

## Development Management Report

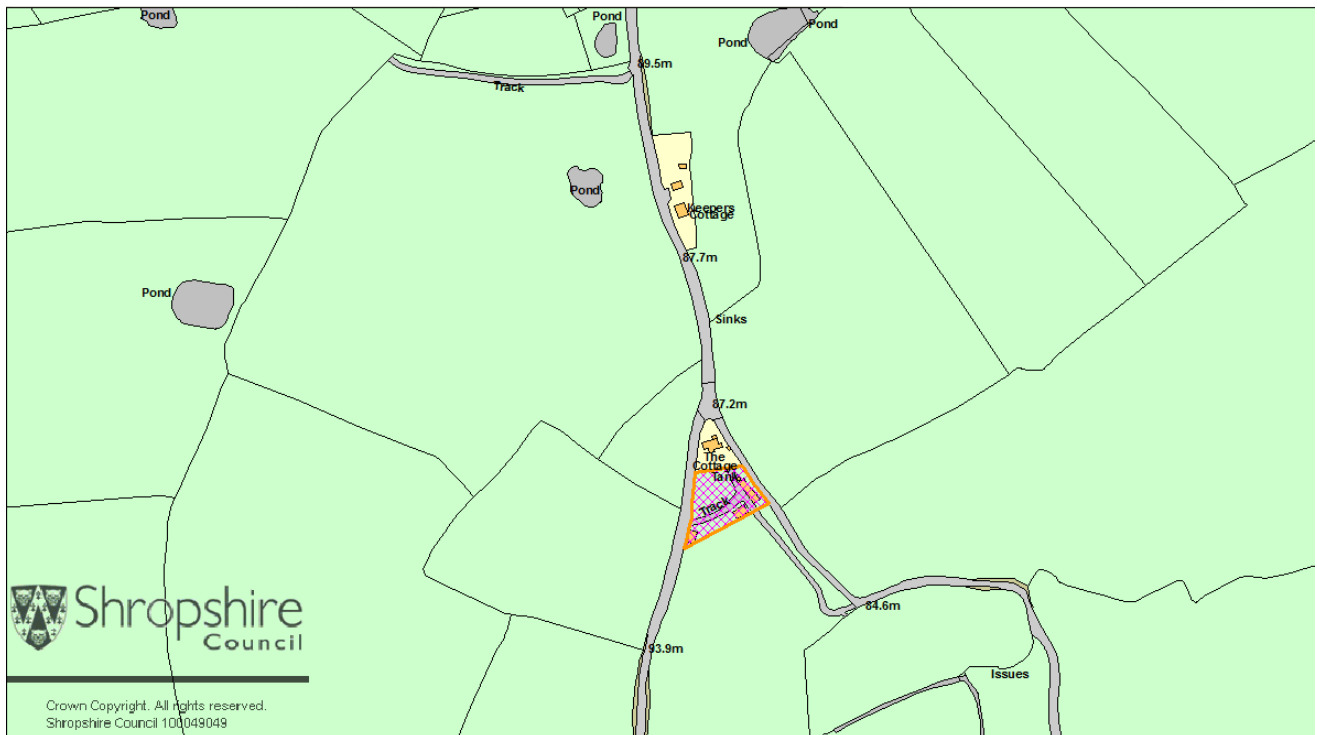
Responsible Officer: Tim Rogers

Email: [tim.rogers@shropshire.gov.uk](mailto:tim.rogers@shropshire.gov.uk) Tel: 01743 258773 Fax: 01743 252619

