



Committee and date

Central Planning Committee

16 July 2015

## Development Management Report

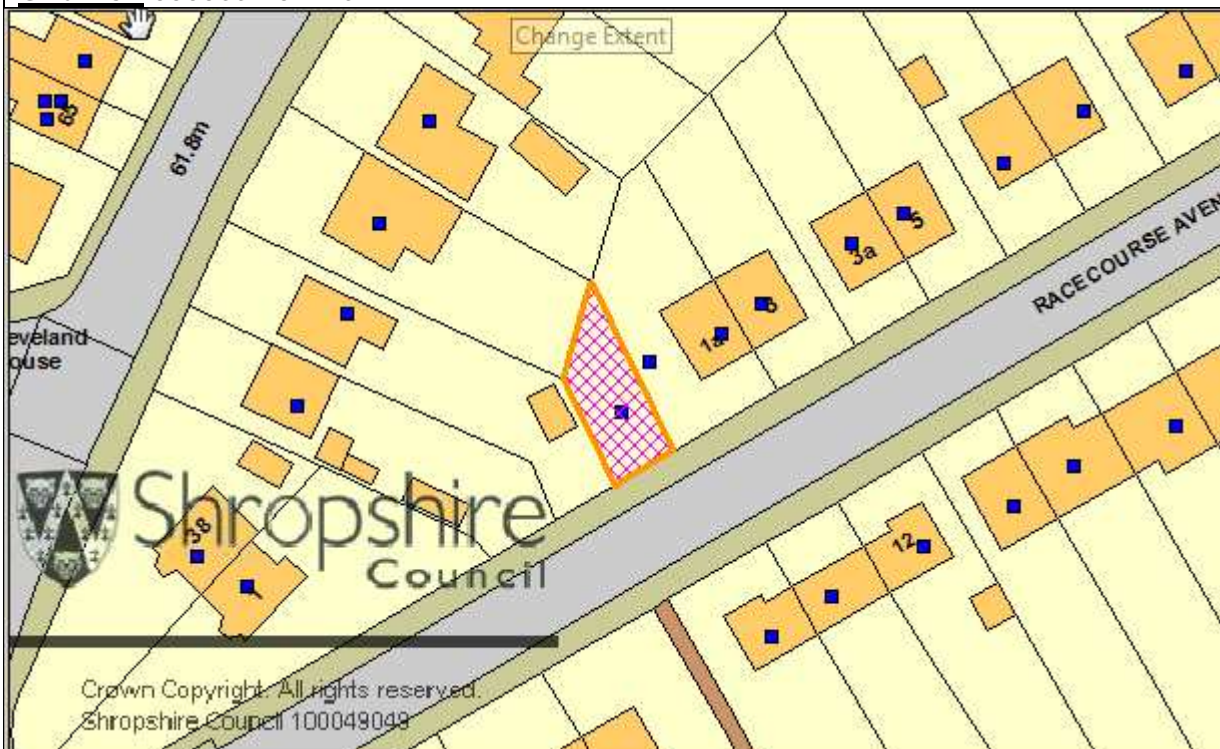
Responsible Officer: Tim Rogers

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

### Summary of Application

<b>Application Number:</b> 15/01382/FUL	<b>Parish:</b>	Shrewsbury Town Council
<b>Proposal:</b> Erection of one terraced dwelling		
<b>Site Address:</b> Land Adjacent To 1B Racecourse Avenue Shrewsbury Shropshire		
<b>Applicant:</b> Monkmoor Fish Bar		
<b>Case Officer:</b> Kate Whitfield	<b>email:</b> <a href="mailto:planningdmc@shropshire.gov.uk">planningdmc@shropshire.gov.uk</a>	

**Grid Ref:** 350369 - 312791



© Crown Copyright. All rights reserved. Shropshire Council 100049049. 2011 For reference purposes only. No further copies may be made.

Contact: Tim Rogers (01743) 258773

**Recommendation:- Refuse**

Recommended Reason for refusal:

Whilst the application site is a sustainable location and a proposed open market dwelling would be acceptable in principle, the Local Planning Authority considers that the site itself is unsuitable for this type of development. It would result in a cramped and contrived form of development which detracts from the character and appearance of the local area and is out of keeping with the general pattern of development. The proposal therefore fails to comply with Shropshire Council Local Development Framework Core Strategy policy CS6.

