

## Development Management Report

Responsible Officer: Tim Rogers

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### Summary of Application

<b><u>Application Number:</u></b> 17/01875/FUL	<b><u>Parish:</u></b>	Cheswardine
<b><u>Proposal:</u></b> Restoration alterations and extensions to existing dwelling and erection of new dwelling		
<b><u>Site Address:</u></b> Property Known As The Lodge Ellerton Newport Shropshire TF10 8AW		
<b><u>Applicant:</u></b> Mr and Mrs Pariera		
<b><u>Case Officer:</u></b> Karen Townend		<b><u>email:</u></b> <a href="mailto:planningdmne@shropshire.gov.uk">planningdmne@shropshire.gov.uk</a>

**Grid Ref:** 372028 - 325587



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**Recommendation:- Grant Permission subject to the conditions set out in Appendix 1.****REPORT****1.0 THE PROPOSAL**

- 1.1 This application, in addition to an associated listed building application, seeks consent for the erection of a new detached dwelling and restoration and extension of the listed building to create an annexe. Works are also required to create an access drive, install services and landscaping.
- 1.2 The detached dwelling will be a three bed property with an open plan living/ dining/ kitchen area, utility room and three garages. The listed building will become a one bed annex.
- 1.3 In support of the application the agent/ architect has submitted full plans, visual impression drawings, a design and access statement, heritage statement, protected species survey and updated survey report.

**2.0 SITE LOCATION/DESCRIPTION**

- 2.1 The site area is 1.68 hectares, located in an area designated as countryside in the planning policy. It lies on the boundary between Shropshire and Telford and is accessed via a farm track leading between Ellerton House Farm and Ellerton Hall. In the immediate area Ellerton is a small settlement made up of a range of large detached country houses, small cottages and farm building conversions to the east of Hinstock. The application site is within agricultural land and, other than the settlement, is within open fields.
- 2.2 The application site currently consists of an area of grassland, a pool of 0.47 hectares and a small grade II listed building which is octagonal in shape, built of red sandstone and slate. The land slopes down to the pool and also contains a number of trees on the higher ground. The site is not currently enclosed by any means other than field boundaries.
- 2.3 The listed building, now referred to as The Lodge but previously referred to as the Toll House, has an octagonal footprint and is constructed of sandstone block work. It is two storey and has a pitched roof; though this was probably an addition that was added during the late 20<sup>th</sup> century. The building also has octagonal shaped windows at first floor. The existing building is small with a footprint that measures just 34.5 square metres and is 6.3 metres in height to its ridge. The building contains two small rooms; one on each floor and a staircase. The building contains fire places and internal doors which date from the Mid 19<sup>th</sup> century and indicate that the building did have some type of residential use. The building appears to have been occupied by people employed by the various owners of the hall. The most recent use of the building was as a holiday let up until the late 1980's when it was used as a fishing lodge.

**3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION**

- 3.1 The Parish Council has expressed a view which is contrary to the Case Officer recommendation. In accordance with part 8 of the Council Scheme of Delegation, and the onward delegation, the local member was consulted to determine whether

they consider the comments of the Parish Council justified committee determination of the application. No specific opinion was received and therefore the matter was discussed with the Chair and Vice Chair of the Planning Committee who decided that the application should be considered by the planning committee due to the Parish Council comments and also the previous decision being a committee decision.

#### **4.0 COMMUNITY REPRESENTATIONS**

##### **Consultee Comments**

- 4.1 **Parish Council** – 25.08.17 – The Parish Council objects to this application. The proposals do not justify section 55 status for a new build in open countryside as the design is not of significant architectural merit. The members do not consider that the design meets the “truly outstanding or innovative” requirement of Section 55 of the NPPF and the proposed build would not enhance the immediate surroundings.

23.06.17 – The proposals were studied by the Councillors who noted the application had been made using section 55 (grand design) in order to qualify for exception status. Councillors agreed that the viability of the guest house was not dependent on a new residence. Dimensions of proposed dwelling were checked. Councillors queried whether the proposals justified section 55 status. They did not agree that the design was of significant architectural merit. Councillors do not feel the plans meet the "not truly outstanding or innovative" does not enhance the immediate surroundings - all agreed to object.

- 4.2 **Conservation** – There have been a number of previous applications which have been approved on this site, which have entailed the restoration and extension of the listed building with a large modern dwelling, immediately abutting the historic building and extending into the hillside to the rear. These have been renewed and the latest is still extant. This application has been subject to pre application advice from Conservation and Planning Officers.

In considering the proposal, due regard to the following local policies and guidance has been taken, when applicable: SC Core Strategy policies CS5 (Countryside and Greenbelt), CS6 (Sustainable Design and Development) and CS17 (Environmental Networks), SC SAMDev policies MD2 (Sustainable Design), MD13 (The Historic Environment), and with national policies and guidance: National Planning Policy Framework (NPPF), published March 2012. Section 66(i) of the Planning (Listed Buildings and Conservation Areas) Act 1990 applies.

