

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

Date: Monday, 8 April 2024

Committee:
Southern Planning Committee

Date: Tuesday, 16 April 2024

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.

There will be some access to the meeting room for members of the press and public, but this will be limited. If you wish to attend the meeting please email democracy@shropshire.gov.uk to check that a seat will be available for you.

Please click [here](#) to view the livestream of the meeting on the date and time stated on the agenda

The recording of the event will also be made available shortly after the meeting on the Shropshire Council Youtube Channel [Here](#)

The Council's procedure for holding Socially Distanced Planning Committees including the arrangements for public speaking can be found by clicking on this link:

<https://shropshire.gov.uk/planning/applications/planning-committees>

Tim Collard
Assistant Director – Legal and Governance

Members of the Committee

David Evans (Chairman)
Nick Hignett (Vice Chairman)
Caroline Bagnall
Andy Boddington
Richard Huffer
Christian Lea
Hilary Luff
Nigel Lumby
Tony Parsons
Ed Potter
Robert Tindall

Substitute Members of the Committee

Roy Aldcroft
Joyce Barrow
Gwilym Butler
Rachel Connolly
Cecilia Motley
Nigel Hartin
Pamela Moseley
Claire Wild
David Vasmer
Paul Wynn

Your Committee Officer is:

Tim Ward Committee Officer

Tel: 01743 257713

Email: tim.ward@shropshire.gov.uk

AGENDA

1 Apologies for Absence

To receive any apologies for absence.

2 Minutes (Pages 1 - 4)

To confirm the minutes of the Southern Planning Committee meeting held on 20 February 2024

Contact Tim Ward (01743) 257713.

3 Public Question Time

To receive any questions or petitions from the public, notice of which has been given in accordance with Procedure Rule 14. The deadline for this meeting is no later than 5.00 pm on Thursday 11 April 2024

4 Disclosable Pecuniary Interests

Members are reminded that they must declare their disclosable pecuniary interests and other registrable or non-registrable interests in any matter being considered at the meeting as set out in Appendix B of the Members' Code of Conduct and consider if they should leave the room prior to the item being considered. Further advice can be sought from the Monitoring Officer in advance of the meeting.

5 Concord College Acton Burnell Shrewsbury Shropshire SY5 7PF (23/04725/FUL) (Pages 5 - 24)

Erection of boarding house with staff accommodation, associated landscaping and parking.

6 Oak Farm Claverley Wolverhampton Shropshire WV5 7AE (23/04940/FUL) (Pages 25 - 50)

Application under Section 73A of the Town and Country Planning Act 1990 for the erection of agricultural buildings and operational development (resubmission of application 23/01726/FUL)

7 The Lodge Huffage Farm Woundale Bridgnorth Shropshire (24/00390/VAR) (Pages 51 - 60)

Removal of Condition No's 11 and 13 attached to planning permission 17/02852/FUL dated 09 October 2018

8 Schedule of Appeals and Appeal Decisions (Pages 61 - 148)

9 Date of the Next Meeting

To note that the next meeting of the Southern Planning Committee will be held at 2.00 pm on Tuesday 21 May 2024, in the Shrewsbury Room, Shirehall.

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Committee and Date

Southern Planning Committee

12 March 2024

SOUTHERN PLANNING COMMITTEE

Minutes of the meeting held on 20 February 2024

2.00 - 2.50 pm in the Shrewsbury/Oswestry Room, Shirehall, Abbey Foregate, Shrewsbury, Shropshire, SY2 6ND

Responsible Officer: Tim Ward

Email: tim.ward@shropshire.gov.uk Tel: 01743 257713

Present

Councillors David Evans (Chairman), Caroline Bagnall, Richard Huffer, Christian Lea, Hilary Luff, Nigel Lumby, Tony Parsons, Ed Potter, Robert Tindall, Roy Aldcroft (Substitute) (substitute for Nick Hignett) and David Vasmer (Substitute) (substitute for Andy Boddington)

58 Apologies for Absence

Apologies for absence were received from Councillors Andy Boddington and Nick Hignett

Councillor David Vasmer substituted for Councillor Boddington and Councillor Roy Aldcroft substituted for Councillor Hignett

59 Minutes

RESOLVED:

That the Minutes of the meeting of the Southern Planning Committee held on 16 January 2024 be approved as a correct record and signed by the Chairman.

60 Public Question Time

There were no public questions

61 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.

There were no declarations made

62 Former Bowling Green Ford Shrewsbury Shropshire (23/05174/FUL)

The Development Manager introduced the application which was an application for the erection of a religious meeting hall (Case 12(b)) with associated access and

parking and with reference to the drawings and photographs displayed, she drew Members' attention to the location and proposed layout and elevations.

The Development Manager drew Members attention to the information in the schedule of late representations in particular the amendment to the class of use from Class F2(b) to Class F1(f).

David Kilby spoke on behalf of the Shropshire Playing Fields Association against the proposal in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees

Rebecca Turner (Clerk) spoke on behalf of Ford Parish Council against the proposal in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees

Councillor Roger Evans, local Ward Councillor spoke against the proposal in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees

Nigel Thorne, (Agent), spoke in support of the proposal in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees.

In response to a question the Development Manager confirmed that there was extant outline planning permission for 2 dwellings on the site which would expire in 2025.

Members commented that as the principle of development had been established and there were no objections from statutory consultees, they felt that the proposed use was acceptable.

After further discussion it was

RESOLVED:

That in accordance with officer recommendation, planning permission be granted subject to the conditions set out in Appendix 1 and the schedule of late representations

63 Former Bowling Green Ford Shrewsbury Shropshire (23/05162/OUT)

The Development Manager introduced the application which was an outline application for the erection of a single dwelling including reconfigured access and with reference to the drawings and photographs displayed, she drew Members' attention to the to the location and proposed layout and elevations.

David Kilby spoke on behalf of the Shropshire Playing Fields Association against the proposal in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees

Rebecca Turner (Clerk) spoke on behalf of Ford Parish Council against the proposal in accordance with Shropshire Council’s Scheme for Public Speaking at Planning Committees

Councillor Roger Evans, local Ward Councillor spoke against the proposal in accordance with Shropshire Council’s Scheme for Public Speaking at Planning Committees

Nigel Thorne, (Agent), spoke in support of the proposal in accordance with Shropshire Council’s Scheme for Public Speaking at Planning Committees.

Members considered that the amended access was acceptable and asked that the reserved matters application be brought back to the Committee for consideration.

RESOLVED:

That in accordance with officer recommendation, outline planning permission be granted and delegated authority be given to Officers to draft conditions as set out in Appendix 1 and to secure a Section 106 Agreement to secure the Affordable Housing contribution.

It was also agreed that the reserved matters application be brought back to committee for consideration.

64 Schedule of Appeals and Appeal Decisions

RESOLVED:

That the Schedule of Appeals and Appeal Decisions for the southern area as at 20 February 2024 be noted.

65 Date of the Next Meeting

RESOLVED:

That it be noted that the next meeting of the Southern Planning Committee will be held at 2.00 pm on Tuesday, 12 March 2024 in the Shirehall, Shrewsbury, SY2 6ND.

Signed (Chairman)

Date:

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AGENDA ITEM



Committee and date

16th April 2024

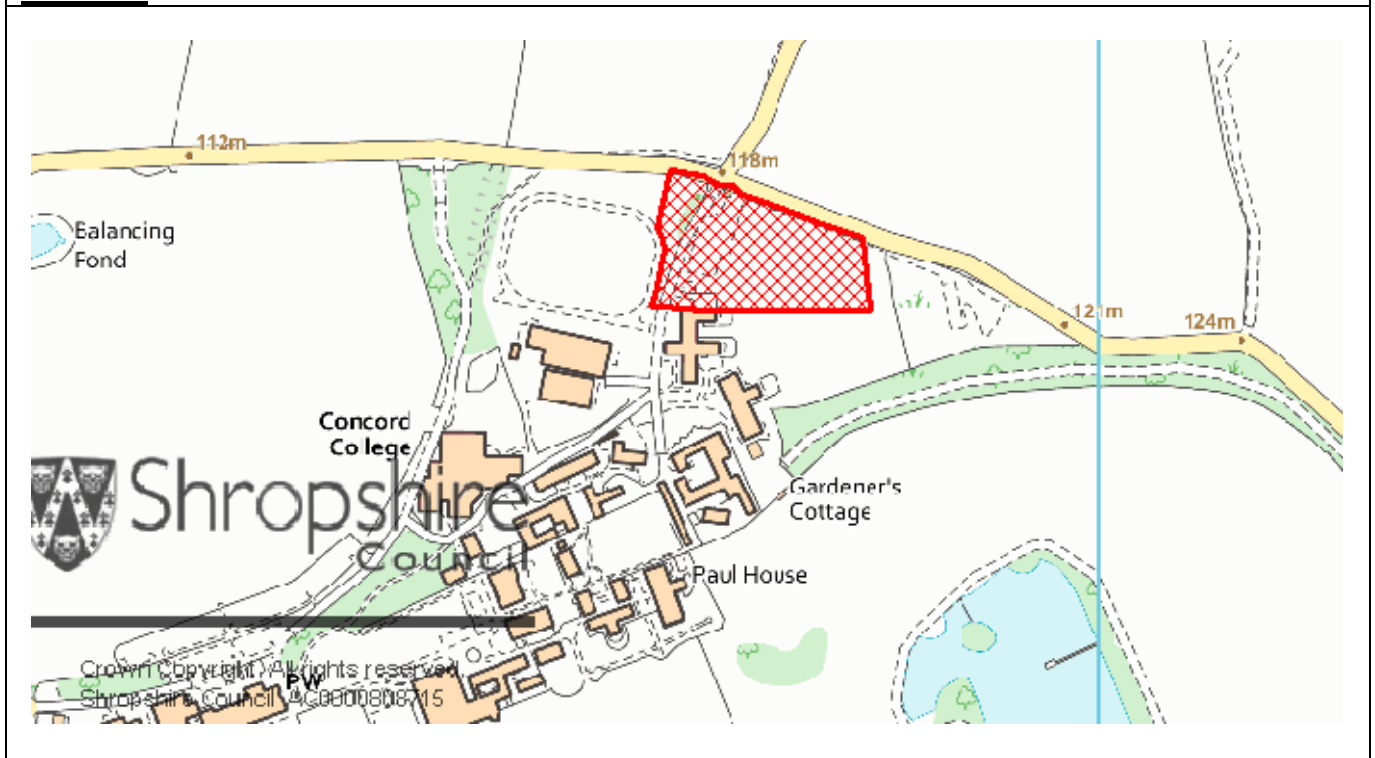
Development Management Report

Responsible Officer: Tracy Darke, Assistant Director of Economy & Place

Summary of Application

Application Number: 23/04725/FUL	Parish:	Acton Burnell
Proposal: Erection of boarding house with staff accommodation, associated landscaping and parking.		
Site Address: Concord College Acton Burnell Shrewsbury Shropshire SY5 7PF		
Applicant: Concord College		
Case Officer: Lynn Parker	email: lynn.parker@shropshire.gov.uk	

Grid Ref: 353422 - 302018



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

REPORT

1.0 THE PROPOSAL

1.1 This application is for the erection of a new boarding house at Concord College, Acton Burnell. The proposed development includes a three storey boarding house with 60 ensuite bedrooms, staff accommodation, re-provision of car parking spaces, resurfacing of a private track, tree removal and hard and soft landscaping works. The building is proposed to the north east section of the campus adjacent to existing boarding houses.

1.2 Concord College is an independent boarding school well established over decades at the Acton Burnell site and which has been steadily growing in pupil numbers and reputation. It is an internationally recognised establishment within Shropshire that caters for boarding and day pupils with a licence of up to 630, many of whom are from overseas and live on the campus for most of the academic year. Through the development of a masterplan strategy for the College, whilst the focus is for a consolidation period, inadequacies in the current boarding facilities were identified. A number of the existing boarding houses do not have ensuite facilities and offer limited flexibility due to the need for separate boys and girls accommodation.

1.3 The proposed boarding house is designed to meet the National Minimum Standards for Boarding Schools. In addition to each bedroom having an ensuite shower room and toilet, the layout provides increased access control to internal corridors to allow the building to be divided in multiple ways both vertically and horizontally to house boys and girls securely in the same building. This layout would be adaptable to differing male and female student intake numbers. Common spaces to provide a central place to socialise and cook, staff accommodation in the form of Boarding Parents living accommodation, Assistant House Boarding Parents apartment and a tutor bedsit are included the layout. The aim is to enhance student wellbeing and provide a safe base to live whilst they are away from home.

1.4 To achieve a sustainable design, the proposed boarding house would have thermally insulated walls, floors and roofs, and natural ventilation. Low energy use systems including air source heat pumps and roof mounted solar panels are incorporated into the proposed development to achieve energy efficiency. All entrance and exits will have level access thresholds and the ground floor level houses 3 accessible bedrooms with accessible shower rooms.

1.5 As a result of a design development process, the final form of the boarding house is proposed with an irregular footprint intended to break up the facades of the building and reduce its perceived massing, albeit of a scale commensurate with the

adjacent existing boarding house at Taylors Residence. The proposed materials have been selected to integrate the building into its surrounding context and environment rather than replicating what is already present. An upgraded palette is indicated of high quality materials to include timber cladding, zinc facades and roofing, a black brick base and red brick spine.

- 1.6 During the course of the application, various amendments have been made in response to concerns raised by consultees and through public representation. The main amendments reduce the height of the proposed building by 0.6m and alter the materials palette by introducing darker more recessive finishes by replacing the red brick with black, and indicating a darker stain for the timber cladding. Additionally the LVA has been amended and updated, and planting proposed within the landscape strategy increased and enhanced with typical parkland species.

2.0 SITE LOCATION/DESCRIPTION

- 2.1 Concord College is located on the east side of the settlement of Acton Burnell and is accessed via minor and C roads from the A458 to the north and east and the A49 to the west. The campus occupies 73 acres of land with the main College building, Grade II* Listed Acton Burnell Hall, positioned centrally on the south side. There are additionally Grade I St Mary's Church and Grade I Acton Burnell Castle in the south west corner of the campus. The Castle is also a Scheduled Monument as a moated site with a chamber block and tithe barn. The whole campus falls within Acton Burnell Historic Park and Garden and the majority of it within Acton Burnell Conservation Area. However the north west corner in which the new boarding house is proposed is outside the Conservation Area boundary.

- 2.2 The wider site benefits from much mature landscaping around and between its buildings with larger open areas of garden and sports fields to the north and south of the central built environment. The main access is via a tree lined driveway extending from the northern boundary with the main sports field on its west side and the site for the new boarding house adjacent to the east side. The development site is level and currently a gravelled car park. It is adjacent to two more recently constructed boarding houses to the south and a field extending to the east which contains ground source heat pumps.

- 2.3 This site is visible from adjacent roads and countryside to the north and east behind its native perimeter hedging dotted with mature trees. There are no neighbouring properties within 500m of the proposed boarding house site outside the campus as the adjacent land to the north comprises level agricultural fields with views across to the Wrekin in the distance.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

- 3.1 The Parish Council comments are at variance with the Officer view and the Local Member has requested Committee determination. The Chair of the South Planning Committee, in consultation with the Development Manager South, consider that material planning considerations are raised which warrant consideration by the

South Planning Committee.

4.0 Community Representations

4.1 Consultee Comments

- 4.1.1 Acton Burnell, Frodesley, Pitchford, Ruckley and Langley Parish Council (06-02-24)
- Maintain their strong objection to this proposal as detailed in comments dated 11th December 2023. The very large building would be clearly visible from the road and completely alter the natural environment and views approaching Acton Burnell from Acton Pigott, Evenwood and Cound Moor.

Acton Burnell, Frodesley, Pitchford, Ruckley and Langley Parish Council (111-12-23) - Strongly object to this planning application. The Council is not opposed to the principle of building a new boarding house on the College site, however the scale, nature and location of the proposed development close to the road would have a severely negative impact on the natural and historic environment of Acton Burnell. The application fails to comply with CS6, CS17, MD2 and MD13. Concerned over: the modern design of the building and its construction materials; its domination of the skyline; impact on the adjacent Conservation Area; that it would become a local landmark overshadowing the beautiful views and heritage buildings of the village; that it would result in increased light pollution. A very detailed construction traffic management plan is requested.

- 4.1.2 SC Drainage - The drainage proposals are acceptable.

- 4.1.3 SC Highways - No objection. Pre-commencement conditions recommended in relation to the provision of a Construction Management Plan.

- 4.1.4 SC Environmental Protection - No comments.

- 4.1.5 SC Conservation - In principle there is no heritage objection raised with the location and plan form for this new building. The amended more muted external finishes should go some way to mitigating the visual impact of the relatively large building form as will the revised landscaping scheme.

- 4.1.6 SC Archaeology - No comments to make on this application with respect to archaeological matters.

- 4.1.7 Historic England - Do not offer any advice, and suggest we seek the views of our specialist conservation and archaeological advisers.

- 4.1.8 The Gardens Trust and Shropshire Gardens Trust - No objection.

- 4.1.9 SC Trees - No objection. A detailed Arboricultural Method Statement (AMS) and Tree Protection Plan (TPP) have been produced which demonstrate how the proposal can be achieved without damaging the significant trees including 2 veteran Oaks which are important locally and to the appearance of the site. Pre-

commencement condition recommended in relation to tree protection measures.

4.1.10 SC Landscaping - The assessment methodology of the LVA reflects the recommendations of GLVIA3 and the landscape and visual assessment results are generally reliable. Pre-commencement conditions recommended in relation to a detailed soft landscaping scheme and a Landscape Management and Maintenance Plan.

4.1.11 SC Ecology - The information and plans submitted with the application have been reviewed and the level of survey work carried out is acceptable. A pre-commencement condition in relation to biodiversity net gain is recommended.

4.2 Public Comments

4.2.1 Confirmation of site notice display received on 16th November 2023. Proposed development advertised in the Shropshire Star on 21st November 2023 as being a Major development and affecting a Conservation Area.

4.2.2 Five letters of public representation have been received from four different members of the public expressing objection to the application. These can be viewed in full online, however the concerns are summarised below:

- The amendments to the scheme are minimal and will not mitigate the impact of this building on the environment.
- Object to the location, massing and visual intrusion of the proposed 3 storey building on the adjacent highway and surrounding land.
- Too close to the road with no screening or bunding to mitigate its dominance in the landscape.
- The proximity of the proposed new building and its access to existing trees.
- A residential building of this scale and size will have considerable impact on the views towards Acton Burnell Hill and the Conservation Area unless it is carefully positioned and adequately screened.
- There should be more screening of the building.
- The approach views from the east across the landscape into Acton Burnell would be impacted upon.
- There will be considerable light spillage from over 100 windows in the building to the detriment of local residents and wildlife.
- Continued usage of a substandard access to the highway.
- There is a lack of consultation with the residents of Acton Pigott.

5.0 THE MAIN ISSUES

- Principle of development
- Siting, scale and design of structure
- Visual impact and landscaping
- Impact on the historic environment
- Ecology and BNG

6.0 OFFICER APPRAISAL

6.1 Principle of development

6.1.1 Concord College is an established educational facility which occupies a significant area of the settlement of Acton Burnell. The planning use of the campus is a residential institution falling within Class C2. Unrestricted residential open market housing would not be supported in this area as it is countryside outside of any development boundaries designated under existing planning policies. However Policy CS11 does allow for specialist housing provision in appropriate locations and where there is an identified need.

6.1.2 LDF Core Strategy Policy CS5 states that 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 identifies specific types of development which may be acceptable, including the retention and appropriate expansion of an existing established business, unless relocation to a suitable site within a settlement would be more appropriate. Policy CS8 seeks to protect and enhance existing facilities, including schools, and to facilitate the timely provision of additional services to meet identified needs in locations that are appropriate and accessible.

6.1.3 The College has identified a need for additional student accommodation and a requirement for it to be of a higher quality than some of the existing boarding houses on the campus. The proposed development would be specialist housing provision for an identified need that appropriately expands an established business within its existing site. The scheme is therefore considered to be acceptable in principle.

6.2 Siting, scale and design of structure

6.2.1 The proposed site on the north eastern side of the campus has been carefully selected by the College as the most viable for a new boarding house for a number of reasons. Most of the new development that has taken place at the College in recent years has been directed to the north eastern section of the campus which is not within the Conservation Area and is furthest away from the Listed Buildings and Scheduled Monument within the site, limiting intervisibility with them. This part of the campus is additionally furthest away from the buildings and residences within Acton Burnell itself. Therefore it is logical to site a new boarding house in this location where it would be adjacent to two existing boarding houses. The specific siting of the boarding house in this area is limited by the presence of ground source heat pumps under the ground immediately to the east restricting any potential re-positioning, and by the sports facilities across the driveway to the west where there is a covenant on the land which prevents permanent structures there. Any development further west would also result in the inappropriate loss of existing sports pitches. Given that as part of the College masterplan, it has been identified that additional boarding facilities are required above the replacement and upgrading of some existing boarding houses (projects which are also to be

forthcoming), the most logical and practical position for the new boarding house is the one hereby proposed.

6.2.2 The scale of the proposed boarding house is determined by the number of additional bedrooms identified as being required. The proposed building is three storeys to limit its footprint - a lower building would result in a significantly larger footprint to accommodate 60 bedrooms. The adjacent existing boarding house is of a commensurate scale with three storeys and accommodates 65 bedrooms.

6.2.3 The design and form of the building have been carefully compiled to both minimise its mass and to introduce materials and shapes that could aid integration with the surrounding environment. Substantial sections of timber cladding have been employed on all facades together with solar shading fins to soften its appearance in respect of the adjacent natural environment. This treatment of the facades has a vertical emphasis which also alludes to the tree line driveway to the west. The proposed irregular footprint shape and variation in elevation depths unified by a central spine combined with the high quality palette of materials indicated would result in an institutional building with much visual interest rather than one which is a simple rectangular block. SAMDev Plan Policy MD2 allows for the embracing of opportunities for contemporary design solutions, which take reference from and reinforce distinctive local characteristics to create a positive sense of place, and the proposed boarding house responds positively in this way achieving a well-designed and beautiful place in accordance with Section 12 of the NPPF.

6.3 Visual impact and landscaping

6.3.1 A Landscape and Visual Appraisal (LVA) has been submitted in support of the application which has been twice amended in response to consultee comments. SC Landscape comments have been sought on the most recently submitted version - Rev C, and have confirmed the landscape and visual assessment results as generally reliable.

6.3.2 The Appraisal concludes that the proposed campus location specifically selected outside the Conservation Area and furthest distance from Listed Buildings, the Scheduled Monument and residential properties in Acton Burnell to minimise both potential landscape and visual effects, would at worst have a moderate adverse effect. The landscape strategy proposed to mitigate the effect is based on several core principles including the conservation and enhancement of the existing characteristic boundary hedgerows and mature trees, and the proposed provision has been increased through amendment. It introduces semi-mature evergreen trees to screen the proposed development from the north and a change in the management of the boundary hedgerow to allow it to increase in height alongside the woodland buffer to the east. Additionally, the choice of cladding materials has been selected to be more reflective of the historic and rural setting and of colours to help the proposal recede into the existing landscape.

6.3.3 SC Landscape had previously commented that there were concerns that the

proposed mitigation planting to the north of the proposed boarding house would likely to be inadequate to sufficiently mitigate adverse landscape and visual effects to the north of the site. Additionally recommendations were made to amend the methodology of the LVA and landscape strategies. The LVA has been amended to explain how the value and susceptibility of receptors has been combined through the methodology and to address the effectiveness of mitigation planting to the north of the boarding house, reducing the visual effects for users on the two adjacent lanes.

6.3.4 The amended landscape strategy has introduced planting appropriate to a parkland setting into the north eastern corner of the campus where the boarding house is proposed. The submitted Heritage Statement advises that this section of the campus has relatively recently been included in the parkland and this accounts for the existing absence of mature trees here. The introduction of the landscaping proposed in this section would protect and enhance this valued landscape in accordance with Section 15 of the NPPF. Semi-mature Holm Oaks are proposed along the northern boundary and at the northern gable end of the building as these are an evergreen species of parkland tree which would provide all year screening to filter views of the boarding house. Their positioning would provide a layering of trees canopies between the road and boarding house which would further visually break up its mass in addition to its design, and would contribute positively to the special character of the parkland. This planting would complement the existing veteran Oaks immediately to the west. In accordance with Policy MD12, the amended LVA and landscape strategy would avoid harm to Shropshire's natural assets and their conservation, enhancement and restoration would be achieved.

6.4 Impact on the historic environment

6.4.1 Further to the submission of the LVA Rev C and the revisions to the proposed material palette, SC Conservation have confirmed that the visual impact of the relatively large building form would be suitably mitigated.

6.4.2 There is no in principle heritage objection to the proposed development, its location or plan form. Its location is within the north east extent of the campus away from the Listed Buildings and other buildings/features of historic interest. New build elements have been previously encouraged within this area to avoid issues of co-visibility and intervisibility with built heritage assets, and to better mitigate potential setting impacts. The proposed boarding house of three storey height in the selected position adjacent to the northern boundary would be visible from outside the campus.

6.4.3 Following the amendment to reduce the height of the boarding house, SC Conservation had retained some concern that it could still be a dominant form looking into the site and the Conservation Area, and that this may be exacerbated by the less recessive appearance of natural cladding indicated for the elevations. However, the proposed landscape strategy has been revisited and planting is now indicated that would both further contribute to filtering the view of the building and

to enhancing the existing parkland. This together with the amended more muted materials palette would reduce the potential dominance of the structure in this environment. The proposed development, as amended, is appropriate in its scale and design in that it would conserve and enhance the historic context of this campus avoiding harm to the heritage assets within the site and their settings in accordance with Policies CS6, CS17, MD2 and MD13.

6.5 Ecology and BNG

6.5.1 A Preliminary Ecological Appraisal and Biodiversity Metric Assessment have been submitted in support of this application in addition to proposed landscaping. SC Ecology have noted that no further ecological surveys are required and have recommended ecological enhancement conditions accordingly. BNG has been proposed as on-site provision and predicts a net gain of 29.7% Habitat Units and 123.7% Hedgerow Units. A Construction Environment Management Plan and Habitat Management Plan will be required pre-commencement in order to protect existing habitat during construction, to ensure the formation of new habitat as indicated, and to secure the habitat compensation value at no net loss.

7.0 CONCLUSION

7.1 The proposed boarding house and associated works, as amended, with a reduction in height, a revised materials palette with darker more recessive finishes and a more robust landscaping strategy is acceptable development for specialist housing where there is an identified need in this appropriate campus location serving a viable and internationally recognised College. Whilst the proposed boarding house would be visible from outside the campus and could not be fully screened, it has been identified that a building of this scale is required and it is of a commensurate scale with the adjacent boarding houses. Both the design of the building and the landscape strategy now proposed would help to reduce potential impact from the mass of the structure. Sufficient information has been submitted to demonstrate that this is the most viable site within the campus where the new boarding house will have the least impact on the various environments concerned. The development would not adversely impact on the character and appearance of heritage assets or their settings and would provide enhanced landscaping appropriate to the surrounding parkland. As such my recommendation is for Approval.

8.0 Risk Assessment and Opportunities Appraisal

8.1 Risk Management

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

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

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

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

8.2 Human Rights

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

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

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

8.3 Equalities

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

9.0 Financial Implications

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

10. Background

Relevant Planning Policies

Central Government Guidance:

National Planning Policy Framework

National Planning Practice Guidance

LDF Core Strategy Policies:

CS5 Countryside And Green Belt

CS6 Sustainable Design And Development Principles

CS8 Facilities, Services And Infrastructure Provision

CS13 Economic Development, Enterprise And Employment

CS17 Environmental Networks

CS18 Sustainable Water Management

Site Allocations & Management Of Development (SAMDev) Plan Policies:

MD2 Sustainable Design

MD12 Natural Environment

MD13 Historic Environment

RELEVANT PLANNING HISTORY:

There is no planning history specifically for the proposed location, however there is substantial planning history for the wider College campus. The following details relate to the existing adjacent boarding house:

14/05709/FUL - Erection of accommodation block comprising 65 student beds and two self contained staff dwellings. Granted 1st June 2015

11. Additional Information

View details online: <http://pa.shropshire.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=S3CVP0TDL4700>

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

- Planning Statement dated October 2023
- Drainage Design Report by Causeway dated 19/01/24.
- BEA Landscape & Visual Appraisal 2367-TGW-LVA001 Rev C.
- BEA LVA Figures 1-8A

AGENDA ITEM

- 16th April 2024

Concord College

- BEA LVA Figures 9-18.
- Biodiversity Metric Assessment by Middlemarch and Appendix dated October 2023.
- Preliminary Ecological Appraisal by Middlemarch dated September 2023.
- Arboricultural Survey - Arboricultural Impact Assessment by Llanerch Arboriculture LA-2023-021 Revision A and Appendices dated 26/09/23.
- Arboricultural Survey - Method Statement by Llanerch Arboriculture and Appendices dated 23/01/24.
- Heritage Statement by Pegasus Group P23-1548 dated 20/10/2023.
- Transport Statement by Pegasus Group P23-1437 TRO2 dated October 2023.
- Flood Risk Assessment & Drainage Strategy Report R100 Revision 1.2 dated October 2023.

Cabinet Member (Portfolio Holder) - Councillor Chris Schofield

Local Member - Cllr Dan Morris

Appendices
APPENDIX 1 - Conditions

APPENDIX 1

Conditions

STANDARD CONDITIONS

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, drawings and documents as listed in Schedule 1 below.

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

3. Details and samples of all the materials to be used externally on the boarding house and hard surfacing hereby approved, shall have been first submitted to and approved by the Local Planning Authority in writing before being used in the development. The development shall be carried out in accordance with the approval details.

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

CONDITIONS THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES

4. No development shall take place until a scheme of surface and foul 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).

Reason: The condition is a pre-commencement condition to ensure satisfactory drainage of the site and to avoid flooding.

5. No development shall take place, including any demolition works, until a Construction Management Plan incorporating a Method Statement has been submitted to and approved in writing by the Local Planning Authority. and shall provide for:

1. A construction programme including phasing of works.
2. 24 hour emergency contact number.
3. Hours of operation.
4. Expected number and type of vehicles accessing the site: deliveries, waste, cranes, equipment, plant, works, visitors; size of construction vehicles; the use of a consolidation operation or scheme for the delivery of materials and goods; phasing of works.

5. Means by which a reduction in the number of movements and parking on nearby streets can be achieved (including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction).
6. Routes for construction traffic, avoiding weight and size restrictions to reduce unsuitable traffic on residential roads;
7. Locations for loading/unloading, waiting/holding areas and means of communication for delivery vehicles if space is unavailable within or near the site.
8. Locations for storage of plant/waste/construction materials.
9. Arrangements for the turning of vehicles, to be within the site unless completely unavoidable.
10. Arrangements to receive abnormal loads or unusually large vehicles.
11. Swept paths showing access for the largest vehicles regularly accessing the site and measures to ensure adequate space is available.
12. Any necessary temporary traffic management measures.
13. Measures to protect vulnerable road users (cyclists and pedestrians).
14. Arrangements for temporary facilities for any bus stops or routes.
15. Method of preventing mud being carried onto the highway.
16. Methods of communicating the Construction Management Plan to staff, visitors and neighbouring residents and businesses.

The Plan shall be adhered to throughout the construction period.

Reason: This information is required prior to the commencement of the development in the interests of the safe operation of the adopted highway in the lead into the development both during its demolition and construction phase to result in the provision of a sustainable development.

6. Before any construction works hereby approved are commenced, a Construction Environment Management Plan (CEMP) and Habitat Management Plan (HMP) expanding upon the information provided within the Biodiversity Metric, Landscape Plan and Ecological Appraisal documents detailing, in full, measures to protect existing habitat during construction works and the formation of new habitat, to secure a habitat compensation value of no net loss, shall be submitted to and approved in writing by the Local Planning Authority. Within the CEMP/HMP document the following information shall be provided:

1. Current soil conditions of any areas designated for habitat creation and detailing of what conditioning must occur to the soil prior to the commencement of habitat creation works (for example, lowering of soil pH via application of elemental sulphur).
2. Descriptions and mapping of all exclusion zones (both vehicular and for storage of materials) to be enforced during construction to avoid any unnecessary soil compaction on area to be utilised for habitat creation.
3. Details of species composition and abundance (%age within seed mix etc.) where planting is to occur.
4. Proposed management prescriptions for all habitats for a period of no less than 30 years.
5. Assurances of achievability.
6. Timetable of delivery for all habitats, and

7. A timetable of future ecological monitoring to ensure that all habitats achieve their proposed management condition as well as description of a feed-back mechanism by which the management prescriptions can be amended should the monitoring deem it necessary.

