



Committee and date

South Planning Committee

26 April 2016

## Development Management Report

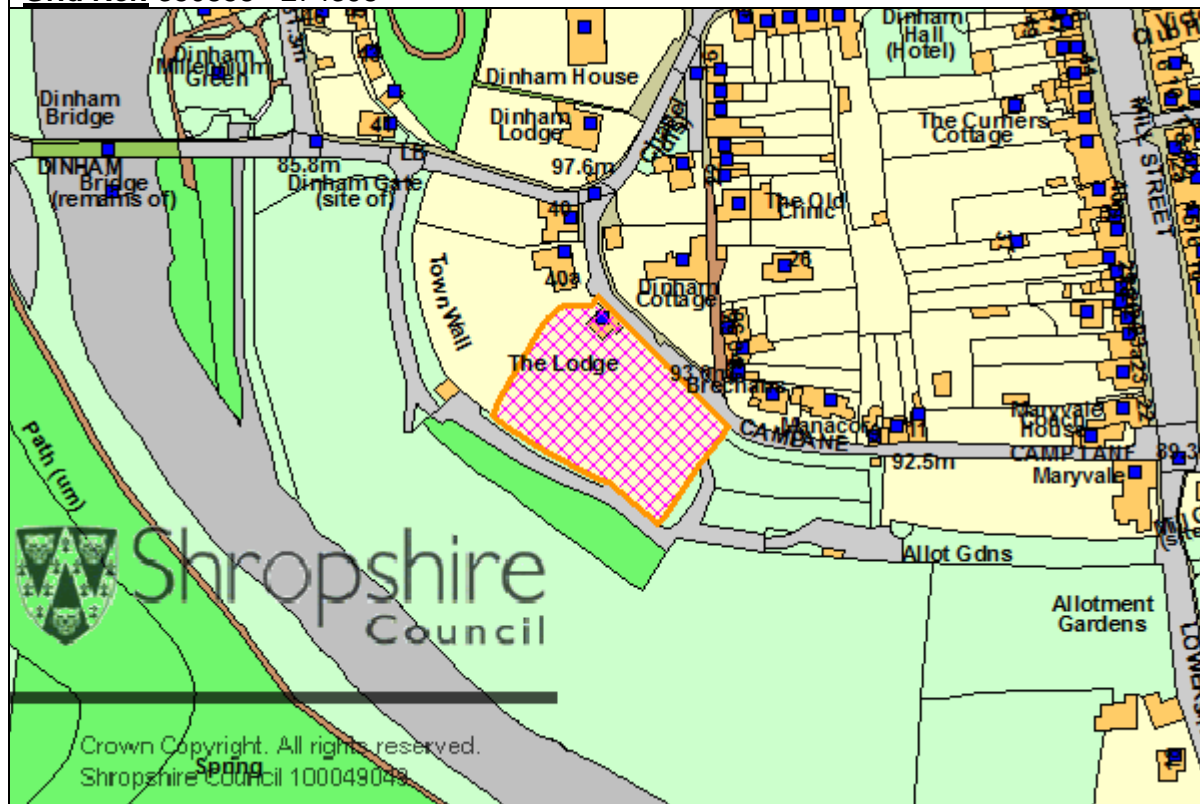
Responsible Officer: Tim Rogers

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### Summary of Application

<b>Application Number:</b> 15/01819/FUL	<b>Parish:</b>	Ludlow Town Council
<b>Proposal:</b> Erection of replacement dwelling following demolition of existing		
<b>Site Address:</b> The Lodge Camp Lane Ludlow Shropshire SY8 1EQ		
<b>Applicant:</b> Mr R And Mrs A Cundall		
<b>Case Officer:</b> Chris Hammersley	<b>email:</b> <a href="mailto:planningdmsw@shropshire.gov.uk">planningdmsw@shropshire.gov.uk</a>	