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

- 1.1 This proposal relates to the erection of a one bedroom open market dwelling with associated front and rear garden area and parking space.
- 1.2 The two storey dwelling will have a floorspace of 41.32 square metres. The new property will be constructed from Baggeridge 'Old English' brick and reclaimed clay tiles with uPVC windows and doors.
- 1.3 The siting and design of the proposed dwelling was amended during the course of the application and amended plans submitted.

**2.0 SITE LOCATION/DESCRIPTION**

- 2.1 The application refers to land which is currently part of the residential curtilage of No. 1B Racecourse Lane, which is located in the Monkmoor area of Shrewsbury. The land lies to the south east of this dwelling, which itself is a recently built house, attached to the south eastern side of an original semi-detached property at 1A Racecourse Lane. No 1B Racecourse Lane is a two storey dwelling constructed from brick with a tiled, hipped roof.
- 2.2 Racecourse Lane is a residential street with a combination of traditional style semi-detached and terraced properties on either side of the road. To the north the site backs onto the rear gardens of properties on Monkmoor Road and to the south west lies a detached garage building lying in the rear garden of the property at no. 42 Monkmoor Road, which extends right down to Racecourse Lane itself. A large Beech tree lies at the bottom of the garden of this property and on the boundary with the application site.

**3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION**

- 3.1 The Local Member has requested that the application be determined by the Planning Committee. This request has been agreed by the Chair and Vice Chair of the Planning Committee and the Principal Planning Officer/Service Manager with responsibility for Development Management.

#### 4.0 **COMMUNITY REPRESENTATIONS**

##### 4.1 **Consultee Comments**

##### 4.2 **Shropshire Council's Flood and Water Management Team :**

Informative: A sustainable drainage scheme for the disposal of surface water from the development should be designed and constructed in accordance with the Shropshire and Staffordshire Sustainable Drainage Systems (SuDS) Handbook.

4.3 The provisions of the Planning Practice Guidance, in particular Section 21 Reducing the causes and impacts of flooding, should be followed.

4.4 Preference should be given to drainage measures which allow rainwater to soak away naturally. Connection of new surface water drainage systems to existing drains / sewers should only be undertaken as a last resort.

##### 4.5 **Shropshire Council's Affordable Housing Officer :**

As an open market housing proposal, the Core Strategy requires the development to contribute towards the provision of affordable housing. The detail of this requirement is contained in Core Strategy Policy CS11 together with Chapter 4 of the Council's adopted Supplementary Planning Document on the Type and Affordability of Housing.

4.6 The exact contribution is dependent upon the affordable housing rate applicable at the date of submission of a full planning application or reserved matters in the case of an outline application. This rate is reviewed annually.

4.7 The current affordable housing contribution rate for this area is 20% and as such a proposal for 1 new open market dwelling would be liable to make a contribution equivalent to 1 x 0.20 of a whole affordable unit (1 x 20%). As this level of contribution is less than a whole unit, it is translated into a cash sum paid by the developer as an off-site Affordable Housing Contribution used by the Council fund the delivery of affordable housing provision elsewhere in the area.

4.8 As part of the application process the applicant should be requested to complete a new Affordable Housing Contribution Proforma so that the correct level of their contribution can be calculated and agreed.

##### 4.9 **Shropshire Council Highways Development Control** (*Comments made on plans initially submitted*):

The Highway Authority raises an objection to the granting of consent and offers the following reason for refusal.

4.10 'No satisfactory facilities are being provided within the curtilage of the site for off-street parking. Moreover, if the development is permitted, the parking provision for the previous adjoining approved residential unit will also not be provided. As a consequence, it is considered that the development, if permitted, would be likely to result in the parking of vehicles on the adjoining highway to the detriment of the free flow and safe movement of traffic using Racecourse Avenue.'

