



Date: Tuesday, 9 January 2018

Time: 2.00 pm

Venue: Shrewsbury/Oswestry Room, Shirehall, Abbey Foregate, Shrewsbury, Shropshire, SY2 6ND

Contact: Emily Marshall, Committee Officer  
Tel: 01743 257717  
Email: [emily.marshall@shropshire.gov.uk](mailto:emily.marshall@shropshire.gov.uk)

## NORTH PLANNING COMMITTEE

### TO FOLLOW REPORT (S)

#### **2 Minutes (Pages 1 - 4)**

To confirm the Minutes of the meeting of the North Planning Committee held on 12<sup>th</sup> December 2017, attached, marked 2. (To Follow)

Contact: Emily Marshall on 01743 257717

#### **5 Land South East Of Rosedale, Maesbrook, Oswestry, Shropshire, SY10 8QN (17/04401/FUL) (Pages 5 - 16)**

Erection of an affordable dwelling with detached garage/store and formation of vehicular access. (Report to Follow)

#### **6 Barn To The South Of Lee, Ellesmere, Shropshire (17/04613/FUL) (Pages 17 - 30)**

Application under Section 73A of the Town and Country Planning Act for the erection of 1No dwelling; erection of detached storage building; change of use of agricultural land to domestic residential use; realignment of existing vehicular access track and installation of package treatment plant (amended scheme). (Report to Follow)

**7 Proposed Residential Development To The West Of Shrewsbury Street, Prees, Shropshire (17/03775/OUT) (Pages 31 - 44)**

Outline application for the erection of up to 5 no. residential dwellings including access off Shrewsbury Street. (Report to Follow)

**8 Proposed Foodstore To The North Of Wrexham Road, Whitchurch, Shropshire (17/01152/FUL) (Pages 45 - 92)**

Erection of a new foodstore (Use Class A1), access, substation and associated car parking and landscaping. (Report to Follow)

**9 Proposed Residential Development, Land At The Cross, West Felton, Shropshire (16/05336/REM) (Pages 93 - 110)**

Approval of reserved matters (access, appearance, landscaping, layout, scale) pursuant to 14/00133/OUT for residential development of 25 houses (inclusive of 2 affordable)  
(Report to Follow)

**10 Proposed Residential Development, Land At The Cross, West Felton, Shropshire (17/05626/VAR) (Pages 111 - 132)**

Variation of condition number 7 attached to Planning Permission 14/00133/OUT dated 1st October 2014 (won on appeal) to allow amendments to the access arrangements.  
(Report to Follow)

**11 Appeals and Appeal Decisions (Pages 133 - 138) (Report to Follow)**



## Committee and Date

North Planning Committee

9<sup>th</sup> January 2018

## **NORTH PLANNING COMMITTEE**

### **Minutes of the meeting held on 12 December 2017**

**In the Shrewsbury/Oswestry Room, Shirehall, Abbey Foregate, Shrewsbury, Shropshire, SY2 6ND**

**2.00 - 2.50 pm**

**Responsible Officer:** Emily Marshall

Email: emily.marshall@shropshire.gov.uk    Tel: 01743 257717

### **Present**

Councillor Paul Wynn (Chairman)

Councillors Roy Aldcroft, Gerald Dakin, Steve Davenport (Substitute for Vince Hunt), Pauline Dee, Rob Gittins, Roger Hughes, Mark Jones, Paul Milner and Peggy Mullock

### **62 Apologies for Absence**

Apologies for absence were received from Councillors Claire Aspinall and Vince Hunt (substitute: Steve Davenport).

### **63 Minutes**

#### **RESOLVED:**

That the Minutes of the meeting of the North Planning Committee held on 14<sup>th</sup> November 2017 be approved as a correct record and signed by the Chairman.

### **64 Public Question Time**

There were no public questions, statements or petitions received.

### **65 Disclosable Pecuniary Interests**

Members were reminded that they must not participate in the discussion or voting on any matter in which they had a Disclosable Pecuniary Interest and should leave the room prior to the commencement of the debate.

Councillor Paul Wynn declared a disclosable pecuniary interest in relation to planning application 17/05115/VAR, proposed café at Hadley Farm, Wrexham Road, Whitchurch, Shropshire, as the applicant. Councillor Wynn stated that he would vacate the Chair and leave the room during consideration of the application. In the absence of the Vice-Chairman, Councillor Gerald Dakin was appointed Chairman for consideration of agenda item 7 (Minutes Ref 68).

In relation to planning application 17/05115/VAR, proposed café at Hadley Farm, Wrexham Road, Whitchurch, Councillor Gerald Dakin declared that he knew Councillor Paul Wynn (the applicant) and that he would be voting on the merits of the application only.

**66 Wood Lane Quarry, Spunhill, Ellesmere, SY12 0HY (16/05501/MAW)**

The Principal Planning Officer introduced the application for the proposed construction of 7 x 995KW Biomass Plant, confirming that the application was mainly retrospective and the building had been constructed and trial operations had taken place. The Principal Planning Officer stressed that the Council did not condone construction before gaining planning permission, however there were extenuating circumstances relating to this application, in that there had been a significant delay in resolving ecological issues and financial pressures relating to the Government renewable heat incentive payment.

Carole Warner (Clerk) on behalf of Welshampton and Lyneal Parish Council spoke against the proposal in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees.

The Chairman expressed his disappointment that the local ward councillor was not present to speak on the application.

Mr Stuart Lawrence, Estate Manager on behalf of the applicant spoke in support of the proposal in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees.

The Committee expressed their concern at the retrospective nature of the application, but accepted the reasons put forward, therefore, having considered the submitted plans and listened to the comments made by all of the speakers, the Committee expressed their support for the proposals

**RESOLVED:**

That planning permission be granted subject to the conditions set out in Appendix 1 of the Planning Officer's report.

**67 North Of Milford Road, Baschurch, Shropshire (17/02954/REM)**

The Principal Planning Officer introduced the application for the approval of reserved matters (layout, scale, appearance and landscaping) pursuant to 14/01123/OUT for the erection of 34 dwellings and public open space (amended description).

Members' attention was drawn to the information contained within the Schedule of Additional letters.

Ed Austin, a local resident adjoining the site, spoke against the proposal in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees.

The Chairman expressed his disappointment that the local ward councillor was not present to speak on the application.

Helen Howie, Agent on behalf of the applicant spoke in support of the proposal in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees.

In response to questions from Members, the Principal Planning Officer confirmed that there were five affordable units, to which the agent confirmed that these were located in the top north east corner of the site, three for affordable rent and two shared ownership.

Having considered the submitted plans and listened to the comments made by all of the speakers, Members expressed their support for the proposals.

**RESOLVED:**

That planning permission be granted subject to the conditions set out in Appendix 1 of the Planning Officer’s report.

**68 Proposed Cafe At Hadley Farm, Wrexham Road, Whitchurch, Shropshire (17/05115/VAR)**

*(In accordance with his declaration made at Minute 65, Councillor Wynn left the room during consideration of this application. Councillor Dakin, presided as Chairman for this item).*

*Councillor Peggy Mullock, as local ward councillor left the room during consideration of this application and did not return.*

Having considered the submitted plans members unanimously expressed their support for the proposals.

**RESOLVED:**

That planning permission be granted subject to the conditions set out in Appendix 1 of the Planning Officer’s report.

**69 Appeals and Appeal Decisions**

**RESOLVED:**

That the appeals and appeal decisions for the northern area be noted.

**70 Date of the Next Meeting**

It was noted that the next meeting of the North Planning Committee would be held at 2.00 p.m. on Tuesday, 9<sup>th</sup> January 2018, in the Shrewsbury/Oswestry Room, Shirehall, Shrewsbury.

Signed ..... (Chairman)

Date: .....

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Committee and Date

North Planning Committee

9th January 2018

Item

**5**

Public

## Development Management Report

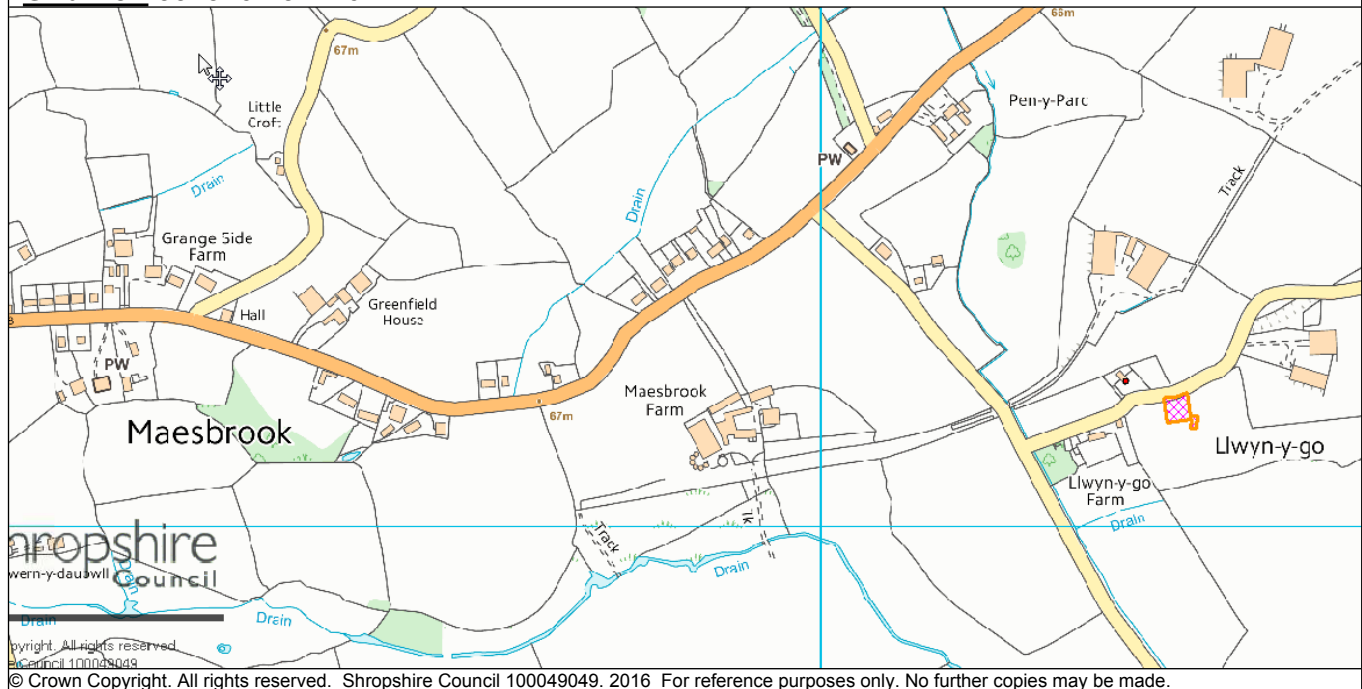
Responsible Officer: Tim Rogers

Email: [tim.rogers@shropshire.gov.uk](mailto:tim.rogers@shropshire.gov.uk) Tel: 01743 258773 Fax: 01743 252619

### Summary of Application

|   |  |
|---|--|
| <b>Application Number:</b> 17/04401/FUL   | <b>Parish:</b> Kinnerley   |
| <b>Proposal:</b> Erection of an affordable dwelling with detached garage/store and formation of vehicular access. |  |
| <b>Site Address:</b> Land South East Of Rosedale Maesbrook Oswestry Shropshire SY10 8QN                           |  |
| <b>Applicant:</b> Mr John Davies  |  |
| <b>Case Officer:</b> Oliver Thomas  | <b>email:</b> <a href="mailto:planningdmc@shropshire.gov.uk">planningdmc@shropshire.gov.uk</a> |

**Grid Ref:** 331346 - 321167



**Recommendation:- Refuse for the following reason:**

1. Although the applicants have demonstrated a strong local connection and a need to reside in the locality, it is not considered that the overall scale and design of the dwelling's associated outbuildings and plot layout/shape is appropriate in the manner proposed. The scale of the proposed garage is considered to be too significant for its intended purpose, being both disproportionate and inappropriate to the sites context and surroundings. Additionally the plots irregular shape and semi-isolation from any neighbouring residential boundaries results in a plot that would be considered as sporadic and failing to reflect and sympathise with the existing built environment, having adverse detriment to the landscape setting and character. The development as proposed would result in direct conflict with the provisions set out in Shropshire Council Types and Affordability SPD, having regard to scale and design, as well as Core Strategy Policy CS6, CS11, SAMDev Policy MD2, MD7a and the provisions set out within the NPPF.

**REPORT****1.0 THE PROPOSAL**

**1.1** This application is seeking full planning permission for the erection of a single affordable dwelling and detached garage/store, to include the formation of a new access point, in accordance with the Councils single plot exception scheme.

**1.2** Prior to the submission of this application, the applicants submitted a Pre-application enquiry for the currently submitted proposal (planning ref: PREAPP/14/00615) in which it was considered that the principle of an affordable dwelling in this location would be considered acceptable.

**2.0 SITE LOCATION/DESCRIPTION**

**2.1** The application site forms part of a larger agricultural field, which extends to some 5 acres and is currently used as grazing land for the applicant's livestock. The field lies within the small, rural and dispersed settlement of Llywn-y-go, south of Maesbrook. The site lies south of an unclassified highway, behind a high boundary hedgerow providing visual separation between those neighbouring properties to the north, to the west of the larger field is Rosedale – a Grade II listed dwelling, with additional residential dwellings further afield to the east.

**3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION**

**3.1** Applications where the Parish Council submit a view contrary to Officers refusal based on material planning reasons that cannot reasonably be overcome by negotiation or the imposition of planning conditions and the Area Manager/Principal Planning Officer in consultation with the committee chairman/vice chairman and the Local Member agrees that the Parish Council have raised material planning issues and that the application should be determined by committee.

**4.0 Community Representations**

**4.1 - Consultee Comments**



**4.1.1 SC Drainage (SuDS) – No objections subject to informative.****4.1.2 SC Highways Authority – No objections subject to conditions.**

The proposed development seeks to erect an affordable dwelling on land to the south east of Rosedale, Maesbrook. The development sits is accessed directly from an unclassified single track no through road. The proposed new access will be located on the outside of a bend and the visibility splays proposed are considered acceptable given the local circumstances. The first few metres of the new vehicular access should be given to a sealed surface so as to prevent re-location of loose material onto the highway.

**4.1.3 SC Affordable Housing – In support.**

Mr and Mrs Davies have demonstrated housing need, strong local connections, support and a need to live ion the local area. However, due to issues of availability and affordability within the local parish areas they are unable to meet their own housing need without assistance through this policy.

**4.1.4 SC Ecology – No objections subject to conditions.**

Having read the above application and the supporting documents, including the Extended Phase 1 Habitat Survey prepared by Susan Worsfold (May 2015) a number of conditions and informative are recommended to ensure the protection of European Protected Species.

**4.1.5 Kinnerley Parish Council – In support.**

No comments provided.

**4.1.6 Cllr Mat Lee (Local Ward Member for Llanymynech) – Committee determination request.**

“1. The policy status of Llwyn-y-Go would need to change from open countryside to a Community Cluster, in order to allow general ‘infill’ housing development in the future.

There is no sound reasoning for such a change. The dispersed nature of the settlement and its lack of any services or facilities, would make it a most inappropriate location to allow such development, which would dramatically alter the existing character and appearance of the settlement. Which would mean any development in the future would be difficult.

2. The Parish Council supports the current position of the plot, which follows the very clearly ‘dispersed’ pattern of development in Llwyn-y-Go. A pre-application enquiry submitted to the Council, was supported by the Planning Officer dealing with the case at that time.

3. The neighbour to the west has already objected to the siting of the dwelling in its current position. Bringing it closer will no doubt generate further objections – not

only from the current objector, but perhaps also from the property opposite, who currently have made no objection to the dwelling in its proposed position.

4. The Highways Department has raised no objection to the access, as proposed, subject to the following condition.

*Prior to the first occupation of the development hereby permitted a visibility splay measuring 2.4 x 45 metres to the nearside carriageway edge shall be provided to each side of the access where it meets the highway..... Reason: To ensure the provision of adequate visibility in the interests of highway safety.*

If the plot is brought further to the west, it will bring the proposed highway access much closer to the bend to the west. The Applicants believe that an access at this point would be unsafe.

I believe these considerations are sufficient to send the application to the planning committee.

If you require anything else off myself please don't hesitate to contact me.”

## **4.2 - Public Comments**

### **4.2.1 One public representation neither supporting or objecting to the proposal was received, with its material considerations being summarised as follows;**

- Adjacent landowner has a right of access across the western side;
- Llywn-y-go is designated open-countryside within the adopted development plan, so concerns over infill are unreasoned.

### **4.2.2 One public representation objecting to the proposal was received, with its material considerations being summarised as follows;**

- Proposed development will have significant impact upon neighbouring amenities.
- Loss of privacy and overlooking, due to topography of site and orientation of dwelling;
- Increase in vehicle movements will adversely impact upon highway safety;
- Proposed garage ridge line is unacceptably high, resulting in an overbearing outbuilding.
- Placing of window/door openings raises concerns over privacy, as rear doors are shown as having direct sightlines into neighbouring garden spaces.
- The dwellings external appearance and construction materials are not reflective of its immediate setting.

## **5.0 THE MAIN ISSUES**

**Principle of development**  
**Siting, scale and design of structure**  
**Impact on amenities**  
**Highways and access issues**  
**Drainage issues**  
**Ecological issues**

## **6.0 OFFICER APPRAISAL**

### **6.1 Principle of development**

6.1.1 A key objective of both national and local planning policy is to concentrate residential development in locations which promote economic, social and environmental sustainability. Specifically, Policies CS1, CS3, CS4, CS5 and CS11 of the Shropshire Local Development Framework Adopted Core Strategy and MD1, MD3 and MD7a of the SAMDev Plan state that new open market housing will only be permitted on sites within market towns, other ‘key centres’ and certain named settlements (‘Community Hubs and Clusters’) as identified in the SAMDev Plan. Isolated or sporadic development in open countryside (i.e. on sites outside the named settlements) is generally regarded as unacceptable unless there are exceptional circumstances.

6.1.2 One of the exceptions mentioned under Core Strategy Policy CS5 and SAMDev Policy MD7a is where named individuals with strong local connections and who are in demonstrable housing need wish to build their own ‘affordable’ house. Detailed guidance on this initiative, including definition of the terms ‘strong local connections’ and ‘housing need’, can be found in the Type and Affordability of Housing Supplementary Planning Document (the SPD). As is required the Housing Enabling team (Affordable Housing) are satisfied that the policy requirements are met, this clarifies the council’s position in regards to the local connection, in response to the public representations received. Any permission granted would be subject to prior completion of a legal agreement to control both initial and future occupancy and restrict the resale value.

6.1.3 Returning to the issue of location, even affordable homes on rural exception sites are required by the SPD to be within or adjoining “recognisable named settlements”. Further, the SPD explains that because a settlement is characterised in no small part by the relationship between its various properties, its limits are defined by where that relationship peters out. This varies from settlement to settlement, depending on both the number of houses and their proximity. For example, a site a short distance from a scattered or loose-knit settlement may be considered to adjoin it, whereas a site a similar distance from a tightly clustered or nucleated settlement would not.

6.1.4 The development site forms a parcel of agricultural land that lies within the small rural settlement of Llywn-y-Go, a recognisably named settlement south of Maesbrook. The development site is situated with a group of properties that are seen as forming part of the overall settlement. However, it is acknowledged that the settlement is relatively isolated and secluded from principle services and facilities, with relatively poor network links. Under local policy, Llywn-y-Go has been designated as open-countryside, where new open-market housing development is resisted. Recognising the need to provide rural rebalance and in supporting local people, the principle of development is both established and supported due to the considerable resultant social benefits.

### **6.2 Siting, scale and design of structure**

6.2.1 The development site sees the development of current agricultural land in the applicant’s ownership, adjacent to the northern highway and in close proximity to a number of neighbouring properties. Following negotiations on those originally

submitted plans, an amended site plan has been submitted to show an irregular shaped plot that measures some 950sqm, below the maximum 0.1ha (1000sqm). The plots irregular shape results in a boundary that spans a large portion of the highway boundary, beginning to the west and close to the neighbouring Rosedale (a Grade II listed property) and extending some 56m along the highway edge, with access provided through a newly formed eastern access point, mid-point along the field and intended to serve a yet-to-be constructed agricultural building (15/04800/AGR), in the north-eastern corner of the field.

- 6.2.2 A key requirement for single plot exception schemes is that they do not constitute isolated or sporadic development and the development must reflect the character and scale of the settlement. Whilst it is acknowledged that Llwyn-y-go is a small cluster of housing, it is characterised by smaller groups of adjoining residential properties, as such it was requested that the site plan be altered to physically adjoin the eastern boundary of Rosedale – this was requested at pre-application stage also. This was resisted by the applicants for amenity issues and due to the need to leave clear a 6m passage adjacent to the western boundary, to allow agricultural equipment to access agricultural land to the south and that does not have direct access onto the highway network. Whilst this is not a material consideration and also with the option of re-locating this access further east, the Officer was willing to compromise and suggested leaving a buffer of 8m from this boundary to serve this purpose. Despite the western point of the plot starting at this location, it was expected that the plot would provide a regular shape that followed an 8m buffer to its southern most point as this would ensure that the proposed dwelling would not be read as isolated or secluded and not what was subsequently submitted.
- 6.2.3 Resultantly, the Officer is unable to support the current plot location and layout for the concerns expressed above. The applicant justified their rationale behind the plot layout; however, they raised no material justifications with the majority being for the applicants gain only. By grouping housing together, instead of dispersed, the character of the immediate residential context would be enhanced and provide a stronger sense of community. Instead, the current proposal results in their being breaks in the pattern of development, with housing interspersed along agricultural land and detrimental to the overall landscape character and setting.
- 6.2.4 On-site, the proposed dwelling has been sited to the far west and slightly set back in the plot, to allow sufficient parking/turning areas to its front. The dwellings lies facing the highway, positioned at a slight angle to follow the topography of the land. The dwelling is of traditional construction and appearance, reflective of a stone cottage and 1.5 storeys in height, in accordance with the SPD requirements the internal floorspace measures some 99.76sqm across two floors and provides a modest 3 bedroomed dwelling. The dwelling is to be constructed from a range of materials, including local stone cladding to its frontal elevation, with facing brickwork occupying the other elevations with contrasting brick quoins to all its joins, all under a natural slate roof, providing a dwellings that is sympathetic to its rural location.
- 6.2.5 The submitted site plan shows the erection of a large detached double garage perpendicular to the dwelling, providing a double bay garage, with a covered storage area, internal staircase and accommodation/storage space within the

eaves. In accordance with the SPD, detached garages/outbuildings are considered appropriate, but only where they are suitably designed and appropriate to their context. The proposed detached garage, similar to the dwelling, is traditionally designed and constructed – timber framed and clad building under a dual pitched roof. However, its scale is considered disproportionate for the plot and size of dwelling, having a footprint of some 68qm, with an internal floorspace of 64sqm across the two floors – footprint is larger due to external storage and overhanging eaves.

- 6.2.6 Whilst certain aspects of the scheme are acceptable, overall the siting, scale and design of both the plot and development within the site are considered unacceptable in complying with the stringent controls afforded through the SPD. Affordable housing is considered as exception sites and must be treated as such, instead the submitted scheme is unable to seamlessly reflect the character of the area, being inappropriate for its location, whilst providing a disproportionately large detached garage. So much so, that approval cannot be granted on this basis, with failed negotiations and concerns unable to be dealt with through the imposition of conditions.

### **6.3 Impact on amenities**

- 6.3.1 The proposed two storey dwelling is located sufficiently far enough for there to be no concerns over impact on residential amenities of those surrounding neighbouring properties. Despite the objection comments received, the separation distances between its closest neighbours are some 60m and 80m, north and west respectively, ensuring that there will be no unacceptable levels of overlooking or loss of privacy. Furthermore, measures have been adopted to further protect amenities of neighbouring resident and future occupants, through the orientation of the dwelling, the use of boundary treatments and outbuildings obscuring views.
- 6.3.2 By nature, the creation of a domestic dwelling in this rural, countryside location will have some visual impacts; however, these are not considered too severe so as to raise concern. The dwelling will be partly screened by the existing high highway hedgerow, being retained, its proximity to neighbouring dwellings further minimises its visual impacts as the introduction of domestic paraphernalia will not appear isolated. The submitted site plan shows additional attempts at softening its visual impact through the introduction of an orchard to the west of the plot and minimal un-landscaped garden space.
- 6.3.3 As mentioned, the western neighbouring property, Llywn-y-Go Farm, is Grade II listed, with the proposed development having the potential to impact on this designated heritage assets setting and character. The proposal therefore has to be considered against Shropshire Council policies CS6, CS17, MD2 and MD13 and with national policies and guidance including PPS5 Historic Environment Planning Practice Guidance and section 12 of the National Planning Policy Framework. Special regard has to be given to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses as required by Section 66 of the Planning (Listed Building and Conservation Areas) Act 1990. Due to the separation distances, the use of boundary treatments and with a sensitively designed dwelling the Officer is satisfied that there will be minimal harm to the designated heritage asset.

## **6.4 Highways and access issues**

- 6.4.1 The proposal to construct a new affordable dwelling and detached garage see the formation of a new domestic access point to the sites eastern side. This access point is served directly from an unclassified single track, no through road, located on the outside of a bend the site is able to provide visibility splays that are acceptable given the immediate conditions and circumstances. However, in order to meet current highway standards, the first few metres of the new vehicular access should be given to a sealed surface so as to prevent re-location of loose material onto the highway.
- 6.4.2 The access point then leads on to a private parking and turning area, laid in gravel and able to provide adequate parking for 3 vehicles with sufficient manoeuvrability - the parking area will also serve the proposed double bay garage. As mentioned, the proposed access is intended to serve an agricultural building that has not yet been constructed, as such once leaving the highway the access meets an area of standing of which the dwelling is served to the west, access to the field to the south and branching off eastwards is a track serving the proposed agricultural building, with all three access routes having gates installed.
- 6.4.3 It must be noted that as this agricultural building is yet to be constructed, it holds no weight whatsoever in the determination of this application, additionally the proposed description is for an affordable dwelling and must only be treated as such. Whilst additional provisions might be advantageous to the applicants, the Officer can only consider those pertinent to the construction of an affordable dwelling. Notwithstanding this, the proposed access point and provision of parking and turning is considered acceptable from a highway perspective.

## **6.5 Drainage issues**

- 6.5.1 The submitted site plan suggests that the proposed dwelling will be served by a newly installed biodisc treatment plant for the removal of foul waste, this is shown beyond the hedgerow enclosure, but has been included within the applicants red-line edge for maintenance purposes. Additionally, surface water will be directed to soak pits, with the applicant willing to install measures of sustainable water management – water butts and permeable surfacing for the parking and turning areas. All aspects of drainage have been confirmed by the Councils drainage engineer as acceptable, subject to conditions.

## **6.6 Ecological issues**

- 6.6.1 Due to the construction of a dwelling on currently undeveloped agricultural land, that includes the removal of agricultural hedgerows, an extended Phase 1 habitat survey accompanies the application. This report, completed by Worsfold and Bowen (May 2015), provides that there was no evidence of protected species being noted on site or at risk as a result of the development. Additionally, the Councils ecologist has confirmed its findings and raised no objections or loss of habitat, subject to conditions.

## **7.0 CONCLUSION**

The proposal to provide a single plot exception, affordable dwelling, whilst acceptable in principle and compliant with the SPD in terms of its location within a recognisable named settlement, is considered unacceptable in terms of siting, scale and design. The plot layout fails to reflect the existing pattern of development,

that would provide a residential unit seen as isolated and sporadic, showing little relationship to the surrounding settlement, having adverse impacts upon the landscape setting and character. Additionally, the proposed detached garage is of a scale that is both disproportionate and inappropriate in relation to the size of the dwelling, the plot and its surroundings. Despite all other matters of the scheme raising little concern, the adverse impacts arisen from those mentioned results in a proposal that fails to comply with the development plan and is unable to be supported. It is therefore recommended that permission be REFUSED.

## **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.

he 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

#### **Core Strategy and Saved Policies:**

CS1 - Strategic Approach

CS5 - Countryside and Greenbelt

CS6 - Sustainable Design and Development Principles

CS11 - Type and Affordability of housing

CS17 - Environmental Networks

CS18 - Sustainable Water Management

MD1 - Scale and Distribution of Development

MD2 - Sustainable Design

MD7A - Managing Housing Development in the MD7A - Managing Housing Development in the Countryside

CS1 - Strategic Approach

MD12 - Natural Environment

MD13 - Historic Environment

SPD Type and Affordability of Housing

### Relevant planning history:

OS/07/15133/FUL Extension to bungalow GRANT 12th September 2007

OS/07/15161/FUL Erection of replacement detached single garage GRANT 20th September 2007

PREAPP/14/00615 Erection of a single plot affordable dwelling PREAIP 7th January 2015

17/04401/FUL Erection of an affordable dwelling with detached garage/store and formation of vehicular access. PDE



**11. additional information**

[View details online:](#)

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| List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information) |
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| Cabinet Member (Portfolio Holder)<br>Cllr R. Macey |
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| Local Member<br>Cllr Matt Lee |
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| Appendices<br>None |
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Committee and Date  
 North Planning Committee  
 9<sup>th</sup> January 2018

Item  
**6**  
 Public

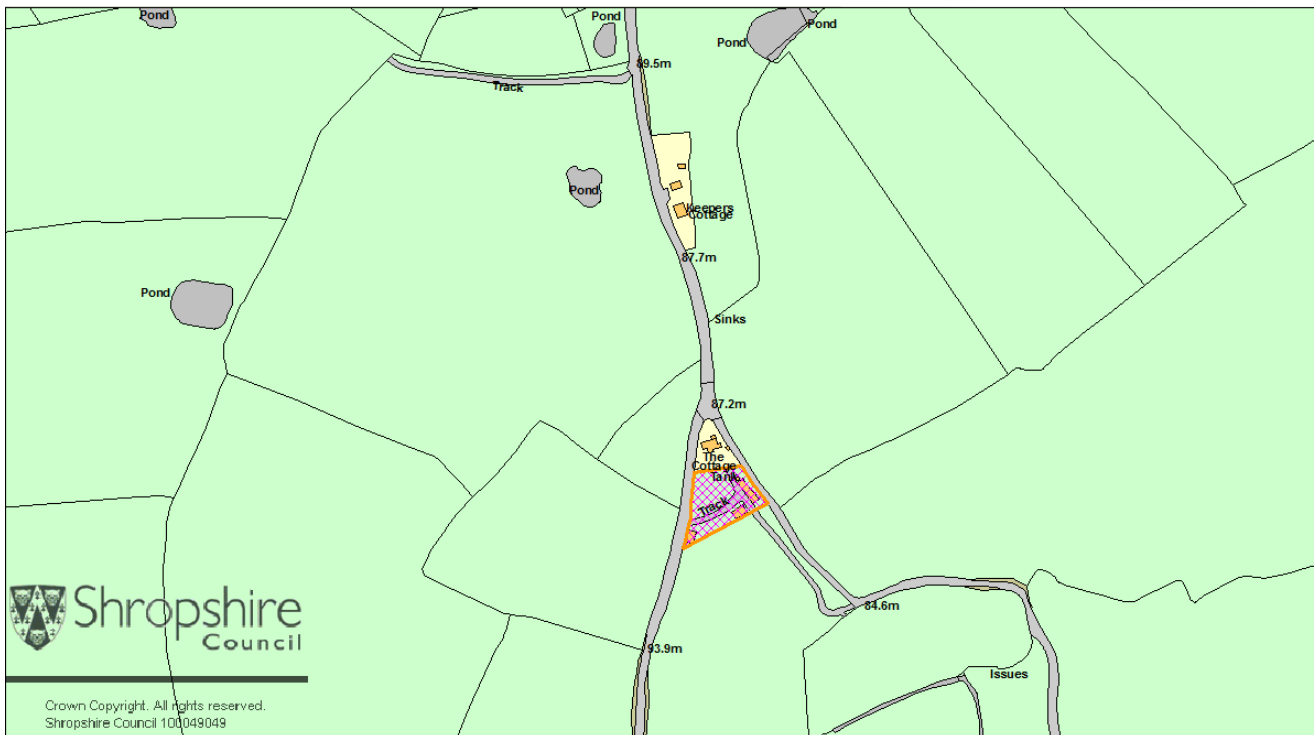
## Development Management Report

Responsible Officer: Tim Rogers  
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### Summary of Application

|   |                       |   |
|---|-----------------------|---|
| <b><u>Application Number:</u></b> 17/04613/FUL  | <b><u>Parish:</u></b> | Ellesmere Rural   |
| <b><u>Proposal:</u></b> Application under Section 73A of the Town and Country Planning Act for the erection of 1No dwelling; erection of detached storage building; change of use of agricultural land to domestic residential use; realignment of existing vehicular access track and installation of package treatment plant (amended scheme) |                       |   |
| <b><u>Site Address:</u></b> Barn To The South Of Lee Ellesmere Shropshire   |                       |   |
| <b><u>Applicant:</u></b> Dukescroft Limited   |                       |   |
| <b><u>Case Officer:</u></b> Oliver Thomas   |                       | <b><u>email:</u></b> <a href="mailto:planningdmc@shropshire.gov.uk">planningdmc@shropshire.gov.uk</a> |

**Grid Ref:** 340539 - 331997



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**Recommendation:- Refuse**

## Recommended Reason for refusal:

1. The development site fails to be located within or adjacent to an area identified for additional sustainable residential development in accordance with Shropshire's strategic approach and the main aims of the National Planning Policy Framework. As a result, the site is considered as being within open-countryside, where strict controls are placed on all new development to ensure that only those that maintain and enhance the vitality and character will be supported, of which open market new build dwellings are not considered to improve the sustainability of rural communities. The development site would also fail to comply with the Settlement Policy as found at S8.2(iv) in that the development is neither an infill site or a conversion. Resultantly, the proposed development is contrary to local policies CS1 and CS5 of the Shropshire Core Strategy, MD1 and MD7a of the SAMDev Plan and to the overall aims of the National Planning Policy Framework.

**REPORT****1.0 THE PROPOSAL**

- 1.1 This application is seeking full, part retrospective planning permission for the erection of a single detached dwelling together with ancillary works.
- 1.2 This application is a resubmission of a recent refusal (ref: 17/03208/FUL) notice, refused due to it being considered as sited within open countryside that fails to comply with Lee's settlement policy and therefore unsustainable development. Additionally, the design and external appearance was considered as incongruous to the sites immediate setting and character. Resultantly, this application seeks to address the concerns raised over the proposals compliance with local policy, its scale and appearance whilst also showing the applicants willingness to supply a financial contribution in regards to affordable housing
- 1.3 The site has an extensive planning history. Originally 15/02591/PMBPA was submitted for the conversion from an agricultural building into a residential dwelling under permitted development rights (Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order, 2015), this application was considered lawful with prior approval granted for those concerning matters.
- 1.4 The applicant then submitted 16/03788/CPL to confirm that the replacement of external cladding was not considered as 'development' as defined under s55 of the Town and Country Planning Act 1990. This was considered lawful as the works did not materially affect the external appearance and confirmed that the works identified in the certificate application could not form part of a technical implementation of 15/02591/PMBPA having occurred.
- 1.5 Subsequently 17/00368/FUL was submitted, which included a number of amendments and alterations to 15/02591/PMPBA (similar to those plans submitted currently). This was refused on grounds of detrimentally impacting upon the agricultural character of the existing buildings, providing an overly domestic appearance that fails to both preserve and enhance the buildings character and

setting.

