Committee and date
South Planning Committee
26 September 2017

Development Management Report

Responsible Officer: Tim Rogers
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Summary of Application

Application Number: 16/04716/VAR	**Parish:**	Ludlow Town Council
Proposal: Variation of Condition No.2 (approved plans) attached to permission 14/00563/FUL dated 03/08/2015 to allow for underground fuel storage tanks to be approved by Environment Agency in place of semi-submerged tanks with additional parking at ground level		
Site Address: Brian Mear (Bricks) Ltd, The Brick Library, Bromfield Road, Ludlow Shropshire, SY8 1DN		
Applicant: Mead House Pension Scheme C/O Garrabost Trustees		
Case Officer: Graham French	**email:** planningdmsw@shropshire.gov.uk	

Recommendation: Grant Permission subject to the conditions sets out in Appendix 1

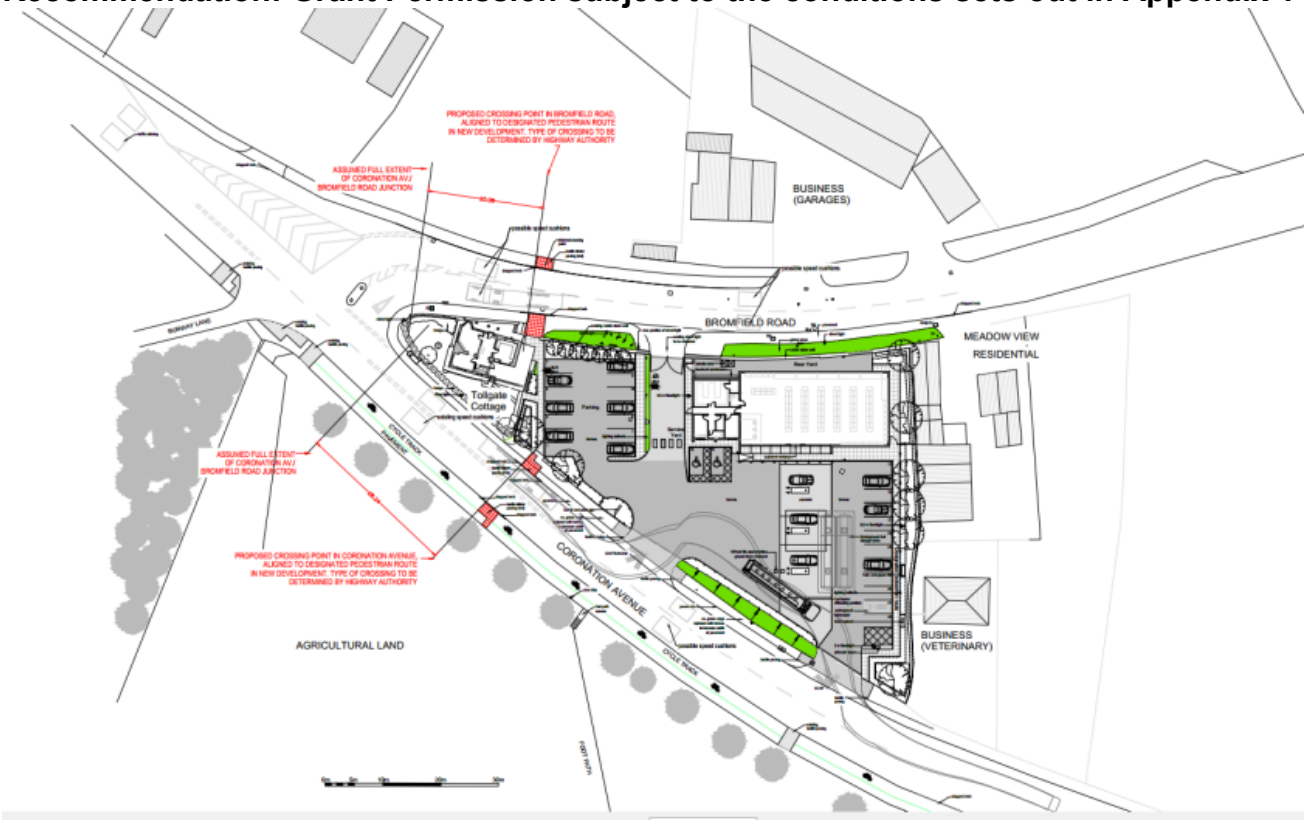

Figure 1 - Location

REPORT

1.0 THE PROPOSAL

1.1 Members will recall that full planning permission was granted for 'Demolition of existing buildings on former Burway Abattoir site and erection of proposed petrol filling station and ancillary convenience store with new vehicular access (revised scheme)' on 3rd August 2015 (14/00563/FUL).

1.2 The original design involved the provision of underground fuel storage tanks but this was amended to involve partially submerged storage tanks instead. This was in order to resolve objections from the Environment Agency. The current variation application seeks to re-introduce underground storage tanks at the site, with additional parking provision above. The application has been put forward following further discussions between the applicant and the Environment Agency.

