

Development Management Report

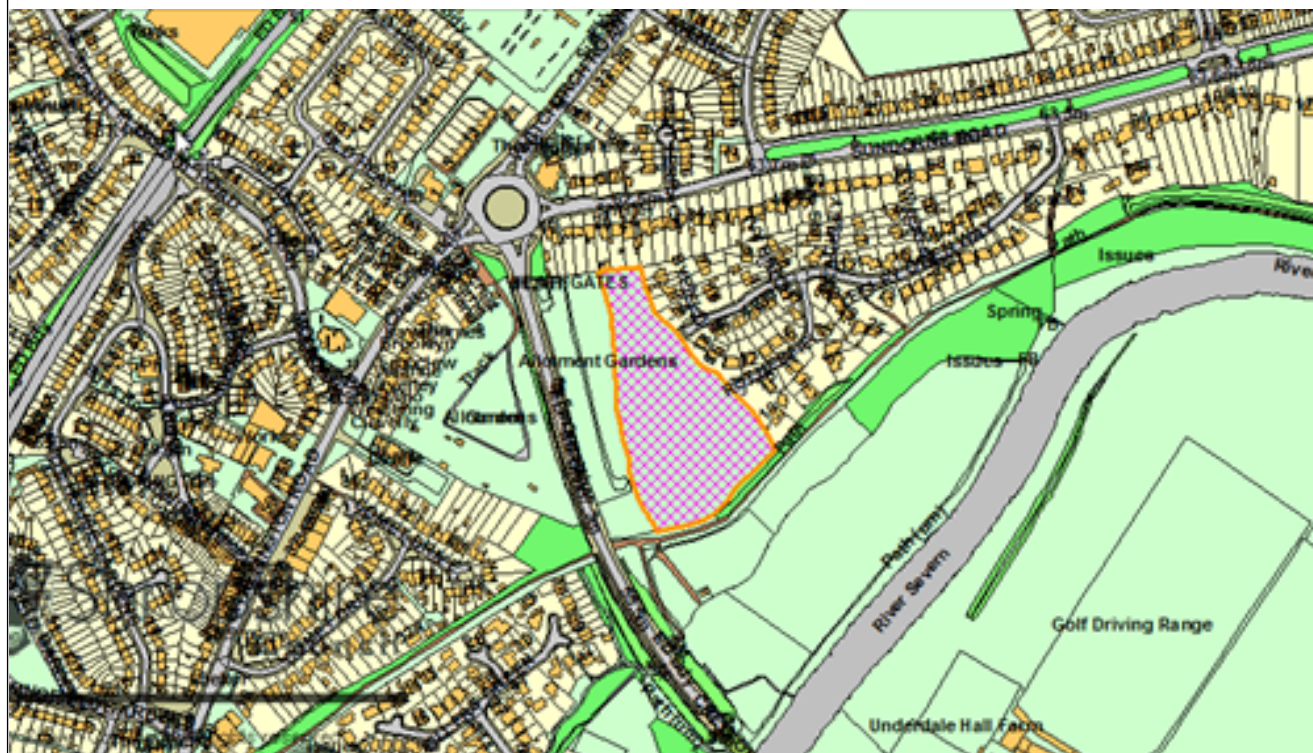
Responsible Officer: Tim Rogers

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Summary of Application

<u>Application Number:</u> 16/00476/OUT	<u>Parish:</u>	Shrewsbury Town Council
<u>Proposal:</u> Outline application (all matters reserved) for mixed residential development to include affordable houses; formation of estate roads and vehicular access from Lesley Owen Way		
<u>Site Address:</u> Land West Of Lesley Owen Way Shrewsbury Shropshire		
<u>Applicant:</u> Sundorne Estate		
<u>Case Officer:</u> Jane Raymond	<u>email:</u> planningdmc@shropshire.gov.uk	

Grid Ref: 350540 – 314436



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Recommendation: Grant Permission subject to the conditions set out in Appendix 1 and a S106 to secure the relevant affordable housing contribution at the Reserved Matters stage.

REPORT

1.0 PURPOSE OF REPORT

- 1.1 This application was previously considered by the Central Planning Committee at its meeting on 16th February 2017. Members at that meeting were minded to refuse the application, the minutes of the meeting record the proposed reason for refusal and reason for deferral as follows:

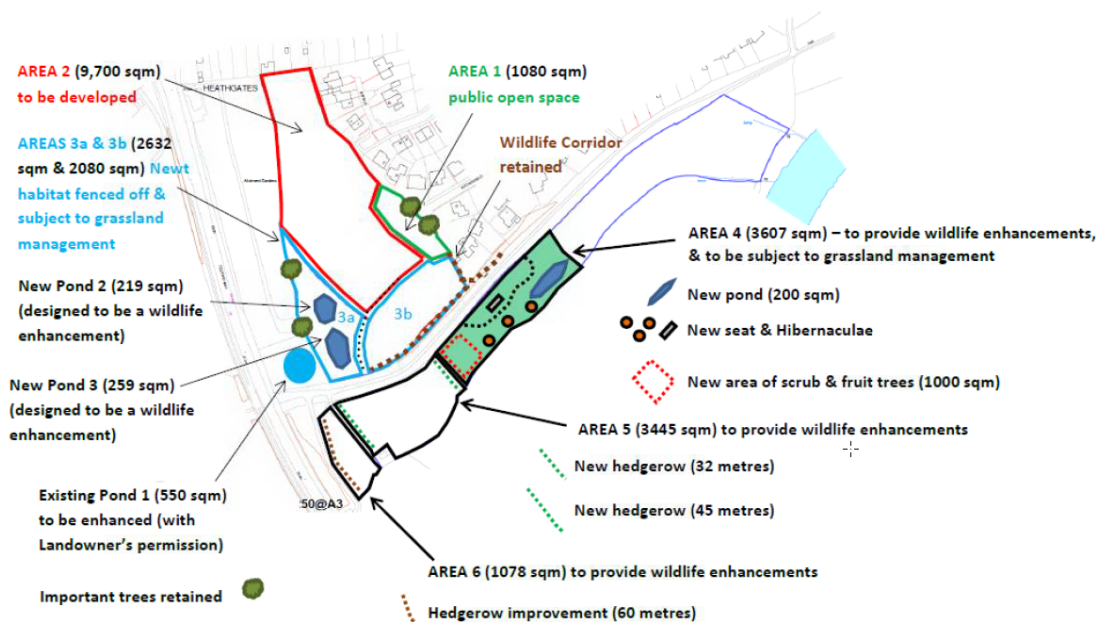
‘That Members are minded to refuse this application on the basis that the proposed development fails to protect, restore, conserve and enhance the natural environment contrary to policy CS6 of the Core Strategy. In accordance with paragraph 17.4 of the Local Protocol for Councillors and Officers dealing with Regulatory Matters the application stands deferred to a future meeting’.

The minutes also note that members considered that more information was required regarding the impact on an outlier badger sett.

- 1.2 This report seeks to provide members with further information including additional responses received from consultees following the February meeting and advice on the risk associated with refusing the application for the above reason. The original report presented to members in February 2017 is attached to this report for information at appendix 3.
- 1.3 The risk of refusing any planning application is that the applicant appeals the decision. This is a risk in that a Planning Inspector deciding an appeal may overturn the Councils decision and allow the proposal. There are costs associated with defending an appeal against refusal but there are also risks of the Council being required to pay the appellants costs of an appeal. Costs can be awarded if the Council is considered to have behaved unreasonably, in not allowing the application or in its conduct in defending an appeal, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The purpose of the costs regime is stated to include encouraging local planning authorities to properly exercise their development management responsibilities, and to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case. All involved in the appeal process should behave in a reasonable way including presentation of full and detailed evidence to support their case.
- 1.4 This report is before members on the basis that the suggested reason for refusal was (and is still considered by officers) to not be defensible if challenged at appeal. The report below seeks to advise members on the defensibility of the above reason for refusal.

2.0 ADDITIONAL INFORMATION RECEIVED

- 2.1 At the February Committee members were made aware that an amended indicative layout and Environmental report had been submitted that included a plan that showed areas for wildlife habitat protection and enhancement including Areas 3a and 3b and Area 4. The plan is reproduced here for information:



Some members expressed concern about the impact of the proposal on the natural environment and in particular the loss of an outlier badger sett and its replacement with an artificial sett. It was noted that Shropshire Wildlife Trust and Shropshire Badger Group had not responded to their re-consultation on these revisions. Following the February committee meeting the Shropshire Wildlife Trust and the Shropshire Badger Group were re-consulted again and have now provided comments on the proposal as amended prior to the February committee. The Councils Ecologist has provided a response to these comments.

3.0 CONSULTEE COMMENTS

- 3.1 **Shropshire Wildlife Trust:** We welcome the amendments to the plan and the provision of a greater area of green space within the development.

However we still have issues relating to the proposed development and question whether sufficient mitigation and compensation is actually being proposed. This relates not just to protected species but to the impact on the natural character of the area.

The proposals for contributing to the management of the pond at Telford Way (previously a Shrewsbury Urban Wildlife Pond) and the additional newt habitat outside the development need careful consideration. How 'additional' will these proposals actually be? Are they deliverable and enforceable? Will they be

compromised by other uses of these areas, for example is the cycle track still being considered?

