



Shropshire Council  
Legal and Democratic Services  
Shirehall  
Abbey Foregate  
Shrewsbury  
SY2 6ND

Date: Monday, 14 December 2015

**Committee:**  
**North Planning Committee**

**Date:** Tuesday, 22 December 2015  
**Time:** 2.00 pm  
**Venue:** Shrewsbury/Oswestry Room, Shirehall, Abbey Foregate, Shrewsbury,  
Shropshire, SY2 6ND

You are requested to attend the above meeting.  
The Agenda is attached

Claire Porter  
Head of Legal and Democratic Services (Monitoring Officer)

**Members of the Committee**

Arthur Walpole (Chairman)  
Paul Wynn (Vice Chairman)  
Joyce Barrow  
John Cadwallader  
Gerald Dakin  
Steve Davenport  
Pauline Dee  
Vince Hunt  
David Lloyd  
David Minnery  
Peggy Mullock

**Substitute Members of the Committee**

Nicholas Bardsley  
Karen Calder  
Steve Charmley  
Peter Cherrington  
Andrew Davies  
Ann Hartley  
Simon Jones  
Brian Williams  
Thomas Biggins  
Roger Hughes  
VACANCY

Your Committee Officer is:

**Shelley Davies:** Committee Officer  
Tel: 01743 257718  
Email: [shelley.davies@shropshire.gov.uk](mailto:shelley.davies@shropshire.gov.uk)

# AGENDA

## 1 Apologies for Absence

To receive apologies for absence.

## 2 Minutes (Pages 1 - 4)

To confirm the Minutes of the meeting of the North Planning Committee held on 24<sup>th</sup> November 2015, attached, marked 2.

Contact: Shelley Davies on 01743 257718.

## 3 Public Question Time

To receive any questions, statements or petitions from the public, notice of which has been given in accordance with Procedure Rule 14.

## 4 Disclosable Pecuniary Interests

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

## 5 Land Adjacent to Woodbury, Hengoed, Oswestry, SY10 7EU (13/02994/OUT) (Pages 5 - 20)

Outline application for the erection of a detached dwelling to include means of access.

## 6 Land At Rhosygadfa, Gobowen, Shropshire (15/03975/FUL) (Pages 21 - 48)

Construction of a solar farm to include solar panel arrays, substation inverters, a primary substation, and perimeter stock fencing.

## 7 Burlton Lane Farm, Myddle, Shropshire, SY4 3RE (15/04781/EIA) (Pages 49 - 72)

Erection of extensions to existing free range poultry buildings and erection of egg packing unit.

## 8 Former Store, Walnut House, Little Ness Road, Ruyton Xi Towns, Shropshire (15/04348/FUL) (Pages 73 - 80)

Change of use of existing store/office to dwelling.

## 9 Appeals and Appeal Decisions (Pages 81 - 122)

## 10 Date of the Next Meeting

To note that the next meeting of the North Planning Committee will be held at 2.00 p.m. on Tuesday, 26<sup>th</sup> January 2016 in the Shrewsbury Room, Shirehall, Shrewsbury.



## Committee and Date

North Planning Committee

22<sup>nd</sup> December 2015

## **NORTH PLANNING COMMITTEE**

### **Minutes of the meeting held on 24 November 2015**

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

**2.00 - 2.50 pm**

**Responsible Officer:** Shelley Davies

Email: shelley.davies@shropshire.gov.uk Tel: 01743 257718

### **Present**

Councillor Arthur Walpole (Chairman)

Councillors Paul Wynn (Vice Chairman), Joyce Barrow, John Cadwallader, Steve Davenport, Pauline Dee, Vince Hunt, David Lloyd, David Minnery and Peggy Mullock

### **81 Apologies for Absence**

An apology for absence was received from Councillor Gerald Dakin.

### **82 Minutes**

#### **RESOLVED:**

That the Minutes of the meeting of the North Planning Committee held on 27<sup>th</sup> October 2015 be approved as a correct record and signed by the Chairman.

### **83 Public Question Time**

There were no public questions, statements or petitions received.

### **84 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.

### **85 Development Land East Of Wem Road, Shawbury, Shropshire (14/04558/OUT)**

The Principal Planning Officer introduced the report which was an addendum to a previous report on 17<sup>th</sup> February 2015, when outline approval for residential development for up to 25 dwellings had been granted. Members' attention was drawn to the schedule of additional letters which referred to additional information from the agent regarding noise issues and a representation from Open Space and Recreation (Shropshire Council) which stated that the proposal did not meet policy requirements in relation to Public open space. The Principal Planning Officer explained that due to its advanced stage greater weight could now be given to SAMDev and Officers were now recommending refusal of the application.

Councillor Dave Roberts, on behalf of Shawbury Parish Council spoke against the proposal in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees.

Mr Justin Stevenson, 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 a request from the Chairman, the Principal Planning Officer clarified Policy MD3 and explained that the number of 50 new dwellings as quoted in SAMDev was a guideline, not a maximum figure.

During the ensuing debate, Members expressed differing views with some Members continuing to support approval as was previously resolved. The majority of Members considered that the proposal would have an adverse impact on the surrounding area and supported refusal as per the reasons set out in the report.

**RESOLVED:**

That planning permission be refused in accordance with the Officer's recommendation for the following reasons:

1. The proposal is considered to conflict with the Shropshire Core Strategy, Shropshire Site Allocations and Management of Development Plan (SAMDev) and the saved policies of the North Shropshire Local Plan as the development proposes housing development in an area identified as countryside for planning purposes which does not comply with the restricted development supported in the policies. The site is not a recognised site for development in accordance with SAMDev policy S17.2, Core Strategy policy CS5 or saved policy H5 of the North Shropshire Local Plan. The Council is also of the opinion that it can now demonstrate an adequate five year supply of house building land as required by paragraph 49 of the NPPF.
2. The development of the site is not considered to be sustainable development in accordance with the overall aims and objectives of NPPF by reason of the visual impact of the development and the environmental harm from developing grade 3 agricultural land. These adverse impacts are considered to be harm resulting from the development which are not outweighed by the benefits identified or any material considerations.

**86 Former Oswalds Stores, Oswalds Well Lane, Oswestry, Shropshire, SY11 2TF (15/03804/FUL)**

The Principal Planning Officer introduced the application for the erection of four dwellings and detailed the planning history in relation to the application site.

Mrs Judith Williams, local resident spoke against the proposal in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees.

Debate ensued with the majority of Members expressing the view that although some of the previous concerns had been addressed, the proposal was overdevelopment, with limited poor quality amenity space, inadequate arrangements for access to and storage of bins and would adversely affect the residential amenity of the adjacent properties.

Having considered the submitted plans for the proposal, the majority of Members expressed their objection to the proposal contrary to the Officer's recommendation.

**RESOLVED:**

That planning permission be refused contrary to the Officer's recommendation for the following reason:

1. Taking into account the local context and character, the layout scale and design of the proposed development is not considered to relate well to the surrounding area, would create a cramped form of development having an adverse overbearing and oppressive effect on the residential amenity of adjacent occupiers. Furthermore the proposed outside amenity space is inadequate in terms of layout and scale, and the arrangements for the storage of and access to refuse bins are considered to be unsatisfactory leading to adverse impacts on the residential amenity of adjoining occupiers and future occupiers of the development . As such the proposal is contrary to Policy CS6 of Shropshire Council's Core Strategy and the Type and Affordability of Housing SPD.

**87 Appeals and Appeal Decisions**

**RESOLVED:**

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

**88 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 22<sup>nd</sup> December 2015 in the Shrewsbury/Oswestry Room, Shirehall, Shrewsbury.

Signed ..... (Chairman)

Date: .....

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Committee and Date

North Planning Committee

22<sup>nd</sup> December 2015

Item

**5**

Public

## Development Management Report

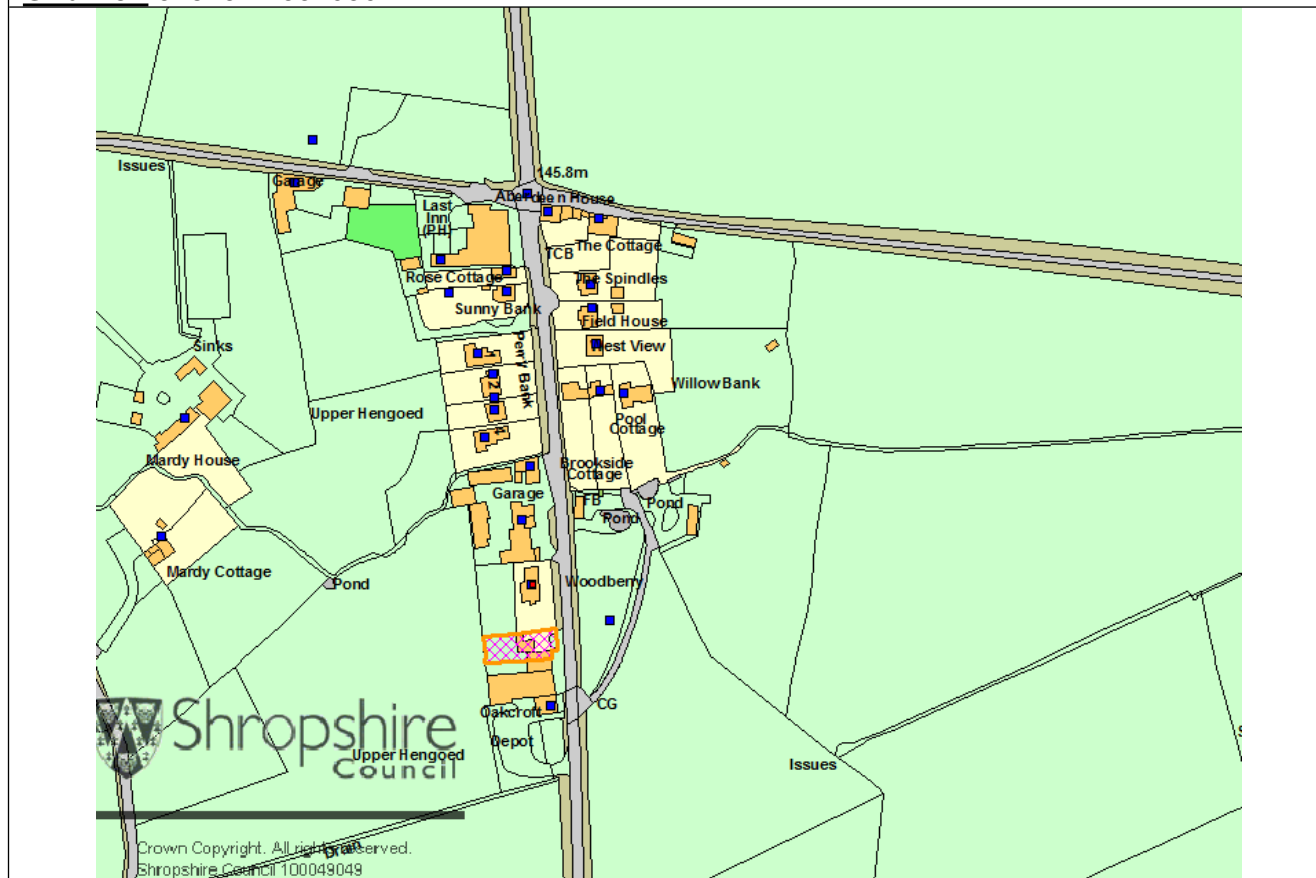
Responsible Officer: Tim Rogers

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> 13/02994/OUT	<b>Parish:</b>	Selattyn And Gobowen
<b>Proposal:</b> Outline application for the erection of a detached dwelling to include means of access		
<b>Site Address:</b> Land Adjacent to Woodbury Hengoed Oswestry SY10 7EU		
<b>Applicant:</b> Lloyd Developments		
<b>Case Officer:</b> Philip Mullineux	<b>email:</b> <a href="mailto:planningdmnw@shropshire.gov.uk">planningdmnw@shropshire.gov.uk</a>	

**Grid Ref:** 328431 - 334036



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## REPORT

### Recommendation:- REFUSE planning permission for the following reasons:

1. The proposal is considered to conflict with the Shropshire Core Strategy, Shropshire Site Allocations and Management of Development Plan (SAMDev) and the saved policies of the Oswestry Borough Local Plan as the development proposes housing development in an area identified as countryside for planning purposes to which Policy S14.2(x) of the SAMDev also does not support housing development at this location and as such the proposal does not comply with the restricted development supported in the policies, or saved policies H16 and H19 of the Oswestry Borough Local Plan. The Council is also of the opinion that it can now demonstrate an adequate five year supply of house building land as required by paragraph 49 of the NPPF.
2. Overall the development of the site is not considered to be sustainable development in accordance with the aims and objectives of NPPF by reason of the overall environmental and local policy implications. These adverse impacts are considered to be harm resulting from the development which is not outweighed by the benefits identified.

### ADDENDUM TO PREVIOUS OFFICER REPORT – Re: The SAMDev Plan and progress.

#### 1.0 Background

- 1.1 On the 1<sup>st</sup> October 2014 it was resolved by the Northern Planning Committee to grant outline planning permission for the erection of a detached dwelling and relocation of an existing garage on land adjacent to the property known as 'Woodbury', Hengoed, Oswestry, subject to conditions and the signing and completion of a Section 106 Legal Agreement to secure affordable housing in line with Core Strategy policy CS11 and the Councils' adopted SPD on the 'Type and Affordability of Housing' To date in this instance no progress has been made with regards to completion and signing of the Section 106 agreement.
- 1.2 Since the Committee decision the Council's Site Allocations and Management of Development Plan SAMDev has progressed through its process and now has much more significant and substantial planning weight. Since October 2014 the SAMDev examination has been undertaken, main modifications have been published and consulted on and the Council has received the Inspectors report. As such, in accordance with paragraph 216 of the NPPF, the Local Planning Authority now considers that the weight which can be given to the SAMDev has significantly altered.
- 1.3 The following is a review of the 'Principle and Policy of Development' previously presented to Committee for re-consideration in light of the publications of the SAMDev Plan main modifications.

#### 2.0 Impact of SAMDev progress

- 2.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The starting point for decision taking is therefore the development plan. Proposals that accord with an



up-to-date plan should be approved, whilst proposals that conflict with the plan should be refused, unless other material considerations indicate otherwise (para 12 of the National Planning Policy Framework (NPPF) refers).

- 2.2 The NPPF in itself constitutes guidance for local planning authorities as a material consideration to be given significant weight in determining applications. At para 14 the NPPF sets out the presumption in favour of sustainable development as a golden thread running through plan-making and decision-taking. At para. 197 the NPPF reiterates that in assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development. These considerations have to be weighed alongside the provisions of the development plan. Development plan policies of particular relevance to assessing the acceptability of this housing application in principle are discussed below:
- 2.3 The Development Plan  
For the purposes of the assessment of this application the development plan presently comprises of the adopted Shropshire Core Strategy 2011 and a range of Supplementary Planning Documents. The policies in the Oswestry Borough Local Plan remain saved policies until the formal adoption of the SAMDev, however the policies in the Oswestry Borough Local Plan, (OBLP), could be argued to be out of date and as the SAMDev progresses the weight that can be given to OBLP policies reduces.
- 2.4 Shropshire Core Strategy policies CS1, CS4 and CS5 - Policies CS1, CS4 and CS5 of the Core Strategy set out the strategic approach to housing provision in the countryside, which includes the area known as Hengoed. It is envisaged that the market towns will provide for substantial levels of new development, of an appropriate scale and design for each town and on allocated sites or within the development boundaries. Policies CS1 and CS4 are consistent with the objectives of the NPPF to focus new development in sustainable locations.
- 2.5 The site lies outside of any development boundary as shown in both the OBLP and the forthcoming SAMDev as Hengoed does not have a boundary in either policy. Therefore, the proposal would conflict with adopted Core Strategy policies CS1 and CS4 and falls to be assessed against adopted Core Strategy policy CS5. Policy CS5 states that new development will be strictly controlled in the countryside and only allows for exceptions in housing needs, including those to meet an essential rural business need or local need, none of which apply to this proposal. The proposal therefore conflicts with CS5. It is considered that policy CS5 is consistent with the objectives of the NPPF to protect the intrinsic character and beauty of the countryside.
- 2.6 SAMDev Policy – The SAMDev is now considered to be at an advanced stage. The SAMDev Plan Inspector has confirmed the proposed main modifications to the plan following the examination sessions held in November & December 2014. The main modifications were published on 1<sup>st</sup> June 2015 for a 6 week consultation period, and the Inspector's final recommendations have been received. This means that the plan may be considered to be sound in principle in accordance with NPPF paragraph 216. Therefore substantial significant weight can now be given to SAMDev policies in planning decisions.

- 2.7 Selattyn, Upper/Middle/Lower Hengoed and Pant Glas are identified in the Core Strategy in S14.2(x) as a Community Cluster, which will provide additional housing for young families or small live/work developments. Reflecting the level of recent commitments, including a consent for 13 dwellings in Upper Hengoed, the sustainability of the cluster will be further improved by about 5 further homes in Selattyn as infill development within the development boundary. Further housing development in Lower Hengoed, Middle Hengoed, Upper Hengoed, or Pant Glas will not be supported during the period to 2026. Critical infrastructure investment priorities include waste water treatment infrastructure. The site is therefore not a proposed allocated site or windfall site. As such the development of the site is considered contrary to the housing development policy in the SAMDev.
- 3.0 **Other material considerations**
- 3.1 The NPPF - As previously mentioned the NPPF sets out the presumption in favour of sustainable development as a golden thread running plan-making and decision-taking and is a material consideration to which significant weight should be attributed. As part of the overall planning balance, it is therefore appropriate to assess this site within the context of the 'presumption in favour of sustainable development'.
- 3.2 At para 10 the NPPF states that policies in local plans should follow the approach of the presumption in favour of sustainable development, with clear policies that will guide how the presumption should be applied locally.
- 3.3 Ultimately the policies contained in the SAMDev Plan will therefore need to comply with the sustainable guidance set out in the Framework in order to proceed to adoption. Under the NPPF sustainable sites for housing where the adverse impacts do not outweigh the benefits of the development will still have a strong presumption in favour of permission when considered against the NPPF as a whole.
- 3.4 The October 2014 report to committee placed substantial weight on the NPPF indicating that although the site is classed as 'open countryside' according to current and emerging policy and lacks local support (Parish Council), the site would effectively be classed as 'infill', and could represent sustainable development and would only exceed the housing requirement of the Community Cluster by one dwelling. With reference to draft Policy MD3, it was considered that these material considerations were sufficient to justify a departure in this case. As such, the principle of development was considered acceptable.
- 3.5 However, the report also noted that the Parish Council considered that there should be no further development in Upper Hengoed not even infill development, with further development in the cluster limited to a maximum of 5 houses in Selattyn, all of which should be infill. This request it is noted is in accordance with criteria as set out in S14.2(x) of SAMDev which now has substantially more significant planning weight.
- 3.6 Officers accept that the site represents infill which will not have a significant visual impact in the overall surrounding landscape, and therefore that the visual impact

is not significant and demonstrable.

- 3.7 Shropshire Council can now evidence a 5 year housing land supply and as such it is considered that the Core Strategy is up to date policy and furthermore that the SAMDev is now at an advanced stage where substantial significant weight can be given to its policies. The site is also classed as open countryside in accordance with the OBLP, as Hengoed does not have a recognised development boundary in accordance with the OBLP.

#### **4.0 Conclusion**

- 4.1 The site is located outside a recognised development boundary and is therefore classed as open countryside as Policy S14.2(x) of the Core Strategy does not support development at this location and as such the development is considered a departure from the development plan, contrary to Core Strategy policies CS1, CS4 and CS5.
- 4.2 In light of the SAMDev planning weight, and the site's location in accordance with the OBLP, it is considered that significant weight can now be placed upon policy S14.2(x), in a way consistent with paragraph 216 of the NPPF. Policy S14(x) does not allocate the application site for development, It is therefore considered that significant weight be also given to policy Core Strategy CS5 given the site is considered 'countryside' in policy terms, and that relevant policy constraints should apply. The Council can currently demonstrate a five year supply of housing land which further emphasises the significant weight that be given to SAMDev Policy S14.2(x) and Core Strategy policy CS5.
- 4.4 Whilst there are aspects of the development such as drainage, impact on neighbours and ecology which could be mitigated and therefore comply with the relevant parts of adopted policies and the NPPF, it is considered that the development would result in harm to the character of the rural landscape, representing development overall that is not considered sustainable development with consideration to the rural location area, and would therefore would not comply with policies CS6 or CS9 of the Core Strategy or the NPPF as a whole.
- 4.5 The proposal would contribute to the supply of housing and generally provides some economic and social benefits to Shropshire. However, it is considered that the development does not meet the requirements of the NPPF as a whole in regards providing a sustainable development for the reasons given above. Also no progress has been made with regards to completion of a section 106 agreement in relationship to affordable housing as referred to earlier in this report. Accordingly on balance officer's recommendation on this application has therefore changed since the October 2014 meeting and is now one of refusal for the following reason:
- 4.6 *The proposal is considered to conflict with the Shropshire Core Strategy, Shropshire Site Allocations and Management of Development Plan (SAMDev) and the saved policies of the Oswestry Borough Local Plan as the development proposes housing development in an area identified as countryside for planning purposes to which Policy S14.2(x) of the SAMDev also does not support housing development at this location and as such the proposal does not comply with the restricted development supported in the policies, or saved policies H16 and H19*

*of the Oswestry Borough Local Plan. The Council is also of the opinion that it can now demonstrate an adequate five year supply of house building land as required by paragraph 49 of the NPPF.*

- 4.7 *Overall the development of the site is not considered to be sustainable development in accordance with the aims and objectives of NPPF by reason of the overall environmental and local policy implications. These adverse impacts are considered to be harm resulting from the development which is not outweighed by the benefits identified.*

## **5.0 RISK ASSESSMENT AND OPPORTUNITIES APPRAISAL**

### **5.1 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.

### **5.2 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.

### **5.3 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.

## 6.0 FINANCIAL IMPLICATIONS

6.1 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.

## 7.0 BACKGROUND

### Relevant Planning Policies

National Planning Policy Framework

Shropshire Core Strategy

CS1 – Strategic Approach

CS4 – Community Hubs and Community Clusters

CS5 - Countryside and Greenbelt

CS6 - Sustainable Design and Development Principles

CS9 – Infrastructure Contributions

CS11 - Type and Affordability of Housing

CS17 – Environmental Networks

CS18 – Sustainable Water Management

SPD Type and Affordability of Housing

SAMDev

MD1 – Scale and Distribution of Development.

MD2 – Sustainable Design

MD3- Managing Housing Development

MD7a – Managing Housing Development in the Countryside

MD8 – Infrastructure Provision.

S14.2(x).

Also Oswestry Borough Local Plan – Saved Policies.

## 8.0 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) Cllr M. Price
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Local Members Cllr David Lloyd MBE Cllr Robert Macey
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Appendices
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## APPENDIX 1 - Conditions

**PREVIOUS OFFICER REPORT****1.0 THE PROPOSAL**

- 1.1 This application seeks outline planning permission for the erection of a detached dwelling and relocation of an existing garage on land adjacent to the property 'Woodbury'. Access is the only matter under consideration with all other matters reserved.

**2.0 SITE LOCATION/DESCRIPTION**

- 2.1 The site is located on the west side of a minor road running between Oswestry and Weston Rhyn in the small settlement of Upper Hengoed, situated east of Selattyn and west of Gobowen. The site is currently occupied by the vehicular access, garage and part of the garden of the adjacent bungalow 'Woodbury' to the north; and a field access which is accessed via an open-fronted building. The site is bounded to the south by a redundant haulage garage with open fields to the west and on the opposite (east) side of the road.

- 2.2 A previous application for a dwelling on this site (12/04976/OUT) was refused in January 2013 on the grounds of the proposed development being located within the countryside and failing to comply with policy, and insufficient information being submitted to demonstrate satisfactorily that there would be adverse impact on Great Crested Newts.

**3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION**

- 3.1 In accordance with the Council's adopted 'Scheme of Delegation', the application is referred to the planning committee for determination since the Town Council's objection is contrary to officers' recommendations and in the view of the Local Members and committee chair the scheme raises significant material considerations.

**4.0 COMMUNITY REPRESENTATIONS****4.1 CONSULTEE COMMENTS****Selattyn and Gobowen Parish Council****4.1.1 12.09.13:**

Please refer to the Parish Council's SAMDEV comments relating to future development Hengoed.

**4.1.2 16.09.13:**

The Parish Council's stance on this application should be taken as an objection. The Parish Council's comments relate to the Council's SAMDEV comments for Hengoed which state that:

- There should be no development in Upper Hengoed not even infill development.
- There should be no development in Lower Hengoed, Middle Hengoed not even infill development until the area is linked to the main drain.

### **Local Members**

- 4.1.3 Having discussed the application with the local members for the area, Cllr Lloyd and Cllr Macey, it was agreed that the application should be taken to committee. This decision was supported by the Chair of the North Planning Committee, Cllr Walpole.

### **Shropshire Council Planning Policy**

- 4.1.4 The planning policy position is clear – this is a site in the countryside under both current and emerging policy, where new open market housing development would not accord with policies H16 or H19 of the Oswestry Plan (no development boundary for Hengoed) and the emerging development strategy for Hengoed identified in the SAMDev ‘Revised Preferred Options’. It is significant that, in approving 15 additional dwellings in Hengoed, the Council have already started to apply the emerging SAMDev policy, since such development would have been contrary to the Oswestry Plan.
- 4.1.5 Selattyn & Gobowen PC had originally indicated at SAMDev ‘Preferred Options’ stage that it would like to establish a Community Cluster comprising the settlements of Selattyn, Upper/ Middle/ Lower Hengoed and Pant Glas to accommodate 10-25 dwellings in Upper Hengoed and Selattyn over the period 2010 – 2026 (equivalent to 1 per year in each settlement). The maximum number of new dwellings across the Cluster should be limited to 30. However, in light of recent site commitments amounting to 15 dwellings in Upper Hengoed (11/00824/OUT: 1 dwelling; 11/00824/OUT: 1 dwelling; 11/05648/OUT: 5 dwellings; 11/05648/OUT: 8 dwellings), the PC revised its view and now considers that there should be no further development in Upper Hengoed not even infill development, with further development in the cluster limited to a maximum of 5 houses in Selattyn, all of which should be infill.
- 4.1.6 However, in these circumstances, it is a question of whether other material considerations change the view, with the circumstances being sufficiently exceptional to justify a departure. Material considerations include the fact that the site would effectively be infill and could represent sustainable development consistent with the NPPF definition, but that it lacks Parish Council support. The key test is that within draft Policy MD3 (given that we have already started to apply the emerging SAMDev to development in this area). MD3 provides that:

*4. The identified housing requirements for settlements are a significant material consideration. Where development would result in the number of completions plus outstanding permissions exceeding the identified requirement, regard will be had to:*

- i. The degree by which the requirement is exceeded;*
- ii. The likelihood of delivery of the outstanding permissions;*
- iii. Evidence of community support;*
- iv. The benefits arising from the development.*

- 4.1.7 In light of this test, notwithstanding the PC view, the proposed development could reasonably be considered to be sustainable in a way consistent with NPPF and it seems unlikely that a single additional infill dwelling could be construed as

significantly exceeding the agreed development strategy.

#### **Shropshire Council Flood and Water Management Team**

- 4.1.8 The application form states that the surface water drainage from the proposed development is to be disposed of via soakaways, however no details have been provided. Percolation tests and soakaways should be designed in accordance with BRE Digest 365, and full details, calculations and location plan should be submitted for approval. Full details and sizing of the proposed septic tank including percolation tests for the drainage field soakaways should also be submitted for approval. These drainage details, plan and calculations could be conditioned and submitted for approval at the reserved matters stage if outline planning permission is granted.

#### **Shropshire Council Planning Ecologist**

- 4.1.9 Two ponds within 100m of the site have been assessed for their potential for Great Crested Newts and scored 'poor' and 'below average' suitability respectively. The site has potential to be used by foraging and commuting bats. Conditions should be attached to the decision notice regarding:
- Work shall be carried out strictly in accordance with the Ecology report conducted by Dr Michael Worsfold (May 2013)
  - Submission of a lighting plan prior to the erection of any external lighting
- 4.1.10 Informatives should also be included, regarding:
- Protected status of Great Crested Newts
  - Protected status of bats
  - Excavation and closure of trenches in the same day to prevent wildlife from becoming trapped
  - Storage of building materials on pallets or skips to prevent their use as refuges by wildlife

#### **Shropshire Council Highways Development Control**

- 4.1.11 No objection to the proposal in principle. The access to the site had been amended from that proposed under application 12/04976/OUT (refused), relocating it slightly further to the south and combining it with the retained right of way to the fields to the rear. The layout of the site access remains acceptable but the verge should be satisfactorily reinstated with the closing of the existing access that used to serve the garage.
- 4.1.12 Conditions should be attached to the decision notice regarding:
- Access arrangements, parking and turning areas to be completed in accordance with approved plans
  - Access apron completed in accordance with Council specifications
  - No gates or other means of enclosure to be erected with 5m of highway boundary
- 4.1.13 An informative should be added regarding the requirement for a 'Licence to work on the highway'.