The proposals for the restoration of the listed building are largely based on the details of the previous consent, and are therefore supported. The small extension now proposed to the rear of the building is considered to be appropriate, reflects the form of the existing building, and minimizes the impact on historic fabric. There are interventions to the historic building proposed internally, including the removal of a later staircase and partition, and it is recommended that the removal of such features is subject to a condition ensuring their recording. Any approval should also be subject to conditions for all materials, which would need to be agreed prior to commencement.

The proposal to relocate the majority of accommodation from within an attached building as a separate, but linked, dwelling is deemed appropriate as it will enable

the retention of the historic building in a relative scale and form which is closest to its original state whilst permitting its restoration. The design rationale for the new building is clear – sustainable building features have been incorporated, its orientation and massing have been planned for it to appear less visible in the views from and towards the listed building, and it has the potential to enhance its setting. It enables the retention and long term future of the listed building, which would be tied to the main site in perpetuity. In summary, it is felt that the scheme now being proposed is appropriate as it has less of an impact upon the fabric of the Listed Building and would complement its unique setting.

It is acknowledged that the proposal does constitute a separate, yet co-owned element to the listed building, but having regard to the previous permissions, it is considered that the proposal is an acceptable form of development which preserves and enhances the character and fabric of the listed building and as such is supported by officers.

The restoration of the listed building should be of paramount importance; any permission should be predicated on the first phase of works being for the restoration of the listed building, which would be carried out with a number of related conditions.

4.3 **Historic England** – On the basis of the information available to date, we do not wish to offer any comments. We suggest that you seek the views of your specialist conservation adviser.

4.4 **Highways** – No objection subject to the development being constructed in accordance with the approved details and the recommended informatives.

The site is on land to the south of Ellerton Hall, Ellerton near Hinstock in North Shropshire. It includes an existing building which has variously been called the Lodge and the Tollhouse probably because of its shape as there are no roads nearby. It should be pointed out that as the applicant has chosen to use the name The Lodge, Ellerton that it should not be confused with Ellerton Lodge on the junction of the U3148 and the C2098 opposite Ellerton Hall. The Lodge, Ellerton is on the Local Authority boundary between Shropshire and Telford and Wrekin. This is an agricultural area with scattered farms and some dwellings but few roads.

The proposal is to refurbish The Lodge, build a sympathetically designed extension and join them with a glass corridor to make it habitable for use as a home for the family who are building a large detached house nearby for their eventual family home after which The Lodge will become a guest house.

A private, internal farm track along which there is a restricted right of way, 0204/24/2 followed by Footpath 0204/24A/1 is the only access to the The Lodge from the highway which is the U3148 Sambrook to Goldstone road. In order to build the new house, an extension to the farm track is to be made utilising the path of 0204/24A/1 around the pool. The farm track acts as an access for the hall and the farm which are nearer to the highway.

Some consideration should be given to those who require access to the front doors, letterboxes and deliveries in general. The installation of secure gate-side post and

paper boxes should be considered. From the potential householders view, the length of driveway is the trip which they will have to make, weekly, to put out refuse and recycling bins for emptying. The recommended maximum distance is 25m. Smooth, level space is required at the road side for temporary storage of refuse bins and recycling boxes which must not be allowed to obstruct the highway or the visibility splay of the access. Collection is made from the roadside.

4.5 **Rights of Way** – The access to this development site from Ellerton Hall will be along Public footpath 24/24A, although not directly affected by the proposed development please ensure that the applicant adheres to the standard criteria to ensure the right of way remains open and unhindered.

4.6 **Ecology** – Recommend conditions and informatives.

#### Bats

In 2015 bat activity survey work was conducted at The Toll House. This confirmed the presence of non-breeding, day roosts of Common pipistrelle (max count 8), Soprano pipistrelle (max count 4), and Natterer's bats (max count 2). Common pipistrelle access was recorded in crevices between slate and felt. Soprano pipistrelle accessed via slipped mortar into a void between lead flashing and the wooden porch roof. Natterer's bat gained access to internal void via gaps in stone work. DNA analysis confirmed findings.

The development to the Toll House will be conducted under an EPS mitigation licence from Natural England. This will require updated bat activity survey work when applying for a licence. Alternative roosting provision, prior to works commencing on site, will be in the form of bat boxes. An ecological clerk of work will exclude bats and supervise soft demolition of the roof spaces and roosting structures at a time of year to avoid encountering bats. Temporary fencing should be erected around the structure to act as a lighting screen between the working area of the development and the immediate locality. Any flood lighting should be switched off at the minimum of 1 hour prior to sunset and any works required to be undertaken between dusk and dawn should not occur between mid-April and October, inclusive, thereby avoiding the active season for bats.

The provision of new roosting opportunities will be in the form of raised ridge tiles to mitigate for the loss of the original roosting features currently used by common pipistrelles and soprano pipistrelles. The inclusion of bat tubes within The Toll house structure will provide roosting opportunities for Natterer's bats.

An update walkover survey has been conducted by Mark Latham in 2017 and it confirms that there has been no material changes in relation to the presence of priority or protected species on site that would alter the conclusions and recommendations provided in the previous ecological report.

I have provided a European Protected Species 3 tests matrix for bats. The planning officer will need 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. The form provides guidance on completing sections 1 and 2 but please get in touch if additional assistance is required.

