



Committee and date
South Planning Committee
26 April 2016

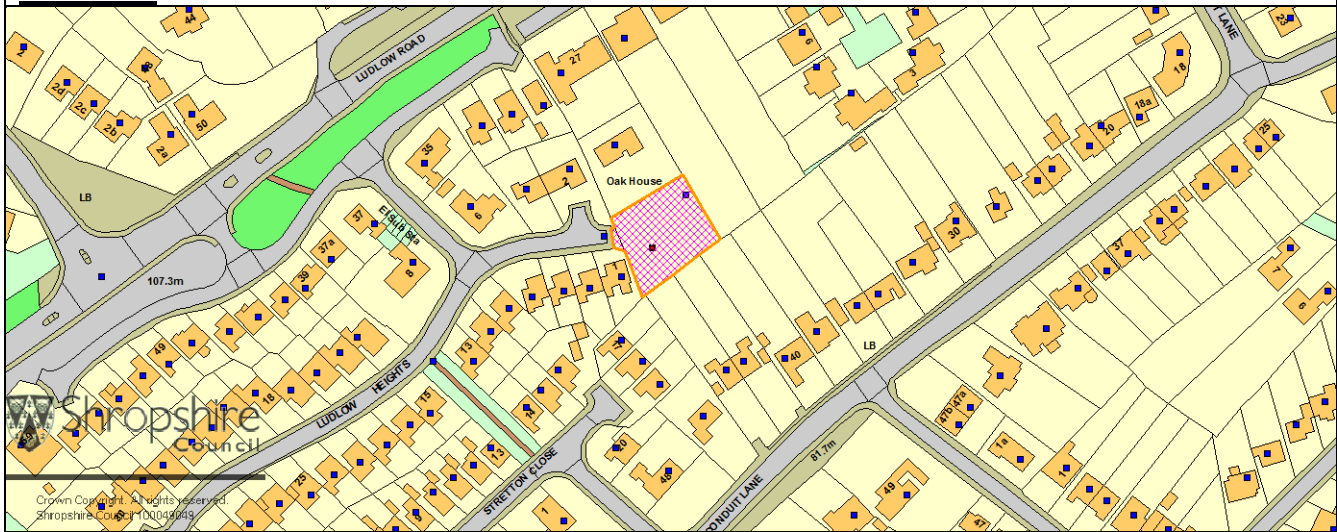
Development Management Report

Responsible Officer: Tim Rogers
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Summary of Application

Application Number: 15/04296/FUL	Parish: Bridgnorth Town Council
Proposal: Erection of two storey dwelling with parking.	
Site Address: Proposed Dwelling To The East Of Ludlow Heights Bridgnorth Shropshire	
Applicant: Mrs Jayne Roberts	
Case Officer: Mandy Starr	email: planningdmsw@shropshire.gov.uk

Grid Ref: 370735 - 292876



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Recommendation: - Refuse

Recommended Reason for refusal

By reason of its location and siting the proposed development would prejudice the retention of the prominent oak tree at the site which is protected by The Salop County Council (Ludlow Road Bridgnorth) TPO 1974 due to the likely pressure from the occupants of the proposed dwelling for work to be carried out to safeguard their amenity and safety. The amenity and safety of the proposed dwelling to this oak tree would be impacted upon by the overbearing presence of the tree within their garden area along with a substantial degree of overhanging branches and the amount of detritus discarded by a tree of this size and maturity. The high probability of loss or erosion by way of lopping/pruning/felling of this high value amenity and natural asset provided by this tree would not protect or enhance local distinctiveness. In addition the siting of the proposed dwelling so close to the proposed southern boundary of the site on a raised platform would result in likely pressure to have the existing third party owned Leylandii hedge lopped or removed to provide solar gain to the proposal which in turn would result in a material loss of amenity to the occupiers of both 17 Stretton Close and 44 Conduit Lane. The proposal would therefore be contrary to the NPPF, CS6 and CS17 of the Core Strategy and MD2, MD3 and MD12 of the Shropshire Sites Allocations and Management of Development (SAMDev) Plan.

REPORT**1.0 THE PROPOSAL**

- 1.1 The proposal is to erect a detached two bedroom chalet bungalow with an associated parking area for two vehicles on land to the south of a recently built dwelling known as 2A Oak House which is to the east of Ludlow Heights in what was originally part of the rear garden of No 27 Ludlow Road. Access to the dwelling would be via a shared access that currently leads to No 2A off Ludlow Heights that was granted permission under 10/03744/FUL and has been completed.
- 1.2 The submitted plans show that the new dwelling would be constructed on top of an artificially raised landscaped terrace to be constructed from layers rolled topsoil subject to a formal specification that would be built to the southwest of the site above the existing ground level in order that an existing mature oak tree that is the subject of a Tree Preservation Order would have its root protection area/canopy protected from the development.
- 1.3 The proposed dwelling would be constructed from through-colour render blockwork and some hardwood cladding with brick detailing beneath a concrete plain tiled roof. It would have a footprint of 54m². The height to the ridge when viewed from the east on the raised terrace would be 7.16m and to the eaves 3.4m. The proposed dwelling would provide a dining kitchen, hall, wc and living room on the ground floor, with two bedrooms and a bathroom at first floor level. The first floor accommodation would be within the steeply sloping, dual pitched roof and would be lit by windows in the north and south facing gable elevations, and by a dormer and rooflight on the east elevation. A monopitch canopy porch would be positioned over the front door on the east elevation, and would be a continuation of the main roof plane. The proposed roofing material would be concrete plain tiles, with the external walls rendered. Timber cladding would be a design feature to the dormer,