#### **Shropshire Council Affordable Housing Team:**

- 4.1.14 Core Strategy Policy CS11 requires all open market residential development to contribute to the provision of affordable housing. If the permission is granted, then



in accordance with the adopted Policy any consent would need to be subject to a Section 106 Agreement requiring an affordable housing contribution. The contribution will need to accord with the requirements of the SPD Type and Affordability of Housing and will be set at the prevailing percentage target rate at the date of the Reserved Matters. It should be noted that the current prevailing target rate will be changing from the 1st September 2013 and thereafter subject to an annual review.

### **Shropshire Council Public Protection**

4.1.15 No comment.

## **4.2 PUBLIC COMMENTS**

4.2.1 One letter of objection has been received, raising the following points:

- PC's comments are paramount
- Permission for the residential development on the opposite side of road was granted prior to public consultation of development across the cluster
- Septic tank alone unlikely to be sufficient to cater for the dwelling

## **5.0 THE MAIN ISSUES**

- Principle of development
- Layout and design
- Impact on residential amenity
- Drainage
- Ecology
- Highways
- Affordable Housing Contribution

## **6.0 OFFICER APPRAISAL**

### **6.1 Principle of development**

6.1.1 At the heart of the NPPF is a presumption in favour of sustainable development which means that proposals that accord with the development plan should be approved. The development plan for Shropshire is the Council's Adopted Core Strategy, the 'Type and Affordability of Housing' Supplementary Planning Document (SPD) and 'saved' policies from the preceding local plans; in this case, the Oswestry Local Plan. The Council is also in the process of producing a Site Allocations and Management of Development Plan (SAMDev), which is currently at the Revised Preferred Options stage with public consultation on this paper having finished in August 2013.

6.1.2 As detailed above, the Planning Policy team state that although the site is classed as 'open countryside' according to current and emerging policy and lacks local support (Parish Council), the site would effectively be classed as infill, could represent sustainable development and would only exceed the housing requirement of the Community Cluster by one dwelling. With reference to draft Policy MD3, it is considered that these material considerations are sufficient to justify a departure in this case. As such, the principle of development is considered acceptable.

## **6.2 Layout and design**

- 6.2.1 A proposed plan (No. 0038/2012/A) has been provided with the application which demonstrates that the site would utilise the existing field access from the road (following removal of the existing open-fronted building) which would lead to a turning area and garage towards the rear of the site. The access through to the field at the rear would be retained. The property would be situated towards the north of the site, alongside the field access/driveway, with a separate pedestrian access provided from the east. Garden area would be provided to the east (front) and west (rear).

The development site has been extended from that proposed as part of the previous refused application (12/04976/OUT) and there is considered to be sufficient room to provide an adequate vehicular turning area and garden amenity space. The permission for two additional dwellings on the site to the south, to be located either side of the existing dwelling 'Oakcroft', is at outline stage so the layout is yet to be finalised, although the position of the houses would be unlikely to have an adverse impact on the privacy or outlook of the proposed dwelling adjacent to Woodbury. The plot takes account of the approximate position of these proposed dwellings.

- 6.2.2 Although design is one of the reserved matters to be dealt with at a later application, proposed elevations have been submitted for the proposed dwelling to give an indication of its likely appearance. The house would be a simple two storey dwelling faced in brick and render with a pitched roof and front gable projection. As the outline permissions for residential development on the sites to the south and east would comprise two storey dwellings, and that the adjacent bungalow Woodbury has received permission for a first floor extension (currently being implemented), a two storey house in this location would not be considered out of place.
- 6.2.3 Overall the proposed layout would be satisfactory and an appropriately designed dwelling could be constructed without detriment to the character and appearance of the area.

## **6.3 Impact on residential amenity**

- 6.3.1 The indicative proposed elevation drawings for the dwelling suggest that the western elevation would be blank, so would not overlook the proposed dwellings at Oakcroft, and would only have three small windows on the north elevation, which would minimise any loss of privacy or outlook to/from the adjacent property Woodbury. It is the opinion of the officer that the development of the site could be carried out without having an unacceptable impact upon the residential amenities of the area, provided that due consideration is given to this in the final design of the dwelling. Therefore the proposal would be in accordance with policy CS6 of the Shropshire Core Strategy.

## **6.4 Drainage**

- 6.4.1 It is a requirement of Section 10 of the NPPF and policy CS18 of the Shropshire Core Strategy that the potential for flood risk be considered as part of any planning application. With this in mind the Council's Drainage Engineer has assessed the information submitted with the application. Further information is required to be submitted regarding full details, calculations and location plan of the proposed

percolation tests and soakaways, along with full details and sizing of the proposed septic tank. The Drainage Engineer is willing for these details to be conditioned and submitted for approval at the reserved matters stage if outline planning permission is granted. This addresses the concern raised by a neighbour regarding the septic tank and potential drainage issues, and the development would be carried out in accordance with the requirements of the NPPF and policy CS18 of the Shropshire Core Strategy.

## **6.5 Ecology**

6.5.1 As detailed above, the Planning Ecologist notes that the site has potential for foraging and commuting bats and low potential for Great Crested Newts. As precautionary measures, the conditions for carrying out development in accordance with the submitted Ecology report and submission of a lighting plan are attached as suggested, along with the proposed informatives.

## **6.6 Highways**

6.6.1 As detailed above, the Highways Development Control Officer considers the layout of the site to be acceptable and has no objection in principle, subject to the verge being reinstated by closing the access to the previous position of the garage. The conditions and informatives regarding completion of the access apron in accordance with Council specifications, location of gates and licence to work on the highway have been included as suggested. The condition regarding development in accordance with approved plans is already covered by the Council's standard condition regarding approved plans so has not been listed separately.

## **6.7 Affordable Housing Contribution**

6.7.1 The applicant has completed and signed an Affordable Housing Contribution proforma as part of the application. The provision of the financial contribution would form part of a Section 106 legal agreement. Officers note the recent Ministerial statement and amendments to the National Planning Practice Guidance as a material consideration in determining a planning application. However, following a subsequent decision by the Cabinet of the Council, the Council continues to give full weight to Policy CS11 of the adopted Core Strategy and Type and Affordability of Housing SPD and continues to seek on site provision of affordable housing and/or developer contributions to the provision of affordable housing in relation to all sites (please see the public statement of the Council 'as published on the website 30/01/15').

Given the above, it is recommended that planning permission be granted only subject to the satisfactory completion of a legal agreement to secure the provision of affordable housing in accordance with the terms of the policy. Non compliance with the requirements of adopted Core Strategy Policy CS11 would mean that the proposal would be in clear conflict with the aims and requirements of the Development Plan and should therefore be refused, unless other material considerations indicate otherwise.

## **7.0 CONCLUSION**

7.1 Although the site is classed as 'open countryside' according to current and emerging policy and lacks local support, material considerations are considered sufficient to justify a departure in this case. The proposed development could reasonably be considered to be sustainable in a way consistent with NPPF and it

seems unlikely that a single additional infill dwelling could be construed as significantly exceeding the agreed development strategy. The layout and design of the proposed dwelling is acceptable in principle and the development would have no significant impact on neighbours' amenities, drainage, protected species or highway safety. An affordable housing contribution would be secured through a S106 agreement. The application therefore accords with the principal determining criteria of the relevant development plan policies and approval is recommended, subject to conditions to reinforce the critical aspects.

## **8.0 RISK ASSESSMENT AND OPPORTUNITIES APPRAISAL**

### **8.1 Risk Management**

8.1.1 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 three months after the grounds to make the claim first arose.

8.1.2 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**

8.2.1 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.

8.2.2 First Protocol Article 1 requires that the desires of landowners must be balanced against the impact on residents.

8.2.3 This legislation has been taken into account in arriving at the above recommendation.

### **8.3 Equalities**

8.3.1 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.

## **APPENDIX 1**

### **Conditions**

#### **STANDARD CONDITION(S)**

1. Details of the layout, siting, landscaping and appearance (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 1(2) of the Town and Country Planning General Development (Procedure) Order 1995 and no particulars have been submitted with respect to the matters reserved in this permission.

2. Application for approval of 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 begin 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. 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.

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

5. Prior to the development commencing, full details, calculations and location plan of surface water soakaways and percolation tests (designed in accordance with BRE Digest 365) should be submitted in writing to the local planning authority for approval. A catchpit should be provided on the upstream side of the proposed soakaways.

Reason: To ensure that soakaways, for the disposal of surface water drainage, are suitable for the development site and to ensure their design is to a robust standard to minimise the risk of surface water flooding.

6. Prior to the development commencing, full details, plan and sizing of the proposed septic tank including percolation tests for the drainage fields should be submitted to the local planning authority for approval, including the Foul Drainage Assessment Form (FDA1 Form).

Reason: To ensure that the foul water drainage system complies with the Building Regulations H2.

7. No built development shall commence until details of all external materials, including hard surfacing, have been first submitted in writing to and approved by the Local Planning Authority. The development shall be carried out in accordance with the approval details.

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

8. 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 development shall be carried out in accordance with the approved details and thereafter 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**.

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

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

9. The access apron shall be completed in accordance with the Councils specification of 20mm thickness of 6 mm aggregate surface course, 40 mm thickness of 20 mm aggregate binder course and 200 mm thickness of MOT type 1 sub-base prior to the dwelling being first occupied.

Reason: In the interest of highway safety.

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

10. Notwithstanding the provisions of the Town and Country (General Permitted Development) Order 1995 or any order revoking and re-enacting that Order with or without modification, no access gates or other means of closure shall be erected within 5.0 metres of the highway boundary.

Reason: To provide for the standing of parked vehicles clear of the highway carriageway in the interests of highway safety.

11. Work shall be carried out strictly in accordance with the Assessment of Impact on Great Crested Newts conducted by Dr Michael Worsfold (May 2013) as attached as an appendix to this planning permission.

Reason: To ensure the protection of Great Crested Newts, a European Protected Species



Committee and Date

North Planning Committee

22<sup>nd</sup> December 2015

Item

**6**

Public

## Development Management Report

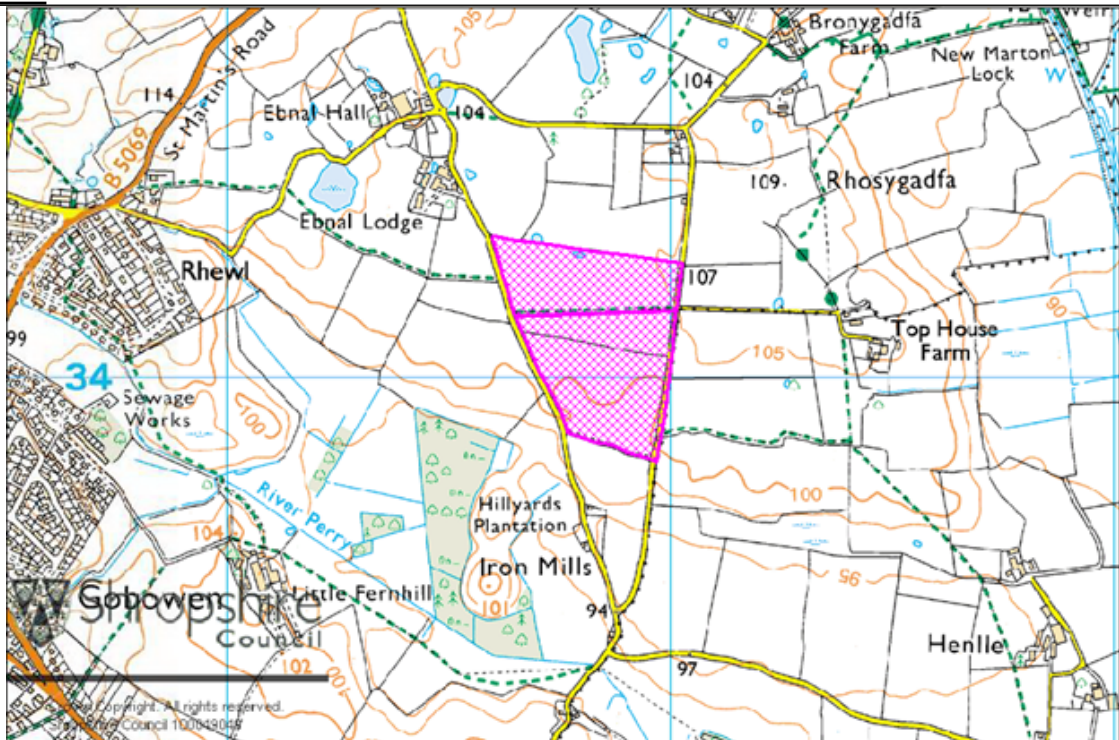
Responsible Officer: Tim Rogers

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> 15/03975/FUL	<b>Parish:</b>	Selattyn And Gobowen
<b>Proposal:</b> Construction of a solar farm to include solar panel arrays, substation inverters, a primary substation, and perimeter stock fencing		
<b>Site Address:</b> Land At Rhosygadfa Gobowen Shropshire		
<b>Applicant:</b> Mr David Meehan		
<b>Case Officer:</b> Kelvin Hall	<b>email:</b> <a href="mailto:planningdmc@shropshire.gov.uk">planningdmc@shropshire.gov.uk</a>	

**Grid Ref:** 332047 - 334123



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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 is a resubmission of a previous application for a solar farm for which planning permission was refused by Members in July 2015 (ref. 14/03946/FUL). The proposed development has been revised to seek to address the reasons for refusal, which were as follows:

1.2 *It was acknowledged that substantial weight should be given to the generation of renewable energy proposed by the scheme, noting local and national policies, however very significant weight was given to the scale and massing of the development which would introduce an alien and discordant element to the landscape causing significant detrimental visual impact to the landscape character of the surrounding area. Recognising the intrinsic character and beauty of the countryside, the Committee were concerned that the proposed hedgerow and tree planting scheme in conjunction with the existing trees and hedgerows did not adequately mitigate against the detrimental impact of the development on the surrounding countryside. The Committee also felt that the proposed development would result in diminished enjoyment of the public rights of way which run alongside and through the site. Although the available evidence was that the site was not best and most versatile agricultural land, nevertheless it has been productive and is not brownfield land where it was considered that such developments would be better sited, this being a further albeit minor, negative factor weighing against the scheme. Accordingly it was considered that the impacts of the scheme are not and cannot be made acceptable. For these reasons it was felt that the proposed development was contrary to Shropshire Council Core Strategy Policies CS5, CS6 and CS17 and paragraphs 17, 98, 111 of the National Planning Policy Framework (NPPF).*

1.3 The revised application seeks to address the concerns raised by Members, and proposes a significant reduction in the size of the site, from approximately 21 hectares to approximately 13.5 hectares. As a result the capacity of the site would be 5MW compared to 10MW as previously proposed. The main changes to the proposal comprise:

- the removal of the two easternmost fields from the site;
- a reduction in the number of panels from 40,000 to 20,000;
- a corresponding reduction in the number of ancillary buildings associated with the proposal;
- an increase in the distance between the solar panels and the public right of way that runs through the site.

1.4 As a result of these modifications, the details of the revised proposal are as follows. The proposal would comprise the installation of 20,000 solar panels that would generate 5MW of electricity. The panels would be installed within west-east orientated rows. They would be mounted on fixed aluminium frames, of galvanized steel, in a double portrait configuration. These frames would be bolted onto vertical galvanized steel posts which are pushed into the ground. The panels would face south, angled at 25 degrees to the horizontal, with the highest edge at a height of



between 2.4 metres and 2.8 metres and the lowest at 0.8 metre.

- 1.5 Buildings and other infrastructure proposed comprises the following:
- 4no. inverter substation buildings (to convert DC to AC): 7 metres x 2.5 metres x 3 metres high, coloured green. Two would be located at the north-western side of the site; two would be located within the central part of the southernmost field
  - 1no. primary electricity substation: 6 metres x 3.2 metres x 3.4 metres high. This would be a green-coloured portacabin style building, located at the north-western side of the site
  - Perimeter fencing: 2.45 metres high wooden post and wire deer fencing
  - Stone access tracks to provide vehicular access to the inverters.
- 1.6 No CCTV security cameras are proposed. Once the panels have been erected the land is proposed to be grazed by sheep. It is proposed that the panels would be removed at the end of their operational life.
- 1.7 The application is supported by a number of detailed documents, including: Landscape and Visual Impact Assessment; Heritage Impact Assessment; Ecological Assessment; Traffic Statement; Flood Risk Assessment; Agricultural Land Classification Report.
- 2.0 **SITE LOCATION/DESCRIPTION**
- 2.1 The application site is located on agricultural land approximately 1km to the east of Gobowen. The site covers an area of approximately 13.5 hectares, and comprises three agricultural fields that are situated between two public highways. The site is located between 99m and 107m AOD, within a gently rolling landscape which slopes down towards the south-west. Surrounding land is generally in agricultural use. A public right of way runs in a generally west – east orientation along the southern boundary of the northernmost field. The fields within the application site are bounded by hedgerow. A pond is located at the northern side of the site.
- 2.2 The nearest residential properties to the proposed site boundary include: Yew Tree Cottage, approximately 145 metres to the south; Ebnal Lodge, approximately 185 metres to the north-west; Rose Cottage, approximately 215 metres to the south; The Bryn, approximately 290 metres to the north; and properties at Ebnal Hall approximately 315 metres to the north-west. The nearest Listed Buildings are Ebnal Hall (the property itself being 385 metres away) and Ebnal Lodge; both Grade II Listed buildings.
- 2.3 Access to the inverter substations would be required, and access to these would be gained via existing field access points.
- 3.0 **REASON FOR COMMITTEE DETERMINATION OF APPLICATION**
- 3.1 The views of the Parish Council is contrary to the Officer recommendation.
- 4.0 **COMMUNITY REPRESENTATIONS**
- 4.1 **Consultee Comments**
- 4.1.1 **Selattyn and Gobowen Parish Council**

Strongly objects.

This application comes quickly on the back of a previous application for the same site which was rejected at the North Shropshire Council Planning Committee due to its non-compliance with Shropshire Council's own Policies CS5; CS6; CS8; CS13; and CS16 of the core strategy. This application contains no substantial change to the original application and fails to address a number of objections raised previously by this council at the consultation stage and identified by the committee in their written decision, namely:

Massing: This application will see over 20,000 panels en bloc on one site covering a total of over 34 acres, still introducing an 'alien and discordant' element to the landscape.

Concerns over landscape management: The application's report has not changed and therefore fails to address the problems previously identified by the committee and community (see comments below).

Concerns over diminished enjoyment of PROW: This site, the surrounding lanes and PROW are well used by locals and visitors to enjoy the character of our Shropshire countryside, no changes have been proposed to the management of this PROW in the new application (see additional comments below).

Land Quality: The council disputes the report submitted with regard to the grading of the land (see additional comments below).

The fact that this new application has been submitted so soon after the rejection of the previous application makes a mockery of the planning process.

Whilst the Council is not opposed to renewable energy they consider that solar panels should be on industrial buildings and housing, not put on good prominent agricultural land as is the case with this application. The population is increasing which makes food production even more important so good agricultural land, as this is, will be needed to produce the food.

In addition, the areas of objection to this application highlight:

Traffic:

- Traffic report cite 7 accidents between St. Martins School and Gobowen but very selective in the years. Recommend extension to last 10 years.
- No mention of the narrow bridge, one way traffic, on the B5070 between Gledrid and St Martins School this poses a significant bottleneck for local traffic and construction vehicles.
- Vehicles described are large and will cause access problems for other road users – pedestrians/dog walkers, cyclists and horse riders.
- No mention is made about the safety of leisure users during construction. The vehicles to be used are as wide as the lane (2.5m) from the B5069 to the site.
- The large articulated lorries cannot turn at the site so will have to reverse back down the route also during unloading there will be major and significant inconvenience to other highway users, there are no provisions for unloading bays or turning areas in the application.

Probably the transport management plan will not be overseen by the applicant but

by the sub contractors who will be working on wafer thin margins, so who will care about the locals?

Land classification:

- The site is prime agricultural land NOT as stated poor quality grade 4 and 5.
- Report is contradictory. 7.0 states' 541r – The soil is WICK series1 which is deep well drained coarse loamy and sandy soil, then 7.1.1 States' that one field has 3- inches of soil' and the other 5 inches of soil One of the fields is currently being rented and has been planted with maize, which can-not be done in '3 inches of soil'. This begs the question - Why would a farmer rent a field to plant maize, (establishment costs are in the region of £250/300 per acre excluding rent) if the field was unsuitable for its production and would not be financially viable?
- What is written in the application regarding the grade quality of the field (it says it is Grade 5 land) does not match the current use and productivity of the land, it is wrong. Mention is made of stones but their size is not given and neither their type, which can have a profound difference on the grading result. Are the stones hard or soft? Therefore, the consultant should be asked to reassess the fields.

Leisure use:

- The lanes surrounding the proposed site and the rights of way in the area are well used by cyclists, runners, walkers, hikers and horse riders. The installation of solar panels would spoil the recreation and enjoyment for all users.
- The proposed fence and high hedges will all have a detrimental impact on the landscape character of the area and the enjoyment of all recreational users and residents. The area is well used by locals and others, even a Liverpool cycling club.
- The hedge bordering the south of the site is not in the ownership of the applicant. It is privately owned and trimmed annually by the owner. Therefore there will be no screening on the southern boundary of the site

Effect on local community:

- The application will not bring any financial, employment or environmental benefit to the community. It will impact upon visitor numbers by driving them away thus reducing the viability of our local tourist facilities
- It will be a blot on the landscape
- Overlooking /loss of privacy – This application will have a significant impact on neighbouring properties and residents.
- Public visual amenity – The application does not present a true picture of the impact on the surrounding countryside as it will be visible from a long distance. It will have a negative visual impact on local countryside.
- Overbearing nature - The Parish Council considers that the proposals are overbearing. Fact - any newly planted hedges will not be grown to the height specified until half way through the life of the site. Due to the hedges being grown for screening purposes, they are unlikely to be cut until they have reached the required height, which will produce thin leggy hedging that in winter will provide negligible screening. Current hedges are in such a poor state that they will not screen the site.

In addition to these objections the Parish Council wishes to submit the following

comments about the application.

- It is concerned over the number of errors and omissions in the supporting documents in the application.
- Local land has been very productive locally for over 100 years. The evidence on the ground doesn't match the information in the application.
- Still mentions Rhyn Park School it is St Martins Through School -proof that the application is recycled.
- There were no photos in the pack received by the council just 13 blank pages.
- Clarification is needed on the exact sizes of the proposed panels.
- No new crested newt survey has been undertaken; they are using the previous survey.
- The application mentions farm diversification but makes no mention of how this development if successful will impact upon the viability of the farming business in relation to the safeguard of jobs or the creation of others. This is diversification for an income stream for the land owner.
- Concern about the impact that noise from the inverters and generators will have on residents, leisure users and wildlife in the area.
- The applicant does not provide any evidence that any brownfield sites have been considered as an alternative location for a solar farm in the area. The Parish Council believe that the applicant should show evidence of this as part of the requirements of the National Planning Policy Framework. Is the application valid without a brownfield site survey?
- Application doesn't declare the number of panels,
- Clarification needed about the annual energy output from the site in normal Gobowen weather.
- The height of the solar panels makes them a blot on the landscape
- The application does not specify the route grid connection will it be underground? Will this result in a new overhead line involving posts and structures imposing more unsightly infrastructure on the area. We need to see the route as does the planning committee, another example of the lack of care in the preparation of the application.

There is no prescribed quota for the production of energy by each uk county, currently Shropshire has approved 150MW OF SOLAR ENERGY PRODUCTION and there are numerous AD and wind turbine facilities in operation. The county is already doing its bit.

- 4.1.2 **Whittington Parish Council** (adjacent parish) Objects. The revised application, though does not affect land, actually, in the parish of Whittington, does border the Parish and members believe this Solar Farm to be totally inappropriate despite the reduction in size.
- 4.1.3 **SC Highways** No response received. In relation to the previous refused proposal, the Highways Officer raised no objections subject to a condition requiring the submission of traffic mitigation measures for approval.
- 4.1.4 **SC Public Protection** No objections. The proposed development will not have a significant impact on the amenity of the area.
- 4.1.5 **SC Drainage** The surface water run-off from the solar panels is unlikely to alter the greenfield run-off characteristics of the site therefore the proposals are acceptable.

4.1.6 **SC Trees** No response received.

4.1.7 **SC Ecologist** This is a revised and smaller proposal following refusal of application 14/03946/FUL.

Great crested newts: Greenscape Environmental have identified 10 groups of ponds within 500m of the application site. One of the ponds is on the application site and has a Habitat Suitability Index (HSI) score of 0.37, i.e. with 'poor' suitability for great crested newt breeding. One torching session was also carried out which revealed no newts. The pond is shown for retention in the scheme layout and for restoration in the Biodiversity Management Plan. Pond 2 immediately to the north of the site did not contain water and Pond 3 had a low HSI and was torched on four occasions with no newts found.

Ponds with 'average' or 'good' suitability were subject to presence/absence surveys. Small populations of GCN were identified in Ponds 4c and 4d, sited over 380m from the application site with no GCN found in other ponds surveyed.

Because of the distance of the GCN populations from the application site, Greenscape Environmental considers that the risk of harm will be sufficiently reduced by carrying out installation of the solar farm under a strict method statement. A condition is recommended to require that work is carried out in accordance with the Environmental report (see Appendix 1).

Badgers: An active badger sett was found over 250m from the site. There was an outlier sett on the site with badger activity found around the central hedgerow. The August 2015 Greenscape report recommends a 10m buffer zone around the badger sett holes, and on one occasion 15m. Drawing JPW0402-011 submitted with the new application indicates a minimum 20m stand off from the badger setts, with this distance also given in the Biodiversity Management Plan.

Greenscape Environmental includes a method statement for badgers in their Phase 1 report and installing badger gates into the security fencing in their report, which the condition recommended above will require implemented. To ensure no breach in the legal protection for badger setts in The Badger Act 1992 it is recommended that the 20m stand off is implemented.

Biodiversity Management Plan: A Biodiversity Management Plan has been submitted with this new application, which includes grazing beneath the proposed solar panels, wildflower rich planting on the field margins, hedgerow management and various habitat enhancements such as bat and bird boxes and hibernaculum. A condition is recommended requiring that work is carried out strictly in accordance with the Biodiversity Management Plan (see Appendix 1).

Under Regulation 61 of the Conservation of Habitats and Species Regulations (2010), the proposed works will not have a likely significant effect on any internationally designated site. An Appropriate Assessment is not required.

4.1.8 **SC Rights of Way** Our comments made on 14/03946/FUL with regard to Selattyn & Gobowen Footpath 24Y are still applicable. There is no outlet onto the county

end at the western end of Footpath 24Y on the definitive line, despite records of a stile kit having previously been delivered to the landowner. It is not clear whether footpath users will be able to exit onto the road via the existing gate access in the field to the south of the PROW. Therefore, the most appropriate course of action would be for the stile kit already delivered, or preferably a pedestrian gate, to be installed on the definitive line.

4.1.9 **SC Archaeology** Recommends a condition.

The Shropshire Historic Environment currently contains no records of any known heritage assets with archaeological interest within the proposed development site itself. There are records for a possible cropmark enclosure and ring ditch (HER PRN 02158) and two further possible ring ditches (HER PRN 02288), c.400m south and c.650m south-east of the site respectively. In addition, an area of probable WWI practice trenches (HER PRN 02858) is also recorded c.300m south-west of site. The Tithe Award Map for Ebnal Township in Whittington Parish of 1839 records a Brickkiln Field (plot 1405) in the north-western part of the site. The Shropshire Historic Landscape Character (HLC) assessment assigns the site to the 'planned enclosure' HLC Type, suggesting the field pattern was originally created through the enclosure of a former common. This is confirmed by the Desk Based Assessment that has been submitted with the application, which reproduces an Enclosure Map of 1781. This Assessment also identifies the sites of two former post-medieval common edge cottages in the north-eastern part of the site. Based on the analysis of HER data and historic maps, the Desk Based Assessment concludes that the proposed development site has moderate archaeological potential overall, with low-moderate potential for prehistoric remains and high potential for post-medieval remains.

It is advised that the archaeological Desk Based Assessment by Foundations Archaeology provides a satisfactory level of information about the archaeological interest of the proposed site in relation to Paragraph 128 of the NPPF.

To provide an appropriate level of archaeological mitigation, and in line with Paragraph 141 of the NPPF, it is advised that a phased programme of archaeological work should be a condition of any planning permission for the proposed development. This should comprise a pre-commencement geophysical survey, followed by further mitigation as necessary and appropriate (see Appendix 1).

4.1.10 **SC Conservation** In relation to the previous application that was refused, the Conservation Officer noted that no impact on the setting of Old Hall (Grade II\* listed building) at Old Marton is perceived. The Officer commented that, having reviewed the updated information supplied by the agent, it would appear that the proposed solar farm will have a minimal impact on the significance of Ebnal Hall, therefore no objection is made to the revised submission.

4.1.11 **Historic England** No comments. The application should be determined in accordance with national and local policy guidance, and on the basis of your specialist conservation advice.

4.1.12 **Natural England** No objections and no conditions requested. The proposed

amendments to the original application relate largely to size, and are unlikely to have significantly different impacts on the natural environment than the original proposal.

Wildlife and Countryside Act 1981 (as amended): This application is in close proximity to Fernhill Pastures Site of Special Scientific Interest (SSSI). Natural England is satisfied that the proposed development being carried out in strict accordance with the details of the application, as submitted, will not damage or destroy the interest features for which the site has been notified. Therefore this SSSI does not represent a constraint in determining this application.