In addition to the questions relating to the viability of the mitigation proposals there appear to be unresolved issues regarding the badger sett on the site.

Given the above issues and the fact that the land to the south of the site has a high local value in recreational and ecological terms we maintain our objection to the scheme.

The land to the south is not just any pathway/cycleway/bridleway it is a very well used and loved route, a national cycle route and important ecological corridor. These areas are becoming increasingly rare across the town and subjected to development at such close proximity that much of their previous value is being eroded.

We would encourage a more generous package of mitigation and compensation measures.

- 3.2 **Shropshire Badger Group:** Thank you for seeking comments from Shropshire Badger Group regarding the revised indicative layout and Ecological report produced by Greenscape Ecology. Whilst we welcome the new proposals for enhanced areas for wildlife, we would like to raise the following issues:

1.0 Outlying Sett and Construction of Simple Artificial Sett

1.1 A pre-commencement survey of the outlying sett is felt to be essential given the nature of use of this category of sett by badgers and we feel this is worthwhile explaining in more detail below. This survey must be undertaken by an Ecologist with the appropriate experience to identify current badger occupation.

1.2 An outlying sett usually comprises of one or two holes which are used sporadically by badgers. It is not a main breeding sett which is usually inhabited by badgers for the majority of the year. Outlying setts tend to be used more on an occasional basis, particularly during the summer when ectoparasite infestation is a problem at the main sett or when youngsters are dispersing from the main sett. Outlying setts are also used as a temporary shelter when badgers are foraging in the vicinity and feel the need to seek refuge for whatever reason. It is quite common to find foxes and rabbits inhabiting an outlying sett when not in use by badgers.

We feel that outlying setts provide a valuable resource to badgers and given that one outlier has already been destroyed when new fencing was erected around the allotment gardens, the loss of this further outlying sett in the field designated for building will significantly disadvantage the badgers. We therefore strongly recommend that a simple artificial sett comprising one chambers is constructed to replace the outlier that will be closed down in the field. We would like to be consulted on the final design for the artificial sett.

1.3 We have identified the site hatched in red in Area 4 on Figure 22 of the Enhancement Plan Jan 2017 designated as a new area of scrub and fruit trees to be a favourable location for an artificial sett. The embankment should aid drainage and

the artificial sett will be screened from the public. We recommend that planting should include thorny shrubs and trees to discourage human disturbance as well as elderberry trees.

2.0 Post Construction

2.1 We strongly disagree with the proposal at 6.2.3. Post Construction in Greenscape's report to provide a gap in the bottom of the fencing around new properties. Our experience has shown that new homeowners do not welcome badgers attempting to find food in their traditional foraging areas after turf has been newly laid or gardens have been established. This results in Shropshire Badger Group being called in to deal with dismayed new homeowners and having to advise on exclusion methods.

In the circumstances, given that the field to be developed is frequently used by badgers for foraging at the present time, we therefore recommend that perimeter fencing is badger-proofed to prevent such conflict occurring.

2.2 Area 3a and 3b must be excluded from the public to allow the badgers to continue to forage undisturbed. We also seek confirmation that Area 3b will be left undisturbed during the construction work.

2.3 A basic habit management plan should be agreed at the earliest possible stage to indicate how areas 3a and 3b will be managed and enhanced as suitable Great Crest Newt and Badger habitat.

2.4. We have surveyed the wooded embankment to the north of Area 4 on Figure 22 : Enhancement Plan and found this to be very valuable habitat for badgers. We strongly recommend that no vegetation is cleared in this area (as has recently been undertaken in vicinity of the old canal site). Such clearance work will not only denigrate the habitat for badgers but also for the other flora and fauna found there.

2.5 We support the proposal to create a cycleway / footpath running between Lesley Owen Way across the proposed public open space and around the protected wildlife area. This will allow badgers to continue to forage at sites around Lesley Owen Way.

2.6 We recommend traffic calming measures are installed between the current end of Lesley Owen Way and the drive to be created into the new housing development to prevent collision with badgers crossing at this point.

2.7 The Ecology Consultant should be made aware that there is a possibility of the proposed newt fencing shown on Figure 24 being compromised by badgers attempting to reach their traditional foraging on the field where the development is planned.

- 3.3 **SC Ecology:** SC Ecology has been asked to review our recommendations with view of the additional Shropshire Wildlife Trust, and Shropshire Badger Group planning comments (March 2017).

SC Ecology supports this proposal, and would emphasise the following comments;

- A pre-commencement badger survey is required prior to the commencement of work on site
- Details of an artificial sett should be shown on the Reserved Matters plans, this will be agreed in writing by Shropshire Council, and be appropriately constructed prior to the commencement of this development. The artificial sett will be retained for the life time of this development.
- Garden fencing should be badger proof in order to exclude badgers from domestic gardens post development.
- Areas 3a and 3b are to be excluded from the public in order to protect the environmental network, great crested newts, and badgers.
- Full details of landscape plan and habitat management plan, in particularly for areas 3a, 3b and 4, will be provided at reserved matter stage.
- The application is unlikely to impact on the pathway/cycleway/bridleway. The buffer to this existing pathway will be enhanced through planting and long term habitat management securing high quality habitat for the lifetime of this development (currently there is no restriction on how this land is managed), particularly in areas 3a, 3b and 4. To make this site work for the development and ecology it is essential to create and maintain networks that connect the site to the wider environment in line with planning policy CS17. The Proposed Site Plan, 'project number 1405, drawing number P-01 K dated 2nd December 2016', shows an area of 4670m² of land retained and fenced off from the public open space as ecological habitat which links to public open space of 1080m², and then connects with a footpath through to Lesley Owen Way.

Great Crested Newts

SC Ecology welcomes the new site plan titled 'Proposed Site Plan, project number 1405, drawing number P-01 K dated 2nd December 2016' showing an area of 4670m² of land retained and fenced off from the public open space as great crested newt habitat. This will be conditioned on a planning decision notice, with more detail to be submitted at reserved matters stage regarding landscape plan and habitat management.

In addition to the great crested newt mitigation which has been included within the red line boundary there is a proposal to enhance habitat in the area of land to the south of the development site. This is in the same land ownership. There is also referral to a financial commitment to the landowner to restore Heathgates pond;

On page 5 of the ecological report, and page 25 of the D&S, it says that the developer will provide some financial support to the council for the clearance and maintenance of Heathgates pond.

Throughout the ecological report and on page 26 of the D&S it states that the plot of land (areas 4, 5 and 6 as marked in the ecological report and named site 2 in the D&S) to the south of the development site will be used for compensation for the loss of terrestrial habitat close to a breeding pond.

Although SC Ecology welcomes the commitment of the developer to restore Heathgates pond and areas 6 and 5 in site 2 as shown in the ecological report, this

cannot be enforced through planning as it is not essential to make the development acceptable in planning terms.

Area 4 to the south of the development site is required to compensate for the loss of terrestrial habitat from the development area in the red line boundary. This area will be enhanced for badgers and great crested newts. The Greenscape Environmental report shows on Figure 22 the Enhancement plan January 2017. Area 4, which is shown as 3607m² should be conditioned to provide wildlife enhancements – this is to include grassland management, new pond, hibernacula, artificial badger sett and new area of scrub and fruit trees for the lifetime of the development.

Based on the information above, SC Ecology considers that the proposal will be able to secure an EPS mitigation licence from Natural England and that the favourable conservation status of great crested newts can be maintained.

I have provided a European Protected Species 3 tests matrix. The planning officer needs to complete sections 1 and 2, 'over riding public interest' and 'no satisfactory alternative.' The EPS 3 tests matrix must be included in the planning officer's report for the planning application and discussed/minuted at any committee at which the application is considered.

Badgers

A sett observed on the western boundary of the development site was considered to be an outlier sett in 2013. During the update survey in 2015 Greenscape Environmental Ltd has reported that this outlier sett has now been removed. There is a second outlier sett within the centre of the proposed development site.

The Badger Group has submitted formal comments and has reported that the sett which is in the middle of the proposed site is a valuable resource for badgers in the area, particular as the sett in the allotments has been lost. Mitigation required for the loss of the badger sett and foraging habitat should be provided at Reserved Matters Stage – appropriate design will reduce any impact that badgers could have on the new development. The ecological consultant should provide a scheme which helps connect a new artificial sett (and enhanced foraging area) to the main sett.

The badger group recommend that a simple artificial sett comprising one chambers is constructed in area 4 to replace the outlier that will be closed down in the field. As badgers can often cause disturbance in urban gardens the badger group has also recommended that badger proof fencing is used for garden perimeters.

Bats & Nesting Birds

The oak tree close to the boundary with the allotment gardens has potential to support bats and would require further survey work should it be removed. If the site layout changes and this tree is to be lost then bat phase 2 survey work will be required to support a reserved matters application (this should be included within the updated ecology survey to be conditioned).

The proposed development site could be enhanced for nesting birds with the incorporation of bird nest bricks within the building design. Hedgerow planting will help mitigate for any adverse impact on nesting birds.

4.0 MATTERS FOR CONSIDERATION

4.1 The main issues to be considered when determining this application are as follows:

- Principle of development
- Access/Highway impacts
- Layout, scale, design and appearance
- Impact on residential amenity
- Trees and landscaping
- Ecology
- Flood risk/Drainage
- Developer contributions

These issues were all fully addressed in the February committee report and considered by members. However as outlined in part 1 above members were minded to refuse the application due to their concern regarding the impact of the proposal on the Natural Environment. This report therefore only deals with the impact of the proposal on the Natural Environment and Natural Assets.

