



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

Date: Monday, 23 January 2017

Committee:
North Planning Committee

Date: Tuesday, 31 January 2017

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
Roger Hughes
Vince Hunt
David Lloyd
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
Vacancy

Your Committee Officer is:

Emily Marshall Committee Officer

Tel: 01743 257717

Email: emily.marshall@shropshire.gov.uk

AGENDA

1 Apologies for Absence

To receive apologies for absence.

2 Minutes (Pages 1 - 8)

To confirm the Minutes of the meeting of the North Planning Committee held on 29th November 2016, attached, marked 2.

Contact: Emily Marshall on 01743 257717

3 Public Question Time

To receive any public questions or petitions from the public, notice of which has been given in accordance with Procedure Rule 14. The deadline for this meeting is 5 p.m. on Thursday, 26th January 2017.

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 South Of Aspen Grange, Weston Rhyn, Shropshire (16/01735/OUT) (Pages 9 - 32)

Outline application for residential development (All Matters Reserved).

6 Land Adjacent To Rush Lane, Market Drayton, Shropshire (16/03082/REM) (Pages 33 - 60)

Approval of reserved matters (layout, scale, appearance and landscaping for approval) for residential development of 162 residential units; associated open space and landscaping; discharge of conditions 5 - 7 and 12 pursuant to APP/L3245/A/14/2227146 (allowed on appeal) by the Secretary of State

7 Land At Former Garage Site, Manor Place, Higher Heath, Whitchurch, Shropshire (16/04846/FUL) (Pages 61 - 72)

Erection of five dwellings and associated access.

8 Proposed Solar Farm At Rhosygadfa, Gobowen, Shropshire (16/05607/FUL) (Pages 73 - 82)

Temporary siting of telecom mast to support recently approved solar farm

9 Appeals and Appeal Decisions (Pages 83 - 186)

10 Date of the Next Meeting

To note that the next meeting of the North Planning Committee will be held at 2.00 pm on Tuesday 28th February 2017, in the Shrewsbury Room, Shirehall,

Shrewsbury.

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Committee and Date

North Planning Committee

31st January 2017

NORTH PLANNING COMMITTEE

Minutes of the meeting held on 29 November 2016

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

2.00 - 4.43 pm

Responsible Officer: Emily Marshall

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

Present

Councillor Arthur Walpole (Chairman)

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

44 Apologies for Absence

There were no apologies for absence received.

45 Minutes

RESOLVED:

That the Minutes of the meeting of the North Planning Committee held on 4th October 2016 be approved as a correct record and signed by the Chairman.

46 Public Question Time

There were no public questions or petitions received.

47 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.

48 Oakfields Kennels, Heath Road, Whitchurch, SY13 2AA (16/03848/FUL)

The Area Planning and Enforcement Officer introduced the application for the erection of one block of 30 kennels and confirmed that the Committee had undertaken a site visit that morning to assess the impact of the proposed development on neighbouring properties and the surrounding area.

In accordance with the Local Protocol for Councillors and Officers dealing with Regulatory Matters (Part 5, Paragraph 15.1) Councillor Gerald Dakin, as local ward councillor, made a statement and then left the table, took no part in the debate and did not vote on this item. During his statement, the following points were raised:

- He was concerned at the impact of noise from the proposed kennel block on nearby residential properties; and
- He wanted to ensure that local residents were aware of the fact that if any issues were to arise they could seek help through the Council's environmental health team.

During the ensuing debate, some members were concerned at the potential impact of noise and odour on nearby residential properties, however they were reassured that appropriate conditions to safeguard existing levels of residential amenity and landscaping improvements such as the provision of a soundproof bund and timber fencing would protect the amenity of local residents.

Having considered the submitted plans, the majority of members expressed their support for the proposal.

RESOLVED:

That planning permission be granted subject to the conditions set out in Appendix 1.

49 Land West Of London Road, Irelands Cross, Shropshire (15/02805/REM)

The Technical Specialist Planning Officer introduced the application for the Approval of reserved matters (access, appearance, landscaping, layout and scale) pursuant to planning permission 13/02698/OUT (Phase B - Approval for plots 1 to 5 and 7).

Members' attention was drawn to the Schedule of Additional letters which contained additional conditions recommended by the Highways Authority.

In accordance with the Local Protocol for Councillors and Officers dealing with Regulatory Matters (Part 5, Paragraph 15.1) Councillor John Cadwallader, as local ward councillor, made a statement and then left the room, took no part in the debate and did not vote on this item. During his statement, the following points were raised:

- The Parish Council had produced a comprehensive response to the application and it was not a development that was welcomed within Woore and there were concerns that the proposals submitted with the original outline application were complied with;
- He was concerned at the loss of an established hedge, road safety implications and whether turning requirements had been calculated; and
- He was concerned about the affordable housing aspect of the development and questioned whether market research had been undertaken as he felt that affordable housing was needed in the area.

In response to concerns raised by the local member, the Technical Specialist Planning Officer explained that following concerns raised by the Shropshire Housing Group in relation to the demand for an affordable rent or discount/shared ownership scheme the council's Housing Enabling Team had concluded that a financial contribution to be used locally would be more appropriate.

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

RESOLVED:

That planning permission be granted subject to;

- The conditions set out in Appendix 1; and
- The additional Highways conditions referred to in the Schedule of Additional Letters.

50 Land West Of London Road, Irelands Cross, Shropshire (15/02806/REM)

The Technical Specialist Planning Officer introduced the application for the Approval of reserved matters (access, appearance, landscaping, layout and scale) pursuant to planning permission 13/02698/OUT (Phase A - Approval for plots 6 and 8 to 10). Members' attention was drawn to the information contained within the Schedule of Additional letters.

In accordance with the Local Protocol for Councillors and Officers dealing with Regulatory Matters (Part 5, Paragraph 15.1) Councillor John Cadwallader, as local ward councillor, made a statement and then left the table, took no part in the debate and did not vote on this item. During his statement, the following points were raised:

- There was a lack of affordable housing within Woore;
- The market potential for affordable housing was being ignored; and
- Developers needed to be looking for more flexible and inventive ways to provide affordable housing.

During the ensuing debate, members felt that they wanted it noted that within the local plan review, consideration should be given to ensuring that there were sufficient numbers of more modestly sized houses which would be more affordable generally as the larger 4 and 5 bedroom houses were not what local people need or could afford. It was agreed that the comments made in relation to the provision of affordable housing be noted by the Committee Officer and reported to Shropshire Council's Housing Enablement Team.

Having considered the submitted plans and listened to the comments made by all of the speakers, the majority of members expressed their support for the officer's recommendation.

RESOLVED:

That planning permission be granted subject to:

- The conditions set out in Appendix 1; and
- The additional Highways conditions referred to in the Schedule of Additional Letters.

51 The Retreat, Bolas Road, Ercall Heath, Telford, Shropshire (16/04106/FUL)

The Principal Planning Officer introduced the application for the erection of a two storey extension to existing residential care facility and confirmed that the Committee had undertaken a site visit that morning to assess the impact of the proposed development on neighbouring properties and the surrounding area. Members' attention was drawn to the information contained within the Schedule of Additional letters and also additional information that had been received from Childs Ercall Parish Council and which had been circulated to Members. The Principal Planning Officer responded to some of the points raised within the document.

Tracey Willets Perrins on behalf of local residents spoke against the proposal in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees.

Councillor Richard Barge on behalf of Childs Ercall Parish Council spoke against the proposal in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees.

Mr Adrian Rose, 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 accordance with Rule 6.1 of the Council Procedure Rules contained in Part 4 of Shropshire Council's Constitution, Councillor Andrew Davies addressed the Committee as the local ward Councillor, during which a number of points were raised including the following:

- He was aware of concerns among local residents with regards to communication;
- ; and
- Those using the facility were vulnerable and it was important that any hostility within the local community was not picked up on.

The Principal Planning Officer responded to the key concerns raised by all of the speakers.

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

However, given the concerns raised by local residents, in relation to the number of and issues arising from care homes within the locality, the Committee requested that these be passed on to Karen Bradshaw as Director of Children's Services.

RESOLVED:

That planning permission be granted subject to the conditions set out in Appendix 1.

52 Proposed Residential Development, Land Off The Beeches, Chester Road, Whitchurch, Shropshire (15/05325/REM)

The Principal Planning Officer introduced the application for reserved matters (appearance, landscaping, layout and scale) pursuant to permission 14/02830/OUT for the erection of up to 15 no. dwellings. Members' attention was drawn to the information contained within the Schedule of Additional letters.

In accordance with Rule 6.1 of the Council Procedure Rules contained in Part 4 of Shropshire Council's Constitution, Councillor Thomas Biggins addressed the Committee as the local ward Councillor, during which a number of points were raised including the following:

- There had been good dialogue between local residents and the developer who had listened to local concerns;
- The gifted land was very much appreciated;
- An error to Condition 7 of the planning officer's report which referred to plots 1 and 15 and should have read 1 and 14 was highlighted;
- Requested that permitted development rights be removed entirely from plots 1 and 14 to reduce the potential for overlooking;
- He was pleased to see the retention of a mature tree at the entrance to the site; and
- He would like reassurance that given the restricted width of the ransom strip of land that the site was not extended in the future.

In accordance with the Local Protocol for Councillors and Officers dealing with Regulatory Matters (Part 5, Paragraph 15.1) Councillor Peggy Mullock as local ward councillor, left the table, took no part in the debate and did not vote on this item.

Following comments made by the local member, the agent on behalf of the applicant indicated that they would be willing to remove permitted development rights from plots 1 and 14.

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

RESOLVED:

That planning permission be granted, subject to;

- The Conditions set out in Appendix 1 with condition 7 amended to refer to plots 1 and 14;
- That permitted development rights be removed from plots 1 and 14; and
- That the approval be withheld until the unilateral undertaking (UU) relating the gifting of the land has been finalised.

Councillor Pauline Dee left the meeting at this point.

53 Proposed Affordable Dwelling, South East Of Pit Farm, Pentre Coed, Ellesmere, Shropshire (16/04022/FUL)

The Technical Specialist Planning Officer introduced the application for the erection of a single storey dwelling and garage under the 'Build Your own affordable Housing' scheme and confirmed that the Committee had undertaken a site visit that morning to assess the impact of the proposed development on neighbouring properties and the surrounding area. Members' attention was drawn to additional information that had been submitted by the applicant's architect.

Councillor John Baker, on behalf of Ellesmere Rural Parish Council spoke in support of the proposal in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees.

Mr Craig Marston, Architect 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 accordance with the Local Protocol for Councillors and Officers dealing with Regulatory Matters (Part 5, Paragraph 15.1) Councillor Davenport, as local ward councillor, made a statement and then left the table, took no part in the debate and did not vote on this item. During his statement, the following points were raised:

- The applicants were a local, young family who fulfilled the local connections and housing need criteria for an affordable home;
- The applicants had submitted a pre-application which had been approved by officers who selected this particular site;
- Pentre Coed was a settlement comprising 32 properties; and
- The proposed development encouraged growth within rural areas.

The Committee considered that the application was in accordance with Shropshire Core Strategy Policy CS5 and with the Supplementary Planning Document. The Committee considered the site was within a recognised, named settlement and the applicants had met the local needs criteria for an affordable home.

Having considered the submitted plans and listened to the comments made by all of the speakers, Members unanimously expressed their support for the application, contrary to the Officer's recommendation, subject to granting delegated powers to the planning officers to attach appropriate conditions and a Section 106 Legal Agreement to ensure that the property remained affordable in perpetuity.

RESOLVED:

That, contrary to the Officer's recommendation, planning permission be granted, subject to:

- Planning Officers being granted delegated powers to attach appropriate conditions; and
- A Section 106 Legal Agreement to ensure the property remains an affordable dwelling in perpetuity.

54 Appeals and Appeal Decisions

RESOLVED:

That the Schedule of Appeals and Appeal Decisions for the Northern area as at 29th November 2016 be noted.

55 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 31st January 2017 in the Shrewsbury/Oswestry Room, Shirehall, Shrewsbury.

Signed (Chairman)

Date:

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Committee and Date

North Planning Committee

31st January 2017

Item

5

Public

Development Management Report

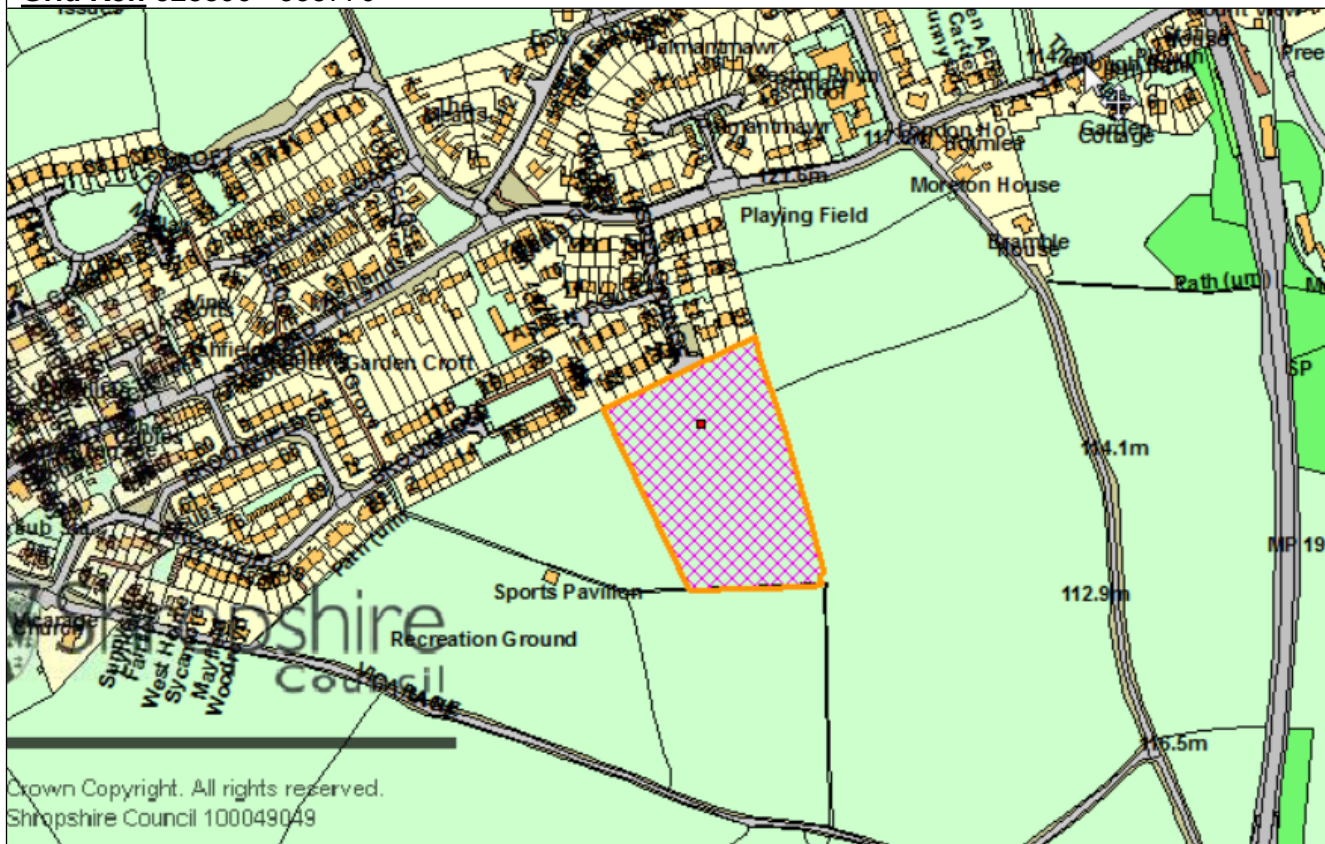
Responsible Officer: Tim Rogers

Email: tim.rogers@shropshire.gov.uk Tel: 01743 258773 Fax: 01743 252619

Summary of Application

Application Number: 16/01735/OUT	Parish: Weston Rhyn
Proposal: Outline application for residential development (All Matters Reserved)	
Site Address: Land South Of Aspen Grange Weston Rhyn Shropshire	
Applicant: Mr M Richardson	
Case Officer: Karen Townend	email: planningdmne@shropshire.gov.uk

Grid Ref: 328896 - 335770



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Recommendation:- Grant planning permission subject to the applicants entering into a S106 legal agreement to secure affordable housing and subject to the conditions set out in Appendix 1.

REPORT

1.0 THE PROPOSAL

- 1.1 This application seeks outline planning permission for residential development on land at Aspen Grange, Weston Rhyn. The application has all matters of access, layout, scale, appearance and landscaping reserved for later approval and as such is currently only considering the principle of residential development on the land.
- 1.2 To assist in the consideration of the application the submission is accompanied by a design and access statement, indicative layout and ecology survey.

2.0 SITE LOCATION/DESCRIPTION

- 2.1 The application site area is 1.65 hectares and is currently in agricultural use for grazing. It is enclosed by well established hedges on all boundaries with sporadic trees in the eastern and southern boundaries and an existing watercourse crosses within the southern edge of the site. It is relatively flat with limited changes in ground level.
- 2.2 The land lies to the south of the existing housing on Aspen Grange which is a modern estate of detached and semi detached houses with a turning head at the edge of the application site. The houses immediately to the north of the application site face over the application site with private driveways and gardens between. To the east and south is open countryside. There is another parcel of agricultural land on the east of the application site between the site and the village playing fields which include a football pitch and pavilion and multi use games wall, seating shelter and children's play equipment. This parcel of land was included in the previous application for development but has been removed from the current application.
- 2.3 In the wider area the village is focused around the main road through the village from the school at one end to the church at the opposite end. There are estates off the main road varying in age and house type with a few older properties along the main road. The village is served by a school, shops, public house, takeaway facilities and church. It is within the rural area surrounding and supported by the town of Oswestry.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

- 3.1 The Parish Council has submitted a view which is contrary to the officers recommendation and is based on material planning reasons which can not be overcome by condition or negotiation. Furthermore, both local members, Councillor Macey and Councillor Lloyd have requested that the application be determined by the North Planning Committee.

This request has been discussed with the Chair of the Planning Committee who has confirmed that the application should be considered by members.

4.0 COMMUNITY REPRESENTATIONS

4.1 Consultee Comments

- 4.1.1 **Weston Rhyn Parish Council** – Weston Rhyn Parish Council wish to object to this application expressing full support behind the objections already submitted by residents.

Namely the Council object on the grounds of the unsuitability of access/egress from the site which will see a large increase in vehicular traffic travelling through the existing housing estate along a narrow road to egress onto Station Road.

The Council also object on the grounds of the proposal for a sewerage treatment plant and channelling of treated water into the nearby stream and the potential problems this raises in terms of health issues and flooding.

- 4.1.2 **Affordable housing** – If this site is deemed suitable for residential development, the scheme would be required to contribute towards affordable housing in accordance with Policy CS11 of the adopted Core Strategy. The level of contribution would need to accord with the requirements of the SPD Type and Affordability of Housing and at the prevailing housing target rate at the time of Reserved Matters application.

The size, type and tenure of the affordable homes will need to be agreed in writing with the Housing Enabling Team and would be transferred to a housing association for allocation from the housing waiting list in accordance with the Councils prevailing Allocation Policy and Scheme.

- 4.1.3 **Conservation** – Thank you for consulting Conservation on the above application. We will not be commenting in full in this case however:

-The design of the proposed dwellings should reflect local vernacular details in terms of scale, details materials, siting/ layout etc.

-The development should be in accordance with policies CS6 Sustainable Design and Development and CS17 Environmental Networks, as well as MD2 and MD13 of SAMDev, and with the National Planning Policy Framework (NPPF) 2012.

- 4.1.4 **Archaeology** – The Shropshire Historic Environment Record contains a record for a possible undated enclosure site (HER PRN 03893) within the field immediately to the south of the proposed development site.

The record entry notes that the site has been identified on the basis of a single vertical and comments that it may be a natural feature. However, without further investigation is not possible to entirely rule out the possibility that this site is of archaeological interest and that features and deposits associated with it might be present on the proposed development site. For these reasons, the proposed development site is considered to have moderate archaeological potential.

In view of the above and in line with Paragraph 141 of the NPPF and Local Plan Policy MD13, it is recommended that a programme of archaeological work be made a condition of any planning permission for the proposed development. This should comprise an archaeological field evaluation consisting of an initial geophysical survey, followed by further mitigation as appropriate.

- 4.1.5 **Highways** – No comments received on current application.

Advice on previous application (14/01654/OUT):

No objection. Firstly, the application site, in part, is included as a preferred site within the SAMDev submission. The current land area proposed however is greater than that which is included in the SAMDev submission and therefore it is implicit that the number of dwellings that can be accommodated as part of this application is likely to be double the number than could be accommodated on the proposed housing area in the SAMDev submission. It is noted that the Parish Council made no comment initially on the basis, it is assumed, on its allocation during the SAMDev process and it having Parish Council support. However the Parish Council have now raised an objection which include highway issues.

The highway issues relate to heavy construction traffic, suitability of the Aspen Grange/Station Road junction for additional traffic and increase traffic created onto Station Road together with the failure of Shropshire Council to reclassify Station Road as a 'B' Class road.

With regard to the highway issues raised by the Parish Council, it is considered by the highway authority that Aspen Grange is suitable to accommodate the development land area, supporting a development of the scale indicated on the indicative layout plan showing 50 dwellings. Aspen Grange has a carriageway width of 5.5 metres flanked on either side by 1.8 metre and at its junction with Station Road visibility splays are provided in accordance with and in excess of Manual for Streets guidance. It is considered therefore that there are no fundamental highway grounds to object to the granting of an outline permission.

Issues surrounding construction traffic could, as is normally the case, be controlled within a standard condition. As regards the issue raised by the Parish Council concerning the classification of Station Road, this is not a matter which concerns the determination of this application.

The highway authority therefore raise no objection to the granting of outline consent subject to the further submission of satisfactory access, access road layout, parking and turning area(s) together with a construction management plan to be implemented during the construction phasing of the development.

4.1.6 **Ecology** – No objection. Recommends conditions and informatives.

4.1.7 **Drainage** – The proposed surface water drainage details, plan and calculations should be conditioned and submitted for approval at the reserved matters stage if outline planning permission were to be granted.

Recommends conditions requiring submission of a flood risk assessment, submission of surface water drainage details including maintenance details, submission of the foul drainage treatment plant.

If the watercourse is occasionally dry, then the discharge of the treated foul effluent should not be allowed. Consent or an exemption certificate is required as appropriate from the Environment Agency for discharging treated foul effluent into the watercourse. Worth contacting the EA regarding this application and make them aware that a public has reported that the watercourse is occasionally dry.

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

SEWERAGE We refer back to comments made by us for this site at the recent LDP examination stage relating to this allocation, where it was advised that there are isolated incidents of flooding in the public sewerage system downstream of this site which will need to be overcome if development is to proceed and a communication to the public sewer is made. Further assessment of the sewer network by means of a Hydraulic Modelling Assessment (HMA) would be required to consider the impact of this development upon the receiving sewerage network and establish a solution to accommodate the foul flows only from this development site without causing detriment to existing customers or the environment.

The use of the a Grampian condition, that has been suggested by Shropshire Local Planning Authority is supported in principle, however this is subject to the Local Planning Authority acknowledging that the only means of establishing a permanent solution for the disposal of foul drainage (as required by part 1 of the condition) shall be through the undertaking of a HMA and the subsequent implementation of any solution identified by the assessment (as required by part 2)

Shropshire Local Planning Authority would have to be satisfied that this condition is reasonable/practical and would therefore meet the planning condition tests.

For the developer to obtain a quotation for the hydraulic modelling assessment, we will require a fee of £250 + VAT to engage our consultants, this fee is non-refundable. We therefore recommend that the developer engages with us as early as possible to discuss their intentions.

Also recommended conditions requiring details of the drainage scheme and no development within 3m of the sewer crossing the site and advisory notes relating to connection to the sewer and that there may be other sewers and drains not on the records.

SEWAGE TREATMENT

No problems are envisaged with the Waste Water Treatment Works for the treatment of domestic discharges from this site.

Our response is based on the information provided by your application. Should the proposal alter during the course of the application process we kindly request that we are re-consulted and reserve the right to make new representation.

- 4.1.9 **Environment Agency** – We would not provide comment on this application (16/01735/OUT). This is based on our current consultation checklist in consideration of the scale and nature of the proposal in this location (non mains drainage less than 80 dwellings).

For non mains drainage proposals we advise the Council/applicant to refer to our local area 'Foul Drainage Assessment Form' (copy attached for information). We would leave it with the applicant to discuss matters with the relevant utility company (Severn Trent Water in this instance) to pursue a connection to the mains foul sewer where available.

In the absence of a mains foul connection the non-mains option may be necessary

and, separate to planning, we would expect a permit to discharge to be submitted to us, under the Environmental Permitting Regulations (2010). This would control the discharge of waste water to the watercourse. We would recommend this Permit application is progressed concurrent with the planning application to ensure the proposed non-mains option is viable without detriment to the water environment.

4.1.10 **Public Protection** – Having considered the location, previous and neighbouring land use I have no objection to this applications proposals and have no conditions to recommend. Conditions in relation to construction times, burning on site etc. should be considered by the case officer and would be supported by public protection.

4.2 **Public Comments**

4.2.1 12 letters of representation have been received raising the following concerns:

- No need for housing on this site
- Should develop brownfield sites first
- Previous application refused
- Access road is narrow and can have cars parked along it
- Road structure would not cope with construction traffic
- Road outside school is congested at school times
- Would be dangerous for children to play on the estate due to additional traffic
- Road network will not cope with construction traffic
- HSE would not pass the route to this site
- The existing brook does not have 12 month flow, has low capacity to dilute treated effluent, the outflow would be greater than the existing water in the watercourse
- Watercourse floods in winter and reduces to a trickle in summer
- Risk to watercourse and public health if treatment plant malfunctioned
- Field is always very wet and has no drainage
- Increase in flood risk from brook and from surface water
- EA maps show existing properties at risk of surface water flooding

5.0 **THE MAIN ISSUES**

- Policy & principle of development
- Is the site sustainable?
- Layout, scale and design
- Impact on residential amenity
- Highways, access, parking and rights of way
- Ecology and trees
- Drainage

6.0 **OFFICER APPRAISAL**

6.1 **Policy & principle of development**

6.1.1 Under section 38(6) of the Planning and Compulsory Purchase Act 2004, all planning applications must be determined in accordance with the adopted development plan unless material considerations indicate otherwise. Since the adoption of the Councils Core Strategy the National Planning Policy Framework (NPPF) has been published and is a material consideration that needs to be given

weight in the determination of planning applications. The NPPF advises that proposed development that accords with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused unless other material considerations indicate otherwise. The NPPF constitutes guidance for local planning authorities as a material consideration to be given significant weight in determining applications.

- 6.1.2 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’, with the requirement for authorities to have a housing land supply of 5 years to achieve this. Therefore, the fact (and degree) that a proposed development helps to boost housing supply is a significant material consideration.
- 6.1.3 The Council currently have a 5 year housing land supply and therefore consider that the development plan, that being the Core Strategy and SAMDev, should be given full weight. Weston Rhyn is being promoted as part of a Community Cluster with the villages of Rhoswiell, Wern and Chirk Bank with a housing target of 78 dwellings. The current application site is the allocated site within the SAMDev for housing development for the village of Weston Rhyn (with a separate allocation in Rhoswiell on the opposite side of the railway line). The two allocated sites will provide 45 dwellings with the remainder to be made up of infilling, conversions and small groups of houses.
- 6.1.4 Several objectors have noted that the previous application on this site was refused and was also dismissed at appeal and have therefore questioned why the current application has been submitted or is being considered. The previous application was refused on the 14th May 2015 for one reason:
“Having considered the potential benefits to the community, including boosting the Council’s Housing supply and generating CIL funds, the Committee were concerned that the foul drainage infrastructure would be overloaded and that at the time of the decision it was not clear on the information available and in the absence of more detailed studies, that the mitigation schemes proposed by the agent would be sufficient or appropriate to ensure that the scheme would overcome the foul drainage issues and therefore that the proposals were contrary to Core Strategy Policies CS6 and CS8.”
- 6.1.5 This refusal was appealed and was dismissed on the 25th January 2016. However the appeal was only dismissed on the grounds that there was no S106 agreement submitted to secure affordable housing. The Planning Inspector determined that the foul drainage infrastructure issue could be overcome by an appropriately worded condition and as such did not uphold the Council’s reason for refusal.
- 6.1.6 As such there are no grounds to resist a resubmission of the planning application and the agent was advised to ensure that he considered both foul drainage and the need for a S106 agreement. Other matters have also been raised by the objectors which will be considered in detail in the report. The foul drainage proposals of the current application will also be detailed later in the report. However, at this time there is no reason to not determine the current planning application.

- 6.1.7 It should also be noted that the previous application and appeal proposal was for a larger site than the current application and included the field between the application site and the village play area. The previously larger site was beyond the land allocated in the SAMDev. The current application is for the land allocated within the SAMDev and as such the principle of developing the site for housing has been accepted in allocating the site. The key point here is that the land subject to the current application is an allocated site and therefore the current proposal complies with policy. As such both legislation and national policy advise that the application should be approved unless material considerations indicate otherwise.
- 6.1.8 The material considerations relevant to this outline application are the matters of its sustainability and its impact on amenity, highways, ecology, trees and drainage. These issues are hereafter considered.
- 6.2 **Is the site sustainable?**
- 6.2.1 Paragraph 7 of the NPPF sets out the three dimensions to sustainable development and provides an overview of what is considered to be the economic, social and environmental roles of the planning system. The initial assessment of potential sites in the community cluster considered 25 sites in total. The larger site, the site dealt with under the previous application and appeal, was assessed under stage 2 by Shropshire Council Policy Officers who scored the site positively for access to bus service, school and recreation facilities but negatively for being grade 3 agricultural land. It was considered to be capable of providing new housing and the conclusion of the assessment was that the overall sustainability of the site is good.
- 6.2.2 The local objectors have questioned whether the development of the site would add unacceptable pressure on the local services and facilities, including the school, highway network and drainage systems. The impact on the highway and drainage are considered in later sections of this report. The agent notes the presence of the amenities within Weston Rhyn, the school, shops, post office, takeaway food shop and public houses; that the village is on a regular bus route and is close to the employment sites at Gledrid and Moreton Park.
- 6.2.3 The aim of the Shropshire Core Strategy is to promote development in villages and rural areas with services or where new development can help to improve sustainability. The development of this site will have economic benefits through CIL payments, construction jobs and support for local businesses and services and this needs to be given substantial weight in the determination of the application. The CIL contribution could provide for infrastructure enhancements or could also be used to contribute towards school places if this is considered to be a priority in the local area. As noted above the development of this site will add pressure but also income for local services and facilities and as such any harm resulting from the development needs to be balanced against the benefits.
- 6.2.4 There are also social benefits of new housing including affordable housing. As an outline application the level of affordable housing to be provided on the site would be dependant on the target rate at the time of the submission of reserved matters and a legal agreement will be required as part of this outline consent to ensure that the affordable housing is provided and retained as such. The recommendation reflects this requirement. If the S106 agreement is not secured the consent will not

be granted. The permission is reliant on the S106 agreement and therefore can ensure that affordable housing is secured.

- 6.2.5 Environmentally it is acknowledged that the development of the site from agricultural land to built development will have an environmental and visual impact, as considered in greater detail below. However there are also environmental benefits gained from the development. The development includes the provision of open space within the site including a green corridor along the watercourse and retention of the existing landscaping features. The site is currently private land and the proposal will provide public open space in the form of this green corridor along the southern edge of the site. This is an environmental gain which should be taken into consideration in the balance of harm against benefit.
- 6.2.6 Local objectors have raised concern about the loss of the agricultural land. The SAMDev site assessment notes that the land is grade 3 agricultural land but continued to promote the whole of the current application site for development. It is therefore considered that to enable development and growth of the village will result in the loss of some agricultural land. The loss of best and most versatile agricultural land is an impact of the development proposed, however officers consider that the loss of the area proposed for the 32 houses would not constitute significant loss of agricultural land and as such that this harm is not so significant and demonstrable as to outweigh the benefits of new housing. The concern of local residents that brownfield land should be developed first has not been quantified with any suggested sites. It is acknowledged that recent Government announcements seek to promote brownfield land but this does not require a sequential approach to development of land and the Council are continually promoting brownfield land for development where it results in sustainable development. The other allocated site within the Community Cluster is a brownfield site, however there is also a current application on that site and as such officers consider it is being promoted as a developable site.
- 6.3 **Layout, scale and design**
- 6.3.1 Policy CS6 'Sustainable Design and Development Principles' of the Shropshire Core Strategy requires development to protect and conserve the built environment and be appropriate in scale, density, pattern and design taking into account the local context and character. The development should also safeguard residential and local amenity, ensure sustainable design and construction principles are incorporated within the new development.
- 6.3.2 The design and access statement confirms that the plan submitted with the application is for indicative purposes only and is intended to show that the site can be developed for a mix of housing. The indicative plan suggests 32 dwellings. The plan recommends the provision of an area of open space within the southern edge of the site which will be accessible to the public and provided with enhanced landscaping. The plan also recommends that the density of the site relates to the existing housing in the northern part of the application site whilst reducing in density and scale in the southern part of the site. These are commendable principles to set and would help to assimilate the development into the surrounding area and reduce the visual impact of the site from the wider area. However, these matters are not submitted for consideration at this outline stage and would need to be determined at the time of an application for reserved matters.

6.4 **Impact on residential amenity**

6.4.1 Policy CS6 'Sustainable Design and Development Principles' of the Shropshire Core Strategy indicates that development should safeguard the residential and local amenity.

6.4.2 As with the consideration of layout and scale the impact on the amenities of existing residents can not be fully assessed at this outline stage as the impact will predominately depend on the layout. It is noted that the existing housing on Aspen Grange face over the application site, although this provides a good separation distance it also raises issue of layout. Officers consider that the layout of the site, where it is adjacent to the housing on Aspen Grange facing over the site, should respect these frontages and provide frontages facing the existing housing but would need to ensure that the separation distances protect the existing amenities in terms of loss of light and privacy. This is a matter which will need to be reconsidered at the time of submission of reserved matters.

6.5 **Highways, access, parking and rights of way**

6.5.1 Paragraph 32 of the NPPF advises that developments that generate significant amounts of traffic should be supported by a Transport Statement and promotes sustainable modes of travel, safe accesses and improvements to existing transport networks. Core Strategy Policy CS6 states that proposals likely to generate significant levels of traffic should be located in accessible locations where opportunities for walking, cycling and use of public transport can be maximised and the need for car based travel to be reduced.

6.5.2 Although this is an outline application with all matters reserved the design and access statement and the indicative layout suggests a single point of vehicular access off Aspen Grange. The agent has commented within the design and access statement that the existing estate road is capable of accommodating the additional traffic that will result from the development proposed and that the estate road was designed to a higher standard than was required to serve the existing dwellings. The agent also comments that the junction onto Station Road has sufficient visibility and that the proposed road within the application site will be designed up to adoptable standards with kerbs and footways.

6.5.3 However, local objectors, including the parish council, have raised concern about the width and capacity of Aspen Grange and its junction with Station Road, and concerns about the general increase in traffic in the village, especially outside the school.

6.5.4 The Council Highway Officer has not submitted any comments on this current application. However, the advice from the Highway Officer on the previous application, which was for a larger site, was that an objection on highway matters could not be sustained. The existing road width is sufficient for the anticipated construction and housing traffic and the junction of Aspen Grange and Station Road has acceptable levels of visibility. The scale of the proposed development at that time, which was indicated to be around 50 houses, would not result in a sever impact on capacity of the highway network and the construction traffic impact can be controlled by condition. As the current application is now for a smaller site and fewer houses, approximately 35, it is officers' opinion that a refusal on highway

grounds would not be defensible. Furthermore, highways was not previously a reason for refusal and it would be unreasonable to add it now given the relatively short period of time since the previous refusal.

6.5.5 Objectors have also referred to an application for a new access onto Station Road that has been refused. However, the application referred to was refused on the basis of lack of visibility from the proposed junction. That application is materially different to this current proposal which proposes using an existing junction which has sufficient and appropriate visibility for both the existing traffic and potential increase in traffic.

6.6 **Ecology and trees**

6.6.1 The NPPF and policy CS17 of the Shropshire Core Strategy require consideration to be given to the impact of the proposed development on the natural environment. This particularly relates to the impact on statutorily protected species and habitats and existing trees and landscaping. Furthermore the development guidelines in the SAMDev note that the development of the application site is subject to appropriate biodiversity surveys. A protected species survey has been undertaken and submitted with the application and this has been considered by the Council Ecologist.

6.6.2 The submitted report considers the existing site conditions, surrounding features and evidence of protected species. Desk studies and field surveys were undertaken and the survey concludes that there is no evidence of any protected species and the proposed development is unlikely to have any impact on any protected species that might be found in the area. The report notes the boundaries to the site being hedge on the southern and northern edges with the south hedge well managed native species and the north hedge being recently replanted following the development of the adjacent houses.

6.6.3 Although local objectors have raised concerns that the site is used by wildlife the Council Ecologist has not raised any objection to the scheme. Their advice on the previous application was that the approval should be subject to conditions to provide artificial nests and details of lighting and this has been carried forward onto this application. It is also noted that the development indicated proposes an area of open space, although objections have been received regarding this, the provision of open space within a development is a positive benefit both for the local community and also for enhancing habitat for wildlife and for providing new trees. Overall it is considered that the development of this site can be undertaken without harm to protected species and with enhancements and environmental gains in accordance with policy CS17.

6.7 **Drainage**

6.7.1 Policy CS18 'Sustainable Water Management' of the Shropshire Core Strategy indicates that development should integrate measures of sustainable water management to reduce flood risk and avoid an adverse impact on water quality and quantity. Furthermore the development guidelines in the SAMDev note that the development of the site should be subject to appropriate drainage design.

6.7.2 As submitted the surface water is intended to be drained via a sustainable drainage system to the existing watercourse. Within the design and access statement the

agent notes the presence of 2 existing surface water drains which cross the site and which is accepted will need to be taken into account in considering the layout of the site at reserved matters. Foul drainage was originally proposed to be dealt with via a package treatment plant on site and the outflow also discharged to the watercourse.

- 6.7.3 Objectors, including the Parish Council, have raised concerns about the flooding of the land, noting that it is already at risk of flooding, and also about the proposed method of dealing with the foul drainage and capacity issues in the mains drainage system. The objectors have noted that the previous application was refused on the grounds of foul drainage capacity.
- 6.7.4 As noted above, the previous application, which was for this site and also the adjacent field, was refused by the planning committee in May 2015 for the following single reason:
Having considered the potential benefits to the community, including boosting the Council's Housing supply and generating CIL funds, the Committee were concerned that the foul drainage infrastructure would be overloaded and that at the time of the decision it was not clear on the information available and in the absence of more detailed studies, that the mitigation schemes proposed by the agent would be sufficient or appropriate to ensure that the scheme would overcome the foul drainage issues and therefore that the proposals were contrary to Core Strategy Policies CS6 and CS8.
- 6.7.5 The refusal was appealed and the Planning Inspector concluded that the foul drainage of the site could be dealt with by an appropriately worded condition. The appeal was only dismissed as the applicant did not submit a legal agreement with the appeal and as such there was no means of securing affordable housing. The Inspector did not agree with the members on the matter of foul drainage. I have attached the Inspector's decision letter for reference and draw members' attention to paragraphs 6-8.
- 6.7.6 Foul drainage – The application as submitted proposed the installation of a private package treatment plant to deal with the foul drainage from the proposed housing. This was intended to overcome the objections as a package treatment plant would not place any additional foul drainage into the mains drainage system. However, firstly concerns were raised about the ability of the watercourse to accept the outflow from a package treatment plant and secondly, the National Planning Practice Guidance advises that: *“Applications for developments relying on anything other than connection to a public sewage treatment plant should be supported by sufficient information to understand the potential implications for the water environment...when drawing up wastewater treatment proposals for any development, the first presumption is to provide a system of foul drainage discharging into a public sewer to be treated at a public sewage treatment works (those provided and operated by the water and sewerage companies).”*
- 6.7.7 Officers therefore advised the agent that there was not sufficient justification with the application to satisfy the national advice and support a private treatment plant. The agent was asked to reconsider connection to the mains drainage system. However, as an outline application, the applicant, who is the land owner, does not want to pay Welsh Water to start the required work to understand capacity and any

upgrades required as this work will be costly and may also be out of date before a developer is ready to start work on the site. An outline consent is a permission in principle, the applicant would then look to sell the land on to a developer, who would submit an application for approval of reserve matters. Officers agree that it would be unreasonable to require the applicant and Welsh Water to undertake the work required to establish capacity and work required to provide capacity if the development is not ready to commence.

6.7.8 It is considered more appropriate to provide a condition that requires the necessary survey work and consideration of options and upgrades to be carried out before any work commences on site. However, national policy also accepts that there may be instances where a connection to a public sewage treatment plant is not feasible (in terms of cost and/or practicality) and that a package treatment plant can be considered and the Environment Agency Foul Drainage Assessment Form – Non Trade Effluent advises that *“The utilisation of non-mains drainage as part of your planning proposal will only be allowed in exceptional circumstances and you must provide evidence that a connection to the sewer is not practicable.”*

6.7.9 The agent and applicant have therefore withdrawn the proposal for a package treatment plant and the following condition has been drawn up by officers:
The development hereby approved shall not commence until a detailed scheme for the disposal of foul drainage has been agreed in writing with the local planning authority. For the avoidance of doubt the detailed scheme shall identify a suitable point of connection and any necessary improvements within the public sewerage network as a result of a Hydraulic Modelling Assessment unless it can be demonstrated to the Council’s satisfaction that connection to the public sewerage network is not feasible (in terms of cost and/ or practicality) and in such case a detailed alternative scheme shall include any necessary permits from the Environment Agency for discharge to the watercourse. Thereafter the development shall not be occupied until the approved foul drainage scheme has been completed strictly in accordance with the approved details.
Reason: To ensure satisfactory foul drainage of the development and ensure that the drainage of the site does not result in environmental consequences in the wider area.

6.7.10 This condition will allow the outline consent to be granted, subject to a legal agreement to secure affordable housing, whilst ensuring that the development adequately addresses the disposal of foul drainage from the site before any development commences in accordance with the advice from the Planning Inspector in the appeal decision. It would also meet the requirements of Welsh Water as detailed in section 4 above, who have advised that a Grampian style condition is supported and would allow the required hydraulic modelling assessment to be carried out.

6.7.11 Surface water – A Flood Risk Assessment (FRA) has been undertaken and submitted with the application. This report notes the watercourse on the southern boundary of the site which discharges into Morlas Brook. The site is within flood zone 1, the lowest zone and not liable to any flooding. However the FRA proposes the finished floor levels should be 150mm above the surrounding ground level to protect the new properties. The FRA also reports on the ground conditions for the purposes of understanding the potential surface water drainage for the site. The

ground conditions are not suitable for soakaways and as such the FRA recommends discharging the surface water drainage to the watercourse with attenuation to restrict discharge to greenfield run-off rates. The FRA also recommends the creation of a wetland area in the open space and acknowledges that there is an existing drainage pipe crossing the site which will need to be retained.

6.7.12 The Council Drainage Engineer has confirmed that the FRA is acceptable but has requested further details relating to surface water flows and the finished floor levels but also confirmed that this can be provided as part of the reserved matters application or through conditions. Overall the Drainage Engineer advice is clear that there is a solution available to enable development of the site without increasing flood risk either within the site or to the surrounding area.

6.8 Other matters

6.8.1 The Council Archaeologist has advised that an archaeological field evaluation should be carried out and mitigation may be required. This can be secured by means of a condition as recommended by the Archaeologist.