### Summary of Application

<b><u>Application Number:</u></b> 17/04613/FUL	<b><u>Parish:</u></b>	Ellesmere Rural
<b><u>Proposal:</u></b> Application under Section 73A of the Town and Country Planning Act for the erection of 1No dwelling; erection of detached storage building; change of use of agricultural land to domestic residential use; realignment of existing vehicular access track and installation of package treatment plant (amended scheme)		
<b><u>Site Address:</u></b> Barn To The South Of Lee Ellesmere Shropshire		
<b><u>Applicant:</u></b> Dukescroft Limited		
<b><u>Case Officer:</u></b> Oliver Thomas	<b><u>email:</u></b> <a href="mailto:planningdmc@shropshire.gov.uk">planningdmc@shropshire.gov.uk</a>	

**Grid Ref:** 340539 - 331997



**Recommendation:- Refuse**

## Recommended Reason for refusal:

1. The development site fails to be located within or adjacent to an area identified for additional sustainable residential development in accordance with Shropshire's strategic approach and the main aims of the National Planning Policy Framework. As a result, the site is considered as being within open-countryside, where strict controls are placed on all new development to ensure that only those that maintain and enhance the vitality and character will be supported, of which open market new build dwellings are not considered to improve the sustainability of rural communities. The development site would also fail to comply with the Settlement Policy as found at S8.2(iv) in that the development is neither an infill site or a conversion. Resultantly, the proposed development is contrary to local policies CS1 and CS5 of the Shropshire Core Strategy, MD1 and MD7a of the SAMDev Plan and to the overall aims of the National Planning Policy Framework.

**REPORT****1.0 THE PROPOSAL**

- 1.1 This application is seeking full, part retrospective planning permission for the erection of a single detached dwelling together with ancillary works.
- 1.2 This application is a resubmission of a recent refusal (ref: 17/03208/FUL) notice, refused due to it being considered as sited within open countryside that fails to comply with Lee's settlement policy and therefore unsustainable development. Additionally, the design and external appearance was considered as incongruous to the sites immediate setting and character. Resultantly, this application seeks to address the concerns raised over the proposals compliance with local policy, its scale and appearance whilst also showing the applicants willingness to supply a financial contribution in regards to affordable housing
- 1.3 The site has an extensive planning history. Originally 15/02591/PMBPA was submitted for the conversion from an agricultural building into a residential dwelling under permitted development rights (Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order, 2015), this application was considered lawful with prior approval granted for those concerning matters.
- 1.4 The applicant then submitted 16/03788/CPL to confirm that the replacement of external cladding was not considered as 'development' as defined under s55 of the Town and Country Planning Act 1990. This was considered lawful as the works did not materially affect the external appearance and confirmed that the works identified in the certificate application could not form part of a technical implementation of 15/02591/PMBPA having occurred.
- 1.5 Subsequently 17/00368/FUL was submitted, which included a number of amendments and alterations to 15/02591/PMPBA (similar to those plans submitted currently). This was refused on grounds of detrimentally impacting upon the agricultural character of the existing buildings, providing an overly domestic appearance that fails to both preserve and enhance the buildings character and

setting.

- 1.6 17/01566/FUL was then submitted under the applicants 'free-go' following the refusal of 17/00368/FUL. However, between the previous decision being issued and the submission of this application, substantial operational/construction works had occurred to the agricultural building, implementing 15/02591/PMBPA. Which, at the time of assessment were considered as being too substantial (structural works/complete removal of walls and roof) for the works to be considered as falling within the scope of conversion within the permitted development regulations (Class Q, Q1(i)). As a result of the works failing to now comply, the building could no longer rely on the permitted development provisions and was therefore considered unlawful as the resultant dwelling would be tantamount to a new dwelling construction – something the permitted development rights do not permit.

## **2.0 SITE LOCATION/DESCRIPTION**

- 2.1 The development site forms a parcel of agricultural land measuring some 0.16 ha, located to the south of Lee. The site gains access from the west, a classified highway, and adjoins a residential dwelling to the north that forms a triangular plot with highways to both the west and east. The access leads onto a track which serves the former agricultural barn on site, to the east and adjacent to the eastern boundary, with a number of other small outbuildings around the site previously providing different functions, but all now in a bad state of repair and dis-used. The site is bounded by mature hedgerow on all sides, other than its eastern which has seen the removal of its eastern boundary.

