

Recommendation: Grant Outline planning permission subject to the conditions set out in the minutes to the Committee meeting of 3rd November 2015 relating to a construction method statement and a stability report in respect of the boundary wall.

1.0 Purpose of report

1.1 Planning Committee Members considered this application, which seeks outline planning permission to erect an open-market dwelling plus approval of the means of access, on 3rd November 2015. At that meeting Members resolved, contrary to the officer's recommendation, that permission should be granted subject to:

- a Section 106 legal agreement to secure an appropriate affordable housing contribution;
- conditions requiring prior approval of a construction method statement and a stability report in respect of the existing boundary wall; and
- an informative note advising on the need for the scale and design of the proposed dwelling to respect its setting.

1.2 The purpose of this report is to allow Members to consider whether or not to permit the scheme without the Section 106 agreement securing an affordable housing contribution.

1.3 The original officer's report and recommendation considered at the November 2015 meeting are attached to this report as Appendix A.

2.0 Affordable housing contribution

2.1 Members will recall that on 28th November 2014 the Minister of State for Housing and Planning, Brandon Lewis MP, issued a Written Ministerial Statement (WMS) announcing that planning obligations should not be used to secure affordable housing contributions in connection with developments of 10 units or less (and with a maximum combined gross floor space of 1,000sqm), or 5 units or less in Designated Rural Areas. The latter are defined under Section 157 of the Housing Act 1985, and now include many rural parishes in Shropshire as well as the Shropshire Hills Area of Outstanding Natural Beauty (AONB).

2.2 Reading and West Berkshire Councils sought to challenge the WMS at the High Court. On 31st July 2015 it was quashed by Mr Justice Holgate, and the Government subsequently withdrew its associated Planning Practice Guidance (PPG). From this point Shropshire Council continued to apply its own affordable housing policy.

2.3 The Government challenged Mr Holgate's decision through the Court of Appeal, which overturned it on 11th May 2016. Consequently the WMS still applies. Furthermore the Housing and Planning Act gained Royal Assent on 12th May 2016, giving the Government power to achieve the same result (i.e. to set minimum thresholds for requiring affordable housing contributions) via secondary legislation.

2.4 In addition the Planning Inspectorate had already taken the stance that the WMS was a material consideration to be given significant weight in planning appeals, in accordance with the Secretary of State's position. The Court of Appeal confirmed this view that, like the National Planning Policy Framework (NPPF), the WMS constitutes

policy as opposed to mere guidance, and that the Secretary of State is entitled to give greater weight to his policy if it conflicts with a development plan.

- 2.5 At this juncture Shropshire Council accepts that, despite the development plan remaining the starting point for planning decisions, the WMS is a *significant* material consideration and one which is more up-to-date than its own policies. The Council will not generally require an affordable housing contribution in connection with schemes where the aforementioned thresholds would not be met (See paragraph 2.1 above).

3.0 Recommendation

- 3.1 In this case the site is within the Shropshire Hills AONB and hence is a Designated Rural Area under the Housing Act, but the proposal is for a single dwelling whose floor area would clearly be below 1,000sqm. Members considered previously that the scheme met the three (economic, social and environmental) dimensions of sustainable development, and the minutes of the November 2015 meeting give no indication that the affordable housing contribution then required as standard was a significant factor in the decision to overturn the officer recommendation and grant planning permission. It should also be noted that affordable housing contributions have not been required in connection with several recent approvals for new housing in other settlements forming part of the same 'Community Cluster' as Snailbeach village.
- 3.2 In view of the above, and particularly given the substantial weight which must now be attached to the WMS, it is considered the Council would have little defensible case in refusing the application solely on the basis of the lack of an affordable housing contribution. Consequently Members may now wish to grant planning permission without a contribution.