5.0 OFFICER APPRAISAL

5.1 Policy considerations - The local plan policies most relevant to consideration of the impact on the Natural Environment include Core Strategy Policy CS6 (Sustainable Design and Development Principles) and CS17 (Environmental Networks) and SAMDev policy MD12 (Natural Environment).

5.1.1 CS6 requires that all development protects, restores, conserves and enhances the natural, built and historic environment. CS17 also seeks to ensure that all development protects and enhances the diversity, high quality and local character of Shropshire's natural, built and historic environment. MD12 provides a list of Shropshire's natural assets that includes designated sites, protected species and habitats, ecological networks, important trees, woodland and hedges, visual amenity and landscape character and sets out the level of protection to ensure that development does not have a significant adverse effect on these assets. MD12 also encourages development that appropriately conserves, enhances, connects, restores or recreates these natural assets.

5.2 Designated sites – The field proposed for development is private land and is not public open space. The site is a green field site within the Shrewsbury urban area but has no ecological, wildlife, heritage or landscape designation. The previous SABC policy that sought to protect it as greenspace is no longer relevant. The proposal would therefore have no adverse impact on a locally or nationally designated site.

5.3 Protected species and habitats, and ecological networks

5.3.1 The application is accompanied by a phase 1 and phase 2 Environmental Survey and an indicative layout that shows areas for ecological enhancement. Protected species that may be affected by this proposal include Great Crested Newts (GCN),

Badgers and Bats.

- 5.3.2 GCN – The proposed development site is close to a GCN breeding pond and there is a medium population of great crested newts within close proximity to the site boundary. There is therefore a risk of damage to individual newts during construction so work will need to follow a strict method statement and be conducted under licence from Natural England. The development of part of this site will result in the loss of potential terrestrial habitat for GCN but this loss will be mitigated and more than compensated for by the provision of high quality habitat in areas 3a, 3b and 4. There is currently no restriction on how the land in these areas is managed and as the proposal provides ecological enhancement including grassland management, a new pond, GCN hibernacula, and new area of scrub and fruit trees the proposal cannot be considered to have an adverse impact on the habitat for GCN but an enhancement of the current situation. The Councils Ecologist has confirmed that the proposed development will not be detrimental to the maintenance of the populations of great crested newts at a favourable conservation status within their natural range provided the recommended conditions are imposed regarding the method statement for mitigation works and landscape and habitat enhancements. Work will need to be conducted under licence from Natural England and an EPS three tests matrix has been completed and is attached at appendix 2 to this report and should be noted by members.
- 5.3.3 Badgers – There is a single outlier badger sett in the field to be developed and concern was expressed by members regarding the loss of this sett and the provision of an artificial sett as compensation. Members also queried the definition of an outlier sett. Badger colonies often utilize several setts including a large main sett usually in the central part of a colony's territory and occupied by most of a colony's members in addition to one or more smaller outlier setts. Outlier setts may have only one or two entrances and may be used occasionally by a small number of colony members when nearby food sources are in season or in autumn when the main sett is crowded with the year's young.
- 5.3.4 Shropshire Badger Group have now provided comments on the revised indicative layout and Ecological report and welcome the new proposals for enhanced areas for wildlife subject to the provision of a simple artificial set to replace the outlier that will be closed down in the field. They consider that area 4 of the habitat enhancement plan that includes a new area of scrub and fruit trees is a favourable location for an artificial sett. They also support the proposal to create a cycleway / footpath running between Lesley Owen Way across the proposed public open space and around the protected wildlife area as this will allow badgers to continue to forage at sites around Lesley Owen Way. They have also made requests regarding pre-commencement survey work, badger proof fencing and exclusion of the public from area 3a, 3b and 4. The Councils Ecologist agrees with these requests and has provided relevant planning conditions and provided these conditions are followed it is considered that the proposal would have no adverse impact on badgers or their habitat and that the proposal will provide enhanced areas of habitat for badgers.
- 5.3.5 Bats – The proposal would have no adverse impact on habitat for bats as there are no buildings or trees proposed to be removed that offer bat roosting potential. The proposed landscaping including hedge and tree planting, ponds and gardens will

provide enhanced foraging habitat in addition to maintaining and enhancing commuting corridors for bats.

- 5.3.6 Ecological networks - Ecological networks are vital for the movement, foraging, migration and dispersal of wildlife species through urban and rural landscapes and both CS17 and MD12 seek to ensure that connecting green corridors are preserved or enhanced. Shropshire Wildlife Trust still maintain their objection to the proposal as they consider that the land to the South of the site has a high local value in recreational and ecological terms and that the pathway/cycleway/bridleway is a very well used and loved route and important ecological corridor. They are concerned that these areas are becoming increasingly rare across the town and subjected to development at such close proximity that much of their previous value is being eroded.
- 5.3.7 The submitted enhancement plan indicates that the existing footpath and cycle route will be unaffected by the proposal and that the proposed enhancement of areas 3a, 3b and 4 either side of this route will not erode the value of the green corridor but will actually improve it. The wooded embankment to the north of Area 4 is also unaffected by the proposal. It is considered that the proposal will not sever the existing green corridor or result in a barrier to wildlife and that the ecological network will be preserved and enhanced.
- 5.4 Trees, woodland and hedges –
- 5.4.1 The detailed landscaping (which will include tree and hedgerow removal and new planting) is reserved for later approval and this will be fully considered at the Reserved Matters stage. However there are existing trees and hedgerow on the site and development should not be permitted unless it can be satisfactorily demonstrated that important trees to be retained can be protected, and that new development would not result on future pressure to remove any trees to be retained.
- 5.4.2 An arboricultural report has been submitted and concludes that the proposed scheme is not significantly constrained by the trees and will be possible with the loss of just two grade C trees. There will be no loss of amenity provided by significant trees at the site and the key Specimens (O1, O4 and O5) will be retained and can be protected using standard tree protection measures. The location of development will ensure that the existing major trees to be retained will not overshadow the proposed properties and therefore post developmental pressure on the retained trees would be low. There is considerable scope to plant a number of trees within the buffer zone between the development and the pond to the South West and a number of specimens, that will grow to be large, could be planted here to add to the amenity of the area.
- 5.4.3 The submitted tree report and tree protection measures have been reviewed by the Councils tree officer who agrees with its findings subject to the imposition of a tree protection condition. The existing trees are not within a Conservation area or protected by a TPO so could be removed without the Councils consent at any time. Approval of this development will therefore secure the retention of the important higher value trees and the provision of enhanced landscaping of the site. The proposal could therefore not be considered to have an adverse impact on these

natural assets.

5.5 Visual amenity/landscape character

- 5.5.1 The site to be developed is a small field on the edge of an urban housing estate of no significant landscape value or character. The developable area has been reduced to that first submitted and cannot be increased as the remaining land is required to be enhanced for GCN and badgers and other wildlife, and this can be secured by a condition attached to any approval.
- 5.5.2 Concern has been raised about the loss of greenspace and the impact on the semi-rural character of the area. The outlook from the houses on the Western edge of this housing estate is towards the existing field and the flood plain of the river and Shrewsbury beyond. However there is no right to a view and there is an area of open space proposed between the existing and proposed houses and as the land to be developed slopes away and down toward the river the distant views from the existing properties on the edge of Lesley Owen Way will not be significantly affected. The development will read as a small extension to the existing residential road and would not adversely impact on the character and appearance of the locality and the existing housing estate.
- 5.5.3 Public views of the site are predominantly from the footpath to the South and the allotments to the West. The existing houses and the site cannot be seen from Telford Way further to the South West due to the significant amount of trees. The development area has been reduced so that there will be a partial green buffer between the allotments to the West and a significant green buffer between the development and the footpath to the South. The proposed green buffer to the South adjacent to the canal footpath addresses the concerns expressed by Shropshire Wildlife Trust regarding the negative impact the proposal would have on this green corridor and natural setting of the route which could have been impacted on if new housing had backed directly onto the route as the existing housing does. The proposed landscaping and future management of the land either side of the footpath to be secured by condition will enhance the green natural setting of the route and tree planting will help screen both the existing and proposed housing.
- 5.5.4 Although the development may appear more prominent in public views than the existing edge of the Lesley Owen Way estate it is considered that a satisfactory layout and buildings of a satisfactory scale, design and appearance can be achieved without adverse impact on the character and appearance of the locality. The proposal will result in development of less than two thirds of the field and officers consider that this represents an extremely small incursion into the larger expanse of green space along the green corridor adjacent to the river. Landscaping of both the remaining green space within the site North of the old canal footpath and the land to the South of the canal footpath will provide significant visual enhancement of any views of the site.

6.0 **CONCLUSION**

- 6.1 The site is within the urban development boundary of Shrewsbury and the proposal

will contribute to housing supply in a sustainable location and is therefore considered acceptable in principle and in accordance with the adopted plan. The appropriate amount of affordable housing provision (to be determined at the Reserved Matters stage) will be secured by a S106 agreement and the payment of CIL will contribute towards infrastructure.

