

Development Management Report

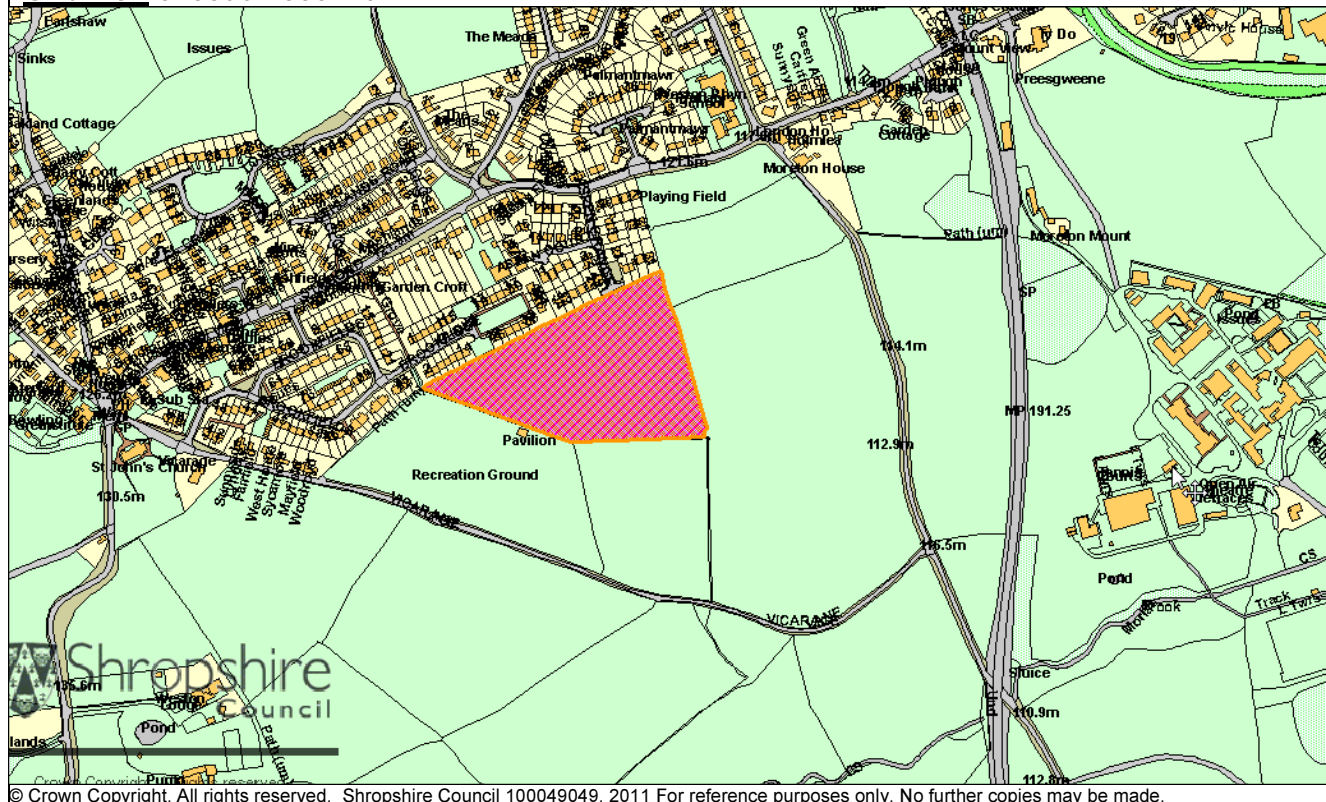
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Summary of Application

Application Number: 14/01654/OUT	Parish: Weston Rhyn
Proposal: Outline application for residential development (All Matters Reserved)	
Site Address: Development Land South Of Aspen Grange Weston Rhyn Oswestry Shropshire	
Applicant: M Richardson & Partners	
Case Officer: Karen Townend	email: planningdmne@shropshire.gov.uk

Grid Ref: 328896 - 335770



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1.1 This report is an addendum to the report presented to members in March 2015 which detailed the proposal for outline planning permission for residential development on land at Aspen Grange, Weston Rhyn (all matters reserved). Members at the meeting of the 17th March were minded to refuse the application on the grounds that part of the application is not within the SAMDev and also that the foul drainage infrastructure issues could not be mitigated by conditions.

1.2 In accordance with Part 5, Section 17.4 of the Shropshire Council Constitution, Officers have referred this item back to Members to explain the risks and implications of the contrary decision.

