

## Development Management Report

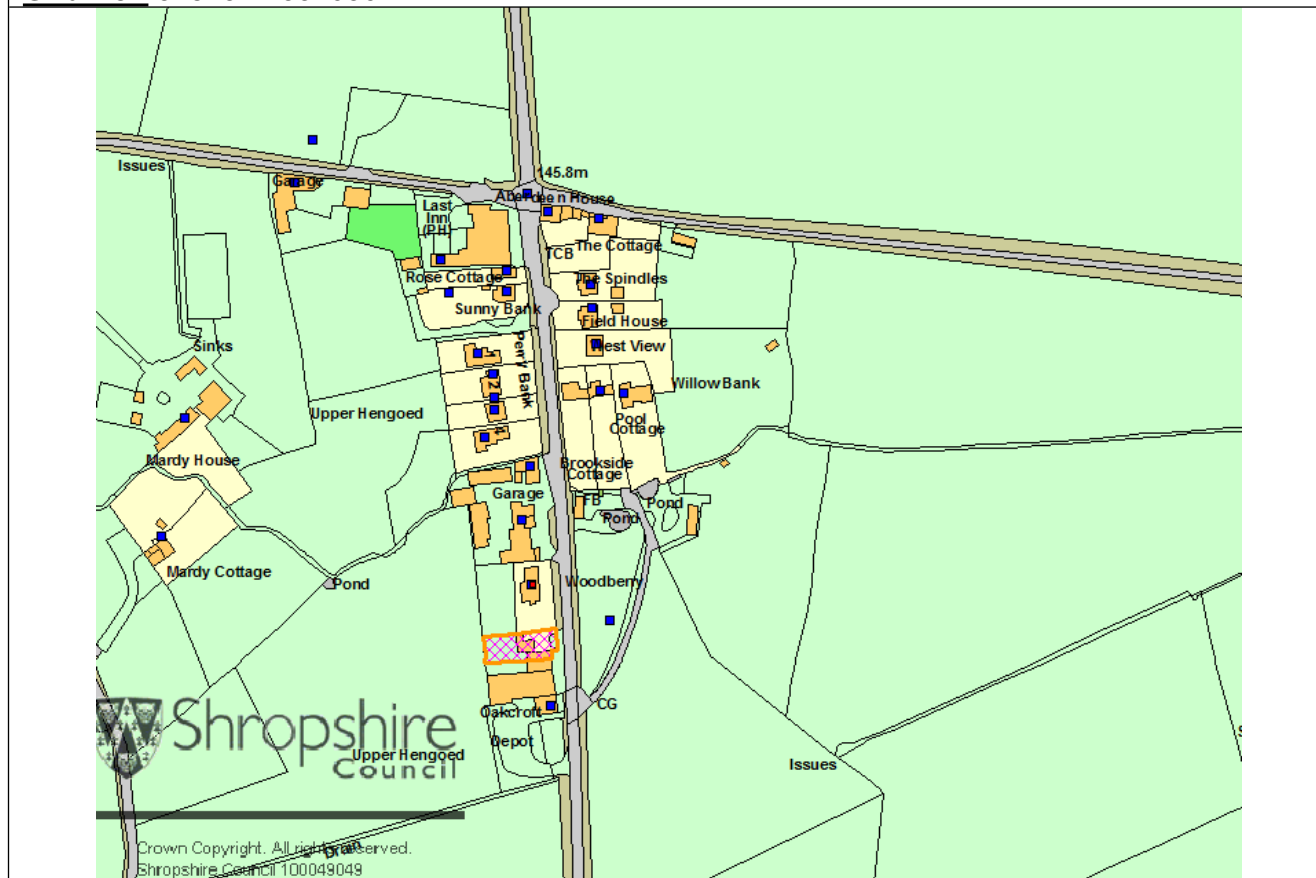
Responsible Officer: Tim Rogers

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### Summary of Application

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

**Grid Ref:** 328431 - 334036



## REPORT

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

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

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

#### 1.0 Background

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

#### 2.0 Impact of SAMDev progress

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

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

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

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

is not significant and demonstrable.