APPENDIX A

**COPY OF OFFICER REPORT AND RECOMMENDATIONS
CONSIDERED AT 3RD NOVEMBER 2015 SOUTH PLANNING COMMITTEE**



Committee and date
South Planning Committee
3 November 2015

Development Management Report

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

Summary of Application

Application Number: 14/05151/OUT	Parish:	Worthen With Shelve
Proposal: Erection of dwelling and alterations to existing vehicular access (outline application to include means of access, but with matters of appearance, landscaping, layout and scale reserved)		
Site Address: The Sidings Snailbeach Shrewsbury SY5 0LT		
Applicant: Mrs C M Challinor		
Case Officer: Trystan Williams	email: planningdmsw@shropshire.gov.uk	

Recommendation: Refuse

Recommended reasons for refusal:

1. A new open-market dwelling in this location beyond the established built-up areas of the settlements of Snailbeach and Crowsnest would be contrary to Policies CS1, CS4, CS5 and CS11 of the Shropshire Local Development Framework Adopted Core Strategy, and would not represent sustainable development under the National Planning Policy Framework.
2. The further encroachment of sporadic ribbon development into the essentially open and rural landscape which currently separates the settlements of Snailbeach and Crowsnest would detract from the setting of the Snailbeach Conservation Area and the character and scenic quality of the Shropshire Hills Area of Outstanding Natural Beauty, contrary to the National Planning Policy Framework and Policies CS6 and CS17 of the Shropshire Local Development Framework Adopted Core Strategy.

3. On account of its elevation above the adjacent highway the development would appear unduly prominent and overbearing. It would, therefore, detract from the street scene and from key public views into the Snailbeach Conservation Area, contrary to the National Planning Policy Framework and Policies CS6 and CS17 of the Shropshire Council Local Development Framework Core Strategy.

REPORT

1.0 THE PROPOSAL

- 1.1 This application seeks outline planning permission to erect an open-market dwelling at the above site. Also sought at this stage is approval of the means of access. However, matters of appearance, landscaping, layout and scale are reserved for consideration under a separate application, and in these respects the plans should be regarded as indicative.
- 1.2 The scheme is a revised resubmission of application No. 14/01271/OUT, which was withdrawn after officers requested heritage and ecological assessments and raised other concerns.

2.0 SITE LOCATION/DESCRIPTION

- 2.1 The site is a long, narrow parcel of land along the eastern side of the Class C road leading south out of Snailbeach village, a former lead mining settlement at the western foot of the Stiperstones ridge. The ground consists of terraces cut into the hillside and retained above the road by a stone wall whose height increases considerably towards the southern end. It once formed part of Snailbeach Wharf, the terminus of the Snailbeach District Railways' narrow gauge freight line from Pontesbury. In actuality the line continued southwards into a siding from which trains would reverse northeast up an inclined plane into the heart of the mine complex, which is now followed by a metalled track. An additional siding extended into the broad lower terrace on the western half of the site.
- 2.2 The railway opened in 1877 and operated sporadically until the 1950s. Little remains besides the earthworks and retaining walls of the terraces (which reflect the differing heights of the railway line and its sidings), although a small timber-framed and iron-clad shed possibly built in the 1920s survives mid-way along the lower terrace. Opposite the site entrance, meanwhile, is a brick building formerly a weighbridge office, now used as holiday accommodation and incorporated into the curtilage of a cottage further north. 'The Sidings' is a modern house at the north end of the wharf (also owned by the applicant), whilst the hillside to east is densely wooded. The site is just inside the Shropshire Hills Area of Outstanding Natural Beauty (AONB), and its northern tip is within the Snailbeach Conservation Area.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

- 3.1 Although the Parish Council has classified its comments as neutral, the Local Member for Shropshire Council supports the application and feels that the issues raised are significant enough to warrant consideration by the planning committee. Accordingly, and in line with the Council's adopted Scheme of Delegation, determination by the committee is required.