2.0 SITE LOCATION & DESCRIPTION

2.1 The application site occupies a triangular plot of land located between Bromfield Road and Coronation Avenue. The site was formerly an abbatoir and is currently occupied by Brian Mear (Bricks) Ltd, a brick and paving merchant. The proposed the fuel storage tank occupies a rectangular plot at the north-western corner of the site.

2.2 The site is bounded by the premises of the Marches Veterinary Group to the east, Coronation Avenue and agricultural land to the south, Tollgate Cottage immediately to the west of the site and Bromfield Road and A.E.Jones Haulage and Corve Bridge Garage to the north. There is an existing access to Bromfield Road.

2.3 Planning permission was granted under 14/00651/COU and 14/00652/LBC on 2 September 2014 for the change of use of the Listed Tollgate Cottage adjoining the site to a café with residential accommodation above.

2.3 The site is in the Ludlow Conservation Area and within Flood Zone 2 with a small portion being in Flood Zone 3.

3.0 REASON FOR DELEGATED DETERMINATION OF APPLICATION

3.1 The application has been referred to committee by the local Member Andy Boddington because it raises complex technical issues and this decision has been ratified by the Chair and Vice Chair under the Council's Scheme of Delegation.

4.0 COMMUNITY REPRESENTATIONS

4.1 Ludlow Town Council: No comments received.

4.2i. Environment Agency (22/11/16 – Holding objection):
Thank you for referring the above application which was received on the 26 October 2016 along with subsequent correspondence confirming the rationale behind the new submission. We object to the proposed Variation of Condition 2, to allow for underground tanks, and would offer the following comments for your consideration.

Site Location: As you are aware, from the previous submission, the proposed new Petrol Filing Station (PFS) is located within a sensitive groundwater area. The site is located on Raglan Mudstone Formation bedrock which is overlain by Bromfield Sand and Gravels. Both the solid geology and the superficial deposits are Secondary A aquifer which supplies private water abstractions and groundwater baseflows to local watercourses, such as the River Corve 80m to the east. The River Teme is 410m to the west of the site and is likely to be in connectivity with ground and other surface water features, such as the Springs and Boiling well 150m to the south west of the application area. The River Teme is also designation as a Site of Specific Scientific Interest (SSSI), adding to the sensitively. There are no further licensed groundwater abstractions present within 500m of the site, however your Council should hold records to confirm whether there are additional private water supplies within the near vicinity. The applicant is also advised to contact British Geological Survey (BGS) for records of any boreholes etc; and make enquiries with adjacent properties and landowners.

ii. National Planning Policy Framework (NPPF) paragraph 109 states that the planning system should contribute to and enhance the natural and local environment by preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of water pollution. Paragraphs 120-121 of the NPPF state that local policies and decisions should ensure that new development is appropriate for its location, having regard to the effects of pollution on health or the natural environment, taking account of the potential sensitivity of the area or proposed development to adverse effects from pollution. In addition, national guidance on the storage of potential pollutants is set out in our 'Groundwater Protection: Principles and Practice (GP3) (November 2012)' document which is available at:
http://www.environment-agency.gov.uk/research/library/publications/144346.aspx
The GP3 guidance Policy D2 (underground storage) states we will agree to new and increased underground storage of hazardous substances on principal and secondary aquifers outside SPZ1 "...only if there is evidence of overriding reasons why:
(a) the activity cannot take place on unproductive strata, and
(b) the storage must be underground (for example public safety), in which case we expect the risks to be appropriately mitigated..."
Also, relevantly, Policy D3 - Sub water table storage states that "we will object to storage of hazardous substances below the water table in principal or secondary aquifers". The applicant is now seeking to revert to the initially proposed underground tanks in order to increase the parking on site. This application to vary Condition 2 has been submitted in anticipation of proposed amendments to the abovementioned GP3 and, specifically, Policy D3. However please note that, whilst changes to GP3 may be introduced in due course, at the time of this submission Policy D3 recommends an objection to storage below the water table.
I would also refer you to Policy CS18 of your Adopted Core Strategy which requires new development to enhance and protect water quality, including Shropshire's groundwater resources.
Application context: We previously agreed to partially submerged tanks which were located above the identified groundwater level and accorded with Policy D3 of GP3. These tanks were identified on the 'Section of Proposed Leak-Proof partially

submerged tanks Plan (Ref: PA-71, dated 3 December 2014). We had previously objected to the proposed development as it would have resulted in underground tanks within the water table. The submitted 'Risk Assessment for Underground Storage (SLR Ref: 404 -04287-0001) confirmed that the tanks would be partially beneath the water table. Table 3 of the Report confirmed that the estimated depth to Groundwater on the application site was 2.5m whilst Section 4.1 confirmed that the base of the tank would be 4m below ground level. Whilst the agreed, partially submerged, tanks were subsequently located above the groundwater level on site, as previously advised, our preference remained for 'above ground' storage tanks. GP3: Policy D2 states that tanks set completely above ground level and "any tank that is partially set in the ground in secondary containment and is totally accessible and wholly visible will also be considered to be an above ground tank". This is within the interests of being able to visually inspect the tanks, in addition to the necessary leak detection methods.