**Grid Ref:** 350858 - 274398



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

- 1.1 This scheme seeks full planning permission for a replacement dwelling, following demolition of the existing. The application was previously considered by Members at the South Planning Committee held on 01<sup>st</sup> March 2016. At that meeting it was determined that the application be deferred to a future meeting to enable further consideration to be given by the applicants and their agent as to the design, scale and elevations of the proposal.
- 1.2 During the debate by Members at the meeting of the 01<sup>st</sup> March 2016 the following key areas of concern were identified for reconsideration: -
- Scale and massing;
  - Too blocky;
  - Lack of Chimney;
  - Long Eaves – unnecessary;
  - Rear gable – better if subservient;
  - Materials too stark;
  - House too standard in design;
  - Lack of local distinctive character and proposed design does not make a positive contribution to this;
- 1.3 In response to the Members concerns a revised scheme has been submitted which proposes the following alterations: -
- Reduction in height of dwelling by a further 200mm, resulting in proposed scheme around 700mm below the height of the existing dwelling;
  - Fenestration amendments to ensure window size and pattern reflects existing dwelling;
  - Reduction in eaves projection to reflect existing dwelling;
  - Alteration to materials - removal of previously proposed facing brick to east projection, use of stone and roughcast render to the walls throughout. The break between the stone and the render on the side elevations proposed to be less formal than to the rear;
- 1.4 The original dwelling measures 85sqm. The external floorspace of the revised scheme remains as originally proposed at 140sqm which is approximately 60% larger than the original. The internal floor space of the proposed dwelling is less than the approximate 60% increase in the external measurement due to the thickness of the walls.
- 1.5 The revised scheme continues to propose a 3-storey rear gable projection, and adopt the undercroft feature of the existing dwelling to create level access from the dwelling to the lower garden. As originally proposed the dwelling would appear 3-storey from the south (rear) elevation, and 2 storey from the north (front), which reflects the existing appearance of the house.

- 1.6 The accommodation remains as previously proposed with the ground floor providing a kitchen, hall, living room, utility, store and plant room. The first floor would have a galleried landing as its central feature, with level access onto the parking area. Accommodation at this level would comprise two ensuite bedrooms and a study. The second floor accommodation, within the roof space and front and rear gable projections, would provide two further bedrooms, a bathroom and a study area. Both the existing dwelling and the proposed replacement would contain four bedrooms.
- 1.7 In terms of the proposed siting of the replacement dwelling the side elevation would be set away from the side boundary with no. 40a Dinham, Camp Lane and set back in the plot, by some 6.2metres from the frontage. The stone wall boundary treatment to Camp Lane would be retained and extended to maintain this form of enclosure to the lane.
- 1.8 A structural report commissioned on behalf of the applicant on the existing dwelling indicates that there is evidence of cracks that have been developing in recent years, although these cracks are not currently of great structural concern. The existing house is built into the stone roadside wall. This has long term implications for damp ingress into the house due to the water from the road/stone wall coming through to inside. The agent contends it would be difficult and expensive to upgrade the existing house to modern energy standards, and to improve access.

## **2.0 SITE LOCATION/DESCRIPTION**

- 2.1 The site is located on the edge of the open countryside and is in the Ludlow Conservation Area. The development boundary excludes the curtilage land of The Lodge. The house was built circa.1930 on the site of the Coach House to Maryvale House. The existing house has an Arts and Crafts era design.
- 2.2 The site falls within a landscape character which is one in which the landscape is largely dominated by settlement and existing development on the edge of the development boundary. Nevertheless, open views across the river are also a feature which the policy guidance seeks to maintain, within the Conservation Area and the adjacent open countryside.

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

- 3.1 The Town Council has objected and requested that the application be presented to the Planning Committee for consideration. The Principal Planning Officer, in consultation with the Committee Chairman and Vice Chairman consider that the Town Council has raised material planning issues and the application should be determined by committee.

## **4.0 Community Representations**

NOTE: The responses set out below relate to the scheme as considered at the planning committee on the 01<sup>st</sup> March 2016. Given the amendments are in response to Member concerns regarding the detailing and design of the scheme, it is not considered necessary in this case for any re-consultations to be carried out on the revised proposals.

#### 4.1 Consultee Comments –

##### 4.1.1 Ludlow Town Council –Object:

The proposal will have a significant detrimental impact on the Conservation Area, including non-designated and designated heritage assets.