- 1.6 17/01566/FUL was then submitted under the applicants 'free-go' following the refusal of 17/00368/FUL. However, between the previous decision being issued and the submission of this application, substantial operational/construction works had occurred to the agricultural building, implementing 15/02591/PMBPA. Which, at the time of assessment were considered as being too substantial (structural works/complete removal of walls and roof) for the works to be considered as falling within the scope of conversion within the permitted development regulations (Class Q, Q1(i)). As a result of the works failing to now comply, the building could no longer rely on the permitted development provisions and was therefore considered unlawful as the resultant dwelling would be tantamount to a new dwelling construction – something the permitted development rights do not permit.

## **2.0 SITE LOCATION/DESCRIPTION**

- 2.1 The development site forms a parcel of agricultural land measuring some 0.16 ha, located to the south of Lee. The site gains access from the west, a classified highway, and adjoins a residential dwelling to the north that forms a triangular plot with highways to both the west and east. The access leads onto a track which serves the former agricultural barn on site, to the east and adjacent to the eastern boundary, with a number of other small outbuildings around the site previously providing different functions, but all now in a bad state of repair and dis-used. The site is bounded by mature hedgerow on all sides, other than its eastern which has seen the removal of its eastern boundary.

## **3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION**

- 3.1 Application requested to be referred, by the Local Member, to the relevant Planning Committee within 21 days of electronic notification of the application and agreed by the Service Manager with responsibility for Development Management in consultation with the committee chairman or vice chairman to be based on material planning reasons.

## **4.0 Community Representations**

### **4.1 - Consultee Comments**

#### **4.1.1 SC Ecology – No objections subject to conditions and informative.**

A 'Preliminary Ecological Assessment' was carried out on this site in April 2015.

None of the barns are considered to have any significant roost potential due to their structure of predominantly metal with some wood lap. The loft although visible was not easily accessible and the safety of the floor was unknown. No evidence of any other protected or priority species was observed on or in close proximity to the site and no additional impacts are anticipated.

**4.1.2 SC Drainage (SuDS) – No objection subject to informative.****4.1.3 SC Affordable Housing – No objections.**

The affordable housing contribution proforma accompanying the application indicated the correct level of contribution and/or on site affordable housing provisions and therefore satisfies the provisions of the SPD Type and Affordability.

**4.1.4 SC Regulatory Services – No objection subject to conditions.**

Having considered maps of the area it is noted that a historic tank is shown on the site. As a result it is proposed an appropriately worded condition be imposed to ensure that risks from land contamination are minimised.

**4.1.5 SC Highways Authority – No objection subject to conditions.**

The revisions to the proposed development to overcome the reason for refusal do not affect the proposal from the highway perspective and the comments forwarded in the Highway Advice note dated 06.09.2017 remain relevant for the current submission.

**4.1.5 SC Trees - No objections subject to conditions.**

The proposed development will not impact on any significant trees on or adjacent to the site. A tree protection plan and details have been provided and this demonstrated that trees of value can be retained and protected.

**4.1.6 Ellesmere Rural Parish Council – In support.**

The Parish Council STRONGLY supports this application on the following grounds:

The application complies with current policy.

The development site falls within the named settlement of Lee, being centrally placed on the through road, between the two name location signs situated near The Smithy (SY12 9AE) and the Chapel (SY12 9AF). The settlement of Lee features on historic maps (eg A map drawn by Christopher Saxton map William Cecil Lord Burghley. Secretary of State to Elizabeth I), is evident via postal addresses featuring both SY12 9AE and 9AF postcodes, house names, electoral roll, the opinions of local residents and Shropshire Council's mapping system. There are a number of listed properties in the hamlet including Lee Old Hall and a telephone kiosk.

The settlement of Lee is included in the Local Plan for development as follows:

"S8.2(iv): Tetchill, Lee and White

The settlements of Tetchill, Lee and Whitemere are a Community Cluster where development by infilling, groups of houses and conversions may be acceptable on suitable sites within the development boundary identified on the Policies Map. The housing guideline across the Cluster is around 20 dwellings. A single allocated site identified on the Policies Map will deliver around 10 dwellings in Tetchill. In Lee and Whitemere development will be limited to single infill plots and conversions."

The Parish Council Members are content that this plot constitutes an infill site as defined in the Local Plan; The site has an existing hedge boundary and buildings providing a footprint and making it suitable for redevelopment. The proposed development would not constitute development in open countryside as it is the site of a redundant agricultural building. The development of the site is regarded by the Council members and local residents as beneficial and desirable as it will result in improving the plot by tidying up the old stack yard.

The Parish Council approves the build design which is sympathetic to the original building. There is sufficient space for vehicles to be parked outside the proposed residential curtilage without causing any highway safety issues on the public highway. The development will not cause any undue noise and disturbance for the occupiers of the neighbouring property, The Cottage, which would be detrimental to their living conditions/residential amenity.

The proposals comply with CS4 being of a scale and design that is sympathetic to the character of the settlement and its environs. It corresponds with CS5 being sited in a named settlement on a plot adjacent to an existing property recognised as being in Lee (The Cottage, SY12 9AE) and is a replacement of a redundant agricultural building which, in the view of Parish Council Members, will make a very positive contribution to the character of the existing built form of the settlement and is entirely in keeping with the current characteristic/nature of the area. The Parish Council has noted the offer of an affordable housing contribution. The design corresponds with CS6 as the development will: 'protect, restore, conserve and enhance the natural built and historic environment and is appropriate in scale, density and pattern and design taking into account the local context and character....' and will have no adverse impact on the local landscape. The Parish Council is entirely satisfied with the orientation, landscaping and design of the proposals.

The application meets strategic objectives 3, 4, 5, 10 and 11 of the Core Strategy.

The Parish Council unanimously and strongly supports this application.

#### **4.1.7 Cllr Brian Williams (Local Ward Member for The Meres)**

"I support this application and if it is the intention of planning offices to refuse once again, I would wish the application be determined by Committee for the reasons which the Parish Council have set out and with which I agree. There are material community reasons which must be given more weight than has been accepted by officers in previous applications on this site and which I have conveyed to Planning Services Manager (Mr Ian Kilby) in previous correspondence."

## 4.2 - Public Comments

### 4.2.1 One public letter of support received, with its material considerations being summarised as follows;

- Proposed dwelling will provide visual enhancements to the immediate and wider setting/context;
- Neighbouring residential units have always been considered as being within the settlement confines.

## 5.0 THE MAIN ISSUES

### Principle of development

### Siting, scale and design of structure

### Other matters

## 6.0 OFFICER APPRAISAL

### 6.1 Principle of development

6.1.1 Under Section 38(6) of the Planning and Compulsory Purchase Act 2004, all planning applications must be determined in accordance with the adopted development plan, unless material considerations indicate otherwise. Since the adoption of the Shropshire Core Strategy (March 2011) the National Planning Policy Framework (NPPF) has been published and is a material planning consideration, which is given significant weight in any determination process.

6.1.2 Paragraph 14 of the NPPF states that for decision making, this means;

*“...approving development proposals that accord with the development plan without delay; and where the development is absent, silent or relevant policies are out of date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework taken as a whole.”*

6.1.3 Shropshire Councils adopted Development Plan consists of both the Core Strategy and the Site Allocations and Management of Development Plan (SAMDev Plan). Following their adoption the Council are satisfied that it is able to demonstrate a deliverable 5 year housing land supply – currently at 6.04 years’ - to meet the housing need through the sites identified within the SAMDev Plan and through the provision of additional housing across the county on those sites considered sustainable under Core Strategy Policies (CS1).

6.1.4 In accordance with Shropshire’s strategic approach, all new development will be directed to those areas capable of additional sustainable growth, which CS1 and MD1 separate into either Shrewsbury (CS2), the Market Towns and Key Centres (CS3) and Community Hubs and Clusters (CS4) with all other areas considered as being rural/open countryside (Page 22) where only socially/economic beneficial



housing will be approved.

6.1.5 The development site forms an agricultural field, with a former Dutch Barn located adjacent to the eastern boundary and various other disused outbuildings around the site. To the north, the boundary is adjoined by a residential curtilage, with this plot occupying a 'fork' in the highway, in all other directions is agricultural land for some few hundred metres before the next residential property – some 240m south. Further beyond the adjoining northern property, some 425m, there is a mid-density cluster of housing (approx. 14 properties), surrounding a road junction and having a close-knit relationship: this cluster of development forms the settlement of Lee, as identified on Ordnance Survey maps.

6.1.6 Lee has been identified within the SAMDev Plan as a Community Cluster, with it being considered capable of supplying additional sustainable development throughout the plan period. It is identified alongside both Tetchill and Whitemere, which at S8.2(iv) of the SAMDev Plan states:

*“...a Community Cluster where development by infilling, groups of houses and conversion may be acceptable on suitable sites within the development boundary identified on the Policies Map. The housing guideline across the Cluster is around 20 dwellings. A single allocated site identified on the Policies Map will deliver around 10 dwellings in Tetchill. In Lee and Whitemere development will be limited to single infill plots and conversion”.*

6.1.7 Although Lee has been identified for additional development, it has been identified without a development boundary, as such each development site is determined on the existing built form of that settlement and the relationship that the site has with the existing pattern and built form. As provided within the submitted Design and Access Statement, there are currently 21 registered residential properties, 14 of which are nucleated some 450m further north. The remaining registered properties either form long established farmsteads (Lee New Farm and Lee Bridges) which by nature are isolated away from the settlement core, with those other properties being traditional and historic dwellings as shown on 1874 mapping, or constructed in association with the existing farmsteads as housing rural workers (Lee House and Rydal).

6.1.8 Whilst it is readily acknowledged that all properties within Lee and its hinterlands will fall under the postal address of Lee, this is not to say that they form part of the settlement for planning purposes. The allocation of postal addresses is purely for administrative purposes. Instead, the characterisation of Lee is determined on the existing built form and pattern, of which clearly shows a relatively tight knit cluster of housing surrounding the highway junction, further north of the development site. It is acknowledged that there are residential properties outside of this cluster, but for determining a settlements edge, the mean pattern of built form must be taken.

6.1.9 Shropshire is an inherently rural county, if postal addresses were to indicate settlement boundaries, there would be very little open countryside remaining. Furthermore, the applicant has submitted their own interpretation of the settlement boundary, placing its extent at the village signs – north and south; however, it is readily recognised that village signs do not form a settlements extent, and are also located for administration/historic **Page 23** only – entirely separate from

Shropshire's Local Development Framework and its spatial and strategic approach.

- 6.1.10 Resultantly, due to the sites semi-isolation from the obvious settlement core and separation from the close-knit development by large expanses of undeveloped agricultural land, the development site cannot be considered as being within the settlement confines. Which in accordance with CS4, “... *countryside between the settlements is not part of the cluster*” and “...*windfall development adjoining the village is not acceptable...*”, therefore any proposed development must be demonstrably part of an identified settlement.
- 6.1.11 Notwithstanding the above, should the development site be considered as being within the settlement of Lee, in accordance with S8.2(iv) only those developments which represent infilling, groups of houses and conversions will be acceptable. It is the Officers opinion that the proposed constitutes none of these, regardless of the Parish Councils comments to the contrary. Readily acknowledging that there is no technical definition of ‘infill’ within the planning system (unsure as to where the Parish Council have defined infill in the Local Plan), a general assumption of infill development is where one would expect to see residential housing, typically between two residential curtilages and within an urbanised area – the proposed development site does not constitute infill as it fails on all criteria.
- 6.1.12 MD3 of the SAMDev Plan does support the delivery of housing outside of those identified settlements; however, only in situations where the settlement housing guideline appears unlikely to be met. The councils delivery and monitoring evidence base (Five Year Housing Land Supply Statement: September 2017) provides that Lee (and Tetchill and Whitemere) has had 5 completions and 14 sites having deliverable permissions, totalling 19. As this figure is close to the settlement guideline (20) with a number of years left within the plan period (2006-2026), the provisions of MD3 fail to be enacted and therefore relied upon at this stage in the plan. In addition, the development plan as a whole is on track to deliver the prescribed level of additional housing throughout the plan period.
- 6.1.13 Whilst the proposal may see the removal of redundant buildings and the erection of a new dwelling, it must be clearly understood that due to the site lying within an area of open countryside, only those proposals which support the conversion of historic/heritage assets and those dwelling types for local persons or rural workers will be supported. The re-development of a dis-used agricultural site is not an exception site, with the site able to provide a multitude of uses, which would enhance and support its rural setting, before being considered for residential development.
- 6.1.14 Unlike 17/03208/FUL, this application is accompanied with an Affordable Housing Contribution proforma, highlighting that the applicant is willing to supply a financial contribution to support the provision of affordable housing within the local area. Whilst this financial contribution is a material consideration in accordance with CS11, the recently published Written Ministerial Statement (November 2014) exempted small housing scheme from supplying contributions and itself is a material consideration in the determination. The WMS does not outweigh the adopted development plan and is to be used only when proposals conflict with the development plan. It is to be balanced against the plan and the LPA's evidence base, resultantly the decision maker has discretion in applying their judgement as

to where the balance should lie.

- 6.1.15 The affordable housing contribution is welcomed and does add favour to the balance of judgement. However, it alone does not constitute an approval and the adverse impacts arisen from its unsustainability must be balanced, with the officer cautious that a financial contribution, alone, shifting the balance could be perceived as being in breach of the fundamental principle that planning permission may not be bought. On this occasion, the negatives arisen from the sites open countryside location and its failure to comply with Lee's settlement policy amount to too severe adverse impacts and the balance remains negative.
- 6.1.16 Acknowledging the NPPF's presumption in favour of sustainable development, site specific material considerations can outweigh a proposals non-compliance with the Local Plan (para 12 NPPF). However, the applicant has not evidenced any substantially beneficial material considerations that would provide this. Instead, only those benefits which are applicable regardless of location and development type are provided, with these not being substantial enough to provide the outweighing – economic contribution due to jobs created in the construction phase, supporting local facilities and services.
- 6.1.17 As a result of the development site being in an area of open-countryside, new un-encumbered market housing is resisted. There are minimal substantive material benefits evidenced as a result of the proposal, only those which are apparent regardless of location and a financial contribution. The proposal is therefore contrary to Shropshire's strategic approach and to the overall aims of the NPPF's sustainable development, failing to have its principle of development established.

## **6.2 Siting, scale and design of structure**

- 6.2.1 Policy CS6 of the Shropshire Core Strategy: 'Sustainable Design and Development Principles' requires development to protect and conserve the built environment and be appropriate in scale, density, pattern and design taking into account the local context and character. The development should also safeguard against both residential and local amenity, ensuring that sustainable design and construction principles have been incorporated throughout.
- 6.2.2 Further to Policy CS6, SAMDev MD2: 'Sustainable Design' requires developments to achieve local aspirations for design in terms of visual appearance and functionality. Proposals need to respond appropriately to the form and layout of the existing development including a mixture of uses, streetscapes plot sizes, scale and density that reflect locally characteristic architectural design and details which enhance, respect and restore the local context and character.
- 6.2.3 Section 7 of the National Planning Policy Framework 'Requiring good design' attaches great importance to the design of the built environment, ensuring that developments respond to the local character, reflecting the local surrounding and materials whilst being visually attractive.
- 6.2.4 The existing site forms a parcel of agricultural land, with a large Dutch barn along the eastern boundary, with a number of various buildings within its curtilage, all of which have no visual or historic merit, therefore not worthy of retention under CS5

and MD7a. This application is part-retrospective, in that the building works already occurred on site – reconstruction and replacement of groundworks, structural framework and external works – are tantamount to a new structure, yet still of similar appearance and scale.

- 6.2.5 The submitted plans show the creation of a moderately large two storey dwelling – approx. 171sqm, retaining much of the agricultural appearance of the Dutch barn, yet incorporating domestic features for amenity purposes – fenestration and chimney flues. In addition a number of the existing buildings are to be removed, with additional ones built in replacement – general garden/bin store by access point. The proposal is to include a large residential curtilage, with landscaping and the laying of a gravel driveway and parking/turning area. This current scheme differs from 17/03208/FUL in that the submitted plans show a simplification of the site, as the external balcony, staircase and attached flat roofed garage have been omitted.
- 6.2.6 Despite the re-construction works having already occurred, the proposed dwelling is of the same footprint and scale to the existing, which provides a large 4 bedroomed dwelling. The external appearance has altered considerably since the previous 15/02591/PMBPA, in which it was determined that the proposal would have minimal intervention with no substantial alterations. The submitted plans show the inclusion of fenestration and openings that mimic a former agricultural building; however, it is not considered that these features truly replicate the application buildings former use – large full length windows and hanging roller doors/shutters.
- 6.2.7 Unlike those previous applications, this current one sees the removal of a number of outbuildings, which were previously considered as over-domestication. Instead, the submitted site plans shows the removal of a number of outbuildings, with only a single outbuilding being retained and improved: an outbuilding located on the western boundary, close to the upgraded access point and used as a ‘garden store’. The previously resisted concrete attached garage has been completely omitted from the proposal, with this space now providing additional parking area.
- 6.2.8 Although there remains concerns with its external appearance and character, it has improved greatly on those previous applications and now provides a much simpler vernacular that is able to better reflect the buildings former use. So much so, that a refusal on design grounds can no longer be upheld.

### **6.3 Other matters**

#### **6.3.1 - Drainage issues**

Shropshire Core Strategy Policy CS18: ‘Sustainable Water Management’ states that developments should integrate measures for sustainable water management to reduce flood risk and avoid an adverse impact on water quality and quantity within Shropshire. Policy MD2 ‘Sustainable Design’ of the SAMDev Plan ensures that the Incorporate Sustainable Drainage techniques, in accordance with Policy CS18, as an integral part of design and apply the requirements of the SuDS handbook as set out in the Local Flood Risk Management Strategy. The application form states that foul sewage water will be directed into a package treatment plant, with its treated water discharging into the nearby watercourse, with the surface water will be

discharged into via existing connections. This arrangement is considered acceptable in ensuring the water quality and preventing any surface water flooding or displacement.

### 6.3.2 - Highways and access issues

Core Strategy CS6 and SAMDev MD2 both require that proposals should be located in accessible locations, that safe and accessible to all, if likely to generate significant levels of traffic. Developments must be designed in such a way so as to not result in any adverse impacts on the local infrastructure, being sited in locations where there are opportunities for other modes of transport (walking, public transport, cycling) – resulting in the reduction in private vehicle based travel. Sufficient and adequate provisions should be provided that do not negatively impact on the local road network, through ample off-street parking and having no impact upon other highway users and their safety.

The proposal sees the retention of an existing field access being utilised for residential purposes, with the necessary improvements made to ensure satisfactory domestic standards. On-site, the driveway will be re-routed to provide a clear distinct residential garden space, being laid in gravel and providing adequate parking and turning areas. The concerns over the access apron and opening of the gate noted at 17/03208/FUL have now been satisfactorily addressed and there are no concerns from a highways perspective.

### 6.3.3 - Residential curtilage

The development site has planning history for its residential curtilage, which was previously refused on two occasions on the basis that it would constitute over domestication of the site, significantly detracting from the sites former agricultural use. However, recognising the sites location, boundary screening and proposed landscaping measures, the Officer is satisfied that the proposed residential curtilage is not of a detrimental scale. Measures can be incorporated to ensure the retention of an agricultural appearance – removal of permitted development rights, further hard and soft landscaping mitigation – so much so, that the a refusal cannot be upheld on domestication of the site.

### 6.3.4 - Visual impact and landscaping

The historical and former use of the site is agricultural, with those existing buildings and the on-site layout having a function pertinent to the operations occurring – agricultural machinery and equipment storage. At the time of application, the development site (0.16ha) is no longer in operational agricultural use and is currently being used in association with the construction works that have occurred prior to the submission of application. However, as its last lawful use was agricultural, the proposal will be determined accordingly. By nature, the creation of a residential dwelling and curtilage will significantly alter the appearance of the site and have visual impact within its immediate setting – the introduction of domestic paraphernalia and a building being occupied for residential purposes. The applicant has included measures to mitigate this impact, through the inclusion of garages and domestic outbuilding to ensure that the resultant impact will not be detrimental to

the local amenities and setting of the surrounding area. Whilst the proposed residential curtilage is large, if the applicant were to retain a small section of agricultural land, this would have an unmanageable and un-operational use, which over time would be more harmful to the surroundings than changing the use entirely.

## **7.0 Conclusion**

7.1 The proposal to erect an open-market dwelling, with associated ancillary works, within an agricultural setting and of an agricultural appearance, (other than more minor detail and ancillary development), is not considered to be acceptable in accordance with both local and national policies.

7.1 The development site fails to be sited within an identified location that is able to support additional, sustainable growth in accordance with Shropshire's strategic approach and the overall aims of the NPPF. The site is too far separated from Lee's settlement core, with large expanses of agricultural land interspersing for some 400m. Furthermore, the proposed site does not conform to the existing pattern of development and fails to be demonstrably part of the identified Community Cluster. As such, the site is considered as being within open-countryside, where new open market dwelling is strictly controlled to ensure only those which support and enhance the vitality and character of the countryside. The proposed new build dwelling is contrary to policies CS5, MD7a and Section 6 of the NPPF. Furthermore, given the nature and extent of the works carried out to the structure to date, it is no longer capable of conversion under permitted development and would not meet the requirements of the SAMDev settlement policy relating to infill or conversions.

## **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 regard 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

#### **Core Strategy and Saved Policies:**

CS1 - Strategic Approach

CS4 - Community Hubs and Community Clusters

CS5 - Countryside and Greenbelt

CS6 - Sustainable Design and Development Principles

CS11 - Type and Affordability of housing

CS17 - Environmental Networks

CS18 - Sustainable Water Management

MD1 - Scale and Distribution of Development

MD2 - Sustainable Design

MD3 - Managing Housing Development

MD7A - Managing Housing Development in the MD7A - Managing Housing Development in the Countryside

MD12 - Natural Environment  
 MD14 - Waste Management Facilities  
 SPD Type and Affordability of Housing  
Relevant planning history:

15/02591/PMBPA Application for prior approval under Part 3, Class Q of the Town & Country Planning (General Permitted Development) (England) Order 2015 for the change of use from agricultural to residential use PNR 14th September 2015

16/03788/CPL Certificate of Lawful Development for the replacement of existing infill wall panels with new infill wall panels with the external appearance and dimensions remaining unaffected LA 31st October 2016

17/00368/FUL Change of use of agricultural land to residential use, construction of two bay carport/garage, construction of open sided balcony, realignment of existing track, reuse of outbuilding as garden store, installation of additional cladding, external flue and sliding shutter on existing barn, all to be used in connection with permitted barn conversion (15/02591/PMBPA) REFUSE 24th March 2017

17/01566/FUL Change of use of agricultural land to residential use, construction of two bay carport/garage, realignment of existing track, reuse of outbuilding as garden store, installation of additional cladding and external flue on existing barn, all to be used in connection with permitted barn conversion REFUSE 20th June 2017

17/03208/FUL Application under Section 73A of the Town and Country Planning Act for the erection of one 2-storey dwelling with 2-bay part open fronted garage; erection of detached storage building; change of use of agricultural land to domestic residential use; formation of vehicular access track REFUSE 11th September 2017

17/04613/FUL Application under Section 73A of the Town and Country Planning Act for the erection of 1No dwelling; erection of detached storage building; change of use of agricultural land to domestic residential use; realignment of existing vehicular access track and installation of package treatment plant (amended scheme) PDE

17/04613/FUL Application under Section 73A of the Town and Country Planning Act for the erection of 1No dwelling; erection of detached storage building; change of use of agricultural land to domestic residential use; realignment of existing vehicular access track and installation of package treatment plant (amended scheme) PDE

## 11. ADDITIONAL INFORMATION

[View details online:](#)

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| List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information) |
| Cabinet Member (Portfolio Holder)<br>Cllr R. Macey   |
| Local Member<br>Cllr Brian Williams  |
| Appendices<br>APPENDIX 1 - Conditions  |





Committee and Date  
 North Planning Committee  
 9<sup>th</sup> January 2018

Item  
**7**  
 Public

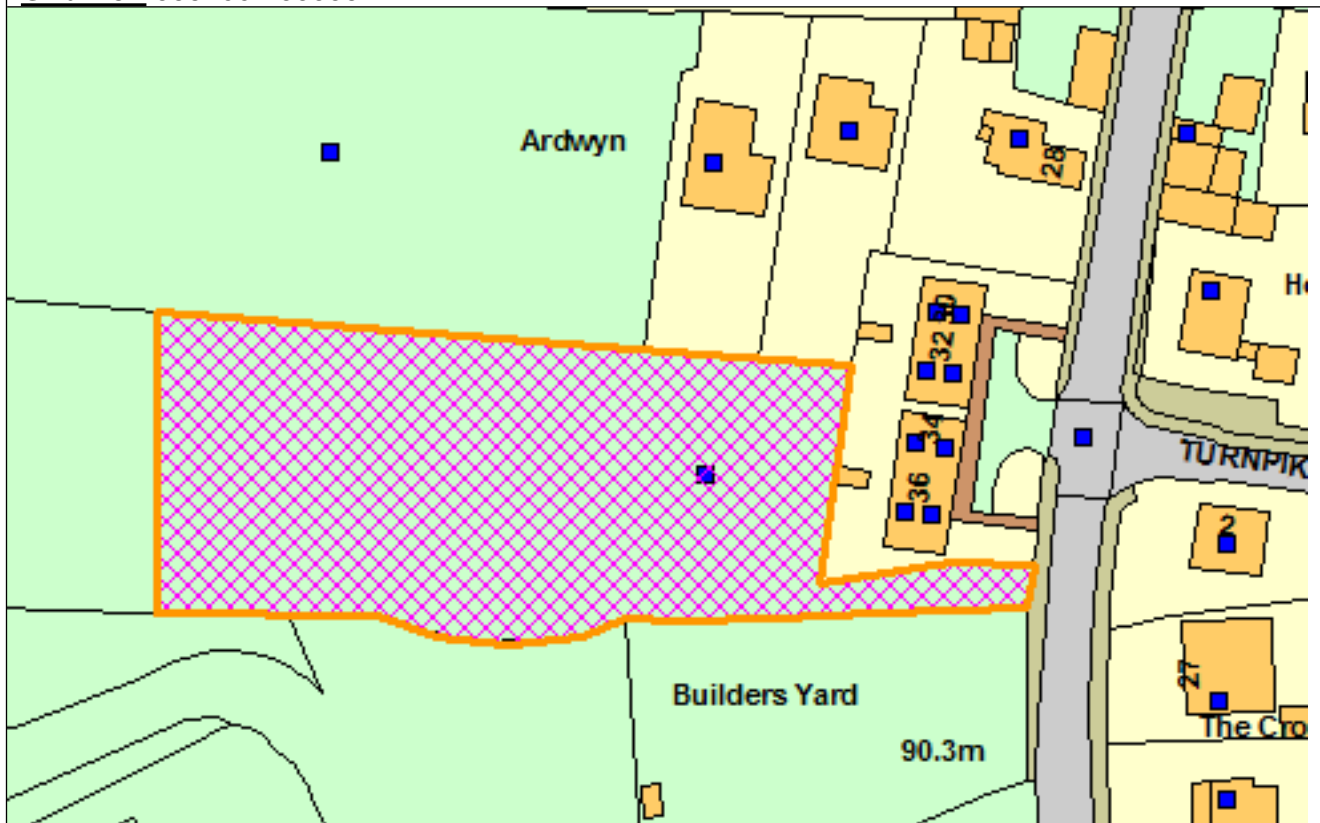
## Development Management Report

Responsible Officer: Tim Rogers  
 Email: [tim.rogers@shropshire.gov.uk](mailto:tim.rogers@shropshire.gov.uk) Tel: 01743 258773 Fax: 01743 252619

### Summary of Application

|   |  |
|---|--|
| <b>Application Number:</b> 17/03775/OUT   | <b>Parish:</b> Prees   |
| <b>Proposal:</b> Outline application for the erection of up to 5 no. residential dwellings including access off Shrewsbury Street |  |
| <b>Site Address:</b> Proposed Residential Development To The West Of Shrewsbury Street<br>Prees Shropshire                        |  |
| <b>Applicant:</b> Messrs John & William Nash  |  |
| <b>Case Officer:</b> Sue Collins  | <b>email:</b> <a href="mailto:planningdmne@shropshire.gov.uk">planningdmne@shropshire.gov.uk</a> |

**Grid Ref:** 355266 - 333354



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**Recommendation:- Grant Permission subject to the conditions set out in Appendix 1.****REPORT****1.0 THE PROPOSAL**

1.1 This application seeks outline planning permission for the construction of up to five dwelling and the formation of a vehicular access to land off Shrewsbury Street, Prees.

**2.0 SITE LOCATION/DESCRIPTION**

2.1 The land is identified in SAMDev as being part of an allocated housing site within the village. The land is currently laid to grass and is used for agricultural purposes. It is a relatively flat area of land behind existing dwellings fronting Shrewsbury Street and two dwellings to the north. To the south is the Prees Industrial Estate. The remaining areas adjacent to the site are agricultural land.

2.2 There is a hedgerow to the south with some mature/semi mature trees around and the boundaries to the dwellings are defined by fencing.

**3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION**

3.1 The Parish Council have objected to the proposal which is contrary to the recommendation of officers. Under the terms of the Scheme of Delegation, due to the opposing opinions the application should be presented to the planning committee for determination.

**4.0 COMMUNITY REPRESENTATIONS full details of the responses can be viewed online****4.1 Consultee Comments**

4.1.1 Prees Parish Council: Prees Parish Council stands by its previous comments concerning its disquiet about piecemeal development of this site and reiterates that in its view access is extremely difficult and therefore potentially unsafe.

4.1.2 **Affordable Housing:** If the development is policy compliant then whilst the Council considers there is an acute need for affordable housing in Shropshire, the Councils housing needs evidence base and related policy pre dates the judgment of the Court of Appeal and subsequent changes to the NPPG, meaning that on balance and at this moment in time, then national policy prevails and no affordable housing contribution would be required in this instance.

4.1.3 **Conservation:** In considering the proposal due regard to the following local policies and guidance has been taken, when applicable: CS5 Countryside and Green Belt, CS6 Sustainable Design and Development and CS17 Environmental Networks, MD13 Historic Environment and with national policies and guidance, National Planning Policy Framework (NPPF) published March 2012 and Section 66 and 72 of the Planning (Listed Building and Conservation Areas) Act 1990.

We will not be commenting in full in this case, however:

- The site is outside the conservation area but is in close proximity to it and when designing any dwellings, should decision takers consider this outline application to be acceptable, as the character of the conservation area could be harmed through inappropriate development of this site.

- It is considered that the site extends too far back from Shrewsbury Street and should be reduced in length to reduce its encroachment into agricultural pastureland beyond the line which appears to be already set.
- The design of any proposed dwellings should reflect the local vernacular detail in terms of scale, details, materials and layout.
- Developments of this type have the potential to have an adverse impact on the character of the area unless carefully designed and detailed as per first comment made.

#### 4.1.4 **Highways:** No objection

The highway comments from WSP have been reviewed.

The highway authority acknowledge that the current application site forms part of a larger parcel of land allocated within the SAMDev. The principle of development was therefore acceptable although access issues would need to be resolved as part of any proposals coming forward. The current scheme seeks consent within its land ownership footprint and therefore the access has been designed accordingly. The access therefore does not provide any access radii or at a width that would allow the simultaneous movement of vehicles at the access point with the public highway.

The application seeks outline consent only with all matters reserved apart from access, this includes therefore the number of dwellings that would be accommodated on the site although the application forms suggest 5 dwellings and is shown on an illustrative drawing.

As regards the highway comments of WSP, the attached Land Registry Plan indicate the land ownership on the southern side of the access and appears to show a margin width between the property boundary and carriageway edge. The current overgrown hedge does not provide this margin width to be evident on the ground. In the circumstances it appears that a satisfactory margin width may be available within highway limits.

The highway authority is satisfied therefore that an adequate means of access could be provided although any scale of development would need to be limited having regard to the constraints of the access design which is constrained by the land ownership in the applicant's control. This questions therefore the potential build out of the site in support of the overall SAMDev land allocation.

#### 4.1.5 **Ecology:** No objection

##### **Badger**

The nearest sett entrance is estimated to be 20m from the proposed development sites boundary and as such it is likely that impacts on the sett can be avoided through precautionary methods of working (20m is considered to be the maximum extent of badger tunnels). Considering the limited foraging opportunities, the site's value largely relates to its proximity to the main sett, and in providing a relatively safe and undisturbed parcel of land for badgers to cross to access suitable foraging ground. A Method Statement with respect to risk avoidance measures to ensure the protection of badger during works will be provided.

**Bats & Nesting Birds**

In order to mitigate and enhance the site for bats and nesting birds, lighting will be controlled on site and bird and bat boxes will be built into the site design. Mature trees and hedgerows should be retained where appropriate on site, and additional planting should be used to enhance these existing ecological corridors.

**Great Crested Newts**

Survey work conducted in 2016 recorded absence of great crested newts in ponds within 250m of the proposed development. Seasons Ecology has recommended an updated ecological assessment, prior to works on site, if development has not commenced by 2019.

4.1.6 **Trees:** Whilst no objection in principle, I note that unlike the previous withdrawn outline application a tree survey has not been submitted. A full application will require an updated arboricultural report and tree protection plan. The indicative plan shows that most of the trees can be retained as they are situated on the curtilage of the site.

4.1.7 **Drainage:** No objection, however full details shall be submitted as part of the reserved matters application should outline planning permission be granted.

4.1.8 **Archaeology:** No objection

The proposed development site is located just beyond the historic core of the settlement of Prees and close to the boundary of the Conservation Area. There are currently no known heritage assets with archaeological interest recorded on the Historic Environment Record on the site. However, the existing field pattern on the proposed development site suggests it has evolved from a group of crofts and closes on the immediate edge of the medieval core of the settlement. For these reasons the proposed development site is deemed to have low to moderate archaeological potential.

In view of the above, and in line with Paragraph 141 of the NPPF and Policy MD13 of the Local Plan, it is recommended that a programme of archaeological work, to comprise an archaeological watching brief during all ground works, is made a condition of any planning permission.

**4.2 Public Comments**

4.2.1 Two letters of representation have been received. The areas of concern relate to:

- The proposed access arrangements are inadequate.
- The neighbouring land is to become a nature park with public access.