### Great Crested Newts

SC Ecology had liaised with Pearce Environment Ltd, read the previous ecological survey work for this site, and Fran Lancaster's previous consultation response for development of The Toll House. SC Ecology had removed the need for additional GCN survey work due to the presence of fish, the size of the development, and the survey work already conducted (admittedly out of date, but it is reasonably unlikely that there will be gcn present due to reasons listed in the Pearce Environment Ltd Report). SC Ecology has requested that a gcn method statement is submitted and conditioned on the decision notice. A working method statement for amphibians has been provided in Mark Latham's report (2017).

### Nesting Birds

Nesting opportunities should be provided for swallow in the form of one 'Schwegler' or 'woodcreate' type swallow box to be incorporated into the structures design.

- 4.7 **Drainage** – A sustainable drainage scheme for the disposal of surface water from the development should be designed and constructed in accordance with the Councils Surface Water Management: Interim Guidance for Developers document. It is available on the councils website at: [www.shropshire.gov.uk/environmental-maintenance-and-enforcement/drainage-andflooding/flood-risk-management-and-the-planning-process](http://www.shropshire.gov.uk/environmental-maintenance-and-enforcement/drainage-andflooding/flood-risk-management-and-the-planning-process).

The provisions of the Planning Practice Guidance, in particular Section 21 Reducing the causes and impacts of flooding, should be followed.

Preference should be given to drainage measures which allow rainwater to soakaway naturally. Connection of new surface water drainage systems to existing drains / sewers should only be undertaken as a last resort, if it can be demonstrated that infiltration techniques are not achievable.

### 4.8 **Public Comments**

- 4.9 Site notices and a press notice were produced to publicise the application and the site notices were erected by the case officer on the 25<sup>th</sup> May 2017 adjacent to Ellerton Hall on the access track to the site. This track serves as a public right of way and as such the site notices were considered to be appropriate publicity for the proposed development.

## 5.0 **THE MAIN ISSUES**

- Principle of development, relevant policies and history of site
- Siting, scale and design of dwelling
- Siting, scale and design of alterations and extension to listed building
- Access, parking, turning and rights of way
- Ecology, landscaping and drainage

## 6.0 **OFFICER APPRAISAL**

### 6.1 **Principle of development, relevant policies and history of site**

- 6.1.1 Planning permission has previously been granted four times for extending the existing building to create a single dwelling. The first approval was designed as a

number of octagonal sections around the existing building. The later approvals were for a large two storey section linked by a single storey connecting extension to the existing building. The most recent consent is from 2015 and as such is still an extant consent which could be developed. The previous consents are a material planning consideration in the determination of the current planning application.

- 6.1.2 Under section 38(6) of the Planning and Compulsory Purchase Act 2004, all planning applications must be determined in accordance with the adopted development plan unless material considerations indicate otherwise. Since the adoption of the Councils Core Strategy the National Planning Policy Framework (NPPF) has been published and is a material consideration that needs to be given weight in the determination of planning applications. The NPPF advises that proposed development that accords with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused unless other material considerations indicate otherwise. The NPPF constitutes guidance for local planning authorities as a material consideration to be given significant weight in determining applications.
- 6.1.3 The development plan is the Shropshire Core Strategy and the Shropshire Site Allocations and Management of Development Plan (SAMDev). Specific policies relevant to this application are CS5, CS6, CS17 & CS18 of the Shropshire Core Strategy and MD2, MD7a, MD12 and MD13.
- 6.1.4 CS5 deals with development in the countryside and, in compliance with the NPPF, seeks to strictly control development to ensure that development maintains and enhances countryside vitality and character. The policy lists developments which may be acceptable in the countryside, including conversion of existing heritage assets. CS5 does not support new open market houses in the countryside and this view has been supported by a number of recent appeal decisions. CS6 is a general policy requiring all development to be, amongst other things, sustainable and of high quality.
- 6.1.5 CS17 requires development to protect and enhance the environmental and heritage assets of the County by ensuring that development is of a high quality and does not adversely affect the historic environment or ecological values and functions. CS18 relates to drainage and sustainable water management and requires all development to reduce flood risk and avoid adverse impacts on water quality and quantity.
- 6.1.6 MD2 expands on CS6 in seeking to ensure development is sustainably designed by ensuring that development responds to local design aspirations, local distinctiveness and character and also expands on CS17 in requiring development to protect, conserve and enhance historic context and incorporate natural assets. Policy MD7a reiterates CS5 in strictly controlling housing outside of the identified settlements except where needs are proven for affordable housing or conversion of heritage assets. MD12 provides greater detail on the consideration of development on the natural environment and provides advice on information requirements and MD13 is similar for historic environment but also provides detailed policy on consideration of development which is likely to have an impact on a heritage asset.
- 6.1.7 The application was initially submitted, as detailed in the D&A, as a Section 55 of

the NPPF dwelling on the basis that the architect considered the design and construction to be exceptional and the proposal was for enabling development. S55 of the NPPF relates to new housing proposals outside of settlements. It states that Local Planning Authorities should avoid new isolated homes in the countryside unless there are special circumstances. These include agricultural workers dwellings, reuse of redundant or disused buildings (conversions) and:

- Where development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets (enabling development); or
- The exceptional quality or innovative nature of the design of the dwelling is truly outstanding or innovative, helping to raise standards of design more generally in rural areas; reflect the highest standards in architecture; significantly enhance its immediate setting; and be sensitive to the defining characteristics of the local area.

