

Development Management Report

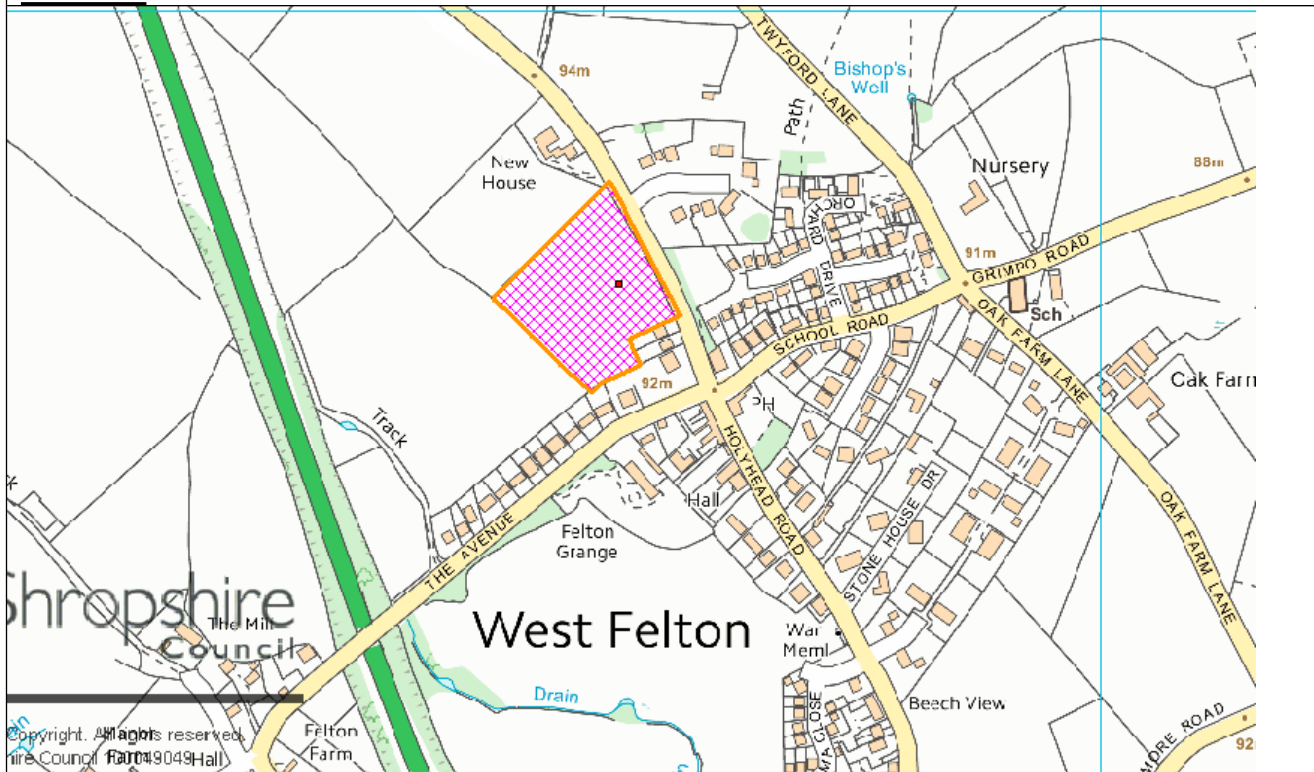
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Summary of Application

Application Number: 17/05626/VAR	Parish: West Felton
Proposal: Variation of condition number 7 attached to Planning Permission 14/00133/OUT dated 1st October 2014 (won on appeal) to allow amendments to the access arrangements	
Site Address: Proposed Residential Development Land At The Cross West Felton Shropshire	
Applicant: Mrs K Price	
Case Officer: Karen Townend	email: planningdmne@shropshire.gov.uk

Grid Ref: 334572 - 325759



RECOMMENDATION: That, subject to the amendments sought by the Council Highway Consultant that delegated powers be granted to the Head of Planning Services to approve the variation of condition 7 and the condition re-worded to reflect the plans submitted with this application.

REPORT

1.0 THE PROPOSAL

- 1.1 This application seeks consent to vary the wording of condition 7 of the outline planning consent, granted on appeal. Condition 7 currently states:
“Access to the site shall be provided generally in accordance with the access scheme shown on Drawing No.WF-AA-400 (July 2014) prepared by Woodsyde Developments. No development shall take place until a scheme showing full engineering details of the access has been submitted to and approved in writing by the local planning authority. The scheme shall include alterations to Holyhead Road to provide a footway of width between 1.2m (min.) and 2.0m (max.) and a carriageway width of 5.5m (min.) between the site and the junction of Holyhead Road with The Avenue, in accordance with the above drawing. No dwelling shall be occupied until the access scheme has been fully implemented to the satisfaction of the local planning authority.”
- 1.2 The proposal is to remove reference to the drawing numbered in the condition and also to alter the minimum width of the footway. The application has been submitted as, during the consideration of the reserved matters application (16/05336/REM), the position of a TPO'd tree outside of the application site was considered to be in a location which would mean that the above condition could not be complied with, without the potential loss of the tree. Concerns were also raised by residents about land ownership.
- 1.3 The proposal is now to provide a shorter section of footway on the edge of the application site and provide a wider footway on the opposite side of the highway. The details are provided later in the report along with the consideration of highway and pedestrian safety.