**5.0 THE MAIN ISSUES**

- Principle of Development
- Affordable Housing
- Design, Scale and Character
- Impact on Residential Amenity
- Highways
- Ecology
- Trees

- Drainage
- Archaeology

## **6.0 OFFICER APPRAISAL**

### **6.1 Policy & principle of development**

- 6.1.1 Under section 38(6) of the Planning and Compulsory Purchase Act 2004, all planning applications must be determined in accordance with the adopted development plan unless material considerations indicate otherwise. Since the adoption of the Councils Core Strategy the National Planning Policy Framework (NPPF) has been published and is a material consideration that needs to be given weight in the determination of planning applications. The NPPF advises that proposed development that accords with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused unless other material considerations indicate otherwise. The NPPF constitutes guidance for local planning authorities as a material consideration to be given significant weight in determining applications.
- 6.1.2 Policy S18.2(1) of the SAMDev identifies Prees as part of the community cluster with a future housing growth of approximately 100 dwelling over the period to 2026. Within this policy the land shown as PRE/002/011/12 is identified as being for providing 30 dwellings subject to suitable access being available. The application site is part of this allocated land and would provide for up to 5 dwellings. An indicative layout plan has been provided with the application to demonstrate how it would be possible to achieve the development.
- 6.1.3 Policy CS4 of the Shropshire Core Strategy relates to development within the community hubs and clusters. This policy aims to focus development to within the hubs and clusters and not allowing development outside these areas. As the site is allocated within the SAMDev it would be in accordance with policy CS4.
- 6.1.4 It is noted that one of the objections from the Parish Council relates to the piecemeal nature of the application. In terms of policy and legislation, there is no requirement for the whole site to be applied for in one application. Therefore this cannot be justified as a reason to refuse a planning application. It will be necessary however, to ensure that the current proposal does not affect the potential for the remaining land in PRE/002/011/12 to be developed.
- 6.1.5 On the basis of the above information it is the opinion of officers that the principle of the development of the land is acceptable and in accordance with policy S18.2(i). Other issues such as highways etc. will be detailed further in this report.
- ### **6.2 Affordable Housing**
- 6.2.1 In accordance with the national policies currently applicable, while there is an acute need for affordable housing Shropshire in this case no affordable housing contribution will be required.
- ### **6.3 Design, Scale and Character**
- 6.3.1 Policy CS6 'Sustainable Design and Development Principles' of the Shropshire Core Strategy requires development to protect and conserve the built environment and be appropriate in scale, density, pattern and design taking into account the local context and character. The development should also safeguard residential

and local amenity, ensure sustainable design and construction principles are incorporated within the new development. Policy 7 'Requiring Good Design' of the National Planning Policy Framework indicates that great weight should be given to outstanding or innovative designs which help raise the standard of design more generally in the area.

- 6.3.2 In addition policy MD2 of SAMDev builds on policy CS6 and deals with the issue of sustainable design.
- 6.3.3 This is an outline application where the matters of appearance, scale and layout will be dealt with as a separate application should outline planning permission be granted.
- 6.3.4 An indicative site plan has been provided with the application to demonstrate a potential layout for the land. Comments have been made by the Conservation Officer that the parcel of land extends beyond the current developed land. However the Case Officer has spoken to the Conservation Officer and it seems they were not aware that the land is allocated for development in SAMDev.
- 6.3.5 While Tarragon Cottage and Ardwyn are occupied to the north, there is a current permission for two further dwellings to be constructed to the west of them. This would extend the built form to the boundary between plots 4 and 5 of the current proposal. This further reduces the argument that it is a projection in to a rural location.
- 6.3.6 The layout plan supplied, clearly identifies that five reasonably sized dwellings with garages and driveways could be constructed on the land with an access from Shrewsbury Street. As demonstrated a hammer head turning area would be provided at the end to allow turning for vehicles. However the plan also shows that access would be maintained to the existing land. This provision would also allow for the further development of the land in the future.
- 6.3.7 Therefore on the basis of the above it is demonstrated on the indicative plan that an appropriate development could be undertaken on the site with the ability to continue development on the remaining allocated land. Issues relating to design and scale would be fully assessed as part of any reserved matters application.
- 6.4 **Impact on Residential Amenity**
- 6.4.1 Policy CS6 'Sustainable Design and Development Principles' of the Shropshire Core Strategy indicates that development should safeguard the residential and local amenity.
- 6.4.2 As stated above no details as to the final layout and design of the proposed dwellings has been provided as part of this application. However from the details provided it is evident that sufficient separation could be achieved to maintain privacy to neighbouring properties. Appropriate design would also ensure this is maintained. Similarly the future design of the buildings and their layout will ensure that appropriate levels of light are also maintained.
- 6.5 **Highways**
- 6.5.1 Concerns have been raised that the proposed access arrangements are

inadequate and will not prevent it being a highway hazard.

- 6.5.2 Information has been submitted with the application identifying that works would be undertaken to the access to meet the standards required. This would include relaying the kerb to provide additional visibility, increasing the width of the access for 16 metres and trimming back an overgrown hedge.
- 6.5.3 Highways Development Control has commented that they have no objection to the proposed access for the development as proposed. However there remains a doubt that any further to development to the extent as identified in SAMDev would be acceptable from this access.
- 6.5.4 Therefore it is necessary to consider whether permission should be granted for five dwellings served off an acceptable access or whether permission should be refused on the basis that it may not be appropriate for the total number of dwellings to be provided on the allocated site. As this is an outline planning application, there may be other options available in due course to improve the access arrangements to serve the remaining development, but there is no guarantee of this.
- 6.5.5 If the application is approved, a condition has been recommended for inclusion to ensure that appropriate engineering details are submitted for approval.
- 6.6 **Impact on Trees**
- 6.6.1 There are number of trees located on the site. No objection has been raised by the Council's Tree Officer to the proposal as the indicative layout plan identifies that most of the trees can be retained as part of the development. However as recommended any planning permission should include a condition requiring a full up to date arboricultural report and tree protection plan to be submitted. This would set out in full the potential implications for the trees on the site.
- 6.6.2 In view of this it is considered that the requirements of policies CS17 and MD12 can be complied with in terms of protecting the natural environment.
- 6.7 **Ecology**
- 6.7.1 The NPPF and policy CS17 of the Shropshire Core Strategy require consideration to be given to the impact of the proposed development on the natural environment. This particularly relates to the impact on statutorily protected species and habitats. Policy MD12 of SAMDev further supports the principle of protecting and enhancing the natural environment. Therefore the application has been considered by the Council's Ecologist.
- 6.7.2 No objection to the proposed development has been raised. A number of conditions and informatives have been recommended for inclusion on any planning permission that may be granted. These will ensure that any development will provide the necessary protection and enhancement for the ecology and biodiversity of the area.
- 6.7.3 In view of the above it is considered by officers that the proposed development will not have a detrimental impact on statutorily protected species and habitats. Therefore the proposal meets the requirements of the NPPF policy CS17 of the

## Shropshire Core Strategy and policy MD12 of SAMDev

### 6.8 **Drainage**

- 6.8.1 The NPPF and policy CS18 of the Shropshire Core Strategy require consideration to be given to the potential flood risk of development.
- 6.8.2 No objection to the proposed scheme has been received from the Council's Drainage Engineer. However, it stated that full drainage details, plan and calculations will need to be submitted for approval as part of the reserved matters. A condition will therefore be included on any planning permission requiring full drainage details to be provided.
- 6.8.3 In view of the above it is the opinion of officers that an appropriate drainage system can be installed to meet the requirements of the NPPF and policy CS18 of the Shropshire Core Strategy.

### 6.9 **Archaeology**

- 6.9.1 The Council's Archaeologist has commented on the application. While there are no known heritage assets with archaeological interest recorded, there are indications such as the field pattern that suggests the site has evolved over time any may have been a group of crofts close to the immediate edge of the medieval core of the settlement. As such there is a low to moderate archaeological potential on the site. On this basis it has been recommended that a condition be imposed should planning be granted, requiring a programme of archaeological work be carried out.
- 6.9.2 This would ensure that any development of the site would be in accordance with para 141 of the NPPF and policy MD13 of the Shropshire Core Strategy.

### 6.10 **Other Matters**

- 6.10.1 An objection has been made by a local land owner that neighbouring land will be used as a nature park with access to the public. No evidence is available to suggest that this will be carried out. Therefore it is only possible to determine the application in accordance with existing use and adopted policy which is agricultural land that is allocated for housing development.

## 7.0 **CONCLUSION**

- 7.1 The site is part of an allocated housing site within the village of Prees. The concerns raised have been assessed and it is the view of officers that the development will not have a detrimental impact on highway safety, or the character and appearance of the area for the construction of up to five dwellings. Although it may only be a small part of the overall housing site, the indicative site layout identifies that access to the remaining land will be retained for future development. Overall the proposal would be considered to be in accordance with the NPPF and policies S18.2(i), CS4, CS6, CS17, CS18, MD2, MD12 and MD17 of the Shropshire Local Development Framework.

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.



## **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 - written representations, a hearing or inquiry.

The decision is 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 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 give 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 1970.

## **9.0 FINANCIAL IMPLICATIONS**

9.1 There are likely financial implications of the decision and/or imposition of conditions if challenged by a planning appeal or judicial review. The costs of defending any decision will be met by the authority and will vary dependant on the scale and nature of the proposal. Local financial considerations are capable of being taken into account when determining this planning application – in so far 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

National Planning Policy Framework

Settlement: S18 - Whitchurch

CS4 - Community Hubs and Community Clusters

CS6 - Sustainable Design and Development Principles

CS17 - Environmental Networks

CS18 - Sustainable Water Management

MD1 - Scale and Distribution of Development

MD2 - Sustainable Design

MD12 - Natural Environment

MD13 - Historic Environment

### Relevant planning history:

PREAPP/15/00044 Proposed residential development for upto 50 dwellings PREAMD 16th March 2015

16/05657/OUT Outline application for the erection of up to 5 no. residential dwellings including access off Shrewsbury Streets WDN 26th January 2017

17/03775/OUT Outline application for the erection of up to 5 no. residential dwellings including access off Shrewsbury Street PDE

## 11. Additional Information

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|--|
| List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information) |
| Cabinet Member (Portfolio Holder)<br>Cllr R. Macey   |
| Local Member<br>Cllr Paul Wynn   |
| Appendices<br>APPENDIX 1 - Conditions  |

## APPENDIX 1

### Conditions

#### STANDARD CONDITION(S)

1. Approval of the details of the design and external appearance of the development, access arrangements, layout, scale, and the landscaping of the site (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.

Reason: The application is an outline application under the provisions of Article 4 of the Development Management Procedure Order 2015 and no particulars have been submitted with respect to the matters reserved in this permission.

2. Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.

Reason: This condition is required to be imposed by Section 92 of the Town and Country Planning Act, 1990.

3. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

Reason: This condition is required to be imposed by Section 92 of the Town and Country Planning Act, 1990.

4. Any reserved matters application shall provide full details of a scheme of foul drainage and surface water drainage including drawings, details and calculations. The approved scheme shall be fully implemented prior to the occupation of the dwellings approved.

Reason: To ensure satisfactory drainage of the site and to avoid flooding.

5. Any reserved matters application shall be accompanied by an up to date Arboricultural Report and Tree Protection Plan. The approved scheme shall be implemented in full prior to the commencement of any demolition, construction or ground clearance and thereafter retained on site for the duration of the construction works.

Reason: To safeguard existing trees and/or hedgerows on site and prevent damage during building works in the interests of the visual amenity of the area, the information is required before development commences to ensure the protection of trees is in place before ground clearance, demolition or construction.

Reason

6. 1. If the development hereby permitted does not commence (or having commenced is suspended for more than 12 months) within 2 years from the date of the outline planning consent then the approved ecological measures and mitigation secured through conditions shall be reviewed and, where necessary, updated and amended.

The review shall be informed by further ecological surveys (in line with recognised national good practice guidance) in order to i) establish if there have been any changes in the presence and/or abundance of species or habitats on the site and ii) identify any likely new ecological impacts and mitigation requirements that arise as a result.

Where update surveys show that conditions on the site have changed (and are not addressed through the originally agreed mitigation scheme) then a revised updated and amended mitigation scheme, and a timetable for implementation shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development (or commencement of the next phase). Works will then be carried forward strictly in accordance with the proposed new approved ecological measures and timetable.

Reason: To ensure that development is informed by up to date ecological information and that ecological mitigation is appropriate to the state of the site at the time development/phases of development commence.

7. 2. The first submission of reserved matters shall include a Construction Environmental Management Plan. The submitted plan shall include:

- a) An appropriately scaled plan showing 'Wildlife/Habitat Protection Zones' where construction activities are restricted, where protective measures will be installed or implemented and where ecological enhancements (e.g. hibernacula, integrated bat and bird boxes, hedgehog-friendly gravel boards and badger buffer distance) will be installed or implemented;
- b) Details of protective measures (both physical measures and sensitive working practices) to avoid impacts during construction;
- c) Requirements and proposals for any site lighting required during the construction phase;
- d) A timetable to show phasing of construction activities to avoid harm to biodiversity features (e.g. avoiding the bird nesting season);
- e) The times during construction when an ecological clerk of works needs to be present on site to oversee works;
- f) Identification of Persons responsible for:
  - i) Compliance with legal consents relating to nature conservation;
  - ii) Compliance with planning conditions relating to nature conservation;
  - iii) Installation of physical protection measures during construction;
  - iv) Implementation of sensitive working practices during construction;
  - v) Regular inspection and maintenance of physical protection measures and monitoring of working practices during construction; and
  - vi) Provision of training and information about the importance of 'Wildlife Protection Zones' to all construction personnel on site.
- g) Pollution prevention measures.

All construction activities shall be implemented strictly in accordance with the approved plan, unless otherwise approved in writing by the Local Planning Authority.

Reason: To protect features of recognised nature conservation importance, in accordance with MD12, CS17 and section 118 of the NPPF.

8. 3. The first submission of reserved matters shall include a landscaping plan. The submitted plan shall include:

- a) Planting plans, creation of wildlife habitats and features and ecological enhancements (e.g. hibernacula, integrated bat and bird boxes, hedgehog-friendly gravel boards and amphibian-friendly gully pots);
- b) Written specifications (including cultivation and other operations associated with plant, grass and wildlife habitat establishment);
- c) Schedules of plants, noting species (including scientific names), planting sizes and proposed numbers/densities where appropriate;
- d) Native species used are to be of local provenance (Shropshire or surrounding counties);
- e) Details of trees and hedgerows to be retained and measures to protect these from damage during and after construction works;

## f) Implementation timetables.

The plan shall be carried out as approved, unless otherwise approved in writing by the Local Planning Authority.

Reason: To ensure the provision of amenity and biodiversity afforded by appropriate landscape design.

**CONDITION(S) THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES**

9. No development approved by this permission shall commence until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI). This written scheme shall be approved in writing by the Planning Authority prior to the commencement of works.

Reason: The development site is known to hold archaeological interest.

10. Within 90 days prior to the commencement of development, a badger inspection shall be undertaken by an appropriately qualified and experienced ecologist and the outcome reported in writing to the Local Planning Authority. If new evidence of badgers is recorded during the pre-commencement survey then the ecologist shall submit a mitigation strategy that sets out appropriate actions to be taken during the works.

Reason: To ensure the protection of badgers, under the Protection of Badgers Act 1992.

**CONDITION(S) THAT REQUIRE APPROVAL DURING THE CONSTRUCTION/PRIOR TO THE OCCUPATION OF THE DEVELOPMENT**

11. Prior to first occupation / use of the buildings, the makes, models and locations of bat boxes shall be submitted to and approved in writing by the Local Planning Authority.

A minimum of 2 external woodcrete bat boxes or integrated bat bricks, suitable for nursery or summer roosting for small crevice dwelling bat species, shall be erected on the site. The boxes shall be sited at an appropriate height above the ground, with a clear flight path and where they will be unaffected by artificial lighting. The boxes shall thereafter maintained for the lifetime of the development.

Reason: To ensure the provision of roosting opportunities for bats, in accordance with MD12, CS17 and section 118 of the NPPF.

12. Prior to first occupation / use of the buildings, the makes, models and locations of bird boxes shall be submitted to and approved in writing by the Local Planning Authority.

A minimum of 2 artificial nests, of either integrated brick design or external box design, suitable for small birds such as robin, blackbird, tit species, swift, sparrow and swallow shall be erected on the site.

The boxes shall be sited at least 2m from the ground on a suitable tree or structure at a northerly or shaded east/west aspect (under eaves of a building if possible) with a clear flight path, and thereafter maintained for the lifetime of the development.

Reason: To ensure the provision of nesting opportunities for wild birds, in accordance with MD12, CS17 and section 118 of the NPPF.

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

13. Prior to the erection of any external lighting on the site, a lighting plan shall be submitted to and approved in writing by the Local Planning Authority.

The lighting plan shall demonstrate that the proposed lighting will not impact upon ecological networks and/or sensitive features, e.g. bat and bird boxes (required under separate planning conditions). The submitted scheme shall be designed to take into account the advice on lighting set out in the Bat Conservation Trust's Artificial lighting and wildlife: Interim Guidance: Recommendations to help minimise the impact artificial lighting (2014). The development shall be carried out strictly in accordance with the approved details and thereafter retained for the lifetime of the development.

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



Committee and Date

North Planning Committee

9th January 2018

Item

8

Public

## Development Management Report

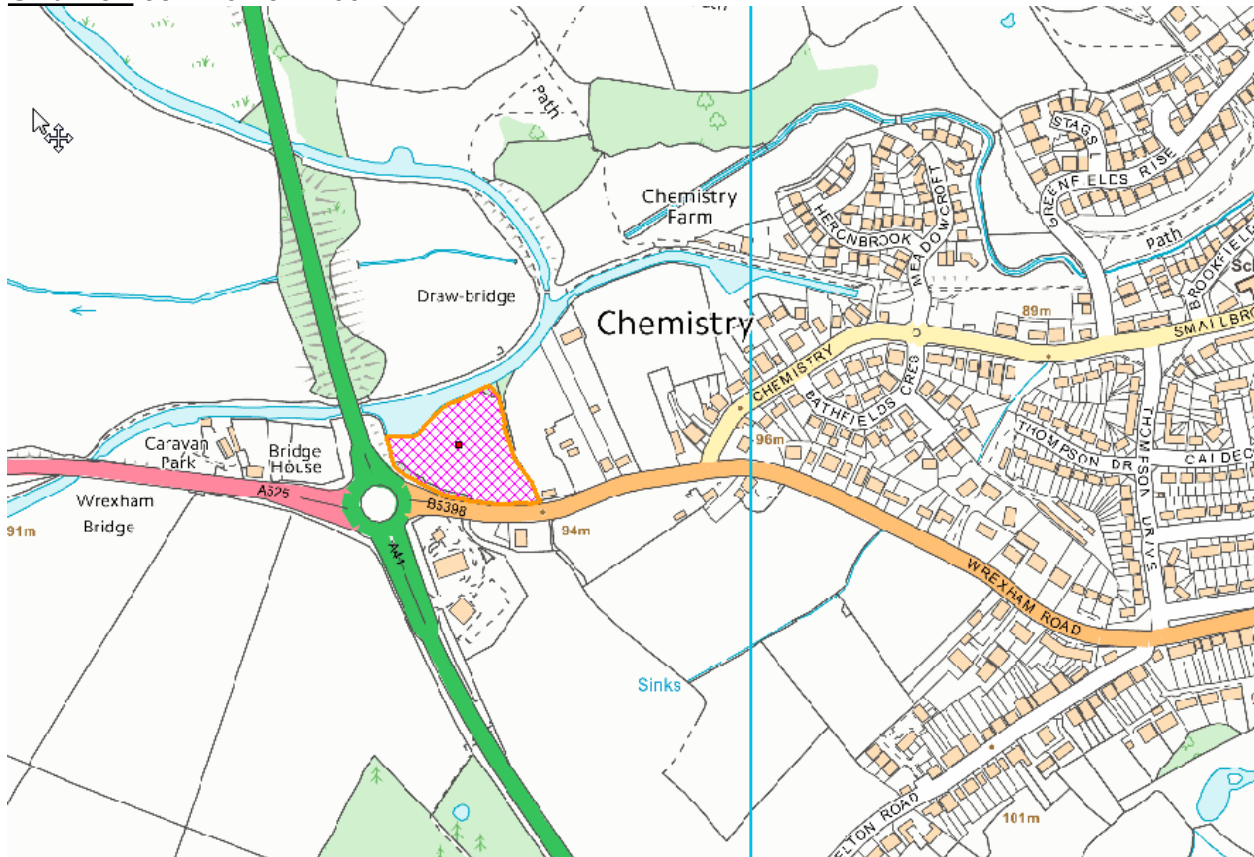
Responsible Officer: Tim Rogers

Email: [tim.rogers@shropshire.gov.uk](mailto:tim.rogers@shropshire.gov.uk) Tel: 01743 258773 Fax: 01743 252619

### Summary of Application

|  |  |
|--|--|
| <b>Application Number:</b> 17/01152/FUL  | <b>Parish:</b> Whitchurch Urban  |
| <b>Proposal:</b> Erection of a new foodstore (Use Class A1), access, substation and associated car parking and landscaping |  |
| <b>Site Address:</b> Proposed Foodstore To The North Of Wrexham Road Whitchurch Shropshire                                 |  |
| <b>Applicant:</b> Aldi Stores UK Limited   |  |
| <b>Case Officer:</b> Karen Townend   | <b>email:</b> <a href="mailto:planningdmne@shropshire.gov.uk">planningdmne@shropshire.gov.uk</a> |

**Grid Ref:** 352726 - 341409



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**Recommendation:- Refuse****Recommended Reason for refusal**

1. The proposed development will have an adverse impact on the vitality and viability of the town centre, albeit not a significant adverse impact, there remains an impact. The site, taking into account the proposed shopper bus, is not well connected to the town centre to encourage linked trips and use of alternative means of travel other than the private car. Furthermore, the application site lies in a historic and rural landscape context and the proposed development is considered to have an adverse impact on the significance of the setting of the non-designated heritage asset and an adverse impact on the immediate landscape.

The heritage and landscape impacts are not considered to be overcome by mitigation offered by the proposed landscaping or finish material for the building. Furthermore, these impacts, in addition to the impact on the town centre and the impact on connectivity are not considered to be outweighed by the public benefits of the development.

As such the proposal is not considered to comply with the Development Plan Core Strategy policies CS5, CS6 and CS17 or with policy MD13 of the Shropshire Site Allocations and Management of Development (SAMDev) and the National Planning Policy Framework (NPPF), specifically paragraph 135. 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.

**REPORT****1.0 THE PROPOSAL**

1.1 This application seeks full planning permission for the erection of a new food store, a new vehicular access, car parking, substation and landscaping. The proposed store is to have a gross internal floor space of 1,743sqm on a site of 0.9 hectares. Access is to be off Chester Road and provide for both customer and delivery vehicles and pedestrians.

1.2 The proposed building is single storey, however will appear as two storey in height along the front elevation. A mono-pitched roof slopes down, from a maximum height of 4m at the front, towards the canal which runs along the rear of the site, where the height of the building will be 2.7m. The external materials are proposed to be grey and silver cladding and timber cladding with a ribbon of high level glazing along the front and both ends. The proposed building has a footprint of approximately 17m by 32m (not including the service yard and loading bay). The gross footprint of the building (measured externally) is 1,818sqm with an internal floor area of 1,743sqm and total net sales area 1,254sqm (% of gross) with a split of 80% convenience goods and 20% comparison goods.

1.3 Convenience goods are food, beverages, newspapers and household goods whereas comparison goods are principally non-food goods such as clothes,



household appliances, furniture, ornaments etc. The definitions of convenience and comparison goods was previously best provided by annex B of Planning Policy Statement 4 (“PPS 4”) which states that convenience shopping is “the provision of everyday essential items” whereas comparison shopping is “the provision of items not obtained on a frequent basis”. Although PPS4 is no longer a material consideration this definition is still valid and useful in considering out of town food stores and the impact they have on town centres as detailed later in this report.

- 1.4 In support of the planning application the agent has submitted a Design and Access Statement, Planning and Retail Statement, Landscape and Visual Impact Appraisal, Heritage Statement, Noise Impact Assessment, Transport Assessment, Ecology Survey and Flood Risk Assessment.
- 1.5 It is the opinion of Shropshire Council as Local Planning Authority that the proposal is not an EIA development under any part of either Schedule 1 or Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011 and as such does not require an Environmental Statement to be submitted. The application meets the criteria of Part 10(b) of Schedule 2 of the 2011 Regulations being urban development projects however taking into account the advice in the NPPF the application is not considered to require an Environmental Statement as the proposed development is not significant in relation to the surrounding uses and would not have a significant impact or result in significant effects on the environment by virtue of its nature, size or location.

## **2.0 SITE LOCATION/DESCRIPTION**

- 2.1 The application site is 2.24 acres (0.91ha) in area, currently grazing land with hedge and tree boundaries to the south and west and enclosed by the Whitchurch bypass, Wrexham Road, the canal and housing. The site occupies higher ground rising from the canal which lies to the north of the site but is lower than the bypass and roundabout to the west and southwest.
- 2.2 The site is within the bypass, however it is outside the development boundary for Whitchurch as identified in the SAMDev Plan, adopted December 2015. The development boundary for Whitchurch has been drawn around the existing and proposed development areas for the period 2006 to 2026. It therefore does not include all land within the bypass and specifically excludes the application site from the development boundary.
- 2.3 To the east of the site, on the northern side of Wrexham Road, is a small field, three detached houses and a site currently being developed for housing before the junction with Chemistry. On the southern side of Wrexham Road, opposite the site, is the A41 service area. The service area contains a MacDonaldis fast food restaurant, a petrol filling station and small shop and a Starbucks coffee shop/ drive through. Its focus is very much towards passing traffic using the by-pass. Towards Whitchurch the southern side of Wrexham Road is undeveloped up to the junction with Chemistry where a single dwelling lies adjacent to a site currently under construction for housing. Beyond this is the main built up area of the town.
- 2.3 North of the site is the canal, towpath and open fields beyond. To the west is the

bypass and on the opposite side of the bypass are fields and Whitchurch marina. The site is visible from the bypass, towpath and Wrexham Road.

### **3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION**

3.1 The application is considered, by the Planning Services Manager, in consultation with the Chair and Vice Chair of the Planning Committee, to be a complex application which should be determined by committee.

### **4.0 COMMUNITY REPRESENTATIONS**

#### **4.1 Consultee Comments**

4.1.1 **Whitchurch Town Council** – Object – Whilst WTC would welcome the addition of Aldi to Whitchurch the committee believe that the proposed site is unsuitable because:

- It is on a green field site outside of the SAMDev.
- It is close to a roundabout that is on a very busy that has had a high number of road traffic collisions.
- It is not on a road that is well connected to the town centre and that road already has traffic problems.
- The proposed location will have a highly detrimental effect on the town centre and existing traders.
- It does not pass the sequential test as there are other sites available within the development boundary including brownfield sites.
- The site is not well connected to the town, is not on a bus route, nor near a railway station. The site Aldi own at Waymills is on a bus route, 2 min walk from the railway station and 5-10 min walk from the town centre
- No soakaway included in the plans
- The application does not adhere to para 2.23-2 of the NPPF or para 26
- The application has concentrated on the effect on other supermarkets mainly Lidl and not made any objective assessment of the effect on the small town centre businesses

If permission is granted, WTC would like the following conditions levied on Aldi:

- That they contribute an annual sum (yet to be provided) for a minimum of 5 years, to subsidise an extra stop by the town bus at Aldi, rather than bringing an extra bus provider into the town from Newport and therefore putting a further vehicle on Wrexham Road
- As stated by George Brown of Aldi WTC to have control of £45,000 to boost tourism in the town and provide a grant scheme for community groups
- That there should be no access from/ to Aldi to the canal bank, valuable footfall should come into the town centre
- No advertising boards to be placed on the rear of the store

4.1.2 **Council Planning Policy Team** – Further to more recent information provided by Plan A (on behalf on Lidl) on 4<sup>th</sup> December 2017, it is considered necessary to revisit the conclusions of previous comments provided by Planning Policy to this proposal. In particular, this relates to the extent of forecast retail impact on the existing Lidl store on Bridgewater Street, and the implications this has for the

wider impact on the vitality of Whitchurch town centre.

Plan A continue to object strongly to the proposal by Aldi to develop a new store on the Wrexham Road site. Over the last few months there have been a number of exchanges between the applicant (JLL on behalf of Aldi) and Plan A on the matter of retail impact. It is considered this exchange has been extremely useful in allowing the Council to draw out many of the issues around retail impact, but it has meant the position of the Planning Policy Team has been subject to some degree of change as new information become known. It is important to ensure the Council has the best and most up-to-date information available to inform the planning balance.

### Background

The impact on the exiting Lidl store is important to define because of its location within the defined town centre, although it should also be noted that Planning Policy does not seek to protect any particular retailer from out-of-centre development. Planning policy set out in NPPF paragraphs 26 and 27, Core Strategy policy CS15 and SAMDev Policy MD10b establish the need to protect the vitality and viability of town centres. Ensuring appropriate choice and competition should therefore not be at the expense of this overarching policy objective. For clarity, the test is whether there will likely be a **significant adverse impact** on the vitality of the town centre. This must be assessed on a case by case basis considering the nature of the town centre.

The Council should arrive at a view on retail impact with the best available information. The current performance of the Lidl store is an important factor in this assessment. In summary, the better the Lidl store is currently trading the more resilient the store will be to trade diversion resulting from the new Aldi proposal. Conversely, the less well the store is performing, the less resilient Lidl will be to the same level of trade diversion.

Initially, in the absence of any other empirical evidence on the trading performance of the Lidl store the applicant relied upon 'benchmark' data. 'Benchmark' turnover is derived from the average sqm trading performance of Lidl stores nationally (£6,995 per sqm), multiplied by the size of the store's convenience floor space (736sqm). This suggested Lidl had a convenience turnover of £5.15m. Using 'benchmark' turnover is a standard practice within Retail Impact Assessments in the absence of specific store trading data. It should be noted the applicant believed Lidl to be trading much better in reality, although no firm evidence was presented to support this claim. Therefore, applying the 'benchmark' turnover and taking account of expected trade diversion resulting from the Aldi proposal this suggested a direct impact on Lidl of -41% and -16.7% on Whitchurch Town Centre. This level of impact was expected to be significantly adverse on Lidl individually, whilst the level of impact on the wider town centre was considered high and potentially significant.

In response to this policy concern, the applicant commissioned a new Household Survey. In the absence of actual trading information on the Lidl store (which at this stage was not forthcoming from Lidl), the use of a new Household Survey was encouraged by the Council. Household Surveys are a recognised empirical mechanism to predict levels of trade performance from individual stores. . The

process involves asking a number of people from the Study Area (400 in this case) a series of questions about their shopping patterns, including which store they use for their main food shop. Using this empirical data it is possible to distribute the expected expenditure capacity of the area to specific stores, and to use this to estimate a store's turnover with more confidence. The Applicant's Household Survey was undertaken by NMES Research who have significant experience in this field. The information suggested Lidl trades at a level around twice that of the 'benchmark' position at around £10.36m. Applying this information led to a forecast impact of -25.75% on Lidl and -14.89% on the wider town centre. This information suggested the Lidl store would continue to trade effectively (above benchmark levels) even when trade diversion to the Aldi store was taken into account. In light of this new information, it was considered the level of impact on both Lidl and the wider town centre was unlikely to be significantly adverse.

#### Updated Policy Position

Plan A's new information provided on 4<sup>th</sup> December 2017 now provides additional information on the trading performance of Lidl. This new information includes a general response to comments made by the applicant in their 14<sup>th</sup> November letter, which provide a counter argument to a number of qualitative issues on the operation of the Lidl store, such as queue length at checkouts, congestion in aisles, car parking, supply of goods and staffing levels. These issues have been considered here but do not in themselves point to a firm conclusion on the level of trade at the Lidl store. This is because the conclusions are difficult to ratify with any degree of confidence as a trend, e.g. queue length; or may depend on the style of management applied to that particular store, e.g. supply of goods. As evidence, these issues are therefore considered to be of contextual interest only. The same conclusion equally applies to the arguments on these issues presented by the Applicant on these matters.

The other part of Plan A's additional information is the headline store trading information for the last financial year (1<sup>st</sup> March 2016 – 28<sup>th</sup> February 2017). Lidl have supplied this information to the Council to counter the results of the applicant's Household Survey, which they argue misrepresents the true trading position of the Lidl store.

Lidl consider the additional information provided is commercially sensitive and have therefore requested this not to be published. This new information indicates a large discrepancy between the actual trading position presented for the financial March 2016-February 2017 and that shown within the Applicant's Household Survey information. In their 4<sup>th</sup> December letter Plan A point to anomalies present in many household surveys which can result in accurate results, although there are no specific reasons identified by Plan A as to why the Applicant's Household Survey is, on the face of it, significantly inaccurate when it came to predicting the trading performance of Lidl.

Effectively the Council is faced with competing trading performance assumptions for the Lidl store. Both cannot be correct. The conclusions of the Household Survey do apply empirical information from the questionnaire responses, but it is accepted this method has potential to be open to errors depending on how respondents answer. This is true of any evidence-based survey. However, it

must also be acknowledged the information provided by Plan A is not ideal as this fails to provide past performance data by way of a useful comparison. Importantly it is also not open for wider scrutiny given its commercially sensitive nature. Indeed the Council have only seen the headline figures, and have not been able thus far to interrogate more detailed background information. It is considered the lack of content and context provided by Plan A does reduce the amount of weight that can be applied to this as evidence in decision making.

On balance, and consistent with previous policy advice on the matter, it is considered the actual commercial trading data provided by Plan A represents the more reliable data source available to the Council at this time to assess the likely trading performance of Lidl. However, it would be clearly be beneficial for this data to be made publically available in order to allow a greater level of scrutiny and for this to be used with a greater degree of confidence.

Plan A also provide further comment on the Impact Assessment methodology within the publicly available part of their 4<sup>th</sup> December letter. This highlights their concern over how the Applicant has factored in 'in-flow' expenditure into their assumptions. Plan A therefore paint a much bleaker picture of the current performance of the town centre as a whole. However, it is considered Plan A's argument on this issue is not robust as it is considered Whitchurch will inevitably have an element of 'in-flow' expenditure given its location on the local transport network and the presence of a number of major convenience stores . Plan A's argument is also contrary to the position expressed by the Applicant in their town centre health check which suggested the Whitchurch Town Centre is performing relatively well.

The new trading data provided by Plan A indicates that the performance of the Lidl store is marginally less than the 'benchmark' data suggested. Plan A do not transfer this data into a specific trade diversion 'impact' on the Lidl store, presumably because this would mean the commercially sensitive data could be compromised. However, in this absence of this it is considered appropriate to revert to the 'benchmark' position given the similar nature of the trading levels.

In summary therefore, the new trading data would indicate a position where there is likely to be a significant adverse impact on Lidl, which could lead to the closure of the Lidl store. This is a significant consideration. However, the impact on the wider town centre is less clear. Clearly, the Lidl store is located within the town centre, but the extent to which this store supports linked trips with the town centre is not clear aside from some observations made by the Applicant and Lidl on the matter. Unsurprisingly, the two competing stores do not agree on this matter either, although it is considered the Applicant does make some valid points about the Lidl store's orientation away from the town centre hindering the linked trip potential.