- 6.1.8 Council Officers did not agree with the agent's conclusion. The proposed dwelling is not exceptional as noted by the Parish Council in their objection. The design and construction methods are not new, not breaking boundaries or new technology and have been done before. In reaching this view officers have taken into account a 2015 appeal decision in the Kent Downs, which dealt with a S55 dwelling, the Inspector in that decision advised that to meet S55 the new dwelling has to be truly outstanding and of the highest standard of design. He acknowledged that one-off houses frequently take unusual forms but this is not the same as being innovative. The proposed dwelling on this site is considered to be similar to the Kent Downs proposal in that it is not outstanding, innovative or of the highest standard. As such the dwelling was not considered to be capable of being approved under S55.
- 6.1.9 Furthermore, as noted by the Parish Council's first objection, the restoration of the listed building, the Lodge, is not reliant on the finances gained from constructing the new house. The new house is not to be sold off to fund the listed building works and it is not the applicant's case that the financial cost of restoring the listed building requires the construction of new build development. As such the scheme is not strictly an enabling development when considered against the Historic England guidance for enabling development. Within the revised D&A the agent has acknowledged this and suggested that the new dwelling is facilitating the works to the listed building.
- 6.1.10 However, officers acknowledge that the proposed dwelling is of design and construction method that is non-standard and the applicant's aim is to provide a dwelling which sits in the landscape, does not detract from the character of the listed building and is carbon neutral, potentially carbon positive. The construction of a house will also ensure the restoration of the listed building and this is a material consideration in the application. This has previously been accepted by the granting of the previous consents to extend the building to create a dwelling. The previous consents have also accepted, as noted in the updated D&A, that sufficient accommodation to provide a family dwelling needs to be constructed on site.
- 6.1.11 The current view of the applicant and officers concerned, including the Council Conservation Officer, is that the previous proposals were all additions to the listed building which, although were acceptable, would also have significantly altered the character of the listed building. This application is for a smaller addition to the



listed building to enable its use as an annex and the construction of a detached dwelling. The revised D&A comments that the proposed floor area of the current scheme is around 20 percent less than the floor area of the previous consent. Pre-application advice was sought prior to submitting the application and the principle of a new dwelling was considered favourably.

6.1.12 The previous consent, which remains a valid consent and could be constructed, is also a material consideration which needs to be given weight in the determination of the current application. The previous consent granted an extension which would provide a floor area of approximately 420sqm. In comparison the current proposal provides a floor area of approximately 310sqm. The design and scale of the proposed detached dwelling, and the addition to the listed building, are all considered to be appropriate for the site and the surrounding area, the scale of the current proposal is less than the previous approval and furthermore the design, building standard and materials go some way towards what would be considered acceptable as a S55 dwelling which can therefore also be given weight.

6.1.13 As such, although officers consider that the proposed dwelling and development of the listed building does not strictly comply with the adopted local plan policies or the guidance provided in the NPPF, including Section 55, there are material considerations which need to be given weight in the planning balance. The primary consideration is the extant consent, which is given substantial weight. This application proposes a development which officers consider will have less of an impact on the listed building, as detailed below. As such the current proposal is considered to be better than the extant consent. This is also a material consideration which officers consider should be given significant weight.

6.1.14 The restoration of the listed building, the site specific constraints and the extant consent are material considerations of this application which are considered to be sufficient to set aside the policy presumption against the development of a new dwelling in the countryside. These are exceptional circumstances which would not easily be repeated on other sites.

## 6.2 **Siting, scale and design of dwelling**

6.2.1 Policies CS5 and CS6 of the Core Strategy together with SAMDev policy MD7b seek to ensure that all development and is appropriate in terms of siting, scale, design and appearance, taking into account the local context and character.

6.2.2 As noted above the architect has worked through several schemes for the site before submitting the current application. It is the architect's opinion that the proposal as submitted is high quality architecture. The new build dwelling has been designed as a two storey building but by using the existing topography the house is set within the slope and the garaging is sited behind the dwelling. It is modern in its design, form and construction. It is T shaped with the stem of the T sitting in the bank of the land and providing the garage spaces. The front elevation includes large areas of glazing facing out over the pool. The submitted drawings and the D&A advise that the other walls will be finished in a light coloured render with timber decking, glass balustrades and a dark grey roof. However, the final finish colour of the dwelling is to be conditioned as officers have concerns that a light coloured finish may not be suitable for the site and would draw the eye from the lodge.

6.2.3 As detailed above the layout of the site has been considered to take advantage and retain as much of the existing landscaping as possible. Additional new planting is also proposed but without formal designation of a domestic curtilage. The principles set out in the amended plans and D&A are that the landscaping of the site is to remain natural and native and for the area closest to the house and lodge to be cut shorter but that the transition to the meadow areas will be soft.