canopy porch and above the large area of glazing proposed for the north elevation. Foul sewage is indicated to be disposed of to a main sewer and surface water to a soakaway. To the north of the dwelling above a retaining wall would be 2No car parking spaces to be constructed from imported stone rolled in layers with pavements above.

2.0 SITE LOCATION/DESCRIPTION

2.1 The application site is on an area of land of some 0.08ha that is sited at the end of double row of 1960's chalet bungalows on land to the south of Ludlow Road. The nearest dwelling is No 1 Ludlow Heights which faces roughly north/south in direction. Beyond these dwellings to the east is the remains of domestic garden for No 27 Ludlow Road and which contains a large mature oak tree. To the north of the tree is a recently permitted bungalow known as 2A Oak House which is reached via a paved driveway off Ludlow Heights.

2.2 The submitted red edging shows that the application site would include much of the canopy of the existing mature oak tree giving the site approximate dimensions of 31.5m wide by 26m deep with the dwelling to be sited in the southwest corner of the approximately rectangular site. Apart from the oak tree whose canopy takes up much of the proposed garden area, there is a small row of semi-mature Leylandii to the south of the site that forms the rear garden party boundary with 44 Conduit Lane. Beyond these trees is fencing that forms the rear garden boundary of No 42 Conduit Lane. To the east of the site beyond the oak tree is the picket fencing forming the garden boundary with No 25 Ludlow Road a property that has its access off Ludlow Road itself. Whilst to the north there no defined boundary to 2A Oak House except that it shares part of the canopy area for the oak tree. To the west of the site for the proposed dwelling is the boundary for No 1. It should be noted that this dwelling is higher than the application site with a retaining wall with fencing along its eastern boundary.

2.3 To the north east of the proposed dwelling is the large oak tree that is the subject of a Tree Preservation Order. The tree canopy is extensive. It is a tall specimen and is visible from some distance away in particular from the south west approach from Ludlow Road which is at a higher level. In addition the upper parts of the tree are visible above the adjacent roofscapes.

2.4 This proposal is within the Key Centre to the west of the Town Centre and is accessed off the Ludlow Heights development off Ludlow Road. The area is characterised by a mix of larger detached properties with long gardens and smaller dwellings and semi-detached properties with more modest gardens such as the Ludlow Heights development which are predominantly chalet bungalows with small plots which are positioned close together.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

3.1 The application is considered to raise material considerations and has a recent planning history which, in the view of the Area Planning Manager in consultation with the Chair and Vice-Chair, would warrant consideration of this proposal by the South Planning Committee.

4.0 **Community Representations**

Consultee Comments

4.1 **Bridgnorth Town Council:** Recommend refusal to planning application 15/04296/FUL on the grounds of overdevelopment of the site, concerns over potential damage to the Oak Tree and the impact on the natural environment and ecology.

4.2 **SC Highway Authority**

The proposed development is unlikely to significantly increase vehicular activity, on this residential cul-de-sac. The site is currently served by an existing private drive to one dwelling at the termination of an existing established residential street (unclassified road).

This access is considered acceptable in its current form to accommodate this proposed additional dwelling and associated vehicular activity. No objection

4.3 **SC Arboricultural Officer** (*Amended comments following submission of revised Tree Condition Report received 15th February 2016*)

I have read the information provided in the most recent tree report (Forester and Arborist Services Ltd, 15.1.2016) and wish to provide further comments as regards arboricultural aspects of this application.

In this regard, whilst I consider that the dwelling itself has been appropriately designed in terms of its size and position and orientation of main windows in relation to the tree, I have concerns as to the overbearing size and dominance of the tree compared to the relatively small size of the garden area to the side of the house.

My earlier consultation response to the current application (2nd November 2015) was based on the premise that the principle of the proposed dwelling had been established by a previous planning officer's pre-application response. On further consideration, in light of the Inspector's comments highlighted above and the adoption of the SAMDev Plan on 17th December 2015, which strengthened the Council's environmental and land use policies, I feel I must revise my opinion and object to the current application on arboricultural grounds.

SC Arboricultural Officer

(*Original Comments*)

I have reviewed the arboricultural information submitted in association with this application and consider it to be consistent with the information and consultation response provided to the preapplication enquiry.

I therefore have no objection to the proposed development, providing appropriate precautions are taken to protect the oak tree from damage during construction, should permission be granted, as per the tree report (Terry Merchant, 28.7.2010). The Tree Protection Plan will need updating, so that it is based upon an accurately scaled final layout and also takes account of any changes to the condition or status of the tree and hedge cover on / adjacent the site, since the tree report was originally prepared.