In the absence of better evidence on the issue of 'linked trips' it is considered the potential loss of the town centre Lidl store does have potential to have an adverse impact on the wider Whitchurch town centre and that this should be considered as a negative consequence of the Aldi proposal within the overall planning balance.

4.1.3 **Council Conservation** – The Conservation Team's role is to provide advice to

the planning officers on the significance of heritage assets, including the contribution made by their settings, to assess the effects that development proposals will have upon that significance, and to thereby identify whether proposals will cause harm to that significance and to what degree. It is then a matter for the decision taker, be it the planning committee or the planning officer under the Council's Scheme of Delegation, to weigh that advice appropriately when considering the overall planning balance. These comments have been submitted for consideration and represent the Historic Environment teams position with regard to the application

We consider that the canal to be a non-designated heritage asset to which the proposed development will cause harm for the reasons set out in greater detail below. As a result, Policies CS5, CS6, CS17 and MD13 of the Local Plan, together with Paragraph 135 of the NPPF, are relevant to the determination of this planning application.

The Conservation Officer has advised since the pre-application stage that the branch of the Llangollen/ Whitchurch Canal adjacent to the proposed development of the site to be a non-designated heritage asset (in relation to the definition of 'heritage assets' provided in Annex 2 of the NPPF and the further guidance provided in paragraph 039 Reference ID: 039a-039-20140306 of the NPPG). The canal is recorded in the Shropshire Historic Environment Record under record reference PRN 03414 and is understood to have originally have been constructed by the Ellesmere Canal Company under an Act of 1793. William Jessop was appointed by the Company as their engineer and Thomas Telford as their architect. We would therefore consider the canal to hold historic interest as a result of its association with these major figures in the history of civil engineering, and thereby to hold heritage significance in relation to the definition set out in Annex 2 of the NPPF. Because of this, and the fact that the canal forms part of a regional scale piece of early 19th century industrial transport infrastructure, that it should be considered to be of regional significance (whilst the section of Llangollen Canal between Pontcysyllte and Chirk Aqueducts has been inscribed as a World Heritage Site but at no point has the Team attempted to suggest that the section adjacent to the proposed development site is of equal significance).

The Team furthermore considers that the proposed development site falls within the setting of the canal as a non-designated heritage asset. Annex 2 of the Framework defines the setting of heritage assets as:-

*"The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral."*

Further guidance on assessing the settings of heritage assets is also provided in Historic England's 'Good Practice in Planning Advice Note 3: The Setting of Heritage Assets' (2016). I have followed the process for assessing outlined in this document in these comments.

It is acknowledged that the construction of the Whitchurch By-pass in the later 20th century and subsequent development have altered the surroundings of the canal within the vicinity of the proposed development site. Nonetheless, and as

Figure 2 on page 8 of the Design and Access Statement illustrates, the proposed development site remains an undeveloped piece of agricultural land across which users of the canal, and to a degree the by-pass too, gain distant views across it towards the later 19th century and 20th century buildings on the western margins of Whitchurch. As such, we consider the site forms part of the surroundings in which the significance of the canal is experienced and appreciated, and that the present semi-rural character to the site together with the views it affords towards the outskirts of Whitchurch, contribute positively to the significance of the asset.

In this respect, we digress from the Applicant's heritage experts JLL, who conclude in their Heritage Statement (page 12) that "The application site does not contribute to the significance of the non-designated heritage asset [the canal]." In this sense, we consider the Statement to be deficient but this is essentially a difference of opinion rather than a matter of methodological flaws.

Turning now to effects of the proposed development on the significance of the canal, the proposed new supermarket will be positioned towards the rear of the site with the rear, largely blank, elevation of the building facing the canal. As a result, the proposed development will introduce a sizable building, with a scale, massing, form and materials that reflect its commercial function, in close proximity of the canal. As illustrated by CGI-08B on page 17 of the Design and Access Statement, views across the site, towards the buildings on the outskirts of the town, will be blocked and the character of the site will also be altered, which we consider will have a negative effect on people's ability to experience and appreciate the significance of the canal. Once established, it is acknowledged that the proposed landscaping will over time act to screen it to a large degree, although as CGI-08E on page 24 of the Design and Access Statement illustrates, the building will remain visible 10 years after construction. As a consequence, of these factors we consider that the proposed development will harm the significance of the canal as a non-designated heritage asset. (It should also be noted that the Canal and Rivers Trust, as the relevant statutory consultee, reaches a similar conclusion in its letter of 18 April 2017, and have not been persuaded to change by their position by the Applicant's Heritage Rebuttal.).

In considering the degree of harm, the Framework defines two levels of harm: substantial and less than substantial (see also the 'Decision-taking: historic environment' section of NPPG and Historic England's 'Good Practice in Planning Advice Note 2: Managing Significance in Decision-Taking in the Historic Environment'). Whilst we consider the proposed development will cause harm and the effect will be major within the immediate vicinity of the site, it will be localised in its extent when considering the canal as a whole. As a consequence, we consider that the harm will be less than substantial and towards the lower end of the scale.

In finding this level of harm we are not, contrary to Mr Crean's suggestion (on behalf of the applicant) in his fourth point, seeking to suggest that the test set out in Paragraph 134 applies, since this explicitly relates to designated heritage assets. We are merely seeking to categorise the level of harm in the terms established by the Framework. Further, we advise the decision taker needs to consider this finding of harm, and weigh it against the benefits of the scheme, when undertaking the balancing in relation to Policy MD13 of the Local Plan and

Paragraph 135 of the NPPF.

From our knowledge of the case law and appeal decisions relating to setting, we are of the opinion that if less than substantial harm to the non-designated heritage asset as a consequence of development within its setting were to be used as the sole reason for refusing an application of this type it would be highly unlikely to withstand an appeal. Whilst the team does not therefore support the application because we consider it will cause harm, neither do we object outright to it for this reason. If planning permission is granted we would recommend that appropriate conditions are applied to secure the proposed landscaping scheme and appropriate use of external materials and finishes, since this will provide a degree of mitigation over time.

Previous comment:

The Heritage Assessment submitted is sufficient to address the requirements of para 128 of the NPPF and MD13 of the SAMDev, however, the statement in its summary are not concurred with. The report states that the application site “*does not contribute to the significance of the non-designated heritage asset*”. (4.24) and “*that section of the Llangollen Canal which feeds the Whitchurch Arm comprises a number of urbanising features, such as the bypass and residential development, which have altered the previously rural character of the canal. Furthermore, the changing trajectory of the canal results in short views and as such there is not a sense of an open, rural landscape*”. It is considered by the HE Team that the open land (the application site) does contribute to the significance of the canal due to the reasons which are further stated in the Historic Consultant’s report, and that the canal does have aesthetic and historic values which “*...this largely derives from the pioneering structures of engineering which form part of the World Heritage Site and its associated functional value*”. It is considered that whilst this is correct this part of the Llangollen Canal was formed the way it was due to the changing circumstances of the construction of the canal, it contains a winding hole, sandstone trail etc which are all part of the historic and aesthetic interest and value of this part of the canal, not just that it is part of a larger canal; part of which is a WHS that has very important structures in their own right, but that this section in its’ own right it has significance.

There are also other elements of the statement that are not concurred with, such as that the site is not rural due to other residential development and other C20 interventions in the area. Essentially the site and its wider context is rural open landscape intersected with roads, with residential scale development to the east only and a small amount of small scale commercial to the south (separated by Wrexham Road). This does not equate to the large scale commercial development proposed on the application site, which would be completely alien in its form, scale, massing, design and materials, and totally inappropriate in this location in such close proximity to the identified heritage asset which is the canal.

When reviewing the area around the proposed development with regard to visual impact, alongside reviewing the heritage statement photographs, it was noted that no views were taken from Chester Road, where the site, canal and swing bridge is seen in one view. Part of this view is shown in figure 4.10 of the report but this does not give any indication of the wider setting of the canal and the role the



proposed site plays in this open landscape around the canal, especially the winding hole.

From this perspective the scale of this commercial development is considered to be large and inappropriate in this rural location.

The application is considered to be inappropriate in its scale, massing, design and materials in this rural location and within the setting of heritage assets. There is insufficient justification and evidence provided which clearly shows that it will not cause harm to the heritage assets and their settings (as noted above) and therefore cannot be supported in heritage terms and with regard to the above policies referred to.

- 4.1.4 **Council Highways** – I refer to the above planning application, subsequent discussions and more recent meeting held at the Shirehall with representatives of Aldi.

From a highway aspect consider that the highway matters raised initially have been satisfactorily addressed through both discussion and the submission of revised details. It is considered that any outstanding design matters can be dealt with by planning condition and as part of the Section 278 technical submission, in the event that planning permission is granted.

The highway authority recognise that the site is located on the edge of town and therefore connectivity and accessibility issues have been raised by the Town Council, which relate to the guidance set out in the NPPF. The highway authority note those concerns however it is not considered that a highway objection on these grounds alone would be sustainable.

The highway authority therefore raise no objection to the granting of consent subject to conditions requiring engineering details of highway works and access; the submission of a travel plan and the provision of parking and turning space prior to the store opening.

Further to the above, the highway authority is supportive of the offer of Aldi to provide a 'Shopper Bus' in order to promote accessibility to the site. This would need to be incorporated within a Section 106 Agreement and I would suggest that Members are requested to defer this matter for officers to negotiate the terms of the bus provision.

- 4.1.5 **Council Ecologist** – No objections recommends conditions and informatives.

An Extended Phase 1 Habitat Survey was carried out on this site in May 2016 and updated in January 2017 (following pre-application discussions with SC Ecology). The quotes below are taken from the submitted survey report and are the opinions of the applicant's ecologist.

#### Habitats

Habitats on the site consist of species-poor grazed semi-improved grassland, broadleaved tree belts, ruderal vegetation, riparian marginal vegetation and mature trees.

*'The construction zone of the development proposals includes most of the field of semi-improved grassland. The banks of the canal and the canal itself will be protected through an 8-10 metre easement from the development zone. Within this easement will be enhancement of the existing vegetation, including planting with a mixture of native species and the grassland will be seeded with a lowland neutral wildflower mixture. The eastern tree belt and the southern and western hedgerows will be retained and protected. These features will also be enhanced through swathes of planting adjacent to the hedgerows and tree belt, using a mixture of ornamental and native species planting.'*

There should be no access, material storage or ground disturbance within the buffer zone.

*'Soft landscaping should include the provision of native and non-native flowering perennial species and/or berry-bearing shrubs, to provide a pollen and nectar source for invertebrates and a food source for birds and small mammals.'*

The landscaping and planting details are shown on drawing V1303 L01 Rev F.

#### Bats

The mature trees on site do not contain any features suitable to support roosting bats. Bats are likely to forage and commute along the site boundaries. The lighting scheme must be sensitive to bats (and other wildlife) and follow the Bat Conservation Trust's guidance. Bat boxes should be erected on the site to enhance the roosting opportunities available.

#### Water voles and Otters

*'No evidence of Water Vole activity was located along the canal during the 2016 survey and the 2017 survey. The banks were searched for burrows, latrines, feeding remains and footprints. The majority of the banks of the canal at the site are not considered to be suitable to support Water Vole burrows.'*

*'The canal offers potential foraging and commuting habitat for Otter. No field signs of Otter could be located, such as spraints or footprints, during the survey.' The 'canal and its banks are not being affected by the development proposals.'*

The buffer zone will ensure that water voles and otters will be protected during the development and the landscaping and sensitive lighting plan will ensure that a dark corridor is retained.

#### Great crested newts

There is an ornamental pond 'within an adjacent garden to the east' which 'is surrounded by mown lawn.' The only suitable terrestrial habitats on the site are the boundary hedgerows and ruderal vegetation. These habitats will be retained and enhanced.

The following working methods should be employed to protect newts (and other wildlife) that may enter the site during the development.

- The grassland should be kept short prior to and during construction to prevent the creation of attractive habitats.

- Should any removal of long and overgrown vegetation be required, it should be removed in stages and clearance undertaken in one direction, towards remaining vegetated areas.
- Site materials should be stored off the ground, e.g. on pallets or in skips, to prevent them being used as refuges by wildlife.
- Trenches should be closed overnight or contain a ramp so that any animals that become trapped have a means of escape.
- Should a great crested newt be encountered at any time, works must cease and a suitably qualified ecologist contacted for advice.

#### Birds

The trees and hedgerows offer potential nesting opportunities for birds. Any removal of vegetation should take place between October and February to avoid harming nesting birds. If this is not possible then a pre-commencement check must be carried out and if active nests are present, works cannot commence until the young birds have fledged. Bird boxes should be erected on the site to enhance the nesting opportunities available.

#### Other species

No evidence of any other protected or priority species was observed on, or in close proximity to, the site and no additional impacts are anticipated. The buffer zone will ensure that wildlife will be protected during the development and the landscaping and sensitive lighting plan will ensure that a dark corridor is retained.

- 4.1.6 **Trees** – No objection in principle to the proposal on the grounds of trees and in particular support the buffer zone and new planting to the canal frontage at the back of the proposed store. I do however wish to raise the issue of the two mature Oak trees which are on the eastern boundary of the site and appear to be in separate ownership whilst encroaching over the site both below and above ground.

With regard to planning policy, important trees on and adjacent to the site may be considered as natural assets for the purposes of SAMDev Policy MD12 – the Natural Environment. This policy encourages development that appropriately conserves, enhances, connects, restores or recreates natural assets.

Development that will have a significant adverse effect upon a natural asset will only be permitted if it can be clearly demonstrated that there is a): no satisfactory alternative means of avoiding such impacts through re-design or relocation on an alternative site; and b): the social or economic benefits of the proposal outweigh the harm to the asset.

These trees are significant natural assets in the landscape and valuable screening to the adjacent property and give stature and maturity to the environment of the site. The proposal is to keep the trees with 10 parking bays immediately underneath them covering at least 40% of the root protection area (RPA). An arboricultural statement has been included that no dig construction will be used under arboricultural supervision to construct underneath the trees. Whilst in theory this would appear to work in practice I would raise the following concerns:

The proposed crown lift and pruning of the trees will lead to physiological stresses combined with a loss of rooting area and hard surfacing up to the base of the

trees could lead to their decline over time.

Parking under mature trees with inevitable detritus, twig/ fruit / leaf fall of this species is a risk to persons and vehicles and not desirable. My view is that these parking bays are not sustainable or compatible with the healthy retention of the trees in the long term.

I would ask that the parking is amended to leave the 2 Oak trees with the RPA's in a protected buffer zone.

4.1.7 **Drainage** – The proposed drainage details, plan and calculations should be conditioned if planning permission were to be granted. The proposed surface water drainage strategy in the FRA is acceptable in principle.

4.1.8 **Welsh Water** – We would request that if you are minded to grant Planning Consent for the above development that the condition and advisory note provided are included within the consent to ensure no detriment to existing residents or the environment and to Dwr Cymru Welsh Water's assets.

4.1.9 **Public Protection** – Having considered the proposed site I have no objection in principle to the proposed development.

The noise assessment, produced by Spectrum Acoustic Consultants reference RK2135/16484/Rev1, is considered suitable and robust. It predicts no increase in noise levels at nearest residential receptors and I therefore do not consider any additional mitigation is necessary over and above that already proposed. The mitigation proposed is a fence to the northeast length of the development boundary and a fence around plant to the rear of the store. It is advised that these aspects are conditioned as necessary. This could be through conditioning of plans that these features are shown on.

The Design and Access statement provided with the application references the NPPFs drive for sustainable and inclusive patterns of development through good design and that good design can reduce CO2 emissions and promote sustainable patterns of development. It goes on to state that the proposal seeks to facilitate sustainable economic growth.

With the proposed development located within a mile of Whitchurch town centre it is likely to generate many transport movements. It is advised that active travel is encouraged wherever possible. The plans indicate 8 cycle parking places. I would advise that an increase to provide 12 (10% of the total number of car parking spaces available) is encouraged to further promote sustainable travel. In addition, it is strongly advised that the inclusion of electric vehicle charging points with the ability to deliver a rapid charge to electric vehicles are included in the proposal. By providing facilities for customers to charge electric vehicles while they shop this would help deliver the strong commitment to sustainability that the applicants Design and Access Statement (DAS) is looking to achieve. For example, providing electric charging points for customers vehicles would promote the following statements within the DAQS:

- Page 31 numbered point (2): ensure all environmental matters are taken account of

- Page 31 numbered point (4): endeavour to attain a reputation for effective environmental management
- Page 31 numbered point (6): attempt to stop the release of emissions of pollutants that may cause damage to the environment
- Page 31 numbered point (10): ensure that Aldi is perceived as responsible environmentally
- Section 8.5 Sustainability Issues: help to promote the aim of delivering a project that has longevity and where practical fixtures and fittings that can be re-used
- Strengthen table 8.7 by showing additional commitment to reducing CO2 and other air pollutant emissions linked to the proposed development

According to maps of electric charging points available (Zap Map:

<https://www.zap-map.com/live/>) there are currently no electric charging points available for those who wish to take up this vehicle technology in Whitchurch. With electric vehicles making up approximately 1.5% of all new car sales in the UK, with this percentage expected to continue to rise in future, and around 90,000 electric vehicles now registered in the UK it is important to recognise this emerging trend and cater for it to ensure that any development is fit for future. The introduction of rapid electric charging points at this site would encourage those with electric vehicles to frequent the site particularly as there are currently no other opportunities in Whitchurch to charge an electric vehicle. The result of including electric charging points at the proposed development would be to; promote the

sustainability agenda given weight in the applicants own DAS, the NPPF and Shropshire Council policies, promote reductions in locally derived CO2 emissions, promote cleaner more sustainable vehicles helping to reduce air pollutants, and generate an additional reason for shoppers to use the store. This would provide a win-win scenario for the Council and the applicant and provide sustainability in terms of health, environment and economics.

In conclusion Public Protection would like to see the inclusion of rapid electric charging points to promote cleaner more sustainable transport options in the area and in the County more widely. It is suggested that the facility to charge two vehicles simultaneously on site should be included at a point when the store opens and that the applicant install the necessary underground infrastructure to allow more charging points to be brought on line as and when demand increases in future.

Providing the charging points in a prominent location on site would promote this sustainable aspect helping to fulfil the applicants for Aldi to be ever mindful of its responsibilities to the environment (p31 of the DAS) and promote LDF Adopted Core Strategies CS6 and CS8.

## 4.2 **Public Comments**

4.2.1 Following direct consultation with neighbouring properties and the posting of a site notice the Council has received 59 public comments of support and 23 public comments of objection.

The grounds for support are mainly general support for Aldi building a store in Whitchurch. Site specific support includes:

- The development will assist in improving traffic on Wrexham Road and Smallbrook Road

- Will promote Whitchurch
- Proposed buffer to canal
- Whitchurch town centre is already dying
- Change is inevitable
- Greater choice and competition
- Provides additional jobs
- Proposed community bus is also a benefit
- Close to new housing developments
- Will retain Aldi customers who currently go to other towns
- Landscaping enhancements
- Extending the 30mph zone is welcomed
- Easily accessible off the bypass
- Shopper bus is a benefit
- Could finance long stay parking in the town

The grounds for objection are as follows:

- Other sites are available within the town and on brownfield land
- New application for Builders Yard on Waymills site implies site is developable and sequentially preferable
- No need for another supermarket
- Will have a financial impact on the town centre businesses
- Potential closure of Lidl
- Lidl is not over trading
- Adverse impact on canal – heritage and tourism
- Visual impact of proposed store
- Visual impact of fence
- Increase in traffic and associated pollution
- No frequent bus service, not easy to access on foot and bicycle
- Road to town has parking difficulties
- Dangerous access and other accesses within area
- Pedestrian access is available from the canal vial the A41 bridge
- This is the canal entrance to the town
- Site is adjacent to visitor mooring
- Density of trees proposed out of context with area
- Will result in noise and light pollution
- Impact on wildlife

One letter has not expressed an opinion but raised concerns about the use of the car park when the store is closed and also the potential for trolleys being dumped in the canal.

- 4.2.2 Plan A Ltd has submitted letters of objection on behalf of Lidl UK GmbH raising concerns that the site is outside the development boundary; that there are sequentially preferable sites, including the previously approved Waymills site and other sites not considered by Aldi; that the proposed store would have a significant impact on Lidl in the town centre and that the impact assessment makes some assumptions which they consider are incorrect.

Further objections were received following the submission of the household

survey data which question the data and assumptions made. The objection provides the Lidl store manager's opinion on trade, queueing, delivery numbers and other factors which Lidl consider provide evidence to show that they are trading at average if not below. Lidl have since also provided the trading figures for the store but these are stated to be commercially sensitive and therefore have not been made publically viewable.

- 4.2.3 An objection has been received on behalf of the land owners of the allocated site on Heath Road which suggests that their site is sequentially preferable as it is within the development boundary and allocated for development and that a food store would help to deliver the allocated site. A second objection for the same land owners also comment that the agent for the current application accepts that the site is in the countryside and does not comply with CS5. Furthermore, the development of Heath Road will enhance connectivity to the town centre to a greater degree than the current application site and that there is uncertainty around the long term shopper bus.
- 4.2.4 An objection has also been received promoting the allocated site on Station Road (WHIT051) which is within the development boundary, allocated and close to residential and employment areas. The use of the Station Road site could also open up access to the Network Rail land to the east of the station to be used as a car park.
- 4.2.5 Canal and River Trust (CRT) have also submitted an objection commenting that the proposed building, due to its height, design and proximity to the canal would be visually intrusive when viewed from the canal corridor and adversely impact on its wider landscaped character. Insufficient detail has been provided to demonstrate that the landscaping buffer would be sufficient to mitigate this harm and no assessment of the impact on the canal, as a non-designated heritage asset has been provided.

CRT consider the site and surrounding area retains a predominately rural character, the feel is of a countryside walk along the canal and although the landscape buffer could provide some screening the building would be a prominent feature and has an urban feel.

Also raised concerns about access from the store to the towpath, increased use of the towpath, canal stability, impact on ecology and drainage.

- 4.2.6 Whitchurch Branch of Shropshire Wildlife Trust have sent an objection on the basis that the canal and adjacent country park form an important green wedge and that the proposed store would be visually intrusive and restrict views from the canal and tow path, impacting on the wider landscape character.

The Branch also comment that the banks of the canal adjacent to the site were enhanced a few years ago to provide habitat for water voles. The proposed landscape buffer would shade the banks and alter the habitat.

Also objected on trade, congestion and visitor impact grounds.

## 5.0 THE MAIN ISSUES

- Policy & principle of development
- Retail sequential site assessment
- Retail impact assessment
- Layout of site, scale and design of food store
- Landscape impact
- Impact on historic environment
- Access, highway capacity, car parking and accessibility to town centre
- Impact on neighbours amenities
- Ecology
- Flooding, drainage and contamination
- Other matters
- Planning balance

## **6.0 OFFICER APPRAISAL**

### **6.1 Policy & principle of development**

- 6.1.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires Local Planning Authorities to determine planning applications in accordance with the development plan, unless material considerations indicate otherwise. The development plan, which provides the basis for considering this proposal, comprises the local policies set out in the adopted Shropshire Core Strategy (2011) and the Site Allocations and Management of Development DPD (SAMDev) Plan adopted in December 2015.
- 6.1.2 The Shropshire Core Strategy was adopted in March 2011. Policies CS1 (Strategic Approach) and CS3 (Market Towns and Other Key Centres) aim to support revitalisation of Shropshire's market towns, including Whitchurch, and seek to develop their roles as key centres. Policy CS15 (Town and Rural Centres) encourages the provision of appropriate convenience and comparison retail, office and other town centre uses preferably within the identified town centres as a 'town centres first' approach, however it does acknowledge the NPPF sequential and impact tests where no town centre sites are available.
- 6.1.3 The Shropshire Site Allocations and Management of Development (SAMDev) Plan was adopted in December 2015. Policies MD1 (Scale and Distribution of Development) and MD10a (Managing Town Centre Development) & 10b (Town and Rural Centre Impact Assessments) are relevant to the principle of development. MD1 advises that sufficient land will be made available within the plan led process to provide for the housing and employment land delivery required in Shropshire. This is done through defining development boundaries and allocating sites for development whilst continuing to support the principle of sustainable development. MD10a and 10b support retail development in the town centre, reinforcing the town centre first approach of CS15 and the NPPF. MD10b sets local thresholds for impact assessments. The proposed development exceeds the threshold for Whitchurch and as such an impact assessment was required.
- 6.1.4 The site is not allocated for any form of development within the SAMDev Plan and is outside the development boundary for Whitchurch. As such policy CS5 (Countryside and Greenbelt) is also relevant. This policy seek to control development beyond the development boundaries and identified settlements to



ensure that any such development is appropriate for the countryside. Although the site is located outside of the settlement boundary this not an automatic reason for refusal. The proposed development is considered by officers to be clearly not compliant with the development plan due to its location outside the development boundary and the proposal is for a form of development which is not supported by CS5. Furthermore, there are sites allocated for employment development and the proposed site is not one of the allocated sites. The consideration of the proposal therefore relies on whether there are any material considerations which would weigh in favour of approving the development.

- 6.1.5 At a national level the NPPF, section 2, sets out the national planning framework for determining planning applications for retail and other town centre uses. It seeks to be positive and promote competitive town centres but does acknowledge that policies will be required to consider main town centre uses which cannot be accommodated in or adjacent to town centres. Paragraph 24 requires local planning authorities to apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date local plan. This test is the “town centre first” approach where out of town sites should only be considered where there are no sites within or on the edge of centres and preference should be given to accessible out of town sites that are well connected to the town centre.
- 6.1.6 Paragraph 26 of the NPPF also requires out of town retail applications to be submitted with an impact assessment to assess:  
*“the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made.”*
- 6.1.7 Where an application fails the sequential test or is likely to have a significant impact it should be refused. Where no significant adverse impacts have been identified, and where the application also satisfies the requirements of the sequential test, a decision should be taken by balancing the positive and negative impacts of the proposal and other material considerations, and also the likely cumulative effect of recent permissions. These two issues of sequential and impact assessments and the consideration of the planning balance are the key to determining this application.
- 6.1.8 The first issue is determining whether there are any sequentially preferable sites available and suitable, or likely to become so within a reasonable period of time; and secondly whether the proposed retail development would result in a significant adverse impact on the existing town centre. These are the two tests within the NPPF and policy CS15. The NPPF states that applications should only be refused where they fail the sequential test or are likely to have a significant impact on existing centres. PPS4, the national retail policy prior to the NPPF, removed the requirement for applicants to satisfy a test of “need” in justifying proposals for town centre uses and as such whether there is a need for the food store is given less weight but can still inform the conclusions reached in terms of the impact test.

6.1.9 In order to consider these issues the application has been submitted with Planning Statement which includes a Retail Statement as it is accepted that the proposal constitutes an out of centre retail development. Other relevant policies of the Core Strategy and SAMDev are considered later in this report.

## 6.2 **Retail sequential site assessment**

6.2.1 Policy CS15 of the Shropshire Core Strategy seeks to maintain and enhance the vitality and viability of existing town and rural centres identifying town centres as the preferred location for new retail development and acknowledging the need for sequential and impact assessments. Paragraph 24 of the NPPF requires developments in 'out of centre' locations to demonstrate that there are no sequentially preferable sites suitable or available to accommodate the proposed development within the town centre or on the edge of the town centre. The sequential assessment should also take into account other out of centre sites which are accessible and well connected. The new National Planning Practice Guidance, which replaced the PPS4 guidance, advises that retailers should show flexibility in the design approach but also acknowledges that flexibility can prejudice the business model. Aldi's business model does not provide a "one-stop shop" with a smaller range of goods than other large supermarket chains and no in store facilities such as pharmacy or sales of newspapers and stamps.

6.2.2 Paragraph 6.2 of the Practice Guidance on Need, Impact and the Sequential Approach states that:

*"the sequential approach is intended to achieve two important policy objectives:*  
*- Firstly the assumptions underpinning the policy is that town centre sites (or failing that well connected edge of centre sites) are likely to be the most readily accessible locations by alternative means of transport and will be centrally placed to the catchments established centres serve, thereby reducing the need to travel,*  
*- The second related objective is to seek to accommodate main town centre uses in locations where customers are able to undertake linked trips in order to provide for improved consumer choice and competition. In this way, the benefits of the new development will serve to reinforce the vitality and viability of the existing centre."*

6.2.3 Paragraph 27 of the NPPF indicates that, where an application fails to satisfy the sequential test or is likely to have a significant adverse impact on one or more of the factors referred to in paragraph 26 (as detailed in 6.1.6 above), it should be refused. However, this paragraph does not extinguish the requirement to consider all material considerations in assessing the planning balance.

6.2.4 The application has been submitted with a sequential assessment which advises that Aldi require a 0.7ha regular shaped site which is prominent on a highway. Aldi look for sites with visibility from a highway as a lack of visibility is considered to impact on viability of the store. As such the sequential assessment has considered sites over 0.4ha and buildings of over 1,000sqm.

6.2.5 Five sites have been considered two of which are within the town centre. The Wood Yard was considered but the applicant suggests that the site is too small, not actively marketed and does not have a main road frontage. The Swimming Pool is not available and is also too small. The assessment suggests that there are no sites on the edge of centre and as such the other sites are all out of centre.

Waymills, the site which was previously granted consent for a new Aldi store, is now considered by Aldi to be in a poor location behind Homebase, with no highway visibility, isolated from residential areas and contaminated, with the cost of the remediation making the site unviable. A site on Heath Road/ Prees Road is also considered by the applicant to be detached from residential areas, allocated for employment uses and with high infrastructure costs.

- 6.2.6 The applicant's retail statement therefore concludes that the Heath Road/ Prees Road site is sequentially the same as the application site. The two sites in the centre are too small and not available and there are no other sites which are sequentially preferable to the application site.
- 6.2.7 As noted in section 4 above objections have been received from the Town Council, local residents, land promoters for alternative sites, and an agent on behalf of Lidl, who currently operate from a site in the town centre. The Town Council and local resident's objections are general in that they consider there are sequentially preferable sites, the objections on behalf of land promoters and Lidl specify sites which they consider are sequentially preferable. Lidl have questioned the justification for discounting the Waymills site and commented on other Aldi sites where a road frontage is not available and that Aldi should have been aware of the contamination issues.
- 6.2.8 The recent planning application for development of a builder's yard on the Waymills site has also been raised by objectors who consider that this recent application shows that the Waymills site is developable. The Town Council and a local resident have also questioned the Wood Yard advising that they understand the site would be available and would be big enough for the store and deliveries though the existing car park would need to be used.
- 6.2.9 The land promoters for alternative sites have suggested that two sites which are allocated for development in the SAMDev plan, the land on Heath Road and the land on Station Road are both sequentially preferable. The objectors consider that these sites are sequentially preferable as they are allocated and therefore within the development boundary. Furthermore, the objectors suggest that an Aldi on either of the allocated sites would open up development of the wider sites.
- 6.2.10 The Council's Planning Policy Officer, who specialises in retail planning matters has provided advice on this matter. The remit of the sequential assessment is to focus development in the town centres or on sites which achieve connectivity with the town centre. A site which is closer to the town centre, but still out of centre, may not be sequentially preferable if it is not achieving connectivity with the town centre and vice versa. Furthermore, the allocation of a site does not automatically make it sequentially preferable if an unallocated site provides better connectivity.
- 6.2.11 Officers accept that there are no sites within the town centre or edge of centre which are available, suitable and viable for the proposed development. The two sites considered, the Wood Yard and Swimming Pool site, are both too small for the proposed development, furthermore the developer would not be able to rely on a car park that they have no control over in regard to the Wood Yard. Officers are not aware of any other sites within the identified town centre.

- 6.2.12 Both allocated sites and the Waymills site are all out of centre sites and therefore not sequentially preferable in terms of location (they are neither in centre or edge of centre). The sequential test thereafter requires consideration of connectivity with the town centre. The Policy Officer's advice is that none of the sites quoted by objectors, including Waymills, provide any greater opportunities for connectivity and as such none are sequentially preferable. However, neither is the application site sequentially preferable to the allocated sites or Waymills, even taking into account the proposed shopper bus. As such the conclusion reached by officers is that the application site is sequentially equal to Waymills and the allocated sites.
- 6.2.13 The Waymills site presumably was considered by Aldi to be acceptable at the time of the previous application and subsequent appeal. The issues of contamination and highway visibility have not changed. Aldi have presumably changed their opinion of the Waymills site for business reasons rather than anything changing on the Waymills site. Furthermore, a new potential occupier also considers the site is a developable site, given the recent application for the use of this site. The Waymills site is within the development boundary and brownfield land, however it is not within or on the edge of the centre and therefore not strictly a sequentially preferable site in retail planning terms. There would have been other planning benefits of developing Aldi on Waymills. The allocated sites may also have other benefits which could be taken into account in the overall planning balance, such as opening up opportunities for further development or providing access along with being plan led development.
- 6.2.14 However, other material considerations and these benefits are not part of the sequential site assessment. The Council cannot refuse this application on the basis of either Waymills or the allocated sites being sequentially preferable. Considering the compliance with the sequential test in the NPPF and CS15 the proposed development is considered to comply as there are no sequentially preferable sites in either location or connectivity terms.
- 6.2.15 It should also be acknowledged, as noted by the Policy Officer, that other out of centre sites, which could include the allocated sites and Waymills, would also be capable of passing the sequential test.
- 6.3 **Retail impact assessment**
- 6.3.1 Paragraph 26 of the NPPF requires out of centre developments to also assess the impact on existing, committed and planned investment and the impact on the vitality and viability of the town centre and wider area, up to five years from the time the application is made. Only where the impact is significant should this be used as a reason to refuse. New retail developments will have an impact but this is not always a bad thing as new development often enhances choice, competition and innovation. The NPPF seeks to prevent significant adverse impact which would undermine the vitality and viability of the town centre and not to prevent competition or increases in choice. Paragraph 27 confirms that where an application is likely to have significant adverse impact on one or more of these factors (set out in NPPF para 26), it should be refused.
- 6.3.2 The application has been submitted with a retail statement which includes an impact assessment. Further work has also been carried out by the applicant's agent in regard to this matter following comments from local residents, land

promoters, Lidl and the Council Policy Officer. The concerns relate to the impact on the existing Lidl store and to the overall impact on the town centre. The Town Council also raised concerns that the impact assessment did not assess the potential impact on small retailers in the town centre.