The development shall thereafter be undertaken in accordance with the approved CEMP/HMP.

Reason: This information is required prior to the commencement of the development to ensure the sustainable provision of natural environment and to protect and enhance features of recognised nature conservation importance, in accordance with MD12, CS17 and section 180 of the NPPF.

7. A Landscape Management and Maintenance Plan for the landscape areas identified in the Landscaping Scheme shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. All vegetation detailed within the Landscaping Scheme shall be managed in accordance with the approved Landscape Management and Maintenance Plan for a minimum of five years following planting. If within this 5 year period any tree, shrub or hedgerow or any replacement planting is removed, uprooted or dies or becomes seriously damaged or diseased, replacement planting of the same species and size shall be planted in the same location in the next planting season.

Reason: This information is required prior to the commencement of the development to secure and maintain establishment of the landscaping in the interests of visual amenity and ecology.

8. No development shall take place until a scheme providing full details of the soft landscaping to be implemented on the site has been submitted to, and approved in writing by, the Local Planning Authority. The Landscaping Scheme submitted shall be in accordance with the details illustrated on the approved Soft Landscape Strategy (Drawing 23-076-P-01 REV P05). The Scheme shall include a planting plan and specification for all grassed areas, tree, shrub and hedgerow planting providing schedules for all new planting and seeding, noting species, mixes, planting sizes and proposed numbers/densities where appropriate, and a timetable for implementation. All new planting shall be implemented in accordance with the approved details and implementation programme. If within a period of 5 years from the date of planting, any tree, shrub or hedgerow or any replacement planting is removed, uprooted or dies or becomes seriously damaged or diseased replacement planting of the same species and size shall be planted in the same location in the next planting season.

Reason: This information is required prior to the commencement of the development to ensure the sustainable provision, establishment and maintenance of a reasonable standard of landscape in accordance with the approved designs and the provision of enhancements for biodiversity in accordance with the NPPF, MD12 and CS17.

9. All pre-commencement tree works and tree protection measures as detailed in the submitted Llanerch Arboricultural Method Statement and Appendix 1 Tree Protection Plan LA-2023-045-TPP 10 shall be fully implemented to the written satisfaction of the Local Planning Authority, before any development related equipment, materials or machinery are brought onto

the site.

Reason: This information is required prior to the commencement of the development to safeguard important trees

10. Prior to the commencement of the development the consulting arboriculturist shall be appointed to undertake supervision and monitoring of the tree protection fencing and other measures at pre-commencement stage and throughout the construction period as outlined in Appendix 2 Arboricultural Method Statement Checklist Ref: LA-2023-045 and submit to the Local Planning Authority a satisfactory Completion Statement to demonstrate compliance with the approved tree protection measures at each stage listed.

Reason: This information is required prior to the commencement of the development to ensure the satisfactory overview and delivery of tree protection measures on site that require supervision by a competent arboriculturist.

CONDITIONS THAT REQUIRE APPROVAL DURING THE CONSTRUCTION/PRIOR TO THE OCCUPATION OF THE DEVELOPMENT

11. Prior to first occupation/use of the boarding house hereby approved, the makes, models and locations of wildlife enhancements shall be submitted to and approved in writing by the Local Planning Authority.

The following boxes shall be erected on the site:

- A minimum of 8 external woodcrete bat boxes or integrated bat bricks, suitable for nursery or summer roosting for small crevice dwelling bat species.
- A minimum of 8 artificial nests, of either integrated brick design or external box design, suitable for starlings (42mm hole, starling specific), sparrows (32mm hole, terrace design), house martins (house martin nesting cups), swallows (swallow nesting cups) and/or small birds (32mm hole, standard design).
- A minimum of 6 artificial nests, of integrated brick design, suitable for swifts (swift bricks).
- A minimum of 4 invertebrate bricks/houses of integrated or external design, suitable for pollinators.
- A minimum of 2 hedgehog domes (standard design) suitable for hedgehog refuge.

The boxes shall be sited in suitable locations, with a clear flight path and where they will be unaffected by artificial lighting. The boxes shall thereafter be maintained for the lifetime of the development.

Swift bricks should be positioned as follows:

- 1) Out of direct sunlight
- 2) At the highest possible position in the buildings wall
- 3) In clusters of at least three
- 4) 50 to 100cm apart

- 5) Not directly above windows
- 6) With a clear flightpath to the entrance
- 7) North or east/west aspects preferred.

(See <https://www.swift-conservation.org/Leaflet%20-%20Swift%20Nest%20Bricks%20-%20installation%20&%20suppliers-small.pdf> for more details)

Reason: To ensure the provision of roosting and nesting opportunities, in accordance with MD12, CS17 and section 180 of the NPPF

12. Prior to the erection of any external lighting on the site, a Lighting Plan shall be submitted to and approved in writing by the Local Planning Authority. The Lighting Plan shall demonstrate that the proposed lighting will not impact upon ecological networks and/or sensitive features, e.g. bat and bird boxes, trees, and hedgerows. The submitted scheme shall be designed to take into account the advice on lighting set out in the Bat Conservation Trusts Guidance Note 08/18 Bats and artificial lighting in the UK. The development shall be carried out strictly in accordance with the approved details and thereafter retained for the lifetime of the development.

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

13. Prior to the erection of any associated signage on the boarding house hereby approved, full details shall be submitted to approved in writing by the Local Planning Authority. The development shall be carried out in complete accordance with the approved details.

Reason: To ensure that the external appearance of the development is satisfactory and that the addition of signage would not result in an adverse visual impact.

14. Prior to first occupation/use of the boarding house hereby approved, details of any external extraction or servicing equipment 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.

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

CONDITION THAT IS RELEVANT FOR THE LIFETIME OF THE DEVELOPMENT

15. The boarding house hereby approved shall not be used for any other purposes than those uses within Use Class C2 - Residential Institutions of the Town and Country Planning (Uses Classes) Order 1987 (as amended), and shall only be used in connection with Concord College educational establishment. The boarding house shall not at any time be sold, let or otherwise disposed of as separate unit.

Reason: The application has been considered on the basis of it providing accommodation for a specific housing group only and its suitability for other uses has not been assessed. The site is

an area where unrestricted residential accommodation would not be supported by local plan policy.

Informatives

1. In determining the application the Local Planning Authority gave consideration to the following policies:

Central Government Guidance:
National Planning Policy Framework
National Planning Practice Guidance

LDF Core Strategy Policies:
CS5 Countryside And Green Belt
CS6 Sustainable Design And Development Principles
CS8 Facilities, Services And Infrastructure Provision
CS13 Economic Development, Enterprise And Employment
CS17 Environmental Networks
CS18 Sustainable Water Management

Site Allocations & Management Of Development (SAMDev) Plan Policies:
MD2 Sustainable Design
MD12 Natural Environment
MD13 Historic Environment

2. Where there are pre commencement conditions that require the submission of information for approval prior to development commencing at least 21 days notice is required to enable proper consideration to be given.

3. Your attention is specifically drawn to the conditions above that require the Local Planning Authority's approval of materials, details, information, drawings etc. In accordance with Article 21 of the Town & Country Planning (Development Management Procedure) Order 2010 a fee is required to be paid to the Local Planning Authority for requests to discharge conditions. Requests are to be made on forms available from www.planningportal.gov.uk or from the Local Planning Authority. The fee required £145 per request, and £43 for existing residential properties.

Failure to discharge pre-start conditions will result in a contravention of the terms of this permission; any commencement may be unlawful and the Local Planning Authority may consequently take enforcement action.

4. The active nests of all wild birds are protected under the Wildlife and Countryside Act 1981 (as amended). An active nest is one being built, contains eggs or chicks, or on which fledged chicks are still dependent.

It is a criminal offence to kill, injure or take any wild bird; to take, damage or destroy an active nest; and to take or destroy an egg. There is an unlimited fine and/or up to six months imprisonment for such offences.

All vegetation clearance, tree removal and scrub removal and/or conversion, renovation and demolition work in buildings [or other suitable nesting habitat] should be carried out outside of the bird nesting season which runs from March to August inclusive.

If it is necessary for work to commence in the nesting season then a pre-commencement inspection of the vegetation and buildings for active bird nests should be carried out. If vegetation or buildings cannot be clearly seen to be clear of nests then an appropriately qualified and experienced ecologist should be called in to carry out the check. Only if there are no active nests present should work be allowed to commence.

[Netting of trees or hedges to prevent birds from nesting should be avoided by appropriate planning of work. See guidance at <https://cieem.net/cieem-and-rspb-advise-against-netting-on-hedges-and-trees/>.]

[If during construction birds gain access to [any of] the building[s] and begin nesting, work must cease until the young birds have fledged.]

5. Widespread reptiles (adder, slow worm, common lizard and grass snake) are protected under the Wildlife and Countryside Act 1981 (as amended) from killing, injury and trade. Widespread amphibians (common toad, common frog, smooth newt and palmate newt) are protected from trade. The European hedgehog is a Species of Principal Importance under section 41 of the Natural Environment and Rural Communities Act 2006. Reasonable precautions should be taken during works to ensure that these species are not harmed.

The following procedures should be adopted to reduce the chance of killing or injuring small animals, including reptiles, amphibians and hedgehogs.

If piles of rubble, logs, bricks, other loose materials or other potential refuges are to be disturbed, this should be done by hand and carried out during the active season (March to October) when the weather is warm.

Areas of long and overgrown vegetation should be removed in stages. Vegetation should first be strimmed to a height of approximately 15cm and then left for 24 hours to allow any animals to move away from the area. Arisings should then be removed from the site or placed in habitat piles in suitable locations around the site. The vegetation can then be strimmed down to a height of 5cm and then cut down further or removed as required. Vegetation removal should be done in one direction, towards remaining vegetated areas (hedgerows etc.) to avoid trapping wildlife.

The grassland should be kept short prior to and during construction to avoid creating attractive habitats for wildlife.

All building materials, rubble, bricks and soil must be stored off the ground, e.g. on pallets, in skips or in other suitable containers, to prevent their use as refuges by wildlife.

Where possible, trenches should be excavated and closed in the same day to prevent any wildlife becoming trapped. If it is necessary to leave a trench open overnight then it should be sealed with a close-fitting plywood cover or a means of escape should be provided in the form of a shallow sloping earth ramp, sloped board or plank. Any open pipework should be capped overnight. All open trenches and pipework should be inspected at the start of each working day to ensure no animal is trapped.

Any common reptiles or amphibians discovered should be allowed to naturally disperse. Advice should be sought from an appropriately qualified and experienced ecologist if large numbers of common reptiles or amphibians are present.

If a great crested newt is discovered at any stage then all work must immediately halt and an appropriately qualified and experienced ecologist and Natural England (0300 060 3900) should be contacted for advice. The Local Planning Authority should also be informed.

If a hibernating hedgehog is found on the site, it should be covered over with a cardboard box and advice sought from an appropriately qualified and experienced ecologist or the British Hedgehog Preservation Society (01584 890 801).

[Hedgerows are more valuable to wildlife than fencing. Where fences are to be used, these should contain gaps at their bases (e.g. hedgehog-friendly gravel boards) to allow wildlife to move freely.]

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AGENDA ITEM



Committee and date

16th April 2024

Development Management Report

Responsible Officer: Tracy Darke, Assistant Director of Economy & Place

Summary of Application

<u>Application Number:</u> 23/04940/FUL	<u>Parish:</u>	Claverley
<u>Proposal:</u> Application under Section 73A of the Town and Country Planning Act 1990 for the erection of agricultural buildings and operational development (resubmission of application 23/01726/FUL)		
<u>Site Address:</u> Oak Farm Claverley Wolverhampton Shropshire WV5 7AE		
<u>Applicant:</u> Mr And Mrs Oakley		
<u>Case Officer:</u> Mike Davies	<u>email:</u>	mike.daves.planning@shropshire.gov.uk
<u>Grid Ref:</u> 378676 - 292824		



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

REPORT

1.0 THE PROPOSAL

- 1.1 This application is a retrospective application for structures connected to the agricultural use of the site. Planning permission is sought for the following forms of development detailed below.
- 1.2 **Livestock building / goat pen** - The building proposed will cover a footprint of 127 sqm. The building would be constructed with profile sheeting forming the shelter areas, with a central covered goat pen. The building is required to house the goats and sheep on site. The two shelters provide space for animals to be separated for birthing and quarantining animals as required in addition to a dedicated milking parlour.
- 1.3 **Implement store** - Retrospective consent is sought for an existing implement store as constructed adjacent to the holding's access gates. This building provides secure storage for implements and machinery stored on site. The building was constructed further to the grant of planning permission 18/00470/FUL, although the

building is larger than that previously approved and the applicant sought to regularise the situation through a part retrospective application under reference 20/01900/FUL. As can be seen on site, the building is currently fully utilised for agricultural purposes, needed to be sited where it is to allow access into the site and would be compromised in functional terms if it was any smaller.

1.4 **Shipping containers** - The applicant has sited three shipping containers on site to provide additional space for secure storage and processing of produce on site. The containers have been linked with a roof structure to provide small, covered yard areas in the space between the containers.

1.5 In addition to the above, planning permission is also sought for the following items:

- Retaining wall
- Increasing the width of the access
- Soakaway
- Associated hardstanding

2.0 SITE LOCATION/DESCRIPTION

2.1 The site falls within open Green Belt countryside to the south west of the village of Claverley. It is accessed from the C4261 via other C roads from either the B4176 to the north or the A458 to the south. The area is generally characterised by sporadic agricultural and residential development, however Claverley Cricket Ground occupies a plot directly to the south of the site. The site is an agricultural field which is mostly level, but undulates towards the north end creating a dip in the land. The perimeter is defined by mature native hedging containing some trees along the western boundary with the road. Access into the site is via a wide gate at the south west corner and a pedestrian gate at the north west corner where additional fencing across to the boundary hedging suggests that the access was previously wider.

2.2 The site is located approximately 700m to the south west of the village of Claverley and is known as Oak Farm. The site is accessed via a gated vehicular access located in the northwest corner of the site. Oak Farm is a registered small holding. Land directly to the east and across the road to the west is agricultural. Adjacent to the north is a small copse of trees and beyond this several residential properties comprising Sandford House, Sandford Lodge, Sandford Mews and The Gate House which are not visible from the site and are a minimum 85m away. The cricket pavilion to the south is approximately 240m from the site.

2.3 The site comprises approximately 1.57 ha of agricultural land which includes an area of grazing land, with a yard and storage located along the site's northern boundary.

3.0 PLANNING HISTORY

3.1 Planning Permission was granted in 2018 under 18/00470/FUL, for a single agricultural building on the site with a floor area of 36sqm. It was subsequently discovered that the building had a floor area of 60sqm and a retrospective planning

application was invited. The case officer had negotiated a reduced scheme and whilst the applicant agreed these reductions they chose to build the building to the original size.

- 3.2 Rather than submit a retrospective application as invited to, the applicant chose to submit an application to vary the approved plans condition rather than include it as part of this application and a separate report has been prepared in relation to this application. However, it is important to understand this proposal in the context of this application and along with the original application which was amended to the smaller building that was granted approval.
- 3.3 Since the initial application and construction of the building on site, subsequent applications have been required to be submitted in order to regularise the development that had taken place. These are detailed as follows:
- 3.4 Application number 20/01900/FUL
Works to include erection of gates at the site entrance, a concrete panel retaining wall, installation of a soakaway, excavations to level an area and lay it with hardcore, the siting of 3 shipping containers and the erection of an agricultural building (part retrospective). This application was refused.
- 3.5 Application number 20/01901/VAR
Variation of condition number 2 (approved plans) attached to planning permission reference 18/00470/FUL dated 15/08/2018 to allow an amended design of the original proposal | Land To The North Of Claverley Cricket Ground Claverley Wolverhampton Shropshire WV5 7AE. This application was refused.
- 3.6 Application number 21/02922/ENF
Appeal Against Without Planning Permission, the material change of use of the land to a mixed use of agricultural and for storage associated with non-agricultural commercial use, namely storage of vehicles and materials in association with the carrying on of other businesses. The enforcement notice was quashed following an appeal in February 2022.
- 3.7 Notwithstanding the above appeal being upheld against an enforcement notice, there is a further enforcement notice still in force relating to the agricultural use of the land. As a result of the other appeal the local planning authority invited an application to regularise the development on site, with it being for agricultural purposes only.
- 3.8 Application Number 23/01726/FUL
Application under Section 73A of the Town and Country Planning Act 1990 for the erection of agricultural buildings and operational development – Withdrawn. This application was withdrawn at the request of the Local Planning Authority following a site visit which revealed discrepancies between the development being applied for and the development that was on site.

3.9 As can be seen from the site history set out above the site, the applicant has often adopted the approach of undertaking work and then seeking approval retrospectively. Clearly, this approach has not been well received by the local community, however undertaking development without planning permission is not unlawful in itself it only becomes unlawful when an enforcement notice is served and to serve a notice it has to be expedient to do so. Therefore, it is important when considering the current planning application that previous misdemeanours are ignored and the decision is based solely on the planning merits of the application before the committee.

3.0 REASON FOR COMMITTEE/DELEGATED DETERMINATION OF APPLICATION

3.1 The Parish Council object to the proposals and the Ward member has requested that the application be considered by the Southern Planning Committee.

4.0 Community Representations

4.1 Consultee Comment

4.1.1 **Claverley Parish Council** - Objects to the **retrospective** planning application 23/01726/FUL on the grounds that it is inappropriate development in the Green Belt being disproportionate in scale to the agricultural activity capacity being performed on the site and the land holding. The application for the erection of agricultural buildings and operational development does not comply with permitted development Class B (developments of units under 5 Ha).
development is not permitted
B1. (c) *Within 25m of a public highway.*
(d) *Within 400m of protected buildings.*
B2. (f) *Within 5m of site boundary.*

The Parish Council would also make the following points and observations regarding the works included (and not included) comprising this application:

Erection of gates at the site entrance (Retrospective)

The original 5 bar wooden field gate, which was set back from the public highway for periodic access to the grass field, has been replaced by:-

- a) New gates 2.2 metre high, solid construction, higher than the adjacent sandstone wall are not in keeping in this countryside Green Belt setting.
- b) For safe ingress and egress to the site on a now daily basis with associated agricultural equipment onto a Class C highway with a 60 mph speed limit, the entrance gates should be repositioned at least 5m back from the road to prevent obstructing the highway, as has been done at the southern site entrance.

Concrete Panels

The concrete panels are out of keeping with the local environment and not essential for agricultural use of the site. Therefore, they represent inappropriate development in the Green Belt.

Installation of a soakaway (Retrospective)

SUDs consultee states drainage must conform with BRE Digest 365 percolation test. Since there are no plans supplied (or percolation test details to comply with BRE365) for any drainage constructed on the site with this or any previous application the application cannot confirm that drainage requirements have been met.

To comply with Building Regulations H2 Waste Water Treatment Systems and Cesspool .

Siting of a Drainage field :

The following are none conformities on this site.

1.27 (b) at least 50m from the point of abstraction of any groundwater supply.

(c) at least 15 M from any building.

1.29 No supply pipes or underground services other than those required by the disposal system itself should be located within the disposal area.

1.40 Drainage fields should be constructed using perforated pipe, laid in trenches of a uniform gradient which should be not steeper than 1:200.

1.41 Pipes should be laid on a 300mm layer of clean shingle or broken stone graded between 20mm and 50mm BS 6297:20

It can be seen from the photographs included with this submission that none of the above conditions have been complied with and since the soakaway is a named part of this application it is grounds for refusal.

Photo 1.

Twin 4" soil pipes un perforated laid directly onto the sub soil .

Water and electric services laid in same trench.

Adjacent to water supply borehole (within 10 M).

Soak away pipes laid under Hay Barn and Goat shed.

Photo 2.

Waste water pipe from a container connected to a soil pipe, unknown flow destination.

Photo 3.

Shows electric and water services with soak away pipes in corner of hard standing area adjacent to water supply borehole.

Photo 4.

Showing location of plastic bottle septic tank unknown use and connections (foul water or rain water) but within 50M of water supply bore hole.

Excavations to level an area and lay it with hardcore (Retrospective)

a) If the 538 square metres of hardstanding in planning application 18/00470/FUL was inappropriate development in the Green Belt (policy MD 7b) it follows that the current 1400 square metres on the northern boundary and the 600 square metres in the south west corner are also inappropriate and out of scale and proportion.

b) The site hardcore area exceeds 456 square metres so it contravenes Town and Country Planning Act 2015 part 6 Class B.3 (d).

Siting of 3 shipping containers (Retrospective)

The 3 containers are linked by a single roof forming a single permanent structure so require planning permission in the Green Belt. The requirement for this structure needs to be accessed combined with the several other structures as to the appropriate building area need for the level of agricultural activity possible on this 3.74 acre site.

Hay Barn (Retrospective)

Using the current stated goat numbers of 22 the hay feed requirements for a milking goat 6.5 lbs/ day and 2-4 lbs /day for other goats, which equates to 3-4% of body weight.

At an average of 5lbs hay /day or 3-4% of body weight, small round bale hay (4x4 = 400-600 lbs)

22 goats x 365 days x 5 lbs = 40,150lbs divided by 500lbs = a storage need of 80 bales of hay fed for 365 days.

Given normal grass growth for 6 months the hay barn would need to store 40 bales, or 71m³. The built Hay barn is 3 times the required size.

Goat pen /shelter/parlour (Retrospective)

The required size of building is dependent on the stocking capacity of the 3.74 acre site. The information provided quotes 0.17acre orchard, 2.93 acre grassland (the remaining 0.64 acre is presumed hard standing /chicken runs), Brown Rural quote a stocking rate of between 4-10 goats/sheep /acre to project the site can hold 30 goats. The Parish Council consulted its own members with agricultural experience (130 yrs) in the parish, other livestock farmers in the parish and local land agents the consensus being a stocking rate of 3-4 /acre as the normal limit if the grassland is used for grazing and mowing. A stocking rate of 10/acre would only be achieved with stubble turnips on grade 2 arable land which this site is not. The site is light sandy grade 3 soil a stocking rate of 10/acre is unrealistic consequently this will affect the required building area as the holding capacity of the site would be 9-12 goats/sheep.

Brown's stated space requirements

30 goats at 2.5 m/goat shed size 75m²

Local consensus stocking rate 3-4/acre 12 goats at 2.5 m/goat shed size 30m²

Actual shed size 15.16 x 7.27 = 110.20 m²

Even using Brown's maximum inflated figures the Goat shed is 32% out of scale and proportion for the site, or 73% using local consensus stocking rates .

Pig enclosure

No plans for a pig enclosure have been provided in this application.

The 3 bay concrete panel storage structure is not a pig enclosure as it has no roof to protect stock from the elements, is not secure as it is only three sided and has no water provision. The storage this structure provides is out of scale and proportion

along with the 600 square meters of hard standing in the south west corner of the site (see photo's 5/6 with skip used for burning imported waste).

Brown's appraisal state that the pig pens are sited on a "previously a small yard" but in planning application 18/00470/FUL (Amended Site plan) it clearly shows this south west corner to be grass pasture. It is inappropriate development in the Green Belt, affects the openness of the rural area and the amenity of the adjacent cricket ground and should be removed.

Storage Unit (Retrospective)

Permission for a 6 x 6m building (18/00470/FUL) was granted as being in scale and proportion for the 3.74 acre site. The storage unit that was built was 10 x 6m, of a different style, included a chimney and is within 25m of the public highway. It is an illegal structure and should be removed to comply with Class B permitted development regulation B.1 (c) and 18/00470/FUL.

Omitted Details

Application does not include an accurate site plan /block plan. The Land Survey plan does not include: (see actual site plan attached)

The hard standing in the south west corner

5/6 goat shelters reducing the grazing area

Two caravans one with paved area and covered awning and foul drainage connection to what ?. (photo 7)

Flood lights mounted on 8 metre poles on 24/7.

No ecology assessment on potential increased night predation of bats has been provided.

Companies House List Mr Gavin Oakley and Mrs Sonja Oakley as Director and secretary respectively for

Komo Services West Midlands,

Komo Lettings (West Midlands) Ltd,

Both with the service address as Oak Farm, Sandford Claverley WV5 7AE which building are these non agricultural businesses operating from? (see Doc 1-4)

Financial viability

At the end of the financial year the site needs to generate an income for Mrs Oakley and half of Mr Oakley's as stated by Emery Planning.

There are also the setup costs to be written off:

1400 approx. square metres hardcore 300 mm deep 840t at £17/ t £14,280

Listed machinery £58,200-£69,300

3 shipping containers £10,000

12 hives @ £450 £5,400

Bees £1,800

Concrete 150mm (Brown Rural areas 297 square metres) £6177

With the buildings erected, concrete panels, land purchase price, electricity supply, water borehole, fencing, retaining walls and gate, livestock purchase, costs will come

AGENDA ITEM

Southern Planning Committee - 16th April 2024

Oak Farm

to well in excess of a hundred thousand to be financed by the output of 12 hives, 15 goats 18 chickens off 3.74 acres.

This is not a financially sound solely agricultural business proposal for this size of site.

Information for consideration on scale and proportion

Oak Farm 5 hives, honey processing in an 8 x 20 foot container, existing local apiary has run 100 hives from a 8 x 16 foot wooden shed.

Tractor on site has turf tyres which are more associated with amenity business use than agricultural use.

Large agricultural holdings would struggle to justify a mini digger unless there was an alternative income stream use .

A small agricultural holding would use a tractor with a forend loader rather than a Telescopic telehandler as it is limited to only lifting material. On a site of this size a telehandler is extremely extravagant.

Machinery storage realistic appraisal

MACHINERY/IMPLEMENT	Machinery Requirement	Shed Requirement or Hard standing	Brown's Space Requirement	Realistic Space Requirement
Telescopic handler (Bobcat TL34.65HF Agri)	Contractor/Hire	No	13.50 m2	
Tractor (Kubota L380)	Own equipment	Yes	11.50 m2	11.50 m2
Bobcat Mini-digger	Contractor/Hire	No	9.00 m2	
Honda Fourtrac Quad	Own equipment	Yes	4.50 m2	4.5 m2
Quad trailer	Own equipment	Hard standing	6.50 m2	
Multipurpose Trailer	Own equipment	Hard standing	20.00 m2	
Chain Harrows	Own equipment	Hard standing	6.00 m2	
Stock trailer	Own equipment	Hard standing	15.00 m2	
Muck spreader	Contractor/Hire	No	13.00 m2	
Flail mower	Contractor/Hire	No	12.50 m2	
Mower/Conditioner	Contractor/Hire	No	15.50 m2	
Hay turner/rowing in machine	Own equipment	Hard standing	7.50 m2	
Baler	Contractor/Hire	No	15.80 m2	
Total			150.30 m2	16 m2

Claverley Parish Council contends that the scale and proportion of building works are disproportionate for the size of the site's agricultural output capacity and that it represents inappropriate development in the Green Belt . This application should be refused, the true building requirement assessed, a new application submitted and structures deemed disproportionate/illegal should be removed.

- 4.1.2 **Regulatory Services** - The submitted noise and odour assessments indicated no adverse impacts arising from the development. Therefore no further comments or conditions required.
- 4.1.3 **Highway Authority** - The planning statement, and drawings show the build and land particulars however there is a lack of highway details as they do not indicate the transportation proposals, no visibility measurements have been provided, along with the required dimensions for a vehicular parking arrangements with a safe access, egress for stock carrying vehicles and their associated trailers and transporters.

Therefore, Shropshire Council (SC) highways authority cannot evaluate this application, as the highways proposals do not provide enough detail for this resubmission.

It is recommended the drawings are re-submitted to accordingly demonstrate the highways and transport arrangements Along with annotated visibility splay measurements and dimensions. This information is required to fulfil the highways details for an unclassified highway within a national speed limit zone and are commensurate with the prevailing local highway conditions.

- 4.1.4 **County Ecologist** - Recommends the inclusion of informatives in relation to Nesting Birds, Wildlife protection and Lighting.
- 4.1.5 **Local Lead Flood Authority** - This is a minor development and the site is not located in a SuDs consultation area. It is considered that the proposals are unlikely to significantly increase the risk of flooding and according an informative should be attached to any approval granted.
- 4.1.6 **SC Landscape** - The site is set within an existing framework of mature trees along its northern and eastern boundaries, and a hedgebank along the western boundary with Pound Street. The nearest landscape designations are the Grade II Listed Registered Parks and Gardens at Ludstone Hall approximately 1.7km to the northeast, with the Shropshire Hills National Landscape [AONB] over 9km to the southwest of the site; given the scale of the proposals and the intervening vegetation and landform between the site and Ludstone Hall, and the separation distance with the Shropshire Hills, it is unlikely that the proposals will result in adverse effects upon either of these landscapes.

Visual receptors are likely to include those travelling by vehicle or cycle on Pound Street that passes to the west of the proposed buildings, and walkers on the two Public Rights of Way in the vicinity of the site, on Digbeth Lane [ref BOAT 0118/UN8/2] approximately 0.6km north, and on the footpath [ref Footpath 0118/23/1] approximately 0.4km to the southeast. We are aware from several public comments that the proposals may be visible from Claverley Cricket Club

approximately 0.2km south of the site. There are unlikely to be any views from nearby residential properties due to the intervening built form and mature field boundary vegetation. Road users on the minor road travelling between Farmcote and Claverley may have a glimpsed view of the proposed buildings, partially screened by the existing roadside hedge along Pound Street. Walkers on the two Public Rights of Way in the vicinity of the site, the byway on Digbeth Lane [0118/UN8/2] to the north, and the footpath [0118/23/1] to the southeast, will have views effectively screened by mature hedgerow along the field boundaries and landform.

In conclusion, it would appear that any adverse landscape and visual effects are likely to be limited; given the rural setting of the proposed buildings these are unlikely to be significant.

However, any potential adverse effects on recreational users at Calverley Cricket Club could be mitigated by a length of hedgerow planted along the southern boundary of the landholding, adjacent to the cricket club. We would recommend that should the application be approved, a pre-commencement condition be imposed requiring the submission of the appropriate landscape details and aftercare plan.

Provision should also be made to ensure that no retained tree would be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped, without the written approval of the local planning authority. Any tree work approved should be carried out in line with BS 3998:2010 (Recommendations for Tree Works).

- 4.1.7 **Environment Agency** - The application is not EIA and we would not be a statutory consultee. It doesn't appear to be a site that we would expect to make bespoke comment upon. The following is provided to help clarify.

Given the apparent scale and nature of the proposed agricultural operation, the proposed activity doesn't appear to be a site that we would regulate under Environmental Permitting Regulations (EPR). We would not therefore comment on any emissions/impacts to land, air and water. You may therefore wish to consult with your Public Protection team who may comment on aspects of the operation in this regard.

According to our records, the site falls within Source Protection Zone 3 (SPZ) and not SPZ1 as you have indicated. While I note the Parish Council has drawn attention to a borehole near/within the site (which would require its own protection zone), we do not hold records of private boreholes and you may wish to seek confirmation of this from the relevant Local Authority department along with any measures to protect that potential supply.

The plans do not appear to include any details of washdown or slurry storage/disposal measures. If a slurry lagoon or tank were proposed, we would refer you to our standard comments on SSAFO regulations (within our agricultural guidance note).

On this basis, the EA do not wish to provide bespoke comment.

4.1.8 **Severn Trent Water** - No comments received.