7.0 CONCLUSION

7.1 The site is located within the recently adopted development boundary for Weston Rhyn and is a site allocated for housing development in the Site Allocations and Management of Development (SAMDev) Plan and it is therefore accepted that the site is in a sustainable location, on the edge of the existing built development, where it benefits from the facilities, services and infrastructure offered by the village and will provide additional housing supply in accordance with national planning policy priorities. Furthermore, the development will provide for affordable housing in accordance with Policy CS11 and infrastructure provision in accordance with policy CS9 and will not result in significant loss of agricultural land.

7.2 The size of the site and constraints from the existing development, watercourse and village recreation field limits the developable area, however in principle the site can be developed for housing without adversely affecting the amenities of the existing properties, in context with the surrounding built form and with an appropriate access. Furthermore, subject to submission of detailed designs, the site can be provided with satisfactory foul and surface water drainage arrangements, will not be harmful to local habitats or biodiversity and public open space will be provided which also improves the accessibility and the landscaping of the area.

7.3 Accordingly, subject to conditions and the applicant entering into a S106 legal agreement to secure affordable housing, it is considered that the proposal meets with the housing policies and general requirements of the NPPF and otherwise complies with policies CS6, CS9, CS11, CS17 and CS18 of the Shropshire Core Strategy and policies MD1, MD2, MD8, MD12, S14.2 and S14.s(xi) of the SAMDev. In arriving at this decision the Council has used its best endeavours to work with the applicant in a positive and proactive manner to secure an appropriate outcome as required in the National Planning Policy Framework paragraph 187.

8.0 RISK ASSESSMENT AND OPPORTUNITIES APPRAISAL

8.1 Risk Management

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

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

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

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

8.2 **Human Rights**

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

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

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

8.3 **Equalities**

The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed in planning committee members' minds under section 70(2) of the Town and Country Planning Act 1970.

9.0 **FINANCIAL IMPLICATIONS**

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

10. Background

Relevant Planning Policies

Central Government Guidance:
National Planning Policy Framework

Core Strategy:
CS4 - Community Hubs and Community Clusters
CS5 - Countryside and Greenbelt
CS6 - Sustainable Design and Development Principles
CS7 - Communications and Transport
CS9 - Infrastructure Contributions
CS11 - Type and Affordability of housing
CS17 - Environmental Networks
CS18 - Sustainable Water Management

SAMDev:
MD1 – Scale and Distribution of Development
MD2 – Sustainable Design
MD8 – Infrastructure Provision
MD12 – Natural Environment
S14.2 – Oswestry Community Hub and Cluster Settlements
S14.2(xi) – Weston Rhyn, Rhosweil, Wern and Chirk Bank

Relevant planning history:

14/01654/OUT Outline application for residential development (All Matters Reserved) REFUSE
14th May 2015
APPEAL - 15/02343/REF Outline application for residential development (All Matters Reserved) DISMISSED 25th January 2016

11. Additional Information

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)
Cabinet Member (Portfolio Holder) Cllr M. Price
Local Member Cllr David Lloyd MBE Cllr Robert Macey
Appendices APPENDIX 1 – Conditions APPENDIX 2 – Appeal Decision

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

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

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

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

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

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

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

4. This permission does not purport to grant consent for the layout shown on the deposited plan submitted with this application.

Reason: To enable the Local Planning Authority to consider the siting of the development when the reserved matters are submitted.

5. The following information shall be submitted to the local planning authority concurrently with the first submission of reserved matters:

- The number of units
- The means of enclosure of the site
- The levels of the site
- The means of access for disabled people
- The surface water drainage scheme of the site
- The finished floor levels

Reason: To ensure the development is of an appropriate standard.

CONDITION(S) THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES

6. Prior to the commencement of the development, including any works of demolition, a Construction Method Statement shall have been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period.

Reason: This detail is required prior to commencement to avoid congestion in the surrounding area and to protect the amenities of the area.

7. The development hereby approved shall not commence until a detailed scheme for the disposal of foul drainage has been agreed in writing with the local planning authority. For the avoidance of doubt the detailed scheme shall identify a suitable point of connection and any necessary improvements within the public sewerage network as a result of a Hydraulic Modelling Assessment unless it can be demonstrated to the Council's satisfaction that connection to the public sewerage network is not feasible (in terms of cost and/ or practicality) and in such case a detailed alternative scheme shall include any necessary permits from the Environment Agency for discharge to the watercourse. Thereafter the development shall not be occupied until the approved foul drainage scheme has been completed strictly in accordance with the approved details.

Reason: To ensure satisfactory foul drainage of the development and ensure that the drainage of the site does not result in environmental consequences in the wider area.

8. 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

9. Prior to the first occupation of the dwellings details of five woodcrete artificial nests suitable for small birds such as robin, blackbird, tit species, sparrow and swallow shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented in full prior to the occupation of the dwelling/ building.

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

10. Prior to the erection of any external lighting which would illuminate trees and hedgerows 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 ARE RELEVANT FOR THE LIFETIME OF THE DEVELOPMENT

11. The proposed development site is crossed by a 450mm surface water with the approximate position being marked on the attached Statutory Public Sewer Record. Under the Water Industry Act 1991 Dwr Cymru Welsh Water has rights of access to its apparatus at all

times. No part of the building will be permitted within 5 metres either side of the centreline of the public sewer.

Reason: To protect the integrity of the public sewer and avoid damage thereto.

12. Land drainage run-off shall not be permitted to discharge, either directly or indirectly, into the public sewerage system.

Reason: To prevent hydraulic overload of the public sewerage system and pollution of the environment.

13. No surface water shall be allowed to connect, either directly or indirectly, to the public sewerage system unless otherwise approved in writing by the Local Planning Authority.

Reason: To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and ensure no detriment to the environment.

14. Foul water and surface water discharges shall be drained separately from the site.

Reason: To protect the integrity of the public sewerage system.

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

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

16. No burning shall take place on site including during clearance of the site.

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

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Appeal Decision

Site visit made on 11 January 2016

by Alison Partington BA (Hons) MA MRTPI

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

Decision date: 25 January 2016

Appeal Ref: APP/L3245/W/15/3138356

Land at Aspen Grange, Weston Rhyn, Oswestry, Shropshire SY10 7TS

- 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 Mr M Richardson (M Richardson and Partners) against the decision of Shropshire Council.
 - The application Ref 14/01654/OUT, dated 10 April 2014, was refused by notice dated 14 May 2015.
 - The development proposed is described as "outline application for residential development".
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted in outline with all matters reserved. I have determined the appeal on this basis, treating the plan that shows the site layout as indicative.
3. Since the submission of the appeal the Council has adopted its *Site Allocations and Management of Development Plan* (SAMDev). The 'Final Comments' stage of the appeal process gave both parties the opportunity to address any implications arising from the adoption of this document. I have determined the appeal on the basis of the national and local policies as adopted at the present time.

Main Issues

4. The main issues in the appeal are:
 - Whether or not the proposal makes adequate arrangements for the disposal of foul drainage from the site; and
 - Whether or not the proposal makes adequate provision for affordable housing.

Reasons

Drainage

5. The appeal site is currently grazing land located to the south of housing on Brookfield Close and Aspen Grange. The village of Weston Rhyn has been classified as part of a Community Cluster within the recently adopted SAMDev

- and Policy S14.2(xi) identifies the village as one that is suitable for new housing. In particular the SAMDev allocates part of the appeal site for housing development subject to, amongst other things, appropriate drainage design.
6. The appellant has acknowledged that to progress the development of the site a Hydraulic Modelling Assessment would need to be carried out with Welsh Water. He considers that this can be adequately controlled by way of a condition which could ensure that this is completed before any development takes place. Although the application was recommended for approval on this basis, the Council has expressed concern, based on experience elsewhere, on whether a condition would be sufficient to prevent development commencing.
 7. I note that the condition used by the Council previously required that no dwelling should be occupied until the scheme for the drainage had been approved. I accept that the wording of that condition would not be adequate to ensure that the drainage was adequately addressed before any development took place. Notwithstanding this, I consider that altering the wording of the condition to state that no development should take place until a drainage scheme has been approved by the local planning authority, would be sufficient to ensure that drainage matters were adequately addressed before any development starts on the site. Such a condition would also meet the requirements for conditions set out in the *National Planning Policy Framework*.
 8. As such, I consider that a condition can be used to ensure that the development adequately addresses the disposal of foul drainage from the site before any development commences. Therefore there would be no conflict with Policy CS6 and CS8 of the *Shropshire Core Strategy (adopted March 2011)* (SCS) which seek to ensure that there is adequate capacity and availability of infrastructure to serve any new development.

Affordable Housing

9. It is indicated that some of the dwellings within the site would be provided as affordable housing. This would be in accordance with Policy CS11 of the SCS and the *Type and Affordability of Housing SPD (adopted September 2012)* (SPD) which seek the on-site provision of affordable accommodation for all developments of more than 5 dwellings. However, I do not have an executed S106 agreement, or a signed Unilateral Undertaking, before me to secure the provision of this affordable housing on the site.
10. The requirement for an affordable housing contribution as set out in the above policy and the SPD is necessary to the acceptability of the development, is directly related to it, and is fairly related in scale and kind. As such, it would accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010, and the tests for planning obligations set out in the Framework. Without any mechanism before me which would secure the provision of the affordable housing, I am not satisfied that the proposed development would make adequate provision for affordable housing. Consequently, the proposal would be contrary to policy CS11 of the SCS.

Conclusion

11. Although I consider that a condition can be used to ensure that the development adequately addresses drainage on the site, the proposed

development would not make adequate provision for affordable housing. For this reason, I conclude that the appeal should be dismissed.

Alison Partington

INSPECTOR

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Committee and Date
 North Planning Committee
 31st January 2017

Item
6
 Public

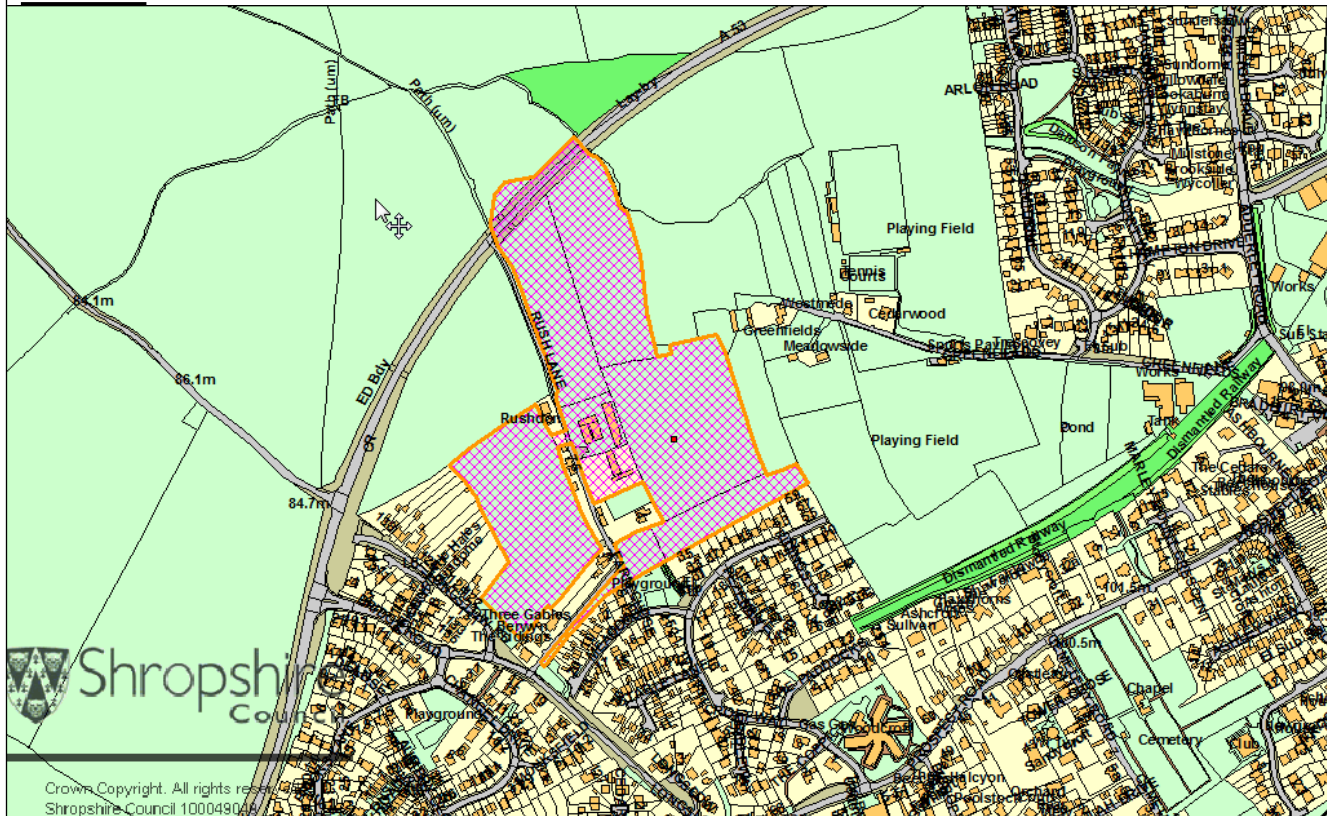
Development Management Report

Responsible Officer: Tim Rogers
 Email: tim.rogers@shropshire.gov.uk Tel: 01743 258773 Fax: 01743 252619

Summary of Application

Application Number: 16/03082/REM	Parish: Market Drayton Town
Proposal: Approval of reserved matters (layout, scale, appearance and landscaping for approval) for residential development of 162 residential units; associated open space and landscaping; discharge of conditions 5 - 7 and 12 pursuant to APP/L3245/A/14/2227146 (allowed on appeal) by the Secretary of State	
Site Address: Land Adjacent To Rush Lane Market Drayton Shropshire	
Applicant: David Wilson Homes (Mercia)	
Case Officer: Karen Townend	email: planningdmne@shropshire.gov.uk

Grid Ref: 366521 - 334597



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Recommendation: That delegated powers be given to the Area Planning Manager to grant planning permission subject to no further objections from the Council Highway Officer and subject to the conditions set out in Appendix 1.

REPORT

1.0 THE PROPOSAL

1.1 The current application is for approval of reserved matters of layout, scale appearance and landscaping for the land either side of Rush Lane, Market Drayton. Outline consent was granted (by appeal) in May 2015 subject to conditions and subject to a S106 legal agreement to secure affordable housing.

1.2 The application has been submitted with full plans and supporting information to seek to deal with the matters reserved on the outline consent and details a proposal for 162 detached, semi detached and terrace two storey and three storey dwellings. Access to the site was approved at the outline stage, therefore the key matters for consideration now are the layout, scale and appearance and the landscaping of the site. Conditions 5 and 6 of the outline consent requires the submission of details for the provision of vehicular, pedestrian and cycle routes through the site, linking to the eastern and western boundaries to be shown with the reserved matters application. Condition 7 requires the details of an extension to the existing play area on Meadow Close and other open space. Information has been provided with the current application to deal with all of these matters and will be considered in the relevant sections below.

2.0 SITE LOCATION/DESCRIPTION

2.1 The site is 7.68 hectares of agricultural land made up of 4 fields currently used for grazing lying south of the A53 with hedgerow and tree boundaries. The land is at a slightly lower level than the A53 and relatively level with only small changes in the level. Rush Lane, a restricted byway, bisects the site and is a narrow lane which is only formally surfaced for part and serves 10 existing properties and one farm off the lane. Existing housing lies to the west and south and fields lie to the east beyond which is the existing Greenfields Lane sports fields and clubs. Sych Brook lies on the north east boundary of the site and is encompassed by an area at risk of flooding (zones 2 and 3) and the bridleway which leads off Greenfields Lane also crosses the site and is currently subject to an application for diversion to re-route the bridleway to allow for the development.

2.2 There is existing housing to the south and west and beyond the sport pitches, all south of the A53. The existing housing is a mix of new estate and older properties with all the properties along Rush Lane being older. The nearest properties overlook the site with some along Rush Lane in close proximity to the site. There are also a number of agricultural buildings adjacent to the farm which will be removed as part of the application. The site will be highly visible from the A53 and also from the surrounding housing development.

2.3 The site lies on the northern edge of Market Drayton, within the bypass formed by the A53. The town centre is south of the site and approximately 2km away. Market Drayton is identified in both the North Shropshire Local Plan and the Shropshire

Core Strategy as a Market Town and as such a key focus for new development.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

3.1 The minutes of the Planning Committee Meeting dated 18th November 2014 at which the outline planning application reference 14/04701/OUT was considered notes that members resolved to grant the outline planning permission subject to the reserved matters application being considered by the North Planning Committee.

Although this reserved matters application has been submitted against the outline application reference 14/01982/OUT, which was approved by the Planning Inspector at appeal, the Area Planning Manager has advised that, given the members previous resolution, that the current reserved matters application should be considered by the committee.

4.0 COMMUNITY REPRESENTATIONS

4.1 Consultee Comments

4.1.1 **Town Council** – To support the application on the conditions of the following issues being resolved with Shropshire Council, the developer and residents:

- Emergency vehicular access to be appropriate
- Access to water pipes
- Access to septic tanks
- To look at the siting of the bungalows
- The creation of a play area to be finalised with the Town Council
- The maintenance of hedgerows in the area
- CIL money - confirmation of the appropriate use

The Town Council have also written following a meeting of the Market Drayton Services and Facilities Committee commenting that the Town Councils' existing play area off Croft Way can not be used as the designated open space and play area for the new developments of Rush Lane and Greenfields.

The Council do not consider this play area to be in the best place for this development and future developments in the Greenfields area.

The Council would like to know what is the statutory requirement for open space/ play areas/ recreation areas on new developments, clarification on this issue would be appreciated. As the Council is not convinced every recreation area needs play equipment as an open space may be more beneficial and versatile for peoples well being. Is the use of allotments an option on the open space?

In connection with granting a licence to the developer to have access to and cross Town Council land at Croft Way this is refused.

There has been virtually no consultation with the Town Council about the play area for the new development by either the planners or developers, this is totally unacceptable. The Town Council insists on full consultation on any future developments in particular if there is a wish to use or develop Town Council property or land.

The Town Council have previous local involvement with residents that were not

aware of a management agreement they had entered into about maintaining open space around their homes. We urge better communication with these issues to avoid later problems. The Town Council will not be responsible for any further open space areas in the town.

Further clarification is required with regard to Market Drayton's CIL money. The Town Council is not prepared to equip a play area through its Neighbourhood Fund.

- 4.1.2 **Affordable Housing** – The affordable housing statement shows the correct number, size and tenure of affordable housing dwellings, that will meet some of the identified need in this area at this time. The financial contribution is also correct. If the location/ plot numbers/size or tenure of any of the affordable dwellings change then please re-consult the housing enabling team.
- 4.1.3 **Education** – Shropshire Council Learning and Skills reports that the local primary school currently has no excess capacity. It is therefore essential that the developers of this and any new housing development in this area contribute towards the consequential cost of any additional places/facilities considered necessary at those schools. It is recommended that capacity pressures resulting from this development are addressed by way of financial contributions.
- 4.1.4 **Open Space** – Under Shropshire Councils SAMDev Plan and MD2 policy requirement, adopted 17th December 2015, all development will provide adequate open space, set at a minimum standard of 30sqm per person (equivalent to 3ha per 1,000 population). For residential developments, the number of future occupiers will be based on a standard of one person per bedroom. For developments of 20 dwellings and more, the open space needs to comprise a functional area for play and recreation. This should be provided as a single recreational area, rather than a number of small pockets spread throughout the development site, in order to improve the overall quality and usability of the provision.

The revised drawing, POS Areas, dated 21/06/16, indicates a slightly different mix of houses and therefore there will be a change to the amount of bedrooms, which would need to be clearly identified so as to enable the minimum calculation for POS provision. The revised drawing shows a total of 17109m² open space provided. However, the MD2 policy also states that on large developments such as this, POS should be provided as one usable site. Currently a new area of POS has been identified along Rush Lane away from the main open space provision to the north, which is contrary to the policy requirement. This POS space area should be included as part of the larger POS.

The inclusion of public open space is critical to the continuing health and wellbeing of the local residents. Public open space meets all the requirements of Public Health to provide space and facilities for adults and children to be both active physically and mentally and to enable residents to meet as part of the community.

- 4.1.5 **Archaeology** – We note Condition 9 of the outline permission ref. 14/01982/OUT. We have no further comments to make with respect to archaeological matters.
- 4.1.6 **Conservation** – The application for the approval of layout, scale, appearance and landscaping has been subject to considerable input from our team in a design and

conservation role, and has reached the point at which we can accept and support the development, which has the potential to enhance the setting of the historic market town at this northern edge.

The detailed materials submitted and viewed are dealt with individually as follows:
Bricks: Ibstock Ravenhead Calderstone Russett and Throckley Wylam Olde Blend - these are to be applied by house-type within the materials layout plan.

Mortar: Mix to be agreed prior to construction start for each housetype

Render: Off white Monocouche to be applied with a smooth finish

Tiles: As per technical product sheet by email and as shown on layout plan

Rainwater goods, soffits and fascias: As used at the Mounts development, Whitchurch

Windows and doors: Sample not seen.

The latest revisions made to layout and the siting and amount of public open space largely address our earlier comments on the initial scheme design at the meeting held with the agent and applicant, particularly with regard to the creation of an arrival point at its centre. Any further tree planting and creation of local character areas should be encouraged, especially along any publicly visible boundaries. These would serve to enhance the character and visual effect of the scheme as far as possible as it sits prominently in the foreground to the historic town.

The dispersal of materials across the house-types within the site is not something we would be keen to support, as it would be hoped that this could better reflect the scale and relative position of each of the dwellings, creating a better sense of legibility and character. It has been pointed out that this could be achieved relatively simply through the logical and coherent application of materials. It is hoped that this can be addressed within a pre occupation if deemed appropriate by the decision maker.

- 4.1.7 **Public Protection** – Having considered the layout I have no concerns in relation to noise as properties are set back from the main road which borders the site to the north west. In relation to contaminated land a condition has been placed on the appeal decision notice reference APP/L3245/A/14/2227146. The applicant is reminded that this is a pre-commencements condition.

In respect of the impact on existing residential dwellings from the construction of this site I would advise that the applicant provides construction and demolition times of operation of 07:30 - 18:00 Monday to Friday, 08:00 - 13:00 Saturday, no work on Sundays, no work on bank holidays. This information should be submitted as part of a discharge of condition 8 on application APP/L3245/A/14/2227146.

- 4.1.8 **Highways** – There are a number of significant concerns relating to the compliance with the appeal decision (Outline planning consent) and the submitted road layout.

This consultation follows a previous application (reference 14/01982/OUT) submitted in May 2014 which resulted in an Appeal against non-determination. The Planning Inspector's decision to allow the appeal, dated 18 May 2015, considered the submitted application details which included the Highway and Transport implications of the development along with those of the adjacent development sites within the SAMDev allocations. The Appeal decision sets out a number of planning

conditions which comprise the Outline consent, specifically the requirement for pedestrian and cycle routes through the site linking to the eastern and western boundaries (condition 5); vehicular routes from the A53 roundabout to points on the eastern and western boundaries (condition 6) and a Construction Method Statement (condition 8).

The submitted Planning Statement states in paragraph 5.20 on page 14 (paragraphs 5.18 – 5.20 are repeated on pages 13 and 14) that: –“The Distributor Road (including the crossing of Rush Lane) is to be offered for adoption under a Section 38 agreement. All other roads, including shared-surfaces, are to be kept private and managed by the site wide Residents Management Company that will be established to manage the on-site Public Open Space areas...”

The submitted Section 38 Approval Layout (Drawing S38 Rev C) indicates the main spine Road 01 and Road 02 for potential adoption, from the A53 roundabout to two locations on the eastern development site boundary. A potentially adoptable link to the western development site is shown via Road 05 which crosses the Rush Lane restricted by-way. Within the correspondence on file there appear to be claimed discrepancies in terms of the respective site boundary positions such that the connectivity appears to be in doubt. In addition, the legal requirements for the crossing of Rush Lane appear to be under active discussion.

The Section 38 Approval Layout drawing does not, however, include a number of the secondary residential roads, i.e., Roads 03, 04, 06, 07 and the southern section of Road 08.

The following concerns relating to the extent of the proposed road adoption are still considered to be relevant:

1. The Shropshire Council Refuse and Recycling Advice Note for Developers dated September 2015 states that the Refuse Collection Vehicle will only travel along roads which are constructed to adoptable standards. Whilst this advice appears not to require actual Highway adoption, there may be a requirement for all of the roads to be subjected to a technical audit, approval and site supervision during construction to meet this criteria,
2. The refuse collection vehicle route shown on the submitted Refuse Strategy Layout (Drawing No. ME-21-09B) extends to the majority of the proposed site roads regardless of the stated adoption limits,
3. If the “secondary” roads stated are to be vested in a Residents Management Company rather than being offered for adoption as public Highway, the connectivity of the roads and footways to the adjacent residential areas and town centre may not be guaranteed. At present, Roads 03, 06 and 07 are shown to have pedestrian connections to Rush Lane. Road 07 is also indicated as potentially connecting to existing residential areas and roads to the south across the public open space,
4. At present the details of the Residents Management Company appear not to have been provided and the longevity of the arrangements cannot be assumed. In addition, it is considered that the estimated cost of the long-term road maintenance arrangements for new residents should be made available,
5. If the connectivity of the adopted highway network is not secured, this may have implications for extending a bus service into the adjacent site.

It is considered that clarification should be requested in terms of the above issues

to ensure that the road network and connections to both the adjacent development sites and residential areas are available for use by all residents.

Proposed Site Layout (Drawing No. ME-21-19C):

The updated drawing has not addressed a number of the issues raised in the previous Highway Advice and these are repeated below along with further layout concerns:

Visibility Splays:

Roads leading to Private Driveways (Plots 50-55 and Plots 59-63) - Visibility is currently restricted to approximately 15 metres, mainly by the width of the service margin.

Turning Head/Private Driveway (Plots 107-110) – Visibility is currently restricted by Plots 107 and 109 to a maximum of 15 metres.

Private Driveway (Plots 159-162) – A 2.0m x 43m visibility splay to the north across the POS should be indicated and safeguarded.

Where visibility is restricted it is unlikely that speeds will be low enough with in the road alignment currently proposed for the visibility to be compliant with current design guidance.

The visibility from the junction of Road 03 to the north is restricted to approximately 2.4 metres x 18 metres by Plot 07. The maximum achievable across the plot with the current dwelling position is 25 metres however, this is not considered to be acceptable for a junction with the Primary (spine) Road. A “y-distance” of 43 metres is considered to be the minimum requirement and will require the re-siting of Plot 07 (dwelling and parking) and alterations to the Plot 06 curtilage, preferably with the realignment of the footway along the required visibility splay line.

Plot layout issues:

Plot 80 – The second parking space shown conflicts with the service margin and carriageway.

Plots 77, 87, 97, 98 – The layout suggests a car port is to be provided, however, this cannot be confirmed as House Type P332-D5 is not specified within the submitted house type drawings. House Type P332-L5 is submitted but refers to different plots.

Services:

A number of roads with development on both sides have reduced (1.0 metre) service margins. It is considered that confirmation should be requested as to the arrangements for public utilities apparatus and street lighting in these locations. In addition, any enclosure to the plot boundaries has the potential to restrict visibility for emerging vehicles where the service margin is below 2 metres.

Junction Radii:

A number of the junction and turning head radii on the 4.8m carriageway width roads appear to be below the required 6 metres.

General Road Layout:

Page 24 (section 10.01 “Streets for All”) within the submitted untitled/incomplete document makes reference to “people friendly streets and spaces and where the car is not dominant”. The incorporation of at least one footway within all of the non primary roads is not considered to be consistent with the statement in the document

or guidance within Manual for Streets. The reasoning behind block paving the road running east from the Arrival Space (serving Plots 138-148) is not understood and should be clarified in terms of the legibility of the road layout.

A consistent carriageway feature is indicated at the termination of the Arrival Space, some Private Driveways and at changes in carriageway width. This feature appears to be detailed as granite setts within the submitted drawings and is not considered to be suitable for pedestrian use or as crossing points. Appropriate pedestrian bypass routes and crossing points should be consistently applied at these locations. The horizontal alignment for some sections of the non-primary roads are likely to give rise to higher vehicle speeds than the 20mph recommended within Manual for Streets for a residential environment.

The width of Road 08 carriageway to the south of the narrowing to 4.8 metres adjacent to Plot 35 appears to increase to 5.5 metres towards its southern extent, including the private drive.

It is considered that the geometry of the junction of the secondary road (Road 02 - serving Plots 153 to 157) with the main distributor road should be clarified in terms of the indicated outer-radius, surfacing/construction and the driveway access.

Fire Service Access:

Notwithstanding the submitted swept-path analysis, it is noted that the proposed Rush Lane narrowing feature is not compliant with Shropshire Fire & Rescue Service minimum requirements for access. The minimum width between kerbs is stated as 3.7 metres.

Refuse Strategy Layout (Drawing No. ME-21-09B):

The above updated drawing has not addressed a number of the issues raised in the previous Highway Advice and these are repeated below:

1. While through connectivity to the adjacent sites is not indicated, the refuse collection vehicle is shown driving into and reversing out of the roads adjacent to Plots 30/31, 129/130 and 153/154. It is considered that these manoeuvres should be reversed in the interim and additional swept-paths provided,
2. No swept-path for the refuse vehicle is indicated for the cul-de-sac/private drives serving Plots 59-63 & 50-55 although the road geometry should enable access to within the recommended distance for collection,
3. There are a number of instances of the refuse vehicle oversailing the footway. These situations should be reviewed and amendments made to the layout to minimise the potential for pedestrians to come into conflict with the refuse collection vehicle or any vehicle of a similar size.

Soft Landscape Proposal (Drawing No. 1601-PL1 Rev E):

Subject to the adoption considerations above, there appear to be areas of planting within the service margins, for example the road serving Plots 94-127. Within reduced (1.0 metre) service margins, mature planting and other forms of plot enclosure are likely to restrict visibility for emerging vehicles.

Surface Materials Layout (Drawing ME-21-07A):

The above drawing appears to have been updated to Revision B but the drawing reference remains as above. A number of the issues raised in the previous Highway

Advice appear not to have been addressed and are repeated below.

The materials indicated are considered to be indicative at present as the road construction details will need to be the subject of a separate technical approval for potential adoption under Section 38 of the Highways Act 1980 as appropriate. Some initial concerns are, however, noted.

The Arrival Space and block paved road running east, serving Plots 138-148 both appear to have conventional footways alongside the block-paved and verge areas where no suitable kerb upstand is proposed. This situation is likely to give rise to pedestrian safety concerns and encourage parking on the footway. The block paved road is considered to be a hybrid between conventional carriageway/footway construction and a shared-space and is likely to result in uncertainty for road users, particularly pedestrians. The kerb type against the carriageway within the Arrival Space is currently not indicated, however, the kerbing and surface materials will need to accommodate the access crossing of the verge for Plot 138.

Construction phasing:

The Phase 1 development comprises 115 dwellings within the area east of Rush Lane. Phase 2 comprises 47 dwellings to the west of Rush Lane. Consideration should be given as to the safeguards required during the construction of Phase 2 in the event that the Phase 1 primary/spine road is substantially completed and where no alternative construction traffic access is available. The impact of the Phase 2 construction traffic has the potential to cause damage to the completed road construction and delay the road adoption.

- 4.1.9 **Rights of Way** – Further to our previous comments, I have now received further clarity from the agent re. the restricted geometry crossing of Restricted Byway 8/Rush Lane. I understand that bollards will be situated at approx 2.7m apart on each side of the current useable width of RB8, to prevent vehicular traffic turning onto Rush Lane from the proposed estate road, but that the full historic width of 5m will be maintained. In certain circumstances we do authorise limitations within the width of a public right of way, such as bollards or a Kent Carriage Gap, to prevent unlawful use of a route by motor vehicles, and this would appear to be one of those circumstances. I have been assured that the restricted geometry crossing will not impede those persons exercising their lawful public right to use the restricted byway (on foot, horseback, bicycle and non-motorised vehicle i.e. horse and carriage), or indeed those residents of Rush Lane who may use the lane with motor vehicles whilst exercising their private rights of access. I therefore agree that the proposed plan for the crossing of Rush Lane/RB8 is the most pragmatic option.

We are also continuing to progress the application to legally divert Bridleway 9 through the proposed POS. During consultation concerns have been raised about the nature of the proposed crossing points of the estate road and the A53 and what measures will be put in place at those points to ensure the safety of equestrian users crossing the roads. I have requested further information and more detailed plans of those crossing points from the applicant, and believe that it would also be of benefit to make them available as part of the planning application.

Finally, it is noted that there are a number of other paths/pedestrian links proposed throughout the development a second path through the POS leading off the

diverted bridleway, a link to RB8/Rush Lane between Plot 13 and additional POS, another link to RB8/Rush Lane adjacent to Plot 83 and a pedestrian link through POS and onto Rush Lane/RB8 at the south of the application site. At present it is not clear what legal status these routes will have or who will be responsible for their maintenance. Does the developer intend for these additional routes to be 1) adopted footways by Highways, 2) private footways for residents or 3) formally dedicated as public footpaths? If the latter, they should contact this team for more information on how to dedicate a new public right of way, which is a quite straightforward procedure.

- 4.1.10 **Waste Management** – Provided standing advice information regarding waste collection.
- 4.1.11 **Ecology** – Providing the ecological conditions for planning application reference 14/04701/OUT are carried forward, and details to cover these planning conditions will be submitted in a discharge of condition application, I have no additional comments to make on this proposed REM application.
- 4.1.12 **Trees** – SC adopted SAMDev policy MD2 (Sustainable Design) requires new development to provide 30m² open space per person (at a standard of one person per bed space). This equates to sufficient space to plant one large, long-lived tree (such as oak, lime or sweet chestnut for example) for every 24 bed spaces. Large trees such as these should be planted on communal space rather than enclosed within private gardens.

I support the revisions shown in plan 1601-PL1 REV F showing the locations of 9 larger growing trees “positioned in space for their development” throughout the proposed development.

I would like to see the species of these larger trees changed to reflect the trees planted in the large POS such as Tilia Greenspire or Quercus fastiagata thus achieving the aim of canopy cover described above in MD2.

The Arboricultural Method Statement and Tree Protection Plan has been submitted and is satisfactory with regard to protection of existing trees on site.

- 4.1.13 **Drainage** – Drainage details, plan and calculations should be submitted for approval prior to the approval of the application.
- 4.2 **Public Comments**
- 4.2.1 14 letters have been received raising the following concerns. The comments relate to the original submitted plans and the amended plans.
- No masterplan submitted
 - Insufficient infrastructure (medical services, schools etc)
 - No bungalows on proposed scheme
 - No open space on western parcel and confusion over use of open space adjacent to Rush Lane
 - Extension of existing play area is too large and will attract undesirable use
 - No allotments
 - Not acceptable to reduce width of Rush Lane

- Questioning legality of crossing Rush Lane
- Who will maintain Rush Lane?
- No turning head/ circle for Rush Lane, residents currently use a field gate and a replacement provision needs to be made
- Pedestrian use of Rush Lane should not be encouraged as it is not safe (no lighting, poor surface, no lighting)
- Additional signage is required to restrict use of Rush Lane
- No construction traffic should be permitted to use Rush Lane
- Will result in increased traffic on Hampton Drive and Adderley Road once connected through adjacent development site
- Access for emergency vehicles not available
- Overlooking, loss of light, noise, too many 3 storey dwellings and in wrong positions, impact on existing bungalows
- Loss of view and openness
- Impact on wildlife
- Potential impact on existing trees and loss of hedges to provide pedestrian access to Rush Lane
- Need to be able to maintain hedges
- Will impact on existing rights for access to a well, mains water supply, septic tanks and soakaways – new buildings should be more than 5m away
- Increased pressure on drainage and foul waste disposal and risk of increased flooding
- Removal of asbestos

(The full content of objections received are available to view on line).

- 4.2.2 A petition of 31 signatures has also been received. The petition is submitted with a fully detailed objection. The comments raised are included in the objections above.
- 4.2.3 Objection letters have also been received from HOW Planning and Shoosmiths LLP on behalf of the neighbouring land owner/ developer. The objections relate to the need to provide vehicular access up to the boundaries with the land east and west of the application site (on accordance with the SAMDev allocation and conditions of the outline consent). The objections acknowledge that this will be done through the S38 highways agreement but also consider that the plans should show the road up to the boundaries. The objection also includes concerns about the width of some of the estate roads where it adjoins the application site and also the ability for the surface water drainage system proposed to be extended into the adjacent land.
- 4.2.4 Comment has also been received from The Ramblers Association endorsing the comments of Shropshire's Right-of-Way Department concerning the narrowing of Restricted Byway 8. A Restricted Byway should be able to accommodate a horse, or horses, and carriage and a width of 2.7 metres makes it very difficult to pass safely.

5.0 THE MAIN ISSUES

- Policy & principle of development
- Layout, scale and design
- Impact on residential amenity
- Highways, access and parking

- Impact on trees
- Ecology
- Drainage

6.0 OFFICER APPRAISAL

6.1 Policy & principle of development

6.1.1 The granting of the outline planning consent and the allocation of the site in the SAMDev has accepted the principle of the development proposed. The site is located within the bypass of Market Drayton, adjacent to existing built development. The site is part of the wider allocation in the SAMDev and as such the principal of the proposal is wholly compliant with the SAMDev.

6.1.2 Objectors have questioned why there has not been a masterplan submitted and approved as required by the policy allocation and the outline consent granted by the Council. As noted under section 3 above the current application for approval of reserved matters has been submitted following the approval of outline granted by the Planning Inspector. The Inspector altered the conditions from those on the Council's decision notice and deleted the requirement to submit a masterplan. As such there is no requirement for the current application to provide a masterplan. Providing the access is shown up to the boundaries of the site and the open space is suitably located to be extended by the adjacent development then the scheme will allow for the coordinated development of the whole of the SAMDev allocation which was the reason the masterplan was being requested. These matters will be considered in greater detail later in the report.

6.1.3 With regard to affordable housing the current reserved matters application includes 16 affordable dwellings split across both parts of the current application site at a tenure mix of 70% rented and 30% shared ownership. The Council Affordable Housing Officer has confirmed the proposal is acceptable. The submitted affordable housing statement advises that the developer has discussed the development with affordable housing providers but had not yet set an agreed partner.

6.1.4 Policy CS9 of the Shropshire Core Strategy requires all new development to help to deliver sustainable communities by making a contribution to infrastructure. The details of this contribution are provided within the Developer Contributions supplementary planning document which sets out the methods for providing for infrastructure both on site and off site. The development of the site will be liable for Community Infrastructure Levy which will be based on footprint of the development and the current charging schedule. This financial contribution towards infrastructure is a material consideration in favour of the development and will assist towards alleviating infrastructure issues including assisting towards school places as requested by the Learning and Skills Team and the issues raised by the local objectors such as capacity at the doctors surgery.

6.2 Layout, scale and design

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

incorporated within the new development.

- 6.2.2 Layout, scale and design are all submitted at this stage of the application process. All the details were submitted in full but there have also been amendments during the consideration of the application which have sought to overcome some of the comments and objections from the local residents, local member and Town Council.
- 6.2.3 Layout. From the access roundabout the estate road crosses between an area of public open space which will also provide the diversion route for the existing public right of way, the surface water drainage attenuation pond and foul drainage pumping station for the development. This area of land is the identified flood zone and therefore cannot be developed. However, this open space area also sets the housing back from the A53 which will be both a visual and amenity buffer from the main road. Officers consider that the layout of this part of the site is of a high quality and should be supported as a suitable principle to set for housing along the edge of the A53.
- 6.2.4 Within the site the housing is thereafter set along estate roads and lower order roads with semi-detached, detached and a small number of terrace houses mixed across the site. The highest density is in the southeast corner of the application site, near to the existing housing on Croft Way where the housing is a group of semi detached and terrace houses. Other than that group the remainder of the development is of a similar mix and density across the site and officers consider that the proposed development is also similar in mix and density to the houses on Croft Way and the other modern housing estates in the area surrounding the site. Officers acknowledge that the existing housing on Rush Lane and Longslow Road is older and different in size and layout, however older properties are more ad-hoc in layout and individual in design. The presence of older housing in the area does not mean that the proposal for a modern estate housing is not appropriate. Housebuilders propose housing layouts and designs that they can sell, the house types proposed do pick up on some of the features found in older housing in Market Drayton whilst also being built to modern living standards and with efficient use of land and materials.
- 6.2.5 The housing on the site backs onto Croft Way and the agricultural land to the east and west which is to be developed as part of the wider SAMDev allocation. Where the site adjoins Rush Lane the housing will face over the existing lane but not provide vehicular connection to Rush Lane. There are two groups of houses facing Rush Lane both served by private driveways. Rush Lane is enclosed on this side with existing established hedges and although some of these will be removed to create the access road across Rush Lane, and pedestrian linkages to Rush Lane, the majority will be kept. As such it is officer's opinion that the setting back of the houses immediately adjacent to Rush Lane will not adversely affect the character of Rush Lane. The lane will, in most parts, retain its exiting feel of a narrow, unadopted bridleway with older houses along the west. The new housing will be set back from Rush Lane and will only be partially visible from Rush Lane over the hedges. However, it also has to be accepted that as the housing allocation in the SAMDev the land was going to be developed, although the residents of Rush Lane would prefer the housing either side of their properties to be set back with an ecological buffer in between officers consider that this would not be efficient use of the land. There was no requirement in the allocation to provide a buffer and the

residents of the proposed development site would be liable for the ongoing cost of maintaining any such buffer. Officers consider that providing the layout does not significantly adversely affect the amenities of existing residents and is in keeping with the wider area that it is not unreasonable to develop up to the boundaries of the site as is being proposed.

- 6.2.6 In the south west corner of the site the application site does not immediately join Longslow Road, there is a strip of land in separate ownership. The site is therefore set back from this road. The proposed layout shows four houses, two face towards the new estate road and two face towards Longslow Road. The owner of the strip of land has raised concerns that this would sterilise their land from being built on. However the existing houses on Longslow Road, either side of the strip of land, have habitable room windows facing over the strip of land and as such only the very middle section of the land would be developable. The proposed development would not adversely affect the amenities of the existing houses, as considered later in the report, and will provide development which provides interest and a frontage to Prospect Road. The strip of land is owned by the same land owner as other parts of the wider SAMDev allocation and as such could be put forward as part of the open space for the development of that land rather than needing to be developed.
- 6.2.7 In addition to the open space between the A53 and the proposed houses and the land between Prospect Road and the proposed houses there are three other areas of open space. There are two separate sections proposed adjacent to Rush Lane which will provide informal open space and one area adjacent to the existing play area on Croft Way which will enable the existing play area to be extended, if required. The Town Council objection to extending the existing play area off Meadow Close is unfortunate, however it will be up to the Town Council to determine whether to allow a link from the existing play area to the proposed open space or not as they own and manage the existing play area. The applicant has proposed the open space in this location in accordance with condition 7 imposed by the Planning Inspector on the outline consent which expressly required part of the open space to allow for the existing play area to be extended. Furthermore the applicant has acknowledged that to extend the existing play area will require the approval of the Town Council.
- 6.2.8 Shropshire Council current policy regarding open space and play areas is to provide fewer, larger, spaces rather than pepper potting open space. The proposal at the outline stage to extend the existing play area was to comply with this open space policy. The extension of the existing play area would make a play area with more space and possibly more equipment. However, if they Town Council retain their objection the proposed open space will be provided on the opposite side of the existing fence on the boundary of the site. The Town Council have also questioned whether the open space could be used for allotments, this would be a matter for the Town Council to consider after the planning consideration. The provision of allotments is for the Town Council and could be something they provide on any of the open space if they are willing to take on the management of the space. Alternatively the provision of allotments can be through an allotment management company. However, there is no policy requirement for a developer to provide allotments and no evidence of a significant need for allotments. The Council Open Space Officer has confirmed that the space does not have to be linked to the existing play area but could be used for other forms of open space, even allotments

if this is what is required by the local community and Town Council.

