

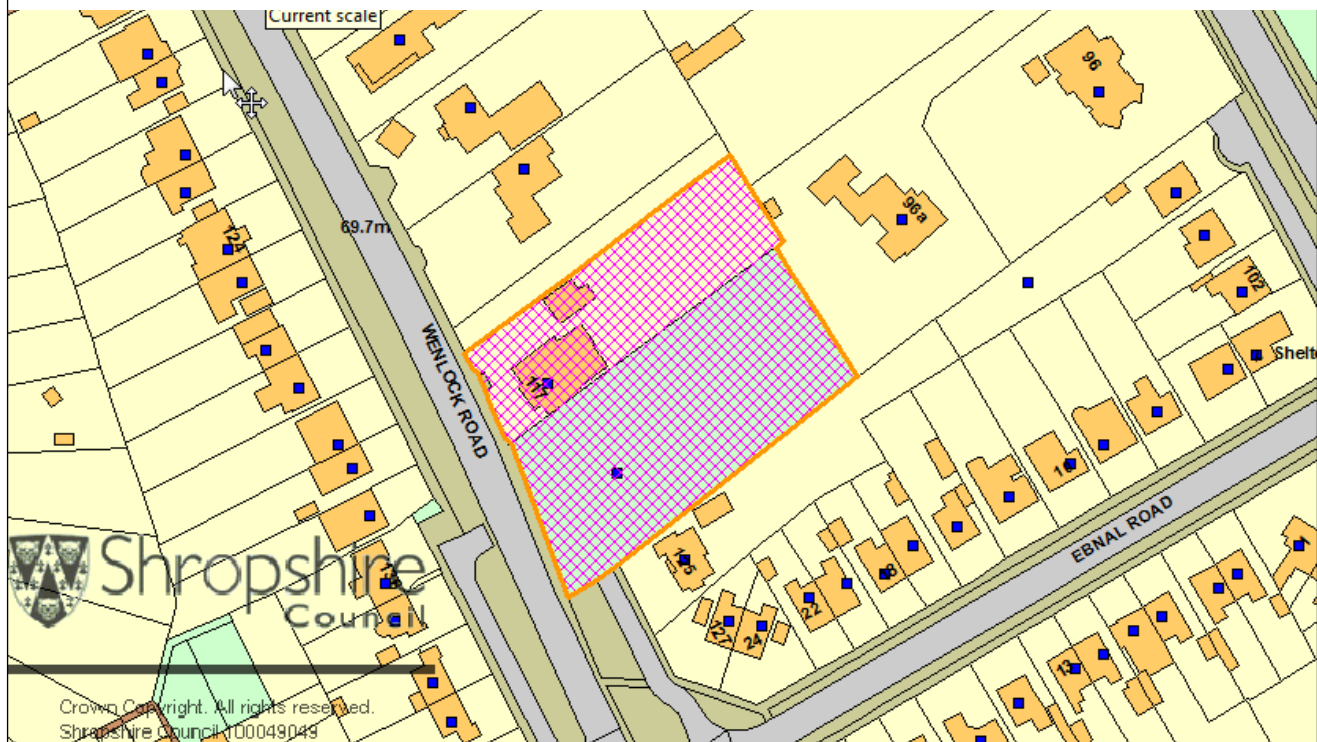
Development Management Report

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

Summary of Application

<u>Application Number:</u> 16/04590/FUL	<u>Parish:</u>	Shrewsbury Town Council
<u>Proposal:</u> Erection of 32 retirement living apartments including communal facilities, landscaping and car parking; formation of vehicular access following demolition of existing property (amended description)		
<u>Site Address:</u> Land At 117/125 Wenlock Road Shrewsbury Shropshire		
<u>Applicant:</u> McCarthy & Stone Retirement Lifestyles Ltd		
<u>Case Officer:</u> Jane Raymond	<u>email:</u> planningdmc@shropshire.gov.uk	

Grid Ref: 350957 - 311340



Recommendation: Grant Permission subject to the conditions set out in Appendix 1 and a S106 to secure a financial AHC of £177,877 and a financial highways contribution of £7,500.00 for the purposes of introducing any appropriate waiting restrictions or Traffic Regulation Orders on Wenlock Road, or any adjacent streets, should any overspill car parking take place.

REPORT

1.0 THE PROPOSAL

1.1 This application relates to the erection of 32 retirement living apartments including communal facilities, vehicular access, landscaping, car parking and mobility scooter parking following demolition of existing building.

1.2 The committee report of 31 August 2017 in respect of 16/04590/FUL is attached as Appendix 3

2.0 SITE LOCATION/DESCRIPTION

2.1 The site comprises the house and part of the garden of 117 Wenlock Road and the vacant field/paddock adjacent to No. 117 that is proposed to be demolished.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

3.1 At the meeting of 27th July 2017 Members resolved to approve the application in accordance with the officer's recommendation, subject to:

- The conditions set out in Appendix 1;
- The final detail of the Section 106 legal agreement in relation to affordable housing being brought back to this Committee for approval
- An additional condition for the developer to provide electric vehicle charging points; and
- An additional condition to restrict occupancy of the apartments to people over the age of 55.

At the meeting of 31 August 2017 members resolved that consideration of the application be deferred to seek clarification on the figures in paragraph 5.6 of the report regarding the size of the plot and the threshold land value calculations.

4.0 THE MAIN ISSUES

4.1 Assessment of the viability appraisal including clarification regarding the size of the plot and the threshold land values and agreement to the amount of financial AHC to be secured by a S106 in lieu of on-site provision of affordable housing.

5.0 OFFICER APPRAISAL

5.1 Core Strategy CS11 (Type and affordability of housing) seeks to ensure that all new open market housing development makes appropriate contributions to the provision of local needs affordable housing having regard to the current prevailing

target rate, set using the Shropshire Viability Index and the viability of developments taking into account Policy CS9 in respect of infrastructure contributions.

- 5.2 The Type and Affordability of Housing Supplementary Planning Document (SPD) provides detailed guidance to assist in implementing Core Strategy CS11. To provide a balance between flexibility and certainty, the current prevailing target rate for affordable housing is set for a period of twelve months at a time reassessed annually in December each year, for the following financial year. The current prevailing target rate for this area is 20% and for a development of 32 homes this would provide 6 affordable houses on site with the balance as a financial contribution of £25,500.
- 5.3 The SPD advises that affordable housing should normally be provided on site unless there are unusual and exceptional circumstances where it is agreed with the Housing Enabling Officers that provision may be made off-site. In these circumstances the calculation of the off-site financial contribution is based on the full cost of provision of affordable housing elsewhere including land acquisition and the SPD provides a formula. Using this formula and for a development of 32 homes with an average floor area of approximately 70 sqm and build costs of £1,155 per square metre the off-site contribution would be approximately £515,000.
- 5.4 The SPD also outlines circumstances where due to viability a reduced amount of AHC may be negotiated and states the following:
- Where a development can demonstrate to the satisfaction of the Housing Enabling Officer that it is not viable at the level of contribution required, negotiations will determine what would be a viable contribution. An open book accounting approach will be used to assess the financial aspects of the development including land acquisition costs, finance costs, 'abnormal' development costs, professional fees, prevailing market conditions and level of risk.*
- The open book accounting approach will expect land prices to reflect current market conditions, current alternative land use value and current policy requirements.*
- 5.5 The applicant (McCarthy and Stone) have submitted a viability assessment and this indicates that the scheme is not viable with either on site provision or the full financial AHC in lieu of off-site provision and indicates a surplus of £49,447 available for an AHC.
- 5.6 Members were previously advised that the main reason why the McCarthy & Stone viability appraisal demonstrates that a surplus of only £49,447 is viable as an AHC (in addition to a CIL payment of £125,647) compared to the policy compliant 6 affordable houses on site (or the equivalent financial AHC of £515,000) is the value of the existing land. In the August report to committee members were advised the following:

- *The first property (No. 117 Wenlock Road) comprises a detached house on*

a site of 0.28 acres and has an existing value of £600,000.

- *The second property (Land between 117 and 125 Wenlock Road) is a residential development site 0.6 acres and has a value of £460,000.*

There was clearly an error in the quoted site areas as No.117 is greater than half the size of the land adjacent and therefore the figures were incorrect. The correct site area for the land associated with 117 Wenlock Road that forms part of this application is 0.34 acres.

5.7 Using the methodology outlined in the previous report and the threshold land value of £525,000 per acre that the Council has determined as being the level at which a landowner would release their land for redevelopment (and at which a 20% affordable housing provision would be viable) the threshold land values for this site are as follows:

- No. 117 Wenlock Road – 0.34 acres = threshold land value of £178,500 (i.e. £421,500 less than the market value of £600,00)
- Land between 117 and 125 Wenlock Road – 0.6 acres = threshold land value of £315,000 (i.e. £145,000 less than the market land value of £460,000)

The market land value has been assessed and agreed with the Housing Enabling team and the total market land value figure of £1,060,000 is £566,500 more than the total threshold land value of £493,500. It is the high market land value that contributes to the scheme only being viable with an affordable housing contribution of £49,447 instead of the policy compliant figure of £515,000.

5.8 The actual market value of the land is higher than the threshold land value for two reasons. Firstly the development site consists of an existing dwelling and the viability testing that has been done by Shropshire Council to try to ensure the policy is viable does not consider this scenario. Secondly the adjacent land has consent for 4 detached open market houses and is valued at £460,000. This equates to £766,666 per acre based on the site area (0.6 acres). This is higher than the £525,000 per acre at which Shropshire Council's Affordable Housing policy should be viable and this is expected as developments of less than 10 houses are now not usually required to make an affordable housing contribution.

5.9 In addition to the land values adding to the costs of developing this site the viability assessment also includes the costs of marketing the site and the housing enabling team had previously advised the following:

Developers of this type of housing claim that there are significant extra marketing and sales costs attributable to the particular demographics of their customers and the particular product they offer. This level of marketing (6% of GDV) has been accepted on 2 Appeal decisions as appropriate, and means that up to £555,000.00 could be offset to sell these 32 apartments. The marketing of these homes is through McC&S's own internal marketing business. McC&S have agreed to lower

their marketing rate to £470,800.00. (5.5%), to reflect local circumstances.

However since the previous committee the Council has been defending refusal of a similar application (16/00720/FUL) made by Churchill Retirement Living where the Inspector has asked for an assessment of the submitted viability appraisal. The assessment considers that a marketing figure of 4% is appropriate on the Churchill site.

- 5.10 The difference between 4% and 5.5% marketing costs for this McCarthy and Stone proposal would yield an additional £128,400. The applicant has been asked if they would agree to a reduced marketing rate of 4% and the resulting reduction in development costs of £128,400 and whether they would therefore agree to an AHC of £177,877 (£49,477 + £128,400) and have responded as follows:

‘We have contacted Churchill this afternoon and they have confirmed that this matter is still in disagreement and is to be considered at the upcoming appeal.

McCarthy & Stone contend that their marketing costs figure proposed is fully justifiable and do not accept that 4% would be appropriate. However, given that a refusal and subsequent appeal would lead to further delay, McCarthy & Stone in this instance on a without prejudice basis will meet the contribution of £177,877 for commercial expediency reasons.

Accordingly, to summarise the applicant want to make it perfectly clear that they do not agree to the 4% marketing costs.

Please note that this figure is only proposed for this committee meeting and should the application not be approved any appeal or deferral would revert back to a figure of £49,477’.

The viability appraisal has been fully reviewed by the Housing Enabling team and officers accept the offer by the applicant of an AHC of £177,877.

- 5.11 The SPD outlines that where a developer demonstrates (to the satisfaction of the Council) that a scheme is not viable at the affordable housing target rate and the Council agrees a reduced contribution rate, the section 106 agreement may include an overage or claw-back clause to enable a further assessment based on achieved development values and actual development costs. This allows for a full “open book” appraisal of the completed schemes finances to assess whether the developer actually achieved in excess of a 20% profit on the GDV. If the development has, the Council seeks to reclaim the excess up to the level of the original policy compliant amount. The applicant has confirmed that they would not accept a S106 agreement with an overage clause as this would be contrary to the guidance contained within the PPG regarding single phase development and would not accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in the NPPF. They have submitted numerous appeal decisions that support their view that an overage clause should not be included in the S106 for a single-phase development. In light of this evidence Officers agree that it would not be defensible to refuse the

application due to the applicant not being willing to include an overage clause in the S106 agreement.