##### 4.1.2 SC Drainage - comment:

No objection, subject to condition.

##### 4.1.4 SC Affordable Houses – comment:

Replacement dwellings are exempt from the need to contribute to affordable housing as per the SPD Type and Affordability of Housing.

##### 4.1.5 SC Conservation – comment:

The Conservation Officer is now satisfied with the principle aspects with the design such as the use of render and timber which reflects that of the existing 1920's building. Whilst the overall scale and footprint of the new dwelling will be greater than the existing building, it is considered that it is proportionate in relation to its overall curtilage plot. During discussions with the applicant and architect some minor alterations to the southern elevation are necessary as to reduce the glazing on the proposed southern elevation, mainly that of the first floor balcony window which should be reduced in width as well as removing the balcony feature, though a plain glazed balcony may be acceptable. This should allow a better hierarchy of window articulation from the ground floor moving upwards.

##### 4.1.6 Historic England – comment:

The form and suite of materials of the existing house has been employed to inform the design of the proposed new house. In order to justify a replacement within the Conservation Area it will be necessary to secure a high quality design that employs high quality materials so that the new house can make an architectural contribution to the Conservation Area such that the character and appearance of the Conservation Area is enhanced. The replacement building should therefore not be of disproportionate scale to that which exists on the site presently, and the ridge line should be meaningfully lower than that of the existing building, so that views into and out of the Conservation Area are enhanced. Consideration of appropriate traditional materials should be made, based upon a study of local vernacular architecture, including brick and timber. We are not convinced that extensive painted render panels are appropriate to this setting. We also recommend that the Historic Environment Good Practice in Planning note 2, 'Managing Significance in Decision-Taking in the Historic Environment', issued on March 25th 2015 is considered in coming to your decision.

##### Recommendation

We would urge you to address the above issues, and recommend that the application should be determined in accordance with national and local policy guidance, and on the basis of your specialist conservation advice. It is not

necessary for us to be consulted again. However, if you would like further advice, please contact us to explain your request.

#### 4.1.7 Ludlow Conservation Area Advisory Committee – comment:

The proposal would have a detrimental impact on the character and appearance of the Conservation Area because of its scale, massing and detailing. The scale of the proposal is justified by comparing it with the existing property and its neighbours. However, the proposal is considerably bigger than either the existing or any other property in the road. The justification for this in the application does not deal with the fundamental points that the apparent scale, because of its massing and more prominent siting, will be very substantially greater than the existing property and that the neighbouring property is very far from one to be emulated. The layout of the windows and other detailing will make the proposal look like an overgrown housing estate property. The pity is that this is a very rare opportunity for a work of modern architecture that will compare in quality with the glories of Ludlow's past something potentially award-winning. What is offered is a proposal of the utmost banality.

#### 4.1.8 SC Ecology – No objections subject to conditions and informatives regarding bats and the active nests of wild birds and completion of tests 1 and 2 on the European Protected Species 3 tests matrix;

- Public Comments:

#### 4.1.9 3no. responses; one person says the building below road level would improve view of the Whitcliffe and still maintain privacy; two other persons have concerns about the effect on parking on the road outside the site during the construction works.

## 5.0 THE MAIN ISSUES

Principle of Development

The impact upon the visual amenities of the Conservation Area and open countryside

Living conditions

Biodiversity

## 6.0 OFFICER APPRAISAL

### 6.1 Principle of Development

6.1.1 S38(6) of the Planning and Compulsory Purchase Act, states LPA's must determine applications in accordance with the local plan unless material considerations indicate otherwise. It means decisions must comply with the development plan as a 'whole.'