- 6.2.9 The Council Open Space Officer has raised concern that there are several small areas of open space proposed and also that there is a shortfall in open space below the requirement of SAMDev policy MD2. The requirement is for 30sqm per bed space and as such the development of 581 bed spaces would require 17,430sqm. The proposal provides 17,109sqm and as such is short by 321sqm. In response to this issue the agent has commented that the site is intended to be connected to the existing play area and is also well connected to the countryside beyond via existing public rights of way. They have also advised that it would not be possible to provide any more open space within the site and that the provision of 4 bungalows in the amended scheme has taken more land. The requirement is 30sqm per bed, the proposal provides 29.44sqm per bed and as such the case officer considers this is only a small shortfall below the required amount and it would be difficult to defend a refusal on the basis of this level of shortfall below the policy requirement.
- 6.2.10 It is a matter of putting the shortfall of open space into the overall planning balance. The shortfall is a negative matter weighing against the application, however it is not a significant shortfall and there are greater benefits which will result from the development of this site for housing in the overall planning balance. As noted in approving the outline consent and allocating the site this land will boost housing supply in a sustainable location and also provide economic, social and environmental benefits.
- 6.2.11 Furthermore officers consider that the layout as amended should be supported in that it provides good views of the development from the wider area, to insist on more open space would require a redesign of the layout which may adversely affect the design of the layout. As such officers consider that the slight shortfall in open space is, on balance, acceptable. The layout provides a good quality design of housing estate served by appropriate estate roads and parking levels and that it would be difficult to defend a refusal on the grounds of layout and open space shortfall.
- 6.2.12 Scale. As noted above the application is for 162 dwellings. Of the 162 houses there are 15 three storey houses on the parcel to the east of Rush Lane and 8 three storey houses on the parcel to the west of Rush Lane. The amended scheme has reduced the number of three storey houses originally proposed on the site and added 4 bungalows, 2 detached and a pair of semi detached, in the western parcel of the site. Therefore of the 162 houses the majority, 135 houses, are two storey.
- 6.2.13 Officers accept that there are existing single storey dwellings in the immediate area, especially along Rush Lane, however beyond Rush Lane the dominant scale across Market Drayton is two storey housing. Objectors have suggested that the development should provide bungalows next to the existing bungalows however there is no policy requirement for bungalows to be built next to bungalows. The issue is whether the proposed development is appropriate in terms of the character of the site and the wider area and also whether the proposed development adversely affects the amenities of the neighbouring dwellings, whether these are single storey or not. This latter issue is considered later in the report.
- 6.2.14 The three storey properties are not full three storey with the third floor provided by

rooms in the roofs served by dormer windows just below half way on the roof slope. The three storey properties are 9.3m high to ridge whereas the two storey properties are 8.9m high to ridge. Accordingly although the three storey houses will have a third floor they are not significantly taller than the majority of the housing on the proposed site, being only half a metre higher, and will not be significantly taller than the existing modern housing near the site. Concerns have been raised about the scale of the development and also noted that the drainage scheme for the site notes that the ground levels will need to be raised to deal with surface water.

- 6.2.15 It is reasonable to assume that there will need to be some raising of the ground level but it is the extent of the raising which is the key. It is not unusual on housing developments to see the ground raised above the existing land as this is required to deal with the surface water drainage. The agent has provided information on the ground level raising. The information advises that there is a need to raise levels generally in the western element (Phase 2 land) to enable surface water flows generated by the proposed development to outfall to the Sych Brook (adjacent to the north eastern corner of the site) by gravity. The recorded ground conditions present on-site are not conducive to the use of an infiltration based surface water drainage system, such as soakaways, while a connection to an existing publically maintained surface water sewer is not achievable due to the presence of 3rd party land.
- 6.2.16 In detail, of the 47 units within the western parcel 24 (51%) will be raised up to 0.50m above existing ground level, 15 will be raised between 0.51m & 1.00m above existing ground level and 8 will be raised between 1.01m and 1.50m above existing ground level. Plots 31-36 will be raised by over 1m but these plots back onto the existing properties on Longslow Road which are over 60m away from the proposed houses and as such the ground raising will not be significant on these existing properties. Plot 34 sees the highest individual raising of existing ground levels (1.45m) but is a single storey bungalow type, therefore further negating the impact. Plots 28 and 66 are also raised over 1m (1.35m and 1.2m respectively). Both of these plots are within the development, surrounded by proposed plots, not adjacent to the edge of the site. As such the increase in ground level of these two plots would not affect any existing dwelling.
- 6.2.17 The plots to be raised between 0.51m and 1m are plots 25, 26, 27, 29, 30, 37, 38, 39, 40, 41, 60, 62, 64, 65, 67. Of these only plot 62 is adjacent to the edge of the site and an existing dwelling, number 5 Rush Lane. Plot 62 is to be raised by 0.55m and therefore not significantly raised above the existing ground level or significantly above what would be considered as standard ground level raising for development. This increase in ground level is not considered by officers to alter the impact on the existing property at 5 Rush Lane given the distance between the proposed house and the existing house and the orientation of the proposed house.
- 6.2.18 Furthermore the agent has advised that the proposal will maintain existing ground levels all the way around the site boundary where it is shared with existing properties in order to retain the existing hedgerows. This is achieved by raising the ground level under the proposed houses rather than across the whole plot. The levels of the ground will drop across the plot back to the original ground level on the site boundary. As such, although the raising of some of the properties by more than 1m is significant ground raising officers consider that none of the ground

raising will result in adverse impacts on existing neighbouring properties or on the character of the site when viewed from public vantage points such as the bypass, Rush Lane and Longslow Road.

- 6.2.19 **Design.** As noted above the house designs pick up on features traditional to Market Drayton whilst also being modern in design and living standards. The designs include features such as stone cills, bay windows, eaves dentiling and brick headers. The designs are standard house types for David Wilson Homes but are considered by officers to be appropriate designs for Market Drayton.
- 6.2.20 Officers have been in negotiation with the agent to ensure that the materials proposed on the site relate well to the surrounding built development and the proposal is for two blended red brick types with occasional rendered houses using a smooth render. On the roofs the materials are slate grey and cottage red tiles and the revised materials schedule groups the materials together in small clusters across the site. This will provide different areas and variety across the site but with the materials along the spine road providing an element of consistency. This has been the result of recommendations from the Council Conservation Officer and is considered to improve the appearance of the proposed scheme whilst not detracting from the overall character of Market Drayton.
- 6.2.21 It is therefore officers opinion that the layout and scale of the houses as amended is appropriate to the context of the site in Market Drayton and that the designs of the dwellings are sympathetic to the existing housing in Market Drayton whilst also acknowledging that they are modern housing rather than attempting to replicate older, traditional housing. Accordingly it is officers opinion that the scheme as amended is acceptable and complies with the adopted policies in the Core Strategy and SAMDev in relation to layout, scale and design.

6.3 **Impact on residential amenity**

- 6.3.1 Policy CS6 'Sustainable Design and Development Principles' of the Shropshire Core Strategy indicates that development should safeguard the residential and local amenity. The development of the site should not result in unacceptable loss of privacy or light to existing dwellings or to the future residents of the site. It is not a matter of protecting views of existing properties or protecting properties from all overlooking or the feeling of overlooking. It is a subjective matter whether an impact is unacceptable or not. However, for ease officers regularly seek to ensure that there is at least 5m undeveloped around existing windows to ensure that the impact on right to light is not unacceptable and seek to ensure that there is around 21m between direct facing windows.
- 6.3.2 Objectors have raised concern about overlooking, loss of light, noise, impact of three storey properties, loss of view and the impact on their water supplies, foul drainage systems and ability to maintain their hedges.
- 6.3.3 The matters of existing residents access to water and foul drainage are civil matters between the residents and David Wilson Homes as the developer of the site. They are not matters which the Council can get involved in. The plan and information submitted by the residents shows that there are water pipes crossing the application site, a connection to mains water will need to be provided by the developer and the agent has suggested that they will be able to connect the

existing houses to the system provided to the new houses. With regard to foul drainage none of the existing residents have their systems actually within the site. The issue is the ability of the collection vehicle to empty existing systems. For some houses this is currently done by driving the collection vehicle into the field, however this is done with the agreement of the land owner and this agreement could be retracted at any time. It is currently done for ease of access rather than as a necessity, neither the Council nor the developer are required by any policy or legislation to provide this into the future and it will be for the collecting company and house owners to establish an alternative means of emptying the tanks. As for hedge cutting it will become the responsibility of the owner of the land either side of the hedge to maintain the hedge. Residents on Rush Lane will maintain their side and the new residents of the housing estate will maintain their side.

- 6.3.4 The matters which are considered as material planning issues are overlooking, loss of light and noise. The loss of a view is not a material planning consideration, residential properties are not entitled to a view. Providing a development is not oppressive or out of context with the surrounding area and providing it does not impact on an important public view the loss of a private view is not a matter which can be considered. As noted above the scale and layout of the scheme is considered by officers to be acceptable and would not be oppressive or out of context with the area. The development of this site will not alter any important public view and as such is acceptable in this regard. In relation to noise, except during construction, the noise will be similar to any other residential area and would not result in statutory noise nuisance. Condition 8 on the outline consent requires the applicant to propose hours of construction and deliveries and it will be for officers to consider whether the applicant's proposals are reasonable to protect the amenities of the neighbouring residents in terms of construction noise.
- 6.3.5 As noted previously the site is adjacent to existing housing to the south and east and is subdivided by Rush Lane which has existing housing situated along both sides. It is these existing houses that should be considered when assessing the impact on the amenities of existing properties. The houses on Longslow Road, except for number 122, are over 50 metres from the nearest house on the application site and therefore will not be adversely affected. 122 Longslow Road is adjacent to the strip of land in separate ownership, this house has windows in the rear facing towards the application site and also in the side facing over the strip of land. The nearest proposed dwelling is plot 43 which will be set with its front elevation level with the back of the existing house, there are no habitable room windows proposed in the side elevation of plot 43, and as such it is considered that the position of this house will not result in unacceptable loss of amenity to 122 Longslow Road. The Sidings is similarly related to plot 45 and as such will also not be adversely affected.
- 6.3.6 35 and 53 Croft Way are single storey houses positioned side on to the proposed housing estate. Plot 106 is approximately 15 metres from the side elevation of 35 Croft Way and plot 117 is just over 5m from 53 Croft Way. However, none of the proposed dwellings have windows in the side elevation facing towards this existing dwelling. The distance is less than 21 meters but as there are no windows in the elevations facing these existing dwellings it is reasonable to accept lesser distances. The lack of windows will ensure that there isn't any overlooking and the distance will ensure that loss of light is not unacceptable.

- 6.3.7 The main impact is on the existing houses on Rush Lane. Number 4 Rush Lane is the only house on the eastern side of the road and is enclosed on three sides by the development. Plot 105 faces towards the rear section of number 4 but is over 26 metres apart, plots 80 to 82 are on the opposite side of number 4 and well over 40 metres apart. Plots 104 and 88 are behind number 4 but to be built at a right angle to the existing dwelling and over 20 metres away. This is just under the 21m preferred distance but the angles will reduce the potential for overlooking and the distance will ensure no loss of light.
- 6.3.8 Rushdon is a detached bungalow and is the furthest property along Rush Lane, this dwelling will be the only property on the opposite side of the proposed vehicular crossing point over Rush Lane, the impact of which is considered under the next section. In terms of impact on privacy and light to Rushdon the scheme proposes a three storey property to the rear (plot 24) with the proposed house sited adjacent to the crossing point and no windows in the rear elevation facing towards Rushdon. As such the proposed dwelling is not directly behind the existing house and is off-set with the garage to the proposed house being behind Rushdon. As such, although the proposed dwelling on plot 24 will be close to the curtilage of Rushdon it will not cause overlooking or loss of light that could be considered as unacceptably harmful. On the opposite side of Rush Lane the scheme proposes a group of 4 detached houses served off a private drive, one of these, plot 23, is directly opposite Rushdon with the others being off set either side of plot 23. The four houses are all two storey with windows in the front elevations facing towards the existing house. The separation distance is approximately 19m with the private drive, Rush Lane and existing hedge in between which is proposed to be retained at 2m high.
- 6.3.9 Numbers 7 and 5 Rush Lane are the next properties when heading back towards Longslow Road. These are two storey dwellings which sit directly on the edge of Rush Lane. Within the application site the scheme proposes a group of five houses off a private drive. Only plots 70 and 85 sit directly opposite these two properties and these are shown as being approximately 16m away from the existing dwellings. As with plot 23 and Rushdon this distance is less than 21m and this is noted by officers. The case officer has raised this with the agent who has commented that the proposed housing has been moved further away than the original submission and that the proposal includes retaining the existing hedge and planting a new hedge.
- 6.3.10 The distance may therefore result in some level of overlooking. However, officers suggest that the level of overlooking could not be argued to be severe. The properties are facing front elevation to front elevation with landscaping and roads in between. The existing housing is already overlooked to an extent by being located on Rush Lane and therefore privacy is already affected by users of the byway.
- 6.3.11 The issue is therefore a balance of planning considerations. The distance between existing and proposed housing is less than what is considered to be good practice, however there is no set distance in Shropshire Council policy or any Shropshire Council published guidance. The distance is not a set standard against which a reduced distance could be refused. On the opposite side of the balance is the layout and design of the proposed scheme. Officers consider that it would not be

practical to pull the proposed houses further from the existing housing and the only alternative would be to redesign the scheme to have the houses closest to Rushdon, 5 and 7 Rush Lane backing onto or side on to the Rush Lane. It is officer's opinion that the design of the site, in terms of the layout of houses off private drives, facing towards Rush Lane and providing a separation gap between Rush Lane and the proposed houses is beneficial and should be given positive weight. The design of the site should be balanced against the harm of overlooking and it is officer's opinion that the scheme as amended provides a good design solution with as much distance between the proposed houses and existing houses as is achievable.

- 6.3.12 1 and 3 Rush Lane are two storey semi-detached houses set where Rush Lane turns a corner. The houses are small but with long domestic gardens at the rear. 3 Rush Lane has windows in the side elevation facing towards the site and a balcony on the rear of house. Plots 52 and 53 are the closest proposed dwellings to 3 Rush Lane. Both of these plots are positioned with blank gable ends facing towards 3 Rush Lane and its garden. There are windows in the front elevation of plot 52 but these are considered by officers to be at an oblique angle which face into the development site. There may be some overlooking from these windows and also from the windows in the rear of plot 52 over the garden of 3 Rush Lane. However, as noted already these gardens are very long and there will be a large proportion of the garden which is not overlooked by any of the dwellings. As such officers consider that the existing dwellings will retain sufficient private amenity space which is not overlooked and as such the loss of amenity resulting from the proposed dwellings overlooking the ends of the gardens could not be considered unacceptable.
- 6.3.13 Three Gables and Berywn are both single storey dwellings at the end of Rush Lane close to where it meets Longslow Road. Plot 47 is the closest to Three Gables and is positioned gable end on to the existing house and just over 20m apart. As such officers consider that although Three Gables is a bungalow and the proposed dwelling is a two storey house the separation distance and layout will ensure that the amenities of the existing property are protected. Plot 45 is adjacent to Berwyn and designed with a blank gable facing towards the existing dwelling and with over 16m separation. As with Three Gables officers consider that the separation distance will mean that the proposed development does not result in unacceptable loss of amenity.
- 6.3.14 The residents of Rush Lane have also noted houses on the application site beyond those noted above. Officers have assessed the impact from the proposed properties which are closest and therefore most likely to have an adverse impact. In most instances the separation distance and layout will ensure that the loss of amenity is not unacceptable and would not be justifiable reason for refusal. Houses on the proposed site which are further away than the ones identified above would have even less of an impact.
- 6.3.15 Officers do accept that there is the potential for loss of amenity to existing houses, as noted in most cases the impact would not be of an extent which would warrant refusal and it is considered that the impact on Rushdon, 5 and 7 Rush Lane is as limited as the applicant can make it without adversely affecting the layout and design. As such it is officer's opinion that, on balance, the impact on amenity is not

unacceptable and should also be weighed in the balance against the layout and design.

6.4 **Highways, access, parking and rights of way**

6.4.1 Paragraph 32 of the NPPF advises that developments that generate significant amounts of traffic should be supported by a Transport Statement and promotes sustainable modes of travel, safe accesses and improvements to existing transport networks. Core Strategy Policy CS6 states that proposals likely to generate significant levels of traffic should be located in accessible locations where opportunities for walking, cycling and use of public transport can be maximised and the need for car based travel can be reduced.

6.4.2 The main vehicular access to the site was approved as part of the outline planning application. The access is served by a new roundabout off the A53. Separate highway consent has also been granted for the detail of the roundabout and its construction has been commenced. The roundabout provides a single access into the site which will also, in the future, serve the land either side of the current application site, the remainder of the SAMDev allocation, as required by the policy guidance and also the conditions on the outline consent. The access road is a 6.1m wide estate road which for the first 84m is tree lined with the footpaths running across grassed open space rather than along the road. The footpaths will lead to the existing rights of way rather than along the road to the roundabout. The point and means of access was previously approved, the current application deals with the internal layout of the housing estate, the crossing of Rush Lane and the accesses to the land beyond the application site.

6.4.3 Within the site the 6.1m wide road continues through the site to the eastern boundary and will therefore be able to provide a route for a bus service, which is to be part funded by the developers of this site and the adjacent site as a requirement of the S106 agreement on the outline consent. This provides a spine road through the site. Off this spine road are lower order roads. There are two 5.5m wide roads which also connect to the east and west of the application site and three 4.8m wide roads and private drives leading off these roads.

6.4.4 Objections have been received on behalf of the developers of the adjacent land. These objections raise concern that the roads are not shown as being built up to the boundaries of the site and as such the developer will retain a potential ransom strip between this site and the adjacent land. The objectors claim this would be contrary to the requirements of the outline consent and the allocation in the SAMDev. The agent has responded to these concerns, which were also raised by the Council Highway Officer, and advised that the three points where the proposed estate roads will connect to the adjacent land will be developed as close to the site boundary as possible. The agent has commented that it would not be possible to just stop the road unfinished at the site boundary as the timing onward development of the adjacent site is not yet known and the road will need to be finished to allow the houses to be occupied. The agent has confirmed that the roads will be adopted by the Council and that the adoption will be completely to the boundary of the site. The agent has also confirmed that the developer has sufficient control over the land not within their ownership to comply with the condition. The latest set of plans submitted by the applicant also show the roads built up to the boundary and as such is considered to comply with the requirements of both the condition on the

outline consent and also the SAMDev allocation. It is not a matter for planning to prevent ransom strips from being held and the cost of the ransom is also outside of the remit of planning and will need to be a matter for negotiation between the developers. The condition on the outline consent did not require the road to be adopted up to the boundary of the site just to show that it can connect to the boundary of the site to enable the future development of the remainder of the SAMDev land. As already noted the latest plan is considered to comply with this requirement. The roads are shown to be adopted up to the boundary of the application site, notwithstanding who owns the land.

- 6.4.5 The Council Highway Officer has also raised some technical issues with the layout of the development as submitted and confirmed that the amended plans have not resolved the concerns raised. These matters were raised with the applicant and further revised plan were received and a written response to the Highway Officer's comments was also provided. The amendments sought are technical issues and do not alter the issues raised by local residents and the Town Council and as such officers consider that the amendments sought would not require a wider consultation.
- 6.4.6 The latest information received off the agent confirms that all of the roads will be built to adoptable standard, the spine road and roads connecting to the adjacent development land will be put forward for adoption by the Council, the other roads will be built to adoptable standard but not adopted. The amended plans show the service strips widened to 2m where this is required for visibility, the visibility from roads and driveways improved, the radii of junctions set to 6m minimum and the arrival square junction finished in tarmac rather than block paving all as requested by the Highway Officer. The additional information has been sent to the Council Highway Officer for further comment and it is hoped that a response will be available before the committee meeting.
- 6.4.7 The other key local issue relating to highways is the crossing of the proposed estate road over Rush Lane. This is a highly contentious issue locally. Objectors have raised concerns whether the applicant has a legal right to create a highway crossing over Rush Lane and this is a matter which the applicant will have to satisfy themselves that they have a right to do. The proposal is to provide an estate road which will be adopted by the Council. The adopted highway will cross Rush Lane and therefore change part of the existing Bridleway, however, either side of the highway will remain bridleway exactly as it is at present. The applicant considers that the proposal to provide an adoptable highway crossing Rush Lane is a legal means of achieving the development proposed.
- 6.4.8 As with ransom strips it is not for the planning application, officers or members to determine whether there is a legal right to cross Rush Lane or whether the applicant's proposal would legally achieve this. The matter to be considered is whether the design and details of the crossing of Rush Lane is appropriate and acceptable. Objections have been raised about reducing the width of the bridleway, the potential of traffic including construction traffic using the bridleway, the increase in pedestrians using Rush Lane and that there is no turning head/ circle for Rush Lane. The proposed detail is intended to prevent vehicles from being able to turn from the new housing estate into Rush Lane and therefore reducing the risk of traffic which does not have a right to use Rush Lane from using it.

- 6.4.9 The Council Rights of Way Officer has confirmed that the proposed design of the crossing of Rush Lane with the new estate road is the most pragmatic option to enable access across Rush Lane. The bollards will be situated at approximately 2.7m apart on each side of the current useable width of Rush Lane. This will prevent vehicular traffic turning onto Rush Lane from the proposed estate road, but will not alter the full historic width of 5m of Rush Lane and therefore will not prevent the existing residents of Rush Lane using the lane with a vehicle or the general public using the lane on foot, bicycle or horse (including with cart). The proposed design will allow the continuation of the existing rights whilst also enabling the development of the SAMDev housing allocation. The clarification of the technical means of crossing Rush Lane has proven that the width of the bridleway is not to be reduced and can continue to be used as it currently is but whilst also discouraging use by traffic from the housing estate.
- 6.4.10 As a bridleway the general public have the right to use Rush Lane on foot, bicycle or horse. It does not permit the general public to use Rush Lane with a vehicle but equally the Council can not restrict or extinguish the right of the general public to use Rush Lane lawfully. The development of the land either side of Rush Lane may increase pedestrian use of the bridleway; however this was always a risk in allocating the site for housing. The Town Council's refusal of linking the open space on the application site to the existing open space will reduce the options for pedestrians, however, the owner of the land off Longslow Road may in the future provide a pedestrian link across his parcel of land as part of the development of the remainder of the SAMDev land. Pedestrian connectivity is available using Rush Lane, other access points would be beneficial but are not essential to make the development acceptable.
- 6.4.11 The applicant has also confirmed that there is no intention to use Rush Lane for construction traffic. This is a matter which would need to be monitored and any misuse reported to the Council and the developer. The developer will inform construction traffic of the location of the new roundabout and this should reduce the risk of vehicles attempting to use Rush Lane. In addition it is noted that a sign has been placed at the end of Rush Lane advising of no access to construction traffic.
- 6.4.12 Within the development each of the proposed dwellings is shown with sufficient space to park two vehicles, either within a garage and on a drive or just on a drive. Subject to the amendments sought by the Council Highway Officer, this would allow for sufficient off-road parking for the whole of the development though some on-street parking is likely it is not considered that this development will be dominated by on-street parking. Each property will have sufficient space for waste storage and the case officer has checked the distance of the private drives to ensure that the development complies with the Council standards. Two of the private drives are over 25m long (the maximum distance a resident should be required to move their bin) but with adding the 15m the waste collection staff will move the bin all of the properties should be capable of being serviced by waste collection facilities.
- 6.4.13 It is therefore considered that, subject to the amendments sought by the Council Highway Officer, that the layout of the development can be made acceptable in highway terms and although residents and the Parish Council have raised concerns about the level of traffic this was a matter which was dealt with during the

consideration of the outline planning application and it was confirmed that the development of this site would not result in severe traffic movements. The internal highway layout, crossing of Rush Lane and parking provision are considered to be appropriate and sufficient to ensure that the development does not result in significant adverse highway conditions to the development or the wider area and as such the scheme as revised is considered to comply with adopted policy.

6.5 Ecology and trees

6.5.1 The NPPF and policy CS17 of the Shropshire Core Strategy require consideration to be given to the impact of the proposed development on the natural environment. This particularly relates to the impact on statutorily protected species and habitats and existing trees and landscaping. The potential for impact on protected species was considered in detail during the determination of the outline planning application and conditions were imposed accordingly to enable improvements to ecology.

6.5.2 The Council Ecologist has confirmed that providing the ecological conditions for planning application reference 14/04701/OUT are carried forward, and details to cover these planning conditions will be submitted in a discharge of condition application they have no objection. The details required by the condition will need to be submitted for approval and will ensure that the development of the site will not adversely affect ecology or habitats.

6.5.3 The Council Tree Officer had requested additional native species tree planting noting that there is a good mix of native semi mature trees proposed in the public open space but that the housing estate lacked new tree planting of any size. The amended plans have added more planting in gaps around the housing, mainly to the front of properties to enable the trees to provide public visual enhancements to the development.

6.5.4 The Council Tree Officer has since confirmed that the locations of 9 larger growing trees “positioned in space for their development” throughout the proposed development is supported but they would prefer the species of these larger trees changed to reflect the trees planted in the large POS such as Tilia Greenspire or Quercus fastiagata thus achieving the aim of canopy cover described above in MD2. It is considered that this could be dealt with by condition rather than requiring further amendments to the scheme. Subject to this change, the layout as amended is considered to provide appropriate landscaping which is achievable and maintainable in the long term and as such the landscaping of the site is considered to comply with the requirements of the outline consent and SAMDev policy MD2 and Core Strategy policy CS6.

6.6 Drainage

6.6.1 Policy CS18 ‘Sustainable Water Management’ of the Shropshire Core Strategy indicates that development should integrate measures of sustainable water management to reduce flood risk and avoid an adverse impact on water quality and quantity. The outline consent approved the principle of foul drainage to the existing mains system and surface water drainage to soakaways and attenuation ponds. The outline consent includes a condition requiring the details to be submitted to the Council for approval. The Council Drainage Engineer has recommended that the details should be submitted before the current application is approved. However, the condition on the outline consent requires the details to be submitted prior to

commencement of the development. As such the current reserved matters application can be determined without the details of the drainage as these details can be submitted under a separate application for discharge of condition.

7.0 CONCLUSION

7.1 It is considered that the proposed layout, scale, appearance and landscaping of the site are acceptable and would not have an unacceptable adverse impact on the character and appearance of the locality or the amenities of neighbouring properties. A safe means of access and adequate parking and turning space will be provided and subject to conditions the proposal would have no adverse highway or ecological implications. It is therefore considered that the proposal accords with Core Strategy Policy CS6.

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

8.0 RISK ASSESSMENT AND OPPORTUNITIES APPRAISAL

8.1 Risk Management

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

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

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

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

8.2 Human Rights

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

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

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

recommendation.

8.3 **Equalities**

The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed in planning committee members' minds under section 70(2) of the Town and Country Planning Act 1970.

9.0 **FINANCIAL IMPLICATIONS**

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

10. **Background**

Relevant Planning Policies

Central Government Guidance:

National Planning Policy Framework

Core Strategy and Saved Policies:

CS1 - Strategic Approach

CS3 - The Market Towns and Other Key Centres

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

Relevant planning history:

14/01982/OUT Outline application (access for approval) for mixed residential development (up to 162 dwellings), associated open space and landscaping NONDET 13th January 2015

14/04701/OUT Outline application (access for approval) for mixed residential development (up to 162 dwellings), associated open space and landscaping (resubmission) GRANT 18th February 2015

Appeal

15/02185/NONDET Outline application (access for approval) for mixed residential development (up to 162 dwellings), associated open space and landscaping ALLOW 18th May 2015

11. **Additional Information**

List of Background Papers

Cabinet Member (Portfolio Holder)
Cllr M. Price

Local Member
Cllr Roger Hughes
Cllr David Minnery

Appendices
APPENDIX 1 - Conditions

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

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

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

2. Prior to the occupation of any dwelling hereby approved details of all walls, fences and hedges shall be approved in writing by the Local Planning Authority. The approved details shall be completed prior to the occupation of any of the buildings on the site and thereafter retained.

Reason: To provide adequate privacy and an acceptable external appearance.

3. Notwithstanding the details submitted, prior to the planting of any trees within the application site, details of the tree species, size, age and planting position shall be submitted to the Council for approval in writing. The tree planting shall thereafter be carried out in accordance within the planting season following commencement of the relevant plot.

Reason: To ensure appropriate landscaping is provided across the site.

-



Committee and Date
 North Planning Committee
 31st January 2017

Item
7
 Public

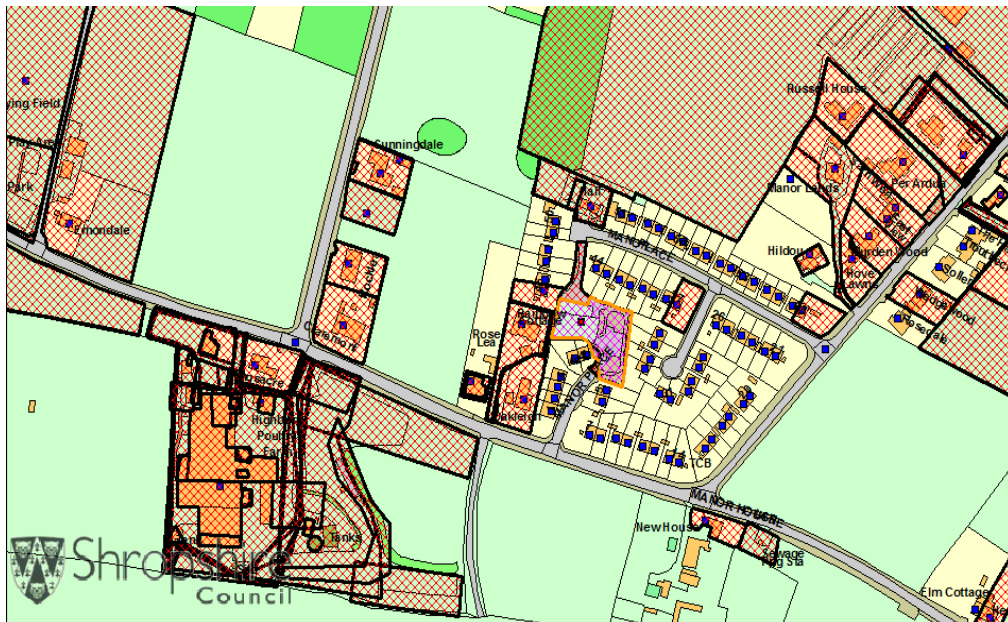
Development Management Report

Responsible Officer: Tim Rogers
 Email: tim.rogers@shropshire.gov.uk Tel: 01743 258773 Fax: 01743 252619

Summary of Application

Application Number: 16/04846/FUL	Parish: Prees
Proposal: Erection of five dwellings and associated access	
Site Address: Land At Former Garage Site Manor Place Higher Heath Whitchurch Shropshire	
Applicant: Shropshire Housing Group	
Case Officer: Mared Rees	email: planningdmc@shropshire.gov.uk

Grid Ref: 356235 - 335329



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Recommendation:- Grant Permission subject to the conditions set out in Appendix 1.

REPORT

1.0 THE PROPOSAL

- 1.1 This proposal seeks full planning permission for the construction of 5 no. dwellings and associated access.
- 1.2 The dwellings would comprise a pair of 2 no. semi-detached properties and a row of 3 no. terraced properties.
- 1.3 Access to the semi-detached dwellings would be via the north and access to the terraced properties would be from the south.
- 1.4 The properties would be 2 storey with parking provision and rear garden areas.

2.0 SITE LOCATION/DESCRIPTION

- 2.1 The application site is located within Prees Higher Heath Settlement Boundary as identified on Policy Map S18 INSET 7.
- 2.2 The site is considered to be previously developed land, forming part of a previously used site for garages.
- 2.3 The site is currently used for car parking, however is not a formally designated car park.
- 2.4 Semi-detached properties lie to the north, east, south and west of the site.

3.0 REASON FOR DELEGATED DETERMINATION OF APPLICATION

- 3.1 The proposed development is considered to accord with the requirements of the Councils relevant adopted policies. The Parish Council object to the application. The Chair and Vice Chair of North Planning Committee, have agreed that the application should be determined at Committee, consideration to procedure as set out in Part 8 of the Council Constitution.

4.0 COMMUNITY REPRESENTATIONS

4.1 - Consultee Comments

4.1.1 SC Affordable Housing – No objection.

The Housing Enabling team have been in discussion with the Registered Provider and can confirm that all of the units will be for affordable rent properties. Shropshire Borough has an identified need for this size of property in this location and it is therefore considered that the development would go some way to meeting the affordable housing need.

4.1.2 SC Highway Authority – No objection.

Highway Authority raise no objection subject to conditions. Specified conditions will be provided in the update report and outlined verbally to members during

Committee.

4.1.3 SC Drainage – No objection.

No objection subject to conditions to secure a surface water disposal scheme and drainage system.

4.1.4 SC Ecology – No objection.

Condition recommended to secure provision of bird boxes.

4.1.5 SC Public Protection – No objection.

4.1.6 Prees Parish Council – Object to the application.

'Prees Parish Council objects to this Application on several counts. The design and layout of the buildings is not in keeping with the context, and they would overlook other housing. The creation of an alleyway bordered by high fences provides a potential crime area and contravenes the Crime and Disorder Act. Also, allowing this development would mean removing amenity space that neighbourhood consultation had earmarked for a community garden.'

4.2 - Public Comments

4 representations received, 3 objecting to the proposal and 1 neither objecting to or supporting.

Concerns raised include:-

Increased overlooking to neighbouring properties, loss of privacy, adverse impact on residential amenity, increase in crime, inadequate drainage facility, loss of playing area and car parking for local residents, loss of turning facilities for residents.

5.0 THE MAIN ISSUES

- Principle of development
- Character and Appearance
- Residential Amenity
- Highway Safety
- Drainage
- Affordable Housing

6.0 OFFICER APPRAISAL

6.1 Principle of development

6.1.1 The application site is located within Prees Higher Heath Settlement Boundary as identified on Policy Map S18 INSET 7.

6.1.2 Prees Higher Heath is identified as a Community Cluster under SAMDev Policy S18.2(i) where amongst other criteria, development by virtue of groups of houses on suitable sites within the development boundary identified on the Policies Map will be allowed.

6.1.3 There is therefore a policy presumption in favour of residential development on this site.

6.2 Other Material Considerations

6.2.1 The site is considered to comprise previously developed land, being a site which formerly accommodated domestic garages for the parking of vehicles.

6.2.2 The garages have since been demolished and the site currently lies vacant. The proposal represents an opportunity to utilise this vacant piece of land.

6.2.3 In locational terms, the proposal is located within approximately 200m of two bus stops.

6.2.4 The proposal would help to foster economic growth both during the construction phase of development and throughout the associated supply chain and these are economic benefits which will arise from the development.

6.2.5 The proposal is for 5 no. affordable rented properties. Shropshire has an identified need for this size of property in this location and it is considered that the development would go some way to meeting the affordable housing need.

6.2.6 The principle of development, having regard to the sites location within Prees Higher Heath Settlement Boundary and its overall sustainability credentials is considered to be acceptable, subject to compliance with visual and residential amenity policies and other associated matters including highway and drainage issues.

6.3 Character and Appearance

6.3.1 It is officers opinion that the submitted Site Plan demonstrates that the application site is capable of accommodating 5 no. two storey dwellings with associated car parking, private amenity areas and a public footpath without appearing overly cramped or incongruous.

6.3.2 The overall scale of the properties are considered to be modest, comprising 5 no. 2 storey, two bedroom properties.

6.3.3 This is considered to be appropriate in relation to surrounding dwellings. Nevertheless, it is considered reasonable to add a condition to any grant of consent to remove permitted development rights, which would safeguard any potential for over-development of the site.

6.3.4 The application site is vacant and considered to be awkwardly shaped.

6.3.5 The proposal it is considered would provide an opportunity to enhance the site and overall area, provided high quality materials, landscaping and boundary treatments are utilised, which would be secured by condition.

6.3.6 The original Site Plan showed the provision of a public footpath running along the eastern boundary of the site. This was considered could result in potential issues relating to crime and safety. The footpath has now been relocated so that it runs through the centre of the site, which is considered would afford improved levels of

natural surveillance.

- 6.3.7 Boundary treatments along the footpath comprise 0.9m high metal hoop top fencing which run along the front and side elevations of the properties and 1.8m high close board fencing which run along the rear of the properties.
- 6.3.8 The extent and type of boundary treatments proposed are considered to be appropriate, clearly distinguishing between the private and public realm, resulting in a more inviting space for users and also improving connectivity through the site.
- 6.3.11 Overall, the proposal is not considered would adversely impact on the visual amenity of the area and would comply with Core Strategy Policy CS6 and SAMDev Policy MD2.

6.4 Residential Amenity

- 6.4.1 Spacing standards between the proposed dwellings are considered to be appropriate.
- 6.4.2 It is considered that adequate private amenity space would be provided with each dwelling.
- 6.4.3 It is acknowledged that the amenity space serving Plot 4 is slightly smaller than those serving the remainder of the plots. However this is considered to be appropriate, having regard to the size of the dwelling and that adequate space could be provided for accommodating basic facilities.
- 6.4.4 Separation distances between the rear elevations of plots 3-5 and the facing elevations of the properties directly north would be in excess of 21m.
- 6.4.5 Separation distances between the rear elevations of the properties to the east and the blank facing side elevation of Plot 5 would be in excess of 17m which is considered to be appropriate.
- 6.4.6 There would be no principal windows in the facing side elevation of the dwelling at Plot 1.
- 6.4.7 The rear facing principal windows serving the semi-detached bungalows to the south of Plots 1 and 2 would measure approximately 16m and 13m away from the rear facing walls of plots 1 and 2, respectively.
- 6.4.8 An existing approximately 2m high close board fence runs along the rear boundaries of these properties which already restricts outlook from these windows.
- 6.4.9 Furthermore, the windows are north facing and therefore naturally suffer from reduced levels of daylight.
- 6.4.10 Plots 1-2 would be orientated at an angle resulting in a layout not directly facing the bungalows, which is considered would help to off-set the massing when viewed from the principal rooms and rear amenity space of the bungalows.

- 6.4.11 Plots 1-2 are not considered would result in any overlooking impacts to the neighbouring bungalows given there would be no rear first floor principal window serving plot 2 and in the context of the siting and distance of the rear first floor principal window serving plot 1, which is considered to be appropriate.
- 6.4.12 Overall it is considered that the proposed development would not result in any undue loss to existing or proposed levels of residential amenities, sufficient to warrant refusal of the scheme as submitted and the development is considered to comply with Policy CS6 of the Shropshire Core Strategy and Policy MD2 of the SAMDev.

6.5 Highway Safety

- 6.5.1 Highway Authority raise no objection subject to conditions.
- 6.5.2 Specified conditions and a more detailed response provided by the Highway Authority will be outlined in the update report and reported verbally to members during Committee

6.6 Drainage

- 6.6.1 SUDS raises no objection to the scheme subject to conditions to secure the submission of a surface water disposal and drainage scheme.

6.7 Affordable Housing

- 6.7.1 The Housing Enabling Team have been in discussion with the Registered Provider and can confirm that all of the units will be for affordable rent properties.
- 6.7.2 Shropshire has an identified need for this size of property in this location and it is therefore considered that the development would go some way to meeting the affordable housing need.
- 6.7.3 SC Affordable Housing raise no objection.

7.0 CONCLUSION

- 7.1.1 The principle of development is considered to be acceptable.
- 7.1.2 The proposed development is considered to be appropriate in terms of its overall layout and scale and would be sympathetic in terms of its impact on the existing and proposed locational context.
- 7.1.3 Any impacts on existing and proposed levels of residential amenity is considered could be mitigated against and the proposal is considered to be acceptable in this respect.
- 7.1.4 Resultant impacts on highways and drainage are considered to be appropriate and can be conditioned to secure mitigation where required.
- 7.1.5 Overall, the proposed development is considered to be acceptable and would comply with the above mentioned policies in the Core Strategy and SAMDev.

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 1970.

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:
NPPF

Core Strategy:
CS4, CS6, CS9, CS11

SAMDev:
MD2, MD12, S18

RELEVANT PLANNING HISTORY:

12/05220/FUL Formation of two temporary car parks following the demolition of existing garages; highway alterations; provision of safety bollard lighting; landscaping (Part Retrospective) GRANT 10th April 2013

16/04846/FUL Erection of five dwellings and associated access PDE

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 Paul Wynn
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 involving the use of any facing or roofing materials shall take place until details or samples of the materials to be used have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details unless any variation is agreed with the Local Planning Authority.
Reason: To ensure that the external appearance of the building is acceptable and to comply with Policy CS6 of the Core Strategy and Policy MD2 of the SAMDev.

4. Prior to commencement of development, a surface water disposal and drainage scheme shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme unless otherwise agreed in writing by the Local Planning Authority.
Reason: In the interest of securing adequate means of surface water drainage.

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

5. Prior to first occupation of the development hereby approved, a scheme for the landscaping of the site shall be submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall include hard landscaping details and details of planting plans, written specifications (including cultivation and other operations associated with tree, shrub, hedge or grass establishment), schedules of plants noting species, plant sizes, the proposed numbers and densities and an implementation programme.
Reason: To ensure appropriate landscaping of the site having regard to Policy CS6 of the Core Strategy and Policy MD2 of the SAMDev.

6. Prior to commencement of development, a plan indicating the positions, design, materials and type of boundary treatment to be erected shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatment shall be

completed prior to first occupation of the dwelling hereby approved. The boundary treatment shall be carried out in accordance with the approved details and permanently retained unless otherwise first approved in writing by the Local Planning Authority.
Reason: To ensure adequate and appropriate treatment to all boundaries in the interests of the visual and residential amenities of the locality in accordance with Policy CS6 of the Core Strategy and Policy MD2 of the SAMDev.

7. Prior to first occupation of the development hereby approved, details for the provision of bird boxes shall be submitted to and approved in writing by the Local Planning Authority. A minimum of 3 artificial nests of either integrated brick design or external box design, suitable for swifts shall be erected on the site. The boxes shall be sited in accordance with the latest guidance (currently <http://www.swift-conservation.org/Nestboxes&Attraction.htm>) and thereafter retained for the lifetime of the development.
Reason: To ensure the provision of nesting opportunities for wild birds, in accordance with MD12, CS17 and section 118 of the NPPF.

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

8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that order), no development (as defined by Section 55 of the Town and Country Planning Act 1990) as may otherwise be permitted by virtue of Class(es) A, B and E of the Order shall be carried out.
Reason: To enable the Local Planning Authority to control the development and to safeguard the visual and residential amenities of the area.
9. The approved landscaping plan shall be completed in accordance with the following:-
a) All landscaping works shall be completed in full accordance with the approved scheme, within the first planting season following completion of the development hereby approved, or in accordance with a programme agreed with the Local Planning Authority.
b) All trees, shrubs and hedge plants supplied shall comply with the requirements of British Standard 3936, Specification -for Nursery Stock. All pre-planting site preparation, planting and post-planting maintenance works shall be carried out in accordance with the requirements of British Standard 4428(1989) Code of Practice for General Landscape Operations (excluding hard surfaces).
c) All new tree plantings shall be positioned in accordance with the requirements of Table A.1 of BS5837:2012 Trees in Relation to Design, Demolition and Construction (Recommendations)
d) Any trees, shrubs or hedges planted in accordance with this condition which are removed, die, become severely damaged or become seriously diseased within five years of planting shall be replaced within the next planting season by trees, shrubs or hedging plants of similar size and species to those originally required to be planted.
Reason: To ensure appropriate landscaping of the site having regard to Section 197 of the Town and Country Planning Act 1990 and Policy CS6 of the Core Strategy and Policy MD2 of the SAMDev.
10. The affordable housing units shall be advertised through the Shropshire Choice Based Letting scheme. The affordable housing units for rent shall be allocated through the Shropshire Housing Allocation Policy and Scheme.