- 5.12 Members queried at the July committee why the affordable housing was not being provided on site. However that report outlined that it is unlikely that the amount of affordable contribution would be sufficient to provide on-site provision. Now that the offer has been increased to £177,877 this has the potential to provide one or two units on site instead of using the sum for off-site provision.
- 5.13 The applicant as part of the original submission provided information and justification for the contribution being off site in lieu of on-site provision. This was not reported to members as the McCarthy & Stone viability appraisal demonstrated that a surplus of only £49,447 is viable as a financial AHC and this would not be sufficient to provide a whole affordable unit on site.
- 5.14 The applicant has provided justification as to why on site provision of any amount of affordable housing would not be appropriate within this development and this was reported to members in the August committee report. The Housing Enabling team have considered the justification provided and they have confirmed that the Appeal decisions submitted by McCarthy and Stone support their view that it is not appropriate to include affordable housing units within their developments siting potential tensions between their open market customers and Registered Providers (RP's) and tenants, and also siting the physical and practical differences created by the schemes design and differing management regimes.
- 5.15 The Housing enabling team have also confirmed that whilst as a matter of policy the Council would oppose such segregation, there are several practical issues relating to design and management highlighted by Registered Providers when on site provision creates very small numbers of affordable housing (1 or 2 units). In those circumstances, the Council may consider an offsite contribution appropriate. It is considered that the provision of one or two affordable units on this site would not be practical within this development and would be difficult to manage by a registered provider. A financial contribution for off-site provision of affordable housing in lieu of the on-site provision of one or two affordable dwellings is considered acceptable in this instance.
- 5.16 Officers therefore recommend that the application is approved subject to a S106 to secure the agreed financial AHC of £177,877 in lieu of onsite provision and a financial highways contribution of £7,500.00.

6.0 OTHER MATTERS

6.1 ECOLOGY

- 6.1.1 The previous report to members advised that the submitted ecological report indicated that it was likely that the loft space of the house (proposed to be demolished) was used by a single or small number of Pipistrellus sp. during summer 2015 and concluded that the roosting features identified are not currently in use. The Councils Ecologist advised that the existing bat roost cannot

legitimately be regarded as no longer legally protected and that the works will need to take place under a European Protected Species licence from Natural England.

- 6.1.2 Since the committee the applicants Ecologist has had discussions with the Councils Ecologist regarding the need for a condition requiring an EPS licence being submitted before the work commences. The Councils Ecologist has now advised the following:

It is ultimately up to the ecologist and those involved to decide if their actions/the proposals would result in an infringement of the legislation and hence, whether a licence is required or not. Natural England do not provide 'precautionary' licences. Due to this, SC Ecology will not be recommending the EPS licence condition goes onto this planning decision notice.

- 6.1.3 The suggested condition is now not included within the list of suggested conditions within Appendix 1 to this report. However the 'three tests' must still 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. Shropshire Council's role is to consider if an offence under the Habitats Regulations is likely, and if so, would a licence be obtainable from Natural England, by considering the 'three tests'. Failing to do so would be in breach of Regulation 3(4) of the 1994 Regulations which requires all public bodies to have regard to the requirements of the Habitats Directive in the exercise of their functions.
- 6.1.4 The completed EPS three tests matrix is attached as appendix 2 to this report and should be noted by members. This confirms that the proposed development will not be detrimental to the maintenance of the population of common pipistrelles at a favourable conservation status within their natural range, provided that the recommended conditions are imposed and complied with. It is for the developer (McCarthy and Stone) to decide whether the proposed development would result in an infringement of the legislation and whether a licence is required or not. If work is carried out which affects bats or roosts without a license the law will be broken and an offence is punishable by up to a £5000 fine per individual animal impacted and potentially up to 6 months in prison.

6.2 **CONDITIONS**

- 6.2.1 Members requested two additional conditions regarding the provision of electric vehicle charging points and a restriction of the occupancy of the apartments to people over the age of 55. These conditions are now included in the recommended conditions in appendix 1.

7.0 **CONCLUSION**

- 7.1 The submitted viability assessment, the enhanced offer of £177,877 and the justification for why this should not be used to provide one or two units of affordable housing on-site has been assessed by officers and the housing enabling team and

it is agreed that the offer should be accepted. It is considered that in light of the evidence submitted the refusal of this application, due to the applicant being unwilling to enter into an agreement to secure the full policy compliant on-site provision (or the full financial AHC of £515,000 in lieu of this) or their unwillingness to enter into a S106 agreement with an overage clause included would not be defensible at appeal.

- 7.2 The proposal will boost housing supply in a sustainable location providing 32 purpose built retirement homes that will meet the needs of a growing ageing population and subsequently release the supply of family homes to the market. Although not providing affordable housing on site the development will provide a financial contribution of £177,877 towards affordable housing (an offer of almost £70,000 higher than when members considered this in August) and will also achieve a far higher CIL levy compared to the previously approved scheme for 4 houses.
- 7.3 Officers therefore recommend approval subject to the conditions within Appendix 1 and a S106 to secure a financial AHC of £177,877 and a financial highways contribution of £7,500.00 for the purposes of introducing any appropriate waiting restrictions or Traffic Regulation Orders on Wenlock Road, or any adjacent streets, should any overspill car parking take place.
- 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.

10. Background

RELEVANT PLANNING POLICIES

Central Government Guidance: NPPF

Core Strategy Policies: CS2, CS6, CS11 and CS17

SAMDev Policies: MD2 and MD13

RELEVANT PLANNING HISTORY:

16/03635/FUL Erection of 4 no. detached dwellings with 3 no. garage blocks GRANT 3rd November 2016

11. Additional Information

List of Background Papers: File 16/04590/FUL
Cabinet Member (Portfolio Holder): Cllr R. Macey
Local Member : Cllr Ted Clarke, Cllr Jane Mackenzie, Cllr Tony Parsons
Appendices APPENDIX 1 – Conditions APPENDIX 2 – EPS 3 Tests APPENDIX 3 – 27 July Committee report

APPENDIX 1: Conditions

STANDARD CONDITION(S)

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

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

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.

CONDITION(S) THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES

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

- o the parking of vehicles of site operatives and visitors
- o loading and unloading of plant and materials
- o storage of plant and materials used in constructing the development
- o the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
- o wheel washing facilities
- o measures to control the emission of dust and dirt during construction
- o a scheme for recycling/disposing of waste resulting from demolition and construction works
- o a construction/operative/visitor Traffic Management and HGV Routing Plan

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

4. No development shall take place (including demolition, ground works and vegetation clearance) until a Japanese Knotweed management plan has been submitted to and approved

in writing by the Local Planning Authority. Works shall be carried out strictly in accordance with the approved management plan.

Reason: To ensure the safe eradication of Japanese Knotweed from the site and to ensure that it does not spread

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

5. All demolition, site clearance and development shall occur strictly in accordance with the Soft Strip Method Statement (Environmental Services, December 2016), unless an alternative Method Statement is submitted to and approved in writing by the Local Planning Authority. Works shall be overseen and undertaken, where appropriate, by a licensed, suitably qualified and experienced ecologist.

Reason: To ensure the protection of and enhancements for bats, which are European Protected Species.

6. All trees which are to be retained in accordance with the approved plan shall be protected in accordance with the submitted Tree Protection Plan Ian Keen Ltd drawing 9178/o2 and in accordance with BS 5837: 2012 'Trees in relation to Design, Demolition and Construction recommendations for tree protection'. The protective fence shall be erected prior to commencing any approved development related activities on site, including ground levelling, site preparation or construction. The fence shall be maintained throughout the duration of the development and be moved or removed only with the prior approval of the LPA.

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

7. No above ground works shall be commenced until full details of both hard and soft landscape works (in accordance with Shropshire Council Natural Environment Development Guidance Note 7 'Trees and Development') have been submitted to and approved in writing by the local planning authority. The landscape works shall be carried out in full compliance with the approved plan, schedule and timescales. Any trees or plants that, within a period of five years after planting, are removed, die or become, in the opinion of the Local Planning Authority, seriously damaged or defective, shall upon written notification from the local planning authority be replaced with others of species, size and number as originally approved, by the end of the first available planting season.

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

8. 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.

9. Prior to first occupation / use of the building, details for the provision of bird boxes shall be submitted to and approved in writing by the Local Planning Authority. The following boxes shall be erected on the site:

- A minimum of 4 artificial nests suitable for swifts (swift bricks or boxes).
- A minimum of 2 artificial nests of either integrated brick design or external box design, suitable for sparrows (32mm hole, terrace design).
- A minimum of 2 artificial nests of either integrated brick design or external box design, suitable for small birds (32mm hole, standard design).

The boxes shall be sited in at least 2m from the ground on a suitable tree or structure at a northerly or shaded east/west aspect (under eaves of building if possible) with a clear flight path, and thereafter retained for the lifetime of the development.

Reason: To ensure the provision of nesting opportunities for wild birds, in accordance with MD12, CS17 and section 118 of the NPPF.

10. No above ground works shall take place until details of the means of access, including the layout, construction and sightlines have been submitted to and approved by the Local Planning Authority. The agreed details shall be fully implemented before the development/use hereby approved is occupied/brought into use.

Reason: To ensure a satisfactory means of access to the highway.

11. No above ground work shall take place until details for the parking , turning, loading and unloading of vehicles have been submitted to and approved by the Local Planning. The approved scheme shall be laid out and surfaced prior to the first occupation of the development and thereafter be kept clear and maintained at all times for that purpose.

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

12. No above ground works shall take place until details of the measures to be taken to provide adequate access and facilities for disabled people have been submitted to and approved by the Local Planning Authority. The approved scheme shall be fully implemented before the development is occupied.

Reason: To ensure adequate facilities for the disabled, in accordance with adopted policy

13. No above ground works shall take place until a scheme of surface water drainage (including a proposed maintenance regime for any sustainable drainage system proposed, including details of who will take responsibility for future maintenance) 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 and maintained for the lifetime of the development.

Reason: To ensure satisfactory drainage of the site and to avoid flooding and to ensure that the drainage system remains in good working order throughout its lifetime.

14. 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.

15. Prior to the commencement of the relevant work details of all external windows and doors and any other external joinery (including the glazed walkway) 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 ensure that the external appearance of the development is satisfactory.

16. Prior to the first occupation of the development hereby approved a scheme outlining the provision of electric vehicle charging points shall be submitted to and agreed in writing with the Local Planning Authority. The electric vehicle charging points shall be implemented in accordance with the agreed scheme.

Reason: To contribute to the objective of providing a sustainable transport network and to provide the necessary infrastructure to help protect and exploit opportunities for the use of sustainable transport modes as required by paragraph 35 of the NPPF.

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

17. Any gates provided to close the proposed access shall be set a minimum distance of 5.5 metres from the carriageway edge and shall be made to open inwards only.

Reason: To ensure a satisfactory form of access is provided in the interests of highway safety.

18. No further windows or other openings shall be formed above ground floor level in the North East facing elevation.

Reason: To preserve the amenity and privacy of adjoining properties.

19. The occupation of the development hereby approved shall be limited to persons who (a) have reached the age of 55 or over, or (b) have taken early retirement due to infirmity or incapacity, or (c) a widow or widower or partner of a person falling within (a) or (b), or (d) a dependant of a resident falling within (a), (b) or (c) residing with him/her.

Reason: The parking provision provided in the development does not make sufficient provision for general occupation.

APPENDIX 2: EPS 3 Tests matrix**EUROPEAN PROTECTED SPECIES – Consideration of the three tests****Application reference number, site name and description:**

16/04590/FUL
Land At 117/125 Wenlock Road Shrewsbury Shropshire
Erection of 32 retirement living apartments including communal facilities,
landscaping and car parking; formation of vehiucalar access following demolition
of existing property

Date:

30th January 2017

Officer:

Sophie Milburn
Assistant Biodiversity Officer
sophie.milburn@shropshire.gov.uk
Tel.: 01743 254765

Test 1:

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

The proposal will boost housing supply in a sustainable location providing 32 purpose built retirement homes that will meet the needs of a growing ageing population and subsequently release the supply of family homes to the market. Although not providing affordable housing on site the development will provide a financial contribution to affordable housing and will also achieve a far higher CIL levy compared to the previously approved scheme for 4 houses. The proposal will provide social and economic benefits for both present and future generations and will also provide bio-diversity enhancements of the site (including eradication of Japanese Knotweed) with no adverse environmental impacts.

Test 2:

Is there **'no satisfactory alternative?'**

The alternative is not to develop the site or alternatively not demolish the house and implement the previously approved scheme on part of the site. However this would not provide the boost to housing supply numbers in Shropshire, would

not make effective use of the land and would not provide an affordable housing contribution or CIL. This would therefore not provide the social and economic benefits of the proposal and the ecological enhancements of the site including the eradication of Japanese Knotweed to be secured by conditions attached to this planning permission.