2.0 SITE LOCATION/DESCRIPTION

- 2.1 The site is 1.53 hectares in area and is currently in agricultural use. It is located on the edge of the existing village between the built up village and a single detached house and outbuildings. Opposite the site is the Dovaston Court development, which is a group of detached houses off a single cul-de-sac, and the open space between Nursery Close and Holyhead Road. Nursery Close is a cul-de-sac off Orchard Drive and is detached and semi detached houses in smaller plots than those on Dovaston Court.
- 2.2 The field is set at a lower ground level than the adjacent road and is enclosed with hedging. There is a grassed verge between the hedge and the road but no footpath on this side of the road.
- 2.3 West Felton is a village which was previously identified in the Oswestry Borough Local Plan as a Larger Settlement where new development would be concentrated. It currently has a school, shop, Chapel, hall and public house. The housing is a mix

of the original village centred around The Cross and the small area on the opposite side of the new A5 and more recent developments. The housing does not follow any set form, design or appearance, however it is in the majority two storey.

- 2.4 However, the village is now considered to be open countryside for planning purposes as West Felton is not identified as a settlement within either the Core Strategy or SAMDev.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

- 3.1 The Chair and Vice Chair of the North Planning Committee consider that this application should be considered by committee as it is linked to the reserved matters application, 16/05336/REM, which is being considered by committee.

4.0 COMMUNITY REPRESENTATIONS

4.1 Consultee Comments

- 4.1.1 **West Felton Parish Council** – Following our recent meeting of 12th December, West Felton Parish Council strongly objects to the proposal to vary condition 7 for to the above proposed Development.

Our grounds for objection are as follows:

1. Planning Policy: That the planning Inspector was clear in his decision notice that a Grampian condition (Condition 7) be set to build a footpath on the Western side of Holyhead Road. The appeal decision says nothing about alternative locations. We object to the applicant circumventing this condition that has been set by the planning inspector and should not be varied.

We bring to your notice the following paragraphs from the Planning Inspectors report which make this clear:

1. 'The appeal is allowed and the outline planning permission is granted for residential development, comprising 25 dwellings, estate roads and public open space in accordance with the terms of the application, Ref 14/00133/OUT dated January 2014, and the plans submitted with it, subject to the conditions in the attached schedule'

3. Whilst the application was being considered by the council, the appellant submitted an access Arrangement Plan (Dwg.No. WF-AA-400). This shows the details of the access to Holyhead Road. It also indicates the alignment of the proposed footpath along the western side of Holyhead Road from the northern extremity of the sites frontage and extending to the junction of that road with The Avenue.

We assume that this modification is submitted under Section 73 of the Town and Country planning Act 1990, however we believe the following to apply in this case: *'New issues may arise after planning permission has been granted, which require modification of the approved proposals. Where these modifications are fundamental or substantial, a new planning application under section 70 of the Town and Country Planning Act 1990 will need to be submitted'* (Department for Communities and Local Government, Planning Practice Guidance and the Planning System March 2014)

West Felton Parish Council considers the access proposals to this proposed development to be both fundamental and substantial to the development - so important the Planning Inspector conditioned them separately. The correct process

should therefore be that the whole application be resubmitted Under Section 70 and evaluated against the current local plan – SAMDev.

2. Highway Safety: You will be aware that this application seeks to narrow the carriageway width of Holyhead Road from 6.3 to 5.5 metres as per the previous application 14/00133/OUT. This reduction in carriageway width is necessary to widen the adjoining footpath on the eastern side of Holyhead Road. The guidance documents that are relevant to this application are the national DOT 'Manual for Streets' (which replaced DB32 Places, Streets and Movement) and Shropshire Councils own document for highway construction titled 'Specification for Residential/Industrial Estate Roads'.

There have been no studies of either traffic type or density to inform this application despite the applicant having nearly 4 years to provide them.

This is a busy road carrying numerous HGV's per day, extensive farm traffic (Pradoe Hall Farm operates near 24 hours a day at peak times) in and out of West Felton together with residential traffic. The road also serves a half hour bus route provided by Arriva.

It is only just wide enough currently, at 6.3 metres when two large vehicles meet. (Appendix 1). During darkness hours the hazards associated with large vehicles negotiating each other and in close proximity to pedestrians is heightened.

The Parish Council is very concerned about this point as previous experience demonstrates during the determination of the outline planning permission for 14/00133/OUT. Shropshire Council Highways originally objected to the development as there were safety issues associated with the current footpath, but then approved the link footpath without taking any background assessments into consideration.