- 6.2 Access, layout, scale, appearance and landscaping of the scheme are all reserved for later approval but it is considered that an acceptable and appropriately designed scheme could be achieved that would have no significant adverse impact on residential amenity and would not result in significant or demonstrable harm to the character and appearance of the locality or highway safety.
- 6.3 The proposal would provide ecological enhancement of the undeveloped part of the site (area 3a and 3b) in addition to the area to the South of the site (area 4) and would have no adverse impact on protected species and their habitat subject to compliance with the suggested conditions. Important trees will be retained and the proposal includes enhanced areas for wildlife including tree and hedge planting, ponds and areas of scrub and managed grassland. The landscaped gardens within the proposed developed part of the site will also provide ecological enhancement and increase bio-diversity compared to its current use as a managed field. It is considered that the proposal would have no adverse impact on the natural environment but would actually protect, restore, conserve and enhance the natural environment in accordance with CS6, CS17 and MD12.
- 6.4 For the reasons given in this report officers strongly advise that the draft reason for refusal suggested by members at the February committee would not be defensible if challenged at appeal and furthermore that pursuing the draft reason for refusal may put the Council at risk of an award of costs.
- 6.5 For the reasons given above and within the original report to committee dated 16 February 2017 officers consider that the proposal accords with Shropshire LDF policies MD1, MD2, MD12, S16.1, CS2, CS6, CS11, and CS17 and the aims and provisions of the NPPF and recommend approval.
- 7.0 Risk Assessment and Opportunities Appraisal
- 7.1 Risk Management
- There are two principal risks associated with this recommendation as follows:
- ☐ As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal, i.e. written representations, hearing or inquiry.
 - ☐ The decision may be challenged by way of a Judicial Review by a third party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will interfere where the decision is so unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its planning merits. A challenge by way of Judicial Review must be made a) promptly and b) in any event

not later than six weeks after the grounds to make the claim first arose.

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

7.2 Human Rights

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

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

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

7.3 Equalities

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

8.0 Financial Implications

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

9. Background

Relevant Planning Policies

Central Government Guidance: NPPF

Core Strategy and SAMDev Policies: CS2, CS6, CS11, CS17, MD1, MD2, MD12, S16.1

RELEVANT PLANNING HISTORY:

92/0860/OUT/263/84: Erection of dwelling houses and construction of estate road and sewers.
REFUSE: 7 October 1992

10. Additional Information

List of Background Papers: File 16/00476/OUT
Cabinet Member (Portfolio Holder):

Local Member: Cllr Kevin Pardy

Appendices

APPENDIX 1 – Conditions

APPENDIX 2 – EPS 3 Tests matrix

APPENDIX 3 – Committee Report 16 February 2017

APPENDIX 1: Conditions

STANDARD CONDITION(S)

1. Approval of the details of the design and external appearance of the development, access arrangements, layout, scale, 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 2015 and no particulars have been submitted with respect to the matters reserved in this permission.

2. Application for approval of the 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 be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

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

4. As part of the first application for reserved matters details of the proposed surface water drainage scheme shall be submitted for approval. If non permeable surfacing is used on the driveway and parking areas and the driveways slope towards the highway, the submitted scheme shall include a drainage system to intercept water prior to flowing on to the public highway.

Reason: To minimise the risk of surface water flooding and to ensure that no surface water runoff from the new driveways runs onto the highway.

5. As part of the first application for reserved matters an updated tree protection plan shall be submitted for approval. All trees which are to be retained in accordance with the approved layout plan shall be protected in accordance with the approved Tree Protection Plan. The protective fence shall be erected prior to commencing any approved development related activities on site, including ground levelling, site preparation or construction. The fence shall be maintained throughout the duration of the development and be moved or removed only with the prior approval of the LPA.

Reason: To safeguard the amenities of the local area by protecting trees

6. The first submission of reserved matters shall include an update phase 1 and where appropriate phase 2 ecological surveys, an assessment of impacts from the development, and a detailed ecological mitigation strategy submitted to the local planning authority. The proposed Great Crested Newt mitigation shall be no less than the area shown on the 'Proposed Site Plan, project number 1405 drawing number P-01 K dated 2nd December 2016' showing an area of 4670m² of land retained and fenced off from the public open space as great crested newt habitat, and 3607m² of wildlife enhancement to the south of the development, in site 2, as shown as Area 4 in Figure 22: Enhancement Plan Jan 2017, in the Greenscape Environmental Ltd report

December 2016. An artificial badger sett should be included in the updated ecological mitigation. The updated ecological mitigation strategy, recommendations and method statements will be implemented as approved in writing by the local planning authority unless changes are required by Natural England in order to obtain a European Protected Species Mitigation Licence. Notification of any changes required by Natural England, including a copy of the licence, must be submitted to the planning authority prior to development commencing.

Reason: To ensure the protection and enhancement of biodiversity and protected species, including Great Crested Newts, a European Protected Species and Badgers, Protected by the Badgers Act.

7. The first submission of reserved matters shall include a Construction Environmental Management Plan (CEMP) for approval in writing by the local planning authority. The plan will be implemented as approved and shall include:
 - a) An appropriately scaled plan showing 'Wildlife/habitat Protection Zones' where construction activities are restricted and where protective measures will be installed or implemented;
 - b) Details of protective measures (both physical measures and sensitive working practices, including lighting) to avoid impacts during construction (may be provided as a set of method statements);
 - c) A timetable to show phasing of construction activities to avoid harm to biodiversity features (e.g. avoiding the bird nesting season);
 - d) The times during construction when specialist ecologists need to be present on site to over-see works;
 - e) The role and responsibilities on site of an ecological clerk of works (EcCoW) or similarly competent person;
 - f) Persons responsible for:
 - i) Compliance with legal consents relating to nature conservation;
 - ii) Compliance with planning conditions relating to nature conservation;
 - iii) Installation of physical protection measures during construction;
 - iv) Implementation of sensitive working practices during construction;
 - v) Regular inspection and maintenance of physical protection measures and monitoring of working practices during construction;
 - vi) Provision of training and information about the importance of 'Wildlife protection zones' to all construction personnel on site.

All construction activities shall be adhered to and implemented strictly in accordance with the approved CEMP unless otherwise approved in writing by the local planning authority.

Reason: To protect features of recognised nature conservation importance.

8. At first submission of reserved matters a scheme of landscaping should be submitted and approved in writing by the local planning authority. The works shall be carried out as approved, prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the local planning authority, unless the local planning authority gives written consent to any variation. The submitted scheme shall include:
 - a) Planting plans, including wildlife habitat and features (e.g. integrated bird, bat boxes, artificial badger sett)

- b) Written specifications (including cultivation and other operations associated with plant, grass and wildlife habitat establishment)
- c) Schedules of plants, noting species (including scientific names), planting sizes and proposed numbers/densities where appropriate
- d) Native species used are to be of local provenance (Shropshire or surrounding counties)
- e) Details of trees and hedgerows to be retained and measures to protect these from damage during and after construction works
- f) Implementation timetables

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

9. The first submission of reserved matters shall include a habitat management plan. The plan shall include:
- a) Description and evaluation of the features to be managed (no less than 4670m² of land should be retained and fenced off from the public open space and managed as great crested newt habitat as indicated in 'Proposed Site Plan, project number 1405, drawing number P-01 K dated 2nd December 2016', and 3607m² of wildlife enhancement to the south of the development, in site 2, as shown as Area 4 in Figure 22: Enhancement Plan Jan 2017, in the Greenscape Environmental Ltd report December 2016);
 - b) Ecological trends and constraints on site that may influence management;
 - c) Aims and objectives of management;
 - d) Appropriate management options for achieving aims and objectives;
 - e) Prescriptions for management actions;
 - f) Preparation of a works schedule (including a 5 year project register, an annual work plan and the means by which the plan will be rolled forward annually);
 - g) Personnel responsible for implementation of the plan;
 - h) Monitoring and remedial/contingencies measures triggered by monitoring.
 - i) The financial and legal means through which the plan will be implemented.
- The plan shall be carried out as approved, unless otherwise approved in writing by the local planning authority, for the lifetime of the development.

Reason: To protect features of recognised nature conservation importance.

10. As part of the Reserved Matters details for the provision of nesting opportunities for swifts shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented in full prior to the occupation of the dwelling(s)/building.

Reason: To ensure the provision of nesting opportunities for swifts

11. As part of the reserved matters details of the location and design of a minimum of 10 bat boxes or bat bricks suitable for nursery or summer roosting for small crevice dwelling bat species shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented in full prior to the occupation of the dwelling/building.

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

CONDITION(S) THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES

12. No development, demolition or site clearance procedures shall commence until a European Protected Species (EPS) Mitigation Licence with respect to great crested newts has been obtained and submitted to the local planning authority for the proposed work prior to the commencement of works on the site. Work shall be carried out strictly in accordance with the granted EPS Mitigation Licence.

Reason: To ensure the protection of great crested newts, a European Protected Species

13. No building and construction work shall be commenced unless evidence has been provided to the Local Planning Authority that no badger setts are present within 30 metres of the development site to which this consent applies immediately prior to work commencing. The site should be inspected within 3 months prior to the commencement of works by an experienced ecologist and a report submitted to the Local Planning Authority. If the survey indicates the presence of any Badger Setts within 30 metres of the site then prior to the commencement of the development an updated mitigation plan shall be submitted for the approval of the Local Planning Authority. The mitigation shall be undertaken in accordance with this approved plan.