Green Infrastructure potential: The proposed development is within an area that Natural England considers could benefit from enhanced green infrastructure (GI) provision. As such, Natural England would encourage the incorporation of GI into this development. There may be opportunities for various types of grassland and ponds. Consideration should be given as to whether the areas between panels themselves could be better managed to benefit biodiversity. Natural England would be happy to discuss possible ways of managing the grassland to benefit biodiversity as the proposal progresses towards implementation.

Other advice: The LPA should consider impacts on local sites (biodiversity and geodiversity), local landscape character, and local or national biodiversity priority habitats and species.

Protected Species: We have not assessed this application and associated documents for impacts on protected species. Standing Advice should be applied to the application.

Soils and Land Quality: From the documents accompanying the consultation we consider this application falls outside the scope of the Development Management Procedure Order (as amended) consultation arrangements, as the proposed development would not appear to lead to the loss of over 20 ha 'best and most versatile' agricultural land (paragraph 112 of the NPPF). For this reason no detailed comments on this are offered.

Biodiversity enhancements: This application may provide opportunities to incorporate features into the design which are beneficial to wildlife, such as the incorporation of roosting opportunities for bats or the installation of bird nest boxes. The authority should consider securing measures to enhance the biodiversity of the site from the applicant, if it is minded to grant permission for this application, in accordance with para 118 of the NPPF. Attention is drawn to S40 of the Natural Environment and Rural Communities Act (2006) regarding conserving biodiversity.

4.1.13 **Ramblers Association** Objects. As there is no difference in this application to the treatment of Selattyn & Gobowen Footpath 0310/24Y/1 in the previous application, we maintain our objection to this Application. It plans to turn a very rural footpath, and one which it is currently difficult/impossible to use, into an enclosed route in an 'industrial' surroundings.

4.1.14 **CPRE, South Shropshire** Objects for the following reasons:

- a reduced size, reduced area, reduced number of panels but it remains a major

development that will cover 34.35 acres and would severely damage the character and appearance of the local countryside

- would cover two sloping fields with many thousands of large inert solar panels, seriously damaging aspects of the rural economy – particularly those associated with recreation and tourism
- still does not comply with the requirements of Policy CS5 of the Core Strategy because it would not maintain and enhance countryside vitality and character nor would it improve the sustainability of the rural community by bringing in local economic and community benefits, and it is not one of the specified preferred development types
- thousands of solar panels sited on sloping land will have considerable visual impacts because of the size and the industrial nature of the panels in a tranquil agricultural area
- LVIA is flawed and biased; does not carry out mapping in the ZTV or the ZVI; does not provide photographs from all points of visibility on the two footpaths; does not address the lack of screening from October to March
- visual disruption of existing field pattern with security fencing and an uncultivated buffer between the panels and existing hedgerows
- does not comply with Policy CS6 because it will be an off-the-shelf package and not designed to a high quality, using sustainable design principles: it would not ‘protect, restore, conserve and enhance the environment – rather the reverse: would not make the most effective use of land by taking out over 34 acres of productive land –both arable and pastoral and covering it with ugly man-made panels surrounded by intrusive security fencing for at least 25 years
- does not comply with Policy CS8 because it would not protect and enhance existing facilities, services and amenities that contribute to the quality of life of residents and visitors: it has not been demonstrated that it will have ‘no significant impact on recognised environmental assets.’
- does not comply with some of Policy CS13 requirements as it fails to recognise the economic benefits of Shropshire’s environment and quality of life as unique selling points which need to be valued, conserved and enhanced: nor does it recognise the continued importance of farming for food production
- would undermine Policy CS16 because it would harm the delivery of high quality, sustainable tourism, and cultural & leisure development: it will not promote nor preserve the rural area
- insufficient information and commitment has been submitted to demonstrate that the management regime is workable or that it will be carried out consistently during the 25 years the site will be used as a solar industrial site.

4.1.15 **Councillor David Lloyd MBE** has advised that local opposition, including that of Gobowen and Selattyn Parish Council, remains strong. The proposal is seen as an alien and inappropriate intrusion into open countryside that is a haven for wildlife and is popular and well used for recreational activities in the locality. A potential blot on the farmscape, there is also concern at the loss of good land that has for years produced quality livestock and crops that the nation can ill-afford to lose.

## 4.2 Public Comments

4.2.1 The application has been advertised by site notice and in the local press. In addition direct notification has included those properties from which representations were received in relation to the previous refused application. In total 26 objections and one letter of support have been received from the public. These can be viewed



in full in the planning file, but have been summarised as follows:

#### 4.2.2 Objections:

##### Visual impact and agricultural land:

- Allowing hedges to grow to 3 metres as mitigation for visual impact is nonsense
- Would destroy a large area of countryside
- Comprises high quality farmland
- Land has been used for cattle grazing and crops, so land is not unworkable
- Would take agricultural land out of production for 25 years
- Impact on landscape for walkers, cyclists and residents
- Impact on views from villages like Selattyn and the Oswestry iron age hillfort
- Query accuracy of assessment of agricultural land classification
- Fields have been used for potato growing in the past and a good number of bales of winter feed
- Allowing hedges to grow will not be adequate as panels would still be visible
- Would be visible from proposed houses close to Whittington Road and surrounding hills
- Would lead to an over-industrialising effect on an undulating landscape
- Hedge on the southern boundary is not in the applicant's ownership and is trimmed regularly and therefore provides no screening whatsoever

##### Ecology and drainage

- Damaging to wildlife, including barn owls, nesting birds and buzzards;, peregrine falcons, red kites, lapwings
- Birds will be liable to be burnt from the solar panels reflection
- Biodiversity management plan doesn't adequately say how birds will be affected
- The area is habitat for diverse wildlife including birds of prey, toads and great crested newts

##### Highways and Access

- construction traffic management statement is incomplete and misleading: should include the number of recorded accidents on the B5070; the years selected to illustrate the number of accidents shows only 2 serious ones whereas in recent years that has been more than 2 fatalities
- use of heavy vehicles would cause daily obstruction
- narrow roads not wide enough for two small vehicles to pass let alone HGVs
- traffic impact during 4 month construction period

##### Local amenity

- damaging to tourism
- intrusion due to high perimeter fencing and CCTV cameras
- impact from fencing off public walkway
- need to know what the projected level of noise would be
- should be further sound absorbing barriers erected near the converters
- noise assessment should be revisited to take account of prevailing wind as assessment was done when calm
- impact on enjoyment of public paths
- impact on use of area by walkers, cyclists and horseriders
- long term effects on peoples' health

Policy and principle

- solar farms should be built on waste land that cannot be used for anything else
- should be built on brownfield sites, or on the roofs of houses, schools, factories, hotels, shops
- Environment Secretary has expressed concerns over spread of solar farms on productive agricultural land
- Minister for Energy and Climate Change has discouraged development that has negative impacts on food production, landscape and communities
- Appeals have been dismissed due to impact on landscape and loss of arable land
- Energy Minister wants solar developments on industrial roofs, homes and on brownfield sites not in the countryside
- Renewable Energy Foundation say that the technology is too expensive to form a major component
- Solar panels are not viable without huge grants paid by the Government
- Production of solar panels will use more energy than they will ever produce

Other Issues:-

- should be possible to project a realistic output and relate this as a realistic number of household's usage of time
- will set a precedent for similar proposals
- concerns over costs of dismantling the site after the 25 year period
- impact on house values
- Council has been flooded with small-to-large scale solar farm applications in the countryside in recent years and have done more than their fair share in supporting green energy
- No economic contribution to the local economy

4.2.3 The reasons for support are as follows:

- Solar farms are noiseless, odourless and hidden from view behind hedges
- Would not lead to loss of agricultural land as land would be used for sheep grazing
- Better than fracking
- Need to build a viable power source for our future generations

5.0 **THE MAIN ISSUES**

- Principle of development
- Siting, scale and design and impact on landscape character
- Site selection and agricultural land classification considerations
- Local amenity and other considerations
- Highways and access consideration
- Historic environment considerations
- Ecological considerations
- Flood risk and drainage considerations

6.0 **OFFICER APPRAISAL**6.1 **Principle of development**

6.1.1 Applications for planning permission should be determined in accordance with the

Development Plan unless material considerations indicate otherwise. The Development Plan policies relevant to the current proposal are discussed below. In addition to these, the National Planning Policy Framework (NPPF) sets out the Government's planning policies and this is a material consideration which should be taken into account in the determination of this application. Further national policy guidance is provided by National Planning Policy Guidance (NPPG).

- 6.1.2 Renewable energy: The NPPF sets out core land-use planning principles, and one of these is to support the transition to a low carbon future. This includes encouraging the use of renewable resources. The current proposal is in line with this. The NPPF advises local planning authorities to recognise the responsibility on all communities to contribute to energy generation from renewable or low carbon sources (para. 97). It states that:
- applicants do not need to demonstrate the overall need for renewable energy;
  - it should be recognised that even small-scale projects provide a valuable contribution to cutting greenhouse gases;
  - applications for renewable energy should be approved if its impacts are (or can be made) acceptable.
- 6.1.3 The Shropshire Core Strategy provides similar support by stating that the generation of energy from renewable sources should be promoted (Strategic Objective 1), and that renewable energy generation is improved where possible (Policy CS6). Core Strategy Policy CS8 positively encourages infrastructure, where this has no significant adverse impact on recognised environmental assets, that mitigates and adapts to climate change, including decentralised, low carbon and renewable energy generation, and working with network providers to ensure provision of necessary energy distribution networks.
- 6.1.4 Planning Practice Guidance on Renewable and low carbon energy sets out the particular planning considerations that apply to solar farm proposals (see Section 10.2 below) and states that increasing the amount of energy from renewable and low carbon technologies will help to make sure the UK has a secure energy supply, reduce greenhouse gas emissions to slow down climate change and stimulate investment in new jobs and businesses. The UK Government's target is to generate 30% of UK electricity from renewable sources by 2020. It has also signed up to the EU Renewable Energy Directive which includes a UK target of 15% of energy from renewables by 2020.
- 6.1.5 The proposed development would be capable of generating 5MW of renewable energy. The supporting documents state that this output is equivalent to the annual electricity requirements of approximately 1,500 typical households. The proposal would provide significant environmental benefits in terms of the production of renewable energy. As such the principle of the proposal is in line with planning policies and national guidance.
- 6.1.6 Rural diversification: Core Strategy policy CS13 provides support for rural enterprise and diversification of the economy. This is in line with the NPPF which seeks to support a prosperous rural economy by stating that local plans should promote the development and diversification of agricultural and other land-based rural businesses. The proposal would ensure that the agricultural use of the land can continue whilst providing an alternative revenue stream for the farm holding.

As such Officers accept that the proposal would bring about a positive effect on the farm business.

**6.2 Siting, scale and design and impact on landscape character**

- 6.2.1 Core Strategy policy CS6 seeks to ensure that development is appropriate in scale and design taking into account local context and character, having regard to landscape character assessments and ecological strategies where appropriate. Policy CS17 also seeks to protect and enhance the diversity, high quality and local character of Shropshire's natural environment and to ensure no adverse impacts upon visual amenity, heritage and ecological assets. It should be noted that the site does not fall within an area designated for landscape importance. It is also acknowledged that the development would be temporary, and a condition can be imposed requiring that the panels would be removed at the end of their operational life or after 25 years, whichever sooner.
- 6.2.2 The application is accompanied by a Landscape and Visual Impact Assessment (LVIA). The LVIA states that the area is a relatively enclosed landscape of irregular field patterns. The LVIA notes that long distance views of rising hills to the west are available from the site. It states that, while the massing of the solar panels across the site would be considerable, the visual envelope for the site is well contained and limited to 0.1km – 1km from the site. The LVIA states that the localised topography and vegetation cover surrounding the site limits views into and out of the site. It states that this, combined with the overall low-lying form and scale of the development, which will be no greater than 3 metres in height, will result in the development not appearing as a prominent feature within the wider landscape.
- 6.2.3 In terms of impacts on visual receptors, LVIA states that visual effects are limited by the lack of sensitive receptors close to the site and levels of screening. It considers that many roads are bordered by mature hedgerows and hedgerow trees, and views are likely to be glimpsed. In relation to views from residential properties, it states that these are generally screened by boundary vegetation and topography.
- 6.2.4 The LVIA identifies that notable visual effects are expected for receptors along the public highways and public rights of way adjacent to the site. In particular the roads along the eastern and western boundaries of the site, and the public footpath through the site. It concludes that, for all notable landscape and visual effects, the impact is considered to be moderate-substantial.
- 6.2.5 In terms of visual impacts from residential properties, the LVIA states that there would be limited views of the proposed development from the properties around Top House Farm to the east of the site due to intervening mature hedgerow. It suggests that the impact on these properties would be negligible to slight-moderate. It states that a very small proportion of part of the site would be visible from properties at Ebnal Hall through gaps in vegetation, and assesses this impact as slight-moderate.
- 6.2.6 The proposed development would retain existing trees and hedgerow at the site. In terms of mitigation it is proposed to manage existing hedgerow at the site to a height of 3 metres. In addition, tree and hedgerow planting would be undertaken to close up gaps in existing cover and provide further screening.

- 6.2.7 The application for which planning permission was refused in July 2015 proposed a 10MW capacity site covering an area of 21 hectares. The current application proposed a solar farm which is significantly smaller in terms of scale and massing. Officers consider that the current proposal would have a significantly smaller impact upon the visual qualities of the local area, albeit at the expense of a corresponding reduction in renewable energy benefits.
- 6.2.8 The proposed development would be visible in the local landscape. However the existing trees and hedgerow in the area, together with the additional landscaping proposed and hedgerow management would restrict open views of the site. Furthermore it is considered that the site is located sufficiently distant from dwellings to ensure that any limited views of the development would not have an overbearing impact upon residential amenity. The reasons for refusal of the previous application referred to Members concerns over the diminished enjoyment of the public rights of way in the area. Following a request from Officers the applicant has agreed to set the panels further back from the public footpath that runs through the site. This would ensure that there would be a 7 metres wide corridor between the hedgerow and the perimeter fence along the route of the path, compared to 5 metres previously. Given that the panels would be set back a further 3 metres from the perimeter fence, there would be a gap of 10 metres between the hedgerow and the panels. It is not considered that the proposed development would have an overbearing impact upon users of the rights of way in the area. Longer distance views to the west may be possible however these are not considered to be significant given that these would be at a distance of many kilometres away.
- 6.2.9 Officers conclude that the proposed development would have some impact upon the local landscape character of the area, through the introduction of a man-made development across the three fields. However it is considered that the mitigation measures proposed are sufficient to ensure that this impact is reduced to acceptable levels, particularly when considered in relation to the environmental benefits that the renewable energy proposal would bring about. As such it is considered that the proposal can be accepted in relation to Core Strategy Policy CS6.
- 6.3 **Site selection and agricultural land quality considerations**
- 6.3.1 Planning Practice Guidance advises that local planning authorities should encourage the effective use of land by focussing large scale solar farms on previously developed and non agricultural land, provided that it is not of high environmental value (para. 013). The comments of Selattyn and Gobowen Parish Council regarding brownfield sites are noted, however it is accepted that planning policy and guidance does not restrict the use of greenfield land for solar farms. The site does not contain any specific land-use designations in respect of landscape or ecological value.
- 6.3.2 Planning Practice Guidance advises that, in considering solar farm proposals located on greenfield sites, local planning authorities should consider whether the proposed use of any agricultural land has been shown to be necessary and poorer quality land has been used in preference to higher quality land; and the proposal allows for continued agricultural use where applicable and/or encourages

biodiversity improvements around arrays.

- 6.3.3 The Guidance also makes reference to a Ministerial Speech made in April 2013 and a Written Ministerial Statement (WMS) made in March 2015. In relation to the former, this stated that where solar farms are not on brownfield land, the industry should be looking at sites on low grade agricultural land where grazing can take place in parallel with generation. In relation to the WMS this states that meeting our energy goals should not be used to justify the unnecessary use of high quality agricultural land. It states that any proposal for a solar farm involving the best and most versatile agricultural land needs to be justified by the most compelling evidence.
- 6.3.4 An Agricultural Land Classification (ALC) report has been submitted with the planning application, to establish the classification of the fields contained within the application site. This is based upon a desktop study and fieldwork undertaken by agricultural consultants. The fieldwork included the digging of a number of trial holes to inspect soil characteristics such as soil depth and stoniness. Based upon this assessment, part of the site is Grade 4 (poor quality) and part is Grade 5 (very poor quality).
- 6.3.5 A number of comments have been received that the land is of a higher agricultural land quality than claimed, and that the land has previously successfully grown wheat and potatoes. The applicant has previously confirmed that the Defra guidance for undertaking land quality assessment advises that the particular grade attributed to land is determined by the most limiting factor present. On the basis of the evidence provided by the Agricultural Land Classification report the proposed development would not affect the 'best and most versatile' agricultural land (classed as land of Grade 1, Grade 2 or Grade 3a). The proposal would therefore be sited on poorer quality agricultural land.
- 6.3.6 It is noted that the land would remain in agricultural use, as it is proposed that sheep would graze between the panels. In addition there would be long-term biodiversity enhancements proposed by way of additional hedgerow planting and some tree planting, and the land would be reinstated at the end of the lifespan of the development. On this basis, it is considered that the proposed development is in line with planning guidance as set out in paras. 6.3.2 and 6.3.3 above.
- 6.3.7 Nevertheless it is noted that the Agricultural Land Classification report identifies limitations of the soil for agricultural use. It is considered that opportunities to undertake some improvement to the soil could be explored, such that the agricultural productivity of the land is increased over the lifetime of the solar farm development. A condition requiring that an assessment is submitted for approval which puts forward measures to improve the longer term quality of the land can be imposed.
- 6.4 **Local amenity and other considerations**
- 6.4.1 Core Strategy policy CS6 seeks to safeguard residential and local amenity.
- 6.4.2 Noise: A noise assessment report has been submitted as part of the planning application, based upon an assessment of background noise levels and the noise emitted by the inverters and transformers. This identifies that the nearest noise

sensitive receptors are at least 140 metres from the proposed development. However it should be noted that the distance between the noise generating equipment (i.e. the transformers and inverters) and the nearest properties is considerably greater than this. The noise report concludes that the noise level from the proposed solar farm would give rise to a low impact on noise-sensitive receptors in the area. The assessment indicates that it is unlikely that noise from the proposed solar farm would adversely impact upon the amenity of the nearest noise sensitive receptors.

6.4.3 The Public Protection Officer has advised that the proposal would not have a significant impact upon the amenity of the area. In relation to the previous application that was refused the Public Protection Officer undertook calculations of the likely noise levels and confirmed that the noise assessment conclusions are satisfactory.

6.4.4 Glint and glare: Planning practice guidance states that the effect on the landscape of glint and glare and on neighbouring uses and aircraft safety is a consideration when determining planning application for solar farms. It is considered that as the panels would be generally well screened by existing and proposed trees and hedgerows it is not anticipated that the proposal would result in adverse levels of impact upon local amenity due to glint or glare.

6.4.5 Decommissioning: Planning Practice Guidance on renewable energy recognises that solar farms are normally temporary structures and that planning conditions can be used to ensure that the installations are removed when no longer in use and the land is restored to its previous use (para. 013). In addition SAMDev Plan Policy MD8 states that proposals for temporary infrastructure will be expected to include measures for satisfactory restoration of the site at the earliest practicable opportunity. The applicant has prepared a Decommissioning Statement setting out arrangements for decommissioning the development at the end of its life (anticipated to be 25 years). This states that at the end of this period the system would be completely dismantled and removed from the site, and the site restored to its preconstruction state. It is considered that, should permission be granted, this is subject to a condition requiring the removal of the panels and other structures within 25 years, or when no longer required for the generation of electricity, whichever sooner.

## 6.5 **Highways and access considerations**

6.5.1 Once construction has been completed the application states that traffic generation would comprise vehicles associated with the maintenance of the site. The application states that the site would only need to be serviced on a quarterly basis, accessed by a van or car. It is not considered that the level of traffic that would be generated during the operation of the solar farm raises highways issues. It is noted that the Highways Officer raised no objections to the previous refused proposal.

6.5.2 In terms of the construction phase, it is anticipated that this would last for 12 weeks and would result in 60 large vehicle trips (i.e. 120 movements) during this period. Details of proposed routing and other traffic management measures such as signage, construction hours and dust control, have been provided in a Traffic Management Statement. It is considered that detailed matters can be agreed as part of an appropriate plan. A suitable condition is set out in Appendix 1 below.

## 6.6 **Historic environment issues**

- 6.6.1 Core Strategy Policy CS17 requires that developments protect and enhance the diversity, high quality and local character of Shropshire's historic environment. SAMDev Plan Policy MD13 requires that heritage assets are conserved, sympathetically enhanced and restored by ensuring that the social or economic benefits of a development can be demonstrated to clearly outweigh any adverse effects on the significance of a heritage asset, or its setting. Paragraph 134 of the NPPF requires that, where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. In addition, Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that, in considering whether to grant planning permission which affects the setting of a Listed Building, the local planning authority shall have special regard to the desirability of preserving the setting.
- 6.6.2 The planning application is accompanied by a Historic Asset report which has considered the significance of historic assets in the area and the likely impacts of the proposal on these. This concludes that the impact of the development on the historic landscape would be minor, given that the site is screened by mature hedgerows, and the impact on the character of the historic landscape would be slight adverse.
- 6.6.3 The report identifies that the only settings issue is that relating to the intervisibility between the site and Ebnal Hall, a Grade II Listed Building to the north-west. It states that the solar panels may not be visible from Ebnal Hall and if they are they will only be glimpsed through intervening hedgerows and mature trees. As such the report considers that the magnitude of the impact is negligible at most.
- 6.6.4 It is considered that views of the proposed development from Ebnal Lodge would be obscured by existing intervening vegetation. As such it is not considered that the proposal would adversely affect the setting of this Listed Building. In relation to the previous refused application, which related to a significantly larger site, the Historic Environment Officer was of the view that the proposed development would have minimal impact on the significance of Ebnal Hall, and raised no objections. It is accepted that existing vegetation restricts views of the site from the Hall. Whilst it is accepted that such screening would reduce after leaf fall, it is noted that the Hall is approximately 370 metres from the site. Given this distance, and the limited viewpoints from the Hall, it is considered that there would be less than substantial harm to the asset. In relation to the requirements of para. 134 of the NPPF, it is considered that the public benefits of the proposal, particularly in relation to the generation of 10MW of renewable energy, outweigh any limited harm there may be to the setting of the Listed Building. Overall it is not considered that the application raises significant issues in respect of impact upon historic assets.
- ## 6.7 **Ecological considerations**
- 6.7.1 Core Strategy Policy CS17 seeks to protect and enhance the diversity, high quality and local character of Shropshire's natural environment and to ensure no adverse impacts upon visual amenity, heritage and ecological assets. It is noted that the application site does not form part of any statutory or non-statutory designated site for nature conservation. SAMDev Plan Policy MD2 requires that development



enhances, incorporates or restores natural assets.

- 6.7.2 Protected species: An ecology report has been submitted, based upon a survey for protected species and of habitats potentially affected by the proposals. This has identified that there are three ponds within 250 metres of the site, all of which lack features suitable for supporting great crested newts. The report advises that a small population of great crested newts has been observed in other ponds within 500 metres of the site. The Council's Ecologist concurs with the findings of the report that work should be undertaken in accordance with the Reasonable Avoidance Measures as set out in the ecology report, and a condition to this effect can be imposed should permission be granted.
- 6.7.3 In relation to badgers, the proposed layout provides for a minimum stand-off of 20 metres from the two badger setts on the site and for a gap under the deer fencing to allow for badger movement. A condition can be imposed to require that the method statement set out in the ecology report is be adhered to (see Appendix 1 below).
- 6.7.4 Biodiversity management and enhancement: Existing trees, hedgerows and ponds within the site would be retained, and the gapping up of hedgerows would be undertaken. The landscape management proposals provide for the planting of 19 new trees to enhance existing field boundaries, and new mixed native species hedgerow along part of the northern boundary of the site. The submitted Biodiversity Management Plan recommends measures to be undertaken to improve the ecological value of the site. These include: sowing the 5 metre margins of the site with a species-rich wildflower and grass seed mix, and the management of these areas; the management of hedgerows to favour birds and other wildlife; the enhancement of ponds for Great Crested Newt; the provision of artificial structures including log, rock and stone piles, and bird and bat boxes.
- 6.7.5 It is considered that the proposed solar farm development offers an opportunity to provide significant biodiversity enhancements, and that it would be appropriate to agree detailed matters as part of a habitat management plan. It is considered that this should include provisions for long-term management of the site, in order to maintain and enhance biodiversity. A condition proposing the submission and approval of such details is included in Appendix 1 below.
- 6.7.6 It is considered that the implementation of the method statements, landscape management and planting proposals, and a habitat management plan would ensure that the proposal would provide significant ecological benefits and as such the proposal is in line with Core Strategy Policy CS17 and SAMDev Plan Policy MD2.
- 6.8 **Flood risk and drainage considerations**
- 6.8.1 Core Strategy Policy CS18 seeks to reduce flood risk and avoid adverse impact on water quality and quantity. SAMDev Plan Policy MD2 requires that developments incorporate sustainable drainage techniques in support of Policy CS18. The submitted Flood Risk Assessment (FRA) confirms that the site lies entirely within Flood Zone 1, signifying areas with the lowest probability of fluvial flooding. The FRA states that the proposed development is located in an area which may be subject to a moderate risk of flooding from groundwater sources, however due to

the site topography, such flooding would be likely to be shallow and should not present a threat to the proposed development.

- 6.8.2 The FRA calculates that the proposed development would increase the impermeable surface area of the site by 0.05% and would have a negligible effect on surface water run-off. The proposal would not alter the topography of the land. The Council's Flood and Water Management team have advised that the proposal is unlikely to affect the surface water runoff characteristics of the area and has raised no objections to the proposal. As such it is considered that the proposal does not raise significant issues in relation to flood risk and surface water management.

## 7.0 **CONCLUSION**

- 7.1 The revised application for the installation of a solar farm at land at land near Rhosygadfa seeks to address the reasons for refusal of a previous proposal. The revised proposal would have 50% fewer panels and would be significantly smaller in size than the previous proposal. It would have a significantly lower impact upon the visual qualities of the area and would be less visible from residential properties. In addition the revised layout provides an increased buffer distance to the public right of way that runs through the site.

- 7.2 Potential impacts on heritage assets have been assessed and would not be significant. The proposal would not affect best and most versatile land and the site would remain in agricultural use. The panels would be removed after the end of their useful life or within 25 years, whichever sooner. The proposal would not result in adverse levels of noise, or have a significant effect on flood risk.

- 7.3 The proposed development would have some impact upon the local landscape character of the area, through the introduction of a man-made development across the three fields. However it is considered that the mitigation measures proposed are sufficient to ensure that this impact is reduced to acceptable levels.

- 7.4 The revised proposal would allow the generation of 5MW of renewable energy for export to the National Grid, and contribute to a reduction in carbon emissions which is one of the core planning principles of the National Planning Policy Framework and is also supported by local planning policies.

- 7.5 On balance it is considered that the level of environmental benefit that the proposal would provide, including those associated with renewable energy production and also significant biodiversity enhancements, outweigh any adverse impacts upon the landscape character and amenity of users of the rights of way network. On this basis it is recommended that the proposal can be accepted in relation to Development Plan policies and other material considerations, and that planning permission can be granted subject to the conditions as set out in Appendix 1.

## 8. **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.

## 9. Financial Implications

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

### 10.1 Relevant Planning Policies

#### 10.1.1 Shropshire Core Strategy

This promotes a low carbon Shropshire by promoting the generation of energy from renewable sources (Strategic Objective 1)

- Policy CS5 (Countryside and Green Belt)
- Policy CS6 (Sustainable Design and Development Principles)
- Policy CS8 (Facilities, Services and Infrastructure Provision)
- Policy CS13 (Economic Development, Enterprise and Employment)
- Policy CS17 (Environmental Networks) – to identify, protect, enhance, expand and connect Shropshire’s environmental assets
- Policy CS18 (Sustainable Water Management)

#### 10.1.2 SAMDev Plan

At the time of writing this report the SAMDev Plan had yet to be adopted. It is anticipated that the SAMDev Plan will be adopted following the Full Council meeting on 17<sup>th</sup> December 2015, following which full weight can be given to its policies.

- Policy MD2 (Sustainable Design)
- Policy MD8 (Infrastructure Provision)
- Policy MD12 (Natural Environment)
- Policy MD13 (Historic Environment)

### 10.2 Central Government Guidance:

10.2.1 National Planning Policy Framework (NPPF): Amongst other matters, the NPPF: encourages the use of renewable resources (para. 17 - Core Planning Principles); promotes good design as a key aspect of sustainable development (Chapter 7); supports the move to a low carbon future as part of the meeting of the challenges of climate change and flooding (Chapter 10); advises that lpa’s recognize that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions, and approve applications if its impacts are (or can be made) acceptable (para. 98); states that the planning system should contribute to and enhance the natural and local environment by preventing development from contributing to unacceptable levels of soil, air, water or noise pollution (Chapter 11).

10.2.2 Planning practice guidance for renewable and low carbon energy (updated March 2015) states (para. 001) that increasing the amount of energy from renewable and low carbon technologies will help to make sure the UK has a secure energy supply, reduce greenhouse gas emissions to slow down climate change and stimulate investment in new jobs and businesses. Planning has an important role in the delivery of new renewable and low carbon energy infrastructure in locations where the local environmental impact is acceptable.