4.4 **SC Drainage** (*Revised comments following submission of revised drawings 15th February 2016*)

The proposed surface water soakaway is acceptable. If planning permission is granted then recommend condition.

SC Drainage

(Original comments)

Drainage details, plans and calculations could be conditioned if planning permission were to be granted

4.5 SC Affordable Housing

The affordable housing contribution Proforma accompanying the application indicates the correct level of contribution and therefore satisfies the provisions of the SPD Type and Affordability of Housing.

- Public Comments

4.6 21 letters received objecting on the following grounds:

- How many times do the residents have to put up with constant planning applications for this development?
- The oak tree is 400 years old and is protected, so any proposal is likely to result in potential damage to the tree as well as applications to prune, lop and possibly fell this tree if it starts to cause loss of amenity to occupiers of proposed dwelling
- There is very limited space around the tree for the house and garden, so concern that heavy plant to be used in construction of development would impact on root protection of oak
- Who would manage the tree during the construction works?
- Development is contrary to BS5837: 2012 as the proximity of the tree in relation to the proposed dwelling is an important consideration because incoming occupiers will want to have a tree in harmony with its surroundings without casting an excessive shade or otherwise interfering with their prospects of reasonable enjoyment of the property.
- It is clear from the previous Committee meeting when a similar scheme was discussed in 2010 that the minutes state that the site would not lend itself to further development
- The Inspector's decision is very clear with regard to the possible harm to this tree from any dwelling in this location and this situation has not changed
- The applicant has not addressed the points raised by the Planning Inspector with regard to this scheme
- Extremely high amenity value of this tree and it is visible from prominent public vantage points. It is a well-recognised natural asset and cannot easily be replaced and therefore any development that would affect it would be contrary to reason why it was protected
- Proposed garden area around tree will be impacted by shading and outlook thereby causing a threat to its health and longevity.
- There was a previous application under 09/0135/TPO for a crown reduction for the sister oak tree by the residents of Ludlow Gates in order to allow for more light and they were further away from that oak tree than the proposed dwelling would be to the existing tree
- The Ludlow Heights roads are used as major access route to Castlefields and Oldbury Wells Schools thus causing conflict with

- developer traffic and increased traffic movements of new dwelling
- Access route to site is narrow so any construction traffic would have difficulty parking due to limited width
- There are bats living in the tree
- Restrictive covenants from 1967 affect this site
- Design of house is not in keeping with architecture of existing houses especially as the house has been turned by 90 degrees.
- If permission is granted what is to stop the owners of both houses seeking the removal of the tree and then applying to build more houses on the land?
- Object to the raising of the ground level as the previous applications, the ground level had to remain untouched as such development could cause damage to the roots and impact on the tree as well as impacting on the residents of Conduit Lane and Stretton Close as proposed dwelling would only be a couple of metres from boundary
- Increase in height of land would result in harmful impact in terms of being overbearing, causing shading as well as lack of privacy
- Many of the trees along the southern boundary have been removed, so new dwelling will result in overlooking
- Lives of many of the residents have already been blighted from the construction of the previous development with the builder's causing problems with occupiers of adjoining properties
- Introduction of new window in roof of No 2a without permission has resulted in loss of amenity to adjacent property
- Already have issues with drainage and foul sewer capacity in this location, so this will exacerbate it, especially to those residents who are to the south of the site.
- Backland development
- The site notice was only displayed for 15 days and put up in an obscure location
- The newly adopted SAMDev now reduces speculative development and in the case of Bridgnorth indicates that most of the housing required has now been built.

5.0 THE MAIN ISSUES

Policy Context and Principle of development

Siting, scale and design of structure

Visual Impact including analysis of Previous Appeal Decision with respect to the oak tree and landscaping

Affordable Housing

Drainage

Residential Amenity

Highway Safety

Ecology

6.0 OFFICER APPRAISAL**6.1 Policy Context and Principle of Development****6.1.1 Core Strategy**

CS1 Strategic Approach. A key objective of market town revitalisation programme to encourage, greater self-containment in terms of employment, retail expenditure and local services.

CS3 The Market Town and Other Key Centres. This policy seeks to ensure that housing development is of an appropriate scale and design that respects each town's distinctive character and is supported by improvements in infrastructure within the town's development boundaries. Bridgnorth will provide a focus for development within the constraints of its location on the edge of the Green Belt and River Severn.

CS6 Sustainable Design and Development Principles deals with sustainable design and development principles and states that development should conserve and enhance the built, natural and historic environment and be of an appropriate scale and design taking into account local character and context. It also needs to take into account the health and wellbeing of communities including safeguarding residential and local amenity and that development is designed to a high quality consistent with good practice standards including appropriate landscaping and taking account of site characteristics and ground contamination.

CS9 Infrastructure Contributions'. This policy also deals with CIL and affordable housing contributions with the appropriate levels of contributions set out in the SAMDev or in the Community Infrastructure Levy Charging Schedule at a level that is economically viable for the majority of development and this is assessed regularly to reflect changes in market prices, costs of construction and alternative land values over time.