This application was unanimously refused at the North Area Planning Committee in September 2014 and subsequently a number of individuals have sought to establish answers to why Shropshire Council Highways Dept. supported this revised scheme despite many complaints relating to both vehicular and pedestrian safety.

Shropshire Council Highways have repeatedly avoided answering questions put to them by the Parish Council and a number of individual objectors relating to the safety aspects of a 5.5 metre carriageway/ narrow footpath in this location, which strongly suggests that the Parish Councils concerns were valid.

In reality nothing has changed with this variation, the carriageway width is to be reduced to 5.5 metres with a substandard narrow footpath of some 36 metres long now being provided. This is an unacceptable hazard for which a detailed Risk Assessment informed by traffic surveys over a period of time should occur to capture the full picture of road use.

Although Holyhead Road is not a classified A or B road it can be best described as a Residential Distributor Road, although this is an arbitrary classification, as in reality it functions as a B Class road carrying through traffic to Queens Head and in the alternative direction. Shropshire Councils 'Specification for

Residential/Industrial Estate Roads' defines the width of a Residential Distributor Road as 6.1 to 7.3 metres (Appendix 2). Furthermore the DOT Manual for Streets (2007) gives the minimum carriageway width for a bus route to be 6.0 metres. (Appendix 3) The former publication DB32 Places, Streets and Movement also details the carriageway width for buses at 6.0 metres wide. (Appendix 4).

A simple question needs to be asked – How do two buses passing each other measuring 3.0 metres wide fit on a carriageway of 5.5 metres? This often happens at this very spot as would have been established had a survey been carried out.

A safety factor that is very relevant to this case is the curvature in the road (travelling North) and the proximity of residential parking between the Village Hall and the shop. Visibility is poor from the village Hall looking northwards and drivers of large vehicles already need to assess if the road is clear for a distance passed the junction with The Avenue.

If this road is narrowed this distance needed for 'clear view' will increase to in excess of 220 metres which is impossible to do – THIS IS A SAFETY ISSUE, once a large vehicle is committed, it will have nowhere to go if it needs to pass oncoming large vehicles as there are no provisions for passing places.

Officers and members should be reminded that there is a notorious 5.5 metre wide carriageway at Ruyton- XI-Towns which causes all sort of issues for large vehicles passing each other for which Shropshire Council does not have a solution other than to promote the North West Relief Road around Shrewsbury. (Appendix 5).

To summarise, the proposal has not been informed by any surveys to inform a decision, the reduced width of the road does not comply to either national or local standards for road type and function, the proposed width of the road does not comply with the recommended carriageway width for a bus route. When combined with residential parking on Holyhead Road, the risk of an accident is heightened due to poor forward visibility.

3. Footpath Safety: For a distance of around 36 metres the width of the footpath is below 1.8 metres wide tapering down to 1.1 metres at its narrowest point. (not 1.2 as advised by the applicant) This is unacceptable as it places pedestrians in very close proximity to vehicles and encourages people to walk on the carriageway. During the hours of darkness this hazard is heightened.

Shropshire Council publication, 'Specification for Residential/Industrial Estate Roads' recommends a footpath width of 1.8 metres on both sides of the road but this is on the assumption that the carriageway measures between 6.1 to 7.3 metres. 'Manual for Streets' recommends a minimum width of 2.0 metres.

Any risk assessment would show that where the carriageway width cannot be achieved the footpath width would be required to be wider to keep pedestrians away from traffic. The scenario of two large vehicles trying to pass each other together with pedestrians close to the footpath edge is an accident waiting to happen.

Roads and footpaths should be designed to avoid risk where possible and cater for

those members of society who may have impaired road judgment i.e. the very young and the elderly - two groups of people specifically catered for by this proposed development.

This variation significantly increases risk to those groups by firstly making them cross a busy road to gain access to a footpath and then placing them in close proximity to traffic approaching them from the rear so they have little warning and time to get out of the way - this is totally unacceptable on safety grounds, which always come first when determining the merits of an application as they have potential to cause harm.

4. Impact on Heritage and Trees: Adjacent to the proposed footpath widening is a sandstone wall of heritage value, behind which is located a row of mature Oak trees (circa 300 years old) Widening the footpath and altering the drainage gulley's will involve excavations which are well within the RPA of the trees. No tree reports have been provided by the applicant and similarly no engineering drawings have been provided to assess any impact to both the trees and the wall. This must be provided before a decision is made.

To conclude, West Felton Parish Council strongly objects to this proposal, on the following material grounds:

1. The planning rules have been wrongly interpreted; this proposal to vary condition 7 is not in accordance with National Planning Policy. Under Section 70 of the Town & Country Planning Act 1990 'fundamental or substantial modifications' should result in the whole application being re-submitted for approval.
2. The justification for Determining under Section 70 is provided by the Specific Grampian Condition (condition 7) set out by the Planning Inspector as the original footpath scheme was fundamental to the scheme going ahead. Section 73 should only be used for minor modifications.
3. The reduced width of the road does not comply with either national or local standards for the road classification or that recommended for a bus route. Evidence has been provided of a similar road width where there are real safety issues known to Shropshire Council.
4. The footpath provided by this variation does not comply with either national or local standards for the reasons stated. The length of reduced width (below the recommended) represents a real safety issue for pedestrians.
5. There has been no evidence provided to support the application in the form of vehicle traffic surveys (type and quantity over a period of time)
6. There has been no study on the impact of parked vehicles on

Holyhead Road for forward visibility.