Test 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'?

A bat survey between July and August 2016 identified a common pipistrelle roost in the building, used in 2015 by a single or small number of bats.

EPS offences under Article 12 are likely to be committed by the development proposal, i.e. damage or destruction of an EPS breeding site or resting place and killing or injury of an EPS.

The likely offences cannot be avoided through mitigation measures secured through planning conditions as the building is going to be demolished.

The Soft Strip Method Statement (Environmental Services, December 2016) sets out the following mitigation, compensation and enhancement measures, which will form part of the licence application:

- 3 Schwegler bat boxes will be erected on a suitable mature tree on the site.
- Works will take place under the supervision of a licensed bat ecologist.
- The roof should be removed between December and March.
- Toolbox talks will be provided.
- A pre-commencement inspection will be carried out.
- Areas of the roof with potential roosting features will be soft stripped by hand.
- 'Once these parts of the roofs are stripped, the open loft areas will be left open to the elements overnight to let any bats present (if any) to disperse naturally. Once the soak period has passed a further inspection will take place and the complete demolition of the building can proceed immediately after this inspection.'
- Should a bat be discovered, it will be relocated by the licensed bat worker.
- 4 bat tubes will be 'installed in to the fabric of the [new] building in groups of two.'
- 'All external lighting during construction to be angled downwards and away from any bat sensitive areas.'
- 'All new lighting within areas of the gardens and on external walls to be kept as low as possible and on short PIR timers.'

I am satisfied that the proposed development will not be detrimental to the maintenance of the population of common pipistrelles at a favourable conservation status within their natural range, provided that the conditions set out in the response from Sophie Milburn to Jane Raymond (dated 30th January 2017) are included on the decision notice and are appropriately enforced. The

conditions are:

- Working in accordance with protected species survey;
- European Protected Species Licence; and
- Lighting plan.

APPENDIX 3: 31 August Committee Report

Development Management Report

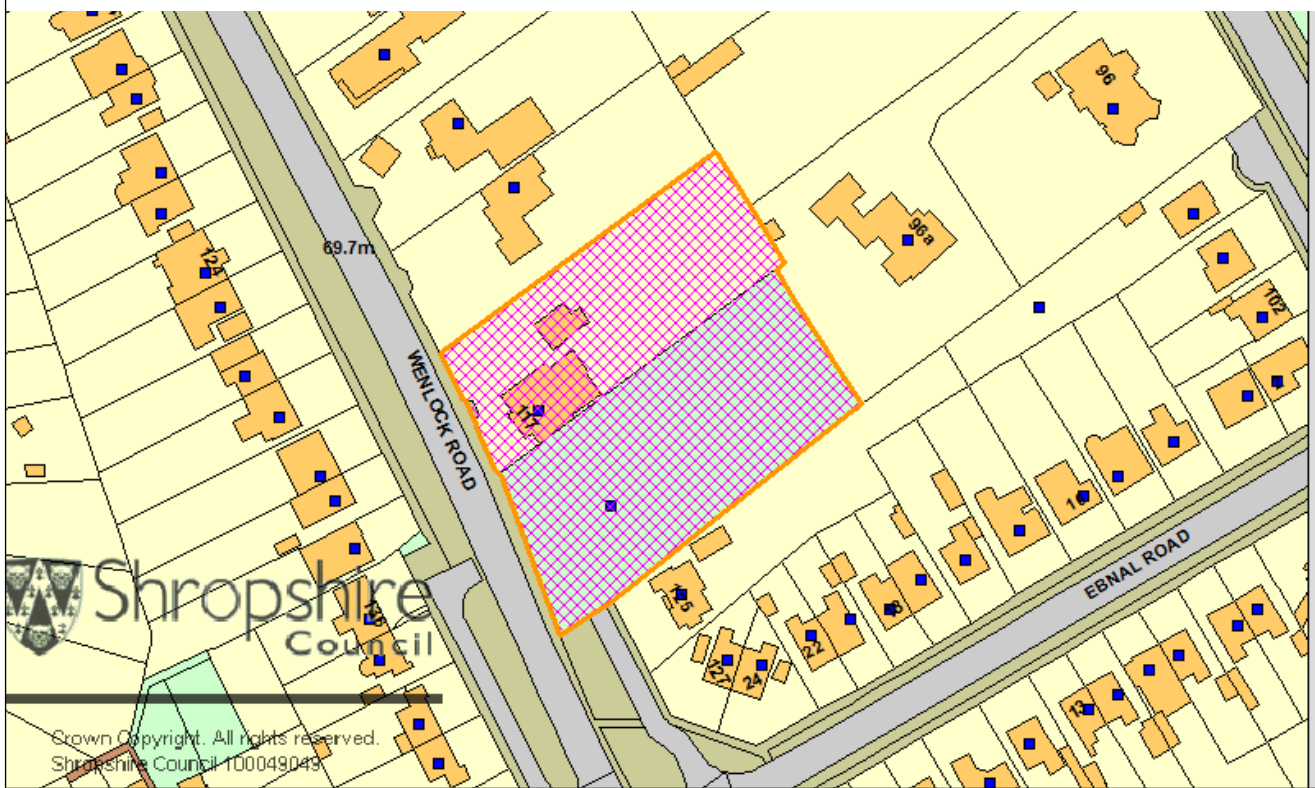
Responsible Officer: Tim Rogers

email: tim.rogers@shropshire.gov.uk Tel: 01743 258773 Fax: 01743 252619

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Case Officer: Jane Raymond	email: planningdmc@shropshire.gov.uk	

Grid Ref: 350957 - 311340



Recommendation: Grant Permission subject to the conditions set out in Appendix 1 and a S106 to secure the agreed financial AHC of £110,000 and a financial highways contribution of

£7,500.00 for the purposes of introducing any appropriate waiting restrictions or Traffic Regulation Orders on Wenlock Road, or any adjacent streets, should any overspill car parking take place.

REPORT

1.0 THE PROPOSAL

- 1.1 This application relates to the erection of 32 retirement living apartments including communal facilities, vehicular access, landscaping, car parking and mobility scooter parking following demolition of existing building.
- 1.2 The committee report of 27th July 2017 in respect of 16/04590/FUL is attached as Appendix 3

2.0 SITE LOCATION/DESCRIPTION

- 2.1 The site comprises the house and garden of 117 Wenlock Road and the vacant field/paddock adjacent to 117 that is proposed to be demolished.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

- 3.1 At the meeting of 27th July 2017 Members resolved to approve the application in accordance with the officer's recommendation, subject to:
- The conditions set out in Appendix 1;
 - The final detail of the Section 106 legal agreement in relation to affordable housing being brought back to this Committee for approval
 - An additional condition for the developer to provide electric vehicle charging points; and
 - An additional condition to restrict occupancy of the apartments to people over the age of 55.

4.0 THE MAIN ISSUES

- 4.1 Agreement to the amount of financial AHC to be secured by a S106 in lieu of on-site provision of affordable housing.

5.0 OFFICER APPRAISAL

- 5.1 Core Strategy CS11 (Type and affordability of housing) seeks to ensure that all new open market housing development makes appropriate contributions to the provision of local needs affordable housing having regard to the current prevailing target rate, set using the Shropshire Viability Index and the viability of developments taking into account Policy CS9 in respect of infrastructure contributions.
- 5.2 The Type and Affordability of Housing Supplementary Planning Document (SPD)

provides detailed guidance to assist in implementing Core Strategy CS11. To provide a balance between flexibility and certainty, the current prevailing target rate for affordable housing is set for a period of twelve months at a time reassessed annually in December each year, for the following financial year. The current prevailing target rate for this area is 20% and for a development of 32 homes this would provide 6 affordable houses on site with the balance as a financial contribution of £25,500.

- 5.3 The SPD advises that affordable housing should normally be provided on site unless there are unusual and exceptional circumstances where it is agreed with the Housing Enabling Officers that provision may be made off-site. In these circumstances the calculation of the off-site financial contribution is based on the full cost of provision of affordable housing elsewhere including land acquisition and the SPD provides a formula. Using this formula and for a development of 32 homes with an average floor area of approximately 70 sqm and build costs of £1,155 per square metre the off-site contribution would be approximately £515,000.
- 5.4 The SPD also outlines circumstances where due to viability a reduced amount of AHC may be negotiated and states the following:

Where a development can demonstrate to the satisfaction of the Housing Enabling Officer that it is not viable at the level of contribution required, negotiations will determine what would be a viable contribution. An open book accounting approach will be used to assess the financial aspects of the development including land acquisition costs, finance costs, 'abnormal' development costs, professional fees, prevailing market conditions and level of risk.

The open book accounting approach will expect land prices to reflect current market conditions, current alternative land use value and current policy requirements.

- 5.5 The applicant (McCarthy and Stone) submitted a viability assessment (that was still being assessed by the Housing Enabling team at the time of the July committee) and this indicated that the scheme was not viable with either on site provision or the full financial AHC in lieu of off-site provision and indicated an AHC of £49,447. McCarthy and Stone have recently made the following statement regarding the financial AHC they are willing to offer:

McCarthy & Stone are willing to offer a financial contribution to go forward for the planning committee on 31st August of £110,000 towards off-site affordable housing. This offer is made on a without prejudice basis for commercial expediency. This figure is obviously in excess of the £49,447 detailed in the Alder King viability appraisal.

- 5.6 The main reason why the McCarthy & Stone viability appraisal demonstrates that a surplus of only £49,447 is viable as a financial AHC (in addition to a CIL payment of £125,647) compared to the policy compliant 6 affordable houses on site (or the equivalent financial AHC of £515,000) is the value of the existing land:

- The first property (No. 117 Wenlock Road) comprises a detached house on a site of 0.28 acres and has an existing value of £600,000.
- The second property (land between 117 and 125 Wenlock Road) is a residential development site 0.6 acres and has a value of £460,000.

To help in understanding why this land value is the main reason that the viability assessment demonstrates that a full policy compliant AHC is not viable the following explanation has been provided by Alder King:

Shropshire Council produced a 'Shropshire Viability Study Final Report – May 2013' which viability tested their proposed affordable housing policy. Within Area A (in which the property sits) the recommended target for Affordable Housing is 20%. In arriving at that figure, the report reviewed a number of different 'benchmark' or 'threshold' land values – simply put, the price that would be necessary to incentivise a landowner to sell their land for redevelopment. Agricultural land values were considered as were development site values in high value areas. A 'threshold land value' of £525,000 per acre has been determined by Shropshire Council as being the level at which a landowner would release their land for redevelopment and at which a 20% affordable housing provision would be viable.

A threshold land value of £525,000 per acre would equate to the following:

- *No. 117 Wenlock Road – 0.28 acres = £147,000 (i.e. £453,000 less than market value)*
- *Land between 117 and 125 Wenlock Road – 0.6 acres = £315,000 (i.e. £145,000 less than market value)*

The 'Shropshire Viability Study Final Report' did not consider the situation we have at Wenlock Road whereby McCarthy & Stone are buying an existing dwelling house. The market value of £600,000 for No. 117 Wenlock Road equates to in excess of £2million per acre (although existing residential houses are rarely analysed in this way). For Shropshire Council's Affordable Housing policy to work, the owner should only expect to receive £147,000 for their property. Clearly it is wholly unrealistic for any homeowner to dispose of their property for significantly less than market value in order for the Council to gain their full Section 106 demands.

A homeowner would not be incentivised to sell their house for £147,000 to a developer, when they could sell their house for £600,000 to another homeowner. Thus, immediately there is a shortfall of £453,000 between the level at which Shropshire Council's affordable housing policy is viable and the level that McCarthy and Stone have to pay in order to secure the site.

Secondly, in Land between 117 and 125 Wenlock Road, McCarthy & Stone are purchasing a small site that is unencumbered by the Shropshire Council Affordable Housing Policy. The land has consent for 4 detached open market houses and is valued at £460,000. This equates to £766,666 per acre based on the site area (0.6

acres). Again, that is higher than the £525,000 per acre at which Shropshire Council's Affordable Housing policy should be viable, but that is to be expected from a small exclusive development site which does not factor in affordable provision.

Thus the land value is the key factor in this particular instance that results in Shropshire Council's affordable housing targets not being met. The landowners are entitled to a 'competitive return' and this is enshrined within the NPPF. They are not required to release their land at less than market value and indeed are entitled to be sufficiently incentivised. Cases where existing residential houses are purchased for redevelopment are not the norm, and the viability testing that has been done by Shropshire Council to try to ensure their policy is viable, has not considered this scenario.