6.2.4 The design is not exceptional or innovative, however it is also not a standard “housing estate” type house which would be seen in new development sites in market towns and villages. The design is individual for the plot and takes account of the site constraints and opportunities. Pictorial views of the proposed development in its setting have been provided by the agent and show that the dwelling will not be overly dominant and will respect the listed building.

6.2.5 The Council Conservation Officer’s comments are provided in full in section 4 above. Overall the Conservation Officer considers that the siting, scale and design of the proposed new dwelling is appropriate. This is also the opinion of the case officer and the scheme is considered to be appropriate when considered against the design requirements of the adopted development plan.

6.3 **Siting, scale and design of alterations and extension to listed building**

6.3.1 As noted above the existing building on site is a grade II listed building which is octagonal in shape, built of red sandstone and slate. It is named in the list entry as “The Round House” and described as a two storey lodge, early C19, octagonal in plan, sandstone with slate roof resting on posts at each corner has been listed since February 1987. The listing description suggests that the first floor may be a later addition due to the more regular masonry and dressings and the roof is also a later alteration or addition. The building is recorded as the former south-east entrance lodge to Ellerton Hall (not listed).

6.3.2 The work proposed to the listed building include the restoration of the sandstone walls to eaves height, the addition of a structural ring to support the walls, the construction of a faceted roof rising to a point, finished in slate. The addition, which will provide kitchen and bathroom, is to be of a similar plan form and roof shape but of a lower scale and also rendered so as to read as a subservient addition. A small glazed link will attach the extension to the original building.

6.3.3 Taking into account the previous approvals on the site which all proposed significantly larger additions to the listed building the current proposal is considered to be a substantial improvement on the previous schemes with regard to the direct impact on the listed building. The impact of the proposed detached dwelling is considered above. Overall the additions and alterations to the grade II building are considered to be acceptable, sympathetic and will not, on their own, result in loss of significance of the listed building.

6.3.4 The alterations now proposed are considered to minimise the impact on the historic fabric through utilising existing openings, the internal alterations are acceptable in principle though a condition is recommended so that features are recorded and damaged fabric is replaced with appropriate alternatives that are as close to the original as possible.

- 6.3.5 The extended lodge is provided with self-contained facilities. This is not normally accepted for annexed accommodation, however the site constraints mean that the annexe will be separate from the main dwelling and could not function with shared facilities. The new dwelling is proposed on the area of land which is most open so as to reduce the need to remove existing landscaping, it is also on a part of the site where the existing ground slope can be utilised. However, the services for the annexe will be combined with the services for the main house and the landscaping and access will link the two parts of the development. A condition is proposed to ensure that the annexe is only occupied as an annexe and not at any time sold or sublet.
- 6.3.6 The applicants have also advised that their intention is to undertake the works to the lodge first and occupy the lodge during the construction of the new dwelling. This can also be controlled by condition and will ensure that the works proposed to the listed building are carried out.
- 6.3.7 Overall the works proposed to the listed building are considered to comply with the principles set out in the NPPF and policies CS17 of the Core Strategy and MD2 and MD13 of the SAMDev. Furthermore, the development as proposed is considered to ensure the preservation of the listed building without detriment to its setting and features of architectural and historic interest in accordance with section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- 6.4 **Access, parking, turning and rights of way**
- 6.4.1 Policy CS6 'Sustainable Design and Development Principles' of the Shropshire Core Strategy indicates that proposals likely to generate significant levels of traffic should be located in accessible locations where there are opportunities for walking, cycling and use of public transport can be maximised and the need for car based travel to be reduced. This policy also indicates that development should be designed to be safe and accessible to all. Policy D7 'Parking Standards' of the North Shropshire Local Plan is still a saved policy and indicates that all development should provide an appropriate level of vehicle parking to avoid on street parking and increasing traffic problems.
- 6.4.2 Vehicular access to the site is proposed via an existing track leading from the road between Ellerton Home farm and Ellerton Hall. The road serves both of these properties and a group of 4 properties created through previous conversion works. Within the submitted D&A the agent accepts that the site is remote from public transport and therefore reliant on the private car. The driveway follows the track, which is also a restricted right of way, to the existing lodge building. The proposed layout thereafter shows a driveway around the rear and front of the house to access garages.
- 6.4.3 The Council Highway Consultant has confirmed they have no objection to the development. The Consultant has advised that consideration should be given to provide gate-side post box etc and also that the applicant will need to be aware of the distance from the house to the highway for putting out waste/ recycling bins. These matters have been raised with the agent and applicant.
- 6.4.4 The Council Rights of Way Officer has confirmed that the proposal will not directly

affect the public footpath, however they have advised that the applicant will need to be aware of the right of way and the requirement for it to remain open and unhindered.

- 6.4.5 Overall, subject to the provision of appropriate waste storage area the proposed development will not have a detrimental impact on highway safety, capacity or public rights of way and sufficient space is provided within the site for parking and turning of vehicles. It is acknowledged that the site is not close to services, facilities or other means of transport. However, the development will not result in significant levels of traffic. The proposal for a single dwelling on this site has previously been accepted and it is considered that the need to restore the listed building is the principle aim which sets aside the poor sustainability of the site.