7. Tree surveys and engineering drawings – have not been provided to assess the impact on the trees and heritage features.

West Felton Parish Council therefore requests that immediate action is taken to:

- Re- determine the whole application under Section 70 of the Town and Country Planning Act 1990.

- Any further decisions relating to this application be put before the North Area Planning Committee for determination.

Appendix 1 – Examples of farm traffic which use the road on a daily basis (24 hours use during planting and harvest periods)



Appendix 2 - Residential Distributor Road – ‘Specification for Residential/Industrial Estate Roads’ Shropshire Council

2.3.2 Residential Distributor Road

Technical Details

Residential distributor roads are through routes which distribute traffic within large residential areas where 300 or more dwellings are being served.

This type of road is a through traffic route and frontage access will not normally be permitted. These roads should be designed for a maximum vehicle speed of 30 mph (48 kph).

The basic requirements for a residential distributor road are as follows:

- (i) Carriageway Width:** 6.1 metres - 7.3 metres
- (ii) Junction Radii:** 15 metres minimum
- (iii) Centre Line Radius:** 60 metres
- (iv) Kerbs:** 125mm kerb face height
Pedestrian crossings are required at all road junctions.
- (v) Footways and Verges:** Footways are normally 1.8 metres wide, on both sides of the road. Where highway verges are provided, consideration should be given to the future maintenance of the grassed areas, which must be kept free of obstructions likely to impede easy access to the services beneath. Wherever possible verges should be sited behind the footway, rather than adjacent to the carriageway.

These provide an unpleasant cycling experience due to the unevenness of the surface. They can prove to be particularly hazardous in the wet and when cyclists are turning, especially when giving hand signals at the same time. The conditions for cyclists on such surfaces can be improved if the line they usually follow is locally paved using larger slabs to provide a smoother ride.

6.5 Public transport

6.5.1 This section concentrates on bus-based public transport as this is the most likely mode to be used for serving residential areas. *Inclusive Mobility* gives detailed guidance on accessible bus stop layout and design, signing, lighting, and design of accessible bus (and rail) stations and interchanges.

Public transport vehicles

6.5.2 Purpose-built buses, from ‘hoppers’ to double-deckers, vary in length and height, but width is relatively fixed (Fig. 6.16).

6.5.3 Streets currently or likely to be used by public transport should be identified in the design process, working in partnership with public transport operators.

6.5.4 Bus routes and stops should form key elements of the walkable neighbourhood. Designers and local authorities should try to ensure that development densities will be high enough to support a good level of service without long-term subsidy.

where delays could occur.

6.5.7 Using a residential street as a bus route need not require restrictions on direct vehicular access to housing. Detailed requirements for streets designated as bus routes can be determined in consultation with local public transport operators. Streets on bus routes should not generally be less than 6.0 m wide (although this could be reduced on short sections with good inter-visibility between opposing flows). The presence and arrangement of on-street parking, and the manner of its provision, will affect width requirements.

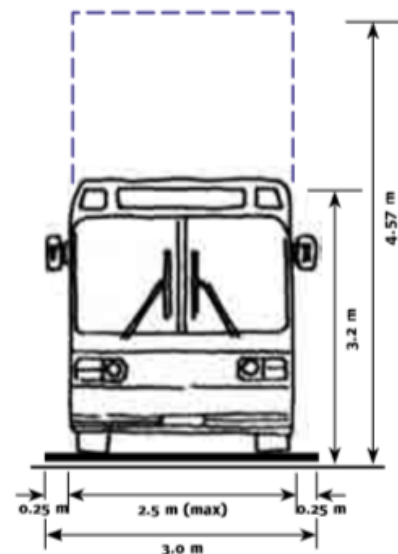


Figure 6.16 Typical bus dimensions

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Chapter 3
Detailed aspects of layout
Forms of movement

Buses

Efforts to persuade people to leave their cars at home must be balanced by the promotion of attractive alternatives. For journeys beyond the local neighbourhood this generally means the provision of a good bus service.

Bus provision should feature high on the agenda of all discussions concerning new development. Developers should discuss with potential operators the kind of service that can be provided and the type of bus that will be used. Local authorities can ensure that consideration is given to bus provision from the development brief onwards, though they cannot dictate the type of bus on a particular route.

Generally buses require a 6m road width, which is slightly wider than the ideal for a traffic calmed domestic road. That is all the more reason for considering carefully how bus routes can be integrated with other routes through an area. In exceptional circumstances special bus links through an area may be considered.



Bus stops should be located where they are available to as many people as possible.