- 5.7 Officers have reviewed this statement and consider that McCarthy and Stone have satisfactorily justified why the difference between the actual value of 117 Wenlock Road) £600,000 and its threshold land value of £147,000 leaves a shortfall of £453,000. It is the value of the existing detached 7 bed roomed home that results in this scheme not being viable if the policy compliant affordable housing is expected to be provided on site or an off-site contribution of £515,000 is accepted in lieu of this.
- 5.8 McCarthy and Stone have made an offer (on a without prejudice basis for commercial expediency) of a financial contribution of £110,000 towards off-site affordable housing. This figure is more than double the £49,447 detailed in the Alder King viability appraisal. McCarthy and Stone have advised that if this application is refused because the offer of £110,00 is considered to be unacceptable they would revert to the fully evidenced figure of £49,447 for any subsequent appeal.
- 5.9 The Housing Enabling team have reviewed the viability assessment that indicates that the Gross Development Value (GDV) of the scheme, minus Gross Development Costs (GDC) that includes site purchases, and profit (20% of the GDV), leaves only £49,477 towards affordable housing. They have provided the following advice regarding how GDV, GDC and profit are calculated.

Gross Development Value (GDV)

The GDV of the site is predicated upon anticipated sale values of all the 32 apartments and has assumed that all the appt's are for open market sale. The values used in the appraisal are considered by the Council to be reasonable and are in fact slightly higher than those provided by 2 local agent's.

Gross Development Costs (GDC)

These are the total scheme costs and include the land purchase, all construction costs, professional fees and finance costs. The construction costs are based upon nationally compiled figures by the Royal Institute of Chartered Surveyors (RICS) for this type of development. Although the Council would prefer to see the level of construction costs McC&S actually achieves on the 44 new developed schemes they aim to build this financial year, the use of the RICS generated figures is a

recognised source for viability appraisals.

Developers of this type of housing claim that there are significant extra marketing and sales costs attributable to the particular demographics of their customers and the particular product they offer. This level of marketing (6% of GDV) has been accepted on 2 Appeal decisions as appropriate, and means that up to £555,000.00 could be offset to sell these 32 apartments. The marketing of these homes is through McC&S's own internal marketing business. McC&S have agreed to lower their marketing rate to £470,800.00. (5.5%), to reflect local circumstances.

Profit

A 20% profit on the GDV is widely accepted as a current industry norm and a necessary return for national/regional house builders in order to satisfy their lenders and level of borrowing. This level of profit has again been accepted on Appeal and is also a policy complaint figure used when an overage clause is used by the Council when varying a s106 affordable housing contribution.

- 5.10 The SPD outlines that where a developer demonstrates (to the satisfaction of the Council) that a scheme is not viable at the affordable housing target rate and the Council agrees a reduced contribution rate, the section 106 agreement may include an overage or claw-back clause to enable a further assessment based on achieved development values and actual development costs. This allows for a full “open book” appraisal of the completed schemes finances to assess whether the developer actually achieved in excess of a 20% profit on the GDV. If the development has, the Council seeks to reclaim the excess up to the level of the original policy compliant amount. The applicant has confirmed that they would not accept a S106 agreement with an overage clause as this would be contrary to the guidance contained within the PPG regarding single phase development and would not accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in the NPPF. They have submitted numerous appeal decisions that support their view that an overage clause should not be included in the S106 for a single-phase development. In light of this evidence Officers agree that it would not be defensible to refuse the application due to the applicant not being willing to include an overage clause in the S106 agreement.
- 5.11 Members queried at the July committee why the affordable housing was not being provided on site. However that report outlined that it is unlikely that the amount of affordable contribution would be sufficient to provide on-site provision. Now that the offer has been increased to £110,000 this has the potential to provide one unit on site instead of using the sum for off-site provision.
- 5.12 The applicant as part of the original submission provided information and justification for the contribution being off site in lieu of on-site provision. This was not reported to members as the McCarthy & Stone viability appraisal demonstrated that a surplus of only £49,447 is viable as a financial AHC and this would not be sufficient to provide a whole affordable unit on site.
- 5.13 The applicant provided the following justification to why on site provision of any

amount of affordable housing would not be appropriate within this development:

Off-Site Provision of Affordable Housing

There are very real and fundamental difficulties in accommodating affordable housing on-site with private sheltered housing of the type detailed within this application. Although government advocates the encouragement of mixed communities, it does not state that this should be accommodated on each and every site. Paragraph 50 of the NPPF states that "...where it can be robustly justified, off-site provision or a financial contribution in lieu of on-site provision (of broadly equivalent value) may be accepted as long as the agreed approach contributes to the creation of mixed and balanced communities in the local authority area." (my emphasis).

My Client would argue that the provision of Category II Sheltered accommodation on small urban sustainable sites such as this itself contributes to mixed communities.

McCarthy & Stone assert that the provision of on-site affordable housing units within specialised housing for the elderly is both problematic and unviable and that an off-site contribution would be more suitable in this instance. However, in order to clearly understand the difficulties that will arise from trying to mix affordable housing alongside private sheltered housing, it is important to understand what sheltered housing is and how it operates.

The specialised communal living environment provided by private Category II Sheltered Housing results in the payment of a service charge by the residents, which covers the upkeep and maintenance of all internal communal areas, the external building fabric and the external grounds, including the gardens and car-parking. In addition, the service charge also covers the salary and accommodation costs of the resident house-manager. Following completion of construction the overall management of the development is passed on to a specialist management company and a further resident's association is generally set up by the residents to facilitate liaison with the management company.

When mixing low-cost / heavily subsidised sheltered housing with open market sheltered housing, one must bear in mind the significant use of the shared communal facilities within private sheltered housing. The level of services provided to the residents of private sheltered housing result in the level of service charge being a significantly larger proportion of total living costs than would apply to other forms of accommodation. It would be very difficult to set the service charge at a level that would cover the costs of the type of management that private purchasers expect, yet still be affordable to residents of affordable housing. It would also be difficult for the affordable housing provider to guarantee payment of a service charge in perpetuity that would be liable to change on an annual basis.

Another consequence of trying to mix private sheltered housing with low cost/ subsidised housing would be the significant potential for friction and animosity between those residents who pay a significant annual service charge for premium services after purchasing a property and those who would occupy low cost or

heavily subsidised apartments, but have use of the same services. It is not unreasonable to assume that some residents would resent the fact that their neighbours are enjoying the same level of services for a fraction of the cost, or that they may perceive themselves to be subsidising others. This situation would only serve to exacerbate management problems and disputes between neighbours and would ultimately undermine the success of the housing development.

If attempts are made to try to overcome management, maintenance and service charge issues by splitting the site to have separate blocks for the sheltered and affordable accommodation, this introduces further issues. The proposed development site is relatively small at 0.39 hectares and its physical constraints are such that a separate block of affordable housing, with the necessary access, parking and amenity space, would reduce the size of the sheltered block by such a degree to make it unviable and inefficient. A further loss of units would derive from the separation of the blocks and provision of sufficient amenity area. The significant reduction in sheltered units would mean that fewer elderly purchasers would have to share the fixed cost of the necessary communal facilities associated with sheltered housing and make the market sheltered scheme unviable. The commuted sum for the provision of off-site affordable housing would lead to more appropriate and acceptable housing layouts for both the sheltered and affordable provision.

Thus an attempt to shoehorn affordable housing within the same site would result in a likely loss of private units leading to an unviable level of provision for both sheltered and affordable accommodation.

The inherent difficulties of attempting to integrate other forms of housing within private sheltered housing for the elderly that are detailed above are generally accepted and have been consistently accepted by Inspectors when this matter has been assessed at appeal.

As a result of the above it is clearly not feasible to meet the Council's affordable housing requirement on-site. The proposed development therefore clearly meets the "exceptional circumstances" requirement detailed in the Affordable Housing Supplementary Planning Guidance and that an off-site financial contribution is accordingly the most appropriate option in this instance.

- 5.1.4 The Housing Enabling team have considered the above and have confirmed that the Appeal decisions submitted by McCarthy and Stone support their view that it is not appropriate to include affordable housing units within their developments siting potential tensions between their open market customers and Registered Providers (RP's) and tenants, and also siting the physical and practical differences created by the schemes design and differing management regimes.
- 5.1.5 The Housing enabling team have also confirmed that whilst as a matter of policy the Council would oppose such segregation, there are several practical issues relating to design and management highlighted by Registered Providers when on site provision creates very small numbers of affordable housing (1 or 2 units). In those circumstances, the Council may consider an offsite contribution appropriate. It is considered that the provision of one affordable unit on this site would not be

practical within this development and would be difficult to manage by a registered provider. A financial contribution for off-site provision of affordable housing in lieu of the on-site provision of one affordable dwelling is considered acceptable in this instance.

- 5.1.6 Officers therefore recommend that the application is approved subject to a S106 to secure the agreed financial AHC of £110,000 in lieu of onsite provision and a financial highways contribution of £7,500.00.

6.0 OTHER MATTERS

6.1 ECOLOGY

- 6.1.1 The previous report to members advised that the submitted ecological report indicated that it was likely that the loft space of the house (proposed to be demolished) was used by a single or small number of Pipistrellus sp. during summer 2015 and concluded that the roosting features identified are not currently in use. The Councils Ecologist advised that the existing bat roost cannot legitimately be regarded as no longer legally protected and that the works will need to take place under a European Protected Species licence from Natural England.
- 6.1.2 Since the committee the applicants Ecologist has had discussions with the Councils Ecologist regarding the need for a condition requiring an EPS licence being submitted before the work commences. The Councils Ecologist has now advised the following:

It is ultimately up to the ecologist and those involved to decide if their actions/the proposals would result in an infringement of the legislation and hence, whether a licence is required or not. Natural England do not provide 'precautionary' licences. Due to this, SC Ecology will not be recommending the EPS licence condition goes onto this planning decision notice.

- 6.1.3 The suggested condition is now not included within the list of suggested conditions within Appendix 1 to this report. However the 'three tests' must still 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. Shropshire Council's role is to consider if an offence under the Habitats Regulations is likely, and if so, would a licence be obtainable from Natural England, by considering the 'three tests'. Failing to do so would be in breach of Regulation 3(4) of the 1994 Regulations which requires all public bodies to have regard to the requirements of the Habitats Directive in the exercise of their functions.
- 6.1.4 The completed EPS three tests matrix is attached as appendix 2 to this report and should be noted by members. This confirms that the proposed development will not be detrimental to the maintenance of the population of common pipistrelles at a favourable conservation status within their natural range, provided that the recommended conditions are imposed and complied with. It is for the developer

(McCarthy and Stone) to decide whether the proposed development would result in an infringement of the legislation and whether a licence is required or not. If work is carried out which affects bats or roosts without a licence the law will be broken and an offence is punishable by up to a £5000 fine per individual animal impacted and potentially up to 6 months in prison.

6.2 **CONDITIONS**

- 6.2.1 Members requested two additional conditions regarding the provision of electric vehicle charging points and a restriction of the occupancy of the apartments to people over the age of 55. These conditions are now included in the recommended conditions in appendix 1.

7.0 **CONCLUSION**

- 7.1 The submitted viability assessment, the enhanced offer of £110,000 and the justification for why this should not be used to provide a single unit of affordable housing on-site has been assessed by officers and the housing enabling team and it is agreed that the offer should be accepted. It is considered that in light of the evidence submitted the refusal of this application, due to the applicant being unwilling to enter into an agreement to secure the full policy compliant on-site provision (or the full financial AHC in lieu of this) or their unwillingness to enter into a S106 agreement with an overage clause included would not be defensible at appeal.

- 7.2 Officers therefore recommend approval subject to a S106 and the conditions within Appendix 1.

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.

10. Background

Relevant Planning Policies

Central Government Guidance: NPPF

Core Strategy Policies: CS2, CS6, CS11 and CS17

SAMDev Policies: MD2 and MD13

RELEVANT PLANNING HISTORY:

16/03635/FUL Erection of 4 no. detached dwellings with 3 no. garage blocks GRANT 3rd November 2016

11. Additional Information

List of Background Papers: File 16/04590/FUL
Cabinet Member (Portfolio Holder): Cllr R. Macey
Local Member : Cllr Ted Clarke, Cllr Jane Mackenzie, Cllr Tony Parsons
<p>Appendices</p> <p>APPENDIX 1 – Conditions</p> <p>APPENDIX 2 – EPS 3 Tests</p> <p>APPENDIX 3 – 27 July Committee report</p>

APPENDIX 1: Conditions

STANDARD CONDITION(S)

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

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

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.