4.0 COMMUNITY REPRESENTATIONS

4.1 Consultee comments

4.1.1 Shropshire Council Public Protection – comment:

The dismantled railway would have carried potentially contaminating material from the former lead mines, and may itself have been built on spoil or other material which could present a health risk to people residing in close proximity. It is therefore possible that the site is contaminated, and if planning permission is granted a condition should be attached to secure a site investigation report and, as appropriate, remediation strategy, implementation of the remediation strategy, reporting and remediation of any further contamination uncovered during the construction phase, and a verification report.

4.1.2 Shropshire Council Flood and Water Management – comment:

Full details of the proposed surface water soakaways, to include percolation test results, sizing calculations and a layout plan, should be submitted for approval. A silt trap or catch pit should be installed upstream of the drainage field. If soakaways are unfeasible, details of an appropriately designed attenuation system should be submitted instead. Additionally, measures to intercept surface water run-off should be provided if non-permeable surfacing would be used for any parking areas or driveways which would slope towards the highway, and the incorporation of other sustainable drainage systems (SuDS) should be encouraged through an informative.

4.1.3 Regarding foul drainage, any connection to the mains sewer would require consent from the utility provider.

4.1.4 All of the above details could be secured by condition for approval at the reserved matters stage.

4.1.5 Shropshire Hills AONB Partnership – comment:

The local planning authority has a statutory duty to take into account the AONB designation, and National Planning Policy Framework (NPPF) policies give the highest level of protection to AONBs. The application also needs to conform to the Council's own Core Strategy policies and emerging Site Allocations and Management of Development (SAMDev) plan, whilst the Shropshire Hills AONB Management Plan is a further material consideration. The lack of detailed comments by the Partnership should not be interpreted as suggesting that the application raises no landscape issues.

4.1.6 English Heritage – no objection:

No detailed comments. The application should be determined in accordance with national and local policy guidance, and on the basis of the Council's own specialist conservation advice.

4.1.7 Shropshire Council Affordable Housing – comment:

Core Strategy Policy CS11 and the accompanying Supplementary Planning Document require all new open-market residential development to contribute towards affordable housing provision. Here a financial contribution based on the target rate prevailing at the date of the reserved matters submission would need to be secured through a Section 106 agreement.

4.1.8 Shropshire Council Historic Environment (Archaeology) – comment:

This scheme involves new-build construction on a site that has a direct linear/functional link via the former railway (Historic Environment Record No. PRN 01344) with Snailbeach Lead Mine (PRN 0984). Parts of the mine complex are a scheduled monument which also includes sections of the railway. Most of the railway trackbed appears to have been removed in the past, and in parts has been built on following the infilling of a former cutting to the north of the application site. However, the current proposal relates to land on rising ground which previously incorporated parts of the railway sidings, and which on account of its elevation might theoretically retain some archaeological evidence relating to the railway.

4.1.9 In previous cases English Heritage has acknowledged that ancillary features with strong links to a scheduled site can be regarded as having equal significance, and consequently should be considered under policies on designated heritage assets (NPPF Paragraph 139). In this case a Heritage Statement and Impact Assessment has been submitted. This provides a comprehensive history including of the railway and its relationship with Snailbeach Wharf. It states that the principal significance of the remains located within the proposed development site lies in the surviving terracing, the engineering involved and its historic relationship with Snailbeach Mine, and concludes that despite some of these relationships having been severed by later developments the terrace walls and track formation should be preserved. It suggests that the development proposals would include provision for this, with minimal loss of original fabric, and also concludes that there are unlikely to be any significant buried archaeological deposits which might be disturbed by the development.

4.1.10 The Council's Archaeology Team concurs with these findings, but suggests that conditions are used to:

- secure prior approval of any scheme to renovate or restore the terraces and other earthworks at the site;
- secure a programme of archaeological work which includes provision for the recording of historic fabric; and
- ensure the Historic Environment Team is notified before groundworks commence and afforded reasonable access to monitor such works.