Reason: To ensure that all affordable properties are advertised in accordance with Shropshire Housing Allocation Policy.

11. The dwellings shall not be let or occupied other than either:
- a) under a tenancy in accordance with the normal letting policy of a Registered Provider;
 - or,
 - b) by way of a Shared Ownership lease or equity share arrangement whereby the occupier is able to achieve a share of 100% of the whole.

Reason: To ensure compatibility between the requirements of Shropshire Core Strategy Policy CS11 and the Homes and Communities Agency's affordable homes 2011/15 funding requirements for developments funded by the Agency.

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Committee and Date

North Planning Committee

31st January 2017

Item

8

Public

Development Management Report

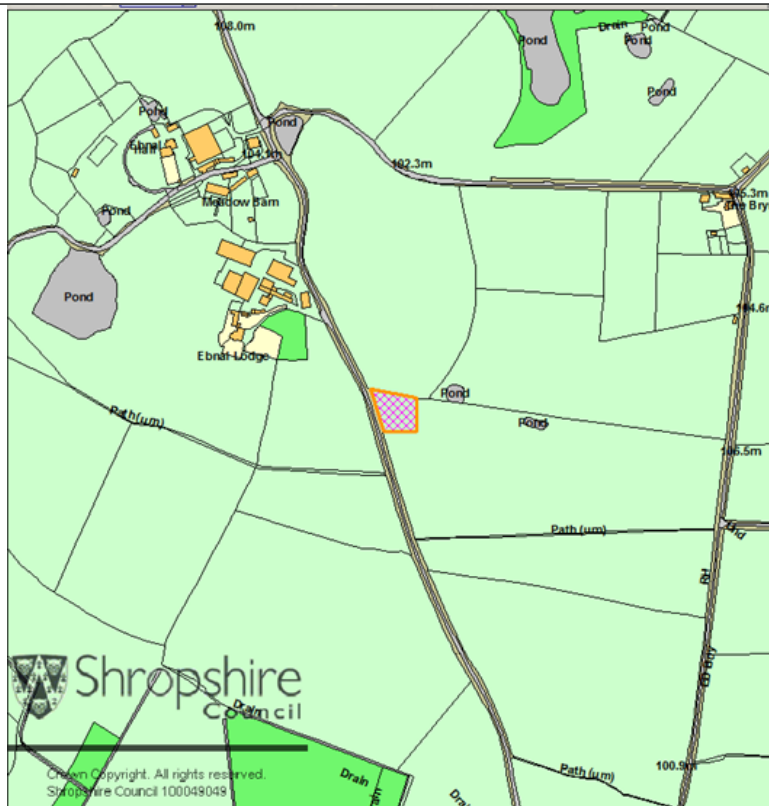
Responsible Officer: Tim Rogers

Email: tim.rogers@shropshire.gov.uk Tel: 01743 258773 Fax: 01743 252619

Summary of Application

Application Number: 16/05607/FUL	Parish:	Selattyn And Gobowen
Proposal: Temporary siting of telecom mast to support recently approved solar farm		
Site Address: Proposed Solar Farm At Rhosygadfa Gobowen Shropshire		
Applicant: Elgin Energy Esco Ltd		
Case Officer: Kelvin Hall	email: planningdmc@shropshire.gov.uk	

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 seeks planning permission for the installation of a temporary mast at the recently approved solar farm at Rhosygadfa. The mast is required to provide a data connection from the on-site substation to the electricity company's substation, pending the installation of a fibre connection to the site by BT. The mast would be 20 metres high and 0.85 metres in diameter. It would be of lattice construction and sit on a below-ground concrete platform.

1.2 The application as originally submitted stated that permission was being sought for a temporary period of 3 years. The application has now been amended to state that the mast would be removed by no later than 12th October 2017.

2.0 SITE LOCATION/DESCRIPTION

2.1 The permitted solar farm covers an area of approximately 13 hectares, on agricultural land approximately 1km to the east of Gobowen. The mast would be located within the boundary of the solar farm, adjacent to the approved substation at the north western corner of the site close to the site entrance. Surrounding land is generally in agricultural use. There are public rights of way in the vicinity approximately 70 metres to the south, 150 metres to the south and 290 metres to the north.

2.2 The nearest residential properties to the mast site are Ebnal Lodge (the landowner) approximately 215 metres to the north-west, and properties at Ebnal Hall, approximately 330 metres to the north-west. The nearest Listed Buildings are Ebnal Hall (the property itself being 415 metres away) and Ebnal Lodge; both Grade II Listed buildings.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

3.1 The views of the Parish Council are contrary to the Officer recommendation. One of the Local Members, Councillor Robert Macey, has requested that the application is determined by Planning Committee. The Planning Manager in consultation with the Committee chairman and Local Member has agreed that the Parish Council has raised material planning issues and that a decision by Planning Committee is appropriate.

4.0 COMMUNITY REPRESENTATIONS

4.1 Consultee Comments

4.1.1 **Selattyn and Gobowen Parish Council** Objects. The proposed mast would be detrimental to the landscape and the Parish Council object on the grounds that this will have a significant visual impact on what is meant to be a low profile development.

Alternative solution - The Parish Council propose that you investigate connecting up to other nearby cabinets and sources of fibre optic broadband

- 4.1.2 **Whittington Parish Council** (adjacent parish) No comments received.
- 4.1.3 **SC Ecologist** No comments. Ecological requirements have already been covered in the original application for the solar farm.
- 4.1.4 **SC Conservation** No response received at the time of writing this report.
- 4.1.5 **Councillor David Lloyd MBE (Shropshire Councillor for Gobowen, Selattyn and Weston Rhyn)** Objects.

An extended period for comment following delayed notification to Selattyn and Gobowen Parish Council and local elected members is welcome. This has also enabled the promoters to address a well attended public meeting.

I wish to object to the erection of a communication mast which will be an intrusive and unacceptable feature above a low profile operation in open countryside for which consent was granted only after plans for high fencing and security cameras were dropped.

Experience following a premature start of work on site has further demonstrated the need to keep construction traffic out of the network of narrow country lanes in the locality.

- 4.1.6 **Councillor Robert Macey (Shropshire Councillor for Gobowen, Selattyn and Weston Rhyn)** Objects.

I am concerned that this application for a substantial mast, sited in open countryside, will have considerable visual impact not just on its immediate locality but surrounding communities.

I note the application is for a fixed period of three years and is tied to another application which has already been subject to a great deal of public debate and had to revise its visual impact in regard to site features including CCTV, fencing and hedgerows.

The temporary nature of the application indicates it is reliant upon other more permanent solutions. If these permanent solutions have been agreed I would have expected more certainty around the date and arrangements of when this permanent solution would be in place.

The extension of the consultation period as raised previously and subsequent public meeting are appreciated.

4.2 **Public Comments**

- 4.2.1 The application has been advertised by site notice. Eight objections have been received, summarised as follows:

- Visual impact of mast; will be seen from surrounding England and Welsh hills and as far away as Rodney's Pillar; mast will tower above the trees; will look like a pylon with large discs attached
- Area used for low level helicopter training flights as well as access to the

hospital

- Viability of project is a commercial decision and not relevant to planning
- Proposal is 'planning creep'; site is turning into large scale industrial use
- developer must have known it would need good internet access and that it was not available
- Unlikely that BT will ever provide good internet links in the area; mast will be required for many years to come, more than the proposed 3 years; no legal commitment that BT provide a suitable connection within a specific timeframe; no evidence that a satellite broadband option is not reliable enough;
- Underground fibre optics connection should be considered
- Adverse impact on local birdlife
- Applicant is unaware that there is no solar farm in the area
- Concern over timing of submission of application over Christmas period
- Health implications to residents from mast, including learning problems; trouble concentrating; behavioural disorders such as Attention Deficit Disorder (ADD); extremely high and extremely low Blood Pressure - and swapping between the two; medicines stop working as well, so prescriptions have to increase; heart rhythms get upset, as does the immune system; sudden Heart Attacks and Strokes happening in younger and younger people; more Brain diseases such as Alzheimer's, Parkinson's, Motor Neurone Disease and Epilepsy; more Cancers, Leukaemia and Brain Tumours; more and worse Headaches and Migraines; more and worse sleeping disorders; constantly being tired, getting sleepless and being sleepy during the day; anxiousness; ringing in the ears (Tinnitus); increased infections, colds, allergies and viruses; pains in their nerves and bodies for no apparent cause.

5.0 THE MAIN ISSUES

- Principle of development
- Siting, scale and design and impact on landscape character
- Local amenity and other considerations
- Historic environment considerations
- Ecological considerations

6.0 OFFICER APPRAISAL

6.1 Principle of development

6.1.1 Planning permission for the solar farm on agricultural land at Rhosygadfa was granted in December 2015 (ref. 15/03975/FUL). In addition to the solar pv panels the permission allows for the installation of a primary substation and a number of inverter substations at the site. The applicant has advised that it is planned to commission the solar farm by 31st March 2017, as after this date there is a fall in the support provided to such schemes which would render the project unviable. Some preliminary construction works associated with the installation of the primary substation commenced in December 2016

6.1.2 The current application states that the site requires an internet connection to allow real time data to be transferred from the on-site substation to the electricity company's (SPEN) substation. This is required to allow SPEN to shut down the solar farm in the event of a fault level issue. BT will be providing a fibre connection to the site for this purpose, and have confirmed that they intend that this will be completed by no later than 30th June 2017. As it is not expected that the fibre

connection would be installed prior to the planned commissioning date of the solar farm the applicant has investigated alternative temporary options for providing an internet connection. The applicant has advised that the feasibility of providing a satellite broadband connection has been investigated but that SPEN has advised that this is not reliable enough. The proposed mast would provide a line of site to the SPEN substation at Ifton and would ensure that there is a satisfactory internet connection to enable the solar farm to operate pending the completion of the fibre connection by BT.

6.1.3 The environmental benefits of the solar farm were set out in the Committee report relating to that application. In summary the facility 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. It has been estimated that this 5MW output is equivalent to the annual electricity requirements of approximately 1,500 typical households.

6.1.4 Based upon the information provided in the application Officers accept that, in order to meet the planned commissioning date, the installation of a temporary mast is the only viable option for providing the necessary broadband connection. As such, it is considered that the proposal to provide essential support for the permitted solar farm in this way is acceptable in principle.

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.

6.2.2 Officers consider that the siting of the mast at the site entrance and at the lower part of the site is appropriate. The height of the mast is dictated by the need to provide a line of sight to the SPEN substation. It would be partly screened by trees in the vicinity of the site, including adjacent to the solar farm. Nevertheless given its height it would be visible in the landscape from some public viewpoints including public footpaths and public highways. The applicant has now been amended such that permission is now sought to retain the mast for up to seven months rather than the three years as originally proposed. Officers have sought further evidence from the applicant that this time period for removal is realistic. In response the applicant has provided a letter from BT who have confirmed that they are looking at completing the fibre connection by no later than 30th June 2017. The applicant has also submitted a statement to confirm that the mast would be decommissioned no later than 12th October 2017 regardless of whether the fibre connection has been installed. It is considered that this provides satisfactory reassurance that the mast will not be retained for longer than the proposed October date. A condition can be imposed to require that the mast is removed once the fibre connection is available, or at the latest by the requested date of 12th October 2017. The concerns raised by local residents regarding the visual impact of the proposed mast are noted, and Officers acknowledge that the mast would have some adverse impact on landscape character in the area. However this impact would be for a

temporary period only and Officers do not consider that a refusal on landscape grounds would be justified.

6.3 **Local amenity and other considerations**

6.3.1 Core Strategy Policy CS6 seeks to safeguard residential and local amenity. The NPPF states that, in determining planning applications for telecommunications development, planning authorities should not determine health safeguards if the proposal meets International Commission guidelines for public exposure. Confirmation on this has been requested from the applicant.

6.3.2 The concerns raised by some local residents over potential conflict between the mast and low flying helicopters are noted. There is no requirement to consult the CAA or other bodies in relation to this proposal. The applicant has confirmed that they have not identified any airfields or aerodromes within a 3km radius of the proposed mast. The mast would not be significantly higher than some adjacent trees in the area and it is not anticipated that it would present a safety hazard to aircraft.

6.3.3 In relation to the concerns that have been raised regarding the potential impact upon health, the NPPF states that local planning authorities should not determine health safeguards if the proposal meets International Commission guidelines for public exposures. The applicant has confirmed that the mast would conform to these.

6.4 **Historic environment issues**

6.4.1 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.

6.4.2 The mast is likely to be visible from the two listed buildings to the north-west, Ebnal Hall and Ebnal Lodge and has some impact on their setting. Members will be updated on any comments that are received by the Council's Historic Conservation team. However the Case Officer considers that any harm to the setting of these assets would be less than substantial given the short timeframe that the mast would be in place, and that the public benefits of the proposal, in supporting the solar farm, would outweigh this limited, short-term harm.

6.5 **Ecological considerations**

6.5.1 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. The Council's

Ecologist has raised no issues in respect of the proposed mast. Local concern that the proposal would affect birds are noted but there is no evidence that the mast would adversely affect wildlife.

7.0 **CONCLUSION**

7.1 The permitted solar farm at Rhosygadfa is required to have an internet connection between the site and the network operator's off-site substation. A fibre connection is scheduled to be provided by BT over the coming months however this will not be completed in advance of the planned commissioning date of the solar farm at the end of March 2017. The proposed temporary mast would provide a suitable connection until this fibre connection is available, which is anticipated to be by summer 2017. Due to its height the proposed mast would have some impact on the landscape character of the area and on the setting of nearby heritage assets. However Officers consider that such impacts would not be unacceptable when considering the short-term nature of the proposal and the environmental benefits of the solar farm for which permission has already been granted. The proposal does not raise any other significant land-use impacts and as such Officers consider that the proposal can be accepted in relation to Development Plan and national planning policies and recommend that planning permission is granted for a temporary period 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.

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

Relevant Planning Policies

Central Government Guidance:
National Planning Policy Framework

Core Strategy and Saved Policies:
CS6 - Sustainable Design and Development Principles
CS17 - Environmental Networks
MD13 - Historic Environment

RELEVANT PLANNING HISTORY:

16/05607/FUL Temporary siting of telecom mast to support recently approved solar farm PDE 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) REFUSE 13th July 2015

15/03975/FUL Construction of a solar farm to include solar panel arrays, substation inverters, a primary substation, and perimeter stock fencing GRANT 23rd December 2015

16/03944/DIS Discharge of condition 4 (archaeology) for the construction of a solar farm to include solar panel arrays, substation inverters, a primary substation, and perimeter stock fencing relating to 15/03975/FUL DISAPP 11th October 2016

16/05352/DIS Discharge of Conditions 3 (Construction Management scheme) and 6 (External Materials) of Planning permission 15/03975/FUL PCO

16/05355/AMP Proposed non material amendment pursuant to 15/03975/FUL - Construction of a solar farm to include solar panel arrays, substation inverters, a primary substation, and perimeter stock fencing PCO

Appeal

16/02380/REF 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) DISMIS 6th June 2016

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 David Lloyd MBE Cllr Robert Macey
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.

3. The mast and associated concrete pad hereby approved shall be removed from the site within two weeks of the solar farm being connected to the internet by means of fibre connection, or, if sooner, by 12th October 2017. The site shall be reinstated to its former condition within four weeks of the removal of the mast.

Reason: To ensure that the mast is removed from the site as early as possible in order to minimise the impact on landscape character and the setting of heritage assets.

-



<u>Committee and Date</u>
North Planning Committee
31 st January 2017

<u>Item</u>
9
Public

Development Management Report

Responsible Officer: Tim Rogers
 Email: tim.rogers@shropshire.gov.uk Tel: 01743 258773 Fax: 01743 252619

SCHEDULE OF APPEALS AS AT COMMITTEE 31ST JANUARY 2017

Appeals Lodged

LPA reference	16/01719/FUL
Appeal against	Refusal
Committee or Del. Decision	Delegated
Appellant	Mrs J Davies
Proposal	Demolition of existing 3 bedroom 2 storey cottage and construction of 3 bedroom replacement dwelling with associated works
Location	High Fawr Cottage, OSWESTRY,
Date of appeal	30.11.2016
Appeal method	Written reps
Date site visit	
Date of appeal decision	
Costs awarded	
Appeal decision	

LPA reference	16/02327/OUT
Appeal against	Refusal
Committee or Del. Decision	Delegated
Appellant	Mr T Evans – C/O Trevor Mennell
Proposal	Outline application (all matters reserved) for the erection of one dwelling and garage utilising existing underground reservoir construction as domestic basement
Location	Former Reservoir To The North Of Shawbury Road Wem
Date of appeal	03.01.17
Appeal method	Written Representations
Date site visit	
Date of appeal decision	
Costs awarded	
Appeal decision	

LPA reference	16/01540/PMBPA
Appeal against	Refusal
Committee or Del. Decision	Delegated
Appellant	Mr Don Carissimo – C/O Mr M Lapworth
Proposal	Application for prior approval under Part 3, Class Q of the Town & Country Planning (General Permitted Development) (England) Order 2015 for the change of use from agricultural to residential use
Location	Agricultural Building A At Rose Cottage Prees Green Whitchurch
Date of appeal	03.01.17
Appeal method	Written Representations
Date site visit	
Date of appeal decision	
Costs awarded	
Appeal decision	

LPA reference	16/01541/PMBPA
Appeal against	Refusal
Committee or Del. Decision	Delegated
Appellant	Mr D. Carissimo – C/O Mr M. Lapworth
Proposal	Application for prior approval under Part 3, Class Q of the Town & Country Planning (General Permitted Development) (England) Order 2015 for the change of use from agricultural to residential use
Location	Agricultural Building B At Rose Cottage Prees Green Whitchurch
Date of appeal	03.01.17
Appeal method	Written Representations
Date site visit	
Date of appeal decision	
Costs awarded	
Appeal decision	

Appeals determined

LPA reference	16/01115/FUL
Appeal against	Refusal
Committee or Del. Decision	Delegated
Appellant	RC & GM & CW Roberts
Proposal	Proposed is the erection of an agricultural workers' dwelling.
Location	Foxhall Farm Aston Oswestry
Date of appeal	25.08.2016
Appeal method	Hearing
Date site visit	02.02.2016
Date of appeal decision	01.12.2016
Costs awarded	
Appeal decision	Dismissed

LPA reference	15/00431/OUT
Appeal against	Non determination
Committee or Del. Decision	Delegated
Appellant	Miss M Jones and F S P H Ratcliff
Proposal	Outline application (access for approval) for residential development
Location	The Larches Shawbury Road Wem
Date of appeal	11.12.2015
Appeal method	Hearing
Date site visit	
Date of appeal decision	02.12.2016
Costs awarded	
Appeal decision	Dismissed

LPA reference	15/00438/OUT
Appeal against	Non Determination
Committee or Del. Decision	Delegated
Appellant	Miss M Jones & F S P H Ratcliff
Proposal	Outline application (access for approval) for residential development
Location	The Larches Shawbury Road Wem
Date of appeal	11.12.2015
Appeal method	Hearing
Date site visit	
Date of appeal decision	02.12.2016
Costs awarded	
Appeal decision	Dismissed

LPA reference	14/03216/OUT
Appeal against	Refusal
Committee or Del. Decision	Delegated
Appellant	Mr and Mrs D Ward of DAW Construction
Proposal	Erection of 3 dwellings including means of access
Location	Land off Rosehill Road Stoke Heath
Date of appeal	24.06.2016
Appeal method	Written Representations
Date site visit	
Date of appeal decision	09.12.2016
Costs awarded	
Appeal decision	Dismissed

LPA reference	14/05206/OUT
Appeal against	Refusal
Committee or Del. Decision	Delegated
Appellant	Berrys
Proposal	Mixed residential development
Location	Land off A525 Newcastle Road Woore
Date of appeal	26.02.2016
Appeal method	Hearing
Date site visit	
Date of appeal decision	09.12.2016
Costs awarded	
Appeal decision	Dismissed

LPA reference	15/04631/OUT
Appeal against	Refusal
Committee or Del. Decision	Delegated
Appellant	Mr George Reeves
Proposal	Outline application for residential development to include means of access
Location	Land South of the Parklands, Cockshutt, Shrewsbury
Date of appeal	15.06.2016
Appeal method	Written Representations
Date site visit	
Date of appeal decision	09.12.2016
Costs awarded	
Appeal decision	Dismissed

LPA reference	14/04558/OUT
Appeal against	Refusal
Committee or Del. Decision	Committee
Appellant	Acton Reynold Estate Trustees – C/O FBC Manby Bowdler
Proposal	Outline application (access for approval) for mixed residential development
Location	Development Land East Of Wem Road Shawbury Shropshire
Date of appeal	22.08.16
Appeal method	Hearing
Date site visit	
Date of appeal decision	15.12.16
Costs awarded	
Appeal decision	DISMISSED

LPA reference	15/00916/OUT
Appeal against	Refusal
Committee or Del. Decision	Delegated
Appellant	Muller Property Group – C/O Berrys
Proposal	Outline application (access for approval) for residential development of up to 39 dwellings
Location	Land Adj Bollandfield Tarpoley Road Whitchurch
Date of appeal	22.10.15
Appeal method	Public Enquiry
Date site visit	
Date of appeal decision	06.01.17
Costs awarded	
Appeal decision	DISMISSED

LPA reference	15/03780/CPE
Appeal against	Refusal
Committee or Del. Decision	Delegated
Appellant	Mr and Mrs C Williams
Proposal	Application for Lawful Development Certificate in respect of existing use of private swimming pool at Hunky Dory for providing childrens swimming lessons
Location	Hunky Dory Tern Hill Market Drayton
Date of appeal	06.04.2016
Appeal method	Public Enquiry
Date site visit	11.01.2017
Date of appeal decision	17.01.2017
Costs awarded	
Appeal decision	DISMISSED

LPA reference	12/03866/FUL
Appeal against	Refusal
Committee or Del. Decision	Committee
Appellant	Mr E Jones
Proposal	Reposition previously approved replacement dwelling
Location	The Hollies, Dovaston, Kinnerley, SY10 8DS
Date of appeal	27.09.2016
Appeal method	Written Reps
Date site visit	06/12/2016
Date of appeal decision	19/01/2017
Costs awarded	
Appeal decision	Allowed

Appeal Decision

Hearing held on 2 November 2016

Site visit made on 2 November 2016

by A J Mageean BA (Hons) BPI PhD MRTPI

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

Decision date: 1st December 2016

Appeal Ref: APP/L3245/W/16/3152229

Foxhall Farm, Aston, Oswestry, Shrewsbury SY11 4JQ

- 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 RC & GM & CW Roberts against the decision of Shropshire Council.
 - The application Ref 16/01115/FUL, dated 11 March 2016, was refused by notice dated 4 May 2016.
 - The development proposed is the erection of an agricultural workers' dwelling.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have used the more succinct version of the site address provided on the appeal form in the interests of clarity.
3. A signed Section 106 Agreement setting out the occupational restriction of the proposed dwelling in the event of planning permission being granted was presented at the Hearing. The Council representatives indicated their acceptance of this document and I have no reason to take a different view. I have therefore taken this into consideration in the determination of this appeal.

Main Issue

4. The main issue is whether the proposal would be an isolated new home in the countryside and, if so, whether there is an essential need for a dwelling to accommodate a rural worker.

Reasons

Background and Policy Context

5. The appellants have occupied Foxhall Farm for around the past 30 years. This is a family run business involving both parents and their three children, all of whom currently live in the Farm House. Whilst the appeal documentation states that all five family members work full time on the Farm, it was confirmed at the Hearing that due to health issues one of the daughters, Sally, is no longer working on the Farm. The possibility of the recruitment of an

- additional worker to replace Sally was discussed at the Hearing, though no firm plans have been made at this stage.
6. This agricultural enterprise extends to just over 200 hectares (ha), around 103 ha of which is owned by the Farm and a further area of around 98 ha is rented under grazing agreements. Most of this land area is used for grass forage and grazing which supports the primary dairy and beef business, though additional income is gained from corn crops. The buildings around the Farm House are the main focus of dairy operations.
 7. The proposed dwelling would be located on part of a grass field which lies adjacent to the access lane leading to the main buildings at Foxhall Farm. It would provide accommodation for one of the younger family members working on the Farm, to enable them to move out of the main Farm House, but still be within sight and sound of the main dairy farm operations. The site is not located within any settlement boundaries and is therefore classed as open countryside for the purpose of interpreting planning policy.
 8. The relevant policies in this case are Policy CS5 and CS6 of the Shropshire Local Development Framework: Adopted Core Strategy (2011) (the Core Strategy) and Policy MD7a of the Shropshire Council Site Allocations and Management of Development Plan (2015) (the SAMDev). Also of relevance is the Type and Affordability of Housing Supplementary Planning Document (2012) (the SPD).
 9. These policies are consistent with the National Planning Policy Framework (the Framework) in seeking to ensure that residential development in countryside locations outside settlement boundaries is strictly controlled. In this respect the Framework states that one of the special circumstances in which development could be allowed is "*the essential need for a rural worker to live permanently at or near their place of work*"¹.
 10. SAMDev Policy MD7a further defines the circumstances in which exceptions to these strict controls may be made. Of particular relevance to this case, which seeks to provide an additional farm workers' dwelling on this site, is that it must provide for "*a worker who is required to be present at the enterprise for the majority of the time*" and in this respect "*a functional need is demonstrated*"².
 11. I accept the appellants' point that SAMDev Policy MD7a does not require that additional workers' dwellings meet the same tests as those set for primary dwellings. In particular, proposals for additional dwellings are not required to demonstrate that "*the business is viable in the long term and that the cost of the dwelling can be funded through the business*". However, in order to justify an exception to national and local policies requiring that new development in rural locations be strictly controlled, it is necessary to demonstrate *functional or essential need*. My view is that such consideration must include whether or not the business is financially sustainable, including the viability of the business moving forward.

¹ The Framework, paragraph 55.

² SAMDev Policy MD7a, 2c.

Essential Need

12. Details of the nature of the current enterprise and plans for its expansion were discussed at the Hearing. I note particularly the increase in the level of calf rearing, now up to 80 calves, and the renting of additional land and buildings at Bromwick Park and Rowe Farm to support this. I also note the plans to re-introduce ice cream making and selling into the business. I therefore accept that, considering the Standard Man Day requirements for such an enterprise, as set out in the appellants' Statement of Case, the current levels of employment are required by the business.
13. Detailed information about the current and projected future financial health of this business was not presented. The accountant's letter presented as part of the appeal documentation confirms that investment has been made in farm facilities over recent years and that profits in excess of £42,000 per annum have been made. It was also stated at the Hearing that it was hoped that annual profits would increase to £60,000 during the current financial year, though no evidence to corroborate this forecast or illustrate how it would be achieved was presented. My view is therefore that insufficient evidence has been presented to demonstrate the sustainability of this business, including how the current workforce, and any future expansion, is and would be supported.
14. Nevertheless, the parties have agreed in the Statement of Common Ground that the nature of this business means that there is a need for more than one worker to live on the site. In this respect it is clear to me that the current dairy operations, which require attention at all times of the day and night throughout the year, may lead to situations in which a second worker is required to be on hand at short notice to deal with medical or other emergencies. The accommodation needs of two farm workers can clearly be met in the existing Farm House.
15. Looking at the need for two or three further farm workers, whilst I accept that additional workers are required to support farm operations during a typical working day, a case has not been made for them to be on hand at all times. In this respect it is not clear why the accommodation requirements of these additional workers cannot be met elsewhere, such as in local villages or the nearby town of Oswestry, located some 4km away. Information submitted by the Council suggests that there is some reasonably priced accommodation available in this area, which in terms of costs is comparable to the cost of constructing a new dwelling on a greenfield site. On this basis a functional need for additional accommodation on this site has not been demonstrated.
16. I recognise that the family has reached the stage where the children, who are now in their early twenties, would like to set up their own homes away from the Farm House. Looking at other opportunities on the Farm itself, I am satisfied that the other buildings on this site are currently in use and therefore not available for conversion into living accommodation. It would clearly be cost effective and convenient to build a new dwelling on land already owned by the business, and living on the Farm would reduce the need to travel to work. However, such considerations do not in themselves justify building in this rural location, recognising that in such areas "*housing should be located where it will*

*enhance or maintain the vitality or rural communities*³, which in Shropshire is focused on the identified community hubs and community clusters⁴.

17. I conclude in this matter that the proposal would, in policy terms, represent an isolated new home in the countryside. I also conclude that an essential need for a dwelling to accommodate a rural worker has not been demonstrated. In this respect the proposal would therefore conflict with Core Strategy Policies CS5 and CS6, SAMDev Policy MD7a, the SPD and paragraph 55 of the Framework.

Other Matters

18. The appellants suggest that even if the proposed dwelling were to be constructed and then at some future stage was no longer required to accommodate farm workers, the Section 106 agreement would secure it as affordable accommodation which would help provide for local needs. However, this outcome would not be consistent with the established criteria for the identification of exception sites for the development of affordable homes in Shropshire. In particular, it would conflict with Policy CS11 of the Core Strategy which permits *"exception schemes for local needs affordable housing on suitable sites in and adjoining Shrewsbury, Market Towns and Other Key Centres, Community Hubs, Community Clusters and recognisable named settlements, subject to suitable scale, design, tenure and prioritisation for local people and arrangements to ensure affordability in perpetuity"*. Whilst I accept that this proposed dwelling would meet these criteria in terms of design, scale and affordability, it would clearly conflict with locational criteria. Such considerations are therefore not material to the determination of this case.
19. The appellants also point to the presumption in favour of sustainable development, and the environmental, social and economic dimensions of sustainability set out in the Framework. In this respect, I accept that the proposed dwelling has been designed to integrate with the other Farm buildings and thereby reduce its visual impact. I also accept that such a dwelling could have some social benefits by enabling a young person to live and work in this area. However, as noted above, the economic basis for this development, in terms of both the financial case and specifically the functional need for more than two workers to be present at all times, has not been demonstrated. My view is that these economic considerations outweigh the limited environmental and social benefits.

Conclusion

20. For the reasons set out above I conclude that the appeal should be dismissed.

AJ Mageean

INSPECTOR

³ The Framework, paragraph 55.

⁴ The Core Strategy, Policy CS1.

APPEARANCES

FOR THE APPELLANT

Mr C Roberts	Appellant
Mrs G Roberts	Appellant
Mr S Thomas	Appellants' Agent

FOR THE LOCAL PLANNING AUTHORITY

Mr P Mullineux	Principal Planner (Not present at site visit)
Mr M Perry	Case Officer

INTERESTED PARTIES

Ms A Newport	Agent's PA (Not present at site visit)
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DOCUMENTS

1. Signed Section 106 agreement, dated 1 November 2016, relating to the occupation restriction of the development which is the subject of the planning appeal.

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Appeal Decisions

Hearing held on 28 April 2016

Site visit made on 23 May 2016

by Beverley Doward BSc BTP MRTPI

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

Decision date: 2 December 2016

Appeal A Ref: APP/L3245/W/15/3138752

The Larches, Shawbury Road, Wem, Shropshire, SY4 5PF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Miss M Jones and F, S, P, H Ratcliff against Shropshire Council.
 - The application Ref 15/00431/OUT, is dated 28 January 2015.
 - The development proposed is described as "outline planning permission for residential development and access (all other matters reserved)."
-

Appeal B Ref: APP/L3245/W/15/3138755

The Larches, Shawbury Road, Wem, Shropshire, SY4 5PF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Miss M Jones and F, S, P, H Ratcliff against Shropshire Council.
 - The application Ref 15/00438/OUT, is dated 29 January 2015.
 - The development proposed is described as "outline planning permission for residential development (all matters reserved)."
-

Decisions

Appeal A Ref: APP/L3245/W/15/3138752

1. The appeal is dismissed and planning permission for residential development and access (all other matters reserved) is refused.

Appeal B Ref: APP/L3245/W/15/3138755

2. The appeal is dismissed and planning permission for residential development (all matters reserved) is refused.

Procedural Matters

3. The appeals relate to two adjoining fields on the north side of Shawbury Road to the south-east of Wem Town. Appeal A relates to the more southerly of the two fields which I will refer to as Site A. I will refer to the site in Appeal B which is the more northerly of the two fields as Site B.
4. The planning applications that led to the appeals were submitted in outline form. In relation to Site A all matters other than access were reserved for future consideration whilst in relation to Site B all matters were reserved for

future consideration. Accordingly, I have dealt with the appeals on the same basis.

5. In both cases the appeals were made on the grounds of non-determination. I have considered each proposal on its own merits. However, given that they have much in common including the same appellants and in the interests of brevity I shall deal with both appeals together. My reasoning relates to both appeals unless otherwise indicated.
6. A proposal for residential development on an area of land which included Site A was the subject of an appeal that was dismissed in May 2015¹.
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8. At the time of submitting the appeal the appellants' position was that the Council could not demonstrate a five year supply of deliverable housing land and that therefore paragraph 49 of the National Planning Policy Framework (the Framework), which states that relevant policies for the supply of housing should not be considered up-to-date if the local authority cannot demonstrate a five year supply of deliverable housing sites, was engaged. Prior to the Hearing session the appellants withdrew their evidence on housing land supply contained within the Housing Land Supply Rebuttal and Appendices and replaced it with a Housing Land Supply and Delivery Statement and Appendices dated 2 March 2016. The appellants indicated that, in the light of the findings of Inspectors on other appeals in Shropshire they were withdrawing their challenge in relation to five year land supply.
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10. Two separate signed, dated and certified UUs relating to the provision of affordable housing were submitted before the Hearing.

Main Issues

11. The main issues in this case are:

- whether the appeal proposals accord with the development strategy for the area;

¹ APP/L3245/W/14/3000672

² APP/L3245/W/15/3067596

- the effect of the proposed development on the character and appearance of the area; and
- whether the proposals comprise sustainable development.

Reasons

Development Strategy

12. The development plan for the area comprises the Core Strategy and the Shropshire Site Allocations and Management of Development (SAMDev) Plan adopted December 2015.
13. Policy CS1 of the Core Strategy sets out the strategic approach to development in Shropshire and establishes a hierarchy which focuses development towards Shrewsbury, the Market Towns and other Key Centres.
14. Policy CS3 of the Core Strategy indicates that balanced housing and employment development will take place within the development boundaries of the Market Towns and other Key Centres and on sites allocated for development. Wem is included in the list of Market Towns and other Key Centres in the Core Strategy.
15. Policy S17.1 of the SAMDev Plan supports policy CS3 of the Core Strategy and indicates that Wem will provide a focus for modest growth of approximately 500 dwellings and 4 hectares of employment land. The explanatory text to the policy indicates that in order to maintain its role, the town will need to accommodate balanced housing and employment development within its development boundary and on sites allocated for development.
16. Both of the appeal sites lie outside the development boundary of Wem. Accordingly, they fall to be considered as within the countryside for planning policy purposes. In such areas policy CS5 of the Core Strategy indicates that new development will be strictly controlled in accordance with national planning policies protecting the countryside. It indicates 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 benefits, particularly where they relate to certain identified types of development. The appeal proposals do not relate to any of the development types listed although the list is not exhaustive.
17. Policy MD7a of the SAMDev Plan further clarifies the approach to housing development in the countryside. It indicates, amongst other things, that further to Core Strategy policy CS5, new market housing will be strictly controlled outside of Shrewsbury, the Market Towns and Community Hubs and Clusters.
18. There is disagreement between the main parties as to the interpretation of policy CS5 of the Core Strategy and in particular whether it is restrictive or permissive given its deference to national planning policy. Both main parties have referred to various appeal decisions in support of their case and to which I have had regard.
19. Policy CS5 of the Core Strategy is permissive of various types of development, although as indicated above, the list of developments indicated as acceptable within the countryside is not exhaustive. However, policy MD7a of the SAMDev

- Plan further complements Core Strategy policy CS5 and is clear in indicating that new market housing will be strictly controlled within the countryside.
20. The SAMDev Plan has been found to be sound. Therefore, I am satisfied that the approach adopted within policy MD7A of the SAMDev Plan with regard to development within the countryside should be considered consistent with national policy as too should policy CS5 of the Core Strategy which it complements.
 21. The Core Strategy policies and the policies of the SAMDev Plan referred to above are broadly consistent with the Framework, specifically the advice contained at paragraph 55 that to promote sustainable development in rural areas housing should be located where it will enhance or maintain the vitality of rural communities and that local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances. Policy CS5 of the Core Strategy and policy MD7a of the SAMDev Plan are also broadly consistent with the core planning principle of the Framework that planning should recognise the intrinsic character and beauty of the countryside.
 22. The appellants contend that having regard to the number of dwellings that have been completed in the first 9 years of the Core Strategy period (2006-2015) there is a need for a step-change in housing delivery in Shropshire and that the only way to meet the Core Strategy requirement of 27,500 dwellings is by exceeding the housing guideline figures in the SAMDev Plan and/or by allowing development in the countryside. Accordingly, it was put to me that the appeal site would contribute to meeting this requirement as a sustainable windfall site as envisaged by policy MD3 of the SAMDev Plan.
 23. Policy MD3 relates to the delivery of housing development. It indicates that in addition to the development of the allocated housing sites set out in the Settlement Policies S1-S18, planning permission will also be granted for other sustainable housing development subject to the policies of the Local Plan, particularly policies CS2, CS3, CS4, CS5, MD1 and MD7a. The policy goes on to indicate that the settlement housing guideline is a significant policy consideration, explaining the approach to be adopted where development would result in either more or less dwellings than the guideline figure. It indicates that where a settlement housing guideline appears unlikely to be met additional sites outside the settlement development boundaries that accord with the settlement policy may be acceptable subject to a number of factors.
 24. It seems to me therefore that whilst the policy does make provision for housing beyond the settlement development boundaries it is only where the settlement housing guideline appears unlikely to be met. That is not the case here. The Council indicates that at least 424 dwellings have been built or committed for development in Wem since 2006. Therefore, at this stage, with 10 years of the plan period remaining, I consider from the evidence before me that the housing guideline figure of 500 dwellings for Wem is likely to be achieved from sites within the settlement development boundary. Whilst the guideline figure is not a maximum it has been established and examined through the development plan process. Accordingly, it is afforded weight.
 25. The supporting text to policy MD3 of the SAMDev Plan indicates that a key component of the housing land supply is the allocated sites with related guidelines. It goes on to indicate that 'windfall' development on other sites is also important, both within settlements and in the countryside, including both

- brownfield and, where sustainable, greenfield sites, having due regard to the policies of the Local Plan.
26. I note the various appeal decisions referred to by the main parties which they contend provide support to their respective case in relation to the interpretation of policy MD3 of the SAMDev Plan. However, my reading of policy MD3 of the SAMDev Plan together with its supporting text lead me to the view that 'windfall' developments within the countryside need to be considered against the relevant Local Plan policies, namely policy CS5 of the Core Strategy and policy MD7a of the SAMDev Plan. In so far as the appeal proposals would essentially be for market housing they would not satisfy these policies and therefore, having regard to the policies of the Local Plan, as required by policy MD3, they would not be appropriate windfall housing developments.
27. The appellants refer to the spatial distribution of development set out in policy CS1 of the Core Strategy and contend that having regard to the level of completions since 2006 and the SAMDev Plan housing settlement guidelines and allocations there is a particularly heavily reliance on windfalls in North East Shropshire, which includes Wem, to deliver the figure of between 5,500 and 6,050 dwellings indicated in policy CS1 of the Core Strategy for this spatial zone. However, the Inspector examining the SAMDev Plan will have considered the effectiveness of the overall approach and strategy adopted in the SAMDev Plan including both the settlement housing guidelines and allocations and the reliance on windfalls to meeting the requirements of the Core Strategy, including the spatial distribution of development set out in policy CS1. It seems to me therefore that the settlement housing guidelines in the SAMDev Plan which take into account the differing pressures, opportunities and constraints in the area are the most appropriate against which to assess housing delivery. Furthermore, as indicated above I see no reason to conclude at this stage of the plan period that on the basis of existing housing delivery the housing settlement guideline for Wem will not be met or even exceeded from development within the settlement development boundary.
28. I note the appeal decision at West Felton³ referred to by the appellants in support of their case for assessing the delivery of housing within the spatial zones. The Inspector in this appeal referred to the housing targets for the five spatial zones in his consideration of the position in relation to housing land supply. However, I am mindful that this decision pre-dates the adoption of the SAMDev Plan. Furthermore, whilst I note that policy CS10 of the Core Strategy refers to the delivery of the levels of development required in each spatial zone, this is in the context of the managed release of new housing sites identified in the SAMDev Plan.
29. Drawing together all of the above therefore, the appeal proposals for market housing within the countryside, although they would contribute some affordable housing through the provisions of the UUs, would be contrary to policies CS1, CS3 and CS5 of the Core Strategy and policies S17.1, MD3 and MD7a of the SAMDev Plan. Accordingly, they would be contrary to the overall development strategy for the area.

³ APP/L3245/W/15/3003171

Character and appearance

30. The appeal sites comprise two adjoining fields on the north side of Shawbury Road to the south-east of Wem Town. Site A adjoins the property known as The Larches to the south-east, beyond which are open fields. To the north are open fields and to the north-west are two fields, the nearest of which is Site B. The field beyond Site B forms part of the site allocated for employment development in the SAMDev Plan, the edge of which now forms the development boundary of the town. Beyond the employment allocation and further to the north-west is an existing employment site which serves as a large depot for a construction company.
31. There is some sporadic housing development on Shawbury Road. However, this principally comprises a small linear group of dwellings on the southern side of the road; the northern side of the road being largely defined by open, undeveloped agricultural land. The varied field pattern and absence of built development in the area contributes to a pleasant semi-rural environment and both of the appeal sites have the physical characteristics and appearance of being open countryside to which policy CS5 of the Core Strategy applies and where all development is required to be consistent with policies CS6 and CS17 which seek to protect, conserve and enhance the natural environment and make sure that development does not have an adverse visual effect on it.
32. I appreciate that employment development on the allocated site would serve to extend built development into the open countryside in the vicinity of the appeal sites. However, it would be physically and functionally connected to the existing employment site to the north-west. In contrast the appeal proposals would be separated from the main residential built form of Wem; the raised railway embankment providing both a physical and visual barrier between the main suburban residential form of Wem and the wider countryside to the east. Although there is some residential development further north which extends eastwards across the railway line, the railway in this area does not provide the same major landscape feature as it does in the vicinity of the appeal sites.
33. Residential development on Site A alone would result in an isolated pocket of residential development largely surrounded by open countryside. This would appear as a visually intrusive form of development which would conflict with the open, undeveloped character of the wider area.
34. Residential development on Site B, either alone or in combination with site A, would extend the residential built form beyond the physical barrier formed by the railway and result in an encroachment of residential development into the open countryside.
35. Notwithstanding that the proposals are in outline form, it seems to me that, due to the quantum of the development and the depth and scale of the sites, the appeal proposals, either individually or if taken together, would fail to respect the established structure and linear pattern of the existing residential development in the area. Consequently, they would appear out of keeping with the predominantly semi-rural character of the area. I appreciate that by virtue of the adjoining employment allocation there will be some change to the established structure and pattern of development in the area. However, the appeal proposals would not relate physically or functionally to the employment development and in my view this would exacerbate their appearance as an incongruous incursion of residential development into the countryside.