CS11 Type and Affordability of Housing. In order to meet the diverse housing needs of the county's residents to create an integrated and balanced approach with regard to existing and new housing including type, size, tenure and affordability. This will be achieved by a number of criteria including seeking to ensure that all housing developments are designed to be capable of adaption to accommodate lifestyle changes and ensuring that new open market dwellings makes appropriate contributions to the provision of local needs housing.

CS17 which deals with Environmental Networks is also concerned with design in relation to the environment and places the context of a site at the forefront of consideration so that any development should protect and enhance the diversity, high quality and local character of Shropshire's built, natural and historic environment and it does not adversely affect the values and function of these assets.

CS18 Sustainable Water Management requires that developments will need to integrate measures for sustainable water management to reduce flood risk, avoid an adverse impact on the water quality and quantity including ground water resources and to provide opportunities to enhance biodiversity by ensuring that all developments include appropriate sustainable drainage systems (SUDS) to

manage surface water so that all development should aim to achieve a reduction in the existing runoff rate, but must not result in any increase in runoff rate.

6.1.2 **Shropshire Sites Allocations and Management of Development (SAMDev) Plan**

MD1 Scale and Distribution of Development. This policy sets out where the pattern of new housing development will be within the County; namely Market Towns and other Key Centres, Community Hubs and Community Clusters and areas where exception schemes for local needs housing is acceptable.

MD2 deals with Sustainable Development. This requires that for a development to be considered acceptable it must achieve local aspirations for design in terms of visual appearance and how a place functions as set out in local community led plans and it must also contribute to and respect local distinctive or valued character and existing amenity value by a number of specific criteria such as responding to the form and layout of the existing development and the way it functions including building heights, lines, scale etc. It must also reflect local characteristic architectural design and details. There is also a requirement to consider the design of the landscaping which responds to the local character and context of the site

MD3 Managing Housing Development. There is a requirement over the 10 year plan period until 2026 to deliver 27,500 new homes and the Council has in excess of a 5 year housing land supply Furthermore such proposals must meet the requirements of sustainable development set out elsewhere in the Core Strategy and the SAMDev.

MD12 Natural Environment. In connection with other associated policies seeks to apply guidance of the conservation, enhancement and restoration of the county's natural assets which will be achieved by ensuring that the social and economic benefits of the development can be demonstrated to clearly outweigh the harm to the natural assets where proposals are likely to have an unavoidable significant adverse effect, directly or indirectly or cumulatively on any of the following: locally designated biodiversity sites; priority species and habitats; woodlands, trees and hedges and landscape character and local distinctiveness. In these circumstances a hierarchy of mitigation then compensation measures will be sought. There is also a need to encourage development which appropriately conserves, enhances, connects, restores or recreates natural assets particularly where this improves the extent or value of these assets are recognised as being in poor condition. Finally there is a need to support proposals which contribute positively to special characteristics such as adjacent high priority biodiversity areas.

6.1.3 Settlement Policy S3 for the Bridgnorth Area seeks to deliver 1,400 dwellings in the Plan Period through a mix of allocated and windfall sites.

6.1.4 The proposed site falls within the Market Town of Bridgnorth and there is no in-principle planning housing policy objection to the erection of new-build open market housing within the Town development boundary. The acceptability or otherwise of this proposal therefore turns upon consideration of the detailed matters discussed below.

6.2 Siting, Scale and Design of Structure

- 6.2.1 The proposed dwelling would be sited in the southwest corner of the former garden of No 27 Ludlow Road and be erected on a raised and curved platform terrace to take account of the spread of canopy of the tree and its root protection area. The terrace would extend right up to the existing paved driveway leading to No 2A to the north of the proposed dwelling and it would run round to the southwest corner of the site but be set physically away from the party boundary with No 17 Stretton Close and 44 Conduit Lane.
- 6.2.2 It should also be noted that the existing garden area gently slopes to the south, so at present the trunk of the oak tree is at 98.10m whereas the south east corner of the site is 97m giving a 1.1m drop across the site. Towards the west of the site at the entrance to the existing driveway the level is measured at 100.23m, whereas the southern boundary adjacent to the row of conifers has a level of 98.02m. This shows that the level change here is 2.21m.
- 6.2.3 The proposed raised terrace would extend from the existing driveway off Ludlow Heights and would be 16m in length with a maximum width of 13m. Due to the sloping site, the depth of the terrace is greater to the south than to the north of the site. It would have a 30 degree batter and would be grassed to have a similar appearance to the bank that supports the access drive to No 2A. A set of steps would be built in front of the dwelling leading down to the garden area. The two parking spaces would be provided to the south of the existing access drive just to the north of the proposed dwelling.
- 6.2.4 The proposed dwelling would have a footprint of 52m² and a gross floor area of 104m² providing for a front porch, hallway, living room, downstairs WC, open plan kitchen and dining room with utility space in cupboards at the rear. At first floor would be two bedrooms and a bathroom. Although the dwelling would have its principle elevation facing east over part of the canopy of the mature oak tree, the main windows would actually face north being for the living room and bedroom 1. The other elevations would have minimal fenestration.
- 6.2.5 The proposed chalet bungalow would have a ridge height of 7.16m as viewed from the principal elevation facing east on the terrace, but 8.42m when viewed from the original ground level. The eaves height from the terrace would be of 3.4m high, whereas from the original ground level would be 5.3m high. However on the southern elevation which would be sited on a deeper part of the platform, the overall height of the dwelling taking into account the height of the terrace would result in the dwelling being some 8.2m high with eaves of 5.3m.
- 6.2.6 The submitted drawings show that the extent of the slope of the proposed terrace would extend to within 800mm to the boundaries with 17 Stretton Close and 44 Conduit Lane which would then abut the root protection area of the existing line of Leylandii trees that form the boundary treatment here. Moreover there would be only be 1300mm between the side of the dwelling and the end of the terrace, so the dwelling would only be 4m away from the party boundary.