iii. Based on the Section Plan submitted (referenced above) whilst the agreed tanks were set partially within the ground, they did not appear to be totally accessible or wholly visible and we would therefore deem the tanks as 'below ground'. Therefore, whilst the agreed tanks were set appropriately above the identified groundwater level, we recommended that your Council be satisfied that the tanks cannot be set 'above ground' (as defined above) or include tertiary containment system. It should be noted that the above stance was offered as a pragmatic solution to a constrained site in a sensitive groundwater area. Variation of Condition 2: In consideration of the above we would object to varying Condition 2, which seeks to revert to underground tanks within the water table. As outlined above, in accordance with our current Policy D3, 'we will object to storage of hazardous substances below the water table in principal or secondary aquifers'. Notwithstanding the above we acknowledge that changes to GP3 are currently being considered. However this has not been finalized and, therefore, the current GP3 is still extant. It is also likely that any forthcoming changes to GP3 would, in this instance, not negate the need for a detailed risk assessment and, in cases where such a risk assessment demonstrates that the groundwater provides an important contribution to drinking water supply, river flow or other sensitive surface waters or wetlands, we would still be minded to object.

iv. The applicant may wish, in anticipation of a forthcoming change to GP3, to submit a detailed site specific risk assessment (following a source-pathway-receptor approach) but, as any change has not yet been finalized and introduced, this would be at their own risk and cost. The assessment would need to clearly demonstrate that below ground tanks are acceptable within this local site setting and that are also acceptable with the right mitigation in place in order to protect controlled waters. Even in consideration of a forthcoming amendment to GP3 we would object to storage below the water table without such assessment. Whilst the risk assessment may help to further consider the acceptability of the current proposed design we would advise caution with progressing prior to formal amendments to the above-mentioned GP3. We would therefore, in the first instance, recommend that the applicant maintain the partially submitted tanks as the more sustainable option. We would question the need for the design change which could, ultimately, increase the risk to groundwater.

4.2b Environment Agency (17/08/17 – No objection):

i. Following on from discussions with my colleague, Helen Pickering, with regards to above, we have now reviewed the submitted 'Site Specific Risk Assessment for Underground Fuel Storage Tanks', Dated 2 August 2017. On the basis of the submitted detail we are satisfied that our objection to the proposed Variation of Condition 2 can be removed. We would offer the following comments for your consideration at this time. Whilst have not yet been formally reconsulted on the application it is understood that the above mentioned risk assessment has now been submitted to Shropshire Council for consideration. Site Location: The proposed new Petrol Filing Station (PFS) is located within a sensitive groundwater area. The site is located on Raglan Mudstone Formation bedrock which is overlain by Bromfield Sand and Gravels. Both the solid geology and the superficial deposits are Secondary A aquifer which supplies private water abstractions and groundwater baseflows to local watercourses, such as the River Corve 80m to the east.

ii. National Planning Policy Framework (NPPF) paragraph 109 states that the planning system should contribute, to and enhance, the natural and local environment by preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of water pollution. Paragraphs 120-121 of the NPPF state that local policies and decisions should ensure that new development is appropriate for its location, having regard to the effects of pollution on health or the natural environment, taking account of the potential sensitivity of the area or proposed development to adverse effects from pollution. History: Having gained permission for the development with partially submerged tanks (Ref: 14/00563/FUL) the applicant requested a variation to condition 2 to allow below ground storage. We objected to the proposed variation as it was contrary to our, then, Groundwater Protection: Principles and Practice (GP3) and due to insufficient information submitted to justify the change to below ground tanks. The applicant submitted the application in anticipation of changes to our Groundwater Guidance, changes which have now been introduced. However, as stated in our response to the planning application, the changes to GP3 would, in this instance, not negate the need for a detailed risk assessment. The assessment needs to clearly demonstrate that below ground tanks are acceptable within this local site setting and that are also acceptable with the right mitigation in place in order to protect controlled waters.

iii. Groundwater Protection: As stated above we have recently introduced (14 March 2017) new guidance on groundwater protection which was previously known as GP3. The associated Technical Guidance and Position Statements can be viewed via the link below: https://www.gov.uk/government/collections/groundwater-protection Specifically, Section D within the groundwater protection document (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/620438/LIT_7660.pdf) outlines our position with regards pollutant storage and transmission. Relevant to this application are Policies D2 and D3. D2 – Underground Storage: We will normally object to new and increased underground storage of hazardous substances in Source Protection Zone (SPZ) 1. We will agree to such storage in principal and secondary aquifers outside SPZ1, as in this instance, only if there is evidence of overriding reasons why the:

- activity cannot take place within unproductive strata;
- storage must be underground (for example public safety), in which case it is expected that the risks are appropriately mitigated;

For all storage of pollutants underground (hazardous substances and non-hazardous pollutants), we expect operators to adopt appropriate engineering standards and have effective management systems in place. These should take into account the nature and volume of the materials stored and the sensitivity of groundwater. In principal and secondary aquifers we would expect the storage of hazardous substances to be within above ground tanks. However, we recognises that this may not always be reasonable when other risks (such as health and safety) are taken into account. Position statement D2 therefore allows for underground storage of hazardous substances, outside SPZ1, where there is sufficient evidence to justify such an approach. This should include both site-specific and generic data on the performance of installations (providing this is appropriate to the materials being stored). We will not object to below ground storage in such situations provided there is evidence that:

- there are no suitable alternatives to below ground storage;
- redevelopment will maintain a low risk or significantly reduce an existing risk to groundwater;
- proposals comply with appropriate engineering standards and BAT;
- effective management systems will be in place;
- redevelopment does not bring the below ground storage nearer to any groundwater abstraction source, surface water or spring.