- 6.3.3 Whitchurch is currently served by Tesco, Lidl and Iceland in the town centre and Sainsbury and a small convenience Co-op out of the town centre. The applicant's retail statement comments that Lidl is the only deep discounter in town and is trading well (a point disputed by Lidl) but doesn't provide sufficient choice or range for the catchment. As such Aldi suggests that there is a need for a further store. The NPPG advises that new retail development is most likely to have an impact on similar retailers; supermarkets generally have an impact on supermarkets. There may be an impact on smaller stores and other shops in the town centre, as noted by the Town Council, however this has been considered as part of the overall impact assessment.
- 6.3.4 The scheme proposes an 80%/ 20% split between convenience and comparison goods. The retail statement suggests that the proposed store is intended to serve Whitchurch and the surrounding area. Wem is 13km and Ellesmere 16km away from the site, Nantwich 15km, Crewe 22km and Wrexham 22km. The retail statement suggests that the site has a large catchment area where Whitchurch is closer to a large rural hinterland than any other town.
- 6.3.5 The retail statement suggests that Whitchurch is healthy with 18 convenience stores and 47 comparison stores (and 13 vacant). 18% of the stores are national chains and 82% independent retailers and the town centre also has services, restaurants and beverage venues. The historic town centre also serves as a tourism attraction and is accessible by bus and train whilst also providing good levels of parking.
- 6.3.6 To consider the impact on the town centre of an out of centre Aldi store the applicant had originally relied on the Sainsbury impact assessment. This took account of the previous Aldi approval at Waymills and concluded that a new food store, at that time Sainsbury, would not have an adverse impact on the town centre. The Sainsbury application was concluded to not have a significant impact and in forming that conclusion the applicant had to assume that the Aldi at Waymills would be built. The Sainsbury impact was a cumulative impact. As such some form of trade diversion to an Aldi store was considered to be acceptable previously. The retail report submitted with the application suggests that the retail income for the previously approved Aldi has gone to Lidl due to the increasing market share for deep discount stores. Given this assumption the retail impact assessment submitted with the original application suggested a -37.79% trade diversion from Lidl but commented that Lidl is trading well above benchmark and will still be above benchmark after the development of Aldi (a point strongly refuted by Lidl).
- 6.3.7 The report also suggested that Tesco and Iceland are overtrading and that the impact on each of these stores will be -10.8% and -8.69% respectively. The impact on the independent stores was predicted to be -9.91% and as such the overall impact on the town centre as a whole would be -16.09%. It is therefore the opinion of the applicant that the town centre will remain vital and vibrant.

- 6.3.8 An addendum to the impact assessment was submitted following receipt of comments. The addendum re-assessed the impact on the basis of Lidl trading at published benchmark, rather than the previously assumed figures from the Sainsbury impact assessment. The addendum concluded that the impact on Lidl would be -41.44%, Tesco would be affected by -11.61% and Iceland would be affected by -10.85%. The overall town centre impact in the addendum report was shown as -16.7%. The agent continued to assert that all of the town centre supermarkets are overtrading with Lidl trading much better than benchmark (benchmark being £5.15m). However, Lidl continued to object advising that the store was not overtrading and was below benchmark. Neither retailer was, at that time, providing hard evidence to substantiate their claims. Aldi were advised to undertake a household survey and Lidl were asked to provide trading figures for the Whitchurch store.
- 6.3.9 The Council Policy Officer's initial advice was that, based on the addendum report, the impact of -41.44% on Lidl was considered to be significant and as the existing Lidl is within the defined town centre its loss to the town would have an adverse impact on the overall town centre. Furthermore, the overall impact on the town centre of -16.7% was also considered to be high and potentially significant. However, there is no set level of impact which is defined as significant; it is not a case of an impact over a certain level is significant. The significance of the impact depends on the health of the town and, in the case of Whitchurch, how Lidl functions. Does the existing Lidl function as part of the town centre? Are there linked trips etc? On the basis of the original impact assessment and the addendum these questions remained unanswered and the impact was therefore not able to be clearly understood.
- 6.3.10 The applicant's agent therefore commissioned a household survey to provide information on shopping patterns. The work was carried out by a reputable, independent, survey company (NMES) and provided information on where people do 'main' and 'top up' shopping and also provided this in percentage format. The agent has then applied expenditure capacity assumptions to show potential turnover levels in 2020. As such there is still an element of uncertainty in the levels of turnover but these assumptions are supported by evidence from the household survey. The new household survey information shows Lidl trading well above benchmark and therefore in a better position to withstand trade draw from the proposed Aldi. The revised impact on Lidl, following the household survey, is -25.75% and the overall impact on the town centre is -14.89%. As such the applicant's agent has concluded that all of the town centre stores will continue to trade above benchmark after the development of the Aldi.
- 6.3.11 Based on the household survey information the Council's Policy Officer concluded that the level of impact on Lidl would be high but the store would continue to trade above benchmark and therefore would be unlikely to close. As such, although there may be some loss of linked trips, the level of the impact on the vitality and viability of the whole of the town centre would not be significantly adverse.
- 6.3.12 Lidl has written further objection letters continuing to raise concerns about the retail impact assessment submitted on the basis that Lidl will cease trading if Aldi is approved. They have questioned the household survey results. The survey

results appeared to show that the Whitchurch Lidl attracts two and a half times more customers than the average Lidl store and if this were true the store would be busy every day of the week and have a high volume of goods turnover, especially given that the Whitchurch Lidl is a very small and, in its view, a compromised store.

- 6.3.13 Lidl has confirmed to officers that there are not many Lidl stores of the same size as Whitchurch as most built at the same time have been extended or rebuilt to larger stores. Any expansion of the Whitchurch store is constrained by the size of the site and the presence of badgers nearby. Lidl provided the Store Manager's comments on queues being limited, car park occupancy not reaching capacity, staffing and delivery levels being low for a store of this size and also information on deliveries at another store which Lidl accepts over trades and is of a similar size. The Whitchurch store has one delivery per day whereas the other store has 11 per week. Lidl has also provided information on weekly transactions advising that the Whitchurch store had 25% less transactions than other stores in the region.
- 6.3.14 Aldi has responded questioning a number of the claims made by Lidl and including photographs of the store with more than two tills open and evidence of more than one delivery per day. Aldi consider that its evidence supports the household survey that shows Lidl is overtrading.
- 6.3.15 Following this objection Lidl has provided officers with further information which comments on the household survey, noting that Aldi have not proven the results of the household survey with additional survey information, comments on the reply from Aldi regarding queues, congestion, car parking and deliveries and also including the Lidl store trading figures for one 12 month period. However, the figure is stated to be commercially sensitive and therefore not publically available. The figure does appear to show that the Whitchurch store is already performing less than 90% of its average sales density (measured in £/sq m) which confirms that, contrary to previous indications and information submitted by the applicant, the existing Lidl store is under-trading.
- 6.3.16 The Council Policy Officer has reconsidered all of the information from Aldi and Lidl and his latest advice is provided in section 4 above. In summary the Policy Officer has advised that the current performance of Lidl is an important factor in the assessment of the impact on the wider town centre. However, the information from both retailers regarding the qualitative issues and operation of the Lidl store is of contextual interest only. The single trading figure from Lidl does indicate a large discrepancy between the applicant's household survey information and Lidl's trading position, both cannot be correct. The Policy Officer has advised that, in the absence of background data and on the basis that the trading figure is sensitive information, members should consider the impact on Lidl based on benchmark trading figures.
- 6.3.17 On benchmark trading figures (£5.15m) the impact on Lidl would likely to be significant and could lead to the closure of the Lidl store. However, the NPPF requires Council's to consider the retail impact of a new retail development on the vitality and viability of the whole of the town centre, not just on one store. Although there will be like for like trade diversion and therefore the impact is likely

to be greatest on Lidl this does not mean that the overall impact on the town centre is significantly adverse. Officers accept that the Lidl store is within the town centre, however it is also officer's opinion that Lidl does not function as a key part of the town centre. It is not an anchor store, there may be some linked trips (the evidence is lacking in detail), but the store backs onto the town centre.

6.3.18 As noted in the Policy Officer's advice the loss of the town centre Lidl store, which may result from the construction of an Aldi on the application site, has the potential to have an adverse impact on the town centre. This is a negative impact which members will need to consider as part of the planning balance. Without mitigation the impact should be given significant weight.

6.3.19 During the determination of the application, on the basis that officers were advising the applicant that they had concerns about the impact of the development on the town centre, a town centre mitigation proposal was put forward. The mitigation provides the recently completed store in Newport, Shropshire, as an example. At Newport Aldi has provided a financial contribution of £10,000 to Newport Town Team to be used for information boards, communications and business development and marketing; a financial contribution of £5,000 given to Newport Council for community groups; and a free shopper bus on Tuesday and Thursday which takes people from the town centre to the store and back again to encourage linked trips.

6.3.20 The mitigation proposed for Whitchurch is for the provision of a bus operated as a members club with free membership to residents within 5 minutes of the store funded by Aldi for 3 years. The bus would operate 2 days a week (possibly Wednesday and Friday), twice per day and would either pick up on request or on a regular route. Shoppers would have an hour at the store. Two routes have been suggested which cover the whole of Whitchurch and both routes do stop on the edge of the town centre. This mitigation could be given some weight in balancing against the harm identified to the town centre. However, firstly it is not clear what happens to the bus service at the end of the three year period paid for by Aldi, and secondly it is officers' opinion that the bus will provide more customers for Aldi rather than link the town centre to Aldi. The opportunities for linked trips are increased by the provision of the bus but so are the opportunities to shop at Aldi rather than in the town centre. Officers therefore consider that this mitigation will be neutral and will not outweigh the impact on the town centre.

6.3.21 Overall, as noted above the potential closure of the Lidl store will likely have a negative impact on the vitality and viability it will also have some impact on the town centre, which is an adverse impact and therefore a harm. For the reasons given in this section the impact is not considered to be significantly adverse. However, it remains an adverse impact which should be taken into account in the overall planning balance.

#### 6.4 **Layout of site, scale and design of food store**

6.4.1 Policy CS6 'Sustainable Design and Development Principles' of the Shropshire Core Strategy requires development to protect and conserve the built environment and be appropriate in scale, density, pattern and design taking into account the local context and character. The development should also safeguard residential and local amenity, ensure sustainable design and construction principles are



incorporated within the new development. Policy MD2 of the SAMDev requires development to contribute to and respect locally distinctive or valued character and existing amenity by, amongst other things, responding to local patterns, form and layout; reflecting local architecture; protecting, conserving and enhancing historic context and enhancing natural assets.

- 6.4.2 Access to the site is off Wrexham Road in the corner of the site furthest from the roundabout on the A41. Highway safety of this access is considered later in the report. For this part of the report the consideration is whether the layout is suitable in planning terms. The access is proposed in the position of the existing field gate. It will need to be widened to provide for simultaneous entrance and exit and this will involve removal of additional hedge. Within the site the proposal is laid out with the store backing onto the canal, with a 8-10m buffer between the building and the canal. The primary elevation of the store faces towards the A41 roundabout with a secondary side elevation facing towards the car park, which is situated between the store and Wrexham Road.
- 6.4.3 Officers have enquired about alternative layouts, for example turning the building 90 degrees to sit with a shorter elevating against the canal. However, the agent has advised that this would not provide sufficient manoeuvring space for customers or delivery vehicles. The design has a glazed gable end elevation facing towards the A41 and the small section of car park at the side of the building with the service yard to the opposite end and a landscaped buffer between the store and the canal.
- 6.4.4 The building is proposed to have an external footprint of 1,818sqm and an internal floor space of 1,743sqm of which 1,254sqm is sales area. Within the D&A the agent suggests that the design is good as it introduces a modern addition to the local vernacular. The material finish is modern and the design includes large sections of glazing, timber cladding and a mono pitched roof. The submitted D&A also provides full detailed elevations and visuals of the development from the roundabout, Wrexham Road and the canal both on completion of the development and 10 years after completion.
- 6.4.5 The submitted elevation drawings show that the car park and building will be built on lower ground level than the roundabout with existing and proposed trees and post and rail fencing providing the boundary. However the building will be higher than the canal. The existing ground level is already higher than the canal level and the ground level will need to be increased to build the store at a single level.
- 6.4.6 During the consideration of the application, the applicant has altered the finish cladding materials for the elevating facing towards the canal in an attempt to address its impact when viewed from the canal. The amendment provides this elevation with timber cladding and high level ribbon glazing. The timber cladding wraps around the one end, facing the roundabout, with the rest of this elevation being the glazed gable end with silver coloured cladding above. The long side elevation facing over the car park is to be clad with a mix of grey, silver and timber cladding with high level ribbon glazing. The materials are considered to be appropriate for the development proposed and will provide a mix of materials and interest. The ribbon glazing adds movement and shadow whilst also allowing natural light into the building. The roof is clad with grey cladding and solar panels.

6.4.7 The layout of the site and design and materials proposed for the building are considered to be acceptable for the proposed use. However, this does not mean that they are wholly appropriate. The implications of developing this site for the proposed use are considered below. The proposed development has the potential to have an impact on landscape and heritage as will be considered in the following two sections.

## 6.5 **Landscape impact**

6.5.1 The NPPF and policy CS17 of the Shropshire Core Strategy require consideration to be given to the impact of the proposed development on the natural environment. This particularly relates to the impact on statutorily protected species and habitats and existing trees and the wider landscape. A protected species survey, tree survey and Landscape and Visual Assessment (LVA) have all been undertaken and submitted with the application and considered by the relevant consultees. Local objectors have both supported the proposal for additional landscaping and objected to the potential impact on landscaping and ecology.

6.5.2 Council Officers have sought external landscaping advice and in addition Canal and River Trust (CRT) and Whitchurch Branch of Shropshire Wildlife Trust (SWT) have also written commenting on landscape impact matters. Both of these latter two parties' comments are summarised in section 4.2 above. CRT have raised concerns that the building will be visually intrusive from the canal corridor which, they consider, retains a predominately rural character and the feeling of a countryside walk along the towpath. The Whitchurch branch of SWT's concerns are also visual and landscape impact on what they consider is a green wedge.

6.5.3 The proposed scheme includes an 8m to 10m buffer along the boundary with the canal which is to be planted with trees and shrubs to create a landscape belt between the store and the canal. In addition the application accepts that the lighting scheme will have to be sensitively designed to maintain bat corridors and also that bat and bird boxes should be provided. Care is also recommended during the construction works to ensure that no protected species is affected by the development work. This issue is considered in greater detail later in the report.

6.5.4 A Landscape and Visual Assessment (LVA) has been submitted with the application. This has considered the impact of the proposed development on the landscape and also details landscaping for the site. The development proposes the removal of some trees to open up views but maintains the boundary hedges. The LVA acknowledges that the site is countryside for planning purposes (outside the development boundary) and details the site and surroundings including noting the regional and local landscape assessments. The susceptibility to change is considered by the applicant's consultant to be low to medium and the magnitude of change low. The site is on the edge of the settlement and the LVA concludes that the impact on the landscape character is low to negligible.

6.5.5 The assessment suggests a small loss of visual amenity from adjacent properties, a larger visual change to the dwelling opposite and the canal towpath but that the impact can be mitigated by layout, materials and landscaping. The LVA suggests

that the development will be associated with the road, service station and settlement rather than the countryside. It is accepted, within the assessment, that the impact on the immediate landscape will be adverse during construction and for the first few years until the site matures and becomes more integrated.

- 6.5.6 The LVA has been assessed on behalf of the Council by an external Landscape expert who critically analysed the submitted document and raised some concerns about the content of the assessment and the conclusions reached. The LVA includes details of planting and bunds which are not shown in the application; no zone of theoretical visibility has been provided and as there is higher land to the north there is a risk that visual receptors may have been missed; the assessment does not state whether the effects on the landscape are adverse or beneficial; no impact on heritage assets have been considered and there are assets within potential influencing distance; insufficient assessment has been carried out on the impact of the development on other residential properties other than the 1 immediate neighbour; views from vehicles on the A41 as they cross the canal should be included; the proposed fence on the east boundary may result in loss or damage to the existing hedge. The most significant criticism is that magnitude of change from viewpoint 7 is considered to be medium rather than low and therefore the significance of the effect should be moderate-substantial.
- 6.5.7 The applicant's landscape consultant has responded to the critical analysis commenting that the submitted LVA is in accordance with the guidelines; that a ZTV is not required and that any missed views are beyond 0.5km and therefore not likely to be affected; that heritage assets have been considered in the heritage impact assessment; that no further road views are necessary and that the difference in scale of impact is a professional opinion. Furthermore, the applicant has commented that the viewpoints were agreed with the Council at the pre-application stage. However, the response does clarify that the impacts noted in the LVA are adverse impacts, not beneficial impacts.
- 6.5.8 The Council's landscape consultant does not concur with the applicant's assessment of landscape impact or its conclusions. The Council's consultant considers that some of the visual effects will be greater than the applicant's consultant. The Council Consultant's concludes:  
*"In summary, we still have concerns that adverse visual effects have not been fully explored and that the potential adverse effects on the distinctive and valued character of the local landscape, particularly the setting of the Llangollen and Whitchurch Canals and Greenfield Nature Reserve may be objectionable. The site is an open, rural, canal-side pasture located outside of the Development Plan boundary for Whitchurch and therefore a more strict approach to assessing landscape and visual effects is required by Core Strategy Policy CS6 and SAMDev Development Management Policy MD12. However well landscaped, the proposed store is a large commercial building that 'turns its back' on the canal corridor and would probably be objectionable to local people and visitors to the canals, towpath, footpath network leading out of Whitchurch and the nature reserve."*
- 6.5.9 The applicant's landscape consultant has since updated the LVA to include views from the new residential development under construction on Wrexham Road. The applicant's consultant's conclusion remains one that the development of this site

will bring some adverse effects but that these are to a very local area and can be mitigated by the proposed landscaping.

6.5.10 This is, as noted above, an opinion and not one shared by officers. The site is currently a grassed field, it is accepted that it is adjacent to the bypass and service station, however it is also adjacent to the canal and other open fields. The setting of the site includes sections of the Llangollen and Whitchurch canals, including the junction of the two, a towpath, bridge and winding hole. It is officer's opinion, taking into account the advice of the external consultant, that the area is locally distinctive and valued. It is open countryside for planning purposes (being outside the development boundary) but also does have the character context of a junction of the canal informed by fields and vegetation rather than buildings. The canal is clearly a well-used tourist route and also a walking route for local residents. Officers consider that the proposed store, even with the landscaping proposed, would introduce a substantial commercial building to this otherwise rural context that would have a negative impact on the immediate landscape around the site and specifically on the canal and towpath.

6.5.11 It is accepted that this is not a significant impact on a wider landscape or a defined valued landscape in the terms of paragraph 109 of the NPPF (which seek to protect and enhance valued landscapes). However, paragraph 109 is not the only protection the NPPF affords to landscape and the countryside. One of the core principles of the NPPF is recognising the intrinsic character and beauty of the countryside. The National Planning Practice Guidance confirms that landscape includes designated landscapes and also the wider countryside. It is officer's opinion that the proposed development will result in some harm to the immediate landscape and this harm needs to be taken into account in the overall planning balance and officers consider that this harm should be attributed moderate weight.

## 6.6 **Impact on historic environment**

6.6.1 The site is not close to listed buildings or conservation areas, however the Council has considered the canal as a non-designated heritage asset and the applicant's agent was advised of this at the pre-application stage. The application therefore needs to be considered against policies CS5, CS6, CS17 and MD13 of the local plan and paragraph 135 of the NPPF (relevant to non-designated heritage assets). Paragraph 135 of the NPPF advises that *"The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset."*

6.6.2 The local policies seek to protect, conserve, enhance and restore Shropshire's heritage assets and, as detailed in MD13, this includes both designated and non-designated assets. MD13 also advises that proposals which are likely to have an adverse effect on the significance of a non-designated heritage asset, including its setting, will only be permitted if it can be clearly demonstrated that the public benefits of the proposal outweigh the adverse effect. Policy MD13 is considered by officers to be in line with the requirements of paragraph 135 of the NPPF but also sets greater local protection of non-designated assets. The harm has to be identified and thereafter taken into account as part of the overall planning balance.

This section of the report will advise on the harm. The planning balance is undertaken later in the report.

- 6.6.3 A heritage statement was been submitted with the application which confirms that there are no designated heritage assets or conservation areas near the application site but accepts that the canal is a non-designated heritage asset. The statement goes on to detail the historic development of Whitchurch from a Roman fort spreading along the Wroxeter to Chester road, Medieval market town based on livestock and cheese and after WW2 the development spread towards Chemistry, which was previously a separate village. The bypass was constructed in 1992 and the heritage statement considers that this has altered the historic character of the application site.
- 6.6.4 With regard to the canal the heritage statement advises that the wider canal network links Ellesmere to Llangollen, a section of the canal 26 miles west of the application site is a World Heritage Site and there are listed structures along the canal. The branch into Whitchurch was completed around 1811 and ended at Castle Well in the town. This canal branch was never a through route and was later abandoned in 1944 with much of it being filled in. It is acknowledged within the heritage statement that Whitchurch Waterways Trust are attempting to restore the canal and that they have planning permission to open up a section to Chemistry bridge. The statement also comments that Chemistry bridge is the only surviving bridge on the Whitchurch branch but there is no inter-visibility between the bridge and the application site. It is the applicant's opinion that the canal adjacent to the application site does not contain any physical structures and therefore makes little contribution to the overall significance of the canal.
- 6.6.5 In conclusion the applicant's heritage statement suggests that the significance of the whole of the canal is derived from its historic value as a C19 canal system, it is also part of the industrial revolution and the association with William Jessop and Thomas Telford is noted. However, the agent considers that the character of the site, and the part of the canal along the edge of the site, has been altered by the bypass, service station and housing development and therefore the feeling is of entering/ exiting the town. The statement comments that, in the opinion of the applicant's consultant, this part of the canal has a minor contribution towards the significance of the canal as a whole.
- 6.6.6 However, this view is not shared by officers and technical consultees. It is accepted that this section of the canal is part of the wider canal network and a section of the Llangollen canal. However, the canal at this point is not simply a linear water feature. Adjacent to the site is a winding hole, it is close to the junction of the Llangollen canal with the Whitchurch arm and the site is visible from the pedestrian bridge over the canal at the junction and from the canal tow path. The section of canal adjacent to the site does have features which distinguish it from other parts of the wider canal network. The application site is on the edge of Whitchurch and currently provides a gradual change between the more open countryside beyond the bypass and the built up area of the town. The proposed development will create a harder edge to this site.
- 6.6.7 It is acknowledged that the construction of the Whitchurch by-pass in the later 20th century and subsequent development have altered the surroundings of the

canal within the vicinity of the proposed development site. Nonetheless, and as Figure 2 on page 8 of the Design and Access Statement illustrates, the proposed development site remains an undeveloped piece of agricultural land across which users of the canal, and to a degree the by-pass too, gain distant views across it towards the later 19<sup>th</sup> century and 20<sup>th</sup> century buildings on the western margins of Whitchurch. As such, it is considered that the site forms part of the surroundings in which the significance of the canal is experienced and appreciated, and that the present semi-rural character to the site together with the views it affords towards the outskirts of Whitchurch, contribute positively to the significance of the asset. The Council's Conservation Officer raised concerns that the development of this site would have an impact on the non-designated heritage asset.

- 6.6.8 Aldi submitted a 'heritage rebuttal' and a 'Position statement on the non-designated heritage asset' to seek to respond to the Conservation Officer's concerns. The rebuttal details how the applicant's consultant has undertaken the heritage assessment using the NPPF and Historic England guidance. The consultant considers that the canal should be considered as a whole rather than in small component parts but also acknowledges that the character of the canal will vary along its length. It is the consultant's opinion that the application site does not have a relationship with the canal other than sitting alongside it. One of the key issues from the consultant is that they acknowledge that the application site does form part of the setting of the canal but it does not contribute to the significance of the canal as a heritage asset.
- 6.6.9 Within the rebuttal the applicant's consultant has commented that setting is not a heritage asset itself, the importance of setting lies in what it contributes to the significance of the asset. However, the consultant has also confirmed that significance of setting can also include the way in which the asset is experienced.
- 6.6.10 The position statement advises that the applicant has considered the significance of the heritage asset as part of the wider context of the canal as an infrastructure route for industry and development rather than pleasurable amenity. The applicant's consultant considers that the degree of change/urbanisation within the vicinity of the application site has meant that the site no longer contributes to the significance of the canal.
- 6.6.11 This is a matter of opinion and, as detailed in the consultee comments section above, is not shared by the Council's Conservation team. The Council Conservation team consider that the site does still contribute towards the significance of the canal and that the impact on the non-designated heritage asset is less than substantial. This part of the canal is part of the wider canal route which is now mainly used for tourism and does have aesthetic and historic value.
- 6.6.12 Aldi has also sought legal advice on this matter and provided it to the Council. The advice is that a proposal which causes harm to a non-designated heritage asset must be the subject of a balanced judgement. It then goes on to criticise the Conservation Officer for not having carried out the planning balance. However, this is not the role of the Conservation Officer. The planning balance is a matter for the decision maker. The Conservation Officer's role is to provide advice on the harm to the significance of the setting of the non-designated heritage asset (the

canal). This has been provided by the conservation officer who has advised that the harm is less than substantial. Aldi's legal advice suggests that this is using the test in paragraph 134 of the NPPF which doesn't apply to non-designated assets. This is not the case. The Conservation Officer has not sought to rely on 134, what has been provided is a definition of the level of harm which the officer considers is reached.

6.6.13 In conclusion it is officer's opinion that the development of this site for a food store in the form and layout as proposed will have less than substantial harm on the significance of the setting of the non-designated heritage asset. This in itself is not considered to be sufficient grounds to refuse the current planning application, however, as noted by the Aldi legal advice, needs to be considered as part of the overall planning balance. The impact, albeit less than substantial as a direct impact on the non-designated heritage asset, is a negative impact. In the context of policy MD13 of the Council's adopted SAMDev plan it therefore needs to be clearly demonstrated that the harm identified is outweighed by the public benefits of the proposal for it to comply with that part of the policy. It is officer's opinion that the public benefits have not been clearly demonstrated to outweigh the harm. The planning officer considers that the impact to the non-designated assets, although less than substantial, should be given significant weight in the planning balance.

## 6.7 **Access, highway capacity, car parking and accessibility to town centre**

6.7.1 Paragraph 32 of the NPPF advises that developments that generate significant traffic should be supported by a Transport Statement and promotes sustainable modes of travel, safe accesses and improvements to existing transport networks. Core Strategy Policy CS6 states that proposals likely to generate significant levels of traffic should be located in accessible locations where opportunities for walking, cycling and use of public transport can be maximised and the need for car based travel to be reduced. It is acknowledged that as a food store catering for major food shopping trips many customers will travel by car; however the site should also provide the opportunity for other means of travel such as by public transport, bicycle or walking and, as an out of centre food store, provide opportunities for creating linked trips to the town centre.

6.7.2 The NPPF states that when considering out-of-centre locations for retail development "preference should be given to accessible sites that are well connected to the town centre". Therefore, in assessing the relative merits of the site it is also necessary to look at accessibility and connection to the town centre. This can include the potential for linked trips through a range of potential sustainable transport modes, not just by foot. The policy is not a simple presumption in favour of the site which is closest to the town centre or even to the most accessible site but enables local authorities to give weight to sites which are accessible and well connected.

6.7.3 Access – A new access is proposed off Wrexham Road at approximately the point of an existing field gate. Visibility splays of 2.4m by 34m are shown on the revised plans but the applicant considers that 79m visibility is available, which complies with the requirement for 40mph speeds. From the town centre direction the proposal will include a right turn lane for traffic waiting to turn into the site so that traffic flow to the A41 is not impeded. Furthermore, the revised designs show the splitter from the A41 roundabout extended to the junction with the service station

in order to prevent vehicles turning from the A41 into the services.

- 6.7.4 Concern has been raised by local representatives that the access is not safe and that this access, along with other accesses in the area, will not be safe. The Council Highway Officer's comments are detailed in section 4 above. The Council Highway Officer has considered whether the proposed access is safe as part of his overall consideration of the proposal. The Highway Officer has not raised any issues with the proposed access.
- 6.7.5 The Planning Case Officer considers that the proposed works to the existing highway, in terms of extending the splitter and the potential to extend the 30mph (subject to the formal process for this work) will result in an improvement to the main issue with highway safety on Wrexham Road. Currently there are incidents of traffic turning into the service station on the opposite side of Wrexham Road. This junction is meant to be exit only and not an entrance to the service station. At present the vehicles using this as access increase the risk of collision within the service station and on Wrexham Road. The extension of the splitter would prevent the right turn manoeuvre off Wrexham Road and thereby improve safety. This would be a positive benefit resulting from the development and should therefore be given some positive weight in the planning balance.
- 6.7.6 The proposed access itself is shown to be provided with sufficient visibility in line with highway standards.
- 6.7.7 Highway capacity – Within the TA the applicant accepts that the proposed development will increase traffic but considers that most of the traffic will already be using the A41 and a high proportion will also already be using Wrexham Road. Traffic counts have been carried out by the applicant's highway consultant to consider the impact on the local highway network and the roundabout junction. The assessments and modelling of future traffic movements are considered to show that the roundabout operates within capacity and will continue to do so after the development with no increase in queues.
- 6.7.8 In the immediate area around the site the application includes highway improvements in extending the existing 30mph limit to the roundabout; a splitter island, which has been extended to beyond the exit from the service station, to prevent overtaking and to restrict vehicles from turning into the service station exit; and the installation of VAS.
- 6.7.9 Crashmap data has been investigated and notes 5 slight and 2 serious incidents all but 1 on the roundabout. The applicant's highway consultant considers that this is to be expected at the roundabout due to the level of traffic, speeds and the high order of the A41. However, the consultant does not consider that the proposed food store development on this site will increase the likelihood of incidents.
- 6.7.10 With regard to delivery vehicles the TA advises that there will be approximately 4 HGV deliveries per day plus a daily milk delivery and weekly bin collection. All deliveries are carried out by Aldi and as such the timings of deliveries can be controlled to quieter customer times.



- 6.7.11 The main concern of the local residents, in highway and traffic terms, relates to traffic and on street parking along Wrexham Road towards the town centre. There is currently an issue with residents on Wrexham Road not having off-street parking and therefore on-street parking causes delays to traffic flow. The applicant for the current application set up a highways working group to consider this existing issue. The working group proposed a scheme of managed on street parking. However, the proposal was not looked on favourably by residents and as such the working group has recommended a financial contribution towards a strategic scheme.
- 6.7.12 The proposed contribution is £75,000 and is proposed to be paid to the Council to consider options for alleviating the existing issues in the residential area further along Wrexham Road. The applicant's own planning benefits statement accepts that the Highway Officer does not consider that the contribution is required to make the development acceptable. The new food store will not result in a significantly greater impact. The issue is an existing issue rather than one which is a result of the proposed development. As such it would not be reasonable or related to the application to require the developer to pay a financial contribution towards providing off-street parking on Wrexham Road. Such a contribution would not meet the tests within the CIL Regulations and therefore could not be required by a S106 agreement.
- 6.7.13 The proposed scheme will result in traffic movements to and from the store. The benefits of the physical works proposed to the existing highway in terms of the splitter, extending the 30mph speed limit and the provision of vehicle activation signs (VAS) are all relevant and reasonable benefits and are considered necessary. However the impact on highway capacity is not severe and would not justify refusal or the form of mitigation proposed by the financial contribution.
- 6.7.14 Parking – 117 parking spaces are proposed, of which 9 would be parent and child, 8 disabled and 6 cycle hoops (12 cycle spaces). Aldi have assessed their other stores and the car parking requirements and suggest that the parking requirement will be a maximum of 89 cars during the peak time on a Saturday, with the weekday peaks being around 57 cars.
- 6.7.15 No contrary evidence or information has been provided to officers and as there are no longer parking standards for development Councils need to consider applications on a case by case basis. It is the case officer's opinion that Aldi are not likely to build a store that does not have sufficient parking available to serve its customers as this would not be good business. The site is, as acknowledged above, out of centre and there are no other car parks that customers could use. Alternative means of travel are considered below.
- 6.7.16 However, concern has been raised by the Council's Tree Officer that the parking spaces under the oak trees on the adjacent land would affect the trees. This is taking into account the no-dig method of constructing these spaces. Even with a no-dig proposal the trees will overhang the spaces, the roots will be affected by the provision of hard standing and furthermore customer vehicles may be damaged by the trees and increase the risk of pressure to remove these trees. This affects 13 parking spaces along the eastern edge of the site and would therefore reduce the level of parking provided to 104 spaces. Additional

information has been received relating to the construction methods for under the trees. This has been provided the Council Tree Officer to comment and members will be updated at the meeting. However, even with the reduction to 104 spaces there is likely to still be sufficient parking. Officers have reached this conclusion by comparing the proposed store with the recently opened store in Oswestry which has a similar footprint and 103 parking spaces.

- 6.7.17 The Council's Public Protection Officer has also commented on the need to provide rapid charge electric vehicle charging points to promote sustainable development and reduce CO2 emissions and has recommended the installation of a point to charge 2 vehicles and the infrastructure to provide more at a later date. The website provided by the PPO advises that rapid charge provides 80% charge in around 30 minutes. Given the recent Government announcement to ban new petrol and diesel cars from 2040 it is considered necessary to ensure that electric vehicle charging points are available.
- 6.7.18 The case officer had initially discussed this issue with the applicant prior to the Government announcement and it is Aldi's view that their shoppers do not spend long enough in the store to justify the installation of charging points. However, this does not take account of the rapid charging available at present and also of the speed of change of this technology. It is likely that charging times will only reduce and electric vehicle use will increase. As such this matter has been reconsidered and it is officer's opinion that charging infrastructure should be available within the car park. This is in line with the requirements of paragraph 35 of the NPPF.
- 6.7.19 As such, based on the evidence from the Oswestry store, it is officer's opinion that even with the removal of the parking spaces from under the Oak trees there would be sufficient parking available for cars. Conditions could be imposed should planning permission be granted to ensure these spaces are not used for cars and also to include providing for electric charging points. These are matters which officers consider could be resolved through discussion or a suitable condition and as such do not consider that they should be given any weight in the overall planning balance.
- 6.7.20 Accessibility – The D&A suggests that the nearest bus stop is a short walk from the site, the TA confirms that there are two stops with the nearest 500m from the site. The TA also considers that the site is within walking distance of residential areas and cycling distance of the whole of Whitchurch. However, it also accepts that, in a car, the bypass would be the quickest route into town rather than along Wrexham Road (for the reasons commented above relating to on-street parking). The proposal includes a maintenance schedule for the roadside hedge to maintain useable footpath which will help with pedestrian connectivity. Cycle parking stands are proposed within the site which will help encourage cycling for both customers and staff.
- 6.7.21 Concern has been raised in local resident's objections and the town council objection that the site is not well connected and that there is not a frequent bus service in the area. The Council Highway Officer has recognised that the site is located on the edge of town and notes the concerns raised, however the highway authority consider that a highway objection on these grounds alone would not be

sustainable. The location of the site is, as noted in the policy section of the report a negative in the planning balance, although a refusal based purely on highway grounds could not be sustained this does not diminish the fact it is a negative impact in terms of the overall planning balance.