- 4.11 Comments: The site is located on the outskirts of the town centre, on the northern side of Racecourse Avenue, an unclassified road subject to a local speed limit of 30 mph. The proposed dwelling will be within a line of semi-detached/terraced style properties. A number of these existing properties lining Racecourse Avenue have off road parking provision.
- 4.12 The proposal is seeking for the approval for a further residential unit on the original plot of land to 1A Racecourse Avenue with the application site removing the approved parking and turning facilities in connection with the previous approval for 1B under permission 10/05582/FUL. If permitted this would effectively result in three separate residential units where there had previously been one.
- 4.13 The supporting information states that the proposal 'designed to make allowance for off road parking' but the submitted plans do not show any new provision or the relocation of the approved parking in connection with 1B. In line with guidelines and the saved policy 'Appendix 2' from the SABC Local Plan, the development should be providing 1.5 parking spaces per residential unit.
- 4.14 In addition, the development if approved would make similar applications difficult to sustain an objection to and would also result in the non-compliance of the previously approved scheme under 10/05582/FUL. The Highway Authority would not be supportive of an amended application for 1B to regularise the removal of the parking provision for the same reason given above.
- 4.15 *Subsequent Comments Received 9 June 2015 :*  
With regards to the above application to which we raised an objection on the grounds of insufficient parking/removal of an existing parking space for the adjacent dwelling, I confirm that we have now reviewed the revised layout provided by the applicant (attached) which includes three parking spaces for the two dwellings. The revised layout deals with the issues we previously raised and provides an acceptable level of parking for this location. We therefore withdraw our previous objection to the scheme.
- 4.16 **Shropshire Council Tree and Woodland Amenity Protection Officer:** Having read the submitted tree report and plans I am satisfied that the important amenity tree can be adequately protected. It is requested that a condition is applied to state that the submitted Tree Protection Plan should be erected to the satisfaction of the LPA prior to commencing any approved development related activities on site. In addition, if any specialized construction work within the Root Protected Area (RPA) takes place a Arboricultural Method Statement (AMS) shall first be submitted detailing how any approved construction works will be carried out.
- 4.17 **Shropshire Council's Ecologist:** No comments on the application.
- 4.18 **Public Comments**
- 4.19 **Shrewsbury Town Council:** No objections to the proposal.
- 4.20 The application has been advertised by notices at the site and the 5 nearest residential properties have been individually notified. Two representations have been received in response to this publicity.

4.21 Both representations raise concerns about the proximity of the proposed dwelling to a Beech Tree located within the garden area of the neighbouring property to the south west.

4.22 A query is also raised over whether the dwelling will have any parking.

## **5.0 THE MAIN ISSUES**

- Principle of development of the site for new housing.
- Siting, scale and design of the proposed dwelling and impact on the visual amenity of the surrounding area.
- Impact on the residential amenity of neighbouring properties.
- Other matters – Arboricultural Matters, Access & Parking, Drainage, Affordable Housing Contribution.

## **6.0 OFFICER APPRAISAL**

### **6.1 Principle of Development of the site for new housing.**

6.1.1 Applications for planning permission must be determined in accordance with the adopted development plan (Section 38(6) of the Planning and Compulsory Purchase Act 2004). Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused, unless other material considerations indicate otherwise.

6.1.2 The adopted development plan for Shropshire is the Local Development Framework (LDF) Core Strategy, the Supplementary Planning Document (SPD) on the Type and Affordability of Housing and any saved policies from the preceding 'local plan', which in this case is the Shrewsbury and Atcham Borough Council Local Plan. Significant weight is also to be attributed to the National Planning Policy Framework (NPPF) in the determination of planning applications.

6.1.3 The application site is located within the urban area of Shrewsbury. Core Strategy Policy CS2: Shrewsbury - Development Strategy, states that Shrewsbury will provide the primary focus for housing development within Shropshire, aiming to achieve a minimum of 60% of the housing target on previously developed land over the plan period. In terms of emerging policy it is also noted that the application site lies within the development boundary for Shrewsbury as set out in the Pre-submission Draft SAMDev Plan published on 17<sup>th</sup> March 2014.

6.1.4 The application will result in a presumably 'affordably priced' one bedroom dwelling. In terms of location the site is within a predominantly residential area of Shrewsbury, relatively close to the town centre and with good transport links and local facilities. It is a sustainable location for new dwellings and therefore the re-development of the site to provide an additional property would be potentially acceptable in principle under Policies CS2 and CS11 of the Core Strategy, which identifies Shrewsbury as the primary focus for housing development for Shropshire.