CONDITION(S) THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES

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

- o the parking of vehicles of site operatives and visitors
- o loading and unloading of plant and materials
- o storage of plant and materials used in constructing the development
- o the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
- o wheel washing facilities
- o measures to control the emission of dust and dirt during construction
- o a scheme for recycling/disposing of waste resulting from demolition and construction works
- o a construction/operative/visitor Traffic Management and HGV Routing Plan

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

4. No development shall take place (including demolition, ground works and vegetation clearance) until a Japanese Knotweed management plan has been submitted to and approved in writing by the Local Planning Authority. Works shall be carried out strictly in accordance with the approved management plan.

Reason: To ensure the safe eradication of Japanese Knotweed from the site and to ensure that it does not spread

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

5. All demolition, site clearance and development shall occur strictly in accordance with the Soft Strip Method Statement (Environmental Services, December 2016), unless an alternative Method Statement is submitted to and approved in writing by the Local Planning Authority. Works shall be overseen and undertaken, where appropriate, by a licensed, suitably qualified and experienced ecologist.

Reason: To ensure the protection of and enhancements for bats, which are European Protected Species.

6. All trees which are to be retained in accordance with the approved plan shall be protected in accordance with the submitted Tree Protection Plan Ian Keen Ltd drawing 9178/o2 and in accordance with BS 5837: 2012 'Trees in relation to Design, Demolition and Construction recommendations for tree protection'. The protective fence shall be erected prior to commencing any approved development related activities on site, including ground levelling, site preparation or construction. The fence shall be maintained throughout the duration of the development and be moved or removed only with the prior approval of the LPA.

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

7. No above ground works shall be commenced until full details of both hard and soft landscape works (in accordance with Shropshire Council Natural Environment Development Guidance Note 7 'Trees and Development') have been submitted to and approved in writing by the local planning authority. The landscape works shall be carried out in full compliance with the approved plan, schedule and timescales. Any trees or plants that, within a period of five years after planting, are removed, die or become, in the opinion of the Local Planning Authority, seriously damaged or defective, shall upon written notification from the local planning authority be replaced with others of species, size and number as originally approved, by the end of the first available planting season.

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

8. 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.

9. Prior to first occupation / use of the building, details for the provision of bird boxes shall be submitted to and approved in writing by the Local Planning Authority. The following boxes shall be erected on the site:

- A minimum of 4 artificial nests suitable for swifts (swift bricks or boxes).
- A minimum of 2 artificial nests of either integrated brick design or external box design, suitable for sparrows (32mm hole, terrace design).
- A minimum of 2 artificial nests of either integrated brick design or external box design, suitable for small birds (32mm hole, standard design).

The boxes shall be sited in at least 2m from the ground on a suitable tree or structure at a northerly or shaded east/west aspect (under eaves of building if possible) with a clear flight path, and thereafter retained for the lifetime of the development.

Reason: To ensure the provision of nesting opportunities for wild birds, in accordance with MD12, CS17 and section 118 of the NPPF.

10. No above ground works shall take place until details of the means of access, including the layout, construction and sightlines have been submitted to and approved by the Local Planning Authority. The agreed details shall be fully implemented before the development/use hereby approved is occupied/brought into use.

Reason: To ensure a satisfactory means of access to the highway.

11. No above ground work shall take place until details for the parking, turning, loading and unloading of vehicles have been submitted to and approved by the Local Planning Authority. The approved scheme shall be laid out and surfaced prior to the first occupation of the development and thereafter be kept clear and maintained at all times for that purpose.

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

12. No above ground works shall take place until details of the measures to be taken to provide adequate access and facilities for disabled people have been submitted to and approved by the Local Planning Authority. The approved scheme shall be fully implemented before the development is occupied.

Reason: To ensure adequate facilities for the disabled, in accordance with adopted policy

13. No above ground works shall take place until a scheme of surface water drainage (including a proposed maintenance regime for any sustainable drainage system proposed, including details of who will take responsibility for future maintenance) 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 and maintained for the lifetime of the development.

Reason: To ensure satisfactory drainage of the site and to avoid flooding and to ensure that the drainage system remains in good working order throughout its lifetime.

14. 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.

15. Prior to the commencement of the relevant work details of all external windows and doors and any other external joinery (including the glazed walkway) 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 ensure that the external appearance of the development is satisfactory.

16. Vehicle charging condition

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

17. Any gates provided to close the proposed access shall be set a minimum distance of 5.5 metres from the carriageway edge and shall be made to open inwards only.

Reason: To ensure a satisfactory form of access is provided in the interests of highway safety.

18. No further windows or other openings shall be formed above ground floor level in the North East facing elevation.

Reason: To preserve the amenity and privacy of adjoining properties.

19. The occupation of the development hereby approved shall be limited to persons who (a) have reached the age of 55 or over, or (b) have taken early retirement due to infirmity or incapacity, or (c) a widow or widower or partner of a person falling within (a) or (b), or (d) a dependant of a resident falling within (a), (b) or (c) residing with him/her.

Reason: The parking provision provided in the development does not make sufficient provision for general occupation.

APPENDIX 2: EPS 3 Tests matrix

EUROPEAN PROTECTED SPECIES – Consideration of the three tests

Application reference number, site name and description:

16/04590/FUL
Land At 117/125 Wenlock Road Shrewsbury Shropshire
Erection of 32 retirement living apartments including communal facilities, landscaping and car parking; formation of vehiular access following demolition of existing property

Date:

30th January 2017

Officer:

Sophie Milburn
Assistant Biodiversity Officer
sophie.milburn@shropshire.gov.uk
Tel.: 01743 254765

Test 1:

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

The proposal will boost housing supply in a sustainable location providing 32 purpose built retirement homes that will meet the needs of a growing ageing population and subsequently release the supply of family homes to the market. Although not providing affordable housing on site the development will provide a financial contribution to affordable housing and will also achieve a far higher CIL levy compared to the previously approved scheme for 4 houses. The proposal will provide social and economic benefits for both present and future generations and will also provide bio-diversity enhancements of the site (including eradication of Japanese Knotweed) with no adverse environmental impacts.

Test 2:

Is there **'no satisfactory alternative?'**

The alternative is not to develop the site or alternatively not demolish the house and implement the previously approved scheme on part of the site. However this would not provide the boost to housing supply numbers in Shropshire, would not make effective use of the land and would not provide an affordable housing contribution or CIL. This would therefore not provide the social and economic benefits of the proposal and the ecological enhancements of the site including the eradication of Japanese Knotweed to be secured by conditions attached to this planning permission.

Test 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'?

A bat survey between July and August 2016 identified a common pipistrelle roost in the building, used in 2015 by a single or small number of bats.

EPS offences under Article 12 are likely to be committed by the development proposal, i.e. damage or destruction of an EPS breeding site or resting place and killing or injury of an EPS.

The likely offences cannot be avoided through mitigation measures secured through planning conditions as the building is going to be demolished.

The Soft Strip Method Statement (Environmental Services, December 2016) sets out the following mitigation, compensation and enhancement measures, which will form part of the licence application:

- 3 Schwegler bat boxes will be erected on a suitable mature tree on the site.
- Works will take place under the supervision of a licensed bat ecologist.
- The roof should be removed between December and March.
- Toolbox talks will be provided.
- A pre-commencement inspection will be carried out.
- Areas of the roof with potential roosting features will be soft stripped by hand.
- 'Once these parts of the roofs are stripped, the open loft areas will be left open to the elements overnight to let any bats present (if any) to disperse naturally. Once the soak period has passed a further inspection will take place and the complete demolition of the building can proceed immediately after this inspection.'
- Should a bat be discovered, it will be relocated by the licensed bat worker.
- 4 bat tubes will be 'installed in to the fabric of the [new] building in groups of two.'
- 'All external lighting during construction to be angled downwards and away from any bat sensitive areas.'
- 'All new lighting within areas of the gardens and on external walls to be kept as low as possible and on short PIR timers.'

I am satisfied that the proposed development will not be detrimental to the maintenance of the population of common pipistrelles at a favourable conservation status within their natural range, provided that the conditions set out in the response from Sophie Milburn to Jane Raymond (dated 30th January 2017) are included on the decision notice and are appropriately enforced. The conditions are:

- Working in accordance with protected species survey;
- European Protected Species Licence; and
- Lighting plan.

APPENDIX 3: 27 July Committee Report



Committee and date

27 July 2017

Item

Public

Development Management Report

Responsible Officer: Tim Rogers

email: tim.rogers@shropshire.gov.uk Tel: 01743 258773 Fax: 01743 252619

Summary of Application

Application Number: 16/04590/FUL	Parish:	Shrewsbury Town Council
Proposal: Erection of 32 retirement living apartments including communal facilities, landscaping and car parking; formation of vehicular access following demolition of existing property (amended description)		
Site Address: Land At 117/125 Wenlock Road Shrewsbury Shropshire		
Applicant: McCarthy & Stone Retirement Lifestyles Ltd		
Case Officer: Jane Raymond	email: planningdmc@shropshire.gov.uk	

Grid Ref: 350957 - 311340

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Recommendation: That members resolve to approve the application but give officers delegated authority to agree the amount of Affordable Housing Contribution (AHC) and issue the decision notice subject to a S106 to secure the agreed AHC and a financial highways contribution of £7,500.00 for the purposes of introducing any appropriate waiting restrictions or Traffic Regulation Orders on Wenlock Road, or any adjacent streets, should any overspill car parking take place.

REPORT

1.0 THE PROPOSAL

1.1 This application relates to the erection of 32 retirement living apartments including communal facilities, vehicular access, landscaping, car parking and mobility scooter parking following demolition of existing building.

2.0 SITE LOCATION/DESCRIPTION

2.1 The site comprises the house and garden of 117 Wenlock Road and the vacant field/paddock adjacent to 117 which is proposed to be demolished.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

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

4.0 Community Representations

4.1 - Consultee Comments

4.1.1 SC Conservation (comments following receipt of amended plans):

Background

We had previously noted at the formal planning application stage that the proposal would need to demonstrate that a development would be of a required standard to justify the loss of 117 Wenlock Road, deemed to be a non-designated heritage asset. A heritage assessment was subsequently submitted and revised plans prepared.

Assessment

The main dwelling currently on the site, albeit not present at the time of the first edition OS mapping, is felt to be representative of the period of early 20th century development on the site and in the vicinity, and has a strong connection with the large Edwardian property known as Woodville, which faces London Road. The boundary walls and garden features are believed to be contemporary with the building of Woodville, and should be protected and restored as part of the scheme. Whilst it is believed that the dwelling itself is worthy of recording prior to any demolition, it has been extended significantly and its historic form has been largely subsumed by modern extensions.

It has been emphasised that the design of the development should minimize any harmful impact on the character and appearance of the area and the street scene in particular, making a positive contribution to ensure compliance with policies on design and the protection of the historic environment.

The amendments to the plans in terms of scale, design, stepping back the footprint of the central atrium, and varying gables and chimneys to enhance traditional design and detailing, generally reflect the context and local vernacular of the area. In order to further enhance this, the scheme will be expected to deliver a high standard of construction, which should be addressed through a series of conditions ensuring the selection of materials and finishes are appropriate to its context. With regard to this, there are some refinements and clarifications on materials and finishes, which would be welcomed; these are largely in terms of the surface finish, detail and materials of rainwater goods to the linking blocks, and window details including materials and depth of reveals to these elements – these should be the subject of pre-commencement conditions as detailed below and not on the basis of current plans.

Recommendation:

Generally no objection on conservation or design grounds as on balance the scheme is considered to accord with the relevant policies, guidance and legislation noted above, subject to the inclusion of the following conditions: CC1 (External Materials), JJ20 (Joinery – with revised Reasons), pre demolition recording of the main house and retention of any garden features, plus conditions to agree hard and soft surfaces for the driveway access, parking and amenity areas, as well as any

boundary walling or enclosure features.

4.1.2 **SC Highways** (final comments on proposal as amended):

Recommendation

No Objection - Subject to the development being carried out in accordance with the approved details and the following conditions/informatives

Observations/Comments:

It is considered that the currently submitted details supporting the revised development proposals have been robustly presented and justified. However, given the site location, 'retirement living' occupancy type and the precedent set by the similar McCarthy & Stone development on Copthorne Road, Shrewsbury. An absolute minimum allocation of one parking space per apartment should be provided to support this development proposal.

In the circumstances, if a minimum of 32 car parking spaces can be incorporated within the application site, then it is considered that this development could be acceptable from a highway & transport perspective.