- 6.7.22 The site is within walking distance of both residential areas and bus stops. The applicant has also proposed to provide a “shopper bus” and indicated two possible routes around the other residential parts of the town and the town centre. This, as previously noted, is proposed to enhance connectivity and accessibility between the site, town centre and residential areas. The proposed bus will provide alternative means of travel in addition to the existing public transport in the area. The draft bus note advises that the bus will operate on two days a week, is free to customers (though free membership) and will be funded by Aldi for three years. This is a benefit in terms of connectivity but, as noted in section 6.3, it is not currently clear what happens at the end of the three year period. Overall the benefit of the proposed bus is considered to be neutral as the bus will also provide access to Aldi as well as the town centre.
- 6.7.23 With regard to access from the canal the scheme does not propose to provide direct pedestrian access to the canal on the basis that Aldi are hoping to encourage boaters to continue to use the town centre. A financial contribution is being offered to provide signage along the canal to further encourage this. Local objectors have noted that the site will be accessible from the canal via the A41 road bridge. This is noted, however, officers accept that there is a risk of some custom from the canal users but that the proposed tow path signage will help to encourage canal users to continue to access the town centre.
- 6.7.24 A draft travel plan has also been submitted which sets the principles for a full travel plan to be drawn up on store opening. The store manager will be the travel plan co-ordinator, the plan will seek to encourage staff and customers to cycle, walk and car share through the provision of information, posters and maps. To ensure this occurs, given that the site is outside of the town centre and therefore not well connected by existing other means of travel, a travel plan is considered necessary for this site and, if planning permission were to be granted, a condition should be imposed to require the draft travel plan to be worked up into a full travel plan.
- 6.7.25 Overall the proposed access is considered, by officers, to be provided with sufficient visibility; the off-site highway works will be beneficial to both the development and wider highway safety; sufficient parking and turning can be made available and delivery times can be managed by the store to reduce the potential of conflict with customer traffic; and the site is accessible by foot, cycle and public transport with the proposed shopper bus adding to accessibility and connectivity. The scheme is therefore considered to be acceptable in highway terms when considered against the relevant policies.
- 6.8 **Impact on neighbours amenities**
- 6.8.1 Policy CS6 ‘Sustainable Design and Development Principles’ of the Shropshire Core Strategy indicates that development should safeguard the residential and local amenity. NPPF paragraph 109 also seeks to ensure existing development is not put at risk of unacceptable noise or pollution whilst paragraph 123 recognises

that development will often create some noise but seeks to avoid significant adverse impacts on health and quality of life.

- 6.8.2 Prior to submitting the current application Aldi held public exhibitions and consulted with local residents, members and officers, produced leaflets, press releases and set up a website and phone number. A highways working group was also set up, this matter is dealt with under section 6.5 above. The consultation statement submitted with the application advises that the general response from community consultation was of support for the additional jobs, choice, value and the reduction in travelling. However, concerns were raised about highway capacity (considered at section 6.5 above), the impact on the town centre and that the site is too far out of town (section 6.3). The consultation statement does not detail any concerns of residents regarding direct impact on amenities.
- 6.8.3 This is also the conclusion of the Council's own consultation carried out on the application. The majority of objections relate to town centre impact and highway matters. However, concern has been raised about noise and light pollution. The site is currently a grassed field on the edge of the town. Any development on the site would alter the level of noise & light in the immediate area.
- 6.8.4 A noise assessment has been submitted with the application as the applicant acknowledges that the site is in a sensitive area. The opening hours of the proposed store are 8am-10pm Monday to Saturday and 6 hours between 10am-6pm on Sunday. Background noise measurements were carried out and the dominant noise is road traffic, which given the close proximity of the site to the A41 is as expected. The report notes the potential for noise from plant and deliveries. The plant will be on the northeast elevation of the store and is proposed to be surrounded by 3.75m high timber fencing. The noise levels from the plant have been provided from other recently built stores and the supplier and the conclusion is that the plant noise will be comparable to background noise levels.
- 6.8.5 With regard to deliveries, as noted above, Aldi operate their own deliveries and use an internal unloading system. As with plant the delivery noise was assessed using other stores and noise was noted on arrival, reversing and departure. Noise during unloading was minimal due to the internal system where the vehicle reverses up to the building and unloads directly into the building. However, the report accepts that there will be some noise and that, without mitigation, the noise levels may be significant. As such the proposed layout of the site also includes a 3.75m high acoustic barrier on the east boundary of the site to reduce the impact on the neighbouring properties, including canal boats.
- 6.8.6 The Council Public Protection Officer has confirmed that, subject to the proposed fencing along the northeast of the site and around the plant at the rear of the store, they have no objection to the development and agrees that the site will not increase noise levels. The mitigation will reduce noise impact on the neighbouring residential properties but will also have a visual impact and potential impact on trees and hedges along this boundary.
- 6.8.7 As such the proposed development will not have a detrimental impact on the

residential amenities of any existing properties in terms of loss of light, privacy or noise. However, this is on the basis of the proposal including a close boarded fence along the full northeast boundary of the site which officer's consider will have a further negative impact on the character of the area.

## 6.9 Ecology

6.9.1 The NPPF and policy CS17 of the Shropshire Core Strategy require consideration to be given to the impact of the proposed development on the natural environment. This particularly relates to the impact on statutorily protected species and habitats and existing trees and landscaping. An ecology assessment and arboriculture report have been undertaken and submitted with the current application and this was considered by the Council's Ecologist and Tree Officer. The impact on trees has been commented on elsewhere within this report but will be touched on again in this section.

6.9.2 The applicant's ecology survey has assessed the site and surrounding area for protected species and also plant species. The submitted survey details the site as being semi-improved grassland with hedges, ruderal plants and 2 oak trees. There are 2 ponds within 500m of the site, one is ornamental in a garden and the other is on the opposite side of the A41. As such the applicant's ecologist considers that there is limited risk of the development impacting on great crested newts. Furthermore there was no evidence of badgers, water voles or otter. None of the trees on site showed features which could be used by bats. The survey acknowledges that the canal offers potential foraging and commuting habitat for otter but there was no signs within the application site that it was being used and the site and boundaries offer potential for nesting habitat for birds. The survey recommends the canal buffer is protected during the construction works and that any works to trees or hedges are carried out outside of the nesting season.

6.9.3 The layout as proposed includes the provision of an 8-10 metre buffer between the edge of the site and the edge of the canal. This is predominately intended to provide a landscaping buffer for trees to reduce the visual impact of the building. However, the buffer will also provide a wildlife corridor and will be planted with both woodland trees, low growing plants and wild flowers. The ecology report also advises that the existing boundary hedge will be retained and enhanced.

6.9.4 The Council Ecologist has considered the application and the survey information and accepted the conclusions of the survey. The Council Ecologist has recommended conditions and informatives relating to protection of the buffer; consideration of bats in the design of the lighting of the site; provision of bat boxes; working methods to manage the site and reduce the risk of formation of habitats within the construction site and the provision of bird boxes.

6.9.5 With regard to existing landscaping the site is currently grassland with a broad-leaved plantation tree belt on the southern, eastern and western boundaries. The southern boundary is also made up of a hedgerow. The boundary to the canal is post and wire fence with low growing plants. Although, as noted above, the ecology report suggests that the boundary landscaping will be retained and enhanced the Design and Access statement advises that the tree belt along the bypass is to be removed and the hedgerow managed, thinned and reduced in

height to open views into the site. With regard to impact on existing trees and hedges a tree survey has been carried out which records 6 trees, 2 hedgerows and 3 groups of trees. The proposal requires the removal of 2 sections of hedge to create the new access but also proposes additional planting to mitigate the loss. None of the existing trees are to be removed.

- 6.9.6 The Council Tree Officer has no objection to the principle of the development and supports the buffer zone and new planting along the northern boundary. However, the Tree Officer has raised an objection to the provision of parking under the two oak trees which lie outside the side but adjacent to the eastern boundary. The Council Tree Officer has advised that these two trees are significant natural assets in the landscape and also provide screening to the neighbouring property. The proposal includes 10 parking spaces under these two trees which will cover approximately 40% of the root protection area. Although no-dig construction methods could be employed any works to crown lift or prune these trees will lead to stress to the trees and parking spaces under trees risks damage to vehicles and people. The Council Tree Officer has advised that proposing parking bays under these trees is not compatible with the healthy retention of the trees in the long term.
- 6.9.7 Additional information has recently been provided with more detail of the construction methods of the car park under the trees. This has been passed to the Council Tree Officer whose response is awaited. Members will be provided with an update at the meeting in regard to this matter. However, as noted in the highway section above it is officer's opinion that the level of parking, even with these 10 parking spaces removed, will be sufficient for the size of the store.
- 6.10 **Flooding, drainage and contamination**
- 6.10.1 Policy CS18 'Sustainable Water Management' of the Shropshire Core Strategy indicates that development should integrate measures of sustainable water management to reduce flood risk and avoid an adverse impact on water quality and quantity.
- 6.10.2 A FRA has been submitted with the application, although the site is within flood zone 1 it is over 1ha. The FRA identifies possible flood risks but considers the probability of any flooding, including surface water flooding, is low. Canal flooding is very low due to the difference in levels. The FRA has also considered climate change and the need to design the surface water drainage system to accommodate climate change.
- 6.10.3 Surface water is proposed to be discharged through a SUDs system with no increase in run off. The FRA advises that the ground conditions are unsuitable for infiltration and therefore recommends planting with high water demand, re-use of surface water and attenuation. The applicant is negotiating with the Canal and River Trust to seek to discharge the final surface water run-off to the canal. Foul drainage is proposed to be connected to the public sewerage system to the north of the canal vial a pumping station and rising main on the service station site. The foul drainage connection will be subject to agreement with Welsh Water.
- 6.10.4 Both Welsh Water and the Council Drainage Consultant have recommended that the drainage of the site be the subject of a condition. Neither have raised any

objections to the principle of the proposal or suggested that the site is not capable of being provided with a suitable means of drainage.

**6.11 Other matters**

6.11.1 Public support has also been received commenting that the development will provide jobs. This is a matter of fact. New commercial development will provide jobs, subject to the impact test as considered above. The provision of additional jobs can be given some positive weight in the planning balance. Furthermore, the provision of additional choice of retailers and goods is supported locally and is a positive benefit of the development which should be given some weight in the planning balance.

6.11.2 Concern has also been raised about the potential for the car park to be mis-used when the store is closed and also of the potential for trolleys to be dumped into the canal. At present there are no proposals to gate the car park, however as a private car park this would be a matter for Aldi to deal with should the issue of mis-use of the car park arise and cause disturbance to the community or the store. With regard to the trolleys Aldi provide coin-operated trolleys to encourage customers to return trolleys after use and also reduce the risk of trolleys being taken outside of store opening hours. As such although the concerns of the residents are noted these would be matters for Aldi to deal with should the issues arise.

**6.12 Planning balance**

6.12.1 Paragraph 14 of the NPPF advises that development which complies with the local plan should be approved without delay. It goes on to advise how to consider applications where the development plan is absent, silent or out of date. Paragraph 14 does not advise on what to do when an application does not comply with the local plan. For that the Planning and Compulsory Purchase Act 2004, or paragraph 196 of the NPPF advises that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.

6.12.2 The application is for development outside of the development boundary for a form of development that is not one of the exceptions listed within the local policies as appropriate for in the countryside (reference policy CS5). It is not either a listed exception or along similar lines to those listed. The starting point is therefore the proposed development is contrary to the local plan. Paragraph 196 therefore advises the decision maker to consider other material considerations. This is the matter of the planning balance. Balancing the harm and the benefit. The fact the application is contrary to the policy for development in the countryside is itself given significant weight on the negative side of the balance.

6.12.3 The agent has submitted a list of what it considers are the planning benefits of the scheme. These include providing a new store for the growing population of Whitchurch which, the agent considers, is needed due to the existing stores performing well (both points disputed by Lidl); existing expenditure lost to other towns; general increase in expenditure with increase in population. Other non-site specific benefits include construction jobs; circa 40 jobs once open; apprenticeship and graduate schemes and the provision of solar panels on the roof. These are considered by officers to be non-site specific as they would be

provided wherever the store was located. These benefits should be given weight. As noted in section 6.2 above there are no sequentially preferable sites. Furthermore, as noted at 6.3, it will also have some impact on the town centre, which is an adverse impact and therefore a harm. As such the above benefits of a new store should, in the opinion of officers, be given substantial weight. Although these benefits may tip the balance in favour of the proposal if the only harm was that the site is outside the development boundary there are other harms, identified in this report which weigh against the proposal.

- 6.12.4 The agent has commented that the Sainsbury store on London Road sits outside the development boundary and that this shows the Council recognise and accept the principle of retail development outside the boundary. However, they have not fully acknowledged the planning balance undertaken for the Sainsbury application and the two scenarios are not therefore directly comparable. The agent suggests that the principle is acceptable where the development makes a contribution to local needs and connectivity. The Sainsbury store was outside the development boundary and therefore contrary to the development plan; however there were other material considerations that weighed in its favour. The Sainsbury store is well located to encourage linked trips with the town centre and the redevelopment of that site included the restoration of two listed buildings and a contribution towards a third. The heritage impact of the Sainsbury store was mitigated by the positive benefit that a financial contribution towards restoring the Old Rectory would provide. The decision for the Sainsbury store was clearly a very finely balanced matter given the objection from Historic England.
- 6.12.5 Officer's opinion of the landscape impact of the proposed development is detailed in section 6.5 and has taken account of both the applicant's landscape assessment and the advice from the Council's landscape consultant. The landscape impact is considered to be adverse, albeit not significant and only to the immediate area, the impact is still a negative in the planning balance to be given weight. The applicant has proposed a landscaped buffer and shown the proposed store after 10 years of growth and also proposed to clad the rear elevation of the store with timber. However, officers are of the view that the proposed store, even with the landscaping proposed would be a substantial commercial building and that it would have a negative impact on the immediate landscape around the site and specifically on the canal and towpath due to its size and proximity to the canal. It is officer's opinion that the negative impact on landscape should be given moderate weight in the planning balance.
- 6.12.6 The heritage impact is detailed in section 6.6 above. The canal which runs adjacent to the site is considered to be a non-designated heritage asset. This section of the canal has canal features which distinguish it from other sections of the canal. The officer view of the proposed development has taken into account the views of the Council Conservation team and the advice from the applicant's heritage consultant and legal advisor. The conclusion of section 6.6 is that there is a difference of opinion. Officer's view is that the development will have a less than substantial negative impact on the significance of the setting of the non-designated heritage asset. However, as noted at 6.6.2, MD13 requires the public benefits of development which is likely to have an adverse effect on the significance of a non-designated heritage asset to outweigh the impact. The planning officer considers that the impact to the non-designated assets, although



less than substantial, should be given significant weight in the planning balance. Furthermore, with reference to MD13, it is officer's opinion that the public benefits have not been clearly demonstrated to outweigh the harm.

- 6.12.7 With regard to highway matters of access and capacity section 6.7 advises that the proposed development will not result in a severe highway impact. The proposed splitter island extension, signage on the roundabout, extension of the 30mph limit and installation of VAS will provide improvements to the current situation in regard to the use of the exit to the service station as an entrance. Furthermore, the application proposes signage within the store and car park directing shoppers to the town centre and directional signage for tourists on the canal to direct them to the town centre. These, are considered to be improvements to connectivity which are reasonable and related to the development proposed. The proposed shopper bus will also provide some level of improvements to connectivity but, as noted above, will not outweigh the harm to the town centre. The benefit of the shopper bus is considered by officers to be neutral.
- 6.12.8 The proposal to pay a £75,000 financial contribution to the Council towards resolving the current on-street parking problems on Chester Road is not considered to be related to the proposed development. As noted at 6.7.12 the Highway Officer does not consider that the contribution is required to make the development acceptable. The issue is an existing one and not one that is a result of the proposed development. The applicant's benefits note confirms that they are aware that this contribution is not required but they have offered it to overcome local objections.
- 6.12.9 The tests in section 122 of the Community Infrastructure Levy Regulations set the criteria for consideration of whether a benefit can be part of a S106 agreement. These tests require the S106 to be a) necessary to make the development acceptable in planning terms; b) directly related to the development; and c) fairly and reasonably related in scale and kind to the development. As noted above the financial contribution to car parking on Wrexham Road does not meet test a or b.
- 6.12.10 The applicant's benefit note also suggests that they are also proposing to make a financial contribution to town centre management. This is the contribution noted in the town council response. This is intended to help to mitigate the impact on the town centre. The agent suggests that the contribution could be used for town centre promotion or public realm improvements.
- 6.12.11 The signage within the site and along the canal tow path is also put forward by the applicant as mitigation of the town centre impact. The signage on the canal is intended to direct canal users to the town centre, not Aldi, and the signage within the site is intended to direct shoppers into the town centre. The signage will go some way towards promoting linked trips but given the distance from the site to the town centre officers do not consider that there will be a high number of linked trips. The proposed signage would slightly reduce the impact on the town centre but officers do not consider that the proposed signage will wholly overcome the impact identified.
- 6.12.12 The addition of the financial contribution towards town centre management will

also help alleviate the impact. Officers consider that the town centre contribution will enhance the attractiveness of the town centre and the combined signage will encourage visitors to the food store to also visit the town centre. As such it would be considered necessary make the development acceptable in planning terms, when considering the balance against the harm to the town centre, it is also directly related to the development in that it will mitigate some of the impact on the vitality and viability of the town centre and the level of contribution is reasonable and related in scale and kind. As such it is considered by officers that the financial contribution to town centre enhancements meets the requirements of the CIL regulations and that the level of contribution and works to be undertaken, with associated costs, would be detailed within the Section 106 agreement.

- 6.12.13 In conclusion the benefits of the development are the addition of a new store and associated non-site specific matters and the benefit to the town centre of the financial contribution which officers consider partially mitigates the impact on the town centre and makes the balance neutral in that regard. However the harm to the heritage and landscape are not considered to be overcome and the site is outside the development boundary.
- 6.12.14 The material considerations in favour of the development, the benefits, are not considered to outweigh the harm. Officer's view is that the benefits of the scheme need to outweigh the harm. In this case it is officer's opinion, for the reasons given above, that the benefits that can be given weight in the determination of the application do not outweigh the harm. Even if you were to consider this in the counter direction, that the harm needs to outweigh the benefits, it is officer's opinion that, taken cumulatively, the harms resulting from the development of this site are significant and demonstrably outweigh the benefits.

## **7.0 CONCLUSION**

- 7.1 The proposed development has been assessed in accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004, namely that any determination must be made in accordance with the development plan unless material considerations indicate otherwise. In particular, the proposed development has been assessed against locally adopted policies and the National Planning Policy Framework in relation to retail development. This assessment concludes that approval of a food store on the application site, subject to the proposed signage and town centre enhancement financial contribution, would not have a significant adverse impact on the vitality and viability of Whitchurch town centre and that there are no sequentially preferable sites. There is still the potential for the existing Lidl to close and there will therefore be some impact on the town centre.
- 7.2 A safe means of access and service delivery space is acceptable and accords with adopted policy. Off-site highway improvements will ensure that the development does not result in severe highway safety implications and also help to mitigate an existing issue which could be compounded by the proposed development. The proposal signage and shopper bus will also increase the connectivity of the proposed development to the wider residential areas and the town centre, however this overall results in a neutral impact. Furthermore the development will not have an unacceptable detrimental impact on the amenities of the neighbouring properties, ecology, flood risk or drainage.

7.3 It is considered that the layout, scale and design of the site is appropriate for the end user, however the site lies in a historic and rural landscape context and the proposed development is considered to have an adverse impact on the significance of the setting of the non-designated heritage asset and an adverse impact on the immediate landscape. These impacts are not considered to be overcome by mitigation offered by the proposed landscaping or finish material for the building. Furthermore, these impacts, in addition to the impact on the town centre and the impact on connectivity are not considered to be outweighed by the public benefits of the development.

7.4 As such the proposal is not considered to comply with the Development Plan Core Strategy policies CS5, CS6 and CS17 or with policy MD13 of the Shropshire Site Allocations and Management of Development (SAMDev) and the National Planning Policy Framework (NPPF), specifically paragraph 135. 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.

## **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 - written representations, a hearing or inquiry.

The decision is 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 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 give 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 1970.

### 9.0 **FINANCIAL IMPLICATIONS**

9.1 There are likely financial implications of the decision and/or imposition of conditions if challenged by a planning appeal or judicial review. The costs of defending any decision will be met by the authority and will vary dependant on the scale and nature of the proposal. Local financial considerations are capable of being taken into account when determining this planning application – in so far 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

National Planning Policy Framework

CS1 - Strategic Approach

CS3 - The Market Towns and Other Key Centres

CS6 - Sustainable Design and Development Principles

CS7 - Communications and Transport

CS15 - Town and Rural Centres

CS16 - Tourism, Culture and Leisure

CS17 - Environmental Networks

MD10A - Managing Town Centre Development

MD10B - Impact Assessments for Town and Rural Centres

Settlement: S18 - Whitchurch

### Relevant planning history:

None

## 11. **ADDITIONAL INFORMATION**

|  |
|--|
| List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information) |
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|--|
| Cabinet Member (Portfolio Holder)<br>Cllr R. Macey |
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|---|
| Local Member<br>Cllr Thomas Biggins<br>Cllr Peggy Mullock |
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| Appendices |
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APPENDIX 1 - Conditions

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Committee and Date

North Planning Committee

9th January 2018

Item

9

Public

## Development Management Report

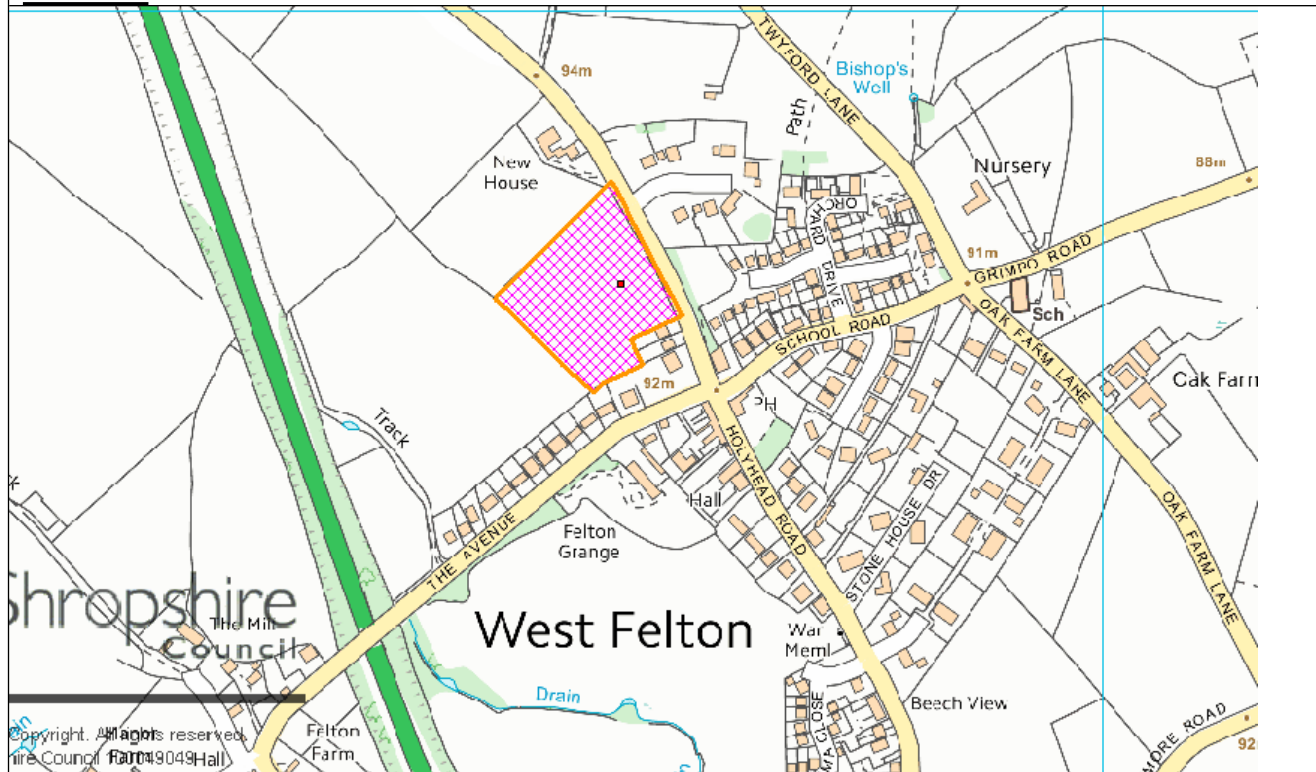
Responsible Officer: Tim Rogers

Email: [tim.rogers@shropshire.gov.uk](mailto:tim.rogers@shropshire.gov.uk) Tel: 01743 258773 Fax: 01743 252619

### Summary of Application

|  |  |
|--|--|
| <b>Application Number:</b> 16/05336/REM  | <b>Parish:</b> West Felton   |
| <b>Proposal:</b> Approval of reserved matters (access, appearance, landscaping, layout, scale) pursuant to 14/00133/OUT for residential development of 25 houses (inclusive of 2 affordable) |  |
| <b>Site Address:</b> Proposed Residential Development Land At The Cross West Felton Shropshire   |  |
| <b>Applicant:</b> Mrs K Price  |  |
| <b>Case Officer:</b> Karen Townend   | <b>email:</b> <a href="mailto:planningdmne@shropshire.gov.uk">planningdmne@shropshire.gov.uk</a> |

**Grid Ref:** 334572 - 325759



**RECOMMENDATION: That delegated power be granted to the Head of Planning Services to grant reserved matters consent, subject to no new material planning issues raised by consultees or the Parish Council and subject to the conditions as listed in appendix 1.**

## REPORT

### 1.0 THE PROPOSAL

- 1.1 This application is for approval of all of the reserved matters of layout, scale, appearance, access and landscaping for the site known as land at The Cross, West Felton, which sits opposite Dovaston Court and between New House and Lawn House. Outline consent was granted (by appeal) in November 2015 subject to conditions and subject to a S106 legal agreement to secure affordable housing.
- 1.2 The application has been submitted with full plans and supporting information to deal with the matters reserved on the outline consent and details a proposal for 25 dwellings made up of a mix of detached, semi-detached and terrace two storey and single storey properties with an area of open space. In support of the proposal the application has been submitted with a design and access statement, highways and drainage report and ecological surveys.
- 1.3 Condition 5 of the appeal decision set some requirements for the future reserved matters application; that the development shall be no more than 25 dwellings; six of the open market dwellings shall be bungalows; 4 of the two storey open market dwellings shall be 2 bed; 2 of the two storey open market dwellings shall be 3 bed. Condition 6 also required the submission of levels of the site, finished floor levels and drainage details concurrently with the submission of reserved matters and as such this information has been provided with the current application.
- 1.4 Other conditions on the appeal decision required further information to be submitted prior to commencement or prior to occupation of any of the dwellings. This information does not need to be submitted as part of the current application for approval of reserved matters and can be dealt with at a later date through a separate application for discharge of condition. However, the agent has submitted most of the information required by the conditions in the current application.
- 1.5 A separate application has now also been received by the Council (17/05626/VAR) which seeks to vary condition 7 on the outline consent. Condition 7 relates to the provision of a footpath between the site and the junction to the south of the site. This is being considered as a separate matter but will need to be dealt with before the reserved matters application can be determined.

### 2.0 SITE LOCATION/DESCRIPTION

- 2.1 The site is 1.53 hectares in area and is currently in agricultural use. It is located on the edge of the existing village between the built up village and a single detached house and outbuildings. Opposite the site is the Dovaston Court development, which is a group of detached houses off a single cul-de-sac, and the open space between Nursery Close and Holyhead Road. Nursery Close is a cul-de-sac off Orchard Drive and is detached and semi detached houses in smaller plots than those on Dovaston Court.



- 2.2 The field is set at a lower ground level than the adjacent road and is enclosed with hedging. There is a grassed verge between the hedge and the road but no footpath on this side of the road.
- 2.3 West Felton is a village which was previously identified in the Oswestry Borough Local Plan as a Larger Settlement where new development would be concentrated. It currently has a school, shop, Chapel, hall and public house. The housing is a mix of the original village centred around The Cross and the small area on the opposite side of the new A5 and more recent developments. The housing does not follow any set form, design or appearance, however it is in the majority two storey.
- 2.4 However, the village is now considered to be open countryside for planning purposes as West Felton is not identified as a settlement within either the Core Strategy or SAMDev.

### **3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION**

- 3.1 The determination of this application under delegated powers does not comply with the delegation to officers as set out in Part 8 of the Shropshire Council Constitution. The Parish Council have submitted a view contrary to officers which the Chair and Vice Chair of the North Planning Committee consider are material considerations and justify the application being determined by committee.

### **4.0 COMMUNITY REPRESENTATIONS**

#### **4.1 Consultee Comments**

- 4.1.1 **West Felton Parish Council** – Following consideration of the plans submitted the Parish Council wish to **object** to this application for the reasons outlined below

The plans and information submitted as part of the Reserved Matters application do not address a number of the conditions that were part of the planning permission namely:

Drainage - The Council is particularly concerned that proposals for soakaways may be in contravention with building regulations as one in particular is located too close to a property. In addition to this the council is aware that 2 soakaways which are to be located in the rear gardens of the proposed properties will affect drainage arrangements already in place on a neighbouring property.

Landscaping Details - no details have been submitted

Engineering details of the Footpath Construction - no details have been submitted. As the construction of the footpath is a key part of the development no decision must be made on this application until full details of the footpath construction and location are submitted.

Due to the importance of ensuring that all the planning conditions for this application are properly addressed by the applicant the Parish Council request that this application is considered by the North Area Planning Committee and not by officers under delegated powers.

In addition to this the Parish Council is very concerned to hear that a resident who has tried to contact Council Officers over the ownership of the verges in this location has not received a response from council officers.

- 4.1.2 **Open Space** – Under Shropshire Councils SAMDev Plan and MD2 policy requirement, adopted 17th December 2015, all development will provide adequate open space, set at a minimum standard of 30sqm per person (equivalent to 3ha per 1,000 population). For residential developments, the number of future occupiers will be based on a standard of one person per bedroom. For developments of 20 dwellings and more, the open space needs to comprise a functional area for play and recreation. This should be provided as a single recreational area, rather than a number of small pockets spread throughout the development site, in order to improve the overall quality and usability of the provision.

The Design and Access Statement acknowledges the need for open space as set out under SAMDev Policy MD2. As there are more than 20 dwellings, the number of bedrooms needs to be considered. The development includes 81 bedrooms equating to 81 people. Working on 30 square metres per person it equates to an area of 2430m<sup>2</sup> (0.24 Ha).

The layout plan attached to the application shows the OAS area extending to 2725m<sup>2</sup> (0.27 Ha) which we consider fulfils the planning criteria.

- 4.1.3 **Affordable Housing**– The Design and Access statement accompanying the application indicates the correct level of contribution and on site affordable housing provision and therefore satisfies the provisions of the SPD Type and Affordability of Housing. It is assumed the affordable units at plot 2 and 3 would be transferred to a housing association for allocation from the housing waiting list in accordance with the Councils prevailing Allocation Policy and Scheme.
- 4.1.4 **Highways Agency** – The principle of the development has been agreed in support of the outline planning application. As this reserved matters application is related to matters internal to the site and matters of the Local Planning Authority's concern, Highways England has no comments to make.
- 4.1.5 **Highways** – Do not approve – on the grounds that the latest drawings do not fully comply with the outline planning permission (Appeal reference: APP/L3245/W/15/3003171 dated 30 November 2015) in terms of the provision of the footway link along Holyhead Road to the south. A minor layout change is also considered to be required.

The application site was the subject of a planning Appeal following the refusal of an outline application reference 14/00133/OUT. The Appeal was allowed subject to the conditions set out in the Inspectors Report, one of which relates to the site access onto Holyhead Road and the provision of footway widening along the full site frontage and southeast to the junction with The Avenue. Both elements of the access and footway works were shown in principle on Drawing No. WF-AA-400 which was considered at the Appeal and referenced in Condition 7 of the decision.

A concurrent application (17/05626/VAR) has been lodged to vary Condition 7 the details of which are shown on the Access Arrangements Plan (Drawing No. TC-AA-408 Rev B) which has also been submitted with this reserved matters application. Changes are proposed in relation to the site access junction radii and the pedestrian footway link which is now shown on the opposite side of Holyhead

Road to that originally considered. Highway Advice has been issued in relation to the proposed design changes shown on the variation drawing and are repeated below: -

1. Kerb-line change currently shown is considered to be severe and isolated, as no further traffic calming features are in place along Holyhead Road. It is considered that a change in the design involving the extension of the footway shown on the development side to a point further south would allow a more gradual kerb-line transition and footway width to be developed on the opposite side of Holyhead Road to achieve the necessary minimum footway width at an appropriate crossing point, subject to an acceptable level of pedestrian visibility to the south being demonstrated. Appropriate “road narrows” signing and any changes to the road centreline markings/reflective studs should also be noted or indicated on the drawing.
2. It is noted that the improved footway width still falls below the minimum 1.2 metre width stipulated in Condition 7 of the appeal decision (Inspector’s Report) at a point on the eastern side of Holyhead Road, however, as the width reduction is only marginally below that required and over a very short length, a refusal on this point alone is not considered to be sustainable.
3. The change in the footway provision will also result in the loss of the visibility improvement to the north of the junction of The Avenue and Holyhead Road, which was a result of the footway link being provided on the western side of Holyhead Road.

It is considered that the submission of a revised drawing which incorporates the amendments suggested in point 1 above should be acceptable to vary Condition 7.

Concerning the internal site layout, the latest drawings include a Conceptual Site Layout as Proposed (Revision G) and General Arrangements Plans (Drawing No’s TC-GA-400 Revision D and TC-GA-401 Revision D). As the Conceptual Site Layout as Proposed drawing does not appear to be capable of being reproduced precisely to the scale indicated, the General Arrangements Plans have been used as the basis for the comments below.

1. The driveway to the garage on Plot 6 is below the minimum length of 5.5 metres required to accommodate a vehicle standing clear of the footway while opening the garage door.
2. It is assumed that the shared surface roads serving plots 2-10 and 18-23 are still to be privately maintained and the means of refuse and recycling collection will need to be agreed with Shropshire Council Waste Management. In addition, it is considered that the junction radii shown should be amended to dropped-kerb footway crossings.

#### 4.1.6 **Waste Management** – Providing standard advice

We would prefer to see vehicle tracking of the refuse vehicle to ensure the vehicle can manoeuvre the roads of the development. Particular concern is given to the

following plots which are on private drives and the vehicle would not access:  
13/12/11/17/16

For the properties identified above collection points would need to be identified and residents advised when they move in/purchase. Residents would also need to be made aware that they would be collection points only and not storage points where bins are left permanently.