## **3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION**

- 3.1 Application requested to be referred, by the Local Member, to the relevant Planning Committee within 21 days of electronic notification of the application and agreed by the Service Manager with responsibility for Development Management in consultation with the committee chairman or vice chairman to be based on material planning reasons.

## **4.0 Community Representations**

### **4.1 - Consultee Comments**

#### **4.1.1 SC Ecology – No objections subject to conditions and informative.**

A 'Preliminary Ecological Assessment' was carried out on this site in April 2015.

None of the barns are considered to have any significant roost potential due to their structure of predominantly metal with some wood lap. The loft although visible was not easily accessible and the safety of the floor was unknown. 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.

**4.1.2 SC Drainage (SuDS) – No objection subject to informative.****4.1.3 SC Affordable Housing – No objections.**

The affordable housing contribution proforma accompanying the application indicated the correct level of contribution and/or on site affordable housing provisions and therefore satisfies the provisions of the SPD Type and Affordability.

**4.1.4 SC Regulatory Services – No objection subject to conditions.**

Having considered maps of the area it is noted that a historic tank is shown on the site. As a result it is proposed an appropriately worded condition be imposed to ensure that risks from land contamination are minimised.

**4.1.5 SC Highways Authority – No objection subject to conditions.**

The revisions to the proposed development to overcome the reason for refusal do not affect the proposal from the highway perspective and the comments forwarded in the Highway Advice note dated 06.09.2017 remain relevant for the current submission.

**4.1.5 SC Trees - No objections subject to conditions.**

The proposed development will not impact on any significant trees on or adjacent to the site. A tree protection plan and details have been provided and this demonstrated that trees of value can be retained and protected.

**4.1.6 Ellesmere Rural Parish Council – In support.**

The Parish Council STRONGLY supports this application on the following grounds:

The application complies with current policy.

The development site falls within the named settlement of Lee, being centrally placed on the through road, between the two name location signs situated near The Smithy (SY12 9AE) and the Chapel (SY12 9AF). The settlement of Lee features on historic maps (eg A map drawn by Christopher Saxton map William Cecil Lord Burghley. Secretary of State to Elizabeth I), is evident via postal addresses featuring both SY12 9AE and 9AF postcodes, house names, electoral roll, the opinions of local residents and Shropshire Council's mapping system. There are a number of listed properties in the hamlet including Lee Old Hall and a telephone kiosk.

The settlement of Lee is included in the Local Plan for development as follows:

"S8.2(iv): Tetchill, Lee and Whitemere Cluster

The settlements of Tetchill, Lee and Whitemere are a Community Cluster where development by infilling, groups of houses and conversions may be acceptable on suitable sites within the development boundary identified on the Policies Map. The housing guideline across the Cluster is around 20 dwellings. A single allocated site identified on the Policies Map will deliver around 10 dwellings in Tetchill. In Lee and Whitemere development will be limited to single infill plots and conversions."

The Parish Council Members are content that this plot constitutes an infill site as defined in the Local Plan; The site has an existing hedge boundary and buildings providing a footprint and making it suitable for redevelopment. The proposed development would not constitute development in open countryside as it is the site of a redundant agricultural building. The development of the site is regarded by the Council members and local residents as beneficial and desirable as it will result in improving the plot by tidying up the old stack yard.

The Parish Council approves the build design which is sympathetic to the original building. There is sufficient space for vehicles to be parked outside the proposed residential curtilage without causing any highway safety issues on the public highway. The development will not cause any undue noise and disturbance for the occupiers of the neighbouring property, The Cottage, which would be detrimental to their living conditions/residential amenity.