A continuous Street network is more attractive to public transport than one which is closed and restrictive. Loop roads can help operators to provide efficient services.

Startlewood Lane, Ryton XI Towns



The image is taken on Church Street, Ryton XI Towns on the Junction with Startlewood Lane and demonstrate a carriageway width of 5.5 metres. (Middle of measuring wheel to opposite kerb edge)

This stretch of road would experience a similar traffic volume and type to West Felton and is notorious for drivers of large vehicles as it is just too narrow for the type of traffic using it as you can see from the damage to the highway verge.

In terms of a bus route West Felton has many more bus journeys through it as it is on a half hour bus route whereas Ruyton-XI-Towns is not.

The safety issues relating to this stretch of road has previously been recognised by Shropshire Council and used to help justify building of the North West Relief Road around Shrewsbury.

Image(s) below are the same location, looking towards the opposing direction.



4.1.2 **Council Highways** – Further Details Required – there is insufficient detail submitted with the application to make an informed highway comment, at this time.

The application proposes a variation of Condition 7 of the Outline planning permission (Appeal reference: APP/L3245/W/15/3003171 dated 30 November 2015) relating to site access and pedestrian footway facilities.

The application site was the subject of a planning Appeal following the refusal of the Outline application reference 14/00133/OUT. The Appeal was allowed subject to the conditions set out in the Inspectors Report, one of which relates to the site access onto Holyhead Road and the provision of a footway along the full site frontage and south to the junction with The Avenue. Both elements of the access and footway works were shown in principle on Drawing No. WF-AA-400 which was considered at the Appeal and referenced in Condition 7 of the decision.

The proposed variation is shown on the submitted Access Arrangements Plan (Drawing No. TC-AA-408 Rev B) and comprise a change in the site access junction radii to 7.5 metres and the pedestrian footway link being provided on the opposite side of Holyhead Road to that originally considered.

Comments in relation to the design shown on the current drawing are as follows: -

1. Kerb-line change currently shown is considered to be severe and isolated, as no further traffic calming features are in place along Holyhead Road. It is considered that a change in the design involving the extension of the footway shown on the development side to a point further south would allow a more gradual kerb-line transition and footway width to be developed on the opposite side of Holyhead Road to achieve the necessary minimum footway width at an appropriate crossing point, subject to an acceptable level of pedestrian visibility to the south being demonstrated. Appropriate “road narrows” signing and any changes to the road centreline markings/reflective studs should also be noted or indicated on the drawing.

2. It is noted that the improved footway width still falls below the minimum 1.2 metre width stipulated in Condition 7 of the appeal decision (Inspector’s Report) at a point on the eastern side of Holyhead Road, however, as the width reduction is only marginally below that required and over a very short length, a refusal on this point alone is not considered to be sustainable.

3. The change in the footway provision will also result in the loss of the visibility improvement to the north of the junction of The Avenue and Holyhead Road, which was a result of the footway link being provided on the western side of Holyhead Road.

Further Highway Advice can be provided upon receipt of an amended drawing which addresses point 1 above.

4.1.3 **Drainage** – If non permeable surfacing is used on the new access or the new access slope towards the highway, the applicant should submit for approval a surface water drainage system to intercept water prior to flowing on to the public highway.

4.2 **Public Comments**

- 4.2.1 5 letters of representation have been received raising the following concerns:
- Application should not be determined under Section 73 but should be a new application under section 70 as the change is fundamental and substantial
 - Contrary to Planning Inspectors decision
 - Pressure on village services
 - Increase in traffic
 - Reduced width of road and footpath does not comply with national or local policies and guidance
 - Insufficient width for two buses or other large vehicles to pass
 - Narrowing road will be unsafe
 - No consideration of impact when A5 is closed and traffic is diverted through the village
 - No traffic surveys
 - Existing footpath is sufficient and safe
 - Wrong place for pedestrian crossing
 - Increased risk to 100+ residents from requiring them to cross the road
 - Encouraging children to cross the road to the play area will be unsafe
 - Impact on Oak trees from widening existing footpath
 - Potential impact on historic stone wall

5.0 THE MAIN ISSUES

- Policy & principle of development
- Amendment to condition 7
- Highway and pedestrian safety
- Drainage

6.0 OFFICER APPRAISAL

6.1 Policy & principle of development

6.1.1 The granting of the outline planning consent, which was granted at appeal in November 2015, has accepted the principle of the development proposed. It is accepted that the site is situated within open countryside for planning purposes being outside any identified development boundary as the village of West Felton no longer has a development boundary in the recently adopted Shropshire Site Allocation and Management of Development (SAMDev) Plan. However the current application is not seeking consent for the principle of the development, this has previously been granted.

6.1.2 The outline consent was granted at appeal at a time when less weight could be given to the SAMDev. It was considered by the Planning Inspector against the NPPF as sustainable development, taking into account its agricultural status. Although the principle can't be revisited the granting of outline consent on this site also does not set any form of precedent for any other sites in the village. Any future applications for new housing schemes would need to be considered against the SAMDev. The outline consent was for mixed residential development. The current application is for variation of condition 7, in relation to footway improvements, on the outline consent. The current application does not alter the principle of developing the site for housing.