We would expect proposals for underground storage of pollutants in principal and secondary aquifers to be accompanied by a risk assessment appropriate to the volume and type of pollutants being stored and the hydrogeological situation. D3 - Sub Water Table Storage: We will normally object to any proposed new storage and transmission of hazardous substances below the water table in SPZ1. For all other proposed locations, a risk assessment must be conducted based on the nature and quantity of the hazardous substances and the physical nature of the location. Where this assessment demonstrates that there is a high risk of groundwater pollution, we will normally object to storage below the water table:

- in any strata where the groundwater provides an important contribution to drinking water supply, river flow or other sensitive surface waters or wetlands;
- within SPZ2 or 3;
- in a principal aquifer.

The Site Specific Risk Assessment (SLR Consulting, ref: 416.07479.00001, dated 2 August 2017), which has been produced after discussion with our Groundwater Team, confirms that the site falls outside of these parameters and we would offer the following comments on the detail submitted below.

Fate and Transport Assessment: The hydrocarbon contaminant transport modelling assessment and discussion provided simulating hydrocarbon migration should a leak take place demonstrates that the risks to the water environment are low once the mitigation measures (as defined) are in place to break pathways to controlled waters and provide the necessary total protection required. It is therefore agreed in principle that the risk assessment which includes fate and transport modelling based on site specific parameters, in addition to the proposed mitigation measures to protect groundwater, clearly demonstrate that a new petrol filling station with

below ground tanks is acceptable within this site setting with the right mitigation in place.
In terms of the PFS installation we acknowledge that it will be designed and constructed in strictest accordance with the best practice guidance and standards following the APEA Blue Book – "Design, Construction, Modification, Maintenance and Decommissioning of Filling Stations". This acceptance of the reversion to below ground storage is on the basis that the defined mitigation and control options submitted to date, as detailed in the condition below, are implemented. Whilst, to date, we have not been formally re-consulted by Shropshire Council we would recommend that Condition 2 be amended to remove reference to PA-61a and a new Condition be applied to secure adherence to the above.
(Condition and informative notes included in Appendix 1)

4.3 SC Conservation – No objections.

4.4 SC Archaeology: - No comments.

4.5 SC Ecology – No comments.

4.6 SC Highways - No objection subject to the development being carried out in accordance with the approved details. It is considered that the revised layout is adequate to accommodate the proposed development. Informative notes are recommended.

4.7a SC Public Protection (1): - Having considered the proposed layout Public Protection have no objection in principal to the proposal and are generally supportive of underground monitored tanks. However, looking at the proposed plans I can see no indication of where the off-set fills are located or where the vent pipes to the tanks will be positioned. Please can an amended site plan be submitted which shows the position of these elements. In addition a note of if the off-set fills will be above or below ground should be noted. The applicant should be made aware that above ground off set fills are preferred as they remove certain manual handling issues and maintenance complications. Should above ground off set fills be shown these would be accepted dependant on positioning however below ground off set fills would need further consideration.

4.7b SC Public Protection (2): In general I have no objection to the proposals for the underground fuel tanks. Reasoning for this includes the fact that underground fuel tanks would remove the threat of tanks being driven into causing damage and potential significant spillage events. In addition underground tanks remove environmental degradation from the elements. Furthermore by placing the tanks beneath the forecourt this reduces the length of underground pipework to deliver fuel to pumps therefore reducing likelihood of a fuel escape event. It is noted that on the current plans it shows off-set fills marked as 'above/below ground to be reviewed'. Once finalised please consult for further comment if below ground is opted for.

4.8 Councillor Andy Boddington: I wish to call this application into the South Planning Committee. The proposal is to vary planning permission to allow for underground fuel storage tanks, allowing extra car parking at ground level. This site is at a very

sensitive location on the edge of a floodplain. The original proposal, approved by the South Planning Committee in May 2015, had fuel storage tanks that were mostly above ground (14/00563/FUL). I do not believe that the committee would have approved the application with below ground storage tanks. I am disappointed that this application has been put out to public consultation without any details of the proposed underground tanks being placed on the planning portal. This is not an outline application but a variation of full planning permission. Full information should have been provided before the public consultation began. I do not believe that any proposal for underground petrol storage will be acceptable on this site.