2.0 Matters for Consideration

- Status of SAMDev
- Foul Drainage

2.1 Status of SAMDev

2.1.1 As noted in the March report to committee the SAMDev is not yet an adopted document. Although it has been submitted to the Planning Inspector and the Examination in Public has been held the Council is awaiting modification proposals from the Inspector and will thereafter need to re-consult on these matters prior to adopting the document as part of the development plan. With respect to Weston Rhyn there are outstanding objections relating to the proposed allocated sites, the number of dwellings being allocated, the identification of the village as a cluster and the impact on sewerage. As such only limited weight can be given to the SAMDev. Accordingly the development plan is the saved Oswestry Local Plan, which is at risk of being considered time expired due to its age and non-compliance with the NPPF, and the Shropshire Core Strategy, which does not identify settlements for development or set development boundaries.

2.1.2 Accordingly the advice of officers at the March meeting was that the SAMDev can not yet be given full weight and as such the fact that the site is greater than the site proposed to be allocated in the SAMDev should not be used as the primary reason for refusing the current application. The application should be considered against the three threads of sustainable development in the NPPF. Sustainable sites for housing where the adverse impacts do not significantly and demonstrably outweigh the benefits of the development have a strong presumption in favour of permission under the NPPF. As such it remains officer's advice that it would be difficult to defend a refusal for a site which constitutes sustainable development and the conclusion of the March report was that there are no significant or demonstrable harms which would result from the development of this site and therefore that the proposal would constitute sustainable development.

2.1.3 Any harm from developing the site would also need to take into account the fact that part of the site is being promoted as a future housing allocation site. Although only limited weight can be given to the SAMDev, a site, which following adoption of the SAMDev would be approved, would be difficult to refuse prior to the adoption of the SAMDev. Therefore, the harm from the development could only really relate to the extended site. It is officer's opinion that the extended site could not be considered to be visually or environmentally harmful and provides social and economic benefits. The report of the March committee meeting is attached to

this appendix report for information and details, in full, the sustainability assessment for the site.

2.2 Foul Drainage

- 2.2.1 Substantial concern was raised locally about the potential impact of the development on the foul drainage system in the local area. The Parish Council noted it in their objection, raising concerns about the adequacy of the village drainage/ sewerage infrastructure to cope with such a large increase in dwellings, and local representations also questioned capacity. Welsh Water had initially objected to the proposal noting that there are isolated incidents of flooding the public sewerage system downstream of this site which will need to be overcome if development is to proceed. Further assessment of the sewer network, with particular focus on overland flows entering the sewer, would be required to consider the impact of this development on the receiving network. The letter continued to advise that a Hydraulic Modelling Assessment, (HMA), would be required and that, if the Council was minded to approve the application, a Grampian condition should be imposed.
- 2.2.2 Such a condition was therefore proposed to Welsh Water, as detailed in the March report. The condition as worded would have allowed outline consent to be granted for the development but would not have permitted a connection to the existing foul drainage system until capacity was available. Welsh Water supported the proposed condition in principle, subject to the Local Planning Authority acknowledging that the only means of establishing a permanent solution for the disposal of foul drainage (as required by part 1 of the condition) shall be through the undertaking of a HMA and the subsequent implementation of any solution identified by the assessment (as required by part 2 of the condition).
- 2.2.3 Officers remain of the view that the proposed condition would allow for the hydraulic modelling assessment and any upgrades required before occupation of the dwellings but also allow for a temporary system to be provided if the works are not completed and as such accepts that the only means of establishing a permanent solution for the disposal of foul drainage is through the undertaking of a HMA as requested by Welsh Water.
- 2.2.4 Without such a condition and without a consent there is no driver to the upgrading of the foul drainage system. Neither the developer nor the land owner will pay for a HMA without the knowledge that they can develop the site for housing. Welsh Water will not be required to undertake any upgrades unless there are dwellings proposed to be connected to the system. It is unfortunately a “chicken and egg” situation in that without the planning consent there is no reason to undertake the HMA and upgrade but with the consent there is a pressing need to ensure that the dwellings can be connected as soon as possible.
- 2.2.5 Following the March meeting the case officer has contacted Welsh Water for additional advice and the following response has been sent:
“In ideal circumstances we would encourage the completion of a Hydraulic Modelling Assessment in advance of planning being granted as it gives the LPA and the developer certainty. I do, however, appreciate that imposing a condition helps to move the planning process forward.”

