

## Development Management Report

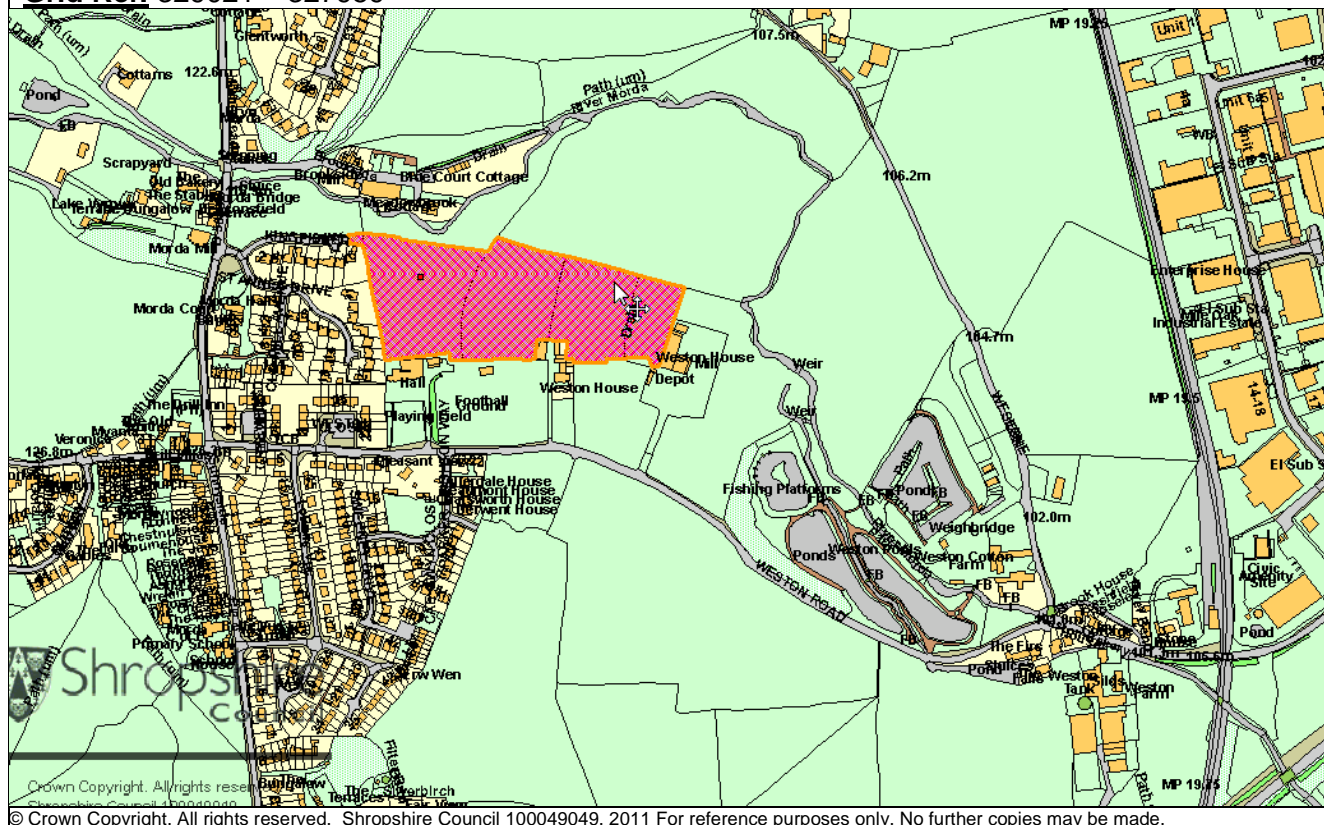
Responsible Officer: Tim Rogers

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### Summary of Application

<b>Application Number:</b> 14/05461/VAR	<b>Parish:</b> Oswestry Rural
<b>Proposal:</b> Variation of Condition No. 12 attached to Planning Application No. 13/01393/OUT dated 31st October 2014 to achieve access from Weston Road only.	
<b>Site Address:</b> Proposed Residential Development Land East Of Kingfisher Way, Morda Shropshire	
<b>Applicant:</b> Mr & Mrs Hughes	
<b>Case Officer:</b> Mark Perry	<b>email:</b> <a href="mailto:planningdmnw@shropshire.gov.uk">planningdmnw@shropshire.gov.uk</a>

**Grid Ref:** 329021 – 327959



**Recommendation:- Approval subject to the conditions set out in Appendix 1, and completion of a Section 106 Agreement in relation to affordable housing provision.**

## REPORT

### 1.0 THE PROPOSAL

1.1 This is an application seeking to vary condition 12 of planning decision notice 13/01393/OUT approved on the 31<sup>st</sup> October 2014.

