

Shropshire Council  
Legal and Democratic Services  
Shirehall  
Abbey Foregate  
Shrewsbury  
SY2 6ND

Date: Monday, 12 October 2020

**Committee:**  
**Southern Planning Committee**

**Date:** Tuesday, 20 October 2020  
**Time:** 2.00 pm  
**Venue:** THIS IS A VIRTUAL MEETING

**Members of the public will be able to listen to this meeting by clicking on this link: <https://www.shropshire.gov.uk/SouthernPlanningCommittee20October2020>**

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**The Council's procedure for holding Virtual Planning Committees can be found by clicking on this link: <https://www.shropshire.gov.uk/planning/applications/planning-committees/>**

You are requested to attend the above meeting.  
The Agenda is attached

Claire Porter  
Director of Legal and Democratic Services (Monitoring Officer)

**Members of the Committee**

David Evans (Chairman)  
David Turner (Vice-Chair)  
Andy Boddington  
Simon Harris  
Nick Hignett  
Richard Huffer  
Cecilia Motley  
Tony Parsons  
Madge Shingleton  
Robert Tindall  
Tina Woodward

**Substitute Members of the Committee**

Roger Evans  
Nigel Hartin  
Christian Lea  
Elliott Lynch  
Dan Morris  
Kevin Pardy  
William Parr  
Kevin Turley  
Claire Wild  
Leslie Winwood  
Michael Wood

Your Committee Officer is:

**Tim Ward**    Committee Officer  
Tel:                01743 257713  
Email:             [tim.ward@shropshire.gov.uk](mailto:tim.ward@shropshire.gov.uk)

# AGENDA

## 1 Apologies for Absence

To receive any apologies for absence.

## 2 Minutes

To confirm the minutes of the Southern Planning Committee meeting held on 22 September 2020 **TO FOLLOW**

Contact Tim Ward (01743) 257713.

## 3 Public Question Time

To receive any questions or petitions from the public, notice of which has been given in accordance with Procedure Rule 14. The deadline for this meeting is no later than 2.00 pm on Friday 16 October 2020

## 4 Disclosable Pecuniary Interests

Members are reminded that they must not participate in the discussion or voting on any matter in which they have a Disclosable Pecuniary Interest and should leave the room prior to the commencement of the debate.

## 5 Proposed Residential Development Land Adjacent to Linney House, The Linney, Ludlow, Shropshire. (19/05519/FUL) (Pages 1 - 54)

Re-profiling of ground; erection of four detached houses; restoration of stone boundary wall to The Linney; creation of a managed woodland area (on the lower level of the site) with access track for maintenance.

## 6 Orchard Cottage 5 Crackleybank Sheriffhales Shifnal Shropshire (20/01219/FUL) (Pages 55 - 68)

Change of use of private kennels to Boarding Kennels and Dog Grooming.

## 7 Former Council Offices Westgate Bridgnorth Shropshire (20/02056/FUL) (Pages 69 - 102)

Demolition of existing buildings; erection of mixed residential scheme of 31 dwellings; highway works; landscaping scheme to include felling of trees; all associated works.

## 8 Land Adjacent The Round House Fenn Green Alveley Shropshire (20/02669/FUL) (Pages 103 - 126)

Application under Section 73A of the Town and Country Planning Act 1990 for use of land as travellers caravan site comprising of 3 No. caravans (retrospective)

## 9 7 Manor Crest Ford Shrewsbury SY5 9NZ (20/03129/FUL) (Pages 127 - 136)

Erection of single storey extensions and covered areas to side and rear (following demolition of existing outbuildings and conservatory); construction of single storey inglenook fireplace with flue to side elevation; conversion of garage to habitable room to include elevational amendments; and re-modelling of driveway. (amended description)

**10 Schedule of Appeals and Appeal Decisions (Pages 137 - 180)**

**11 Date of the Next Meeting**

To note that the next meeting of the South Planning Committee will be held at 2.00pm on Tuesday, 17 November 2020.

## Development Management Report

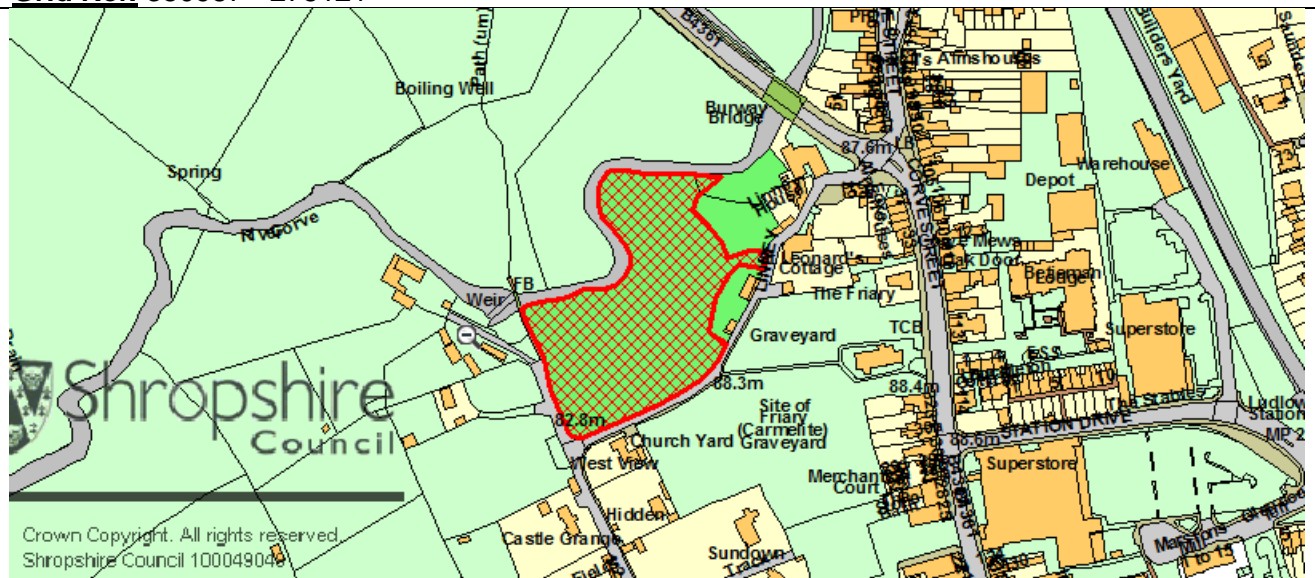
Responsible Officer: Tim Rogers

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> 19/05519/FUL	<b>Parish:</b>	Ludlow Town Council
<b>Proposal:</b> Re-profiling of ground; erection of four detached houses; restoration of stone boundary wall to The Linney; creation of a managed woodland area (on the lower level of the site) with access track for maintenance.		
<b>Site Address:</b> Proposed Residential Development Land Adjacent to Linney House, The Linney, Ludlow, Shropshire.		
<b>Applicant:</b> Linney House Development Limited		
<b>Case Officer:</b> Andrew Sierakowski	<b>email:</b>	planning.southern@shropshire.gov.uk

**Grid Ref:** 350987 - 275121



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**Recommendation:-** That approval of the Application be delegated to the Head of Planning Services subject to the conditions set out in Appendix 1 and the heads of terms for a Planning Obligation (either in the form of a Unilateral Undertaking or conventional Section 106 agreement) set out Appendix 2.

## REPORT

### 1.0 THE PROPOSAL

- 1.1 This is an application, submitted by Linney House Development Limited, for the re-profiling of the ground, erection of four detached houses, restoration of the stone boundary wall along The Linney, creation of a managed woodland area on the lower level of the site and an access track for maintenance, on land adjacent Linney House at The Linney, Ludlow.
- 1.2 The application is the latest of a series of iterations of different schemes that have been developed since 2012, the most recent previous application being that for the eight house scheme (Planning Application Ref. 19/00826/FUL), that was reported to, and considered by this Committee, at its meeting on the 28<sup>th</sup> July 2020 and is currently the subject of an appeal.
- 1.3 This application represents a further amendment of the previously submitted scheme following lengthy and extensive discussion and negotiation with the applicant, which seeks to address the shortcomings of the previous scheme and in particular the inadequate level of the woodland replanting being proposed to provide compensation, mitigation and enhancement for the woodland loss required. It addresses this by reducing the number of dwellings proposed to four dwellings, which are of a contemporary design, and which once the proposed tree planting on the site has matured, are intended to be set in woodland. Each dwelling would be a 4/5 bedroom detached house, all essentially of the same design, albeit one, that on Plot 4, would be a mirror image of the houses on Plots 1-3. Each dwelling would be a one/one and half storey structure, comprising four sections, three with asymmetrical dual-pitch roofs and one with a mono-pitched roof. Materials would be natural stone, Ludlow brick, welsh slate and unstained/untreated oak boards (i.e. left to silver), while the fenestration would comprise large floor to ceiling glazed panels and skylights. There would be a single substantial lead faced flat-roofed box dormer on the central section on the rear elevation of three of the houses and the front elevation on the fourth (which would have its orientation reversed). Each house would have a sperate garage, built of materials to match the houses. The intention is that the houses, rather than appearing as single traditional blocks are broken up into a series of smaller sections.
- 1.4 The four house plots together take up approximately half the site, so that each plot extends to approximately 0.125ha. The Design and Access Statement submitted with the application describes the houses as:
- embracing a woodland character reminiscent of modern Scandinavian forest settlements;
  - using local materials which correlates the design very much with the South Shropshire area;
  - using high tech glazing and traditionally constructed stonework to create a modern vernacular as championed by English Heritage in its advice for new development in historic areas;

- utilising roofing materials which assimilate colours and textures of slates and tiles with both the built and natural environment; and
  - utilising paving materials on driveways and circulation space with subtle earth born hues to blend the hard landscaping into the natural scene.
- 1.5 The application states that as the scheme has evolved the amount of private garden space has diminished to avoid a clash with the river and Linney tree belts, with the overall balance in favour of the enhanced, replanted, woodland, rather than the private garden space.
- 1.6 It proposed to reprofile the site to reinstate what the application states was the original gentle slope down to the river and to raise the finished floor levels above the flood level. Currently, there is a steeply sloping bank that extends from the south side of Plot 2 with a hollow at that end, up to and through the site of Plot 4. It is proposed to dig out and remove soils along the southern boundary of the site adjacent to The Linney which are banked up against the stone boundary wall to a depth of up to approximately 1.3m higher than the road surface. The area to be filled would be between approximately 2m and 4m in depth across the four house plots to create an level terrace for each dwelling, with the lowest on Plot 1 constructed at 84.5m against an existing level of 82.34m and the highest on Plot 4 at a level of 87.161m against an existing level of between 82.89m and 87.84m.
- 1.7 In addition, it is proposed to restore the stone wall along the frontage of The Linney, although as part of these works, the existing access into the rear of Linney House would be widened and a second, wholly new access would be formed towards the western end of the site, so there are two separate accesses, each serving two dwellings, with visibility splays. The application indicates that the central section of the boundary wall adjacent to the bend in The Linney will be taken back to increase visibility around the bend. The application also refers to widening The Linney to provide a passing space, although specific details are not included in the application.
- 1.8 It is proposed to fell, almost all of the approximately 70 trees on the higher part of the site adjacent to The Linney to facilitate the ground levelling works and the repair of the boundary wall along The Linney, with only the large Sycamore tree and Ash tree immediately to the rear of Linney House being retained. On completion of the ground works and the main construction phase it is proposed to re-landscape the upper part of the site, with mixed woodland. By contrast the existing woodland immediately adjacent to the River Corve is to be largely retained, with supplementary native species woodland planting and the addition of some standard trees. The intention is that this area of the site is given over to wildlife and collectively managed as woodland copse.
- 1.9 The existing garage and sheds on the site located the south west of Linney House are to be retained and are excluded from the application site.
- 1.10 The application has been accompanied by an Archaeological Desktop Evaluation and Written Scheme of Investigation Proposal, an Ecological Impact Assessment, a Biodiversity Benefit Statement, a Flood Risk Assessment, a Heritage Assessment, an Assessment of the Potential for Land Contamination, an Arboricultural Report, a

Landscape and Visual Appraisal, and a Landscaping Plan.

- 1.11 In addition, during the course of the application, an updated Landscape and Visual Appraisal, Arboricultural Method Statement, a soft landscaping plan, a planting specification, a detailed contour plan and sections, and a Landscape and Habitat Management Plan have been submitted in response to the advice of consultees.
- 1.12 The Landscape and Habitat Management Plan includes proposals for an initial fifteen-year period for the management of the landscape and habitat areas on the site. It is proposed to set up a management company to be responsible for the long-term management of the site that would be run and funded by the residents of the new houses. The Landscape and Habitat Management Plan makes provision for an annual monitoring review of its implementation including provision for feedback from the Council as the Local Planning Authority.

## **2.0 SITE LOCATION/DESCRIPTION**

- 2.1 The application site is just over 1 ha. in size and forms part of what was the garden and curtilage of Linney House, a Grade II listed building. The Linney forms the southern boundary of the site, while the winding course of the River Corve delineates the northern boundary. The western boundary adjoins a Public Bridleway and Linney House lies to the east. The site is broadly split into two levels, a higher level adjacent to The Linney and a lower lying area adjacent to the river. There is steeply sloping bank in between.
- 2.2 The site lies within the Ludlow Conservation Area and there is a stone wall, which is an important feature running along the length of the boundary with The Linney. The site contains a large number of trees which is it understood are partly self-seeded. These are understood to have previously covered most of the site, although there has also been some felling and clearance works in the last four to five years. A substantial part of the site, along the river to the north and the bridleway to the west falls within in Flood Zones 2 and 3 of the River Corve on the Environment Agency's Flood Map for Planning.
- 2.3 The site is understood to have been a former gravel extraction site, although there are contradictory statements from the applicant and third parties about when mineral extraction ceased, with a statement by the applicant that it remained an extraction site up to the 1980's and from third parties suggesting that mineral extraction ceased by as early as 1930. The area to the south is predominantly residential, whilst that to the north is open pasture.
- 2.4 The site has an extensive recent planning history, which is set out in Section 10 towards the end of this report. This includes Planning Permission Refs. 12/02275/FUL and more recently 17/00230/FUL that granted consent for the development of three dwellings on the site and which remains extant. There are also a number of associated applications and consents to vary or discharge the conditions attached to the two permissions, including most recently Application Ref. 20/00119/DIS and a subsequent variation application, Ref. 20/01127/VAR that has amended the tree protection plan approved under Planning Permission Ref.



17/00230/FUL to enable the phased implementation of that consent. In addition, there is the other current Application Ref.19/00826/FUL, for the alternative eight dwellinghouse scheme on the site, which is subject to an appeal against non-determination, as well as the application to which this report relates.

2.5 There is also an extensive history relating to the trees on the site (including land not included in the current application red line boundary) that makes up the wooded former curtilage of Linney House. This history relates to felling that is understood to have been taken place in May 2015 and then again in the winter of 2015-2016, the former having been undertaken without notice being given under s.211 of the Town and Country Planning Act 1990. The latter it is understood was undertaken as pre-commencement works to the implementation of Planning Permission Ref. 12/02275/FUL. The Tree Officer has provided a detailed statement relating to these activities and to the subsequent compensatory planting that has been undertaken. The Tree Officer’s advice is that 256 out of the total of 401 trees were felled but that after the initial unlawful felling compensatory planting was undertaken which included 100 whips after the initial unlawful felling. Further compensatory planting comprising a block of 96 additional whips as well 87 standard trees, was also agreed, but it is understood that this has not to date been undertaken.