4.1.11 Worthen with Shelve Parish Council – no objection

4.1.12 Severn Trent Water – comment:

No objection subject to inclusion of a condition requiring prior approval of surface water and foul drainage systems.

4.1.13 Natural England – comment:

The application site is close to the European-designated Stiperstones and Hollies Special Area of Conservation (SAC). Shropshire Council should therefore undertake screening in accordance with the Habitat Regulations Assessment (HRA) procedure, although in Natural England's view the proposed development is unlikely to have any significant effect on the SAC and can therefore be screened out from any requirement for further stages of assessment.

- 4.1.14 The SAC is also notified at the national level as a Site of Special Scientific Interest (SSSI). Again, however, given the nature and scale of the proposal it is unlikely to damage or destroy the SSSI's interest features, and so the SSSI does not represent a constraint.

The local planning authority should also consider possible impacts upon locally designated biodiversity and geological sites, local landscape character and protected species and habitats, as well as opportunities for biodiversity enhancements.

- 4.1.15

Shropshire Council Highways Development Control – comment:

- 4.1.16 No objection subject to conditions requiring the submission of details of parking and turning provision at the reserved matters stage, and the provision of 2.4 x 43-metre visibility splays at the junction of the private drive with the public highway. The latter would include land to the north which is owned by the applicant, and which should be included within the red outline denoting the application site.

Shropshire Council Ecology – comment:

- 4.1.17 Following Natural England's comments the Council's Ecology Team has completed HRA screening. It is concluded that there are no likely significant effects on the nearby SAC. The screening matrix should be included within the planning officer's report.

- 4.1.18 An ecological assessment has been completed by a licensed ecologist. Although the SSSI's interest features would not be affected provided the development is carried out in strict accordance with the submitted details, this should be reinforced by condition. Similarly some notable and protected species are recorded, and these should be protected through a condition requiring a biodiversity conservation plan. This should identify:

- wildlife protection zones where construction activities would be restricted and protective measures would be implemented; and
- details of protective measures, based on the recommendations of the ecological assessment, to avoid impacts on and secure enhancements in respect of protected habitats, bats, slow worms/reptiles, hairy wood ants and nesting birds.

An informative regarding the legal status of nesting birds should also be attached.

4.2 Public comments

- 4.2.1 None

5.0 THE MAIN ISSUES

- Principle of development
- Affordable housing
- Layout, scale and design
- Impact on historic environment
- Impact on landscape
- Residential amenity
- Access and highway safety
- Ecology
- Other matters raised in representations

6.0 OFFICER APPRAISAL

6.1 Principle of development

- 6.1.1 A key objective of both national and local planning policy is to concentrate new residential development in locations which promote economic, social and environmental sustainability. Specifically, Core Strategy Policies CS1, CS3, CS4, CS5 and CS11 seek to steer new housing to sites within market towns, other 'key centres' and certain named villages ('Community Hubs and Clusters') as identified in the emerging SAMDev plan. Isolated or sporadic development in open countryside is unacceptable unless there are exceptional circumstances.
- 6.1.2 Snailbeach is not a settlement designated for development under any *current* planning policy (i.e. 'saved' Policies SDS3 and S1 of the former South Shropshire Local Plan). However, officers consider that its inclusion as a component of a proposed 'Community Cluster' under Policies MD1 and S2 of the SAMDev Pre-Submission Draft can now be afforded considerable weight since this plan is at an advanced stage in the process towards formal adoption. Significantly the Secretary of State Inspector has identified the main modifications needed to make the SAMDev policies 'sound', and thus any plan content *not* subject to modification (which includes Policies MD1 and S2) may already be considered sound in principle in accordance with NPPF Paragraph 216.
- 6.1.3 Policy S2 gives a guideline of approximately 15 additional dwellings across this particular Cluster. Besides conversion projects the target will be met through infill development on suitable small-scale 'windfall' sites within the named settlements, which also include the neighbouring hamlet of Crowsnest. Since it is not proposed to designate development boundaries around the Cluster settlements the question of whether or not specific schemes would constitute infilling is a matter for judgment in each case. However, the explanatory text accompanying Core Strategy Policy CS4 states explicitly that development must be within the settlements themselves and not in the countryside in-between.
- 6.1.4 Snailbeach is a scattered settlement whose edges are generally ill-defined, although there are distinct concentrations of housing around the former mine complex and further north. By contrast the application site is at the southern end of a loose ribbon stretching several hundred metres along the road towards Crowsnest. Moreover, on account of the plot's long, narrow shape the new dwelling would need to be positioned towards its southern extremity, in fact just 70 metres or so from the curtilage of No. 1 Crowsnest.
- 6.1.5 Despite 'The Sidings' being constructed on the northern part of the old wharf in the mid-1990s, several other proposals for new dwellings further south have been rejected. Notably, in dismissing an appeal against the refusal of application No. SS/1989/1068/P/ the Planning Inspectorate concluded that a new dwelling directly opposite the current site would extend sporadic development further into the surrounding rural landscape and "narrow the already small gap between Snailbeach and Crowsnest". The inspector continued: "it is important to retain this gap and avoid the coalescence of these settlements, which would be detrimental to the character and appearance of this attractive area of countryside". Although Snailbeach no longer has a designated development boundary the objective of concentrating new