6.1.2 Shropshire Core Strategy policy CS3 relates to Market Towns and other key centres, and identifies Ludlow as a focus for development, whilst respecting its historic character. The existing Lodge dwelling falls within the Ludlow Development boundary in the adopted Site Allocations and Management of Development (SAMDev) Plan, but the bulk of its grounds are outside of the Development boundary. There is no in-principle planning policy objection to the erection of a replacement dwelling on the site of the existing dwelling. In this case the proposed replacement dwelling would be partly on the foot print of the existing dwelling, but

the bulk of its foot print would straddle the line of the Development boundary shown in the SAMDev Plan. However given the overlap and the site of the proposed dwelling being existing residential development, it is considered that there is no in-principle planning policy objection to a suitable replacement dwelling. The consideration of this proposal therefore is focused on an assessment of the detailed considerations set out below.

6.1.3 The Government attached great importance to the design of the built environment (Section 7 of the NPPF). Policy CS6 (Sustainable Design and Development Principles) of the Core Strategy and MD2 of SAMDev sets out the criteria that development will be assessed. Policy CS6 of the Core Strategy refers to, amongst other things, creating sustainable places; high quality design which respects and enhances the local context and character of the area; protects, restores and enhances the natural, built and historic environment; and energy efficiency. The site is within the Ludlow Conservation Area where there is a duty for local authorities under section 72 the Planning (Listed Building and Conservation Areas) Act 1990 to have regard to the desirability of preserving or enhancing the character or appearance of a conservation area in exercising statutory functions. There is a similar obligation under section 66 of the same Act to have special regard to the desirability of preserving listed buildings or their settings, or any features of special architectural or historic interest they possess, in exercising the planning function. Core Strategy policy CS17 and SAMDev Plan policy MD13 accord with this requirement. The impact of the proposed development on the Conservation Area is considered below.

## **6.2 The impact upon the visual amenities of the Conservation Area and open countryside.**

6.2.1 SC Policies CS6, CS17 and MD2 outlines, amongst other things high quality design in context. The thrust of one of the core principles of NPPF is that planning should always seek to secure a good standard of amenity for all existing and future occupants of property. Whilst the increase in floor space (60%) is one measure to assess the size of a building, another is its mass and volume. The landscape impact requires careful evaluation of the proposal's scale and visual (appearance) assessment on the quality of the local landscape.

6.2.2 In terms of 'layout,' the proposed house would be set back from the road. It would sit comfortably set further to the rear. Situated adjacent to the application site is a large detached dwelling no.40a. The new house would project backward of this neighbouring house. As a result of the spacing that would exist between the new house and 40a next door it would not appear cramped on the large plot on which the replacement house would be located.

6.2.3 The scheme as previously considered proposed a ridge height around 0.27m lower than the existing dwelling, the revised scheme proposes to lower the height further so the dwelling would sit approximately 0.7m below the ridge of the existing. The further reduction would help reduce the massing of the building when assessed against its context alongside the existing properties within the area.

- 6.2.4 Visual amenity includes design. In addition to the reduction in overall height the revised scheme also proposes amendments to the fenestration detailing in particular to the west and east elevations, altering the openings in these side elevations to be more reflective of the openings on the rear elevation and of the existing dwelling, in particular widening the openings to introduce the vertical mullions which are considered a strong feature of the existing dwelling. The scheme also proposes the reduction of the eaves projections to match that of the existing dwelling.
- 6.2.5 One of main amendments to the scheme as previously considered by committee members is the alterations to the materials. The revised scheme removes the previously proposed facing brick from the east projection, and seeks to use stone and roughcast render throughout. The treatment of the side elevations is proposed to be less formal than the front and rear, opting to use a more irregular pattern between the stone and render rather than continue the straight break on the rear elevation. This alteration in pattern contributes visually towards breaking up the appearance of these side elevations, softening their appearance. The applicant's agent also advises that the finished colour of the proposed render is proposed to be a 'lichen' grey/green rather than the use of a lighter colour such as the pale yellow of the existing dwelling. The imposition of a condition regarding the materials to be used in the construction would also help to ensure that the design style is of a high standard and the proposed house would make a positive contribution to the character and appearance of the Conservation Area.
- 6.2.6 The amendments set out under the revised scheme combine to result in a scheme which reflects both the main characteristics of the existing dwelling and the wider local vernacular.
- 6.2.7 There are open views from the rear of the site. The siting against a landscaped backdrop to the river would not appear as an intrusive feature on the edge of the development boundary. However, the extensive garden and the undeveloped nature of the site create an attractive transition between the existing dwelling and the adjacent open countryside, although the degree of visibility will vary on a seasonal basis with thickness of the vegetation. The views are open, rural in character in between the house and the river.
- 6.2.8 The key test is not the effect of the proposal on the site itself but on the surrounding area. The proposal is relatively well contained within the landscape and the change in the views would be limited in character, with public vantage points identified from the road and along the public footpath which runs alongside the river, from where the development would be in character with the existing built context. However, given the distance between the replacement house and the river, and because of its scale and appearance, it is considered the views of the proposed dwelling would not have an adverse impact on the landscape and scenic beauty in relation to the receptor locations.
- 6.2.9 In overall conclusion on the second main issue, the proposed development is of the highest quality design and would not have a detrimental impact in terms of the preservation or enhancement of the character and significance of the Conservation Area, and protection of the open countryside, in accord with policies CS6 and CS17 of the Core Strategy and MD2 of the SAMDev Plan.