1.2 The original application granted outline planning permission for residential development, with all matters other than access reserved for subsequent approval, on land East Of Kingfisher Way, Morda. The application was approved by the Council's Planning Committee subject to a Section 106 Agreement relating to provision of affordable housing.

1.3 Condition 12 currently states:

*"12. The proposed access/ estate road shall be a continuous vehicular route and shall run the full length of the site between Kingfisher Way and Weston Road. All dwellings on the site must be able to access this route and leave the site in either direction for the lifetime of the development.*

*Reason: To ensure that in a flood event all dwellings are able to have an alternative safe access and egress route".*

The application is proposing to amend this condition to state:

*"12. The proposed access shall be constructed to provide vehicular access to the entire site, free from flood risk in accordance with drawing number LSP03, Rev C.*

*Reason: To ensure that in a flood event all dwellings are able to have an alternative safe access and egress route."*

1.4 The reason for the proposed change is that the original outline application, which requested access be considered at the outline stage, indicated two points of access to the site, one being from Kingfisher Way and the other Weston Road. However, the application is now seeking for the site to be served from a single point of access from Weston Road.

### 2.0 SITE LOCATION/DESCRIPTION

2.1 The application site covers an area of 3.3 hectares and is located to the eastern side of Morda. To the west there is a modern housing estate, to the north there is the River Morda and to the south there is a football pitch and housing development; both of which are accessed from Weston Road. To the eastern side of the site there is an existing commercial business which has a building and yard where they operate a construction and landscaping business from. The flood plain of the River Morda does extend into the furthest north western corner of the site in the position where it adjoins the end of Kingfisher Way.

2.2 The site is well screened from the east and the north by the mature bands of trees and from the west the view of the site is screened by the adjacent housing

development which sits on a slightly higher level. The highest part of the site is just to the north of the village hall, the land then gently falls away in a northerly and easterly direction.

2.3 The entire application site falls outside of Morda's development boundary as defined in the Oswestry Local Plan.

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

Complex or major applications which in the view of the Group Manager for Environment or the Service Manager with responsibility for Development Management in consultation with the committee chairman or vice chairman should be determined by the relevant Planning Committee.

### 4.0 **Community Representations**

**Parish Council-** No comments received to date

### 4.1 **Consultee Comments**

4.1.1 **Drainage** - The variation is acceptable from a surface water drainage perspective and does not alter the drainage comments made for outline application 13/01393/OUT.

4.1.2 **Environment Agency** – No Objection

4.1.3 **Highways-** No objection to the principle of the site being served by a single access. However, the Highway Authority reserve the right to further consider the appropriate scale of the development to be served via Weston Road as part of a reserved matters application.

### 4.2 **Public Comments**

Representations made from 4 individual addresses 2 objecting to the application and 2 in support commenting on the following issues:

- Highways safety concerns;
- Potential overlooking and loss of privacy to current residents;
- The proposed relocation of new housing away from the flood plain is very much to be welcomed.

### 5.0 **THE MAIN ISSUES**

- Principle of development
- Siting, scale and design
- Flooding issues;
- Potential highway impact of the development when being served by a single access;
- Impact on neighbours.

## 6.0 OFFICER APPRAISAL

### 6.1 Principle of development

6.1.1 In many cases when an application for a variation of condition is proposed the only matters for planning consideration relate to the changes proposed by the condition not to the principal of the development itself.

6.1.2 However, in this case, the access to the site was not a matter reserved for subsequent approval, but was a matter of principal for consideration with the original outline approval. This proposal is effectively seeking to alter the approved access arrangements, and therefore the principle of the entire development, with regard to whether this is a suitable site for residential development with only one access point, needs to be considered.