6.1.3 The principle objection from the Parish Council and a number of local residents refers to the process under which this application is being considered. The Parish

Council and objectors consider that the change now proposed is fundamental or substantial and therefore that a new planning application should be submitted under section 70 of the Town and Country Planning Act 1990 rather than consider the proposal under section 73 as a variation of a condition. The Parish and residents comment that this is a matter of law and that it is written in the act that if the changes are fundamental or substantial a new application is required.

- 6.1.4 This is incorrect. The quote given by the Parish Council is taken from the Planning Practice Guidance. Section 70 of the TCPA 1990 states: *“Where an application is made to a local planning authority for planning permission (a) subject to section 91 and 92, they may grant planning permission, either unconditionally or subject to such conditions as they think fit; or (b) they may refuse planning permission”*. Section 70 does not comment on when a new application should be required. Section 73 relates to proposals to *“develop land without compliance with planning conditions previously attached”*. As such it is wholly reasonable for the applicant to submit the proposal under section 73. The Council, on receipt of a section 73 application *“shall consider only the question of the conditions subject to which planning permission should be granted and if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant permission accordingly. If they (the LPA) decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they should refuse the application”*. As such, although the planning practice guidance advises on what when to consider amendments to applications this does not alter the fact that the application has been submitted and needs to be determined. The decision needs to be made whether to grant a variation to the condition or refuse the current application and therefore retain the consent as previously approved.
- 6.1.5 The Council has no power to decline to determine the application. If members consider that the proposal is not acceptable then the current application should be refused. However, for information officers consider that the changes proposed are not fundamental or substantial. The proposal is still for residential development, the number of houses, size and mix meets the requirements of the appeal decision, the proposal still includes the provision of footpath improvements. The change to reposition the improvements onto the opposite side of the road are considered to be more than a non-material amendment but not so substantial as to change the development previously approved.
- 6.2 **Amendment to condition 7**
- 6.2.1 As noted in section 1 above the current condition 7 states:
“Access to the site shall be provided generally in accordance with the access scheme shown on Drawing No.WF-AA-400 (July 2014) prepared by Woodsyde Developments. No development shall take place until a scheme showing full engineering details of the access has been submitted to and approved in writing by the local planning authority. The scheme shall include alterations to Holyhead Road to provide a footway of width between 1.2m (min.) and 2.0m (max.) and a carriageway width of 5.5m (min.) between the site and the junction of Holyhead Road with The Avenue, in accordance with the above drawing. No dwelling shall be occupied until the access scheme has been fully implemented to the satisfaction of the local planning authority.”

- 6.2.2 The application form submitted advises that the proposal is to remove the reference to drawing TC-AA-408 rev B and reference to “no dwellings shall be occupied until the access scheme has been fully implemented to the satisfaction of the LPA”. The first part of the request relates to the current proposal to change the footway enhancement proposals to provide the improvements on the opposite side of the village road. The second part of the request is not justified within the application. It is not clear from the submission why the applicant is seeking to delete the requirement for the work to be carried out prior to occupation. It is officer’s opinion that this part of the condition should remain as it is critical for connecting the site to the village before any of the houses are occupied. As such any changes to the condition should still require the works to be completed prior to occupation of any dwelling.
- 6.2.3 The removal of the reference to the specific plan is proposed as the footpath proposals are no longer in line with the details shown on the proposed plan. The condition was imposed by the Planning Inspector in order to provide connectivity to the village in a safe way. The Inspector, in considering the appeal decision, commented on land ownership noting there is a dispute over the ownership of the highway and land adjacent to it. Paragraph 87 of the appeal decision implies that the Inspector measured the highway on site and confirmed there was sufficient land available to accommodate the footpath.
- 6.2.4 However, as noted above, the position of a TPO’d tree within the curtilage of a neighbouring property was not fully considered at the outline stage and there is a risk to this tree if the footpath were to be provided on the same side of the highway as the application site. Officers consider that it would be technically possible to construct the footpath but that the tree may be adversely affected and it may result in the loss of the tree.
- 6.2.5 As such, although the details of the footpath are not required as part of the reserved matters application, it is necessary to understand whether the development is achievable and this includes connectivity to the village.
- 6.2.6 An alternative has been put forward by the applicant, which has been discussed with the Council Highway Officer and Planning Officers. The alternative is to widen the footpath on the opposite side of the village road and a short section of footpath outside the application site. This will provide footpath for pedestrians directly outside the application site, a tactile crossing point to the opposite side of the road and a wider footpath on the opposite side of the road. The key issue is whether the proposed footpath will provide safe pedestrian connectivity to the village. This is considered below.
- 6.3 **Highways and pedestrian safety**
- 6.3.1 In considering the outline planning application the Planning Inspector commented, at paragraph 86 of his decision, that the appellant proposes to provide a footpath along the western side of Holyhead Road between the northern boundary of the appeal site and the Avenue. The Inspector also noted that although there is an existing footpath on the eastern side it narrows to 0.7m at a pinch point. He considered that such a situation is far from ideal for persons with prams, pushchairs or for disabled persons. As such the Inspector concluded that, without a new

footpath, there could be a severe highway safety issue. The Inspector accepted that the provision of a new footpath will result in narrowing of the highway but did not consider that it would be a significant issue.