### **6.3 Living Conditions**

- 6.3.1 Core Strategy policy CS6 seeks to safeguard residential amenity. Design should be appropriate in itself and in relation to adjoining properties. In terms of 'siting' the new house would project backward of the neighbouring dwelling to the north (40a). Space would exist between facing flank walls, and there is currently space between the existing side elevation of 40a and the common boundary with the application site.
- 6.3.2 Given the orientation of the sun and the size and the location of the proposed house, it is considered that the distance between it and the neighbour's south facing rear garden/ east facing side elevation would be sufficient to ensure there would be no significant loss of 'light' to this neighbouring property.
- 6.3.4 In terms of 'privacy,' there would be a balcony at 1<sup>st</sup> floor level in the rear elevation. It is considered there would be no opportunity for direct overlooking from this balcony, and the distance between the flank walls would ensure no mutual loss of privacy in terms of overlooking and outlook. The amenities of residential properties on the opposite side of Camp Lane would not be significantly affected as, from their viewing perspective, the proposed replacement dwelling would sit lower in the street scene.
- 6.3.5 For these reasons, it is considered the proposed development would not significantly impact on neighbour amenity. As a result there would be no conflict with this element of policy CS6 of the Core Strategy.

### **6.4 Biodiversity**

- 6.4.1 National guidance gives a duty to public bodies (including Local Planning Authorities) to ensure development does not harm protected species or its habitat. The National Planning Policy Framework (NPPF) emphasises that Local Planning Authorities should ensure development contributes to and enhances the natural and local environment including minimising impacts on biodiversity and providing net gains where possible.
- 6.4.2 The EC Habitats Directive 1992 only allows disturbance, or deterioration or destruction of breeding sites or resting places in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment and provided that there is no satisfactory alternative and no detriment to the maintenance of the species population at favourable conservation status in their natural range
- 6.4.3 The Protected Species Survey report conducted by John Morgan (July 2014), identified a maximum of three bats all identified as most likely to be Common Pipistrelle exiting from two area of the roof of the existing dwelling. As such works to demolish the building will be required under a European Protected Species Mitigation Licence from Natural England. Consideration of the three tests is set out in the matrix attached as Appendix 2 to this report.



6.4.4 The conclusion of the matrix assessment is that the development is in the public interest, there is no satisfactory alternative and the proposal will not be detrimental to the maintenance of the population of Common Pipistrelle bats at a favourable conservation status provided conditions are imposed required a licence from Natural England, the implementation of mitigation measures and a plan of proposed lighting.

## 7.0 CONCLUSION

7.1 There is considered to be no in-principle planning policy objection to the erection of a replacement dwelling in this location. The proposal, in terms of size, scale, design, materials and character would not detract from the character or appearance of the Conservation Area and its setting. The residential amenities of adjacent properties and the locality would not be unduly harmed by the proposed development.