The proposals comply with CS4 being of a scale and design that is sympathetic to the character of the settlement and its environs. It corresponds with CS5 being sited in a named settlement on a plot adjacent to an existing property recognised as being in Lee (The Cottage, SY12 9AE) and is a replacement of a redundant agricultural building which, in the view of Parish Council Members, will make a very positive contribution to the character of the existing built form of the settlement and is entirely in keeping with the current characteristic/nature of the area. The Parish Council has noted the offer of an affordable housing contribution. The design corresponds with CS6 as the development will: 'protect, restore, conserve and enhance the natural built and historic environment and is appropriate in scale, density and pattern and design taking into account the local context and character....' and will have no adverse impact on the local landscape. The Parish Council is entirely satisfied with the orientation, landscaping and design of the proposals.

The application meets strategic objectives 3, 4, 5, 10 and 11 of the Core Strategy.

The Parish Council unanimously and strongly supports this application.

#### **4.1.7 Cllr Brian Williams (Local Ward Member for The Meres)**

"I support this application and if it is the intention of planning offices to refuse once again, I would wish the application be determined by Committee for the reasons which the Parish Council have set out and with which I agree. There are material community reasons which must be given more weight than has been accepted by officers in previous applications on this site and which I have conveyed to Planning Services Manager (Mr Ian Kilby) in previous correspondence."

## **4.2 - Public Comments**

### **4.2.1 One public letter of support received, with its material considerations being summarised as follows;**

- Proposed dwelling will provide visual enhancements to the immediate and wider setting/context;
- Neighbouring residential units have always been considered as being within the settlement confines.

## **5.0 THE MAIN ISSUES**

### **Principle of development**

### **Siting, scale and design of structure**

### **Other matters**

## **6.0 OFFICER APPRAISAL**

### **6.1 Principle of development**

6.1.1 Under Section 38(6) of the Planning and Compulsory Purchase Act 2004, all planning applications must be determined in accordance with the adopted development plan, unless material considerations indicate otherwise. Since the adoption of the Shropshire Core Strategy (March 2011) the National Planning Policy Framework (NPPF) has been published and is a material planning consideration, which is given significant weight in any determination process.

6.1.2 Paragraph 14 of the NPPF states that for decision making, this means;

*“...approving development proposals that accord with the development plan without delay; and where the development is absent, silent or relevant policies are out of date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework taken as a whole.”*

6.1.3 Shropshire Councils adopted Development Plan consists of both the Core Strategy and the Site Allocations and Management of Development Plan (SAMDev Plan). Following their adoption the Council are satisfied that it is able to demonstrate a deliverable 5 year housing land supply – currently at 6.04 years’ - to meet the housing need through the sites identified within the SAMDev Plan and through the provision of additional housing across the county on those sites considered sustainable under Core Strategy Policies (CS1).

6.1.4 In accordance with Shropshire’s strategic approach, all new development will be directed to those areas capable of additional sustainable growth, which CS1 and MD1 separate into either Shrewsbury (CS2), the Market Towns and Key Centres (CS3) and Community Hubs and Clusters (CS4) with all other areas considered as being rural/open countryside (CS5) where only socially/economic beneficial

housing will be approved.

6.1.5 The development site forms an agricultural field, with a former Dutch Barn located adjacent to the eastern boundary and various other disused outbuildings around the site. To the north, the boundary is adjoined by a residential curtilage, with this plot occupying a 'fork' in the highway, in all other directions is agricultural land for some few hundred metres before the next residential property – some 240m south. Further beyond the adjoining northern property, some 425m, there is a mid-density cluster of housing (approx. 14 properties), surrounding a road junction and having a close-knit relationship: this cluster of development forms the settlement of Lee, as identified on Ordnance Survey maps.