- 6.2.7 The west facing elevation of the proposed dwelling would face the existing side elevation of No 1 and its side boundary where there are no first floor windows. There would be a separation distance of 2.7m being provided between the two dwellings. It is also important to note that No 1 Ludlow Heights is substantially higher than the application site as there is a retaining concrete wall and fence panels between the two. The submitted plans indicate that the new built up terrace would reduce the height difference between the two sites to that of only 600mm instead of some 1.8m as existing. It should be noted that No 1 is within the applicant's ownership.
- 6.2.8 As for the distance between the proposed dwelling and protected oak tree canopy this would be between 8.5m and 20m away due to the position of the canopy in relation to the proposed dwelling. Apart from the space beneath the oak tree's canopy, there is smaller area to the south and east that measures roughly 18m by between 4.5m and 11m that would not be affected by the oak tree.
- 6.2.9 Notwithstanding the issue regarding the protected oak tree that will be considered below, the proposed dwelling design is considered to be acceptable here in terms of its design and scale: It would provide a contemporary design of dwelling in the same character as the existing residential units in Ludlow Heights with its steeply pitched roof line and dormer.
- 6.2.10 However there is an issue that has now been made clear from the submission of the revised block and levels plans which shows that there would only be some 600mm beyond the dwelling to the edge of the terrace due to the constrained nature of the site thereby limiting the outlook from this room and any patio area for the occupants. It is clear that this would result in the dwelling that would be cramped and out of character with the established grain of both Ludlow Heights and No 2A Oak House

6.3 Visual Impact including analysis of Previous Appeal Decision with respect to the oak tree and landscaping

- 6.3.1 The submitted drawings also show that both the application dwelling and No 1 would in addition to having steeply sloping roofslopes have similar ridge heights, so that when viewed from Ludlow Heights, the dwelling would have a similar appearance and limited visual impact.
- 6.3.2 Turning to the proposed development in relation to the protected Oak tree, the Council's Tree Officer originally took the view that the proposed dwelling had been designed as such as to successfully integrate with the nearby protected mature oak tree in terms of its size and position as well as the layout of the main windows and levels of the development platform.
- 6.3.3 He also took the view that any approval granted should be on the condition that the rise in site levels to the desired construction platform for the dwelling and parking area is achieved by the importation of appropriate material into the site, rather than cut and fill from elsewhere within the site, be that within the Root Protection Area of the oak tree or outside it. This because that the lowering of the ground levels around the tree, for example on land destined to form the garden for the new dwelling, would tend to increase the perception of height and overbearing

dominance of the oak tree. This should clearly be avoided, given the importance of achieving a successful relationship between tree, dwelling and residents.

- 6.3.4 However following the submission of the recent Revised Tree Condition Report (Forester and Arborist Services Ltd 15.1.2016) the Council's Tree Officer has reconsidered the facts and has now changed his view with regard to the scheme following the assessment of the new Tree Report.
- 6.3.5 The tree report recognises that surgery works have been undertaken as previously recommended to the protected oak tree (T1) since the original report was produced in 2010. The oak tree is the same height (25m) but has increased in stem diameter by 5cm (to 159cm dbh (diameter at breast height) and radial crown spread to the south by 40cm (to 13.4m) and the west by 20cm (to 11.2m), compared to its dimensions in 2010. Nevertheless, the Root Protection Area remains capped at its maximum value of 15m radius and the tree is still a category 'A2' tree of exceptional amenity value.
- 6.3.6 With regard to the proposed construction, as the current tree report states in the Arboricultural Impact Assessment for T1, *'the base of the proposed soil batter falls outside the RPA; no strip excavation is permitted within the RPA; no raising or lowering of current soil levels by >100m is permitted within the RPA'* (It is assumed this is a typographical error and the report should actually state 100mm). For this reason the applicant's Arboriculturalist considers that it would be possible to construct the proposed dwelling without causing physical damage to the protected oak tree T1; given appropriate precautions and controls during implementation of any approved development, as described in the Method Statement in the tree report. Further details would still need to be provided to ensure that this would be the case, with regard to the means of construction and location of any drainage features, excavations for which could damage the roots of the tree.
- 6.3.7 However, it is important to note that the construction of the dwelling is only **one** factor and of equal consideration is the need to achieve a successful juxtaposition of tree and dwelling, so that future occupants can have a reasonable enjoyment of their property and can live in harmony with the protected tree. In this regard, whilst it is considered that the dwelling itself has been appropriately designed in terms of its size and position and orientation of main windows in relation to the tree, there is concerns over the overbearing size and dominance of the tree compared to the relatively small size of the garden area to the side of the house.
- 6.3.8 This issue was specifically addressed by the Inspector during the appeal to a previous planning application to build 5 dwellings, including one (plot 5) in approximately the same location as the currently proposed dwelling (planning ref: 12/00412/FUL; appeal ref: APP/L3245/A/13/2190478). The appeal was dismissed and in his decision of 3rd October 2013 the Inspector stated at paragraph 11 his concerns regarding plot 5:
'Although south-west of the tree and therefore affected by shading to a lesser degree, its side garden area would be dominated by the presence of the oak tree with a significant proportion of it being beneath the canopy...' He went on in para.12 to highlight concerns about possible threats to continued good health and longevity of the tree arising from pressure to fell or (excessively) prune from future