The PPG states that all communities have a responsibility to help increase the use and supply of green energy, but that this does not mean that the need for renewable energy

automatically overrides environmental protections and the planning concerns of local communities (para. 003).

In relation to proposals for large scale ground-mounted solar photovoltaic farms, the PPG states that the deployment of large-scale solar farms can have a negative impact on the rural environment, particularly in undulating landscapes. However, the visual impact of a well-planned and well-screened solar farm can be properly addressed within the landscape if planned sensitively.

Particular factors the local planning authority will need to consider in relation to solar farms include:

- encouraging the effective use of land by focussing large scale solar farms on previously developed and non agricultural land, provided that it is not of high environmental value
- where a proposal involves greenfield land, whether (i) the proposed use of any agricultural land has been shown to be necessary and poorer quality land has been used in preference to higher quality land; and (ii) the proposal allows for continued agricultural use where applicable and/or encourages biodiversity improvements around arrays.
- planning conditions can be used to ensure that the installations are removed when no longer in use and the land is restored to its previous use
- the proposal's visual impact, the effect on landscape of glint and glare (see guidance on landscape assessment) and on neighbouring uses and aircraft safety
- the need for, and impact of, security measures such as lights and fencing
- great care should be taken to ensure heritage assets are conserved in a manner appropriate to their significance, including the impact of proposals on views important to their setting. As the significance of a heritage asset derives not only from its physical presence, but also from its setting, careful consideration should be given to the impact of large scale solar farms on such assets. Depending on their scale, design and prominence, a large scale solar farm within the setting of a heritage asset may cause substantial harm to the significance of the asset;
- the potential to mitigate landscape and visual impacts through, for example, screening with native hedges
- the energy generating potential, which can vary for a number of reasons including, latitude and aspect.

The PPG refers to a speech by the Minister for Energy and Climate Change, the Rt Hon Gregory Barker MP, to the solar PV industry on 25 April 2013. This commented that the Government will focus deployment of solar panels on buildings and brownfield land, not greenfield, and that “where solar farms are not on brownfield land, you must be looking at low grade agricultural land which works with farmers to allow grazing in parallel with generation, incorporating well thought out visual screening, involving communities in developing projects and bringing them with you”.

It also refers to a Written Ministerial Statement made on 25<sup>th</sup> March 2015, which states that “meeting our energy goals should not be used to justify the wrong development in the wrong location and this includes the unnecessary use of high quality agricultural land”. It also states that “any proposal for a solar farm involving the best and most versatile agricultural land would need to be justified by the most compelling evidence”.

The PPG gives guidance in relation to assessing cumulative landscape and visual impact, and states that in the case of ground-mounted solar panels it should be noted

that with effective screening and appropriate land topography the area of a zone of visual influence could be zero.

10.4 Relevant Planning History:

**14/03946/FUL** Construction of a solar farm comprising the installation of (circa) 40,000 ground mounted solar panels; 8 inverters; electricity substation; 2.4m high security fencing (revised description) **REFUSED** 13th July 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)

The application ref. 15/03975/FUL and supporting information and consultation responses.

Cabinet Member (Portfolio Holder)  
Cllr M. Price

Local Members  
Cllr David Lloyd and Cllr Robert Macey (Gobowen, Selattyn and Weston Rhyn)

Appendices  
APPENDIX 1 - Conditions

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

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 91(1) of the Town and Country Planning Act, 1990 (As amended).

2. 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.

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

3. No development shall take place until full details for the traffic mitigation measures indicatively presented within the Construction Traffic Management Statement have been submitted to and approved by the Local Planning Authority; and the development hereby permitted shall be conducted/constructed in accordance with approved details.

Reason: In the interests of highway safety.

4. 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 have archaeological interest.

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

5. Within three months of the commencement of electricity generation at the site a habitat management plan shall be submitted to the local planning authority. The plan shall include: a) Description and evaluation of the features to be managed; b) Ecological trends and constraints on site that may influence management; c) Aims and objectives of management; d) Appropriate management options for achieving aims and objectives; e) Prescriptions for management actions; f) Preparation of a works schedule (including a 5 year project register, an annual work plan and the means by which the plan will be rolled forward annually); g) Personnel responsible for implementation of the plan; h) Monitoring and remedial/contingencies measures triggered by monitoring. The plan shall be carried out as approved, unless otherwise approved in writing by the local planning authority, for the lifetime of the development.

Reason: To protect features of recognised nature conservation importance.

6. Notwithstanding the submitted details, the buildings hereby permitted shall not be constructed until details of their external materials, including colour, have been first submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the approval details.

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

7. Within three months of the commencement of electricity generation at the site an agricultural land improvement scheme shall be submitted in writing for the approval of the local planning authority. The submitted scheme shall set out measures proposed to improve the quality of the agricultural land at the site over the duration of the solar farm development, to improve the potential productivity of the land. The scheme shall be implemented in accordance with the approved details.

Reason: To address identified deficiencies in the agricultural land at the site and ensure that the land is improved by the end of the solar farm development.

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

8. Inverters shall be housed in a suitable structure which will ensure that noise at 1m from the façade of the structure shall be no greater than 76dBLAeq.

Reason: to protect the amenity of the area and that of nearby residential properties.

9. Work shall be carried out strictly in accordance with the Phase 1 Environmental Survey by Greenscape Environmental dated August 2015 and Drawing JPW0402-01.

Reason: To ensure the protection of great crested newts, a European Protected Species and badgers.

10. Work shall be carried out strictly in accordance with the Biodiversity Management Plan by JBA Consulting dated August 2015, unless otherwise required by conditions of this permission.

Reason: To protect and enhance features of recognised nature conservation importance.

11. All landscaping works shall be carried out in accordance with the approved details and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standard 4428:1989. The works shall be carried out within the first available planting season following completion of the development, or in accordance with a timetable agreed with the Local Planning Authority. Any trees or plants that, within a period of five years after planting, are removed, die or become seriously damaged or defective, shall be replaced with others of species, size and number as originally approved, by the end of the first available planting season.

Reason: To ensure the provision, establishment and maintenance of a reasonable standard of landscape in accordance with the approved designs.



12. All existing trees, shrubs and hedgerows within and bordering the site shall be protected, retained and maintained to the satisfaction of the local planning authority for the duration of any development works and for 5 years thereafter.

Reason: To safeguard the visual amenities of the area.

13. (a) Within one week of the completion of the construction of the solar panels, written notice of the date of completion shall be given to the local planning authority.
- (b) Within 6 months of the cessation of energy generation from the site, or a period of 25 years and 6 months following completion of construction, whichever is the sooner, all infrastructure associated with the solar farm will be removed from the site.

Reason: To ensure that the solar farm development is removed from the site following the end of its operational life or within a reasonable period of time to protect the landscape character of the area.

### **Informatives**

1. 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.
2. In determining this application the Local Planning Authority gave consideration to the following policies:  
 Central Government Guidance:  
 National Planning Policy Framework  
 National Planning Practice Guidance  
 Shropshire Core Strategy and saved Local Plan policies:  
 Policy CS5 (Countryside and Green Belt)  
 Policy CS6 (Sustainable Design and Development Principles)  
 Policy CS8 (Facilities, Services and Infrastructure Provision)  
 Policy CS13 (Economic Development, Enterprise and Employment)  
 Policy CS17 (Environmental Networks)  
 Policy CS18 (Sustainable Water Management)
3. Great Crested Newts are protected under the European Council Directive of 12 May 1992 on the conservation of natural habitats and of wild fauna and flora (known as the Habitats Directive 1992), the Conservation of Habitats and Species Regulations 2010 and under the Wildlife & Countryside Act 1981 (as amended).

If a Great Crested Newt is discovered on the site at any time then all work must halt and Natural England should be contacted for advice.

4. Badgers, the setts and the access to the sett are expressly protected from killing, injury, taking, disturbance of the sett, obstruction of the sett etc by the Protection of Badgers Act 1992. No works should occur within 20m of a badger sett without a Badger Disturbance Licence from Natural England.

All known Badger setts must be subject to an inspection by an experienced ecologist immediately prior to the commencement of works on the site.

5. For the transformer installation, the applicant should consider employing measures such as the following:

' Surface water soakaways

' Water Butts

' Rainwater harvesting system

' Permeable surfacing on any new access road, parking area/ paved area

' Greywater recycling system

Reason: To ensure that, for the disposal of surface water drainage, the development is undertaken in a sustainable manner.

6. Whilst works take place the applicant must also be aware of the following:

- The right of way must remain open and available at all times and the public must be allowed to use the way without hindrance both during development and afterwards.

- Vehicular movements (i.e. works vehicles and private vehicles) must be arranged to ensure the safety of the public on the right of way at all times.

- Building materials, debris, etc must not be stored or deposited on the right of way.

- There must be no reduction of the width of the right of way.

- The alignment of the right of way must not be altered.

- The surface of the right of way must not be altered without prior consultation with this office; nor must it be damaged.- No additional barriers such as gates or stiles may be added to any part of the right of way without authorisation.

If it is not possible to maintain public access along the footpath at all times whilst works take place, the applicant should apply to the Mapping and Enforcement Team for a temporary closure of the footpath (fees apply).



Committee and Date  
 North Planning Committee  
 22<sup>nd</sup> December 2015

Item  
**7**  
 Public

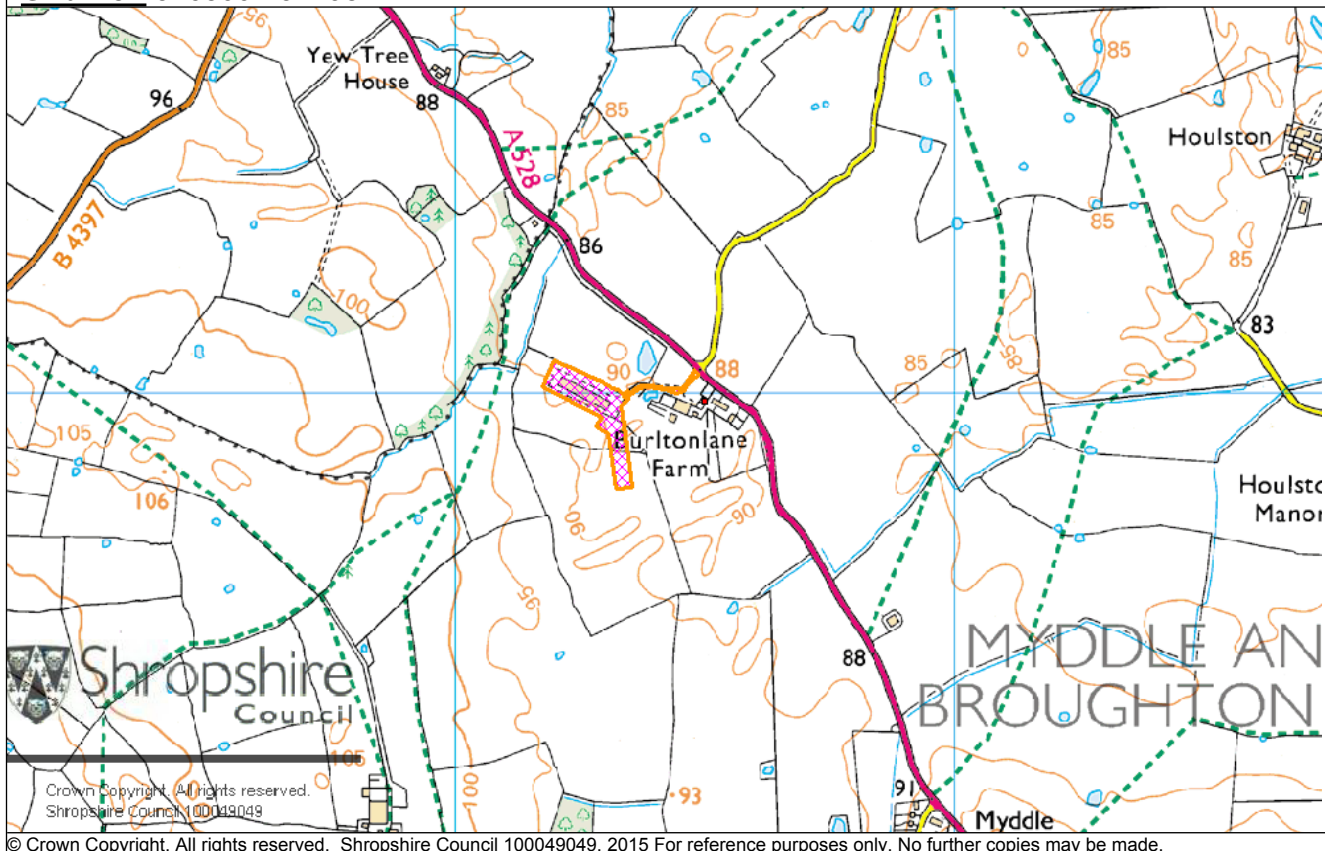
## Development Management Report

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> 15/04781/EIA	<b>Parish:</b> Myddle And Broughton
<b>Proposal:</b> Erection of extensions to existing free range poultry buildings and erection of egg packing unit	
<b>Site Address:</b> Burlton Lane Farm Myddle Shropshire SY4 3RE	
<b>Applicant:</b> TS & Mrs C Powell	
<b>Case Officer:</b> Philip Mullineux	<b>email:</b> <a href="mailto:planningdmnw@shropshire.gov.uk">planningdmnw@shropshire.gov.uk</a>

**Grid Ref:** 346500 - 324984



**Recommendation: Subject to a satisfactory response from Natural England that Members delegate authority to the Head of Planning Services to grant planning permission for the proposed development subject to the conditions as set out in Appendix 2 and any modifications to these conditions if considered necessary by the Head of Planning Services.**

## REPORT

### 1.0 THE PROPOSAL

- 1.1 Application proposes extensions to an existing free range poultry and egg packing complex at Burlton Lane Farm, Myddle. The proposed development entails extending two existing free range egg laying units, construction of a purpose built egg packing unit and installation of four grain silos.
- 1.2 The application is accompanied by a site location plan, block plan, proposed floor and elevations plans, Design and Access Statement, and an Environmental Statement which includes sections in relationship to flood risk and drainage, water resources, odour assessment, ecological assessment, noise assessment, highways and transport assessment, heritage impact assessment, amenity risk and landscape and visual impact assessment.
- 1.3 The application falls into the remit of the Town and Country Planning (Environmental Impact Assessment), (England and Wales) Regulations 2011 (as amended) Schedule one development, and as such an Environmental Statement is mandatory to accompany any planning application for development on site. The threshold for schedule one development is 60,000 in relationship to egg layers. The proposed development comprises 32,000, taken the total number of birds on site to 64,000. As such the application was advertised by the Council as development accompanied by an Environmental Statement.

### 2.0 SITE LOCATION/DESCRIPTION

- 2.1 Burlton Lane Farm is located approximately 1km to the north-west of the village of Myddle to the west side of the A528 midway between Shrewsbury and Ellesmere. The farm is accessed directly off the A528 with the access track extending around the north of the farm buildings to the existing poultry units. The site consists of two existing poultry buildings, each presently accommodate 16,000 free range birds on a single tier (deck) system, which equates to 32,000 birds in total. The existing buildings are 109.74m in length by 19.61m and are low profile, being 3.05m to the eaves and 7.62m to the ridge. It is proposed to extend and re-fit the existing buildings to increase layer hen numbers from the existing 32,000 to 64,000. (32,000 in each building).
- 2.2 The application proposes to extend the two existing 'free range egg production' poultry buildings by 2 bays which will equate to an additional 12.23 metres in length to each of the two existing buildings on site. The height will remain the same at 7.62 metres. The current egg packing units will be re-located from within the existing poultry buildings to a purpose built egg packing building situated between the two poultry units which will be linked by covered conveyor belts. This will measure 21.33 x 12.20 metres, with a height of 7.27 metres. This will allow all of the space within the poultry buildings to be utilised for hen accommodation and

enable the buildings to be fitted out with a multi-tier system. The application also proposes four grain silos with a total height each of 7.63 metres.

- 2.3 Information in support of the application indicates that the buildings will be re-fitted with a 'Big Dutchman Natura 284' system (multi-tier) aviary. The multi-tier aviary systems are suited to extension and refurbishment projects as they are based on a modular system. The system has been developed to allow the birds to follow their natural behaviour patterns whilst giving optimum efficiency and production for the producer. The multiple levels of the system enable 100% of the shed floor area to be used for litter. Manure belts situated below the raised platforms ensure the birds are not exposed to their droppings. The temperature within the sheds can be maintained at a more constant level throughout the year.
- 2.4 There will be a ranging area around the building to allow for 1ha of land per 2,500 hens. (In order that the hens can go out of doors if they so wish). The development will utilise the existing yard area and access track from the A528 highway. The application proposes no additional landscaping.
- 2.5 Information in support of the application indicates that the laying birds remain in the unit for just over one year (56 week production cycle) before they are replaced with the next batch. They will start laying eggs at around 20 weeks of age and will continue to do so until around 72 weeks when they will be removed, depending on the condition of the hens.

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

- 3.1 The proposal is for schedule one development in accordance with EIA Regulations and therefore Committee consideration is mandatory in accordance with the Council's scheme of delegation

### **4.0 Community Representations**

- 4.1 **Myddle and Broughton Parish Council** raises no objections. The response indicates:

Detailed consideration has been given to this application by Council Members and they have agreed to support the application to extend the free range buildings and for the creation of an egg packing unit. However deep concern has been raised about the outlined proposal for the disposal of waste material from the unit. The information document indicates that the development will have no impact on the main road, which would suggest that the intention is to deposit waste on fields on the Myddle side of the road and that the waste will be left there in heaps until there is an opportune time to spread it and plough it into the land. Some of this land owned by the farmer is no more than 500m from residential properties and this proposal could at times lead to an infestation of flies, which would impact on many of the Myddle residents. Members would like an assurance that waste will not be deposited any closer to the village than is the current practice and that measures will be put in place to prevent adverse environmental issues arising which will affect residents.

### **4.2 Consultee Comments**

- 4.3 **Historic England** have responded to the application with no objections. The response indicates:

The application(s) should be determined in accordance with national and local policy guidance, and on the basis of your specialist conservation advice.

- 4.4 **The Environment Agency** raises no objections. The response states:

**Environmental Impact Assessment (EIA):** The proposed development falls under Schedule 1 of the EIA Regulations and therefore EIA is required. Schedule 1 sets the following thresholds, above which EIA is a mandatory requirement: Installations for intensive rearing of poultry or pigs with more than (a) 85,000 places for broilers or 60,000 for hens.

**Environmental Permitting Regulations:** The proposed development comprises 32,000, taken the total number of birds on site to 64,000. This is above the threshold (40,000) for regulation of poultry farming under the Environmental Permitting (England and Wales) Regulations (EPR) 2010. The EP controls day to day general management, including operations, maintenance and pollution incidents. In addition, through the determination of the EP, issues such as relevant emissions and monitoring to water, air and land, as well as fugitive emissions, including odour, noise and operation will be addressed. The applicant has applied for an EP which is being progressed in tandem with the planning application. Based on our current position, we would not make detailed comments on these emissions as part of the current planning application process. It will be the responsibility of the applicant to undertake the relevant risk assessments and propose suitable mitigation to inform whether these emissions can be adequately managed. For example, management plans may contain details of appropriate ventilation, abatement equipment etc. Should the site operator fail to meet the conditions of a permit we will take action in-line with our published Enforcement and Sanctions guidance.

For the avoidance of doubt we would not control any issues arising from activities outside of the permit installation boundary. Your Public Protection team may advise you further on these matters.

**Flood Risk:** The site is located in Flood Zone 1 (low probability) based on our indicative Flood Zone Map. Whilst development may be appropriate in Flood Zone 1 a Flood Risk Assessment (FRA) is required for 'development proposals on sites comprising one hectare or above where there is the potential to increase flood risk elsewhere through the addition of hard surfaces and the effect of the new development on surface water run-off

Under the Flood and Water Management Act (2010) the Lead Local Flood Authority (LLFA) should be consulted on the proposals and act as the lead for surface water drainage matters in this instance. We would also refer you to our West Area Flood Risk Standing Advice – 'FRA Guidance Note 1: development greater than 1ha in Flood Zone 1' for further information.

**Manure Management (storage/spreading):** Under the EPR the applicant will be required to submit a Manure Management Plan, which consists of a risk

assessment of the fields on which the manure will be stored and spread, so long as this is done so within the applicants land ownership. Information submitted within the Design, Access & Planning Statement proposes that poultry manure will be removed from the buildings, loaded directly into sheeted trailers and transported off site. The manure/litter is classed as a by-product of the poultry farm and is a valuable crop fertiliser on arable fields.

Pollution Prevention: Developers should incorporate pollution prevention measures to protect ground and surface water. We have produced a range of guidance notes giving advice on statutory responsibilities and good environmental practice which include Pollution Prevention Guidance Notes (PPG's) targeted at specific activities. Pollution prevention guidance can be viewed at:

<https://www.gov.uk/government/collections/pollution-prevention-guidance-ppg>

The construction phase in particular has the potential to cause pollution. Site operators should ensure that measures are in place so that there is no possibility of contaminated water entering and polluting surface or ground waters. No building material or rubbish must find its way into the watercourse. No rainwater contaminated with silt/soil from disturbed ground during construction should drain to the surface water sewer or watercourse without sufficient settlement. Any fuels and/or chemicals used on site should be stored on hardstanding in bunded tanks.

4.5 **Natural England** – A verbal update will be presented to Committee.

4.6 **Shropshire Fire and Rescue Service** has responded to the application indicating 'no comment'.

4.7 **SC Public Rights of Way Manager** raises no objections indicating there are no recorded public rights of way affected by the proposal.

4.8 **SC Public Protection Manager** raises no objections. The response indicates:

Having considered the details and the location I do not anticipate the proposed having any noise or odour impact on existing residential receptors due to distances between residential receptors and the poultry units. As a result I have no objection to this development in relation to these aspects. I would like to point out that the proposed extensions will result in the applicant requiring an environmental permit issued and regulated by the Environment Agency. I would recommend this is submitted in tandem with the planning application

4.9 **SC Land Drainage Manager** raises no objections. The response indicates:

A sustainable drainage scheme for the disposal of surface water from the development should be designed and constructed in accordance with the Councils Surface Water Management: Interim Guidance for Developers document. It is available on the councils website at:

[www.shropshire.gov.uk/environmental-maintenance-and-enforcement/drainage-andflooding/flood-risk-management-and-the-planning-process](http://www.shropshire.gov.uk/environmental-maintenance-and-enforcement/drainage-andflooding/flood-risk-management-and-the-planning-process).

The provisions of the Planning Practice Guidance, in particular Section 21 Reducing the causes and impacts of flooding, should be followed.

Preference should be given to drainage measures which allow rainwater to soak

away naturally. Connection of new surface water drainage systems to existing drains / sewers should only be undertaken as a last resort, if it can be demonstrated that infiltration techniques are not achievable.

4.10 **SC Planning Ecologist** raises no objections. The response states:

The proposal involves an extension to the existing poultry units at Burlton Lane Farm. The total number of birds will increase from 32,000 to 64,000 (32,000 in each building). An Ecological Assessment has been conducted and Turnstone Ecology has concluded that the proposed development will not permanently affect any terrestrial habitat as the proposed extensions will be constructed on existing concrete slabs, the egg packing unit will be constructed on existing hardstanding and access to the site will be along existing hard core tracks.

Turnstone Ecology has recommended that any screening bunds and/or buffers around the poultry units are seeded with an appropriate wildflower/field margin seed mix and that nesting opportunities for House Martin are provided. Conditions and informatives are recommended.

#### Environmental Permit

The Environment Agency has provided pre-permitting application advice to the applicant. The screening assessment undertaken by the Environment Agency has considered any Special Areas of Conservation (SAC), Special Protection Areas (SPA) and Ramsar sites within 10km; any Sites of Special Scientific Interest (SSSI) within 5km and also any National Nature Reserves (NNR), Local Nature Reserves (LNR), ancient woodlands and local wildlife sites (LWS) within 2km of the farm. The Environment Agency has confirmed that based on the information the applicant has provided detailed modelling is not required to be submitted with the applicants permitting application.

Shropshire Council, under Regulation 61 in the Habitats Regulations, can rely on the 'evidence and reasoning' of another competent authority. Shropshire Council can therefore use the Ammonia Screening Output (provided by Kevin Heede via email dated 19th November) to complete the assessment of air pollution impacts for European Designated Sites within 10km, National Designated Sites within 5km, and Local Wildlife Site/Ancient Woodlands in 2km.

All sites screen out below the permitting threshold and therefore no further modelling is required to support this planning application.

#### Habitat Regulation Assessment

This application must be considered under the Habitat Regulation Assessment process in order to satisfy the Local Authority duty to adhere to the Conservation of Species & Habitats Regulations 2010 (known as the Habitats Regulations).

Natural England must be formally consulted on this planning application and the Local Planning Authority must have regard to their representations when making a planning decision. Planning permission can only legally be granted where it can be concluded that the application will not have any likely significant effects on the integrity of any European or Nationally Designated sites.



4.11 **SC Conservation Manager** raises no objections. The response indicates:

In considering the proposal due regard to the following local and national policies and guidance has been taken, when applicable: CS5 Countryside and Green Belt, CS6 Sustainable Design and Development and CS17 Environmental Networks, and with national policies and guidance, National Planning Policy Framework (NPPF) published March 2012.

Burlton Lane Farm was identified under the Historic farmsteads characterisation project, 2010 and is describe “Regular Courtyard comprising an L- Plan range with detached buildings to the third side of the yard... Additional detached elements to main plan... 19th Century... Position of Farmhouse: Detached, gable on to yard. Farmstead Location: Isolated. Survival: Partial Loss - less than 50% change...”

The “L” plan buildings have exposed timber framing and brick noggin and the farmhouse is constructed of local red sandstone. Both building are identified as being non-designated heritage assets as defined in Annex 2 of the NPPF.

Details:

The Heritage Impact Statement does not refer to up to date guidance regarding setting of heritage assets and suggests that there are no heritage assets within 1km of the proposed application works (which is incorrect as there is one Designated Heritage Asset and several Non-Designated Heritage Assets. The Grove is a Designated Heritage Asset and the converted farm buildings originally with The Grove are non-Designated Heritage Assets; Old Farm and buildings (non-Designated Heritage Asset); Yew Tree Farm (non-Designated Heritage Asset); Myddlewood Farm (non-Designated Heritage Asset) and of course there are the Old Farm Buildings (2 units) and the farmhouse which are non-Designated Heritage Assets. All of these sites were identified on the HER under the Historic Farmstead Characterisation Project 2008-10 and under other recording projects, but have not been considered as part of the HIA undertaken. However, it is agreed that even though the extension to the easterly chicken shed can be seen from the Old Farm converted buildings (although this is not acknowledged within the HIA) the overall proposal will not cause any additional harm to the setting and significance of the heritage assets beyond that which has already occurred as a result of the existing chicken sheds on site.

RECOMMENDATION:

No objection is made as it is considered that, even when considering cumulative impact, the additions do not cause any additional harm to the setting of the heritage assets.

Suggested Conditions:

- Materials
- Additional landscaping to help mitigate the visual impact of the buildings within the wider setting of heritage assets and within the wider landscape.

4.12 **SC Highways Manager** raises no objections. The response indicates:

Although the proposal seeks to increase the number of poultry from 32000 to 64000, the highway authority do not consider that the associated transport

movements would have a material impact and affect traffic flow on the A528 and its junction onto the highway. The highway authority therefore raises no objection to consent being granted.

#### 4.13 **Public Comments**

4.14 No comments/objections have been received from members of the public in relationship to this application.

#### 5.0 **THE MAIN ISSUES**

- Environmental Impact Assessment
- Planning policy and principle of development
- Siting, scale, historic and landscape impact.
- Residential amenity
- Public highway and transportation.
- Drainage
- Ecology

#### 6.0 **OFFICER APPRAISAL**

##### 6.1 **Environmental Impact Assessment**

6.1.2 The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011 specify that Environmental Impact Assessment (EIA) is mandatory for proposed development involving the intensive rearing of poultry where the number of egg laying birds is 60,000 or more. As such the current proposal is EIA development. The planning application is accompanied by an Environmental Statement, as required by the 2011 Regulations.

6.1.3 The Environmental Statement in support of the application makes reference to a sequential site selection, (alternative locations), as set out in Section 3 of the Environmental Statement and Officers consider detail as set out on site selection is considered satisfactory with consideration to the farming business concerned and the location and impacts etc.

##### 6.2 **Planning policy and principle of development**

6.2.1 The National Planning Policy Framework (NPPF) advises that the purpose of the planning system is to contribute to achieving sustainable development (para. 6) and establishes a presumption in favour of sustainable development (para. 14). One of its core planning principles is to proactively drive and support sustainable economic development (para. 17). Sustainable development has three dimensions – social, environment, and economic. In terms of the latter the NPPF states that significant weight should be placed on the need to support economic growth through the planning system (para. 19). The NPPF also promotes a strong and prosperous rural economy, supports the sustainable growth and expansion of all types of business and enterprises, in rural areas, and promotes the development of agricultural businesses (para. 28). The NPPF states that the planning system should contribute to and enhance the natural and local environment (para. 109) and

ensure that the effects (including cumulative effects) of pollution on health, the natural environment or general amenity should be taken into account (para. 120).