6.1.6 Lee has been identified within the SAMDev Plan as a Community Cluster, with it being considered capable of supplying additional sustainable development throughout the plan period. It is identified alongside both Tetchill and Whitemere, which at S8.2(iv) of the SAMDev Plan states:

*“...a Community Cluster where development by infilling, groups of houses and conversion may be acceptable on suitable sites within the development boundary identified on the Policies Map. The housing guideline across the Cluster is around 20 dwellings. A single allocated site identified on the Policies Map will deliver around 10 dwellings in Tetchill. In Lee and Whitemere development will be limited to single infill plots and conversion”.*

6.1.7 Although Lee has been identified for additional development, it has been identified without a development boundary, as such each development site is determined on the existing built form of that settlement and the relationship that the site has with the existing pattern and built form. As provided within the submitted Design and Access Statement, there are currently 21 registered residential properties, 14 of which are nucleated some 450m further north. The remaining registered properties either form long established farmsteads (Lee New Farm and Lee Bridges) which by nature are isolated away from the settlement core, with those other properties being traditional and historic dwellings as shown on 1874 mapping, or constructed in association with the existing farmsteads as housing rural workers (Lee House and Rydal).

6.1.8 Whilst it is readily acknowledged that all properties within Lee and its hinterlands will fall under the postal address of Lee, this is not to say that they form part of the settlement for planning purposes. The allocation of postal addresses is purely for administrative purposes. Instead, the characterisation of Lee is determined on the existing built form and pattern, of which clearly shows a relatively tight knit cluster of housing surrounding the highway junction, further north of the development site. It is acknowledged that there are residential properties outside of this cluster, but for determining a settlements edge, the mean pattern of built form must be taken.

6.1.9 Shropshire is an inherently rural county, if postal addresses were to indicate settlement boundaries, there would be very little open countryside remaining. Furthermore, the applicant has submitted their own interpretation of the settlement boundary, placing its extent at the village signs – north and south; however, it is readily recognised that village signs do not form a settlements extent, and are also located for administration/historic purposes only – entirely separate from

Shropshire's Local Development Framework and its spatial and strategic approach.

- 6.1.10 Resultantly, due to the sites semi-isolation from the obvious settlement core and separation from the close-knit development by large expanses of undeveloped agricultural land, the development site cannot be considered as being within the settlement confines. Which in accordance with CS4, “... *countryside between the settlements is not part of the cluster*” and “...*windfall development adjoining the village is not acceptable...*”, therefore any proposed development must be demonstrably part of an identified settlement.
- 6.1.11 Notwithstanding the above, should the development site be considered as being within the settlement of Lee, in accordance with S8.2(iv) only those developments which represent infilling, groups of houses and conversions will be acceptable. It is the Officers opinion that the proposed constitutes none of these, regardless of the Parish Councils comments to the contrary. Readily acknowledging that there is no technical definition of ‘infill’ within the planning system (unsure as to where the Parish Council have defined infill in the Local Plan), a general assumption of infill development is where one would expect to see residential housing, typically between two residential curtilages and within an urbanised area – the proposed development site does not constitute infill as it fails on all criteria.
- 6.1.12 MD3 of the SAMDev Plan does support the delivery of housing outside of those identified settlements; however, only in situations where the settlement housing guideline appears unlikely to be met. The councils delivery and monitoring evidence base (Five Year Housing Land Supply Statement: September 2017) provides that Lee (and Tetchill and Whitemere) has had 5 completions and 14 sites having deliverable permissions, totalling 19. As this figure is close to the settlement guideline (20) with a number of years left within the plan period (2006-2026), the provisions of MD3 fail to be enacted and therefore relied upon at this stage in the plan. In addition, the development plan as a whole is on track to deliver the prescribed level of additional housing throughout the plan period.
- 6.1.13 Whilst the proposal may see the removal of redundant buildings and the erection of a new dwelling, it must be clearly understood that due to the site lying within an area of open countryside, only those proposals which support the conversion of historic/heritage assets and those dwelling types for local persons or rural workers will be supported. The re-development of a dis-used agricultural site is not an exception site, with the site able to provide a multitude of uses, which would enhance and support its rural setting, before being considered for residential development.
- 6.1.14 Unlike 17/03208/FUL, this application is accompanied with an Affordable Housing Contribution proforma, highlighting that the applicant is willing to supply a financial contribution to support the provision of affordable housing within the local area. Whilst this financial contribution is a material consideration in accordance with CS11, the recently published Written Ministerial Statement (November 2014) exempted small housing scheme from supplying contributions and itself is a material consideration in the determination. The WMS does not outweigh the adopted development plan and is to be used only when proposals conflict with the development plan. It is to be balanced against the plan and the LPA's evidence base, resultantly the decision maker has discretion in applying their judgement as