Public Comments

4.9 The application has been advertised in accordance with statutory provisions and the nearest residential properties have been individually notified. Representations have been received from thirteen individuals including some with more than one comments. Of these, twelve individuals have written objecting to the proposals. One has written in support and one respondent makes neutral observations. The main concern of objectors is the potential pollution risk of the proposed fuel tank undergrounding within a flood plain and the suggestion that any benefits from undergrounding would be outweighed by this risk. A summary of objector comments is provided below:

i. The previous application included the tanks raised to avoid environmental risk in the event of flooding. The level of the tanks is being lowered, a modification which is a reversal. The potential environmental impact is unacceptable. This is not a hypothetical situation because the tanks are located in the flood plain and in an area which has been totally and seriously flooded twice in the last ten years. The possibility of fuel getting into either flood water or into the ground structure is a real risk. This change permits four additional car park spaces giving potential commercial benefit but taking an unacceptable risk to our environment. It prevents proper monitoring and risks leakage into the water-table and pollution of water sources and local streets and properties. The original application only received approval due to the developer's agreement to locate fuel storage tanks above ground level. This was considered an essential requirement to reduce the potential risk of fuel contaminating the rivers Corve and Teme during flood conditions. This risk has not gone away and will be increasing year on year due to our inability to prevent the effects of climate change. This is a sensitive site close to the flood plain and the risk from any leak in this area would have enormous consequences for the area and ecology of the Corve and Teme. The application for variation makes no reference to reasons for changing the agreed layout of the tanks, apart from the gaining of extra parking spaces. Should a subterranean fracture occur, submerging the tanks in a well-documented flood plain would clearly have a catastrophic impact on properties and the environment in the area. Living at a time of climatic uncertainty, to undertake such a course of action is to be deeply regretted, particularly as this change of tank location is only of value to the developer to facilitate the provision of more car parking spaces.

ii. The high risk of leakage from USTs is well known and the setting of the applicant's site in terms of ground conditions, geological profile and groundwater are such that the proposal to site the tanks underground would fail an Environmental Impact

Assessment under Town and Country Planning (EIA) Regulations 2011. As I have already remarked for the initial application, the proposed site is close to greenfield land and is in sight of the meadows alongside the River Corve and the views of the Castle and Whitcliffe beyond. Of great relevance, but not addressed by the applicant, is the proving of sand and gravel as the site geology, confirming my earlier comments. The site sits on a well-established fluvioglacial terrace which extends down the right bank (western side) of the River Corve to the meadows beyond Coronation Avenue. Within the meadows is an historic sacred groundwater spring, the Boiling Well, which is a natural spring issuing from the same fluvioglacial terrace as the proposed development is sited. The groundwater level is relatively high and within these granular sediments. The risk of pollution from spillages is therefore extremely high and the documentation still does not make clear how contamination of the environment can be avoided (SLR report Nov 2014), a requirement by the Environment Agency. Thus the concerns previously expressed remain: that a surface spillage or a leakage of a UST ARE likely to permit significant contamination of the groundwater system with deleterious effects on the downstream ecosystem, which includes the Teme SSSI.

4.10i. Friends of the Corve and Teme (Ludlow's Flood Action Group): Objection. This request for a variation to the agreed requirement for above ground storage tanks should be opposed for the same reasons that existed 15 months ago when the original application was agreed. The applicant has made no case for the change. To quote Cllr Andy Boddington:
"This application had been in the planning system for more than fifteen months (14/00563/FUL). It had taken a good while to get right. The scale of the building was reduced, a safe pedestrian was agreed and the petrol tanks, which had previously been below ground, had been lifted out of the water table. Once these objectives had been achieved, there was no reason to turn the application down – indeed, we could not have done under national planning rules. The petrol tanks and safe pedestrian crossing were crucial to the approval of the scheme. I urged the South Planning Committee to approve the scheme, giving Ludlow a much needed second petrol station. This is a sensitive site because it is close to the floodplain and has a high water table. Any leakage of fuel could be catastrophic for the ecology of the Corve and Teme. To reduce the risk to an absolute minimum, Mead House moved the petrol tanks above ground. The Convault tanks would be wrapped in an earth bund. They would be collision and pretty much bomb proof. Now Mead House wants to put the petrol tanks below ground into the water table. This will allow the company to reinstate four car parking spaces removed to accommodate the above ground tanks."

ii. The Environment Agency in their letter of 15th January 2015 clearly stated that their preference was for above ground storage in this sensitive location. They also state that the existing plans do not meet their preferred options but they are reluctantly agreeing to them on pragmatic grounds although there is no tertiary protection for leaks. "Whilst the proposed tanks are located above the groundwater level on site, as previously advised, in addition our preference would be for 'above ground' storage tanks. GP3: Policy D2 states that tanks set completely above ground level and "any tank that is partially set in the ground in secondary containment and is totally accessible and wholly visible will also be considered to be an above ground tank". This is within the interests of being able to visually inspect the tanks, in

addition to the necessary leak detection methods. Based on the Section Plan submitted (referenced above) whilst the proposed tanks are set partially within the ground, they do not appear to be totally accessible or wholly visible and we would therefore deem the tanks as 'below ground'. Whilst the proposed tanks are set appropriately above the identified groundwater level, we recommend that your Council are satisfied that the tanks cannot be set 'above ground' (as defined above) or include tertiary containment system. In the absence of the tanks being set above ground or within tertiary containment, being pragmatic we are not minded to object to the proposed development based on the likely risk to groundwater, the proposed tank design and bearing in mind the site context."