4.2 Public Comments

4.2.1 38 objections have been received in relation to the proposals the reasons can be summarised as follows:

- Unlawful Development and disregard for planning laws
- Contrary to Planning Policy
- Concern at lack of enforcement and site inspections
- Site should be cleared and reinstated
- Description of development misleading and should include 'retrospective'
- Use blights residents lives
- Attempt to build residential property by stealth
- Light Pollution
- Noise and Disturbance
- Barking dogs
- Odour
- Over intensive use of site
- Over development
- Inappropriate development in the Green Belt
- No very special circumstances demonstrated
- Use could contaminated local borehole supply
- Other land leased by applicant is irrelevant and should be disregarded
- Consultants not agricultural experts and their statements should be disregarded
- Bees have swarmed and caused cricket match to be abandoned on adjacent field
- The Agricultural and Planning statements contain insufficient data or expert agriculture/farming opinion
- The current agricultural use is not viable
- The submitted plans do not show the location of the soakaway
- No details of how slurry from livestock will be collected or stored on site
- The applicant continues to use the site as the correspondence address for non-agricultural businesses which operate from the site
- None of the work undertaken constitutes permitted development
- Anti Social Behaviour
- No Environmental Permit for the site has been applied for by the applicant which is required by law
- Unacceptable impact on Cricket Club
- This is not sustainable development
- Site gates out of character with rural location
- Does not comply with BRE Digest 365 or Building Regulations H2

- The three shipping containers on site linked by a roof needs to be considered against the over provision of buildings and plant & machinery for a small holding of 3.74 hectares as it is inappropriate
- Deliberate concealment of development
- Local Infrastructure inadequate to deal with additional vehicular traffic
- Development disproportionate to scale of agricultural operation
- Concrete fencing on site out of character with rural location
- Highway safety issues due to vehicles emerging from the site and not having sufficient visibility to see other road users
- No details of septic tank location

4.2.2 No supporting representations have been received.

5.0 THE MAIN ISSUES

Principle of development
Siting, scale and design of structure
Visual impact and landscaping
Residential Amenity
Highway safety
Ecology
Drainage
Other Issues

6.0 OFFICER APPRAISAL

6.1 Principle of development

6.1.1 Section 38(6) of the Planning and Compensation Act 2004 requires that determinations be made in accordance with the development plan unless material considerations indicate otherwise. The development plan for Shropshire consists of the Shropshire Core Strategy (Adopted 2011) and the Shropshire Sites and Allocations Management of Development Plan (Adopted 2016). The emerging Shropshire Local Plan is also now at an advanced stage and can be afforded moderate weight in the decision-making process. In addition, the Sustainable Design Supplementary Planning Document (Adopted July 2011) is also a relevant consideration.

6.1.2 The National Planning Policy Framework updated in December 2023 and the accompanying National Planning Policy Guidance are also relevant considerations in relation to the determination of this application.

6.1.3 Green Belt policies CS5, MD6 and section 13 of the National Planning Policy Framework require that the openness, permanence and visual amenity of land within its boundaries is preserved. Inappropriate development is, by definition, harmful to the Green Belt and support is not given to such proposals except in very special circumstances. New buildings within the Green Belt are considered

inappropriate unless they are needed for agriculture or forestry (amongst other criteria). Essential facilities should be genuinely required for uses of land which preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.

- 6.1.4 Para 88 of the NPPF states that planning decisions should enable sustainable growth and expansion of businesses in rural areas including new buildings along with the development and diversification of agricultural and other land-based rural businesses. Para 89 goes on to state that *'decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements.'*
- 6.1.5 Para 152 of the NPPF states *'Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.'* However, at para 154 it lists a number of where the construction of new buildings is not considered inappropriate and this includes agricultural structures.
- 6.1.6 Turning to development plan policies CS5 reinforces national planning policy in relation to the Green Belt at a local level, stating that new development in the Green Belt will be strictly controlled. The policy goes on to state *'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 then goes on to identify particular types of development which will be supported in principle including
- Small-scale new economic development diversifying the rural economy, including farm diversification schemes
 - dwellings to house agricultural workers and other affordable housing / accommodation to meet a local need
 - Agricultural related development
 - The retention and appropriate expansion of an existing established business
- 6.1.7 Policy MD6 Green Belt states that *'In addition to meeting the general requirements that apply in the countryside as set out in Policies CS5 and MD7a and MD7b, development proposed in the Green Belt must be able to demonstrate that it does not conflict with the purposes of the Green Belt.'* Clearly any new building will have an impact on the openness of the Green Belt which is a primary consideration when determining proposals which impact the Green Belt, however in this context there are also exceptions which are considered appropriate development in the Green Belt and these include agricultural buildings. Therefore, in this case the issue primarily revolves around the quantum of development and whether it is necessary to serve this small holding and the other land the applicants manage.
- 6.1.8 Policy MD7b General Management of Development in the Countryside states agricultural development will be permitted where it can be demonstrated that the development is:

- a. of a size/ scale and type which is consistent with its required agricultural purpose and the nature of the agricultural enterprise or business that it is intended to serve;
- b. Well designed and located in line with CS6 and MD2 and where possible, sited so that it is functionally and physically closely related to existing farm buildings;
- and,
- c. There will be no unacceptable impacts on environmental quality and existing residential amenity.

The policy accepts the appropriateness of agricultural development in the countryside and as such the main consideration comes down to whether the quantum of development is appropriate in relation to the scale of the agricultural operation.

6.1.9 Policy CS13 Economic Development, Enterprise and Employment recognises the importance of the rural economy in the county and the importance of farming for food production as well as supporting rural enterprise and diversification of the economy, in particular areas of economic activity associated with agricultural and the promotion of local food and supply chains.

6.1.1 SAMDev Policy S3.3(i) Wider Area Policies permits appropriate uses such as 0 agriculture in the Countryside and Green Belt.

6.1.1 The fact that the site is situated in the Green Belt has been the focus of much of the 1 objections along with applicants' willingness to undertake development without planning permission and then apply retrospectively. From a planning policy perspective, the use of the site for agricultural purposes is compatible with its Green Belt status so there is no in principle objection to the use itself. Clearly, the structures erected on site do impinge on the openness of the Green Belt however this needs to be weighed in the balance against the needs of the agricultural operation.

6.2 Siting, scale and design of structure

6.2.1 The site is located to the southwest of the village of Claverley in an area of open countryside designated as Green Belt on the adopted proposals map. The agricultural buildings and structures which are the subject of this application are situated in a hollow which has been excavated out by the applicant.

6.2.2 The main issue in terms of this development is its scale and whether it is justified in relation to the size of the agricultural operation. The applicant has chosen to use this site as their base for servicing the other agricultural holdings they control which amount to an additional 6.88 hectares on top of this site which covers 1.57hectares. Therefore, the total landholding covers 8.45 hectares.

6.2.3 Permitted Development rights are allocated to agricultural holdings of 5 hectares and above. However, in this case as the landholding is fragmented the individual

landholding are not large enough on benefit from permitted development rights and therefore planning permission is required for these proposals.

6.2.4 The application is supported by an agricultural appraisal undertaken by Brown Rural Surveyors which justifies the quantum of development based on the total landholding and it is considered that this is a robust report. Therefore, it is considered that the quantum of development has been properly justified in this instance.

6.3 Visual impact and landscaping

6.3.1 The site sits in a depression on the edge of Claverley Cricket Club and is well screened in general from outside of the site. Therefore, its visual impact in the landscape is not overly intrusive. Historical aerial photographs indicate that this depression appears to have been excavated since the applicant occupied the site and it has been laid with a hardstanding.

6.3.2 The Council's Landscape Consultant has suggested that the planting of a hedgerow should be conditioned as this would allow the site to be further screened from view from the adjoining cricket club to the south.

6.4 Residential Amenity

6.4.1 The site is located in open countryside to the south of Claverley and is used for agricultural purposes, which is considered to be an appropriate use in this context. Animal husbandry is an important part of the operation and as such this has the potential to give rise to disturbance through odour and noise. At present there are goats, sheep and chickens on site, with the intention to introduce a small number of pigs, however these are considered to be situated far enough away from residential properties to not result in any significant impact on the amenities of neighbours in terms of noise or odour.

6.4.2 An odour and noise report were submitted in support of the application and these concluded that there was no adverse impact on residential amenity. Regulatory Services have reviewed these reports and concur with their findings.

6.4.3 The floodlighting of the site has been raised as a concern by neighbours. There has been no application for floodlighting and no details are contained within this application. Following a meeting with the agent this information has been requested. It is considered that via the imposition of appropriate conditions requiring the installation of cowling to control light spillage and an hours condition restricting the use of the lighting that this element can be adequately controlled to make it acceptable.

6.4.4 The issue of Bees swarming on the adjacent cricket pitch is not a planning consideration and not something that can be controlled by the planning system. Bees clearly play an important part in the ecosystem and on occasions when they do swarm this can be frightening and potentially problematic. However, it is understood

that the applicant has since moved the beehives on site away from the boundary with the neighbouring cricket club.

6.5 Highway Safety

6.5.1 Access to the site is from Pound Street. There is a gated entrance to the site which is set back which allows a vehicle to pull off the highway and turnaround.

6.6 Ecology

6.6.1 The County Ecologist has raised no objections to the proposals as the site is intensively grazed by goats and as such has little value in terms of biodiversity. There are also several hives on site each housing a colony of bees which will assist in the pollination of wild flowers and other plants which will contribute positively to biodiversity.

6.7 Drainage

6.7.1 The site sits in an evacuated hollow and as such is below the ground level of the surrounding land. The site is within flood zone one and is not considered to be susceptible to flooding as there are no nearby watercourses. Hardstanding has been installed across part of the site which will increase surface water run-off however the LLFA do not consider this to be a major issue in the context of this location.

6.7.2 Comments were also received about the potential for the use to contaminate local boreholes. Both the EA and STW have been consulted on the application and have raised no concerns.

6.8 Other Issues

6.8.1 Several other non-material planning considerations have been raised which are dealt with below.

6.8.2 As the site is situated within the Green Belt it has been suggested by objectors that 'Very Special Circumstances' have not been demonstrated. However, as the site is in agricultural use and the development related to this there is no need to demonstrate 'VSC' as the use itself is in conformity with national and local planning policy. The issue that needs to be addressed is demonstrating that the development is required to support the agricultural operation and to this end the applicant has submitted a report from Brown Rural Surveyors in justification of the proposals. The case put forward to justify the development is considered to be robust based on the evidence provided.

6.8.3 The applicant's willingness to undertake development without planning permission on the site has also been the focus of much attention from objectors. However, undertaking development without the relevant planning permission is not unlawful in itself. It only becomes unlawful where an enforcement notice fails to be complied with. Taking enforcement action is a discretionary power of the Local Planning Authority and there needs to be clear justification for doing so as well as it being expedient to use these powers. Clearly, any development undertaken without the

prerequisite planning approvals is done so at the developers own risk, however the fact they do not have the necessary permissions in advance does not in itself justify the use of enforcement powers as a retrospective proposal needs to be considered in exactly the same way as prospective scheme. A developer should not be disadvantaged just because they have undertaken development without planning permission and the application needs to be considered against planning policy and on its material planning merits.

- 6.8.3 It has been suggested by objectors that 'Other land leased by the applicant is irrelevant and should be disregarded'. Clearly, the size of an agricultural holding has a direct correlation to how much built form is required to service the landholding. This approach is borne out by the differing permitted development rights allocated to larger and smaller agricultural enterprises. The fact that the applicant's landholding is not all in a single land parcel is not a material planning consideration and it needs to be considered in the round in terms of what structures are required to enable the agricultural operation to work efficiently and effectively. This needs to then be properly justified and the report by Brown Rural Surveyors does this.
- 6.8.4 Animal husbandry is an important part of this agricultural operation and their welfare considerations play an important part in dictating how much development is required to provide the necessary facilities to meet welfare standards.
- 6.8.5 The fact that separate named businesses namely Komo Services West Midlands and Komo Lettings (West Midlands) Ltd use the site has their registered address is not a planning consideration. Using the site as a registered address does not mean the business operates from there and it would only become a consideration if the businesses were causing harm as a result of their operations.
- 6.8.6 Two touring caravans have been stationed on site to provide welfare facilities for workers. However, given the existing structures on site it is not considered that the retention of these can be justified and as such any permission granted should be conditional on these two caravans being removed from site.
- 6.8.7 Allegations have also been made around breaches of other legislation namely environmental permitting and building control matters. Government guidance is extremely clear on such matters that the respective legislation should be used to control such matters and that planning decision should be concerned with controlling planning issues only and not intrude into other areas.

7.0 CONCLUSION

- 7.1 The use of the site for agricultural purposes is compliant with the NPPF and Development Plan policies in principle. Therefore, the main consideration is the quantum of development on site and whether this has been justified in the context of the Green Belt. A report by an agricultural consultant has been submitted to justify the development and it is considered that this robustly justifies the development on site, despite the differing views expressed by objectors and the Parish Council.

- 7.2 A significant concern expressed by objectors and the Parish Council is that the development of the site is a prelude to the future residential occupation of the site by the applicant. Whilst a significant amount of development has been undertaken on the site by the applicant without the benefit of planning permission and this appears to some to have served the applicant well. Undertaking development without the relevant planning permission is not in itself unlawful, however it does bring with it a significant risk to the applicant in that unauthorised development can be subject to enforcement action should the local planning authority deem it expedient and appropriate to take action to remedy any resultant harm.
- 7.3 In this particular case development has taken place in the Green Belt which has impacted its openness. However, the development is all related to the agricultural use of the land and has been fully justified by a supporting Agricultural Appraisal of the operation by Brown Rural Chartered Surveyors. The use of the site in connection with agriculture is supported by national and local planning policy and is an appropriate use in this location. It is acknowledged that there is a clear concern about further additional development and what this might lead to in the future, however the local planning authority cannot speculate on what might happen and can only consider the application currently before it. It therefore needs to assess whether the proposals are compliant with the development plan and if it considers it does whether other material planning considerations outweigh this. The residential occupation of the site would require a separate planning permission and the Local Planning Authority would then need to take a view on the appropriateness of such a proposal should it ever materialise.
- 7.4 Having regard to the above it is considered that the development has been properly justified and as such it is recommended that approval be granted subject to appropriate conditions.

8.0 Risk Assessment and Opportunities Appraisal

8.1 Risk Management

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

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

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

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

8.2 Human Rights

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

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

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

8.3 Equalities

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

9.0 Financial Implications

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

10. Background

Relevant Planning Policies

Central Government Guidance:

West Midlands Regional Spatial Strategy Policies:

Core Strategy and Saved Policies:

RELEVANT PLANNING HISTORY:

18/00470/FUL Erection of an agricultural shed GRANT 15th August 2018

20/01900/FUL Works to include erection of gates at the site entrance, a concrete panel retaining wall, installation of a soakaway, excavations to level an area and lay it with hardcore, the siting of 3 shipping containers and the erection of an agricultural building (part retrospective) REFUSE 3rd September 2020

20/01901/VAR Variation of condition number 2 (approved plans) attached to planning permission reference 18/00470/FUL dated 15/08/2018 to allow an amended design of the original proposal REFUSE 2nd September 2020

23/01726/FUL Application under Section 73A of the Town and Country Planning Act 1990 for the erection of agricultural buildings and operational development WDN 20th September 2023

23/04940/FUL Application under Section 73A of the Town and Country Planning Act 1990 for the erection of agricultural buildings and operational development (resubmission of application 23/01726/FUL) PDE

Appeal

21/02922/ENF Appeal Against Without Planning Permission, the material change of use of the land to a mixed use of agricultural and for storage associated with non-agricultural commercial use, namely storage of vehicles and materials in association with the carrying on of other businesses. ALLOW 8th February 2022

11. Additional Information

View details online: <http://pa.shropshire.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=S46I7LTDLHN00>

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) - Councillor Chris Schofield

Local Member

AGENDA ITEM

Southern Planning Committee - 16th April 2024

Oak Farm

Cllr Colin Taylor

Appendices

APPENDIX 1 - Conditions

APPENDIX 1

Conditions

STANDARD CONDITION(S)

1. The development shall be carried out strictly in accordance with the approved plans, drawings and documents as listed in Schedule 1 below.

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

2. All caravans shall be removed from site within 2 months of date of this planning permission.

Reason: The caravans are an inappropriate form of development in the Green Belt and as such are contrary to Policies CS5 of the Shropshire Core Strategy and Policies MD6 of the SAMDev Plan.

3. A scheme for the cowling of the floodlights to prevent light spillage shall be submitted for approval to the local planning authority within 2 months of the date of this permission. The approved scheme shall then be implemented within 2 months following approval by the local planning authority and retained in perpetuity.

Reason: In the interests of residential amenity.

4. The floodlighting shall not be used outside of the hours of 07.00 to 20.00 daily.

Reason: In the interests of residential amenity.

5. Full details of both hard and soft landscape works (in accordance with Shropshire Council Natural Environment Development Guidance Note 7 'Trees and Development') shall be submitted to and approved in writing by the local planning authority within 2 months of the date of this permission. The landscape works shall be carried out in full compliance with the approved plan, schedule and time scales. Any trees or plants that, within a period of five years after planting, are removed, die or become, in the opinion of the Local Planning Authority, seriously damaged or defective, shall upon written notification from the local planning authority be replaced with others of species, size and number as originally approved, by the end of the first available planting season.

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

Informatives

1. In arriving at this decision Shropshire 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 38.

2. A sustainable drainage scheme for the disposal of surface water from the development should be designed and constructed in accordance with the Councils SUDS Handbook which is available in the Related documents section on the councils website at:

<https://shropshire.gov.uk/drainage-and-flooding/development-responsibility-and-maintenance/sustainable-drainage-systems-handbook/Preference> should be given to drainage measures which allow rainwater to soakaway naturally.

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

Any proposed drainage system should follow the drainage hierarchy, with preference given to the use of soakaways. Soakaways should be designed in accordance with BRE Digest 365.

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

Where a positive drainage connection is proposed, the rate of discharge from the site should be restricted to an appropriate rate as set out in the SuDS Handbook.

3. Nesting birds

The active nests of all wild birds are protected under the Wildlife and Countryside Act 1981 (as amended). An active nest is one being built, contains eggs or chicks, or on which fledged chicks are still dependent.

It is a criminal offence to kill, injure or take any wild bird; to take, damage or destroy an active nest; and to take or destroy an egg. There is an unlimited fine and/or up to six months imprisonment for such offences.

All vegetation clearance, tree removal and scrub removal and/or conversion, renovation and demolition work in buildings [or other suitable nesting habitat] should be carried out outside of the bird nesting season which runs from March to August inclusive.

If it is necessary for work to commence in the nesting season then a pre-commencement inspection of the vegetation and buildings for active bird nests should be carried out. If vegetation or buildings cannot be clearly seen to be clear of nests then an appropriately qualified and experienced ecologist should be called in to carry out the check. Only if there are no active nests present should work be allowed to commence.

[Netting of trees or hedges to prevent birds from nesting should be avoided by appropriate planning of work. See guidance at <https://cieem.net/cieem-and-rspb-advise-against-netting-on-hedges-and-trees/>.]

[If during construction birds gain access to [any of] the building[s] and begin nesting, work must cease until the young birds have fledged.]

4. General site informative for wildlife protection

Widespread reptiles (adder, slow worm, common lizard and grass snake) are protected under the Wildlife and Countryside Act 1981 (as amended) from killing, injury and trade. Widespread amphibians (common toad, common frog, smooth newt and palmate newt) are protected from trade. The European hedgehog is a Species of Principal Importance under section 41 of the Natural Environment and Rural Communities Act 2006. Reasonable precautions should be taken during works to ensure that these species are not harmed.

The following procedures should be adopted to reduce the chance of killing or injuring small animals, including reptiles, amphibians and hedgehogs.

If piles of rubble, logs, bricks, other loose materials or other potential refuges are to be disturbed, this should be done by hand and carried out during the active season (March to October) when the weather is warm.

Areas of long and overgrown vegetation should be removed in stages. Vegetation should first be strimmed to a height of approximately 15cm and then left for 24 hours to allow any animals to move away from the area. Arisings should then be removed from the site or placed in habitat piles in suitable locations around the site. The vegetation can then be strimmed down to a height of 5cm and then cut down further or removed as required. Vegetation removal should be done in one direction, towards remaining vegetated areas (hedgerows etc.) to avoid trapping wildlife.

The grassland should be kept short prior to and during construction to avoid creating attractive habitats for wildlife.

All building materials, rubble, bricks and soil must be stored off the ground, e.g. on pallets, in skips or in other suitable containers, to prevent their use as refuges by wildlife.

Where possible, trenches should be excavated and closed in the same day to prevent any wildlife becoming trapped. If it is necessary to leave a trench open overnight then it should be sealed with a close-fitting plywood cover or a means of escape should be provided in the form of a shallow sloping earth ramp, sloped board or plank. Any open pipework should be capped overnight. All open trenches and pipework should be inspected at the start of each working day to ensure no animal is trapped.

Any common reptiles or amphibians discovered should be allowed to naturally disperse. Advice should be sought from an appropriately qualified and experienced ecologist if large numbers of common reptiles or amphibians are present.

If a great crested newt is discovered at any stage then all work must immediately halt and an appropriately qualified and experienced ecologist and Natural England (0300 060 3900) should be contacted for advice. The Local Planning Authority should also be informed.

If a hibernating hedgehog is found on the site, it should be covered over with a cardboard box and advice sought from an appropriately qualified and experienced ecologist or the British Hedgehog Preservation Society (01584 890 801).

[Hedgerows are more valuable to wildlife than fencing. Where fences are to be used, these should contain gaps at their bases (e.g. hedgehog-friendly gravel boards) to allow wildlife to move freely.]

5. The above conditions have been imposed in accordance with both the policies contained within the Development Plan and national Town & Country Planning legislation.

-

AGENDA ITEM



Committee and date

Development Management Report

Responsible Officer: Tracy Darke, Assistant Director of Economy & Place

Summary of Application

Application Number: 24/00390/VAR	Parish: Claverley
Proposal: Removal of Condition No.s 11 and 13 attached to planning permission 17/02852/FUL dated 09 October 2018	
Site Address: The Lodge Huffage Farm Woundale Bridgnorth Shropshire	
Applicant: Jennifer Jones	
Case Officer: Sara Jones	email: sara.jones@shropshire.gov.uk

Grid Ref: 377281 - 293226

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Recommendation:- that delegated authority be given to Officers to secure a Deed of Variation to the Section 106 Agreement to ensure that the dwelling would remain affordable in perpetuity and grant permission subject to the conditions as set out in Appendix 1.

REPORT

1.0 THE PROPOSAL

1.1 This application proposes the removal of conditions 11 and 13 attached to planning permission 17/02852/FUL.

1.2 Condition 11 states:

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, D, and E shall be erected, constructed or carried out.

Reason: To ensure that the dwelling remains of a size which is "affordable" to local people in housing need in accordance with the Council's adopted affordable housing policy.

Condition 13 states:

The dwelling hereby permitted shall not exceed 100 square metres gross internal floor area, including any future extensions. No further internal habitable space shall be created within the dwelling by internal alterations.

Reason: To ensure that the dwelling is of a size appropriate to the local affordable housing market.

2.0 SITE LOCATION/DESCRIPTION

2.1 The site is located within the Green Belt open countryside located west of Claverley village in the hamlet of Woundale which is a small group of farmsteads and dwellings dispersed around a crossroads. Woundale is a "tight knit", though small, settlement.

2.2 The existing dwelling comprises a single storey bungalow with dual pitched tiled roof, facing brickwork with entrance porch, 3 bedrooms, bathroom, WC and open plan living/diner/ kitchen area. A detached double garage is located to the east of the dwelling with parking provision, amenity land to the north west, south west and beyond the garage to the east.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

3.1 The Parish Council has objected contrary to the Officer recommendation. The

Area Manager in consultation with the chairman have considered this and have concluded that the application raises material planning issues and should be determined by Committee.

4.0 Community Representations

Consultee Comment

SC Affordable Housing – Support, subject to a Deed of Variation which maintains the value of the dwelling to 60% of the dwelling as permitted by 17/02852/FUL.

Public Comments

Claverley PC – Neutral.

Comment: No objection to the removal of Condition 13. However, as this site is an exception site in the Green Belt the Parish Council would object to the removal of Condition 11 (permitted development rights) as it feels any development in the Green Belt should have the full scrutiny of a full planning application with associated plans.

A Site Notice has publicised the application. No representations have been received.

5.0 THE MAIN ISSUES

5.1 Planning Considerations

6.0 OFFICER APPRAISAL

6.1 Planning Considerations

6.1.1 Planning Conditions may be imposed when planning permission is granted in order to regulate the development or the use of any land in question. Section 73 of the Town and Country Planning Act 1990 (As amended) allows applications to be made for permission to develop without complying with a condition(s) previously imposed on a planning permission. Paragraph 55 of the NPPF and PPG paragraph 003 sets out the 6 tests for conditions. They must be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise, and reasonable in all other respects. PPG paragraph 017 advises that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances.

6.1.2 The rationale for the Council's Single Plot Exception Scheme (SPES) is to engender additional community resilience and sustainability, and to increase the affordable rural housing stock. The SPES is a self-help scheme enabling qualifying people to build their own homes on appropriate single plot exception sites. This tenure provides a solution for those people in rural communities whose needs are not met by the market, and yet may also not be a priority for the more mainstream affordable tenures development by Registered Providers. The Council's SPD stipulates when the first occupier no longer has need for the

dwelling, they will transfer it at the appropriate affordable value to another local person in need. Thus, the community benefit of providing the affordable dwelling in the first place is itself recycled.

- 6.1.3 Planning permission was granted for 'The Lodge' in 2018 under the Single Plot Exception Site Scheme (SPES). The permitted dwelling is single storey and provides three bedrooms together with a living/kitchen/dining area. In addition, a detached double garage was permitted. Planning permission was granted subject to planning conditions which prevented the dwelling from being extended beyond 100 sq. metres and the removal of permitted development rights as with all SPES dwellings. The reasons for the conditions were to ensure that the dwelling remains as an affordable dwelling to local people and to ensure that the dwelling is of a size appropriate to the local affordable housing market.
- 6.1.4 In addition, the permission was subject to a S106 Agreement that restricts the value and occupation of the dwelling house. The resale value of a SPES dwelling is set at a "Formula Price" which means 60% of the open market value of the Dwelling (excluding any extensions or conversions or alteration to the Development). Detached garages do not count against the permitted 100 sq. metres and therefore do not form part of its value and therefore are built at 'nil' value.
- 6.1.5 The Planning Statement submitted with this application explains that due to changes in the household formation the applicants require more space and to create two additional bedrooms in the roof space. In addition, it is noted that the existing internal layout of the dwelling would appear to limit the opportunities for internal reconfiguration.
- 6.1.6 The Council's SPD indicates that it may be acceptable to enlarge an existing affordable house to accommodate the needs of the existing household when there are genuine difficulties faced by growing households. Furthermore, the SPD acknowledges that it may not be possible for occupants to move to a new house due to the chronic shortage of affordable housing in Shropshire and that the potential sale value of the dwelling would be restricted as if it were still 100 sqm.
- 6.1.7 It is noted that the reason that the conditions were imposed in the first place was to enable the Local Planning Authority to ensure that the dwelling remains of a size which is "affordable" to local people in housing need in accordance with the Council's adopted affordable housing policy.
- 6.1.8 Government guidance advises that; 'Local planning authorities should, in making their decisions, focus their attention on national and development plan policies, and other material considerations which may have changed significantly since the original grant of permission'. The Planning Statement draws attention to recent appeal decisions where the Inspectors have concluded that the future value of the dwelling would be restricted by the planning obligation to ensure that it would

remain affordable in perpetuity and therefore the use of permitted development rights would not affect its contribution to the supply of affordable housing in the area. The proposal would therefore be consistent with the aims of Policy CS11 of the Shropshire Core Strategy (2011) and Policy MD7a of the Shropshire Site Allocations and Management of Development Plan (2015). Furthermore, the Statement draws attention to the fact that the removal of condition No.11 would only re-instate permitted development rights (PDR) which will be controlled by what is permitted by Schedule 2 of the General Permitted Development Order 2015 (as revised) (GPDO) and would therefore remain controlled. These are significant material considerations.

6.1.9 Whilst the comments made by the Parish Council are acknowledged with respect to the location of the site in the Green Belt it is noted that the GPDO does not limit householder PDRs in the Green Belt designation.

6.1.10 Given the above bearing in mind 'the reason' for the conditions officers consider that there is no justification not to remove condition 11 and 13 in this case.

6.2 Other Matters

6.2.1 A S73 application constitutes a new permission and therefore in approving this application, to ensure the property's ongoing affordability it needs to be tied by a S106. Which in this case will mean a deed of variation to the original S106 to include the new consent. The agent is aware of this and as such the new decision notice can be issued when the amended s106 is completed.

6.2.2 Whilst it is noted that the SC Housing Enabling Team are supportive of the opportunity for the family to create additional bedrooms in the roof space, subject to a Deed of Variation which maintains the value of the dwelling to 60% of the dwelling as permitted by 17/02852/FUL. The existing garage should remain detached and should explicitly be excluded from any valuation of the dwelling together with any other structure/extension built under permitted development. Without such requirements being included within a Deed of Variation they would be unable to support the proposed variation, given that would be unlikely that the dwelling could be maintained in perpetuity as an affordable dwelling.

7.0 CONCLUSION

7.1 The conditions, subject of this application, were imposed to enable the Local Planning Authority to ensure that the dwelling remains of a size which is "affordable" to local people in housing need in accordance with the Council's adopted affordable housing policy. The future value of the dwelling may however be restricted by a Deed of variation to the planning obligation to ensure that it would remain affordable in perpetuity. As such it is concluded that there is no justification to resist the removal of condition 11 and 13 in this case.

8.0 Risk Assessment and Opportunities Appraisal

8.1 Risk Management

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

- As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal, i.e. written representations, hearing or inquiry.
- The decision may be challenged by way of a Judicial Review by a third party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will interfere where the decision is so unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its planning merits. A challenge by way of Judicial Review must be made a) promptly and b) in any event not later than six weeks after the grounds to make the claim first arose.

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

8.2 Human Rights

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

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

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

8.3 Equalities

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

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The Lodge

9.0 Financial Implications

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

10. Background

Relevant Planning Policies

Central Government Guidance:

National Planning Policy Framework

National Planning Practice Guidance

Core Strategy and SAMDev Plan Policies:

CS11 - Type and Affordability of housing

MD7A - Managing Housing Development in the Countryside

SPD Type and Affordability of Housing

RELEVANT PLANNING HISTORY:

17/02852/FUL Erection of an affordable dwelling with detached double garage and formation of vehicular access GRANT 9th October 2018

19/00150/DIS Discharge of conditions 4 (survey levels), 5 (site levels), 6 (parking), 7 (access), 8 (bat boxes) and 10 (lighting) on planning permission 17/02852/FUL for the erection of an affordable dwelling with detached double garage and formation of vehicular access DISAPP 5th March 2019

11. Additional Information

View details online: <http://pa.shropshire.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=S8592PTDN3M00>

List of Background Papers

Planning application reference 24/00390/VAR and plans and supplementary reports.

Cabinet Member (Portfolio Holder) - Councillor Chris Schofield

Local Member

AGENDA ITEM

-	The Lodge
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Cllr Colin Taylor
Appendices APPENDIX 1 - Conditions

APPENDIX 1

Conditions

STANDARD CONDITION(S)

1. The access, parking and turning areas approved under application 19/00150/DIS shall be kept clear and maintained at all times for that purpose in perpetuity.

Reason: To avoid congestion in the surrounding area.

2. The Bat and Bird boxes approved under application 19/00150/DIS shall be retained for the lifetime of the development.

Reason: To ensure the provision of roosting and nesting opportunities, in accordance with MD12, CS17 and the NPPF.

3. There shall be no amendment to the external lighting scheme approved under application 19/00150/DIS.

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

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

4. Any gates provided to close the proposed access shall be set a minimum distance of 5 metres from the carriageway edge and shall be made to open inwards only.

Reason: To ensure a satisfactory form of access is provided in the interests of highway safety.