to where the balance should lie.

- 6.1.15 The affordable housing contribution is welcomed and does add favour to the balance of judgement. However, it alone does not constitute an approval and the adverse impacts arisen from its unsustainability must be balanced, with the officer cautious that a financial contribution, alone, shifting the balance could be perceived as being in breach of the fundamental principle that planning permission may not be bought. On this occasion, the negatives arisen from the sites open countryside location and its failure to comply with Lee's settlement policy amount to too severe adverse impacts and the balance remains negative.
- 6.1.16 Acknowledging the NPPF's presumption in favour of sustainable development, site specific material considerations can outweigh a proposals non-compliance with the Local Plan (para 12 NPPF). However, the applicant has not evidenced any substantially beneficial material considerations that would provide this. Instead, only those benefits which are applicable regardless of location and development type are provided, with these not being substantial enough to provide the outweighing – economic contribution due to jobs created in the construction phase, supporting local facilities and services.
- 6.1.17 As a result of the development site being in an area of open-countryside, new un-encumbered market housing is resisted. There are minimal substantive material benefits evidenced as a result of the proposal, only those which are apparent regardless of location and a financial contribution. The proposal is therefore contrary to Shropshire's strategic approach and to the overall aims of the NPPF's sustainable development, failing to have its principle of development established.

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

- 6.2.1 Policy CS6 of the Shropshire Core Strategy: '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. The development should also safeguard against both residential and local amenity, ensuring that sustainable design and construction principles have been incorporated throughout.
- 6.2.2 Further to Policy CS6, SAMDev MD2: 'Sustainable Design' requires developments to achieve local aspirations for design in terms of visual appearance and functionality. Proposals need to respond appropriately to the form and layout of the existing development including a mixture of uses, streetscapes plot sizes, scale and density that reflect locally characteristic architectural design and details which enhance, respect and restore the local context and character.
- 6.2.3 Section 7 of the National Planning Policy Framework 'Requiring good design' attaches great importance to the design of the built environment, ensuring that developments respond to the local character, reflecting the local surrounding and materials whilst being visually attractive.
- 6.2.4 The existing site forms a parcel of agricultural land, with a large Dutch barn along the eastern boundary, with a number of various buildings within its curtilage, all of which have no visual or historic merit, therefore not worthy of retention under CS5

and MD7a. This application is part-retrospective, in that the building works already occurred on site – reconstruction and replacement of groundworks, structural framework and external works – are tantamount to a new structure, yet still of similar appearance and scale.