iii. The application for variation makes no reference to reasons for changing the agreed layout of the tanks, apart from the gaining of extra parking spaces. How can local residents comment on this without more detail of the reasons underpinning the request? Leaks do happen, and the consequence of long term undetected leakage is obviously contaminated groundwater, leading to contamination in the connected surface waters. You cannot see or locate leaks from the tank(s) and over time even the best protected underground tank is at a significant risk of leakage. With the approved plans, the tanks are mostly above ground and it will be easy to access any leak. With tanks fully below ground, major works will be required to access the site of any leak. That will not happen quickly and all the time pollution will flow into the water table (already high and of concern) and into the Corve.

iv. Ludlow residents are already concerned about drainage and surface water issues. When the river is level with the flood plain, the road at the bottom of Lower Corve Street floods, making access to some houses difficult. This brings the potential consequences of leaked fuel into the public domain. In looking at our flood response plan for the Corve and Teme, we believe, in extreme circumstances, the new garage could be at risk from flooding, with the added risk of contamination from the fuel storage tanks. In that event, but also in the event of fuel leakage outside of any flooding, it would be useful if we and the relevant Emergency Services could have emergency contact details for the garage owner/manager to be included in our flood response plan.

4.11 A supporter makes the following comments: 'If the Environment agency agree the changes with the applicant then surely it will make the project more viable. Viability has previously been taken into account on other applications decided favourably by Shropshire planning'.

4.12 Ludlow Conservation Area Advisory Committee: Neutral comments. Some members of the Committee were concerned that any leakage of fuels from an underground tank might go undetected. Others were reassured by the technical evidence and thought the visual improvement to the scheme was to its benefit.

5.0 THE MAIN ISSUES

- Principle of development and policy context;
- Pollution risk.

6.0 OFFICER APPRAISAL

6.1 Context and principle of development:

6.1.1 Core Strategy Policies CS6, CS17 and CS18 and SAMDev Policy MD12 require that water resources are protected from pollution in accordance with paragraphs 120 and 121 of the NPPF and the associated technical guidance on water supply, waste water and water quality (DCLG, March 2015). In general, development cannot be supported where there is an unacceptable risk of pollution to water resources.

6.1.2 The principle of allowing a petrol filling station at this existing brownfield site has been established under permission reference 14/00563/FUL approved on 3rd August 2015. The approved scheme involved partially submerging the fuel storage tanks and covering the area of upstand with a 2m high grassed earth bund, parts of which would be visible externally. Originally the applicant had sought to place the tanks entirely underground and to use the area above them for parking but an earlier 2013 scheme was withdrawn following objection from the Environment Agency (EA).

6.1.3 Since this time the national guidance employed by the EA regarding underground storage tanks in flood plain areas has changed and is now more supportive of this practice where appropriate safeguards can be demonstrated. The applicant's consultant has submitted a site specific risk assessment setting out mitigation measures which would apply and this has been accepted by the EA. The Council's Public Protection service has also not objected and has remarked that undergrounding would prevent the risk of a vehicle colliding with the tank. It would also reduce the length of the supply pipework, thereby also reducing the risk of leakage. The conclusions of the applicant's risk assessment are summarised in the succeeding section.

6.1.3 In terms of justification, the applicant considers that the additional 6 parking spaces which could be delivered at the site would represent a significant improvement. Parking is limited within the site and additional parking would be beneficial, including for the café use which has been approved for Tollgate House under a previous planning consent. The previous requirement to construct an earth bank immediately behind the retained stone wall on this margin of the site also raised potential structural issues regarding the wall and restricted options for landscape planting on this margin. The current proposals represent a more optimal use of the available space and would facilitate conventional shrub planting on the inside of the wall. These benefits need to be assessed against the concerns of local residents regarding the risk of pollution to water resources. (Core Strategy Policy CS18)

6.2 Detailed pollution control considerations

6.2.1 The Environment Agency (EA) is the relevant technical expert for pollution control issues and has not objected to the scheme. Government advice states that planning authorities should not seek to duplicate the controls of other regulatory regimes such as that implemented by the EA and should assume that other agencies will implement these regimes effectively.