### 6.2 Siting, scale and design

6.2.1 The appearance, landscaping, layout and scale of the site were all matters that have been reserved for later approval. However, the purpose of Condition 12 was to address concerns that were raised by planning committee members, to ensure adequate means of escape from any potential flooding event for future residents.

6.2.2 In relation to the original outline application, the applicant provided, because of potential flooding concerns, an indicative layout scheme indicating that all the dwellings would be able to use either access. However, as this information was only indicative at that stage, and would still be subject to full consideration at the reserved matters stage, members requested the inclusion of Condition 12 to ensure adequate means of flood escape for the development.

### 6.3 Flooding

6.3.1 With regards to any potential flooding impact as a result of the proposed amendment to a single access point condition 11 of the approved outline consent states:

*“11. All of the proposed dwellings and their garden areas shall be located outside of flood zone 2 and 3 as defined on the Strategic Flood Risk maps.*

*Reason: To ensure that development is located away from areas at risk of flooding and that people and property are protected”.*

6.3.2 If members are mindful to approve this application this condition will be included in any new permission ensuring that no dwellings will be constructed within Flood Zones 2 or 3.

6.3.3 The Environment Agency advised in their consultation response that they have no objection to the proposed variation of Condition 12.

6.3.4 Accordingly, while the approved scheme provided two potential escape points from a flood event for residents, it is considered that the proposed variation to a single access point on Weston Road will still enable a safe flood escape route for future residents of the site, if a flood event was to occur.

## 6.4 Highways

- 6.4.1 As originally submitted the Highway Authority maintains its view that this site would be served via Kingfisher Way and Weston Road and the issue to be addressed as part of a reserved matters application related to whether there would be a vehicular through route. In any event the Highway Authority wish to see a pedestrian/cycle link.
- 6.4.2 The current application seeks now to require all development traffic to enter and exit via Weston Road as a single point of access. On the basis of the current consent the principle of traffic entering and leaving the development site has been established. What is not clear at this outline stage, however, is the number of units that would be served off Weston Road as scale and layout are matters which would be subject to a subsequent reserved matters application.
- 6.4.3 The current application, however, would not achieve a footway/pedestrian link through Kingfisher Way and as a result pedestrians and cyclists would have to route along Weston Road and back upon to Morda Bank to thereafter route towards Oswestry, the local School & College and other amenities and facilities. Clearly, therefore, routing from the site through Kingfisher Way would provide a more direct route and quicker pedestrian/cycle route. Whilst in itself this would not be a substantive reason to refuse this application, it is considered to be deficiency of the proposal when a more direct route is potentially available.
- 6.4.4 Given the above, the Highway Authority consider that a highway objection to the principle of this site being served off Weston Road would not be sustainable but the Highway Authority reserve the right to further consider the appropriate scale of the development to be served via Weston Road as part of a reserved matters application.

## 6.5 Section 106 Agreement

- 6.5.1 If members are mindful to approve this application this will result in the creation of a new planning permission for a development which was approved subject to a Section 106 Agreement. A Deed of Variation to this agreement is therefore required to ensure that the original agreement is still applicable to the new planning permission.
- 6.5.2 The applicant has agreed to this deed of variation and the Council's solicitors are currently preparing the required document.

## 7.0 CONCLUSION

- 7.1 In conclusion it is considered that the proposed variation of condition is considered acceptable, in that the alteration to a single point of access onto Weston Road will still provide an acceptable escape route for future residents if a flood event were to occur.
- 7.2 In addition a single point of access is considered suitable in principal to serve the proposed residential development.

- 7.3 The application is seeking outline planning permission with details of layout, scale, landscaping and the potential number of dwellings being reserved for subsequent approval. Therefore the reduction to a single point of access, and the potential impact of this on the roads network, can be considered when the detailed reserved matters application is submitted with number of proposed houses and associated vehicular and pedestrian movements identified.
- 7.4 If it is considered that these details indicate an inappropriate level of traffic movements for the point of access onto the highway network, or indicate inappropriate pedestrian/cycle links then any detailed reserved matters application could still be refused.
- 7.5 Accordingly the recommendation is to approve the application subject to the conditions detailed in Annexe 1 and the signing of an appropriate Deed of Variation to the Section 106 Agreement to ensure the provision of an appropriate level of affordable housing.