occupiers. Stating *'such pressures are likely to occur because of real householder concerns relating to restriction of light and overshadowing, dominance and perceived danger from falling limbs. This is notwithstanding any other potential issues which may arise in terms of falling debris or branches, blocked gutters, interference with underground services, or simply in relation to its overbearing presence'*.

- 6.3.9 The Inspector recognised in para.14 that the protection afforded by a TPO would enable the Council to control any future tree works, but considered that 'it would be more difficult for it to refuse an application to cut back or even remove a tree that was threatening the safety of the occupiers or having a harmful effect on their enjoyment of the property. There can be no certainty that such pressures could be reasonably resisted'. He further stated in para.16 that pruning that stunted the appearance of the tree would diminish its amenity value and that the appearance of the surrounding would suffer as a result.
- 6.3.10 The Inspector concluded in para.17 that the proposed development was likely to lead to increased pressure to carry out works to the oak tree, which in turn may have a detrimental effect on its future appearance and life expectancy. This would conflict with policies CS6 and CS17 of the SC Core Strategy and para.118 of the NPPF. In para.24 of his Decision the Inspector stated that these conclusions represented *'a significant, substantial and overriding objection which must be decisive'*.
- 6.3.11 Whilst the Inspector's decision related to the original proposal to build 3 dwellings in proximity to the tree, it is considered that the conclusion remains valid and applicable to the current application for a single dwelling to the south-west. Further, since the time of the appeal, the Council has now adopted its Site Allocations and Management of Development (SAMDev) Plan and in addition to the aforementioned policies, the current application is contrary to SAMDev policy MD2: Sustainable Design and MD12: Natural Environment.
- 6.3.12 MD2 requires that development proposals need to contribute to and respect locally distinctive or valued character and existing amenity value by responding appropriately to the form and layout of existing development and the way in functions; as well as enhancing, incorporating or recreating natural assets in accordance with MD12 and considering the design of landscaping and open space holistically as part of the whole development that provides safe, useable and well-connected outdoor spaces which respond to and reinforce the character and context within which it is set which includes natural features such as trees.
- 6.3.13 Furthermore, it is consider that the proposed development could also have a negative long-term impact for the 8m high Lawson cypress hedge (H1 in the tree report) in third party ownership, running close to the southern site boundary. Whilst it is considered the hedge could be afforded mostly adequate protection from damage during construction, because it is tall and rather close to the proposed dwelling so it would take light from the southern elevation of the proposed dwelling and terrace. This then has the potential to result in a formal 'High Hedge' objection to the Council from future residents due to overshadowing. The hedge lies due south of the only proposed glazing (double doors) in the southern elevation of the

kitchen / dining area of the new dwelling. Given the elevated build platform, (with a floor level over 2m higher than neighbouring ground level), a reduction in height of the hedge to allow increased light to the new dwelling could adversely impact on the already diminished privacy of the hedge owners to the south.

6.3.14 The agent has now submitted a number of responses to the Council following the Tree Officer revised comments:

☐ In respect of the Inspector's comments referred to in the Tree Officer's comments, this relates to an entirely different proposal and should not be compared with the current application

- Officer's response: The Local Planning Authority has to consider the previous history of the site in all applications and especially when a previous application for residential development involves the protected oak tree that is a significant factor in the determination of the current scheme. In this case, the previous appeal inspector considered the effect of the proposal on the appearance and life expectancy of the protected oak tree as one of the two main issues in the determination of the previous scheme under 12/00412/FUL. In respect of the current design, it is acknowledged that it is carefully designed so that it does not physically encroach onto the tree, but there are other issues involved in this scheme

☐ It is not agreed that the proposal would have a relatively small garden as it is considered that the amenity space is generous by current standards for a two bedroom dwelling.