- 6.2.5 The submitted plans show the creation of a moderately large two storey dwelling – approx. 171sqm, retaining much of the agricultural appearance of the Dutch barn, yet incorporating domestic features for amenity purposes – fenestration and chimney flues. In addition a number of the existing buildings are to be removed, with additional ones built in replacement – general garden/bin store by access point. The proposal is to include a large residential curtilage, with landscaping and the laying of a gravel driveway and parking/turning area. This current scheme differs from 17/03208/FUL in that the submitted plans show a simplification of the site, as the external balcony, staircase and attached flat roofed garage have been omitted.
- 6.2.6 Despite the re-construction works having already occurred, the proposed dwelling is of the same footprint and scale to the existing, which provides a large 4 bedroomed dwelling. The external appearance has altered considerably since the previous 15/02591/PMBPA, in which it was determined that the proposal would have minimal intervention with no substantial alterations. The submitted plans show the inclusion of fenestration and openings that mimic a former agricultural building; however, it is not considered that these features truly replicate the application buildings former use – large full length windows and hanging roller doors/shutters.
- 6.2.7 Unlike those previous applications, this current one sees the removal of a number of outbuildings, which were previously considered as over-domestication. Instead, the submitted site plans shows the removal of a number of outbuildings, with only a single outbuilding being retained and improved: an outbuilding located on the western boundary, close to the upgraded access point and used as a ‘garden store’. The previously resisted concrete attached garage has been completely omitted from the proposal, with this space now providing additional parking area.
- 6.2.8 Although there remains concerns with its external appearance and character, it has improved greatly on those previous applications and now provides a much simpler vernacular that is able to better reflect the buildings former use. So much so, that a refusal on design grounds can no longer be upheld.

### **6.3 Other matters**

#### **6.3.1 - Drainage issues**

Shropshire Core Strategy Policy CS18: ‘Sustainable Water Management’ states that developments should integrate measures for sustainable water management to reduce flood risk and avoid an adverse impact on water quality and quantity within Shropshire. Policy MD2 ‘Sustainable Design’ of the SAMDev Plan ensures that the Incorporate Sustainable Drainage techniques, in accordance with Policy CS18, as an integral part of design and apply the requirements of the SuDS handbook as set out in the Local Flood Risk Management Strategy. The application form states that foul sewage water will be directed into a package treatment plant, with its treated water discharging into the nearby watercourse, with the surface water will be

discharged into via existing connections. This arrangement is considered acceptable in ensuring the water quality and preventing any surface water flooding or displacement.

### 6.3.2 - Highways and access issues

Core Strategy CS6 and SAMDev MD2 both require that proposals should be located in accessible locations, that safe and accessible to all, if likely to generate significant levels of traffic. Developments must be designed in such a way so as to not result in any adverse impacts on the local infrastructure, being sited in locations where there are opportunities for other modes of transport (walking, public transport, cycling) – resulting in the reduction in private vehicle based travel. Sufficient and adequate provisions should be provided that do not negatively impact on the local road network, through ample off-street parking and having no impact upon other highway users and their safety.

The proposal sees the retention of an existing field access being utilised for residential purposes, with the necessary improvements made to ensure satisfactory domestic standards. On-site, the driveway will be re-routed to provide a clear distinct residential garden space, being laid in gravel and providing adequate parking and turning areas. The concerns over the access apron and opening of the gate noted at 17/03208/FUL have now been satisfactorily addressed and there are no concerns from a highways perspective.

### 6.3.3 - Residential curtilage

The development site has planning history for its residential curtilage, which was previously refused on two occasions on the basis that it would constitute over domestication of the site, significantly detracting from the sites former agricultural use. However, recognising the sites location, boundary screening and proposed landscaping measures, the Officer is satisfied that the proposed residential curtilage is not of a detrimental scale. Measures can be incorporated to ensure the retention of an agricultural appearance – removal of permitted development rights, further hard and soft landscaping mitigation – so much so, that the a refusal cannot be upheld on domestication of the site.

### 6.3.4 - Visual impact and landscaping

The historical and former use of the site is agricultural, with those existing buildings and the on-site layout having a function pertinent to the operations occurring – agricultural machinery and equipment storage. At the time of application, the development site (0.16ha) is no longer in operational agricultural use and is currently being used in association with the construction works that have occurred prior to the submission of application. However, as its last lawful use was agricultural, the proposal will be determined accordingly. By nature, the creation of a residential dwelling and curtilage will significantly alter the appearance of the site and have visual impact within its immediate setting – the introduction of domestic paraphernalia and a building being occupied for residential purposes. The applicant has included measures to mitigate this impact, through the inclusion of garages and domestic outbuilding to ensure that the resultant impact will not be detrimental to

the local amenities and setting of the surrounding area. Whilst the proposed residential curtilage is large, if the applicant were to retain a small section of agricultural land, this would have an unmanageable and un-operational use, which over time would be more harmful to the surroundings than changing the use entirely.