The agent contacted me last week to discuss the processes involved in the funding of a modelling assessment. I referred to my letter which stated that in order to progress matters the applicant could engage with Welsh Water at the earliest possible opportunity in order to obtain a quote to undertake a Hydraulic Modelling Assessment (HMA). It is important to note that more often than not a solution can be engineered but the solution would have to be cost effective and of a time period which is favourable to the developer. The agent has not, at this stage, agreed to fund this quote. I will keep you informed if this changes.

This initial process should take approximately a Month (this is subject to resources and the complexity of the assessment). The outcome of this quote will enable us to:

1. Outline the scope of works required within the HMA
2. Indicate the cost estimate of the HMA
3. Specify a programme and time periods for the HMA

It is important to note that this is only the first stage of the process and the developer will then have to fund the Hydraulic Modelling Assessment and any upgrade works which are identified in the HMA.

The solution(s) will only be apparent once a Hydraulic Modelling Assessment has been completed and getting to a stage where a solution has been identified is likely to take at least 8 Months. It is therefore apparent that Members will be faced with the same dilemma in the forthcoming planning committee meetings.

We would want to reassure Members that, if the condition in question is put in place, we would not support the discharge of such a condition until a solution is known and implemented.

If the application is refused then I would be happy to support the Council in the appeal process.

The developer is aware that this initial quote will cost £300 but I have not been able to advise on the cost of the HMA or the upgrading works at this stage. It would also be difficult to advise on how long it would take to complete the actual upgrading.”

- 2.2.6 This recent advice is clear in that there is an ideal position but that the proposed condition would have helped move the process forward. The advice does not suggest that there is not a solution to the existing problems with capacity or with connecting the development to the sewer but that the solution may be costly. This would be a matter for the developer and Welsh Water and the cost of the foul drainage connection is not material to the planning decision. The advice notes that the condition would not be discharged until the solution was implemented.
- 2.2.7 However the advice also notes that Welsh Water would be happy to support the Council in the appeal process if the application is refused.
- 2.2.8 Since the March meeting the agent has also advised that they are:
“looking at the possibilities of providing a sewage treatment plant for the site with the provision of a sewage pumping station and main which could be made live and

connected to the main sewer in Station Road as and when the surcharge problem in that sewer is rectified.

We are awaiting feedback from the Environment Agency as to the suitability of the stream on the southern boundary of the site to receive the final effluent discharge.”

- 2.2.9 The key issue is therefore the risks of a refusal of an outline planning application. Although Welsh Water have advised that they would be willing to support the Council in defending a refusal at appeal any costs claim would be against the Council not against Welsh Water. Costs can be awarded where the Council has behaved unreasonably and this can include “refusing planning permission on a planning ground capable of being dealt with by conditions which it is concluded that suitable conditions would enable the proposed development to go ahead” (National Planning Practice Guidance paragraph 050).
- 2.2.10 As such, although the application could be refused on the grounds of foul drainage, a refusal on these grounds would place the Council at risk of appeal and potentially at risk of a cost award against the Council. Should members continue to be minded to refuse this application on foul drainage grounds officers would advise that the reason reflect the initial advice from Welsh Water in that the proposed development would overload the sewerage network and place at risk health and safety of existing residents and the environment. No improvements are planned within Dwr Cymru Welsh Water’s Capital Investment Programme and any development prior to improvements being made would be premature.

3.0 CONCLUSION

- 3.1 Officers have sought to advise members within this report of the issues raised at the March meeting. Further advice has been taken from Welsh Water to provide members with evidence on the foul drainage issue raised and further detail has been provided on the SAMDev and sustainability of the development. It is officers opinion that refusal on the grounds of non-compliance with the SAMDev would not be a defensible reason for refusal of the application and that the foul drainage can be dealt with by condition. As such, the officer’s recommendation to the March meeting remains, this is subject to the applicants entering into a S106 legal agreement in order to secure affordable housing, and subject to conditions, planning permission should be granted.
- 3.2 The site is located outside the current development boundary for Weston Rhyn and is therefore classed as a departure from the development plan. However, part of the site is being promoted as a proposed site allocation for housing development in the forthcoming Site Allocations and Management of Development (SAMDev) Plan and it is therefore accepted that the site is in a sustainable location, on the edge of the existing built development, where it benefits from the facilities, services and infrastructure offered by the village and will provide additional housing supply in accordance with national planning policy priorities. Furthermore, the development will provide for affordable housing in accordance with Policy CS11 and infrastructure provision in accordance with policy CS9 and will not result in significant loss of agricultural land.
- 3.3 The size of the site and constraints from the existing development, watercourse

and village recreation field limits the developable area, however in principle the site can be developed for housing without adversely affecting the amenities of the existing properties, in context with the surrounding built form and with an appropriate access. Furthermore, subject to a hydraulic modelling assessment, the site can be provided with satisfactory foul and surface water drainage arrangements, to which it is considered will not be harmful to local habitats or biodiversity and public open space will be provided which also improves the accessibility and the landscaping of the area.