Reason: To ensure the protection of badgers, under the Badgers Act (1992)

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

14. No works which include the creation of trenches or culverts or the presence of pipes shall commence until measures to protect badgers from being trapped in open excavations and/or pipes and culverts are submitted to and approved in writing by the Local Planning Authority. The measures may include:
 - a) Creation of sloping escape ramps for badgers, which may be achieved by edge profiling of trenches/excavations or by using planks placed into them at the end of each working day; and
 - b) Open pipework greater than 150mm outside diameter being blanked off at the end of each working day.

Reason: To ensure the protection of badgers, under the Badgers Act (1992)

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

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

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

APPENDIX 2: EPS 3 Tests matrix

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

Application name and reference number:

16/00476/OUT
Land West Of Lesley Owen Way
Shrewsbury
Shropshire
Outline application (all matters reserved) for mixed residential development to include affordable houses; formation of estate roads and vehicular access from Lesley Owen Way.

Date of consideration of three tests:

4th May 2017

Consideration of three tests carried out by:

Nicola Stone
Planning Ecologist
Shropshire Council

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

The proposal will provide up to 29 new homes including some affordable, which will boost the housing supply in a sustainable location and as a result provide social and economic benefits for both present and future generations and will also provide bio-diversity enhancements of the site with no adverse environmental impacts.

2 Is there 'no satisfactory alternative'?

The alternative is not to develop the site but this would not provide the boost to housing supply numbers in Shropshire and would not provide the social and economic benefits of the proposal and the ecological enhancements of the site to be secured by conditions attached to this planning permission.

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

I have read the above application and the supporting documents including the;

- Phase 1 and Phase 2 Environmental Survey conducted by Greenscape Environmental Ltd (2016)
- Update Greenscape Environmental Survey (April 2016)

- Proposed site plan drawing number P-01 Revision J
- Design and Access Statement January 2016
- Phase 1 and 2 Environmental Survey conducted by Greenscape Environmental Ltd (December 2016)
- Amended proposed site plan drawing number p-01 K (2nd December 2016)
- Shropshire Wildlife Trust comment dated 10th March 2017
- Badger Group comments dated 7th March 2017

There is a medium population of great crested newts within close proximity to the site boundary.

There is risk of damage to individual newts so work will need to follow a strict method statement and be conducted under licence from Natural England. A likely method statement has been provided by Greenscape Environmental Ltd which includes, but is not limited to the following;

- The licensed consultant will be employed as the Ecological Clerk of Works to oversee the work in areas sensitive to GCN on site.
- The site will be fenced with Temporary amphibian fencing and a minimum of 60 days trapping will take place.
- A toolbox talk will be conducted for and contractors will be advised not to handle GCN at any time.
- A minimum of 4670m2 great crested newt habitat being created and managed, not included within public open space on the proposed development site.
- A minimum of 3707m2 to the south of the proposed development (in site 2, marked as area 4) should be conditioned to provide wildlife enhancements – this is to include grassland management, new pond, hibernacula, and new area of scrub and fruit trees for the lifetime of the development.
- Creation of hibernacula and hedgerow planting

The proposed development will not be detrimental to the maintenance of the population of great crested newts recorded at a favourable conservation status within their natural range provided that the following conditions detailed in the response from Nicola Stone to Jane Raymond dated 4th May 2017 are on the decision notice and are appropriately enforced:

REM Condition 1:

The first submission of reserved matters shall include an update phase 1 and where appropriate phase 2 ecological surveys, an assessment of impacts from the development, and a detailed ecological mitigation strategy submitted to the local planning authority. The proposed Great Crested Newt mitigation shall be no less than the area shown on the 'Proposed Site Plan, project number 1405 drawing number P-01 K dated 2nd December 2016' showing an area of 4670m2 of land retained and fenced off from the public open space as great crested newt habitat, and 3607m2 of wildlife enhancement to the south of the development, in site 2, as shown as Area 4 in Figure 22: Enhancement Plan Jan 2017, in the Greenscape Environmental Ltd report December 2016. An artificial badger sett should be included in the updated ecological mitigation. The updated ecological mitigation strategy, recommendations and method statements will be implemented as approved in writing by the local planning authority unless changes are required by Natural England in order to obtain a European Protected Species Mitigation Licence. Notification of any changes required by Natural England, including a copy of the licence, must be submitted to the planning authority prior to development commencing.

Reason: To ensure the protection and enhancement of biodiversity and protected species, including Great Crested Newts, a European Protected Species and Badgers, Protected by the Badgers Act.

REM Condition 2:

The first submission of reserved matters shall include a Construction Environmental Management Plan (CEMP) for approval in writing by the local planning authority. The plan will be implemented as approved and shall include:

- a) An appropriately scaled plan showing 'Wildlife/habitat Protection Zones' where construction activities are restricted and where protective measures will be installed or implemented;
- b) Details of protective measures (both physical measures and sensitive working practices, including lighting) to avoid impacts during construction (may be provided as a set of method statements);
- c) A timetable to show phasing of construction activities to avoid harm to biodiversity features (e.g. avoiding the bird nesting season);
- d) The times during construction when specialist ecologists need to be present on site to over-see works;
- e) The role and responsibilities on site of an ecological clerk of works (EcCoW) or similarly competent person;
- f) Persons responsible for:
 - i) Compliance with legal consents relating to nature conservation;
 - ii) Compliance with planning conditions relating to nature conservation;
 - iii) Installation of physical protection measures during construction;
 - iv) Implementation of sensitive working practices during construction;
 - v) Regular inspection and maintenance of physical protection measures and monitoring of working practices during construction;
 - vi) Provision of training and information about the importance of 'Wildlife protection zones' to all construction personnel on site.

All construction activities shall be adhered to and implemented strictly in accordance with the approved CEMP unless otherwise approved in writing by the local planning authority.

Reason: To protect features of recognised nature conservation importance.

REM Condition 3 Landscape Plan

At first submission of reserved matters a scheme of landscaping should be submitted and approved in writing by the local planning authority. The works shall be carried out as approved, prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the local planning authority, unless the local planning authority gives written consent to any variation. The submitted scheme shall include:

- a) Planting plans, including wildlife habitat and features (e.g. integrated bird, bat boxes, artificial badger sett)
- b) Written specifications (including cultivation and other operations associated with plant, grass and wildlife habitat establishment)
- c) Schedules of plants, noting species (including scientific names), planting sizes and proposed numbers/densities where appropriate
- d) Native species used are to be of local provenance (Shropshire or surrounding counties)
- e) Details of trees and hedgerows to be retained and measures to protect these from damage during and after construction works
- f) Implementation timetables

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

REM Condition 4: Habitat Management Plan

The first submission of reserved matters shall include a habitat management plan. The plan shall include:

- a) Description and evaluation of the features to be managed (no less than 4670m² of land should be retained and fenced off from the public open space and managed as great crested newt habitat as indicated in 'Proposed Site Plan, project number 1405, drawing number P-01 K dated 2nd December 2016', and 3607m² of wildlife enhancement to the south of the development, in site 2, as shown as Area 4 in Figure 22: Enhancement Plan Jan 2017, in the Greenscape Environmental Ltd report December 2016);
- b) Ecological trends and constraints on site that may influence management;
- c) Aims and objectives of management;
- d) Appropriate management options for achieving aims and objectives;
- e) Prescriptions for management actions;
- f) Preparation of a works schedule (including a 5 year project register, an annual work plan and the means by which the plan will be rolled forward annually);
- g) Personnel responsible for implementation of the plan;
- h) Monitoring and remedial/contingencies measures triggered by monitoring.
- i) The financial and legal means through which the plan will be implemented.

The plan shall be carried out as approved, unless otherwise approved in writing by the local planning authority, for the lifetime of the development.

Reason: To protect features of recognised nature conservation importance.

Planning Condition

1. No development, demolition or site clearance procedures shall commence until a European Protected Species (EPS) Mitigation Licence with respect to great crested newts has been obtained and submitted to the local planning authority for the proposed work prior to the commencement of works on the site. Work shall be carried out strictly in accordance with the granted EPS Mitigation Licence.

Reason: To ensure the protection of great crested newts, a European Protected Species



Committee and date

16 FEB 2017

Item

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> 16/00476/OUT	<u>Parish:</u>	Shrewsbury Town Council
<u>Proposal:</u> Outline application (all matters reserved) for mixed residential development to include affordable houses; formation of estate roads and vehicular access from Lesley Owen Way		
<u>Site Address:</u> Land West Of Lesley Owen Way Shrewsbury Shropshire		
<u>Applicant:</u> Sundorne Estate		
<u>Case Officer:</u> Jane Raymond	<u>email:</u> planningdmc@shropshire.gov.uk	

Recommendation: Grant Permission subject to the conditions set out in Appendix 1 and a S106 to secure the relevant affordable housing contribution at the Reserved Matters stage.

REPORT

1.0 THE PROPOSAL

1.1 This application relates to Outline permission for mixed residential development to include affordable houses, formation of estate roads and vehicular access from Lesley Owen Way with all matters reserved for later approval.