- 6.2.2 Core Strategy Policy CS5 states that development proposals on appropriate sites which maintain and enhance countryside vitality and character will be permitted where they improve the sustainability of rural communities by bringing local economic and community benefits, particularly where they relate to specified proposals including: agricultural related development. It states that proposals for large scale new development will be required to demonstrate that there are no unacceptable adverse environmental impacts. Whilst the Core Strategy aims to provide general support for the land based sector, it states that larger scale agricultural related development including poultry units, can have significant impacts and will not be appropriate in all rural locations (para. 4.74). Policy CS13 seeks the delivery of sustainable economic growth and prosperous communities. In rural areas it says that particular emphasis will be placed on recognising the continued importance of farming for food production and supporting rural enterprise and diversification of the economy, in particular areas of economic activity associated with industry such as agriculture.
- 6.2.3 The Council's SAMDev Policy MD7b indicates that planning applications for agricultural development will be permitted, where it can be demonstrated that the development is required in connection to a viable agricultural enterprise, and is of a size/scale and type which is consistent with its required agricultural purpose and the nature of the agricultural enterprise that it is intended to serve.
- 6.2.4 The above policies indicate that there is strong national and local policy support for development of agricultural businesses which can provide employment to support the rural economy and improve the viability of the applicant's existing farming business. In principle therefore it is considered that the provision of an extension to the existing poultry unit in this location as an extension to the existing enterprise can be supported. Policies recognise that poultry units can have significant impacts, and seek to protect local amenity and environmental assets. These matters are assessed below.
- 6.3 **Siting, scale and historic and landscape impact.**
- 6.3.1 Application proposes extending two existing egg laying units and construction in between these existing units a purpose built egg packaging plant.
- 6.3.2 Whilst it is acknowledged that intensive poultry units can have a significant impact on the landscape character as well as a visual impact, consideration also has to be given to the economic benefits.
- 6.3.3 The application proposes extending an existing egg laying unit which forms part of a family farming enterprise. The two sheds are located alongside the remainder of the farmstead and measure 109.74m in length and 7.62m high. (to the ridge). The proposal is for two extensions to the existing buildings measuring 12.23 metres. Application also proposing a new build egg processing plant measuring 21.33 x 12.20 metres, with a total height of 7.27 metres. Also proposed are four additional feed silos which will have a 18 tonne capacity with a total height of 7.63 metres.

- 6.3.4 Paragraph 129 of the NPPF indicates that local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal, (including by development affecting the setting of a heritage asset), taking account of the available evidence and any necessary expertise.
- 6.3.5 A heritage impact assessment has been submitted as part of the Environmental Statement in support of the application to which Officers overall share the conclusion of the report in principle, in that there will be no significant impact on either designated or non designated heritage assets within or adjacent to the proposed development site. (Officers though do not share the conclusions of the report in that there are no surrounding non designated heritage assets, these being the farmhouse and former traditional farm buildings, however impact on these is considered acceptable). It is also noted that Historic England raises no objections.
- 6.3.6 A landscape and visual impact assessment also forms part of the Environmental Statement submitted in support of the application and this indicates providing additional landscaping on the site would not be practical due to the requirements of a free range unit and the risk of predators within the ranging area, visual impact from the proposed development is considered insignificant and, as such, no additional landscaping is proposed.
- 6.3.7 Officers consider that the principle of the development is considered acceptable as the proposed development will contribute towards the economic viability of a traditional farming business that has diversified in recent years into egg production, and this is considered an acceptable form of diversification for the business concerned with consideration to the location.
- 6.3.8 However as indicated earlier in this report intensive poultry units can have a significant impact on the landscape character as well as a visual impact, and can appear 'industrial' in the rural landscape. In this instance the applicants' comments with regards to landscaping in relationship to the immediate vicinity of the site are accepted, and it is considered that the existing farmstead does help mitigate the development into the surrounding landscape. However there are viewpoints from where impact is considered significant and although the proposed extensions are small in comparison to the existing buildings on site, the cumulative impact with the proposed egg packing unit, it is considered will have an impact from certain viewpoints in the wider landscape. Therefore it is recommended that a condition is attached to any approval notice issued in order to ensure landscaping in the form of native tree and hedge planting, in order to help mitigate the development into the surrounding overall landscape, with consideration to mitigation as per the suggested condition, and the existing development on site, scale and design of the proposed development considered acceptable.
- 6.4 **Residential amenity.**
- 6.4.1 The nearest dwellings outside of the applicants control to the site are approx. 210 metres away and the applicants have included as part of the Environmental Statement an odour impact assessment which indicates that odour exposures will be below the Environment Agency's benchmark for moderately offensive odours.
- 6.4.2 The proposed development will mean the total number of birds on site is 64,000.

This is above the threshold (40,000) for regulation of poultry farming under the Environmental Permitting, (EP), (England and Wales) Regulations (EPR) 2010. The EP controls day to day general management, including operations, maintenance and pollution incidents. In addition, through the determination of the EP, issues such as relevant emissions and monitoring to water, air and land, as well as fugitive emissions, including odour, noise and operation will be addressed. It is understood the applicant has applied for an EP which is being progressed in tandem with the planning application. Should the site operator fail to meet the conditions of a site permit, the Environment Agency are in a position to take action in-line with their published Enforcement and Sanctions guidance.

- 6.4.3 The National Planning Policy Framework in paragraph 122 states that ‘local planning authorities should focus on whether the development itself is an acceptable use of the land, and the impact of the use, rather than the control of processes or emissions themselves where these are subject to approval under pollution control regimes. Local planning authorities should assume that these regimes will operate effectively.
- 6.4.4 The permit issued and monitored by the Environment Agency only covers on site activities and therefore feed deliveries to the site and manure movements off the farming unit concerned will not be covered by the permit, (other than on-site activities), and as such with proximity to the location of dwellings outside of the applicants control it is recommended that conditions are attached to any approval notice issued restricting times for feed deliveries and that any manure removed off site is done so in sealed and covered containers/trailers.
- 6.4.5 Manure disposal and storage. Detail in support of the application indicates that the applicants intend storing manure generated on site, on the farm holding for spreading on land forming part of the farm. Information forming part of the Environmental Statement indicates that the shed will be fully cleaned out once every 13-15 months at the end of each cycle and will generally take place over a period of 1 to 2 days. This chore is as a result of the belt conveyor system, which allows weekly removal of manure. The system uses a belt system for the removal of manure. The droppings fall onto manure belts, and remain dry and friable. This allows the weekly removal of manure which is to be removed off site in sealed trailers to be stored in suitable temporary field heaps to be spread on land farmed by the applicants. (The comments as raised by the Local Parish Council on this matter are noted).
- 6.4.6 The response from the Environment Agency as outlined in paragraph 4.4 above discusses manure management, indicating that under the environmental permitting regime the applicant will be required to submit a manure management plan. This will consist of a risk assessment of the fields on which the manure will be stored and spread, so long as this is done so within the applicants land ownership. It is used to reduce the risk of the manure leaching or washing into groundwater or surface water. The permitted farm would be required to analyse the manure twice a year and the field soil (once every five years) to ensure that the amount of manure which will be applied does not exceed the specific crop requirements i.e. as an operational consideration. Any plan submitted would be required to accord with the Code of Good Agricultural Policy (COGAP). Therefore it is considered that the Environmental Permit will address matters of concern in relationship to manure

storage and disposal on site. Clearly when manure leaves the permitted holding it then becomes outside of the permit regime for the specific holding and as such it is recommended that a condition is attached to any approval notice if members are mindful to approve the application, in order to ensure all manure moved off the intensive poultry site is done so in sealed and covered trailers as proposed. It must also be noted that the Council's Public Protection section has statutory powers to deal with any proven amenity issues as a result of the development.

6.4.7 Also submitted in support of the application is a noise impact assessment to which the conclusions to the report indicate that a noise survey has been conducted to determine the typical background noise levels at the nearest dwellings to the proposed extended/upgraded free-range poultry units. The extract fan and internal activities including livestock as a result of the proposed free-range egg poultry units extension/upgrade have been assessed in accordance with BS4142:201. The findings of the report are considered acceptable, and it is noted that neither the EA or the Council's Public Protection Manager raise any objections on this matter.

6.4.8 On balance the proposal is considered acceptable in relationship to surrounding residential amenity issues, the applicants having applied for an environmental permit for the operations as proposed from the EA. As such the proposal is considered to be in accordance with relevant policies of the Shropshire Core Strategy, the Council's emerging SAMDev and the National Planning Policy Framework on issues in relationship to residential amenity and public protection.

## 6.5 **Public highway and transportation issues.**

6.5.1 Access into and out of the site is directly onto the A528 highway. The applicants have submitted a traffic impact assessment as part of their application and this indicates that in relationship to 64,000 birds, on free range egg production unit and a production cycle over a 60 week (15 month) period, that traffic generated when the proposed free range egg production unit is in full production, on a weekly basis will be around 6 vehicle movements per week (12 two way vehicle movements). These would be made up of 2.2 feed delivery, 3 egg collections and 1 manure collection. It is unlikely that there would be an increase of traffic movements associated with fallen stock or staff than currently exist with the site. The peak periods are considered to be the bird delivery and depopulation which will occur at the beginning and end of the 15 month cycle. Typically it is estimated that there would be two days of peak activity:

1. Population of sheds – 16 movements (two days)
2. Depopulation of sheds – 16 movements (two days)
3. Manure removal – 2 movements per week

(N.B. 2 movements equates to one vehicle, one movement in, one movement out).

6.5.2 Movements outside of the peak periods - Given the nature of the proposals and likely movements of the traffic generated by the proposals, the movements will be outside of the normally accepted peak hours. HGV's associated with the population and depopulation of the birds will likely be outside the peak hours when there is expected to be less traffic on the highway.

6.5.3 When assessing the overall increase in traffic for a 60 week duration, against the background of the existing site traffic there will be an overall increase of 4 HGV

movements associated with the birds in and birds out, 1.03 HGV's per week for feed (124 two way), 1 HGV per week for egg collection (120 two way), 1 T&T per week for manure (120 T&T two way).

6.5.4 With consideration to the existing public highway access which is direct onto the A528 public highway and the existing vehicle movements as a result of the existing operations on site the increase in vehicle movements as a result of this proposal are considered acceptable and it is noted that no objections are raised on public highway and transportation matters. As such the proposed development is considered to comply with Policies CS6 and CS7 of the Shropshire Core Strategy, the Shropshire SAMDev and the NPPF in relationship to public highway and transportation issues.

## 6.6 **Drainage**

6.6.1 The NPPF and policy CS18 of the Shropshire Core Strategy require consideration to be given to the potential flood risk of development. It is noted that the application site is in flood zone 1 in accordance with the EA flood risk data maps. (lowest risk), The Environmental Statement in support of the application is accompanied by a drainage and flood risk assessment and its comments and conclusions are noted and have been considered as part of the consideration to this application.

6.6.2 In this case no objections have been raised by the Environment Agency or the Council's Drainage Manager as it is noted that a sustainable drainage system can be installed on site in connection to the existing development. Reference to this can be included on any planning permission if granted.

6.6.3 In view of the above it is considered that an appropriate drainage system can be installed to meet the requirements of the NPPF and policy CS18 of the Shropshire Core Strategy.

## 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. Therefore the application has been considered by the Council's Ecologist and Natural England.

6.7.2 The application is accompanied by an Ecological assessment as part of the Environmental statement and its conclusions are considered satisfactory.

6.7.3 The SC Planning Ecologist in response to the application raises no objections recommending conditions and informatives to be attached to any approval notice issued. It is recommended that these are attached to any approval notice as recommended, and with these in place the proposed development is considered to be in accordance with Policy CS17 of the Shropshire Core Strategy, the Council's SAMDev and the NPPF on matters in relationship to ecological issues. A copy of the Habitat Regulation Assessment is attached as appendix 2 to this report.

## 7.0 CONCLUSION

7.1 The proposal is for an extension to two egg laying units, a purpose built egg packing unit and construction of four feed silos on an established egg laying unit which will house up to 64,000 birds in total on site, as part of an existing farm diversification venture for the previously traditional family farming business.

7.2 It is acknowledged that the development as existing is significant in scale and does have a limited impact on the landscape, however it is considered that the proposed development is not significant in relationship to the existing on site. Therefore on balance with consideration to the location, size and scale and cumulative impacts, there will not be of an adverse impact with further landscape mitigation. Also with consideration to the economic benefits to the business concerned and production of local food with further landscape mitigation in the form of native plantings and consideration to the external colour of the development, on balance acceptable in principle.

7.3 The development raises no adverse concerns from any of the statutory consultees to the application, and with no objections from the local Parish Council, and members of the public it is considered that planning issues can be addressed satisfactorily with consideration to the detail submitted in support of the application and responses received from the statutory consultees. The applicants have submitted to the Environment Agency an application for an environmental permit in order for the site to operate and this will address issues in relationship to amenity and public protection.

7.4 The findings and conclusions as indicated in the Environmental Statement submitted in support of the application are on balance considered acceptable.

7.5 As such the proposed development is considered acceptable and in accordance with relevant policies as set out in the Shropshire Core Strategy, the emerging SAMDev, the National Planning Policy Framework and other relevant planning guidance. The recommendation is therefore one of approval subject to conditions as attached to this report.

## 8.0 Risk Assessment and Opportunities Appraisal

### 8.1 Risk Management

There are two principal risks associated with this recommendation as follows:

- As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal, i.e. written representations, hearing or inquiry.
- The decision may be challenged by way of a Judicial Review by a third party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will interfere where the decision is so unreasonable as to be irrational or



perverse. Therefore they are concerned with the legality of the decision, not its planning merits. A challenge by way of Judicial Review must be made a) promptly and b) in any event not later than six weeks after the grounds to make the claim first arose.

Both of these risks need to be balanced against the risk of not proceeding to determine the application. In this scenario there is also a right of appeal against non-determination for application for which costs can also be awarded.

## 8.2 Human Rights

Article 8 gives the right to respect for private and family life and First Protocol Article 1 allows for the peaceful enjoyment of possessions. These have to be balanced against the rights and freedoms of others and the orderly development of the County in the interests of the Community.

First Protocol Article 1 requires that the desires of landowners must be balanced against the impact on residents.

This legislation has been taken into account in arriving at the above recommendation.

## 8.3 Equalities

The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed in Planning Committee members' minds under section 70(2) of the Town and Country Planning Act 1990.

## 9.0 Financial Implications

There are likely financial implications if the decision and / or imposition of conditions is challenged by a planning appeal or judicial review. The costs of defending any decision will be met by the authority and will vary dependent on the scale and nature of the proposal. Local financial considerations are capable of being taken into account when determining this planning application – insofar as they are material to the application. The weight given to this issue is a matter for the decision maker.

## 10.0 Relevant Planning Policies

### 10.1 Shropshire Core Strategy

- Strategic Objective 9 seeks to promote a low carbon Shropshire by measures that include the generation of energy from renewable sources
- Policy CS5 (Countryside and Green Belt)
- Policy CS6 (Sustainable Design and Development Principles)
- Policy CS13 (Economic Development, Enterprise and Employment)

- Policy CS17 (Environmental Networks)
- Policy CS18 (Sustainable Water Management)
- Policy CS19 (Waste Management Infrastructure)

## 10.2 Central Government Planning Policy and Guidance:

National Planning Policy Framework (NPPF): The NPPF: supports a prosperous rural economy, and states that plans should promote the development of agricultural businesses (Chapter 3); promotes good design as a key aspect of sustainable development (Chapter 7); supports the move to a low carbon future as part of the meeting of the challenges of climate change and flooding (Chapter 10); states that the planning system should contribute to and enhance the natural and local environment by preventing development from contributing to unacceptable levels of soil, air, water or noise pollution (Chapter 11). The NPPF states that local planning authorities should not require applicants for energy development to demonstrate the overall need for renewable or low carbon energy and recognize that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions, and should approve applications for renewable or low carbon energy if its impacts are (or can be made) acceptable (para. 98).

## 10.3 Emerging policy:

Site Allocations and Development Management (SAMDev) document: Relevant draft Development Management policies include:

- MD2 (Sustainable Design)
- MD7b (General Management of Development in the Countryside)
- MD12 (Natural Environment)
- MD14 (Waste Management Facilities)

### Relevant planning history:

NS/04/01118/FUL Erection of poultry house with associated equipment and hardstanding and alterations to existing vehicular access CONAPP 13th December 2004

NS/05/00207/FUL Extension to existing poultry house CONAPP 4th April 2005

NS/07/01475/FUL Proposed erection of a Free Range Poultry Building and associated feed bins CONAPP 18th October 2007

## 11. Additional Information

View details online:

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) Cllr M. Price
Local Member Cllr Brian Williams
Appendices APPENDIX 1 – Conditions Appendix 2 – HRA.

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

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 91(1) of the Town and Country Planning Act, 1990 (As amended).

2. 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.

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

3. Prior to commencement of works on site a scheme of landscaping shall be submitted to and approved by the Local Planning Authority. The works shall be carried out as approved. The submitted scheme shall include:

- a) Planting plans, including wildlife habitat and features
- b) Schedules of plants, noting species (including scientific names), planting sizes and proposed numbers/densities where appropriate. Native species used to be of local provenance (Shropshire or surrounding counties).
- c) Details of trees and hedgerows to be retained and measures to protect these from damage during and after construction works and this will include vegetation surrounding the application site as referred to in condition number 11 below.
- d) Implementation timetables

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

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

4. Manure will be removed off the application site in sealed and covered trailers.

Reason: In consideration of the amenity of the surrounding area.

5. 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 development shall be carried out in accordance with the approved details and thereafter 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

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

6. A total of 4 woodcrete artificial nests suitable for small birds such as house sparrow and swallow shall be erected on the site prior to first occupation of the buildings hereby permitted.

Reason: To ensure the provision of nesting opportunities for wild birds

7. A total of 2 woodcrete bat boxes suitable for nursery or summer roosting for small crevice dwelling bat species shall be erected on the site prior to first use of the building hereby permitted. All boxes must be at an appropriate height above the ground with a clear flight path and thereafter be permanently retained.

Reason: To ensure the provision of roosting opportunities for bats which are European Protected Species

8. No feeding stuffs will be delivered to the site outside the hours of 8am - 6pm Monday - Saturday or at any times during a bank holiday.

Reason: In the interests of surrounding residential amenity.

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

9. All building development on site, (including all the feed silo's), are to be all externally coloured in accordance with an external colour scheme to be agreed in writing with the Local Planning Authority prior to any development on site.

Reason: In consideration of the visual impact and to mitigate the development into the surrounding landscape.

**APPENDIX 2****Habitat Regulation Assessment (HRA) Screening Matrix**

Application name and reference number:

15/04781/EIA

Burlton Lane Farm

Myddle

Shropshire

SY4 3RE

Erection of extensions to existing free range poultry buildings and erection of egg packing unit.

Date of completion for the HRA screening matrix:

23<sup>rd</sup> November 2015

HRA screening matrix completed by:

Nicola Stone

Planning Ecologist

01743-252556

**Table 1: Details of project or plan**

Name of plan or project	15/04781/EIA Burlton Lane Farm Myddle Shropshire SY4 3RE Erection of extensions to existing free range poultry buildings and erection of egg packing unit.
Name and description of Natura 2000 site and Nationally designated site which has potential to be affected by this development.	<p><b>West Midland Mosses SAC</b></p> <p>West Midland Mosses SAC (184.18ha) is a collection of sites which between them represent nationally important dystrophic water bodies, transition mires and quaking bogs.</p> <p>Annex I Habitats that are a primary reason for selection of site:</p> <ul style="list-style-type: none"> <li>• Natural dystrophic lakes and ponds</li> <li>• Transition mires and quaking bogs</li> </ul> <p><b>Fenn`s, Whixall, Bettisfield, Wem and Cadney Mosses SAC and Midland Meres and Mosses Ramsar Phase 2.</b></p> <p>Fenn`s, Whixall, Bettisfield, Wem and Cadney Mosses SAC and Midland Meres and Mosses Ramsar Phase 2 (949.2ha) together form an outstanding example of lowland raised mire. The site as a whole supports a wide range of characteristic acid peat bog vegetation. The moss complex, which straddles the border between Shropshire, England and Clwyd, Wales, is one of the largest and most southerly raised mires in Britain.</p> <p>Annex I Habitats that are a primary reason for selection of the SAC:</p> <ul style="list-style-type: none"> <li>• Active raised bog.</li> </ul> <p>Annex I Habitats present as a qualifying feature but not a primary reason for selection of the SAC:</p> <ul style="list-style-type: none"> <li>• Degraded raised bogs still capable of natural regeneration</li> </ul> <p>The site is included within the Ramsar Phase 2 due to its Raised Bog and Carr habitats with invertebrate assemblages and the plant species <i>polifolia</i>, <i>Dicranum undulatum</i> and <i>Sphagnum pulchrum</i></p>

**Hencott Pool**

Most of Hencott Pool Midland Meres and Mosses Ramsar Phase 2 (11.5ha) is swamp carr on very wet peat dominated by alder *Alnus glutinosa* and common willow *Salix cinerea* with frequent crack willow *Salix fragilis*. Although there are considerable areas of bare peat beneath the trees, there is a rich flora of fen plants. It is included in the Ramsar Phase for its Carr habitat and the species *Carex elongata* and *Cicuta virosa*

**Sweat Mere & Crose Mere**

Sweat Mere and Crose Mere Midland Meres and Mosses Ramsar Phase 2 (38.58ha) are two dissimilar meres constituting a site of exceptional importance. The meres and their surrounds form a complex of open water, reedswamp, fen and woodland habitats unrivalled in Shropshire for the variety of natural features of special scientific interest. It is included in the Ramsar Phase for its Open water, Swamp, Fen, Wet pasture and Carr habitats with the species *Carex elongata* and *Thelypteris palustris*

**Brownheath Moss**

Brownheath Moss Midland Meres and Mosses Ramsar Phase 2 (31.32ha) differs from the other North Shropshire Mosses in consisting of a series of pools set in an area of heathland and woodland, rather than an expanse of peat. It is included in the Ramsar Phase for its Fen and Carr habitats with the species *Carex elongata*.

**Cole Mere**

Cole Mere Midland Meres and Mosses Ramsar Phase 2 is one of the largest of the Shropshire meres, with an almost complete fringe of woodland. There is a comparatively rich flora of aquatic macrophytes and the aquatic invertebrate fauna of Cole Mere is particularly diverse. It is included in the Ramsar Phase for its Open water, Wet pasture and Carr habitats with the plant species *Carex elongata*

**Midland Meres and Mosses (Ramsar phase 1)****1.1.1.1 Clarepool Moss**

Clarepool Moss Midland Meres and Mosses Ramsar Phase 1 (15.62ha) is a basin mire which has developed, in part at least, as a quaking bog (Schwingmoor). It is included within the Ramsar Phase for its Open Water and Basin Mire habitats with the species Dotted Footman.

**White Mere**

White Mere Midland Meres and Mosses Ramsar Phase 1 (31.97ha) is one of the richest of the North Shropshire meres for aquatic plants. It is included within the Ramsar Phase for its open water and carr habitats with the plant species *Carex elongata* and *Eleocharis acicularis*

**1.1.1.2 Fenemere**

Fenemere Midland Meres and Mosses Ramsar Phase 1 (16.34ha) is a particularly rich and interesting mere with eutrophic water. Fenemere is also important for its rich aquatic invertebrate fauna. It is included within the Ramsar Phase for its open water, swamp, fen, wet pasture and Carr habitats with the species *Cicuta virosa* and *Thelypteris palustris*

Description of the plan or project	Erection of extensions to existing free range poultry buildings and erection of egg packing unit.
Is the project or plan directly connected with or necessary to the management of the site (provide details)?	No
Are there any other projects or plans that together with the project or plan being assessed could affect the site (provide details)?	No

We have identified the following effect pathways:

- Damage to the Ramsar site & SAC caused by aerial emissions
- Possible effects on the hydrology of the Ramsar site & SAC

### **1. Possible impact of aerial emissions**

The Environment Agency has provided pre-permitting application advice. The screening assessment undertaken by the Environment Agency has considered any Special Areas of Conservation (SAC), Special Protection Areas (SPA) and Ramsar sites within 10km; any Sites of Special Scientific Interest (SSSI) within 5km and also any National Nature Reserves (NNR), Local Nature Reserves (LNR), ancient woodlands and local wildlife sites (LWS) within 2km of the farm. The Environment Agency has confirmed that based on the information the applicant has provided detailed modelling is not required to be submitted with the applicants permitting application.

Shropshire Council, under Regulation 61 in the Habitats Regulations, can rely on the 'evidence and reasoning' of another competent authority. Shropshire Council can therefore use the Ammonia Screening Output (provided by Kevin Heede via email dated 19<sup>th</sup> November) to complete the assessment of air pollution impacts for European Designated Sites within 10km, National Designated Sites within 5km, and Local Wildlife Site/Ancient Woodlands in 2km.

All sites screen out below the permitting threshold and therefore no further modelling is required to support this planning application.

### **2. Hydrology**

SC Ecology has assessed Natural England's Ramsar Catchment Areas. The proposed site location falls outside of the catchment area. No further assessment has been undertaken.

### **Conclusion**

Providing works are carried out in accordance with the approved plans, and as agreed within an Environment Agency Permit, SC Ecology has concluded that the proposed development will not impact on the integrity of Ramsar sites and SAC in 10km.

### **The Significance test**

### **1.1.1.3 There is no likely significant effect on European Designated Sites from planning application 15/04781/EIA.**

#### **The Integrity test**

There is no likely effect on the integrity of the European Designated Sites from planning application 15/04781/EIA.

#### **Conclusions**

Natural England should be provided with SC Ecologist HRA. Comments should be received prior to a planning decision being granted.

#### **Guidance on completing the HRA Screening Matrix**

##### **The Habitat Regulation Assessment process**

Essentially, there are two ‘tests’ incorporated into the procedures of Regulation 61 of the Habitats Regulations, one known as the ‘significance test’ and the other known as the ‘integrity test’. If, taking into account scientific data, we conclude there will be no likely significant effect on the European Site from the development, the ‘integrity test’ need not be considered. However, if significant effects cannot be counted out, then the Integrity Test must be researched. A competent authority (such as a Local Planning Authority) may legally grant a permission only if both tests can be passed.

The first test (the significance test) is addressed by Regulation 61, part 1:

61. (1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for a plan or project which –

(a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and

(b) is not directly connected with or necessary to the management of that site, must make an appropriate assessment of the implications for that site in view of that site’s conservation objectives.

The second test (the integrity test) is addressed by Regulation 61, part 5:

61. (5) In light of the conclusions of the assessment, and subject to regulation 62 (consideration of overriding public interest), the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

In this context ‘likely’ means “probably”, or “it well might happen”, not merely that it is a fanciful possibility. ‘Significant’ means not trivial or inconsequential but an effect that is noteworthy – Natural England guidance on The Habitat Regulation Assessment of Local Development Documents (Revised Draft 2009).

#### **Habitat Regulation Assessment Outcomes**

**A Local Planning Authority can only legally grant planning permission if it is established that the proposed plan or project will not adversely affect the integrity of the European Site.**



**If it is not possible to establish this beyond reasonable scientific doubt then planning permission cannot legally be granted unless it is satisfied that, there being no alternative solutions, the project must be carried out for imperative reasons of over-riding public interest, and the Secretary of State has been notified in accordance with section 62 of the Conservation of Habitats and Species Regulations 2010. The latter measure is only to be used in extreme cases and with full justification and compensation measures, which must be reported to the European Commission.**

#### **Duty of the Local Planning Authority**

It is the duty of the planning case officer, the committee considering the application and the Local Planning Authority as a whole to fully engage with the Habitats Regulation Assessment process, to have regard to the response of Natural England and to determine, beyond reasonable scientific doubt, the outcome of the 'significance' test and the 'integrity' test before making a planning decision.