36. The proposals may provide the potential to enhance the distribution of tree cover across the sites. However, I am not persuaded that this would materially reduce the visual impact of the proposals so as to mitigate the harm that would be caused to the character and appearance of the area as a result of the substantial incursion of residential development into the countryside.
37. Notwithstanding that the sites do not comprise a valued landscape, having regard to all of the above I consider that the appeal proposals on Site A and Site B either separately or taken together would have a significant detrimental impact on the character and appearance of the area. Accordingly, the proposals would conflict with Core Strategy policies CS5 and CS6 which together seek to maintain and enhance the character of the countryside and to protect, conserve and enhance the natural environment. They would also conflict with the core planning principle of the Framework that planning should take account of the different roles and character of different areas and recognise the intrinsic character and beauty of the countryside.

Other material considerations

38. As indicated above although the appellants sought to cast some doubt over whether the housing requirement in the Core Strategy would be delivered they accepted at the Hearing session that the Council could demonstrate a five year supply of deliverable housing land based on the housing requirement set out in the Core Strategy. Following their submission of the Teal Drive appeal decision the appellants did not provide any further evidence on housing land supply save to suggest that the findings of the Inspector in that decision were a material consideration in this case. The Teal Drive decision has subsequently been quashed.
39. The latest update of the Council's Five Year Housing Land Supply Statement indicates that it is able to demonstrate a 5 year supply of deliverable housing land. Accordingly, on the basis of the evidence before me I have no reason to regard the relevant policies for the supply of housing as being not up-to-date with respect to the advice at paragraph 49 of the Framework.
40. The appellants contend that irrespective of the position in relation to the five year supply of housing land having regard to the Wychavon⁴ case the presumption in favour of sustainable development exists outside of paragraph 14 of the Framework and therefore does not only apply where the development plan is absent, silent or relevant policies are out of date. However, the remarks of the judge in the Wychavon case on that matter were made in obiter and there is no requirement that a decision maker should follow them. The judgment of the Court of Appeal in the case of Suffolk Coastal District Council v Hopkins Homes Ltd and Richborough Estates Partnership LLP v Cheshire East⁵ confirmed that paragraph 14 explains how the presumption in favour of development is to be applied. It follows from this, that in the context of decision taking, the presumption does not apply unless the proposal accords with the development plan or the development plan is absent, silent, or relevant policies are out of date and the adverse impacts do not significantly

⁴ Wychavon District Council v Secretary of State for Communities and Local Government and Crown House Developments Ltd [2016] EWHC 592 (Admin)

⁵ Secretary of State for Communities and Local Government v Hopkins Homes Ltd; Richborough Estates Partnership LLP v Cheshire East BC also known as Suffolk Coastal District Council v Hopkins Homes Ltd Court of Appeal [2016] EWCA Civ 168; C1/2015/0583 and C1/2015/0894; High Court [2015] EWHC 132 (Admin); 2015 WL 376011

and demonstrably outweigh the benefits. This is supported by the approach advocated in the Cheshire East judgment⁶. As indicated above in this case I have no reason to regard the relevant policies for the supply of housing as being not up-to-date. Accordingly the presumption in favour does not apply.

Sustainable development/Planning balance

41. Paragraph 7 of the Framework sets out three dimensions of sustainable development, namely the economic, social and environmental roles. These dimensions are mutually dependent and should be jointly sought.
42. The appeal proposals, either separately or taken together, would provide some economic and social benefits. They would provide housing development which may provide some short term employment opportunities during the construction phase and then in the longer term would provide homes whose future occupants may contribute to the local economy and help support local services and facilities. They would also result in a Community Infrastructure Levy (CIL) payment to be spent locally on infrastructure in and around Wem, additional Council Tax receipts and a New Homes Bonus. The proposals would also contribute to the supply of market housing and provide affordable housing through the provisions of the UU to meet a recognised need.
43. In relation to the environmental role of sustainable development, I note the concerns of local residents regarding the limitations of the existing footway link from the sites to the edge of the town in so far as it is narrow, only partially lit and runs alongside a busy road. I also note that it is proposed to widen the footway adjacent to the bridge to improve access by utilising part of the highway verge. The Council's Highway's Officer confirmed at the Hearing session that this could be achieved and secured by a suitably worded condition. It seems to me therefore that the occupants of the proposed houses would be able to access the facilities and services in the centre of Wem, which is within a reasonable walking distance, by means other than the private car. Accordingly, as the Inspector found in the previous appeal proposal on the site which included Site A, I consider that the proposed development would be in a reasonably accessible location.
44. However, the appeal proposals on Site A and Site B either separately or taken together would result in the encroachment of residential development into the open countryside which would have a significant detrimental impact on the character and appearance of the area. This would be contrary to the core planning principle of the Framework that planning should take account of the character of different areas and recognise the intrinsic character and beauty of the countryside.
45. Taking all of the above into account therefore, I consider that the adverse impacts relating to the environmental role would be significant and are not outweighed by the benefits such that the appeal proposals, either separately or taken together, would not comprise sustainable development as defined in the Framework. Moreover, the development plan is not out of date and the conflict that I have identified with it above is not outweighed by any other material consideration.

⁶ Cheshire East BC v Secretary of State for Communities and Local Government [2016] EWHC 571 (Admin)

Other matters

46. The submitted UUs are signed, dated and certified. They include provision for affordable housing. However, given my conclusions on the appeals, there is no need for me to consider the matter of the UUs further.
47. Local residents have expressed concerns regarding problems with existing flooding in the area and the implications that the appeal proposals could have on adjacent land including their properties. It is clear from the evidence that in particular Site B and the land opposite floods during periods of heavy rain. However, the evidence indicates that such matters could be suitably mitigated through the imposition of appropriate conditions requiring the submission and approval of drainage details and, in the case of Site B, a full and detailed Flood Risk Assessment.
48. Both parties have referred to a number of other appeal decisions in support of their respective cases, some of which were allowed and others dismissed but all of these simply demonstrate the exercise of planning balance in the circumstances of each case. Each case is different and must be determined on its merits. I have also had regard to the legal judgments referred to by both the appellant and the Council in my consideration of the appeals.

Conclusion

49. To conclude therefore, both of the appeal proposals would not accord with the overall development strategy for the area as set out in the development plan and would cause significant harm to the character and appearance of the area in conflict with a number of policies of the Core Strategy as detailed above. Accordingly, they would be contrary to the development plan as a whole and would not comprise sustainable development. I have found no material considerations which would warrant making a decision other than in accordance with the development plan. Therefore, for the reasons set out above and having regard to all other matters raised, I conclude that both of the appeals should be dismissed.

Beverley Doward

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

David Richards	The Planning Group
Martin Parish FPCS MIED	The Planning group
Helen Howie MRTPI	Berrys
John Sumner I Eng AMICE	Sumner Consultancy
Theo Osmund-Smith of Counsel	

FOR THE LOCAL PLANNING AUTHORITY:

Tim Rogers	Area Planning Manager, Shropshire Council
Edward West MCD MRTPI	Principal Planning Officer, Shropshire Council
Adrian Cooper	Planning Policy Team Leader, Shropshire Council

INTERESTED PERSONS:

Richard Unwin	Acting on behalf of local residents
Angus Gregory	Local resident

DOCUMENTS SUBMITTED AT HEARING SESSION

1. Copy of judgment Suffolk Coastal District Council and Hopkins Homes Limited and Secretary of State for Communities and Local Government, Richborough Estates Partnership LLP and Cheshire East Borough Council and Secretary of State for Communities and Local Government [2016] EWCA Civ 168
2. Minutes of meeting of Wem Town Council on 27 March 2014
3. Table headed total supply – North East Spatial Zone
4. Plan titled Site Plan with flooding from surface water
5. Shropshire Council adopted Policies Map Extract for Wem Place Plan Area
6. Annotated plan titled Flood Alleviation Proposals
7. Further Shropshire Council Drainage comments in relation to planning application ref 15/00438/OUT

DOCUMENTS SUBMITTED AFTER HEARING SESSION

1. Correspondence from Shropshire Council dated 11 May 2016 relating to proof of title and terms of UUs.
2. Correspondence from appellants dated 16 May 2016 enclosing appeal decision APP/L3245/W/15/3067596.
3. Correspondence from Shropshire Council dated 31 May 2016 relating to appeal decision APP/L3245/W/15/3067596 indicating that the Council is in the process of lodging a s288 statutory challenge against the decision.
4. Correspondence from appellants dated 2 June 2016 in response to Shropshire Council's correspondence dated 31 May 2016.
5. Correspondence from Shropshire Council dated 2 June 2016 relating to appeal decision APP/L3245/W/15/3067596.
6. Correspondence from Shropshire Council dated 8 June 2016 relating to appeal decision APP/L3245/W/15/3067596 and confirming that the Council has lodged

- a s288 statutory challenge against the decision and enclosing copies of the claim form, statement of facts and grounds and a letter from the Court.
7. Correspondence from Richard Unwin dated 12 June providing comments on implications of appeal decision APP/L3245/W/15/3067596.
 8. Correspondence from Shropshire Council dated 18 July 2016 enclosing further comments on implications of appeal decision APP/L3245/W/15/3067596.
 9. Correspondence from Shropshire Council dated 4 November 2016 enclosing a copy of the Teal Drive judgment (Shropshire Council v Secretary of State for Communities and Local Government and BDW Trading Limited Trading as David Wilson Homes (Mercia) and Others [2016] EWHC 2733 (Admin).
 10. Correspondence from appellants dated 14 November 2016 in response to Teal Drive judgment and enclosing a copy of appeal decision APP/L3245/W/15/3137161.
 11. Correspondence from Richard Unwin dated 17 November 2016 in response to Teal Drive judgment.

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Appeal Decisions

Hearing held on 28 April 2016

Site visit made on 23 May 2016

by Beverley Doward BSc BTP MRTPI

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

Decision date: 2 December 2016

Appeal A Ref: APP/L3245/W/15/3138752

The Larches, Shawbury Road, Wem, Shropshire, SY4 5PF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Miss M Jones and F, S, P, H Ratcliff against Shropshire Council.
 - The application Ref 15/00431/OUT, is dated 28 January 2015.
 - The development proposed is described as "outline planning permission for residential development and access (all other matters reserved)."
-

Appeal B Ref: APP/L3245/W/15/3138755

The Larches, Shawbury Road, Wem, Shropshire, SY4 5PF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Miss M Jones and F, S, P, H Ratcliff against Shropshire Council.
 - The application Ref 15/00438/OUT, is dated 29 January 2015.
 - The development proposed is described as "outline planning permission for residential development (all matters reserved)."
-

Decisions

Appeal A Ref: APP/L3245/W/15/3138752

1. The appeal is dismissed and planning permission for residential development and access (all other matters reserved) is refused.

Appeal B Ref: APP/L3245/W/15/3138755

2. The appeal is dismissed and planning permission for residential development (all matters reserved) is refused.

Procedural Matters

3. The appeals relate to two adjoining fields on the north side of Shawbury Road to the south-east of Wem Town. Appeal A relates to the more southerly of the two fields which I will refer to as Site A. I will refer to the site in Appeal B which is the more northerly of the two fields as Site B.
4. The planning applications that led to the appeals were submitted in outline form. In relation to Site A all matters other than access were reserved for future consideration whilst in relation to Site B all matters were reserved for

future consideration. Accordingly, I have dealt with the appeals on the same basis.

5. In both cases the appeals were made on the grounds of non-determination. I have considered each proposal on its own merits. However, given that they have much in common including the same appellants and in the interests of brevity I shall deal with both appeals together. My reasoning relates to both appeals unless otherwise indicated.
6. A proposal for residential development on an area of land which included Site A was the subject of an appeal that was dismissed in May 2015¹.
7. The main Hearing session on the appeals was held on 28 April 2016. However, due to the need to obtain clarification from the Council on the submitted Unilateral Undertakings (UUs) and to return to make the site visit at a later date, the Hearing remained open. It was closed in writing on 28 June 2016.
8. At the time of submitting the appeal the appellants' position was that the Council could not demonstrate a five year supply of deliverable housing land and that therefore paragraph 49 of the National Planning Policy Framework (the Framework), which states that relevant policies for the supply of housing should not be considered up-to-date if the local authority cannot demonstrate a five year supply of deliverable housing sites, was engaged. Prior to the Hearing session the appellants withdrew their evidence on housing land supply contained within the Housing Land Supply Rebuttal and Appendices and replaced it with a Housing Land Supply and Delivery Statement and Appendices dated 2 March 2016. The appellants indicated that, in the light of the findings of Inspectors on other appeals in Shropshire they were withdrawing their challenge in relation to five year land supply.
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Main Issues

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¹ APP/L3245/W/14/3000672

² APP/L3245/W/15/3067596

- the effect of the proposed development on the character and appearance of the area; and
- whether the proposals comprise sustainable development.

Reasons

Development Strategy

12. The development plan for the area comprises the Core Strategy and the Shropshire Site Allocations and Management of Development (SAMDev) Plan adopted December 2015.
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15. Policy S17.1 of the SAMDev Plan supports policy CS3 of the Core Strategy and indicates that Wem will provide a focus for modest growth of approximately 500 dwellings and 4 hectares of employment land. The explanatory text to the policy indicates that in order to maintain its role, the town will need to accommodate balanced housing and employment development within its development boundary and on sites allocated for development.
16. Both of the appeal sites lie outside the development boundary of Wem. Accordingly, they fall to be considered as within the countryside for planning policy purposes. In such areas policy CS5 of the Core Strategy indicates that new development will be strictly controlled in accordance with national planning policies protecting the countryside. It indicates 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 benefits, particularly where they relate to certain identified types of development. The appeal proposals do not relate to any of the development types listed although the list is not exhaustive.
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19. Policy CS5 of the Core Strategy is permissive of various types of development, although as indicated above, the list of developments indicated as acceptable within the countryside is not exhaustive. However, policy MD7a of the SAMDev

- Plan further complements Core Strategy policy CS5 and is clear in indicating that new market housing will be strictly controlled within the countryside.
20. The SAMDev Plan has been found to be sound. Therefore, I am satisfied that the approach adopted within policy MD7A of the SAMDev Plan with regard to development within the countryside should be considered consistent with national policy as too should policy CS5 of the Core Strategy which it complements.
 21. The Core Strategy policies and the policies of the SAMDev Plan referred to above are broadly consistent with the Framework, specifically the advice contained at paragraph 55 that to promote sustainable development in rural areas housing should be located where it will enhance or maintain the vitality of rural communities and that local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances. Policy CS5 of the Core Strategy and policy MD7a of the SAMDev Plan are also broadly consistent with the core planning principle of the Framework that planning should recognise the intrinsic character and beauty of the countryside.
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 23. Policy MD3 relates to the delivery of housing development. It indicates that in addition to the development of the allocated housing sites set out in the Settlement Policies S1-S18, planning permission will also be granted for other sustainable housing development subject to the policies of the Local Plan, particularly policies CS2, CS3, CS4, CS5, MD1 and MD7a. The policy goes on to indicate that the settlement housing guideline is a significant policy consideration, explaining the approach to be adopted where development would result in either more or less dwellings than the guideline figure. It indicates that where a settlement housing guideline appears unlikely to be met additional sites outside the settlement development boundaries that accord with the settlement policy may be acceptable subject to a number of factors.
 24. It seems to me therefore that whilst the policy does make provision for housing beyond the settlement development boundaries it is only where the settlement housing guideline appears unlikely to be met. That is not the case here. The Council indicates that at least 424 dwellings have been built or committed for development in Wem since 2006. Therefore, at this stage, with 10 years of the plan period remaining, I consider from the evidence before me that the housing guideline figure of 500 dwellings for Wem is likely to be achieved from sites within the settlement development boundary. Whilst the guideline figure is not a maximum it has been established and examined through the development plan process. Accordingly, it is afforded weight.
 25. The supporting text to policy MD3 of the SAMDev Plan indicates that a key component of the housing land supply is the allocated sites with related guidelines. It goes on to indicate that 'windfall' development on other sites is also important, both within settlements and in the countryside, including both

- brownfield and, where sustainable, greenfield sites, having due regard to the policies of the Local Plan.
26. I note the various appeal decisions referred to by the main parties which they contend provide support to their respective case in relation to the interpretation of policy MD3 of the SAMDev Plan. However, my reading of policy MD3 of the SAMDev Plan together with its supporting text lead me to the view that 'windfall' developments within the countryside need to be considered against the relevant Local Plan policies, namely policy CS5 of the Core Strategy and policy MD7a of the SAMDev Plan. In so far as the appeal proposals would essentially be for market housing they would not satisfy these policies and therefore, having regard to the policies of the Local Plan, as required by policy MD3, they would not be appropriate windfall housing developments.
27. The appellants refer to the spatial distribution of development set out in policy CS1 of the Core Strategy and contend that having regard to the level of completions since 2006 and the SAMDev Plan housing settlement guidelines and allocations there is a particularly heavily reliance on windfalls in North East Shropshire, which includes Wem, to deliver the figure of between 5,500 and 6,050 dwellings indicated in policy CS1 of the Core Strategy for this spatial zone. However, the Inspector examining the SAMDev Plan will have considered the effectiveness of the overall approach and strategy adopted in the SAMDev Plan including both the settlement housing guidelines and allocations and the reliance on windfalls to meeting the requirements of the Core Strategy, including the spatial distribution of development set out in policy CS1. It seems to me therefore that the settlement housing guidelines in the SAMDev Plan which take into account the differing pressures, opportunities and constraints in the area are the most appropriate against which to assess housing delivery. Furthermore, as indicated above I see no reason to conclude at this stage of the plan period that on the basis of existing housing delivery the housing settlement guideline for Wem will not be met or even exceeded from development within the settlement development boundary.
28. I note the appeal decision at West Felton³ referred to by the appellants in support of their case for assessing the delivery of housing within the spatial zones. The Inspector in this appeal referred to the housing targets for the five spatial zones in his consideration of the position in relation to housing land supply. However, I am mindful that this decision pre-dates the adoption of the SAMDev Plan. Furthermore, whilst I note that policy CS10 of the Core Strategy refers to the delivery of the levels of development required in each spatial zone, this is in the context of the managed release of new housing sites identified in the SAMDev Plan.
29. Drawing together all of the above therefore, the appeal proposals for market housing within the countryside, although they would contribute some affordable housing through the provisions of the UUs, would be contrary to policies CS1, CS3 and CS5 of the Core Strategy and policies S17.1, MD3 and MD7a of the SAMDev Plan. Accordingly, they would be contrary to the overall development strategy for the area.

³ APP/L3245/W/15/3003171

Character and appearance

30. The appeal sites comprise two adjoining fields on the north side of Shawbury Road to the south-east of Wem Town. Site A adjoins the property known as The Larches to the south-east, beyond which are open fields. To the north are open fields and to the north-west are two fields, the nearest of which is Site B. The field beyond Site B forms part of the site allocated for employment development in the SAMDev Plan, the edge of which now forms the development boundary of the town. Beyond the employment allocation and further to the north-west is an existing employment site which serves as a large depot for a construction company.
31. There is some sporadic housing development on Shawbury Road. However, this principally comprises a small linear group of dwellings on the southern side of the road; the northern side of the road being largely defined by open, undeveloped agricultural land. The varied field pattern and absence of built development in the area contributes to a pleasant semi-rural environment and both of the appeal sites have the physical characteristics and appearance of being open countryside to which policy CS5 of the Core Strategy applies and where all development is required to be consistent with policies CS6 and CS17 which seek to protect, conserve and enhance the natural environment and make sure that development does not have an adverse visual effect on it.
32. I appreciate that employment development on the allocated site would serve to extend built development into the open countryside in the vicinity of the appeal sites. However, it would be physically and functionally connected to the existing employment site to the north-west. In contrast the appeal proposals would be separated from the main residential built form of Wem; the raised railway embankment providing both a physical and visual barrier between the main suburban residential form of Wem and the wider countryside to the east. Although there is some residential development further north which extends eastwards across the railway line, the railway in this area does not provide the same major landscape feature as it does in the vicinity of the appeal sites.
33. Residential development on Site A alone would result in an isolated pocket of residential development largely surrounded by open countryside. This would appear as a visually intrusive form of development which would conflict with the open, undeveloped character of the wider area.
34. Residential development on Site B, either alone or in combination with site A, would extend the residential built form beyond the physical barrier formed by the railway and result in an encroachment of residential development into the open countryside.
35. Notwithstanding that the proposals are in outline form, it seems to me that, due to the quantum of the development and the depth and scale of the sites, the appeal proposals, either individually or if taken together, would fail to respect the established structure and linear pattern of the existing residential development in the area. Consequently, they would appear out of keeping with the predominantly semi-rural character of the area. I appreciate that by virtue of the adjoining employment allocation there will be some change to the established structure and pattern of development in the area. However, the appeal proposals would not relate physically or functionally to the employment development and in my view this would exacerbate their appearance as an incongruous incursion of residential development into the countryside.

36. The proposals may provide the potential to enhance the distribution of tree cover across the sites. However, I am not persuaded that this would materially reduce the visual impact of the proposals so as to mitigate the harm that would be caused to the character and appearance of the area as a result of the substantial incursion of residential development into the countryside.
37. Notwithstanding that the sites do not comprise a valued landscape, having regard to all of the above I consider that the appeal proposals on Site A and Site B either separately or taken together would have a significant detrimental impact on the character and appearance of the area. Accordingly, the proposals would conflict with Core Strategy policies CS5 and CS6 which together seek to maintain and enhance the character of the countryside and to protect, conserve and enhance the natural environment. They would also conflict with the core planning principle of the Framework that planning should take account of the different roles and character of different areas and recognise the intrinsic character and beauty of the countryside.

Other material considerations

38. As indicated above although the appellants sought to cast some doubt over whether the housing requirement in the Core Strategy would be delivered they accepted at the Hearing session that the Council could demonstrate a five year supply of deliverable housing land based on the housing requirement set out in the Core Strategy. Following their submission of the Teal Drive appeal decision the appellants did not provide any further evidence on housing land supply save to suggest that the findings of the Inspector in that decision were a material consideration in this case. The Teal Drive decision has subsequently been quashed.
39. The latest update of the Council's Five Year Housing Land Supply Statement indicates that it is able to demonstrate a 5 year supply of deliverable housing land. Accordingly, on the basis of the evidence before me I have no reason to regard the relevant policies for the supply of housing as being not up-to-date with respect to the advice at paragraph 49 of the Framework.
40. The appellants contend that irrespective of the position in relation to the five year supply of housing land having regard to the Wychavon⁴ case the presumption in favour of sustainable development exists outside of paragraph 14 of the Framework and therefore does not only apply where the development plan is absent, silent or relevant policies are out of date. However, the remarks of the judge in the Wychavon case on that matter were made in obiter and there is no requirement that a decision maker should follow them. The judgment of the Court of Appeal in the case of Suffolk Coastal District Council v Hopkins Homes Ltd and Richborough Estates Partnership LLP v Cheshire East⁵ confirmed that paragraph 14 explains how the presumption in favour of development is to be applied. It follows from this, that in the context of decision taking, the presumption does not apply unless the proposal accords with the development plan or the development plan is absent, silent, or relevant policies are out of date and the adverse impacts do not significantly

⁴ Wychavon District Council v Secretary of State for Communities and Local Government and Crown House Developments Ltd [2016] EWHC 592 (Admin)

⁵ Secretary of State for Communities and Local Government v Hopkins Homes Ltd; Richborough Estates Partnership LLP v Cheshire East BC also known as Suffolk Coastal District Council v Hopkins Homes Ltd Court of Appeal [2016] EWCA Civ 168; C1/2015/0583 and C1/2015/0894; High Court [2015] EWHC 132 (Admin); 2015 WL 376011

and demonstrably outweigh the benefits. This is supported by the approach advocated in the Cheshire East judgment⁶. As indicated above in this case I have no reason to regard the relevant policies for the supply of housing as being not up-to-date. Accordingly the presumption in favour does not apply.

Sustainable development/Planning balance

41. Paragraph 7 of the Framework sets out three dimensions of sustainable development, namely the economic, social and environmental roles. These dimensions are mutually dependent and should be jointly sought.
42. The appeal proposals, either separately or taken together, would provide some economic and social benefits. They would provide housing development which may provide some short term employment opportunities during the construction phase and then in the longer term would provide homes whose future occupants may contribute to the local economy and help support local services and facilities. They would also result in a Community Infrastructure Levy (CIL) payment to be spent locally on infrastructure in and around Wem, additional Council Tax receipts and a New Homes Bonus. The proposals would also contribute to the supply of market housing and provide affordable housing through the provisions of the UU to meet a recognised need.
43. In relation to the environmental role of sustainable development, I note the concerns of local residents regarding the limitations of the existing footway link from the sites to the edge of the town in so far as it is narrow, only partially lit and runs alongside a busy road. I also note that it is proposed to widen the footway adjacent to the bridge to improve access by utilising part of the highway verge. The Council's Highway's Officer confirmed at the Hearing session that this could be achieved and secured by a suitably worded condition. It seems to me therefore that the occupants of the proposed houses would be able to access the facilities and services in the centre of Wem, which is within a reasonable walking distance, by means other than the private car. Accordingly, as the Inspector found in the previous appeal proposal on the site which included Site A, I consider that the proposed development would be in a reasonably accessible location.
44. However, the appeal proposals on Site A and Site B either separately or taken together would result in the encroachment of residential development into the open countryside which would have a significant detrimental impact on the character and appearance of the area. This would be contrary to the core planning principle of the Framework that planning should take account of the character of different areas and recognise the intrinsic character and beauty of the countryside.
45. Taking all of the above into account therefore, I consider that the adverse impacts relating to the environmental role would be significant and are not outweighed by the benefits such that the appeal proposals, either separately or taken together, would not comprise sustainable development as defined in the Framework. Moreover, the development plan is not out of date and the conflict that I have identified with it above is not outweighed by any other material consideration.

⁶ Cheshire East BC v Secretary of State for Communities and Local Government [2016] EWHC 571 (Admin)

Other matters

46. The submitted UUs are signed, dated and certified. They include provision for affordable housing. However, given my conclusions on the appeals, there is no need for me to consider the matter of the UUs further.
47. Local residents have expressed concerns regarding problems with existing flooding in the area and the implications that the appeal proposals could have on adjacent land including their properties. It is clear from the evidence that in particular Site B and the land opposite floods during periods of heavy rain. However, the evidence indicates that such matters could be suitably mitigated through the imposition of appropriate conditions requiring the submission and approval of drainage details and, in the case of Site B, a full and detailed Flood Risk Assessment.
48. Both parties have referred to a number of other appeal decisions in support of their respective cases, some of which were allowed and others dismissed but all of these simply demonstrate the exercise of planning balance in the circumstances of each case. Each case is different and must be determined on its merits. I have also had regard to the legal judgments referred to by both the appellant and the Council in my consideration of the appeals.

Conclusion

49. To conclude therefore, both of the appeal proposals would not accord with the overall development strategy for the area as set out in the development plan and would cause significant harm to the character and appearance of the area in conflict with a number of policies of the Core Strategy as detailed above. Accordingly, they would be contrary to the development plan as a whole and would not comprise sustainable development. I have found no material considerations which would warrant making a decision other than in accordance with the development plan. Therefore, for the reasons set out above and having regard to all other matters raised, I conclude that both of the appeals should be dismissed.

Beverley Doward

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

David Richards	The Planning Group
Martin Parish FPCS MIED	The Planning group
Helen Howie MRTPI	Berrys
John Sumner I Eng AMICE	Sumner Consultancy
Theo Osmund-Smith of Counsel	

FOR THE LOCAL PLANNING AUTHORITY:

Tim Rogers	Area Planning Manager, Shropshire Council
Edward West MCD MRTPI	Principal Planning Officer, Shropshire Council
Adrian Cooper	Planning Policy Team Leader, Shropshire Council

INTERESTED PERSONS:

Richard Unwin	Acting on behalf of local residents
Angus Gregory	Local resident

DOCUMENTS SUBMITTED AT HEARING SESSION

1. Copy of judgment Suffolk Coastal District Council and Hopkins Homes Limited and Secretary of State for Communities and Local Government, Richborough Estates Partnership LLP and Cheshire East Borough Council and Secretary of State for Communities and Local Government [2016] EWCA Civ 168
2. Minutes of meeting of Wem Town Council on 27 March 2014
3. Table headed total supply – North East Spatial Zone
4. Plan titled Site Plan with flooding from surface water
5. Shropshire Council adopted Policies Map Extract for Wem Place Plan Area
6. Annotated plan titled Flood Alleviation Proposals
7. Further Shropshire Council Drainage comments in relation to planning application ref 15/00438/OUT

DOCUMENTS SUBMITTED AFTER HEARING SESSION

1. Correspondence from Shropshire Council dated 11 May 2016 relating to proof of title and terms of UUs.
2. Correspondence from appellants dated 16 May 2016 enclosing appeal decision APP/L3245/W/15/3067596.
3. Correspondence from Shropshire Council dated 31 May 2016 relating to appeal decision APP/L3245/W/15/3067596 indicating that the Council is in the process of lodging a s288 statutory challenge against the decision.
4. Correspondence from appellants dated 2 June 2016 in response to Shropshire Council's correspondence dated 31 May 2016.
5. Correspondence from Shropshire Council dated 2 June 2016 relating to appeal decision APP/L3245/W/15/3067596.
6. Correspondence from Shropshire Council dated 8 June 2016 relating to appeal decision APP/L3245/W/15/3067596 and confirming that the Council has lodged

- a s288 statutory challenge against the decision and enclosing copies of the claim form, statement of facts and grounds and a letter from the Court.
7. Correspondence from Richard Unwin dated 12 June providing comments on implications of appeal decision APP/L3245/W/15/3067596.
 8. Correspondence from Shropshire Council dated 18 July 2016 enclosing further comments on implications of appeal decision APP/L3245/W/15/3067596.
 9. Correspondence from Shropshire Council dated 4 November 2016 enclosing a copy of the Teal Drive judgment (Shropshire Council v Secretary of State for Communities and Local Government and BDW Trading Limited Trading as David Wilson Homes (Mercia) and Others [2016] EWHC 2733 (Admin).
 10. Correspondence from appellants dated 14 November 2016 in response to Teal Drive judgment and enclosing a copy of appeal decision APP/L3245/W/15/3137161.
 11. Correspondence from Richard Unwin dated 17 November 2016 in response to Teal Drive judgment.

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Appeal Decision

Site visit made on 1 November 2016

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

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

Decision date: 9 December 2016

Appeal Ref: APP/L3245/W/16/3151042

Land off Rose Hill Road, Stoke Heath, Shropshire TF9 2LF

- 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 Mr & Mrs David and Helen Ward of DAW Construction against the decision of Shropshire Council.
 - The application Ref 14/03216/OUT, dated 16 July 2014, was refused by notice dated 29 March 2016.
 - The development proposed is 3 dwellings with private access.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The scheme is in outline with all matters reserved except for access. I have dealt with the appeal on this basis, treating the sketch layout that shows the access to the highway as indicative insofar as it relates to the layout, appearance and scale of the dwellings and landscaping.

Main Issue

3. The main issue is the effect of the proposed development on the character and appearance of the area.

Reasons

4. The appeal site comprises a field/paddock adjacent to the junction of Rose Hill Road and Sandy Lane. There is no dispute between the parties that the site is within the settlement of Stoke Heath. This settlement is characterised by dispersed ribbon development which gives a clear linear pattern of development with the majority of dwellings directly facing the highway. There is a variety of age and form from traditional 2-storey dwellings to modern bungalows the majority of which are set in generous landscaped plots. These features give the area an open and spacious character and appearance. Furthermore, the spaciousness is further enhanced by areas of open land that are interspersed between the dwellings and emphasise the rural character of the area.
5. Policy CS4 of the Shropshire Core Strategy (the CS) indicates that in the rural area, communities will become more sustainable by, amongst other things, focusing investment into Community Hubs and Community Clusters providing that it is of a scale and design that is sympathetic to the character of the settlement and its environs, and satisfies policy CS6. There is no dispute between the parties that Stoke Heath is a Community Hub.

6. CS Policy CS5 is referred to in the reason for refusal on the Council's decision notice. However, as CS Policy CS6 is referred to in CS Policy CS4 and consequently, is relevant to this appeal I taken this to be a typographical error. CS Policy CS6 requires, amongst other things, all development to be appropriate in scale density, pattern and design taking into account the local context and character.
7. Policy S11.2(vi) of the Sites Allocations and Management of Development Plan (SAMDev) indicates that Stoke Heath will provide for a limited amount of growth of about 20-25 new dwellings over the period to 2026. An allocated site for 20 -25 dwellings is identified as part of this policy but it does allow for limited infilling, groups of houses and conversions on suitable sites in the Community Hub. As the proposal would be a group of houses within the Community Hub it would comply with this policy.
8. The indicative plan shows a development of detached housing with a built footprint covering the majority of the site and an access point from Rose Hill Road. I note the appellants' point that the proposed site plan is indicative of one layout of how 3 dwellings could be accommodated on the site and that they are not tied to that layout as all matters are reserved for later approval (except for access). However, given the access point, I consider that the density and site coverage shown on the drawings before me is representative of how a scheme of 3 dwellings could be accommodated on the site.
9. It would be unlikely given the access point that all or some of the dwellings would front onto Sandy Lane. The layout as shown with Plots 1 and 2 set well back from the road behind Plot 3 would be at odds with the predominant pattern of development in which dwellings are arranged in a linear way and directly face the highway. Moreover, this layout would create a more closely spaced pattern of development than that, which predominates in this part of the settlement. If 3 dwellings were to be positioned all fronting Rose Hill Road, utilising the access as shown, the proposal would also create a more closely spaced pattern of development than that, which predominates in this part of the settlement.
10. I acknowledge that the Council's Officer Report states that the continuation of development along Sandy Lane and along the road frontage with Rose Hill Road would not be out of keeping with the character of the area. However, the proposed development with the indicative layout or another layout for 3 dwellings would not be consistent with the established pattern of building in the area. The proposal would substantially alter the appearance of the site and its immediate surroundings, eroding its open aspect and giving the area a more built up appearance. The proposal would thus detract from the spacious, rural character of the locality.
11. I acknowledge that the dwellings would be partially screened by the existing boundary hedges and landscaping. Nonetheless, there would be some visibility of the dwellings in the surrounding countryside through glimpsed views from both Rose Hill Road and Sandy Lane, particularly in winter months when foliage is sparser.
12. As such the development would result in significant harm to the character and appearance of the area. Consequently the proposal would be contrary to CS Policies CS4 and CS6 which, amongst other things require development that is sympathetic and appropriate to the local context and character.

Other Matters

13. The appellants have referred to a recent appeal decision¹ in relation to the Council's 5 year housing land supply and whether its policies that relate to housing supply are out-of-date. The Council lodged a legal challenge to that decision and it has subsequently been quashed in the High Court.² I have no other evidence before me that the Council is unable to demonstrate a 5 year housing land supply and have, therefore, considered the appeal on the basis that it is able to do so in accordance with the Council's evidence.
14. In terms of the three dimensions to sustainability set out in paragraph 7 of the Framework, the proposal would make a limited contribution to the local economy including the provision of construction jobs, some additional local spend and New Homes Bonus and community charge receipts. I acknowledge that there would be sustainability benefits associated with the proposal. Both parties agree that the appeal site is in a sustainable location.
15. However, I have found that the proposal would result in significant harm to the character and appearance of the area. As such it would not accord with the environmental dimension of sustainable development. Given that the 3 roles of sustainability are mutually dependent and should not be undertaken in isolation, I conclude that the proposal would not comprise sustainable development.
16. The harm that would be caused to the character and appearance of the area also leads me to conclude that the proposal would conflict with the development plan. In accordance with S38(6) of the Planning and Compensation Act 2004, and as set out in paragraph 12 of the Framework, development which conflicts with the development plan should be refused unless other material considerations indicate otherwise. In this case there are no material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
17. Even if the Council were unable to demonstrate a 5 year housing land supply, the adverse impacts which would be caused by the proposal would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole. The proposal would still therefore fail.

Conclusion

18. For these reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

D. Boffin

INSPECTOR

¹ APP/L3245/W/15/3067596

² Shropshire Council V SSCLG [2016] EWHC 2733 (Admin)

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Appeal Decision

Hearing held on 29 June and 12 October 2016

Site visit made on 29 June 2016

by Nigel Harrison BA (Hons) MRTPI

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

Decision date: 9 December 2016

Appeal Ref: APP/L3245/W/16/3143516

Land off A525 Newcastle Road, Woore, Shropshire

- 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 Berrys against the decision of Shropshire Council.
 - The application Ref: 14/05206/OUT dated 18 November 2014, was refused by notice dated 29 July 2015.
 - The development proposed is an outline application for the erection of up to 54 dwellings to include means of access.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made in outline with approval sought for the means of access at this stage. Layout, appearance, landscaping and scale are reserved matters. An indicative site layout plan has been submitted which I shall treat as being for illustrative purposes only.
3. The Hearing was adjourned to allow the parties to comment on the Council's *Full Objectively Assessed Housing Need Report* (FOAN) published on 6 July 2016. The appellant has provided a full written rebuttal in response to the FOAN, and the Council has submitted a response to that rebuttal.
4. The Council's 3rd reason for refusal says the proposal conflicts with adopted policy in that no Section 106 Agreement had been submitted in relation to the provision of affordable housing and public open space. However, a signed and dated Section 106 Agreement was submitted at the Hearing, the Council no longer wishes to defend this reason for refusal.

Main Issues

5. I consider the main issues in this case are:
 - Whether the appeal site would be a suitable location for the development proposed with particular reference to the housing strategy for the area;
 - The effect of the proposed development on the character and appearance of the countryside;
 - The effect of the proposed development on the site's ecological interest;

- Whether the Council can demonstrate a 5 year supply of housing land to meet a full objectively assessed housing need; and
- Whether the proposal would be consistent with the principles of sustainable development.

Reasons

Suitability of the site: Housing strategy for the area

6. At the heart of National Policy as stated in paragraph 14 of the *National Planning Policy Framework* (the Framework), is a presumption in favour of sustainable development. For decision making this means: 'Approving proposals which accord with the development plan without delay; and: Where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole'.
7. Notwithstanding the general presumption in favour of sustainable development Paragraph 2 of the Framework reiterates the statutory position that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
8. The development plan comprises the *Shropshire Local Development Framework Adopted Core Strategy* (CS), March 2011, and the *Shropshire Council Site Allocations and Management of Development Plan* (SAMDev). This forms the second part of the development plan and was adopted in December 2015 after the date of the decision. It replaces the 'saved' policies of the former *North Shropshire Local Plan* (NSLP). Although the appeal site was outside the development boundary of Woore in the NSLP, no development boundary for Woore has been defined in the SAMDev Plan.
9. CS Policy CS1 sets out the strategic approach to development in the county to meet its needs and make its settlements more sustainable by delivering about 27,500 new homes in the Plan period (2006-2026). It steers the majority of new housing development to Shrewsbury, the market towns and other key centres. In the rural areas development will be concentrated in settlements defined as Community Hubs or Community Clusters. These will accommodate around 35% the county's residential development over the plan period. It is augmented by SAMDev Policy MD1 which concerns the scale and distribution of development.
10. CS Policy CS4 states that in the rural areas, communities will become more sustainable by focusing development in the designated community hubs and clusters and not allowing development outside these settlements unless it meets CS Policy CS5. This policy seeks to ensure that all development in community hubs and clusters is of a scale and design that is sympathetic to the character of the settlement and its environs, and satisfies CS Policy CS6. Paragraph 4.69 of the supporting text to CS4 makes it clear that development in community hubs and clusters will be within the village, or on land that has been specifically allocated for development. To prevent fragmented development it adds that windfall development outside the village is not acceptable unless it is an exception site for affordable housing or other development allowed under CS5.

11. Within this strategy for sustainable development the Council says the appeal site should be regarded being within open countryside, where CS Policy CS5 applies. This policy seeks to strictly control new development in the countryside and limits new housing development to that which needs to be located there, including dwellings for agricultural workers, affordable housing to meet local needs, and the conversion of rural buildings. CS5 is augmented by SAMDev Policy MD7a which has similar aims in seeking to manage housing development in the countryside. The Council says the proposal for principally open market housing would not meet any of the permitted exceptions, although the appellant considers Policy CS5 to be of a permissive nature in that the exceptions are not an exhaustive list and do not solely restrict housing development to the specified categories.
12. Furthermore, the appellant suggests that the site is not in open countryside for the purposes of Policy CS5, given that the policy pre-dates the Framework. Nonetheless, I find it broadly consistent with the core principle of the Framework that planning should recognise the intrinsic character and beauty of the countryside. Even though the site adjoins built-up development on its western edge, it is a large open field with a very different character to the urban area, and to my mind clearly forms part of the open countryside on the eastern side of the village. I am therefore satisfied that the site should be regarded as countryside to which Policies CS5 and MD7a apply. When read together as part of the overall strategy, they clearly do not support the continued development of the village with predominantly open market housing.
13. Returning to Policy CS4, Woore is identified as being part of a Woore, Irelands Cross and Pipe Gate Community Hub, and the amount of new housing development envisaged the hub is set out in SAMDev Policy S11.2. Although no specific sites are identified in Woore it says there is limited potential for development of approximately 15 dwellings over the plan period to 2026. This will be delivered through limited infilling, conversions and small groups of houses which may be suitable on certain sites within the villages, avoiding ribbon development along the A51. It adds that any development must respect the sensitive gap between the settlements to prevent coalescence.
14. The appellant questions the basis on which the options for growth in the Woore Community Hub were assessed and says the plan-making process was flawed because 'reasonable alternatives' involving higher levels of development and different options for delivering housing were not considered as part of a sustainability appraisal process. The appellant 15 dwellings is a very low and constraining figure, particularly given the community services and facilities available in the village, and suggests that 95 dwellings over the plan period would be more appropriate, based on Shropshire's annual growth rate of 1%.
15. However, I note that as part of the SAMDev Plan process, a higher figure was considered by the Council and community, but was not taken forward because Woore experienced very significant housing growth during the plan period of the former NSLP, with housing development on two sites alone providing some 75 homes. This view was supported by the SAMDev Plan Examining Inspector. She noted that whilst there are other housing sites which are still being promoted as preferred sites during the examination; in accordance with the strategy founded on the principles of localism, community preference has been a key determining factor in site selection.

16. The Council's statement of case makes it clear that the sustainability of Woore is not in question, as it has been identified as being part of a community hub capable of accommodating some additional (albeit modest) growth in the SAMDev Plan. The appellant contends that the scale of development proposed will help maintain existing facilities and services but does not seek to provide any evidence that these services and facilities need additional support. However, as noted previously Woore has experienced large scale housing provision during the previous plan period, and the SAMDev guideline figure was set to ensure that that future development was of proportionate to the size of the village and the facilities and services which it offers.
17. In addition to supporting the development of the allocated sites and housing guidelines set out in the settlement policies S1-S18, Policy MD3 says planning permission will also be granted for other sustainable housing development. However, it does not give unqualified support for windfall development outside the settlements, but says it must have regard to other policies of the Local Plan, particularly CS2, CS3, CS4, CS5, MD1 and MD7a. Therefore, in my view, for a proposed development to be considered acceptable under this policy, the decision maker has to give consideration to the degree of consistency or conflict it would have with other Local Plan policies.
18. The appellant submits that the site designations in community hubs and clusters provide insufficient capacity to meet the level of development proposed in the rural areas. The SAMDev Examining Inspector commented on the heavy reliance on windfall sites to deliver this figure, but found the Council's expectation that 35% of the overall housing requirement (10,000 dwellings) will be provided in rural areas was realistic given the past record of completions. She concluded that the Council's approach of relying more on windfall development rather than specific site allocations in the hubs and clusters to be consistent with the higher proportion of windfall sites needed in the rural areas. Overall, the Inspector found the SAMDev plan to be sound, and I must consider the proposal in the light of the policies of this recently adopted plan.
19. I have concluded that the appeal site lies within the countryside for planning policy purposes. The proposed development does not fall within any of the exceptions permitted by CS Policy CS5/SAMDev Policy MD7a, and therefore conflicts with these policies. It also conflicts with CS Policy CS4 which presumes against development outside the designated community hubs and clusters unless the exceptions within Policy CS5 can be satisfied.
20. The scale of the development proposed (54 dwellings), is well in excess of the housing 'target figure' for the Woore, Irelands Cross and Pipe Gate Community Hub for the whole plan period, and as such the proposal conflicts with SAMDev Policy S11.2. Furthermore, the proposal would not support the strategic aims and the scale and distribution of development required by CS Policy CS1 and SAMDev Policy MD1. Nor, given the extent of conflict with the various policies cross-referenced in SAMDev Policy MD3, would the proposal receive any support from that direction in terms of representing an acceptable form of windfall development.
21. Accordingly, drawing together all the above, I conclude on this issue that the proposal would not be a suitable location for the development proposed having regard to its conflict with the development strategy for the area.