Notwithstanding the above, should the developer choose not to improve the car parking ratio within the site, it is recommended that the Developer enters into a Section 106 Agreement with the Council. For the purposes of securing a financial contribution of £7,500.00, to be held for 5 years following the full occupation of the development. This contribution could then be used, by the Council, for the purposes of introducing any appropriate waiting restrictions or Traffic Regulation Orders, on Wenlock Road (or any adjacent streets), should any overspill car parking take place, associated with the development, which is considered to be contrary to the interests of highway safety.

Would also support an appropriately worded condition that restricts the age of the occupants, this will seek to reduce the level of car ownership and associated demand on parking. Mouchel have recommended that a condition is placed upon any permission granted that requires details of access to be submitted, and would welcome this condition as the details of the current access do not show the viability splays and swept paths.

On receipt of additional information confirmed that the proposed layout of the access is sufficient to accommodate two-way car movements, as requested. However, the details presented in the applicant's email dated 24th May 2017, does not provide all the detail required to discharge the recommended conditions (i.e. no construction specification or visibility splays shown.)

4.1.3 **SC Waste Management:** It is vital new homes have adequate storage space to contain wastes for a fortnightly collection (including separate storage space for compostable and source segregated recyclable material).

Also crucial is that they have regard for the large vehicles utilised for collecting waste and that the highway specification is suitable to facilitate the safe and efficient collection of waste. Any access roads, bridges or ramps need to be capable of supporting our larger vehicles which have a gross weight (i.e. vehicle plus load) of 32 tonnes and minimum single axle loading of 11 tonnes.

I would recommend that the developer look at the guidance that waste management have produced, which gives examples of best practice. This can be viewed here: <http://new.shropshire.gov.uk/media/2280/shropshireplusrefuse-and-recycling-planning-guidanceplusseptemberplus2015plusversionplusa.pdf>

We would prefer to see vehicle tracking of the refuse vehicle to ensure the vehicle can manoeuvre the roads of the development. Collection crews would need a code or fob to access the site as it is gated.

With regards to refuse vehicles Highways have confirmed that normal waste collection arrangements for existing residents along Wenlock Road is currently undertaken at kerbside, so this particular operation, if it is only once a week, is probably going to be acceptable.

4.1.4 **SC Trees:** Recommends a condition in order to protect the retained trees on site and adjacent important amenity trees.

4.1.5 **SC Ecology:**

Bats

A bat survey was carried out on this site between July and August 2016 by Environmental Services.

During an initial inspection, approximately 50 pipistrelle droppings 'were discovered in the loft space of the original structure', 'scattered below the central beam of the original building and at each gable end. The droppings were old suggesting the loft space has not been used by bats in 2016, and given the number found was used by a single or small number of individuals.'

A re-entry survey was carried out on 13th July and emergence surveys were carried out on 11th August and 22nd August. Static detectors were also used.

A 'possible emergence' was recorded during the first emergence survey 'from the Northwest facing elevation. As a result, the loft space was checked for a second time and an additional surveyor added to the third survey effort in order to specifically watch this area. No fresh droppings were discovered and no bat emergence was identified from the building. Therefore the 'possible' emergence is highly likely to have been a bat flying over the building foraging between the gardens and the vacant plot of land.'

Common pipistrelles were recorded foraging around 'the main property and over the vacant plot of land' during the surveys. No roosting behaviour was identified.

Bats do not appear to be currently using the building but ‘the loft space was likely used by a single or small number of *Pipistrellus* sp. during summer 2015’. Therefore, the works will need to take place under a European Protected Species licence from Natural England.

Environmental Services have produced a Soft Strip Method Statement (December 2016) which sets out the following mitigation, compensation and enhancement measures, which will form part of the licence application:

- 3 Schwegler bat boxes will be erected on a suitable mature tree on the site.
- Works will take place under the supervision of a licensed bat ecologist.
- The roof should be removed between December and March.
- Toolbox talks will be provided.
- A pre-commencement inspection will be carried out.
- Areas of the roof with potential roosting features will be soft stripped by hand.
- ‘Once these parts of the roofs are stripped, the open loft areas will be left open to the elements overnight to let any bats present (if any) to disperse naturally. Once the soak period has passed a further inspection will take place and the complete demolition of the building can proceed immediately after this inspection.’
- Should a bat be discovered, it will be relocated by the licensed bat worker.
- 4 bat tubes will be ‘installed in to the fabric of the [new] building in groups of two.’
- ‘All external lighting during construction to be angled downwards and away from any bat sensitive areas.’
- ‘All new lighting within areas of the gardens and on external walls to be kept as low as possible and on short PIR timers.’

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

RammSanderson Ecology Ltd was commissioned to undertake a single nocturnal survey of this site to update the previous survey work. One bat survey was conducted following the negative result of roosting bats during the 2016 nocturnal surveys. RammSanderson Ecology has concluded that the roosting features identified are not currently in use.

SC Ecology considers that the existing bat roost cannot legitimately be regarded as no longer legally protected.

Natural England require a period of monitoring for a bat roost prior to its ‘de-designation’. If it can be demonstrated that a former bat roost had not been occupied by bats for a period of five years or more, it might no longer constitute as a bat roost and therefore no longer fall under the legal protection of the Habitats Regulations, but to my knowledge, this timeframe has not yet been tested in Court, so one ought to be cautious.

Natural England advises on a timeframe of 'after a number of years'. A sufficient level of survey work would be needed to demonstrate long-term absence of bats. When applying for an EPS licence, it is often the case that an estimate of the number of bats using the roost during a typical calendar year is not known accurately, but the total(s) applied for must be strongly indicative and supported evidentially. The status of the roost is equally important. This evidence can be based on counts of bat droppings, their age, distribution, setting; looking at the potential bat features within a structure and all with the bat's ecology – typical sizes of roosts etc. all taken into account.

The Bat Survey Guidelines state (the main information relevant here is in Chapter 7):

Section 7.2.8 states:

Dusk and dawn surveys should be repeated until the information outlined in sect 5.1 is reliably collected, although appropriate methods and equipment should be used to minimise the number of survey visits required and effort should always be proportionate to impact. If presence has been confirmed by droppings found during a preliminary roost assessment but bats have not been detected during roost characterisation surveys, it may be necessary to carry out further surveys at alternative times of year.

Based on the points above the comments made by SC Ecology from Sophie Milburn, dated 30.01.2017, are still relevant to this planning application. As bats tend to re-use the same roost after periods of vacancy, legally a roost is protected whether a bat is present at that time or not. Due to the evidence of bat droppings Shropshire Council will complete the 'three tests'. The 'three tests' 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. Shropshire Council's role is to consider if an offence under the Habitats Regulations is likely, and if so, would a licence be obtainable from Natural England, by considering the 'three tests'. Failing to do so would be in breach of Regulation 3(4) of the 1994 Regulations which requires all public bodies to have regard to the requirements of the Habitats Directive in the exercise of their functions.

If work is carried out which affects bats or roosts without a license the law will be broken. The applicant should be aware that an offence is punishable by up to a £5000 fine per individual animal impacted and potentially up to 6 months in prison.

Birds

Environmental Services do not record whether any evidence of birds was found on or in the building.

Vegetation removal should take place between October and February to avoid harming nesting birds. If this is not possible then a pre-commencement check

should be carried out and if any active nests are present, works cannot commence until the young birds have fledged.

Bird boxes should be erected on the site to enhance the nesting opportunities available for birds.

Other species

No evidence of any other protected or priority species was observed on, or in close proximity to, the site and no additional impacts are anticipated.

Site materials should be stored off the ground, e.g. on pallets or in skips, to prevent them being used as refuges by wildlife.

Trenches should be covered overnight or contain a ramp so that any animals that become trapped have a means of escape.

The landscaping scheme should ideally contain more native species of local provenance and species of particular value to wildlife.

4.1.6 **SC Drainage:** The proposed drainage details, plan and calculations should be conditioned if planning permission were to be granted.

4.1.7 **SC Affordable Homes:** Awaiting final view on the viability assessment and agreement on the amount of financial affordable housing contribution.

4.2 - Public Comments

4.2.1 **Shrewsbury TC:** Objects: Initially concerned that the parking provision is inadequate for the number of residential units and disliked the massing of the building and considered that the demolition of 117 Wenlock Road would be a significant loss to the area. On receipt of the amended plans welcomed the amendments which have addressed the concerns regarding the level of massing. Members however do have a retained concern about the number of parking places and given that the local area has minimal on-street parking on this busy gateway into the town they would welcome a 1:1 ratio regarding car-parking.

4.2.2 **West Mercia Constabulary:** Provides advice on crime prevention through the environmental design advice within 'Secured By Design' to explore opportunities to design out crime and /or the fear of crime and to promote community safety.

4.2.3 31 letters of objection have been received and 12 letters of support to the scheme as first submitted and as amended summarised as follows (comments are available to view in full on the public file):

4.2.4 Support:

- The proposal is well designed and attractive and would suit the street scene.

- Although the proposal is wide, 113 and 115 are almost joined at their shared boundary and together offer quite a wide frontage which people are already accustomed to seeing.
- The height will be similar to 125 and less than the front portion of the Tower House.
- It will add to the wide variety of building ages and styles between Armoury Gardens and Ebnal Road.
- The development seems to be generally in keeping with and will blend in well with surrounding properties.
- No. 117 is a fine house but would not be missed if it were to go.
- The site has been an eyesore for too long and looking forward to this well needed development in an excellent location.
- The development would eradicate the Japanese Knotweed which should be welcomed and M & S have experience in dealing with brownfield sites such as this and can be depended on to clean up this land.
- It is relatively high density compared to the alternative approved four houses but it would mean less disturbance to the occupiers of nearby properties.
- Retired people have simpler more 'low key' lives than families. Four 4-bed houses could have up to a dozen children squealing and shouting in gardens, birthday parties, barbeques and barking dogs etc.
- Wenlock Road could easily accommodate the extra traffic and it's not a commercial development. Apart from a short period in the mornings and evenings the traffic density is not an issue.
- The alternative 4 houses would do nothing for affordable housing.
- Both central and local government are under huge pressure to increase housing supply but in particular for couples and those living alone.
- Provision of suitable housing for the older age group is limited in this part of Shrewsbury but figures show that this ward has a high number of residents over 65 years.
- There are enough 4 bedroom homes in this location.
- Having family in Shrewsbury and now living alone one of these apartments would be ideal and it will be a good area to retire to.
- Have lived in the area for over 30 years and want to stay but until now there

has been nothing suitable to down size to.

- These apartments will free up family homes.
- This development is in an ideal residential location with a frequent bus service.
- There are local shops for essentials and two mini supermarkets only a few hundred yards away. The local shops including the butchers at Mereside would benefit from the extra business.
- St Giles Parish Church, and Parish Hall, Mereside Community Centre, Doctors surgery and chemist, dental practice, the facilities at SCAT (Hairdressers and restaurant) and local pubs are all nearby.
- This development with its communal areas will facilitate mutual support for the residents and alleviate isolation and loneliness which so often lead to the need for hospitalisation.
- The grouping of people of similar disposition can help make nursing care and the distribution of medication more efficient and cost effective.

4.2.5 Object:

- Residents have obtained 107 signatures from the local residents opposing the scheme, including those living on Wenlock Road, Armoury Gardens, Ebnal Road and London Road.
- The site is constrained and cannot accommodate over 30 dwellings and does not provide sufficient parking or the ability to deal with surface water without flooding nearby gardens.
- Little mention of any rainwater or 'grey' water recycling other than a few rainwater butts. The size of the proposal must lead to an increase in the volumes of water required and sewage generated. Recycling rainwater and grey water would reduce any increasing demand for water and help reduce run off.
- The dwelling to be demolished is one of the original dwellings on this highway route into town and should not be demolished and would result in demonstrable harm to the amenity of the area.
- Demolition of 117 Wenlock Road that contributes to the distinctiveness of the locality would be in conflict with LDF strategic objective 7 and the large replacement building does not 'respond to the local context.
- It is ironic that the trees and hedge should be preserved but a house allowed to be demolished.