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Committee and Date  
 North Planning Committee  
 22<sup>nd</sup> December 2015

Item  
**8**  
 Public

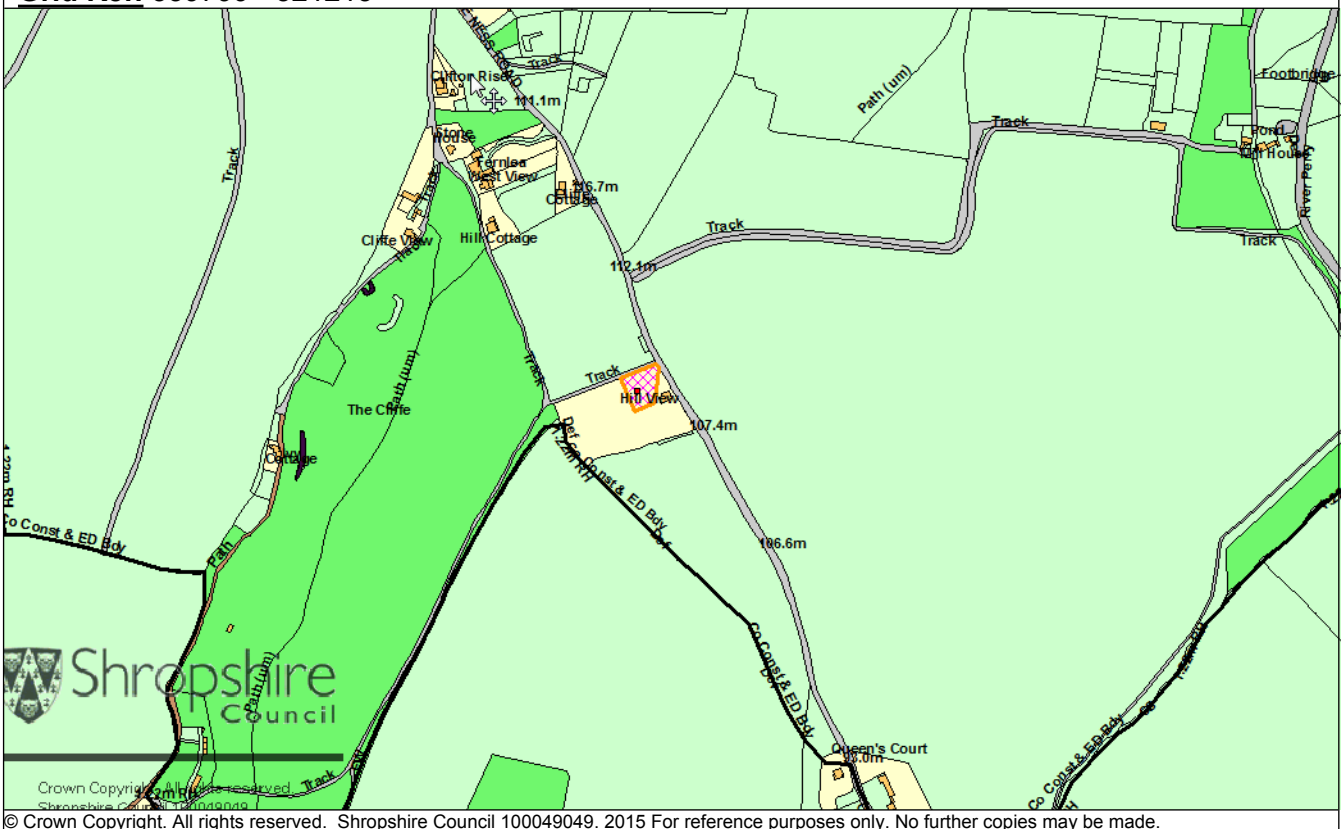
## Development Management Report

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> 15/04348/FUL	<b>Parish:</b>	Ruyton XI Towns
<b>Proposal:</b> Change of use of existing store/office to dwelling		
<b>Site Address:</b> Former Store Walnut House Little Ness Road Ruyton Xi Towns Shropshire		
<b>Applicant:</b> Mr & Mrs D & P PRITCHARD		
<b>Case Officer:</b> Mark Perry		<b>email:</b> <a href="mailto:planningdmnw@shropshire.gov.uk">planningdmnw@shropshire.gov.uk</a>

**Grid Ref:** 339799 - 321213



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

1.1 The submitted application is the conversion of an existing building to an independent dwelling. The existing building was granted planning permission in 2008 for use as a store/ office where it was conditioned that it could only be used for purposes ancillary to Walnut House and not as an independent dwelling. The previous owner of the dwelling used the building as a home office however the new owners have no use for the ancillary office use and now wish to use the building as an independent unit of living accommodation.

**2.0 SITE LOCATION/DESCRIPTION**

2.1 The application site is located around 750 metres from the edge of Ruyton XI Towns adjacent to a single track rural land. The existing single residential curtilage is surrounded by agricultural fields with a public right of way running along the northern boundary of the site.

2.2 The existing curtilage contains a large detached dwelling and an L-shaped range of single storey, timber constructed outbuildings which are currently used to provide ancillary garaging and kennel accommodation. The building the subject of this application is 2 storey and of a more robust method of construction. It is understood that the building originated from a historic timber framed barn which was rebuilt on this site although with substantial modern additions. Whilst there appears to be some small historic value to the building the vast majority of it is considered to be of modern construction.

**3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION**

3.1 In accordance with the adopted scheme of delegation the local member and the Chair of the Planning Committee consider that the application raises issues which warrants the applications determination by the Planning Committee.

**4.0 Community Representations**

- Consultee Comments

**Parish Council** - oppose the application as Shropshire Council now has in excess of a 5 year housing supply; its planning policies now carry more weight and as such the proposed development outside the development boundary depicted in the parish council's SAMDev submission (CS4); is in open countryside (CS5) and cannot therefore be supported. In addition the Parish Council were disappointed that the application had been validated by Shropshire Council as it breaches conditions attached to the connected previous planning application ref. 04/13043/FUL; and would recommend that the application be either withdrawn or refused on this basis.

**Affordable Housing**- the correct amount of contribution is indicated in the submission.

### - Public Comments

2 letters of representation received commenting on the following issues-

- Leaves the original house with no outbuildings increasing the risk of more being erected close to the bridleway
- Extra traffic on the road affecting walkers, cyclists and horse riders.
- No facilities nearby
- Will not contribute to open market housing requirement
- It is outside of the development boundary
- Contrary to existing planning conditions restricting its use
- New dwelling should not be allowed to be sold off

## 5.0 THE MAIN ISSUES

Principle of development

Siting, scale and design of structure

Visual impact and landscaping

## 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 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 The NPPF sets out the presumption in favour of sustainable development as a golden thread running through plan-making and decision-taking (para. 14), so it applies, as a material planning consideration, in any event. The NPPF specifically aims to 'boost significantly the supply of housing' therefore, the fact (and degree) that a proposed development helps to boost housing supply is a significant material consideration to which considerable weight must be attached. These considerations have to be weighed alongside the provisions of the Development Plan, including those relating to housing supply.

6.1.3 The Council is now in a position that it has identified sufficient land that addresses the NPPF 5 year housing land supply requirements. Significant weight can now be awarded to the SAMDev policies which have been through the examination process and the plan has been found to be 'sound' by the Planning Inspector. The next stage is for the plan to formally adopted by the Council at full Council in December 2015. Given the very advanced stage of the SAMDev plan, very significant weight can now be awarded to it in making planning decisions.

6.1.4 Within the SAMDev Plan Ruyton XI Towns is classed as a community hub where there is already a range of services and facilities. The village has an

unimplemented consent for 100 dwellings with a further 15 dwelling by infilling , small groups and conversions within its development boundary. The application site lies outside the SAMDev boundary and is therefore classed as open countryside for planning policy purposes. In accordance with current policy the application therefore falls to be assessed under Core Strategy policy CS5 relating to open countryside and the re-use of rural buildings to form dwellings. In order to satisfy the requirements of policy CS5 relating to the re-use of buildings in the open countryside to form dwellings it is stipulated the building involved must constitute a heritage asset. A heritage asset is defined in the Councils adopted SPD on the Type and Affordability of Housing as:

- pre-date 1950;
- comprise traditional materials and building methods;
- are of permanent and substantial construction;
- are of local significance and add value to the landscape.

- 6.1.5 It is acknowledged that the application building is a modern structure that does not fulfil the above criteria. However, this building is already in residential use albeit as ancillary residential accommodation and not as an independent unit of living accommodation.
- 6.1.6 Policy CS5 states that open market residential conversions will only be considered where respect for the heritage asset and high standards of sustainability are achieved. It is fully acknowledged that the building the subject of this application cannot be considered a heritage asset as it was only built in 2008. However, the core frame of the building is of historic value, although not sufficient for the building to be considered a heritage asset. As such the fact that the building is not a heritage asset weighs negatively in the overall planning balance. However regard should also be had to the current permitted development rights under class Q which allows agricultural buildings to be converted to dwellings and class O which allows offices (use class B1) to be converted to dwelling without requiring planning permission, this is regardless of whether they are or are not of any architectural or historic merit. This approach is in line with the NPPF's aims of significantly boosting the supply of housing. Whilst the existing building is not a heritage asset it is attractive and sits comfortably within the context of the site and it does contribute towards the character of the area. The proposal is more closely aligned with an application for the sub division of an existing dwelling rather than the conversion of an existing redundant building to create a new dwelling. To facilitate the conversion of the building to a separate dwelling would require minimal works dwelling given its existing use as ancillary accommodation to the main house with much of the necessary services and internal/ external works already carried out. In this respect it is a sustainable alternative use for the building.
- 6.1.7 On a general note, as a Community Cluster it is accepted in principle that Ruyton XI Towns is a sustainable settlement capable of accommodating some further growth in order to maintain and enhance this status. The application site is around 730 metres from the edge of the settlement's development boundary. Whilst the lack of road side pavements is likely to discourage people walking into the village it is feasible that they could cycle or have a very short car journey. Its position outside of the development boundary does weigh against the proposal.

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

6.2.1 The scheme proposes turning the barn into a two bedroom dwelling. The gross internal floor area would measure approximately 117 sqm so it would provide accommodation for the smaller and therefore more affordable end of the housing market. The applicant has stated that the barn will initially be occupied by the applicant's parents who will be able to provide child care and for the applicant's to be able to provide care to their parents in future years. However, what is being applied for is a completely separate dwelling which if approved would allow the barn to potentially be sold or let separately to someone not associated with the occupiers of the main dwelling. The applicant has revised the red line of the application site so that in the event that the barn is sold off the use of the existing single storey outbuilding would be split between the barn and the main dwelling which would ensure that there remains an adequate amount of garage/ storage accommodation for each property and therefore reducing the risk of occupiers wanting to erect new garages or outbuildings.

## 6.3 **Residential Amenity**

6.3.1 The only dwelling that would be affected by the proposal would be the applicant's own property. The barn sits behind the L-shape garage block when viewed from the applicant's main dwelling. There is approximately 27 metres between the barn and the main dwelling. It is considered that there is sufficient space around the buildings and the existing residential curtilages are large enough to comfortably accommodate two independent dwellings and provide adequate parking, storage and amenity land and without detrimentally impacting upon residential amenities.

## 6.4 **Public Right of Way**

6.4.1 A bridleway passes along the northern boundary of the site with its route and entrance to the driveway converging at almost the same point adjacent to the adopted highway. The scheme proposes no alterations to the access arrangements and the driveway will continue to be used in the same way that it has for a number of years. The creation of a new dwelling is likely to give a rise in the number of vehicles movements to and from the site. However, this is not likely to result in any obstruction to the public right of way as vehicles enter and leave the site.

## 6.5 **Affordable Housing**

6.5.1 Regarding the need for an affordable housing payment, officers acknowledge the November 2014 Ministerial statement and National Planning Practice Guidance (PPG) advising against the use of planning obligations to secure tariff-style contributions. These were afforded weight in a number of recent appeal cases, although the Council contended that those decisions did not set a binding precedent since the evidence underpinning its Core Strategy Policy CS11 had not been considered in full as part of the appeal process. In any event the Government has subsequently withdrawn the relevant PPG following a successful High Court challenge (as of the 31st July 2015). The Council therefore maintains its position that an appropriate affordable housing contribution will continue to be sought in all cases in accordance with adopted Policy CS11 and the Housing SPD. The application has confirmed that they intend to enter into a S106 which will secure an affordable housing contribution of J9,000.

## 7.0 **CONCLUSION**

- 7.1 Whilst the site occupies an open countryside location and involves the change of use of a non heritage asset to an open market residential use, the building is already in a residential use, albeit an ancillary use providing residential accommodation. Therefore conversion to a dwelling would require minimum alterations. Regard must be given to the Governments drive to boost the supply of housing, this is clearly set out by the revised permitted development rights allowing almost any type of former agricultural building and office accommodation to be converted to a dwelling regardless of location (subject to meeting the set criteria). The existing building will make a contribution towards housing although only a small amount, but although it is in the open countryside it is not completely isolated as there is a sporadic scattering of other dwellings between the site and Ruyton XI Towns which is only a short distance away.
- 7.2 On balance, it is considered that the proposal has some social, economic and environmental benefits which, when assessed as a whole, currently weigh in favour of allowing the change of use as a sustainable form of development as envisaged by the NPPF.

## **8.0 Risk Assessment and Opportunities Appraisal**

### **8.1 Risk Management**

There are two principal risks associated with this recommendation as follows:

As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal, i.e. written representations, hearing or inquiry.

The decision may be challenged by way of a Judicial Review by a third party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will interfere where the decision is so unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its planning merits. A challenge by way of Judicial Review must be made a) promptly and b) in any event not later than six weeks after the grounds to make the claim first arose.

Both of these risks need to be balanced against the risk of not proceeding to determine the application. In this scenario there is also a right of appeal against non-determination for application for which costs can also be awarded.

### **8.2 Human Rights**

Article 8 gives the right to respect for private and family life and First Protocol Article 1 allows for the peaceful enjoyment of possessions. These have to be balanced against the rights and freedoms of others and the orderly development of the County in the interests of the Community.



First Protocol Article 1 requires that the desires of landowners must be balanced against the impact on residents.

This legislation has been taken into account in arriving at the above recommendation.

### 8.3 Equalities

The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed in Planning Committee members' minds under section 70(2) of the Town and Country Planning Act 1990.

### 9.0 Financial Implications

There are likely financial implications if the decision and / or imposition of conditions is challenged by a planning appeal or judicial review. The costs of defending any decision will be met by the authority and will vary dependent on the scale and nature of the proposal. Local financial considerations are capable of being taken into account when determining this planning application – insofar as they are material to the application. The weight given to this issue is a matter for the decision maker.

## 10. Background

### Relevant Planning Policies

Central Government Guidance:  
National Planning Policy Framework  
Planning Practice Guidance

Core Strategy and Saved Policies:  
CS4- Community Hubs and Community Clusters  
CS5- Countryside and Greenbelt  
CS11- Type and Affordability of Housing

## 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) Cllr M. Price
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Local Member Cllr Nick Bardsley
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Appendices APPENDIX 1 - Conditions
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## **APPENDIX 1**

### **Conditions**

#### **STANDARD CONDITION(S)**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 91(1) of the Town and Country Planning Act, 1990 (As amended).

2. 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.

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

3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that order with or without modification), the following development shall not be undertaken without express planning permission first being obtained from the Local Planning Authority:-

- extension to the dwelling
- free standing building within the curtilage of the dwelling
- addition or alteration to the roof
- erection of a porch
- any windows or dormer windows

Reason: To enable the Local Planning Authority to control the development and so safeguard the character and visual amenities of the area, and to ensure that adequate private open space is retained within the curtilage of the building.

-



<u>Committee and Date</u>
North Planning Committee
22 <sup>nd</sup> December 2015

<u>Item</u>
<b>9</b>
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 COMMITTEE 22<sup>nd</sup> December 2015

#### Appeals Lodged

<b>LPA reference</b>	14/03722/OUT
<b>Appeal against</b>	Refusal
<b>Committee or Del. Decision</b>	
<b>Appellant</b>	Executors Of The Estate Of L Coomansingh – C/O Berrys
<b>Proposal</b>	Outline application (access for approval) for the residential development of six open market dwellings
<b>Location</b>	Grove Feeds Tern Hill Market Drayton Shropshire TF9 2JQ
<b>Date of appeal</b>	20.11.15
<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>	14/01654/OUT
<b>Appeal against</b>	Refusal
<b>Committee or Del. Decision</b>	Committee
<b>Appellant</b>	M Richardson & Partners
<b>Proposal</b>	Outline application for residential development (All Matters Reserved)
<b>Location</b>	Development Land South Of Aspen Grange, Weston Rhyn, Oswestry
<b>Date of appeal</b>	20.11.15
<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>	15/02538/FUL
<b>Appeal against</b>	Refusal of planning permisison
<b>Committee or Del. Decision</b>	Delegated
<b>Appellant</b>	Mr Richard McLaughlin C/O Mr Graham Fergus
<b>Proposal</b>	Erection of four bungalows
<b>Location</b>	Land Off Old Chester Road Hinstock Shropshire
<b>Date of appeal</b>	03.12.15
<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>	14/04038/FUL
<b>Appeal against</b>	Refusal
<b>Committee or Del. Decision</b>	Delegated
<b>Appellant</b>	Mr & Mrs J Harvey
<b>Proposal</b>	Repair and reinstatement of existing building and erection of extension to form one residential dwelling; to include insertion of rooflights, roof mounted solar panels and heating panels; works to vehicular access
<b>Location</b>	Barn at Hen-Hafod, Berghill Lane, Whittington, SY11 4NT
<b>Date of appeal</b>	03.12.2015
<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>	14/04039/LBC
<b>Appeal against</b>	Refusal
<b>Committee or Del. Decision</b>	Delegated
<b>Appellant</b>	Mr & Mrs J Harvey
<b>Proposal</b>	Repair and reinstatement of existing building and erection of extension to form one residential dwelling; to include insertion of rooflights, roof mounted solar panels and heating panels; works to vehicular access
<b>Location</b>	Barn at Hen-Hafod, Berghill Lane, Whittington, SY11 4NT
<b>Date of appeal</b>	03.12.2015
<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>	

**Appeals Decided**

<b>LPA reference</b>	15/01590/PMBPA
<b>Appeal against</b>	Refusal
<b>Committee or Del. Decision</b>	Delegated
<b>Appellant</b>	Mr P Brisbane
<b>Proposal</b>	Change of Use from Agricultural Use to Residential
<b>Location</b>	Painsbrook Farm, Painsbrook Lane, Hadnall
<b>Date of appeal</b>	18.08.15
<b>Appeal method</b>	Written Representations
<b>Date site visit</b>	
<b>Date of appeal decision</b>	23.11.15
<b>Costs awarded</b>	
<b>Appeal decision</b>	<b>Dismissed</b>

<b>LPA reference</b>	14/05230/PMBPA
<b>Appeal against</b>	Refusal
<b>Committee or Del. Decision</b>	Delegated
<b>Appellant</b>	Mr Roger Pinches
<b>Proposal</b>	Change of Use from Agricultural Use to 3 Residential dwellings
<b>Location</b>	Barn adj Mannings Farm, Hazels Road, Shawbury
<b>Date of appeal</b>	22.07.15
<b>Appeal method</b>	Written Representations
<b>Date site visit</b>	
<b>Date of appeal decision</b>	24.11.15
<b>Costs awarded</b>	
<b>Appeal decision</b>	<b>Dismissed</b>

<b>LPA reference</b>	14/00133/OUT
<b>Appeal against</b>	Refusal
<b>Committee or Del. Decision</b>	Committee
<b>Appellant</b>	Galliers Homes Limited
<b>Proposal</b>	Outline application for mixed residential use; formation of new vehicular access and estate roads and creation of public open space
<b>Location</b>	Land at the Cross, West Felton, Oswestry
<b>Date of appeal</b>	06.03.15
<b>Appeal method</b>	Hearing
<b>Date site visit</b>	14.10.15
<b>Date of appeal decision</b>	30.11.15
<b>Costs awarded</b>	
<b>Appeal decision</b>	<b>Allowed</b>

<b>LPA reference</b>	15/00971/FUL
<b>Appeal against</b>	Refusal
<b>Committee or Del. Decision</b>	Delegated
<b>Appellant</b>	Mr & Mrs Colin & Jenny Boswell
<b>Proposal</b>	Erection of 1No detached dwelling following demolition of existing outbuilding (revised scheme)
<b>Location</b>	1 Wingthorpe, Mount Drive, Oswestry
<b>Date of appeal</b>	30.07.15
<b>Appeal method</b>	Written Representations
<b>Date site visit</b>	
<b>Date of appeal decision</b>	30.11.15
<b>Costs awarded</b>	
<b>Appeal decision</b>	<b>Dismissed</b>

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# Appeal Decision

Site visit made on 3 November 2015

**by Paul Singleton BSc (Hons) MA MRTPI**

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

Decision date: 23 November 2015

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**Appeal Ref: APP/L3245/W/15/3132010**

**The Cow Shed, Painsbrook Farm, Painsbrook, Hadnall, Shrewsbury, Shropshire SY4 4BA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
  - The appeal is made by P R Brisbourne & Son against the decision of Shropshire Council.
  - The application Ref 15/01590/ PMBPA, dated 14 April 2015, was refused by notice dated 24 June 2015.
  - The development proposed is the conversion of existing cow shed to 3 bedroomed residential accommodation.
- 

## Decision

1. The appeal is dismissed.

## Procedural Matters

2. The application was made on the 14 April 2015, but was determined by the Council having regard to Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order (GDPO) 2015<sup>1</sup> which came into effect on the following day (15 April 2015) and I have considered the appeal on the same basis. The application sought prior approval in relation both to the proposed change of use under Class Q(a) and the building operations required for the conversion under Class Q(b).
3. The Council has acknowledged that there was an error in the wording of the decision notice and has corrected the references to the specific paragraphs within the GPDO. This does not affect the outcome of the appeal.

## Main Issue

4. The main issue is whether the proposed conversion would be permitted development.

## Reasons

5. Class Q of the GDPO allows a change of use of any building and any land within its curtilage from use as an agricultural building to a use falling within Class 3 (dwellinghouses) of the Schedule to the Use Classes Order and building operations reasonably necessary to convert the building to a use falling within Class 3. Paragraph Q.1. sets out various circumstances in which development is not permitted by Class Q.

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<sup>1</sup> SI 2015/596

6. The Council's concerns relate to paragraph Q.1.(i) which states that development is not permitted if the development under Class Q(b) would consist of building operations other than the installation or replacement of windows, doors, roofs or exterior walls or services to the extent reasonably necessary for the building to function as a dwelling house; and partial demolition to the extent reasonably necessary to carry out these building operations. The Council has not argued that the various tests set out in the other sub paragraphs of Q.1. are not satisfied.
7. The portal framed building is open sided on the south elevation and clad with a mixture of concrete blocks, concrete panels and Yorkshire Boarding on the other elevations; the roof is clad in fibrous cement sheets. The block walls and panels would be retained and rendered externally. The Yorkshire Boarding would be extended to cover the upper sections of the north and west elevations, and extended vertically on the east elevation to replace existing fibrous cement cladding so providing a more uniform appearance to these elevations; the existing roof cladding would be retained. Insulation to the walls and roof would be achieved by means of internal insulation and lining. New window openings would be formed within the existing concrete block walls and new timber stud walls above on the north elevation.
8. None of the alterations to the north, east or west elevations would involve any demolition and, given that there are no walls or panels on the south elevation that could be demolished, the Council's concerns as to the extent of demolition are unfounded. I consider that the extent of building operations envisaged in respect of the roof and to the three enclosed elevations would fall within the scope of the "reasonable necessity" test set out in Q.1.(i). The key issue is with regard to the proposed infilling of the south elevation with full height glazing.
9. This proposed treatment would involve extensive framing along the lines indicated on the appeal plans with large panels of glazing and new lintels above. No constructional details were submitted with the application and the officer's report raised concerns that the glazing would introduce substantial new loadings and that no information was available to demonstrate that such loadings could be supported by the existing concrete floor slab.
10. Further structural information has subsequently been provided by the appellant in the form of two letters from Richard Strauss Associates, Consulting Structural Engineers. The first, dated 20 August 2015, provides a general description of the structure and advises that there is no structural reason why the existing building cannot be converted as proposed, and that the existing structure is sufficiently robust to support the proposed roof and wall cladding. The second, dated 23 September 2015, confirms this view and advises that, as it is understood that the new internal walls will be lightweight, non load-bearing timber framed partitions, these could be built off of the existing concrete slab.
11. Neither of the letters expressly addresses the question of how the loadings associated with the proposed full height glazing would be supported but further clarification is given in the appellant's written comments on the Council's statement. These confirm that;
  - (a) the existing steel frame is constructed on concrete pad foundations but new strip foundations would be installed in order to support the proposed glazing to the south elevation, and



- (b) the new lintels at high level within the existing steel frame would not add a significant additional load to the existing structure but would enhance the stability of the panels to be glazed.
12. The infilling of the currently open side of the building is necessary for the building to function as a dwelling and the proposed fully glazed elevation would be sympathetic to the character of the building. However, in considering whether these building operations would meet the “reasonable necessity” test, regard should be had to the guidance in paragraph 105 of the national Planning Practice Guidance<sup>2</sup> (PPG).
13. The PPG states that the permitted development right under Class Q assumes that the agricultural building is capable of functioning as a dwelling but recognises that some building operations which would affect the external appearance of the building, which would otherwise require planning permission, should be permitted. It also makes it clear that it is not the intention of the permitted development right to include the construction of new structural elements for the building. Therefore it is only where the existing building is structurally strong enough to take the loading which comes with the external works to provide for residential use that the building would be considered to have the permitted development right.
14. Having regard to that guidance I consider that the proposed strip foundations should properly be treated as constituting new structural elements and, given their stated purpose of enhancing the stability of the panels to be glazed, the proposed lintels could also be argued to fall within that classification of works. For these reasons I find that these elements of the proposed works would not benefit from permitted development rights under Class Q(b). I note the appellant’s reference to two other appeal decisions. However these decisions both predate the current guidance in PPG and neither appears to consider any proposal for new foundations as part of the building operations.
15. The appellant has demonstrated that all the other works can be achieved within the capacity of the existing structure and it may be that an alternative means of infilling the south elevation could be achieved without additional structural elements. However, on the basis on the information available, I am unable to conclude that the building as a whole is structurally strong enough to take the loading which comes with the external works necessary to provide for its conversion to a residential use. Accordingly, I conclude that the proposed conversion and works do not benefit from permitted development rights under Class Q; planning permission would, therefore, be required for any change to residential use.
16. An a application for planning permission would be a matter for the Local Planning Authority to determine in the first instance and cannot be addressed under the prior approval provisions set out in the GPDO. For these reasons the appeal is dismissed.

*Paul Singleton*

INSPECTOR

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<sup>2</sup> Reference ID: 13-105-20150305

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# Appeal Decision

Site visit made on 3 November 2015

**by Paul Singleton BSc (Hons) MA MRTPI**

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

Decision date: 24 November 2015

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**Appeal Ref: APP/L3245/W/15/3097735**

**Barn adjacent to Mannings Farm, Hazels Road, Stanton upon Hine Heath, Shropshire SY4 4ET**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
  - The appeal is made by Mr Roger Pinches against the decision of Shropshire Council.
  - The application Ref 14/05220/PMBPA, dated 17 November 2014, was refused by notice dated 30 March 2015.
  - The development proposed is conversion of the existing agricultural building to three residential units.
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## Decision

1. The appeal is dismissed.

## Procedural Matters

2. The application was made under Schedule 2, Part 3, Class MB of the Town and Country Planning (General Permitted Development) Order 1995 (as amended). That statutory instrument has largely been replaced with the Town and Country Planning (General Permitted Development) (England) Order (GPDO) 2015<sup>1</sup> and equivalent provisions are now included within Schedule 2, Part 3, Class Q of that Order (Class Q). The relevant legislation provides for anything done under the previous provisions to be treated as if done under the new provisions, so an application made under Class MB has effect as if made under Class Q. As both the Council's Statement of Case and the appellant's response refer to this change, there is no prejudice to either party in my proceeding on the basis of the new Class Q.
3. The appellant has indicated an anticipation that there may be two elements of prior approval; first for the proposed demolition and secondly for the proposed change of use. However, the application form used and the description of development given clearly indicate that prior approval is sought for the proposed change of use. The application form and supporting material also included information as to the nature and extent of building works envisaged for the creation of 3 dwellings.
4. The description of development as set out in the application includes text providing details of the building and site. I have taken the first sentence of that description as being a full and sufficient description of the proposal.

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<sup>1</sup> SI 2015/596

## Main Issue

5. The main issue is whether the proposed conversion would be permitted development.

## Reasons

6. Class Q of the GPDO allows a change of use of any building and any land within its curtilage from use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order, and building operations reasonably necessary to convert the building to a use falling within Class C3. The development permitted is subject to a number of exclusions and conditions set out within the subsequent clauses of Class Q and in other parts of the GPDO.
7. The Council has submitted a copy of the planning permission granted in January 1993, Ref No. N/92/921/SH/200, under which the agricultural building was constructed and has drawn my attention to Condition 06 of that permission which reads:

*As development in the locality is carefully controlled and generally restricted to that which is essential for agricultural purposes, the building hereby permitted shall be used for agricultural purposes only and shall be removed and the land reinstated to its former condition if at any time it ceases to be used for this purpose.*

The appellant has commented that Condition 06 does not specifically withdraw permitted development rights but its existence must be considered having regard to Article 3(4) of GPDO which states that:

*Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3<sup>2</sup> of the Act otherwise than by this Order.*

8. Condition 06 imposes an unequivocal restriction on the use of the building and, by virtue of Article 3(4), means that the building does not benefit from permitted development rights under Class Q. The proposal would also fail to meet the following requirements of Class Q.
9. The floor space of the existing building (assessed by the Council to be 1,176 square metres) far exceeds the maximum permitted threshold, of 450 sq m, as set out in Q.1.(b). I note the intention to reduce the size of the building as part of the proposal but Q.1.(b) clearly relates to existing floorspace and there is no provision in the GPDO for this to be assessed on any other basis.
10. Although marked as preliminary, the scheme drawings indicate an intention to provide 3 dwellings which would have a combined floor space in excess of the 450 sq m threshold set out in paragraph Q.1.(h). I concur with the Council's submissions that the reference to floor space in Q.1.(h) does not differentiate between ground and first floor accommodation and that this should be included in the floor space calculation, given that living accommodation is proposed over two storeys.

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<sup>2</sup> The reference is to Part 3 of the Town and Country Planning Act 1990 and the new consolidated 2015 GPDO changed this text from 'III' to '3' only.

