



Committee and date
South Committee
21st June 2016

Development Management Report (Referral back to committee)

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

Summary of Application

Application Number: 15/04158/OUT	Parish:	Ludford
Proposal: Outline application for the erection of 2 detached dwellings (all matters reserved)		
Site Address: Proposed Residential Development Land to the South Of Rocks Green Ludlow		
Applicant: Mr & Mrs W & L Smith		
Case Officer: Grahame French	email: planningdmsw@shropshire.gov.uk	

Recommendation: It is recommended that the requirement for an affordable housing contribution accompanying the approval resolution for the application at the 2nd February 2016 committee is removed on the basis that there has been a subsequent material change to national affordable housing policy.

REPORT

1.0 BACKGROUND TO THE REPORT

1.1 This application was reported to the committee on 2nd February 2016. The original officer report is attached as Annex 1. Members resolved to approve the application in accordance with the officer recommendation which included a legal agreement relating to 1) an affordable housing contribution and 2) revocation of permission ref SS/1/07/19486/CE for storage use on applicant's land.

1.2 There has been a significant change in national policy on affordable housing since this time and the applicant has indicated that the affordable housing contribution should no longer apply. The application is being reported back to the committee on this basis.

2.0 AFFORDABLE HOUSING POLICY

2.1 A Written Ministerial Statement (WMS) on affordable housing contributions (AHC's) was issued in November 2014 and stipulates that Local Planning Authorities should not require an AHC for applications for 10 or less dwellings (5 of less in designated rural areas) and less than 1,000sq m floor area. This was challenged legally by West

Berkshire and Reading Councils and Shropshire Council continued to implement its adopted affordable housing policy (see below) whilst the challenge was in progress.

- 2.2 In May this year the High Court supported the Government's position and Shropshire Council has now accepted that the WMS applies as a significant material consideration. Accordingly the Council will not normally require an AHC where the circumstances set out in the WMS apply.
- 2.2 Prior to the above High Court decision the Council's policy on affordable housing was set out in Core Strategy Policy CS11 and an accompanying Supplementary Planning Document on type and affordability of housing. The policy advises that all new open market housing development should make 'appropriate contributions to the provision of local needs affordable housing having regard to the current prevailing target rate, set using the Shropshire Viability Index'.
- 2.3 The current application was considered by the committee before the May High Court decision and an AHC was therefore required under the Council's adopted housing policy. However, the legal agreement has not yet been completed and, as stated above, the WMS is now a significant material consideration. It is therefore necessary to re-evaluate whether an AHC can still be justified in the light of the WMS. As the original decision was taken by the south committee it is necessary to report the application back to the committee.
3. OFFICER APPRAISAL
 - 3.1 The key test to apply in determining the weight to be accorded to the WMS is whether the application would still be compliant with the development plan without an AHC.
 - 3.2 Notwithstanding the specific thresholds set out in the AHC, recent case law has confirmed that a developer can seek to 'overprovide' affordable housing in order to make an otherwise unacceptable scheme more acceptable (a recent appeal for a major housing scheme in the Green Belt succeeded because the developer proposed a voluntary 30% AHC). This is because securing an AHC can render a scheme more acceptable in terms of social sustainability and this can in turn be a material consideration weighing in favour of the scheme. Overprovision can in the current context mean volunteering to provide an AHC where it was previously required under Policy CS11 but is no longer formally required in the wake of the WMS. Significant weight can potentially be given to the benefits of 'AHC overprovision', particularly where there is a strong affordable housing need.
 - 3.3 However, the current applicant has not volunteered to 'overprovide' and is simply seeking to remove this requirement from the legal agreement in the light of the WMS. It is necessary therefore to assess whether the development would remain sustainable and hence capable of support in the absence of the AHC.
 - 3.4 The key issues raised by the Rock Green proposals are set out in the officer report (Annex 1). This indicates that in policy terms the site is located outside the development boundary of Ludlow. The location is nonetheless considered to be a sustainable location for 2 proposed properties given its close spatial relationship to existing property and to a nearby allocated housing site and its proximity to the market town of Ludlow. Moreover,

the site is currently part of a yard area which benefits from planning permission for storage uses. As such it is a brownfield site and the NPPF encourages the preferential development of such sites.

- 3.5 The land use issues raised by the proposals have also been considered in the officer report. No objections have been received from technical consultees. Whilst local residents have expressed concerns about the nature of the access to the site the highways officer has not objected. The applicant has agreed to formally revoke the permission for a storage use within their land ownership and this could potentially have generated greater levels of traffic than the proposed development.
- 3.6 The housing enabling team did not identify Rocks Green as an area of high affordable housing need in commenting on the planning application. Hence, this issue was not accorded any special weight above the normal level for Core Strategy Policy CS11. It should be noted in this respect that the proposed nearby housing allocation, when developed, will deliver a significant level of affordable housing provision and also Community Infrastructure Levy funding. In addition, there is a significant concentration of existing affordable / social housing within the Market Town of Ludlow, commensurate with its role as an important centre within South Shropshire.