**6.2 Siting, scale and design of the proposed dwelling and impact on the visual amenity of the surrounding area.**

- 6.2.1 Proposals for new housing need to meet the sustainable design and development principles that are identified in policy CS6. This policy states that development should be appropriate in scale, density, pattern and design, take into account the local context and character of an area and should also safeguard residential and local amenity.
- 6.2.2 Racecourse Avenue is characterised by semi-detached and rows of short terraces, mostly with front garden areas and side driveways. There is a strong building line and a regular alignment of buildings. Planning permission was previously granted for the addition of the dwelling to the south western end of an original semi-detached dwelling at 1A Racecourse Avenue. This property has recently been completed and is considered to fit well into the street scene, matching a similar terrace of three properties opposite. There was adequate space for this dwelling to be accommodated without any detrimental impact on the overall character and appearance of the street scene.
- 6.2.3 The proposed new dwelling will be adjoined to this recently built property, expanding the terrace to four dwellings. Design amendments were made during the course of the application to meet the concerns of consultees. The dwelling was moved back in the site to ensure that it would not have a detrimental impact on the Beech tree and to ensure that off street parking provision could be provided for both this new dwelling and the dwelling at 1B Racecourse Avenue, which would have lost its side driveway as a result of the proposal. However, notwithstanding these amendments, it is considered that the application site cannot satisfactorily accommodate a further additional dwelling. The addition of another property in this location will appear noticeably cramped and contrived when viewed in the street scene and the design will result in a house which is out of keeping with the established character and pattern of development along Racecourse Avenue.
- 6.2.4 In addition, in order to provide the required off street parking, it is proposed to give over a large part of the frontage of both the new dwelling and the previously built dwelling at 1B Racecourse Avenue to provide 2 parking spaces, one for the new dwelling and one for no. 1B. Whilst the Highways Officer has confirmed that the spaces meet the minimum size for a vehicle they would be tightly spaced between the front elevation of the properties and the pavement. This frontage parking is not a characteristic of the street scene along Racecourse Avenue. It is considered to be detrimental to the character and appearance of the street scene and is considered to be a design issue which gives a strong indication of the over development of the site.
- 6.2.5 By virtue of its siting, scale and design the proposed dwelling is therefore considered to represent an over development of the site, which would have a detrimental impact on the street scene and the character and appearance of the area. The proposal is therefore considered to be contrary to the aims of Core Strategy Policy CS6.

**6.3 Impact on the residential amenity of neighbouring properties.**

- 6.3.1 The proposed dwelling will be built level with the newly built dwelling at 1B Racecourse it will be attached to. As a result it should not have any impact on the light or outlook of this property. The recently built dwelling at 1B Racecourse Avenue has been built with a first floor window in the south eastern side elevation, which would directly overlook the rear patio of the proposed dwelling. This window serves a bedroom, however, a condition is on the 2010 permission for this bedroom window to be obscure glazed and this has been complied with.
- 6.3.2 The site is cramped and the proposed dwelling will lie very close to the rear boundary of the site, however, it is noted that the rear window in the proposed new dwelling only serves a bathroom, with the bedroom window being located at the front of the property. Therefore the scheme will not lead to any direct overlooking onto the rear garden of the property backing onto the application site. The rear of the new dwelling will be approximately 20 metres from the rear of the actual properties in Monkmoor Road and it is therefore considered that the proposal will not appear obtrusive or overbearing to these dwellings.
- 6.3.3 There are no properties lying directly to the south east of the application site and it is not considered that the proposed addition of an extra dwelling on the end of this terrace of three properties would have any detrimental impact on the residential amenity of any other neighbouring properties. The proposal is therefore deemed to be acceptable in terms of its impact on residential amenity.

**6.4 Other Matters : Arboricultural Matters, Access & Parking, Drainage, Ecology, Affordable Housing Contribution.**

- 6.4.1 **Arboricultural Matters** : A large Beech Tree in the garden of the neighbouring property lies close to the front boundary of the site. An Arboricultural Report was therefore requested to assess the possible impact on this tree. Following submission of this report, and the submission of amended plans to site the proposed dwelling further away from this tree, the Tree Officer advised that the proposals would be acceptable and that with adequate tree protection measures it should be possible to protect the tree from being detrimentally affected by the proposed dwelling.
- 6.4.2 **Access & Parking** : Originally no off road parking provision was indicated for the new dwelling. In addition, the plans resulted in the newly built dwelling at No. 1B Racecourse Lane losing its allocated parking area to the side. The Highways Officer advised that this would not be acceptable, however, amended plans were received during the course of the application which enabled 2 parking spaces to be included within the scheme. This resolved the Highways Officer's objection, however, as detailed above this has resulted in design issues which are not considered to be acceptable.
- 6.4.3 **Drainage** : Surface water drainage would be provided via the main sewer. No additional information has been requested in relation to this by the Council's Drainage team and due to the small scale of the dwelling it is not considered that any further details would be required for prior approval.