- 4.1.7 **Ecology** – The information provided details plans to enhance the retained hedgerows by planting native species. The plan shows the locations of 6 bird and bat boxes, and details the lighting locations. SC Ecology is satisfied that the information submitted is sufficient to cover ecological REM conditions. However, we would like to add that the proposed closed board fencing should allow for movement of hedgehogs by inserting gaps into the gravel boards at appropriate intervals.
- 4.1.8 **Shropshire Wildlife Trust** – No comments received.
- 4.1.9 **Trees** – Whilst no objection is raised to the development itself, the proposed footpath link along the east side of Holyhead Road would cut through the Root Protection Area of a very significant tree, protected by a Tree Preservation Order. Unless the proposed footpath was formed within the area that is currently the existing carriageway and was constructed in a way that allowed for no disturbance whatsoever to the ground within the RPA then this tree would suffer substantial damage, significantly prejudicing its long-term survival. Given the very high public amenity value associated with this tree I cannot support its loss for the purposes of installing a footpath and would recommend that this application be refused as it is contrary to policies MD2 & MD12 of the adopted SAMDev and to the general principles of sustainable development described in the NPPF. Should a revised application be put forward it would need to demonstrate that this, or any other significant tree, could be retained and protected to the minimum standards recommended in BS5837: 2012.
- 4.1.10 **Drainage** – drainage plans need updating to reflect amended layout plan
- 4.1.11 **Public Protection** – Having reviewed the past land use it is noted that there are significant areas of potentially filled ground. As a result recommends the standard condition.
- 4.2 **Public Comments**
- 4.2.1 8 letters of representation have been received raising the following concerns:
- Not sustainable development
  - Loss of agricultural land
  - Contrary to SAMDev
  - Will increase pressure to develop adjacent land
  - No school places
  - Loss of countryside
  - No need for more housing
  - Land ownership issues
  - No drawings of views from Holyhead Road to take into account views of

- Welsh Hills as noted by Inspector
- No details of boundary treatments
- Relocating play area to front of site not suitable in visual terms, safety of children or ecological connectivity with wider countryside
- Congestion on A5 junctions
- Will increase commuting
- No details of requirement to provide footpath to the village
- Footpath will adversely affect TPO'd tree in neighbouring garden
- Narrowing the road is not suitable
- Impact on ecology
- Soakaways too close to existing properties and do not consider existing easements

## 5.0 THE MAIN ISSUES

- Policy & principle of development
- Layout, scale and design
- Impact on residential amenity
- Highways, access, parking and footpath link to village
- Ecology and trees
- Drainage

## 6.0 OFFICER APPRAISAL

### 6.1 Policy & principle of development

- 6.1.1 The granting of the outline planning consent, which was granted at appeal in November 2015, has accepted the principle of the development proposed. It is accepted that the site is situated within open countryside for planning purposes being outside any identified development boundary as the village of West Felton no longer has a development boundary in the recently adopted Shropshire Site Allocation and Management of Development (SAMDev) Plan. However the current application is not seeking consent for the principle of the development and this matter can not be revisited as part of this application.
- 6.1.2 The outline consent was granted at appeal at a time when less weight could be given to the SAMDev. It was considered by the Planning Inspector against the NPPF as sustainable development, taking into account its agricultural status. Although the principle can't be revisited the granting of outline consent on this site also does not set any form of precedent for any other sites in the village. Any future applications for new housing schemes would need to be considered against the SAMDev. The outline consent was for mixed residential development. The current reserved matters application seeks consent for housing and an area of open space on the site previously approved.
- 6.1.3 Policy CS9 of the Shropshire Core Strategy requires all new development to help to deliver sustainable communities by making a contribution to infrastructure. The details of this contribution are provided within the Developer Contributions supplementary planning document which sets out the methods for providing for infrastructure both on site and off site. The development of the site will be liable for Community Infrastructure Levy which will be based on footprint of the development and the current charging schedule. The agent has confirmed in the submitted D&A what the footprint is and therefore has also been able to confirm

the CIL payment. This financial contribution towards infrastructure is a material consideration in favour of the development and will assist towards alleviating infrastructure issues. The concerns of the public regarding school places are matters which the developer of the site will need to be aware of but also need to resolve as part of developing the site.

6.1.4 With regard to affordable housing the current reserved matters application includes 2 affordable dwellings (now plots 16 and 17 in the revised plans). The current prevailing target for affordable housing in West Felton would be for 10% of the development to be affordable. As such 2 dwellings on site results in a small under provision which can be made up through a financial contribution. As such the proposed development, in terms of affordable housing, is considered to meet the requirements of the adopted policy.

## 6.2 **Layout, scale and design**

6.2.1 Policy CS6 'Sustainable Design and Development Principles' of the Shropshire Core Strategy requires development to protect and conserve the built environment and be appropriate in scale, density, pattern and design taking into account the local context and character. Section 7 'Requiring Good Design' of the National Planning Policy Framework indicates that great weight should be given to outstanding or innovative designs which help raise the standard of design more generally in the area.

6.2.2 A Design and Access Statement (D&A) has been provided with the application to support the proposals. Within the statement the site is detailed as being roughly square in shape and level (from 92.5m to 94m AOD). A single vehicular access point is proposed on Holyhead Road to serve the proposed housing development. The access point will serve a single estate road off which lead a lower order estate road and private driveways.

6.2.3 The layout of the site has been amended during the consideration of the current application as it was officer's opinion, as also reflected by the initial comments of the local community, that the layout as originally submitted was too similar to the layout indicated with the outline consent. The Planning Inspector, in considering the layout, questioned the suitability of the layout and raised concerns about the impact of this development on the views of the Welsh hills. Accordingly a revised layout was submitted, and re-consulted on, which provided the open space on the front of the site and therefore opened views of the hills earlier than the original proposal.

6.2.4 However, following that amendment a potential developer has been brought in and has further amended the layout. The open space is now to the rear of the site, between the new houses and the existing bungalows. A single storey dwelling is now proposed on the frontage of the site, to the north of the access junction. This will provide development on the road frontage and therefore within the views of the Welsh Hills, however the agent has provided additional information to show that the views will still be available either side of the dwelling and over the roof of this single storey property.

6.2.5 Along Holyhead Road the layout shows one bungalow to the north of the new junction, as noted above, and four two storey houses to the south of the access

junction set back from the road with new hedges planted along the rear edge of the short section of footway and visibility splays. Behind the houses fronting Holyhead Road the estate is laid out to face the new estate roads and the area of open space. This will mean that the houses along the north edge of the site have back garden edges along the edge of the development. However, this edge is not prominent from the approach to the village due to the site levels, existing hedges and the adjacent property, New House. Furthermore the proposal is to retain the existing hedge along this boundary rather than replace it with close boarded fences. If residents require additional security fences could be constructed within the hedge and the hedge can be allowed to grow higher to provide screening.

- 6.2.6 The layout submitted complies with minimums set out in condition 5 of the outline consent in providing 6 bungalows (two and three bed), 6 two bed dwellings, 2 three bed dwellings, 8 four bed dwellings and 3 five bed dwellings, provided in a mix of semi-detached (6) and detached (19). Two of the single storey properties are positioned along the southern edge of the application site, adjacent to the open space, backing onto the existing properties situated around the junction The Cross.
- 6.2.7 The area of open space proposed is 2,155sqm which is therefore 215sqm short of the requirement set in MD2 of the SAMDev for 30sqm per bed space based on the proposed development of 79 bed spaces. The shortfall is a negative of the proposal, however to increase the open space would require a further change to the layout and result in tighter development of plots 18-20. The revised layout plan shows the area of open space to the south of the site and indicated to be planted with trees and grass. The revised plans do not show any details of the play equipment required by condition 9 of the appeal consent, however this will need to be provided prior to the commencement of the building works.
- 6.2.8 As noted above there are 6 single storey dwellings, the remainder are all proposed as two storey properties to be constructed of brick and tile with pitched roofs. The features include chimneys, bay windows, dormer windows, projecting gables and the designs provide both symmetrical and asymmetrical frontages. Overall the designs are considered to pick up on the features already found within the village in both the older houses and the more recent developments. The developer is the same as the current scheme under construction at Tedsmore Road and the house types are similar to those being built on that site. The scale and design of the house types proposed provides a good proportion of single storey dwellings (24%) and respects the character of the wider village.
- 6.2.9 Overall officers consider that the scheme, as amended, is appropriate in terms of layout and the mix of the properties across the site is commended. The scheme shows appropriate estate roads with pedestrian routes, retention of existing landscaping and provision of a number of new trees which respects key views from the village. The proposal is therefore considered to be of an appropriate layout, scale and appearance for the context of the site and the wider area and that the development as proposed will comply with the relevant policies of the development plan.
- 6.3 **Impact on residential amenity**
- 6.3.1 Policy CS6 'Sustainable Design and Development Principles' of the Shropshire

Core Strategy indicates that development should safeguard the residential and local amenity.

- 6.3.2 As noted above the site is between existing housing. New House is a detached dwelling to the north of the application site which lies approximately 37m from the edge of the application site. The nearest proposed dwelling to New House is plot 1 which, in the most recent amendment, is a detached single storey dwelling facing over estate road and with its rear elevation facing towards New House and the intervening hedge boundary. The distance between New House and the new dwelling and the fact that the new dwelling is single storey will ensure that the amenities of New House are protected. On the opposite side of Holyhead Road is Dovaston Court, a recent housing development of detached houses set on a cul-de-sac, the nearest dwelling is just under 28m from the edge of the application site and on the opposite side of the main road through the village. Dovaston Court is enclosed on the roadside with a low wall and well established trees. The revised layout proposes the same single storey detached dwelling on plot 1 opposite the housing on Dovaston Court. There are no windows proposed in the roadside elevation of plot 1, the separation distance and the existing landscaping will all ensure that the amenities of Dovaston Court are protected.
- 6.3.3 To the south of the application site, along Holyhead Road, sit two detached houses, Lawn House and The Old Police Station, which are both hipped roofed dwellings set within narrow plots and rear gardens of 21m length. The application site wraps around the rear of these two properties. The latest revision to the layout plan places the open space to the rear of these two dwellings, and the others off The Cross, and as such there is no loss of amenity from dwellings being built behind the existing houses.
- 6.3.4 Plots 18 & 19 sit to the side of the garden of Lawn House, however both are proposed as single storey properties and the existing hedge boundary is shown as being retained and will therefore provide screening to the garden and dwelling of Lawn House. The proposed dwelling in the corner of the site, immediately adjacent to Lawn House has been amended to a detached two storey dwelling. Lawn House is set back from the road by approximately 15m and as such the dwelling on plot 20 will be closer to the road than Lawn House. The frontage of Lawn House will be approximately in line with the ridgeline of plot 20, however the distance between the properties and internal layout of the new dwelling will ensure that the new dwelling on plot 20 will not have an unacceptable impact on the amenities of Lawn House.
- 6.3.5 It is acknowledged that the outlook from all of the neighbouring properties will change. However, a private view is not a material planning consideration. The layout of the proposed development will not have an unacceptable adverse impact on light or privacy to any neighbouring property.
- 6.3.6 Local representations have commented that the proposal does not take into account the views of the Welsh Hills noted by the Planning Inspector in the appeal decision letter. This was in response to the plans as originally submitted. The matter was raised with the applicant and agent and an amended layout plan was submitted which relocated the open space to the front of the site and the housing to within the site. As noted above a further amendment has since been carried



out which positions a single storey dwelling on the road frontage. The agent has therefore provided visuals to show how the Welsh Hills will still be visible above the roof height of this proposed dwelling and around the dwelling.

- 6.3.7 The Inspector, by approving the outline consent, will have had to accept that development of this site will have some level of impact on the views of the Welsh Hills as views are currently achievable for the full length of the site frontage. However, by granting consent the view was going to be reduced. It is officer's opinion that the latest amendment to the scheme still retains some of the public views of the Welsh Hills on the edge of the village over and around the single storey dwelling on plot 1 and also provides a softer entrance to the village than the originally submitted scheme. Accordingly it is officer's opinion that the layout, scale and appearance of the proposal is acceptable and does not impact on amenities of existing residents or the wider village.

#### 6.4 **Highways, access, parking and footpath link to village**

- 6.4.1 Paragraph 32 of the NPPF advises that developments that generate significant amounts of traffic should be supported by a Transport Statement and promotes sustainable modes of travel, safe accesses and improvements to existing transport networks. Core Strategy Policy CS6 states that proposals likely to generate significant levels of traffic should be located in accessible locations where opportunities for walking, cycling and use of public transport can be maximised and the need for car based travel can be reduced.
- 6.4.2 A Highways and Drainage report has been submitted with the application which confirms that access and visibility for vehicles and pedestrians at the access point of the site is achievable. The site is a short walk from the village facilities and improvements will be made to pedestrian access, as required by the outline consent granted on appeal and as is being dealt with under the separate application (17/05626/VAR). The applicant's highway report comments that the development will not have an impact on traffic flows.
- 6.4.3 Objections have been received in relation to traffic levels and queueing on the A5. These matters were considered as part of the outline application as the scale of the development was known at that time. The Planning Inspector in determining the appeal considered traffic levels and the impact on the A5 and took into account the views of Highways England at the time. As noted in section 4 above Highways England have no comment to make on this application. The traffic levels will not be significant or result in severe highway safety implications. There may be an increase in traffic but a development of 25 houses will not be a significant amount of traffic.
- 6.4.4 The layout plan shows each property with two parking spaces either on a side by side driveway or one behind the other or one on a driveway and one within a garage. The comments of the Highway Consultant in relation to plot 6 are not accepted as the Case Officer has measured the driveway to plot 6 and it is shown as more than 10m long (plot 2 however is less than 5m but the garage could be moved further back into the plot). The layout is therefore considered to provide sufficient space for residents to park off the estate road and therefore ensure that the development does not increase on-street parking. The estate roads are shown to provide manoeuvrability for residents, deliveries and waste collection

vehicles.

- 6.4.5 The main issue with the local community in terms of highway impact is the footpath improvements which were to be secured through the development of this site. Condition 7 on the outline consent required footpath improvements to ensure that the development did not result in a severe highway safety issue. The condition advises that the improvements should be provided generally in accordance with a specific plan and also details the minimum and maximum width of the footpath and the minimum width of the highway carriageway.
- 6.4.6 As detailed in 1.5 at the start of this report, the details for the footpath improvements now form part of a separate application. The details were not required to be submitted with the reserved matters application as the condition imposed at outline required the details to be submitted before commencement of the development. However, during the consideration of this reserved matters application the issue of land ownership and a protected tree were noted to restrict the ability of the developer to provide the footpath improvements in line with the details in the condition. As such the applicant is applying to vary condition 7 to provide the footpath improvements on the opposite side of the existing village road.
- 6.4.7 This matter will need to be considered in detail under the VAR application before the reserved matters can be determined. In summary the proposal will provide a short section of footpath outside the application site and a tactile crossing point. The footpath on the opposite side of the village road will then be widened to meet the requirements of condition 7, minimum of 1.2m, except for a short section where an existing stone wall, trees and the width of the highway prevent further widening. This short section is less than 1m in length and the footpath will be 1.178m wide. This is still wide enough for a wheelchair or pushchair but not wide enough for a pedestrian to pass either a wheelchair or pushchair. However, as noted in the report for 17/05626/VAR, the length of the narrow section is short and therefore pedestrians will have a short wait until they can use this section of footpath. Beyond the narrow section the footpath widens out to just under 3m and as such there is space to wait.
- 6.4.8 The VAR does reduce the width of the footway for this short 1m section below the width required by the condition from the planning inspector. This is likely to cause contention locally as residents objections appear to imply that if the footpath improvements can't be provided the development can't proceed. However, this is not the case. The applicant is entitled to apply to vary condition 7 on the outline consent and that is being processed separately. The comments from the Parish Council and objectors regarding the process of amending the condition are considered in full in the VAR report. It is officer's opinion on the change can be considered under a variation of the condition application and that the variation will provide improvements to the footpath between the application site and the village services. Furthermore, the short section which is below the previously required minimum width is not significant and will not result in detrimental harm to pedestrian safety.
- 6.4.9 Subject to the improvements to the footpath, which will be secured through the application to vary condition 7 on the outline, the development is not considered to

have a severe or significant impact on highway safety for either vehicles or pedestrians. As such the reserved matters application would comply with the relevant policies in this regard.

## 6.5 Ecology and trees

- 6.5.1 The NPPF and policy CS17 of the Shropshire Core Strategy require consideration to be given to the impact of the proposed development on the natural environment. This particularly relates to the impact on statutorily protected species and habitats and existing trees and landscaping.
- 6.5.2 The ecology report submitted with the application confirms that the site is currently in agricultural use for crops and grazing. There are hedgerows around the field, several mature trees lie within 100m and a tree belt within 200m but there are no trees or other ecological features within the site. A desk top study and field surveys have been carried out. The report advises that there are no water bodies suitable for amphibians and no records of bat species, otter, water voles, dormouse or badgers. The nearest great crested newt record is 3 miles east.
- 6.5.3 The field survey checked for signs of nesting birds, barn owls and other birds of prey and the report notes that there were few signs of wildlife in the application field, surrounding fields or gardens adjacent to the site. The report acknowledges that the site has the potential to be habitat for bats foraging and there were signs of birds around the field and the potential for nesting within the boundary hedges. Overall the report considers that the development of the site will have little negative impact on wildlife and no mitigation is recommended. Lighting is to be kept to a minimum and hedges are to be retained where possible with gaps filled in with native species.
- 6.5.4 Landscaping details have been submitted and considered by the relevant officers within the Council. The objection on this matter from the Parish Council is not clear. The landscaping details show the existing hedgerow retained where possible, the hedgerow along the existing village road as being removed and a new hedge planted along the rear of the proposed roadside footway and a new section of hedge being planted on the western boundary where there is currently a fence.
- 6.5.5 The D&A confirms that there are no existing trees within the site or site boundaries. The D&A is supported by a landscaping plan showing existing hedges, proposed new native species hedge, new tree planting and areas of grass. The details include the scale of the plants to be planted and how they will be planted. The details of small scale and garden planting is not included, however this would be beyond the control of the Council. The proposed plan is considered to show a high number of new trees to be planted which include Maple, Silver Birch, Hornbeam, Holly, Ash and Hawthorn. Officers consider the proposed landscaping to be beneficial to ecology and landscape as well as providing a pleasant development.
- 6.5.6 The Council Ecologist has confirmed that the information shows the retention of the existing hedgerow and enhancement with native species planting. The application has detailed the landscaping for the site (contrary to the comments of the parish council). The details are considered to be acceptable to both the

council Ecologist and Tree officer.

6.5.7 The matter of the impact on the TPO'd tree off-site has been dealt with under the highways section above. This tree would be affected if the footpath improvement were as originally proposed on the same side of the village road. However, following submission of the VAR application the footpath improvements are on the opposite side of the road and therefore the tree is no longer at risk from the footpath improvements.

6.5.8 As such the proposed development is considered to be acceptable in terms of ecology and trees.

## 6.6 **Drainage**

6.6.1 Policy CS18 'Sustainable Water Management' of the Shropshire Core Strategy indicates that development should integrate measures of sustainable water management to reduce flood risk and avoid an adverse impact on water quality and quantity. The parish council and local residents have raised concerns about the drainage proposals. The details have been provided with the application and the concerns of residents is that the details do not meet the requirements of Building Regulations, as they are too close to existing properties, and the proposed development will affect existing drainage arrangements.

6.6.2 The issue was raised with the agent, along with the initial comments from the Council Drainage Consultant. Furthermore the layout was revised and therefore a new drainage plan was also required. A revised drainage scheme has been submitted and is being considered by the Council. The revised scheme includes a statement from the applicant's consultant confirming that they have considered the requirements of Building Regulations. Providing the Council Drainage Engineer has no objections to the revised scheme the recommendation would be one of approval for the development in compliance with policy CS18.

## 7.0 **CONCLUSION**

7.1 It is considered that the proposed layout, scale, appearance and landscaping of the site are acceptable and would not have an unacceptable adverse impact on the character and appearance of the locality or the amenity of neighbouring properties. A safe means of access and adequate parking and turning space will be provided and, subject to the separate application for variation of condition 7 on the outline consent to provide footpath improvements connecting the site to the village, the development would not have adverse highway safety implications. It is therefore considered that the proposal accords with Core Strategy Policies CS6, CS17 and CS18; SAMDev Policies MD2, MD7b and MD12 and the National Planning Policy Framework.

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

## 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 - written representations, a hearing or inquiry.

The decision is 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 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 give 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 1970.

## 10. BACKGROUND

### Relevant Planning Policies:

National Planning Policy Framework

CS1 - Strategic Approach

CS4 - Community Hubs and Community Clusters

CS5 - Countryside and Greenbelt

CS6 - Sustainable Design and Development Principles

CS9 - Infrastructure Contributions

CS17 - Environmental Networks

CS18 - Sustainable Water Management

MD1 - Scale and Distribution of Development

MD2 - Sustainable Design

MD7A - Managing Housing Development in the MD7A - Managing Housing Development in the Countryside

MD8 - Infrastructure Provision

MD12 - Natural Environment

Relevant planning history:

14/00133/OUT Outline application for mixed residential use; formation of new vehicular access and estate roads and creation of public open space REFUSE 1st October 2014

17/05626/VAR Variation of condition number 7 attached to Planning Permission 14/00133/OUT dated 1st October 2014 (won on appeal) to allow amendments to the access arrangements PDE

Appeal:

15/02224/REF Outline application for mixed residential use; formation of new vehicular access and estate roads and creation of public open space ALLOW 30th November 2015

## 11. ADDITIONAL INFORMATION

|  |
|--|
| List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information) |
| Cabinet Member (Portfolio Holder)<br>Cllr R. Macey   |
| Local Member<br>Cllr Steve Charmley  |
| Appendices<br>APPENDIX 1 - Conditions  |

**APPENDIX 1****Conditions****STANDARD CONDITION(S)**

1. The development shall be carried out strictly in accordance with the approved plans and drawings

Reason: For the avoidance of doubt and to ensure that the development is carried out in accordance with the approved plans and details.

2. No construction and/or demolition work shall commence outside of the following hours: Monday to Friday 07:30 to 18:00, Saturday 08:00 to 13:00. No works shall take place on Sundays and bank holidays.

Reason: to protect the health and wellbeing of residents in the area.

3. The approved Construction Method Statement, submitted on the 21st June 2016, shall be adhered to throughout the construction period.

Reason: To avoid congestion in the surrounding area and to protect the amenities of the area.

**CONDITION(S) THAT REQUIRE APPROVAL DURING THE CONSTRUCTION/PRIOR TO THE OCCUPATION OF THE DEVELOPMENT**

4. The materials to be used in the construction of the external walls shall be as detailed on the correspondence received 1st July 2016 in relation to application 16/02759/DIS.

Reason: To ensure that the external appearance of the development is satisfactory.

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Committee and Date  
 North Planning Committee  
 9th January 2018

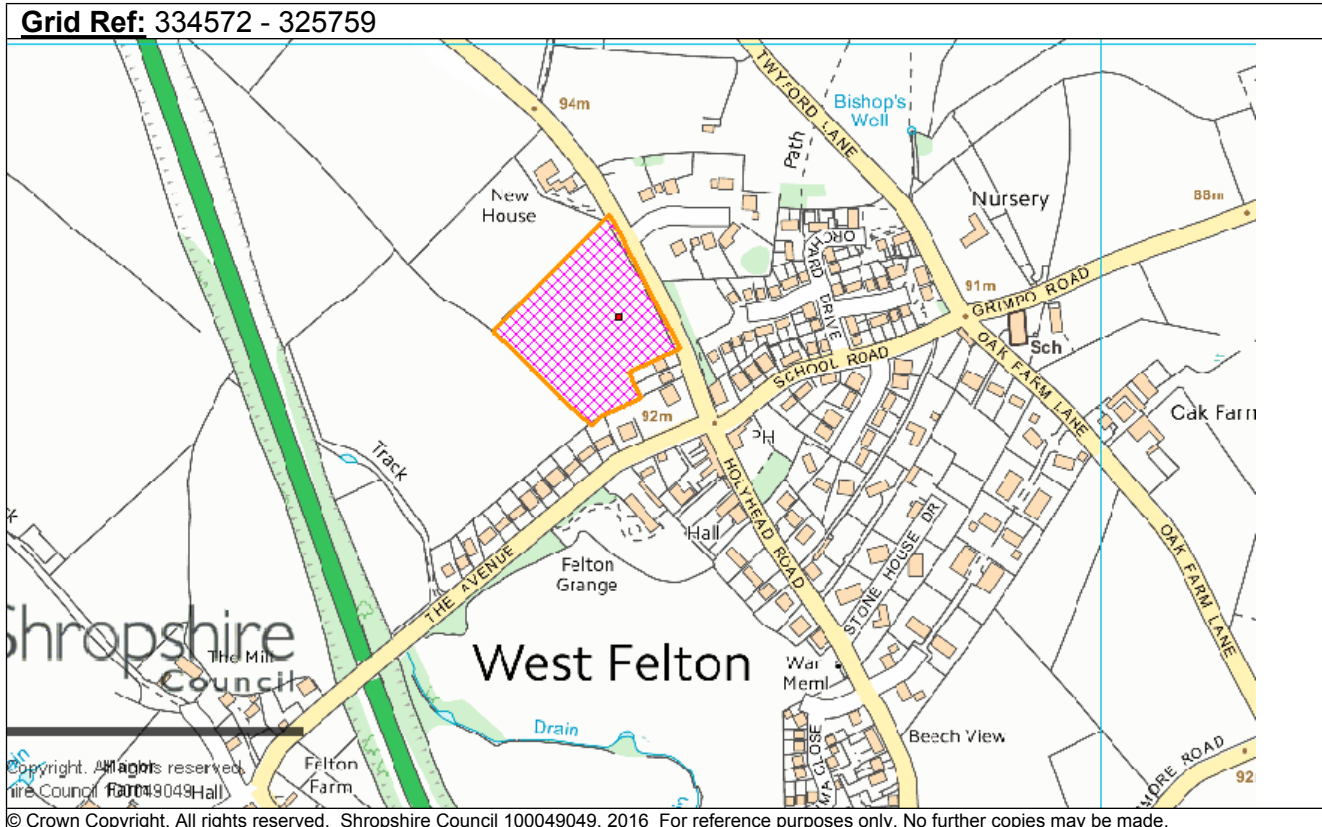
Item  
**10**  
 Public

## Development Management Report

Responsible Officer: Tim Rogers  
 Email: [tim.rogers@shropshire.gov.uk](mailto:tim.rogers@shropshire.gov.uk) Tel: 01743 258773 Fax: 01743 252619

### Summary of Application

|   |  |             |
|---|--|-------------|
| <b>Application Number:</b> 17/05626/VAR   | <b>Parish:</b>   | West Felton |
| <b>Proposal:</b> Variation of condition number 7 attached to Planning Permission 14/00133/OUT dated 1st October 2014 (won on appeal) to allow amendments to the access arrangements |  |             |
| <b>Site Address:</b> Proposed Residential Development Land At The Cross West Felton Shropshire  |  |             |
| <b>Applicant:</b> Mrs K Price   |  |             |
| <b>Case Officer:</b> Karen Townend  | <b>email:</b> <a href="mailto:planningdmne@shropshire.gov.uk">planningdmne@shropshire.gov.uk</a> |             |



**RECOMMENDATION:** That, subject to the amendments sought by the Council Highway Consultant that delegated powers be granted to the Head of Planning Services to approve the variation of condition 7 and the condition re-worded to reflect the plans submitted with this application.

## REPORT

### 1.0 THE PROPOSAL

- 1.1 This application seeks consent to vary the wording of condition 7 of the outline planning consent, granted on appeal. Condition 7 currently states:  
*“Access to the site shall be provided generally in accordance with the access scheme shown on Drawing No.WF-AA-400 (July 2014) prepared by Woodsyde Developments. No development shall take place until a scheme showing full engineering details of the access has been submitted to and approved in writing by the local planning authority. The scheme shall include alterations to Holyhead Road to provide a footway of width between 1.2m (min.) and 2.0m (max.) and a carriageway width of 5.5m (min.) between the site and the junction of Holyhead Road with The Avenue, in accordance with the above drawing. No dwelling shall be occupied until the access scheme has been fully implemented to the satisfaction of the local planning authority.”*
- 1.2 The proposal is to remove reference to the drawing numbered in the condition and also to alter the minimum width of the footway. The application has been submitted as, during the consideration of the reserved matters application (16/05336/REM), the position of a TPO'd tree outside of the application site was considered to be in a location which would mean that the above condition could not be complied with, without the potential loss of the tree. Concerns were also raised by residents about land ownership.
- 1.3 The proposal is now to provide a shorter section of footway on the edge of the application site and provide a wider footway on the opposite side of the highway. The details are provided later in the report along with the consideration of highway and pedestrian safety.

### 2.0 SITE LOCATION/DESCRIPTION

- 2.1 The site is 1.53 hectares in area and is currently in agricultural use. It is located on the edge of the existing village between the built up village and a single detached house and outbuildings. Opposite the site is the Dovaston Court development, which is a group of detached houses off a single cul-de-sac, and the open space between Nursery Close and Holyhead Road. Nursery Close is a cul-de-sac off Orchard Drive and is detached and semi detached houses in smaller plots than those on Dovaston Court.
- 2.2 The field is set at a lower ground level than the adjacent road and is enclosed with hedging. There is a grassed verge between the hedge and the road but no footpath on this side of the road.
- 2.3 West Felton is a village which was previously identified in the Oswestry Borough Local Plan as a Larger Settlement where new development would be concentrated. It currently has a school, shop, Chapel, hall and public house. The housing is a mix

of the original village centred around The Cross and the small area on the opposite side of the new A5 and more recent developments. The housing does not follow any set form, design or appearance, however it is in the majority two storey.

- 2.4 However, the village is now considered to be open countryside for planning purposes as West Felton is not identified as a settlement within either the Core Strategy or SAMDev.

### **3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION**

- 3.1 The Chair and Vice Chair of the North Planning Committee consider that this application should be considered by committee as it is linked to the reserved matters application, 16/05336/REM, which is being considered by committee.

### **4.0 COMMUNITY REPRESENTATIONS**

#### **4.1 Consultee Comments**

- 4.1.1 **West Felton Parish Council** – Following our recent meeting of 12<sup>th</sup> December, West Felton Parish Council strongly objects to the proposal to vary condition 7 for to the above proposed Development.

Our grounds for objection are as follows:

1. Planning Policy: That the planning Inspector was clear in his decision notice that a Grampian condition (Condition 7) be set to build a footpath on the Western side of Holyhead Road. The appeal decision says nothing about alternative locations. We object to the applicant circumventing this condition that has been set by the planning inspector and should not be varied.

We bring to your notice the following paragraphs from the Planning Inspectors report which make this clear:

*1. 'The appeal is allowed and the outline planning permission is granted for residential development, comprising 25 dwellings, estate roads and public open space in accordance with the terms of the application, Ref 14/00133/OUT dated January 2014, and the plans submitted with it, subject to the conditions in the attached schedule'*

*3. Whilst the application was being considered by the council, the appellant submitted an access Arrangement Plan (Dwg.No. WF-AA-400). This shows the details of the access to Holyhead Road. It also indicates the alignment of the proposed footpath along the western side of Holyhead Road from the northern extremity of the sites frontage and extending to the junction of that road with The Avenue.*

We assume that this modification is submitted under Section 73 of the Town and Country planning Act 1990, however we believe the following to apply in this case: *'New issues may arise after planning permission has been granted, which require modification of the approved proposals. Where these modifications are fundamental or substantial, a new planning application under section 70 of the Town and Country Planning Act 1990 will need to be submitted'* (Department for Communities and Local Government, Planning Practice Guidance and the Planning System March 2014)

West Felton Parish Council considers the access proposals to this proposed development to be both fundamental and substantial to the development - so important the Planning Inspector conditioned them separately. The correct process

should therefore be that the whole application be resubmitted Under Section 70 and evaluated against the current local plan – SAMDev.

2. Highway Safety: You will be aware that this application seeks to narrow the carriageway width of Holyhead Road from 6.3 to 5.5 metres as per the previous application 14/00133/OUT. This reduction in carriageway width is necessary to widen the adjoining footpath on the eastern side of Holyhead Road. The guidance documents that are relevant to this application are the national DOT 'Manual for Streets' (which replaced DB32 Places, Streets and Movement) and Shropshire Councils own document for highway construction titled 'Specification for Residential/Industrial Estate Roads'.

There have been no studies of either traffic type or density to inform this application despite the applicant having nearly 4 years to provide them.

This is a busy road carrying numerous HGV's per day, extensive farm traffic (Pradoe Hall Farm operates near 24 hours a day at peak times) in and out of West Felton together with residential traffic. The road also serves a half hour bus route provided by Arriva.

It is only just wide enough currently, at 6.3 metres when two large vehicles meet. (Appendix 1). During darkness hours the hazards associated with large vehicles negotiating each other and in close proximity to pedestrians is heightened.

The Parish Council is very concerned about this point as previous experience demonstrates during the determination of the outline planning permission for 14/00133/OUT. Shropshire Council Highways originally objected to the development as there were safety issues associated with the current footpath, but then approved the link footpath without taking any background assessments into consideration.

This application was unanimously refused at the North Area Planning Committee in September 2014 and subsequently a number of individuals have sought to establish answers to why Shropshire Council Highways Dept. supported this revised scheme despite many complaints relating to both vehicular and pedestrian safety.

Shropshire Council Highways have repeatedly avoided answering questions put to them by the Parish Council and a number of individual objectors relating to the safety aspects of a 5.5 metre carriageway/ narrow footpath in this location, which strongly suggests that the Parish Councils concerns were valid.

In reality nothing has changed with this variation, the carriageway width is to be reduced to 5.5 metres with a substandard narrow footpath of some 36 metres long now being provided. This is an unacceptable hazard for which a detailed Risk Assessment informed by traffic surveys over a period of time should occur to capture the full picture of road use.

Although Holyhead Road is not a classified A or B road it can be best described as a Residential Distributor Road, although this is an arbitrary classification, as in reality it functions as a B Class road carrying through traffic to Queens Head and in the alternative direction. Shropshire Councils 'Specification for

Residential/Industrial Estate Roads' defines the width of a Residential Distributor Road as 6.1 to 7.3 metres (Appendix 2). Furthermore the DOT Manual for Streets (2007) gives the minimum carriageway width for a bus route to be 6.0 metres. (Appendix 3) The former publication DB32 Places, Streets and Movement also details the carriageway width for buses at 6.0 metres wide. (Appendix 4).

A simple question needs to be asked – How do two buses passing each other measuring 3.0 metres wide fit on a carriageway of 5.5 metres? This often happens at this very spot as would have been established had a survey been carried out.

A safety factor that is very relevant to this case is the curvature in the road (travelling North) and the proximity of residential parking between the Village Hall and the shop. Visibility is poor from the village Hall looking northwards and drivers of large vehicles already need to assess if the road is clear for a distance passed the junction with The Avenue.

If this road is narrowed this distance needed for 'clear view' will increase to in excess of 220 metres which is impossible to do – THIS IS A SAFETY ISSUE, once a large vehicle is committed, it will have nowhere to go if it needs to pass oncoming large vehicles as there are no provisions for passing places.

Officers and members should be reminded that there is a notorious 5.5 metre wide carriageway at Ruyton- XI-Towns which causes all sort of issues for large vehicles passing each other for which Shropshire Council does not have a solution other than to promote the North West Relief Road around Shrewsbury. (Appendix 5).

To summarise, the proposal has not been informed by any surveys to inform a decision, the reduced width of the road does not comply to either national or local standards for road type and function, the proposed width of the road does not comply with the recommended carriageway width for a bus route. When combined with residential parking on Holyhead Road, the risk of an accident is heightened due to poor forward visibility.