**6.6 Ecology, landscaping and drainage**

- 6.6.1 The NPPF and policy CS17 of the Shropshire Core Strategy require consideration to be given to the impact of the proposed development on the natural environment. This particularly relates to the impact on statutorily protected species and habitats and existing trees and landscaping. Ecology surveys were undertaken and submitted with the previous application, these have been submitted with this current proposal as they are less than 2 years old, however an addendum update report has also been submitted.
- 6.6.2 The submitted ecology survey focuses on bats and acknowledges that there is evidence of bats using the listed building but that the numbers are low and not maternity roosts. The survey recommends alternative roosting is provided during the demolition and construction works but that the roost options in the listed building are reinstated on completion of the development so as not to increase competition for feed sources or alter species composition. It is also recommended that works should be carried out when bats are least likely to be resident and also following further inspections and surveys. The survey also notes the potential for nesting birds and recommends the provision of artificial nests.
- 6.6.3 The addendum report advises that there have not been any material changes on site that would alter the conclusions and recommendations of the report on the previous planning application. The report confirms that no further surveys are required, including for bats, and that a site visit will be carried out prior to submission of the EPS licence as required by Natural England.
- 6.6.4 The Council Ecologist has considered all of the information submitted and confirmed that they have no objection and recommend conditions and informatives. With regard to bats, the main species affected by the works to the listed building, the development to the Toll House will be conducted under an EPS mitigation licence from Natural England and it is the Council's opinion, as detailed in the EPS 3 test matrix for bats at appendix 1 below, that the development is in the public interest and that there are no satisfactory alternatives for the reasons given in the matrix.
- 6.6.5 The application site lies within an existing landscape. The topography has been assessed by the architect and taken into account along with the existing landscape features and flora. The D&A comments that the proposed siting enables a significant proportion of the meadow grassland to be retained and also protects the

existing woodland. The development, as noted above, will have an impact on the existing landscape by the introduction of a new dwelling within the landscape. However, the siting of the dwelling has been considered so as to have the least possible impact on the landscape and is considered to be less harmful than the previous approvals. As such it should be acknowledged that there is an impact on landscape but the impact is outweighed by the material considerations previously referred to.

6.6.6 The D&A also comments that the proposed landscaping is purely treatment of the existing landscaping through the creation of informal paths, driveways and the cutting of the grass or planting with wildflower mix. The architect has requested that the landscape be allowed to evolve and mature and as such that conditions should not be imposed that would constrain the landscaping. This appears at first glance to be acceptable. However, the principles of retaining the existing character are commendable but without sufficient control the Council could not prevent the gardens evolving and maturing into highly formal gardens and thereby changing the context of the new dwelling. It is therefore recommended that a landscaping condition be added that only allows domestication of the area within the driveway immediately adjacent to the house and that beyond this driveway the grounds be retained as meadow with informal paths. Permitted development rights for outbuildings, fences etc should also be removed.

6.6.7 Foul drainage is proposed to be dealt with by a septic tank system due to the remoteness of the site from any mains drainage connection and due to the percolation results of the ground excluding the use of standard soakaways. A system has been specified in the foul drainage assessment form and will also be a matter for approval under the Building Regulations process. Surface water drainage for both the new dwelling and the extended listed building will be directed to soakaways. The Council Drainage Consultant has confirmed that the principles set out in the assessment are acceptable and not raised any objection. The details of the surface water drainage will need to be submitted for approval and a condition is therefore recommended.

## **7.0 CONCLUSION**

7.1 The proposed dwelling and development of the listed building does not strictly comply with the adopted local plan policies or the guidance provided in the NPPF, including Section 55. However, there are material considerations which need to be given weight in the planning balance. The primary consideration is the extant consent, which is given substantial weight. This application proposes a development which will have less of an impact on the listed building and its setting. The siting, scale and design of the proposed dwelling and the works to the listed building are considered to be acceptable and appropriate for the listed building and its setting.

7.2 Furthermore, subject to the provision of appropriate waste storage area the proposed development will not have a detrimental impact on highway safety, capacity or public rights of way and sufficient space is provided within the site for parking and turning of vehicles. Ecology mitigation and the landscaping of the site can be controlled by conditions along with the details of the drainage of the site.

7.3 Overall the proposed development is considered to comply with the principles of

policies CS6, CS17 and CS18 of the Shropshire Core Strategy, policies MD2, MD7a, MD12 and MD13 of the Shropshire Site Allocations and Management of Development and the National Planning Policy Framework. The scheme is also considered to ensure the preservation of the listed building without detriment to its setting and features of architectural and historic interest in accordance with section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

## **8.0 Risk Assessment and Opportunities Appraisal**

### **8.1 Risk Management**

There are two principal risks associated with this recommendation as follows:

As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal, i.e. written representations, hearing or inquiry.

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

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

### **8.2 Human Rights**

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

First Protocol Article 1 requires that the desires of landowners must be balanced against the impact on residents. This legislation has been taken into account in arriving at the above recommendation.