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

Core Strategy policies:  
CS3 - The Market Towns and Other Key Centres  
CS6 - Sustainable Design and Development Principles  
CS17 – Environmental Networks

SAMDev Plan:  
MD2 - Sustainable Design  
MD12 – Natural Environment  
MD13 – Historic Environment  
S10 – Ludlow Area

### RELEVANT PLANNING HISTORY:

SS/1/01/12188/LB Erection of a porch, alterations to dwelling, and alterations to vehicular access. PERCON 9th July 2001  
SS/1/01/12187/F Erection of a porch, alterations to dwelling, and alterations to vehicular access. PERCON 9th July 2001  
SS/1/04/16407/LB Installation Of A Satellite Dish. PERCON 13th December 2004  
SS/1/00/11552/TC Felling of trees. NOOBJ 16th November 2000  
SS/1/00/11548/CA Demolition of conservatory and garage. PERCON 16th November 2000

### 11. Additional Information

[View details online:](#)

<https://pa.shropshire.gov.uk/online-applications/applicationDetails.do?activeTab=details&keyVal=NNBQE4TDK0800>

List of Background Papers

Design and Access Statement  
Biodiversity Survey and Report  
Heritage Statement  
Structural Survey

Cabinet Member (Portfolio Holder)  
Cllr M. Price

Local Member  
Cllr Andy Boddington

Appendices  
APPENDIX 1 – Conditions  
APPENDIX 2 – European Protected Species Three Tests Matrix

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

1. The development hereby permitted shall begin no later than three years from the date of this decision.

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

2. The development hereby permitted shall be carried out strictly in accordance with the approved plans and drawings numbered 3b(block plan); 04 (floor plans) and the revised elevation drawing received by the Local Planning Authority on 04<sup>th</sup> April 2016 .

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

3. Development shall not commence until a European Protected Species (EPS) Licence with respect to bats has been obtained for the proposed work. Work shall be carried out in accordance with the Protected Species Survey report conducted by John Morgan (July 2014) attached as an appendix to this planning permission. A copy of the granted EPS licence and accompanying documents should be supplied to the local planning authority prior to the commencement of works on the site.

Reason: To ensure the protection of bats, a European protected Species.

4. A total of 3 woodcrete bat boxes suitable for nursery or summer roosting for small crevice dwelling bat species shall be erected on the site prior to commencement of works as shown on a site plan. All boxes must be at an appropriate height above the ground with a clear flight path and thereafter be permanently retained.

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

5. No development shall take place until a scheme of foul drainage, and surface water drainage has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented before the development is occupied/brought into use.

Reason: This information is required before the commencement of development, to ensure satisfactory drainage of the site and to avoid flooding.

6. Prior to the above ground works commencing samples and/or details of the roofing materials and the materials to be used in the construction of the external walling, including the finished colour of the render 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 the external appearance of the development is satisfactory.

7. Before the development is commenced there shall be submitted to and approved in writing a scaled plan showing cross sections through the site which show the existing land levels and proposed land levels together with the finished floor levels the proposed dwelling and garden. Once these details are approved the development shall be carried out in accordance with the agreed details unless otherwise agreed by the Local Planning Authority.

Reason: To ensure a satisfactory relationship between the development site and adjoining land. To ensure that construction is carried out at a suitable level having regard to drainage, access, the appearance of the development and the amenities of neighbouring properties.

8. No development shall take place until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that the archaeological interest of the site is properly safeguarded and recorded.

9. No development shall be commenced until full details of landscape works have been approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include:

Planting plans;

Written specifications (including cultivation and other operations associated with plant and grass establishment);

Schedule of plants, noting species, planting sizes and proposed number/ densities where appropriate; and

Implementation timetables.

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

10. All hard and soft landscaping works shall be carried out in accordance with the approved details. The works shall be carried out in the first planting and seeding season following the completion of the development or in accordance with a timetable which has been approved in writing by the Local Planning Authority. Any trees or plants that, within a period of five years from planting, are removed, die or become seriously damaged or defective, shall be replaced with others of species, size and number as originally approved, by the end of the first available planting season.

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

11. Prior to the first use of the development hereby approved 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

12. A scheme for making good any damage/scarring of the roadside boundary wall revealed by the demolition work shall be submitted to and approved in writing by the Local Planning Authority within one month of the demolition. The works relating to the scheme shall be carried out in accordance with the approved details.