development towards its geographical centre and maintaining its rural setting remains valid, as discussed further in Section 6.5.

6.1.6

Given the above officers consider that the development would not constitute infilling within the established built-up area, and consequently that it is unacceptable in principle under Core Strategy Policy CS4 and the emerging SAMDev Plan. Whilst there are some benefits (e.g. the availability of public transport, the reuse of brownfield land, short-term construction jobs and trade, increased housing supply, affordable housing and Community Infrastructure Levy contributions and an aspiration for energy efficient construction) these would be marginal and would generally apply to all new housing in Snailbeach, irrespective of the precise location. As such they would not offset the visual harm identified and the scheme would fail to meet the NPPF's ambition for sustainable development led by an up-to-date local plan.

6.2 **Affordable housing**

6.2.1 Officers acknowledge the November 2014 Ministerial statement and national Planning Practice Guidance (PPG) advising against the use of planning obligations to secure affordable housing contributions. These were afforded weight in a number of recent appeal cases, although the Council contended that those decisions did not set a binding precedent since the evidence underpinning its Core Strategy Policy CS11 had not been considered fully as part of the appeal process. In any event the Government has subsequently withdrawn the relevant PPG following a successful High Court challenge (as of 31st July 2015). The Council therefore maintains its position that an appropriate contribution should continue to be sought in all cases in accordance with adopted Policy CS11 and the Housing SPD.

6.2.2 In this instance the applicant has indicated a willingness to enter into a Section 106 agreement to secure the requisite payment towards off-site provision (see Paragraph 4.1.7).

6.3 **Layout, scale and design**

6.3.1 Since layout, scale and appearance are all reserved matters precise details are not known. However, as mentioned above the indicative block plan shows that the dwelling would need to be sited towards the southern end of the plot, which has the greatest elevation above the road and is farthest from the neighbouring properties. Consequently even a very modest or single-storey building would appear overwhelming and unduly prominent within the street scene, particularly when approached from Crowsnest. Whilst there are examples of houses on elevated plots elsewhere in both Snailbeach and Crowsnest, most of these are set back off the main road and/or predate current planning legislation.

6.3.2 In relation to the previous application for the same site, it was suggested that the scheme would provide a three-bedroom family home in line with Parish Plan aspirations. However, because scale is a reserved matter there can be no certainty over the floor space or number of bedrooms. That said, it is worth noting that the Design and Access Statement indicates 160-180m², which is twice the national average for a new 3-bedroom house.