**3.0 REASON FOR COMMITTEE/DELEGATED DETERMINATION OF APPLICATION**

3.1 The application is a complex application which in the view of the Planning Services Manager in consultation with the Chairman or Vice Chairman should be determined by the Planning Committee

**4.0 COMMUNITY REPRESENTATIONS AND CONSULTEE COMMENTS**

**Parish Council**

4.1 Ludlow Town Council: Neither supports nor objects to the application but states that it has concerns regarding the course of the river following the recent removal of the nearby weir, although this is unrelated to the current application.

**Public Comments**

4.2 In addition to the comments from Ludlow Town Council there have been fourteen third-party representations from ten local residents and organisations. Of these representations, three state support for the application, two of which are from the Ludlow Civic Society, which are identical and submitted twice, eight offer objections and three, including two representations from the Ludlow Conservation Area Advisory Committee and one from the Ludlow Swift Group, state that they are neutral.

4.3 Those from the Ludlow Civic Society in support of the application in summary make the following points:

- That the proposal is of a reduced scale compared to the previous application;

- That the site was originally open meadow with land sloping down to the river rather than being tree covered and is not natural woodland;
- That both of the existing proposals are far better than the permitted scheme for three houses; and
- That delays in starting any development, continue to fuel neglect of the site whilst the road improvement and restoration of the natural stone wall is becoming an issue with the regular users of the lane. The wall along The Linney is now a "structure at risk" in the Ludlow Conservation Area.

4.4 The other supporting comment states that:

- The applicant has a superb track record in Ludlow of delivering development which is environmentally sound and extremely pleasing to the eye; and
- That he is highly sensitive to all aspects of the community, and the protection of trees and wildlife.

4.5 Those that object to the development in summary make the following points:

- That the site is woodland and a unique part of Ludlow;
- That the adjacent road is narrow with blind corners and the increased traffic from the four additional houses and through traffic will increase traffic, increasing the level of hazard;
- That the wildlife on and around the site has already been disrupted by the removal of trees and the proposed new planting though sensitively designed will take time to establish. The work involved in developing the site will have an additional detrimental effect on the bird and wildlife that has previously flourished on the site;
- That the site is subject to flooding and this may become more problematic;
- They question whether the construction of four additional large houses justifies developing one of the last remaining natural corners in Ludlow town centre;
- That Shropshire Council has recently declared a Climate Emergency and that Ludlow does not need four more executive homes on the flood plain. Instead more trees and wildlife are required. The trees are required now and not in 30 year's time when any new planting on the site matures;
- That the tree report submitted with the application states that out of the remaining 145 trees on the site, 67 further trees are to be felled, 6 of which are Category B, i.e. perfectly good trees. One of these, a mature London Plane, carries a TPO, whilst another close by is a semi-mature copper beech;
- That the remaining mature tall trees on the western end of the site are used daily by numerous birds, including flocks of winter visitors and for roosting. These are all scheduled to be cut down;
- That the tree report submitted with the application states that there will be a "small initial negative impact upon the visual environment by tree removal": This should be wholly unacceptable to a sensitive riparian, edge-of-town site in the Conservation Area;
- That the application is an improvement on the previous eight house application (Ref. 19/00826/FUL) in that the number of houses has been

reduced and landscaping and tree planting are improved, but otherwise fails to address the objections to all previous applications regarding this site;

- That the development is an unwanted property development of an unsuitable flood-prone site, that answers no local social or housing needs, and will result in an increased hazard from road traffic on the Linney, particularly with the badly-positioned site entrances breaching the stone wall, for which no plans for rebuilding have been included;
- That the development is not preservation or enhancement of the character of a Conservation Area;
- That the submitted Design and Access Statement justifies the replanting scheme on the grounds that most of the existing trees are of limited value. This is because most of the mixed woodland habitat of 338 trees has been cut down already, in breach of the Town & Country Planning Act. The application is claiming an enhancement of amenity and wildlife habitat, but the only reason for this is that the damage has already been done;
- That Plots 1 and 2 flooded over the weekend of 15-16 February 2020 and that there is photographic evidence to confirm this and that the western half of the site is therefore not suitable for development;
- That the flooding caused by Storm Dennis on the weekend of 16 February 2020 shows up the nonsensical flood risk assessments concerning this site. Putting the building plots into categories of Flood Zone 1 and Flood Zone 2 implies an expectation of floods between 1 in 100 years and 1 in 1000 years, yet the western half of the site has flooded on three recent occasions in 2007, 2015 and 2020 i.e. 3 times during the past 13 years. A formal request has been made to the Environment Agency for a reassessment to categorise the area as Flood Zone 3 on the basis of the unequivocal observational evidence. It is irresponsible to allow the building of residential properties on sites with such a high flood risk;
- That the two westerly houses (Plots 1 and 2 on the Proposed Site Layout drawing) lie on the former quarry floor and are both within Flood Zone 2 as shown on current EA mapping. Plot 1 is clearly within this high category of flood risk; Plot 2 is shown likewise, but on site actually appears to lie on a pile of quarry waste next to a channel;
- That the proposed floor levels may be compared with the wrack mark elevations recorded by the Environment Agency following the 20 July 2007 event (which was primarily flooding of the Teme at a lower elevation than the flooding of the Corve a month earlier) of 82.77 m downstream of the site (by the footbridge over the River Corve leading from Linney to the Boiling Well meadow) and 85.00 m upstream (below the culvert on the western approach to Corve Bridge);
- That the flood risk assessment accompanying the planning application is based on the Teme which is 600 metres downstream of the site and around two metres lower. That flood risk assessment states the minimum ground level of the development will be 2.19 m above the modelled flood level of the Teme. This is not relevant. In October 2019 the Corve was at a height of 3.7 m. That potentially threatens two of the planned homes with flooding (Plots 1 and 2);
- That the more easterly of the proposed houses (Plots 3 and 4) are situated outside the zone of significant flood risk but are located just behind the edge

of the former quarry face. No remarks have been made concerning their stability and their suggested location could be geotechnically hazardous;

- That no geological conservation interest has been acknowledged in the application, when there is considerable historical geological interest in the quarry face that runs through the property. This is the site where Professor William Watts FRS discovered granite pebbles within the fluvioglacial gravels that provide the evidence for glacial ice having come across the Irish Sea Basin from the Lake District. In the later account compiled by Dwerryhouse and Miller (QJGS, 1930) igneous pebbles are described that have been derived from the Breidden Hills (andesite and Criggion dolerite) as well as igneous rocks from the Lake District (Eskdale granite and Ennerdale granophyre), indicating that these had been brought in by glacial meltwater. Aside from its intrinsic interest, this historically important site should be scientifically examined and recorded if any development works are approved;
- That it is not clear if the new proposals follow the earlier schemes which proposed a reduction in height of the stone wall bordering Linney to just 0.9 m, which would have adversely impacted on the character of the stone wall, more than halving its original height of about 2.0 metres. Such a reduction would ruin both the rural character of the lane and the architectural character of the stone wall, and adversely impact on the visual amenity of this part of the Ludlow Conservation Area;
- That the submitted tree report makes its recommendations concerning the impact of removing trees on the basis that the stone wall will remain at its original height, providing a visual screen from the development within;
- That the application states that the development along The Linney is recent (within the last century) but this is incorrect. For a millennium The Linney has comprised burgage plots and developed as such;
- That the quarrying on the site ended in about 1930, not in the 1980s as stated in the Design & Access Statement;
- That the contention that quarrying is responsible for the depleted soil prolife across the site is only applicable to where the quarry faces were once located and that elsewhere the site is still underlain by the natural fluvioglacial sands and gravels and the soil profile is typical of that geological stratum and that the stability of the trees on such ground will be determined by the species and their ability to develop a natural root system; and
- That two documents, the Archaeological Evaluation and the Heritage Assessment, incorrectly describe the geology on the site.

4.6 Of the neutral comments, that from the Ludlow Conservation Area Advisory Committee comments that whilst it is broadly supportive of the application, that:

- The details of palette of walling and roofing materials should be conditioned and that the Committee is concerned that that the application does not include details of the external hard surfaces which are also important and should be agreed before planning permission is granted; and that
- The character of the Conservation Area in the vicinity of the site is defined by the sense of enclosure created by the walls on either side of The Linney. The Committee was initially concerned that the proposed alterations to the

boundary wall along The Linney would undermine this character and facilitate higher traffic speeds than are possible at present, but it has subsequently commented further adding that it considers that the long-term future of the wall is doubtful without development of the site and that the realignment of the central section is a compromise that is necessary to make the scheme viable.

- 4.7 It is also concerned that the additional traffic generation would be disproportionately increased as a result of increased through traffic that the improved sightlines and width of the carriageway would encourage. It therefore considers that traffic calming measures such as speed humps with 5mph humps adjacent to the proposed accesses should be installed with the walls and planting being retained in their present alignment.
- 4.8 Finally, the Ludlow Swift Group asks that integral swift bricks, which will be used by a range of bird species including, as well as Swifts, House Sparrows and Starlings are included in the development. These bricks are built into the fabric of buildings, recreating natural cavities found in older properties. They also ask that artificial nest cups for swallow are provided in suitable locations.

### Technical Consultees

- 4.9 Shropshire Council - Affordable Housing: Advise that the development falls within the definition of major development set out in the National Planning Policy Framework (NPPF) and consequently triggers the requirement for an affordable housing contribution in line with the requirements set out in the Council's Type and Affordability of Housing Supplementary Planning Document (SPD). They advise that the contribution required in this instance is £54,000, based on the 15% contribution rate for the site and 4 dwellings that exceed 100 sq. metres.
- 4.10 Shropshire Council – Highways: Advise that the application is considered to be generally acceptable from a highways and transport perspective, although further details, which can be reserved by condition, are required, comprising:
- Details of the accesses onto the highway, including the width, gradients, visibility splays, and construction details;
  - Engineering details of the proposed retaining wall amendments, as strengthening and repairing is proposed and is adjacent to the highway; and
  - Engineering details of the proposed widening of the highway.
- 4.11 Shropshire Council - Public Rights of Way: Advise that they have no comments to make on the application.
- 4.12 Shropshire Council - SUDS: Advise that the application is acceptable subject to the inclusion of conditions requiring the submission for approval of a scheme for surface and foul water drainage and its subsequent implementation and a requirement that the proposed groundworks on the site shall provide a minimum ground level of 84.50mAOD as stated in the submitted Flood Risk Assessment. They also advise the inclusion of informatives on the use, siting and design of soakaways, urban creep, drainage in the event of the use of non-permeable surfacing, and the submission of details of the proposed foul water sewage disposal arrangements.

- 4.13 Shropshire Council - Regulatory Services: Advise that the contaminated land assessment submitted with the application is not sufficiently detailed as a preliminary risk assessment (Phase I Desk Study) having regard to Environment Agency Land contamination risk management (CLR11) guidance. They further advise that there are two identified potentially contaminative past land uses within the development boundary of the site. These include its use as a timber yard (circa 1885); and as a quarry with filled ground (circa 1926). They also comment that the information submitted with the application refers to use of part of the site as a coal yard, an unofficial quarry dump and to the levelling of the top terrace with the deposited material. They therefore, recommend if planning permission is granted that conditions be included requiring: that a Site Investigation be undertaken to assess the nature and extent of any contamination on the site and that the report of the Site Investigation shall be submitted to the Council for approval; that in the event of the Site Investigation Report finding the site to be contaminated a further report detailing a Remediation Strategy shall be submitted to and approved in writing by the Council; that the works detailed as being necessary to make safe the contamination shall be carried out in accordance with the approved Remediation Strategy; that in the event that further contamination is found at any time during the carrying out of the approved development, that was not previously identified, it must be reported in writing and that an investigation and risk assessment, must be undertaken and if remediation is necessary a remediation scheme shall be prepared and submitted for written approval; and that on completion of measures identified in the approved remediation scheme, a Verification Report shall be submitted for approval, that demonstrates the contamination identified has been made safe, and the land no longer qualifies as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land. They also recommend the inclusion of an informative on how to comply with these requirements.
- 4.14 Shropshire Council - Trees: The Council's Tree Team have advised that they have no objection to the broad principle of the proposal. However, given the scale of disturbance required to deliver it, in terms of the loss of woodland and the prominence of the site within the Ludlow Conservation Area, they also initially advised that the level of supporting detail on a number of key issues lacked sufficient depth to ensure that the physical and technical complications of delivering the landscape compensation had been fully considered in the application. They therefore advised that more detailed information was required.
- 4.15 They advised that in broad terms the scheme now proposed reflects the concept of a development within the existing woodland as originally discussed when the site first gained planning consent for three houses in 2014. However, they commented that whereas the original approved scheme sought to establish a development within the existing woodland, retaining much of the existing tree cover, this amended scheme depends upon the removal of most of the existing woodland and requires the creation of a new bespoke woodland around the development.
- 4.16 They advised that this was not the concept that was supported by the Council's Tree Team at the time of the previous applications, Refs. 12/02275/FUL and 17/00230/FUL, which were both approved, but they nevertheless advised that the

scheme now proposed does in the long-term have potential to work, if delivered well and secured through binding landscape mitigation and compensatory planting strategy, including soil improvement/amelioration details, and long-term management proposals, linked to a viable funding mechanism that will be clearly transferable to any future ownership model for the site. However, because of the required degradation of the site to implement this scheme, in terms of the loss of woodland, the Tree Team initially advised that these are fundamental and material considerations in determining whether this application should be granted planning consent at all. Without the details, they initially advised that they could not recommend approval of the scheme.

- 4.17 They advised specifically that the following considerations in relation to the landscape mitigation proposed needed to be addressed:

#### Background Information on Tree Cover

- 4.18 They offered detailed comment on the historic tree cover on the site, referencing the recent felling history and the resulting requirement for compensatory planting that they advised should have taken place but which has not been completed. As a result, they advised that the baseline information on the trees on the site was inadequate and that the proposed tree planting scheme did not include sufficient detail to enable it to conclude that what is proposed, by way of new planting and the future management of the site, provided adequate compensation for the loss of the woodland proposed. In particular, they were unable to determine whether because there remains an undelivered compensatory planting scheme and there is insufficient detail in the current scheme that this has been adequately addressed in the current scheme.
- 4.19 They therefore advised that full details of the landscape mitigation and compensation, including planting schedules, soil amelioration, management details and details of long-term funding mechanisms, should be provided in advance of determination.

#### Re-Profiling of the Site

- 4.20 In relation to the reprofiling of the site, the Tree Team stated that there is a lack of detail about the scale of excavations and associated ground disturbance required to deliver the scheme, and that in turn it was therefore difficult to assess the full extent of the implications of the development. They commented that the site sections offered an indication of the proposed outcome for Plots 1, 2, & 3 but do not show the changes for the eastern end of the quarry and how Plot 4 would stand and function within the changed topography and broader landscape.
- 4.21 They commented that the level changes and extent of engineering works and ground preparation mean that the existing soil horizons across the developed area of the site would be destroyed and that the new graded levels would be subject to compaction and other impacts that would render the new ground as an un-fit medium for meaningful landscape mitigation. They advised that for any landscape mitigation to have a realistic chance of survival or success, it will be necessary to re-create a

healthy de-compacted high grade brown earth soil horizon with graded top soil to a depth, after settling, of no less than 60cm. They advised that these details would be essential in order to determine whether the scheme is workable.