4. CONCLUSION

- 4.1 Whilst the site is outside of the development boundary for Ludlow it is considered to be a sustainable location for the reasons outlined in the February 2016 officer report and there are no technical objections to the scheme.
- 4.2 There are no special circumstances which would justify retaining an affordable housing contribution for this development in the light of the significant weight which must now be accorded to the Written Ministerial Statement. It is concluded on balance that the proposals would remain compliant with the Development Plan as a whole in the absence of an affordable contribution. The committee is therefore recommended to remove the legal clause relating to the affordable contribution. The clause relating to revocation of the storage use permission would remain.

5. ADDITIONAL INFORMATION

[View details online:](#)

<https://pa.shropshire.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=Nv567QTDIAF00>

List of Background Papers: Planning application form for application reference 15/04158/OUT and accompanying design and access statement and plans
--

Cabinet Member (Portfolio Holder): Cllr M. Price
--

Local Member: Cllr. Vivienne Parry

Appendices: APPENDIX 1 - Conditions

ANNEX 1

REPORT TO SOUTH PLANNING COMMITTEE ON 2 FEBRUARY 2016



Committee and date
South Committee
2 nd February 2016

Item
7
Public

Development Management Report

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

Summary of Application

<u>Application Number:</u> 15/04158/OUT	<u>Parish:</u>	Ludford
<u>Proposal:</u> Outline application for the erection of 2 detached dwellings (all matters reserved)		
<u>Site Address:</u> Proposed Residential Development Land to the South Of Rocks Green Ludlow		
<u>Applicant:</u> Mr & Mrs W & L Smith		
<u>Case Officer:</u> Grahame French	<u>email:</u> planningdmsw@shropshire.gov.uk	

Recommendation:- Grant Permission as a Departure subject to the conditions set out in Appendix 1 and subject to Legal Agreement delivering an affordable housing contribution and revocation of permission ref SS/1/07/19486/CE for storage use on applicant's land.



**Figure 1 - Location
REPORT**

1.0 THE PROPOSAL

1.1 This application seeks outline planning permission for the erection of two detached dwellings (reduced from 3) on vacant land at the rear of Rock Terrace, Rocks Green Ludlow and the means of access. All other details including scale, appearance, layout and landscaping would be the subject of a reserved matters application. The original layout plan (below) showed 3 properties, but two are now proposed following discussion with officers.



Figure 2 – Original indicative layout, now reduced to 2 properties

2.0 SITE LOCATION/DESCRIPTION

- 2.1 The site is located at Rocks Green, Ludlow, a small settlement that straddles the A4117 in linear form immediately on the eastern side of the by-pass. A major housing development has taken place on the northern side of the A4117 that is accessed immediately opposite Rock Terrace which fronts the southern side of the highway.
- 2.2 The site is vacant land situated at the rear of Rock Terrace in Rocks Green and to the rear of the Nelson Public House. The land and a further area to the immediate south has the benefit of a Certificate of Lawfulness for storage use granted in 2007 (SS/1/07/19486/CE). The application site comprises two parcels of land, one to the west of an existing single detached bungalow and a further parcel to the south.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

- 3.1 The Parish Council have submitted a view contrary to officers' recommendation for approval. The Area Planning Manager in consultation with the Local Member and the committee chairman agrees that the material planning issues have been raised by the Parish Council and that the application should be referred to the committee.

4.0 COMMUNITY REPRESENTATIONS

4.1 Consultee Comments

- 4.1.1 Ludford Parish Council: Objection. As the Parish Council is uncertain how much the new application has changed regarding drainage, much increased use of an old green lane and a near impossible access on to the B4117 and over development etc. the parish council is to reiterate their reasons for objecting to the proposal for 3 dwellings at Rocks Green number 15/011410/OUT. Ludford Parish Council objects to the planning application, for the reasons outlined below:

- i. There are errors on the application, namely:
- The land is not, nor has been, residential.
 - There is no access to a mains drainage system. The present sewerage arrangement allows the current properties to access a septic tank to be found in the field the subject of this planning application, together with all proper legal easements necessary for this arrangement. It is understood that this system will not allow for any increase of the use of the system. In the event that the proposed application was to receive approval it is suggested that a condition be imposed to protect the existing sewerage pipework connecting the existing properties to the septic tank, and for access to and from such tank for maintenance and emptying.
- ii. The concerns are that have determined the objection are:
- There is poor visibility splay at the junction with the A4117 and requires the Highway Agency to report on the safety issues which will arise in the event of this development being granted permission.
 - The lane leading to the proposed site, part of which is a grass lane and narrow, is inadequate and unsuitable for the traffic that would be generated to and from the

site, and would not allow simultaneous two way traffic during all hours of the day and night.