- 6.4.4 **Ecology** : Council Ecologists have confirmed that no protected habitats or species are likely to be affected by the proposed works. An ecological assessment is therefore not deemed to be necessary.
- 6.4.5 **Affordable Housing Contribution** :  
Policy CS11 supports the provision of an integrated and balanced mix of new housing development. It also states that new open market housing must make a contribution to the provision of local needs affordable housing. The Applicant has agreed to this and the contribution would be secured through the provision of a S106 Agreement, with the final contribution amount to be determined by the prevailing percentage target rate at the date of a full or reserved matters application.
- 6.4.6 The Minister of State for Housing and Planning, Brandon Lewis MP issued a Written Ministerial Statement (WMS) on 28th November announcing that Local Authorities should not request affordable housing contributions on sites of 10 units or less (and which have a maximum combined gross floor space of 1,000 m<sup>2</sup>), or 5 units or less in designated protected rural areas, the aim being to boost housing supply on smaller sites by removing “burdensome obligations”.
- 6.4.7 This statement and the subsequent adoption into the National Planning Practice Guidance is a material consideration that the Local Planning Authority now has to take into consideration and is clearly at odds with Shropshire’s adopted Core Strategy (Policy CS11) which requires that all new open market residential development makes an appropriate contribution to the provision of affordable housing.
- 6.4.8 A report was submitted to the Cabinet of the Council on the 21st Jan 2015 and the Council’s unanimous decision was to take into account the WMS as a material planning consideration but to continue to apply the adopted Core Strategy and SPD.
- 6.4.9 The Council notes that the High Court is currently considering its judgement in the judicial review of the WMS brought by West Berks/Reading Councils, which may further inform Shropshire Council’s position. A recent appeal decision (APP/L3245/A/14/2218662 - Vashlyn, Kelsalls Lane, Copthorne, Shrewsbury, Shropshire, SY3 8LU, unexpectedly considered and commented on the Councils position which has since been widely propagated as a defining judgement. This is arguable and these are overly simplistic and subjective views on a decision where the Council had not provided detailed narrative, evidence or reasoning as the applicant had agreed to the Affordable Housing Contribution and was not challenging the Council on this particular issue.
- 6.4.10 The Council considers therefore that although this is an important case, it is not a binding precedent and it is a potentially flawed decision against which the Council is considering a formal challenge. As a consequence, the Council’s current position, based upon a robust policy position endorsed by Cabinet, will continue.



- 6.4.11 The Council therefore continues to give full weight to Policy CS11 of the adopted Core Strategy and Type and Affordability of Housing SPD and continues to seek on site provision of affordable housing and/or developer contributions to the provision of affordable housing in relation to all sites.
- 6.4.12 Given the above, it is recommended that planning permission be granted only subject to the satisfactory completion of a legal agreement to secure the provision of affordable housing in accordance with the terms of the policy. Non compliance with the requirements of adopted Core Strategy Policy CS11 would mean that the proposal would be in clear conflict with the aims and requirements of the Development Plan and should therefore be refused, unless other material considerations indicate otherwise.

## **7.0 CONCLUSION**

- 7.1 Whilst the application site is a sustainable location and a proposed open market dwelling would be acceptable in principle, it is considered that the site itself is unsuitable for this type of development. It would result in a cramped and contrived form of development which detracts from the character and appearance of the local area and appears out of keeping with the general pattern of development. The proposal therefore fails to comply with Shropshire Council Local Development Framework Core Strategy policy CS6 and delegated refusal is recommended.

## **8.0 RISK ASSESSMENT AND OPPORTUNITIES APPRAISAL**

### **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 three months 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.

### **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.

## **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**

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**

### Relevant Planning Policies

#### **Central Government Guidance:**

National Planning Policy Framework :

Part 6 : Delivering a wide choice of high quality homes.

Part: 7: Requiring Good Design

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

Shrewsbury & Atcham Borough Local Plan (June 2001) Policies :

T14 : Parking Standards Outside the River Loop and Appendix 2.

CS2 : Shrewsbury – Development Strategy

CS6 : Sustainable Design and Development Principles

CS11 : Type and Affordability of Housing

Supplementary Planning Document (SPD) on the Type and Affordability of Housing (adopted September 2012)

RELEVANT PLANNING HISTORY: None.

List of Background Papers : Application Reference 15/01382/FUL
Cabinet Member (Portfolio Holder) Cllr M. Price
Local Member Cllr Miles Kenny
Appendices APPENDIX 1 - Conditions

**Informatives**

1. Despite the Council wishing to work with the applicant in a positive and proactive manner as required in Paragraph 187 of the National Planning Policy Framework, the proposed development is contrary to the policies set out in the officer report and referred to in the reasons for refusal, and as such it has not been possible to reach an agreed solution in this case.