- Reduction in the height of the hedge reduces nesting opportunities for the local small bird communities.
- The nature and form of development should match the surrounding development and three storey development is unacceptable.
- The development is over intensive and three storey development would be incongruous to the street scene.
- The apartment building is totally out of character with the mainly detached and semi-detached nature of development in the area.
- The proposed building is too high - overlooking neighbouring gardens resulting in a lack of privacy issues for residents.
- It might also appear intrusive and result in a loss of light.
- Whilst an attempt has been made to reduce the scale of the building it will still be massive with a large car park to the front and would be more appropriate on an industrial estate. It is still incongruent and not in keeping with the area.
- The front elevation has basically remained the same with a few aesthetic tweaks and adding a few chimneys to an already large building does not make it more sympathetic to its surroundings.
- The new glass connecting corridors and black timber facade do not “reflect the local character of the street scene”.
- This development is not two and a half storeys it is a three storey block of flats not three ‘pavillions’ or ‘villas’.
- The revised plan still represents a physical overdevelopment of the site when compared to other properties along Wenlock Road which present a varied and attractive range of private homes.
- Over 30 houses would result in a considerable increase in traffic movements compared to that of the four houses already approved.
- Wenlock Road is already busy and the impact of the development has to be considered on both the access onto the highway and the wider road network and junctions.
- There will be thousands of additional traffic movements due to the development on Oteley Road and Emstrey Business park causing more potential for highway danger and this proposal should be viewed in the context of that.

- Shropshire Council must accept that there is a highway safety issue due to the road closure and highway improvements including pedestrian crossings in recent years.
- The development will generate at least 90 traffic movements a day and this will be dangerous close to a complicated road junction and a pedestrian crossing.
- Insufficient parking is provided. Although the apartments are aimed at the over 55 age group there is nothing in planning law or land law to stop anyone buying and occupying one of the apartments from owning one or two cars.
- Developers anticipate the average age of occupants to be around 79 years which is based on previous developments. Statistics are fine as a basis for calculating
- unknowns but they are not facts and until the properties are all sold this will remain just speculation.
- The nature of occupation means that it is likely that there will be more visits from health visitors etc. and parking will be required. Residents and visitors will park on the road or on the grass and slip road opposite, causing congestion and highway dangers.
- There is no provision for disabled parking and the parking of larger vehicles such as emergency vehicles and deliveries.
- In sufficient parking on site will result in parking on Wenlock Road which will be a hazard and add to the congestion.
- There is no emergency assembly area indicated on the plans
- From experience of working in a M & S property a more accurate and true reflection of what to expect is that:
 - 1/ half of residents will have cars
 - 2/half of residents will come from outside the area (Shropshire)
 - 3/a very high turnover of residents
 - 4/ a high level of 'care ' traffic (ambulances, doctors, nurses and several types of care personnel)
- Good quality and frequently accessible public transport is not available in this area of Wenlock Road which has only a limited bus service and no service later in the evening.
- A pedestrian crossing should be installed at the Column end of Wenlock Road at the expense of the developer.

- The influx of up to 100 elderly residents will impose extra burden on: a) already overstretched doctors surgeries b) local post offices c) local bus services, which are already overcrowded.
- Shrewsbury already has an excess of elderly residents and adding more places a
- further burden on the social and healthcare services already stretched to breaking point.
- There is no provision for parking during the construction phase causing congestion and impact on highway and public safety.
- Air pollution, dust and noise pollution will be increased during construction
- The proposal could impact on bats and owls in the area and a bat survey should be undertaken. There was standing water on the site and a newt survey should be carried out.
- The Japanese Knotweed needs to be fully investigated and dealt with.
- The proposal does not represent an appropriate use of available land as required by LDF strategic objective 4.
- It does not provide for a mix of good quality, sustainable housing development of the right size, type, tenure and affordability to meet the housing needs and aspirations of all sections of the community, including provision for specialist needs and the elderly as required by LDF objective 5.
- The prices they are marketed at are beyond the means of the vast majority of local residents in the target age range.
- The proposal fails to address the need for social housing provision and should include affordable housing and this should not be negotiable
- The development will not meet the housing needs of local elderly but is expected to attract more wealthy individuals from elsewhere, thereby reducing the availability of land and affordable properties for local residents.
- What will ensure that the apartments are only occupied by the elderly.
- Who will be responsible for the upkeep of the building and the communal areas.

5.0 THE MAIN ISSUES

Principle of development
Siting, scale, design and appearance
Impact on residential amenity

Access and parking
Trees and Ecology
Developer contributions

6.0 OFFICER APPRAISAL

6.1 Principle of development

6.1.1 This proposed development for open market retirement apartments falls within Use Class C3 (Dwelling Houses). The site is considered to be in a sustainable location reasonably close to the Town Centre and other services and facilities nearby. It is situated within the urban development boundary for Shrewsbury identified within SAMDev and the provision of housing within the urban area of Shrewsbury accords with policy CS2 that identifies Shrewsbury as the primary focus for housing development for Shropshire.

6.1.2 CS2 identifies that the ageing population is a particular issue in Shropshire, where 28.4% of the population is expected to be over the age of 65 by 2026. There is a requirement for all types and size of housing to meet the housing need but in particular there is a need for smaller accommodation to suit the elderly. Although not providing affordable accommodation this proposal will help meet that need and also release family homes to the market.

6.1.3 CS11 seeks to create mixed, balanced and inclusive communities, and ensure the provision of a mix of type, size, tenure and affordability. It states that high priority should be given to the provision of housing to meet the local needs and aspirations of all households, including the elderly. CS6 requires that the design of housing should be adaptable to changing needs (including the elderly) and this is one element of sustainable design. This proposal is designed to meet the needs of the elderly and will help to provide a shortfall in accommodation specifically for the elderly and retired.

6.2 Siting, scale, design and appearance

6.2.1 SAMDev Policy MD2 (Sustainable Design) and Core Strategy Policy CS6 (Sustainable Design and Development Principles) requires development to protect and conserve the built environment and be appropriate in scale, density, pattern and design taking into account the local context and character and should also safeguard residential and local amenity. Policy CS17 and MD13 seeks to ensure that development does not have a significant adverse impact on Shropshire's environmental assets and protects and enhances the built and historic environment.

6.2.2 The proposal is for a three storey building to provide 32 apartments. The number of apartments and the height of the building have been reduced to that first submitted in order to reduce its overall scale and bulk. Although it is a three storey building the third floor of accommodation is in the roof and the new design has effectively broken the building up into three distinct blocks. This has resulted in a development which will front Wenlock Road and will appear as two pairs of semi-

detached houses with a subservient element in between that links them together and is set back from the front elevation.

- 6.2.3 The proposal appears much more domestic in scale than previously and the detailing and proportions are now more in keeping with other buildings in the locality. The front of the building is also set slightly further back than the existing building line which will help reduce its prominence in the street. The glazed second floor corridor that is obviously not a feature of other buildings in the locality will not be flush with the edge of the two storey link but is set back and will sit on top of the roof. It will therefore not be readily seen from ground level as it is set so far back on the flat roof. It is required to provide connectivity between the three different blocks and to provide access to the communal lounge and the ground and first floors by lift.
- 6.2.4 There is a mix of public opinion regarding the acceptability of the design and appearance of the proposal and it is acknowledged that there is a strong public objection to the development. However whilst some may consider that it will not be a positive addition to the location it is officers view that the proposed scale, design and appearance of the building would have no adverse impact on the character and appearance of the locality that would justify refusal.
- 6.2.5 With regard to the dwelling to be removed it is one of many examples of early 20th century housing in the area and it is not a particularly exemplary example of this period or type of architecture. The conservation officer has also confirmed that it has been extended and its historic form has been largely subsumed by modern extensions. Furthermore the removal of the dwelling is permitted development requiring only an application for prior approval for its method of demolition and the clearing of the site. It would therefore not be justifiable to refuse this application due to the loss of this building.

6.3 **Impact on residential amenity**

- 6.3.1 SAMDev policy MD2 and Core Strategy Policy CS6 seeks to ensure that all development safeguards residential and local amenity.
- 6.3.2 The proposed building will be situated centrally within the site and although it is a three storey building the second floor of accommodation will be within the roof and the building will not be significantly higher than surrounding properties. The part of the building closest to any boundary is two storey and not three storey and is situated to the rear of the site and there are no first floor windows proposed for the rear North East facing elevation. A condition can be imposed to ensure that no additional windows are added. It is considered that due to the distance from the existing boundaries and the mature trees on the boundaries and within adjacent gardens, the proposal would not appear overbearing and obtrusive, would not result in a loss of light and will also not result in unacceptable levels of overlooking or a loss of privacy.

6.4 **Access and parking**

- 6.4.1 SAMDev policy MD2 requires development to be designed to provide adequate onsite car parking to ensure that cars do not overflow onto surrounding roads and therefore negatively impact on the local road network. There has been much public concern that the proposal provides insufficient parking for the number of units proposed, including lack of parking for visitors and service vehicles and that this will inevitably lead to on street parking resulting in congestion in the surrounding streets and that this combined with the additional traffic generated would have highway safety and capacity implications.
- 6.4.2 The proposal now indicates 29 parking spaces for 32 units. Highways have confirmed that they would prefer to see 1:1 parking provision and would not object to the proposal if this were provided. However notwithstanding this, Highways have not objected to the proposal and have suggested that if the applicant is unable to provide more parking spaces then they should enter into a Section 106 Agreement with the Council for the purposes of securing a financial contribution of £7,500 to be held for 5 years following the full occupation of the development. This contribution could then be used by the Council for the purposes of introducing any appropriate waiting restrictions or Traffic Regulation Orders on Wenlock Road (or any adjacent streets) should any overflow car parking associated with the development take place.
- 6.4.3 The applicant has confirmed that they are willing to enter into such agreement. However it is considered unlikely that overflow parking will take place as M & C have confirmed that the average age of home owners upon purchase is 79 and that residents often choose to give up running their own cars upon residency. One of the objectors to the proposal whose family has experience of working in a M & C development confirms that only half the residents usually have cars and that there is usually a high turnover of residents. The dwellings are designed as retirement apartments and the majority of future residents will normally be giving up driving as part of their life style choice to move into this type of accommodation. Future occupiers will be aware that they will not be purchasing or being provided with a parking space when they buy an apartment so they would presumably not purchase such a home if they intended to retain the use of a car. As less than half the spaces will be allocated to residents it is considered that sufficient parking for visitors and service vehicles will be available.
- 6.4.4 Although contractors and cleaners will visit the site to maintain the communal area, the exterior of the building and the garden the proposal is not a care facility and there is no on site care or medical staff or restaurant facilities. The only communal facility is a home-owners lounge. It is considered that the car parking provision is adequate and that residents and any visitors will have sufficient on site parking and the proposal will not create a demand for on street parking. Although the S106 will be entered into it is unlikely that parking restrictions will be required to deter on street parking but is required in case a problem should arise. A condition will also be imposed to restrict occupancy to the over 55's. This will ensure that accommodation designed specifically for an ageing population (that have chosen this lifestyle choice to give up the responsibility of the up keep of a family home and garden and the use of a car) remains available in the future. A condition that restricts the age of the occupants will also ensure that the reduced level of car

ownership and associated demand on parking is maintained.

- 6.4.5 With regards to increased traffic the provision of 32 apartments with age restricted occupancy should not result in a significant increase in the volume of traffic travelling up and down Wenlock Road. Highways have expressed no concern about the proposal having an impact on congestion or the capacity of the roads and nearby junctions to accommodate the traffic generated as a result of this proposal. In any case any vehicle movements generated are not likely to be concentrated or coincide with the existing peak traffic times as future occupiers are all likely to be retired. Highways have confirmed that the proposed layout of the access is sufficient to accommodate two-way car movements but that details of a construction specification and visibility splays for the access are still required and that the recommended condition regarding this should be imposed.

6.5 **Trees and Ecology**

- 6.5.1 A tree constraints plan and tree protection details have been submitted and this indicates that 4 trees in the centre of the site and 4 trees to the rear of the site (trees 13 – 20 inclusive on the tree protection plan) and a single tree (tree 9) in the North East corner are required to be removed. The tree officer has no objection to their removal and recommends a condition in order to protect the retained trees on the site and the adjacent important amenity trees. Although a landscape plan has been submitted a landscaping condition will also be imposed requiring full landscaping conditions to be submitted for approval as the Ecologist has recommended that it should ideally contain more native species of local provenance and species of particular value to wildlife.
- 6.5.2 The proposal involves the demolition of a building and therefore an ecological survey is required and a bat survey was undertaken in summer 2016. The initial inspection revealed pipistrelle droppings in the loft space but their age indicated that the loft space had not been used by bats in 2016. The emergence surveys of 2016 also revealed that bats did not appear to be currently using the building. A single nocturnal survey has recently been undertaken and the report concludes that the roosting feature identified is not currently in use. It is likely that the loft space was used by a single or small number of Pipistrellus sp. during summer 2015. Ecology have confirmed that Natural England consider that an identified roost is still protected regardless if bats have been recorded emerging/re-entering the bat roost feature and that it can not be 'de-designated' until sufficient survey information has been collected to confirm that it has not been occupied by bats for over 5 years. As 5 years has not lapsed the roost falls under the legal protection of the Habitats Regulations and therefore an EPS species licence is required for the development to proceed.
- 6.5.3 Ecology have completed the 3 tests matrix and have confirmed that the proposed development will not be detrimental to the maintenance of the population of common pipistrelles at a favourable conservation status within their natural range, provided that the recommended conditions are imposed and complied with. These conditions will ensure that the Method Statement which sets out mitigation, compensation and enhancement measures will be carried out including four bat

tubes installed in to the fabric of the new building and three Schwegler bat boxes erected on mature trees on the site. As work will need to be conducted under licence from Natural England the completed EPS three tests matrix is attached as appendix 2 to this report and should be noted by members.

