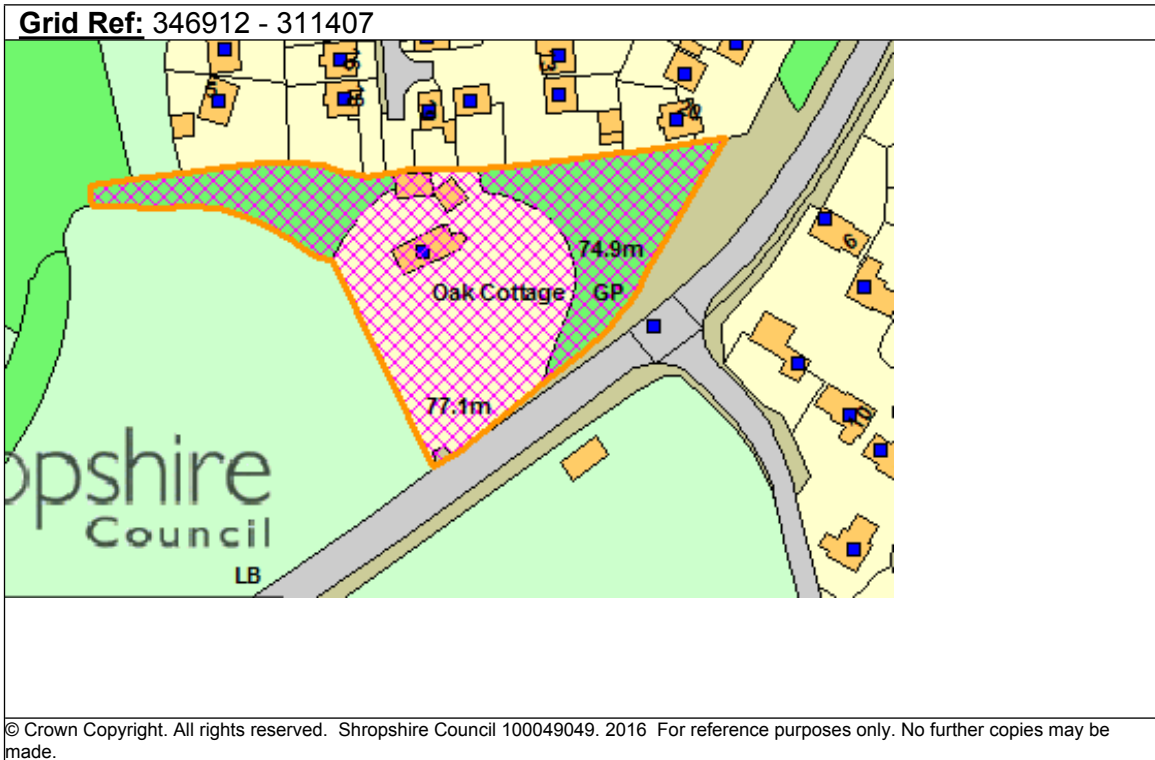


Development Management Report

Responsible Officer: Tim Rogers
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Summary of Application

Application Number: 18/01459/VAR	Parish:	Shrewsbury Town Council
Proposal: Removal of condition 6 (construction of footpath) attached to planning permission reference 16/03825/FUL dated 05/12/2016.		
Site Address: Oak Cottage Hanwood Road Shrewsbury SY5 8NT		
Applicant: Mr & Mrs Michael Coady		
Case Officer: Frank Whitley	email: planningdmc@shropshire.gov.uk	



Recommendation:- Grant Permission subject to the conditions set out in Appendix 1.

REPORT

1.0 THE PROPOSAL

1.1 The application seeks planning permission for the Removal of condition 6 (construction of footpath) attached to planning permission reference 16/03825/FUL dated 05/12/2016.

1.2 Condition 6 states:

Prior to commencement of development full engineering details of the proposed footway along the western side of Hanwood Road between the site access and the existing facility to the north of the application site shall be submitted to and approved in writing by the Local Planning Authority. The works shall be fully implemented in accordance with the approved details prior to first occupation of the dwellings hereby approved.

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

2.0 SITE LOCATION/DESCRIPTION

2.1 The application site is a large plot of land adjacent to Hanwood Road, which currently has a single dwelling approved for demolition. A condition was imposed on approved scheme 14/04733/OUT requiring the construction of a roadside footpath to the NE. This condition was repeated in approved 16/03825/FUL, though this scheme was only for 2 dwellings.

2.2 The rationale for this variation of Condition 6 is that the works required are effectively disproportionate for the scale of development, given (in part) that there is already a footpath on the other side of Hanwood Road.

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 has submitted a view contrary to officers

4.0 Community Representations

Consultee Comments

4.1 Shrewsbury Town Council – objection

The Town Council sees no valid reason for removing this condition which will improve the safety of pedestrians and therefore cannot support this application.

4.2 Highways –no objection

No Objection – The proposed variation seeks to remove the following condition attached to planning permission 16/03825/FUL dated 15/12/2016:

6. Prior to commencement of development full engineering details of the proposed footway along the western side of Hanwood Road between the site access and the existing facility to the north of the application site shall be submitted to and approved in writing by the Local Planning Authority. The works shall be fully implemented in accordance with the approved details prior to first occupation of the dwellings hereby approved. Reason: To ensure a satisfactory means of access to the highway.