Effect on the character and appearance of the countryside

22. The application site comprises a large field to the east of the village of Woore, adjoined by open countryside to the north, east and south (on the opposite side of the A525 Newcastle Road). There is some sporadic development along the A525 leading outwards from the village, but the area has nonetheless maintains a rural character and appearance.
23. Although no Landscape and Visual Impact Analysis (LVIA) was carried out, the appellant suggests that views of the site are limited, and that the natural steep slope of the land aids screening of the site, with the hedgerow boundaries forming clear delineated boundaries which contain it. As such, it is put to me that the proposed development would not lead to an inappropriate incursion into open countryside.
24. I find it difficult to accept this line of reasoning however. The local topography would mean that any development on the site would be clearly visible on the eastern approach to Woore along the A525 and from other more distant public viewpoints including Gravenhunger Moss to the east. To my mind the proposed development would fundamentally and detrimentally change the character and appearance of the rural setting of the village and the wider surrounding countryside. Nor am I persuaded that this harm would be materially reduced by additional new planting in either the short or long term.
25. I appreciate that the appeal site and the adjoining countryside is protected by no particular landscape quality designation. However, whilst it may not be 'classic' countryside, being on the edge of Woore, its visual character is still overwhelmingly open and predominantly rural. Consequently, I consider the proposed development would result in harmful encroachment into the countryside. I do not agree with the appellant that it would represent a logical rounding-off of this part of the village as the as the existing housing to the west already gives a strong edge to built development in this part of the village. On the contrary' it would extend the built form of the village into the open countryside and in my view the rural character of the eastern approaches to the village would be irrevocably changed through the loss of this open land.
26. Part of the appellant's case is that at reserved matters stage careful consideration will be given to the scale, layout and design of the development to ensure that it is in keeping with the built form of the village and the character of the surrounding area. However, whilst the location and relatively low density might indicate the type of scheme which might follow, I am unconvinced how this could be secured through any application for approval of reserved matters.
27. Overall on this issue I conclude that the proposal would have a detrimental effect on the character and appearance of the surrounding countryside. In this respect it would conflict with CS Policies CS5 and CS6 which together seek to maintain and enhance the character of the countryside and to protect, conserve and enhance the natural environment.

Effect on the ecological interest of the site

28. Amongst other matters, CS Policy CS17 requires a development not to have a significant adverse impact on environmental assets or create barriers or sever links between dependant sites. The appeal site is a habitat for bats (it is an

extensive resource for foraging and commuting bats within the vegetated boundaries), nesting birds, and badgers (there is an extensive main breeding badger sett within 20m of the northern boundary of the site and others close to the northern boundary hedgerow). The Council is satisfied that the mitigation measures identified in the Extended Phase 1 Report¹ will ensure that the proposed development would not materially harm the site's ecology insofar as these species are concerned and I find no reason to disagree.

29. However, the Council's second reason for refusal states that the proposal has the potential to impact on great crested newts, listed as a European Protected Species (EPS) in Schedule 2 of *the Conservation of Habitats and Species Regulations 2010* (Annex 4 to the Habitats Directive). It is an offence to deliberately disturb an EPS wherever it occurs; to cause disturbance likely to impair its ability to survive, breed or reproduce; or significantly affect the local distribution or abundance of the species.
30. A survey² was completed in June 2015 and confirmed the presence of a small population of great crested newts within ponds 1 and 4 to the south-west of the site and a medium presence was also confirmed in pond 8, which has good connectivity with the site via a drainage ditch. The appeal site provides a suitable terrestrial habitat for the species for foraging and hibernating, and forms part of the interconnecting habitat between breeding ponds in the area.
31. The survey sets out a number of mitigation measures including exclusion fencing and pitfall traps (during development works) in accordance with standard recommended guidance. It also suggests that the proposed area of public open space would be a 'good terrestrial habitat', and that a pond should be formed in this area. The inclusion of other terrestrial opportunities is recommended as part of the scheme, including new hedgerows and an earth embankment surrounded by rough grassland on the north side of the pond.
32. The proposed development would involve considerable ground works over an extended period of time, and is therefore likely to result in disturbance and significant risk to the population of great crested newts. Accordingly, an EPS development licence would be required to allow the development to progress lawfully. Regulation 9(3) of the *Regulations* places a duty on me, as the competent authority to have regard to the requirements of the Habitats Directive. Where it considers the proposal might cause harm to an EPS, three tests in the Habitats Directive have to be considered. Firstly, the development needs to be in the interests of public health and public safety, or for imperative reasons of overriding public interest including those of a social or economic nature; secondly there must be no satisfactory alternative; and thirdly, that the action authorised by the licence will not be detrimental to maintaining the population of the species at a favourable conservation status.
33. The Council is satisfied that the proposed mitigation measures would be acceptable and would not be detrimental to the maintenance of the great crested newt population. I see no reason to take a contrary view and that the third test would be met.
34. However, I cannot be satisfied in relation to the other tests that there would be a reasonable prospect of a licence being granted to allow the development to

¹ Pearce Environmental Extended Phase 1 Report January 2015

² Pearce Environmental Extended Phase 1 and Phase 2 Great Crested Newt Survey Report June 2015

progress lawfully so as not to cause significant harm to the EPS. The appeal proposal would not meet the purpose of public health or public safety. Although there would be some public benefits arising from the provision of new housing, it will be seen from my conclusion on the other main issues and overall planning balance that I have found that the site is unsuitable for residential development for other reasons, and as such I cannot apportion significant weight to this benefit when weighed against the harm to the EPS. For the same reasons there are other alternatives to the development of housing on this site. As such, the proposal would fail to meet the first and second tests and would conflict with the requirements of the *Regulations*, CS Policy CS17, and Government policy as set out in paragraphs 118 and 119 of the Framework.

Housing land supply and full objectively assessed housing need

35. In order to boost significantly the supply of housing the appellant has drawn my attention to paragraph 47 of the Framework. This indicates that the Council should use an evidence base to plan to meet the full objectively assessed housing needs (FOAN) for open market and affordable housing. The identification of a FOAN is a pre-requisite step for identifying whether a Council can demonstrate a five year supply of housing land. It is not disputed that the Council can demonstrate a five year supply at present (5.97 years based on the latest statement published 26 August 2016).
36. The Council produced a *Full Objectively Assessed Housing Need Report* in July 2016. It provided endorsement of the adopted housing requirement in that housing need over the remainder of the current plan period (2016-2026) is less than, but generally consistent with the current housing requirement. The first 10 years of the report coincide with the next 10 years of the period addressed within the CS housing requirement (2016-2026), and according to the report the need arising in this 10 year period is 13,039 dwellings (equating to 1,304 dwellings per annum). Following on from this, the Council says it is still appropriate to utilise the housing requirement in CS Policy CS1 as the basis for assessing housing land supply in Shropshire. The Council says its FOAN report uses a methodology consistent with that detailed in the Planning Policy Guidance (PPG) in that it identifies an appropriate housing market area and utilises the 2012 based sub-national household projections as the starting point. It also considers the need to make adjustments in response to past planning policy, past housing provision, market signals, future employment forecasts and other locally relevant factors.
37. However, the nub of the appellant's case is that the Council is not able to demonstrate a FOAN, and argues that the July 2016 FOAN report does not represent a Framework-compliant assessment of Shropshire's housing needs. Therefore, in the absence of a FOAN, the appellant contends that Shropshire cannot demonstrate compliance with paragraph 47 of the Framework and Government advice in the *Planning Policy Guidance* (PPG), and that relevant policies for the supply of housing should be considered out-of-date in accordance with paragraph 49.
38. The appellant says the FOAN report has significant shortcomings for a number of reasons: That it does not consider the suppression of household formation rates by historic under-supply or make adjustments to the demographic projections in response; that it makes no adjustments for the shortfalls in housing delivery between 1996 and 2015 despite the fact that the PPG is clear

that under-delivery should be applied as a demographic adjustment; that it does not reflect the Framework and PPG requirement to reflect rising house prices; that it takes inadequate account of affordability problems; that the allowance of 24 dwellings per annum to address concealed households is inadequate; that affordable housing need must be assessed as a 'policy-off' element of the FOAN, and it is therefore incorrect for the council not to include some 'uplift' in its figures; that the job growth assumptions of 465 jobs per annum are unreasonably low, and that the Council's assumption that jobs growth will be countered by a decline in net commuting is a 'policy-off' decision inappropriate in a FOAN.

39. Further to these criticisms the appellant considers that the Development Plan (CS Policy CS1) requirement of around 27,500 dwellings over the plan period has been out-of-date since the publication of the Framework and PPG in 2012, in that it was based upon out-of-date being based on 2006 data and the revoked West Midlands Regional Spatial Strategy and the 2012 sub-national household projections 2012 (SNHP), which have been criticised for under-estimating population figures because of recessionary trends at that time. It was further put to me that both the housing requirement looking forward and the under-provision figure to date needs revising in the light of a Framework-compliant FOAN figure. Overall, the appellant suggests that the actual full, objectively-assessed housing need figure should be significantly higher than those presented in the Council's FOAN report and in CS Policy CS1.
40. In this regard I have taken account of the judgement in the case of *Shropshire Council v SSCLG and BDW Trading Ltd*³ where a development of 68 houses was allowed on appeal at a site outside the settlement boundary at Teal Drive, Ellesmere. In summary, the judge quashed the decision and found that the Inspector had erred in law by concluding that Council could not demonstrate a five year housing land supply because they did not have a FOAN, and hence did not have a robust housing requirement on which to demonstrate a five year supply. She went on to say that the Inspector was required to make a judgement on the Council's current FOAN or housing requirement based on the evidence before him despite its imperfections. Although the Teal Drive case centred on the Council's Strategic Housing Market Assessment (SHMA) reports (March and July 2014), which have now been superceded by the July 2016 FOAN report, the judge's conclusions remain a valid material consideration. Therefore, for the purposes of this appeal I need to reach a decision on the Council's housing requirement based on the evidence presented.
41. However, even though the Council's methodology has been strongly criticised by the appellant, and upward adjustments have been suggested, I note that it is not the appellant's intention to provide an alternative FOAN. Nor does the evidence in this case lead to a single clear conclusion. As stated by the appellant, and as set out in PPG paragraph 30, limited weight should be given to a FOAN that has not yet been tested. For the same reason, I can only afford limited weight to the appellant's evidence at this time, and although many valid points have been made, these will need to be tested through consultation and examination as part of the upcoming Development Plan review process which is due to commence in early 2017.

³ [2016] EWHC 2753 (Admin)

42. In these circumstances I consider that the adopted housing requirement figure is the one that should be used in this instance, and that the housing supply requirement in this appeal should be considered against this. In reaching my view I have been mindful of the judge's remarks in the Teal Drive case that an Inspector is not required to undertake the kind of analysis which would be appropriate at a development plan inquiry, but should make a judgement on housing needs and supply in order to properly apply paragraph 49 of the Framework. My decision on this matter does not bind the Council, or another Inspector, or the Secretary of State as to the housing requirement for Shropshire in other applications and appeals. The relevant housing requirement in another case would depend on a separate exercise of judgement at the time of the relevant decision, including relevant policy documents such as the Development Plan review at whatever stage that process has reached.
43. CS Policy CS5 and SAMDev Policy MD7a seek to restrict new development in the countryside, and CS Policy CS4 does not allow development outside the community hubs and clusters unless it meets Policy CS5. As such, these are relevant policies for the supply of housing as referred to in the Framework. In that they define the circumstances where windfall development can take place and set a housing figure for the community hub, SAMDev Policies MD3 and S11.2 are also relevant policies concerning the supply of housing.
44. I have concluded that the Council can demonstrate a five year supply of deliverable housing sites based on the housing requirement contained in the Development Plan and set out in CS Policy CS1. Therefore, in accordance with paragraph 49 of the Framework, these policies can be regarded as being up-to-date and afforded full weight. This in turn means that the second part of paragraph 14 of the Framework is not engaged.
45. In view of this it is now necessary for me to consider whether there are any other material considerations that would indicate that planning permission should nonetheless be granted. Such considerations centre on the effect of the proposed development in terms of its landscape impact and the economic, social and environmental dimensions of the proposal.

Whether sustainable development: Overall planning balance

46. The Framework makes it clear that its policies, taken as a whole, constitute what sustainable development means in practice for the planning system. Paragraph 7 of the Framework sets out the three dimensions of sustainable development, namely the economic, social and environmental roles. Paragraph 8 makes it clear that the three roles are mutually dependent and should not be carried out in isolation.
47. There would be economic benefits arising from the construction and occupation of the dwellings, and the provision of housing (with a proportion being affordable housing) would represent a social benefit. Given the acknowledged need for such housing Shropshire, that is a benefit of the scheme to which I afford some weight. However, that weight is tempered by the consideration that the policy requirement to provide a 33% affordable homes applies to all other development that comes forward, and the Council has demonstrated that it has a sufficient supply of housing to meet its needs for the next five years.
48. In addition, the proposal would create direct and indirect jobs and help to support local services and facilities. Indeed, the Council accept that the

proposed development would generate some economic benefits to Shropshire. I recognise that Woore has a modest range of services and facilities which would be easily accessible to future residents. Taken together, these represent material benefits in terms of the social and economic dimensions of sustainable development, although in any event, there would be some conflict with the economic dimension of sustainability which seeks to ensure, among other things, the delivery of housing land in the right place.

49. Bringing these matters together, my conclusion with regard to the harmful environmental impacts of the proposal on the character and appearance of the countryside and my conclusion with regard to the protected species represent significant and overriding objections which must be decisive. The adverse harm which I have identified would substantially and demonstrably outweigh any potential social and economic benefits of the appeal scheme. Nor can other planning and policy considerations simply be set aside. The appeal proposal would clearly conflict with the Council's housing strategy for the rural areas of Shropshire and the community hub of Woore in particular. For these reasons I conclude that the proposal would not be consistent with the principles of sustainable development as it conflicts with the policies of the development plan and the Framework taken as a whole.

Other matters

Other appeal decisions

50. The appellant has drawn my attention to other allowed appeal decisions at Ash Grove, Wem⁴, The Cross, West Felton⁵ and Bromyard Road, Ludlow⁶ relating to housing development beyond development boundaries. However these pre-date the adoption of the SAMDev Plan and this Plan now gives greater certainty in terms of the final wording of its policies and the fact that it is now part of the development plan and attracts full weight. Suffice it to say that each application and appeal falls to be determined on its own merits, and the various decisions indicate the finely balanced nature of the cases, and it is clear that each needs to be judged on its own merits.

Section 106 Agreement

51. A signed and dated planning obligation in the form of an Agreement under Section 106 of the *Town and Country Planning Act 1990* was submitted at the Hearing. It includes a provision that a percentage of the dwellings⁷ are "affordable" as defined in the Framework's Glossary, and in accordance with the prevailing policy requirement. This equates to 33% of the total. The owner also covenants to provide and maintain an area of public open space within the site prior to occupation of the first dwelling, together with a scheme of future maintenance for a period of 20 years.
52. The Council and appellant agree that these affordable housing and open space contributions would be necessary in the event that planning permission were to be granted, and I note that they accord with CS Policy CS11, the *Type and Affordability of Housing Supplementary Planning Document*, and with SAMDev Policy MD2. Paragraph 204 of the Framework says planning obligations must be

⁴ APP/L3245/W/15/3029727

⁵ APP/L3245/W/15/3003171

⁶ APPL3245/W/15/3001117

⁷ Not less than the Prevailing Target Rate

necessary to make the development acceptable in planning terms, and fairly and reasonably related to it in scale and kind. As the development is also chargeable development, the S106 needs to satisfy the corresponding tests in Regulation 122 of the Community Infrastructure Regulations 2012 (CIL).

53. Having regard to the representations made, I consider the relevant Policy and CIL legal tests have been satisfied. However, I do not consider the provisions of the Agreement would outweigh the particular harm I have found in this case, nor thus render the development acceptable or overcome the planning policy objections to the proposal.

Conclusion

54. Therefore, for the reasons given above, and taking into account all other matters raised, including the comments of Woore Parish Council and a significant number of local residents objecting to the proposal, and a letter in support of the proposal from Woore Cricket Club, I conclude that the appeal should be dismissed.

Nigel Harrison

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Helen Howie	Berrys
David Hough	David Hough Properties
Kevin McDermott	

FOR THE LOCAL PLANNING AUTHORITY:

Karen Townend (29 Jun only)	Shropshire Council
Philip Milieu (12 Oct only)	Shropshire Council
Edward West	Shropshire Council

DOCUMENTS

- 1 Appeal Decision: APP/L3245/W/16/3145235; Land west of Pear Tree Lane, Whitchurch, Shropshire
- 2 Appeal Decision: APP/L3245/W/15/3133490; Land opposite The Garage, Welshampton, Ellesmere, Shropshire
- 3 Appeal Decision: APP/L3245/W/15/3067596; Teal Drive, Ellesmere, Shropshire, SY12 9PX
- 4 Claim to High Court by Shropshire Council in respect of appeal decision APP/L3245/W/15/3067596: Council's Statement of Facts and Grounds
- 5 Section 106 Agreement dated 26 June 2016
- 6 Shropshire Full Objectively Assessed Housing Need (FOAN) Report Published 4 July 2016
- 7 FOAN Accompanying Note: July 2016
- 8 Appellant's rebuttal of FOAN report: 24 August 2016
- 9 Council's response to the rebuttal of the FOAN

Appeal Decision

Site visit made on 8 September 2016

by Nicola Gulley MA MRTPI

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

Decision date: 9 December 2016

Appeal Ref: APP/L3245/W/16/3151475

Land South of The Parklands, Cockshutt, Shrewsbury, Shropshire

- 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 G.W. Reeves against the decision of Shropshire Council.
 - The application Ref 15/04631/OUT, dated 16 October 2015, was refused by notice dated 9 December 2015.
 - The development proposed is residential development to include means of access.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application is made in outline with all matters except access reserved.

Procedural Matters

3. Since the determination of the planning application, the Shropshire Council Site Allocations and Management Plan (SAMDev) (2015) has been adopted. This plan, along with the adopted Shropshire Local Development Framework: Core Strategy (CS) (2011), are now the developments plan for the area and I will determine this appeal on this basis.

Main Issues

4. The main issues are whether the proposed development conflicts with national and local policies designed to protect the countryside and promote sustainable development and its effect on travel patterns, biodiversity and the provision for affordable housing.

Reasons

Site and surroundings

5. The appeal site comprises a roughly rectangular area of land some 0.49 hectares in size which forms part of a much larger agricultural field located outside the defined settlement boundary in the countryside on the fringe of Cockshutt. The site is enclosed on three sides by a combination of woodland trees, hedgerows and fencing. At the time of my site visit the shared boundary with the agricultural field had not been delineated. Adjacent to the site is the

small modern residential estate of The Parklands which provide vehicular and pedestrian links to the settlement.

Conflicts with National and Local Policies

6. The policy context for the supply and distribution of new housing in Shropshire is provided by the CS and the SAMDev. CS Policy CS1 outlines a requirement for 27,500 new dwellings to be constructed over the plan period, of which: 25% of the new dwellings are to be delivered in Shrewsbury; 40% in market Towns and Key Centres; and, in order to rebalance local needs and improve the sustainability of local centres, 35% in Community Hubs and Community Clusters; outside these areas new development will primarily be for economic diversification and to meet the needs of local communities for affordable housing. This approach is supported by SAMDev Policy M1 which provides the geographical definition for these areas and, in doing so, identifies Cockshutt as a Community Hub. The combination of CS Policy CS5 and SAMDev Policies MD3 and MD7(a) provide the framework for managing new residential development in the countryside and require that, unless it can be demonstrated that housing guidelines would not be achieved, only proposals for rural diversification or affordable housing would be permitted. The policy context for new residential development in Cockshutt is provided by SAMDev Policy S8.2(i) which identifies a housing guideline figure of 50 new dwellings to be provided on sites within the defined settlement boundary over the plan period.
7. The National Planning Policy Framework (NPPF) requires local planning authorities to identify a 5 year supply of deliverable housing sites, plus a suitable additional buffer of 5 or 20% to provide choice and competition in the market. The Council contends that it has a 5.97 year housing land supply including a 20% buffer¹. The appellant does not directly dispute this figure, but has drawn my attention to a recent appeal decision in respect of Teal Drive, Ellesmere² within Shropshire Council's area, issued on the 16 May 2016, which found that the Council could not demonstrate that it has a five year supply and that paragraph 14 of the Framework was therefore engaged.
8. The Inspector's findings in that case differ from those of other Inspectors who have determined recent appeals in the Council's area, and have for the most part found that a 5 year housing land supply exists. Further, the Teal Drive decision has been quashed by the High Court³. As a consequence, I consider that no weight can be afforded to this decision.
9. Furthermore, I note that no substantive evidence has been presented by the appellant to dispute the Council's claim or to demonstrate that the supply of housing land is less than 5 years. As a consequence, and in accordance with paragraph 49 of the NPPF, I consider that the LP policies that relate to the supply of housing, which includes CS Policies CS1 and CS5 and SAMDev Policies MD1, MD3, MD7 (a) and S8.2(i), are not out of date.
10. With regard to the delivery of new housing in Cockshutt, the Council contends that progress is being made in delivering development on the allocated sites⁴

¹ Shropshire Council 5 Year Housing Land Supply Statement : Data to 31 March 2016 (August 2016)

² Appeal Reference APP/L3245/W/15/3067596

³ Shropshire Council V SSCLG EWHC 2733

⁴ Planning permission has been granted for the development of site reference CO005, CO023 and CO002a (subject to a S106 agreement) and an application is pending on site reference CO002b.

and that there is no evidence to suggest that the provision of new housing would fall below the housing guideline figure contained in SAMDev Policy S8.2(i). The evidence presented by the Council in respect of housing delivery indicates that all of the allocated sites are likely to have planning permission in the first half of the plan period. Moreover, the Council maintains that the proposed development would represent an unjustified encroachment beyond the defined settlement boundary which would have a detrimental affect on the rural character and appearance of the site. In support of this assertion the Council has drawn my attention to a number of recent appeal decisions in which the individual circumstances of the case have led inspectors to conclude that development would not be acceptable because insufficient evidence has been presented to demonstrate that the housing requirements would not be met.

11. The appellant has presented no substantive evidence to demonstrate that the housing guidelines in Cockshutt will not be met, but contends that the proposed development would: assist in meeting the Council's housing requirements; be sustainable development; deliver a good mix of quality homes, including affordable housing; and that no unacceptable adverse environmental impacts or other harm would result to outweigh the benefits of the scheme.
12. In light of the evidence presented, it appears to me that, at the present time, there is no reason to question the Council's assertion that sufficient housing development would be delivered over the plan period to meet the housing guideline outlined in SAMDev Policy S8.2(i) or to justify the extension of the settlement into the countryside. As such I consider that the proposed development would represent an unjustified incursion of built development into the countryside which is contrary CS Policies CS1 and CS5 and SAMDev Policies MD1, MD7(a) and S8.2(i).

Travel Patterns

13. CS Policy CS6 requires that proposals that are 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. In this instance, the proposed vehicular and pedestrian access to the development would be provided by a short access road leading directly from the adjoining residential estate.
14. Whilst I note the Council's concerns, I consider that the close proximity of the adjoining estate, which has a segregated footpath that leads to the village, coupled with the small scale of the development would ensure that the proposal would not materially alter the existing travel patterns, have a detrimental impact on pedestrian safety or result in the significant generation of additional traffic.. As such I consider that the proposed development would comply with the objectives CS Policy CS6.

Biodiversity

15. CS Policy CS17 and SAMDev Policy MD12 seeks to ensure that proposals for new development, conserve, enhance, connect restore or recreate the natural assets of the area. This approach is supported by guidance contained in the NPPF.

16. In support of the proposal the appellant has submitted an environmental assessment which considers the impact of the proposal on the appeal site and surrounding land. The findings of the assessment indicate the potential for 2 small pools located within 30 metres and 140 metres of the appeal site to be breeding grounds for great crested newts (GCN) but that the clearance of the appeal site would, because of the scale of the development and the presence of extensive surrounding habitat, only have a minor to low impact on the GCN. The assessment recommends that in order to mitigate the impact of development a compensatory habitat should be provided within 50 to 100 metres of the breeding ponds and that a plan for ecological management should be prepared and implemented. The approach to ecological mitigation and management outlined in the assessment was supported by the Council's ecologist.
17. However, at the time the application was determine no agreement had been reached with the appellant about the requirement for an off-site GCN mitigation area and management plan. A signed unilateral undertaking dated 29 July 2016 has subsequently been submitted by the appellant that makes appropriate provision for the mitigation area but not the preparation and implementation of a management plan. Notwithstanding this, I consider that this is a matter that could be addressed by the imposition of a condition. In my opinion the submission of a unilateral undertaking together with a condition requiring a management plan would ensure that the development would not have a harmful effect on the GCN population and, as a consequence, the proposal would comply with the objectives of CS Policy CS17, SAMDev Policy MD12 and the NPPF.

Affordable housing

18. CS Policy CS11 requires the provision of 33% affordable houses on qualifying sites of 5 dwellings or more. As with the biodiversity issue, at the time that application was determine no agreement had been reached with the appellant about the requirement for the provision of affordable housing. However, a signed unilateral undertaking has subsequently been submitted by the appellant that exceeds the requirements of CS Policy CS11 and makes provision for 2 no. affordable dwellings to be constructed on the site. As such, I consider the issue has been appropriately addressed and the proposed development would comply with the objectives of CS Policy CS11.

Other Matters

19. The appellant has drawn my attention to a site on which planning permission, reference for a single dwelling has recently been granted (16/01096/OUT). Based on the evidence presented and my observations at the recent site visit, the site, which is located to the rear of The Crown, Shrewsbury Road, Cockshutt, is previously developed land and located within the boundary of the settlement. As a result I do not consider that this development directly parallels the circumstances of this appeal. I have in any case, determined the appeal before me on its own merits.

Overall Planning Balance and Conclusions

20. The NPPF, paragraph 14, outlines a presumption in favour of sustainable development. In doing so the paragraph makes clear that when taking decisions: proposals that accord with the development plan should be

approved without delay; and where the development plan is absent, silent or relevant policies are out-of-date, planning permission should be granted unless any adverse impacts of doing so would significantly or demonstrably outweigh the benefits of development, when assessed against the policies in the framework taken as a whole. In the case of proposals for new housing development, the NPPF paragraph 49 makes clear that where the relevant local planning authority is unable demonstrate a 5 year supply including a buffer, of deliverable housing sites then applications should be considered in the context of sustainable development.

21. In this instance, I am satisfied that the Council has demonstrated that it has a 5.97 year housing land supply. Therefore, in accordance with paragraph 49, I am satisfied that the Council's policies relating to the supply of housing may be considered to be up-to-date and when assessing proposals for sustainable development and can be afforded full weight.
22. The definition of sustainable development contained in the NPPF provides for the consideration of social, economic and environmental factors. I recognise that the construction and occupation of new housing in Cockshutt would have social and economic benefits for the settlement particularly through the creation of additional jobs, by providing support for local facilities and services and the provision of affordable homes to meet the defined local need. Furthermore, I am satisfied that the development would not have an adverse impact on environmental matters and that issues in relation to GCN can be effectively mitigated. However, given the full weight that must be afforded to the CS and the SAMDev these benefits do not outweigh the strong policy objections which I have identified.
23. In light of this, I consider that the proposed development would result in the unjustified encroachment of built development into the countryside. As such I consider the proposals would be contrary to the objectives of CS Policies CS1 and CS5 and SAMDev Policies MD1, MD7(a) and S8.2(i).
24. For these reasons, and taking all matters raised into account, I conclude that the appeal should be dismissed.

Nicola Gulley
INSPECTOR

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Appeal Decision

Hearing held on 22 November 2016

Site visit made on 22 November 2016

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 15th December 2016

Appeal Ref: APP/L3245/W/16/3150322

Land to the East of Wem Road, Shawbury SY4 4PQ

- 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 Acton Reynald Estate Trustees against the decision of Shropshire Council.
 - The application Ref 14/04558/OUT, dated 8 October 2014, was refused by notice dated 25 November 2015.
 - The development proposed is a residential development of 25 dwellings.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted in outline with all detailed matters other than means of access reserved for future approval. I have dealt with the appeal on that basis, treating the site layout as illustrative.
3. The Shropshire Site Allocations and Management of Development (SAMDev) Plan was adopted on the 17 December 2015 which was after the Council issued its decision to refuse planning permission, but before the submission of this appeal. All parties have had the opportunity to comment on the change in status of this document in terms of the relevance to their case. The Council confirmed that upon adoption of the SAMDev Plan, Saved Policies of the North Shropshire Local Plan have been replaced and are no longer part of the development plan, including Saved Policy H5 which was referred to in the decision notice. I, therefore, give no weight to policies of the North Shropshire Local Plan in determining this appeal.
4. A completed legal agreement under Section 106 of the Planning Act (S106) was submitted during the hearing¹. The agreement includes obligations relating to affordable housing and public open space.
5. During the hearing, attention was drawn to a High Court judgement in the case of *East Staffordshire Borough Council v Secretary of State for Communities and Local Government and Barwood Strategic Land II LLP [2016] EWHC 2973 (Admin)*. The written judgement although published on 22 November 2016 was not available at the time of the hearing. By agreement, the matter was addressed after the hearing closed by written representations. I have taken

¹ Hearing Document 1

the High Court judgement² and written responses from the parties³ into account in determining this appeal.

Main Issues

6. The main issues are:

- Whether the proposal is consistent with the objectives of local and national planning policies relating to the location and supply of housing in rural areas;
- The effect on the character and appearance of the site and its surroundings, and;
- The effect on agricultural land.

Reasons

Location and supply of housing in rural areas

7. 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, unless material considerations indicate otherwise.
8. Policy CS1 of the Shropshire Local Development Framework: Adopted Core Strategy, March 2011 (CS), sets out the strategic approach to development in Shropshire. It suggests that over the plan period 2006-2026 around 27,500 new homes, of which 9,000 will be affordable, will be delivered. Approximately 25% of this housing development will be accommodated in Shrewsbury, around 40% will be accommodated in Market Towns and other Key Services Centres and around 35% will be accommodated through a 'rural rebalance' approach with the objective that rural areas will become more sustainable.
9. As part of the 'rural rebalance', Policy CS1 indicates that development and investment will be located predominantly in Community Hubs and Community Clusters. Outside these settlements, development will be primarily for economic diversification and to meet the needs of the local communities for affordable housing.
10. Policy CS4 of the CS anticipates that in the rural area, communities will become more sustainable by, amongst other things, focusing private and public investment into Community Hubs and Community Clusters, and not allowing development outside these settlements unless it meets Policy CS5 of the CS. Policy CS4 also sets out that Community Hubs and Community Clusters are identified in the SAMDev Plan.
11. Policy CS5 of the CS states that new development will be strictly controlled in accordance with national planning policies protecting the countryside. The policy indicates 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 a list of identified types of development. The list, although not all-encompassing as it

² Post Hearing Document 1

³ Post Hearing Documents 2 & 3

- is preceded by 'particularly where they relate to', does not identify market housing, other than in terms of considerations relating to residential conversions.
12. Further to the policies of the CS, Policy MD1 of the SAMDev Plan relates to the scale and distribution of development. The policy states that sufficient land will be made available during the remainder of the plan period up to 2026 to enable delivery of the development planned in the CS, including amongst other things, the amount of housing in Policy CS1. In this respect, it indicates that sustainable development will be supported in Shrewsbury, the Market Towns and Key Service Centres, and the Community Hubs and Community Cluster settlements identified in Schedule MD.1.1, having regard to Policies CS2, CS3 and CS4 of the CS respectively and to the principles and development guidelines set out in Settlement Policies S1-S18 and Policies MD3 and MD4 of the SAMDev Plan.
 13. Policy MD3 states that in addition to supporting the development of the allocated housing sites set out in Settlement Policies S1-S18, planning permission will also be granted for other sustainable housing development having regard to the policies of the Local Plan, particularly Policies CS2, CS3, CS4, CS5, MD1 and MD7a. In this respect, the policy indicates that the settlement housing guideline is a significant policy consideration.
 14. However, Policy MD3 does not specifically preclude development where it would result in the number of completions plus outstanding permissions providing more dwellings than the guideline, subject to listed criteria in part 2 of the policy which decisions will have regard to. The criteria includes the increase in number of dwellings relative to the guideline, likelihood of delivery of outstanding permissions, benefits arising from the development, the impacts of the development and the presumption in favour of sustainable development.
 15. For the purpose of interpretation of Policy MD3, the explanatory text at paragraph 3.18 indicates that windfall development on sites other than those allocated for housing in Policies S1-S18 of the SAMDev Plan is also important, both within settlements and in the countryside, including both brownfield and, where sustainable, greenfield sites, having regard to the policies of the Local Plan.
 16. With regard to the above, Policy MD7a of the SAMDev Plan relates to managing housing development in the countryside and indicates that further to Policies CS5 and CS11 of the CS, new market housing will be strictly controlled outside of Shrewsbury, the Market Towns, Key Service Centres and Community Hubs and Community Clusters. The policy also states that suitably designed and located exception site dwellings and residential conversions will be positively considered where they meet evidenced local housing needs and other relevant policy requirements.
 17. The Glossary of the SAMDev Plan⁴ provides the definition of an exception site as 'small sites solely for affordable housing which would not otherwise be released for general market housing'. The explanatory text of Policy MD7a at paragraph 3.55 indicates that the detailed criteria for the assessment and

⁴ Hearing Document 8

subsequent treatment of exception housing proposals is set out in the Type and Affordability of Housing Supplementary Planning Document (SPD)⁵.

18. When Policies MD3 and MD7a of the SAMDev Plan are read together, the circumstances where market housing may be acceptable in the countryside outside of settlement development boundaries, if the proposal does not meet the definition of an exception site, is when a settlement housing guideline appears unlikely to be met. This reflects circumstances where Policy MD3 part 3 would be engaged, with an assessment of a development remaining subject to the listed criteria at Policy MD3 part 2. Consequently, it follows that Policy MD3 part 2 is intended to apply only to windfall development within settlements identified in Schedule MD.1.1 and Settlement Policies S1-S18 when Policy MD3 part 3 is not engaged.
19. The policies set out above are broadly consistent with the Framework which seeks to significantly boost the supply of housing in paragraph 47. The Council's strategy, including the approach of Policy CS5 of the CS, also seeks to meet the objectives of national policy in terms of protection of the countryside. This is reflected in paragraph 17 of the Framework where an overarching principle is recognising the intrinsic character and beauty of the countryside and supporting thriving communities within it. In this regard, paragraph 55 of the Framework seeks that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities.
20. The Framework makes clear that relevant policies for the supply of housing should not be considered up-to-date if local planning authorities cannot demonstrate a five-year supply of deliverable housing sites⁶. The Council have indicated in its evidence that there is a deliverable five year supply of deliverable housing sites in Shropshire. Furthermore, during the hearing, my attention was drawn to a recent appeal decision dated 10 November 2016 at Land at Foldgate Lane, Ludlow, Shropshire⁷ in which up-to-date evidence relating to housing supply had been tested through an Inquiry held on 2 to 5 August and 4 to 5 October 2016. In determining the appeal, the Inspector accepted that a five year supply of deliverable housing sites can be demonstrated.
21. The appellant has not disputed the issue of five year housing supply or provided any evidence to the contrary, nor have I any reason to take a different view to the conclusion of the Inspector relating to this matter. In such circumstances, paragraph 49 of the Framework and the related criteria in paragraph 14 applicable when a development plan is absent, silent or out of date, are not engaged.
22. During the hearing, the Council provided a summary of housing supply and windfall analysis which provided an update to Table MD1.1 of the SAMDev Plan as at 31 March 2016⁸. It was indicated that the information had been tested and accepted by Inspectors in recent appeals. The document identifies that of the overall housing requirement of 27,500 dwellings in Policy CS1 of the CS, 10,902 dwellings have been built since 2006 and 11,309 dwellings are

⁵ Hearing Document 5

⁶ Paragraph 49

⁷ Appeal Ref: APP/L3245/W/15/3137161 - Hearing Document 9

⁸ Hearing Document 4

identified as commitments on sites with planning permission. In addition, there are site allocations (without existing planning permission) with an estimated capacity of 5,800 dwellings. In this regard, the Council have suggested that the current housing supply would be sufficient to deliver the housing requirement.

23. Notwithstanding the above, it is evident from the distribution of the housing supply in the updated Table MD1.1 in seeking to meet the housing requirement in Policy CS1 would be influenced by a surplus in Shrewsbury and Market Towns, whilst a shortfall in rural areas remains. In this respect, I am mindful that the strategic approach for development in Shropshire includes the objective to achieve a 'rural rebalance'. However, there is no substantiated evidence before me that would lead me to consider that the current shortfall in rural areas up to 2026 could not be met by development in accordance with Policies CS4 and CS5 of the CS and Policies S1-S18, MD3 and MD7a of the SAMDev Plan. This would include windfall development within settlement limits, together with affordable housing, conversions, single plot affordable and rural workers dwellings and other such developments which would be supported by the policies as a whole.
24. The appeal site adjoins, but lies outside of the settlement boundary of Shawbury as identified by the Shropshire Council Adopted Policies Map Inset 2⁹ at its northern extent. The settlement boundary identified in Inset 2 relates to Policy S17.2 of the SAMDev Plan which indicates that Shawbury is a Community Hub, as listed under Schedule MD1.1.
25. The SAMDev Plan, through Policy S17.2, indicates modest housing growth for Shawbury of about 50 new dwellings over the period to 2026. The evidence before me indicates that the requirement would be met by a single housing allocation within the settlement boundary that has an extant outline planning permission (ref 14/03635/OUT)¹⁰ granted on 8 September 2015. There is also possibility of windfall development within the settlement boundary. The appellant has expressed concern with respect to the deliverability of the housing allocation due to the noise impact arising from the proximity to flight corridors used by RAF Shawbury. In this regard, the outline planning permission includes a condition that a noise assessment shall be submitted with the first reserved matter, which has yet to occur. Nevertheless, there is no substantiated evidence before me that delivery of the site is not feasible and that the noise constraints could not be satisfactorily overcome.
26. Having regard to the above, at the current time there is no immediate need to release additional sites, including those outside of the settlement boundary of Shawbury such as the appeal site, to meet the housing growth indicated in Policy S17.2 of the SAMDev Plan. In such circumstances, Policy MD3 part 3 is not engaged.
27. As the appeal site lies outside of a Community Hub or Community Cluster it is within the countryside. As such the development would appear to be contrary to the strict controls on market housing in Policy MD7a of the SAMDev Plan and would not fall in the listed exceptions, albeit that it would provide for some affordable housing through the provisions of the S106.

⁹ Hearing Document 6

¹⁰ Hearing Document 7

28. With regard to the above, it is evident that Policy MD7a is intended to be read together with Policy MD3 and the protection afforded to the countryside by Policies CS4 and CS5 of the CS. Policy CS5 is permissive of appropriate sites which maintain and enhance countryside vitality and character where they improve the sustainability of rural communities by bringing local economic and community benefits. In such circumstances, although market housing outside of settlements is strictly controlled, it is not expressly prohibited and can be allowed outside them, including in the countryside if the proposal accords with the development plan policies when read as a whole. This approach is consistent with the Framework.
29. It is common ground between the main parties that the development would not result in isolated homes with respect to paragraph 55 of the Framework, which consists of national policy to which Policy CS5 of the CS seeks compliance. I have no reason to take a different view given that the site has adjoining development on three sides, including the Shawbury settlement to the south and RAF Shawbury to the west and north.
30. Although the appeal site is outside of the settlement boundary of Shawbury, it is a short walking distance from existing local services in the Community Hub with the route having a pedestrian footway and street lighting. As such, the development would make a positive contribution to the enhancement of the vitality of the rural community. The potential for a 50% increase in housing supply relative to the housing growth indicated in Policy S17.2 for Shawbury up to 2026 would be significant. However, the Council has not provided any evidence that the cumulative addition of housing associated to the development and the existing allocation could not be supported by local infrastructure.
31. Having regard to the above, the development would make a positive contribution to the vitality of rural communities with associated local economic benefits. However, there would appear to be a degree of conflict with Policies MD3 and MD7a of the SAMDev Plan and the objectives of planning policies relating to the location and supply of housing in rural areas. Nevertheless, to conclude on the compliance of the proposal with Policies CS4 and CS5 of the CS and the development plan as a whole it is necessary to also determine the effect on the character and appearance of the site and its surroundings which I will now go on to consider.

Character and appearance

32. The appeal site forms part of a larger agricultural field which slopes gently away from the frontage on Wem Road (B5063), towards an undulating landscape of further farmland visible to the east. Although the appeal site has no specific ecological, landscape or heritage designation, I consider it important to the setting of Shawbury as part of the wider area of countryside around the settlement. The open appeal site and its frontage represents a definite visual break and a gap in built development, albeit narrow, on the eastern side of Wem Road.
33. The site marks the point where the character changes from the settlement of Shawbury briefly to countryside, which provides differentiation from existing development associated with RAF Shawbury to the north. Although the layout before me is illustrative, the shape of the site would inevitably result in a more linear form of development than the visible settlement edge of Shawbury and

- would considerably narrow the existing gap between built development to the north.
34. The construction of dwellings on the site would result in built development where there is presently none on a greenfield site. The Council have offered no specific concerns with respect to the potential for a reserved matters submission to provide a development in compliance with Policy CS6 of the CS. However, the footprint of buildings and the resultant bulk, scale and massing, together with hardstanding and domestic paraphernalia would inevitably change the character of the site. The loss of views of open countryside further to the east of Wem Road and the change in character of the site to a suburban addition beyond the existing settlement edge would be observed from the pedestrian footway which adjoins the site. The potential for additional boundary screening or landscaping would not mitigate the resultant change of the site to a suburban character and appearance.
35. The impact on the countryside arising from the loss of the rural character of the site would be reduced by the visual containment provided by surrounding built form associated to RAF Shawbury to the west and north. Furthermore, open views into the site from passing vehicles travelling along Wem Road are largely screened by the presence of an existing hedgerow. Nevertheless, users of the pedestrian footway are sensitive receptors to change and the development would increase the sense of enclosure of built form on the eastern side of Wem Road.
36. Having regard to the above, the development of the site would result in a detrimental visual impact on the countryside and therefore, would fail to maintain its vitality and character. Consequently, the proposal would be an unacceptable development in the countryside given the harm identified and would not, therefore, comprise one of the types of development that Policy CS5 of the CS permits.
37. I conclude that the development would have a harmful effect in terms of the character and appearance of the site and its surroundings. The proposal is not, therefore, consistent with the objectives of local and national planning policies relating to the location and supply of housing in rural areas. The proposal conflicts with Policies CS4 and CS5 of the CS and Policies MD3 and MD7a of the SAMDev Plan.