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

#### **4.0 Conclusion**

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

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

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

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

### **5.1 Risk Management**

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

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

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

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

### **5.2 Human Rights**

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

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

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

### **5.3 Equalities**

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

**6.0 FINANCIAL IMPLICATIONS**

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

**7.0 BACKGROUND**Relevant Planning Policies

National Planning Policy Framework

Shropshire Core Strategy

CS1 – Strategic Approach

CS4 – Community Hubs and Community Clusters

CS5 - Countryside and Greenbelt

CS6 - Sustainable Design and Development Principles

CS9 – Infrastructure Contributions

CS11 - Type and Affordability of Housing

CS17 – Environmental Networks

CS18 – Sustainable Water Management

SPD Type and Affordability of Housing

SAMDev

MD1 – Scale and Distribution of Development.

MD2 – Sustainable Design

MD3- Managing Housing Development

MD7a – Managing Housing Development in the Countryside

MD8 – Infrastructure Provision.

S14.2(x).

Also Oswestry Borough Local Plan – Saved Policies.

**8.0 ADDITIONAL INFORMATION**

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

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

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

**2.0 SITE LOCATION/DESCRIPTION**

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

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

**3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION**

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

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

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

**4.1.2 16.09.13:**

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

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



**Local Members**

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

**Shropshire Council Planning Policy**

- 4.1.4 The planning policy position is clear – this is a site in the countryside under both current and emerging policy, where new open market housing development would not accord with policies H16 or H19 of the Oswestry Plan (no development boundary for Hengoed) and the emerging development strategy for Hengoed identified in the SAMDev ‘Revised Preferred Options’. It is significant that, in approving 15 additional dwellings in Hengoed, the Council have already started to apply the emerging SAMDev policy, since such development would have been contrary to the Oswestry Plan.

- 4.1.5 Selattyn & Gobowen PC had originally indicated at SAMDev ‘Preferred Options’ stage that it would like to establish a Community Cluster comprising the settlements of Selattyn, Upper/ Middle/ Lower Hengoed and Pant Glas to accommodate 10-25 dwellings in Upper Hengoed and Selattyn over the period 2010 – 2026 (equivalent to 1 per year in each settlement). The maximum number of new dwellings across the Cluster should be limited to 30. However, in light of recent site commitments amounting to 15 dwellings in Upper Hengoed (11/00824/OUT: 1 dwelling; 11/00824/OUT: 1 dwelling; 11/05648/OUT: 5 dwellings; 11/05648/OUT: 8 dwellings), the PC revised its view and now considers that there should be no further development in Upper Hengoed not even infill development, with further development in the cluster limited to a maximum of 5 houses in Selattyn, all of which should be infill.

- 4.1.6 However, in these circumstances, it is a question of whether other material considerations change the view, with the circumstances being sufficiently exceptional to justify a departure. Material considerations include the fact that the site would effectively be infill and could represent sustainable development consistent with the NPPF definition, but that it lacks Parish Council support. The key test is that within draft Policy MD3 (given that we have already started to apply the emerging SAMDev to development in this area). MD3 provides that:

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

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

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

significantly exceeding the agreed development strategy.

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

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

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

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

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

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

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

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

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

### **Shropshire Council Public Protection**

4.1.15 No comment.

## **4.2 PUBLIC COMMENTS**

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

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

## **5.0 THE MAIN ISSUES**

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

## **6.0 OFFICER APPRAISAL**

### **6.1 Principle of development**

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

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

## **6.2 Layout and design**

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

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

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

## **6.3 Impact on residential amenity**

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

## **6.4 Drainage**

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

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

## **6.5 Ecology**

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

## **6.6 Highways**

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

## **6.7 Affordable Housing Contribution**

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

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

## **7.0 CONCLUSION**

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

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

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

### **8.1 Risk Management**

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

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

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

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

### **8.2 Human Rights**

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

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

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

### **8.3 Equalities**

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

## **9.0 FINANCIAL IMPLICATIONS**

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

## **APPENDIX 1**

### **Conditions**

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

1. Details of the layout, siting, landscaping and appearance (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.

Reason: The application is an outline application under the provisions of Article 1(2) of the Town and Country Planning General Development (Procedure) Order 1995 and no particulars have been submitted with respect to the matters reserved in this permission.

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Prior to the erection of any external lighting on the site a lighting plan shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and thereafter retained for the lifetime of the development. The submitted scheme shall be designed to take into account the advice on lighting set out in the Bat Conservation Trust booklet Bats and **Lighting in the UK**.

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

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

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

Reason: In the interest of highway safety.

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

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

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

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

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