1.2 The area of the site identified for development has been amended and reduced to that first submitted to allow for the provision of a larger area of land within the red outlined site boundary to be enhanced for GCN. The reduced developable area of the site shown on the revised indicative layout indicates 29 houses which are a mixture of detached and semi-detached. Additional habitat enhanced for newts is also proposed on land outside the development site outlined in blue.

2.0 SITE LOCATION/DESCRIPTION

2.1 The site is a vacant roughly rectangular field which is narrower to the North and is situated to the East of allotments accessed off Telford Way located further to the West of the site. The Northern boundary is shared with the rear gardens of three properties that face Sundorne Road to the North, there are residential properties to the East accessed off Lesley Owen Way and to the South is a public footpath / public bridleway / cycleway and further to the South is the River Severn.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

- 3.1 The scheme does not comply with the delegation to officers as set out in Part 8 on the Shropshire Council Constitution as the Town Council have submitted a view contrary to officers and the application has been requested to be referred by the Local Member, and the Area Planning Manager in consultation with the Committee Chairman agrees that the application should be determined by committee.

4.0 COMMUNITY REPRESENTATIONS**4.1 - Consultee Comments**

- 4.1.1 **SC Highways:** The current application seeks outline consent with all matters reserved hence access, scale and layout etc are not being considered at this stage. Whilst therefore access is not included at this stage it is somewhat implicit that access to the site would be derived via an extension of Lesley Owen Way. This is confirmed by the indicative layout drawing which shows a potential housing scale and layout. The highway authority attach no weight to the indicative drawing at this stage.

It is noted that there is strong local representation within the Lesley Owen Way Development and from the Town Council, including highway related concerns. Whilst therefore noting those concerns, the highway authority consider that a level of housing development is acceptable but that access, scale and design would need to be considered further as part of any subsequent reserved matters application. This would include further consideration of traffic calming measures being introduced to mitigate the impact of the development, in particular the interface between the site and current termination of Lesley Owen Way. Issues regarding the junction of Lesley Owen Way and Sundorne Road have been raised and again mitigation measures will need to be properly considered dependent upon the scale of development promoted.

- 4.1.2 **Environment Agency:** I would have no comments to offer on the application as the site lies wholly within Flood Zone 1, the low risk Zone. Whilst the Flood Map does indicate a small portion of Flood Zone 2 detailed modelling has confirmed that, in fact, the whole site is within the low risk zone. Paragraph 4.1.1 of the submitted Flood Risk Assessment (inc. Table 5) confirms this. You are advised to seek the comments of your Flood and Water management team with regard to surface water management on the site.
- 4.1.3 **SC Drainage:** The drainage details, plan and calculations could be conditioned if planning permission were to be granted.
- 4.1.4 **SC Learning and Skills:** Shropshire Council Learning and Skills reports that the local primary schools are at capacity and forecast to remain that way for the foreseeable future. It is therefore essential that the developers of this and any new housing in this area of town contribute towards the consequential cost of any additional places/facilities considered necessary at those schools.
- 4.1.5 **SC Affordable Dwellings:** If this site is deemed suitable for residential development, then there would be a requirement for a contribution towards the provision of affordable housing in accordance with Policy CS11 of the adopted

Core Strategy. The level of contribution would need to accord with the requirements of the SPD Type and Affordability of Housing and at the prevailing housing target rate at the time of a full or Reserved Matters application.

The assumed tenure split of the affordable homes would be 70% for affordable rent and 30% for low cost home ownership and would be transferred to a housing association for allocation from the housing waiting list in accordance with the Council's prevailing Allocation Policy and Scheme.

If this site is deemed suitable for residential development, then the number, size, type and tenure of the on-site affordable units must be discussed and agreed with the Housing Enabling Team before an application is submitted.

4.1.6 **SC Trees:** I have read the submitted Tree Survey and am in agreement with the findings. I am pleased to see the mature trees will be excluded from back gardens. I can support the application if a tree protection condition is imposed on any approval.

4.1.7 **SC Rights of Way:** Public Bridleway 108 Shrewsbury (and cycleway) abuts the southern boundary of the proposed development site, but it will not be affected by the application.

4.1.8 **SC Ecologist:** SC Ecology welcomes the new site plan titled 'Proposed Site Plan, project number 1405, drawing number P-01 K dated 2nd December 2016' showing an area of 4670m² of land retained and fenced off from the public open space as great crested newt habitat. This will be conditioned on a planning decision notice, with more detail to be submitted at reserved matters stage regarding habitat management.

In addition to the great crested newt mitigation which has been included within the red line boundary there is a proposal to enhance habitat in the area of land to the south of the development site. This is in the same land ownership. There is also referral to a financial commitment to the landowner to restore Heathgates pond;

- On page 5 of the ecological report, and page 25 of the D&S, it says that the developer will provide some financial support to the council for the clearance and maintenance of Heathgates pond.

- Throughout the ecological report and on page 26 of the D&S it states that the plot of land (areas 4, 5 and 6 as marked in the ecological report and named site 2 in the D&S) to the south of the development site will be used for compensation for the loss of terrestrial habitat close to a breeding pond.

Although SC Ecology welcomes the commitment of the developer to restore Heathgates pond and areas 6 and 5 in site 2 as shown in the ecological report, this cannot be enforced through planning as it is not necessary to make the development acceptable in planning terms.

Area 4 to the south of the development site is required to compensate for the loss of terrestrial habitat from the development area in the red line boundary. The Greenscape Environmental report shows on Figure 22 the Enhancement plan January 2017. Area 4, which is shown as 3607m² should be conditioned to provide wildlife enhancements – this is to include grassland management, new pond, hibernacula, and new area of scrub and fruit trees for the lifetime of the

development.

Based on the information above, SC Ecology considers that the proposal will be able to secure an EPS mitigation licence from Natural England and that the favourable conservation status of great crested newts can be maintained.

I have provided a European Protected Species 3 tests matrix. The planning officer needs to complete sections 1 and 2, 'over riding public interest' and 'no satisfactory alternative.' The EPS 3 tests matrix must be included in the planning officer's report for the planning application and discussed/minuted at any committee at which the application is considered.

Badgers

A sett observed on the western boundary of the development site was considered to be an outlier sett in 2013. During the update survey in 2015 Greenscape Environmental Ltd has reported that this outlier sett has now been removed. There is a second outlier sett within the centre of the proposed development site.

The Badger Group has submitted formal comments and is of the opinion that the sett which is in the middle of the proposed site is a valuable resource for badgers in the area, particular as the sett in the allotments has been lost. Mitigation required for the loss of the badger sett and foraging habitat should be provided at Reserved Matters Stage – appropriate design will reduce any impact that badgers could have on the new development. The ecological consultant should provide a scheme which helps connect a new artificial sett if required (and enhanced foraging area) to the main sett.

Bats & Nesting Birds

The oak tree close to the boundary with the allotment gardens has potential to support bats and would require further survey work should it be removed. If the site layout changes and this tree is to be lost then bat phase 2 survey work will be required to support a reserved matters application (this should be included within the update ecology survey work condition 1 above).

The proposed development site could be enhanced for nesting birds with the incorporation of bird nest bricks within the building design. Hedgerow planting will help mitigate for any adverse impact on nesting birds.

- 4.1.9 **Shropshire Wildlife Trust:** No comments have been received in relation to the revised scheme but objected to the application as first submitted as follows:

The site for the proposed development is immediately adjacent to the Sundorne Canal Local Wildlife Site and includes an area of open green space highlighted as being of value to local communities in our recent green spaces consultation.

Not only was the site itself identified as being of value (community appreciation of green space, ability to watch badgers, birds, etc.) the canal footpath is clearly a very important green corridor for residents of the whole of Shrewsbury and for visitors to the town. This is for a wide range of reasons (recreation, exercise, traffic free commuting/travel, etc.) but with a common theme of the green natural setting of the route. Development in close proximity would exacerbate the impact of the

current housing backing on to the route from Lesley Owen Way and Sundorne Road.

While we welcome the mitigation and compensation measures suggested they do not go far enough to address all the impacts relating to the development.

Buffers and corridors within the development site are limited and are unlikely to be successful in the long term. There is an insufficient buffer area along the southern boundary of the site with buildings coming to within 10 – 15m of the footpath and property boundaries closer still.

The proposed area for compensation (Site 2) needs to be clearly defined, a commitment made to long term management and preferably a handover to the local authority, etc. to secure the long term future of the site.

While Site 2 can be improved for GCN and biodiversity value increased it is also within the Environmental Network and so provides no compensation for the loss of green space within the Environmental Network resulting from the development.

The Environmental Network seeks to address a range of issues connected with green space not just the ecological requirements of a few priority/legally protected species.

We would recommend that the proposal to include a path/cycle route within Site 2 is abandoned

New hedgerows and the management of areas adjacent to the national cycle route should be in line with the recommendations of Sustrans guidance.

4.1.10 **Natural England:** No comments to make on this application.

The lack of comment from Natural England does not imply that there are no impacts on the natural environment, but only that the application is not likely to result in significant impacts on statutory designated nature conservation sites or landscapes. It is for the local planning authority to determine whether or not this application is consistent with national and local policies on the natural environment. Other bodies and individuals may be able to provide information and advice on the environmental value of this site and the impacts of the proposal to assist the decision making process. We advise LPAs to obtain specialist ecological or other environmental advice when determining the environmental impacts of development.