- The proposed development is not included within SAMDev. There are 200 dwellings proposed at Rocks Green in SAM-Dev and the SAM-Dev proposal is sufficient development for Rocks Green. Consequently there would be an over-development at this site.
- The encroachment on the adjoining properties by this proposed development would place an unacceptable loss of residential amenity.
- The application does not conform with the SAM-Dev proposals and should therefore be refused by Shropshire Council as not meeting their own plans.

4.1.1 Affordable Housing: Core Strategy Policy CS11 requires all open market residential development to contribute to the provision of affordable housing. If this development is considered to be acceptable then in accordance with the adopted Policy any consent would need to be subject to a Section 106 Agreement requiring an affordable housing contribution. The contribution will need to accord with the requirements of the SPD Type and Affordability of Housing and will be set at the prevailing percentage target rate at the date of a full application or the Reserved Matters application.

4.1.2 Highways: No objection subject to condition approving access details. The development is proposed to be served via an existing private drive/lane which accesses out onto Rocks Green, A4117 adjoining the Nelson Public House, within a 40 mph speed limit. The Highway Authority commented upon the earlier application submission 15/01141/OUT which was subsequently withdrawn. Whilst the application has been submitted with all matters reserved, an indicative plan has been forwarded and the proposed development described as the erection of three dwellings. The current application from the highway perspective is a resubmission of the earlier proposal. As with the earlier application having regard to the context of the proposed application and the existing use of the private drive, the Highway Authority continues to be of the view that the width of the private drive is unlikely to result in conditions detrimental to highway safety to sustain a highway objection to the proposal.

4.1.3 Ecology: No objection, Informative notes on protected species are recommended. Under Regulation 61 of the Conservation of Habitats and Species Regulations (2010), the proposed works will not have a likely significant effect on any internationally designated site. An Appropriate Assessment is not required.

4.1.4 Drainage: No objection. The drainage details, plan and calculations could be conditioned and submitted for approval at the reserved matters stage if outline planning permission were to be granted:

4.2 Public Representations:

4.2.1 The application has been advertised in accordance with statutory provisions. Comments have been received from one resident objecting to the proposals and an agent acting on their behalf. The following points are raised:

- Procedural: Delay in the application submission process has caused distress;

- Access: Objector owns the land and existing rights of access would not be sufficient to afford rights of access for 3 new properties. The access and its limitations have discouraged past development attempts;
- Highway comments advising of no objection to access proposals are questioned. The existing lane does not meet relevant standards and the proposals would exacerbate this;
- Questioning accuracy of application plans;
- The land falls outside of the development boundary and is not garden or residential amenity space. It must therefore be considered as open countryside.
- The proposal would conflict with the linear form of Rocks Green and must be regarded as backland development.
- The applicant questions the Council's claim to have a 5 year housing supply. However, the site is unsustainable as a windfall site and small sites such as this do not make any significant impact on housing supply.
- The proposals are trying to ride on the back of an adjacent SAMDev allocation. A major development would provide significant benefits which is not the case with this proposal.
- The site may have ecological potential.
- Foul water drains cannot be connected and the nearest mains supply is at the roundabout where the cost of connection would be prohibitive.
- The proposals would not deliver affordable housing.
- The ward councillor and Parish Council opposed the original application before it was withdrawn and there have been no material changes to affect their views.

5.0 THE MAIN ISSUES

- Principle of development
- Siting, scale and design of structure
- Highways and access
- Visual impact and landscaping
- Other considerations