- 3.4 Accordingly, subject to conditions and the applicant entering into a S106 legal agreement to secure affordable housing, it is considered that the proposal meets with the housing policies and general requirements of the NPPF and otherwise complies with Shropshire Core Strategies CS6, CS9, CS11, CS17 and CS18 of the Shropshire Core Strategy. In arriving at this decision the Council has used its best endeavours to work with the applicant 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.

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.

9.0 **FINANCIAL IMPLICATIONS**

9.1 There are likely financial implications of the decision and/or imposition of conditions if challenged by a planning appeal or judicial review. The costs of defending any decision will be met by the authority and will vary dependant on the scale and nature of the proposal. Local financial considerations are capable of being taken into account when determining this planning application – in so far as they are material to the application. The weight given to this issue is a matter for the decision maker.

10. **BACKGROUND**

10.1 Relevant Planning Policies

Central Government Guidance:
National Planning Policy Framework

Core Strategy and Saved Policies:
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
CS7 - Communications and Transport
CS9 - Infrastructure Contributions

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 M. Price
Local Member Cllr David Lloyd MBE Cllr Robert Macey
Appendices APPENDIX 1 - Conditions

APPENDIX 1**Conditions****STANDARD CONDITION(S)**

1. Approval of the details of the scale, siting, external appearance of the development and the access details and landscaping of the site (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 4 of the 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 three years 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. This permission does not purport to grant consent for the layout shown on the deposited plan submitted with this application.

Reason: To enable the Local Planning Authority to consider the siting of the development when the reserved matters are submitted.

5. 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 means of access for disabled people
- The surface water drainage scheme of the site
- The finished floor levels

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

CONDITION(S) THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES

6. 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:

- i. the parking of vehicles of site operatives and visitors
- ii. loading and unloading of plant and materials
- iii. storage of plant and materials used in constructing the development
- iv. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
- v. wheel washing facilities
- vi. measures to control the emission of dust and dirt during construction
- vii. 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.

7. No dwelling hereby approved shall be occupied until:
- 1) A detailed and permanent scheme for the disposal of foul drainage (together with details of any temporary foul drainage solution and phasing of occupation as required) has been agreed in writing with the local planning authority: and
 - 2) The appropriate permanent or temporary foul drainage scheme approved under part 1 above for the relevant phase of the development has been completed strictly in accordance with the approved details

Reason: To ensure satisfactory foul drainage of the development and ensure that the drainage of the site does not result in environmental consequences in the wider area.

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

8. Prior to the first occupation of the dwellings details of five woodcrete artificial nests suitable for small birds such as robin, blackbird, tit species, sparrow and swallow shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented in full prior to the occupation of the dwelling/building.

Reason: To ensure the provision of nesting opportunities for wild birds

9. Prior to the erection of any external lighting which would illuminate trees and hedgerows 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

10. The proposed development site is crossed by a 450mm surface water with the approximate position being marked on the attached Statutory Public Sewer Record. Under the Water Industry Act 1991 Dwr Cymru Welsh Water has rights of access to its

apparatus at all times. No part of the building will be permitted within 5 metres either side of the centreline of the public sewer.

Reason: To protect the integrity of the public sewer and avoid damage thereto.

11. Land drainage run-off shall not be permitted to discharge, either directly or indirectly, into the public sewerage system.

Reason: To prevent hydraulic overload of the public sewerage system and pollution of the environment.

12. No surface water shall be allowed to connect, either directly or indirectly, to the public sewerage system unless otherwise approved in writing by the Local Planning Authority.

Reason: To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and ensure no detriment to the environment.

13. Foul water and surface water discharges shall be drained separately from the site.

Reason: To protect the integrity of the public sewerage system.

14. No construction and/or demolition work shall commence outside of the following hours: Monday to Friday 07:30 - 18:00, Saturday 08:00 - 13:00. No works shall take place on Sundays and bank holidays.

Reason: to protect the health and wellbeing of residents in the area.

15. No burning shall take place on site including during clearance of the site.

Reason: to protect the amenity of the area and protect the health and wellbeing of local residents.