#### Landscape and Visual Impact Assessment

- 4.22 In relation to the Landscape and Visual Impact Assessment submitted with the application the Tree team advised that this has omitted three key public viewpoints in Ludlow town centre previously requested by the Tree Team and they requested again that these should be provided.

#### Landscape Mitigation Proposals

- 4.23 In relation to the landscape mitigation proposals, the Tree Team commented that the indicative draft landscape plan submitted with the application lacked the following detailed information:

- (i) Details of the soils needed including the volumes to support the compensatory planting to ensure its healthy establishment and growth;
- (ii) Details of how the planting proposals have taken into consideration the future growth of woodland blocks close to dwellings and how any proximity issues will be managed;
- (iii) Details of species, size, planting spacing, planting mix;
- (iv) Measures to ensure protection from rodent damage, weed competition and draught;
- (v) Measures to ensure replacement of losses; and
- (vi) How planting will be managed on an on-going basis.

- 4.24 In light of the above comments, the applicant has submitted, a number of updated supporting documents, including an updated Landscape and Visual Appraisal, an Arboricultural Method Statement, a soft landscaping plan, a planting specification, a detailed contour plan and sections, and a Landscape and Habitat Management Plan.

- 4.25 Following these submissions, the Tree Team have advised that the detail of the amended landscape proposal and after care provision are significantly improved, although they are still unable to support a landscape proposal and consider that from the perspective of the volume of sustainable woodland compensation, the approved scheme under the extant Planning Permission Ref. 17/00230/FUL is still a better option. They do however advise that revision of the extent of compensatory planting to the north of the site would overcome their objection could be made acceptable.

- 4.26 They advise that the planting along the frontage with The Linney and to the eastern part of the site is broadly acceptable but that the small blocks of woodland planting on the reprofiled slopes to the north of the new buildings fail to perpetuate the previously agreed planting schemes from Planning Permission Ref. 17/00230/FUL and consequently renege upon the concept agreed in previous applications for providing a resilient block of woodland along the northern portion of the site. In particular, they comment that the introduction of: (a) the 5m tree free strip along the river edge and; (b) the proposal for a wildflower meadow to be regularly cut and; (c)



proposed halo thinning and coppicing of the existing mature trees (detailed in the Landscape and Habitat Management Plan), will erode the existing and future core area of woodland and offer no opportunity for tree planting or natural regeneration between the bottom of the re-profiled land and the river.

- 4.27 Over the long-term they advise that this will result in the net loss of tree cover from the north-west of the site with only the high maintenance woodland blocks planted on made ground hard up against the back gardens of the new dwellings remaining.
- 4.28 They therefore advise, that for compensatory woodland planting it needs to occupy all of the space between the 5m river edge buffer to the edge of the gardens of the new dwellings and that because the surrounding countryside contains meadows and rough pasture they do not consider the exclusion of a solid block of compensatory woodland in favour of a patch of wildflower sward to be a sustainable alternative.
- 4.29 They therefore advise that further amendment to the landscaping scheme and management plan is required.
- 4.30 Shropshire Council - Ecology: The Ecology Officer comments that the main habitat on the site is tall ruderal herb with scrub and saplings (planted and naturally regenerated) and scattered and/or localised groups of trees. The trees and shrubs are largely deciduous (other than along some of the boundaries) with a mix of native and non-native species. Many of the trees are immature or early mature although there are a few older native trees and pockets of mature Hawthorn scrub, with some scattered mature Hazel. The site boundaries include the River Corve to the north, with both retaining and free-standing stone walls comprising the remaining boundaries. These walls are typically associated with scrub and the tall non-native hedgerow to the west and a line of conifers to the south-east. They advise that there is Himalayan/Indian Balsam, outside the development footprint in the lower lying areas along the riverbank, which they advise should not be moved during the works.
- 4.31 They further comment that there will be a permanent loss of tall ruderal vegetation, plantation and scrub away from the riverbank, that has some site level biodiversity value, providing shelter, nectar and foodplants for various common invertebrates as well as foraging opportunities for small mammals and nesting habitat for various bird species.
- 4.32 They advise, with areas of plantation and scrub retained, enhanced and/or created throughout the site and adjacent to it, and in particular along the lower lying ground next to the riverbank and in the garden areas, that the proposal is unlikely to have a significant residual adverse effect on the biodiversity of the site in the long-term. With woodland areas encouraged to mature and sensitive woodland management practices in place for the early establishment phase, they further advise that the proposal will now have a significant beneficial effect on biodiversity in the long-term. The thinning of older trees/large shrub which have been planted in groups, should be carried out and the issue of non-native invasive species addressed through a management plan (which has now been submitted).

- 4.33 They also advise that no ground disturbances should occur within at least 20m of the riverbank and that pollution prevention and spillage action plans will need to be in place for the duration of the construction period. A Construction Environmental Management Plan will accordingly need to be followed during the works.
- 4.34 The Ecology Officer additionally advises that the site lies within the Shropshire Environmental Network, but that with inclusion of conditions relating to a submission for approval of a Construction Environmental Management Plan, detailed Landscaping Plan, Lighting Plan and Habitat Management Plan, that the development will not have an adverse impact on the Environmental Network and will provide ecological enhancements.
- 4.35 In addition, they have provided detailed comments in relation to a number of protected species, including bats, otters, dormice, badgers, herptiles (reptiles and amphibians) and birds, and that there is a particular concern that there is some evidence of (Lesser Horseshoe) bats on the site. They advise that lighting should be minimised and construction operations limited to daylight hours to avoid lighting and noise disturbance during the works minimised. In addition, materials during the construction phase, should be stored off the ground and trenches covered at night or contain a ramp, and Bat and Bird boxes, artificial Otter holts, herptile refuges and/or hibernacula created in suitable locations, to provide ecological enhancement.
- 4.36 The Ecology Officer accordingly advises the inclusion of conditions relating to; reporting by an Ecological Clerk of Works of the proposed mitigation measure; the submission for approval and implementation of a Construction Environmental Management Plan; the submission for approval of a lighting plan; the submission for approval and implementation of a more detailed landscaping plan; the provision of bats and bird boxes; and the submission of an updated badger survey if the development or each phase of the development is delayed and the implementation of Landscape and Habitat Management Plan.
- 4.37 Shropshire Council - Landscape Advisor: The Council's landscape advisor has reviewed the Landscape and Visual Appraisal submitted with the application. Whilst they offer a number of comments on the details of the how the Appraisal has been undertaken, their overall conclusion is that the Appraisal has been prepared in a proportionate manner in compliance with the guidance set out in the Landscape Institute's current guidelines for landscape and visual impact assessment and they broadly agree with the conclusions of the Appraisal. These are that the landscape effect associated with the proposed development is categorised as Moderate Adverse, but that this is very likely to reduce over time to Slight Adverse as the proposed planting becomes established and integrates the development into its wider landscape setting and that the visual effects will vary from a Moderate to Slight Adverse reducing to Slight Adverse in relation to Ludlow Castle and Slight Adverse reducing to Negligible for other viewpoints.
- 4.38 They did however initially identify that additional information should be sought from the applicant before the application is determined, and that this additional information should include; details of the proposed rebuilding of the boundary wall, details of existing and proposed levels, details of the locations and positions of trees and

hedgerows proposed for removal, identification of any developments likely to create cumulative landscape and visual effects, and if present, assessment of those effects, a fully specified hard and soft landscaping scheme for the whole site reflecting the site's location and the local landscape character, including details of the materials used for all paved surfaces and details of the plant species, sizes, numbers and densities, soils, methods of cultivation and planting, means of protection and a programme for implementation. They also advised that a management plan and schedule of landscape maintenance for areas lying outside of private gardens should be submitted and that the maintenance schedule should be for a period of at least 10 years and include details of the arrangements for its implementation and that it should include reference to the replacement of any plant (including any tree and hedgerow planting) that is removed, uprooted or destroyed or dies, or becomes seriously damaged or defective.

- 4.39 This additional information has now been submitted, as set out in paragraphs 1.11 and 1.12 above (or its submission can be conditioned).
- 4.40 Shropshire Council - Conservation: They comment that the site is located in the northern part of the Ludlow Conservation Area and includes part of the former garden and grounds, and therefore falls within the setting, of Linney House: a Grade II listed 18th century house. They further comment that the site has been subject to gravel quarrying which has altered the original site profile and levels creating two terraces above the current floodplain of the River Corve. It has subsequently been colonised by trees, with younger, self-set trees supplementing the more mature trees within the former garden, on the former terrace sides and along the river's banks, such that in recent decades it has developed a wooded character.
- 4.41 In assessing the current planning application, they state it is accepted that there is an extant planning permission for three large, detached dwellings on the proposed development site (consented originally under Planning Permission Ref. 12/02275/FUL and more recently under Planning Permission Ref. 17/00230/FUL, which remains extant). They comment that the previous application (Ref/19/00826/FUL) for eight dwellings was one in relation to which they raised objections on the basis that the proposed landscaping scheme would neither preserve or enhance the character and appearance of the Conservation Area.
- 4.42 They advise that in assessing the current application, due consideration has been given to Sections 66(1) and Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990; the policies contained in Chapter 16 of the NPPF; Policies CS6, CS17, MD2 and MD13 of the Local Plan, and the guidance contained in the NPPG and Historic England's Historic Environment Good Practice in Planning Advice Notes 2 (Managing Significance in Decision-Taking in the Historic Environment) and 3 (The Settings of Heritage Assets).
- 4.43 In relation to the requirements set out in Policy MD13 of the Local Plan and Paragraph 189 of the NPPF, they comment that the applicant has submitted a Heritage Impact Assessment which provides an assessment of the effects of the proposed development on the built historic environment.

- 4.44 In relation to the setting of Linney House, they advise that the proposed development would reduce the amount of development within the near vicinity of the listed building over that previously approved under Planning Permission Refs. 12/02275/FUL and 17/00230/FUL and that proposed under application 19/00826/FUL. They also comment that under this revised scheme, the existing adjacent garage and outbuilding would also be retained. They comment that the Assessment makes the point that the landform on the proposed development site was significantly altered by quarrying activity in the 1960s or early 1970s, which they consider had a negative effect on its significance. With this in mind they advise that they consider that the development now proposed would not result in any additional harm being caused to the significance of the listed building over the previously approved schemes (Refs. 12/02275/FUL and 17/00230/FUL) as a result of the effects that the development would have on its setting.
- 4.45 In relation to the effect on the Ludlow the Conservation Area, they advise that the legal duty imposed by Section 72(i) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires that "...special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area" by the decision taker when determining planning applications, is of primary importance.
- 4.46 With this in mind, they advise that the site currently has a wooded character and that the existing extant Planning Permission (Ref. 17/00230/FUL) for three dwellings was deemed to preserve the character and appearance of the Conservation Area through a landscaping scheme that it was considered would maintain the wooded character of the site.
- 4.47 The current application, they comment, proposes a total of four new dwellings but is of a substantially different design to the extant scheme, and which is described in the Heritage Impact Assessment as being of "...a contemporary "Nordic woodland" style.". This involves the construction of half the number of dwellings proposed under Application Ref. 19/00826/FUL, and they would now be located in the centre of the site and surrounded by extensive soft landscaping.
- 4.48 They comment that the dwellings will utilise a mixed palate of traditional building materials characteristic of the Ludlow Conservation Area, comprising brick, stone and timber and slate and plain tile roofs, which is intended to reflect those within the wider town and surrounding area. In addition, a mixture of roof profiles and pitches will be used to further break-up the form and massing of the dwellings, whilst significant amounts of glazing are intended to provide further interest, providing internal views that integrate the interior and exterior spaces. A palate of hard landscaping materials with earth born hues are proposed to complement and blend the scheme into the soft landscaping scheme. They comment that the Heritage Impact Assessment therefore states that "the riverside trees and additional planting will maintain a wooded environment character where the houses may be glimpsed through the foliage but will not be on full uninterrupted view."
- 4.49 They further comment that the contemporary design concept behind the scheme is welcome and that they consider that the mixture of forms, layouts and materials will

achieve the aim of breaking up the massing of each dwelling. Likewise, they also consider that it would enable the built form of the development to be better integrated with the reprofiled landform. As such, they consider that it has the potential to provide a greater level of architectural interest within the Conservation Area than the previously approved development would otherwise provide, subject to appropriate conditions being included on the grant of planning permission to ensure prior approval of all external materials and that the design objective behind the scheme are fully realised.

- 4.50 In relation to the boundary wall along The Linney, they comment that this is currently in a poor state of repair, but that the applicant has acknowledged that this is a key element of the Conservation Area. As with the extant Planning Permission, two vehicular accesses through the wall are proposed in broadly similar locations. The applicant is also proposing to realign the wall to offer some highway improvements, whilst it is also proposed to repair/reconstruct the existing wall. They note the comments of the Highways Officer and the issues they raise will therefore need to be resolved. However, as the Heritage Impact Assessment argues, they advise that the repair/reconstruction of the wall would in principle provide benefit to the wider Conservation Area by ensuring that the positive contribution the wall makes to its character and appearance is sustained in the longer term. They recommend that conditions be included on the grant of planning permission to ensure the new accesses and the realigned sections are contrasted, and that the repairs are undertaken, in a manner appropriate to the Conservation Area.
- 4.51 Finally, in relation to the landscaping scheme for the development they comment that this will be of fundamental importance in terms of maintaining the wooded character of the site, and to whether or not the tests set out in Section 72(i) of the Planning (Listed Buildings and Conservation Areas) Act 1990, are considered to have been met. They comment that the Council's Tree Officer does not object to the application subject to appropriate and binding short and long-term management proposals for landscape mitigation being secured. They concur with the Tree Officer's comment regarding the centrality of these considerations in determining whether this application meets with the principles for sustainable development and advise that that it equally applies to the consideration of whether the proposed scheme will preserve or enhance the character and appearance of the Conservation Area. Subject to the Tree Officer's requirements being met, they consider that the proposed landscaping concept has the potential in the longer term to preserve the wooded character of the part of the Conservation Area in which the site is located and potentially also to enhance it. In this latter respect, and subject to the Tree Officer's advice being followed in full, they consider that the proposed development will not cause harm to the significance of the Conservation Area as a designated heritage asset. Consequently, and whilst emphasising these caveats, they raise no objections to the proposed development in respect of Policies CS6, CS17, MD2 and MD13 of the Local Plan and Paragraphs 193, 194 and 200 of the NPPF.
- 4.52 They advise in relation to the comments of the Ludlow Civic Society and the Ludlow Conservation Area Advisory Committee that they consider that the advice provided above, and the planning conditions recommended below, address the matters raised.