6.0 OFFICER APPRAISAL

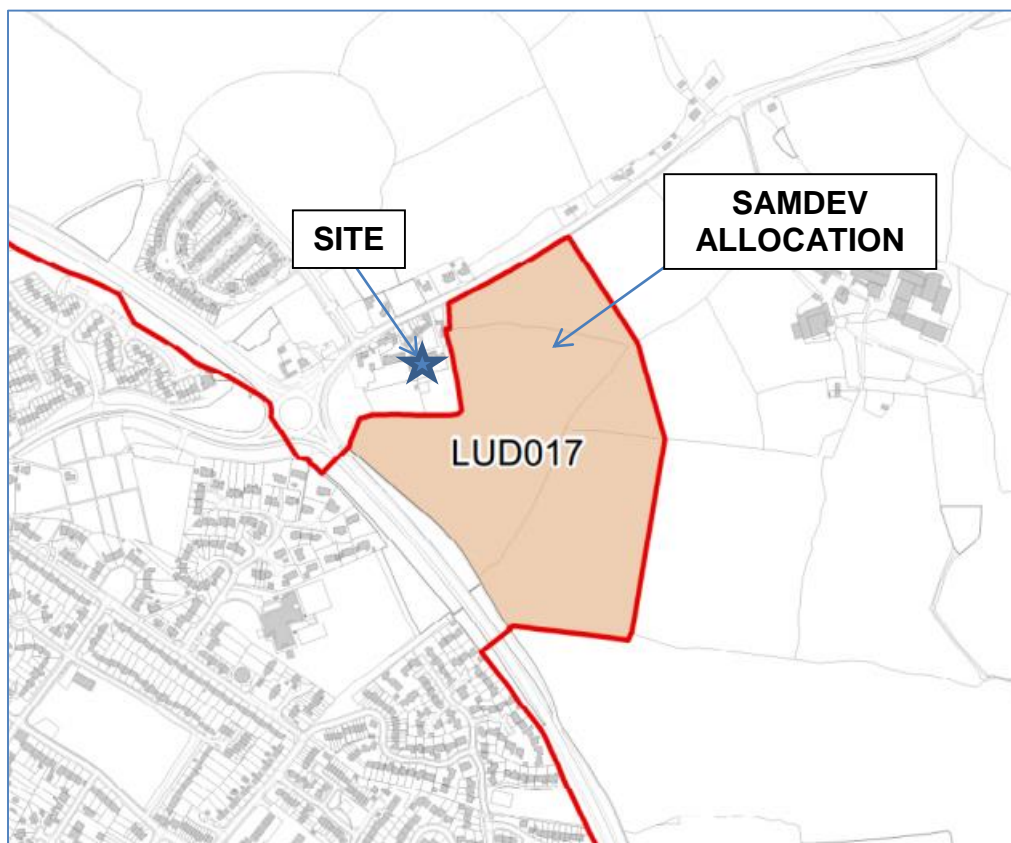


Figure 3 – SAMDev allocation

6.1 Principle of development

- 6.1.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that any application for planning permission must be determined in accordance with the Development Plan (DP) unless material considerations indicate otherwise. Consideration needs to be given to this presumption in favour of sustainable development in determining whether a site is suitable for release.
- 6.1.2 The application site is located outside of the development boundary for Ludlow as identified in the adopted SAMDev plan and Rocks Green is not identified as part of a community hub or cluster. In technical terms therefore the site is in an ‘open countryside’ location where Core Strategy policy CS5 generally seeks to prevent new open market housing.
- 6.1.3 SAMDev Policy MD3 reaffirms the need for housing proposals to be sustainable and compliant with other relevant policies. It advises that ‘In addition to supporting the development of the allocated housing sites set out in Settlement Policies S1-S18, planning permission will also be granted for other sustainable housing development having regard to the policies of the Local Plan, particularly Policies CS2, CS3, CS4, CS5, MD1 and MD7a’. Residential proposals should also meet the design requirements of relevant Local Plan policies and confirm with the settlement housing guideline.
- 6.1.4 Existing spatial housing policies do not support open market housing in countryside locations. In this particular case however there are extenuating circumstances which weigh in favour of the proposals:

- 6.1.5 The proposed development is to the immediate north of a site allocated for 200 houses in the SAMDev (LUD017 - plan 3). SAMDev Policy S10 advises that the guideline for growth in Ludlow is for around 875 new dwellings and a minimum of 6 ha of employment land between 2006 and 2026. The policy advises that new housing development will be delivered primarily on the allocated housing sites east of the A49, alongside additional infill and windfall development within the town's development boundary.
- 6.1.6 The effect of the housing allocation LUD17 is to extend the town's development boundary in this area such that the application site will be surrounded by development on all sides, except by a small paddock to the west which separates the site from the Ludlow By-Pass. As such, Rocks Green cannot be said in landscape terms to be a separate settlement in open countryside and the proposals would have the characteristics of an infill development. It is considered unlikely that the small 'landlocked' area between existing and allocated housing, including the current site and its immediate surrounds would be capable of sustaining a viable agricultural use.
- 6.1.7 Previous proposals for housing in this area have been refused by the former South Shropshire District Council, but adoption of the SAMDev and the adjacent large housing allocation represents a material change in the context of the site. It could be argued that the allocation has not yet been developed and that it is premature to take account of this as context. However the principle of housing development on this adjacent area has now been established and the probability that the allocation will be developed is considered high. It is also the case that the allocation would benefit from a modern purpose built access and other new enabling infrastructure, in contrast to the current site. However, SC Highways have not objected to the principle of using the existing access for 3 properties and this has now been reduced to 2.
- 6.1.8 A key objective of the Council's spatial housing strategy is to direct housing development towards sustainable settlements and to avoid encroachment into open countryside locations. It is considered, whilst previous residential proposals for the site were in conflict with this objective, the current proposals would not be in conflict in the light of the SAMDev allocation.
- 6.1.9 The site also has the benefit of a Certificate of Lawfulness for open storage use (containers, vehicles) granted by the former South Shropshire District Council in May 2007 (ref SS/1/07/19486/CE). The approval also extends beyond the southern boundary of the site. Air photo evidence confirms that the site has remained as a fenced off yard with an ongoing low-key storage use since this time. Some existing outbuildings have been erected at the northern end of the site in connection with this use but would be removed as part of the development. The agent advises that the use also has a connection with the applicant's existing domestic property, though the Parish Council contests that the site has any existing residential status.
- 6.1.10 The officer considers that the site can be said to have a 'brownfield' status in view of this existing business use. The applicant has agreed to revoke this use within their landholding. The development is also located immediately between existing and proposed residential development on the edge of the market town of Ludlow with its wide range of services. In view of this, and given also the generic support for new housing development set out in the NPPF it is considered in this particular case there may

potentially be circumstances justifying a departure from adopted spatial housing strategy (CS4, CS5; MD1, MD3). It is necessary however to determine the extent to which the proposals are also capable of complying with other relevant development plan policies.