6.2.2 The EA has advised that since their initial objection to the application changes have been made to the Agency's approach to Groundwater Protection (formally called GP3). These new position statements can be found at: https://www.gov.uk/government/collections/groundwater-protection The offer added scope (in Policies D1 and D2) with regards to allowing underground fuel storage. In consideration of the Policy changes the EA has accepted the principle of reverting to underground storage. A risk assessment required by the EA has been produced by the applicant's consultant and demonstrates that below ground tanks are acceptable within this local setting. Key conclusions of the risk assessment are as follows:

'As set out in previous UST risk assessment report (April 2014) the likelihood of a leak to ground is very small due to utilisation of:

- *double-skinned tanks built in accordance with BS EN 12285-1 with pipework built in accordance with EN 14125;*
- *Real Time Leak Detection Systems – including interstitial monitoring of the void between the inner and outer tank skins, and automatic wet-stock monitoring using statistical inventory reconciliation system;*
- *groundwater monitoring network around the tank farm to enable monitoring of groundwater quality and recovery of fuel loss; and*
- *implementation of an incident response procedure'.*

'Given the protection measures outlined above the risk of a fuel release to ground from the UST is extremely small. Should a leak occur beyond the second skin of the tank it is likely to be limited to a small volume before it is detected and mitigation measures implemented. Therefore, it is envisaged that the maximum volume that could be foreseeably lost would be limited to less than 1,000 litres of fuel, which would impact the aquifer in the immediate proximity to the tanks only'. 'The shallow aquifer is likely aerobic and highly conducive to attenuation of hydrocarbons along the groundwater flow pathway'. 'The results indicate that even when modelling attenuation in dissolved phases only, any dissolved phase impact in proximity to the underground storage tanks would attenuate to below the adopted water quality standards prior to entry into the river. The calculated remedial target concentrations are significantly above the theoretical source concentration solubility limits for all CoCs modelled'. 'The results also indicate that the shortest travel time between the source and the receptor would be 55 years, which clearly demonstrate that there is sufficient time to respond to a release from the Site in the event of an infrastructure failure.

6.2.3 The risk assessment concludes as follows:

- *'The River Corve is the most sensitive receptor in proximity to the Site;*
- *Groundwater flow is to the south-east towards the River Corve;*
- *The likelihood of a fuel release to ground is very small and detection and monitoring systems would identify a release in a short period of time. As such the scale of any loss to ground would be small and free-phase fuel impact would likely be limited to only small area in proximity to the affected infrastructure;*
- *Fate and transport modelling of key constituents of concern (based on CL:AIRE 2017) indicate that, even with phase source concentrations at*

effective solubility limits, the aquifer has capacity to attenuate hydrocarbon impact to concentrations below adopted water quality standard within the distance between the Site and the river;

- *Sensitivity analysis has indicated that, even when accounting for a very high permeability scenario, the travel time between the source and the river would be at least 14 years. This would allow a robust emergency incident response to be implemented without risk of rapid migration of hydrocarbons to the River Corve.*
- *Given the conclusions of the additional risk assessment work, coupled with the proposed infrastructure standards and monitoring systems, the risk posed by the proposed development to controlled waters is acceptably low'.*

6.2.4 These conclusions have been accepted by the EA who have withdrawn their objections and recommend a condition requiring compliance with the provisions of the mitigation scheme (included in Appendix 1).

7.0 CONCLUSION

7.1 Whilst the concerns of objectors regarding pollution of the River Teme and groundwater are noted the EA is the relevant technical consultee for pollution matters and has concluded that the proposal to underground the fuel storage tanks can be accepted. This is given the significant measures which have been put forward to protect groundwater including a double-skinned tank with leak detection and also the evidence put forward regarding pollution pathways in the applicant's pollution risk assessment.

7.2 Regulatory services (Public Protection) have also not objected and acknowledge that undergrounding reduces some pollution risks by preventing risk of collision and shortening supply pipework. It is concluded on this basis that an objection on the grounds of pollution control could not be substantiated.

7.3 The undergrounding proposals would deliver benefits in terms of increased parking provision which is considered to be desirable given the limited parking within the site and the non-fuel-sales retail element of the scheme. It would also avoid the need to construct a large and visually prominent earth bund within the site. Highways consider the revised layout to be satisfactory.

7.4 It is considered that the proposals are sustainable and compliant with the NPPF and relevant planning policies covering pollution, sustainability and environmental protection. Permission is therefore recommended, subject to appropriate conditions.

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 - written representations, a hearing or inquiry. If the decision is 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 intervene 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 a) promptly and b) in any event not later than three months after the grounds for making 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 1970.

9.0 FINANCIAL IMPLICATIONS

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

10.0 BACKGROUND

Relevant Planning History:

Relevant Planning Policies:

Central Government Guidance:

10.1 National Planning Policy Framework (NPPF) (DCLG – July 2011)

10.1.1 Relevant areas covered by the NPPF are referred to in section 6 above and include:

- 1. Building a strong, competitive economy;

- 3. Supporting a prosperous rural economy;
- 7. Requiring good design;
- 8. Promoting healthy communities;
- 10. Meeting the challenge of climate change, flooding and coastal change;
- 11. Conserving and enhancing the natural environment.

10.2 Core Strategy:

- CS6: Sustainable Design and Development Principles;
- Policy CS7: Communications and Transport;
- CS17: Environmental Networks;
- Policy CS18: Water protection.

10.3 SAMDev:

- MD2 – Sustainable Design;
- MD8 –Infrastructure Provision;
- MD12: The Natural Environment.