Informatives

1. In arriving at this decision Shropshire 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 38.

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Agenda Item 8

SCHEDULE OF APPEALS AS AT COMMITTEE 16th April 2024

LPA reference	22/05138/FUL
Appeal against	Refusal
Committee or Del. Decision	Delegated
Appellant	Mr P Whiteman
Proposal	Application under Section 73A of the Town And Country Planning Act 1990 for the change of use of agricultural land to form new residential access and parking (Part Retrospective)
Location	Paper Mill 121 Alveley Bridgnorth
Date of appeal	08/02/2024
Appeal method	Written representations
Date site visit	
Date of appeal decision	
Costs awarded	
Appeal decision	

LPA reference	22/05234/FUL
Appeal against	Refusal
Committee or Del. Decision	Delegated
Appellant	Mr Craig Roberts
Proposal	Application under Section 73A of the Town And Country Planning Act 1990 for the siting of 2No domestic garden storage outbuildings with associated groundworks, hardstanding, fencing and landscaping and the associated change of use of land to garden curtilage
Location	Maitland The Barns Of Litley Chorley Bridgnorth Shropshire WV16 6PP
Date of appeal	21.07.2023
Appeal method	Written Representations
Date site visit	06.02.2024
Date of appeal decision	16.02.2024
Costs awarded	N/A
Appeal decision	Allowed

LPA reference	22/05358/OUT
Appeal against	Refusal
Committee or Del. Decision	Delegated
Appellant	Chris & Christine Shone
Proposal	Erection of dwelling (outline application with all matters reserved)
Location	Land At Seiffen Barns Marton Shropshire
Date of appeal	09.01.2024
Appeal method	Written representations
Date site visit	n/a
Date of appeal decision	22.02.2024
Costs awarded	
Appeal decision	Withdrawn

LPA reference	22/02441/FUL
Appeal against	Refusal
Committee or Del. Decision	Committee
Appellant	Mr Kyle Philpott
Proposal	Installation of solar farm and associated infrastructure
Location	Proposed Solar Farm To The South Of Hall Lane Kemberton
Date of appeal	02.10.2023
Appeal method	Public Inquiry
Date site visit	12.01.2024
Date of appeal decision	22.02.2024
Costs awarded	
Appeal decision	Allowed

LPA reference	23/01429/VAR
Appeal against	Refusal
Committee or Del. Decision	Delegated
Appellant	Mr and Mrs Bryan
Proposal	Removal of condition 3 attached to planning permission 4/72/1072 relating to agricultural occupancy
Location	Reaside Neenton Bridgnorth Shropshire WV16 6RL
Date of appeal	30.11.2023
Appeal method	Written Reps
Date site visit	30.01.2024
Date of appeal decision	28.02.2024
Costs awarded	N/A
Appeal decision	Dismissed

LPA reference	23/01805/FUL
Appeal against	Refusal
Committee or Del. Decision	Delegated
Appellant	Mr J Corbo
Proposal	Partial demolition of the existing retail convenience store and construction of extensions, revision to car parking facilities, provision of four electric vehicle charging points, installation of solar panels on extension roof and change of use of the ground floor of 17 St Marys Road to a coffee shop (resubmission)
Location	Wheatland Garage Bridgnorth Road Much Wenlock Shropshire TF13 6AG
Date of appeal	06.03.2024
Appeal method	Written Representations
Date site visit	
Date of appeal decision	
Costs awarded	
Appeal decision	

LPA reference	23/03747/FUL
Appeal against	Conditions
Committee or Del. Decision	Delegated
Appellant	Mr Christopher Jordan
Proposal	Change of use of 1st floor from storage to licensed restaurant and retention of Air Conditioning Unit
Location	Christophers Restaurant 8 Market Place Shifnal Shropshire TF11 9AZ
Date of appeal	11/03/2024
Appeal method	Written representations
Date site visit	
Date of appeal decision	
Costs awarded	
Appeal decision	

LPA reference	23/046161/FUL
Appeal against	Refusal
Committee or Del. Decision	Delegated
Appellant	Mr C Shine
Proposal	Erection of two storey and single storey extensions
Location	Sycamore Cottage Dorrington Shrewsbury Shropshire SY5 7ER
Date of appeal	07.03.2024
Appeal method	Householder Fastrack
Date site visit	
Date of appeal decision	
Costs awarded	
Appeal decision	

LPA reference	22/04358/COU
Appeal against	Refusal
Committee or Del. Decision	Delegated
Appellant	Mr and Mrs Chris and Rosemary Thomas
Proposal	Change of use of public house to additional residential accommodation
Location	The Plough Inn Wall Under Heywood Church Stretton Shropshire SY6 7DS
Date of appeal	12.03.2024
Appeal method	Hearing on 21 May 2024
Date site visit	
Date of appeal decision	
Costs awarded	
Appeal decision	

LPA reference	22/04127/FUL
Appeal against	Refusal
Committee or Del. Decision	Delegated
Appellant	Hamstead Investment Group Ltd
Proposal	Re-development of former bank to create a ground floor bakery and extension to first floor to create 3 no. flats.
Location	Former TSB Bank High Street Albrighton Wolverhampton Shropshire WV7 3JE
Date of appeal	08.11.2023
Appeal method	Written Representations
Date site visit	
Date of appeal decision	18.03.2024
Costs awarded	
Appeal decision	Dismissed

LPA reference	23/03695/FUL
Appeal against	Refusal
Committee or Del. Decision	Delegated
Appellant	Mr Billy Joe Watton
Proposal	Erection of a pair of semi-detached holiday lets and carport.
Location	Proposed Residential Development Land To The South Of Knowle Sands Bridgnorth Shropshire
Date of appeal	19.03.2024
Appeal method	Written Representations
Date site visit	
Date of appeal decision	
Costs awarded	
Appeal decision	

LPA reference	22/04045/FUL
Appeal against	Refusal
Committee or Del. Decision	Delegated
Appellant	Mr P Brick
Proposal	Change of use of land to camp site with 56 Plots, new shower/toilet block, refuse area, and septic tank (amended scheme)
Location	Proposed Camp Site West Of Hurst Farm Morville Bridgnorth Shropshire
Date of appeal	04.12.2023
Appeal method	Written Representations
Date site visit	
Date of appeal decision	Dismissed
Costs awarded	
Appeal decision	

LPA reference	22/04355/FUL
Appeal against	Refusal
Committee or Del. Decision	Committee
Appellant	Econergy International Ltd
Proposal	Erection of an up to 30 MW Solar PV Array, comprising ground mounted solar PV panels, vehicular access, internal access tracks, landscaping and associated infrastructure, including security fencing, CCTV, client storage containers and grid connection infrastructure, including substation buildings and off-site cabling
Location	Proposed Solar Farm To The West Of Berrington Shrewsbury
Date of appeal	23.11.2023
Appeal method	Public Inquiry
Date site visit	4 and 14 March
Date of appeal decision	26.04.2024
Costs awarded	
Appeal decision	Dismissed

LPA reference	23/03654/FUL
Appeal against	Refusal
Committee or Del. Decision	Delegated
Appellant	Mr T Smythe
Proposal	Erection of part two storey and part single storey extension following partial demolition, single storey flat roof side extension and partially replacing boundary fence with brick wall (revision to previously approved scheme 21/05218/FUL)
Location	Pryll Cottage 19 Burway Road Church Stretton Shropshire SY6 6DP
Date of appeal	27.03.2024
Appeal method	Fast Track
Date site visit	
Date of appeal decision	
Costs awarded	
Appeal decision	

LPA reference	22/05245/OUT
Appeal against	Refusal
Committee or Del. Decision	Delegated
Appellant	Mr Kelvin Bailey
Proposal	Outline application (all matters reserved) for the erection of 2No dwellings following demolition of all existing buildings (re-submission)
Location	Benthall Grange Benthall Lane Benthall Broseley Shropshire TF12 5RR
Date of appeal	11.01.2024
Appeal method	Written Representations
Date site visit	
Date of appeal decision	03.04.2024
Costs awarded	
Appeal decision	Dismissed

LPA reference	22/02056/FUL
Appeal against	Refusal
Committee or Del. Decision	Delegated
Appellant	Mr N Thiara
Proposal	Erection of one replacement dwelling with detached 3-bay garage and six additional dwellings; formation of additional vehicle access, estate road and parking areas
Location	Development Site Adjacent Stone Lee Calcutts Road Jackfield Shropshire TF8 7LG
Date of appeal	12.10.2023
Appeal method	Written Reps
Date site visit	27.02.24
Date of appeal decision	05.04.24
Costs awarded	N/A
Appeal decision	Appeal Allowed



Appeal Decision

Site visit made on 6 February 2024

by **David Murray** BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th February 2024

Appeal Ref: APP/L3245/W/23/3326378

Maitland, The Barns of Litley, Chorley, BRIDGNORTH, WV16 6PP

- 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 Craig Roberts against the decision of Shropshire Council.
 - The application Ref 22/05234/FUL, dated 30 November 2022, was refused by notice dated 24 January 2023.
 - The development proposed is the siting of 2 no. domestic garden storage outbuildings with associated groundworks, hardstanding, fencing and landscaping (retrospective) and the associated change of use of land to garden curtilage.
-

Decision

1. The appeal is allowed and planning permission is granted for the siting of 2 no. domestic garden storage outbuildings with associated groundworks, hardstanding, fencing and landscaping (retrospective) and the associated change of use of land to garden curtilage, at Maitland, The Barns Of Litley, BRIDGNORTH, WV16 6PP in accordance with the terms of the application, Ref 22/05234/FUL, dated 30 November 2022, and the plans submitted with it, subject to the following conditions:
 - 1) Unless within six months of the date of this decision a scheme for the landscaping of the site is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within a further period of six months of the local planning authority's approval, the use of the extended curtilage shall cease until such time as a scheme is approved and implemented.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
 - 2) The scheme of new landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant establishment); schedules of plants noting species, plant supply sizes and proposed numbers/densities where appropriate. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
 - 3) The outbuildings hereby approved shall only be used for purposes ancillary to the residential use of Maitland and not for any separate residential use or for commercial purposes.

Preliminary Matter

2. The government issued a revised version of the National Planning Policy Framework (the Framework) on the 19th December 2023. I have considered the changes in relation to the main issues in this appeal but find that the changes are minor and not material to the decision. The parties were therefore not invited to make submissions on the application of the amended Framework.

Main Issue

3. The main issue is the effect of the proposal on the open countryside landscape character of the area.

Reasons

Background

4. The appeal site comprises a dwelling arising from a barn conversion and its curtilage which lies in an area of countryside to the west of the village of Chorley. There is another dwelling adjacent converted from a barn and two further houses to the north of the site and the land rises up on a valley side with a brook and stone bridge to the south.
5. The proposal, which is retrospective, seeks to extend the previously approved curtilage of the property and site two single storey outbuildings to be used as a store/home office.

Effect on countryside character

6. The present property of Maitland has a relatively limited curtilage around it reflecting its agricultural origins. Its dark stained timber elevations are seen set back from the lane in views from around the stream bridge. The proposed outbuildings also have a similar dark stain timber applied to match the existing dwelling and detached double garage.
7. On the face of it the degree of additional curtilage proposed to bring into the garden would not be extensive however, because of the sloping nature of the land, wire and stone gabions have had to be used to bring the land up to a height about level with the manoeuvring space around the double garage.
8. This raising of the land and the siting of the outbuildings close to the lane has resulted in the structures being seen in views from the lane however they are seen in the context of the permitted buildings at Maitland which have a similar profile and external materials and do not appear out of place in the rural landscape.
9. I have also taken account of the existing vegetation and landscaping proposed. Although the roadside hedge appeared to have been cut back in the local area just before my visit, there was still a sizeable hedge along the frontage down to the stream. I also noted the landscaping that the appellant has carried out but this appeared to be sparse in places and the outer edge of the gabion wall was visible to public view as a relatively stark feature. The appellant has submitted photographs taken at a different time of year which show the surrounding landscaping in full bloom.
10. Subject to further landscaping being carried out I am satisfied that the proposed extension to the residential curtilage of the existing property and the

siting of the timber clad outbuildings do not have an imposing and harmful visual effect on the prevailing rural landscape. I see no conflict with the provisions of Core Strategy Policies CS5, CS6 and CS17 as the countryside character would be maintained and the design of the outbuildings respects the existing development. Neither is there conflict with SAMDev policy MD2 on securing sustainable design.

11. As the proposal reasonably accords with the relevant policies in the development plan and this is not outweighed by other considerations the appeal should be allowed.
12. The Council recommends that only one condition is needed and this relates to the carrying out of development in accordance with the submitted plans but as the development has been implemented such a condition is now unnecessary. However, as mentioned above it is necessary for the development to have additional landscaping which the appellant has offered to undertake. I will therefore impose a condition to achieve this although it has to be worded to reflect the retrospective nature of the proposal. It is also necessary to impose a condition to restrict the use of the outbuildings to that ancillary to Maitland as that is the scheme put forward and on which the development has been assessed.

Conclusion

13. For the reasons given above I conclude that the appeal should succeed.

David Murray

INSPECTOR

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Appeal Decision

Inquiry held on 9 – 12 January 2024

Site visit made on 12 January 2024

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd February 2024

Appeal Ref: APP/L3245/W/23/3329815

Land to the South of Hall Lane, Kemberton, Telford, TF11 9LB

- 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 K Philpott (Vattenfall) against the decision of Shropshire Council.
 - The application Ref 22/02441/FUL, dated 13 May 2022, was refused by notice dated 20 March 2023.
 - The development proposed is the installation of a solar farm and associated infrastructure.
-

Decision

1. The appeal is allowed and planning permission is granted for the installation of a solar farm and associated infrastructure at land to the south of Hall Lane, Kemberton, Telford, TF11 9LB in accordance with the terms of the application, Ref 22/02441/FUL, dated 13 May 2022, subject to the conditions set out in Annex A.

Procedural Matters

2. The Council confirmed (25 April 2022) that an Environmental Impact Assessment was not required. There is no reason to disagree.
3. One of the reasons for refusal related to the impact on landscape character. However, the Council confirmed at the Case Management Conference and in the Statement of Common Ground that they would not be contesting that reason for refusal.
4. A revised Landscape Mitigation Plan was submitted with the appeal. This shows additional biodiversity enhancements in the south-east corner of the site and additional hedgerow planting to the east of the substation enclosures. The council expressed no concern with the use of this revised plan. I consider the changes are relatively minor and I am satisfied that no party would be prejudiced by my taking the amended plan into account. Accordingly, the Inquiry proceeded on this basis.

Main Issues

5. The parties are agreed that the proposal is inappropriate development in the Green Belt in terms of local and national policy.
6. Given this, the main issues in the appeal are:

- The effect of the proposed development on the openness of the Green Belt and the purposes of including land within it;
- The effect of the proposal on, and the potential loss of, agricultural land and an agricultural enterprise; and
- Whether the harm to Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the proposed development.

Reasons

The site, the surrounding area and the proposal

7. The appeal site comprises 2 fields that form a L-shape and which total approximately 20 ha. External and internal field boundaries are mainly defined by mixed hedgerows and mature trees, the exception being the eastern boundary of the southern field that is marked by a post and wire fence. A public right of way, which forms part of the Monarch's Way long distance path, traverses the south-east corner of the site.
8. The site is located between the village of Kemberton to the east and the built edge of Telford to the west, both of which occupy higher ground. It is also within the West Midlands Green Belt. Immediately adjacent to the northern and western boundaries lie Hall Lane and the B4379 respectively. Beyond these roads and adjacent to the other boundaries is a mix of arable and pastoral agricultural land with a rolling topography.
9. The proposal would consist of ground mounted solar arrays arranged in rows across the majority of the two fields along with essential electricity generation infrastructure, internal access tracks, security fencing, pole mounted CCTV cameras and boundary landscaping.

Planning policy context

10. The development plan comprises the *Shropshire Core Strategy 2006 – 2026 (adopted February 2011)* (CS) and the *Site Allocations and Management of Development Plan (adopted December 2015)* (SAMDev).
11. Leaving aside the third reason for refusal on landscape character which is not being contested, the reasons for refusal reference Policy CS5 which deals with development in the Green Belt and the countryside, CS13 which addresses economic development, enterprise and employment, and CS15 on Town and Rural Centres. At the Inquiry the Council could not identify how the proposal was contrary to any part of CS15. I would agree with that conclusion and so will not consider it further.
12. Although not mentioned in the reasons for refusal, the need to make effective use of land and safeguard natural resources, including high quality agricultural land, is set out in CS Policy CS6. In addition, Policy CS8 of the CS supports low carbon and renewable energy generation proposals where they would not have significant adverse impacts on recognised environmental assets.
13. The Council are currently in the process of producing a new Local Plan (LP). This was submitted for examination in 2022. But it was confirmed at the Inquiry that a further hearing session is expected in the summer with

consultation on the main modifications in late 2024. The Council made reference to Policies DP18 and DP26 within the LP but in the absence of any indication of the level of unresolved objections on these policies and whether modifications may be needed to make them sound, I give minimal weight to them.

14. The *National Planning Policy Framework* (the Framework), the *Planning Practice Guidance* (PPG), the *National Policy Statement on Energy* (EN-1) and the *National Policy Statement on Renewable Energy Infrastructure* (EN-3) are all material considerations.
15. Kemberton produced a Parish Plan in 2017 which sets out a framework for the future of Kemberton. Whilst this was subject to consultation with the community, it underwent no independent examination to ascertain whether it aligns with development plan and is not a Neighbourhood Plan. As such, whilst I take note of the factual information it contains, I give minimal weight to any of its aspirations in relation to planning and development.

Green Belt openness

16. Policy CS5 of the CS indicates that development in the Green Belt will be controlled in accordance with national policy which is currently set out in the Framework.
17. The Government attaches great importance to the Green Belt. The fundamental aim is to prevent urban sprawl by keeping land permanently open; the essential characteristics of the Green Belt are their openness and their permanence. Openness has both a visual and spatial element.
18. The appeal site currently comprises 2 open fields. The proposal would introduce development across the majority of these fields. Although the footprint of the posts holding the arrays would be small, the panels themselves are larger. They would have the effect of covering more of the ground area, albeit that their mass would be broken up by the grass in between each row and the fact that there would be 'airspace' and functioning soil beneath the panels. In addition, there would be access tracks, fencing, substations and transformers as part of the proposal. As a result, I consider that the proposal would slightly diminish the openness of the Green Belt spatially.
19. In visual terms, the appellant's landscape witness considered the effects to be very limited and localised due to the existing and proposed vegetation around the site and the local topography. This is supported by the findings of the Landscape and Visual Impact Assessment (LVIA) which found that the only publicly accessible viewpoints which would have more than 'negligible' visual effects were a section of the Monarch's Way footpath (viewpoints 1-4), sections of footpaths to the north and west of Kemberton (viewpoint 7) and the roads adjacent to the site (viewpoint 5). In all cases the visual effect from these would be reduced as the new planting is established with only Monarch's Way remaining more than 'negligible' at 'slight adverse'.
20. The Council highlighted that the Zone of Theoretical Visibility (ZTV) shows there to be visibility of 100% of the site from the ridge of the Halesfield Industrial Estate. However, the only publicly accessible point on this ridge is the road. Road users would primarily be paying due care and attention to other road users and hazards, so would only take in limited glimpses of the site,

resulting in only a negligible adverse visual effect. Even for passengers, views would only be fleeting. Whilst the views would be less fleeting for pedestrians, the absence of any footway on the road at this point, suggests this route is unlikely to be heavily utilised by pedestrians.

21. The other point on the ZTV where there is 100% visibility, was indicated to be a field with no public accessibility. Views of the site are also possible from the car park and outside seating areas to the rear of the Mason's Arms Public House in Kemberton. What views of the site that are possible from these areas are similar to that from viewpoint 1 and are at present heavily screened by the existing boundary vegetation. As this existing hedging would relatively quickly mature to its new height, views of the proposal would be minimal.
22. The Council did not provide any technical evidence to counter the findings of the LVIA and from my own observations I would agree with the conclusions it reached on the likely visual effects of the proposal.
23. The appellant's landscape witness considered that the proposed planting would take slightly longer to establish than suggested in the LVIA – 5-10 years rather than 3-5 years. I consider that the proposed increase in height of the existing hedges to 3m could be achieved in 3 years, bringing the mitigation benefits to the majority of the viewpoints highlighted above within a relatively short timeframe. Whilst the full screening effect of the new mitigation planting is more likely to take between 5 and 10 years to achieve, I am not persuaded this slightly longer timeframe significantly alters the visual impact of the proposal.
24. All in all, initially, I consider the proposal would cause moderate harm to the visual openness of the Green Belt, but this would reduce to slight as the mitigation planting matures. Given the very localised nature of this visual impact overall, I consider it would only have a slight impact on the visual openness of the Green Belt.
25. The LVIA acknowledges that there would be some views of the proposal from various residential properties in the vicinity, although, when the mitigation planting is fully established, at worst the visual effect would be "slight adverse". Moreover, these are private not public views and the Council accepted that the proposal would not cause any unacceptable harm to the living conditions of the occupiers of these dwellings. There are no other existing or proposed solar farms in the LVIA study area, so there would be no cumulative landscape or visual effects.
26. The PPG indicates that when assessing the impact of a development on the openness of the Green Belt, the duration of the development and its remediability, and the degree of activity it would be likely to generate, are matters to take into consideration. The proposal would occupy the site for 40 years which although a significant period of time is not permanent. At the end of this period the site could be restored to agricultural land. In addition, apart from during the construction phase and during de-commissioning, the development would generate minimal activity.
27. Taking all of the above together, both visually and spatially, the proposal would result in slight harm to the openness of the Green Belt. This adds to the harm caused by reason of inappropriateness.

Green Belt purposes

28. As defined by paragraph 143 of the Framework, the Green Belt serves 5 purposes (a) to check the unrestricted sprawl of large built-up areas; (b) to prevent neighbouring towns merging into one another; (c) to assist in safeguarding the countryside from encroachment; (d) to preserve the setting and spatial character of historic towns; and (e) to assist in urban regeneration by encouraging the recycling of derelict and other urban land.
29. It is agreed that the fourth purpose, relating to historic towns, is not relevant in this instance. In addition, the Council indicated that all parts of the Green Belt contribute equally to the fifth purpose.
30. As part of the evidence base for the emerging LP an assessment of how land within the Green Belt contributed to the five Green Belt purposes has been undertaken. In this the appeal site lies within area BA2. The assessment concludes that this area makes no contribution to purpose 1, a moderate contribution to the second purpose and a strong contribution to purpose 3. The land on the other side of the B4379 lies in area P22, which the assessment concludes makes a strong contribution to purpose 1, a weak contribution to purpose 2 and a moderate contribution to purpose 3.
31. The Framework does not provide a definition of what constitutes "sprawl", but it is a matter considered by the Council's Green Belt Assessment. This notes that definitions of 'sprawl' vary but concludes that "land immediately adjacent to the large built up area is likely to contribute to this purpose as it provides the boundary and zone of constraint to urban expansion."
32. Although the appeal site is situated in what is a relatively narrow gap between Telford and Kemberton, it is not immediately adjacent to either the built edge of Telford, or Kemberton (although the latter is not a large built up area), as intervening fields lie between the site and both settlements. As a result, the proposed development would be visually discrete from both settlements.
33. Moreover, the solar panels and associated infrastructure would be relatively low-lying features, that would have a completely different character and form to either the industrial units on the edge of Telford or buildings in Kemberton. As such, the proposal would not be seen as the spreading out of either settlement. Thus, even if 'sprawl' encompasses 'leapfrog development' as suggested by the Council, the proposed development would not be contrary to this purpose.
34. With regard to the second purpose of including land in the Green Belt, the Council's Green Belt assessment highlights that the Framework specifically refers to preventing the merging of towns, not the merging of towns with smaller settlements, or the merging of smaller settlements with each other. Whilst Kemberton was referred to as either a village or a hamlet, it is agreed that it is not a town.
35. The Green Belt in the area has a role to play in preventing the coalescence of Telford with the town of Shifnal. However, the appeal site does not lie directly between these 2 settlements and so the proposal would not contribute to any narrowing of the gap between Telford and Shifnal. In addition, should it be considered that the site lies between Telford and Albrighton, the considerable

distance between these two towns means the proposal would not reduce this gap to any significant degree.

36. The proposed development would result in the partial infilling of the gap between Kemberton and Telford and so physically would lead to a narrowing of this gap. Nonetheless, open fields would remain between the site and both settlements. Additionally, the LVIA shows that there would be very little visibility of the proposal from the public realm and so visually the impact the proposal would have on the perceived openness of this gap would be very limited. Consequently, even if it is considered that the second purpose relates to the gap between Telford and Kemberton, the proposal would not, in my view, be contrary to this purpose.
37. It is not disputed that the proposal would represent development in the countryside. However, the busy nature of the 'B' road adjacent to the site does detract from the rural character of the area. The appeal scheme would introduce man-made structures into the fields and would change their character. Nonetheless, the solar arrays would be located within the existing field pattern and the scheme would retain and enhance the existing field boundaries which would result in minimal visibility of the scheme from outside the site. Furthermore, the solar arrays would be low-lying, open sided features, that would be temporary in nature, limiting the overall effect on the countryside.
38. Therefore, the proposal would cause encroachment into the countryside, contrary to this purpose. However, the degree of harm it would cause would be limited.

Green Belt conclusion

39. The parties agree that the proposal is inappropriate development in the Green Belt. This is, by definition, harmful to the Green Belt. The development would also cause some slight harm to the openness of the Green Belt and by causing some degree of encroachment into the countryside would conflict with one of the purposes of including land in the Green Belt. In line with paragraph 153 of the Framework, the harm to the Green Belt from these matters results in substantial weight against the proposal. The proposal would not accord with Policy CS5 or the Framework.
40. The Council highlighted other recent solar farm developments that had been approved in the Green Belt in the Albrighton area. It was suggested they were more acceptable because they did not conflict with any of the purposes of including land in the Green Belt and were not as close to urban areas. Be that as it may, I have considered the appeal scheme on its own merits.

Effect on, and potential loss of, agricultural land

41. Amongst other things, CS Policy CS6 seeks to make efficient use of land and safeguard natural resources including high quality agricultural land. Whilst paragraph 180b of the Framework states that planning decisions should take into account the economic and other benefits of the best and most versatile (BMV) agricultural land, it does not prevent the use of such land for non-agricultural uses. Further guidance regarding the use of BMV land is provided in footnote 62 of the Framework. This footnote is linked to paragraph 181 not 180b, and the former relates to plan making not decision taking. However even

- if it is considered to be relevant to decision taking it simply indicates that the availability of land for food production is a consideration to be taken into account, rather than preventing the use of such land.
42. The Written Ministerial Statement on solar energy (25 March 2015) indicates that the use of BMV for solar farms has to be justified by the most compelling evidence.
43. In addition, *The Planning Practice Guidance* (PPG) on renewable and low carbon energy, which also dates from 2015, provides a list of planning considerations that relate to large scale ground mounted solar photovoltaic farms¹. These include: encouraging the effective use of land by focussing such developments on previously developed and non-agricultural land provided it is not of high environmental value; and where a proposal involves greenfield land, whether (i) the proposed use of any agricultural land has been shown to be necessary and poorer quality land has been used in preference to higher quality land; and (ii) the proposal allows for continued agricultural use where applicable and/or encourages biodiversity improvements around arrays.
44. It is agreed that the majority of the appeal site (71%) comprises Grade 3b agricultural land with the rest being Grade 3a. Whilst the latter constitutes BMV land, it is not a discrete element that could be farmed separately. The wider area comprises overwhelmingly of Grade 2 and 3 land, with no grade 5 land and only small amounts of Grade 4. In this context, the use of a site that is predominantly Grade 3b would constitute using poorer quality agricultural land as required in the PPG.
45. In addition, the appellant's Site Selection Process report (SSP), identified all potentially suitable land within an area that would be able to connect to either the Halesfield or Shifnal substations, where there was connection capacity. The Council suggested that there are other substations with capacity in the region. However, this failed to recognise the difference between transformer capacity and export capacity. As the appellant's evidence is based on detailed discussions with the local electricity distribution network operator, I have no reason to doubt that Halesfield and Shifnal are the only two substations with viable connection capacity. As such, the search area used in the SSP is reasonable.
46. The SSP found that within the search area there was no urban or brownfield land that would be large enough for the proposal. 36 greenfield sites were identified, but many of these were ruled out due to being too small or because they were Grade 2 agricultural land. Two of the sites were outside the Green Belt but both of these were being actively developed for housing. Whilst a detailed assessment of the other sites classified as Grade 3 land has not been undertaken to clarify if any of them contain less Grade 3a land than the appeal site, appendix 2 of the SSP gives good reasons as to why all of them were discounted. I therefore consider that the SSP represents a robust analysis of other potential sites. In this respect this appeal differs from the appeal referred to by the Council.²
47. In the absence of any evidence to the contrary regarding the availability and suitability of alternative sites, I see no reason to disagree with the conclusions

¹ Paragraph ID:5-013-20150327

² Appeal Decision APP/F1040/W/22/3313316

of this report, which shows there is no poorer quality agricultural land or urban/brownfield land available that would be able to use the available grid connections. Therefore, in accordance with the PPG, it has been demonstrated that the use of agricultural land would be necessary, and that poorer quality land would be used in preference to higher quality agricultural land.

48. It was highlighted that the SSP was not submitted when the planning application was lodged but later in the determination period. However, there is no national or local policy requirement to carry out an assessment of alternative sites for solar farm developments and to submit this as part of an application. From the evidence before me I am satisfied that the SSP explains adequately the process the appellant went through in identifying potential sites. Moreover, whilst the land on the other side of the B4379 may be closer to the sub-station the evidence shows it is not available for such developments.
49. The proposal would change the use of the land for a period of 40 years which, although a significant period of time, is not permanent. Furthermore, during the operational period it is indicated that the land around the solar panels would be used for the grazing of sheep. As a result, apart from the small areas used for the fixed infrastructure, the majority of the land would still be used for some agricultural purposes during the 40 year period the solar farm operated. It is the intention that it would be returned fully to agricultural land at the end.
50. I note the concerns that the productivity and versatility of the land would be reduced and that grazing by sheep during the operational period is not guaranteed. Nevertheless, the specific way agricultural land is farmed is not a matter that is subject to planning controls. As such, there would be nothing in planning terms to prevent the owners using the fields that form the appeal site for the grazing of sheep at present or even leaving them fallow.
51. Given this, the fact that the proposal would limit the ability to carry out any arable farming does not, in my opinion, mean that it results in the loss of agricultural land when it can still be used for other agricultural uses and can be returned to agricultural use in the future. Nor is there any substantive evidence to show that cumulatively solar farm developments are having an unacceptable impact on the amount of agricultural land available in the county.
52. The appellant has indicated that the footings for the solar panels would be piled. As such this would cause minimal disturbance to the soil and the quality of the land. This conclusion is supported by the findings of post-construction surveys of other solar farms provided by the appellant. Nor is there any evidence to show that the proposal would cause the release of the carbon stored in the soil as a result of the organic farming practices that the land has been subject to in recent years.
53. Whilst the land currently has organic status, this relates to how the land is managed rather than the land quality. This status could be lost if it was rented out differently and could also be regained at the end of the lifetime of the development.
54. Overall, I am satisfied that the proposal would not result in the temporary or permanent loss of agricultural land as the land could continue to be used for some agricultural purposes whilst also being used to produce solar energy. Nor would the proposal be detrimental to the quality of the land, so a return to agricultural use at a later date would still be possible.

Effect on, and potential loss of, an agricultural enterprise

55. Policy CS13 of the CS seeks to develop and diversify the economy and deliver sustainable economic growth. It indicates that in rural areas particular emphasis will be placed on recognising the continued importance of farming for food production and to supporting rural enterprise and diversification of the economy. As part of supporting a prosperous rural economy, paragraph 88b of the Framework also supports the development and diversification of agricultural and other land based rural businesses.
56. Until recently the fields that form the appeal site were used as pasture by the adjacent organic dairy farm and so were only indirectly used for food production. However, Policy CS6 does not state that any proposal that leads to a loss of area used for food production is unacceptable. Moreover, at the inquiry, the Council acknowledged that the use of agricultural land for solar energy is an example of economic activity associated with agricultural and farm diversification even if not listed as such in this policy.
57. Whilst the adjacent dairy farm had been using the land for around 20 years, it was rented by them on an annual basis with no security of tenure. As such, irrespective of the appeal proposal, there was no guarantee that the land would have necessarily continued to be available to rent by the dairy farm. Given the nature of this tenancy arrangement with the dairy farm, the Council accepted that it was incorrect for the second reason for refusal to allege the proposal would adversely affect this tenancy for 40 years. They also accepted that the rest of this second reason for refusal was based on the misunderstanding of the tenancy.
58. Moreover, there is no evidence that the loss of the two fields to the dairy farm would adversely impact on milk production or the viability of the business albeit that, as a consequence of the inability to continue renting this land, the business may incur costs in finding new land. In fact, the evidence of the owner of the dairy at the inquiry was that despite the loss of this land the business continued to be thriving. As such, the proposal would not cause any harm to food production.
59. Consequently, I consider that the proposed development would not be detrimental to, or lead to the loss of, an agricultural enterprise.