Agricultural land

38. The appeal site consists of 0.93 hectares and is within an area of grade 3 agricultural land. At the time of my visit the field of which the site forms part appeared to be in agricultural use. However, no substantiated evidence has been provided with respect to the definitive breakdown between grades 3A and 3B agricultural land relating to the field. In such circumstances, I cannot be certain that the site includes any of the best and most versatile agricultural land. It, therefore, follows that I cannot conclude that the proposal would involve development of agricultural land resulting in a loss of best and more versatile agricultural land.
39. There is no evidence before me that would lead me to consider that there is a shortfall of grade 3 agricultural land in Shropshire. In any case, the extent of loss of agricultural land would not, in my view, be significant in the context of

the Framework¹¹. As such, the loss of agricultural land would reflect only a minor adverse effect in the planning balance.

40. I conclude that, based on the evidence before me, the development would not result in significant harm to agricultural land, with only a minor adverse effect arising from its loss. The Framework seeks only that the economic and other benefits of best and most versatile agricultural land are taken into account in decision making.

Other Matters

41. In reaching my conclusions on the main issues, I have taken into account appeal decisions which were brought to my attention by the appellant including at Ludlow¹² and West Felton¹³. However, those decisions pre-date the adoption of the SAMDev Plan. In that respect, the evidence before me and the individual circumstances of each case when compared to the proposal are different. I have also taken into account the additional appeal decisions¹⁴ drawn to my attention by both parties in support of their case. Nonetheless, those decisions emphasise the finely balanced nature of the cases and that each case needs to be judged on its own merits, based upon the evidence before the Inspector.
42. The proposal would deliver social and economic benefits in a relatively accessible location by providing up to 25 new homes. The S106 makes provision for affordable housing as part of the development in accordance with Policy CS11 of the CS and the Council's Type and Affordability of Housing SPD, and therefore the provision of affordable housing can be attributed weight. In this respect, the development would contribute to meeting the identified housing need and choice in Shawbury and elsewhere in Shropshire, whilst supporting local services and businesses. In addition, there would also be local economic benefits arising from Community Infrastructure Levy revenue and the necessary construction activity required to deliver the development.
43. The S106 agreement also includes an obligation relating to the provision of public open space. In this regard, even though the primary purpose would be to meet policy requirements, there would be some social benefit from the potential for wider public access to any on-site provision. I have taken the S106 agreement into account as it has been signed, dated and executed by the relevant parties and the obligations relating to affordable housing and public open space accord with paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).
44. Although the site is not currently needed in order to ensure an adequate supply of deliverable housing sites, there is nothing in the Framework to suggest that the existence of a deliverable five year supply of housing should be regarded as a restraint on further development. Furthermore, Policy CS1 of the CS set minimum targets for housing delivery rather than a limitation on housing development. In this context, and given the need to deliver affordable homes

¹¹ Paragraph 112

¹² APP/L3245/W/15/3001117

¹³ APP/L3245/W/15/3003171

¹⁴ APP/L3245/A/14/2221627, APP/L3245/A/14/2228348, APP/L3245/A/14/2229145, APP/L3245/W/15/3004618, APP/L3245/W/15/3029727, APP/L3245/W/15/3039545, APP/L3245/W/15/3131686, APP/L3245/W/15/3134152, APP/L3245/W/16/3142894, APP/L3245/W/16/3143283, APP/L3245/W/16/3145470, APP/L3245/W/16/3145902, APP/L3245/W/16/3145822, APP/L3245/W/16/3146165, APP/L3245/W/16/3146178, APP/L3245/W/16/3146736, APP/L3245/W/16/3146986, APP/L3245/W/16/3149461, APP/L3245/W/16/3149970, APP/L3245/W/16/3152344.

in Shropshire in accordance with Policies CS1 and CS11 of the CS, I attach significant weight to the above social and economic benefits associated with the proposal.

45. It is common ground between the main parties that the proposal would be acceptable in terms of highway safety relating to the single means of access proposed onto Wem Road, ecology and biodiversity, drainage and flooding, and noise and amenity, subject to the imposition of conditions if the appeal were to be allowed. Based on the evidence before me, I have no reason to take a different view and the proposal would, therefore, meet the relevant parts of Policies CS6, CS17 and CS18 of the CS relating to those matters. In addition, I am satisfied that a layout of development which would preserve the living conditions of occupiers of neighbouring properties could be secured as part of a reserved matters application. However, the absence of any concern in these respects is largely a neutral factor, aside from limited environmental benefits which could be secured relating to ecology and biodiversity enhancements by condition.
46. The appellant has made reference to the Council approach to the visual harm to the countryside identified and have drawn my attention to an initial Committee Report which recommended that planning permission should be granted subject to a planning obligation. However, based on the evidence before me, the difference in the Committee Reports arose as different weight was applied to the material considerations as part of the planning balance. This was influenced by the publication of the Inspectors Report following the SAMDev Plan Examination in Public.

Planning Balance

47. The proposal would conflict with the approach to the location and supply of housing in rural areas in Policies CS4 and CS5 of the CS and Policies MD3 and MD7a of the SAMDev Plan and would not therefore be in accordance with the development plan. In such circumstances, planning law and the Framework¹⁵ indicate that planning permission should not be granted unless material considerations indicate otherwise.
48. The appellant has made reference to the Wychavon¹⁶ case with respect to the interpretation of the presumption in favour of sustainable development and whether it should be applied outside of paragraph 14 of the Framework and not only to circumstances where the development plan is absent, silent or relevant policies are out of date. However, the judgement of the Court of Appeal in the case of *Suffolk Coastal District Council v Hopkins Homes Ltd and Richborough Estates Partnership LLP v Cheshire East Borough Council*¹⁷ confirmed that paragraph 14 of the Framework explains how the presumption in favour of development is to be applied.
49. It follows from the above, that in the context of decision taking, the presumption does not apply unless the proposal accords with the development plan or the development plan is absent, silent, or relevant policies are out of date and the adverse impacts do not significantly and demonstrably outweigh

¹⁵ Paragraph 11

¹⁶ *Wychavon v SCLG and Crown House Developments Ltd* [2016] EWHC 592 (Admin)

¹⁷ *Suffolk Coastal District Council v Hopkins Homes Ltd and Richborough Estates Partnership LLP v Cheshire East, SCLG* [2016] EWCA Civ 168

the benefits. This is supported by the approach advocated in the recent East Staffordshire judgment referred to earlier.

50. The Framework makes it clear that the policies that it sets out, taken as a whole, constitute what sustainable development means in practice for the planning system. Paragraph 7 of the Framework sets out three dimensions of sustainable development, namely the economic, social and environmental roles. These dimensions are mutually dependent and should be jointly sought. The appeal proposal would contribute significantly to the social and economic dimension through the provision of up to 25 new homes, including affordable housing, to which I attach significant weight. However, it would cause harm to the character and appearance of the countryside and the setting of the northern edge of the settlement of Shawbury. Such harm is contrary to a core principle of the Framework that planning should take account of the character of different areas and recognise the intrinsic character and beauty of the countryside. Although limited environmental benefits in terms of ecology and biodiversity enhancements could be secured, this would be largely offset by a minor adverse effect in terms of loss of agricultural land.
51. The Framework does not change the statutory status of the development plan as the starting point for decision making. In this case, the appeal proposal would be contrary to the development plan as a whole, given the conflict with policies I have referred to, that set out the approach to the location and supply of housing in rural areas, which are not out of date.
52. On a simple balancing exercise, the adverse impact of the development in terms of the conflict with the development plan relating to protection of the countryside would not, in my judgement, be outweighed by other material considerations. This includes the contribution of the development to the supply of housing and the significant weight attributed to the identified social and economic benefits which would result. In this respect, the presence of less harmful alternatives for the location and supply of housing which exist to meet the requirements of the CS for development of housing in Shawbury and within Shropshire is overriding. The proposal, therefore, is not sustainable development when considered relative to the Framework as a whole.

Conclusion

53. For the reasons set out above and having taken all other matters into account, I conclude that the appeal should be dismissed.

Gareth Wildgoose

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Niall Blackie LLB LARTPI

FBC Manby Bowdler LLP

Justin Stevenson MRICS

Balfours LLP

FOR THE LOCAL PLANNING AUTHORITY:

Karen Townend MD BSc MRTPI

Shropshire Council

Killian Garvey

Kings Chambers

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Section 106 Agreement dated 21 November 2016 - signed and certified 22 November 2016
- 2 Appeal Decision - Ref: APP/L3245/W/16/3146178
Dunedin, Lower House Farm Junction to St Martins Church, Little Ness, Shrewsbury SY4 2LG
- 3 Appeal Decision - Ref: APP/L3245/W/16/3152344
Land in Middleton, Ludlow, Shropshire SY8 3EP
- 4 SAMDev Plan Inspectors Report Housing Supply/Windfall Analysis with Current Position (as at 31 March 2016)
- 5 Shropshire Council Type and Affordability of Housing Supplementary Planning Document, adopted 12 September 2016
- 6 Extract from Shropshire Council Adopted Policies Map 2015, including S17 Inset 1 (Wem), 2 (Shawbury), 3 (Harmer Hill) and 4 (Myddle).
- 7 Shropshire Council Decision Notice
Application No. 14/03635/OUT- Development Land East of A53, Shrewsbury Road, Shawbury, Shropshire
- 8 Shropshire Local Development Framework: Adopted Core Strategy March 2011 - Glossary
- 9 Appeal Decision - Ref: APP/L3245/W/15/3137161
Land at Foldgate Lane, Ludlow, Shropshire
- 10 Planning Resource article dated 22 November 2016 - 'Judge rules on application of NPPF's presumption in favour of sustainable development'
- 11 Draft wording of proposed condition relating to glazing and ventilation requirements for dwellings

DOCUMENTS SUBMITTED AFTER THE HEARING (BY AGREEMENT)

- 1 High Court judgement – East Staffordshire Borough Council v Secretary of State for Communities and Local Government and Barwood Strategic Land II LLP.
22 November 2016 [2016] EWHC 2973 (Admin)
- 2 Written Submission from Kings Chambers on behalf of Shropshire Council dated 22 November 2016, received 25 November 2016
- 3 Written Submission from FBC Manby Bowdler LLP for the Appellants dated 30 November 2016, received 1 December 2016

Appeal Decision

Inquiry held on 12, 13 July and 15-17 November 2016

Site visit made on 14 July 2016

by Richard McCoy BSc MSc DipTP MRTPI IHBC

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

Decision date: 06 January 2017

Appeal Ref: APP/L3245/W/15/3133616

Land off Tarporley Road, Whitchurch, Shropshire

- 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 Muller Property Group against the decision of Shropshire Council.
 - The application Ref 15/00916/OUT, dated 27 February 2015, was refused by notice dated 29 July 2015.
 - The development proposed is the erection of up to 39 no. dwellings (access for approval).
-

Procedural matters

1. The application was made in outline, with all matters reserved except for access though an indicative layout was supplied and a number of illustrative details given in the Design and Access Statement.
2. A signed and dated Agreement under Section 106 of the Town and Country Planning Act 1990 (S106) was submitted by the appellant. This ensures the provision of affordable housing at a level of at least 10%, up to a maximum of 20%, if the prevailing rate has not increased by the time the scheme is built out. It also secures the provision, and ongoing maintenance, of public open space. I return to these matters below.
3. In the light of the provisions of the 106 Agreement¹, the Council confirmed that it was no longer pursuing refusal reason 4 in respect of affordable housing. In addition, the Council confirmed that it was satisfied that the issue of drainage could be dealt with by means of a suitably worded condition were outline planning permission to be granted. Accordingly, refusal reason 5 was no longer being pursued. I have dealt with the appeal on this basis.
4. The appellant's witness, John Sumner IEng AMICE, Sumner Consultancy Ltd., and the Council's witness, Mr J Hughes, Welsh Water, who were going to give evidence on drainage, were not called.

Decision

5. I dismiss the appeal.

¹ Inquiry Document 21

Application for costs

6. At the Inquiry an application for costs was made by Muller Property Group against Shropshire Council. This application is the subject of a separate Decision.

Main Issues

7. I consider the main issues to be:
- 1) whether or not a 5 year supply of deliverable housing land can be demonstrated;
 - 2) the effect of the proposal on the setting of nearby heritage assets;
 - 3) the effect of the proposal on the character and appearance of the area; and
 - 4) whether this would be a sustainable form of development having regard to national and development plan policies in respect of the delivery of new housing.

Reasons

Background and policy

8. The appeal site extends to around 1.69 hectares and is currently in agricultural use as grazing land. It stands within 500 metres of Whitchurch town centre and has a short section of roadside frontage onto Tarporley Road. A public footpath runs along its north western boundary while dwellings are located to both sides of the road frontage and opposite. Access is gained from Tarporley Road which runs between the town centre and the A49. The appeal site slopes away from Tarporley Road to a low lying area with a pond.
9. Proposed under this outline planning permission is the erection of up to 39 no. dwellings, with access submitted at this stage for approval and all other matters reserved for later approval. The Development Plan for the area includes the adopted Shropshire Local Development Framework Core Strategy - March 2011 (CS)² and the Site Allocations and the Management of Development Plan (SAMDev)³ (adopted December 2015).
10. CS Policy CS1 sets the overall strategic approach, and the housing and employment land targets for the plan period. The policy seeks sustainable development, focusing development within Shrewsbury, the market towns and key centres. A housing requirement figure of 27,500 is set out for the plan period to 2026. Whitchurch is identified in the CS as a market town and one of the key settlements for development under CS Policy CS3. This sets the strategic framework for development in these settlements. It states that balanced housing and employment development will take place within the development boundary and on sites allocated for development.
11. The appeal site adjoins the Whitchurch settlement boundary as defined in SAMDev Policy S18 which shows the extent of the development boundary and the location of housing and employment allocations. The appeal site is neither allocated for development in the SAMDev nor does it fall within the Whitchurch

² Core Document CD3

³ Core Document CD4

development boundary. However, CS Policy CS5 does not preclude development in the countryside stating 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...*". It is also common ground that greenfield sites may be required in order to meet Shropshire's housing requirement to 2026.

12. CS Policy CS6 states that development should protect, restore, conserve and enhance the natural built and historic environment and should be appropriate in scale, density, pattern and design, taking into account local context and character. In addition, CS Policy CS17 seeks that all development should protect and enhance the diversity, high quality and local character of Shropshire's natural, built and historic environment, and should not adversely affect the visual, ecological, geological, heritage or recreational values and functions of these assets, their immediate surroundings or their connecting corridors.
13. Finally, SAMDev Policies MD2 and MD13 seek inter alia to protect, conserve, sympathetically enhance and restore Shropshire's heritage assets by ensuring that wherever possible, proposals avoid harm or loss of significance to designated heritage assets including their settings.

Housing land supply

14. The appellant contended that the CS housing requirement figure is out-of-date as it is based on the West Midlands Regional Spatial Strategy (RSS), which it is claimed, has been superseded by more recent demographic forecasts. As a result, all CS policies that are relevant to the supply of housing should be considered out-of-date. In addition, the appellant argued that the Council's full objectively assessed housing needs⁴ (FOAHN) cannot be considered to be in accordance with the National Planning Policy Framework (NPPF)⁵ and the Government's on-line National Planning Practice Guidance (PPG)⁶.
15. The appellant's Figure 3A⁷ sets out a housing requirement of 1996 dwellings per annum (dpa) based on the adjustments to the FOAHN contained in the Key Differences Table⁸. This gives a supply at best, when the under-delivery, 20% buffer and the Council's supply figure are factored in, of around 4.46 years. The Council's FOAHN figure, in the appellant's view, under-estimates the housing requirement figure by having too low a starting point and failing to make sufficient adjustments for a number of key factors (which I deal with below).
16. While this appeal is not a local plan examination and it is not my role to set a specific housing requirement figure, my attention was drawn to the judgement in the case of West Berkshire⁹ where it was found to be incumbent upon the Inspector, in that case, to identify the housing requirement for the purposes of calculating 5 year housing land supply in the area. Unlike that case however, in this instance the LPA does have a housing requirement figure as set out in both

⁴ Rebuttal Proof of Evidence, Edward West

⁵ Core Document CD1

⁶ Core Document CD2

⁷ Addendum Proof of Evidence, Helen Howie, 18 October 2016

⁸ Inquiry Document 18

⁹ Legal Cases L5

the adopted CS and the SAMDev. Furthermore, in the case of Oadby¹⁰, to which reference was also made, the judgement concerned a Strategic Housing Market Area which covered a number of administrative areas whereas a single Council area is involved in this instance.

17. Nevertheless, the appellant claimed that significant new evidence is available which gives rise to concerns regarding the CS housing requirement being out-of-date. It was argued that the CS is based on an extremely old evidence base that has been superseded by new projections and forecasts. However, if supported by evidence, there is no reason why a figure derived for example from a RSS should not be used. I heard that the CS figure was considered by the Inspector at the SAMDev Examination¹¹ under the test of soundness and was not found to be inconsistent with the NPPF. I note the view of a colleague on this matter at a recent appeal ref APP/L3245/W/15/3137161¹² wherein the Inspector noted that; *the OAN that underpins the housing requirement figure within the adopted CS, and which the SAMDev uses to identify housing sites within the local authority area is, in this case, a pragmatic and methodically tested one.*
18. Historically, while I note that housing completions have been persistently less than the housing requirement for 2001, the requirement figure has been well above the defined need based on the relevant demographic projections at the time. In which case, it would appear that the RSS figure has not constrained housing need in Shropshire. The Council published its FOAHN to inform the partial review of the development plan on 4 July 2016. This considered the CS requirement figure which runs until 2026 and calculated a housing requirement figure of 25,178 over the period 2016-2036.
19. However, the appellant also cited concerns¹³ regarding the Council's FOAHN. I note that the main points in dispute are whether it is better to use one 'forecasting house' or an average of 3 in assessing need, the use of 2012 rather than 2014 Department for Communities and Local Government (CLG) projections, sensitivities around 5 and 10 year migration trends and suppressed household formation rates amongst the 25-34 age group, insufficient adjustment for concealed households, the impact of the new University Campus in Shrewsbury on population retention and increased-in-migration, and most notably in the appellant's view with regard to population growth, the matter of the treatment of unattributable population change (UPC).
20. It is the case that the NPPF under Paragraph 47 seeks to boost significantly the supply of housing and indicates that to achieve this, local planning authorities (LPA) should use their evidence base to ensure that their LP meets the FOAHN for market and affordable housing in the area. In this regard, the PPG advises that estimating future housing need is not an exact science and there is no one methodological approach or dataset which will provide a definitive assessment. Nevertheless, the starting point for establishing housing need should be the latest household projections published by the CLG. The PPG sets out that plan makers may consider sensitivity testing, specific to their local circumstances, based on alternative assumptions in relation to underlying demographic projections and household formation rates.

¹⁰ Core Document CD15

¹¹ Core Document CD6

¹² Inquiry Document 16

¹³ Mr McColgan Proof of Evidence

21. It also sets out that account should be taken of the most recent demographic evidence, including the latest Office for National Statistics (ONS) population estimates. In addition, the PPG indicates that the housing need figure suggested by household projections should be adjusted to reflect appropriate market signals. The appellant contended that the Council's FOAHN fails to do this and is therefore not PPG and NPPF compliant.
22. In my judgement, the use of 2012 ONS data accords with the PPG and while the Council, unlike the appellant, did not adjust for UPC, the issue is covered in the FOAHN where it is noted that the ONS excludes UPC from its projections. Moreover, it was not demonstrated that UPC can be ascribed to an identifiable cause or that it is not, in some measure, associated with errors of recording at the 2001 census. Therefore, while a historically large figure in Shropshire, there is nothing to suggest given the refinements to census data capture, that any future UPC would be of a similar magnitude. In addition, I heard that an adjustment for UPC is not an explicit requirement of the PPG and I have no reason to conclude in this instance that the absence of such an adjustment renders the FOAHN fundamentally flawed.
23. The Council assessed the position within Shropshire with national trends and against other comparator LPAs. Notwithstanding the appellant's criticisms, I consider that the evidence is sufficiently robust to demonstrate that the Council's FOAHN took account of levels of past provision, concealed households, market signals (in respect of affordability), employment forecasts and other local factors such as the creation of a university campus in Shrewsbury and the closure of Shrewsbury prison. The indicators set out in the PPG were assessed and no worsening trends were identified in Shropshire in respect of land prices, affordability, concealed households and house prices. Adjustments were made accordingly where it was deemed necessary.
24. While I note this is not to the extent canvassed by the appellant, it does satisfy the requirements and guidance of the NPPF and PPG. Furthermore, from the evidence, I have no reason to conclude that the use by the Council of an economic forecast from Oxford Economics, rather than a comparison of a range of forecasts, has resulted in data that cannot be considered to be robust. Moreover, in looking at market signals, I consider that the Council considered affordability as set out in the PPG and the Kings Lynn judgement (Borough Council of Kings Lynn and West Norfolk v Secretary of State for Communities and Local Government, ELM Park Holdings Ltd, [2015] EWHC 2464 (Admin), CO/914/2015).
25. I am therefore content that the Council's FOAHN does not conflict with the policies and guidance contained in the NPPF and PPG, and provides (based on the annual housing requirement figure in the CS against which no outweighing material considerations have been identified) a reasonable assessment of the housing requirement for the area. The Council was satisfied that the CS housing requirement of 27,500 (1390dpa to 2021) of which 9,000 is affordable, is sufficient to help deliver the 1st 10 years of the FOAHN and is the figure employed within the SAMDev to identify housing sites. This is a pragmatic figure for the purposes of this appeal, though I note the common ground between the parties that it should not be viewed as a maximum figure.
26. With regard to the 5 year housing land supply, NPPF paragraph 49 states that '*...housing applications should be considered in the context of the presumption*

in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites...'. In this regard, the Council for the 5 year period up to 2021 claims a supply of around 5.97 years. This is based on the CS 5 year requirement of 6,950 plus a past under delivery of 1,998 to which a 20% buffer is applied giving a total of 10,738. A supply of 12,829 was identified by the Council that includes dwellings with planning permission as well as windfall sites.

27. In not disputing the Council's overall housing supply figure for the plan period, the appellant nevertheless pointed out that the Council faces an enormous challenge in boosting housing delivery with around 16,500 to be delivered by the end of the plan period. Concerns were raised that the Council cannot demonstrate sufficient deliverable sites to meet the CS housing requirement. It was pointed out that the Council would be heavily reliant on windfall sites to meet the delivery target and it was argued that this is reflected in SAMDev Policy MD3 which permits windfall development both within and outwith the defined settlement boundaries in order to boost the number coming forward. Table 1 of the appellant's Statement of Case shows that 5,427 dwellings are to be delivered in the rural area up to 2026 and it was argued that sites such as the appeal site will be needed to achieve this figure.
28. The appeal scheme would provide additional homes that would contribute to the NPPF objective to boost significantly the supply of housing. CS policy CS1 indicates that 35% of Shropshire's residential development over the plan period will be in rural areas to provide a 'rural rebalance'. The policy states: *development and investment will be located predominantly in community hubs and community clusters, and will contribute to social and economic vitality; and, outside these settlements development will be primarily for economic diversification and to meet the needs of local communities for affordable housing.*
29. However, I heard that there are sufficient permissions/commitments in the pipeline to meet the housing requirement to 2026. In the case of Whitchurch, the guideline for housing development has already been reached and should this change in the future, SAMDev Policy MD3 provides for positive action if a settlement is struggling to achieve its housing guideline. The matter of windfall sites was addressed by the Inspector at the SAMDev Examination who was content that settlement development boundaries could be drawn. This would suggest that windfall sites could come forward within settlements rather than there being a total, or very heavy, reliance on rural sites.
30. It was argued that in line with the decision at West Felton¹⁴, a spatial approach should be adopted in terms of housing allocation. However, as that appeal concerned housing supply rather than delivery, I do not consider it to be directly comparable. In which case, with a housing requirement of around 10,738 and a supply of around 12,829, I am content that the Council is able to demonstrate a 5 year supply of deliverable housing land.

The effect on the settings of heritage assets

31. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCA) states that special regard should be paid to the desirability of

¹⁴ Appeal Decisions AD9

- preserving the settings of listed buildings, where those settings would be affected by proposed development. The NPPF defines the setting of a heritage asset (which includes a building listed for its architectural and historic interest) as the surroundings in which it is experienced. The extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset; may affect the ability to appreciate that significance; or, may be neutral.
32. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight attaches to the asset's conservation; the more important the asset, the greater that weight should be. Significance can be harmed through development within an asset's setting. Historic England guidance, *The Setting of Heritage Assets*¹⁵, indicates that setting embraces all of the surroundings from which an asset can be experienced or that can be experienced from or within the asset. Setting does not have a fixed boundary and cannot be defined, in perpetuity, as a spatially bounded area or as lying within a set distance of a heritage asset.
33. The significance of a heritage asset is defined in the NPPF as its value to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting. Significance may be harmed by a development and it is necessary to determine the degree of harm that may be caused.
34. The designated heritage assets that would be affected in this instance are The Old Rectory (a Grade II* listed building), 18th century Game Larder, The Coach House and adjoining walls, Outbuilding, the mid-18th century Ice House (all Grade II listed buildings) and the Church of St Alkmund (a Grade I listed building). The parties have described the significance of these heritage assets, including the contribution made by their respective settings and have also assessed the effect on significance which would arise as a result of the impact on these settings. This approach is in line with the advice in NPPF paragraphs 128-9. The parties agree that the proposal would not affect the fabric of the listed buildings, and I see no reason to disagree.
35. The Old Rectory stands to the east of the appeal site. Its setting includes an enclosing stand of trees to the north and west (which isolate it visually from the appeal site) and the supermarket development to the south/south-west. The supermarket was erected around 2012 and includes a large car park. It replaced commercial buildings which occupied a smaller footprint on the site. The Old Rectory has a shared setting and group value with the church and the other Grade II listed buildings mentioned above arising from a historic and functional association. It does not feature prominently in any views from the surrounding landscape.
36. From what I observed, the proposal would not harmfully influence the visual relationships between the Old Rectory, the church and the nearby Grade II listed buildings. The Old Rectory is obscured from view from the appeal site by the stand of trees. Landscaping proposals, which would be a matter for approval under a later application were outline planning permission to be granted, could ensure that suitable planting is retained and enhanced on the boundary with the appeal site. In which case, I consider the proposed

¹⁵ Core Document CD24

- development would be peripheral to the setting of the Old Rectory and would not affect the contribution it makes to the heritage asset's significance.
37. With regard to the Game Larder and Coach House, they are located close to the Old Rectory. Indeed their immediate setting is characterised by the courtyard formed by the Old Rectory and the Coach House. This shared setting is strongly influenced by the mass of the nearby supermarket. As with the Old Rectory itself, the proposal would not harmfully influence the visual relationships they have with the Old Rectory, the church and the other nearby Grade II listed buildings.
38. As for the Outbuilding and the Ice House, they are located close to the supermarket, to the east of the appeal site and south of the Old Rectory. The supermarket building stands between the proposal and these historic assets. Their immediate setting is characterised by the supermarket and its car park into which they have been incorporated. The proposal would have a very limited effect on the visual relationship they share with the church and the other nearby listed buildings.
39. In overall terms, the settings of these heritage assets have changed considerably as a result of the construction of London Road, the suburban expansion of Whitchurch and the recently completed supermarket which abuts the eastern boundary of the appeal site. The supermarket development in particular has influenced the settings of these heritage assets. Its bulk and car park layout have resulted in a strong inter-visibility between it and the heritage assets, giving it a commanding presence within their settings.
40. The boundary planting between the Old Rectory, Coach House and Game Larder and the proposal, along with the intervening presence of the supermarket between the proposal and the Ice House and Outbuilding, would be likely to prevent the proposed housing development from detracting from the contribution the setting of each of these heritage assets makes to their significance.
41. Furthermore, the proposal (both individually and cumulatively with the supermarket development) would not affect inter visibility between the church and the other identified heritage assets given their geographical relationship, with the church standing well to the south. In addition, intervening built development between the appeal site and the church, including the supermarket, would mean that the proposal would not affect the setting of the church itself.
42. My attention was also drawn to a nearby non designated asset known as Highfields House. This stands to the west of the appeal site at a higher level and is a fairly typical sub-urban Victorian house. From the evidence and what I observed, while attractive it is of limited architectural and historic interest. Given the intervening distance and change in level between it and the appeal site, I consider that the proposal would have a very limited impact on the contribution its setting makes to its significance.
43. I therefore conclude, paying special regard to the desirability of preserving the setting of listed buildings, as set out in Section 66(1) of the PLBCA, that the proposed development would preserve the settings of the listed buildings. Accordingly, the proposal would accord with NPPF paragraph 132 and there

would be no conflict with CS Policies CS6 and CS17, and SAMDev Policies MD2 and MD13.

Character and appearance

44. The appeal site is located to the north east of Tarporley Road on the northern edge of the built-up area of Whitchurch. It comprises an area of agricultural pasture through which footpath (0234/52/1) passes. It is enclosed by an established hedge on its north-eastern boundary while an area of woodland abuts the south-eastern boundary, beyond which stands the supermarket. A small pond is located next to the northern boundary which is bordered by trees.
45. Adjoining land uses include residential along Tarporley Road, commercial to the east and agricultural to the north and north-east, leading to the Hill Valley Golf Club. The terrain is gently undulating and surrounding roads and recreational routes include the B5395, the Great English Walk Footpath and Route 45 Cycle Way; *The Mercian Way*. There are no landscape designations affecting the appeal site but in character terms it forms part of the *Shropshire, Cheshire and Staffordshire Plain National Character Area*¹⁶ (NCA 61). At the local level its landscape type is identified as *Settled Pastoral Farmlands*¹⁷ (the majority of the site) and *Urban*. A key characteristic of the *Settled Pastoral Farmlands* is a pastoral land use in a lowland agricultural landscape.
46. The appellant further sub-divided the local area into 12 site specific landscape character areas, placing the appeal site within Area 1 *Urban Agricultural*¹⁸. It was argued that Area 1 had a less direct area of visibility than the other areas in this classification and had direct physical links to urban Whitchurch. Nevertheless, despite being on the urban periphery and being in part characterised as an *Urban* landscape type, I observed that the appeal site has a strong pastoral identity. As such it shares its affinity with the open landscape character of the countryside to the north and north-east notwithstanding the presence within this area of the Golf Course. Furthermore, although an undesignated landscape, the appeal site possesses an attractive and tranquil quality that provides an open setting for this part of Whitchurch.
47. While I note the North Shropshire Landscape Sensitivity and Capacity Study 2008¹⁹ regarded the appeal site as having a high landscape sensitivity, from what I observed, as part of a pastoral landscape that fringes the urban edge of Whitchurch, it would have a moderate sensitivity to change. As to the magnitude of change that would be wrought by the proposal, the submitted Landscape and Visual Impact Assessment (LVIA)²⁰ includes 6 no. representative views of the proposal within 750m of the appeal site boundary and distinguishes between its effect on landscape character and its visual impacts on views experienced by visual receptors.
48. I have given careful consideration to the appellant's landscape evidence, including the LVIA and fully appreciate that the landscape to which the appeal site belongs is not rare, or of exceptional quality, and that the site itself has no particular landscape or historic heritage designation. However, it forms part of

¹⁶ Core Document CD14

¹⁷ Core Document CD15

¹⁸ Mr Bright Proof of Evidence

¹⁹ Core Document CD16

²⁰ Core Document CD17

the wider open pastoral landscape to the north of the town and is an integral part of the local landscape character. In my judgement, the development would introduce an overtly urban form of development that would be highly incongruous within this pastoral setting.

49. One of the core principles of the NPPF is that the intrinsic character and beauty of the countryside should be recognised. Building up to 39 new houses with associated infrastructure on the appeal site would lead to an erosion of that natural quality, and as a result, the proposal would cause landscape harm. This magnitude of change (and thus of harm) from a tranquil pastoral landscape of moderate sensitivity to a housing development would, given the proposed mitigation and reflecting the presence nearby of the urban fringe, be moderate.
50. In terms of its visual impact, the development would be prominently seen from closer range views (LVIA Photograph 3 from footpath 0234/52/1, Photograph 4 and Photograph 5). It would also feature prominently in views from the public footpath crossing the Golf Course (LVIA Photograph 6). Although not part of any nationally promoted footpath, 0234/52/1 had the appearance of being a well-used route, presumably by local residents. The introduction of built form with the attendant urbanising elements such as roads, driveways, gardens and street-lighting would be visually jarring and would significantly change the experience of those using the footpath from that of a tranquil, pastoral landscape to that of a sub-urban townscape.
51. I acknowledge the commitment to open space provision within the development but I consider that it would nevertheless increase the quantity of development in the area, introducing built form to a pastoral field that is currently seen as part of the edge of the countryside as it sweeps up to the urban fringe. The lower lying nature of the appeal site relative to surrounding built form serves to increase the sense of tranquillity which the development would encroach upon. This effect would be localised but given the proximity of the roads and footpaths, I consider that the effect would be one of significant harm in visual impact terms.
52. The change to the intrinsic pastoral character of the area which would be seen from Tarporley Road and in particular footpath 0234/52/1, would, I conclude, have a moderately adverse effect on local landscape character and result in a significantly adverse visual impact. There would be conflict with CS Policies CS5 and CS17 in this regard. The proposal would also be at odds with NPPF paragraph 7 which makes clear that *'contributing to protecting and enhancing our natural, built and historic environment is an aspect of sustainable development'*.

Other matters

53. I note that in terms of highway safety, ecology, trees, drainage/flood risk, sewerage, archaeology and the living conditions of nearby residents, the Council, as advised on these matters by the County Highway Officer, the Council Ecologist, the Council Drainage Engineer and Welsh Water, raised no objections, subject to suitably worded conditions being attached to any grant of outline planning permission. From my assessment, I have no reason to disagree.

54. A signed and dated S106 was submitted by the appellant. This covers the completion and transfer of open space and the provision of affordable housing at a rate of between 10 and 20%. In the light of the evidence presented at the Inquiry, I consider that the obligations in the S106 meet the tests set out in the NPPF and satisfy the requirements of regulation 122 of The Community Infrastructure Levy Regulations 2010. I can therefore give the S106 significant weight.
55. The appellant drew my attention to several appeal decisions in the District which also considered the CS housing requirement where housing developments were permitted. Be that as it may, I am not aware of the detailed considerations of those Inspectors and I do not consider them to be directly comparable to this case given the different development plan context and agreement that in those instances there was no current housing requirement figure.

Benefits of the proposal

56. The provision of up to 39 dwellings, between 10 and 20% of which would be affordable, would serve to boost the supply of housing (in particular affordable units, in a District where an affordable housing need exists). The S106 also includes the provision of public open space. Although mainly to the benefit of occupiers of the development, there would be some benefit the wider community. The scheme would also be likely to create construction jobs, deliver investment in construction, increase annual household expenditure in the local area, make a contribution through the Community Infrastructure Levy of around £4,400 per dwelling and bring about biodiversity enhancements. Collectively, I afford these benefits substantial weight.

Planning balance and conclusion

57. I recognise that Whitchurch offers a range of community facilities and services, and links to public transport connections that are within easy access of the appeal site. However, sustainability encompasses economic, social and environmental dimensions, which go beyond whether or not a proposal would be situated within a sustainable location.
58. The benefits of the proposal as set out above are substantial and would accord with the economic, social and environmental dimensions of sustainable development, particular as it would serve boost the supply of housing, including affordable, over and above the minimum figure set out in CS Policy CS1. However, the environmental dimension of sustainability is also concerned with protecting and enhancing the natural environment.
59. In this regard, although there would be no harm to the settings of nearby designated and non-designated heritage assets, or under the *other matters* set out above, I have found that the proposal would cause moderate harm to local landscape character and would have a significantly harmful visual impact from nearby vantage points. Accordingly, there would be significant environmental harm in allowing the proposed development to take place. This would conflict with CS Policies CS5 and CS17. This conflict with the development plan would not be outweighed by the benefits of the proposal including those brought about by the 106 Agreement.

60. From the evidence, I consider that the proposal would not be sustainable development and there are no material considerations that would warrant a decision other than in accordance with the development plan. Accordingly, the appeal is dismissed.

Richard McCoy

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Gary Grant of Counsel	Instructed by the Council Solicitor
He called	
Edward West BA(Hons), MCD, MRTPI	Principal Policy Specialist
Ruth Hitchin MA	Senior Conservation & Design Officer (North)
Keith Hampshire BA, DipLA, CMLI	Director, ESP Ltd
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FOR THE APPELLANT:

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Richard Bright BA(Hons), Dip LA, CMLI	Principal, Bright & Associates
Helen Howie MA(Hons), MCD, MRTPI	Planning Consultant, Berrys
Anthony Martin BA, MA, MCifA	Heritage Consultant
Paul McColgan	Principal Associate Director, GL Hearn

DOCUMENTS

- 1 Council's letter of notification of the Inquiry
- 2 Appearances on behalf of the appellant
- 3 Letter from Welsh water dated 28 April 2014
- 4 Letter from Welsh water dated 13 August 2014
- 5 Letter from Welsh water dated 3 December 2015
- 6 Proposal for Hydraulic Modelling Assessment of Foul Sewerage
- 7 Cheshire East Borough Council and Secretary of State for Communities and Local Government and Renew Land Development Ltd, [2016] EWHC 571 (Admin), CO/5040/2015
- 8 Judgement, Barratt Homes Limited v Dwr Cymru Cyfyngedig (Welsh Water), [2009] UKSC 13
- 9 Site visit itinerary
- 10 Email dated 22 July 2016 setting out historic and current developed floor-space on the adjoining site
- 11 Email from Ruth Hitchen in respect of the Sainsbury site
- 12 Email from Helen Howie in respect of the Sainsbury site
- 13 Shropshire Council and Secretary of State for Communities and Local Government, BDW Trading Limited Trading as David Wilson Homes (Mercia), Magnus Charles Howat, Martin John Howat, [2016] EWHC 2733 (Admin), CO/2850/2016

- 14 List of draft conditions
- 15 Oadby and Wigston Borough Council and Secretary of State for Communities and Local Government, Bloor Homes Ltd, [2015] EWHC 1879 (Admin)
- 16 Appeal decision ref. APP/L3245/W/15/3137161
- 17 North Wiltshire District Council v Secretary of State for the Environment and Clover, Court of Appeal, 12 April 1992
- 18 Table of differences between GL Hearn and Council approach to OAN
- 19 SAMDev Plan Inspector's Report extract on Windfall
- 20 Council's critique of Unilateral Undertaking
- 21 Signed and dated Section 106 Agreement

PHOTOGRAPHS

- 1 Aerial photograph of Sainsbury site pre development
- 2 Aerial photograph of planting belt to the west of the Old Rectory

CORE DOCUMENTS

- CD1 The National Planning Policy Framework
- CD2 Planning Practice Guidance
- CD3 Shropshire Core Strategy (adopted March 2011)
- CD4 Site Allocations and Management of Development Plan (adopted December 2015)
- CD5 Type and Affordability of Housing SPD (adopted September 2012)
- CD6 SAMDev Plan Inspector's Report October 2015
- CD7 EV2 Strategic Housing Land Availability Assessment (SHLAA) July 2014 – map of Whitchurch with key
- CD8 EV3b Strategic Housing Market Assessment (SHMA) March 2014
- CD9 EV3c Strategic Housing Market Assessment (SHMA) Update Addendum July 2014
- CD10 EV77 SAMDev Background Paper March 2014
- CD11 EV79 Housing Delivery Technical Background Paper July 2014
- CD12 Guidelines for Landscape and Visual Impact Assessment (Third Edition), Landscape Institute (2013)
- CD13 Landscape Character Assessment – Guidance for England and Scotland, Carys Swanwick and Land Use Consultants (2002)
- CD14 Shropshire, Cheshire and Staffordshire Plain National Character Area (NCA No.61)m Natural England, 2014
- CD15 The Shropshire Landscape Typology, Shropshire County Council, 2006
- CD16 North Shropshire Landscape Sensitivity and Capacity Study (Part 1, Part 2 and Appendices) White Consultants 2009
- CD17 Landscape and Visual Appraisal, Relating to the Proposed Residential Development, Tarporley Road Residential Development, prepared for Müller Strategic Projects Ltd. by Bright & Associates, February 2015
- CD18 Technical Information Note (TIN) 08/2015, Landscape Institute, February 2016
- CD19 An Approach to Landscape Character Assessment, Natural England, 2014
- CD20 Topic Paper 6 (TP6), Techniques and Criteria for Judging Capacity and Sensitivity, 2002
- CD21 Wigley, A, 2007, The Shropshire Historic Landscape Character Assessment,

- Shropshire County Council/English Heritage
- CD22 Chartered Institute for Archaeologists, 2014, Standard and Guidance for Historic Environment Desk-Based Assessment
- CD23 English Heritage, 2008, Conservation Principles – Policies and Guidance for the Sustainable Management of the Historic Environment
- CD24 Department for Communities and Local Government, 2016, Planning Practice Guidance – Conserving and Enhancing the Historic Environment CD25 Historic England, 2015, The Setting of Heritage Assets Historic Environment Good Practice Advice in Planning:3
- CD26 Nexus Heritage, February 2015, Land at Tarporley Road, Whitchurch, Shropshire Heritage Statement, Report No:3219.R01c
- CD27 Development Management Report, Application number: 15/00916/OUT, Outline application (access for approval) for residential development of up to 39 dwellings, Land Adj Bollandfield Tarporley Road Whitchurch Shropshire SY13 1LW, Shropshire Council
- CD28 Development Management Report, Application number: 15/00433/OUT, Outline application (access for approval) for residential development, Land East of Tarporley Road Whitchurch Shropshire Shropshire Council
- CD29 Development Management Report, Application number: 13/03413/OUT, Outline permission (access for approval) for residential development (up to 86 dwellings) to include vehicular access (off Tarporley Road)

APPEAL DECISIONS

- AD1 Land East of Village Hall, Welshampton, Shropshire 24th May 2016, APP/L3245/W/15/3033490
- AD2 Teal Drive, Ellesmere, Shropshire 16th May 2016 APP/L3245/W/15/3067596
- AD3 Land North of Gorse Lane, Bayston Hill, Shropshire 21st March 2015, APP/L3245/W/15/3127978
- AD4 The Bell Hotel, Cross Houses, Shropshire 23rd February 2016, APP/L3245/W/15/3134152
- AD5 Land adjacent Park View, Broseley, Shropshire 18th February 2016, APP/L3245/W/15/3006489
- AD6 Land East of Station Road, Conover, Shropshire 20th January 2016, APP/L3245/W/15/3007926
- AD7 Land East of Nobold Lane, Longden Road, Shrewsbury 19th January 2016, APP/L3245/W/15/3011886
- AD8 Land at Bromfield Road, Ludlow, Shropshire 30th November 2015
- AD9 Land at The Cross, West Felton, Shropshire 30th November 2015
- AD10 Ash Grove, Wem, Shropshire 23rd September 2015, APP/L3245/W/15/3029727
- AD11 Brook Cottages, Ford, Shropshire 19th May 2015 APP/L3245/A/14/2228348 ref paragraphs 23 & 30
- AD12 Land at Hill Top Farm, Northwich 3rd September 2015 APP/A0665/W/14/3000528
- AD13 Land at Fountain Lane, Davenham, Cheshire APP/A0665/A/14/2226994; ref paragraph 24
- AD14 Land south of Cirencester Road Fairford 22nd September 2014 APP/F1610/A/14/2213318
- AD15 Land south of Greenhill Road, Coalville, Leicestershire 5th January 2016 APP/G2435/W/15/3005052

LEGAL CASES

- L1 Anita Coleman v SoS for DCLG and North Devon District Council and RWE NPOWER RENEWABLES LIMITED [2013] EWHC 1138 (Admin)
- L2 Oadby and Wigston Borough Council v SoS for DCLG and Bloor Homes [2015] EWHC 1879 (Admin)
- L3 City and District Council of St Albans v Hunston Properties and SoS for DCLG [2015] EWHC 1879 (Admin)
- L4 Gallagher Homes and Lioncourt Homes v Solihull Metropolitan Borough Council [2014] EWHC 1283 (Admin)
- L5 West Berkshire District Council v SS CLG & HDD Burghfield Common Ltd [2016] EWHC 267 (Admin)
- L6 Wychavon District Council v SS CLG & Crown House Developments Ltd [2016] EWHC 592 (Admin)
- L7 Suffolk Coastal District Council v Hopkins Homes Ltd & SS CLG, and Richborough Estates Partnership LLP v Cheshire East BC & SS CLG [2016] EWCA Civ 168
- L8 SS CLG v West Berkshire DC and Reading BC [2016] EWCA Civ 441
- L9 Stroud District Council v SS CLG and Gladman Developments Ltd [2015] EWHC 488 (Admin)
- L10 Secretary of State for Communities and Local Government v BDW Trading Limited [2016] EWCA Civ 493
- L11 Oxted Residential Ltd. V Tandridge DC [2016] EWCA 414
- L12 The Queen on the Application of Gladman Developments Ltd v SoSCLG, Borough Council of Wellingborough [2016] EWHC 683 (Admin)
- L13 R(Forge Fields Society) v Sevenoaks DC [2015] EWHC 1895 (Admin)
- L14 Crane v Secretary of State for Communities and Local Government and Harborough District Council [2015] EWHC 425 (Admin)
- L15 Wenman v SSCLG [2015] EWHC 925 at paragraphs 74 – 80
- L16 Barnwell Manor Wind Energy Ltd v East Northants DC [2014] EWCA Civ 137
- L17 Gladman Developments Ltd. V Wokingham Borough Council [2014] EWHC 2320 (Admin)
- L18 R (on the application of Gladman Developments Ltd.) v Aylesbury Vale District Council [2014] EWHC 3423 (Admin)
- L19 Langton Homes Limited v SoS CLG and Harborough District Council [2014] EWHC 487 (Admin)
- L20 Bloor Homes East Midlands Limited v SoSCLG and Hinckley and Bosworth Borough Council [2014] EWHC 754 (Admin)
- L21 South Northamptonshire Council v SoS CLG, Barwood Land and Estates Limited [2014] EWHC 573 (Admin)
- L22 Stratford on Avon District Council v SoSCLG and J S Bloor (Tewkesbury) Limited, Hallam Land Management Limited, RASE (Residents Against Shottery Expansion) [2013] EWHC 2074 (Admin)

Appeal Decision

Inquiry held on 11 January 2017

Site visit made on 11 January 2017

by Pete Drew BSc (Hons), Dip TP (Dist) MRTPI

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

Decision date: 17 January 2017

Appeal Ref: APP/L3245/X/16/3147191

Hunky Dory, Tern View, Market Drayton, Shropshire TF9 1DU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 [hereinafter 'the Act'] as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development [LDC].
 - The appeal is made by Mr & Mrs C Williams against the decision of Shropshire Council.
 - The application [Ref. 15/03780/CPE], dated 1 September 2015, was refused by notice dated 23 November 2015.
 - The application was made under section 191(1)(a) of the Act.
 - The development for which an LDC is sought is use of private swimming pool at Hunky Dory for providing children's swimming lessons [but see below for revision].
 - The evidence was taken on oath from all witnesses who addressed the Inquiry.
-

Decision

1. The appeal is dismissed.

Preliminary matters

2. Section 7 of the application form indicates that an LDC is sought for an existing use that is said to fall within use class "D2". However the Promap, which accompanied the application, shows the curtilage of Hunky Dory edged red, with the shared access edged blue. It was therefore agreed at the Inquiry that the description should be revised to: *Mixed use of Hunky Dory for residential and of private swimming pool at Hunky Dory for providing children's swimming lessons*. This change reflects the mixed use of the land for a residential and commercial use, including the parking of vehicles belonging to the parents of those who have swimming lessons, which would not be within any use class.
3. At the Inquiry it emerged that a number of local residents had made written representations direct to The Planning Inspectorate [PINS] but that these had not been circulated to either main party and had not been placed before me. On behalf of PINS I apologised for this inaction and I formally do so again now. I have asked my colleagues to instigate an investigation so that lessons can be learnt to avoid such a situation reoccurring. I have obtained confirmation from my colleagues that what I was given at the Inquiry [Document 4] is a full set of the correspondence that has been submitted. I would therefore like to assure all interested parties that I am confident that I have taken account of all of the documents that have been submitted to PINS since this appeal was lodged.
4. There has been reference to Circular 10/97, but this is no longer extant because it has been revoked and replaced by the Planning Practice Guidance ["the Guidance"]. However the relevant evidential tests have not changed.