Reason: To ensure that the character and appearance of the Conservation Area is maintained.

13. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking, re-enacting, or modifying the Order), no extensions or enlargement of the dwelling hereby permitted shall be erected, constructed or carried out.

Reason: To maintain the scale, appearance and character of the development and to safeguard residential and visual amenity.

## **INFORMATIVES**

1. A sustainable drainage scheme for the disposal of surface water from the development should be designed and constructed in accordance with the Council's Surface Water Management: Interim Guidance for Developers Document. It is available on the Council's website at: flooding/flood- risk- management - and- the - planning - process. The provisions of the Planning Guidance, in particular Section 21 Reducing the causes and impacts of flooding, should be followed. Preference should be given to drainage measures which allow the rain water to soakaway naturally. Connection of new surface water drainage systems to existing drains/ sewers should only be undertaken as a last resort, if it can be demonstrated that infiltration techniques are not available.
2. In arriving at this decision the Council has used its best endeavours to work with the applicant in a positive manner to secure an appropriate outcome as required in the National Planning Policy Framework, paragraph 187.
3. All species of bats found in the UK are European Protected Species under the Habitats Directive 1992, the Conservation of Species and Habitats Regulations 2010 and the Wildlife & Countryside Act 1981 (as amended).

If a bat should be discovered on site at any point during the development then work must halt and Natural England should be contacted for advice.

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

All clearance, conversion and demolition work in association with the approved scheme shall be carried out outside of the bird nesting season which runs from March to September inclusive

Note: 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 cannot be clearly seen to be clear of bird's nests then an 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.

**APPENDIX 2****EUROPEAN PROTECTED SPECIES – Consideration of the three tests**

Application name and reference number:

15/01819/FUL  
The Lodge  
Camp Lane  
Ludlow  
Shropshire  
**Erection of replacement dwelling following demolition of existing**

Date of consideration of three tests:

12<sup>th</sup> April 201612<sup>th</sup> April 2016

Consideration of three tests carried out by:

Nicola Stone  
Planning Ecologist  
  
Heather Bradley  
Technical Specialist Planning Officer

**1 Is the development ‘in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment’?**

The development involves the demolition of an existing dwelling which is falling into a visible state of disrepair with cracks identifiable on site, the structure report and photographs accompanying the application site illustrate the depth of the structural problems and that the work to repair the defects would be costly resulting in its demolition being the more economically viable solution.

If the dwelling is left as it is it will result in the further deterioration of the building, potentially risking the health and safety of the current and any future occupiers. Further deterioration of the dwelling would not be an enhancement to the character or appearance of the Conservation Area in which it sits.

**2 Is there ‘no satisfactory alternative’?**

The alternative will be to not carry out the demolition, the dwelling is falling into disrepair and it is not financially viable to repair the dwelling. If the dwelling is not demolished it risks being left to deteriorate further and become unfit for use. This would not be satisfactory for the reasons set out above.



### 3 Is the proposed activity 'not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range'?

There was evidence of 3 Pipistrelle bats roosting within the building to be demolished as recorded by the Protected Species Survey report conducted by John Morgan (July 2014).

An EPS licence in respect to bats must be obtained before any demolition works can commence. This will stipulate appropriate timings of demolition works and mitigation for the loss of roosting places. It is anticipated that the timings will be mid-March to beginning of June and mid-September to end October, with mitigation being 3 Schwegler 1FD bat boxes attached to local mature trees within the garden prior to the commencement of works on site. Access to ridge tiles at a minimum of three places within the roof of the replacement house will also be provided. External lighting around the site will be of the 'down lighting' type and will not light up the sky around the buildings, or any bat access points.