- 4.53 They advise the inclusion of conditions relating to submission for approval of details of external materials finishes of the new dwellings, lighting, details of guttering, roofing details, details of rooflights, brickwork bond and type, joinery, details of the hard and soft landscaping, details of the repair and rebuilding of the boundary wall, stonework repairs and stonework bedding, jointing and pointing.
- 4.54 Shropshire Council: Archaeology: Advise that the site lies adjacent to the former Carmelite Friary, excavated remains of which date back to the 12th century, a post medieval graveyard, the Medieval street system, and former open spaces east and west of The Linney. They further comment that documentary evidence indicates that the land on either side of The Linney was laid out in burgage plots in the 13th century and that ridge and furrow cultivation has been recorded in the area which was enclosed by the end of the medieval period. They advise that, although there is no evidence that this area was occupied in the medieval period, it is possible that the medieval plots were used for various crafts and industrial activities as well as agriculture, and medieval occupation activity has been identified west of The Linney comprising at least two building structures with a possible domestic plot occupying the street frontage and an ancillary structure to the rear of later 12th century to the mid-14th century date. Other significant archaeological discoveries include medieval pottery and other artefacts at Linney House.
- 4.55 They comment that the site is low lying and prone to flooding and has been subject to terracing and recent regrading. Despite this they advise that it is still deemed to have some archaeological potential and any below ground archaeological remains are likely to be affected by the construction of the proposed new dwellings, associated services, new vehicular access and any landscaping of the site.
- 4.56 An archaeological desk-based assessment has been produced in support of the current application. This assessment recommends that the proposed development be accompanied by an archaeological watching brief (in line with previous recommendations made by the Historic Environment Team for the site). The Archaeology Officer concurs with this recommendation. A written scheme of investigation (WSI) for a programme of archaeological work was produced and approved by the Historic Environment Team in 2016 for a previous application for the site (in relation to Applications Refs. 12/02275/FUL and 17/000230/FUL).
- 4.57 The Archaeology Officer therefore advises that an updated version of the previously approved WSI should be submitted with any discharge of condition application if planning permission is granted and accordingly recommends the inconclusion of a condition on the grant of planning permission requiring the submission for approval and implementation of an (updated) written scheme of investigation (WSI).
- 4.58 Environment Agency: Advise that they have no objection but have the following detailed comments to make on the application:
- 4.59 Flood Risk: That the site is (partially) located in Flood Zone 3, which is the high-risk zone and is defined for mapping purposes by the Agency's Flood Zone Map. In accordance with Table 1: Flood Zones within the National Planning Practice

Guidance (NPPG) Flood Zone 3 is considered ‘high probability’ of fluvial flooding and comprises land assessed as having a 1 in 100 year, or greater, annual probability of river flooding. The proposed residential units are to be located on a plateau outside of Flood Zone 3.

- 4.60 Sequential Test: That the NPPF details the requirement for a risk-based Sequential Test in determining planning applications. The NPPF requires decision-makers to steer new development to areas at the lowest probability of flooding by applying the Sequential Test. It states that “Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding”.
- 4.61 It comments that further detail is provided in the NPPG which states that “Only where there are no reasonably available sites in Flood Zones 1 or 2 should the suitability of sites in Flood Zone 3 be considered, taking into account the flood risk vulnerability of land uses and applying the Exception Test (ET) if required”.
- 4.62 Based on the scale and nature of the proposal, the Environment Agency states that it does not wish to make any bespoke comments on the Sequential Test, and that it will leave this for the Council to consider. It comments that providing the Council as the Local Planning Authority is satisfied that the Sequential Test has been passed, then it offers the following additional comments.
- 4.63 Flood Risk Assessment (FRA): It advises that it does not have a model for the River Corve, although a Flood Modelling Study on the watercourse was undertaken to support the previous application (19/00826/FUL). It comments that the model has taken a precautionary approach and included updated climate change guidance for both 35% and 70%. The model indicates that the 1 in 100 year plus climate change (design flood level) would be at a level of 82.44mAOD. The developable area of the site is to be set no lower than 84.5mAOD which they therefore advise, is in excess of 2 metres above the design flood level and, as such, that the proposed dwellings will be safe and also afforded dry access in a flood event.
- 4.64 It comments that the development fits within the existing Flood Zone 1 boundary for the majority of the properties. However, it also comments that it appears that the western plot is only considered to be in Flood Zone 1 following the proposed ground works. It further comments that the FRA and Flood Modelling Study state that the impact on areas outside the site boundary is negligible which the Environment Agency advises, it concurs with. It advises that the land reprofiling is predominantly on land above the 1 in 1000 flood level and that the minimal loss of storage within the floodplain is offset by improvements in conveyance.
- 4.65 It also advises that the area of land within 8 metres of the top of the bank from the River Corve (Main River) should be kept free of structures, including fencing and it accordingly requests the inclusion of an informative advising the applicant that any works within 8 metres of the River Corve will require a permit under the Environmental Permitting (England and Wales) Regulations 2016.
- 4.66 Foul Drainage: In relation to foul drainage it advises that it has no objection to the

connection of foul water to the mains foul sewer, as proposed.

- 4.67 Ramblers Association: Comment that Question 22 on the Planning Application Form, which is concerned with whether the site can be seen from a public road, public footpath, bridleway or other public land has been answered incorrectly in stating “No” in that The Linney is a Public Highway and the site can be seen from it.
- 4.68 Canals and Rivers Trust: Have no comment to make.

## 5.0 THE MAIN ISSUES

- **Principle of the Development;**
- **Impact on Trees;**
- **Impact on Ecology;**
- **Impact on Listed Buildings and the Conservation Area;**
- **Traffic, Highway and Pedestrian Safety;**
- **Flood Risk;**
- **Design;**
- **Affordable Housing;**
- **Ground Contamination;**
- **Comparison Against Consented Scheme and the Fallback Position**
- **Overall Public Benefit v Harm – Planning Balance**

## 6.0 OFFICER APPRAISAL

### 6.1 Principle of Development

- 6.1.1 As was the case in relation to the previous eight house scheme, under Planning Application, Ref. 1900826/FUL, considered by the Committee in July 2020 following an appeal for non-determination, the key issue in relation to the principle of the development is that the site is located immediately adjacent to, but outside, the development boundary for Ludlow, and that approval of the application would potentially be a departure from the Development Plan. As a site outside the development boundary the application raises the issue of whether or not there is justification under SAMDev Policy MD3 paragraph 3, for granting consent for the scheme, as a windfall site, taking into consideration the current settlement housing guideline figure for Ludlow and whether this is being met. Even then, if there is not a case for granting consent under Paragraph 3, then insofar as there is an existing consented three house scheme approved on the site, there is also a fallback position to take into account, in terms of whether this lends weight, as justification for the approval of the currently proposed four houses scheme, and in particular because the proposed four house scheme, offers any or sufficient betterment or enhancement over the existing three house scheme.
- 6.1.2 In terms of the development strategy, Core Strategy Policy CS1 sets out the overall Strategic Approach to development in Shropshire, with development concentrated in Shrewsbury and County’s Market Towns and Other Key Centres. Ludlow is identified in Core Strategy Policy CS3 and the SAMDev Policy MD1 and Schedule MD1.1 as one of the Market Towns and Key Centres, and SAMDev Policy S10 and S10.1



identify it as the largest market town in southern Shropshire, providing a focus for development. It includes a housing guideline figure of around 875 new dwellings in the period between 2006 and 2026 and it states that new housing development will be delivered primarily on the allocated housing sites east of the A49, set out in Schedule S10.1a and identified on the Policies Map, alongside additional infill and windfall development, within the town's development boundary. The development boundary is shown on the Adopted Policies Map 2015 – Ludlow Area Place Plan (Inset 1). This shows the development boundary extending along The Linney on the south side of the application site, with the site itself is situated just outside the development boundary. As such it falls within the area of land to be treated as countryside under Core Strategy Policy CS5 and SAMDev Policy MD7a.

- 6.1.3 Neither Core Strategy Policy CS5 nor SAMDev Policy MD7a envisage the development of new open market housing in the countryside and both make clear that new development will be strictly controlled in accordance with national planning policies protecting the countryside. However, Paragraph 3 of SAMDev Policy MD3 sets out that the circumstances in which planning permission may exceptionally be approved for sites outside settlement development boundaries.
- 6.1.4 Paragraph 3 states that where a settlement housing guideline appears unlikely to be met, additional sites outside settlement development boundaries that accord with the settlement policy may be acceptable subject to the considerations set out in Paragraph 2. The considerations set out in paragraph 2 include:
1. The increase in number of dwellings relative to the guideline; and
  2. The likelihood of delivery of the outstanding permissions; and
  3. The benefits arising from the development; and
  4. The impacts of the development, including the cumulative impacts of a number of developments in a settlement; and
  5. The presumption in favour of sustainable development.
- 6.1.5 The starting premise of paragraph 3 is that it applies only in instances where a settlement housing guideline appears unlikely to be met. Therefore, the question is whether the current settlement housing guideline for Ludlow has or has not been met or is unlikely to be met?
- 6.1.6 The latest figures are set out in the Council's Five-Year Housing Land Supply Statement published in March 2020. This indicates that as of the 31<sup>st</sup> March 2019, there had been 480 completions and Planning Permissions of Prior Approvals for 802 additional dwellings, providing a total of 1282 completed sites or dwellings with Planning Permission. There are no outstanding additional allocations. Therefore, when set against the Housing Guideline figure of 875, it is clear that there is already substantial over provision in Ludlow. Because the numbers are so substantially over the Housing Guideline figure, it cannot be considered there is any justification in terms of the numbers and consequently no case for invoking paragraph 3 of the Policy MD3. As such in terms of Development Plan policy there is on the face of it, no case for the development being justified in terms of policy set out in the development strategy of the Development Plan. The applicant does not dispute this and does not attempt make a case that the Policy MD3 should be invoked. There is

no disagreement between the Council and the applicant on this basis.

- 6.1.7 There are alternatively potentially two significant material considerations to set against this. The first being that the NPPF sets out policies for rural housing on Paragraphs 77 to 79. These make clear, in paragraph 77 that, in rural areas, planning policies and decisions should be responsive to local circumstances and support housing developments that reflect local needs and, in paragraph 78 that, to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. As a site on the edge of Ludlow, the issue of the sustainability of rural village communities is not a relevant consideration. Paragraph 79 then states that planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of a number of specified circumstances apply, but none in this case are applicable or are being argued by the applicant. In the current situation of an oversupply of housing completions and permissions against the identified requirement, there is therefore no case in terms of national planning policy outweighing, Development Plan policy as a material planning consideration.
- 6.1.8 The only other case to consider then is whether the fallback to the existing consented scheme lends weight as justification for approval of the current four house scheme and/or whether the proposed four house scheme, offers any, or sufficient, betterment or enhancement over the existing three house scheme, as a material consideration. This is to be assessed in relation to the other issues identified in Section 5 above and as follows:

## **6.2 Impact on Trees**

- 6.2.1 Again, as was the case in relation to the previous eight house scheme, the impact on the trees on the site is by far the most important aspect of the scheme because of its significance as an area of established woodland and because it requires the felling of almost all the trees and the clearance of the upper level and part of the lower level to enable the proposed site reprofiling works to be undertaken. Consideration of the impact on the trees is quite a complex matter which to fully understand, it is necessary to consider it in the context of; the overall recent history of the tree cover on the site and the resulting environmental baseline prior to the approval the existing consented scheme; what the existing consented scheme proposes; the felling proposed; what the current application proposes and how this differs from the consented scheme; and what is now proposed by way replanting, landscaping and management of the site and what the end result will be. This is complex but important to understand in terms of justification for the recommendation on this application.

### The overall recent history of the tree cover on the site

- 6.2.2 As set out above, the site historically is understood to have been worked as a mineral extraction site. As detailed above, there is some disagreement between the applicant and third parties on when mineral extraction ceased. The Design and Access Statement submitted with the 2012 Planning Application Ref. 12/02275/FUL suggested that the upper part of the site adjacent to The Linney was used as a coal

merchants yard, while the lower part of the site adjacent to the river was used by Jolly's Circus for over wintering animals and caravans, although it is unclear exactly when this would have been. Photographs submitted with that application, which its states date from c.1989-1990 and some from 1995, show the site as largely open but with scattered trees, at least some of which were planted 25 years earlier, i.e. in the mid to late 1970s by the previous owner.

- 6.2.3 Aerial images of the site from 1999 show the site substantially covered in trees, albeit with some paths and rides through it, so that it had by that date developed as a substantial block of woodland. Additional aerial images show that this continued to develop and mature through to 2015.
- 6.2.4 The report of the tree survey undertaken in 2012 and submitted as part of Planning Application Ref. 12/02275/FUL indicated that, at that time there were approximately 250 individual recorded trees plus groups comprising approximately 100 further trees on the site. The report indicates that these were a mixture of self-set native species and planted ornamental trees including some conifers.
- 6.2.5 The 2012 planning application initially identified that 64 trees would be felled but that these would largely be confined to the areas where four originally proposed dwellings were to be located, the idea being to retain as many of the trees on-site as possible. The submitted application was subsequently amended to omit one of the proposed dwellings, reducing it to a three-house development which was what was approved in June 2014. Details of the tree protection and landscaping of the site were reserved by condition, and a discharge condition application (Ref. 16/01767/DIS) was subsequently submitted and approved in November 2016. In addition, there were two subsequent amendments (Refs. 16/02803/AMP and 16/05582/AMP) which made a revision to the siting of the house on Plot 2 to avoid a mains sewer and the removal of an additional tree that had not been plotted on the originally submitted tree survey plan. As result of the submitted and approved landscaping plan, it was identified that in total 100 trees would need to be felled (rather than the originally proposed 64), but that as a result 194 trees would be planted as mitigation. The scheme nevertheless retained the substantive tree cover on the upper part of the site adjacent to The Linney. Following the amendments, the net effect is that the total proposed loss would be 99 trees and that total to be replanted would be 183 new trees (which have yet to be planted).
- 6.2.6 What however also happened at this time is that the applicant, before the submission of the discharge of condition application, felled up to 157 other additional trees, without first giving notice under s.211 of the Town and Country Planning Act 1990, because of the location of the site in a Conservation Area. It is understood that some of these trees were those included in the number in the subsequent discharge of condition application. These trees were as such unlawfully felled. The applicant as a result agreed to a voluntary replanting scheme comprising 100 replacement trees planted as whips and these have been planted. The figure for the number of trees unlawfully felled is that identified by the Council's Tree Officer. The exact number is disputed by the applicant.
- 6.2.7 The subsequent 2017 Planning Application Ref. 17/00230/FUL essentially took into

account the details approved in the 2014 permission and in the subsequent discharge of conditions application and amendments. It is understood that an additional 99 trees have been felled as pre-commencement works. The currently submitted Tree Constraints Plan appears to represent the current position on site in terms of the trees remaining, i.e. 145 trees, although for the reasons set out in paragraph 6.2.8 below it is not considered to present a complete and accurate record of the trees on the site.