3. Footpath Safety: For a distance of around 36 metres the width of the footpath is below 1.8 metres wide tapering down to 1.1 metres at its narrowest point. (not 1.2 as advised by the applicant) This is unacceptable as it places pedestrians in very close proximity to vehicles and encourages people to walk on the carriageway. During the hours of darkness this hazard is heightened.

Shropshire Council publication, 'Specification for Residential/Industrial Estate Roads' recommends a footpath width of 1.8 metres on both sides of the road but this is on the assumption that the carriageway measures between 6.1 to 7.3 metres. 'Manual for Streets' recommends a minimum width of 2.0 metres.

Any risk assessment would show that where the carriageway width cannot be achieved the footpath width would be required to be wider to keep pedestrians away from traffic. The scenario of two large vehicles trying to pass each other together with pedestrians close to the footpath edge is an accident waiting to happen.

Roads and footpaths should be designed to avoid risk where possible and cater for

those members of society who may have impaired road judgment i.e. the very young and the elderly - two groups of people specifically catered for by this proposed development.

This variation significantly increases risk to those groups by firstly making them cross a busy road to gain access to a footpath and then placing them in close proximity to traffic approaching them from the rear so they have little warning and time to get out of the way - this is totally unacceptable on safety grounds, which always come first when determining the merits of an application as they have potential to cause harm.

4. Impact on Heritage and Trees: Adjacent to the proposed footpath widening is a sandstone wall of heritage value, behind which is located a row of mature Oak trees (circa 300 years old) Widening the footpath and altering the drainage gulley's will involve excavations which are well within the RPA of the trees. No tree reports have been provided by the applicant and similarly no engineering drawings have been provided to assess any impact to both the trees and the wall. This must be provided before a decision is made.

To conclude, West Felton Parish Council strongly objects to this proposal, on the following material grounds:

1. The planning rules have been wrongly interpreted; this proposal to vary condition 7 is not in accordance with National Planning Policy. Under Section 70 of the Town & Country Planning Act 1990 'fundamental or substantial modifications' should result in the whole application being re-submitted for approval.
2. The justification for Determining under Section 70 is provided by the Specific Grampian Condition (condition 7) set out by the Planning Inspector as the original footpath scheme was fundamental to the scheme going ahead. Section 73 should only be used for minor modifications.
3. The reduced width of the road does not comply with either national or local standards for the road classification or that recommended for a bus route. Evidence has been provided of a similar road width where there are real safety issues known to Shropshire Council.
4. The footpath provided by this variation does not comply with either national or local standards for the reasons stated. The length of reduced width (below the recommended) represents a real safety issue for pedestrians.
5. There has been no evidence provided to support the application in the form of vehicle traffic surveys (type and quantity over a period of time)
6. There has been no study on the impact of parked vehicles on

Holyhead Road for forward visibility.

7. Tree surveys and engineering drawings – have not been provided to assess the impact on the trees and heritage features.

**West Felton Parish Council therefore requests that immediate action is taken to:**

- Re- determine the whole application under Section 70 of the Town and Country Planning Act 1990.
- Any further decisions relating to this application be put before the North Area Planning Committee for determination.

**Appendix 1 – Examples of farm traffic which use the road on a daily basis (24 hours use during planting and harvest periods)**



**Appendix 2 - Residential Distributor Road – ‘Specification for Residential/Industrial Estate Roads’ Shropshire Council**



## 2.3.2 Residential Distributor Road

### Technical Details

Residential distributor roads are through routes which distribute traffic within large residential areas where 300 or more dwellings are being served.

This type of road is a through traffic route and frontage access will not normally be permitted. These roads should be designed for a maximum vehicle speed of 30 mph (48 kph).

The basic requirements for a residential distributor road are as follows:

- (i) Carriageway Width:** 6.1 metres - 7.3 metres
- (ii) Junction Radii:** 15 metres minimum
- (iii) Centre Line Radius:** 60 metres
- (iv) Kerbs:** 125mm kerb face height  
Pedestrian crossings are required at all road junctions.
- (v) Footways and Verges:** Footways are normally 1.8 metres wide, on both sides of the road. Where highway verges are provided, consideration should be given to the future maintenance of the grassed areas, which must be kept free of obstructions likely to impede easy access to the services beneath. Wherever possible verges should be sited behind the footway, rather than adjacent to the carriageway.

Appendix 3 - Extract from Manual for Streets (DOT) (2007)



These provide an unpleasant cycling experience due to the unevenness of the surface. They can prove to be particularly hazardous in the wet and when cyclists are turning, especially when giving hand signals at the same time. The conditions for cyclists on such surfaces can be improved if the line they usually follow is locally paved using larger slabs to provide a smoother ride.

**6.5 Public transport**

6.5.1 This section concentrates on bus-based public transport as this is the most likely mode to be used for serving residential areas. *Inclusive Mobility* gives detailed guidance on accessible bus stop layout and design, signing, lighting, and design of accessible bus (and rail) stations and interchanges.

**Public transport vehicles**

6.5.2 Purpose-built buses, from ‘hoppers’ to double-deckers, vary in length and height, but width is relatively fixed (Fig. 6.16).

6.5.3 Streets currently or likely to be used by public transport should be identified in the design process, working in partnership with public transport operators.

6.5.4 Bus routes and stops should form key elements of the walkable neighbourhood. Designers and local authorities should try to ensure that development densities will be high enough to support a good level of service without long-term subsidy.

where delays could occur.

6.5.7 Using a residential street as a bus route need not require restrictions on direct vehicular access to housing. Detailed requirements for streets designated as bus routes can be determined in consultation with local public transport operators. Streets on bus routes should not generally be less than 6.0 m wide (although this could be reduced on short sections with good inter-visibility between opposing flows). The presence and arrangement of on-street parking, and the manner of its provision, will affect width requirements.

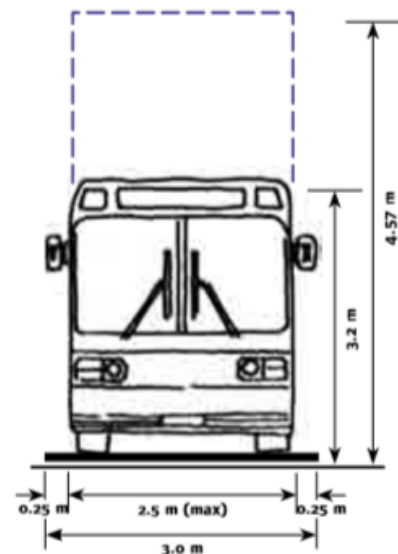


Figure 6.16 Typical bus dimensions

71  
 Chapter 3  
 Detailed aspects of layout  
 Forms of movement

Buses

Efforts to persuade people to leave their cars at home must be balanced by the promotion of attractive alternatives. For journeys beyond the local neighbourhood this generally means the provision of a good bus service.

Bus provision should feature high on the agenda of all discussions concerning new development. Developers should discuss with potential operators the kind of service that can be provided and the type of bus that will be used. Local authorities can ensure that consideration is given to bus provision from the development brief onwards, though they cannot dictate the type of bus on a particular route.

Generally buses require a 6m road width, which is slightly wider than the ideal for a traffic calmed domestic road. That is all the more reason for considering carefully how bus routes can be integrated with other routes through an area. In exceptional circumstances special bus links through an area may be considered.



Bus stops should be located where they are available to as many people as possible.



A continuous Street network is more attractive to public transport than one which is closed and restrictive. Loop roads can help operators to provide efficient services.

## Startlewood Lane, Ryton XI Towns



The image is taken on Church Street, Ryton XI Towns on the Junction with Startlewood Lane and demonstrate a carriageway width of 5.5 metres. (Middle of measuring wheel to opposite kerb edge)

This stretch of road would experience a similar traffic volume and type to West Felton and is notorious for drivers of large vehicles as it is just too narrow for the type of traffic using it as you can see from the damage to the highway verge.

In terms of a bus route West Felton has many more bus journeys through it as it is on a half hour bus route whereas Ruyton-XI-Towns is not.

The safety issues relating to this stretch of road has previously been recognised by Shropshire Council and used to help justify building of the North West Relief Road around Shrewsbury.

Image(s) below are the same location, looking towards the opposing direction.



- 4.1.2 **Council Highways** – Further Details Required – there is insufficient detail submitted with the application to make an informed highway comment, at this time.

The application proposes a variation of Condition 7 of the Outline planning permission (Appeal reference: APP/L3245/W/15/3003171 dated 30 November 2015) relating to site access and pedestrian footway facilities.

The application site was the subject of a planning Appeal following the refusal of the Outline application reference 14/00133/OUT. The Appeal was allowed subject to the conditions set out in the Inspectors Report, one of which relates to the site access onto Holyhead Road and the provision of a footway along the full site frontage and south to the junction with The Avenue. Both elements of the access and footway works were shown in principle on Drawing No. WF-AA-400 which was considered at the Appeal and referenced in Condition 7 of the decision.

The proposed variation is shown on the submitted Access Arrangements Plan (Drawing No. TC-AA-408 Rev B) and comprise a change in the site access junction radii to 7.5 metres and the pedestrian footway link being provided on the opposite side of Holyhead Road to that originally considered.

Comments in relation to the design shown on the current drawing are as follows: -

1. Kerb-line change currently shown is considered to be severe and isolated, as no further traffic calming features are in place along Holyhead Road. It is considered that a change in the design involving the extension of the footway shown on the development side to a point further south would allow a more gradual kerb-line transition and footway width to be developed on the opposite side of Holyhead Road to achieve the necessary minimum footway width at an appropriate crossing point, subject to an acceptable level of pedestrian visibility to the south being demonstrated. Appropriate “road narrows” signing and any changes to the road centreline markings/reflective studs should also be noted or indicated on the drawing.

2. It is noted that the improved footway width still falls below the minimum 1.2 metre width stipulated in Condition 7 of the appeal decision (Inspector’s Report) at a point on the eastern side of Holyhead Road, however, as the width reduction is only marginally below that required and over a very short length, a refusal on this point alone is not considered to be sustainable.

3. The change in the footway provision will also result in the loss of the visibility improvement to the north of the junction of The Avenue and Holyhead Road, which was a result of the footway link being provided on the western side of Holyhead Road.

Further Highway Advice can be provided upon receipt of an amended drawing which addresses point 1 above.

4.1.3 **Drainage** – If non permeable surfacing is used on the new access or the new access slope towards the highway, the applicant should submit for approval a surface water drainage system to intercept water prior to flowing on to the public highway.

4.2 **Public Comments**

- 4.2.1 5 letters of representation have been received raising the following concerns:
- Application should not be determined under Section 73 but should be a new application under section 70 as the change is fundamental and substantial
  - Contrary to Planning Inspectors decision
  - Pressure on village services
  - Increase in traffic
  - Reduced width of road and footpath does not comply with national or local policies and guidance
  - Insufficient width for two buses or other large vehicles to pass
  - Narrowing road will be unsafe
  - No consideration of impact when A5 is closed and traffic is diverted through the village
  - No traffic surveys
  - Existing footpath is sufficient and safe
  - Wrong place for pedestrian crossing
  - Increased risk to 100+ residents from requiring them to cross the road
  - Encouraging children to cross the road to the play area will be unsafe
  - Impact on Oak trees from widening existing footpath
  - Potential impact on historic stone wall

## 5.0 THE MAIN ISSUES

- Policy & principle of development
- Amendment to condition 7
- Highway and pedestrian safety
- Drainage

## 6.0 OFFICER APPRAISAL

### 6.1 Policy & principle of development

- 6.1.1 The granting of the outline planning consent, which was granted at appeal in November 2015, has accepted the principle of the development proposed. It is accepted that the site is situated within open countryside for planning purposes being outside any identified development boundary as the village of West Felton no longer has a development boundary in the recently adopted Shropshire Site Allocation and Management of Development (SAMDev) Plan. However the current application is not seeking consent for the principle of the development, this has previously been granted.
- 6.1.2 The outline consent was granted at appeal at a time when less weight could be given to the SAMDev. It was considered by the Planning Inspector against the NPPF as sustainable development, taking into account its agricultural status. Although the principle can't be revisited the granting of outline consent on this site also does not set any form of precedent for any other sites in the village. Any future applications for new housing schemes would need to be considered against the SAMDev. The outline consent was for mixed residential development. The current application is for variation of condition 7, in relation to footway improvements, on the outline consent. The current application does not alter the principle of developing the site for housing.
- 6.1.3 The principle objection from the Parish Council and a number of local residents refers to the process under which this application is being considered. The Parish

Council and objectors consider that the change now proposed is fundamental or substantial and therefore that a new planning application should be submitted under section 70 of the Town and Country Planning Act 1990 rather than consider the proposal under section 73 as a variation of a condition. The Parish and residents comment that this is a matter of law and that it is written in the act that if the changes are fundamental or substantial a new application is required.

- 6.1.4 This is incorrect. The quote given by the Parish Council is taken from the Planning Practice Guidance. Section 70 of the TCPA 1990 states: *“Where an application is made to a local planning authority for planning permission (a) subject to section 91 and 92, they may grant planning permission, either unconditionally or subject to such conditions as they think fit; or (b) they may refuse planning permission”*. Section 70 does not comment on when a new application should be required. Section 73 relates to proposals to *“develop land without compliance with planning conditions previously attached”*. As such it is wholly reasonable for the applicant to submit the proposal under section 73. The Council, on receipt of a section 73 application *“shall consider only the question of the conditions subject to which planning permission should be granted and if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant permission accordingly. If they (the LPA) decision that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they should refuse the application”*. As such, although the planning practice guidance advises on what when to consider amendments to applications this does not alter the fact that the application has been submitted and needs to be determined. The decision needs to be made whether to grant a variation to the condition or refuse the current application and therefore retain the consent as previously approved.
- 6.1.5 The Council has no power to decline to determine the application. If members consider that the proposal is not acceptable then the current application should be refused. However, for information officers consider that the changes proposed are not fundamental or substantial. The proposal is still for residential development, the number of houses, size and mix meets the requirements of the appeal decision, the proposal still includes the provision of footpath improvements. The change to reposition the improvements onto the opposite side of the road are considered to be more than a non-material amendment but not so substantial as to change the development previously approved.
- 6.2 **Amendment to condition 7**
- 6.2.1 As noted in section 1 above the current condition 7 states:  
*“Access to the site shall be provided generally in accordance with the access scheme shown on Drawing No.WF-AA-400 (July 2014) prepared by Woodsyde Developments. No development shall take place until a scheme showing full engineering details of the access has been submitted to and approved in writing by the local planning authority. The scheme shall include alterations to Holyhead Road to provide a footway of width between 1.2m (min.) and 2.0m (max.) and a carriageway width of 5.5m (min.) between the site and the junction of Holyhead Road with The Avenue, in accordance with the above drawing. No dwelling shall be occupied until the access scheme has been fully implemented to the satisfaction of the local planning authority.”*

- 6.2.2 The application form submitted advises that the proposal is to remove the reference to drawing TC-AA-408 rev B and reference to “no dwellings shall be occupied until the access scheme has been fully implemented to the satisfaction of the LPA”. The first part of the request relates to the current proposal to change the footway enhancement proposals to provide the improvements on the opposite side of the village road. The second part of the request is not justified within the application. It is not clear from the submission why the applicant is seeking to delete the requirement for the work to be carried out prior to occupation. It is officer’s opinion that this part of the condition should remain as it is critical for connecting the site to the village before any of the houses are occupied. As such any changes to the condition should still require the works to be completed prior to occupation of any dwelling.
- 6.2.3 The removal of the reference to the specific plan is proposed as the footpath proposals are no longer in line with the details shown on the proposed plan. The condition was imposed by the Planning Inspector in order to provide connectivity to the village in a safe way. The Inspector, in considering the appeal decision, commented on land ownership noting there is a dispute over the ownership of the highway and land adjacent to it. Paragraph 87 of the appeal decision implies that the Inspector measured the highway on site and confirmed there was sufficient land available to accommodate the footpath.
- 6.2.4 However, as noted above, the position of a TPO’d tree within the curtilage of a neighbouring property was not fully considered at the outline stage and there is a risk to this tree if the footpath were to be provided on the same side of the highway as the application site. Officers consider that it would be technically possible to construct the footpath but that the tree may be adversely affected and it may result in the loss of the tree.
- 6.2.5 As such, although the details of the footpath are not required as part of the reserved matters application, it is necessary to understand whether the development is achievable and this includes connectivity to the village.
- 6.2.6 An alternative has been put forward by the applicant, which has been discussed with the Council Highway Officer and Planning Officers. The alternative is to widen the footpath on the opposite side of the village road and a short section of footpath outside the application site. This will provide footpath for pedestrians directly outside the application site, a tactile crossing point to the opposite side of the road and a wider footpath on the opposite side of the road. The key issue is whether the proposed footpath will provide safe pedestrian connectivity to the village. This is considered below.
- 6.3 **Highways and pedestrian safety**
- 6.3.1 In considering the outline planning application the Planning Inspector commented, at paragraph 86 of his decision, that the appellant proposes to provide a footpath along the western side of Holyhead Road between the northern boundary of the appeal site and the Avenue. The Inspector also noted that although there is an existing footpath on the eastern side it narrows to 0.7m at a pinch point. He considered that such a situation is far from ideal for persons with prams, pushchairs or for disabled persons. As such the Inspector concluded that, without a new



footpath, there could be a severe highway safety issue. The Inspector accepted that the provision of a new footpath will result in narrowing of the highway but did not consider that it would be a significant issue.

- 6.3.2 However, as noted above, since the appeal the position of a TPO'd tree has been identified to be within the area of the new footpath and the construction of the footpath may result in the loss of the tree. As such the applicant has now proposed to widen the existing footpath on the opposite side of the road. This is still done by narrowing the highway carriageway width.
- 6.3.3 A detailed plan has been submitted with this application showing the widths of the highway and footpath. The highway will be a minimum of 5.5m wide and the existing footpath widened. The footpath will be varied widths as there are currently varied widths. Opposite the site the footpath will be approximately 2.3m wide, opposite the neighbouring properties the footpath will be approximately 1.8m to 1.5m wide narrowing to 1.2m just before the pinch point noted by the Inspector. The pinch point will be widened to 1.178m at its narrowest point, which is an increase of just under 0.5m from its existing width. Although this width is less than the width of footpath recommended by the Inspector (1.2m wide) it is shown on the plan that the section that is less than 1.2m is for a distance of 0.973m. The footpath then widens out to just under 3m after the pinch point.
- 6.3.4 A comment has been made that the Planning Inspector did not give any other option for the provision of a footpath other than on the western side of Holyhead Road. This is an assumption of what the Inspector may or may not have been thinking. The Inspector had an application before him which proposed a footpath on the western side of Holyhead Road, that was what was proposed for consideration. No other option was submitted with the appeal and as such no other option was considered. This does not automatically mean that the Planning Inspector would not have allowed the widening of the footpath on the eastern side of Holyhead Road. If members consider that the current proposal is either so significant a change as to require a full planning application (through refusing this variation application) or so harmful to pedestrian safety to warrant refusal of the variation application the applicant has the right to appeal and the Planning Inspector will then consider the current proposal. However, it is officer's opinion, as noted above, that the application can be determined as a variation of the condition. Furthermore, it is officer's opinion that it will provide improvements to pedestrian safety and will not result in a severe pedestrian safety impact. As such it is officer's opinion that a refusal would not be justified.
- 6.3.5 A further part of the Parish and local community objections also refers to the reduction in the width of the road and the width of the proposed footpath being below the standards set within Shropshire guidance and National guidance in Manual for Streets. This is acknowledged, the proposed width at 5.5m wide and the footpath at around 1.2m for the majority of its length is below what is recommended in both local and national guidance. However, the documents quoted are guidance. The reference to the road in Ruyton XI Towns is also noted, the case officer is fully aware of this road having previously lived in this village. However, the case officer does not consider that the road in West Felton is comparable. The section of road in Ruyton XI Towns is on a bend and a hill, as can be seen in the photographs provided by the Parish Council. The road in West Felton is straight. Large vehicles



in Ruyton XI Towns often cross the central line in the road due to the curvature of the road and the hill. This would not be the same situation in West Felton. Furthermore the minimums which are being met, in the most, are within the parameters set by the Planning Inspector in his condition.

- 6.3.6 Officers consider that the proposal as submitted is acceptable. The pinch point is proposed to be widened to a width that can accommodate a pushchair, pram or wheelchair. It is acknowledged that a pedestrian could not pass a wheelchair at this point but, as noted above, the pinch point is a short section of footpath which for the remainder of its length is within or above the parameters set within the condition on the original decision notice.
- 6.3.7 The section of footpath on the application site provides a safe crossing point for the new residents of the development and for the wider community accessing the open space within the site. The changes requested by the Council Highway Consultant relate to the sections of footpath on the application side of Holyhead Road being graduated in and out of the existing highway rather than a blunt end to the footpath as is currently shown. This has been raised with the applicant and further amendments sought. As such, although the current proposal does not comply with the condition as set out in the outline decision, the current application seeks to vary the wording of the condition to reflect the plan now submitted. The proposal will provide improvements to pedestrian connectivity and safety which was the reason for the condition on the outline.

#### 6.4 **Drainage**

- 6.4.1 Policy CS18 'Sustainable Water Management' of the Shropshire Core Strategy indicates that development should integrate measures of sustainable water management to reduce flood risk and avoid an adverse impact on water quality and quantity.
- 6.4.2 The drainage details for the site proposed to be developed for housing has been submitted with the reserved matters application. The highway drainage details will need to be submitted as part of the technical approval for the highway works. Separate consent is required to undertake works to the highway and this will need to include the details of the drainage.

#### 7.0 **CONCLUSION**

- 7.1 It is considered that the proposed changes to condition 7 on the outline consent are acceptable and provide a footpath which will provide improved connectivity and pedestrian safety. It is acknowledged that there is a short pinch point where there is a section that is below the width recommended in the original condition. However, this is a short section, the footpath is wider than existing and thereafter widens further. As such the proposed amendments comply with the reasons for the original condition and complies with the requirements of Core Strategy Policy CS6 and SAMDev Policy MD2 and the National Planning Policy Framework.
- 7.2 In arriving at this decision the Council has used its best endeavours to work with the applicants in a positive and proactive manner to secure an appropriate outcome as required in the National Planning Policy Framework paragraph 187.

#### 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 - written representations, a hearing or inquiry.

The decision is 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 a) promptly and b) in any event not later than six weeks after the grounds to make the claim first arose 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 give 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 1970.

## 10. BACKGROUND

### Relevant Planning Policies:

National Planning Policy Framework

CS1 - Strategic Approach

CS4 - Community Hubs and Community Clusters

CS5 - Countryside and Greenbelt

CS6 - Sustainable Design and Development Principles

CS9 - Infrastructure Contributions  
 CS17 - Environmental Networks  
 CS18 - Sustainable Water Management  
 MD1 - Scale and Distribution of Development  
 MD2 - Sustainable Design  
 MD7A - Managing Housing Development in the Countryside  
 MD7A - Managing Housing Development in the Countryside  
 MD8 - Infrastructure Provision  
 MD12 - Natural Environment

Relevant planning history:

14/00133/OUT Outline application for mixed residential use; formation of new vehicular access and estate roads and creation of public open space REFUSE 1st October 2014  
 16/05336/REM Approval of reserved matters (access, appearance, landscaping, layout, scale) pursuant to 14/00133/OUT for residential development of 25 houses (inclusive of 2 affordable) PCO

Appeal:

15/02224/REF Outline application for mixed residential use; formation of new vehicular access and estate roads and creation of public open space ALLOW 30th November 2015

## 11. ADDITIONAL INFORMATION

|  |
|--|
| List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information) |
| Cabinet Member (Portfolio Holder)<br>Cllr R. Macey   |
| Local Member<br>Cllr Steve Charmley  |
| Appendices<br>APPENDIX 1 - Conditions  |

## APPENDIX 1

### Conditions

#### STANDARD CONDITION(S)

1. Application for approval of the reserved matters shall be made to the local planning authority not later than 30th November 2016.
2. The development hereby permitted shall be begun before the expiration of one year from the date of approval of the last of the reserved matters to be approved.
3. Details of the appearance, landscaping, layout, and scale, together with the access to the site (hereinafter called "the reserved matters") of the development shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
4. The development hereby permitted relates to the site shown on Location Plan, drawing number J0440/01 (January 2014).
5. The development hereby permitted shall be comprised of no more than 25 dwellings. A minimum of:
  - six of the open market dwellings to be constructed shall be bungalows,
  - four of the two storey open market dwellings to be constructed shall be two bedroomed dwellings, and
  - two of the two storey open market dwellings to be constructed shall be three bedroomed dwellings.
6. The following information shall be submitted to the local planning authority concurrently with the first submission of reserved matters:
  - The levels of the site,
  - The finished floor levels,
  - The foul and surface water drainage of the site including proposals for a sustainable drainage system (SUDS).

#### CONDITION(S) THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES

7. Access to the site shall be provided in accordance with the access scheme shown on drawing **TO BE COMPLETED**. No dwelling shall be occupied until the access scheme has been fully implemented to the satisfaction of the local planning authority
8. No development shall take place until a scheme for the enhancement of the hedgerows that define the north-western and south-western boundaries of the site and the replacement and establishment of the hedgerow along the site road frontage, to be repositioned immediately to the rear of the proposed access visibility splays, has been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the hedging scheme has been fully implemented to the satisfaction to the local planning authority. The hedgerows shall thereafter be retained for the lifetime of the development.

9. No development shall take place until a scheme for the provision of an area of open amenity space, including a Local Area of Play, has been submitted to and approved in writing by the local planning authority.
10. Prior to the erection of any external lighting on the site, a scheme for the provision of external lighting shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and thereafter the lighting scheme shall be retained for the lifetime of the development. The submitted scheme shall be designed to take into account the advice on lighting set out in the Bat Conservation Trust booklet 'Bats and Lighting in the UK'.
11. No development shall take place until a scheme for the provision of 6 woodcrete bat boxes suitable for nursery or summer roosting for small crevice dwelling bat species, has been submitted to and approved in writing by the local planning authority. Unless otherwise agreed in writing by the local planning authority, the boxes shall be erected on the site prior to first occupation of the dwellings hereby permitted. Once erected, the boxes shall be permanently retained in their original positions.
12. No development shall take place until a scheme for the provision of 6 woodcrete artificial nests, suitable for small birds such as robin, blackbird, tit species, sparrow and swallow, has been submitted to and approved in writing by the local planning authority. Unless otherwise agreed in writing by the local planning authority, the boxes shall be erected on the site prior to first occupation of the dwellings hereby permitted. Once erected, the boxes shall be permanently retained in their original positions.

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|------------------------------|
| <u>Committee and Date</u>    |
| North Planning Committee     |
| 9 <sup>th</sup> January 2018 |

|             |
|-------------|
| <u>Item</u> |
| Public      |

## Development Management Report

Responsible Officer: Tim Rogers  
 Email: [tim.rogers@shropshire.gov.uk](mailto:tim.rogers@shropshire.gov.uk) Tel: 01743 258773 Fax: 01743 252619

### SCHEDULE OF APPEALS AS AT 9<sup>TH</sup> JANUARY 2018

#### Appeals Lodged

|                                   |   |
|-----------------------------------|---|
| <b>LPA reference</b>              | 17/02504/FUL  |
| <b>Appeal against</b>             | Refusal   |
| <b>Committee or Del. Decision</b> | Delegated   |
| <b>Appellant</b>                  | Mr and Mrs Heaton   |
| <b>Proposal</b>                   | Erection of a detached dwelling, detached garage with room over; formation of new vehicular access and parking spaces |
| <b>Location</b>                   | East of Chapel House, Perthy, Ellesmere   |
| <b>Date of appeal</b>             | 13.12.2017  |
| <b>Appeal method</b>              | Written reps  |
| <b>Date site visit</b>            |   |
| <b>Date of appeal decision</b>    |   |
| <b>Costs awarded</b>              |   |
| <b>Appeal decision</b>            |   |

|                                   |   |
|-----------------------------------|---|
| <b>LPA reference</b>              | 17/04009/OUT  |
| <b>Appeal against</b>             | Refusal of Planning Permission  |
| <b>Committee or Del. Decision</b> | Delegated   |
| <b>Appellant</b>                  | Mr K Roberts – C/O Nextphase Development Ltd  |
| <b>Proposal</b>                   | Outline application for the erection of 2no dwellings, to include the access (all other matters reserved) |
| <b>Location</b>                   | Broomfield<br>Rosehill Road<br>Stoke Heath<br>TF9 2LF   |
| <b>Date of appeal</b>             | 14.12.17  |
| <b>Appeal method</b>              | Written Representations   |
| <b>Date site visit</b>            |   |
| <b>Date of appeal decision</b>    |   |
| <b>Costs awarded</b>              |   |
| <b>Appeal decision</b>            |   |

|                                   |   |
|-----------------------------------|---|
| <b>LPA reference</b>              | 17/04218/FUL  |
| <b>Appeal against</b>             | Refusal   |
| <b>Committee or Del. Decision</b> | Delegated   |
| <b>Appellant</b>                  | Mr and Mrs Edwards – C/O Gary Chesters  |
| <b>Proposal</b>                   | Conversion and extension to outbuilding to form self-contained ancillary accommodation to existing dwelling |
| <b>Location</b>                   | Hayes Barn<br>Coton<br>Whitchurch<br>Shropshire   |
| <b>Date of appeal</b>             | 20.12.17  |
| <b>Appeal method</b>              | Householder Fast Track  |
| <b>Date site visit</b>            |   |
| <b>Date of appeal decision</b>    |   |
| <b>Costs awarded</b>              |   |
| <b>Appeal decision</b>            |   |

**Appeals determined**

|                                   |  |
|-----------------------------------|--|
| <b>LPA reference</b>              | 16/05193/OUT   |
| <b>Appeal against</b>             | Refusal of planning permission   |
| <b>Committee or Del. Decision</b> | Delegated  |
| <b>Appellant</b>                  | Downes Porperty Ltd – C/O DEP Architects                                     |
| <b>Proposal</b>                   | Outline application (all matters reserved) for the erection of two dwellings |
| <b>Location</b>                   | Land Off Quarry House Lane<br>Market Drayton<br>Shropshire                   |
| <b>Date of appeal</b>             | 19.09.17   |
| <b>Appeal method</b>              | Written Representations  |
| <b>Date site visit</b>            |  |
| <b>Date of appeal decision</b>    | 14.12.17   |
| <b>Costs awarded</b>              |  |
| <b>Appeal decision</b>            | <b>DISMISSED</b>   |





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## Appeal Decision

Site visit made on 21 November 2017

**by Elizabeth Pleasant DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 14<sup>th</sup> December 2017**

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**Appeal Ref: APP/L3245/W/17/3181868**

**Vacant Plot Adjacent to 8 Wilfred Owen Close, Off Bottom Lane, Market Drayton.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Downes Property Ltd against the decision of Shropshire Council.
  - The application Ref 16/05193/OUT, dated 1 November 2016, was refused by a notice dated 22 March 2017.
  - The development proposed is an outline application for 2 detached dwellings.
- 

### Decision

1. The appeal is dismissed.

### Procedural Matter

2. The application is for outline planning permission, with all matters reserved for future consideration. Drawings showing an indicative site layout and house type were submitted with the application and I had regard to these in determining the appeal.

### Main Issue

3. The main issue in this case is whether the appeal site is an appropriate location in principle for the proposed development, in the light of local and national planning policies.

### Reasons

4. The Council's Core Strategy adopted in 2011 (CS) sets out a spatial vision for the County until 2026. Policies CS1 and CS3 of the CS identify Market Drayton as a Market Town where new housing and employment development will be focused within the town's development boundary. Outside of this boundary, Policy CS5 indicates that development will be strictly controlled in the countryside and the Green Belt.
5. In relation to the appeal site the adopted Shropshire Council Site Allocations and Management of Development (SAMDev) Plan, 2015 identifies its location as open countryside and outside the defined settlement boundary of Market Drayton. It is clear that the site adjoins Market Drayton's settlement boundary. However, despite the site having had the benefit of a grant of planning permission in the past, and may previously have been intended as an area of public open space, the site does not benefit from any extant consent

and the current development plan excludes the appeal site from within the settlement boundary. From my observations on site and the evidence before me, the site would not appear to be brownfield land. Moreover, its sylvan appearance including the deep, mature, native hedgerow which forms its boundary, provide an important landscape buffer to the settlement edge.

6. The CS and SAMDev DPD provide a clear strategy for Shropshire Council to achieve a 'rural imbalance' through sustainable rural growth to create thriving living and working communities. The Council state that they have at least a six year housing land supply and I have not been provided with any substantive evidence to lead me to conclude otherwise. The development plan is not therefore absent, silent and relevant policies are not out-of-date. Accordingly, the appeal proposal must be determined in accordance with the development plan as set out in Section 38 (6) of the Planning and Compensation Act, 2004, unless material considerations indicate otherwise.
7. Given the location of the appeal site within the countryside, the proposed development would clearly conflict with the Council's development strategy which seeks to direct new open market housing to areas identified as Market Towns, Key Service Centres, Community Hubs and Community Clusters. Furthermore, the appeal proposal would not satisfy any of the criteria set out in Policy CS5 of the CS or Policies MD3 or MD7a of the SAMDev which permit in certain special circumstances residential development in the countryside.
8. I conclude that the appeal site is not therefore a suitable location in principle for the proposed development, in the light of local and national planning policies. It would conflict with the development plan and in particular with Policies CS1, CS3 and CS5 of the CS and Policies S11, MD1, MD3 and MD7a of the SAMDev, the aims of which are set out above.

### **Other Matters**

9. The application was accompanied by a Preliminary Ecological Appraisal<sup>1</sup> which confirmed the presence of badgers on the appeal site and also identified the site as providing a habitat suitable for reptiles, bats and breeding birds. Badgers are a protected species under the Protection of Badgers Act 1992 and in view of their presence on the site, any impact that the development may have on their habitat is a material consideration. In view of my findings on the main issue set out above this is not a matter that I need to address further. However, if the circumstances leading to a grant of permission had been present, in the absence of a specific survey relating to Badgers it would not be clear whether the development could proceed without any impact or whether impact identified could be made acceptable through mitigation measures. Such matters should be considered prior to planning permission being granted for development in accordance with advice set out in Circular 06/2005, Biodiversity and Geological Conservation – statutory obligations and their impact within the planning system.
10. I accept that the site has some sustainability credentials in respect of its location, in relatively close proximity local facilities in Dalelands and public transport routes. However, the development of two large market homes would bring only limited benefits to the economic and social well-being of the neighbouring community. The limited benefit that two dwellings would bring to

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<sup>1</sup> Preliminary Ecological Appraisal, Land off Bottom Lane, Market Drayton, Prepared by Arbtech, 15 February 2017

the overall supply of housing in the area would be demonstrably outweighed by the harm I have identified to the inappropriate location of this development and conflict with the Council's settlement strategy. Furthermore, it has not been demonstrated that the site would safeguard interests of biodiversity and protect the natural environment.

**Conclusion**

11. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should be dismissed.

*Elizabeth Pleasant*

INSPECTOR

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