Conclusion on Agricultural Considerations

60. Overall, I consider that the proposal would not result in the loss of either agricultural land or an agricultural enterprise. Nor would it have an unacceptable impact on either agricultural land or an agricultural enterprise. The land could continue to be used for agricultural purposes alongside the production of renewable energy and could return fully to agricultural use at the end of the lifetime of the development. Accordingly, there would be no conflict with Policies CS13 and CS6 of the CS or with the Framework outlined above.

Benefit arising from the provision of renewable energy

61. The proposal would have an installed capacity of approximately 22MW, estimated to provide sufficient electricity to power around 6,000 homes a year and saving approximately 5,280 tonnes of CO₂ per annum. The site benefits from an immediate connection to the grid at the Halesfield substation which is clearly beneficial in enabling the energy produced to be exported without delay.

62. In recent years both the Government and the Council have declared an Environmental and Climate Change Emergency. Various recent government publications have highlighted the need to significantly increase generation from onshore wind and solar energy production, as it seeks to ensure that by 2035 all our electricity will come from low carbon sources and that it achieves net-zero emissions by 2050. In addition, the Shropshire Climate Action Partnership, of which the Council is one of the founders, has set the objective of achieving a net-zero carbon county by 2030.
63. Documents such as the British Energy Security Strategy reinforce the need for electricity to come from low carbon sources for energy security and economic stability. This is also reflected in various local documents such as the Energy Strategy for The Marches Local Enterprise Partnership.
64. To achieve these ambitious targets, it is clear that considerable growth in large scale solar farms will be necessary and this cannot be achieved solely by the use of brownfield land or roof top installations.
65. The support in both national and local policy for renewable energy is caveated by the need for the impacts to be acceptable, or capable of being made so. Nevertheless, the renewable energy benefit of the proposal, both in terms of its contribution towards energy security and resilience and the reduction in greenhouse gas emissions, must be accorded substantial weight.

Other considerations

66. The proposal would include a variety of landscape and biodiversity measures including new and improved hedging, wildflower grass strips, new tree planting, a new pond and the provision of bird and bat boxes. The biodiversity metric shows that it would deliver biodiversity net gain both in terms of primary and linear habitats. Whilst the net gain may not be as high as achieved on other solar farm schemes in the area, it is still a permanent benefit of the scheme, that, along with the landscape benefits, attract moderate weight.
67. There would be some economic benefit during the construction period albeit this would reduce significantly once the development was operational. It would also result in additional business rates and would support the rural economy through the diversification of the farm business that owns the land. I give moderate weight to these economic benefits. It has been suggested that the proposal could lead to job losses. However, there was no evidence to support this claim and the owner of the dairy did not indicate that the loss of these two fields had had any impact on the number of people they employed. This unsubstantiated claim therefore does not weigh against the proposal.

Other Matters

68. Kemberton Conservation Area lies approximately 150m to the east of the site and 5 Hall Lane, St Andrew's Church and Brockton Hall Farm are all Grade II Listed Buildings in the vicinity of the site. The appellant's Heritage Impact Assessment considered the changes the proposal would cause to the setting of these heritage assets and the impact this would have on their significance. Given the distance to the site and the intervening vegetation that already exists, it is agreed that the proposal would not result in harm to Brockton Hall Farm. From the evidence before me, and what I saw at my site visits, I agree that there would be no harm to the significance of this heritage asset.

69. The undeveloped agricultural fields currently make a positive contribution to the setting of the south-western part of the Conservation Area and the Listed Buildings within it (5 Hall Lane and St Andrew's Church). The topography, existing and proposed vegetation and limited height of the panels means that the majority of the development would not impact on the setting and significance of the heritage assets. However, the introduction of security fencing and security cameras along the north-eastern boundary would cause some limited visual harm to the setting of the Conservation Area and the Listed Buildings and thereby to their significance. However, employing the terminology of the Framework, I consider this would result in 'less than substantial harm', at the lower end of the scale, to these heritage assets. Nonetheless, in accordance with the Framework and the statutory obligations imposed I give great weight to this harm. I shall weigh this against the public benefits later in my decision.
70. The appeal site is in Flood Zone 1 but due to its size a Flood Risk Assessment was produced. This considered all types of Flood Risk and concluded that there was a negligible flood risk, and no specific mitigation was required. Local residents produce photographic evidence showing flooding that already occurs on the adjacent roads and raised concerns that the proposal would exacerbate this further. However, subject to conditions, which includes a condition requiring a surface water run-off mitigation strategy, the Lead Local Flood Authority had no objection to the proposal. In the absence of any substantive evidence to the contrary I see no reason to come to a different conclusion in this regard.
71. The application was accompanied by a Glint and Glare Assessment which considered the impacts on a wide range of different local receptors and concluded that, after taking account of mitigation measures, the impact on all receptors would be low or none and therefore not significant.
72. As well as the houses on Hall Lane there are a small number of other isolated dwellings in the vicinity. The distance between these various properties and the closest panels, together with the existing and proposed intervening vegetation, means that the proposal would not unacceptably harm the living conditions of occupiers, in terms of noise and disturbance or glint and glare.
73. The Parish Plan indicates that the local footpath network attracts tourists and visitors. Whilst tourism can rely considerably on the quality of the countryside, the LVIA specifically considered the impact of the proposal both on the users of the local footpath network and on the wider landscape and found it to be acceptable. This concurs with what I observed on my site visit and the conclusions of the LVIA were not disputed by the Council. I am not persuaded that the changes to the landscape in this case would be detrimental to users of the public footpath network or would lead to the loss of viability of any existing tourism related business.
74. It has been suggested that the appeal scheme would set a precedent for further similar developments. However, no directly comparable sites to which this might apply were put forward. Each application and appeal must be considered on its merits and a generalised concern of this nature does not justify withholding permission in this case.
75. The Parish Council have stated that the Council made some errors on the appeal questionnaire. However, it is not disputed that the appeal site is in the

Green Belt and from the maps provided showing the boundary of Kemberton Conservation Area, the site is not adjacent to the boundary.

Planning Balance and Conclusion

76. It is agreed that the proposal is inappropriate development in the Green Belt. This, by definition, is harmful to the Green Belt. In addition, the proposal would result in slight harm to the openness of the Green Belt and would be contrary to one of the purposes of including land in the Green Belt. In line with the Framework, I give substantial weight to the harm the proposal would cause to the Green Belt. In addition, the proposal would cause less than substantial harm to the setting of nearby designated heritage assets.
77. On the other side of the planning balance, the Framework sets out a presumption in favour of sustainable development, and renewable energy development is central to achieving a sustainable low carbon future. The appeal scheme would make a significant contribution to this, and I give substantial weight both to the contribution the proposal makes to cutting greenhouse gas emissions and to improving energy resilience and security.
78. In addition, I give moderate weight to both the landscape and biodiversity enhancements that would be achieved, and to the economic benefits.
79. The Framework requires that where a proposal causes less than substantial harm to the significance of designated heritage assets, this harm should be weighed against the public benefits of the proposal. I attribute significant weight to this harm but the contribution the scheme would make to the generation of clean and secure energy is a substantial public benefit and together with the other benefits outlined above, outweigh the less than substantial harm to the designated heritage assets.
80. The determination of whether very special circumstances exist is a matter of planning judgement based on a consideration of all relevant matters. In this case I consider that the public benefits of the proposal are of a magnitude that they would clearly outweigh the combined weight of the harm to the Green Belt and to the heritage assets. Therefore, the very special circumstances needed to justify the development exist, and the proposal would not conflict with the policies in the development plan outlined above or the Framework. Consequently, I conclude that the appeal should be allowed.

Conditions

81. The Council and the appellant agreed a set of conditions that were discussed at the Inquiry. I have considered these in the light of paragraph 56 of the Framework and have revised a number of them as discussed at the Inquiry.
82. In addition to the standard implementation condition (condition 1), to provide certainty it is necessary to define the plans with which the scheme should accord (condition 2). Conditions 3 and 4 are reasonable and necessary to limit the period of the permission and to ensure the site is decommissioned either at the end of the permission or when energy generation ceases.
83. In the interest of the character and appearance of the area conditions 5, 9, 10 and 11 are necessary. Conditions 9 and 10 both need to be pre-commencement conditions. The former to ensure adequate protection is given

to the existing trees before any construction works start and the other as it relates to works that need to be undertaken during the construction period.

84. Conditions 6, 7, 8 and 16 are necessary for highway safety. Both conditions 6 and 8 need to be pre-commencement conditions. The former to ensure that a safe access is provided for construction traffic before construction work begins and the latter as it relates to works that need to be undertaken during the construction period.
85. In the interest of biodiversity conditions 12, 13, 14 and 15 are necessary.
86. In accordance with Section 100ZA of the Town and Country Planning Act 1990, the appellant has provided written agreement to the pre-commencement conditions.

Alison Partington

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Gwion Lewis KC instructed by Mr Barry Butchart on behalf of Vattenfall

He called:

Mr Alastair Field BA (Hons), MSc, FBIAC, PIEMA, MI Soil Sci, FRGS	Director & Company Secretary – Reading Agricultural Consultants Ltd
Mr John Ingham BA (Hons), Dip LA, CMLI	Director of Landscape Planning, Stephenson Haliday
Mr Barry Butchart BSc (Hons), MRTPI	Director, Mallory Land

FOR THE LOCAL PLANNING AUTHORITY:

Sioned Davies Counsel instructed by Ms Kim Brown, Solicitor on behalf of the Council

She called:

Cllr Edward Potter	Member of Southern Planning Committee
Ms Lynn Parker BA (Hons), MA	Senior Planning Officer – Shropshire Council
Cllr Tony Parsons	Member of Southern Planning Committee

INTERESTED PARTIES:

Philip Jones	Chair Kemberton Parish Council
Alan Chatham	Chatham Dairy

INQUIRY DOCUMENTS

INQ1	Opening statement by Appellant
INQ2	Opening statement by Council
INQ3	Statement by Mr P Jones on behalf of Kemberton Parish Council
INQ4	Emerging Local Plan position – email from Council
INQ5	Letter from Farms for Farming
INQ6	Closing statement by Council
INQ7	Closing statement by Appellant
INQ8	Map showing Conservation Area boundary on Hall Lane

CORE DOCUMENTS

Can be accessed using the following link:

[Hall Lane, Kemberton, Telford, TF11 9LB - public enquiry docs | Shropshire Council](#)

Annex A

Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision. Such date shall be referred to hereinafter as 'the Commencement Date'.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan Ref SA39827-01; Initial Layout Ref Figure 2a; Landscape Mitigation Plan Drawing No 3109-001 Rev D; Panel and Access Details Ref Figure 3; Security Ref Figure 4; Customer Substation Ref Figure 6; Containerised DNO Substation Ref Figure 7b; and Site Access and Construction Layout Drawing No SA42435-BRY-ST-PL-A-0002.
- 3) The permission hereby permitted shall be limited to a period of 40 years from the date when electricity is first exported from the solar panels to the electricity network (the First Export Date). Written notification of the First Export Date shall be given to the local planning authority within 14 days of the event.
- 4) Within 6 months of the cessation of the export of electrical power from the site, or within a period of 39 years and 6 months following the First Export Date, a Scheme for the decommissioning of the solar farm and its ancillary equipment, and how the land is to be restored, to include a programme for the completion of the decommissioning and restoration works, shall be submitted to the local planning authority for its written approval. The solar farm and its ancillary equipment shall be dismantled and removed from the site and the land restored in accordance with the approved scheme and timescales.
- 5) Prior to their erection on site details of the proposed materials and finish including colour of all solar panels, frames, ancillary buildings, equipment, and enclosures shall be submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details and shall be maintained as such for the lifetime of the development hereby permitted.
- 6) No development shall take place until the proposed site access, as shown on Drawing No SA42435-BRY-ST-PL-A-0002, has been constructed, and the first 15m of the proposed access has been surfaced with a bound material. The access shall be retained as such for the lifetime of the development hereby permitted.
- 7) Before the new site access is brought into use all obstructions exceeding 0.6 metres high shall be cleared from the land within the visibility splays as shown on Drawing No SA42435-BRY-ST-PL-A-0002. Thereafter, the visibility splays shall be kept free of obstructions exceeding 0.6 metres in height for the lifetime of the development hereby permitted.
- 8) No development shall take place until a mitigation strategy to prevent exceedance flows from the development contributing to flooding outside of the development site has been submitted to, and approved in writing by, the local planning authority. The approved scheme shall be fully implemented before the First Export Date.

- 9) No development shall take place until the pre-commencement tree works and tree protection measures as detailed in Section 2 (Arboricultural Impact Assessment), Section 3 (Arboricultural Method Statement), Schedule 1 (Tree Schedule), Appendix 5 (Tree Protective Barrier), Appendix 6 (Ground Protection) and Plan 2 (Tree Protection Plan) of the approved Arboricultural Appraisal (SC: 596AA, Salopian Consultancy Ltd, 17.05.2022) have been implemented and have been approved as such, in writing, by the local planning authority. The approved tree protection measures shall be maintained in a satisfactory condition throughout the duration of the construction phase of the development and until all equipment, machinery and surplus materials have been removed from the site.
- 10) No development shall take place until a scheme providing full details of the soft landscaping to be implemented on the site (the 'Landscaping Scheme') has been submitted to, and approved in writing by, the local planning authority. The scheme submitted shall be in accordance with the details illustrated on approved Landscape Mitigation Plan (Drawing 3109-001 Rev D). The scheme shall include a planting plan and specification (including cultivation and other operations associated with plant and grassland establishment) providing schedules for all new planting and seeding noting species, mixes, planting sizes and proposed numbers/densities where appropriate and a timetable for implementation. All new planting shall be implemented in accordance with the approved details and implementation programme. If within a period of 5 years from the date of planting, any tree, shrub or hedgerow or any replacement planting is removed, uprooted or dies or becomes seriously damaged or diseased replacement planting of the same species and size shall be planted in the same location in the next planting season.
- 11) Prior to the First Export Date, a Landscape Management Plan including long term design objectives, maintenance schedules and a programme of management activities for landscape areas identified in the Landscaping Scheme, including the establishment and thereafter maintenance of hedgerows of a minimum of 3m high, shall be submitted to, and approved in writing by, the local planning authority. The landscape management plan shall cover all existing vegetation within the site as well as any new planting and grassland implemented as part of the development. All vegetation within the site shall be managed in accordance with the approved Landscape Management Plan for the full duration of the development hereby permitted.
- 12) Prior to the First Export Date, the makes, models and locations of bat and bird boxes shall be submitted to, and approved in writing by, the local planning authority. This should make provision for: a) A minimum of 4 external woodcrete bat boxes suitable for nursery or summer roosting for small crevice dwelling bat species; b) A minimum of 4 external bird boxes, suitable for Starlings (42mm hole, starling specific), Sparrows (32mm hole, terrace design), House Martins (House Martin nesting cups) and/or small birds (32mm hole, standard design). The boxes shall be erected on the site prior to the First Export Date in accordance with the approved details and shall thereafter be retained for the lifetime of the development.

- 13) No external lighting shall be installed other than in complete accordance with a scheme that has previously been submitted to, and approved in writing by, the local planning authority. Any external lighting so installed shall thereafter be maintained in accordance with the approved details for the lifetime of the development.
- 14) No works to trees and shrubs, or vegetation clearance, shall occur between 1st March and 31st August in any year unless, immediately prior to any clearance/works, a detailed bird nest survey, undertaken by a suitably experienced ecologist has been carried out and has been submitted to, and approved in writing by, the local planning authority demonstrating that no active bird nests are present.
- 15) Prior to the First Export Date, an appropriately qualified and experienced ecologist shall provide a report to the local planning authority demonstrating implementation of the recommendations made in Section 4 of the Biodiversity Net Gain Assessment by Salopian Consultancy dated 17th June 2022.
- 16) All works to the site shall occur strictly in accordance with the Construction Traffic Management Plan set out in Section 4 of the Transport Statement (Doc Ref: SA42435_TS1 dated March 2022).

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Appeal Decision

Site visit made on 30 January 2024

by **L C Hughes BA (Hons) MTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 February 2024

Appeal Ref: APP/L3245/W/23/3328508

Reaside, B4364 From Clee Brook Bridge To New House Farm Junction, Neenton, Bridgnorth, Shropshire WV16 6RL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr & Mrs Bryan against the decision of Shropshire Council.
 - The application Ref 23/01429/VAR, dated 29 March 2023, was refused by notice dated 31 July 2023.
 - The application sought planning permission for erection of an agricultural workers dwelling and formation of vehicular access without complying with a condition attached to planning permission Ref 4/72/1072, dated 16 August 1972.
 - The condition in dispute is No 3 which states that: Occupation of the dwelling shall be limited to a person employed, or last employed, locally full time in agriculture as defined in Section 290 (1) of the Town and Country Planning Act, 1971, or forestry, or a dependent of such a person residing with him (but including a widow or widower of such a person).
 - The reason given for the condition is: The erection of a dwelling for normal residential purposes would be isolated and sporadic in a rural area and would not be permitted.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. On the 19 December 2023 the Government published a revised National Planning Policy Framework (the Framework) accompanied by a written ministerial statement (WMS). The revised Framework is a material consideration which should be taken into account from the day of publication. I have familiarised myself with the content of the revised Framework and the accompanying WMS and none of the revisions to the Framework would appear to be material to this appeal. Having considered the revisions and in light of the principles of natural justice, in this instance I do not consider it necessary to invite any submissions from the parties on the revised Framework.

Main Issue

3. Permission was granted for the appeal property in 1972, with an agricultural occupancy condition (condition 3). There is no dispute regarding the overall acceptability of removing the condition, but the Council consider that its removal would necessitate the payment of an affordable housing contribution. The appellants have not agreed to such a payment.

4. The main issue, therefore, is whether the removal of condition 3 would give rise for the need to make a financial contribution for affordable housing.

Reasons

5. Policy CS11 of the Shropshire Core Strategy (CS) (2011) requires all new open market housing development to make appropriate contributions to the provision of local needs affordable housing. Furthermore, the Council's Type and Affordable Housing Supplementary Planning Document (SPD) (2012) is clear that the removal of an occupancy condition effectively creates a new market dwelling and that an appropriate contribution will be required towards local needs affordable housing at the prevailing affordable housing target rate. The CS and SPD are therefore unambiguous that where occupancy restrictions are agreed to be removed, an affordable housing contribution will be required.
6. Reaside is a detached dwelling which is located just outside the small village of Neenton. The Framework indicates that the provision for affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas where policies may set out a lower threshold of 5 units or fewer. Designated rural areas are defined by the Framework as National Parks, Areas of Outstanding Natural Beauty (AONB) (recently rebranded as National Landscapes) and areas designated as 'rural' under Section 157 of the Housing Act 1985.
7. Whilst not in a National Park or AONB, Neenton is a designated protected rural parish under Section 157 of the Housing Act 1985. The dwelling is therefore situated in a designated rural area where the Framework is clear that a local planning authority may choose to set its own lower threshold for affordable housing contributions.
8. The appellant highlights that the CS predates the Framework and West Berkshire court of appeal decision in 2016¹. Shropshire Council has a five year land supply and the CS housing policies are therefore not considered to be out of date. They do not conflict with the Framework which is clear that affordable housing contributions can be sought in designated rural areas at a threshold of 5 units or fewer. Furthermore, Policy MD7a of the Site Allocations and Management of Development Plan (2015) (SAMDev) is clear that the policy requesting an affordable housing contribution when an agricultural occupancy condition is to be removed relates to dwellings permitted prior to the adoption of the CS in 2011. The fact that the dwelling predates the CS, the Berkshire decision and the Framework would not exempt it from the affordable housing contribution requirement.
9. My attention has been drawn to a recent appeal decision at Longville Arms² regarding the conversion of holiday lets to a dwelling. The Inspector concluded that as the site was in a designated area, the removal of the condition would give rise to a need for a financial contribution to affordable housing. Reaside is also in a designated rural area. My conclusion is consistent with this decision.
10. Recent decisions where an affordable housing contribution was not required despite the removal of an agricultural workers occupancy restriction condition have also been brought to my attention. However, their circumstances are not

¹Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council CI/2015/2559 (2016) EWCA Civ 441

² APP/L3245/W/20/3254576

directly comparable with those which apply in this appeal. Punch Bowl Farm³, for example, does not lie within a designated rural parish, and so the threshold for affordable housing contributions would not be the same. The application at The Old Dairy⁴ involved a curtilage listed building and as such different policy requirements and exemptions apply.

11. In January 2023 the Council granted a Certificate of Existing Lawful Use or Development (CLEUD) for the occupation of the dwelling in breach of the disputed condition (No 3). The Council was satisfied that, on the balance of probabilities, the dwelling had been used as a dwelling house in excess of ten years in breach of the agricultural occupancy condition. The Council states that, as a result, the development is immune from enforcement action in relation to the breach of the agricultural occupancy condition and hence is lawful. The CLEUD is a material consideration, and I have afforded it significant weight.
12. However, whilst acknowledging that the dwelling benefits from a CLEUD, the development plan policies and SPD are unambiguous that where occupancy restrictions are agreed to be removed, an affordable housing contribution will be required. The SPD indicates specific exceptions from the definition of 'new open market Housing' for the purpose of making affordable housing contributions. Despite having a CLEUD, the proposal does not fall under any of the exemptions listed.
13. My attention has also been drawn to a number of appeal decisions relating to properties which had also been granted CLEUDs^{5 6 7 8 9} and where the relevant Inspectors had allowed the removal of the agricultural occupancy condition, finding it to be no longer necessary or reasonable in light of the CLEUD. However, none of these appeals had a requirement for an affordable housing contribution should the condition be removed. The highlighted cases were generally concerned with the appropriateness of the removal of the agricultural occupancy condition and whether it was still a necessity for the properties to be occupied by qualifying persons. In this appeal, there is no dispute that the agricultural occupancy condition could be removed and is no longer necessary. The dispute is whether the affordable housing contribution is required, and as the appeal decisions brought to my attention do not consider this requirement, they are not directly comparable to this case.
14. National Planning Practice Guidance requires that planning obligations must meet requisite statutory tests. They must be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
15. The requirement of an affordable housing contribution resulting from the removal of the agricultural occupancy condition would meet the statutory tests. The obligation would be acceptable in planning terms, as the adopted development plan policies require such a contribution. The obligation would be directly related to the appeal property, and whilst appreciating that the

³ 20/04578/VAR

⁴ 18/03241/VAR

⁵ APP/T6850/A/20/325618

⁶ APP/D0840/W/22/3304612

⁷ APP/E2001/A/02/1104141

⁸ APP/Y9507/W/16/3147251

⁹ APP/E2001/W/17/3170529

contribution would place a financial burden upon the appellant, little evidence has been provided to demonstrate that the amount required is not of an appropriate scale.

16. I consider that the CLEUD does not outweigh the conflict with the development plan in this instance. The planning obligation meets the required statutory tests, and in the absence of a section 106 agreement that would secure an affordable housing contribution the proposal would be in conflict with Policy CS11 of the CS, Policy MD7a of the SAMDev and guidance contained within the SPD. Consequently, a planning obligation to secure an affordable housing contribution is necessary to justify the removal of condition 3.

Conclusion

17. For the reasons given above, in the absence of a planning obligation to secure an affordable housing contribution, the removal of condition 3 would result in the development being in conflict with the development plan as a whole. The material considerations in this case do not outweigh that finding. Consequently, the appeal is dismissed.

L C Hughes

INSPECTOR



Appeal Decision

Site visit made on 27 February 2024

by **L C Hughes BA (Hons) MTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 March 2024

Appeal Ref: APP/L3245/W/23/3327311

Former TSB Bank, High Street, Albrighton, Shropshire WV7 3JE

- 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 Mann, Hamstead Investment Group Ltd. against the decision of Shropshire Council.
 - The application Ref 22/04127/FUL, dated 26 August 2022, was refused by notice dated 17 March 2023.
 - The development proposed is redevelopment of former bank to create a ground floor bakery and extension to first floor to create 3.No flats.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council amended the description of the proposed development from the description given on the application form. This amended description was used on the decision notice and appeal form, and as it more succinctly and accurately describes the proposal, I have used it in the banner heading above.
3. On the 19 December 2023 the Government published a revised National Planning Policy Framework (the Framework) later updated on 20 December 2023, accompanied by a written ministerial statement (WMS). The revised Framework is a material consideration which should be taken into account from the day of publication. Having considered the main issues, the parties' respective cases and the nature of the revisions, having regard to the principles of natural justice, I have not considered it necessary to invite any submissions from the parties on the revised Framework.

Main Issues

4. The main issues are the effect of the proposed development on:
 - 1) the living conditions of occupiers of neighbouring properties with particular regard to privacy, noise and odours; and
 - 2) the living conditions of future occupiers with particular regard to indoor living space and outside amenity space.

Reasons

Living conditions of neighbouring occupiers

5. The proposed development would be sited centrally within the Market Town of Albrighton, within a designated Town Centre and Primary Shopping Area. I observed on my site visit that the High Street where the appeal site is located was busy, bustling and vibrant with a good mix of retail, food and drink and commercial premises, as well as a number of residential properties.
6. Immediately adjacent to the east of the appeal site is a detached dwelling, 27 High Street, also known as The Grey House (No 27). A hot food takeaway and a residential property (No 24, Greensleeves) lie to the west of the appeal property.
7. The proposal would see the development of three residential flats at first floor level, along with a proposed bakery on the ground floor. The front flat would be accessed via a new external staircase on the western elevation and the rear flats from an external staircase via the flat roof.
8. The rear staircase would necessitate traversing a limited part of the roof, however, it would also serve to allow access on to the wider flat roof of the ground floor. From this roof space it is possible to directly overlook neighbouring gardens, particularly the gardens of No 24 and No 27. The garden of No 27 would be particularly affected due to the very close proximity with the roof. The impact of any overlooking would be exacerbated due to the roof height being higher than the side boundary wall of No 27, and because it projects further to the rear.
9. The roof is also close to the ground floor bay window, first floor window and conservatory of No 27. Its position would enable future occupiers to look into these rooms which could be highly intrusive. Access on to the roof was and is already possible. However, the layout of the former bank use permits convenient internal access to the first floor, suggesting that the rear access might only have been for occasional or emergency use. However, the rear staircase and part of the roof would be the only means of access to the rear flats. The proposal could reasonably result in its use of part of the roof space by future occupiers as a close and convenient outside amenity space.
10. The appellants have suggested that a condition could be attached to limit the use of the first floor roof for access rather than amenity space. However, the Planning Practice Guidance (the PPG) states that conditions must be reasonable and enforceable. Even were I to consider this to meet the reasonableness test, it is not demonstrated how, within the scope of this appeal scheme, such a condition could and would be enforceable. Therefore, I am not persuaded that the conditions would meet all the requisite tests in the PPG.
11. Whilst some impact on overlooking is inevitable in residential areas, the residential use of the first floor of the proposed development would result in a level of direct and intrusive overlooking that would lead to an unacceptable loss of privacy.
12. The proposed bakery would be located within the primary shopping area of Albrighton High Street, in an area where there are existing premises with extraction equipment, which are regarded as acceptable uses in this location.

13. A noise assessment and details of odour abatement in relation to the extraction system were not submitted as part of the proposal. This has led to concerns regarding the possible consequences for neighbouring occupiers with regard to noise and odour.
14. Whilst the proposed use might have the potential to cause noise and odour issues given its proximity to residential properties, paragraph 55 of the Framework indicates that decision-takers should consider whether otherwise unacceptable development could be made acceptable through the use of conditions. Although limited details have been provided, there is no substantive evidence to demonstrate or lead me to a view that such a system could not mitigate odours effectively and ensure that noise would be mitigated to an acceptable level. As such, were I to allow the appeal, on balance I am satisfied that pre-commencement planning conditions could ensure that a system could be satisfactorily installed, operated and maintained thereafter. This would overcome the concerns raised insofar as odour and noise.
15. Whilst on balance, I consider that appropriate conditions could ensure that noise and odour issues are efficiently dealt with for the reasons set out above, the proposal would have an unacceptable effect on the living conditions of neighbouring occupiers with regard to privacy. As such, the proposal would not be in accordance with Policy CS6 of the Shropshire Core Strategy (2011) (CS) which seeks to ensure that development safeguards residential and local amenity. It would also conflict with Policy MD2 of the Shropshire Council Site Allocations and Management of Development Plan (2015) (SAMDev) which highlights that development is required to respect existing amenity value. It would also not accord with guidance contained within the Type and Affordability of Housing Supplementary Planning Document (2012) (SPD) which states that developments must not have unacceptable consequences for neighbours, such as loss of privacy.

Living conditions of future occupiers

16. The submitted plans show that the proposed flats would be 42m², 46m² and 48.6m². The proposed flats would therefore all be above the Nationally Described Space Standard for gross internal floor space of 39m² for one bedroom/ one bathroom/ one storey properties. Whilst the Council have stated that the proposed flats would have low ceilings and limited windows, I have not been referred to specific standards in respect of internal heights. In the absence of any substantive evidence to the contrary, and from my observations when visiting the appeal site, it would appear to me that the ceiling heights would be sufficient to ensure satisfactory living conditions for future occupiers. Each flat would have at least two windows serving different parts of the main living space on two aspects. Overall, based on the evidence before me, I see no reason to consider that the internal living space would result in cramped accommodation or provide unacceptable living conditions for future occupiers in this regard.
17. Limited evidence has been put before me to indicate that the outside amenity space is inadequate for the proposed flats. Whilst I consider that it would be inappropriate to use the roof space for outdoor amenity use, due to the resultant issues with overlooking neighbouring properties as detailed above, I noted from my site visit that there was a fair amount of outdoor space at ground level to the rear of the proposed development. I have not been

provided with any information to suggest that this space could not be used by the residents of the proposed flats. On this basis, I consider that adequate outdoor amenity space could be provided for the proposed first floor flats.

18. Consequently, I consider that the proposed development would provide adequate living conditions for future occupiers in relation to internal living space and outdoor amenity space. As such, the proposal accords with Policy CS6 of the CS which seeks to ensure that development safeguards residential amenity and is consistent with national good practice standards, and Policy MD2 of the SAMDev which stresses the need to provide usable outdoor space. It would also comply with guidance contained within the SPD which highlights the importance of providing acceptable living standards for the occupants of dwellings, in terms of the internal size of living accommodation and the provision of external private amenity space.

Other Matters

19. Both the Council and the appellant have made substantive views in respect of the appeal site's location within the Albrighton Conservation Area (CA). Therefore, in accordance with the statutory duty set out in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), I have paid special attention to the desirability of preserving or enhancing the character or appearance of the CA.
20. The significance of the CA derives partly from the mix of commercial and residential uses which are intermingled rather than segregated, with commercial properties scattered along the High Street amongst residential properties. The predominance of traditional materials, forms and detailing and small domestic scale of buildings provides visual interest and character to the CA.
21. The proposed development would bring a disused building back into use, contribute to the mix of commercial and residential properties within the High Street, and there would be limited alterations to the outward appearance of the building. Accordingly, I conclude that the proposal would preserve the CA in accordance with the aims of Section 72(1) of the Act. As such, it would not harm the significance of this designated heritage asset. This is a neutral balance and does not alter my conclusion in respect of the main issue regarding the harm to living conditions of neighbouring occupants.
22. The appeal property itself is a non-designated heritage asset (NDHA). Paragraph 209 of the Framework requires that the effect of a proposal on the significance of a NDHA should be taken into account in determining the application and states that a balanced judgement will be required. The appeal property is an attractive building which dates from the early twentieth century which makes a positive contribution to the character and appearance of the CA. Despite the limited alterations to the rear of the building the proposed development would largely retain its appearance as an attractive commercial building which reflects the evolution of the town centre. I consider that the proposed development would not harm the significance of the asset. The proposal would therefore have a neutral effect.
23. Additionally, the proposed development would be sited next door to a Grade II Listed Building (No 27). Under s.66(1) of the Act there is a duty to have special regard to the desirability of preserving its setting.