6.4 **Impact on historic environment**

6.4.1 Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places on local planning authorities a duty to pay special attention to the desirability of preserving or enhancing the character and appearance of conservation areas. This is reflected by Core Strategy Policies CS6 and CS17 and NPPF Part 12. The latter also acknowledges the importance of non-designated heritage assets of archaeological interest which are demonstrably of equivalent significance to scheduled monuments, and recognises that an asset's significance can be harmed or lost through development within its setting.

6.4.2 As noted above the southern end of the site where the proposed dwelling is likely to be positioned is outside the conservation area. Nevertheless, and contrary to the Heritage Impact Assessment's claim that the main retaining wall screens the site from the road, officers consider that the development would on account of its elevation and prominence detract from the principal public view into the southern part of the conservation area. It would also introduce a new built element and more domestic character into outward views towards the short stretch of open countryside between Snailbeach and Crowsnest. Certainly it would fail to make a positive contribution given the site's poor relationship with the more cohesive structure and street scene of the main part of the village. The loss of the small metal shed, however, is uncontentious.

6.4.3 As noted by the Council's Archaeology Team, English Heritage (now Historic England) has indicated in comments on several previous applications for development elsewhere in Snailbeach that other ancillary features of the former lead mine should be afforded a similar level of protection as the mine complex itself, which is a scheduled monument. In this case, however, English Heritage has declined to comment specifically, whilst the Heritage Impact Assessment submitted concludes that there would be a negligible impact on the monument's setting since the application site's railway-related remains are poorly preserved and have effectively been severed from the mine complex (and indeed the north part of the former wharf) by other development. In fact, it suggests that securing a viable use for the site would result in the restoration and maintenance of the surviving terracing and retaining walls, which would otherwise be unlikely. On this basis the Archaeology Team does not object, although it remains open to debate whether the visual impact a new dwelling sited hard up against one of the terrace walls and the 'domestication' of the site in general might diminish the benefits of the restoration works. Certainly officers consider that these benefits would not outweigh the visual harm to the conservation area and wider landscape.

6.4.4 The likelihood of disturbing buried archaeological deposits is accepted as being low, and this could be controlled by conditions.

6.5 **Impact on landscape**

6.5.1 The Heritage Impact Assessment also opines that the impact on the wider landscape would be minimal. It argues that in distant views from the northwest the new dwelling would be set against the backdrop of the wooded hillside, and that much of the short gap between the straggling development of Snailbeach and Crowsnest is infilled already by the high terrace wall along the site frontage. However, although the terracing is a manmade feature discernible from across the Hope Valley, much of it is overgrown and the site is currently far less apparent than the scattered housing to

the left (north). A new dwelling perched on top of the retaining wall towards the southern end of the site would be difficult to screen effectively, and whilst it would not breach the skyline it would represent the encroachment of the existing ribbons of development into the essentially open and verdant countryside in-between.

6.5.2 The Local Member has suggested that the proposed dwelling would be separated from Crowsnest by the woodland in-between. However, it would in fact be a similar distance from the southernmost property on the edge of Snailbeach, and in the view of officers this reinforces the counterargument that it would not relate particularly closely to the structure of either settlement and would instead extend sporadic development into the intervening gap. Consequently it is felt that the scheme would detract from the character and intrinsic beauty of the AONB, contrary to Core Strategy Policy CS17 and NPPF Paragraph 115.

6.6 **Residential amenity**

6.6.1 There are no concerns in this regard given the extent of the plot and the distances from the neighbouring properties.

6.7 **Access and highway safety**

6.7.1 As suggested by the Highways Development Control Officer, precise details of parking and turning arrangements and the provision of visibility splays could be secured by condition. Although the northwards splay would extend beyond the site area, this land is also owned by the applicant and so a condition would be enforceable.

6.8 **Ecology**

6.8.1 With reference to Natural England's and the Ecology Team's comments regarding the nearby SAC (and SSSI), the HRA screening matrix is attached as Appendix 2. Issues relating to protected species and biodiversity enhancements could be addressed by condition.