11. The scope of demolition proposed would also go beyond that set out in paragraph Q.1.(i)(ii) which limits the extent of demolition allowed to that reasonably necessary to carry out the building operations allowed under paragraph Q.1.(i)(i). The appellant has indicated that the main objective of the proposed demolition is to reduce the size of the existing building below the 450 sq m threshold rather than to facilitate the proposed conversion; for this reason the proposed works would fail the test of reasonable necessity.
12. From my site visit it is apparent that the appeal site is substantially larger than the area occupied by the building itself and that the red line includes open land, to the south of the building, which cannot reasonably be regarded as forming part of its curtilage since this land is neither closely associated with nor serving the purposes of the agricultural building. Accordingly, the area proposed for use in connection with the new dwellings does not fall within either part (a) or (b) of the definition of "curtilage" as set out in the GPDO, Schedule 2, Part 3, Class X and its use for residential purposes would not constitute permitted development under Q(a).
13. The Council is concerned that the building works required for the proposed conversion would go beyond what is reasonably necessary to achieve the proposed residential use as envisaged in paragraph Q(a) and I agree that this is not fully clear from the appellant's submissions. However there is no need for me to reach a definitive view on these matters given my conclusion, for all the reasons set out above, that the proposed development does not benefit from permitted development rights under Class Q. Hence planning permission would be required for any conversion of the building to residential use.
14. An application for planning permission would be a matter for the local planning authority to consider in the first instance and cannot be addressed under the prior approval provisions set out in the GPDO. For these reasons I conclude that the appeal should be dismissed.

*Paul Singleton*

INSPECTOR

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## Appeal Decision

Hearing held on 13 and 14 October 2015

Site visit made on 14 October 2015

**by M Middleton BA(Econ) DipTP DipMgmt MRTPI**

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

**Decision date: 30 November 2015**

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**Appeal Ref: APP/L3245/W/15/3003171**

**Land at The Cross, West Felton, Oswestry, Shropshire, SY11 4EH**

- 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 Galliers Homes Ltd against the decision of Shropshire Council.
  - The application Ref 14/00133/OUT, dated 13 January 2014, was refused by notice dated 1 October 2014.
  - The development proposed is residential development, comprising 25 dwellings, estate roads and public open space.
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### Decision

1. The appeal is allowed and 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 13 January 2014, and the plans submitted with it, subject to the conditions in the attached schedule.

### Procedural matters

2. The application is in outline with all matters reserved for subsequent approval. It is accompanied by a Design and Access Statement together with an Illustrative Layout. The latter shows notional development details that include houses and bungalows, with between two and four bedrooms each. Access would be taken from Holyhead Road and there would be an area of public open space in the south-western part of the site. It is agreed that the details shown on this drawing are for illustrative purposes only.
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 a proposed footpath along the western side of Holyhead Road from the northern extremity of the site's frontage and extending to the junction of that road with The Avenue.
4. In addition, improvements to the bell-mouth at The Avenue arm of the junction, together with revised junction radii and a pedestrian crossing, are also shown. The configuration of the access to Holyhead Road and that of the junction improvement are agreed with the Highway Authority, subject to the subsequent approval of their detailed design and construction. This could be made the subject of a condition. However, concerns were raised

by local residents about other aspects of the highway proposals and I return to these later.

5. As well as on an accompanied site visit on 14 October, I visited the appeal site and its locality, unaccompanied, on 13 October and between 08:00 and 08:30 on 14 October to observe traffic at the junction of Holyhead Road with The Avenue and School Road.
6. The Appellant submitted a signed Deed of Agreement pursuant to Section 106 of the Town and Country Planning Act 1990 between itself, the land owners and Shropshire Council. In this document the Appellant and the land owners agree, if planning permission is granted, to provide a proportion of the total number of dwellings constructed on the site as affordable housing and to make a financial contribution towards the provision of additional affordable dwellings elsewhere within Shropshire. The exact number of dwellings and the size of the contribution are to be defined in a scheme, prepared in accordance with the prevailing Local Development Framework Supplementary Planning Document on the Type and Affordability of Housing, and approved by the Council.
7. The provision of an element of affordable housing within market housing development is a requirement of *Shropshire Core Strategy 2011* (CS) Policy CS11, which is supported by paragraph 50 of the *National Planning Policy Framework* (Framework). I am consequently satisfied that the measures relating to the provision of affordable housing comply with the provisions of Paragraph 204 of the Framework, are necessary to make the development acceptable in planning terms and meet Regulation 122 of the *Community Infrastructure Levy Regulations* (CIL) 2010.

### **Main Issues**

8. From all that I have read, seen and heard I consider the main issues are
  - a) Whether the proposal is in accordance with the Development Plan and if not
  - b) Whether the Council's Development Plan policies are up to date and it can demonstrate a five-year supply of deliverable housing sites and if not
  - c) whether it is sustainable development within the meaning of the Framework; such that any harm to the character and appearance of the area, the landscape, ecology, the local highway network, community cohesion and any other harm attributable to the development, together with the accessibility of the appeal site, significantly and demonstrably outweigh the benefits of the proposal; such that the presumption in paragraph 14 of the Framework to favourably consider applications for sustainable development, in areas where Local Planning Authorities cannot demonstrate an up-to-date five year supply of deliverable housing sites and/or their Development Plan housing policies are out of date, applies.



## Reasons

### **Planning Policy**

9. Section 38(6) of the *Planning and Compulsory Purchase Act 2004* requires that any application for planning permission must be determined in accordance with the Development Plan (DP), unless material considerations indicate otherwise. The DP for the area now consists of the CS and the saved policies of the *Oswestry Borough Local Plan 1993-2006* (LP), which was adopted in 1999. The former covers a plan period until 2026; the latter sought to meet that Borough's development needs up to 2006.
10. At paragraph 215 the Framework says that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework. Policy CS5 strictly controls development in the countryside in accordance with national policy. It permits development on appropriate sites, which maintain the countryside's vitality and character, listing development types that are appropriate to the improvement of the sustainability of rural communities. These aims are consistent with the countryside protection policies in the Framework. The appeal proposal does not relate to any of the development types listed. Although the list is not exclusive, proposals should bring local community and economic benefits and should also be consistent with policies CS6 and CS17.
11. Policy CS6 seeks to create sustainable places by requiring development to be designed to a high quality using sustainable design principles and achieving an inclusive and accessible environment, which respects and enhances local distinctiveness. This is consistent with section 7 of the Framework, which requires good design. The policy also requires development that is likely to generate significant levels of traffic to be located in accessible locations where opportunities for walking, cycling and the use of public transport can be maximised and the need for car based travel reduced. This is closely aligned with one of the core planning principles as set out in the Framework. Policy CS17 is concerned with the achievement of a multifunctional network of natural and historic resources through development and is consistent with sections 11 and 12 of the Framework.
12. Policy CS4 seeks to focus investment in the rural area into Community Hubs and Community Clusters. These are to be defined in the *Site Allocations and Management of Development* (SAMDev) Development Plan Document (DPD). Following a series of Hearings and modifications, the Examining Inspector's (EI) report has now been received. This plan has consequently reached an advanced stage in its preparation and its policies and proposals should, in principle, carry significant weight. West Felton is not a Community Hub or Community Cluster but a part of the countryside. Policy MD7a strictly controls new market housing in the countryside. The appeal proposal is consequently contrary to this aspect of the emerging plan.
13. Until the SAMdev DPD is adopted, the saved policies of the LP constitute the detailed arm of the DP. Policy H5 directs the majority of the new dwellings required in the former Borough until 2006 to a number of the larger settlements. West Felton is one of these settlements. The policy permits

housing development within these settlements but within the Development Boundaries. Policy H16 covers windfall development such as the appeal proposal. This should be of a size that is appropriate for the settlement but also located within the Development Boundaries.

14. Although the plan period ended some nine years ago, no new Development Boundaries have been established. Consequently, those defined in the LP still apply. The proposal is outside of the Development Boundary as defined in the LP and therefore contrary to saved LP Policies H5 and H16. The proposal is not in accordance with this aspect of the Development Plan.
15. However, the LP housing development policies have been time-expired for nearly a decade but have yet to be statutorily replaced. Paragraph 14 of the National Planning Policy Framework (Framework) says that where the relevant DP Policies are out of date, planning permission should be granted for sustainable development unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole or specific policies in it indicate that development should be restricted. The DP Policies that regulate the supply of housing within the former Borough of Oswestry are out of date. In the context of this appeal site, which is adjacent to the settlement limits and not in the middle of the open countryside, I would include saved LP Policies H5 and H16 in as much as they restrict development to within Development Boundaries in this category because they restrict housing development outside of those areas unless it is small scale. Paragraph 14 of the Framework is consequently engaged in the context of this appeal.

### ***Housing land supply***

16. The Council and Appellant differ as to whether or not there is a five year supply of housing land in Shropshire. Both agree that the dwelling (d) requirement (2006-26), as set out in Policy CS1 (around 27,500) and which was scrutinised during the CS examination, is the only relevant assessment of Full Objectively Assessed Housing Need (FOAHN) in Shropshire. However, they differ in their approach to the calculation of the five years supply and the available and committed land and dwellings to meet that need. The Council considers there to be a 5.75 years supply, the Appellant 4.00 years.

### ***Housing requirement***

17. To calculate the five year supply and to assess under provision since the plan period began, the Appellant has annualised the overall plan requirement,  $27,500/20 = 1375$  dwellings per annum (dpa). The Council has used the stepped approach to dwelling delivery as set out in the housing trajectory contained in the CS. This proposed 1,190 dpa 2006-11 and 1,390 dpa 2011-21, increasing to 1,530 dpa 2021-26.
18. There is no nationally advocated correct method that would resolve this conflict. Policy CS10, as adopted, says that the availability of housing land will maintain a continuous supply of suitable sites to deliver the overall housing target. There is no definitive indication in the policy itself as to

whether this is meant to imply an annualised requirement or one that is stepped according to the trajectory that is contained in its reasoned justification.

19. I was told that the policy wording and that of its supporting text was modified following concerns raised by the examining Inspector. Paragraph 5.4 of the CS, which is supporting text to Policy CS10, says that the purpose of the policy is to guide phased allocations in the SAMDev DPD and that it will not impact on the assessment of the five year supply. This seems contradictory to me, in that if the stepped approach is to guide phased allocations then it must have been envisaged that housing land would have to be released at different rates, during the different parts of the plan period. There must have been a reason for this and in the absence of evidence to the contrary, I assume that it was because the CS envisaged different levels of housing need in the different periods of the plan. This is consistent with the trajectory approach advanced in the *Regional Spatial Strategy for the West Midlands (RSS)*, which proposed increasing indicative annual average targets for Shropshire in each of the five year periods during the life of the CS. Although not DP policy that does not negate the validity of the research and assessment that led to the RSS's conclusions on housing targets.
20. The Framework at paragraph 47 says that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements. The only housing requirement established by policy is the delivery, over the plan period, of around 27,500 new homes contained in Policy CS1. Whilst paragraph 5.4 says that the five year supply will be assessed against this total plan target of 27,500 new homes, it does not mean that a stepped approach is necessarily inappropriate, only that the housing land supply assessment should ensure that land to accommodate this number of dwellings comes forward before 2026. In the absence of substantive evidence to demonstrate why the CS Inspector recommended moving reference to the phasing from the wording of Policy CS10 itself to paragraph 5.5, rather than its removal from the plan altogether, I do not consider the stepped approach used by the Council to be wrong.
21. The Appellant makes the point that the Framework seeks to boost significantly the supply of housing. However, in the context of housing land supply calculation, the Framework says that LPs should meet the FOAHN and that local planning authorities should identify and update annually a supply of specific deliverable sites with an additional buffer to provide five years' worth of housing. The Council's approach is consistent with this.
22. Whilst I understand the problems outlined by the Council, in trying to justify a stepped approach to delivery, for the most part I agree with the Appellant's criticisms. The Council's justifications largely concern housing delivery rather than housing need, which is what the requirement is meant to address. Nevertheless, that does not undermine the validity of the Council's overall approach.

23. The stepped approach results in a five year requirement of 6,950 ds and an under-delivery of 2010 ds. There is agreement that this under delivery should be provided for in the first five years, which is consistent with the advice in the *National Planning Practice Guidance* (NPPG).
24. The NPPG advises that the assessment of a local delivery record is likely to be more robust if a longer view is taken, since this is likely to take account of the peaks and troughs of the housing market. The information accompanying the appeal only looks at housing delivery since 2006 and consequently the period analysed is unlikely to represent a full cycle of the housing market. The analysis demonstrates persistent under delivery since 2009 but not before then. Nevertheless, on the basis of the information available to me I accept that a 20% buffer is appropriate.
25. The parties disagree as to whether the buffer should be applied to the shortfall, as well as to the five year requirement. The Framework makes it clear that the buffer is meant to ensure choice and competition in the market for land and that it is supply brought forward from the latter years of the plan period for that purpose. Its intention is to better ensure that the annual housing requirement is achieved. It does not seek to surpass it or to increase the overall dwelling requirement during the plan period.
26. The shortfall represents dwellings that should already have been built but because of market conditions and/or land supply difficulties, have not been. It therefore seems logical to me that this requirement should also have the buffer applied to it, in order to make sure that its early resolution is not thwarted by land shortage problems. This is consistent with the Framework's desire to boost significantly the supply of housing and is supported by guidance on the matter, from the Planning Advisory Service, which advises that the buffer should be applied to the per annum figure plus the shortfall.
27. I was referred to a Secretary of State (SoS) for Communities and Local Government case in Cheshire East at land bounded by Gresty Lane, Crewe<sup>1</sup>. In that case the SoS concluded that the buffer should not be applied to the shortfall in order to avoid double counting. However, from my reading of the Inspector's Report and the Secretary of State's Decision Letter, it seems that the terms backlog and shortfall may have been used differently by the different writers.
28. In dealing with housing land supply, it is important to use the correct terminology. References to 'backlog' generally relate to need that has not been met from the previous plan period (in this case before 2006), which should have been accounted for in the assessment of the FOAHN and included in the overall housing requirement when the CS was prepared and adopted. The term 'shortfall' relates to that part of the housing requirement that has not been delivered, in the years of the current Plan period that have elapsed to date (2006-15) and should have been a part of the housing supply. Cheshire East does not have an adopted CS with a

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<sup>1</sup> Appeal ref: APP/Ro0660/A/13/2209335, Land bounded by Gresty Lane, Rope Lane, Crewe Road and the A500, Crewe

FOAN that would have accommodated any backlog, whereas Shropshire does.

29. The matter at hand consequently relates to the supply of delivered land and housing and not the housing requirement. In these circumstances, there seems to me to be a tension between the stated intention of the Framework at paragraph 47 to boost significantly the supply of housing and the approach of the Council, which would in effect result in a reduction of the buffer by 20% of whatever the shortfall was.
30. On that basis I consider that the shortfall should be added to the five year housing requirement before the buffer is applied. This results in a five year dwelling requirement of  $6,950 + 2,010 = 8,960 + 20\% = 10,750$ . I recognise that the route to this conclusion may be different from that set out in the Secretary of State decision referred to, but I believe the approach I have set out steers clear of the possibility of the double-counting problem which he wished to avoid.

#### *Housing land supply*

31. The Appellant disputed the Council's revised position on housing land supply and there was discussion about some of the Council's assumptions and the deliverability of some of the sites included in the Council's revised Housing Trajectory that was submitted with the appeal. A number of verbal statements about the facts relating to the five year supply were made to the Hearing by both parties, about which there was discussion and disagreement.
32. As well as disputing the practicalities of building the numbers of dwellings predicted by the Council on some of the sites, the Appellant also challenges the Council's assumptions about the non-delivery rate and its small windfalls allowance.
33. It is by no means universal for Councils to apply a non-delivery rate to committed sites. Notwithstanding this and in recognition that some sites may not be implemented immediately, the Council discounts the sites with planning permission, with a prior approval and a resolution to grant planning permission by 10%.
34. The Appellant argues that this should be increased, in the context of the appeal proposal, because the housing market is weaker in west and north Shropshire but does not explain why this is so or why it justifies increasing the non-delivery rate. The market ought to deliver whatever financial constraints enable the demand for new dwellings to be, providing enough land is identified on the supply side. The buffer is meant to ensure that there is sufficient choice and competition in the market and Shropshire has set it at 20%. Increasing the discount would only result in a requirement for a larger supply to be identified, which would be pointless unless there was insufficient supply identified in a particular area to meet the identified need.
35. Policy CS1 recognises that there are different areas within Shropshire and subdivides it into spatial zones with targets for housing provision to be used

- in the SAMDev DPD. Providing this has been done objectively, then the fact that the local housing market is weaker should have no bearing on the land requirement. As the Framework says, sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that the scheme will not be implemented within five years.
36. The fact that there has been uncertainty about the provision of affordable housing at small sites is not unique to Shropshire and does not justify increasing the non-delivery rate. Again it is not clear how the Appellant's contention that Community Infrastructure Levy contributions in Shropshire are significant, has a bearing on the non-delivery rate. The viability of such contributions will have been the subject of a CIL examination and there is no evidence to suggest that they are unsustainable or have caused house prices in Shropshire to rise faster than the norm. Indeed from my experience it seems to me that housing is more affordable in Shropshire than in many other parts of the country.
37. Before applying the 10% non-delivery to the sites with a resolution to grant planning permission, the Council tests the sites against six criteria to assess whether or not they are deliverable within the five year period. In such circumstances a further 10% discount seems very reasonable to me and the Council's assessment robust in this respect.
38. The Council explained that it did not apply the non-delivery discount to sites allocated through the Development Plan process, sites identified through the Strategic Housing Land Availability Assessment and Affordable Housing sites. This is because it is more actively engaged in discussing the delivery of what, on the whole, are the larger development sites with representatives of the development industry. There is consequently increased certainty as to their deliverability and no need for a non-delivery allowance. I agree.
39. Paragraph 48 of the Framework says that local planning authorities can make an allowance for windfall sites in the five year supply if they have compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply. The historic evidence suggests that windfall sites have made a significant contribution to housing completions in Shropshire. This is recognised by the DP in the supporting text to Policy CS1. Between 2003 and 2013 windfall completions averaged 757 dpa. However, Shropshire has only included a windfall allowance of 299dpa and only for two years. This seems to me to be a conservative approach.
40. I note the Appellant's point about the settlement guidelines in the SAMDev DPD acting as a limit on the amount of development in each settlement. However, that plan has not yet been adopted and it will take a number of years before a significant number of settlements have reached their targets. The use of an allowance of 299dpa when the evidence suggests that 757dpa was achieved in the recent past and through the economic recession, should more than compensate for these concerns during the next five years.

41. The Appellant specifically challenged the Council's assumed delivery from twenty sites. Nearly 1,100 dwellings would be built at these sites in the next five years according to the Council. The Appellant suggests a reduction of about 940d. There is insufficient information to enable me to undertake a forensic site by site analysis. Nevertheless, it seems to me that where there is a requirement for major infrastructure improvements or master planning, the existence of heritage or environmental concerns or an absence of a developer, then there is a need for caution. My experience suggests that it is not unusual for larger sites with the above considerations to take more than 2.5 years from the granting of planning permission to the occupation of dwellings. Sites without planning permission clearly take longer as do ones that require the relocation of an existing use.
42. A number of the sites advanced by the Council do not have planning permission or a known developer. Others require the relocation of an existing user. I am consequently sceptical about the Council's assessment with regard to the ability of eight of the sites to deliver any dwellings and have reduced the output from a further three. On this basis I conclude that the Council's assessment should be reduced by about 600 dwellings. This gives a total supply of about 11,300ds against a requirement of about 10,750ds or a 5.26 years supply.
43. Shropshire Council covers a very large area and given the distances involved it would be inappropriate to give significant weight to an overall surplus in housing land supply in Shropshire if that was because of over-provision in areas many miles from Oswestry and West Felton. Similarly it would be inappropriate to give weight to an overall under-supply if there was clearly a comfortable surplus in the Oswestry area. The CS points out that the different parts of Shropshire have different characteristics and travel to work patterns. It divides Shropshire into five spatial zones and sets out a range of housing targets for each of the zones. The SAMDev DPD is meant to make provision within these zones in accordance with the established targets.
44. The SAMDev DPD subdivides Shropshire into eighteen areas, for which land allocations and dwelling provision are separately identified. Oswestry is one of these areas. I asked the parties to agree a five year land supply position for the Oswestry area. Notwithstanding the format of the SAMDev DPD and its near adoption status, the Council said that it did not have sufficient data to produce the information for the Oswestry zone but could undertake an assessment for the North-West Zone. The Appellant pointed out that the zones, as defined in the CS, are not precise and overlap. It suggested that the SAMDev Oswestry area should be used or an assessment based on a combination of the Ellesmere and Oswestry areas. In its opinion that area is a fair representation of the extent of the North-West Spatial Zone.
45. In the event there appears to have been little subsequent dialogue or cooperation between the parties. The Council produced an assessment based on a maximum interpretation of the extent of the North-West Zone. As the Appellant pointed out, this area extends beyond what could reasonably be regarded as within the spheres of influence of Ellesmere and Oswestry and includes settlements whose primary linkages are with

Shrewsbury. Although the analysis shows a comfortable five years supply, there is no detailed site information and for the above reasons it cannot be given any weight.

46. Whilst the Appellant demonstrated the over-optimism that the Council placed on delivery from some of its allocations in the Ellesmere and Oswestry areas it was unable to obtain any information on completions or commitments in the rural area and consequently unable to undertake a five year supply analysis of its own. It did however demonstrate that development in the market towns, community hubs and clusters in the north-west areas had delivered less than half of the areas' requirements (2006-15)<sup>2</sup>. Policy CS4 seeks to focus development in the rural area into community hubs and clusters. Additionally, between 2008 and 2013, the two areas had only delivered 13.5% of the Shropshire total of delivered ds<sup>3</sup>, whereas the CS mid-point requirement is 22%. As Shropshire overall failed to meet its requirement during this period, this data suggests that there is clearly an urgent need to boost the supply of housing in north-west Shropshire, regardless of the overall position in the Council's area.

### ***Sustainable development***

47. The Appeal site is a 1.53 hectare, relatively flat field that at the present time is in agricultural use. It abuts Holyhead Road to the north of its junction with The Avenue and School Road, from where access would be taken. In the vicinity of the junction, existing residential development fronts both Holyhead Road and The Avenue, the appeal site being situated to its rear. Beyond hedges to the north and west is open countryside, whilst to the east, is a modern, low density residential area with executive housing.
48. At paragraph 14 the Framework says that at its heart there is a presumption in favour of sustainable development. At paragraph 6 it points out that the policies in paragraphs 18 to 219, taken as a whole, constitute the Government's view of what sustainable development means for the planning system. It further points out at paragraph 7 that there are three dimensions to sustainable development: economic, social and environmental. The three roles are mutually dependent and should not be taken in isolation (paragraph 8). The considerations that can contribute to sustainable development, within the meaning of the Framework, go far beyond the narrow meanings of environmental and locational sustainability. As portrayed, sustainable development is thus a multi-faceted, broad based concept. The factors involved are not always positive and it is often necessary to weigh relevant attributes against one another in order to arrive at a balanced position. The situation at the appeal site in this respect is no exception.

### ***Economic role***

49. Economic growth contributes to the building of a strong and competitive economy, which leads to prosperity. Development creates local jobs in the

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<sup>2</sup> NB This excludes completions outside of the designated settlements.

<sup>3</sup> Shropshire Development Trends Report, December 2013, Fig 4: Delivery by Place Plan area



construction industry, as well as business for and jobs in the building supply industry. These support sustainable economic development to deliver the homes, business and infrastructure that the country needs. This is particularly important in times of economic austerity and is emphasised in paragraphs 17 and 18 of the Framework.

50. The appeal site is available. A well-established building company, with a track record of delivering new dwellings, has an interest in acquiring the site to undertake a development in the short term. A condition could ensure that reserved matters are expedited without undue delay so that development could commence at an early date and thereby make a positive contribution to boosting the supply of housing now.
51. There is a general store close by that caters for the village's daily convenience needs, as well as a public house and other businesses. Additional population, residing in the appeal development, would undoubtedly generate more expenditure to support these businesses, which in many rural communities are under threat. In contributing to economic vitality, the proposal is supported by Policy CS1.
52. There would be benefits to the local economy through increased expenditure in the form of wages and material purchases during the construction period. New jobs would be created for the duration of the development but not all of these would be based or recruited locally. Nevertheless, these economic benefits of the development, as discussed above, weigh in favour of the proposal in the sustainability balance.
53. The site is grade 3 agricultural land and the Framework says that local planning authorities should take account of the best and most versatile agricultural land in their decisions. It also promotes the use of poorer quality land in preference to that of a higher quality when significant development of agricultural land is involved. The Framework does not define significant but I agree with the Council that 2.5 hectares is unlikely to fall into this category. There is also no specific evidence that this site consists of the best and most versatile agricultural land i.e. Grade 3a and above and the evidence available suggests that most of the land around West Felton is classified as Grade 3 in any event.
54. There is no dispute that an extensive use of agricultural land will be necessary if Shropshire is to meet its housing requirements. Consequently, the use of agricultural land does not weigh against this proposal and overall I find that it would contribute positively to the economic dimension of sustainability. Together these considerations attract moderate weight in favour of the proposal in the overall sustainability balance.

#### *Social role*

55. The proposal would contribute to the supply of both market and affordable housing at a time when the Framework urges local authorities to boost the supply of housing. Shropshire has a need for affordable housing. On the current assessment, the Section 106 Agreement provides that 10% of the dwellings to be built within the development would provide this type of accommodation and there would also be a commuted sum that would

contribute towards additional provision elsewhere. At Policy CS11 the CS seeks to achieve an overall target of 33%. Whilst by comparison 10% is not a large contribution towards the provision of affordable housing, that is all the SPD currently requires.

56. However, the Appellant has offered to provide bungalows and starter homes as a component of the market housing. Recent developments in the vicinity appear to have concentrated on the provision of larger executive homes. There is evidence that there is a need for bungalows and low cost market housing in West Felton and a contribution to this could be maximised at the reserved matters stage. This development could facilitate the provision of accommodation for elderly local people wishing to down-size and young people wishing to establish themselves on the home ownership ladder. Policy CS11 requires an integrated and balanced approach to be taken to the provision of new housing and by seeking to meet the diverse housing needs of the locality, including type and size, as well as tenure and affordability, the proposal is supported by Policy CS11 and this should be given weight.
57. Whilst the Council has demonstrated a five year supply of housing land, this should not be taken as a ceiling and the Framework urges local authorities to boost significantly the supply of housing. It is some years since housing completions in Shropshire exceeded the annual requirement and although the annual shortfall has been reducing, in 2014-15 it still represented about 17% of the requirement. Although Shropshire now has a five year supply of housing land, its delivery performance in the recent past leaves much to be desired. It is such that the Council agrees that a 20% buffer should be applied.
58. I was also told that although there was a pressing need for affordable housing, no more than 10% could be justified from individual proposals because of viability issues linked to comparatively high land values in Shropshire. In part development land values are a response to supply and demand in the market. The Framework's requirement for a buffer is to introduce more choice and competition into the market and this should assist in at least maintaining development land values at their current level if not reducing them.
59. The Framework also says that steps should be taken to boost significantly the supply of housing now and this is nowhere more relevant than in authorities, which have failed and are still failing to deliver. In the context of Shropshire's apparent high land values, there is no doubt that a case can be made for a significant boost to the supply of housing in sustainable locations. As well as assisting in the provision of affordable homes, the proposal would also contribute to the provision of market housing. I recognise that as there is now a housing land supply that is in excess of five years, the need to boost the supply is not as urgent as it once was. Nevertheless, the Framework does not regard the existence of a five years supply as a cap and the above considerations should consequently attract weight in favour of the appeal proposal.

60. The CIL contribution would provide funding to extend the capacity at the local primary school, as well as funding other infrastructure projects in the local and wider area. Whilst these aspects of the proposal would primarily meet need generated by the new residents and are necessary to enable the development to be acceptable in planning terms, the improvements to the school and other local infrastructure would also improve facilities for the benefit of existing residents and in the circumstances they do attract some minor weight in the sustainability balance.
61. The provision of a well laid-out area of public open space with play facilities and within the development, as suggested on the notional layout plans considered by the Council, would also enable the residents to walk to this facility. They would consequently only need to use those further away to access team sport facilities.
62. It is proposed to locate the on-site open space and its accompanying play equipment on the south-western part of the site away from Holyhead Road and the rest of the village but its current suggested location is not fixed. Nevertheless, even in this location, it would be closer to a large number of the village's residents than the existing provision off Tedsmore Road. Consequently I would expect it to be used by residents from other parts of the village.
63. West Felton appears to be a socially cohesive settlement. As well as the facilities referred to above, there appears to be a thriving local community with numerous activities taking place throughout the week in a variety of locations. The centre of the village, where facilities are concentrated, including the nearest convenience shop, is about 100 metres from the site entrance and no more than 150 metres from most of the appeal dwellings.
64. Whilst the secondary school requires a bus ride, the bus stops are close to the junction of Holyhead Road with School Road and the primary school is only about 300 metres away. Given the distances I would expect most residents of the appeal site to walk to these local facilities. There is a half hourly day time bus service to Oswestry and one to Shrewsbury so that the village, by comparison with many rural villages, is well connected by public transport. This would provide opportunities for new residents at the appeal site to use sustainable travel modes without undue inconvenience.
65. Manual for Streets<sup>4</sup> describes a walkable neighbourhood as one that is typically characterised by having a range of facilities within ten minutes walking distance so that residents can comfortably access them on foot. The appeal site would clearly be a walkable neighbourhood. In promoting sustainable transport, the Framework at paragraph 38 says that key facilities such as primary schools and local shops should be located within walking distance of most properties. Although it does not define "walking distance", I consider the appeal site to be within easy walking distance of these facilities.
66. I understand the local concerns about the rate of development and accept that in the not too distant past it and population growth was comparatively

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<sup>4</sup> Manual for Streets, Departments of Communities and Local Government and for Transport, 2007

high at West Felton. Additionally, the Council has recently approved a development with 35 dwellings at Tedsmore Road and in combination with other local commitments and the appeal proposal, over 60 dwellings could be built in a relatively short period of time. This could lead to an undesirable bulge in children seeking school places and undue pressure on other facilities. However, the responsible authorities have all accepted that there would be no harm if improvements that could be implemented by the CIL monies provided by the development, were carried out.