24. The Council have not raised any concerns in relation to the impact of the proposed development on the listed building. As I am dismissing this appeal for other substantive reasons, and the development would not take place as a result of my decision, I have not considered this matter further. Were I to have resolved that the proposed development would not adversely affect the setting and significance of the listed building, this would be a neutral matter.
25. Interested parties have raised a number of other concerns regarding the proposal, including potential opening hours and overdevelopment. I also noted the intervisibility between the windows of the proposed flats and the side windows of No 27. However, as I am dismissing the appeal on a main issue and they could not alter my conclusions, I have not considered them further.

Planning Balance

26. I acknowledge that there are no concerns regarding highway issues, drainage, affordable housing, archaeology, parking, or the impact on the character and appearance of the area. There would be no impact on ecology and no extensions to the built footprint. However, were I to agree that the proposal would be compliant with policies in this regard, these would be neutral matters within the planning balance.
27. I note that the Council raised no objections in principle to the proposed development, either the bakery or the residential element, which are considered to be an appropriate use in the location. Furthermore, the appeal site would be in a sustainable location and services and facilities would be accessible by bicycle or on foot.
28. The development would be an efficient use of land and would bring a disused historic building into use. The proposal would support economic growth, align with the Market Town revitalisation programme and provide employment and would add to the prosperity and vitality of the High Street.
29. The proposal would boost and widen the supply of homes to help address the housing shortage in line with the Framework. It would also accord with the Albrighton Neighbourhood Plan Light which supports smaller and more affordable market homes.
30. Having regard to the substantive evidence advanced, I attribute these benefits moderate weight in the overall planning balance. However, they do not outweigh the harm to living conditions of neighbouring occupiers with regard to privacy, which given the nature of the potential for harm, is a matter which should be attributed significant weight.

Conclusion

31. I have found that the proposal would result in harmful living conditions for neighbouring occupiers with regard to privacy. Therefore, the proposal would conflict with the development plan when taken as a whole. There are no material considerations advanced, including the Framework, which would indicate a decision other than in accordance with the development plan. For the reasons given above the appeal is dismissed.

L C Hughes

INSPECTOR

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Appeal Decision

Site visit made on 27 February 2024

by **L C Hughes BA (Hons) MTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: **22.03.2024**

Appeal Ref: APP/L3245/W/23/3325296

Hurst Farm, Aldenham Park via The Hurst to Junction North of Coppice House, Morville, Bridgnorth WV16 4TF

- 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 Phil Brick against the decision of Shropshire Council.
 - The application Ref 22/04045/FUL, dated 1 September 2022, was refused by notice dated 5 January 2023.
 - The development proposed is New camp site with 56 Plots, new shower/toilet block, refuse area, and septic tank.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. On the 19 December 2023 the Government published a revised National Planning Policy Framework (the Framework) later updated on 20 December 2023, accompanied by a written ministerial statement (WMS). The revised Framework is a material consideration which should be taken into account from the day of publication. I have familiarised myself with the content of the revised Framework and the accompanying WMS. Having considered the parties' respective cases and the nature of the revisions, in light of the principles of natural justice, I have not considered it necessary to invite any submissions from the parties on the revised Framework.
3. The appellant has submitted amended plans and a revised scheme with the appeal documentation which details significant revisions to the scale of the proposal. I have carefully considered the implications of accepting these revisions in the light of the Procedural Guide, Planning Appeals, England¹ and the principles of the Wheatcroft² judgement.
4. The Procedural Guide advises that an amendment to planning application proposals to overcome a local planning authority's reasons for refusal should normally be made through a fresh planning application, and the appeal process should not be used to evolve a scheme. It is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.
5. With regards to the Wheatcroft judgement, the main criterion on which consideration of revised plans should be exercised is whether the development

¹ Procedural Guide: Planning Appeals – England (updated January 2024)

² Bernard Wheatcroft Ltd v Secretary of State for the Environment (JPL 1982)

is so changed that to grant it would deprive those who should have been consulted on the changed development of the opportunity of such consultation.

6. In this instance, the proposed revisions are seeking to address the issues upon which the Council based its decision on at the application stage in respect of the scale, density and layout of the proposed development and in respect of landscaping to mitigate the impact on the landscape character and designated heritage assets. As such, it is evident that the appellant has sought to evolve the proposed development through the appeal process, thus depriving the Council and interested parties of the opportunity to formally consider the revisions. Consequently, in the interests of natural justice, I have determined this appeal on the basis of the initial plans submitted which have been subject to consultation, and not the suggested amendments.

Main Issues

7. The main issues are:

- 1) whether the scale of the proposed development is appropriate with regards to sustainability objectives and accessibility to local services and facilities; and
- 2) the effect of the proposed development on the local landscape character and designated heritage assets.

Reasons

Scale with regard to sustainability objectives

8. The appeal site comprises part of an arable field. There are two access tracks to the site. The primary access leads from the southwest from the A458. The alternate route leads from the northeast. These access tracks are shared with a public right of way. There is also a public right of way along the track which is within the northeastern boundary of the appeal site.
9. Policy CS16 of the Shropshire Core Strategy (2011) (CS) highlights that in rural areas, proposals for high quality visitor accommodation must be close to or within a settlement, or be an established and viable tourism enterprise where accommodation is required.
10. The proposed development would be in proximity to three lakes which are operated on a commercial basis as coarse and fly fishing lakes by the appellant, who also operates furnished holiday accommodation. The proposal is therefore associated with an established and viable tourism enterprise, and therefore the principle of the development is acceptable subject to detailed considerations.
11. However, Policy CS16 also states that proposals for holiday accommodation must be of an appropriate scale and character for their surroundings. Policy MD11 of the Shropshire Site Allocations and Management of Development Plan (2015) (SAMDev) states that proposals for new camping sites should have regard to the cumulative impact of visitor accommodation on the road network or the over intensification of the site.
12. The tracks to the site are fairly narrow, single width and lightly trafficked. Whilst the tracks are located in attractive countryside and would make a pleasant walk, the lack of street lighting would likely discourage visitors from

walking along them to reach the nearest settlements, especially in poor light or bad weather. There is a bus stop for buses to Bridgnorth, Much Wenlock or Shrewsbury, but this is a thirty minute walk from the appeal site.

13. The nearest settlement is at Morville, which is approximately 1.5 miles away from the proposed development. Morville is designated in the SAMDev as a community cluster which is the lowest settlement category in the development plan hierarchy reflecting its limited sustainability credentials. The nearest settlements with a wide range of facilities and services on offer include the town of Bridgnorth, located approximately 4.5 miles away from the appeal site, and the small town of Much Wenlock, situated approximately 5 miles away from the appeal site.
14. Visitors would therefore have to take relatively long journeys in order to access a good range of amenities realistically capable of serving their full day-to-day needs. Thus, due to the distances involved to reach settlements and the absence of conveniently accessible public transport options, it is to my mind inevitable that the proposal would promote travel by private car.
15. I acknowledge that some of the accommodation may be used by people who currently use the lakes for fishing, and as such they may stay at the appeal site for longer periods than is presently possible rather than coming and going every day, which may reduce the number of car journeys than are currently made. However, there is no guarantee that all future visitors would be of this ilk nor that the anglers, during their stays, would not rely on private car travel to serve their amenities.
16. I note that the Highways Officer and Public Rights of Way Officer have not raised objections to the proposal, and also that there would be staggered arrival and departure times for visitors to help alleviate traffic issues. However, I consider that the scale of the proposal in its current form, for 56 glamping plots, would lead to an unacceptable increase in the amount of private vehicular movements to and from the site and would not be a form of sustainable development.
17. Consequently, I conclude that the scale of the proposed development is inappropriate with regards to sustainability objectives and accessibility to local services and facilities. As such, the proposal would be contrary to the aims of Policies CS5, CS6 and CS16 of the CS and Policy MD11 of the SAMDev which collectively support the provision of high quality visitor accommodation to create sustainable places which protect the countryside and are of an appropriate scale taking into account local context.

Landscape and heritage

18. The proposed development would be nearly 1 hectare in area, and along with the 56 glamping plots would also have a refuse area, septic tank and a building incorporating toilets and shower blocks and a covered central area. This would measure approximately 21 metres in length and 6 metres in width, with a pitched roof which would measure approximately 4.5 metres.
19. Policy MD11 of the SAMDev stresses that proposals should be well screened and sited to mitigate the impact of the visual quality of the area through the use of natural on-site features, site layout and design and landscaping and planting schemes where appropriate. Policy CS6 of the CS highlights that

- development must be appropriate in scale and density, taking into account the local character and those features which contribute to local character.
20. The proposed development would provide limited scope for appropriate landscaping to help screen the proposal or assimilate it into the surroundings. The glamping plots would be tightly laid out in a rather regimented fashion. The high density of the proposed plots limits the scope for landscaping between the proposed plots. Moreover, the proposed plots are situated along the whole length of three of the boundaries. Whilst the trees adjacent to the lake would partially screen the proposed campsite from one direction, there are no field boundaries to the rear of the proposed site. The proximity of the proposed plots to the boundaries further limits the opportunity for screening and mitigating the visual impact of the proposed development with appropriate landscaping.
 21. The density and scale of the proposal therefore does not allow for appropriate landscaping. The campsite would be very visible from the surrounding countryside and public rights of way, appearing as stark, prominent and over dominant in the landscape.
 22. There are designated heritage assets that lie approximately 0.5km to the south of the site. These include the Grade II* listed Aldenham Park, Aldenham Park Registered Park and Garden, which is Grade II listed, and a chapel and stables which are Grade II listed buildings.
 23. I have a statutory duty under sections 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special regard to the desirability of preserving the listed buildings or their settings. I attach this duty significant importance and weight.
 24. Aldenham Park is a late 17th-century country house which stands in parkland. The house is built of ashlar in two-storeys with an eleven bay frontage and a raised parapet. It is approached via an avenue through a set of ornate gates. In my view, the setting of the heritage assets and the contribution that this makes to their significance, is taken from the grand scale of the surrounding park and gardens and the extensive views across the rural landscape beyond.
 25. The appellant submitted a Heritage Assessment which indicated that the heritage assets may be partially viewable, albeit during the winter months when there would be less foliage screening the listed buildings or the proposed campsite. I noted from my site visit that the listed buildings were undoubtedly some distance away, separated by fields along with some trees. Nonetheless I noted that there was some intervisibility. In my view, the fields outside the grounds of the heritage assets contribute to the setting of the grand country estate situated in extensive grounds surrounded by countryside. Therefore without appropriate landscaping and screening the proposed development would encroach views both to and from the Park across open fields and would consequently erode the appreciation of its setting.
 26. Nonetheless, the harm that I have identified is 'less than substantial' due to the distance between the proposal and the heritage assets and the limited intervisibility. Paragraph 205 of the Framework explain that great weight should be given to the conservation of a designated heritage asset. In paragraph 208 it goes on to state that where a proposal would lead to less than

substantial harm to the significance of such an asset, this harm should be weighed against the public benefits of the proposal.

27. The proposal would provide visitor accommodation which would contribute to the economic vitality of the business and the locality, and would provide social benefits by providing holiday accommodation for visitors to enjoy. However, these limited public benefits do not outweigh the great weight to be given to the conservation of the heritage assets.
28. I conclude that the proposal would cause less than substantial harm to the setting of designated heritage assets. It would thus fail to satisfy the requirements of the Act and the Framework. Moreover, the proposed development would harm the local landscape character. It would conflict with Policies CS6, CS16 and CS17 of the CS and Policies MD2, MD11, MD12 and MD13 of the SAMDev, which together seek to ensure that development is appropriate to its location, protects Shropshire's natural assets and protects and enhances the historic environment, including the setting of heritage assets.

Other Matters

29. The appellant's frustrations about the Council's handling of the case are noted. However, this has had no bearing on my determination of the appeal as I have only had regard to the planning merits of the case, on the basis of the evidence that is before me.
30. I recognise that there is no objection in principle to the proposed campsite subject to detailed considerations, and I acknowledge the willingness of the appellant to amend the scheme in order to make it more acceptable. However, I have had to consider the original scheme that was submitted.
31. The proposed development would help diversify the rural economy, retain and expand an existing business and promote connections between visitors and Shropshire's natural environment, helping to enhance the role of Shropshire as a tourist destination. However, these moderate benefits do not override the harm to sustainability objectives and to the landscape character and heritage assets.

Conclusion

32. The proposal would conflict with the development plan when taken as a whole and there are no material considerations which would indicate a decision other than in accordance with the development plan.
33. For the reasons given above the appeal is dismissed.

L C Hughes

INSPECTOR

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Appeal Decision

Inquiry Held on 5 – 8 and 11 March 2024

Accompanied site visit made on 4 March 2024

Unaccompanied site visit made on 14 March 2024

by David M H Rose BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th March 2024

Appeal Reference: APP/L3245/W/23/3332543

Land west of Berrington, Shrewsbury, Shropshire, SY5 6HA

- 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 Econergy International Ltd against the decision of Shropshire Council.
 - The application Reference 22/04355/FUL, dated 26 August 2022, was refused by notice dated 16 May 2023.
 - The development proposed is: Erection of an up to 30 MW Solar PV Array, comprising ground mounted solar PV panels, vehicular access, internal access tracks, landscaping and associated infrastructure, including security fencing, CCTV, client storage containers and grid connection infrastructure, including substation buildings and off-site cabling.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

Reasons for Refusal

2. The planning application was refused by Shropshire Council against Officer recommendation. The reasons given, in short, were:
 - (i). Loss of Best and Most Versatile Land – *'..... it is not considered that the applicant's justifications for this choice of site are sufficient to outweigh the adverse impact of losing the arable production potential*'.
 - (ii). Adverse Visual Impact – *'..... potential to adversely affect the local landscape and visual amenities*'.
 - (iii). Adverse Ecological Impact – *'The application affects land which is used by Skylarks for nesting. The applicant proposes to mitigate for the loss of nesting opportunity by providing protected plots on land to the immediate north of the site. However, this land is of a different character and the general area is also used for seasonal shooting which may coincide with the Skylark nesting season*¹'.

¹ At the Inquiry it was conceded that the shooting and nesting seasons did not coincide and this part of the reason for refusal was not pursued

Case Management Conference

3. I held a Case Management Conference on 4 January 2024, attended by the Council, the Appellant and the Rule 6(6) Party, Flour not Power, to discuss administrative and procedural matters. I set out the main issues, based on the reasons for refusal. In addition, in light of identified heritage assets within the locality of the appeal site, I included a further issue to reflect my statutory duty.
4. It was subsequently confirmed that Flour not Power intended to present evidence on selected heritage assets. This was set out in an addendum to its statement of case². The Appellant provided a Heritage Note by way of response³; and Flour not Power submitted a Built Heritage Reappraisal⁴. It was agreed that the heritage issue would be considered on the basis of the written evidence provided.

The Inquiry

5. The Inquiry was held in person on 5 – 8 March 2024 with closing submissions presented virtually on 11 March 2024. Prior to opening, I was informed by the parties that Flour not Power's landscape witness would be unable to attend the Inquiry due to unforeseen compelling personal circumstances. The parties indicated that they would be content to table all of the landscape evidence in writing, so as to avoid adjournment and delay. I confirmed that the evidence could be considered in this way.
6. Two further matters are to be recorded. First, Notice No 1 was served, belatedly, on the Council, as landowner, on 19 February 2024, relating to a short section of cable route within the highway. At the opening of the Inquiry, the 21 day period for representations had not run its course. However, no representations have been submitted subsequently.
7. Second, a minor drafting error on the red line boundary of the application site had been identified by the Appellant. This relates to the north-western edge of the appeal site and the inclusion of a small strip of land that does not appear in the landowner's title. No development or landscaping is proposed on that land. I am satisfied, absent any adverse representations, that the revised plan, and consequential amendments to other drawings, would not amount to a fundamental change to the application or result in procedural unfairness.

Main Issues

8. At the opening of the Inquiry I announced the main issues as follows:
 - 1) The landscape and visual effects of the proposal, including the effects on users of public highways and on public viewpoints, taking account of the proposed mitigation measures⁵.
 - 2) The implications of, and the weight to be given to, the loss of best and most versatile agricultural land.

² CD 4.14

³ CD 12.8

⁴ CD 14.3 Prepared by Dr Tim Jenkins, PhD, MA, BA(Hons) FRSA, FRHistS

⁵ This issue differs from that identified at the Case Management Conference by the addition of the words 'including viewpoints' to reflect the evidence presented

- 3) Whether the proposed off-site mitigation⁶ would provide an appropriate safe and undisturbed environment for successful Skylark nesting.
- 4) The effect of the proposal on the setting and significance of heritage assets.
- 5) The nature and extent of the benefits of the proposal and whether these would outweigh any harm arising from the issues above.

Reasons

Issue One:

The landscape and visual effects of the proposal, including the effects on users of public highways and on public viewpoints, taking account of the proposed mitigation measures

Introduction

9. There is no dispute about the methodology used relating to landscape character and visual effects, including viewpoints and visualisations. It is common ground that the appeal site and the majority of the study area falls within the Estate Farmlands Landscape Character Type (LCT). It is also agreed that the site is not a '*valued landscape*' for the purposes of paragraph 180 a) of the National Planning Policy Framework (the Framework).

Landscape character

10. The Shropshire Landscape Typology identifies the key characteristics of the Estate Farmlands as mixed farming land use; clustered settlement pattern; large country houses with associated parklands; planned woodland character and medium to large scale landscapes with framed views. They are described as gently rolling lowland and valley floor landscapes.
11. The parties agree, in general terms, that the landscape typology, as a whole, is capable of accommodating the sort of development proposed. The material difference arises in relation to the judgements on the landscape character of the appeal site and its immediate locality with Flour not Power promoting 'high' rather than 'medium' sensitivity. This is based largely on the openness of the site, in part; its elevation; lack of planned woodland blocks; and absence of framed views.
12. The Appellant acknowledges that there would be visibility of the south facing slopes within the appeal site, from the open countryside, which would extend to approximately 0.5km from the appeal site. The site is judged to be of high, rather than medium, susceptibility to the changes arising from the appeal proposal based on the consideration of the nature of the local landscape, which is currently undeveloped open countryside, and its relative openness to views from the south. I agree.
13. However, I disagree with the Appellant's claim that '*The site does, however, have some ability to accommodate the proposed development by building on the existing green infrastructure which is typical of the Estate Farmlands LCT which would help minimise the change to its baseline character*'⁷. In this regard, although the proposal would retain as many landscape features as possible, and provide reinforcement of hedgerows and additional planting, none of this would ameliorate the inevitable change to the baseline character when assessed in the locality of the site to the south.

⁶ 'mitigation' reflects the reason for refusal 3 – hereafter referred to as 'compensation' to reflect evidence

⁷ CD 12.4 paragraph 6.2.4

14. I accept the Appellant's judgement on value and susceptibility, together, for the landscape character type. However, I consider that the lack of visual containment to the south of the appeal site, in particular, undermines the ability of the landscape to absorb the sort of development proposed without a fundamental change to its character at a localised level.
15. The Appellant's assessment of landscape effects during construction acknowledges that *'the character would change from relatively tranquil agricultural fields to a construction site with commensurate short-term movement and activity'*. Whilst localised in relation to the Estate Farmlands as a whole, activity is likely to be large in scale, intense and pervasive, spreading across a wide tract of open aspect countryside landscape. In my opinion, the Appellant has underestimated the 'short-term' effects.
16. The Appellant indicates that during operation, the overall effects at site level would be 'major/moderate' adverse and permanent. From the immediate locality it is said that *'The solar panels and ancillary equipment would permanently alter the character of the site from an arable field, however, the pastoral grassland beneath the panels would retain an element of agricultural use and the tranquility [sic] of the site would be largely unaffected. In addition, the appeal proposals would not affect the openness or scale of the landscape as it would not affect topography and would sit within the existing field structure'*.
17. To my mind, the perception of a retained agricultural use would be minimal as a significant part of the appeal site would be dominated by the proposed solar panels and related infrastructure. The appeal site would take on a wholly different character, and the nature and scale of the development would inevitably diminish the openness of the landscape, by spreading an incongruous form of development across a wide swathe of countryside, and fracturing its continuity.
18. Moreover, lines of rigid arrays, running counter-intuitively to site contours and aspect, would introduce disorder and conflict with the undulating topography of the appeal site. Although the proposal would sit within the existing field structure, this would offer little consolation to the undeniable serious adverse effect on landscape character at the local level.
19. The Appellant states that the changes *'..... would result in medium scale effects initially which would reduce to medium/small over the long term as the proposed planting matures; the landscape structure of the site would be strengthened albeit solar panels would remain perceptible on land as it rises to the north of the site'*. Again, whilst acknowledging that the maturity of the landscape structure will improve over time, I consider that its capability to absorb the development to any material degree would be minimal, given the nature of site topography and the limitations in the ability to secure meaningful foreground softening and filtering from the south.
20. In summary, I consider that the appeal proposal would have minimal effect on the Estate Farmlands typology. However, even with the benefit of intended mitigation, the proposed development would have a significant adverse impact on landscape character at the local level.

Visual effects

21. The parties agree on the assessment of the value and susceptibility of visual receptors with a 'high' sensitivity for users of public rights of way and

residential properties and a 'medium' sensitivity for road users in the vicinity of the site. I shall review the differing judgements reached by the parties on effects by reference to the main viewpoints in dispute.

The public highway to Cantlop Mill (Viewpoints 2, 3, 4, 5 and 6)

22. The single track public highway runs between the eastern and western fields of the appeal site and terminates at the former mill. It serves the residents of the former mill and also those who choose to walk the lane to, and beyond, the mill in the direction of Cantlop (noting the adverse condition of part of the route beyond the mill).
23. Although Flour not Power suggests that these viewpoints have been selected where there is optimal vegetation and where the road is sunken, I am satisfied that they are representative.
24. Indeed, much of the lane is bordered by hedgerow and parts of the route lie well below field level. Flour not Power's assertion that field hedgerows are '*..... degraded and gappy, outgrown and missing (in places)*' is overstated, in my view, and supplementary planting and management would be capable of remedying deficiencies within a modest timescale.
25. Starting with the construction phase, receptors would be able to see the progression of construction activity, either directly, obliquely or glimpsed, as it evolves on either side of the lane. This would be particularly acute where the access track crosses the highway from the western parcel and into the eastern field. The Appellant accepts that the scale of change for users of the lane would be 'large/medium' over a localised extent and short duration. In my opinion, as the highway passes between the two parcels of the construction site, I would assess the scale of change to be within the upper part of that range.
26. Taking the lane from the junction with Cliff Hollow Road, users would have more-or-less unimpeded views of the north-western sector of the eastern field parcel. This represents a small part of the overall development and prominence would be restricted to about 100m of the road. However, the nearest line of arrays, beyond the new boundary fence, would represent an immediate focus, above very limited foreground vegetation, at or near the break between land and sky. Nonetheless, reinforcement tree and hedgerow planting along the northern boundary would, at year fifteen, be capable of reducing the adverse impact to some degree.
27. The most telling impacts would be in the vicinity of the crossing points, where open gaps would provide views across the development parcels bringing the scale of the overall project to the fore. Although the panels would be set back from the road, the alignment of the arrays, parallel with the road and forming a seemingly unbroken mass, would be particularly noticeable, incapable of mitigation and highly uncharacteristic.
28. Elsewhere along the lane, impressions of the development would be fleeting and heavily filtered and reducing as hedgerow reinforcement matures.
29. Despite the harmful effects that I have described, these would not amount to '*a visually oppressive effect for users of the publicly maintained highway leading to Cantlop Mill*'⁸ as alleged.

⁸ CD 3.2 Reason for Refusal 2; CD 4.11 paragraph 28

Public Rights of Way 0407/16/1 (Viewpoint 11) and 0407/1/1 (Viewpoint 12)

30. These two public rights of way run to the east of the appeal site with the former being the closer of the two. In addition, viewpoint 11 observes the eastern parcel at or close to the skyline, whereas in viewpoint 12 the eastern field sits firmly in a layered landscape with distant backdrop hills.
31. Given the manner in which these routes have wide and varied aspect, combined with undulating topography and vegetation, I disagree with Flour not Power's assessment that the magnitude of change from construction activity would be major adverse on the premise that the project, or part of it, would become the dominant feature or focal point of the view.
32. As to the operational phase, users of public right of way 0407/16/1 would experience the greater impacts, albeit views of the eastern field are not continuous as a result of undulating topography and intervening hedgerow boundaries.
33. Where there is open aspect, a wide expanse of the arrays would be highly dominant and intrusive in the mid-ground. They would be seen rising towards the crown of the eastern field and viewed either close to, or - in the case of the north-eastern corner - above the skyline. This would be in stark contrast to the backdrop hills to the west. On this basis, any reinforcement of the eastern boundary of the eastern parcel, by way of hedgerow planting and tree cover, would have minimal perceptible mitigating effect and the adverse intrusive impacts of the development would remain apparent for the duration of the project

Public Right of Way 0407/5R/2 (Viewpoint 15)

34. The right of way is situated some 0.5km (nearest point) south/south-west of the two appeal site parcels and directly west of the hamlet of Cantlop.
35. The two fields form a wide, almost continuous, arc in the undulating countryside. During the construction phase, the quintessential, tranquil, agricultural character and appearance of the appeal site would progressively give way to extensive change in the landscape with related activity and new infrastructure.
36. On completion, as with the construction phase, the entirety of the development would not be visible in a single view. The western parcel benefits from some screening from woodland outside its south-western corner and the lower sections of both fields are masked to varying degrees by vegetation and/or topography.
37. Nonetheless, the viewer would be looking over falling ground towards the Cound Brook and its vegetated corridor. The related rise in topography and the placing of arrays on ascending ground, across a wide swathe of countryside, would have a long-term marked adverse effect on visual amenity and the experience of walking to and from Cantlop. Additional landscaping, reinforcing the foreground hedgerows of the appeal site, would offer little solace to the overall extensive adverse impact.
38. For completeness, albeit not of any great importance, a significant part of the development in the western parcel, and a small element in the eastern

parcel, would be clearly visible from a field gateway (viewpoint 17) at the crossroads junction leading into Cantlop.

39. More significantly, from the unnamed road in Cantlop (Viewpoint 14), sizeable portions of the installation in the eastern sector of the western field and across the eastern parcel would be an inevitable large scale blemish on the landscape for the duration of the development. Whilst there is no alleged impact on the amenity of residential properties in this part of the hamlet, local residents would experience the transformation to the rural landscape on a daily basis.

Other local highways (Viewpoints 1, 7, 9 and 19)

40. Starting with Cliff Hollow Road, beyond the lane to Cantlop Mill (viewpoint 1), much of the single-width road is bordered by hedgerow or sunken below the site, with the exception of two distinct field openings which would provide oblique views into the western parcel.
41. Construction phase effects would be localised and limited. On completion, the arrays would be set back at varying distances from the road and with hedgerow reinforcement, where necessary, the majority of the infrastructure would not be discernible. Despite the illustrated dense tall planting proposed at viewpoint 1, resulting in the loss of an extensive vista, I consider that it would be possible to devise a scheme that would provide a better balance between mitigation and the open aspect at this point.
42. Continuing with Cliff Hollow Road, between Berrington and the lane to Cantlop Mill (viewpoint 7), impacts would be contained to a small part of the eastern parcel and a minor part of the western field. These are likely to remain for the former during the operation of the installation.
43. The road from Newmam Hall Cottages into Berrington, borders the eastern boundary of the eastern parcel. Hedgerow precludes or filters views into the field which would limit construction phase effects and, with hedgerow reinforcement, any longer term effects would be minimal.
44. Viewpoint 19 relates to the north-western corner of the western parcel which sits well above road level and is bordered by a good hedgerow. It is representative of the road from the Cliff Hollow crossroads leading to the main site entrance. Impacts here, either during the construction or operational phases would be very minor.

Conclusion

45. It is acknowledged that the Officer Report restricted its reference to visual impacts to those at Cantlop and from the road leading to Cantlop Mill. Moreover, the Council's landscape adviser had supported the Appellant's Landscape and Visual Assessment methodology and conclusions that *'the proposals can be accepted in terms of visual and landscape effects'*⁹.
46. I also note that the Council's landscape evidence accepts the landscape effects assessed by the Appellant; and the visual effects on local residential properties are also agreed. The assessed effects on users of three public rights of way are also confirmed.
47. The Council's decision to refuse planning permission, reason two, alleged adverse visual impact at the two locations referred to by the Officer and

⁹ CD 3.1 paragraphs 6.5.7 & 6.5.8

added other publicly accessible views from the Berrington Road and the Eaton Mascot Road. Further 'affected' locations have arisen from public representations and the evidence for Flour not Power.

48. Taken in the round, it is my judgement that the proposed development would have a significant adverse effect on landscape character by changing its fundamental characteristics of a medium to large scale landscape at a local level.
49. In terms of visual effects, there would be some marked adverse effects arising from the construction phase but, more typically, from the long-term operational phase. Although these would not be consistent around the site, the most telling adverse effects would be from a southerly direction, reflecting the predominantly open southerly sloping orientation of the appeal site. The limitations of existing foreground filtering and the limited opportunity to remedy this through supplementary planting are a significant negative factor. The adverse impact of the scheme viewed from parts of public right of way 0407/16/1, in particular, is also an important factor.
50. In strategic policy terms, Core Strategy Policies CS6 and CS17, in short, require all development to (at least) protect the natural environment taking into account local context and character. SAMDev¹⁰ Policy MD12 is of similar vein, cross-referenced to the above policies, and indicates that proposals having a significant adverse effect on '*..... visual amenity and landscape character and local distinctiveness*' will only be permitted if it can be clearly demonstrated that '*the social or economic benefits of the proposal outweigh the harm to the asset*'.
51. It is also relevant to recount the Planning Practice Guidance which advises: '*The deployment of large-scale solar farms can have a negative impact on the rural environment, particularly in undulating landscapes. However, the visual impact of a well-planned and well-screened solar farm can be properly addressed within the landscape if planned sensitively*'.
52. Indeed, the Appellant does not shy away from acknowledging that the long-term effects would be '*moderate adverse and permanent*' and '*views from the south and east would be difficult to screen further*' beyond the mitigation proposed¹¹.
53. Overall, whilst some landscape and visual harm is generally to be expected from solar developments of the scale proposed, and found to be acceptable, in this instance the extent of the appeal site, its topography and open aspect to views from the south and east, and the limited effects of minimising those, indicate significant negative weight should be carried into the planning balance within the fifth main issue.

Issue Two:

The implications of, and the weight to be given to, the loss of best and most versatile agricultural land

Policy and guidance

54. With reference to best and most versatile agricultural land, Core Strategy Policy CS6 requires all development to make the most effective use of land, including high quality agricultural land.

¹⁰ Site Allocations and Management of Development Plan (2015)

¹¹ IN20 paragraph 7.3 (11)

55. Policy DP26 (2k) of the Draft Local Plan, in relation to large scale ground mounted solar farm proposals, indicates that *'where a proposal requires the use of agricultural land, poorer quality land should be used in preference to land of a higher quality (see also Policy DP18)'*.
56. Policy DP18 (5) encourages the re-use of brownfield land; and DP18 (4) confirms that *'development should avoid Shropshire's best and most versatile agricultural land (grades 1, 2 and 3a) wherever possible, unless the need for and benefit of the development justifies the scale and nature of the loss'*.
57. In turn, the Framework, at paragraph 180, explains that planning decisions should contribute to and enhance the natural and local environment by, amongst other things, *'recognising the intrinsic character and beauty of the countryside including the economic and other benefits of the best and most versatile agricultural land'*
58. Footnote 62, in relation to paragraph 181 and guidance on plans, tells us: *'Where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality'*
59. Allied to this, the Planning Practice Guidance¹² also confirms that *'where a proposal involves greenfield land, whether (i) the proposed use of any agricultural land has been shown to be necessary and poorer quality land has been used in preference to higher quality land; and (ii) the proposal allows for continued agricultural use'*
60. A further material consideration is the Written Ministerial Statement, made on 25 March 2015, which predated the Practice Guidance. By way of extract: *'Meeting our energy goals should not be used to justify the wrong development in the wrong location and this includes unnecessary use of high quality agricultural land we want to be clear that any proposal for a solar farm involving the best and most versatile agricultural land would need to be justified by the most compelling evidence'*.
61. Most recently, National Policy Statement for Renewable Energy Infrastructure (EN-3)¹³ states: *'While land type should not be a predominating factor in determining the suitability of the site location applicants should, where possible, utilise suitable previously developed land, brownfield land, contaminated land and industrial land. Where the proposed use of any agricultural land has been shown to be necessary, poorer quality land should be preferred to higher quality land avoiding the use of "Best and Most Versatile" agricultural land where possible'*.
62. Drawing these threads together, none of the documents, in particular the development plan, place an embargo on the use of best and most versatile agricultural land. In terms of material considerations, the Draft Local Plan, in general terms, follows the thrust of the Framework, the Planning Practice Guidance and EN-3. The Written Ministerial Statement, with its 'higher bar', remains extant alongside subsequent guidance.