6.2 Siting, scale and design

6.2.1 The application is in outline so detailed design would be the subject of reserved matters if the proposals are approved. An indicative layout plan was provided which shows 3 dwellings and their suggested alignment. The applicant has however now agreed to reduce the proposals to 2 properties following discussions with officers. It is considered that there is ample space to accommodate 2 properties within the site without adversely impacting on the amenities of the nearest existing properties.

6.2.2 It is suggested that any reserved matters application would need to specify a maximum 1½ height design for the plots with use of obscure glazing on appropriate elevations and appropriate landscaping. It is however possible in principle to maintain acceptable spatial relationships with existing properties now that the scheme has been reduced to 2 properties.

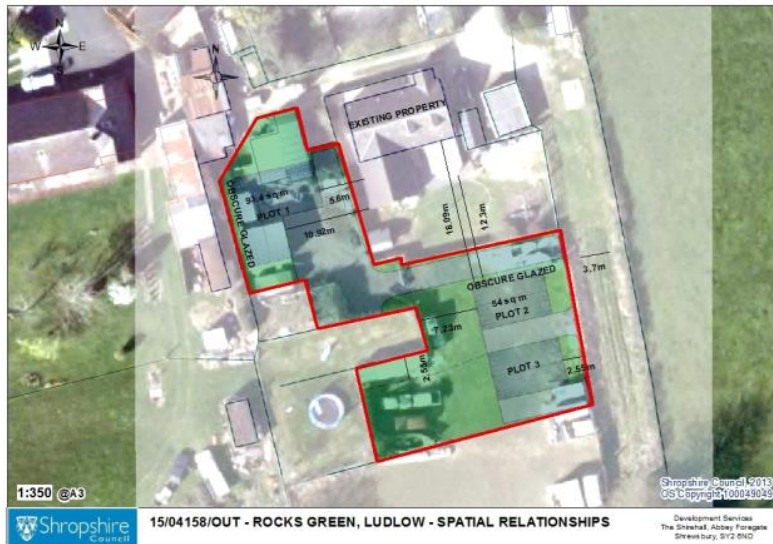


Figure 4 – Spatial relationships for original 3 house scheme

6.2.3 There would be ample space for 2 vehicles to park and turn on the plots. The southern plot is adjacent to the remainder of the storage yard area. However, this land is within the applicant’s control and the applicant has been agreed that the lawful use covering the storage activity can be revoked if the current application is approved. Hence, there would be no conflicts between this use and residential amenity.

6.2.8 In summary, the reduction to a 2 house scheme allows sufficient space to optimise the relationships with neighbouring properties. There is ample space to accommodate 2 detached dwellings within the site whilst maintaining acceptable spatial relationships with neighbours. The requirement for 30m² of amenity space per person for new housing (SAMDev policy MD2) can readily be achieved. It is considered that an acceptable scheme in terms of layout and design could be achieved in principle at the reserved matters stage.

6.3 Highways and access

- 6.3.1 The Parish Council and the objector have raised concerns about the access to the site in terms of width limitations and safety of the junction. The access road is restricted to 3.6m between Nelson Inn and Nelson Cottage some 17m from the public highway. Highway officers have however not objected on the basis of the limited additional traffic which the proposals would generate.
- 6.3.2 The objector's consultant has suggested that the applicant does not have sufficient rights of access to accommodate the 3 properties originally proposed. This is however a separate legal matter and is not a material planning consideration. The objector has also expressed concern that the access track is currently used as an extension to private garden space. Again however, this is a private legal matter and the two existing properties fronting the proposed access both have private gardens.
- 6.3.3 It is not considered that a highway objection can be sustained based on the advice of the Council's Highways officer. Whilst the limitations of the access are acknowledged the reduction to a 2 house scheme provides further mitigation. Revocation of the certificate of lawfulness for the storage use also means that there would be an overall reduction in existing traffic using the access road relative to what could potentially occur.

6.4 Visual impact and landscaping

- 6.4.1 The site is not located within the AONB and there are no listed properties in the vicinity. The Nelson Inn is an old property which is a non-designated heritage asset. There is however no inter-visibility between the proposed development and this public house.
- 6.4.2 Given the relationship of the development to existing residential property it is important that the detailed design is sensitive in order to assist in integrating the development. In particular, as noted above, it is considered that the properties should be of no more than 1½ height design in this location. Other detailed design issues such as use of obscure glazing to certain elevations and landscaping of plot boundaries are capable of being secured by condition at the reserved matters stage.