- 6.3.2 However, as noted above, since the appeal the position of a TPO'd tree has been identified to be within the area of the new footpath and the construction of the footpath may result in the loss of the tree. As such the applicant has now proposed to widen the existing footpath on the opposite side of the road. This is still done by narrowing the highway carriageway width.
- 6.3.3 A detailed plan has been submitted with this application showing the widths of the highway and footpath. The highway will be a minimum of 5.5m wide and the existing footpath widened. The footpath will be varied widths as there are currently varied widths. Opposite the site the footpath will be approximately 2.3m wide, opposite the neighbouring properties the footpath will be approximately 1.8m to 1.5m wide narrowing to 1.2m just before the pinch point noted by the Inspector. The pinch point will be widened to 1.178m at its narrowest point, which is an increase of just under 0.5m from its existing width. Although this width is less than the width of footpath recommended by the Inspector (1.2m wide) it is shown on the plan that the section that is less than 1.2m is for a distance of 0.973m. The footpath then widens out to just under 3m after the pinch point.
- 6.3.4 A comment has been made that the Planning Inspector did not give any other option for the provision of a footpath other than on the western side of Holyhead Road. This is an assumption of what the Inspector may or may not have been thinking. The Inspector had an application before him which proposed a footpath on the western side of Holyhead Road, that was what was proposed for consideration. No other option was submitted with the appeal and as such no other option was considered. This does not automatically mean that the Planning Inspector would not have allowed the widening of the footpath on the eastern side of Holyhead Road. If members consider that the current proposal is either so significant a change as to require a full planning application (through refusing this variation application) or so harmful to pedestrian safety to warrant refusal of the variation application the applicant has the right to appeal and the Planning Inspector will then consider the current proposal. However, it is officer's opinion, as noted above, that the application can be determined as a variation of the condition. Furthermore, it is officer's opinion that it will provide improvements to pedestrian safety and will not result in a severe pedestrian safety impact. As such it is officer's opinion that a refusal would not be justified.
- 6.3.5 A further part of the Parish and local community objections also refers to the reduction in the width of the road and the width of the proposed footpath being below the standards set within Shropshire guidance and National guidance in Manual for Streets. This is acknowledged, the proposed width at 5.5m wide and the footpath at around 1.2m for the majority of its length is below what is recommended in both local and national guidance. However, the documents quoted are guidance. The reference to the road in Ruyton XI Towns is also noted, the case officer is fully aware of this road having previously lived in this village. However, the case officer does not consider that the road in West Felton is comparable. The section of road in Ruyton XI Towns is on a bend and a hill, as can be seen in the photographs provided by the Parish Council. The road in West Felton is straight. Large vehicles

in Ruyton XI Towns often cross the central line in the road due to the curvature of the road and the hill. This would not be the same situation in West Felton. Furthermore the minimums which are being met, in the most, are within the parameters set by the Planning Inspector in his condition.

- 6.3.6 Officers consider that the proposal as submitted is acceptable. The pinch point is proposed to be widened to a width that can accommodate a pushchair, pram or wheelchair. It is acknowledged that a pedestrian could not pass a wheelchair at this point but, as noted above, the pinch point is a short section of footpath which for the remainder of its length is within or above the parameters set within the condition on the original decision notice.
- 6.3.7 The section of footpath on the application site provides a safe crossing point for the new residents of the development and for the wider community accessing the open space within the site. The changes requested by the Council Highway Consultant relate to the sections of footpath on the application side of Holyhead Road being graduated in and out of the existing highway rather than a blunt end to the footpath as is currently shown. This has been raised with the applicant and further amendments sought. As such, although the current proposal does not comply with the condition as set out in the outline decision, the current application seeks to vary the wording of the condition to reflect the plan now submitted. The proposal will provide improvements to pedestrian connectivity and safety which was the reason for the condition on the outline.

6.4 **Drainage**

- 6.4.1 Policy CS18 'Sustainable Water Management' of the Shropshire Core Strategy indicates that development should integrate measures of sustainable water management to reduce flood risk and avoid an adverse impact on water quality and quantity.
- 6.4.2 The drainage details for the site proposed to be developed for housing has been submitted with the reserved matters application. The highway drainage details will need to be submitted as part of the technical approval for the highway works. Separate consent is required to undertake works to the highway and this will need to include the details of the drainage.