What the current application proposes and how this differs from the consented scheme

- 6.2.8 There has been some variation in the stated number of trees that need to be felled to implement the development across the previous application for the eight house scheme and the current application, with the latest version of the Arboricultural Method Statement in the current application stating that 68 trees and four groups of trees will need to be removed. It states that the majority of trees to be lost are small or moderately sized category C specimens with low amenity value. The two most important trees within the former garden area of Linney House, the Sycamore and the Ash located adjacent to the site entrance to Plots 5 to 8, are to be retained.
- 6.2.9 The Arboricultural Reports have been accurate in stating that the majority of the trees are not particularly significant trees as individual trees and that the loss of each as an individual tree does not give rise to significant harm. However, the reports have inadequately considered the impact of the collective loss of the trees and are even misleading in understating the loss that will result. As stated above, there has been disagreement between the Tree Officer and the applicant about the number of trees that have been felled. The Tree Officer has included an Addendum with his comments that details the recent tree history on the site and identifies that there were 256 trees felled in 2015-2016, 157 of which were unlawfully felled and then a further 99 that were additionally felled as part of the authorised pre-commencement works to the implementation of the 2014 Planning Permission (Ref. 12/02275/FUL).
- 6.2.10 This is now largely of historical significance but what is relevant is that the applicant agreed and undertook the planting of 100 trees as compensatory planting for the unlawful felling and also agreed to the planting of a further 183 trees as additional compensatory planting, pursuant to the discharge of conditions on the 2014 Planning Permission. This planting has yet to be undertaken. Whilst these trees do not exist on the site, they do form part of the baseline for the consented scheme, now implemented under the 2017 Planning Permission. The Arboricultural Report submitted with the current application should have identified these as part of the environmental baseline on the site and is inadequate and misleading in that respect. If, however, the currently submitted scheme is intended to supersede that approved under the now implemented 2017 consent, as it is, then the correct environmental baseline can be considered to be the current position before the felling of any additional trees (even if they do not remain on site) as part of the implementation of that consent, the approved replanting required arising from that consent and/or the subsequent discharge and variation of condition applications attached to that consent.

- 6.2.11 Notwithstanding these inadequacies in the submitted details, it is clear from the application that all the trees on the part of the site to be affected by the reprofiling works will need to be felled and that these will be lost, regardless of any dispute over the exact numbers or the accuracy of the Arboricultural Report. In that respect the substantive issue is one of what is proposed by way of replanting on the site, once the re-profiling has been undertaken.

The Amended Proposals included in the Current Application

- 6.2.12 As set out in detail in the report to this Committee on Planning Application Ref. 19/00826/FUL for the previous eight house scheme, the proposals submitted with it would have resulted in the loss of a significant proportion of the trees on the site, including almost all of the trees on the upper part of the site adjacent to The Linney. Because of the number of dwellings proposed, it would simply not have been possible to provide adequate mitigation by way of a replanting/re-landscaping scheme, to make up for the loss. The Tree Officer, the Ecology Officer and the Conservation Officer all advised that that scheme was unacceptable and that for an alternative development proposal on the site to be acceptable, a reduced level of development with an enhanced tree planting and landscaping scheme together with a long-term management plan for the site would be required. This is what the negotiated amended four houses scheme included in this application now seeks to provide.
- 6.2.13 As detailed above the proposal now includes an enhanced landscaping scheme that will provide a much improved level of mitigation by way of replanting that would make up for the loss, with enhanced planting to re-establish the essentially woodland character of the site, and in particular with a much broader belt of tree planting along the boundary of The Linney. The Tree Officer, the Ecology Officer and the Conservation Officer all advise that in principle the amended scheme is now acceptable, although as set out above the Tree Officer has expressed concern about some aspects of the details included in the amended scheme, and in particular, the adequacy of the planting along the northern side of the site.
- 6.2.14 As also detailed above, a Landscape and Habitat Management Plan has now been submitted that includes proposals for an initial fifteen-year period for the management of the landscape and habitat areas on the site. This includes an annual monitoring review of its implementation and provision for feedback from the Council as the Local Planning Authority, as well as the replacement of and replanting of any losses. It is also proposed to set up a management company to be responsible for the long-term management of the site that would be run and funded by the residents of the site.

Overall Conclusions in Relation to the Impact on Trees

- 6.2.15 Overall, whilst the Tree Officer has indicated that some further amendment is required to the submitted landscaping details, the principle of what is proposed is now broadly agreed to be acceptable and in order to allow determination to proceed without further delay, it is recommended that the application be determined subject to conditions, with a condition requiring the submission of further revised landscaping

and plan and amendment to the Landscape and Habitat Management Plan to address the three issues identified by the Tree Officer, and otherwise to include conditions retaining to specification for the restoration soils, implementation of the landscaping scheme, and Landscape and Habitat Management Plan, the monitoring of the implementation of Landscape and Habitat Management Plan and replacement for any losses and tree protection as set out in Appendix 1 at the end of this report.

6.2.16 Accordingly, with the recommended conditions the proposal can now be considered to be an acceptable scheme and in accordance with Core Strategy Policies CS6 and CS17 and SAMDev Policies MD2 and MD12 and paragraph 170 of the NPPF.

### **6.3 Impact on Ecology**

6.3.1 In relation to the impacts on Ecology, the comments of the Ecology Officer as set out above are self-explanatory. The Ecology Officer objected to the previous eight house scheme, on the basis, with the level of development proposed, that the proposal would have resulted in significant damage to the Environmental Network and that the application as submitted did not provide details of sufficient mitigation or compensation measures for the harm to natural assets of the site. They therefore advised that the original consented three house scheme would be significantly less damaging to the Environmental Network and that the submitted scheme did not provide adequate details or adequately demonstrate that the harm will be appropriately mitigated in accordance with the hierarchy of mitigation.

6.3.2 As detailed above they now advise, with the reduced level of development and the enhanced mitigation proposed that whilst the proposed development site lies within the Environmental Network, it is acceptable subject to the inclusion of conditions relating to a submission for approval of a Construction Environmental Management Plan, detailed Landscaping Plan, Lighting Plan and Habitat Management Plan, that the development will not have an adverse impact on the Environmental Network and it will provide ecological enhancements.

6.3.3 The proposal can therefore be considered to be compliant in terms of relevant Development Plan policy which includes Core Strategy Policies CS6 and CS17, SAMDev Policies MD2 and MD12 and the relevant paragraphs of the NPPF.

### **6.4 Impact on Listed Buildings and the Conservation Area**

6.4.1 The impact of the proposal on Listed Buildings and the Conservation Area is summarised in the comments of the Conservation Officer as set out above, so that there is no need to repeat these. The Committee in determining the application, needs to be mindful of the obligations under s.66 and s.72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

6.4.2 In relation to the impact on the Conservation Area, as set out in the Conservation Officer's comments, they are now advising that the amended proposals included in the current application have sufficiently addressed their previous objections. In particular, they comment that in relation to the landscaping scheme that this will be of fundamental importance in terms of maintaining the wooded character of the site,

and to whether or not the tests set out in Section 72(i) of the Planning (Listed Buildings and Conservation Areas) Act 1990, are considered to have been met. As detailed above they concur with the Tree Officer's comment regarding the centrality of these considerations in determining whether the application meets with the principles for sustainable development and advise that it equally applies to the consideration of whether the proposed scheme will preserve or enhance the character and appearance of the Conservation Area. As is set out above, the Conservation Officer now advises, subject to the Tree Officer's requirements being met, that they consider that the proposed landscaping concept has the potential in the longer term to preserve the wooded character of the part of the Conservation Area in which the site is located and potentially also to enhance it. In this respect, and subject to the Tree Officer's advice being followed in full, they consider that the development of the site as now proposed will not cause harm to the significance of the Conservation Area as a designated heritage asset.

6.4.3 Consequently, subject to the inclusion of conditions relating to submission for approval of details of external materials finishes of the new dwellings, lighting, details of services, roofing details, details of rooflights, brickwork bond and type, joinery, details of the hard and soft landscaping, details of the repair and rebuilding of the boundary wall, stonework repairs and stonework bedding, jointing and pointing, the application can be considered to be acceptable in relation to Core Strategy Policies CS6, CS17, SAMDev Policies MD2 and MD13 and Paragraphs 193, 194 and 200 of the NPPF.

## **6.5 Traffic, Highway and Pedestrian Safety**

6.5.1 In relation to traffic, highway and pedestrian safety, the key consideration is that The Linney is very narrow and includes a bend halfway along the southern boundary of the site. This limits the visibility of on-coming vehicles in both directions. The Committee may recall that the eight-house scheme of Application Ref. 19/00826/FUL also included a footpath link with a crossing point for pedestrians on the bend, that would be located adjacent to the gateway into the St Leonard's Church Yard. This has now been omitted, for pedestrian safety reasons.

6.5.2 The development of the site would, even at the reduced scale proposed, give rise to additional traffic on a road that presents some difficulties. The scheme would however offer mitigation by way of the provision of the proposed passing place and also the repair of the boundary wall along The Linney, which directly fronts the road without any intervening kerb or verge. These, as with the previous proposal, would be benefits.

6.5.3 Although not all the details have been submitted as requested by the Highway Authority, there is no in principle objection on highway and pedestrian safety grounds subject to submission of these further details. There is therefore no basis at this stage for considering that the proposal would not be acceptable in relation to traffic, highway and pedestrian safety considerations.

6.5.4 Securing of the provision of the passing place can be achieved by the imposition of a Grampian style condition requiring its provision before the substantive

development works are commenced, although to ensure that the land to be provided for the construction of the passing place is available and publicly accessible in perpetuity, dedication of the land to the Highway Authority is required. This can be secured through a Section 278 legal agreement between Shropshire Council as the Highway Authority and the Developer. Details of the design of passing place can be secured by condition, although they will also need to be subject to the Section 278 technical approval process. The details may (still) need to include the provision of pedestrian barriers to ensure pedestrian safety, depending on the design of the passing place.

- 6.5.5 With the inclusion of appropriate conditions, the application can be considered to be compliant with relevant Development Plan policy which includes Core Strategy Policy CS6 and the NPPF, Paragraphs 108-110.

## 6.6 Flood Risk

- 6.6.1 Although part of the site is located in Flood Zones 2 and 3, the Environment Agency has advised that the development fits within the existing Flood Zone 1 boundary for the majority of the properties, and that it is satisfied that the loss of storage within the floodplain would be minimal and offset by improvements in conveyance. With regard to the reprofiling works proposed, it further advises that if the developable area of the site is to be set no lower than 84.5mAOD which is in excess of 2 metres above the design flood level (82.44mAOD), that the proposed dwellings will be safe and also afforded dry access in a flood event. As such the site cannot be considered to raise any significant issues in terms of flood risk including the need to apply the Sequential Test or Exception Test (as detailed above in the comments of the Environment Agency).

- 6.6.2 It should be noted that the Environment Agency has advised that the area of land adjacent to the top of bank from the River Corve should be kept free of structures, although it has not advised against planting in this area and consideration of flood risk needs to take into account biodiversity objectives and the duty to conserve biodiversity under s.40 of the Natural Environment and Rural Communities Act 2006.

- 6.6.3 There are therefore no significant issues in relation to flood risk, and the development can be considered to be compliant with relevant Development Plan policy including Core Strategy Policies CS6 and CS18 (on Sustainable Water Management) and the NPPF Chapter 14.

## 6.7 Design

- 6.7.1 It is undoubtedly the case that the design of the development, and particularly the proposed dwellings, is one of the key features of the scheme. The desire to bring forward a better design than the existing three house scheme has been a significant underlying motivation for the applicant.

- 6.7.2 The Applicant states in their Planning Statement that:

*“The reason for not having carried out the 2017 permission already, is that in pre-*



*application discussions with... officers of the Council in 2018, it has been established as a matter of unequivocal common ground that the 2012 and 2017 permissions represent a form of development which could be greatly improved on so as better to enhance the area. This planning judgment is mirrored by the landowner's view that better designed houses would present a better return for his company. This is important, because when landowner and Council thinking coincide, the planning system is capable of delivering a high quality development project".*

6.7.3 The consented three house scheme, was described in the Officer's Report on the 2017 renewal application, as comprising:

*"..three houses each with five bedrooms and sited in very substantial plots. Plot 1 is an Arts and Crafts style villa with a link detached double garage. It is faced with render and has a clay tile roof. Plot 2 is a more traditional approach proposing a rendered building with a slate roof and detached double garage" and Plot 3 as also consisting of "...a dwelling of a more traditional design and is constructed in brick and stone with a slate roof [with]... a detached double garage and store".*

6.7.4 There is nothing particular notable or outstanding about the design of the existing consented scheme, as far the built element of it is concerned, and certainly nothing that could be described as innovative or particularly imaginative or that adds anything substantially to the location of the site in the Ludlow Conservation Area. The Officer's report for the 2017 Planning Application did not address the issue of design, other than in the context of the impact on Heritage Assets rather than as a substantive issue in its own right. It described the three dwellings "...as three individually designed plots, each having a different architectural style and finish..." but that the "...the impact will be restrained by the varied levels and landscaping which will accompany the development". To put it another way the design of the dwellings was relatively inconsequential because of the level, of the largely retained, woodland and landscaping. The scheme does nevertheless have merit in retaining the existing stone boundary wall along The Linney, which it would, if it were to be built, be largely maintained and repaired as part of the approved scheme and it would retain a significant proportion of the tree cover on the site, particularly along the frontage with The Linney. These matters are considered in more detail above. As far as the design of the dwellings themselves are concerned, they are certainly not notable for being anything particularly outstanding.

6.7.5 In terms of design, the key consideration then is one of whether the new four house scheme offers something that is better and an improvement on the consented three house scheme. It is clear that it seeks to introduce a very different design approach, with a strong underlying concept, described in the application as a "contemporary Nordic woodland style". There is consistency of design across the four houses proposed, which the Design Access Statement describes as *"...bespoke vernacular dwellings, i.e. characterised by stylistic detail, construction materials and skills specific to its particular locality"* comprising;

- A contemporary modern design;
- Use a palette of naturally occurring local materials;
- Interspersed with generous landscaping and tree planting;

- Preserving the natural river margin to the River Corve;
- Retaining an effective "green screen" along The Linney roadway;
- Avoiding prominence beyond the site;
- Including the rebuilding of the stone boundary wall to The Linney; and
- Avoiding hazard to existing users of the highway.

6.7.6 In terms of Policy, Core Strategy CS6 refers to development being designed to a high quality using sustainable design principles, which respects and enhances local distinctiveness. This it states, is to be achieved by amongst other things protecting, restoring, conserving and enhancing the natural, built and historic environment and ensuring that new development is appropriate in scale, density, pattern and design taking into account the local context and character, including those features which contribute to local character. SAMDev Policy MD2 includes similar references but also refers to embracing opportunities for contemporary design solutions, which take reference from and reinforce distinctive local characteristics. The NPPF Chapter 12 and in particular Paragraph 127 refers to ensuring that new development adds to the overall quality of the area, is visually attractive as a result of good architecture, layout and appropriate and effective landscaping; is sympathetic to local character and history, including the surrounding built environment and landscape setting, but also not to preventing or discouraging appropriate innovation or change and establishing or maintaining a strong sense of place.

6.7.7 In this case, the design is undoubtedly more innovative than the consented scheme and is one that more effectively responds to, and is designed to, reflect the woodland setting of the site. In terms of the design of the built element, the scheme proposed under this application is without any doubt an improvement on the existing consented scheme and, in that respect, must be considered to be preferable and to offer an enhancement over the consented development, which weighs in its favour. The benefit of the design has however, also to be considered in relation to the landscaping of the site which is central to the whole concept. This is considered in more detail above.

6.7.8 As set out above, the Conservation Office welcomes the contemporary design concept behind the scheme as being an improvement on the existing consented scheme, which should be recognised as a benefit. The design can therefore be considered to be acceptable and policy compliant with the key relevant Development Plan and national policies. These include Core Strategy Policy CS6 and SAMDev Policy MD2, as well as Chapter 12 of the NPPF. The proposal can also be considered to be acceptable in relation to the Principle 2 (Local Distinctiveness) set out in the West Midlands Design Charter, which has recently (on 1st June 2020) been endorsed by Cabinet as a material consideration to inform decisions on planning applications.