11. ADDITIONAL INFORMATION

View details online:
https://pa.shropshire.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=OEZZHRTDHLN00

List of Background Papers: Planning application reference 16/04716/VAR and associated location plan and documents
Cabinet Member (Portfolio Holder) Cllr R. Macey
Local Member: Cllr Andy Boddington
Appendices: Appendix 1 – Conditions

APPENDIX 1

Planning Conditions

1. Condition 2 of planning permission 14/00563/FUL is hereby varied in order to allow substitution of the following amended plans and supporting documents which facilitate the provision of underground fuel storage tanks in place of semi-submerged tanks with additional parking at ground level:

   Amended Plans:

   i. The originally approved plan reference PA61-a (Block Plan) accompanying permission reference 14/00563/FUL is hereby replaced by plan reference PA-61b.

   ii. The originally approved plan reference PA72-a (Block Plan) accompanying permission reference 14/00563/FUL is hereby replaced by plan reference PA72-d.

   iii. The originally approved plan reference PA63-d (Proposed Street Elevations) accompanying permission reference 14/00563/FUL is hereby replaced by the amended plan with the same reference accompanying the current application.

   iv. The originally approved plan reference PA73 (Tank Installation) accompanying permission reference 14/00563/FUL is hereby replaced by the plan with the same reference dated 08/11/16.

   Supporting Document:

   i. Letter from SLR Consulting dated 2nd August 2017 (further site specific risk assessment)

   Reason: To define the approved scheme as varied.

The following conditions shall also apply:

2. The development to which this planning permission relates shall be commenced within three years beginning with the date of this permission.

   Reason: To comply with Section 91(1) of the Town and Country Planning Act 1990.

3. The petrol filling station infrastructure shall be constructed in accordance with the documents submitted to Shropshire Council, specifically:

   i. WD12 Tank Installation Details DRW N0 PA-73 (Adcock Associates, dated 08/11/16);
   ii. Risk Items and Mitigation Measures (Adcock Associate's, dated November 2016);
   iii. Assessment of Considerations Determining Installation of USF's (Adcock (included in Appendix 1)Associates, dated November 2016);

iv. Underground Storage Tanks – Mitigation Measures (Adcock Associates, dated November 2016);
v. Site Specific Risk Assessment (SLR Consulting, Ref: 416.07479.00001, dated 02/08/17),

Reason: To protect controlled waters from the discharge of hazardous substances.

4. If below ground off-set fills are used then details shall be submitted to and approved in writing by the County Planning Authority prior to the commencement of the development.

Reason: In the interests of pollution control.

INFORMATIVES

Pollution control:

i. Operators of petrol filling stations should take appropriate measures to manage their sites to ensure they do not cause an unacceptable risk to groundwater quality. The Environment Agency has powers to take action where groundwater pollution occurs, or is likely to occur. If pollution was to occur, Section 161, Water Resources Act 1991 empowers us to recover all costs reasonably incurred in:
- carrying out works, operations or investigations to prevent pollution of surface waters or groundwater;
- undertaking remedial action following a pollution of surface waters or groundwater. Should we be required to undertake such work we would be able to recover these from the company or person responsible.

Where we consider that other forms of control or voluntary action do not give sufficient protection to groundwater, we will serve EPR groundwater activity notices to avoid or restrict inputs of pollutants to groundwater including from, for example, underground storage and distribution facilities

Highways:

ii. No drainage to discharge to highway: Drainage arrangements shall be provided to ensure that surface water from the car parking and turning areas do not discharge onto the public highway. No drainage or effluent from the proposed development shall be allowed to discharge into any highway drain or over any part of the public highway.

iii. Works on, within or abutting the public highway: This planning permission does not authorise the applicant to:
- construct any means of access over the publicly maintained highway (footway or verge) or
- carry out any works within the publicly maintained highway, or
- authorise the laying of private apparatus within the confines of the public highway including any a new utility connection, or
- undertaking the disturbance of ground or structures supporting or abutting the publicly maintained highway

The applicant should in the first instance contact Shropshire Councils Street works team. This link provides further details:

https://www.shropshire.gov.uk/street-works/street-works-application-forms/
Please note: Shropshire Council require at least 3 months' notice of the applicant's intention to commence any such works affecting the public highway so that the applicant can be provided with an appropriate licence, permit and/or approved specification for the works together and a list of approved contractors, as required.

iv. Disabled needs: The attention of the applicant is drawn to Section 175A(3) of the Highways Act 1980 within which the Highway Authority shall have regard to the needs of disabled persons when considering the desirability of providing ramps at appropriate places between carriageways and footways.

v. Affected street lighting or illuminated signs: This permission does not authorise the re-siting of any street lighting columns or illuminated road traffic signs affected by the proposed development. The applicant should contact Shropshire County Council, for the necessary approval. Precise details of all works within the public highway must be agreed with Shropshire Council.

vi. Brightness of illuminated signs: The brightness of the floodlit surface, or illuminated sign face, shall not exceed the values stipulated in the Institution of Lighting Engineers Technical Report No.5:1991 "The Brightness of Illuminated Advertisements".

Previous planning approvals

vii. All other conditions imposed on the original full planning permission (ref 14/00563/FUL) remain in full force and are unaffected by this notice.