### **8.3 Equalities**

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

## **9.0 Financial Implications**

There are likely financial implications if the decision and / or imposition of conditions is challenged by a planning appeal or judicial review. The costs of defending any decision will be met by the authority and will vary dependent on the scale and nature of the proposal. Local financial considerations are capable of

being taken into account when determining this planning application – insofar as they are material to the application. The weight given to this issue is a matter for the decision maker.

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

Application name and reference number:

17/01876/LBC &amp; 17/01875/FUL

Property Known As The Lodge

Ellerton

Newport

Shropshire

TF10 8AW

Restoration alterations and extensions to existing dwelling and erection of new dwelling

Date of consideration of three tests:

6<sup>th</sup> June 2017

Consideration of three tests carried out by:

Nicola Stone

Planning Ecologist

01743 252556

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

The development will ensure the restoration and protection of a listed building and as such the development is in the interest of the benefit of the wider public and the environment

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

There are no satisfactory alternatives that ensure the retention of the listed building. If the building is not restored it will fall into disrepair and demolition may be sought which would have a greater impact on bat populations

**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’?**

Bats

I have read the above application and the supporting documents including the Preliminary Bat Roost Assessment and Activity Survey conducted by Mark Latham (May 2015), and Update walkover survey conducted by Mark Latham (9<sup>th</sup> April 2017).

Dusk emergence surveys were undertaken on the evenings of 12<sup>th</sup> May 2015 and 17<sup>th</sup> June 2015, surveys were supplemented with automated passive detectors. Non breeding, day roosts of Common pipistrelle (max count 8), Soprano pipistrelle (max count 4), and Natterer's bats (max count 2) were recorded. Common pipistrelle access was recorded in crevices between slate and felt. Soprano pipistrelle accessed via slipped mortar into a void between lead flashing and the wooden porch roof. Natterer's bat gained access to internal void via gaps in stone work. DNA analysis confirmed findings.

The development of the Existing Toll House Building will be conducted under an EPS mitigation licence from Natural England. Alternative roosting provision, prior to works commencing on site, will be in the form of bat boxes. An ecological clerk of work will exclude bats and supervise soft demolition of the roof spaces and roosting structures at a



time of year to avoid encountering bats. Temporary fencing should be erected around the structure to act as a lighting screen between the working area of the development and the immediate locality. Any flood lighting should be switched off at the minimum of 1 hour prior to sunset and any works required to be undertaken between dusk and dawn should not occur between mid-April and October, inclusive, thereby avoiding the active season for bats. The provision of new roosting opportunities will be in the form of raised ridge tiles to mitigate for the loss of the original roosting features currently used by common pipistrelles and soprano pipistrelles. The inclusion of bat tubes within the new structure will provide roosting opportunities for Natterer's bats.

The proposed activity will not be detrimental to the maintenance of bat species at a favourable conservation status within their natural range provided that the conditions detailed in the response from Nicola Stone to Karen Townend (6<sup>th</sup> June 2017) are on the decision notice and are appropriately enforced.

The following conditions and informatives should be on the decision notice:

#### **Condition**

1. Work shall be carried out strictly in accordance with the Preliminary Bat Roost Assessment and Activity Survey conducted by Mark Latham (May 2015) attached as an appendix to this planning permission.

**Reason: To ensure the protection of Bats, a European Protected Species**

2. No development, demolition or site clearance procedures shall commence, in association with the existing Toll House building, until a European Protected Species (EPS) Mitigation Licence with respect to Bats 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 Bats, a European Protected Species**

3. 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.**

#### **Informative**

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

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

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

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

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

- 1 **Is the purpose of the development/damaging activity for 'Preserving public health or public safety or other imperative reasons of overriding public interest including**

***those of a social or economic nature and beneficial consequences of primary importance for the environment?***

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

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

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

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

**2 Is there no satisfactory alternative?**

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

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

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

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

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

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

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

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

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

## 10. BACKGROUND

### Relevant Planning Policies

National Planning Policy Framework

CS5 - Countryside and Greenbelt

CS6 - Sustainable Design and Development Principles

CS17 - Environmental Networks

MD2 - Sustainable Design

MD7A - Managing Housing Development in the Countryside

MD13 - Historic Environment

### Relevant planning history:

15/00422/FUL Erection of a two storey extension to Toll House including internal and external alterations and installation of a treatment plant GRANT 13th July 2015

15/00423/LBC Internal and external alterations in connection with erection of a two storey extension to Toll House GRANT 14th July 2015

12/01138/AMP Variation of Condition No.2 attached to planning permission To work in accordance with revised layout and elevational treatment for the extension and alterations. REFUSE 21st March 2012

12/01382/VAR Variation of Condition No. 2 (approved plans) attached to planning permission

12/01138/AMP Variation of Condition No.2 attached to planning permission To work in accordance with revised layout and elevational treatment for the extension and alterations. REFUSE 21st March 2012

12/01382/VAR Variation of Condition No. 2 (approved plans) attached to planning permission

11/03541/FUL dated 18/11/11 to work in accordance with revised drawing submitted with this application GRANT 20th August 2012

11/03541/FUL Renewal of extant Planning Permission 08/01380/FUL for proposed two storey extensions and alterations GRANT 18th November 2011