- Officer's response: On paper the amenity area appears substantial, but in reality the useable space around the dwelling is very limited and that taken with the large expanse of tree canopy, means that a viable sitting-out area, a children's play area or a vegetable garden would be really be restricted to the bottom south east corner of the site which is constrained on three sides. A reduction in the extent of curtilage by giving more to 2A Oak House would not overcome this objection.

☐ The first floor south facing window could be deleted from the scheme as it is not essential

- Officer's response: This secondary window is indicated as being obscurely glazed, but unless it was fixed, overlooking could occur and it is also shown as an escape window too; even though this would be difficult to achieve due to the limited width of the terrace outside

☐ The applicant has acted very responsibly towards maintaining the future longevity of the oak and has complied with all the requirements under the Planning Regulations. It is therefore suggested that a future agreement could be implemented to continue the management of the tree in the future.

- Officer Response: Whilst it is acknowledged that the applicant has acted responsibly in maintaining the future longevity of the oak, a future occupier may wish to undertake works that could see in the long-term the cutting back, removal of major limbs or even removal of the tree were it to affect the safety of occupiers or have an harmful effect on the enjoyment of their property. Furthermore this tree has a prominent symmetrical crown and pressure to reduce side leaders could lead to the crown becoming unbalanced thereby harming the high quality visual amenity of this important historic tree which is used to being surrounded by open garden land.

☐ It is noted that there is local objection to this scheme as happened in the previous scheme, but the Council should not be influenced by the quantity of objections. The comparisons with the approved scheme in 2010 are consistent with this scheme and therefore this should be approved.

- Officer response: The scheme referred to under 10/03744/FUL was for 2A Oak House. This is sited to the north of the tree and has a much large plot size and garden and is higher than the current application site and faces south. The relationship between the built dwelling and the tree is typical of dwellings with large trees in their garden as there is sufficient distance between the edge of the canopy and the house so as not to result in any excessive conflict between the two.

6.4 Affordable Housing

6.4.1 Core Strategy policies CS9 and CS11 require all new-build open market residential developments to make a contribution towards affordable housing. The current prevailing rate for such contributions within Bridgnorth is set at 20%. The applicant has agreed to make the required contribution in this case: This would be achieved through a legal agreement (S106) to be completed and signed should permission be granted.

6.5 Drainage

6.5.1 Core Strategy policy CS18 seeks to secure sustainable water management within developments. During the processing of the application, further details were submitted regarding the drainage of the site as concern was raised as to where the construction of a swale of some 40m² was to be sited as this was not shown on the original submitted drawings. There was also an issue regarding the location of the proposed 1050mm diameter interlinked soakaways and a filter drain to the east of the drive of 80mm diameter plastic coil to drain a 0.3m wide x 0.75m deep trench as these were not shown on the submitted plans either. These features are considered to be crucial to ensure that none of them would affect the RPA of the protected oak so that would restrict them to what is left of the small garden area beyond.

6.5.2 Following the submission of revised plan, the swale, the two interlinked soakaways and the filter drain have now been omitted and instead, a single 2.0m x 2.0m x 2.0m rubble filled soakaway would be sunk in the garden land between the steps leading to the garden area and the party boundary. The house foundations would be sunk to virgin ground. Below the slab void it would be filled with arisings as necessary. The Council's Sustainable Drainage Officer is now satisfied with the changes.

6.6 Residential Amenity

6.6.1 Core Strategy policy CS6 seeks to safeguard residential amenity. The scheme has been designed to minimise any overlooking from the proposed fenestration. It is noted that the western elevation would have no windows at first floor or in the roofspace with only a landing window at ground floor.

6.5.2 In terms of impact from the north, it would be visible from No 2 Ludlow Heights, but it would be some 30m away so that there would be limited overlooking between the principal north facing windows and No 2's windows. Equally there would be no loss of amenity when viewed from No 2A Oak House as that would be some 35m away.

6.5.3 However the situation for the south facing elevation is different in that it would result in the potential for loss of amenity to the occupiers of No 44 Conduit Lane from the

ground floor French Doors due to the changes in levels proposed. It is clear that because of the limited extent of the terrace beyond this elevation being only 1400mm wide as well as the slab level of the proposed dwelling being 1.4m higher than the original ground level; as well as the close proximity of the proposal only being sited 4m away from the party boundary with No 44, there is the unique objection on the ground of loss of amenity caused by loss of privacy and overlooking from the ground floor French Windows into No 44's rear garden. It would appear that this loss of amenity would not be resolved by the erection of 2m high fencing along the party boundary, especially as the extent of the raised terrace's slope would clearly encroach over the Root Protection Area (RPA) of the existing row of Leylandii which could result in their loss at a later date; thereby opening up this boundary even more in the future due to the limited light levels that would occur from the position of these trees.

6.7 Highway Safety

6.7.1 Core Strategy CS6 seeks to ensure safe developments. In the context of highway safety, factors to be considered are the capacity of the local road network and access to accommodate the type and scale of traffic likely to be generated and adequate provision for parking and servicing. The Council's Highways Development Control Team are content that this the local road network and access could satisfactorily accommodate the traffic likely to be generated by an additional dwelling and there would be sufficient parking space within the application site. A refusal on highway safety grounds could not be sustained in this case.