## **6.8 Affordable Housing**

6.8.1 As set out in the comments of the Affordable Housing Officer, the proposal exceeds the site size threshold for an affordable housing contribution. A contribution is required at the Prevailing Target Rate of 15%. It should be noted that although the site is located outside the development boundary for Ludlow, it is still located within

the Ludlow Town Council area, so that the Target Rate is the lower 15% band applicable in the town, rather than the higher 20% applicable in the surrounding rural area.

- 6.8.2 A Section 106 agreement would be required to secure the contribution. Subject to payment of the contribution there is no reason for it to be considered to be a determining issue other than as part of the public benefit that would be provided by the scheme and the application can be considered to be compliant with Core Strategy Policy CS11, the Council's Type and Affordability of Housing SPD (2012) and the NPPF.
- 6.8.3 In this case the applicant has offered a Planning Obligation in the form of a Unilateral Undertaking to secure the affordable housing contribution. Subject to confirmation from the Council's Legal Services Manager that the drafted Unilateral Undertaking is acceptable, there is no reason not to consider this to be acceptable. If it is not, then a conventional Section 106 agreement could be used instead.

## **6.9 Contamination**

- 6.9.1 This is not a major or determining issue and can be addressed by condition as recommended by the Regulatory Services Officer.

## **6.10 Comparison Against Consented Scheme and the Fallback Position**

- 6.10.1 As set out above the application needs to be considered, having regard to the existing consented three houses scheme compared with the currently proposed four house scheme, in terms of the relative merits and harm of the two proposals.
- 6.10.2 As set out above the primary concern in relation to the existing approved three house scheme is with its relatively mediocre design quality, on what is a key site, in Ludlow. The proposed dwellings, of the consented scheme, are of a more traditional although mixed design, and add little of merit to the character and appearance of the Conservation Area. On the other hand, as noted above, in the comments of the Tree Officer, Ecology Officer and Conservation officer, the approved three house scheme retains the existing trees to a much greater extent than in the previously proposed eight house scheme, and there is additional compensatory planting that is still to be undertaken. There is however no agreed management plan for the long-term future management of the retained and future woodland to accompany the existing approved three house scheme. The proposed eight house scheme undoubtedly provided a more interesting design response than the existing consented scheme but what is of most significance is that it would have required the almost wholesale removal of the trees on the upper part of the site adjacent to The Linney, and the level of development proposed would have made it impossible to re-establish anything close to the existing level of woodland cover on the site, giving rise to unacceptable harm. In that respect the eight house scheme would have given rise to significant harm that the approved three house scheme would not. The four house scheme now proposed, overcomes the objection to the eight house scheme and the three key consultees have all advised that in principle it is acceptable, subject to the further amendments requested by the Council's Tree Officer. In that respect, taking

into account the fallback, the proposed four house scheme can be considered to provide significant improvement over the existing consented three house scheme.

## **6.11 Public Benefit v Harm – Planning Balance**

6.11.1 As set out above, the public benefits of the scheme can be considered to include the repair of the boundary wall and the improvements to access along The Linney, the affordable housing contribution that would be secured and an improved architectural design. In this instance the harm caused by the loss of the trees and woodland as a result of the clearance of the site required to implement the scheme can be offset and betterment can be provided by the enhanced landscaping and habitat proposals and the long term Landscape and Habitat Management Plan that has been offered. Insofar as this is the case, the proposal included in this application does satisfactorily provide an alternative to the previously proposed eight house scheme and would provide sufficient, betterment and enhancement over the existing consented three house scheme, to warrant approval, albeit as a departure from the Development Plan, in that it does provide a positive balance of public benefit against the harm that would arise as result the short-term loss of the existing woodland, and can therefore be considered to be acceptable in terms of the overall planning balance.

## **7.0 CONCLUSION**

7.1 This is an application for the re-profiling of the ground, erection of four detached houses, restoration of the stone boundary wall along The Linney, creation of a managed woodland area on the lower level of the site and an access track for maintenance, on land adjacent to Linney House at The Linney, Ludlow. The application is an amended version of the previously submitted eight house scheme and has been submitted following lengthy and extensive discussion and negotiation with the applicant, aimed at addressing the shortcomings of that scheme and in particular the inadequate level of the woodland replanting being proposed to provide compensation, mitigation and enhancement for the loss of the existing woodland.

7.2 The application would be contrary to the Development Plan insofar as it is located outside the development boundary for Ludlow and therefore contrary to Core Strategy Policy CS5 and SAMDev Policies MD7a and S10 and the latest figures set out in the Council’s Five-Year Housing Land Supply Statement published in March 2020 confirms that the number of completions and Planning Permissions or Prior Approvals is so substantially over the Housing Guideline figure for Ludlow, that there is no case for invoking paragraph 3 of SAMDev Policy MD3.

7.3 However, taking into account the fallback position of the existing consented three house scheme, the four house scheme now proposed, overcomes the objections to the previously proposed eight house scheme and can be considered to be acceptable and to provide significant improvement over the existing consented three house scheme.

7.4 As set out above, the public benefits of the scheme can be considered to include; the repair of the boundary wall and the improvements to access along The Linney,

the affordable housing contribution that would be secured and an improved architectural design. The harm caused by the loss of the existing trees and woodland as a result of the clearance of the site required to implement the scheme can be offset and betterment can be provided by the enhanced landscaping and habitat proposals and the long term landscape and habitat management plan that has been offered. Insofar as this is the case, the proposal included in this application does sufficiently and satisfactorily provide an alternative to the previously proposed eight house scheme and can be considered to provide sufficient betterment and enhancement over the existing consented three house scheme, to warrant approval. Whilst it would be a departure from the Development Plan it would provide a positive balance of public benefit against the harm that would be caused by the loss of the existing woodland. It can therefore, notwithstanding the non-compliance with the overall Development Plan development strategy and related policy set out above, otherwise be considered to be acceptable in terms of Core Strategy Policies CS6, CS17 and SAMDev Policies MD2, MD12 and MD13 and the NPPF, and the overall planning balance.

7.5 The application has been advertised as a departure from the Development Plan but, because the period for consultation has not yet ended, the recommendation is that approval of the Application be delegated to the Head of Planning Services subject to the conditions set out in Appendix 1 and the heads of terms for a Planning Obligation (either in the form of the Unilateral Undertaking offered by the applicant or a conventional Section 106 agreement) set out Appendix 2.

## **8.0 Risk Assessment and Opportunities Appraisal**

### **8.1 Risk Management**

8.1.1. 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.

8.1.2 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

- 8.2.1 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.
- 8.2.2 First Protocol Article 1 requires that the desires of landowners must be balanced against the impact on residents.
- 8.2.3 This legislation has been taken into account in arriving at the above recommendation.

## 8.3 Equalities

- 8.3.1 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

- 9.1 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

### Development Plan Policy

Shropshire Local Development Framework: Adopted Core Strategy (March 2011)

Shropshire Council Site Allocations and Management of Development (SAMDev) Plan Adopted Plan (December 2015)

### National Planning Policy

National Planning Policy Framework (NPPF) (February 2019)

### Relevant Planning History:

#### Planning Applications

- 10/03594/TCA Removal of one Leylandii, reduce Leylandii hedge to approx. 3m, reduce Leylandii and Laurel hedge to approx 3m and replace Leylandii and Laurel hedge with Beech/Hawthorn hedge within Ludlow Conservation Area NOOBJC 17th September 2010
- 11/04536/TCA To lower Leylandii, Laurel and Hawthorn hedge to approx 3.5

- metres within Ludlow Conservation Area NOOBJC 11th November 2011
- 12/02275/FUL Erection of three detached dwellings with garages following demolition of existing garage and shed; formation of new vehicular accesses GRANT 26th June 2014
  - 14/04678/VAR Application for variation of condition 11 (ecology/bat surveys) attached to permission 12/02275/FUL to allow for modifications to report WDN 14th December 2015
  - 16/01767/DIS Discharge of Conditions 3 (Materials), 4 (Windows and Doors), 5 (Landscaping), 7 (Archaeology), 8 (Tree Protection), 9 (Drainage Details), 10 (Arboricultural Method Statement), 11 (Ecology) and 12 (Flood Storage) attached to Planning Permission 12/02275/FUL DISAPP 15th November 2016
  - 16/02803/AMP Amendment to Permission 12/02275/FUL (Resiting of Plot 2) GRANT 16th August 2016
  - 16/05582/AMP Non-material amendment attached to permission 12/02275/FUL GRANT 19th December 2016
  - 17/00230/FUL Erection of three detached dwellings with garages; formation of new vehicular accesses GRANT 17th May 2017
  - 19/00826/FUL Erection of 8no dwellings with car shelters; reprofiling of ground; restoration of stone boundary wall and creation of 2no vehicular access points PDE
  - 19/05519/FUL Re-profiling of ground; erection of four detached houses; restoration of stone boundary wall to The Linney; creation of a managed woodland area (on the lower level of the site) with access track for maintenance PCO
  - SS/1/08/20632/TC Coppicing of Alder; Ash; Elderflower; Hawthorn; Cherry Rowans & Leylandii/Laurel. Reduce height of Alder; Maples & Hornbeams to clear power cables. NOOBJ 16th May 2008
  - SS/1/4565/L/ Repair and rebuilding of existing boundary wall to a height of 5 ft. PERCON 26th May 1994
  - SS/1/4564/P/ Repair and rebuilding of existing boundary wall to a height of 5 ft. PERCON 26th May 1994
  - SS/1988/751/P/ Erection of two purpose built conservatories and installation of 2 dormer windows. PERCON 11th October 1988
  - SS/1988/751/L/ Erection of two purpose built conservatories and installation of 2 dormer windows. PERCON 11th October 1988
  - SS/1986/654/L/ Installation of 3 velux roof lights. PERCON 12th December 1986
  - SS/1985/591/P/ Use of derelict quarry for winter storage of circus equipment and the stationing of a residential caravan, rear of. REFUSE 7th February 1986
  - SS/1985/590/P/ Use of existing buildings for storage and repair of antique furniture, bric-a-brac and associated objects. REFUSE 7th February 1986
  - SS/1985/589/P/ Incorporation of land and buildings within curtilage of dwellinghouse, land adjoining. PERCON 14th February 1986
  - SS/1985/327/P/ Erection of two dwellings and formation of vehicular and pedestrian access. REFUSE 30th July 1985
  - SS/1983/372/P/ Erection of two dwellings and formation of a vehicular and pedestrian access. REFUSE 20th October 1983

- SS/1984/137/L/455 Erection of an extension to existing dwelling. PERCON 15th May 1984
- SS/1984/137/P/ Erection of an extension to existing dwelling. PERCON 15th May 1984
- SS/1/99/009973/TC Pruning of an Ash tree and a Sycamore tree and pollarding of Willow trees. NOOBJ 13th July 1999
- SS/1/99/009920/TC Lopping of Sycamore and Ash tree. WDN 22nd April 1999
- SS/1/06/18738/LB Installation of a satellite dish PERCON 16th November 2006
- 14/04678/VAR Application for variation of condition 11 (ecology/bat surveys) attached to permission 12/02275/FUL to allow for modifications to report WDN 14th December 2015
- 16/01767/DIS Discharge of Conditions 3 (Materials), 4 (Windows and Doors), 5 (Landscaping), 7 (Archaeology), 8 (Tree Protection), 9 (Drainage Details), 10 (Arboricultural Method Statement), 11 (Ecology) and 12 (Flood Storage) attached to Planning Permission 12/02275/FUL DISAPP 15th November 2016
- 16/02803/AMP Amendment to Permission 12/02275/FUL (Resiting of Plot 2) GRANT 16th August 2016
- 16/05582/AMP Non-material amendment attached to permission 12/02275/FUL GRANT 19th December 2016
- 17/00230/FUL Erection of three detached dwellings with garages; formation of new vehicular accesses GRANT 17th May 2017
- 19/00826/FUL Erection of 8no dwellings with car shelters; reprofiling of ground; restoration of stone boundary wall and creation of 2no vehicular access points PDE
- 20/00119/DIS Discharge of conditions 4 (WSI) 5 (Tree Protection) 9 (Ecological Measures) 10 (Construction Environmental Management Plan) 11 (External materials) 12 (Exterior soil/vent/waste pipes/rainwater foods and boiler flues) 13 (External Joinery) and 19 (Details of access/layout/construction/sightlines) associated with planning application number 17/00230/FUL DISAPP 11th March 2020
- 20/01127/VAR Variation of condition no.5 (phased tree protection) pursuant of 17/00230/FUL to allow for a commencement to be made on Plot 1 by protecting the remainder of the site through an approved type of fencing around the edge of that plot GRANT 16th April 2020

#### Appeals

- 20/02817/NONDET Erection of 8no dwellings with car shelters; reprofiling of ground; restoration of stone boundary wall and creation of 2no vehicular access points INPROG

#### 11. Additional Information

View details online: <https://pa.shropshire.gov.uk/online-applications/simpleSearchResults.do?action=firstPage>



List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information):

- Planning Submissions in Support of Application, FBC Manby Bowdler LLP, December 2019
- Arboricultural Report, Old Oak Tree Care, 14<sup>th</sup> December 2019
- Revised Landscape Plan, Design with Nature Ltd, Undated;
- December 2019
- An Assessment of the Potential for Land Contamination at The Linney, Ludlow – Desk Based Study with Walkover Survey, Smallbrook Environmental, May 2019;
- Heritage Assessment in relation to the Proposed Erection of Four Detached Dwellings with Garages; and formation of New Vehicular Accesses on land adjacent to Linney House, Ludlow, CJR Heritage Services, 14<sup>th</sup> December 2019;
- Linney House, Ludlow, Flood Risk Assessment, Final V2-01, Thomas Mackay Environmental Solutions, 13<sup>th</sup> December 2019;
- Statement in Support of the New Planning Proposal in Relation to its Biodiversity Benefit over the Existing Planning Consent, Land adjacent to Linney House, Linney, Ludlow, Shropshire SY8 1DP, Churton Ecology 8<sup>th</sup> December 2019,
- Ecological Impact Assessment of Land adjacent to Linney House, Linney, Ludlow Shropshire, SY8 1DP, December 2019;
- Archaeological Desktop Evaluation and WSI Proposal for Land At The Linney, Ludlow Shropshire, undated;
- Design and Access Statement Land Adjacent to Linney House Ludlow, CJR Heritage Services, December 2019;
- Landscape and Visual Appraisal (Version 3), Design with Nature Ltd, June 2020;
- Arboricultural Method Statement, Old Oak Tree Care, 3<sup>rd</sup> June 2020;
- Landscape and Habitat Management Plan for Linney, Ludlow, Shropshire, SY8 1DP (Version 2), 11<sup>th</sup> June 2020;
- Assessment of Stone Boundary Wall Repairs, Linney House, Ludlow, CJR Heritage Services, May 2020.

Cabinet Member (Portfolio Holder)  
Councillor Gwilym Butler

Local Member  
Cllr Andy Boddington

Appendices  
APPENDIX 1 – Conditions  
APPENDIX 2 – Heads of terms for the planning obligation

See Below

## **APPENDIX 1 – CONDITIONS AND INFORMATIVES**

### **STANDARD CONDITIONS**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 91(1) of the Town and Country Planning Act, 1990 (as amended).