11/05348/FUL Erection of a two storey extension to Toll House including internal and external alterations and installation of a treatment plant GRANT 12th March 2012

11/05350/LBC Works to facilitate the erection of a two storey extension including internal and external alterations and installation of a treatment plant affecting a Grade II Listed Building GRANT 12th March 2012

11/03541/FUL dated 18/11/11 to work in accordance with revised drawing submitted with this application GRANT 20th August 2012

10/04830/FUL Erection of a two storey extension to existing Toll House to provide 5 bedrooms, living accommodation, integral double garage, workshop, balcony and external staircase REFUSE 13th October 2011

10/04943/LBC Internal and external alterations in connection with erection of a two storey dwellinghouse to incorporate existing Toll House to provide 5 bedrooms, living accommodation, integral double garage, workshop, balcony and external staircase affecting a Grade II Listed Building REFUSE 13th October 2011

NS/08/01380/FUL Proposed two storey extensions and alterations to create family size dwelling CONAPP 19th September 2008

NS/08/01382/LBC Proposed works to a listed building to facilitate the erection of two storey extensions and alterations to create family size dwelling CONAPP 1st October 2008

NS/03/00737/LBC To restore the original building and add extension to create family size dwelling CONAPP 10th October 2003

NS/03/00738/FUL Extension and alteration to create family size dwelling CONAPP 10th October 2003

NS/90/00868/FUL Proposed extension to existing dwelling (involving partial demolition)  
GRANT

NS/90/00869/FUL Erection of an extension and alteration to existing dwelling GRANT 19th  
September 1990

## 11. ADDITIONAL INFORMATION

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)
Cabinet Member (Portfolio Holder) Cllr R. Macey
Local Member Cllr Rob Gittins
Appendices APPENDIX 1 - Conditions

**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. The development shall be carried out strictly in accordance with the approved plans and drawings

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

3. Work shall be carried out strictly in accordance with the Preliminary Bat Roost Assessment and Activity Survey conducted by Mark Latham (May 2015) attached as an appendix to this planning permission.

Reason: To ensure the protection of Bats, a European Protected Species

4. Work shall be carried out strictly in accordance with the Update walkover survey conducted by Mark Latham (9th April 2017) attached as an appendix to this planning permission.

Reason: To ensure the protection of Great Crested Newts, a European Protected Species

**CONDITION(S) THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES**

5. No development, demolition or site clearance procedures shall commence, in association with the existing Toll House building, until a European Protected Species (EPS) Mitigation Licence with respect to Bats 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 Bats, a European Protected Species

6. No work to the listed building, approved by this permission, shall commence until a photographic level 3 survey, as defined in English Heritage's guidance 'Understanding Historic Buildings: A Guide to Good Recording Practice', of the interior/ exterior of the listed building has been submitted to and approved in writing by the Local Planning Authority.

Reason: This information is required before development commences to record the historic fabric of the building prior to development.

7. Before relevant works commence on the listed building samples of stone for use in repairs and new work shall be made available to and approved in writing by the Local Planning Authority before any works commence.

Reason: To safeguard the architectural and historic interest and character of the Heritage Asset.

8. Details of the roof construction for both the listed building and new dwelling including details of eaves, undercloaks ridges, valleys and verges shall be submitted to and approved in writing by the Local Planning Authority before the development commences. The development shall be carried out in complete accordance with the approved details.

Reason: To safeguard the architectural and historic interest and character of the Heritage Asset.

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

Reason: The condition is a pre-commencement condition to ensure satisfactory drainage of the site and to avoid flooding.

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

10. Prior to the above ground works commencing samples and/or details of the roofing materials and the materials to be used in the construction of the external walls shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in complete accordance with the approved details.

Reason: To ensure that the external appearance of the development is satisfactory.

11. Prior to the commencement of the relevant work on either the listed building or the new dwelling details of all external windows and doors and any other external joinery shall be submitted to and approved in writing by the Local Planning Authority. These shall include full size details, 1:20 sections and 1:20 elevations of each joinery item which shall then be indexed on elevations on the approved drawings. All doors and windows shall be carried out in complete accordance with the agreed details.

Reason: To safeguard the architectural and historic interest and character of the Heritage Asset.

12. The landscaping of the site shall be in accordance with the principles set out in the revised Design and Access Statement. Formal landscaping and planting shall only be provided within the driveway loop as shown on the approved block plan. All other landscaping shall be informal, native species, and retained as such.

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

13. Prior to the first occupation of either the annexe or the new dwelling, (whichever is the sooner), details of the location and form of a collection point for domestic waste shall be submitted to and approved in writing by the Local Planning Authority. The collection point shall be provided in accordance with the approved details and retained for waste collection use for the lifetime of the development.

Reason: To ensure satisfactory household waste collection facilities.

14. Prior to the first occupation of the dwelling/building details for the provision of nesting opportunities for swallows 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 nesting opportunities for wild birds

### **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.

16. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development relating to schedule 2 part 1 classes A, B, C, D, E, F, G or H or schedule 2 part 2 class A and C shall be erected, constructed or carried out.

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