The proposed development will not be detrimental to the maintenance of the populations of Pipistrelle bats at a favourable conservation status within their natural range provided that the following conditions detailed in the response from Nicola Stone to Heather Bradley dated 12<sup>th</sup> April 2016 are on the decision notice and are appropriately enforced:

The following conditions should be on the decision notice:

1. Development shall not commence until a European Protected Species (EPS) Licence with respect to bats has been obtained for the proposed work. Work shall be carried out in accordance with the Protected Species Survey report conducted by John Morgan (July 2014) attached as an appendix to this planning permission. A copy of the granted EPS licence and accompanying documents should be supplied to the local planning authority prior to the commencement of works on the site.

**Reason: To ensure the protection of bats, a European protected Species**

2. Prior to the first use of the development hereby approved 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.**

3. A total of 3 woodcrete bat boxes suitable for nursery or summer roosting for small crevice dwelling bat species shall be erected on the site prior to commencement of works as shown on a site plan. All boxes must be at an appropriate height above the ground with a clear flight path and thereafter be permanently retained.

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

#### Informative

All species of bats found in the UK are European Protected Species under the Habitats Directive 1992, the Conservation of Species and Habitats Regulations 2010 and the Wildlife & Countryside Act 1981 (as amended).

If a bat should be discovered on site at any point during the development then work must halt and Natural England should be contacted for advice.

### **Guidance for filling in the EPS form**

The three tests detailed below must be satisfied in all cases where a European Protected Species may be affected and where derogation under Article 16 of the EC Habitats Directive 1992 would be required – i.e. an EPS licence to allow an activity which would otherwise be unlawful.

In cases where potential impacts upon a European Protected Species can be dealt with by appropriate precautionary methods of working which would make derogation unnecessary; since no offence is likely to be committed, it is not appropriate to consider the three tests.

Test 1 'overriding public interest' and test 2 'no satisfactory alternative' should be addressed by Shropshire Council planning team. Test 3 'favourable conservation status' should be addressed by Shropshire Council Ecologists with guidance from Natural England.

**1 Is the purpose of the development/damaging activity for 'Preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment?'**

NB in order to meet this test, the purpose of preserving public health or public safety must also be shown to constitute a reason of overriding public interest. You would need to demonstrate that action is required to alleviate a clear and imminent danger to members of the general public.

If an unstable structure ( e.g. buildings, trees) is involved, either through neglect or outside influences (e.g. severe weather or seismic events), supporting evidence from an appropriately qualified person such as a structural engineer, arboriculturalist or tree surgeon should be sought.

If vandalism or trespass is used as an argument, evidence of reasonable measures to exclude the general public from the site must be presented. Evidence may be provided by the local police or fire services in relation to the number of incidents dealt with.

Only public interests can be balanced against the conservation aims of the EC Habitats Directive (1992), projects that are entirely in the interest of companies or individuals would generally not be considered covered.

**2 Is there no satisfactory alternative?**

An assessment of alternatives needs to be provided. If there are any viable alternatives which would not have an impact on a European Protected species, they must be used in preference to the one that does. Derogations under the EC Habitats Directive (1992) are the last resort.

Where another alternative exists, any arguments that it is not satisfactory will need to be convincing. An alternative cannot be deemed unsatisfactory because it would cause greater inconvenience or compel a change in behaviour.

This test should identify a) the problem or specific situation that needs to be addressed, b) are there any other solutions, and c) will the alternative solutions resolve the problem or specific question in (a)?

**3 Is the proposed activity 'not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range?'**

Assessment of the impact of a specific development will normally have to be at a local level (e.g. site or population) in order to be meaningful in the specific context.

Two things have to be distinguished in this test: a) the actual conservation status of the species at both a biogeographic and a (local) population level; b) what the impact of the proposal would be.

In such cases where the conservation status is different at the different levels assessed, the situation at the local population level should be considered first, although ultimately both should be addressed.

No derogation under the EC Habitats Directive (1992) can be granted if it has a detrimental effect on the conservation status or the attainment of favourable conservation status for a species at all levels. The net result of a derogation should be neutral or positive for a species.

In the case of destruction of a breeding site or resting place it is easier to justify derogation if sufficient compensatory measures offset the impact and if the impact and the effectiveness of compensation measures are closely monitored to ensure that any risk for a species is detected. Compensation measures do not replace or marginalise any of the three tests, all three tests must still be satisfied.