67. Nevertheless, a large number of new residents, however well motivated, moving into the village in a short period of time would be more difficult to absorb than a low number or a high number over a longer period. There would undoubtedly be some harm to social cohesion but in the context of the overall size of the village (about 1250 persons), the appeal proposal would not be a major component. There is no evidence that West Felton suffers from crime and disorder or that there is a fear of crime among the local population. I can therefore give the overall consideration of social cohesion no more than minor weight against the proposal in the sustainability balance.
68. Overall I conclude that in the context of social sustainability the appeal proposal should attract moderate weight.

#### *Environmental role*

##### a) Character and appearance

69. Policy CS6 seeks to create sustainable places by requiring development to be designed to a high quality, using sustainable design principles and achieving an inclusive and accessible environment, which respects and enhances local distinctiveness. This is an outline application with the details of its layout and design reserved for subsequent approval by the Council. Nevertheless, the information contained in the Design and Access Statement and its supporting documentation suggests that subject to the appropriate discharge of the reserved matters, then a high quality development could be achieved at the appeal site that satisfied this aspect of Policy CS6.
70. Whilst the grain of the built development immediately adjacent to the site is characterised by dwellings fronting the distributor roads, in the immediate vicinity there is also an estate development and the housing needs of Shropshire could not be sustainably provided by large amounts of further ribbon development. Additionally, there is nothing to suggest that the grain of existing development in West Felton is in some way special. With careful attention being given to the detail, I can see no reason why this development should not reflect the better examples of layout and vernacular architecture to be found in the area, thereby respecting its character and quality.

##### b) Countryside

71. The Framework at paragraph 49 seeks to ensure that the need for housing does not take second place to other policy considerations. Nevertheless,

that does not mean that those other considerations, including the protection of the countryside, should be disregarded altogether.

72. The importance of recognising the countryside's intrinsic character and beauty is one of the Framework's core principles, as set out at paragraph 17, and paragraph 109 seeks to ensure that valued landscapes are protected and enhanced. The protection of the environment, in its widest sense, is one of the three 'dimensions' of sustainability, as set out in paragraph 7. The CS, being concerned to conserve, protect and enhance Shropshire's environmental assets at CS17, is broadly consistent with these aims.
73. The appeal site does not lie within any designated area of special landscape value. Nevertheless, that does not mean that the local countryside landscape has no value or that it is not valued by local people. Nothing in the Framework suggests that non designated countryside may not be valued or protected. Indeed many everyday landscapes are treasured by people and are as much a part of the identity of communities as are outstanding landscapes. Having said that, all landscapes are likely to be valued by someone and there is no dispute that some areas of countryside will have to be built upon if Shropshire's development needs are to be met.
74. The effect of the proposal on the character and appearance of the countryside and the setting of the village was central to the refusal of planning permission. The Council thought that the development of the appeal site would be detrimental, in terms of its hardening of the edge of the built form of the village, when it is approached from the north. At the present time, a hard edge to the village entrance is perceived as the traveller approaches and passes New House, with its building complex in close proximity to the road and the residential development opposite on Dovaston Court. The experience is repeated as Lawn House is approached, particularly when the boundary hedge to the appeal site is not high.
75. Whilst the notional layout shows development close to Holyhead Road this is an outline application and such parameters are not fixed. The Council could insist, at the reserved matters stage, that dwellings are sufficiently set back to allow appropriate landscaping to be introduced, such that there could be an overall improvement in the visual quality of this approach into the village. Whilst there would inevitably be some harm to the character and appearance of the local countryside; the introduction of built development onto an agricultural field could not do otherwise; apart from moving the edge of the continuous built development some metres to the north on this side of Holyhead Road and to a point where it is replicated on the other side of the Road, there is no reason why this development should harden the entrance to the village. Indeed with due care and attention, at the reserved matters stage, it ought to soften it and strengthen the experience.
76. Being a medium sized, field surrounded by mature, mixed hedges, the appeal site is typical of the area but it is otherwise commonplace and by no means special or outstanding. It is not elevated and for the most part not often visible in the wider landscape. Other than along Holyhead Road, I

was not referred to any public footpaths whose enjoyment would be impacted upon by the proposal.

77. The evidence advanced by local people at the Hearing and in writing, clearly demonstrates that they value this landscape for the long distance views, from Holyhead Road and across the appeal site, of the Welsh Hills. The proposal, as advanced in the Design and Access Statement, would not protect this visual asset that contributes to the environmental distinctiveness of the locality. In that context the proposal is not supported by Framework paragraph 109 or Policy CS17.
78. However, whilst I accept that there are valued views across this field to the distant hills, at the time of the site visit they were heavily filtered by the height of the hedge, which being a field boundary, is unlikely to be cut on a frequent basis. There would be similar views across fields further north when their boundary hedge with Holyhead Road was cut and as the Appellant points out, trees planted adjacent to the A5 bypass already impact on the south-westerly view of the Welsh Hills across the appeal site. As they continue to grow they will increasingly obliterate it.
79. Nevertheless, despite the by-pass trees, there would still be clear long term views of the Welsh Hills in a north-westerly direction and to a greater extent than from vantages further north, when the boundary hedge is of a height that allows observers to see into the appeal site. However, if the disposition of the dwellings and open space was carefully planned, then it should be possible to create a permanent vista of the Welsh Hills along the site access road and over relocated open space. Following the appeal development, there need not be an intervening hedge that intermittently obscured the view.
80. With careful attention to the site's layout and landscaping at the reserved matters stage, housing development at the appeal site could create a form of built development that was not at odds with the settlement's character or be seriously harmful to its setting and the character and appearance of the local countryside. The development would impact upon the local views of the Welsh Hills but in part this could be mitigated and much of the remainder may not be a permanent experience in any event. Although there would clearly be a reduction in openness, for the reasons discussed above, the harm to the affected DP policies need not be substantial. In such circumstances I can only give minor weight to the harm to the character and appearance of the countryside that would result from the implementation of the appeal proposal.

#### c) Accessibility

81. Employment and facilities in and around West Felton are not sufficient to sustain the local population. Consequently, most economically active residents of the appeal site, like the rest of the village, would travel elsewhere for work, as well as for comparison shopping and they would also be likely to visit the larger supermarkets in Oswestry for many of their convenience purchases.

82. A development of 25 new homes would generate significant movement. However, there is a thirty minute day time bus service to Oswestry and Shrewsbury. Oswestry, to where many journeys would be made, is only five miles away. In the context of rural Shropshire, this is a very accessible and self-reliant settlement and significant amounts of new residential development are being proposed by the DP outside of Shrewsbury, the market towns and other key centres. Indeed Policy CS1 seeks to make the rural area more sustainable through a "rural rebalance" that would accommodate 35% of Shropshire's residential development in this area. Although not proposed to be designated as a Community Hub or Cluster, the Council did not contradict the Appellant's assertion that West Felton was more accessible and had a better range of facilities than many settlements that were proposed to be so designated. Within the context of West Felton this is also a very accessible site, being within easy walking distance of village facilities and the bus stops.
83. I accept that residents of the appeal site would make many journeys by the private car and paragraph 34 of the Framework says that decisions should ensure that developments that generate significant movement are located where the need to travel can be minimised and the use of sustainable transport modes can be maximised. In paragraphs 93 and 110 it encourages radical reductions in greenhouse gas emissions but at paragraph 29 it also recognises that opportunities to maximise the use of sustainable transport in rural areas will be different to those in urban areas. Policy CS6 also requires proposals likely to generate significant levels of traffic to 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.
84. Overall, in the context of rural Shropshire and the CS's desire to concentrate a significant amount of development there, I find that the site has locational advantages in the sustainability balance and that this environmental consideration attracts moderate weight in favour of the appeal proposal in that context.
- d) Traffic
85. There is local concern about the congestion at the junction of Holyhead Road with The Avenue and School Road, particularly when school children are catching the school buses and patrons of the village shop park their cars outside. I observed the situation at one of my site visits and agree that when the bus is at the south bound bus stop and cars are parked opposite, then traffic in both directions comes to a standstill. However, this is momentarily and can in no way be described as severe. Whilst the free flow of traffic is obstructed, it is not for long periods and it could be resolved by traffic regulations or the relocation of the bus stop if it is a real issue. The additional traffic generated by the appeal development would not materially change the situation.
86. 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. Whilst there is a footpath along the eastern side, it narrows to 0.7

metres at a pinch point. Such a situation is far from ideal for persons with prams and pushchairs or for disabled persons. I agree that without the proposed new footpath, there could be a severe highway safety issue were the appeal proposal to be implemented. However, the Highway Authority considers the proposed narrowing of the carriageway and construction of the footpath to be an acceptable solution to the problem. Indeed the proposed new footpath would also improve highway safety for existing pedestrian users of Holyhead Road.

87. Whilst I note that there is a dispute about the ownership of the highway and the land adjacent to it, the Highway Authority has set out minimal parameters within which the footpath construction would be acceptable. Measurements at the site visit suggest that there is just sufficient land available, either within the carriageway or between it and the boundary walls, fences and hedges of the adjacent dwellings, to accommodate the proposed footpath within the guidelines set out by the Highway Authority. In these circumstances the legal dispute does not create sufficient uncertainty to justify dismissing the appeal. A Grampian condition would ensure that the construction of the footpath, to the standards stipulated by the Highway Authority, was assured before any development commenced.
88. Although the provision of the footpath involves narrowing the carriageway to below the recommended standard contained in Places Streets and Movement, the advice in that and the other guidance that I was referred to, is not mandatory and its standards are aimed at new highway design rather than improvements to existing problems. In the absence of the appeal development, the narrowing of the pavement on the eastern side of Holyhead Road is not a desirable situation from a road safety standpoint. The Appellant's solution would provide an alternative footpath of adequate width and in this context has community safety benefits.
89. Although narrowing the carriageway to 5.5 metres is approaching a width where wide vehicles would not be able to pass and I note that a number of large agricultural vehicles use this road, as well as buses, most large vehicles could pass at this dimension and the traffic flows are such that if vehicles had to wait it would not give rise to undue congestion. Visibility is also good along this straight stretch of road and road narrowing, along carriageways in such circumstances, tends to have an outcome of reduced vehicle speeds. Whilst I note the substandard visibility at the junction of The Avenue and School Road with Holyhead Road, the appeal proposal seeks to improve the radii at the former, which along with the road narrowing should improve visibility. I therefore find that the harm to the free flow of traffic caused by the development would be minimal and that the overall impact of the development on highway safety would be positive.

e) Other environmental considerations

90. On balance there would be net gains to ecology, on a site that currently has little in the way of flora and fauna. Bat boxes could assist in the protection and growth of the local bat population and there is no evidence to confirm that lapwings nest at the appeal site. The site's location, adjacent to existing dwellings, suggests that this is unlikely, although they may forage



on the land. Artificial nest boxes would also help to maintain and improve the local population of small birds. Other improvements in ecology could be achieved by facilitating the use of some of the amenity open space by wildlife and the planting of trees in parts of these areas and within the areas to be developed, followed by their effective management. These improvements, which are supported by Policy CS17, could be ensured through conditions and would weigh in favour of the proposal.

91. It is agreed that through the discharge of appropriate conditions, the development could be of a design, layout, scale and mass compatible with the locality and that it could respect and enhance the local environment. If the detailed design and layout were pursued, in accordance with these objectives, the result would be a development that was of a high quality, safe, sustainable and inclusive, in accordance with the requirements of the relevant DP policies. There is no evidence to suggest that the development would not be designed to a high quality using the sustainable design principles outlined in Policy CS6.
92. Overall I conclude that although there would be some harm to the character and appearance of the local countryside, as a result of the appeal proposal, it would be reduced by the benefits to environmental sustainability provided by the ecological improvements. The comparative locational advantages of the site also weigh in favour of the proposal in the environmental balance, as do the highway safety improvements. Consequently there would be long term environmental benefits and this consideration attracts minor weight in favour the proposal in the overall sustainability balance.

#### *Sustainability conclusion*

93. The Framework is clear, economic, social and environmental gains should be sought jointly and simultaneously through the planning system. It is rare for any development to have no adverse impacts and on balance many often fail one or more of the roles because the individual disbenefits outweigh the benefits. Although there are some disbenefits to this proposal, none are so substantial as to outweigh the respective benefits in each of the three strands of sustainability.
94. I find that the proposal would overall positively benefit each of the threads of economic, social and environmental sustainability. It is therefore my judgement that the appeal proposal would deliver sustainable development within the meaning of paragraphs 18-219 of the Framework. Consequently the provisions of Para 14 apply.

#### ***Planning balance and overall Conclusion***

95. The proposal is outside of the settlement boundary of West Felton and consequently within the open countryside. It is therefore contrary to LP Policies H5 and H6. However, these policies are time expired and out of date and the Framework advises that planning permission should be granted for sustainable proposals in such circumstances.
96. I have found that the proposal meets the sustainable principles outlined in Policy CS6. Policy CS 4 requires investment in the rural area that is not in

- Community Hubs and Community Clusters to meet policy CS5. West Felton is not proposed to be one of these in the SAMDev plan.
97. Policy CS5 defers to national policy in the context of controlling development in the countryside. It also seeks to balance any harm to the countryside against the public benefits of a proposal. Additionally, its list of types of acceptable development is not exclusive. This is an outline application and in this context and that of the circumstances and evidence accompanying the appeal, I only need to be satisfied that the development could be satisfactorily accommodated on the site and without adversely affecting the character and appearance and openness of the countryside to an extent that when weighed in the balance against all of the other positive and negative attributes of the scheme, it did not tip the scales against the proposal.
98. I have found that on balance the proposal is sustainable development within the overall meaning of paragraphs 18 to 219 of the Framework. Nevertheless despite any mitigation there would still be some minor harm to the character and appearance of the countryside and there would be a small reduction in its openness. However, Policy CS5 adopts a balanced approach to development in the countryside. Whilst there would be minor harm to the countryside landscape its overall vitality and character need not be harmed. There would be local community and economic benefits as identified above and in the context of rural Shropshire this is a sustainable location for new development. I therefore find the proposal to be consistent with Policy CS5.
99. Policy CS1 seeks to accommodate around 35% of Shropshire's residential development in this rural area. Accommodating all of this in a sustainable way will not be an easy task. The policy seeks to direct the rural development to community hubs and community clusters but these are only to be the predominant locations and are not exclusive. Although West Felton is not to be defined as a community hub in the SAMDev Plan, that plan has still to be adopted. At the present time the Oswestry Borough LP is still a part of the DP and West Felton is defined as a larger settlement within which the majority of new dwellings will be located by saved LP Policy H5. Although the plan was meant to establish the locations for development until 2006, that policy was subsequently saved.
100. There is clearly a tension between the statutory plan and the emerging plan as to the status of West Felton. However, having examined all of the considerations I do not consider any harm to the DP as currently constituted or as emerging, to be so significant as to justify dismissing this appeal.
101. Additionally, I have found that the adverse impacts of granting planning permission do not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Consequently in a situation where some of the DP housing policies are not up to date, the harm to the DP is outweighed.
102. The other material considerations, to which I have been referred, including the representations from local people and the extensive array of

other appeal decisions that I have been referred to, none of which closely parallel the circumstances of the appeal proposal, do not indicate that planning permission should be refused. For the reasons discussed above I therefore find that the appeal should be allowed.

### **Conditions**

103. The Council's nine suggested conditions were considered and expanded in the context of the discussion at the Hearing, the Framework and the advice in the NPPG. All of the conditions are agreed in principle by the parties. They include reduced time limits for commencement, specification of approved plans, phasing and the submission and approval of details that are routinely applied to outline planning permissions.
104. To enable the developments to meet Development Plan policies that seek to achieve sustainable development, conditions concerning the site's access, levels, open space provision, ecological enhancements, including hedgerow replacement and improvement, drainage, lighting, as well as an off-site footpath have been suggested and agreed. To enable the development to attract further weight in the context of social sustainability, the Appellant also agreed to a condition that specified the minimum number of market bungalows and smaller houses that should be provided. The actual number should be determined in the context of an assessment of local needs.
105. I have considered the need for these conditions in the context of the six tests contained in paragraph 206 of the Framework and the advice contained in the NPPG. As one of the reasons for allowing this appeal concerns the site's alleged ability to significantly contribute to housing provision within the next five years, it is appropriate to reduce the time limits for the submission of details and the commencement of development from the norm. As discussed above I consider that it is important that the open space should be of a size and sited so as to maximise the retention of views of the Welsh Hills to the north-west through the development. A condition limiting the number of dwellings permitted is therefore appropriate. The means of access for disabled people is adequately covered under the Building Regulations and Highways legislation.
106. These conditions are necessary in order to ensure that the development is of a high standard, creates acceptable living conditions for existing and future residents within the development and area as a whole, is safe and sustainable and minimises the impact on the environment.

*M Middleton*

INSPECTOR

### Schedule of Conditions

1. Application for approval of the reserved matters shall be made to the local planning authority not later than one year from the date of this permission.
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).
7. 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
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.

## **APPEARANCES**

### FOR THE APPELLANT:

Deborah Sharples	Hewit and Sons
Clive Roberts	Kembertons
Helen Howie	Berry Brothers
Nigel Clarke	Galliers Homes Ltd
Alan Moss	Alan Moss and Associates

### FOR THE LOCAL PLANNING AUTHORITY:

Tim Rogers	Shropshire Council
Eddie West	Shropshire Council

### INTERESTED PERSONS:

Steve Haworth	Local resident
Chris H Jones	Local resident
Chris Jones	Local resident

## **ADDITIONAL DOCUMENTS SUBMITTED TO THE HEARING**

- 1 Shropshire Core Strategy, Policies CS1, CS4, CS8, CS9, CS10, CS11, submitted by the Council
- 2 Committed dwellings within West Felton Parish, submitted by Steve Haworth
- 3 Council's update to its Housing Land Supply Appendix F, Affordable Housing Sites
- 4 Assessment of Housing Land Supply in the North West Spatial Zone, submitted by the Council
- 5 North West Shropshire, Housing Delivery, 13 October 2015, submitted by the Appellant
- 6 Agricultural land classification, West Felton, submitted by Steve Haworth
- 7 Assessment of the appeal proposal under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 by Shropshire Council, submitted by Steve Haworth
- 8 Ecological representations made by Chris Jones of The Garratt
- 9 Visibility survey undertaken at the junction of Holyhead Road and School Road, submitted by Chris Jones of The Garratt
- 10 Letter from Shropshire Council to Woodsyde Developments concerning highway land in the vicinity of the appeal site, submitted by the Appellant
- 11 Various documents concerning the implementation of a footpath along Holyhead Road from the appeal site to The Avenue, submitted by Chris Jones of the Old Police House
- 12 Copy of the Title Deeds for the Old Police House, submitted by Chris Jones of the Old Police House
- 13 Statements from Andrew Nicholls, Richard Nicholls and Yvonne Nicholls concerning the eastern boundary of the Old Police House, submitted by Chris Jones of the Old Police House
- 14 Extracts from Shropshire Specification for Residential/Industrial Estate Roads, submitted by Steve Haworth

- 15 Extracts from Manual for Streets, submitted by Steve Haworth and Chris Jones of The Garratt
- 16 Extracts from Department of Transport, Guidance on Road Classification and the Primary Route Network, submitted by Steve Haworth
- 17 Extracts from Department of Transport, Road Traffic Estimates, submitted by Steve Haworth
- 18 Department of Transport, Information sheet: Agricultural Trailers, submitted by Steve Haworth
- 19 Appeals ref: APP/U1105/A/13/2191905 & 2197001 72197002, Land at Feniton, Devon, submitted by the Council
- 20 Appeal ref: APP/G2713 /A/14/2218137, Land off Station Road, Great Ayton, North Yorkshire, submitted by the Appellant
- 21 Appeal ref: APP/G2713 /A/14/2223624, Land off Tanton Road, Stokesley, North Yorkshire, submitted by the Appellant
- 22 Appeal ref: APP/A00665 /A/14/2226994, Land at Fountain Lane, Davenham, Cheshire, submitted by the Appellant
- 23 Appeal ref: APP/L3245 /W/15/3004618, Land off Chapel Lane, Norton in Hales, Market Drayton, submitted by the Appellant
- 24 Appeal ref: APP/L3245 /W/15/3018212, Land opposite Pharay, Habberley, Shrewsbury, submitted by the Council
- 25 Appeal ref: APP/L3245 /W/15/3029727, Land adjacent to Ash Grove, Wem, submitted by the Appellant
- 26 High Court ref: 2015 WL 3953035, Oadby and Wigston Borough Council v Secretary of State for Communities and Local Government and Bloor Homes Ltd, submitted by the Appellant
- 27 Revised list of agreed planning conditions, submitted by the Appellant
- 28 Email of 13 November 2015 from the Appellant confirming the correct reference for the Access Arrangements Plan
- 29 SAMDev Plan Inspector's Report, supplied by the Council
- 30 SAMDev Plan proposed modifications, supplied by the Council
- 31 Appellant's comments on the SAMDev Plan Inspector's Report

## **PLANS**

- A 1/500 Access Arrangement Plan, submitted by the Appellant
- B 1/1250 Site Plan, Land at The Cross. West Felton, submitted by the Appellant
- C 1/1250 Site Plan, Land between Twyford Lane and Holyhead Road, West Felton, submitted by the Appellant
- D 1/1250 Site Plan, Land north of Tedsmore Road, West Felton

## **PHOTOS**

- 1 Two photos looking towards the Welsh Hills from Holyhead Road, submitted by the Appellant
- 2 Thirty eight photographs of Holyhead Road, submitted by Steve Haworth
- 3 Six photos of the Appeal site from Holyhead Road, submitted by Chris Jones of The Garratt
- 4 Two photos of buses travelling along Holyhead Road, submitted by Chris Jones of The Garratt

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## Appeal Decision

Site visit made on 20 October 2015

**by G Fort BA PGDip LLM MCD MRTPI**

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

**Decision date: 30 November 2015**

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**Appeal Ref: APP/L3245/W/15/3129441**

**Wingthorpe, Mount Drive, Oswestry, Shropshire SY11 1BQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr and Mrs Colin and Jenny Boswell against the decision of Shropshire Council
  - The application Ref 15/00971/FUL, dated 10 February 2015, was refused by notice dated 14 April 2015
  - The development proposed is the demolition of an existing outbuilding and the erection of a new detached dwelling.
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### Decision

1. The appeal is dismissed.

### Procedural Issue

2. The Inspector's Report on Shropshire's Site Allocations and Management of Development (SAMDev) Plan was published on 30 October 2015. The Report is positive and there are no objections to the policy relevant to this appeal. Accordingly, following the advice in paragraph 216 of the National Planning Policy Framework (the Framework) I have attached due weight to its policies in the determination of this appeal.

### Main Issues

3. The main issues in this appeal are the effects of the appeal scheme on the living conditions of the occupiers of Hafod Wynne and Wingthorpe in terms of outlook and privacy; and its effects on the character and appearance of the area.

### Reasons

#### *Living Conditions*

4. The appeal site is located within a leafy and suburban area framed by mature trees. The area is characterised by substantial two-storey detached brick-faced dwellings. Though the plot sizes are generous their shapes and the spacing between properties vary with little uniformity along Mount Drive. The scale and form of the dwellings is also varied, though there are a number of common elements including prominent gables, chimney stacks and the use of decorative brick bonding patterns in varying colours. To the rear of the appeal site more

- modern residential development of a similar scale to the properties within Mount Drive is visible.
5. Wingthorpe itself is a substantial property set in its own grounds on an access running roughly at a right angle to Mount Drive. It is faced in yellow brick in a Flemish bond pattern, with horizontal courses of darker red bricks. At the upper level the gables, barge boards, ridge tiles and chimney stacks give the roof line a great deal of visual interest and character.
  6. Hafod Wynne, the property that borders the appeal site on its other side employs similar brickwork and stylistic details to those of Wingthorpe. Slightly smaller than Wingthorpe in terms of massing and scale, Hafod Wynne is developed at a level considerably lower than that of the appeal site.
  7. The appeal site is currently occupied by outbuildings that from their materials and style look to be contemporary to their host building. To the front is the access drive, and to the rear Wingthorpe's substantial garden.
  8. The proposal is for a two storey dwelling, in a design that references some of the stylistic elements of the surrounding properties. The existing outbuildings, apart from the garage, would be demolished to accommodate the dwelling which would be sited behind the building lines of Wingthorpe and Hafod Wynne. At its closest points, the proposal would be separated from the boundaries of the adjoining properties by around two metres; its flank walls would be around two and a half meters away from Wingthorpe, and around eight metres away from Hafod Wynne. Substantial gables would face each adjoining property, the apex of which would be around ten metres in height. The appeal scheme includes proposals for windows in both flank walls.
  9. In terms of the proposal's effects on outlook, the adjoining property Hafod Wynn occupies a site several metres below that of the appeal scheme. At my site visit I saw that a substantial area of the garden and the principal windows of a number of habitable rooms are on the side of Hafod Wynne which faces the appeal site. The proposed separation distance is not ungenerous; however, in this case due to the difference in levels and the appeal scheme's orientation, the flank wall would be of an excessive height in relationship to Hafod Wynne. This effect would be exacerbated by the proposal's depth, meaning that the prominent gable would have an overbearing and thus significantly harmful effect on the outlook of the occupiers of Hafod Wynne from both the garden and habitable rooms.
  10. In contrast, the site level of Wingthorpe is slightly above that of the appeal scheme. The orientation and siting of the appeal scheme in relation to Wingthorpe, and the fenestration pattern of the latter property would mean that the proposal would not be unduly prominent in views from Wingthorpe and its garden space. Accordingly, I find that no harmful effects would arise from the appeal scheme in relation to the outlook of the occupiers of Wingthorpe.
  11. The appeal scheme's rear windows would have the potential to overlook the garden of Hafod Wynne, however this would not be significantly different to the current privacy arrangements. The proposed fenestration on the flank wall with Hafod Wynne is a window to the staircase between ground and first floor and a ground floor window serving a habitable room. In both of these cases the windows would only have a limited effect on the privacy of the occupiers of

Hafod Wynn because of existing boundary treatments and the potential for the window to the staircase to be obscure-glazed.

12. Similarly, I have no concerns with regard to the proposal's effect on the privacy of the occupiers of Wingthorpe. The flank wall which faces Wingthorpe proposes two windows to a bathroom and a dressing room wherein the use of obscure glazing would be appropriate.
13. Though having no harmful effects on the privacy of adjoining occupiers, or the outlook of the occupiers of Wingthorpe, the appeal scheme would be unduly overbearing and dominant in the context of Hafod Wynne and cause significant harm to the outlook of the occupiers of that property. The appeal scheme would thus run contrary to the objectives of Policy CS6 of the Shropshire Core Strategy (the CS) (Adopted March 2011) , which seek *inter alia* to ensure that new development respects the living conditions of current and future occupiers.

#### *Character and Appearance*

14. Although the appeal scheme is different in terms of scale and massing to Wingthorpe or Hafod Wynne, it would be sensitive to the architectural style and materials palette of the area. The proposal would subdivide Wingthorpe's grounds. However, the resulting plot size would not create a development form that would be unduly cramped in the context of the wider streetscene. Mature planting would be retained, which would help the proposal to harmonize with its surroundings.
15. For these reasons, I do not consider that the appeal scheme would have a harmful effect on the character and appearance of the area, and would not conflict with the objectives of Policy CS6 of the CS and MD2 of SAMDev, which seek *inter alia* to ensure that new development is sensitive to the character and appearance of its surroundings.

#### **Other Matters**

16. The appellants submitted a unilateral undertaking in respect of an affordable housing contribution, which would constitute a benefit should permission be granted for this proposal, and a consideration to which I have given due weight.
17. As part of their appeal statement, the appellants submitted plans for an alternative scheme and related correspondence with the Council. However, this appeal deals only with the plans that were submitted with the application referenced 15/00971/FUL, and accordingly my decision turns on the merits of these plans and not the alternative proposals.

## **Conclusion**

18. I have concluded that the appeal scheme, by virtue of its scale, its depth and the difference in levels between its proposed site and Hafod Wynne would have an unduly overbearing and thus harmful effect on the outlook of occupiers of that property. My concerns in this regard outweigh the lack of harm I found in relation to the appeal scheme's effects in regard to privacy, to the outlook of occupiers of Wingthorpe and to the character and appearance of the area. Though an affordable housing contribution would be a benefit, it would not sufficiently outweigh the significant harm to living conditions of the occupiers of Hafod Wynne that I have described.
19. Accordingly, for the reasons outlined above, and in regard to all other matters raised, I conclude that the appeal should be dismissed.

*G Fort*

INSPECTOR