Background to and identification of the main issues

5. The Guidance says: "*In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability*"¹. The test applies equally to an Inspector at appeal.
6. The application is dated 1 September 2015 and so the material date in this appeal is 10-years before this date, i.e. 1 September 2005. On this basis the first main issue is whether, on the balance of probability, the Appellants have discharged the onus of proof to show that the use of the pool for providing children's swimming lessons began prior to the material date and has continued. The second main issue is whether there has been positive deception of the Local Planning Authority such that a principle of public policy, namely that a person should not benefit from their own wrong, is invoked.

Reasons: (i) Consideration of the first main issue

7. In closing the Council's closing submissions helpfully broke down the 10-year period at issue for the purpose of analysis and I adopt a similar approach now.

Did the commercial use commence prior to the material date?

8. Section 10 of the application form asks "*When was the use or activity begun?*" to which the answer "*31/08/2005*" is given. The Council has highlighted that some of the sworn statements that were submitted with the application² say that swimming lessons had begun at the property "*prior to*" that date. Whilst it is claimed that this conflicts with the answer given on the application form, I am not convinced that there is a great deal of substance to this point. The application form does ask for a specific date and, on the Appellants' version of events, the lessons had started by that date. At its highest it might be said to be imprecise but, in itself, this is not a sound basis to dismiss this appeal.
9. The more substantive point is whether the activity taking place prior to the material date represented the making of a material change in the use of the land. In evidential terms I consider that the position is clear. Mrs Muir gave evidence that lessons started very soon after the "*Teddy Bears Crash Course*", the certificate for which is dated "*WC 15/08/05*"³ and that initially it was just her son and the Appellants' daughter who had regular lessons. Mrs Muir's proof of evidence says her daughter: "*...would sometimes get in the pool with Sue [the swim teacher], but did not officially start to have lessons until she turned 3 years in the March of 2006*". She confirms that the initial lessons at the appeal site were weekly and just on a Tuesday afternoon.
10. The Appellant's proof of evidence says that: "*From 2006, I recruited several children...*" and so, on the Appellant's own evidence, she did not recruit any additional swimmers in 2005. At the Inquiry, despite the fact that their proofs of evidence are silent on this point, both the Appellant and Mrs Muir said that the swimming teacher started to bring her own pupils with her to the lessons

¹ Source of quote: paragraph ID: 17c-006-20140306.

² At Appendix 16 to Miss Groom's proof of evidence.

³ Appendix 17 to Miss Groom's proof of evidence.

that were conducted at the appeal site. However they both said that they were unsure when other children started to attend the lessons: the Appellant said it was a few weeks or a few months after the lessons started; Mrs Muir said that she could not say when other children started lessons, but it might have been within 2 weeks or 2 months. What I take from this is that there is no reliable evidence that other children attended the lessons prior to the material date.

11. Adopting the balance of probability it would appear that there were a maximum of 2 swimming lessons provided at the appeal site prior to the material date, which were provided for 2 children, one of whom received the lesson 'in kind'⁴. Whilst I have no reason to doubt that Mrs Muir's daughter might have got in the pool at the appeal site in August 2005 the evidence is that she did not have swimming lessons in 2005. Mrs Muir's proof of evidence describes the Appellant as a: "...friend of my sister", but says she has known the Appellant: "...for about 20 years" which, given that the proof was written in 2016, would take me back to 1996. So whilst Mrs Muir said she met the Appellant at the swimming pool in Market Drayton and they became friends, they were acquainted before 2005.
12. Taking all of these factors into account I am satisfied, as a matter of fact and degree, that the level of use that took place prior to the material date did not constitute a material change in the use of the land. Essentially 2 parents, who already knew each other, persuaded the swimming teacher to come and give their children some private lessons in the Appellant's own pool with the offer of £5 to essentially cover the teacher's costs. It is not clear at what stage it was said that the teacher could bring her own pupils to future lessons and obtain financial remuneration, but it has not been shown that such use commenced prior to the material date. This alone is a sound basis to dismiss this appeal, but it would be unsatisfactory if I left it there and so I propose to review other aspects of the case and identify when the material change of use took place.

Has the commercial use ceased?

13. At the other end of the period at issue, the Appellants need to show that the use was still subsisting on 1 September 2015, being the date of the application. This is because the test for lawfulness necessarily engages the question as to whether enforcement action, as defined in section 171A(2) of the Act, could be taken. If the use subsisting on the date of the application has reverted to use for a purpose incidental to the enjoyment of the dwellinghouse as such then, by definition, that is not development by virtue of section 55(2)(d) of the Act. Accordingly, if the commercial use had ceased by that date, there would be no breach of planning control against which enforcement action could be taken.
14. The evidential position on this point is more ambiguous. The Appellant was asked about the exchange of emails, culminating in that sent by Miss Groom dated 29 June 2015 [Document 3]. She said that she was sure that she would have abided by it within 2 months of that date, "*definitely*". On the basis of the Appellant's testimony I conclude that paid lessons ceased by 29 August 2015.
15. It would therefore appear that by 29 August 2015 the Appellants had instituted a revised arrangement in which any lessons that did take place after that date were for "*friends and family*", who were asked to make a "*donation*" towards

⁴ Week commencing 15/08/2005 means that date was a Monday and so swim lessons might have taken place on Tuesday 23rd and 30th August. The Appellant confirmed that Sue did not charge for her daughter's lessons.

the cost of heating the pool⁵. During my inspection, the donation box was pointed out to me on the table outside of the entrance to the swimming pool.

16. Miss Groom was asked about what level of use the Council would consider to represent the making of a material change in the use of the land. In giving her answer she specifically addressed the arrangement that the Appellant says is currently subsisting, in which use of the pool is restricted to friends and family who are merely asked to make a donation to the running costs. Miss Groom said the Council would regard this level of use to be acceptable and that it was not a material change in the use of the land; I have no reason to disagree.
17. Notwithstanding the clarity of the position that might be said to arise from the above, Mrs Hancock confirmed the contents of her proof of evidence on oath and it says: "*Both of my children had weekly lessons until June 2016*". She was asked whether she paid for the lessons and confirmed that she did⁶. With hindsight all parties realised that the question was not asked as to whether the payment, which I have no reason to doubt was made after 29 August 2015, was placed in the donation box or given in an envelope under the old system. It is material that at that stage her children had been having weekly lessons for over 8 years and so it is conceivable that she is now a friend of the Appellant.
18. I have to assess what, at face value, might be said to be conflicting evidence and the test is that set out in the Guidance, namely the balance of probability. In view of: i) the Appellant's testimony; ii) the existence of the donation box which I saw during my inspection; and, iii) the fact that the date given by Mrs Hancock is so long after the exchange of emails, there is not a sound basis to conclude that the commercial use continued until June 2016. On the balance of probability, I conclude that the commercial use ceased by 29 August 2015 and thereafter the use of the pool has been restricted to friends and family who have merely made a donation towards the cost of heating the pool.

When did the material change of use occur?

19. The Council does not dispute that the use of the pool for children's swimming lessons gave rise to the making of a material change in the use of the land. Miss Groom indicated that the evidence suggests that the material change of use took place during 2011. The evidence to support such a conclusion includes: i) an exchange of emails between the main parties in 2014 in which the Appellant said she: "*...began to teach on 29th July 2011*"⁷; and, ii) this version of events appears to be reflected in the Design and Access Statement [hereafter DAS]⁸ which, in several instances, says the lessons started in 2011. I propose to examine this evidence further in respect of the second main issue.
20. Miss Groom said in reaching that view she had taken account of the evidence as to the scale and intensity of the use, as well as the complaints that had been received from neighbours. However the complaints only appear to have been made for the first time in 2014. During the site inspection I was given access to the property at Brambleside, amongst others. The view from the window in front of the kitchen sink looks directly across the shared access, which runs at

⁵ The words in italics in both paragraphs 14 and 15 are direct quotes of what the Appellant stated on oath at the Inquiry according to my contemporaneous note of the proceedings.

⁶ Question put on behalf of the Appellants, according to my contemporaneous note.

⁷ Source of quote: Appendix 9 to Miss Groom's proof of evidence.

⁸ Submitted with planning application 15/01386/COU, which was subsequently refused and was the subject of an appeal decision [Ref. APP/L3245/W/3140150] dated 24 March 2016, which dismissed the appeal.

a level of circa 1 m above the slab of the dwelling. In other words any vehicle that attends Hunky Dory has to pass along that length of tarmac in full view of that window, which otherwise serves an open plan lounge area. Although Mr Nurser said he works away during the day he said his wife works from home and therefore spends a great deal of time there, and that her arrangements have not changed over the relevant period. In the context of the Appellant's claim that 2011 was probably her busiest period, I find it difficult to reconcile why all of the neighbours, including Mr & Mrs Nurser, only noticed the problem for the first time in 2014. Nevertheless it appears to be common ground that there has been a breach of planning control by 2014 at the very, very latest.

The period up to February 2008

21. In consideration of whether the material change of use took place before 2011 I start my analysis, in the context of my earlier finding, with the period up to February 2008, when the Appellant's father died. The Appellant acknowledges that her record of events during the period 2006 to February 2008 is limited. There is however no reason to doubt that lessons continued throughout this period and, in particular, that the Appellants' daughter only had lessons at home. Although the publicity poster⁹ has a written date of "2007" on it, the Appellant said that swimming lessons on a Tuesday and Wednesday took place until 2009, and so I am only able to attach limited weight to the date of 2007.
22. Under cross-examination the Appellant initially agreed she could not remember what was going on in the period up to February 2008. However she later said that she had "*limited recollection*"¹⁰ of that period and claimed that there were weekly swimming lessons on a Tuesday and a Wednesday. In re-examination she agreed that there had been regular lessons. It is clear that the level of use did increase during this period and I test the evidence in what follows.
23. There is no reason to doubt that Mrs Muir's daughter started lessons in March 2006. Ms Currie said that she had seen more than 10 lessons in the 12 month period from summer 2005 to summer 2006. On one occasion she recalled seeing 3 or 4 cars and children when she went to the property to water some plants when the Appellants, and their daughter, were on holiday. Given the terms of her proof of evidence, this appears to have been during the summer of 2006. Even if I assume that this included both of Mrs Muir's children, this suggests there was at least one other child attending paid lessons. Ms Currie confirmed that when she saw the teacher in the kitchen she had envelopes with names on them which, Ms Currie assumes, had payments in them. This is consistent with what Mrs Blaxall and others said was the method of payment.
24. Mrs Blaxall's son started lessons in September 2006 and at that stage I am satisfied from her testimony that consecutive lessons took place as she witnessed other children changing at the end of her son's lesson. Mrs Blaxall confirmed that she was not a friend of the Appellant and had just met her in the playground and been invited to attend the lessons. Mrs Blaxall's evidence is the first clear and unambiguous evidence of a person who is not a friend or family member attending the premises and paying for swimming lessons.

⁹ At Appendix 11 to Miss Groom's proof of evidence.

¹⁰ The words in italics are what the Appellant stated on oath at the Inquiry, according to my contemporaneous note.

25. Aside from the sworn evidence a number of letters have been submitted as part of the application, but because they are not sworn I attach limited weight to the contents of that correspondence. Mrs Blaxall's letter dated 3 August 2015 says that she is unsure which day of the week her son's lessons were on. Mrs Muir's letter dated 10 August 2015 says her daughter's lessons normally followed those of her brother on a Tuesday afternoon. Mrs Shelley's letter dated 5 August 2015 says her son's lesson was on a Tuesday, starting in September 2006. Mrs Harding's letter dated 19 August 2015 says her son attended lessons from the end of 2005 and that he was in a class with 3 other children, but it is not said on what day of the week those classes took place.
26. The "*Schedule of submitted evidence in letters/email information*" might be taken to suggest that Melanie Ingham and Carly Skitt started swimming lessons in 2005, but any such inference would be incorrect. Carly Skitt confirmed on oath that the first lesson she saw take place was in 2009. Melanie Ingham's statutory declaration says the Appellant told her about the lessons on 24 August 2005 and that she saw new swimming aids when she used the pool in December 2005. That is broadly consistent with my understanding, but she clearly says her children did not attend the lessons. Both Melanie Ingham and Carly Skitt are members of the Appellant's family and so their use of the swimming pool at the premises is an incidental purpose.
27. The Appellant's letter dated 28 October 2015 says: "*It was not long at all that the lessons/days 'filled up' and swimming lessons were increased in number each day and in the number of days per week*"¹¹. I might be reading a lot into that sentence but the order of change might be significant. However, as I have noted, the Appellant admits that she has limited recollection of this period and hence whilst there is evidence of 2 lessons being convened on one day, I can find no clear evidence that lessons were held on more than one day. So whilst the Appellant claimed that the poster might have been as early as 2006 that is not supported by any other evidence before the Inquiry. I conclude that at least up until the end of 2006 lessons were confined to a Tuesday afternoon.
28. The additional evidence for 2007 is solely from unsworn correspondence. Sarah Clarke's letter dated 19 August 2015 says that her children attended lessons from February 2007 for a period of 12 months, but it does not say which day of the week they attended. Sheila Longland's letter dated 25 August 2015 says her daughters attended lessons between April 2007 and July 2008, but it does not say which day of the week they attended. Mrs Ragbourne's letter dated 8 August 2015 says her daughter had lessons from September 2007 until July 2012, but it too does not say which day of the week they attended. So this correspondence does not materially change the position.
29. In closing the Council submitted that the material change of use did not occur in the first few months after the material date; I agree. However Mrs Blaxall's evidence, to which I attach significant weight, does suggest that the use was at least getting near the threshold in September 2006. Nevertheless the use appears to have been for part of one afternoon, one day a week. The unsworn correspondence that I have reviewed does not demonstrate that lessons were taking place on Wednesdays up to and including February 2008. Whilst the use was growing and at least one person who was not family or a friend was paying to attend lessons, as a matter of fact and degree, it has not been shown that

¹¹ Source of quote: letter at Appendix 22 to Miss Groom's proof of evidence.

this constituted the making of a material change in the use of the land. In this context the analogies given in closing for the Council, for example to a private tutor or a musician having paid students at their home, are apt. For these reasons the Appellants have therefore failed to discharge the onus of proof.

The period from February 2008

30. The submitted Schedule identifies 4 letters from parents whose children are said to have started swimming in 2008. Of these I attach significant weight to the sworn evidence given by Mrs Hancock at the Inquiry. She says that her children attended every Thursday evening from April 2008¹², which is the first clear and unambiguous evidence of swimming lessons being convened on a day of the week apart from Tuesday. I appreciate that the poster might suggest that the sequence was that the first day that swimming lessons were started apart from Tuesdays was on Wednesdays. However there is no other evidence to support that contention and, given that the Appellant admits she has limited recollection for the period up to February 2008, that alone is not enough. In any event the Appellant's concession that the poster might have been as late as 2009 might suggest that the lessons on Wednesdays might not have started until 2008. As such there is no obvious inconsistency in this evidence.
31. Mrs Muir's evidence is that her youngest son had begun swimming lessons in May 2008. Mrs Joyce says her 3 children took swimming lessons from the summer of 2008 and Mrs Davies says her son started having lessons every Wednesday afternoon from November 2008. Whilst unsworn, this is the first clear evidence of swimming lessons being convened on Wednesday afternoons.
32. So by November 2008, at the latest, the evidence suggests that swimming lessons were taking place on at least 3 days a week: Tuesdays, Wednesdays and Thursdays. By my calculation, based on the evidence before me, there is evidence of at least 16 children having paid for swimming lessons in the pool by this date¹³. Of those Mrs Muir, Mrs Blaxall and Mrs Hancock have all given sworn evidence of having paid for swimming lessons. In my view this suggests that the material change of use might have taken place during 2008, possibly as early as May but, adopting the balance of probability, before November.
33. The Appellant's sworn proof of evidence supports such a finding, insofar as she says she recruited "*lots of children*" from Hinstock Hedgehogs Nursery, where she started working in April 2008¹⁴, and that these made up 70 % of the total. It appears to be an admission that the number of children attending swimming lessons materially increased during 2008 to the point where 70 % of them had been obtained by the Appellant as a result of her contact with parents at the school. It follows that those children could not have started before April 2008 and hence the number of children attending before that date, whether recruited by the swimming instructor or otherwise, would have been relatively small.

¹² I note that in this respect her sworn proof of evidence differs from her letter dated 5 August 2015, which says that the initial lessons were on Tuesday evenings from April 2008. Nevertheless, because the contents of that letter are unsworn, it is appropriate to attach greater weight to the contents of her sworn proof of evidence.

¹³ Apart from the Appellant's daughter, these are: Mrs Muir's 3 children; Mrs Harding's son; Mrs Blaxall's son [up to December 2007]; Mrs Shelley's son; Mrs Clarke's children [I shall assume 2 children, as the letter is not more precise, up to February 2008]; Mrs Longland's 2 daughters [up to July 2008]; Mrs Ragbourne's daughter; Mrs Hancock's son; Mrs Joyce's 3 children; and Mrs Davies' son.

¹⁴ Date taken from paragraph 1.10 of the Appellant's proof of evidence but confirmed by her letter at Appendix 22 to Miss Groom's proof of evidence.

34. I have considered the possibility that the reference to 70 % in the Appellant's proof of evidence might be to say that by this stage she had recruited 70 % of the children, including those, such as Mrs Muir, who had started before 2008. However, taking account of the evidence that some of those children, such as those of Mrs Blaxall and Mrs Clarke, had stopped attending by March 2008, and that the only evidence for additional days is after this date, this does not alter my view that the material change of use probably took place during 2008.
35. I further acknowledge that the identification of this date ties in with the period that the Appellant can recall names of parents who attended and that it is possible that the swimming teacher recruited most children prior to April 2008. However, albeit for reasons that I do understand, the swimming teacher has not been called to give evidence and, as a direct result, the evidence for the period up to this date is vague. As the onus of proof falls on the Appellants to demonstrate their case there can be no question of somehow giving them the benefit of the doubt. Whilst this might appear insensitive, that is the nature of this type of application, which is declaratory of certain rights in law and so, case law confirms, broader human rights considerations are not engaged.

Other matters

36. In reaching the conclusion that the material change of use occurred well before 2011, as claimed by the Council, I have also had regard to the evidence of the use between 2008 and 2011. It is material that Carly Skitt confirmed on oath that lessons were being run regularly on at least 3 days a week by June 2009. Other evidence that I have reviewed above has enabled me to date the start of lessons on other days more accurately. The contact lists for swimming classes on Tuesdays and Wednesdays in 2009¹⁵ confirm that by this stage there were multiple classes taking place each day. Excluding the Appellant's daughter, the lists contain the names of 27 children names attending 6 swimming classes on a Tuesday and the names of 28 children attending 6 swimming classes on a Wednesday. The names of parents and guardians, together with details of telephone numbers, which I have no reason to set down in a public document, gives a degree of precision and legitimacy to the evidence for that period. In my view this is clear confirmation that the material change of use occurred well before 2011.
37. Looking at the situation the other way it is also material that the Appellant agreed that there was a 'substantial difference' between the scale of activity at the start of the 10-year period, immediately after the material date, and 2011. Similarly Mrs Muir who, out of those who have given sworn evidence is the only other person who can compare the use in 2011 with that immediately after the material date, agreed that there has been a 'significant increase' in the level of the use over that time frame. This is entirely consistent with my finding that the material change of use occurred at some stage between those years¹⁶.
38. In reaching the view that I have expressed I have taken account of all other documentary evidence. Amongst other things the Appellant's recollection that the swimming instructor had public liability insurance through the ASA is a

¹⁵ Appendix 13 to Miss Groom's proof of evidence has been redacted but the original contact list, including all the contact information, has been provided as part of the appeal documentation that was submitted by the Appellant as part of her appeal.

¹⁶ Note: the weighting is put in 'single quotes' to reflect the fact that, according to my contemporaneous note, it was put that way in the questions that were put to the respective witnesses, rather than in their answers.

complete answer to the absence of such documentation prior to 2011, when the Appellant appears to have taken a far more active role in the lessons.

Overall finding on the first main issue

39. On the first main issue I conclude, on the balance of probability, that the Appellants have not discharged the onus of proof to show that the use of the pool for providing children's swimming lessons began prior to the material date. I have given reasons for finding that the material change of use probably took place after April 2008, possibly as early as May but probably before November. I have also given reasons why the use might not have subsisted at the date of the application but, in view of my broader conclusion, even if I might be wrong about that, it is clear that the appeal cannot succeed on the basis upon which it has been advanced. Although the Council has pointed to a later date, and local residents a later date again, upon which it is said that the material change of use occurred, this does not alter my finding on this issue.

(ii) Has there been positive deception?

40. Given my findings on the first main issue it is not necessary for me to reach a view on this second main issue because the appeal cannot succeed. The Council is not time barred from initiating enforcement action if there was evidence of a continuing breach and the Council considered it expedient to do so. However, again, I consider it is appropriate for me to express a view on what is a principal determining issue on which I heard evidence at the Inquiry although, given my finding on the first main issue, I do so fairly briefly.
41. The case of *Welwyn Hatfield v SSCLG & Beesley* [2011] UKSC 15 held that in appropriate cases the principle of public policy that a person should not benefit from their own wrong can be relied upon to defeat an application for an LDC. Lord Mance, who gave the leading judgement, held that the so-called Connor principle may apply in cases where there was: "...positive deception in matters integral to the planning process...[which] was directly intended to and did undermine the regular operation of that process". Lord Brown held that the principle: "...should only be invoked in highly exceptional circumstances"¹⁷. However this is not a case that meets those tests for the following reasons.
42. The basis for this claim that is evident in the Council's proof of evidence is by reference to the exchange of emails between the Council and the Appellant in May 2014¹⁸. The Council asked: "1. Are you running swimming lessons or activities from your domestic swimming pool? 2. If yes, what date did the operations begin?" The Appellant answered: "1. I do teach swimming from my domestic pool. 2. I began to teach 29th July 2011".
43. I am satisfied that the Appellant did not intend to mislead the Council when she gave those answers. I consider that there is a degree of ambiguity in the way in which those questions have been asked. The Appellant took the questions to relate to her own activity, in personally running the swimming lessons, and hence failed to mention the swimming lessons that another person ran from her pool at an earlier stage. Indeed I note that in closing for the Council it was accepted that this was one interpretation of the manner in which the questions could be read. It is relevant that the 2 questions are linked ['If yes...'] and Miss

¹⁷ Source of quotes: paragraphs 56 and 84, respectively.

¹⁸ Appendix 9 to Miss Groom's proof of evidence.

- Groom fairly acknowledged that the second does follow from the first. Even if it might be said that it did deceive there was plainly no intention to do so.
44. At the Inquiry a fresh basis for that argument was advanced by reference to the DAS. Section 2 thereof says: "*In 2011 as a result of illness to Mr Williams, Mrs Williams started using the swimming pool to provide lessons, teaching children to swim ... [and having provided lessons] since 2011 Mrs Williams has established an excellent reputation amongst the local community*". Section 5 continues by saying the: "*...use of the swimming pool for lessons is considered to be an appropriate use and has been undertaken for a continuous period over the last 3 years without complaint*". This is reflected in paragraph 1.2 of the Committee report¹⁹ and hence it was material to the Council's assessment.
45. First I accept that the DAS was prepared for the Appellants, as is evident from the cover thereof insofar as it says: "*On behalf of Mr & Mrs Williams*". Although the DAS was prepared by an Agent it is clear that its contents were prepared based on the Appellants' instructions and they are ultimately responsible for the accuracy of its factual content. It is unclear whether the Agent that drafted the DAS had sight of the email exchange from 2014 but, adopting the balance of probability, I think it more likely than not that he did and that the contents of the DAS was informed by what those emails said. So whilst the Appellant said on oath that she told the Agent that the use had been operated since 2005 this is a possible, and in my view the most likely, explanation as to why the Agent expressed the DAS in the way that he did in 2015. The statement in section 5 merely follows from what is said in section 2 of the DAS. For these reasons I am not convinced there was any intention by the author of the DAS, or the Appellants, to undermine the regular operation of the planning process.
46. I record that, in answer to the question that the Council was misled because if the DAS had said the use had commenced in 2005 the Council might have issued an enforcement notice, the Appellant said: "*I can see that now*". She also acknowledged that she could see where the Council was coming from, in claiming that it was misled by the reference to 2011 in the DAS. However I am not convinced that the Appellants made a positive misleading statement that was intended to mislead at any stage.
47. The Council says that it has worked compassionately and patiently with the Appellants throughout the process; I agree. However in answer to my question at the Inquiry Miss Groom indicated that this was a reason why it had not issued a Planning Contravention Notice [PCN]. There is however a material difference between issue of a PCN and resorting to enforcement action, as defined in section 171A(2) of the Act. Amongst other things a question as to when any such use began, as per section 171C(3)(b) of the Act, might, if the answer had been 2011, have given the Council a sound basis for making out its case under this head. Whilst I recognise that issue of a PCN is discretionary perhaps, with hindsight, the Council might find that such a course of action might have been appropriate given the circumstances that now prevail.
48. On the second main issue I conclude that there has not been positive deception of the Local Planning Authority such that the principle of public policy, namely that a person should not benefit from their own wrong, should be invoked.

¹⁹ Appendix 2 to Miss Groom's proof of evidence.

The way forward

49. Even if the position might be ambiguous as to whether payment, distinct from a donation, was being made after August 2015, there is no ambiguity in the Appellant's unqualified statement on oath that paid lessons have now stopped and that such use as does now occur is solely by friends and family. Although Mr Nurser has suggested that the level of use now subsisting remains above that which occurred in 2005 there is no objective evidence, such as a log of activity, to demonstrate that. On the basis of the Appellant's evidence it would however appear that the commercial use has now ceased and that might be material to any future assessment as to the continuity of any unlawful use.
50. In the context of this decision and the dismissed section 78 appeal decision, the Appellants should be under no illusion that any future resumption of the commercial use might now result in enforcement action. The reasonableness of an appeal against any enforcement notice would need to be assessed against pertinent advice in the Guidance. Moreover, whilst a civil matter, I am aware that a solicitor has written to the Appellants with regard to a potential breach of certain restrictive covenants. So whilst the dismissal of this appeal would not result in a requirement to desist the commercial use, because no enforcement action has been taken, the Appellants should take advice from their Agent and/or the Council before consideration is given to any resumption of that use.
51. I would add that in consideration of who is a 'friend', it might be beneficial if the Appellants were to keep a record of who, apart from their own family, uses the pool and potentially makes a donation towards its running costs. There is plainly scope for dispute in this matter going forward, which is why, unusually, I believe it is appropriate to set down these views now in order to avoid the possibility of enforcement action being required and hence any further appeal.

Conclusion

52. For the above reasons, having regard to all other matters raised, I am satisfied that the Council's refusal to grant an LDC for the mixed use of Hunky Dory for residential and of private swimming pool at Hunky Dory for providing children's swimming lessons was well founded. The appeal fails and I shall exercise the powers transferred to me in section 195(3) of the Act.

Pete Drew
INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Mrs Christine Williams BSc (Hons) MRTPI	Christal Planning Services Limited.
She called:	
Mrs Amanda Williams	Joint Appellant ²⁰ .
Ms Berny Currie	Maddie's Godmother.
Mrs Andrea Blaxall	Parent of swimmer.
Carly Skitt	Appellants' daughter.
Mrs Stephanie Muir	Parent of swimmers.
Mrs Sarah Hancock	Parent of swimmers.

FOR THE LOCAL PLANNING AUTHORITY:

Killian Garvey	Counsel.
He called:	
Alison Groom	Planning & Enforcement Officer, Shropshire Council.

INTERESTED PERSONS [THOSE WHO ADDRESSED THE INQUIRY]:

Ian Nurser	Local resident.
Andrew Parton	Local resident.
Ian Parton	Local resident.

DOCUMENTS SUBMITTED AT THE INQUIRY

Document	1	Council's letter of notification dated 30 November 2016.
Document	2	Opening statement on behalf of the Appellants.
Document	3	Email exchange from June 2015, which was submitted by the Council at the Inquiry.
Documents	4.1-4.5	Bundle of letters from interested parties, which were submitted by the Council at the Inquiry.

²⁰ Insofar as I have referred to the Appellant, singular, in my main reasoning, this is to Mrs Amanda Williams.

Appeal Decision

Site visit made on 6 December 2016

by Jonathan Tudor BA (Hons), Solicitor (non-practising)

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

Decision date: 19 January 2017

Appeal Ref: APP/L3245/W/16/3157138

The Hollies, Dovaston, Kinnerley, Oswestry, Shropshire SY10 8DS

- 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 Edward Jones against the decision of Shropshire Council.
 - The application Ref 12/03866/FUL, dated 12 September 2012, was refused by notice dated 25 February 2016.
 - The development proposed is reposition previously approved replacement dwelling.
-

Decision

1. The appeal is allowed and planning permission is granted to reposition previously approved replacement dwelling at The Hollies, Dovaston, Kinnerley, Oswestry, Shropshire SY10 8DS in accordance with the terms of planning application, Ref 12/03866/FUL, dated 12 September 2012, subject to the attached schedule of conditions

Procedural Matters

2. I have used the site address on the Council's Decision Notice and the appeal form as it more accurately identifies the location of the appeal site compared with the address on the planning application form.
3. The proposal is to, in effect, reposition a replacement dwelling previously approved under planning permission Ref 06/14437/FUL. The Council advises that the existing consent was commenced and remains a valid planning permission which could be implemented. I have considered the appeal on that basis.
4. The appellant has provided a Unilateral Undertaking to the Council not to proceed with that previous consent, Ref 06/14437/FUL, should planning permission be given for the appeal proposal. That would address the theoretical possibility of two dwellings being constructed on the plot under separate permissions. The Council has confirmed that it is satisfied with the Unilateral Undertaking.

Main Issue

5. The main issue is the effect of the proposed development on the character and appearance of the area.

Reasons

6. The appeal site is located just east of the United Reformed Church and its associated school building on Kinnerley Road in the small rural settlement of

- Dovaston. There is sporadic existing residential development along the road and a line of houses opposite the Church. Agricultural fields lie to the rear and opposite the site.
7. The Council advise that, apart from the siting of the dwelling, the proposal is essentially the same as the extant planning permission to replace the original dwelling given in 2006, Ref 06/14437/FUL. The scale and footprint would be identical to the previously approved dwelling and consist of a two-storey, two-bedroom house. Traditional materials, including natural slate and dressed sandstone, would be used which are sympathetic to the area. Kinnerley Parish Council has no objection to the 2006 permission but does not agree with the proposed re-siting.
 8. The site lies outside the settlement boundary and is, therefore, defined as open countryside. The policy context has changed since the granting of the previous permission in 2006 but the Council Officer's report states that policies CS5 of the Council's Core Strategy (CS)¹ and MD2 and MD7a of the Shropshire Council Site Allocations and Management Development (SAMDev) Plan² include exceptions to the general presumption against development in the countryside.
 9. In any case, the principle of development on the site has already been established by the existence of a previous dwelling and an extant planning permission to replace it which could be implemented. Therefore, it is the proposed siting of the dwelling and its effect on the character and appearance of the area that is at issue.
 10. The Council's Decision Notice suggests that replacing the original dwelling, which has already been demolished, on a different footprint would be contrary to Policy MD7a of the SAMDev and the Shropshire Local Development Framework Type and Affordability of Housing Supplementary Planning Document (SPD).³ Policy MD7a advises that replacement dwellings should not be materially larger than the original dwelling and must occupy the same footprint unless it can be demonstrated why that should not be the case. Similarly, the SPD states that a replacement dwelling should ordinarily be sited in the same position as the original dwelling.
 11. The appellant advises that the re-siting of the dwelling to the centre of the plot rather than perpendicular and close to the road is proposed for a number of reasons. First, it would allow for a private garden at the rear of the dwelling to be screened by the house from the road. That would provide privacy for future occupants when using their outdoor living space.
 12. In addition, it would also ensure that the normal domestic paraphernalia associated with gardens such as washing lines, barbecues, children's play equipment and the like would be out of public view. Furthermore, it would physically separate the drive and car parking area from the garden with attendant safety benefits for future occupants of the property. That could not easily be achieved under the extant permission because of the nature of the layout associated with it.

¹ Adopted February 2011

² Adopted Plan 17th December 2015

³ Adopted 12th September 2012

13. The appellant also submits that re-siting the dwelling would retain the currently unobstructed views, looking north west along the road, towards the Church and its school house.
14. I share the view expressed in the original Council Officer's report, which recommended approval of the application, that the reasons given by the appellant are sufficient justification for re-siting the replacement dwelling.
15. The Council's Planning Committee decided, as they are perfectly entitled to, not follow the Council Officer's recommendation. The Council's Decision Notice also refers to conflict with Guideline G3 of the Kinnerley Parish Design Statement and Landscape Character Assessment (KPDS). It is said the proposal would be out of character with the local area taking into account the local vernacular and built form.
16. It has been suggested by some third parties, though not explicitly in Council's reason for refusal or in the minutes of the relevant Planning Committee meeting, that dwellings with gable end perpendicular orientations close to the road are keynote aspects of the local vernacular. Whilst the KPDS is a useful document in identifying the character of buildings in the general area, the extracts before me make no particular reference to that as being a predominant characteristic of the area.
17. There are dwellings with their gable end orientated towards and close to the road to the south east of the appeal site and at other locations. However, as I observed on my site visit and as confirmed in the Council Officer's Report, the village consists of many other detached dwellings which have their main elevation facing the road and are set back from it. Those dwellings also contribute to the character and appearance of the area.
18. The Council Officer's report includes an extract from the KPDS relating to an area adjoining the site. It refers to the dwellings opposite the Church, which are to varying extents set back from and facing the road. It describes two detached red brick houses, the Manse and a Victorian house, and Dovaston Bank Farm and Maple Cottage as being set back from the road.
19. I note the concerns expressed by Kinnerley Parish Council. The proposal would alter the street scene in that a house would be constructed where, at present, there is no development. It would also not recreate the street scene exactly as it existed before the previous dwelling was demolished. However, change, in itself, does not necessarily amount to harm. I do not consider that the construction of a similar sized dwelling in a different position set back from the road would have an adverse effect. Nor would it be out of character with a local area that includes numerous properties with similar orientations and setbacks.
20. Whilst the Kinnerley Parish Neighbourhood Plan and the associated KPDS are relevant considerations, I note that the Council advise that they are not part of the development plan for the area and can, therefore, only be given more limited weight in comparison with CS and the SAMDev. Whilst re-siting the dwelling would 'affect' or change the setting of the original building, since demolished, in terms of Guideline G3 of the KPDS, for the reasons given above, I do not consider that it would have a detrimental effect on the character of the street or village scene. In any event, Policy MD7a of the SAMDev, as already discussed, allows such re-siting providing there is justification.

21. The suggestion that the re-siting could facilitate inappropriate extensions is dealt with by the removal of permitted development rights via condition, which would mean that such proposals would themselves require planning permission.
22. It seems to me that the original Council Officer's report comprises a careful and thorough analysis of the proposal, which takes into account the complex planning history and assesses it on the basis of the relevant development plan policies and other material considerations. Having examined the evidence and policy framework, I find that I agree with that assessment.
23. Overall, the above factors lead me to conclude that the proposal would not harm the character and appearance of the area. It follows, therefore, that it would not conflict with the objectives of Policy MD7a of the SAMDev or the SPD which, amongst other things, place controls on replacement dwellings in the countryside to ensure that they respect the proportions of the original building and local character and landscape. Neither would it be contrary to Guideline G3 of the KPDS which has similar aims.

Other Matters

24. The appellant advises that access from the road is to be achieved via a separate planning permission, Ref 07/15182/FUL, previously approved on appeal.⁴ The Council's highways department has not raised any objection to the proposal and the appellant advises that the access has been established.
25. In addition to those already dealt with other concerns have been raised by various parties. The long planning history associated with the site has been referred to and a concern expressed that if the appeal were allowed, there may be subsequent applications for a larger dwelling. That may be, but any future application for a different proposal would have to be considered on its own merits and on the basis of the development plan and any other relevant material considerations.
26. Another matter referred to is alleged breaches of conditions of previous planning permissions related to the site. Such issues are not directly relevant to the appeal before me and would be a matter for the Council.
27. Concerns that cars parked in front of the property would be visible from the road would equally apply to the car parking arrangements pertaining to the extant 2006 planning permission.
28. It has been suggested that the proposal would have an adverse effect on views from neighbouring houses. Planning law does not normally protect private views, unless the proposal is so large and close to adjoining properties that it has an overbearing effect on the outlook of residents. In this case it would be a relatively small two storey dwelling set back from the road some distance from nearby properties. Therefore, I do not consider that there would be an adverse effect in that respect.
29. It is submitted that a small house built in accord with the 2006 permission would provide affordable accommodation within the local community. As the Council advises that the size and extent of the property is no different from the extant permission that aspect should be unaffected.

⁴ APP/X3215/A/08/2061388

30. Whilst I have considered the above matters, I note that they are not included in the Council's reasons for refusal. Overall, they do not lead me to alter my decision.

Conditions

31. I have considered the various planning conditions suggested by the Council, amending them if necessary. A condition setting a time limit for the commencement of the development is a statutory requirement. For the avoidance of doubt and in the interests of proper planning, a condition requiring the development to be carried out in accordance with approved plans is appropriate.
32. A condition relating to access, parking and turning areas is warranted in the interests of highway safety. Conditions regarding materials and drainage are necessary to protect the character and appearance of the area and to ensure adequate drainage arrangements. The condition restricting permitted development rights is appropriate to maintain the scale, appearance and character of the development.
33. The Parish Council has expressed concern about the materials to be used to construct the new dwelling. It also refers to a condition, allegedly attached to the extant 2006 permission, which required materials reclaimed from the original demolished house to be used. I have no knowledge if those materials are still available and consider that, with the passage of time; it would be unnecessary and unreasonable to impose such a condition.
34. In any event the appeal proposal would supersede the previous permission. The materials of natural dressed sandstone and slate appear sympathetic to the area and a condition is included to ensure that external materials are subject to local planning authority approval prior to construction.

Conclusion

35. For the reasons giving above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Jonathan Tudor

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
- 2) The development shall be carried out strictly in accordance with the following approved plans and drawings: 20506/01MAC, 20506/02MAC; 20506/04MAC; 20506/05MAC; 20506/06MAC; 20506/07MAC.
- 3) The access, parking and turning areas shall be satisfactorily completed and laid out in accordance with the approved block plan drawing prior to the dwelling being occupied. The approved parking and turning areas shall thereafter be maintained at all times for that purpose.

- 4) No development shall commence until samples and/or details of the roofing materials and the materials to be used in the construction of the external walls have been submitted to and approved in writing by the local planning authority. The development shall be carried out in complete accordance with the approved details.
- 5) No development shall take place until a scheme of foul drainage, and surface water drainage has been submitted to and approved in writing by the local planning authority. The approved scheme shall be fully implemented before the development is occupied/brought into use (whichever is the sooner).
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development relating to schedule 2 part 1 class A, B, C and D shall be erected, constructed or carried out.