6.5 Other considerations

- 6.5.1 Flooding/Drainage – The drainage information submitted in support of the application has been assessed by the Councils submitted flood risk and water management team and they have raised no objection to the proposal on the basis that they are satisfied that a satisfactory drainage solution can be provided subject to recommended conditions.
- 6.5.2 Overlooking/loss of privacy – the layout and design details submitted with the application have been superseded due to the reduction from 3 to 2 houses. Detailed layout and elevation plans would be submitted at the reserved matters stage. The implications for the neighbouring properties can be adequately considered at that time. However, as noted above, the officer is satisfied that acceptable spatial relationships can in principle be maintained between existing and proposed properties. There would be some potential loss of an existing open aspect for the nearest property ('The Bungalow'). However, there is no 'right to a view' in UK planning law and it is not considered that any post

development view would be unacceptably adverse given the reduction to 2 properties and the ability to specify the detailed design, surface treatments and landscaping measures.

- 6.5.3 Residential amenity: – A construction management plan condition has been recommended in order to control and minimise disturbance during the construction phase. Once completed, the development would have no greater implications for noise generation or nuisance than any other residential use. The revocation of the Certificate of Lawfulness may reduce overall levels of noise in the local area relative to what could potentially occur.
- 6.5.4 Development precedent: Approval of this application would not set a wider precedent for development outside of the defined development boundary of Ludlow. This is because of the unique geographic context of the site including its immediate proximity to existing housing and the LUD17 SAMDev housing allocation and the existing brownfield status.
- 6.5.5 Impact on enjoyment of the local area – The site is not in an area likely to be frequented by visitors and construction will be screened from more public areas by existing properties.
- 6.5.6 Sewerage: The objector has indicated that foul water drains cannot be connected and the nearest mains supply is at the roundabout where the cost of connection would be prohibitive. In the event that the proposed application was to receive approval it is suggested that a condition be imposed to protect the existing sewerage pipework connecting the existing properties to the septic tank located to the immediate west of the site, and for access to and from such tank for maintenance and emptying.
- 6.5.7 Ecology: The site is within an existing yard area. SC Ecology have not objected but have recommended advisory notes which are included in Appendix 1.
- 6.5.8 Affordable Housing: The proposals are for open market housing and accordingly, a financial contribution will be due under Core Strategy Policy CS11 so any consent would need to be subject to a Section 106 Agreement. The contribution will need to accord with the requirements of the SPD Type and Affordability of Housing and will be set at the prevailing percentage target rate at the date of the Reserved Matters application.
- 6.5.9 Sustainability: The development is considered to meet all 3 strands of sustainable development identified in the NPPF. It will provide social benefits through the provision of new housing in a sustainable location adjoining the market town of Ludlow. It will provide economic benefits through purchase of local goods and services to facilitate the development and through the economic contribution of future occupants to the town's economy. These benefits will be proportionate to the limited scale of the development but are nonetheless recognised by the NPPF.
- 6.5.10 It is considered that the proposals will also be sustainable in environmental terms. The reduction to 2 properties means that acceptable spatial relationships can be maintained between existing and proposed properties. The access is considered acceptable by highway officers and no technical / environmental issues have been identified which are not considered capable of being addressed by use of appropriate planning conditions.

7.0 CONCLUSION

- 7.1 The application site is located outside of the development boundary of Ludlow and is therefore technically in 'open countryside'. However, it is immediately adjacent to existing dwellings at Rocks Green and is surrounded to the south and east by a SAMDev allocation of 200 houses. The strategic policy objective of preventing urban encroachment into the countryside would therefore be upheld. The site is within easy reach of the market town of Ludlow, the primary road network and existing and emerging facilities east of the by-pass. It is therefore in a generally sustainable location. It also comprises land with permission for a storage use as opposed to an undeveloped 'green field' plot.
- 7.2 The number of proposed houses has been reduced from 3 to 2 and this allows acceptable spatial relationships to be maintained with existing properties. The two plots would have ample private amenity space. Conditions can assist in integrating the development with existing properties and preserving mutual privacy. This includes controls over detailed design (specifying a 1½ height maximum design), use of obscure glazing and a landscaping condition. These matters can be progressed at the reserved matters stage.
- 7.3 Highway officers have not objected and it is not considered that refusal on the grounds of the characteristics of the existing access can be sustained given the level of housing proposed. The reduction to 2 properties will reduce the level of traffic associated with the development and any traffic would be less than that which could potentially occur under the existing Certificate of Lawfulness for storage uses. The removal of the area of open storage use with a lawful development certificate is a material consideration which, together with the sustainable location adjoining a local plan allocation, is considered to be sufficient in principle to justify a departure from adopted housing policy. No other issues have been identified through the planning consultation process which, together with the above would suggest that the proposals should be refused.
- 7.4 The proposals are considered to represent sustainable development when assessed against the development plan overall. Consequently the 'presumption in favour' set out in local and national planning policy applies and release of the site for 2 open market houses is not considered to be in conflict with Policy MD3: Delivery of Housing Development and Policy MD7a; Managing Housing Development in the Countryside. It is concluded that whilst the proposals are a departure from adopted spatial housing strategy they comply with the Development Plan overall. Approval is therefore recommended subject to conditions and a legal agreement providing for the affordable housing contribution and revoking the previously approved storage use.