## **7.0 Conclusion**

7.1 The proposal to erect an open-market dwelling, with associated ancillary works, within an agricultural setting and of an agricultural appearance, (other than more minor detail and ancillary development), is not considered to be acceptable in accordance with both local and national policies.

7.1 The development site fails to be sited within an identified location that is able to support additional, sustainable growth in accordance with Shropshire's strategic approach and the overall aims of the NPPF. The site is too far separated from Lee's settlement core, with large expanses of agricultural land interspersing for some 400m. Furthermore, the proposed site does not conform to the existing pattern of development and fails to be demonstrably part of the identified Community Cluster. As such, the site is considered as being within open-countryside, where new open market dwelling is strictly controlled to ensure only those which support and enhance the vitality and character of the countryside. The proposed new build dwelling is contrary to policies CS5, MD7a and Section 6 of the NPPF. Furthermore, given the nature and extent of the works carried out to the structure to date, it is no longer capable of conversion under permitted development and would not meet the requirements of the SAMDev settlement policy relating to infill or conversions.

## **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:**

National Planning Policy Framework

#### **Core Strategy and Saved Policies:**

CS1 - Strategic Approach

CS4 - Community Hubs and Community Clusters

CS5 - Countryside and Greenbelt

CS6 - Sustainable Design and Development Principles

CS11 - Type and Affordability of housing

CS17 - Environmental Networks

CS18 - Sustainable Water Management

MD1 - Scale and Distribution of Development

MD2 - Sustainable Design

MD3 - Managing Housing Development

MD7A - Managing Housing Development in the MD7A - Managing Housing Development in the Countryside

MD12 - Natural Environment  
 MD14 - Waste Management Facilities  
 SPD Type and Affordability of Housing  
Relevant planning history:

15/02591/PMBPA Application for prior approval under Part 3, Class Q of the Town & Country Planning (General Permitted Development) (England) Order 2015 for the change of use from agricultural to residential use PNR 14th September 2015

16/03788/CPL Certificate of Lawful Development for the replacement of existing infill wall panels with new infill wall panels with the external appearance and dimensions remaining unaffected LA 31st October 2016

17/00368/FUL Change of use of agricultural land to residential use, construction of two bay carport/garage, construction of open sided balcony, realignment of existing track, reuse of outbuilding as garden store, installation of additional cladding, external flue and sliding shutter on existing barn, all to be used in connection with permitted barn conversion (15/02591/PMBPA) REFUSE 24th March 2017

17/01566/FUL Change of use of agricultural land to residential use, construction of two bay carport/garage, realignment of existing track, reuse of outbuilding as garden store, installation of additional cladding and external flue on existing barn, all to be used in connection with permitted barn conversion REFUSE 20th June 2017

17/03208/FUL Application under Section 73A of the Town and Country Planning Act for the erection of one 2-storey dwelling with 2-bay part open fronted garage; erection of detached storage building; change of use of agricultural land to domestic residential use; formation of vehicular access track REFUSE 11th September 2017

17/04613/FUL Application under Section 73A of the Town and Country Planning Act for the erection of 1No dwelling; erection of detached storage building; change of use of agricultural land to domestic residential use; realignment of existing vehicular access track and installation of package treatment plant (amended scheme) PDE

17/04613/FUL Application under Section 73A of the Town and Country Planning Act for the erection of 1No dwelling; erection of detached storage building; change of use of agricultural land to domestic residential use; realignment of existing vehicular access track and installation of package treatment plant (amended scheme) PDE

## 11. ADDITIONAL INFORMATION

[View details online:](#)

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