From a highways perspective we have no objection to the removal of the condition subject to the provision of a minimum 2 metre wide verge along the site road frontage. Therefore the following condition should replace condition 6:

Conditions

A minimum 2 metre wide verge shall be provided along the site road frontage with Hanwood Road. The verge shall be kept free of any obstruction at all times.

Reason: In the interest of highway safety and to allow for the likelihood of future provision of a footway.

4.3 Trees- no objection

No objection to the proposed variation.

4.4 Ecology- no objection

SC Ecology have no objection to the proposed VAR.

4.5 Public Comments- none received**5.0 THE MAIN ISSUES**

Principle of development

Highways

6.0 OFFICER APPRAISAL**6.1 Principle of development**

6.1.1 The principle of development is established by approved schemes 14/04733/OUT and 16/03825/FUL.

6.2 Highways

6.2.1 CS6 requires that all development is designed to be adaptable, safe and accessible to all.

- 6.2.2 The applicant considers that the works required by Condition 6 are disproportionately large for the scale of development now proposed and approved. Highways have been consulted and agree, albeit with a substitute condition to ensure the provision of a 2m wide verge.
- 6.2.3 It is noted that Shrewsbury Town Council has objected to the variation and consideration must be given to its views. The NPPF provides guidance on the imposition of conditions. One of the six tests is that a condition must be “reasonable in all other respects”.
- 6.2.4 In considering the above, in the first instance, Condition 6 is not clear about the route of the footpath, nor its length. There appears to be some difficulty in implementation in any event since the route of the footpath may be outside the control of the applicant, according to submitted plans of applications 16/03825/FUL dated 05/12/2016.
- 6.2.5 There is already a narrow existing footpath already to the west of Nobold Lane/Hanwood Road junction and a wider footpath to the east.
- 6.2.6 The requirement to construct the footpath was considered reasonable at the outline stage for 6 dwellings, because the number of pedestrians likely to use the path was proportionate to the cost of construction. If 16/03825/FUL is implemented for 2 dwellings there will be significantly fewer pedestrians. It is considered that to insist on the footpath would be unreasonable. Highways take the same view, though have asked for a 2m verge to be provided and maintained as a compromise. It is not proposed to impose this suggested condition, since it relates to land outside the application site, and land outside the control of the applicant. Such a condition would be unenforceable and would need a Section 106.

7.0 CONCLUSION

- 7.1 The development now proposed does not conflict with the provisions of the NPPF or the requirements of CS6. With the issue of a new planning permission, the deletion of Condition 6 is recommended.

8.0 Risk Assessment and Opportunities Appraisal

8.1 Risk Management

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

- ⑦ 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.

- ② 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:

West Midlands Regional Spatial Strategy Policies:

Core Strategy and Saved Policies:

National Planning Policy Framework
CS6 - Sustainable Design and Development Principles

RELEVANT PLANNING HISTORY:

14/04733/OUT Outline application for residential development (following the demolition of Oak Cottage) to include means of access and layout GRANT 24th August 2015
16/03825/FUL Erection of two detached dwellings and detached double garages following demolition of all buildings; formation of vehicular access; to include removal of trees/hedgerows GRANT 5th December 2016
17/01889/DIS Discharge of Conditions 4 (Materials), 5 (Landscaping), 6 (Engineering Details), 7 (Trees), 8 (Access, Parking & Turning Areas), 9 (Visibility Splays), 10 (Artificial Nesting), 11 (Access Apron), 12 (External Lighting) and 13 (Boundary Treatments) on Planning Permission 16/03825/FUL for the erection of two detached dwellings and detached double garages following demolition of all buildings; formation of vehicular access; to include removal of trees/hedgerows DISPAR 22nd December 2017
18/01459/VAR Removal of condition 6 (construction of footpath) attached to planning permission reference 16/03825/FUL dated 05/12/2016.

PDE

SA/87/0335 Alterations and additions to provide a two storey pitched roof side extension forming dining room, utility/w.c. with bedroom extension above and a first floor study. PERCON 11th May 1987

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 Keith Roberts
Appendices APPENDIX 1 - Conditions

APPENDIX 1

Conditions

STANDARD CONDITION(S)

1. This permission only varies condition number 6 attached to planning permission 16/03825/FUL for the erection of two detached dwellings and detached double garages following demolition of all buildings; formation of vehicular access; to include removal of trees/hedgerows. This decision notice must be read in conjunction with the decision notice reference 16/03825/FUL where all other conditions that are still subsisting and capable of taking effect remain in force.

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

2. The development hereby permitted shall be begun before 5 December 2019.
Reason: To comply with Section 91(1) of the Town and Country Planning Act, 1990 (As amended) and to the time limits of 16/03825/FUL.

CONDITION(S) THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES

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

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

3. A minimum 2 metre wide verge shall be provided along the site road frontage with Hanwood Road. The verge shall be kept free of any obstruction at all times.

Reason: In the interest of highway safety and to allow for the likelihood of future provision of a footway.