8.0 RISK ASSESSMENT AND OPPORTUNITIES APPRAISAL

8.1 Risk Management

- 8.1.1 There are two principal risks associated with this recommendation as follows:
- As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective

of the mechanism for hearing the appeal, i.e. written representations, hearing or inquiry.

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

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

8.2 Human Rights

8.2.1 Article 8 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

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

9.0 FINANCIAL IMPLICATIONS

9.1 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.

10.0 BACKGROUND

Relevant Planning Policies

Central Government Guidance:

- National Planning policy Framework

Shropshire Core Strategy:

- CS3 The Market Towns and other Key centres
- CS4 Hubs and Clusters
- CS5 Countryside and Greenbelt seeks to limit development in the countryside to that which needs to be there and makes it clear that in assessing proposals account will be taken of the impact on the character of the countryside.
- Policy CS6: Sustainable Design and Development Principles is concerned, amongst other things, with ensuring new development protects, restores, conserves and enhances the natural, built and historic environment. The policy also seeks to ensure that there is sufficient infrastructure capacity to cope with any new development.
- CS11 Type and affordability of Housing;
- Policy C17: Environmental Networks endeavours to protect and enhance the diversity, high quality and local character of Shropshire's natural, built and historic environment.

SAMDev Plan:

- MD1 – Scale and Distribution of Development allocates sufficient land in the period up to 2026 to enable the delivery of the amount and distribution of housing development set out in Policies CS1 and CS2 and in the SAMDev site allocation policies including S10 (Ludlow).
- MD2 – Sustainable Design is concerned, amongst other things, with respecting locally distinctive or valued character, including the historic context.
- MD3 – Delivery of Housing Development;
- Policy MD8: Infrastructure Provision specifies that new development will only take place where there is sufficient existing infrastructure capacity or where development includes measures to address a specific capacity shortfall which it has created.
- MD12: The Natural Environment indicates that proposals that are likely to have a significant adverse effect, directly, indirectly or cumulatively on a range of matters, including visual amenity or landscape character and local distinctiveness, will only be permitted if there is no satisfactory alternative and the social and economic benefits of the proposal outweigh the harm.
- MD13: The Historic Environment
- S10: Ludlow Area

Relevant Planning History:

- 14/00066/FUL Erection of extensions and alterations to existing B & B to provide ground floor bedroom; new rear access and extension to conservatory and first floor extension to include juliet balcony NPW 20th January 2014
- 15/04158/OUT Outline application for the erection of 3 detached dwellings (all matters reserved) PDE
- SS/1/07/20019/F Erection of an extension to dwelling (Delegated matter) PERCON 21st November 2007
- SS/1979/147/P/ Erection of a private double garage. PERCON 4th May 1979
- SS/1977/341/P/ Demolition of existing sheds and erection of a building for use as a workshop for the production of furniture. REFUSE 26th August 1977
- SS/1/99/009633/F Erection of an extension to dwelling. PERCON 12th March 1999

- 15/01141/OUT Outline Application for the erection of 3 No detached dwellings (all matters reserved) WDN 1st September 2015
- 15/04158/OUT Outline application for the erection of 3 detached dwellings (all matters reserved) PDE

11. ADDITIONAL INFORMATION

View details online:

<https://pa.shropshire.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=Nv567QTDIAF00>

List of Background Papers: Planning application form for application reference 15/04158/OUT and accompanying design and access statement and plans
--

Cabinet Member (Portfolio Holder) Cllr M. Price
--

Local Member: Cllr. Vivienne Parry

Appendices: APPENDIX 1 - Conditions

APPENDIX 1

Conditions

STANDARD CONDITION(S)

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

Reason: The application is an outline application under the provisions of Article 4 of the Development Management Procedure Order 2010 and no particulars have been submitted with respect to the matters reserved in this permission.

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

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

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

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

CONDITION(S) THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES

4. Prior to the commencement of development full engineering details of the means of access to the site including parking and turning areas, shall be submitted to and approved in writing by the Local Planning Authority; the access, parking and turning areas shall be fully implemented in accordance with the approved details before the development hereby permitted is first occupied.

Reason: To provide a satisfactory means of access to the site in the interests of highway safety.

5. Full details and sizing of the proposed surface water drainage soakaways shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. Percolation tests and the sizing of the soakaways shall be designed in accordance with BRE Digest 365 to cater for a 1 in 100 year return storm event plus an allowance of 30% for climate change. Alternatively, soakaways shall be designed for the 1 in 10 year storm event provided the applicant submits details of flood routing to show what would happen in an 'exceedance event' above the 1 in 10 year storm event. The system should ensure that flood water does not affect other buildings or infrastructure. Full details, calculations, dimensions and location of the percolation tests and the proposed soakaways shall be submitted for approval. Surface water shall pass through a silt trap or catchpit prior to entering the soakaway to reduce sediment build up within the soakaway.