6.9 **Other matters raised in representations**

6.9.1 Severn Trent Water and the Council's Drainage Engineer are satisfied that precise drainage details could be secured by condition, whilst the issue of contaminated land could be addressed in the same way.

7.0 **CONCLUSION**

7.1 A new open-market dwelling in this location beyond the main built-up area of Snailbeach village would not accord with the Council's emerging SAMDev plan or otherwise represent sustainable development in line with the NPPF, and thus the scheme is unacceptable in principle. Whilst there would be some benefits, including the potential for restoration of the terrace walls associated with the former Snailbeach District Railways, these would be modest and would not outweigh the visual harm which would result from the elevation and prominence of the proposed dwelling and the further consolidation of the loose ribbon development on the fringes of Snailbeach and neighbouring Crowsnest. In these respects the scheme would detract from the setting of the Snailbeach Conservation Area and the character of the Shropshire Hills AONB, contrary to Core Strategy Policies CS6 and CS6 and CS17. It is therefore recommended that planning permission is refused.

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.

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 of the First Protocol of the European Convention on Human Rights gives the right to respect for private and family life, whilst Article 1 allows for the peaceful enjoyment of possessions. These have to be balanced against the rights and freedoms of others and the orderly development of the County in the interests of the community.

8.2.2 Article 1 also requires that the desires of landowners must be balanced against the impact of development upon nationally important features and on residents.

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

8.3 Equalities

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

9.0 FINANCIAL IMPLICATIONS

9.1 There are likely financial implications if the decision and/or imposition of conditions are 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:

National Planning Policy Framework:

Part 6: Delivering a wide choice of high quality homes

Part 7: Requiring good design

Part 11: Conserving and enhancing the natural environment

Part 12: Conserving and enhancing the historic environment

Shropshire Local Development Framework:

Core Strategy Policies:

CS1: Strategic Approach

CS4: Community Hubs and Community Clusters

CS5: Countryside and Green Belt

CS6: Sustainable Design and Development Principles

CS11: Type and Affordability of Housing

CS17: Environmental Networks

CS18: Sustainable Water Management

Supplementary Planning Documents:

Type and Affordability of Housing

Relevant Planning History:

SS/1989/1068/P/ – Erection of split-level house with integral garage (on opposing site) (refused December 1989; appeal dismissed October 1990)

14/01271/OUT – Erection of dwelling and alterations to existing vehicular access (outline application to include means of access, but with matters of appearance, landscaping, layout and scale reserved) (withdrawn July 2014)

11.0 ADDITIONAL INFORMATION

View details online:

<https://pa.shropshire.gov.uk/online-applications/applicationDetails.do?activeTab=details&keyVal=NF1N5WTDGIX00>

<p>List of Background Papers: Application documents available on Council website</p>
<p>Cabinet Member (Portfolio Holder): Cllr M. Price</p>
<p>Local Member: Cllr Heather Kidd</p>
<p>Appendices: Appendix 1 – Informatives Appendix 2 – Habitat Regulations Assessment Screening Matrix</p>

APPENDIX 1 - 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 officer 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.

APPENDIX 2 – HABITAT REGULATIONS ASSESSMENT (HRA) SCREENING MATRIX

Application name and reference number:

14/05151/OUT
The Sidings, Snailbeach, Shrewsbury, Shropshire SY5 0LT
Erection of dwelling and alterations to existing vehicular access

Date of completion for the HRA screening matrix:

24th June 2015

HRA screening matrix completed by:

Rob Mileto, Ecological Consultant to Shropshire Council

Table 1: Details of project or plan

Name of plan or project	14/05151/OUT The Sidings, Snailbeach, Shrewsbury, Shropshire SY5 0LT Erection of dwelling and alterations to existing vehicular access
Name and description of Natura 2000 site	The Stiperstones and The Hollies SAC (601.46ha) represents a nationally important area of dry heath and also hosts a significant presence of sessile oak woodlands with <i>Ilex</i> and <i>Blechnum</i> . Annex I Habitats that are a primary reason for selection of site: <ul style="list-style-type: none"> European dry heaths: This site in central Britain is an example of European dry heaths that contains features transitional between lowland heathland and upland heather moorland. The most extensive vegetation type present is H12 <i>Calluna vulgaris</i> – <i>Vaccinium myrtillus</i> dry heath, which is characteristic of the uplands. South-facing slopes support stands of H8 <i>Calluna vulgaris</i> – <i>Ulex gallii</i> heath, a predominantly lowland vegetation community of south-west Britain. The heathland of the Stiperstones is in excellent condition because it is managed by a programme of rotational, controlled winter burning and cutting. Annex I Habitats present as a qualifying feature, but not a primary reason for selection of site: <ul style="list-style-type: none"> Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles
Description of the plan or project	Erection of dwelling and alterations to existing vehicular access
Is the project or plan directly connected with or necessary to the management of the site (provide details)?	No
Are there any other projects or plans that together with the project or plan being assessed could affect the site (provide details)?	No

Statement:

Given the scale and nature of the development Natural England does not believe there will be any likely significant effect on the SAC, either directly or indirectly.

The Significance test:

There is no likely significant effect on the European-designated site of The Stiperstones and The Hollies SAC as a result of the works proposed under planning application 14/05151/OUT (erection of dwellings and alterations to existing vehicular access at The Sidings, Snailbeach, Shrewsbury, Shropshire SY5 0LT).

The Integrity test:

There is no likely effect on the integrity of the European-designated site of The Stiperstones and The Hollies SAC as a result of the works proposed under planning application 14/05151/OUT (erection of dwellings and alterations to existing vehicular access at The Sidings, Snailbeach, Shrewsbury, Shropshire SY5 0LT).

Conclusions:

There is no legal barrier under the Habitat Regulation Assessment process to planning permission being granted in this case.

Guidance on completing the HRA Screening Matrix

The Habitat Regulation Assessment process:

Essentially, there are two ‘tests’ incorporated into the procedures of Regulation 61 of the Habitats Regulations, one known as the ‘significance test’ and the other known as the ‘integrity test’ which must both be satisfied before a competent authority (such as a Local Planning Authority) may legally grant a permission.

The first test (the significance test) is addressed by Regulation 61, part 1:

61. (1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for a plan or project which –
- (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and
 - (b) is not directly connected with or necessary to the management of that site,
- must make an appropriate assessment of the implications for that site in view of that site’s conservation objectives.

The second test (the integrity test) is addressed by Regulation 61, part 5:

61. (5) In light of the conclusions of the assessment, and subject to regulation 62 (consideration of overriding public interest), the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

In this context ‘likely’ means “probably”, or “it well might happen”, not merely that it is a fanciful possibility. ‘Significant’ means not trivial or inconsequential but an effect that is noteworthy – Natural England guidance on The Habitat Regulation Assessment of Local Development Documents (Revised Draft 2009).

Habitat Regulation Assessment Outcomes:

A Local Planning Authority can only legally grant planning permission if it is established that the proposed plan or project will not adversely affect the integrity of the European Site.

If it is not possible to establish this beyond reasonable scientific doubt then planning permission cannot legally be granted unless it is clear that there are no alternative solutions, the project must be carried out for imperative reasons of overriding public interest, and the Secretary of State has been notified in accordance with section 62 of the Conservation of Habitats and Species Regulations 2010. The latter measure is only to be used in extreme cases and with full justification and compensation measures, which must be reported to the European Commission.

Duty of the Local Planning Authority:

It is the duty of the planning case officer, the committee considering the application and the Local Planning Authority as a whole to fully engage with the Habitats Regulation Assessment process, to have regard to the response of Natural England and to determine, beyond reasonable scientific doubt, the outcome of the 'significance' test and the 'integrity' test before making a planning decision.