7.0 **CONCLUSION**

- 7.1 It is considered that the proposed changes to condition 7 on the outline consent are acceptable and provide a footpath which will provide improved connectivity and pedestrian safety. It is acknowledged that there is a short pinch point where there is a section that is below the width recommended in the original condition. However, this is a short section, the footpath is wider than existing and thereafter widens further. As such the proposed amendments comply with the reasons for the original condition and complies with the requirements of Core Strategy Policy CS6 and SAMDev Policy MD2 and the National Planning Policy Framework.
- 7.2 In arriving at this decision the Council has used its best endeavours to work with the applicants in a positive and proactive manner to secure an appropriate outcome as required in the National Planning Policy Framework paragraph 187.

8.0 **RISK ASSESSMENT AND OPPORTUNITIES APPRAISAL**

8.1 Risk Management

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

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

The decision is challenged by way of a Judicial Review by a third party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will 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 a) promptly and b) in any event not later than six weeks after the grounds to make the claim first arose 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 give the right to respect for private and family life and First Protocol Article 1 allows for the peaceful enjoyment of possessions. These have to be balanced against the rights and freedoms of others and the orderly development of the County in the interests of the Community.

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

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

8.3 Equalities

The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed in planning committee members' minds under section 70(2) of the Town and Country Planning Act 1970.

10. BACKGROUND

Relevant Planning Policies:

National Planning Policy Framework

CS1 - Strategic Approach

CS4 - Community Hubs and Community Clusters

CS5 - Countryside and Greenbelt

CS6 - Sustainable Design and Development Principles

CS9 - Infrastructure Contributions
 CS17 - Environmental Networks
 CS18 - Sustainable Water Management
 MD1 - Scale and Distribution of Development
 MD2 - Sustainable Design
 MD7A - Managing Housing Development in the Countryside
 MD7A - Managing Housing Development in the Countryside
 MD8 - Infrastructure Provision
 MD12 - Natural Environment

Relevant planning history:

14/00133/OUT Outline application for mixed residential use; formation of new vehicular access and estate roads and creation of public open space REFUSE 1st October 2014

16/05336/REM Approval of reserved matters (access, appearance, landscaping, layout, scale) pursuant to 14/00133/OUT for residential development of 25 houses (inclusive of 2 affordable) PCO

Appeal:

15/02224/REF Outline application for mixed residential use; formation of new vehicular access and estate roads and creation of public open space ALLOW 30th November 2015

11. ADDITIONAL INFORMATION

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

APPENDIX 1

Conditions

STANDARD CONDITION(S)

1. Application for approval of the reserved matters shall be made to the local planning authority not later than 30th November 2016.
2. The development hereby permitted shall be begun before the expiration of one year from the date of approval of the last of the reserved matters to be approved.
3. Details of the appearance, landscaping, layout, and scale, together with the access to the site (hereinafter called "the reserved matters") of the development shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
4. The development hereby permitted relates to the site shown on Location Plan, drawing number J0440/01 (January 2014).
5. The development hereby permitted shall be comprised of no more than 25 dwellings. A minimum of:
 - six of the open market dwellings to be constructed shall be bungalows,
 - four of the two storey open market dwellings to be constructed shall be two bedroomed dwellings, and
 - two of the two storey open market dwellings to be constructed shall be three bedroomed dwellings.
6. The following information shall be submitted to the local planning authority concurrently with the first submission of reserved matters:
 - The levels of the site,
 - The finished floor levels,
 - The foul and surface water drainage of the site including proposals for a sustainable drainage system (SUDS).

CONDITION(S) THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES

7. Access to the site shall be provided in accordance with the access scheme shown on drawing **TO BE COMPLETED**. No dwelling shall be occupied until the access scheme has been fully implemented to the satisfaction of the local planning authority
8. No development shall take place until a scheme for the enhancement of the hedgerows that define the north-western and south-western boundaries of the site and the replacement and establishment of the hedgerow along the site road frontage, to be repositioned immediately to the rear of the proposed access visibility splays, has been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the hedging scheme has been fully implemented to the satisfaction to the local planning authority. The hedgerows shall thereafter be retained for the lifetime of the development.

9. No development shall take place until a scheme for the provision of an area of open amenity space, including a Local Area of Play, has been submitted to and approved in writing by the local planning authority.
10. Prior to the erection of any external lighting on the site, a scheme for the provision of external lighting 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 the lighting scheme shall be 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'.
11. No development shall take place until a scheme for the provision of 6 woodcrete bat boxes suitable for nursery or summer roosting for small crevice dwelling bat species, has been submitted to and approved in writing by the local planning authority. Unless otherwise agreed in writing by the local planning authority, the boxes shall be erected on the site prior to first occupation of the dwellings hereby permitted. Once erected, the boxes shall be permanently retained in their original positions.
12. No development shall take place until a scheme for the provision of 6 woodcrete artificial nests, suitable for small birds such as robin, blackbird, tit species, sparrow and swallow, has been submitted to and approved in writing by the local planning authority. Unless otherwise agreed in writing by the local planning authority, the boxes shall be erected on the site prior to first occupation of the dwellings hereby permitted. Once erected, the boxes shall be permanently retained in their original positions.