2. The development shall be carried out strictly in accordance with the approved plans and drawings.

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

### **CONDITIONS THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCE**

3. Prior to the commencement of development (including vegetation clearance, felling, demolition, ground works, re-profiling works, or construction works):

- a) The approved measures for the protection of the trees as identified in the Old Oak Tree Care Arboricultural Method Statement (Ref. OOTC/PC20/389/AMS/rev.1) dated 3<sup>rd</sup> June 2020 and Appendix B Tree Protection Plan (Drawing Ref. PC20/389/TPP/rev.1) dated 10<sup>th</sup> June 2020 shall, notwithstanding the requirements of Condition No. 5, be implemented;

and

- b) The Local Planning Authority has approved in writing that the tree protection measures have been established in compliance with the final approved tree protection plan. (Photographs of the tree protection measures in place will suffice, if sufficient in number and quality to demonstrate that they have been installed as per the approved tree protection plan).

Thereafter, the approved and implemented measures for the protection of the trees shall be maintained for the duration of the site works.

Reason: To ensure that the tree protection is set up and maintained in accordance with the Tree Protection Plan and to safeguard retained trees and/or hedgerows on site and prevent damage during development works, to protect the natural features and amenities of the local area that are important to the appearance of the development.

4. Where the approved plans and particulars indicate that construction work is to take place within the Root Protection Area (RPA) of any retained trees, large shrubs or hedges, prior to the commencement of any site clearance or development works, an updated Arboricultural Method Statement detailing how any approved construction works/service runs/SUDS schemes will be carried out, shall be submitted to the Local Planning Authority.

The updated Arboricultural Method Statement shall include details on when and how the works will take place and be managed; and how the trees, shrubs and hedges will be protected during such a process.

Reason: To ensure that permitted work within an RPA is planned and carried out in such a manner as to safeguard the amenities of the local area and to protect the natural features that contribute towards this and that are important to the appearance of the development.

5. Notwithstanding any details submitted on other approved plans and particulars, ground clearance, demolition or development works shall not take place until a scheme of supervision for the arboricultural protection measures (the Arboricultural Method Statement including the Tree Protection Plan) has been submitted to and approved in writing by the Local Planning Authority. This scheme will include details of a named arboricultural clerk of works (Person or company) with proof of commissioning provided for the duration of the works.

Reason: To ensure the satisfactory oversight and delivery of tree protection measures on site that require the supervision by a competent arboriculturist as is identified in the approved arboricultural method statement and associated tree protection plans

6. No works will commence until the Local Planning Authority has approved in writing that the Tree Protection Measures have been established in compliance with the final approved Tree Protection Plan (Photographs of it in place might suffice).

Reason: To ensure that the Tree protection is set up and maintained in accordance with the Tree Protection Plan.

7. Notwithstanding works to be carried out in accordance with the (Ref. OOTC/PC20/389/AMS/rev.1) dated 3rd June 2020 and Appendix B Tree Protection Plan (Drawing Ref. PC20/389/TPP/rev.1) dated 10th June 2020, any tree felling and/or stump removal works within 5m of the boundary wall adjacent to The Linney shall be carried out in phases, with tree works for each phase only being undertaken at the time that the works to the adjacent section of the boundary wall are carried out, in accordance with the approved schedule of works for a phased programme of repairs and rebuilding of the boundary wall (required by Condition No. 16).

Reason: To safeguard the integrity of the boundary wall until such time as each section of the wall is repaired and rebuilt, in accordance with the approved phased programme of works.

8. (a) Notwithstanding the submitted landscaping details, updated version of the following documents shall be submitted to and approved in writing by the Local Planning Authority:
  - Landscape Habitat and Management Plan;
  - Landscape Plan;
  - Softworks Plan (Drawing Ref. LIN-DD-01); and
  - Specification and Schedules (Drawing Ref. LIN-DD-02)

The updated versions of the documents shall incorporate an amended landscaping

scheme that shall extend the compensatory woodland planting to occupy all of the land between the 'cordon sanitaire'/5m river maintenance corridor including the area of previously proposed wildflower sward on the former terrace sides to the north of the house plots and the proposed management measures shall omit the proposed halo thinning and coppicing of the existing mature trees.

The amended landscaping scheme will include details of:

- a) the quantity, size, species, position and the proposed time of planting for all trees to be planted, together with;
- b) an indication of how the trees will integrate with the existing and planned future landscape and the built development over the long term, with regard to their mature size and anticipated ongoing maintenance;
- c) measures for soil amelioration, or the introduction of fresh top soil that accords with recommendations in BS3882:2015 Specification for Topsoil, for areas of landscape planting; with appropriate volumes of soil in those areas to ensure the successful establishment to independence in the landscape of the trees planted therein;
- d) Measures for the protection and post planting and early years maintenance of the planted trees, hedges and shrubs, as appropriate to ensure successful establishment; and
- e) Details of other hard and soft landscaping as appropriate.
- f) Planting plans for the creation of wildlife habitats and features and ecological enhancements;
- g) Written specifications (including cultivation and other operations associated with plant, grass and wildlife habitat establishment);
- h) Schedules of plants, noting species (including scientific names), planting sizes and proposed numbers/densities where appropriate;
- i) Native species used are to be of local provenance (Shropshire or surrounding counties);
- j) Details of trees and hedgerows to be retained and measures to protect these from damage during and after construction works;
- k) Details of treatment of the buffer with the River Corve to minimise disturbance, particularly at night;
- l) Implementation timetables
- m) A schedule of the annual review meetings and report to undertaken in accordance with Condition No 31.

(b) The delivery of tree planting and landscaping provisions will be completed within the first planting season following completion of the development or before the first occupation of the site, whichever is the earlier.

(c) All tree, shrub and hedge planting and other landscape works included within the approved plan and specifications shall be carried out in accordance with the agreed layout and specifications and in accordance where applicable with good practice as set out in BS8545:2014 -Trees: from nursery to independence in the landscape: recommendations.

(d) If within a period of five years from the date of the planting of any tree or shrub that tree or shrub, or any tree or shrub planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes seriously damaged or defective, another tree or shrub of

the same species and size as that originally planted shall be planted at the same place.

Reason: To ensure that design and layout of general landscape provision and the choice and establishment of replacement trees and blocks of woodland is suitable to the design of the development and the ongoing sustainable amenity of the local area and to ensure the biodiversity afforded by appropriate landscape design.

9. The updated Landscape and Habitat Management Plan approved in accordance with Condition No. 8 shall be implemented in accordance with the approved details.

Reason: To ensure the development of structurally sound mature blocks of woodland in order to safeguard the long-term value of retained trees and/or hedgerows and new planting at the site and to protect the natural features and amenities of the local area that are important to the appearance of the development consistent with Shropshire Local Development Framework Core Strategy Policies CS6 and CS17 and Shropshire Council Site Allocations and Management of Development Policies MD2 and MD12.

10. No development shall take place (including vegetation clearance, felling, demolition, ground works, re-profiling works or construction works) until a plan showing the boundaries of the curtilages of the individual dwellinghouses and the boundaries between the individual dwellinghouses and the adjacent area of riparian woodland, and details of all walls, fences and hedges that will define those boundaries are submitted to and approved in writing by the Local Planning Authority.

The defined curtilages of each individual dwelling shall exclude any areas of the shared accesses and pathways and the area of riparian woodland as proposed in the approved landscaping and tree planting proposals and shall include the area between the boundaries of the individual dwellings and the boundaries of the site, including the River Corve and The Linney.

The approved boundaries shall thereafter be maintained in accordance with the approved details.

Reason: For the avoidance of doubt as to the definition of the residential curtilages of the dwellings hereby approved, to ensure that the riparian woodland as proposed in the approved landscape and tree planting proposals can be protected and is managed for the long-term in accordance with the principles of the development and is consistent with aspirations of the Shropshire Council Local Development Framework Core Strategy Policies CS6 and CS17 and Shropshire Council Site Allocations and Management of Development Policies MD2 and MD12 and to provide adequate privacy and an acceptable external appearance that enhances the character and appearance of the Conservation Area.

11. No development (including vegetation clearance, felling, demolition, ground works, re-profiling works, or construction works) shall take place until a scheme of the surface and foul water drainage has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented for each dwelling before that dwelling is first occupied/brought into use (whichever is the sooner).

Reason: To ensure satisfactory drainage of the site and to avoid flooding.

12. Prior to the commencement of development details of the design and construction of the site accesses, including samples of the material finishes of all hard surfaces to be used in the construction of the accesses, shall be submitted to and approved in writing by the Local Planning Authority. The accesses shall thereafter be constructed in accordance with the approved details, prior to the commencement of any on site clearance, demolition, tree felling, ground re-profiling or construction works and thereafter maintained for the lifetime of the development.

Reason: Highway and Pedestrian Safety.

13. Prior to the commencement of development details of the design and construction of the passing place shall be submitted to and approved in writing by the Local Planning Authority. The submitted details shall include details of protection measures to ensure the safety of pedestrians and the details including samples of the material finishes of all hard surfaces to be used in the construction of the passing place including the pedestrian protection. The passing place including the pedestrian protection measures shall thereafter be constructed in accordance with the approved details, prior to the commencement of any on-site clearance, demolition, tree felling, ground re-profiling or construction works and thereafter maintained.

Reason: Highway and Pedestrian Safety.

14. 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:

- a) details of the contractors working and lay-down area including any temporary buildings;
- b) the parking of vehicles of site operatives and visitors;
- c) loading and unloading of plant and materials;
- d) storage of plant and materials used in constructing the development
- e) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- f) wheel washing facilities;
- g) measures to control the emission of dust and dirt during construction
- h) a scheme for recycling/disposing of waste resulting from demolition and construction works;
- i) a Construction Traffic Management Plan, including all HGV routing & unloading proposals; and
- j) an appropriate community liaison and communication strategy, to inform affected local residents and businesses, throughout the works.

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

15. No development approved by this permission (including vegetation clearance, felling, demolition, ground works, re-profiling works or construction works) shall commence until a photographic survey (Level 2), as defined in English Heritage’s guidance ‘Understanding Historic Buildings: A Guide to Good Recording Practice’, of the entire length of the boundary wall adjacent to The Linney has been submitted to and approved in writing by the Local Planning Authority.

Reason: This information is required before development commences to record the historic fabric of the boundary wall prior to development.

16. Prior to the commencement of development, a schedule of works for a phased programme of repairs and rebuilding of the boundary wall adjacent to The Linney shall be submitted to and approved in writing by the Local Planning Authority. No work shall be carried out other than in accordance with the approved schedule.

Reason: To safeguard the positive contribution the boundary wall makes to the character and appearance of the Conservation Area.

17. No development shall take place (including vegetation clearance, felling, demolition, ground works, re-profiling works, or construction works) until a Construction Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. The plan shall include:

- a) An appropriately scaled plan showing ‘Wildlife/Habitat Protection Zones’ where construction activities are restricted, where protective measures will be installed or implemented and where ecological enhancements (e.g. river buffer zone, integrated bat and bird boxes, artificial otter holts) will be installed or implemented;
- b) Details of protective measures (both physical measures and sensitive working practices including protection measures for otters, bats and badgers) to avoid impacts during construction.
- c) Use of protective fences, exclusion barriers and warning signs including a 20m buffer fenced off parallel to the banks along the length of the water course where no ground disturbance should occur.
- d) Requirements and proposals for any site lighting required during the construction phase. No construction activities will take place outside daylight hours unless they are quiet and suitably screened from the river corridor (e.g. internal works to the buildings);
- e) A timetable to show phasing of construction activities to avoid harm to biodiversity features (e.g. avoiding the bird nesting season);
- f) The role and responsibilities on site of an Ecological Clerk of Works (ECoW) or similarly competent person.
- g) The times during construction when an Ecological Clerk of Works needs to be present on site to oversee works;
- h) Identification of Persons responsible for:
  - (i) Compliance with legal consents relating to nature conservation;
  - (ii) Compliance with planning conditions relating to nature conservation;
  - (iii) Installation of physical protection measures during construction;
  - (iv) Implementation of sensitive working practices during construction;

- (v) Regular inspection and maintenance of physical protection measures and monitoring of working practices during construction; and
  - (vi) Provision of training and information about the importance of 'Wildlife Protection Zones' to all construction personnel on site.
- i) Pollution prevention measures including protection of the River from sediment and pollution during construction.

All construction activities shall be implemented strictly in accordance with the approved plan.

Reason: To protect features of recognised nature conservation importance, in accordance with MD12, CS17 and section 175 of the NPPF.

18. No development shall take place (including vegetation clearance, felling, demolition, ground works, re-profiling works, or construction works) until a lighting plan has been submitted to and approved in writing by the Local Planning Authority. The plan shall:

- a) identify those areas/features on site that are particularly sensitive for bats, badgers and otters, where lighting is likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example for foraging; and
- b) show how and where external lighting shall be installed (through provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places.

All external lighting shall be installed strictly in accordance with the specifications and locations set out on the plan, 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's Guidance Note 08/18 Bats and artificial lighting in the UK.

Reason: To minimise disturbance to bats, which are European Protected Species and to ensure that the external appearance of the development is satisfactory and that the character and appearance of the Conservation Area is enhanced.

19. If the development, or each phase of a phased development, hereby permitted does not commence by the 1<sup>st</sup> November 2020, a badger inspection shall first be undertaken by an appropriately qualified and experienced ecologist and the outcome reported in writing to the Local Planning Authority. If new evidence of badgers is recorded during the pre-commencement survey then the ecologist shall submit a mitigation strategy for prior approval that sets out appropriate actions to be taken during the works. These measures will be implemented as approved.

Reason: To ensure the protection of badgers under the Protection of Badgers Act 1992.



20. No development approved by this permission shall commence until the applicant, or their agents or successors in title, has:

- (i) secured the implementation of a programme of archaeological work in accordance with a Written Scheme of Investigation (WSI) which shall first to be submitted to and approved in writing by the Local Planning Authority and thereafter implemented:
- (ii) and the report of the programme of archaeological work has been submitted to and approved in writing by the Local Planning Authority.

Reason: The site is known to hold archaeological interest and to ensure its investigation and report prior to the development of the site.

### **CONDITIONS THAT REQUIRE APPROVAL DURING THE CONSTRUCTION/PRIOR TO THE OCCUPATION OF THE DEVELOPMENT**

21. a) No development, with the exception of demolition works where this is for the reason of making areas of the site available for site investigation, shall take place until a Site Investigation Report has been undertaken to assess the nature and extent of any contamination on the site. The Site Investigation Report shall be undertaken by a competent person and conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'. The Report is to be submitted to and approved in writing by the Local Planning Authority.

b) In the event of the Site Investigation Report finding the site to be contaminated a further report detailing a Remediation Strategy shall be submitted to and approved in writing by the Local Planning Authority. The Remediation Strategy must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

c) The works detailed as being necessary to make safe the contamination shall be carried out in accordance with the approved Remediation Strategy.

d) In the event that further contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of (a) above, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of (b) above, which is subject to the approval in writing by the Local Planning Authority.

e) Following completion of measures identified in the approved remediation scheme a Verification Report shall be submitted to and approved in writing by the Local Planning Authority that demonstrates the contamination identified has been made safe, and the land no longer qualifies as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and

ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to human health and offsite receptors.