We recommend referring to our SSSI Impact Risk Zones (available on Magic and as a downloadable dataset) prior to consultation with Natural England.

Protected Species

If the proposed works could, at any stage, have an impact on protected species, then you should refer to our Standing Advice which contains details of survey and mitigation requirements.

4.2 - Public Comments

4.2.1 **Shrewsbury Town Council:** Objects (to the application as first submitted): The Town Council has concerns on a number of aspects of the proposed development as follows:

- the loss of valuable green space in the area with a corresponding detrimental impact on wildlife;
- increased traffic levels in an already congested area of Shrewsbury;
- these plans represent an over-development of the site with the current proposals;
- sustainable drainage issues of the site and the close proximity to the flood plain.

Whilst members have previously considered these proposals as part of the pre-planning consultation, they are disappointed that their concerns raised with the developer do not appear to have been addressed. The Town Council respectfully requests that this application should be considered at Committee level and not by delegated decision.

4.2.2 **Shropshire Badger Group:** We have read the (original) Ecology report produced by Greenscape Environmental Ltd and wish to express concern regarding the following points:

Reference is made to a 'potential sett' identified in the field. We feel that this is an outlying sett and it was seen to be in use in May 2015 and March 2016, evidenced by freshly excavated soil containing badger hair (we have recorded photographic evidence) A resident whose property adjoins the field regularly feeds badgers in his garden and has a video record of a sow and cub in the garden in 2015. He has seen 3 badgers in the garden on occasion. We are therefore of the opinion that this sett provides a valuable resource for the badgers in this area, particularly as the sett in the allotments was closed down.

A potential sett entrance was identified by Greenscape in 2013 under a shed in the allotments. This sett has now been removed. As far as we can ascertain, it was not closed down under licence and we are therefore unaware as to the circumstances of its closure. However the closure has resulted in the loss of a resource in an area where suitable sett sites are difficult to find.

We question the statement "Compensation for the loss of any outlying sett will be provided with the public open space being secured from public and planted with some fruit trees". We seek further clarification on the relevance of this opinion. The loss of the field will undoubtedly result in the loss of a significant resource for foraging but there is no mention of this fact in the Ecology report produced by Greenscape and no proposal for mitigation. Undoubtedly the badgers will attempt to access their traditional foraging area and we anticipate complaints from new residents regarding damage to newly laid turf and fencing.

There is no clear mention of any overall mitigation and enhancement for the badgers. In the event that the planning application is successful, we feel that a suitable site should be identified and a compensatory artificial sett constructed. Further comment is sought from Greenscape Ecology regarding compensation for the loss of foraging.

4.2.3 **Shrewsbury Civic Society:** Objects

The primary objection of the Civic Society is to the means of access via Lesley

Owen Way. It can be assumed that this number of dwellings could generate in the region of fifty extra vehicles being added to a road system that was built as a cul de sac for a limited number of houses and their cars. Unfortunately this site does not provide any alternative means of entry and exit. Whilst the Society is very much aware of the need to provide additional housing in the town this site has not, we believe, been designated within the SAMdev as a suitable site for housing and as a 'green field' site the case for building here should be substantial. Unless an alternative means of entry and exit to the site other than via Lesley Owen Way can be found we feel that permission should not be granted.

4.2.4 **Heathgates Allotments Association:**

- ☐ The report shows that the hedge on the south side, which follows the allotment boundary is to be retained. There is no detail of who will be responsible for the maintenance of this and also the ditch which also follows the hedge line. The ditch and hedge have not been maintained by Sundorne Estates and as such this affects the drainage from the allotments, this needs to be addressed and a long term plan for maintenance agreed.
- ☐ The proposal to construct new pools at the bottom of the site near the allotments is also a concern, regarding maintenance and drainage from the allotment. We would like to be assured that the drainage is improved as part of the plan.
- ☐ The housing at the top of the site is planned to be situated close to the allotment boundary which may cause privacy concerns both for the houses and allotment holders.

4.2.5 34 letters of objection and a petition with 82 signatures have been received with comments summarised as follows:

- ☐ Planning permission has previously been refused at this site over 20 years ago and nothing has changed.
- ☐ Increased traffic volume and noise population
- ☐ The roads on the estate are already congested with on street parking, which makes them narrow in places and there are blind spots along the road and at a number of the junctions.
- ☐ Lesley Owen Way is not suitable or safe for the amount of traffic currently using it and unable to accommodate a substantial increase in traffic.
- ☐ There will not be adequate visibility at the new access point close to Byfield.
- ☐ Byfield will lose its quiet, safe, pleasant, cul-de-sac position.
- ☐ Traffic already queues at the junction of Lesley Owen Way with Sundorne Road which is a very busy road with traffic queuing every morning and evening leading up to Heathgates island. This proposal will exacerbate the situation.
- ☐ Increased traffic and queuing at Heathgate roundabout which will increase air pollution
- ☐ There will need to be a traffic management system in place.
- ☐ Access onto Telford Way would be a much better means of access
- ☐ The field was previously an undisturbed area only grazed by horses and a donkey
- ☐ Alarmed that the field was being mowed by a tractor in January and hedges trimmed.

- ☐ Disturbance of the current wildlife in and around the field which includes birds, newts, bats and badgers
- ☐ Overshadowing and loss of light.
- ☐ Overlooking and loss of privacy and security
- ☐ Decreased property value
- ☐ The addition of a footpath is unnecessary as Lesley Owen Way is already served by 2 footpaths. It would not be of any benefit to residents and will attract people from the canal path up through the estate.
- ☐ It is unclear who will use the proposed public open space at the end of Rotherfield and who will be responsible for its upkeep and it may attract anti-social behaviour.
- ☐ There are existing drainage problems on the site and development might exacerbate existing drainage problems on surrounding land and existing gardens.
- ☐ In addition to other developments in the area it will put an even greater strain on local amenities and resources which has a knock on effect to the tax payer.
- ☐ Behind the site are allotments where regular fires are lit which create a considerable amount of smoke and this will be very close to the proposed houses.
- ☐ Loss of an open outlook and view of the Shropshire Hills.
- ☐ Impact on the character of the estate and the countryside setting and semi-rural character of the area by development on one of the few remaining green spaces within Shrewsbury.
- ☐ Shropshire has already met its housing target for many years to come.
- ☐ SABC Policy LNC4 was intended to ensure that the land remained open and undeveloped.
- ☐ Does not understand how it can be described as a windfall site and there is no justification for developing land other than that allocated.

5.0 **THE MAIN ISSUES**

Principle of development

Access/Highway impacts

Layout, scale, design and appearance

Impact on residential amenity

Trees and landscaping

Ecology

Flood risk/Drainage

Developer contributions

6.0 **OFFICER APPRAISAL**

6.1 **Principle of development**

6.1.1 The development will be situated in an established residential area within the urban development boundary of Shrewsbury. It is close to essential services and facilities that could be reasonably accessed by foot or by cycle and the Town Centre is readily accessible by public transport. The location of the development accords with Shropshire Core Strategy Policy CS2 that identifies Shrewsbury as the main focus for new residential development.

- 6.1.2 Some residents have expressed concern that development of this land was refused approximately 20 years ago and so should be refused again as nothing has changed since then. The development has been described as 'windfall' as although within the urban boundary it is not an allocated site. Some residents have commented that Shropshire has already met its 5 Five Year Housing Land Supply (YHLS) target and that this land is therefore not required to be developed and that SABC Policy LNC4 was intended to ensure that the land remained open and undeveloped.
- 6.1.3 The Shropshire Core Strategy identifies a housing requirement of 27,500 dwellings between 2006 and 2026. The Site Allocations and Management of Development (SAMDev) Plan, which seeks to deliver this housing requirement, identifies areas where new housing would be supported in addition to the allocated sites. SAMDev settlement policy for Shrewsbury (S16.1) identifies that appropriate development will be encouraged on suitable sites within the town's development boundary and that new housing will be delivered through a combination of brownfield and greenfield sites and on sites both allocated for development and on windfall sites.
- 6.1.4 Shropshire can currently demonstrate a five year land supply for the period 2016/17 to 2020/21 based on the housing requirement within the Core Strategy. The 5YHLS statement provides a summary of the housing land supply in Shropshire considered deliverable within the next 5 years and the summary identifies a total of 12,829 dwellings which includes 700 homes to be delivered on windfall sites. There is a risk that without windfall sites such as this Shropshire would not be able to provide sufficient housing to demonstrate a 5YHLS and it's policies would once again not be considered up to date. This would leave the Council open to speculative development for proposals that meet the NPPF presumption in favour of sustainable development but which are not in accordance with the adopted plan.
- 6.1.5 The site is a green field site but it has no ecological, heritage or landscape designation and the previous SABC policy that sought to protect it as greenspace is no longer relevant. The site is within the urban development boundary of Shrewsbury, in a sustainable location and would help contribute to the housing land supply providing both open market and affordable housing on site. Officers therefore consider the development of this site is acceptable in principle and in accordance with CS2 and S16.1. Subject to compliance with other relevant policies the proposal should be supported provided there are no other material considerations that would indicate otherwise. This will be considered in the paragraphs below.
- 6.2 **Access/Highway impacts**
- 6.2.1 Access is one of the matters reserved for later approval but the indicative layout shows that it will be achieved by an extension to Lesley Owen Way. Highways advice, whilst noting the concerns of residents and the Town Council, has confirmed that a level of housing development is acceptable but that the exact amount of development would be considered at the Reserved Matters stage.
- 6.2.2 Highways have not objected to the proposal which would have ruled out any new development at this site but have advised that at the Reserved matters stage

further consideration would be given to any requirement for traffic calming measures along Lesley Owen Way and dependent on the scale of development consideration of mitigation measures to address the issues regarding the junction of Lesley Owen Way and Sundorne Road.