- 6.5.4 The recommended informative and condition regarding birds and the erection of bird boxes will enhance nesting opportunities for wild birds and a landscaping condition will ensure appropriate landscaping of the site. The development of the site will also ensure that Japanese Knotweed is eradicated from the area.

6.6 **Developer Contributions**

- 6.6.1 A viability appraisal has been submitted to determine the amount of affordable housing contribution and at the time of writing this has not yet been agreed with the housing enabling team. It is unlikely that the amount of affordable contribution would be sufficient to provide on site provision and officers request that if members are minded to approve this application (subject to a S106 to secure an affordable housing contribution) that they grant delegated authority to officers to agree the amount and issue the decision on completion of the S106. Members will be updated if an agreement is reached on the amount before the date of the committee.
- 6.6.2 The fall-back position is the retention of the existing house and the implementation of the planning permission for 4 houses on the adjacent land which does not include an affordable housing contribution. This proposal although not providing affordable housing on site will provide a financial contribution to affordable housing and will also achieve a fat higher CIL levy compared to the previously approved scheme for 4 houses.

7.0 **CONCLUSION**

- 7.1 Residential accommodation is acceptable in principle in this location and it is considered that the benefits of the scheme outweigh any perceived adverse impacts. It will provide 32 homes that will help boost housing supply whilst meeting the needs of the ageing population and releasing under-occupied family homes to the market. The proposal would not result in a significant increase in traffic and would not adversely impact on highway safety or result in significant congestion along Wenlock Road or at nearby roads and junctions. Given that over half of the residents will have made a decision to give up car ownership on purchasing one of the apartments it is considered that the parking provision is adequate. If the development results in on street parking the S106 will ensure that funds are secured to introduce any appropriate waiting restrictions or Traffic Regulation Orders on Wenlock Road and/or any adjacent streets. A S106 will also secure an affordable housing contribution with the exact amount yet to be agreed.
- 7.2 Officers consider that the proposed scale, design and appearance of the development is acceptable and would have no adverse impact on the character and appearance of the area or adversely impact on residential amenity. The building to be demolished is not considered to be a non designated heritage asset

as it is one of many examples of early 20th century housing in the area. It is not a particularly exemplary example of this period or type of architecture and has been extended significantly and its historic form has been largely subsumed by modern extensions. Its removal is in any case permitted development. The proposal would also not result in the loss of any significant trees and will not be detrimental to the maintenance of the population of common pipistrelles at a favourable conservation status within their natural range subject to compliance with conditions and requiring an EPS licence from Natural England.

7.2.3 The proposal is therefore considered to accord with local plan policies, CS2, CS6, CS11, CS17, MD2 and MD13 and approval is recommended subject to a S106 to secure an affordable housing contribution with the agreement of the exact amount being delegated to officers.

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.

10. Background

Relevant Planning Policies

Central Government Guidance: NPPF

Core Strategy Policies: CS2, CS6, CS11 and CS17

SAMDev Policies: MD2 and MD13

RELEVANT PLANNING HISTORY:

16/03635/FUL Erection of 4 no. detached dwellings with 3 no. garage blocks GRANT 3rd November 2016

11. Additional Information

List of Background Papers: File 16/04590/FUL
Cabinet Member (Portfolio Holder): Cllr R. Macey
Local Member : Cllr Ted Clarke, Cllr Jane Mackenzie, Cllr Tony Parsons
Appendices APPENDIX 1 – Conditions APPENDIX 2 – EPS £ Tests

APPENDIX 1

Conditions

STANDARD CONDITION(S)

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

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

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.

CONDITION(S) THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES

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

- o the parking of vehicles of site operatives and visitors
- o loading and unloading of plant and materials
- o storage of plant and materials used in constructing the development
- o the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
- o wheel washing facilities
- o measures to control the emission of dust and dirt during construction
- o a scheme for recycling/disposing of waste resulting from demolition and construction works
- o a construction/operative/visitor Traffic Management and HGV Routing Plan

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

4. No development shall take place (including demolition, ground works and vegetation clearance) until a Japanese Knotweed management plan has been submitted to and approved in writing by the Local Planning Authority. Works shall be carried out strictly in accordance with the approved management plan.

Reason: To ensure the safe eradication of Japanese Knotweed from the site and to ensure that it does not spread

5. No development shall take place (including demolition, ground works and vegetation clearance) until either:

- a) a European Protected Species (EPS) Mitigation Licence with respect to bats has been obtained from Natural England and submitted to the Local Planning Authority; or

b) a statement from an experienced ecologist has been submitted in writing to the Local Planning Authority explaining why a licence is not required and setting out any additional mitigation measures required.

Reason: To ensure the protection of bats, which are European Protected Species.

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

6. All demolition, site clearance and development shall occur strictly in accordance with the Soft Strip Method Statement (Environmental Services, December 2016), unless an alternative Method Statement is submitted to and approved in writing by the Local Planning Authority. Works shall be overseen and undertaken, where appropriate, by a licensed, suitably qualified and experienced ecologist.

Reason: To ensure the protection of and enhancements for bats, which are European Protected Species.

7. All trees which are to be retained in accordance with the approved plan shall be protected in accordance with the submitted Tree Protection Plan Ian Keen Ltd drawing 9178/o2 and in accordance with BS 5837: 2012 'Trees in relation to Design, Demolition and Construction recommendations for tree protection'. The protective fence shall be erected prior to commencing any approved development related activities on site, including ground levelling, site preparation or construction. The fence shall be maintained throughout the duration of the development and be moved or removed only with the prior approval of the LPA.

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

8. No above ground works shall be commenced until full details of both hard and soft landscape works (in accordance with Shropshire Council Natural Environment Development Guidance Note 7 'Trees and Development') have been submitted to and approved in writing by the local planning authority. The landscape works shall be carried out in full compliance with the approved plan, schedule and timescales. Any trees or plants that, within a period of five years after planting, are removed, die or become, in the opinion of the Local Planning Authority, seriously damaged or defective, shall upon written notification from the local planning authority be replaced with others of species, size and number as originally approved, by the end of the first available planting season.

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

9. 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.

10. Prior to first occupation / use of the building, details for the provision of bird boxes shall be submitted to and approved in writing by the Local Planning Authority. The following boxes shall be erected on the site:

- A minimum of 4 artificial nests suitable for swifts (swift bricks or boxes).
- A minimum of 2 artificial nests of either integrated brick design or external box design, suitable for sparrows (32mm hole, terrace design).
- A minimum of 2 artificial nests of either integrated brick design or external box design, suitable for small birds (32mm hole, standard design).

The boxes shall be sited in at least 2m from the ground on a suitable tree or structure at a northerly or shaded east/west aspect (under eaves of building if possible) with a clear flight path, and thereafter retained for the lifetime of the development.

Reason: To ensure the provision of nesting opportunities for wild birds, in accordance with MD12, CS17 and section 118 of the NPPF.

11. No above ground works shall take place until details of the means of access, including the layout, construction and sightlines have been submitted to and approved by the Local Planning Authority. The agreed details shall be fully implemented before the development/use hereby approved is occupied/brought into use.

Reason: To ensure a satisfactory means of access to the highway.

12. No above ground work shall take place until details for the parking , turning, loading and unloading of vehicles have been submitted to and approved by the Local Planning. The approved scheme shall be laid out and surfaced prior to the first occupation of the development and thereafter be kept clear and maintained at all times for that purpose.

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

13. No above ground works shall take place until details of the measures to be taken to provide adequate access and facilities for disabled people have been submitted to and approved by the Local Planning Authority. The approved scheme shall be fully implemented before the development is occupied.

Reason: To ensure adequate facilities for the disabled, in accordance with adopted policy

14. No above ground works shall take place until a scheme of surface water drainage (including a proposed maintenance regime for any sustainable drainage system proposed, including details of who will take responsibility for future maintenance) 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 and maintained for the lifetime of the development.

Reason: To ensure satisfactory drainage of the site and to avoid flooding and to ensure that the drainage system remains in good working order throughout its lifetime.

15. 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.

16. Prior to the commencement of the relevant work details of all external windows and doors and any other external joinery (including the glazed walkway) 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 ensure that the external appearance of the development is satisfactory.

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

17. Any gates provided to close the proposed access shall be set a minimum distance of 5.5 metres from the carriageway edge and shall be made to open inwards only.

Reason: To ensure a satisfactory form of access is provided in the interests of highway safety.

18. No further windows or other openings shall be formed above ground floor level in the North East facing elevation.

Reason: To preserve the amenity and privacy of adjoining properties.

APPENDIX 2: EPS 3 Tests matrix

EUROPEAN PROTECTED SPECIES – Consideration of the three tests

Application reference number, site name and description:

16/04590/FUL
Land At 117/125 Wenlock Road Shrewsbury Shropshire
Erection of 32 retirement living apartments including communal facilities, landscaping and car parking; formation of vehiucalar access following demolition of existing property

Date:

30th January 2017

Officer:

Sophie Milburn
Assistant Biodiversity Officer
sophie.milburn@shropshire.gov.uk
Tel.: 01743 254765

Test 1:

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

The proposal will boost housing supply in a sustainable location providing 32

purpose built retirement homes that will meet the needs of a growing ageing population and subsequently release the supply of family homes to the market. Although not providing affordable housing on site the development will provide a financial contribution to affordable housing and will also achieve a far higher CIL levy compared to the previously approved scheme for 4 houses. The proposal will provide social and economic benefits for both present and future generations and will also provide bio-diversity enhancements of the site (including eradication of Japanese Knotweed) with no adverse environmental impacts.

Test 2:

Is there **'no satisfactory alternative?'**

The alternative is not to develop the site or alternatively not demolish the house and implement the previously approved scheme on part of the site. However this would not provide the boost to housing supply numbers in Shropshire, would not make effective use of the land and would not provide an affordable housing contribution or CIL. This would therefore not provide the social and economic benefits of the proposal and the ecological enhancements of the site including the eradication of Japanese Knotweed to be secured by conditions attached to this planning permission.

Test 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'?

A bat survey between July and August 2016 identified a common pipistrelle roost in the building, used in 2015 by a single or small number of bats.

EPS offences under Article 12 are likely to be committed by the development proposal, i.e. damage or destruction of an EPS breeding site or resting place and killing or injury of an EPS.

The likely offences cannot be avoided through mitigation measures secured through planning conditions as the building is going to be demolished.

The Soft Strip Method Statement (Environmental Services, December 2016) sets out the following mitigation, compensation and enhancement measures, which will form part of the licence application:

- 3 Schwegler bat boxes will be erected on a suitable mature tree on the site.
- Works will take place under the supervision of a licensed bat ecologist.
- The roof should be removed between December and March.
- Toolbox talks will be provided.
- A pre-commencement inspection will be carried out.
- Areas of the roof with potential roosting features will be soft stripped by hand.

- 'Once these parts of the roofs are stripped, the open loft areas will be left open to the elements overnight to let any bats present (if any) to disperse naturally. Once the soak period has passed a further inspection will take place and the complete demolition of the building can proceed immediately after this inspection.'
- Should a bat be discovered, it will be relocated by the licensed bat worker.
- 4 bat tubes will be 'installed in to the fabric of the [new] building in groups of two.'
- 'All external lighting during construction to be angled downwards and away from any bat sensitive areas.'
- 'All new lighting within areas of the gardens and on external walls to be kept as low as possible and on short PIR timers.'

I am satisfied that the proposed development will not be detrimental to the maintenance of the population of common pipistrelles at a favourable conservation status within their natural range, provided that the conditions set out in the response from Sophie Milburn to Jane Raymond (dated 30th January 2017) are included on the decision notice and are appropriately enforced. The conditions are:

- Working in accordance with protected species survey;
- European Protected Species Licence; and
- Lighting plan.