Site selection

63. The Sequential Site Selection Report¹⁴ accompanying the planning application, which claimed to have taken a *'robust approach to identify sequentially preferable sites for the proposed development'*, was criticised, by the Council, in the choice of brownfield sites for assessment and the failure to consider any other greenfield sites.

¹² CD 6.2 Renewable and low carbon energy – Published 18 June 2015; last updated 14 August 2023

¹³ CD 6.4 Paragraph 2.10.29 (November 2023)

¹⁴ CD 1.13

64. The later Sequential Site Selection Report Addendum: Sites Assessment¹⁵ was also derided by reference to its limited area of search, the size of land parcels assessed, lack of detail and the likelihood of lower grade agricultural land based on Natural England's Agricultural Land Classification (ALC) mapping.
65. It is evident that the key factor defining the area of search was based on the offer of a grid connection between the substations at Bayston Hill and Cross Houses. Whilst like-for-like land parcels might have been to some advantage, the document is in summary form and the ALC mapping identifies much of the land in the same category as the appeal site (60% probability of best and most versatile agricultural land).
66. To my mind, based on the critical importance of a viable grid connection, a 3km search area appears proportionate in the circumstances of this case. There are also a number of other important factors, described in the Addendum, which explain the exercise adopted by the Appellant.
67. It is easy for opponents to claim 'fundamental flaws' in the process by suggesting that there are large areas of likely poorer quality land elsewhere (mainly in the north of the county); there is no requirement to approach other landowners; and the analysis by sub-dividing one of the larger parcels identified in the Addendum, and surmising suitability, appears to be ruled out by the likelihood of another party promoting a scheme in the future.
68. Moreover, there is no policy requirement to carry out an evaluation of alternative sites or guidance on the contents of such reports. Understandably, they will be at a relatively 'high-level', as detailed assessment of sites within a given radius would be disproportionate. In any event, it would not be feasible to carry out detailed ALC assessments, for example, without the permission of landowners.
69. Further, the legal position is common ground with reference to *Bramley*¹⁶ in which it was held '*..... the PPG does not mandate the consideration of alternatives. Still less does it require a sequential test be adopted'*

Agricultural land quality

70. I now turn to the site specific considerations and the composition of the appeal site in terms of agricultural land quality. It is common ground that approximately 88% of the land surveyed within the site is best and most versatile agricultural land.
71. The Agricultural Land Classification Survey¹⁷, that accompanied the planning application, reports 22.4ha of Grade 2 land; 12.4ha of Subgrade 3a land; and 4.9ha of Subgrade 3b land. It is recorded that 1.7ha was not surveyed.
72. The underlying geology is the Salop Formation – a mudstone and sandstone conglomerate. The soils over much of the site are shown as predominantly deep reddish fine loamy soils with some deep well drained coarse loamy soils, which are widespread across the district and the wider region.

¹⁵ CD 4.5

¹⁶ CD 7.1 *Bramley Solar Farm Residents Group and Secretary of State for Levelling Up, Housing and Communities [2023] EWHC 2842 (Admin)* before Mrs J Lang DBE (15 November 2023)

¹⁷ CD 1.3

73. Flour not Power criticises the ALC for not mapping land of Grade 1 quality within the site. However, whilst it would have been possible to do so, there is no obfuscation as the survey details, within Appendix 3, identify those auger borings where Grade I land was found. Indeed, some 13 of the 41 sample points indicated Grade 1 land, grouped in the south-western and south-easterly corners of the western field and in similar locations in the eastern field. These tend to be within the more acutely sloping parts of the appeal site.
74. Whilst the key to the auger records lists ten potential limitations, including 'gradient', only two are recorded in the table of survey details, namely 'droughtiness' and 'wetness'. It is also noted that the Executive Summary to the ALC notes *'The main limitations to the agricultural use of the land include soil wetness or soil droughtiness'*.
75. Moreover, paragraph 1.1 states: *'The land is [sic] falls very gently (0- 3°) from the boundary with Cliff Hollow to the southern boundary. In the north-western part of the site there is a 'valley' feature with some slopes of 8°*. The MAFF guidelines¹⁸ indicate the gradient limit for Grades 1 and 2 and Subgrade 3a to be of 7°.
76. The Appellant's proof, reinforced in evidence at the Inquiry, acknowledges the presence of Grade 1 profiles within the appeal site, noting that *'in the south part of the site the soil textures are variable and the land falls to the field boundary'*. Although recording in the ALC appears to have been somewhat superficial and vague, it is evident to me that parts of the appeal site are likely to be constrained by gradient.
77. On this basis, I accept that the surveyor undertaking the ALC was entitled, as a matter of professional judgement, to take a rounded view having particular regard to the MAFF descriptions of ALC grades and subgrades. In addition, the guidelines provide a framework for classifying land, recognising the effects of limiting factors and that variability within a discrete area is to be expected¹⁹; and the implications for soil management, cropping decisions and yields.
78. Flour not Power also suggested that some of the limitations could be remedied by irrigation. This would elevate a further four auger locations to Grade 1, three of which would be adjacent to other Grade 1 borings, and uplift three borings from Subgrade 3a to Grade 2. It acknowledges, however, that upgrading the land due to irrigation would not change the overall percentage of best and most versatile agricultural land within the appeal site.
79. It remained in dispute as to whether or not the MAFF guidelines on irrigation continued to be a relevant factor after 1997. Either way, and irrespective of the reservoir adjacent to the appeal site boundary, there is nothing to suggest that the discreet areas of 'better land' would determine the overall characteristics and use of either of the two fields forming the appeal site.

¹⁸ CD 9.1

¹⁹ CD 9.1 – The Inspector notes that the guidance expects this to be identified where the mapping scale permits as indicated by Flour not Power

Construction and operational effects

80. The primary comprehensive Statement of Common Ground between the Appellant and the Council accepts that the proposal is temporary; it will not result in permanent loss of agricultural land subject to adherence with a Soil Management Plan; and some agricultural activity, such as grazing, could continue during the operational phase.
81. In turn, the soil specific Statement of Common Ground between the Appellant and Flour not Power confirms that the outline soil management plan sets out the best practice methodology for the management of the soil resources; and that a detailed management plan can be prepared for the whole life - from pre-construction to decommissioning of the proposed solar farm - to ensure the protection and conservation of all soil resources and follow best practice to maintain the physical properties of the soils on site.
82. Two related points of dispute are whether there is an adverse impact resulting from the loss of arable production potential during the lifetime of the development; and whether the site would be capable of being reverted to best and most versatile agricultural land.
83. The Planning Practice Guidance confirms that the consideration of whether continued agricultural use is a material factor; and indicates that solar farms are normally temporary structures and planning conditions can be imposed to ensure the land is restored to its previous use.
84. National Policy Statement EN-3 explains that *'where sited on agricultural land, consideration may be given as to whether the proposal allows for continued agricultural use'* It also encourages the development and implementation of a Soil Resources and Management Plan and confirms that a *'time limited consent, where granted, is described as temporary because there is a finite period for which it exists'*²⁰.
85. The same document provides some detail in relation to mitigating potential effects on soils as follows: *'The Defra Construction code of practice for the sustainable use of soils on construction sites²¹ provides guidance on ensuring that damage to soil during construction is mitigated and minimised. Mitigation measures focus on minimising damage to soil that remains in place, and minimising damage to soil being excavated and stockpiled. The measures aim to preserve soil health and soil structure to minimise soil carbon loss and maintain water infiltration and soil biodiversity. Mitigation measures for agricultural soils include use of green cover, multispecies cover crops - especially during the winter - minimising compaction and adding soil organic matter²².*
86. These extracts, in particular, undermine Flour not Power's view that *'there is little evidence provided that the site will ever return to formal agriculture, let alone arable farming, or that its fertility and soil health will be maintained'*. Further criticism is made of the content of the ALC and the outline soil management plan.
87. The declared purpose of the Soil Management Plan (Outline) is: *'to ensure the protection and conservation of soil resources on site; identify best practice to maintain the physical properties of the soils on site; provide on-site reference on the*

²⁰ CD 6.4 paragraphs 2.10.32; 2.10.34; 2.10.66

²¹ CD 9.2

²² CD 6.4 paragraph 2.10.27

management of the soil resource for site operators’; and ‘to ensure that the land is physically capable of reverting to arable production at the end of the life of the solar farm’. It would apply at each of the three stages of the project, namely, construction, operation and de-commissioning.

88. I am satisfied that the document follows good practice, developed and established over a number of years and supplemented by the recent IEMA *‘A New Perspective on Land and Soil in Environmental Impact Assessment’*²³. Draft condition 25 would secure further details before works could commence.
89. Although particular concern has been expressed about soil compaction, such factors as soil texture, moisture content and soil condition would be assessed; and works and trafficking would be controlled through the appropriate site management of operations in accordance with the scheme to be approved.
90. Indeed, whilst I acknowledge the concerns raised, the evidence of Flour not Power’s expert witness admits, having illustrated the kinds of soil structural damage that can occur, that *‘a detailed soil management plan is essential for the construction operation and decommissioning of the Solar Site’*²⁴.
91. Overall, given the ability to determine methods of working with appropriate safeguards and monitoring, I am satisfied that soil structure, health and future productivity could be maintained.
92. Finally, although grazing livestock amongst solar arrays is not without difficulty, the Agricultural Good Practice Guidance for Solar Farms²⁵ confirms the common practice of grazing the land between and underneath the solar arrays typically by sheep or free-ranging poultry. It also sets out times when grazing might be restricted and indicates when pasture management interventions might be required.
93. In this regard, draft condition 21 would secure a scheme providing measures to facilitate sustainable grazing, including grass sward specification, potential stocking type and density and a monitoring regime. Whilst Flour not Power claims that *‘the reality is that ‘nothing’ grows under the panels, or that only weeds grow and must be sprayed’*, the Natural Capital Best Practice Guidance provides cogent reassurance.
94. Although maligned as an ‘industry publication’ under the banner of Solar Energy UK, the Forward is written by the Chair of Natural England. Whilst much of the document is aimed at natural capital enhancement, the role of sheep-grazing is recognised and guidance is provided on operational measures for grassland management and *‘control of injurious weeds’* without extensive recourse to chemical controls. Moreover, the single axis tracker system and employment of panels oriented east-west, as opposed to fixed tilt panels facing south, is likely to reduce under-panel shading.
95. Overall, I conclude that in relation to the construction, operational and decommissioning phases, there is nothing of substance to counter the Appellant’s position that the physical characteristics of the soil, subject to safeguarding measures, and land quality would remain at the end of a forty-year temporary permission.

²³ CD 9.10 Institute of Environmental Management & Assessment (IEMA) Guide – February 2022

²⁴ CD 14.2 paragraph 5.25

²⁵ CD 9.3

Food production and food security

96. Paragraph 124 b) of the Framework recognises the role of land for food production and Footnote 62 to paragraph 181 states: *'The availability of agricultural land used for food production should be considered, alongside the other policies in this Framework, when deciding what sites are most appropriate for development'*.
97. It is understandable that the consideration of food security has attracted greater prominence with recent conflict in Ukraine and the Middle East. Prior to these events, the Agriculture Act 2020 imposed a new duty on the relevant Secretary of State to report to Parliament on food security in the United Kingdom at least once every three years.
98. The UK Food Security Report 2021, a weighty document, reflects the statement *'Food security has many dimensions. As a topic, it encompasses the state of global agriculture and markets on which the UK is reliant; the sources of raw materials and foodstuffs in the UK and abroad; the manufacturing, wholesale, and retail industries that ultimately bring food to shelves and plates, and their complex supply chains of inputs and logistics; and the systems of inspection that allow consumers to be confident their food is safe, authentic, and of a high standard'*²⁶.
99. The document acknowledges that although the UK is around 75% self-sufficient in foodstuffs that can be produced domestically, almost half of food consumed in the UK is imported. It notes, under the heading *'Theme 1: Global Food Supply'*, that *'global food supply and availability has improved since 2010, which is a positive sign for the UK's overall food security'* and *'projected growth in agricultural production will be largely due to increasing cereal yields and efficiency improvements in meat and dairy production'* However, it warns that *'several factors threaten the stability and long-term sustainability of global food production: climate change and climate variability, biodiversity loss'*
100. A key message from *'Theme 2: UK food Supply Sources'* is: *'the biggest medium to long term risk to the UK's domestic production comes from climate change and other environmental pressures like soil degradation, water quality and biodiversity. Wheat yields dropped by 40% in 2020 due to heavy rainfall and droughts at bad times in the growing season. Although they have bounced back in 2021, this is an indicator of the effect that increasingly unreliable weather patterns may have on future production'*.
101. The two fields within the appeal site are currently used for arable crop production, on rotation, that can be used for food production or animal feeds, with oil seed rape also having industrial applications. It is estimated that the yield from a wheat crop covering the appeal site would be some 0.002% of the national yield and about 0.003% for an oat crop. The contribution to the county's cereal yield would be about 0.06%.
102. It can be seen that the potential contribution of the appeal site to county and national food supply production and security is very small and insufficient to tell against the appeal proposal. Indeed, there is a balance to be struck between the temporary loss of best and most versatile agricultural land and renewable energy generation.

²⁶ CD 9.5 page 7 'What is food security'.

Farm diversification

103. The Appellant's Agricultural Production Assessment²⁷ indicates that Berrington Farm extends to 152.6ha. Some 58ha was entered into an Entry Level and Higher Level Stewardship Agreement in 2012 with related payments. These will reduce as a result of the Agricultural Transition and the farm business will lose a significant part of its income. It is said that the appeal proposal would provide an additional income stream to support the wider agricultural enterprise and result in biodiversity net gains.
104. It is argued by the Appellant that the proposal would represent economic diversification within Core Strategy Policy CS13. This is disputed by the Council, claiming that such proposals lie out-with the types of development anticipated by the policy. However, this is at odds with the position the Council took at the Kemberton Inquiry by reference to paragraph 56 of the appeal decision: '*..... at the inquiry, the Council acknowledged that the use of agricultural land for solar energy is an example of economic activity associated with agricultural and farm diversification even if not listed as such in this policy²⁸*'.
105. Policy CS13 reads: '*Shropshire Council, working with its partners, will plan positively to develop and diversify the Shropshire economy, supporting enterprise, and seeking to deliver sustainable economic growth and prosperous communities. In doing so, particular emphasis will be placed on: in rural areas, recognising the continued importance of farming for food production and supporting rural enterprise and diversification of the economy, in particular areas of economic activity associated with agricultural and farm diversification, forestry, green tourism and leisure, food and drink processing, and promotion of local food and supply chains. Development proposals must accord with Policy CS5*'.
106. To my mind, the policy does not clearly define, or indeed restrict, '*farm diversification*' and the explanatory text takes matters no further in its reference to '*agricultural and non-agricultural farm diversification*'. Plain reading does not indicate to me that the proposal would conflict with Policy CS13.

Conclusion

107. In summary, I am satisfied that the Site Sequential Selection Report and its Addendum provides clear support for the development of the proposed solar farm on the appeal site. Inevitably, for the lifetime of the development, best and most versatile land would not be capable of use for its full agricultural potential, albeit some grazing could take place. However, the site would be capable of restoration to at least its current quality at the end of the forty year period. I have found no adverse effects relating to food production and food security and there would be a benefit to the farm business arising from the proposal.
108. In my opinion, the harm arising from the failure to make the most effective use of high quality agricultural land, and conflict with Core Policy CS6, is a factor of moderate negative weight. Draft Local Plan Policies DP26(k) and DP18(4), which merit moderate weight consistent with progress to adoption, when read together, seek to avoid the loss of best and most versatile agricultural land wherever possible, unless the need for, and benefit of, the development justifies the scale and nature of the loss. National guidance is also a material consideration. These are matters for further consideration in the assessment of the fifth main issue and the overall planning balance.

²⁷ CD 1.20

²⁸ CD 7.40 paragraphs 55 -56

Issue Three:

Whether the proposed off-site compensation would provide an appropriate safe and undisturbed environment for successful Skylark nesting

Introduction

109. It is noted that the Appellant and the Council agree that sufficient environmental information is available for the purposes of impact assessment. I do not have a contrary view.
110. By way of background, the Officer Report contains brief reference to Skylarks subsumed within the Ecology sub-section of 'Other environmental considerations' as follows:

'An Updated Layout Plan and Landscape Masterplan have been prepared in response to comments received from SC Ecology. The updates are: Skylark Protection Areas: The proposed layout scheme now accommodates off-site 'Skylark Protection Areas' to the north of the proposed solar farm. These areas will be transformed into species rich grassland and will form suitable habitat for skylarks. This would be secured by means of a s106 legal agreement

SC Ecology has not objected subject to a number of ecological conditions linked to habitat / biodiversity management / enhancement (included in Appendix 1). They requested further information in relation to mitigation for effects on Skylark habitat. In response the applicant has identified a specific area for Skylark mitigation in fields to the immediate north of the proposed site and has put forward specific management measures for this area to ensure that the habitat remains optimal for Skylark throughout the operational life of the proposed development. These provisions would be secured by means of a s106 Legal Agreement. Subject to this it is concluded that the Proposed Development complies with relevant planning policy regarding ecology / biodiversity (CS6, CS17, MD12).²⁹

111. In turn the decision to refuse planning permission states:

'Skylarks are protected under the EU Birds Directive 79/409/EEC. The application affects land which is used by Skylarks for nesting. The applicant proposes to mitigate for the loss of nesting opportunity by providing protected plots on land to the immediate north of the site. However, this land is of a different character and the general area is also used for seasonal shooting which may coincide with the Skylark nesting season. It is considered that the applicant has not demonstrated sufficiently that the proposed off-site mitigation would provide an appropriate safe and undisturbed environment for successful Skylark nesting. The proposals are therefore contrary to Core Strategy Policy CS17 and SAMDev policy MD12³⁰.

112. During the Inquiry it was conceded that the shooting and nesting seasons did not coincide and this part of the reason for refusal was not pursued.

Planning policy and guidance

113. At this point it is helpful to set out the two relevant policies. Core Strategy Policy CS17 is a multi-dimensional policy seeking to '..... protect, enhance, expand and connect Shropshire's environmental assets'. SAMDev Policy MD12, the natural environment, provides a more definite requirement:

'In accordance with Policies CS6, CS17 and through applying the guidance in the Natural Environment SPD, the avoidance of harm to Shropshire's natural assets and their conservation, enhancement and restoration will be achieved by ensuring

²⁹ CD 3.1 paragraphs 6.7.7 & 6.7.8

³⁰ CD 3.2 Reason 3

that proposals which are likely to have a significant adverse effect, directly, indirectly or cumulatively on any of the following priority species will only be permitted if it can be clearly demonstrated that:

a) there is no satisfactory alternative means of avoiding such impacts through re-design or by relocating on an alternative site and;

b) the social or economic benefits of the proposal outweigh the harm to the asset.

In all cases, a hierarchy of mitigation then compensation measures will be sought’.

114. In its Supplementary Statement of Case, the Council identified as relevant to its case Policies DP12 and DP26 of the emerging Local Plan. The former, in relation to priority species, repeats a) and b) of SAMDev Policy MD12 and adds:

‘Ensuring that where proposals meet these tests, mitigation measures to reduce the harm will be sought in the first instance. Compensation measures for residual harm will only be accepted as a last resort. Mitigation and compensation measures must be demonstrated to be achievable and be in accordance with policies DP14, DP15, DP16, DP17, DP19, DP22 and DP23. Appropriate conditions and/or planning obligations will be used to ensure that such measures are fully implemented and monitored where required’.

115. Draft Policy DP26, in relation to new strategic infrastructure, indicates that new non-wind renewable and low carbon development will be supported where its impact is, or can be made acceptable and is cross-referenced to Draft Policy DP12.

116. The Framework at paragraph 185 b), in relation to plans, seeks ‘..... *the protection and recovery of priority species’*. In relation to determining planning applications, at paragraph 186 a), the following principle should be applied:

‘if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused’.

117. Circular 06/2005³¹ advises that all species of birds are protected within Great Britain under the provisions of the Wildlife and Countryside Act 1981. Paragraphs 96 – 99, in relation to the conservation of species protected by law are to be read as a whole, but the focus of controversy at the Inquiry was paragraph 99:

‘It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision’.

118. Further, the Skylark is listed as a species of principal importance in England under section 41 of the Natural Environment and Rural Communities Act 2006. They are also on the Red List in the Birds of Conservation Concern in the UK 2021.

³¹ IN4

Ecological Impact Assessment and development of a Skylark strategy

119. The July 2022 assessment that accompanied the planning application reported the findings of the breeding bird surveys in the earlier part of the year, recording a total of 24 species breeding on the appeal site of which five species were red listed and seven were amber listed birds of conservation concern. The high number of Skylarks was of particular note with a minimum of 11 territories across the site. The site was assessed as 'site and local importance' for birds.
120. Despite the importance of Skylarks, a declining species, and the anticipation of a net loss of habitat on site, the assessment assumed no significant effects on the population at local, regional or national levels as a result of the development. It concluded '*similar alternative habitat is present within the immediate area, with Skylark present in all adjoining land parcels outside of the site boundary, and therefore no significant local scale impacts are expected*³². This has the hallmarks of being naïve and superficial.
121. The amended report (January 2023) aimed to provide some remedy, noting the research of others that Skylarks are unlikely to nest amongst solar arrays, offered Skylark Protection Areas to be maintained as suitable nesting habitats alongside '*..... similar alternative habitat present within the immediate area* ³³.
122. Exchanges of correspondence between the Council and the Appellant sought to resolve the Council's concerns about the adequacy and effectiveness of the proposed mitigation measures. In turn, the Appellant's Skylark Mitigation and Management Plan (May 2023) identified 25ha of land to the north of the appeal site ('the compensation land') that was considered to be the nearest suitable land for compensation '*..... and will easily accommodate the minimum required area of 6ha*³⁴.
123. Management regimes and conservation objectives were identified should the land be retained as pasture or if it were to revert to arable use.

Establishing the relevant baselines

124. The Council was particularly critical of the Appellant's approach to, and recording of, the breeding bird survey on the appeal site and the presentation of information. Whilst it was countered that the absence of mid/late season surveys was a reasonable exercise of professional judgement, it is notable that the survey report was completed in July 2022 shortly before the submission of the planning application. I also accept that record keeping might have been fuller and more transparent. Nonetheless, there is firm evidence of the importance of the appeal site to nesting Skylarks and I am content that the criticisms do not go to the heart of this main issue.
125. The absence of corresponding surveys on the compensation land is understandable and would have served little informative purpose given the hitherto regime of intensive cattle grazing which is not conducive to Skylark nesting habitat.

³² CD 1.24E [Superseded] section 6.1.9

³³ CD 1.23 section 6.2.5

³⁴ CD 1.15 section 3.2

The compensation land

126. The essence of this point, emerging from a lengthy debate at the Inquiry, is whether or not the compensation land would provide adequate nesting habitat for Skylarks displaced from the appeal site. The Appellant's case, simply put, is that the Unilateral Undertaking, reinforced by a negatively worded planning condition, would provide certainty.

127. Schedule 1 of the Unilateral Undertaking provides:

'The Owners covenant (to the extent that such obligations are applicable to their respective interests in the Mitigation Site and/or the Application Site as relevant) with the Council:

1. *Prior to Commencement of Development to implement the Skylark Mitigation Strategy secured by way of planning condition attached to the Planning Permission;*
2. *Not to Commence Development unless and until the Skylark Mitigation Strategy has been implemented in full and written confirmation of such implementation has been issued to the Council; and*
3. *To Maintain the Skylark Mitigation for the lifetime of the Development'.*

128. In turn, draft condition 28³⁵ would preclude development until the Skylark Mitigation Strategy, following the principles of the May 2023 version with the addition of six criteria, has been submitted to and approved in writing by the local planning authority.

129. The Planning Practice Guidance confirms that conditions requiring works on land that is not controlled by an applicant can be imposed in a negative form (a Grampian condition), prohibiting development authorised by a planning permission until a specified action has been taken. However, such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission. It is not suggested that there are 'no prospects' and I agree.

130. Nonetheless, a number of matters of disagreement remain in play. The first, regarding the lack of certainty about the future use and management regime for the mitigation land, flows from the ending of the Higher Level Stewardship Scheme and the potential for the site to revert to arable use (subject to approval by Natural England). Nonetheless, the Mitigation Strategy provides a series of principles for either of the outcomes.

131. The Appellant's witness was confident that the implementation of the mitigation strategy would provide adequate compensation for the displaced pairs of Skylarks. This was not just in terms of numbers but also by improving breeding productivity due to increased invertebrate availability on a qualitative basis. He also highlighted the certainty that would occur over the lifetime of the development as opposed to the unrestricted ability of a farmer to change cropping regimes without consideration of Skylark provision.

132. However, that leaves in doubt the potential habitat carrying capacity of the compensation land which ultimately will depend on future land use. Irrespective of the debate about the possible conversion to arable, various

³⁵ The draft condition is not agreed by the Council or Flour not Power

uses, including the spontaneous suggestion of organic set-aside, were canvassed in evidence reflecting an ascending hierarchy favourable to Skylarks.

133. It is said '*precisely how far up the hierarchy of habitat carrying capacity can be achieved will be a matter for discussion with and control by the Council*'³⁶. In my opinion, although the objective would be to seek to maximise this, and noting the interaction between qualitative and quantitative habitat provision, it does not assist in establishing the extent to which Skylarks might be affected.
134. Moreover, it was argued that any potential impacts, to the extent that they might occur, would not be significant in terms of either the local, county or national populations and the conservation status of the species would be maintained.
135. Indeed, the development plan and the Framework are written in the language of avoiding 'significant' adverse impacts. In addition, the development plan is phrased on the basis of avoiding harm to Shropshire's natural assets and their conservation, enhancement and restoration.
136. However, that does not suggest to me that impacts on protected species should be considered at what would be an artificially broad geographical area, since it would take a very substantial single loss or a cumulation of losses to reach such a high bar. To my mind, it is relevant to consider the materiality related to a site specific proposal. In fact, Natural England's standing advice³⁷ talks of '*no net loss*' when assessing a planning application.
137. Natural England's advice also counters the claim that disproportionate consideration has been given to Skylarks on the basis that, in the Appellant's experience, it is not usual to provide mitigation based on a definitive number of pairs of birds or number of animals. Insofar as I accept that proposition in general terms, here we have a recorded baseline of a minimum number of breeding pairs. If there is to be no net loss, then it would not be unreasonable to provide equivalence through compensation measures to the extent reasonably possible.
138. Further to this point, whilst I recognise that the improvements to hedgerows, boundaries and margins on the appeal site would be of benefit to other red-listed breeding bird species, there is nothing to suggest that gains for one or more other species should be a counterbalance for a proposal which would displace another priority species in decline.
139. During the Inquiry, extensive reference was made, in particular, to an article by Harry Fox MCIEEM under the banner '*Blithe Spirit: Are Skylarks Being Overlooked in Impact Assessment*'. Although the paper is intended to provide a starting point for discussion and re-examination on ground-nesting birds (GNBs) mitigation, and carries minimal weight, it does highlight some understandable concerns by reference to the following extracts:

'While the fortunes of GNBs may be dramatically influenced by changes in agricultural policy, piecemeal developments have the potential to exacerbate local declines and place greater pressure on remaining habitats to absorb displaced birds

³⁶ IN20 paragraph 8.16 (8)

³⁷ CD 10.11 page 11

..... it would appear there is an inconsistency in understanding of not only skylark ecology, but opinion on what might constitute an impact, and what mitigation could be employed³⁸.

Conclusion

140. From the foregoing it can be seen that the Appellant's initial premise, that Skylarks would simply seek nesting opportunities elsewhere, evolved through several iterations culminating in an eventual proposition to provide off-site compensation.
141. I am in no doubt that the appeal proposal is likely to have a significant adverse effect on a priority species, notably the Skylark which attracts significant negative weight. It has also been shown that there is no satisfactory alternative means of avoiding the adverse effect through re-design or by re-locating on an alternative site. Development plan policy requires a corresponding exercise of balancing the social or economic benefits of the proposal.
142. I return to this, and the consideration of the Grampian condition and Unilateral Undertaking in Issue Five and the planning balance below.

Issue Four:

The effect of the proposal on the setting and significance of heritage assets

Introduction

143. The Framework establishes that heritage assets *'are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations'*.
144. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 sets out the statutory duty to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses in considering whether to grant planning permission for development which affects a listed building or its setting.
145. The Appellant's Built Heritage Statement recorded 31 designated heritage assets within a 1km radius of the appeal site; and none within its boundaries. It concluded that *'..... the majority of the designated heritage assets within the 1km study area and beyond have no potential to be affected by the proposed development'*. Closer analysis indicated that *'only five designated heritage assets could potentially be affected by the proposed development'*; and *'..... the proposed development will result in no negative impact on the heritage significance of these designated heritage assets via any change to their setting'³⁹.*
146. Flour not Power's Built Heritage Reappraisal notes the limitations of the Appellant's survey site visit and seeks to demonstrate the intrinsic interconnectivity of the Cound Brook valley through the Parish as an important part of a wider heritage environment.

³⁸ CD 10.22 page 2

³⁹ CD 1.6 section 8 Conclusions

147. It is said that *'most of the extant historic buildings in the area demonstrate the link between the land and its people'⁴⁰. 'The parish today presents a layout and appearance bearing a strong resemblance to its seventeenth century character and it is one of several villages nearby (including Condover and Acton Burnell) that are fine examples of pre-industrial rural Shropshire life and as such this landscape forms a characterization that needs to be taken into account when considering the impact of the setting of historic assets by the proposed development'⁴¹.*
148. Flour not Power identifies four 'key heritage assets' which it considers to be at most risk of negative impact from the proposed development.

Cantlop Bridge Grade II* Listed Building

149. Cantlop Bridge was opened in 1813 to a Thomas Telford approved design. It is an important early example of a single-span cast-iron bridge which displays particularly well-executed detailing. It survives in its original form and retains its original ironwork and masonry and is considered to be the only Telford-approved cast-iron bridge remaining in situ in Shropshire.
150. In addition to the significance of the bridge itself, the setting of the structure contributes to its significance. Its functional purpose is intrinsically linked to the Cound Brook, the original road alignment on each side of the bridge and the immediate surrounding fields. There is also a wider associated connection as the bridge was built by public subscription collected from the residents of Berrington and Cantlop. The bridge replaced a ford across the brook and provided an alternative to the small mill bridge at Cantlop Mill.
151. The appeal site is some 125m to the north at its closest point, elevated and with its facing slope clothed in trees. Although the wooded area has been thinned, post-dating the photographic images before me, topography and remaining tree cover limit the extent of setting. Moreover, the proposed arrays would be further removed by their set back within the appeal site.
152. Flour not Power suggests that the proposed development would be visible from a wider area, and argue that the setting of the bridge includes the historic turnpike which serves as a tourist route today linking nationally important heritage sites.
153. Nonetheless, this does not change my perception of significance derived from setting. Overall, I conclude that the proposal would not affect the heritage significance of the bridge or how it is experienced. As such the proposal would have a neutral effect.

Berrington Farm House Grade II Listed Building

154. The farmhouse dates from the seventeenth century with later extensions, retaining much of its historic fabric. It has an extensive range of traditional farm buildings and yard to the rear and the farmhouse has prominence and standing from the road running through the village.
155. The farmhouse is perceptible in longer-distant views, notably from Cantlop. The farm was once part of the estate of Sir Edward Joseph Smythe of Acton Burnell Castle, High Sheriff of Shropshire. An advertisement of 1887 lists the farm with 389 acres.