## 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  
Planning Practice Guidance

Core Strategy and Saved Policies:  
CS6 - Sustainable Design and Development Principles  
CS11 - Type and Affordability of housing  
CS17 - Environmental Networks

### Relevant planning history:

12/04725/FUL Erection of 21 no. affordable dwellings with associated access and parking GRANT 20th March 2013  
13/01393/OUT Outline application (to include access) for Use of land for residential development GRANT 31st October 2014

## 11. Additional Information

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)
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Cabinet Member (Portfolio Holder) Cllr M. Price
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Local Member  
Cllr Joyce Barrow

Appendices  
APPENDIX 1 - Conditions



## APPENDIX 1

### Conditions

#### STANDARD CONDITION(S)

1. Details of the appearance, landscaping, layout and scale (hereinafter called "the reserved matters") 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.

Reason: The application is an outline application under the provisions of Article 2(1) of the Town and Country Planning (Development Management Procedure) Order 2010 and no particulars have been submitted with respect to the matters reserved in this permission.

2. Application for approval of reserved matters shall be made to the local planning authority before the expiration of 12 months from the date of this permission

Reason: This condition is required to be imposed by Section 92 of the Town and Country Planning Act, 1990.

3. The development hereby permitted shall begin before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

Reason: This condition is required to be imposed by Section 92 of the Town and Country Planning Act, 1990.

4. The following information shall be submitted to the local planning authority concurrently with the first submission of reserved matters:

The number of units  
 The means of enclosure of the site  
 The levels of the site  
 The drainage of the site  
 The finished floor levels  
 Full Arboricultural Impact Assessment to BS5837:2012 standards  
 Tree survey in accordance with The Bat Conservation Trust's Bat Surveys Good Practice Guidelines

Reason: To ensure the development is of an appropriate standard.

#### CONDITION(S) THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES

5. No development approved by this permission shall commence until the applicant, or their agent or successors in title, has secured the implementation of a programme of archaeological work in accordance with a Written Scheme of Investigation (WSI). This WSI shall be approved in writing by the Local Planning Authority prior to the commencement of works.

Reason: The development site is known to hold archaeological interest.

6. No development shall take place until details of the means of access, including the layout, construction and sightlines have been submitted to and approved by the Local Planning Authority. The agreed details shall be fully implemented before the use hereby approved is commenced or the building(s) occupied.

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

7. No development shall take place until details of the design and construction of any new roads, footways and accesses together with details of the disposal of surface water have been submitted to, and approved by the Local Planning Authority. The agreed details shall be fully implemented before the use hereby approved is commenced or the building(s) occupied.

Reason: To ensure a satisfactory access to the site.

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

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

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

9. No development shall take place until details of the design and construction of any new roads, footways, accesses together with details of the disposal of surface water have been submitted to, and approved by the Local Planning Authority. The agreed details shall be fully implemented before the dwellings are occupied.

Reason: To ensure a satisfactory access to the site

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

10. Prior to the erection of any external lighting on the site a lighting plan shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and thereafter retained for the lifetime of the development. The submitted scheme shall be designed to take into account the advice on lighting set out in the Bat Conservation Trust booklet Bats and Lighting in the UK

Reason: To minimise disturbance to bats, a European Protected Species.

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

11. All of the proposed dwellings and their garden areas shall be located outside of flood zone 2 and 3 as defined on the Strategic Flood Risk maps.

Reason: To ensure that development is located away from areas at risk of flooding and that people and property are protected.

12. The proposed access shall be constructed to provide vehicular access to the entire site, free from flood risk in accordance with Drawing Number LSP03, Rev C.

Reason: To ensure that in a flood event all dwellings are able to have a safe access and egress route.

13. All mature trees and hedges are to be retained within the development, and protected from night time illumination, unless otherwise agreed in writing with the Local Planning Authority.

Reason: To protect habitat for bats (European Protected Species), other wildlife and landscape.

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