6.8 Ecology

6.8.1 The site has been the subject of ecological surveys carried out in 2010 and 2012 (Camlad Ecology), commissioned by the applicant, in respect of other development proposals on the land. The latter report made recommendations in respect of bats (no exterior lighting directed towards the Oak Tree, nesting birds (the best period for clearance work is September to early November or mid February to early March), hedgehogs (potential hibernation sites removed from the working area before late October or left until spring, avoid the creation of hibernation habitats). Also given consideration are badgers, amphibians, reptiles, water bodies and mature trees. SC Ecology advised at that time dwellings in the vicinity of the oak tree will not significantly impact upon the trees potential to support wildlife provided that its retention and protection is ensured and direct lighting is avoided. While no new ecological survey has been submitted with this application, it is considered that conditions and informatives on any approval would remain an adequate safeguard of ecological interests on this site. These would address precautions to be taken during development to safeguard the species listed above, external lighting, and advising on the legal protection afforded to bats and nesting wild birds.

7.0 CONCLUSION

7.1 Whilst the principle of a dwelling would be acceptable in this part of Bridgnorth, this site is unique in having a substantial mature protected oak tree taking up a large proportion of the usable amenity area of the site and in close proximity to the proposed dwelling. Due to the present and future amenity provided by this prominent Oak tree, it would be contrary to the Council's adopted planning policies and to the aspirations of the Tree Preservation Order to allow further residential development that would in any way lead to the erosion of the high value amenity to

the local area provided by this tree. It is considered that the proposed development would not function well in relation to this tree not just for the short term, but over the lifetime of the development which would inevitably result in the loss or diminishing of this locally valued and distinctive natural asset. Furthermore due to the restricted size of the site to the south, there could be further pressure to remove the line of Leylandii trees that form the party boundaries with 17 Stretton Close and 44 Conduit Lane in order to open up the southern side of the dwelling to increased sunlight which would then result in material loss of amenity to these dwellings. These two issues would result in the scheme being unacceptable development. The proposed development would not satisfy the environmental role of sustainable development set out in the National Planning Policy Framework.

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

Core Strategy
CS1 Strategic Approach
CS3 The Market Towns and other Key Centres
CS6 Sustainable Design and Development Principles
CS9 Infrastructure Contributions
CS11 Type and Affordability of Housing
CS17 Environmental Networks
CS18 Sustainable Water Management

Shropshire Sites Allocations and Management of Development (SAMDev) Plan
MD1 Scale and Distribution of Development
MD2 Sustainable Design
MD3 Managing Housing Development
MD12 Natural Environment
S3 Bridgnorth

Type and Affordability of Housing

RELEVANT PLANNING HISTORY:

11/02114/TPO Reduction of branches and removal of all dead wood of one Oak Tree protected by Bridgnorth Council (Ludlow Road, Bridgnorth) TPO 1974 GRANT 5th July 2011

12/00412/FUL Erection of 5 dwellings following demolition of existing dwelling; formation of vehicular access (amended description) REFUSE 9th July 2012

15/00249/AMP Non-material amendment relating to planning permission 10/03744/FUL - Erection of a dormer bungalow with integral garage and creation of new vehicular access GRANT 19th February 2015

15/02210/AMP Non-material amendment relating to planning permission 10/03744/FUL - Erection of a dormer bungalow with integral garage and creation of new vehicular access GRANT 22nd June 2015

BR/95/0171 ERECTION OF A PITCHED ROOF OVER EXISTING FLAT ROOF GRANT 16th May 1995

BR/77/0068 Erection of a private double garage at the front and the use of the existing garage as a games room UNK 1st January 1977

Appeal

13/02014/REF Erection of 5 dwellings following demolition of existing dwelling; formation of vehicular access (amended description) DISMIS 30th October 2013

11. Additional Information

View details online:

<https://pa.shropshire.gov.uk/online-applications/simpleSearchResults.do?action=firstPage&searchType=Application>

List of Background Papers Design and Access Statement Ecology Report Tree Report
Cabinet Member (Portfolio Holder) Cllr M. Price
Local Member(s) Cllr John Hurst-Knight Cllr Les Winwood

Informatives

1. Despite the Council wishing to work with the applicant in a positive and proactive manner as required in Paragraph 187 of the National Planning Policy Framework, the proposed development is contrary to the policies set out in the Committee report and referred to in the reasons for refusal, and as such it has not been possible to reach an agreed solution in this case.
2. In determining this application the Local Planning Authority gave consideration to the following policies:

National Planning Policy Framework
National Planning Practice Guidance

Shropshire Core Strategy
CS1 Strategic Approach
CS3 The Market Towns and other Key Centres
CS6 Sustainable Design and Development Principles
CS9 Infrastructure Contributions
CS11 Type and Affordability of Housing
CS17 Environmental Networks
CS18 Sustainable Water Management

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Type and Affordability of Housing SPD