- 6.2.3 The developable area has been reduced and this will limit the amount of development but the exact number of dwellings will not be determined until a Reserved Matters application is submitted. However it is considered that a safe means of access can be provided and any future consideration of layout will ensure sufficient parking space is provided for new residents and visitors so that they will not need to park in the street. Some residents have raised concern that they will no longer be able to allow their children to play out in the street as the existing dead end to Lesley Owen Way will become a through route to the new houses. However this is not a material consideration as Lesley Owen Way is a highway and not a playground. The NPPF advises that *'development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe'*. It is considered that the additional traffic using Lesley Owen Way and the junction with Sundorne Road would not result in severe traffic and congestion.

6.3 **Layout, scale, design and appearance**

- 6.3.1 SAMDev Policy MD2 (Sustainable Design) and Core Strategy Policy CS6 (Sustainable Design and Development Principles) requires development to protect and conserve the built and natural environment and be appropriate in scale, density, pattern and design taking into account the local context and character and should also safeguard residential and local amenity.
- 6.3.1 Layout, scale, design and appearance are all matters reserved for later approval and will be decided at the Reserved Matters stage. However the developable area has been reduced to that first submitted and cannot be increased as the remaining land is required to be enhanced for GCN and this can be secured by a condition attached to any approval.
- 6.3.2 Concern has been raised about the loss of greenspace and the impact on the semi-rural character of the area. However although the outlook from the houses on the edge of this housing estate is towards the existing field and the flood plain of the river beyond there is no right to a view. The development will read as a small extension to the existing residential road and would not impact on the character and appearance within this urban housing estate.
- 6.3.3 Public views of the site are predominantly from the footpath to the South and the allotments to the West. The existing houses and the site cannot be seen from Telford Way further to the South West due to the significant amount of trees. The development area has been reduced so that there will be a partial green buffer between the allotments to the West and a significant green buffer between the development and the footpath to the South. The proposed green buffer to the South adjacent to the canal footpath has addressed the concerns of Shropshire Wildlife Trust regarding the negative impact the proposal would have had on this green corridor and natural setting of the route that would have been impacted on if new housing had backed directly onto the route in addition to the existing. The

proposed landscaping and future management of the land either side of the footpath to be secured by condition will enhance the green natural setting of the route and tree planting will help screen both the existing and proposed housing.

- 6.3.4 Although the development may appear more prominent in public views than the existing edge of the Lesley Owen Way estate it is considered that a satisfactory layout and buildings of a satisfactory scale, design and appearance can be achieved without adverse impact on the character and appearance of the locality. Whilst the proposal will result in development of approximately two thirds of the field outlined in red officers consider that it will represent only a small incursion into the larger expanse of green space along the green corridor adjacent to the river. Landscaping of both the remaining green space within the site outlined in red and the land outlined in blue will provide significant visual enhancement of any views of the site.

6.4 Impact on residential amenity

- 6.4.1 Development has the potential to impact on residential amenity due to the proximity and scale of new buildings that might appear overbearing or obtrusive or result in overlooking and a loss of privacy. The application is outline only to establish the principle and consideration will be given to the impact on residents when a detailed reserved matters application is submitted. The indicative layout does however indicate that buildings can be located sufficiently far way so as not to adversely impact on existing residents.

- 6.4.2 The indicative layout does show that the proposed houses and their gardens to the North part of the site will be located close to the boundary with the allotments with no buffer in between. The Heathgates Allotments association has raised concern that this may cause privacy issues both for future residents and allotment holders. Allotments are not afforded the same level of privacy as private residential gardens and in any case are often close to residential gardens in many situations. The relationship between the allotments and the new houses will be more fully considered when a layout plan and landscaping including boundary treatment is submitted at the Reserved Matters stage. Their concern about future maintenance of the boundary hedge and drainage will also be more fully considered at this stage.

6.5 Trees and landscaping

- 6.5.1 The detailed landscaping of the site is reserved for later approval and this will be fully considered at the Reserved Matters stage. However there are existing trees and hedgerow on the site and development should not be permitted unless it can be satisfactorily demonstrated that important trees to be retained can be protected, and that new development would not result on future pressure to remove any trees to be retained.
- 6.5.2 An arboricultural report has been submitted and concludes that the proposed scheme is not significantly constrained by the trees and will be possible with the loss of just two grade C trees together with a large number of generally hawthorn scrub. There will be no loss of amenity provided by significant trees at the site and the key Specimens (O1, O4 and O5) will be retained and can be protected using standard tree protection measures. The location of development will ensure that

the existing major trees to be retained will not overshadow the proposed properties and therefore post developmental pressure on the retained trees would be low. There is considerable scope to plant a number of trees within the buffer zone between the development and the pond to the south west and a number of specimens, that will grow to be large, could be planted here to add to the amenity of the area.

- 6.5.3 The submitted tree report and tree protection measures have been reviewed by the Councils tree officer who agrees with its findings subject to the imposition of a tree protection condition. The existing trees are not within a Conservation area or protected by a TPO so could be removed without the Councils consent. Approval of this development will therefore secure the retention of the important higher value trees and the provision of enhanced landscaping of the site.

6.6 Ecology

- 6.6.1 The application is accompanied by a phase 1 and phase 2 Environmental Survey updated in December 2016 which has been viewed by the Councils Ecologist who has no objection to the proposal subject to the imposition of conditions that will provide ecological enhancement of part of the site and also land to the South of the site. Although the site might be suitable as terrestrial habitat for Newts and the development will reduce the amount of undeveloped land the proposed enhancement of this land within the red line of the application in addition to the enhancement of the land to the South will more than compensate for the loss of terrestrial habitat.
- 6.6.2 Shropshire Wildlife Trust, who originally had concerns about the development of this site not only in terms of impact on protected species but also on the loss of valued green space and the wildlife corridor within the Environmental Network, have been re-consulted on the revised proposal, but no comments have been received. However it is considered that the amended plan that provides an enhanced green buffer and enhancement of the green space to the South of the site more than compensates for the loss of part of this field to development. Furthermore the field is a private paddock that can be mown at any time and therefore could provide less ecological value than landscaped gardens and the proposed enhancement of the remaining green space.
- 6.6.3 Whilst the provision of a larger area of land within the red line to be enhanced is sufficient to ensure 'that the favourable conservation status of great crested newts can be maintained' a condition to secure enhancement of the area to the south will ensure that the management of this area is secured for the future and will provide enhancement for both GCN and badgers. The badger condition suggested by the Ecologist will also ensure that the site is re-inspected for badger sets prior to commencement of any development and appropriate mitigation proposed to include an artificial badger sett.
- 6.6.4 Compliance with all the conditions suggested by the ecologist and the provision of a detailed landscaping scheme at the Reserved Matters stage will ensure ecological enhancement of the site itself in addition to enhancement of the area of land to the South of the footpath. The proposed development will not be detrimental to the maintenance of the populations of great crested newts at a favourable conservation

status within their natural range provided the recommended conditions are imposed regarding the method statement for mitigation works and landscape and habitat enhancements. Work will need to be conducted under licence from Natural England and an EPS three tests matrix has been completed and is attached as appendix 2 to this report and should be noted by members.

6.7 Flood risk/Drainage

6.7.1 The Council Drainage Consultant has confirmed that the drainage details, plans and calculations can be conditioned if planning permission is granted. Any site is capable of providing a satisfactory surface water drainage scheme and attenuation measures to ensure that the site can be adequately drained and would not result in increased surface water run off to adjoining land. It is recommended that the suggested conditions and informatives provided by the drainage team are imposed.

6.8 Developer contributions

6.8.1 The development will be liable for payment of CIL which will provide financial contributions to infrastructure including education. A S106 will ensure the provision of the relevant amount of on site affordable housing in accordance with CS11 and the SPD at the RM stage.

7.0 CONCLUSION

7.1 The site is within the urban development boundary of Shrewsbury and will contribute to the housing supply in a sustainable location and is therefore considered acceptable in principle and in accordance with the adopted plan. Access, layout, scale, appearance and landscaping of the scheme are all reserved for later approval but it is considered that an acceptable and appropriately designed scheme could be achieved that would have no significant adverse impact on residential amenity and would not result in significant or demonstrable harm to the character and appearance of the locality or highway safety. The proposal would provide ecological enhancement of the undeveloped part of the site in addition to the area to the South of the site, and important trees will be retained and protected subject to compliance with the suggested conditions. The appropriate amount of affordable housing provision (to be determined at the Reserved Matters stage) will be secured by a S106 agreement and the payment of CIL will contribute towards infrastructure. It is therefore considered that the proposal accords with Shropshire LDF policies MD1, MD2, MD12, S16.1, CS2, CS6, CS11, and CS17 and the aims and provisions of the NPPF.