⁴⁰ CD 14.3 paragraph 4.13

⁴¹ CD 14.3 paragraph 4.23

156. It is acknowledged that there was once an historical functional relationship between the farmhouse and the appeal site, having formed part of its agricultural landholding.
157. Flour not Power suggests that the view from the property contributes to its heritage significance within the wider landscape, sharing much of its historical significance with other listed buildings in the wider area.
158. The farmhouse occupies a prominent position in the settlement and has wide-ranging views from its principal south-easterly aspect. However, it does not directly overlook the appeal site which is situated obliquely to the south-west of the house; on falling ground, with intervening landscape cover; and with the eastern field being one field removed from Cliff Hollow Road.
159. In terms of the relationship from the wider countryside, although the arrays would form an obvious component of the immediate foreground, the significance of the farmhouse as a prominent building with historic connection to the wider landscape, and the appeal site itself, would not be lost.
160. On this basis, I consider that the proposed development would not materially harm the understanding of the asset within the context of the Cound Brook valley, or wider, and the effect of the appeal scheme would be neutral.

Newman Hall Cottages Grade II Listed Building

161. Newman Hall Cottages, now a single dwelling, dates from the seventeenth century. It was remodelled in the eighteenth century and extended at the beginning of the twentieth century. The isolated former cottages were home to 'ordinary' labourers who worked in the countryside and provide understanding of rural life.
162. However, there is no documented direct historical functional or economic relationship with the appeal site. It is to be noted that the dwelling, as currently presented, does not have primary aspect towards the appeal site and it is substantially larger than the original cottages. Moreover, there is some intervening established vegetation, additional planting could be secured and the arrays would be set back from the appeal site boundary.
163. Overall, I am satisfied that the proposal would neither sever the association of the cottages with the agricultural landscape or reduce the understanding or significance of the asset and how it is experienced as part of a wider appreciation of the historic landscape. Accordingly, the proposal would have a neutral effect.

Cantlop Mill – Locally Listed

164. The former corn mill has a longstanding importance with the local community. Its access road, between the eastern and western fields of the appeal site, was once the main communication route between Cantlop and Berrington and bridging point over the Cound Brook. The mill was rebuilt, with public subscription, in 1854 after a fire. There is evidence that in the nineteenth century the tenant of the mill, a potato grower, also cultivated several fields, including those that comprise the appeal site.
165. The former mill and associated buildings sit deep in a tree-covered valley, close to, but well below the level of, and screened from the appeal site. There is therefore no direct visual connection between the asset and the appeal site.

166. Flour not Power argues that it is the association of the ancient route between the hamlets that constitutes the heritage significance of setting. Although glimpses of the arrays either side of this artery would be evident, and with wider views where the access track between the two fields crosses the public highway, I am satisfied that this would not adversely affect the heritage significance of the mill complex or how it is experienced. On this basis the effect of the proposal would be neutral.

Conclusion

167. From my analysis of the material before me, and my site visits, I am satisfied that the detail in the Appellant's Built Heritage Statement was proportionate to the importance of the assets concerned. In turn, this has been supplemented by the Appellant's Heritage Note and Flour not Power's Built Heritage Reappraisal. Having considered all of this material I conclude, in light of my statutory duty, that the appeal proposal would have a neutral effect on the setting and significance of heritage assets.

Issue Five:

The nature and extent of the benefits of the proposal and whether these would outweigh any harm arising from the issues above

168. The benefits of renewable energy generation are not in dispute and can be recorded briefly without undermining their importance. Principally, the proposal would generate enough electricity to power approximately 7,000 homes annually giving a CO₂ saving of approximately 6,000 tons per annum. The planning application was supported by the Council's Climate Change Task Force⁴².
169. The development plan is dated and, understandably, does not identify areas suitable for renewable energy development; and the emerging local plan does not go beyond a criteria based policy in DP26. The Council declared a Climate Emergency in May 2019 as an acknowledgement that it needed to act on climate change.
170. The appeal site is included on the broad brush siting possibilities map produced by Zero Carbon Shropshire⁴³ for ground mounted solar development, albeit meriting very little weight.
171. In terms of the development plan, no breach of Core Strategy Policy CS8 was alleged: *'The development of sustainable places in Shropshire will be assisted by positively encouraging infrastructure, where this has no significant adverse impact on recognised environmental assets, that mitigates and adapts to climate change, including decentralised, low carbon and renewable energy generation*'. The Officer Report also confirmed that the proposal met the criteria for development in the countryside set out by Core Policy CS5. I note also that the Report cites Core Strategy Objective 9 which *aims 'to promote a low carbon Shropshire*'.

⁴² CD 3.1 paragraph 4.3

⁴³ 'Zero Carbon Shropshire is an action-driven partnership of local people and businesses, all dedicated to helping our county fight climate change. Together, we're taking a co-ordinated, collaborative response to the climate and ecological crisis at local level'.

172. At the national level, the amended Climate Change 2008 targets are material and guidance on renewable energy provision includes, but is not limited to, the topic specific Planning Practice Guidance, the Framework, the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Renewable Energy (EN-3).
173. Overall, the Council's planning witness accepted that the renewable energy benefits of the proposal should carry substantial weight. Given the policy imperative, and the fact that the Appellant has secured a grid offer that is available from 2024, I agree.
174. In terms of biodiversity net gain, hedgerows would be reinforced around the appeal site and the fields would be planted with species rich grassland. The proposal would deliver net gains of 123% in habitats and 76% in hedgerows for the appeal site. These important benefits attract significant weight.
175. The economic and employment benefits of the appeal scheme relate principally to the construction phase, and in turn the employment generated by decommissioning, and I apportion limited weight.
176. Set against these benefits is the significant harm to landscape character and visual amenity at a local level. The harm arising from the failure to make the most effective use of high quality agricultural land carries moderate weight. There are no adverse effects in terms of heritage assets.
177. In closing, it was said for the Appellant that '*secondary issues seem to [have] take[n] on a disproportionate importance or the potential to displace a tiny number of Skylark territories (which is not accepted) in a stronghold of perhaps 14,000 pairs⁴⁴*. That might appear to be the case on the basis of the Officer's favourable recommendation and the Committee's third reason for refusal alleging adverse impacts, partly on an unsupportable premise, on Skylarks.
178. However, on the evidence before me, and having regard to local and national policies, there is a clear mandate for consideration by the decision maker. The starting point is, in the knowledge that the appeal site is used by Skylarks for nesting, the inevitable displacement of a protected species is a very strong material consideration.
179. Application of the hierarchy of avoid, mitigate or compensate ultimately became grounded in the latter. But even then, the ability to compensate rests on a scheme yet to be produced and to be secured by a Grampian condition in tandem with the Unilateral Undertaking.
180. Whilst having no criticism of the covenant within Schedule 1 as such, I am not convinced that the nature and effectiveness of the intended mitigation measures are sufficiently understood and well-developed to provide sufficient reassurance.
181. In this regard, certainty is not required, in that the Council would have the final sanction of refusing later details that did not adequately secure an acceptable scheme of compensation.
182. Reverting to the Planning Practice Guidance on conditions, the following is of importance:

⁴⁴ IN20 Paragraph 1.1

For non outline applications it is important that the local planning authority limits the use of conditions requiring their approval of further matters after permission has been granted.

Where it is justified, the ability to impose conditions requiring submission and approval of further details extends to aspects of the development that are not fully described in the application (eg provision of car parking spaces)⁴⁵.

Where it is practicable to do so, such conditions should be discussed with the applicant before permission is granted to ensure that unreasonable burdens are not being imposed. The local planning authority should ensure that the timing of submission of any further details meets with the planned sequence for developing the site. Conditions that unnecessarily affect an applicant's ability to bring a development into use, allow a development to be occupied or otherwise impact on the proper implementation of the planning permission should not be used⁴⁶.

183. Taking this step by step, there are matters of importance that are not fully described in the proposal before me. That said, the Skylark Mitigation and Management Strategy sets out guiding principles to be followed. Further, the Appellant has sanctioned the condition. The claim is, if the details were found to be unacceptable, the Council would simply refuse to endorse them with a resultant embargo on the ability to implement the planning permission. However, in my opinion and in the alternative, if the compensation scheme was found to be unacceptable, and it was the only impedance to the development and all its benefits, the Council would be faced with a balance between the two single opposing interests, out-with the balancing exercise of this decision.
184. On this basis, I am not satisfied that this issue should be deferred to another day and I attach significant weight to the impact of the proposal on Skylarks, a priority species in decline.
185. Turning to the final planning balance, having satisfied myself that there are no other matters that should influence the balance to a material degree, the proposal would not protect and enhance the diversity, high quality and local character of Shropshire's natural environment and it would be in conflict with Core Strategy Policy CS17. It would similarly be at odds with Policy CS6, bullet 4, which is worded to reflect CS17 and a measure of conflict with bullet 7 in that, whilst the natural resource of high quality land could be safeguarded, it would be under-used for a period of up to forty years.
186. SAMDev Policy MD12 rests on determining the balance between harm and benefits. Finally, in relation to the emerging Local Plan, Policy DP26 supports non-wind renewable development where its impact is, or can be made, acceptable and DP12 again requires an overall balance.
187. Considering the proposal in the round, and in light of the many facets of national guidance, I conclude that the nature and extent of the benefits of the proposal do not outweigh the harm that I have identified and the proposal would be in conflict with the development plan read as a whole. Having decided that the planning conditions before me would not make the development acceptable, I dismiss the appeal.

David MH Rose

Inspector

⁴⁵ I do not read this as a 'closed list'

⁴⁶ Paragraph 006 Reference ID:21a-006-20140306

ANNEX A: APPEARANCES

For Econergy International Ltd

David Hardy
Partner CMS

Instructed by
Econergy International Ltd

He called

Howard Fearn
MSc MCIEEM

Director
Avian Ecology Ltd

Ruth Metcalfe
BSc(Hons) M AgrE CEnv MIAgrE

Soil Scientist
RSK ADAS Ltd

Anthony Heslehurst
MPlan MRTPI

Director
RSK ADAS Ltd

Daniel Leaver (evidence in writing)
CMLI

Associate Director
Stephenson Halliday

For Shropshire Council

Sioned Davies, Barrister No5 Chambers
Counsel for the Local Authority

Instructed by
Kim Brown, Legal Team Leader
Regulatory and Environment
Shropshire Council

She called

Diane Corfe
BSc (Hons) MSc RSB CBIOL CIEEM

Technical Director
Waterman Infrastructure and
Environment Ltd

Mike Davies
MBA MRICS MRTPI MCIQB MCMi IHBC⁴⁷

Consultant Planner
Shropshire Council

Tom Hurlstone (evidence in writing)
BA (Hons) MLA CMLI

Senior Associate Director
Waterman Infrastructure and
Environment Ltd

For Flour Not Power

Odette Chalaby, Barrister No5 Chambers
Counsel for the R6(6) Party

Instructed by
Mark Turner, Partner
Aaron and Partners Solicitors

She called

Sam Franklin
BSc(Hons) MSc MRICS FAAV FBIAC MISoilSci

Director
Landscape Land and Property Ltd

⁴⁷ Full qualifications set out in CD 13.2 paragraph 1.1

James Bullock (evidence in writing) CMLI	Director Zebra Landscape Architects Limited
Leo Smith (evidence in writing) BSc (Hons)	Editor The Birds of Shropshire
Dr Tim Jenkins (evidence in writing) PhD MA BA(Hons) FRSA FRHistS	Heritage Consulting

Interested Persons

Dr Simon Briercliffe	Local Resident
Elliot Thomas	Local Resident
Tre	Local Resident
David King	Local Resident
Hamish Eccles	Local Resident
Hugh Elliott	Local Resident
Mary Elliott	Local Resident
John Dryburgh	Local Resident
Claire Wild	Local Resident

ANNEX B: INQUIRY DOCUMENTS

- IN1 Opening on behalf of Econergy International Ltd
- IN2 Opening on behalf of Flour Not Power
- IN3 Opening on behalf of Shropshire Council
- IN4 Circular 06/2005
- IN5 Statement by Dr Simon Briercliffe
- IN6 Statement by Eliot Thomas
- IN7 Statement by Tre
- IN8 Statement by David King
- IN9 Statement by Hamish Eccles
- IN10 Statement by Hugh Elliott
- IN11 Statement by Mary Elliott
- IN12 Statement by John Dryburgh
- IN13 Statement by Claire Wild
- IN14 Council's Unilateral Undertaking Position Statement

- IN15 Final Draft Unilateral Undertaking
- IN16 Schedule 2 Site Location Plan
- IN17 Schedule 3 Skylark Mitigation and Management Plan
- IN18 List of Suggested Conditions (V5)
- IN19 Condition 12 Plan – Construction and Traffic Access Route
- IN20 Appellant’s Closing Statement
- IN21 Flour not Power’s Closing Statement
- IN22 Council’s Closing Statement
- IN23 Appellant’s Response to the Council’s Position Statement (IN14)
- IN24 Signed Unilateral Undertaking

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Appeal Decision

Site visit made on 25 March 2024

by Tamsin Law BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 April 2024

Appeal Ref: APP/L3245/W/23/3322079

Benthall Grange, Benthall Lane, Benthall, Broseley, Shropshire, TF12 5RR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr Kelvin Bailey against the decision of Shropshire Council.
 - The application Ref is 22/05245/OUT.
 - The development proposed is described as "outline application (all matters reserved) for the erection of three dwellings following demolition of all existing buildings.2"
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal proposal was submitted in outline with all matters reserved for future consideration. Notwithstanding that, an indicative block plan together with other illustrative material has been provided. However, the details shown on the additional particulars are not being considered at the outline stage. I have therefore treated these drawings as being indicative to show a possible way of developing the site.

Main Issue

3. The main issue is whether the location of the proposed development would be acceptable with specific regard to the principle thereof, the Council's spatial strategy and access to services.

Reasons

4. The appeal site is a builder's yard and associated workshop units on land located within the north of Benthall Grange, a residential dwelling in the same ownership. The appeal site is located outside the development boundary of Benthall.
5. The strategy for the area is set out in the Shropshire Council Local Development Framework Adopted Core Strategy (2011) (CS). It directs most new development to settlements. Policy CS1 addresses the spatial strategy, where Market Towns and Key Centres will be the primary focus for development. It goes on to state that rural areas will become more sustainable through a "rural rebalance" with development being located predominantly in community hubs and community clusters.
6. The appeal site lies outside a development boundary and does not fall within any of the Community Hubs or Community Cluster Settlements listed in the Shropshire Council Site Allocations and Management of Development Plan

(2015) (SAMDev). SAMDev Policy MD3 allows for housing outside defined settlement boundaries where the settlement housing guideline is unlikely to be met subject to amongst other things, the benefit thereof and the presumption in favour of sustainable development. Policy S4 of the SAMDev details that a housing requirement of 200 dwellings for Broseley, Benthall lies in the Broseley Neighbourhood Plan area, and the most up to date housing figures detail 231 completions and a further allocation for 92 dwellings. Therefore, meeting and exceeding the demand.

7. CS Policy CS5 CS allows new development in the open countryside where it maintains and enhances countryside vitality and character and improves the sustainability of rural communities. It also provides a list of particular development types that this relates to including dwellings for essential workers, affordable housing to meet local need, and the conversion of rural buildings. The proposal would not fall into any of the identified examples.
8. Although CS5 does not explicitly restrict new market housing in the countryside, Policy MD7a of the SAMDev is clear that new market housing will be strictly controlled outside of Shrewsbury, the Market Towns, Key Centres and Community Hubs and Community Clusters. As the proposal is for open market residential development, it would fail to accord with Policies CS5 and MD7a.
9. Therefore, by virtue of its location outside of any defined settlement boundary, the appeal site would not be a suitable location for the proposal, having regard to the development strategy for the area. Consequently, it would conflict with CS Policies CS1, CS4 and CS5 or SAMDev Policies MD1, MD3, MD7a and S4 which, amongst other things, seek to direct housing development to sustainable locations.

Planning Balance

10. The Council in their appeal statement have included an up-to-date assessment of housing land supply. This identifies that the Council is able to demonstrate a 5-year housing land supply. Consequently, the presumption in favour of sustainable development contained in paragraph 11(d) of the Framework is not engaged.
11. Exceptional circumstances put forward by the appellant for development outside the boundary include an extant permission¹ for three dwellings, the ceasing of a commercial use at the site which conflicts with residential dwellings near to the site and the provision of self-build dwellings.
12. From reviewing the planning history, it appears that the three dwellings were given permission as a result of a combination of the removal of the commercial use and a financial contribution towards affordable housing. The policy context at the time meant that a financial contribution for affordable housing was required for development of this scale, the affordable housing contribution was given weight in the planning balance. No affordable housing contribution is proposed on the scheme before me, as such I am unable to attach the positive weight given previously. The appellant asserts that the financial contribution towards affordable housing is unviable. I have not been provided with any

¹ Ref 14/02614/FUL (12 October 2015)

evidence relating to the viability of the scheme, and as such can only give this limited weight.

13. The description of development states that the proposal is for self-build dwellings. No evidence or information pertaining to its self-build nature has been submitted with the appeal and no legal agreement securing it as such has been provided. In any event, the Council's evidence detail that sufficient self-build plots have been approved to meet the demand. As such, I can only give this limited weight.
14. The construction of dwellings could be a more compatible use to the surrounding area, which largely includes residential properties and would likely improve the living conditions of nearby residents. I therefore give this benefit moderate weight.
15. I find that on this occasion the benefits of allowing the proposed development, including removing the conflict between employment and residential uses, would not outweigh the conflict that would be caused to the Council's housing strategy.

Conclusion

16. For the above reasons, there are no relevant material considerations, including the approach of the Framework, that would indicate a decision otherwise in accordance with the development plan. It is for this reason that the appeal should be dismissed.

Tamsin Law

INSPECTOR

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Appeal Decision

Site visit made on 27 February 2024

by **A Tucker BA (Hons) IHBC**

an Inspector appointed by the Secretary of State

Decision date: 05 April 2024

Appeal Ref: APP/L3245/W/23/3319866

Stone Lee, Calcutts Road, Jackfield TF8 7LG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr N Thiara against the decision of Shropshire Council.
 - The application Ref is 22/02056/FUL.
 - The development proposed is 7 dwellings.
-

Decision

1. The appeal is allowed, and planning permission is granted for 7 dwellings at Stone Lee, Calcutts Road, Jackfield TF8 7LG in accordance with the terms of the application, Ref 22/02056/FUL, subject to the conditions in the attached schedule.

Preliminary Matters

2. At the time of my visit construction had commenced on the northern part of the site and two dwellings were partly erected. It is understood that this follows permission granted by the Council¹ for three dwellings at the site. Units 1, 2 and 3 of the appeal proposal are reported to be very similar to those that have been approved. Additionally, Unit 8 is reported to be similar to a previous scheme for a replacement dwelling that the Council previously approved at the site². The appeal proposal is a resubmission of a scheme³ that was refused for a single reason relating to ecology. The appellant advises that the appeal proposal is a resubmission of the previous scheme but with additional information to overcome the ecology issue.
3. An updated version of the National Planning Policy Framework (Framework) was published on 19 December 2023. The Ironbridge Gorge World Heritage Site Supplementary Planning Document was also adopted after the Council had made its decision. The main parties have been given the opportunity to make extra representations on these matters, and any comments received have been considered in my determination of the appeal.
4. Amended drawings were submitted with the appeal. These revise the proposed design for the porches of Units 1-3 and 5-7. This change is minor. I am satisfied that no party would be prejudiced if I take the amended plans into account. Accordingly, I have determined the appeal on the basis of the amended plans.

¹ Council Reference: 20/01162/FUL

² Council Reference: 15/00512/FUL

³ Council Reference: 21/02180/FUL

Main Issue

5. The effect of the proposal on the character and appearance of the area, including the Ironbridge Gorge World Heritage Site and the Severn Gorge Conservation Area.

Reasons

6. The appeal site is in a hilly and wooded area with a scattering of low density development that is generally set back from the road and not prominent to view. Nearby built form is mostly modern and of no defining style or layout, with isolated historic buildings.
7. The site is within the Ironbridge Gorge World Heritage Site (WHS). The industrial revolution had its roots in the WHS area. It focuses on a steep-sided mineral-rich river valley that provided the necessary raw materials and resulted in a concentration of mining, foundries, factories, workshops and warehouses which coexist with an old network of lanes, paths, roads, ramps, canals and railways as well as the substantial remains of a traditional landscape and housing. The appeal site relates to Jackfield, which is one of six major areas of interest and is described as a small town located on the south bank of the Severn that made its living from coal mining, clay production and navigation.
8. The appeal site does not feature any above ground heritage assets that contribute to the OUVs of the WHS. The woodlands and generous tree and vegetated boundaries of the immediate area, including those that remain at the appeal site, are characteristics that contribute to the OUVs of the WHS.
9. The appeal site is also within the Severn Gorge Conservation Area (CA). The CA is a broad area that is dominated by its valued landscape and internationally significant industrial heritage. The spacious layout of buildings within the vicinity of the appeal site, and mature trees and woodland blocks are defining characteristics of the area that contribute to its significance. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA) requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.
10. In terms of density, the proposal would relate comfortably to the scale and density of development established locally and would relate well to the 1940s housing opposite. The proposal would see two dwellings erected at the front of the site, with a generous gap alongside for open space. I accept that these units would be more prominent from the road than The Woodlands; however, this would accord with the low density of nearby road facing development, which would be further softened by the proposed planting, and the open space would allow for the retained tree to continue to grow.
11. The proposed dwellings would have a reasonably uniform design, however with some variety arising from their layout. The four dwellings that would stand at the rear of the site and the replacement dwelling would be set away from the road and not prominent to view. The consistency to the design of the proposed road facing dwellings would be similar to the pairs of 1940s dwellings opposite. At this modest scale, this degree of uniformity would not appear out of place.
12. Trees would be retained across the front of the proposed replacement dwelling. Tree planting to the front of Units 1 and 2 would be modest, however the site would still be viewed within a wooded context, and there are local examples of

development that fronts the road directly such as the pairs of dwellings opposite, so this arrangement would not appear obtrusive or out of place.

13. In summary, the proposal would not harm the character or appearance of the area or the OUV of the WHS. The proposal would also preserve the character and appearance of the CA and would thus accord with the requirements of the LBCA and paragraph 205 of the Framework, which establishes that great weight should be given to the conservation of heritage assets. It would also accord with Policies CS6 and CS17 of the Shropshire Local Development Framework: Adopted Core Strategy 2011 and Policies MD2 and MD13 of the Shropshire Council Site Allocations and Management of Development Plan 2015 (SAMDP). Together these Policies seek to ensure that development proposals are well designed to respect local distinctiveness including the built and historic environment.

Other Matters

14. Although not included as a refusal reason, the officer report refers to the need for a legal agreement to secure a financial contribution towards off site open space. There is nothing before me that would secure this contribution, and no mention of this matter is made by the main parties as part of the appeal process. Policy MD2 of the SAMDP requires adequate open space of at least 30m² per person. The proposed development would therefore require 780m² of open space.
15. In its assessment the Council subtracted the amount of open space required by the extant permission for Units 1-3, which would reduce the required area to 420m². The development would include an area of 306m² of open space. The difference between the two figures is not huge. The proposed area would be well laid out. It would be central to the development and would be alongside retained trees, thus making it a space that would be attractive for the use of future residents. It would be sufficiently sized for the development. I am satisfied that this provision would be acceptable, and that it would accord with the aims of the Policy. On this basis this matter should not form a main issue of the appeal.
16. I note the various objections to the scheme that are before me. In terms of privacy, the distance between the rear of the proposed dwellings and the front elevations of dwellings in The Woodlands development is sufficient to ensure an acceptable level of privacy, especially when the public nature of the intervening space with its existing access road means that the area is already not private.
17. With regard to parking, I note that the Highway Authority did not object to the proposal, and I see no reason to take a contrary view. The development includes sufficient parking for each dwelling and a condition can be used if the appeal is allowed to ensure that the estate road is properly surfaced and fit for use before the dwellings are occupied.
18. I note that a previous scheme for the same development was refused solely because updated bat surveys were required. These were submitted and were sufficient to overcome the Council's concerns. If the appeal is allowed, conditions can be used to further ensure that protected species are not harmed by the development.
19. On this basis there are no other matters that weigh against the proposal.

Conditions

20. I have had regard to the conditions suggested by the Council. I have considered these against the tests in the Framework and the advice in the Planning Practice Guidance. I have imposed condition 2 to specify the approved plans, to give certainty.
21. Condition 3 is necessary to ensure that archaeological interest at the site is properly understood before work commences.
22. Conditions 4 to 8 are necessary to ensure that site conditions are properly understood in relation to drainage, contamination, and land stability. The provision of details shall ensure that the development does not increase the risk of flooding, secures appropriate remediation if contamination is found, and appropriately addresses matters relating to land instability. Details of foul and surface water drainage design were submitted to the Council. However, conditions are still necessary to require the submission of further details as matters raised by the Council's consultee remain unresolved.
23. Conditions 9 to 11 are necessary to ensure that measures are in place to avoid harm to protected species and provide future roosting and nesting opportunities.
24. Conditions 12 to 15 are necessary to ensure that existing trees to be retained are properly protected during the construction phase and that the proposed landscaping is implemented. Such measures will safeguard the character and appearance of the area and ensure that the development is well integrated.
25. Condition 16 and 18 are necessary to manage the external appearance of the dwellings hereby approved, to safeguard the character and appearance of the area, and safeguard protected species.
26. Condition 17 is necessary to ensure the safe operation of the highway network.
27. The Council's officer report refers to the need for a condition to restrict permitted development rights for the formation of new openings on Plot 3 to protect the living conditions of the occupants of No. 7 The Woodlands. The side gable of the proposed garage that would be attached to the dwelling would face towards this neighbour. Given the form of the garage roof and the way it would abut with the side of the two storey dwelling, there would be very little opportunity for new openings to be formed that would look out towards the neighbour. I am therefore of the view that a condition relating to this would not be necessary.

Conclusion

28. For the reasons given above the appeal should be allowed.

A Tucker

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 531-19-02, 3078/1a, 3078/2a, 3078/3g, 3078/12, 531-19-25 Rev A, 531-19-30 Rev C, 531-19-15 Rev B, 531-19-05, TS93-C-007b Rev02, TS93-C-007 Rev06, TS93-C-008 rev05, TS93-C-009 rev05, 3078/4a, 3078/5, 3078/6a, 3078/7a, 3078/8a, and 3078/9 rev a.
- 3) 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 Local Planning Authority (LPA) prior to the commencement of works.
- 4) No development shall take place until a scheme of surface and foul water drainage has been submitted to and approved in writing by the LPA. The approved scheme shall be fully implemented before the development is occupied.
- 5) No development, with the exception of demolition works where this is for the reason of making areas of the site available for site investigation, shall take place until a Site Investigation Report has been undertaken to assess the nature and extent of any contamination on the site. The Site Investigation Report shall be undertaken by a competent person and conducted in accordance with current Environment Agency guidance – Land Contamination: Risk Management (LCRM). The Report is to be submitted to and approved in writing by the LPA before development commences.
- 6) In the event of the Site Investigation Report finding the site to be contaminated a further report detailing a Remediation Strategy shall be submitted to and approved in writing by the LPA. The Remediation Strategy must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

The works detailed as being necessary to make safe the contamination shall be carried out in accordance with the approved Remediation Strategy.

In the event that further contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the LPA. An investigation and risk assessment must be undertaken in accordance with the above requirements, and where remediation is necessary a remediation scheme must be prepared in accordance with the above requirements, which is subject to the approval in writing by the LPA.

Following completion of measures identified in the approved remediation scheme a Verification Report shall be submitted to and approved in writing by the LPA that demonstrates the contamination identified has been made safe, and the land no longer qualifies as contaminated land

under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land.

- 7) No development shall commence until remedial stabilisation works to address land instability arising from recorded mine shaft 368302-036 have been implemented on site in full to ensure that the site is made safe and stable for the development proposed. The remedial works shall be carried out in accordance with authoritative UK guidance.
- 8) Prior to the first occupation of the dwellings hereby approved, a signed statement or declaration prepared by a suitably competent person confirming that the site has been made safe and stable for the approved development shall be submitted to the LPA for approval in writing. This document shall confirm the completion of the remedial works and any mitigatory measures necessary to address the risks posed by past coal mining activity.
- 9) No development shall take place to the bungalow, including demolition works, until:
 - a) a European Protected Species (EPS) Licence with respect to bats has been obtained from Natural England and submitted to the LPA; or
 - b) a statement from an appropriately qualified and experienced ecologist has been submitted in writing to the LPA explaining why a licence is not required and setting out any additional mitigation measures required for prior approval. These measures will be implemented as approved.
- 10) A minimum of 4 Roosting opportunities shall be created prior to the occupation of the dwellings hereby approved in accordance with Section 4.3 of the Bat Roost Assessment (Turnstone Ecology, July 2022). The roosting opportunities shall thereafter be maintained for the lifetime of the development.
- 11) Prior to first occupation of the dwellings hereby approved, the makes, models and locations of bird boxes shall be submitted to and approved in writing by the LPA.

This shall include a minimum of 6 artificial nests, of either integrated brick design or external box design, suitable for Swifts (Swift bricks or boxes with entrance holes no larger than 65 x 28 mm can accommodate a wide range of species (CIEEM, 2019)), Starlings (42mm hole, starling specific), Sparrows (32mm hole, terrace design), House Martins (House Martin nesting cups) and/or small birds (32mm hole, standard design) shall be erected on the site prior to first use of the development.

The boxes shall be sited in suitable locations and at least 2m from the ground, with a clear flight path and where they will be unaffected by artificial lighting. The boxes shall thereafter be maintained for the lifetime of the development.
- 12) All pre-commencement tree works and tree protection measures as detailed in Section 1.11 (Arboricultural Method Statement), Appendix 1 (Tree Survey Schedule) and Appendix 2 (TS93-C-004 Rev04, TS93-C 005 Rev04 and TS93-C-006 Rev04: Tree Protection and Removal Plans) of the approved BS5837: 2012 Pre-development Tree Condition Survey (TS93-C Issue 4, Access2trees, September 2021) shall be fully implemented to

- the written satisfaction of the LPA, before any development-related equipment, materials or machinery are brought onto the site.
- 13) The development shall be implemented in accordance with the Arboricultural Method Statement (Section 1.11) and Tree Protection and Removal Plans (TS93-C-004 Rev04, TS93-C-005 rev04 and TS93-C-006 Rev 04, Appendix 2) of the approved BS5837: 2012 Pre-development Tree Condition Survey (TS93-C Issue 4, Access2trees, September 2021). The approved tree protection measures shall be maintained in a satisfactory condition throughout the duration of the development, until all equipment, machinery and surplus materials have been removed from the site.
 - 14) All services will be routed outside the Root Protection Areas indicated on the approved plans or, where this is not possible, a detailed method statement and task specific protection measures shall be submitted and approved in writing by the LPA prior to any work commencing.
 - 15) The approved landscaping scheme shall be implemented as specified in the Landscape Proposals drawings (TS93-C-007 Rev06 and TS93-C 007b Rev02), Planting Schedule (TS93-C-008 Rev05) and Planting Specification (TS93-C-009 Rev05). It shall be completed prior to occupation of the first dwelling. If within a period of five years from the date of planting, any tree or shrub, or any tree or shrub planted in replacement for it, dies or, in the opinion of the Local Planning Authority becomes seriously damaged or diseased, or is otherwise lost or destroyed, another tree or shrub of a similar specification to the original shall be planted at the same place during the first available planting season.
 - 16) Prior to commencement of the relevant works full details of all external materials including walls, roofs, doors, windows, guttering and facias shall be submitted to and approved in writing by the LPA.
 - 17) Before any dwelling is occupied, all of that part of the estate road and associated footways that forms the junction with the main road and which will be constructed within the limits of the existing highway, shall be laid out and constructed to finished surface levels in accordance with details to be submitted to, and approved in writing by, the LPA.
 - 18) Prior to the erection of any external lighting on the site, a lighting plan shall be submitted to and approved in writing by the LPA. The lighting plan shall demonstrate that the proposed lighting will not impact upon ecological networks and/or sensitive features, e.g. bat and bird boxes (required under a separate planning condition). The submitted scheme shall be designed to take into account the advice on lighting set out in the Bat Conservation Trust's Guidance Note 08/18 Bats and artificial lighting in the UK. The development shall be carried out strictly in accordance with the approved details and thereafter retained for the lifetime of the development.

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