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

6. If non permeable surfacing is used on the new access, driveway and parking area or the new access slopes toward the highway, the applicant shall submit for approval a drainage system to intercept water prior to flowing on to the public highway.

Reason: To ensure that no surface water runoff from the new access runs onto the highway.

7. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- the parking of vehicles of site operatives and visitors;
- loading and unloading of plant and materials;
- storage of plant and materials used in constructing the development;
- measures to control the emission of dust, mud and dirt during construction;
- a scheme for recycling/disposing of waste resulting from demolition and construction works;

- ensuring that construction workers vehicles are parked on site at all times;
- ensuring that smaller vehicles are used whenever possible.

Reason: To avoid congestion in the surrounding area and to protect the amenities of the area during the construction phase.

8. Hours of working for the construction phase shall be restricted to 07.30 to 18.00 hours Monday to Friday and 08.00 to 13.00 hours on Saturdays. There shall be no construction work on Sundays, Public or Bank Holidays.

Reason: To protect the amenities of the nearest residential properties during the construction phase.

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

9. All hard and soft landscape works shall be carried out in accordance with details to be approved as part of the reserved matters submissions and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standard. The works shall be carried out prior to the occupation of any part of the development or in accordance with the timetable agreed with the Local Planning Authority. Any trees or plants that, within a period of five years after planting, are removed, die or become, in the opinion of the Local Planning Authority, seriously damaged or defective, shall 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.

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

10. The developments hereby approved shall consist of no more than 2 floors of living accommodation.

Reason: To define the development and in the interests of residential and visual amenity.

11. The existing sewerage pipework connecting the existing properties to the septic tank adjoining the Site shall be protected during the construction works and appropriate access shall continue to be provided to and from such tank for maintenance and emptying purposes.

Reason: To protect and afford appropriate access to existing sewerage infrastructure within the site.

Notes, Ecology:

- i. Great Crested Newt: There is a pond approximately 100m away from the development. Due to the size of the development, lack of natural habitats on the application site and the distance from the pond it is considered that causing an offence by disturbing a great crested newt population is highly unlikely, as shown using Natural England's Rapid Risk

Assessment. No survey is therefore necessary. The following informatives should be on the decision notice. Great Crested Newts are protected under the European Council Directive of 12 May 1992 on the conservation of natural habitats and of wild fauna and flora (known as the Habitats Directive 1992), the Conservation of Habitats and Species Regulations 2010 and under the Wildlife & Countryside Act 1981 (as amended). If a Great Crested Newt is discovered on the site at any time then all work must halt and Natural England should be contacted for advice.

- ii. Trenches and wildlife: Where possible trenches should be excavated and closed in the same day to prevent any wildlife becoming trapped. If it is necessary to leave a trench open overnight then it should be sealed with a closefitting plywood cover or a means of escape should be provided in the form of a shallow sloping earth ramp, sloped board or plank. Any open pipework should be capped overnight. All open trenches and pipework should be inspected at the start of each working day to ensure no animal is trapped. The storage of all building materials, rubble, bricks and soil must either be on pallets or in skips or other suitable containers to prevent their use as refuges by wildlife.*
- iii. Nesting Birds: There is a hedgerow adjacent the proposed development site as well existing structures on site which may provide habitat for nesting birds. The following informative should be on the decision notice. 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 birds 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.*

Notes, Drainage:

- i. As part of the SuDS, the applicant should consider employing measures such as the following to ensure that, for the disposal of surface water drainage, the development is undertaken in a sustainable manner:*
 - *Water Butts*
 - *Rainwater harvesting system*
 - *Permeable surfacing on any new access, driveway, parking area/ paved area*
 - *Attenuation*
 - *Greywater recycling system*
 - *Green roofs*
- ii. Where the inclusion of the appropriate allowance would increase the total impermeable area to greater than 100%, 100% should be used as the maximum. Curtilage means area of land around a building or group of buildings which is for the private use of the occupants of the buildings.*

- iii. *Urban creep is the conversion of permeable surfaces to impermeable over time e.g. surfacing of front gardens to provide additional parking spaces, extensions to existing buildings, creation of large patio areas. The appropriate allowance for urban creep must be included in the design of the drainage system over the lifetime of the proposed development. This is to ensure that the proposed surface water drainage systems for the site are designed for any future extensions of impermeable surfaces. The allowances set out below must be applied to the impermeable area within the property curtilage:*

<u>Residential Dwellings per hectare</u>	<u>Change allowance % of impermeable area</u>
Less than 25	10
30	8
35	6
45	4
More than 50	2
Flats & apartments	0

Notes, Design:

- i. *The developer is advised that the reserved matters application should specify properties which are no greater than a 1½ height design in order to integrate the development acceptably into its surroundings. Appropriate use should be made of obscure glazing in order to preserve privacy and prevent overlooking of existing properties.*