22. Prior to the above ground works commencing samples and/or details of all external materials of the buildings (the dwellinghouses and garages), including:

- Stonework and mortar, including details of the mortar bedding and jointing;
- Brickwork including bond, type and colour;
- Details of guttering, flues, ducting and soil pipes; and
- Roofing materials details including details of any rooflights; and
- All hard and soft surfacing.

shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in complete accordance with the approved details.

Reason: To ensure that the external appearance of the development is satisfactory and that the character and appearance of the Conservation Area is enhanced.

23. Prior to the commencement of the relevant work details of all external windows and doors and any other external joinery shall be submitted to and approved in writing by the Local Planning Authority. These shall include full size details, 1:20 sections and 1:20 elevations of each joinery item which shall then be indexed on elevations on the approved drawings. All doors and windows shall be carried out in complete accordance with the agreed details.

Reason: To ensure that the character and appearance of the Conservation Area is preserved and enhanced.

24. Before relevant works commence samples of stone for use in repairs and new work to the boundary wall adjacent to The Linney shall be made available to and approved in writing by the Local Planning Authority.

Reason: To safeguard the positive contribution the boundary wall makes to the character and appearance of the Conservation Area.

25. Mortar for bedding and jointing stonework for the boundary wall adjacent to The Linney shall be a lime mortar which matches the original in colour, texture and surface finish. Sample panels of stonework approximately 1m square to match the existing shall be erected on site and approved in writing by the Local Planning Authority before relevant work commences.

Reason: To safeguard the positive contribution the boundary wall makes to the character and appearance of the Conservation Area.

26. Prior to first occupation / use of the buildings, the makes, models, locations and timetable for the installation of bat and bird boxes shall be submitted to and approved in writing by the Local Planning Authority. The following boxes shall be erected on the site:

- A minimum of 6 woodcrete bat boxes shall be erected on mature trees along the river corridor.

- A minimum of 3 woodcrete bat tubes will be integrated into new buildings.
- A minimum of 4 swift bricks will be integrated into new buildings.
- A minimum of 10 artificial nests, of either integrated brick design or external box design, suitable for starlings (42mm hole, starling specific), sparrows (32mm hole, terrace design), house martins (house martin nesting cups), open-fronted nest boxes (for flycatchers, robins etc.) and/or small birds (for tits etc.)

The boxes shall be sited in suitable locations, with a clear flight path and where they will be unaffected by artificial lighting. The boxes shall thereafter be maintained for the lifetime of the development.

Reason: To ensure the provision of roosting and nesting opportunities, in accordance with MD12, CS17 and section 175 of the NPPF.

27. Prior to first occupation of the dwellinghouses an appropriately qualified and experienced Ecological Clerk of Works (ECW) shall provide a report to the Local Planning Authority demonstrating creation of the otter holts and bat loft, as set out the Ecological Impact Assessment (Churton Ecology, December 2019), and installation of the bat and bird boxes in accordance with Condition No. 26. The report shall include photographs of these features.

Reason: To demonstrate compliance with the conditions to ensure the protection and enhancement of populations of bats and otters, which are European Protected Species, and other wildlife in accordance with the Conservation of Habitats and Species Regulations 2017, the Wildlife and countryside Act 1981 and the NPPF 2019.

28. Prior to the first occupation of the dwellinghouses hereby approved the programme or repairs and rebuilding of boundary wall adjacent to The Linney shall have been completed and all surplus or unused construction materials, waste, plant etc removed from the site.

Reason: To ensure the satisfactory completion of the programme of or repairs and rebuilding of boundary wall adjacent to The Linney in order to safeguard the character and appearance of the Ludlow Conservation Area and to ensure highway and pedestrian safety.

## **CONDITIONS THAT ARE RELEVANT FOR THE LIFETIME OF THE DEVELOPMENT**

29. Site preparation, construction works, associated deliveries to and removal of materials from the site shall not take place outside 0800 hours to 1800 hours Mondays to Fridays and 0800 hours to 1300 hours on Saturdays and at no time on Sundays or Bank Holidays or Public Holidays.

Reason: To safeguard the amenities of the area.

30. The proposed groundworks on the site shall provide a minimum ground level of 84.50mAOD as stated in the submitted Flood Risk Assessment.

Reason: To minimise the risk of fluvial flooding from the watercourses.

31. a) Not later than the 1<sup>st</sup> April following the occupation of the first dwelling on the site, an annual review meeting will take place on the site attended by a representative of the site management company and an officer of Local Planning Authority to review the implementation of the updated Landscape Habitat and Management Plan to be approved in accordance with Condition No. 8).
- b) A written report of the annual review of the implementation of the updated Landscape Habitat and Management Plan, shall thereafter be submitted within one calendar month of the date of the site meeting.
- c) Further annual review meetings shall thereafter take place no later than 1<sup>st</sup> April in each calendar year thereafter for further four years (i.e. for the first five years), and after 10 years, 15 years and 20 years (in accordance with the schedule to be included in the Landscape Habitat and Management Plan).

Reason: To ensure the satisfactory implementation of the Landscape Habitat and Management Plan and to ensure the development of structurally sound mature blocks of woodland in order to safeguard the long-term value of retained trees and/or hedgerows and new planting at the site and to protect the natural features and amenities of the local area that are important to the appearance of the development consistent with Shropshire Local Development Framework Core Strategy Policies SC6 and CS17 and Shropshire Council Site Allocations and Management of Development Policies MD2 and MD12.

32. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any order revoking and re-enacting that Order with or without modification, no development relating to Schedule 2, Part 1, Classes A, B, C, D, E and F shall be erected, constructed or carried out.

Reason: To maintain the scale, appearance and character of the development and to safeguard residential and/or visual amenities and to safeguard the character and appearance of the Ludlow Conservation Area.

33. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any order revoking and re-enacting that Order with or without modification, no development relating to Schedule 2, Part 2, Classes A (Gates, fences, walls etc) shall be erected, within 8 metres of the top of the bank of the River Corve (Main River).

Reason: To ensure access to the Main River is maintained to allow for any maintenance or improvement works and to prevent any impact on flood flows and flood risk elsewhere.

## INFORMATIVES

### Highways

#### Visibility Splays

The access for domestic vehicles, onto a highway is required to be measured from a point 2.4m back from the carriageway edge at a height of 1.05m (drivers' eyeline) for 30m in

each direction for a 20mph speed limit or a road where the speeds are commensurate with 20mph speeds. The visibility splay should be such that the boundaries are no higher than 900mm to obtain a view of approaching traffic and no higher than 600mm to obtain a view of small pedestrians along a footway or shared space. It should also be noted that the visibility sightlines must be permanently available and not be reliant on hedge maintenance.

#### Passing Place

The dimensions and design of the passing place must be undertaken to highway standards and it will require prior formal agreement with the Local Highway Authority.

The widening of the highway shall be constructed in accordance with the Council's specification as follows; 20mm thickness of 6 mm aggregate surface course, 40 mm thickness of 20 mm aggregate binder course and 200 mm thickness of MOT type 1 sub-base.

A sign denoting that this is a passing place only will be required to prevent its use as a parking place.

#### Works on, Within or Abutting the Public Highway

This planning permission does not authorise the applicant to:

- construct any means of access over the publicly maintained highway (footway or verge) or
- carry out any works within the publicly maintained highway, or
- authorise the laying of private apparatus within the confines of the public highway including any new utility connection, or
- undertaking the disturbance of ground or structures supporting or abutting the publicly maintained highway

The applicant should in the first instance contact Shropshire Councils Street works team. This link provides further details: <https://www.shropshire.gov.uk/roads-and-highways/road-network-management/application-forms-and-charges/>

Please note: Shropshire Council require at least 3 months' notice of the applicant's intention to commence any such works affecting the public highway so that the applicant can be provided with an appropriate licence, permit and/or approved specification for the works together and a list of approved contractors, as required.

#### No Drainage to Discharge to the Highway

Drainage arrangements shall be provided to ensure that surface water from the driveway and/or vehicular turning area does not discharge onto the public highway. No drainage or effluent from the proposed development shall be allowed to discharge into any highway drain or over any part of the public highway.

#### Mud on the Highway

The applicant is responsible for keeping the highway free from any mud or other material emanating from the application site or any works pertaining thereto.

**Drainage**

Soakaways

The use of soakaways should be investigated in the first instance for surface water disposal. Percolation tests and the sizing of the soakaways should be designed in accordance with BRE Digest 365 to cater for a 1 in 100-year return storm event plus an allowance of 35% for climate change. Alternatively, we accept soakaways to be designed for the 1 in 10-year storm event provided the applicant should submit details of flood routing to show what would happen in an 'exceedance event' above the 1 in 10-year storm event. Flood water should not be affecting other buildings or infrastructure. Full details, calculations, dimensions and location plan of the percolation tests and the proposed soakaways should be submitted for approval.

Surface water should pass through a silt trap or catchpit prior to entering the soakaway to reduce sediment build up within the soakaway.

Should soakaways be not feasible, drainage calculations should limit the discharge rate from the site equivalent to a greenfield runoff rate should be submitted for approval. The attenuation drainage system should be designed so that storm events of up to 1 in 100 year + 35% for climate change will not cause flooding of any property either within the proposed development or any other in the vicinity.

Urban Creep

Urban creep is the conversion of permeable surfaces to impermeable over time e.g. surfacing of front gardens to provide additional parking spaces, extensions to existing buildings, creation of large patio areas.

The appropriate allowance for urban creep must be included in the design of the drainage system over the lifetime of the proposed development. The allowances set out below must be applied to the impermeable area within the property curtilage:

Residential Dwellings per hectare Change allowance % of impermeable area

- Less than 25 10
- 30 8
- 35 6
- 45 4
- More than 50 2
- Flats & apartments 0

Note: where the inclusion of the appropriate allowance would increase the total impermeable area to greater than 100%, 100% should be used as the maximum.

'Curtilage' means area of land around a building or group of buildings which is for the

private use of the occupants of the buildings.

#### Use of Non-Permeable Surfacing

If non-permeable surfacing is used on the new accesses, driveways and parking areas or the new access slopes toward the highway, the applicant should submit for approval a drainage system to ensure that no surface water runoff from the new driveway run onto the highway.

#### Foul Water Sewerage

The proposed method of foul water sewage disposal should be identified and submitted for approval, along with details of any agreements with the local water authority and the foul water drainage system should comply with the Building Regulations H2.

### **Contaminated Land**

Information on how to comply with conditions and what is expected of developers can be found in the Shropshire Council's Contaminated Land Strategy 2013 in Appendix 5. The following link takes you to this document: <http://shropshire.gov.uk/committee-services/Data/Council/20130926/Agenda/18%20Contaminated%20Land%20Strategy%20-%20Appendix.pdf>

### **Ecology**

#### Bats

All bat species found in the U.K. are protected under the Habitats Directive 1992, The Conservation of Habitats and Species Regulations 2017 and the Wildlife and Countryside Act 1981 (as amended).

It is a criminal offence to kill, injure, capture or disturb a bat; and to damage, destroy or obstruct access to a bat roost. There is an unlimited fine and/or up to six months imprisonment for such offences.

If any evidence of bats is discovered at any stage, then development works must immediately halt and an appropriately qualified and experienced ecologist and Natural England (0300 060 3900) contacted for advice on how to proceed. The Local Planning Authority should also be informed.

Breathable roofing membranes should not be used as it produces extremes of humidity and bats can become entangled in the fibres. Traditional hessian reinforced bitumen felt should be chosen.

The active nests of all wild birds are protected under the Wildlife and Countryside Act 1981 (as amended). An active nest is one being built, contains eggs or chicks, or on which fledged chicks are still dependent.

It is a criminal offence to kill, injure or take any wild bird; to take, damage or destroy an

active nest; and to take or destroy an egg. There is an unlimited fine and/or up to six months imprisonment for such offences.

All vegetation clearance, tree and scrub removal and demolition work should be carried out outside of the bird nesting season which runs from March to August inclusive.

If it is necessary for work to commence in the nesting season, then a pre-commencement inspection of the vegetation and buildings for active bird nests should be carried out. If vegetation or buildings cannot be clearly seen to be clear of nests, then an appropriately qualified and experienced ecologist should be called in to carry out the check. Only if there are no active nests present should work be allowed to commence.

### General Wildlife Protection

The following procedures should be adopted to reduce the chance of killing or injuring small animals, including reptiles, amphibians and hedgehogs.

If piles of rubble, logs, bricks, other loose materials or other potential refuges are to be disturbed, this should be done by hand and carried out during the active season (March to October) when the weather is warm.

Areas of long and overgrown vegetation should be removed in stages. Vegetation should first be strimmed to a height of approximately 15cm and then left for 24 hours to allow any animals to move away from the area. Arisings should then be removed from the site or placed in habitat piles in suitable locations around the site. The vegetation can then be strimmed down to a height of 5cm and then cut down further or removed as required. Vegetation removal should be done in one direction, towards remaining vegetated areas (hedgerows etc.) to avoid trapping wildlife.

All building materials, rubble, bricks and soil must be stored off the ground, e.g. on pallets, in skips or in other suitable containers, to prevent their use as refuges by wildlife.

Where possible, trenches should be excavated and closed in the same day to prevent any wildlife becoming trapped. If it is necessary to leave a trench open overnight then it should be sealed with a close-fitting plywood cover or a means of escape should be provided in the form of a shallow sloping earth ramp, sloped board or plank. Any open pipework should be capped overnight. All open trenches and pipework should be inspected at the start of each working day to ensure no animal is trapped.

Any common reptiles or amphibians discovered should be allowed to naturally disperse. Advice should be sought from an appropriately qualified and experienced ecologist if large numbers of common reptiles or amphibians are present.

If a great crested newt is discovered at any stage, then all work must immediately halt and an appropriately qualified and experienced ecologist and Natural England (0300 060 3900) should be contacted for advice. The Local Planning Authority should also be informed.

If a hibernating hedgehog is found on the site, it should be covered over with a cardboard



box and advice sought from an appropriately qualified and experienced ecologist or the British Hedgehog Preservation Society (01584 890 801).

Hedgerows are more valuable to wildlife than fencing. Where fences are to be used, these should contain gaps at their bases (e.g. hedgehog-friendly gravel boards) to allow wildlife to move freely.

Netting of trees or hedges to prevent birds from nesting should be avoided by appropriate planning of work. See guidance at <https://cieem.net/cieem-and-rspb-advise-against-netting-on-hedges-and-trees/>

**Works within 8m of the River Corve**

Any works in, under, over or within 8 metres of the River Corve (Main River) will require a permit from the Environment Agency under the Environmental Permitting (England and Wales) Regulations 2010. This would have formerly been called a Flood Defence End 3 Consent. For more advice to confirm whether a permit is required, what type, and exemptions please ring 03708 506506 and ask for the local Partnerships and Strategic Overview Team. Also go to: <https://www.gov.uk/guidance/flood-risk-activitiesenvironmental-permits>

**APPENDIX 2 – HEADS OF TERMS FOR THE PLANNING OBLIGATION**

1. That the applicant will pay and affordable housing contribution of £54,000 in lieu of on-site provision in accordance with the calculation set out in paragraph 4.20 of the Council’s Type and Affordability of Housing Supplementary Planning Document (September 2012).

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Committee and date

Southern Planning Committee

20 October 2020

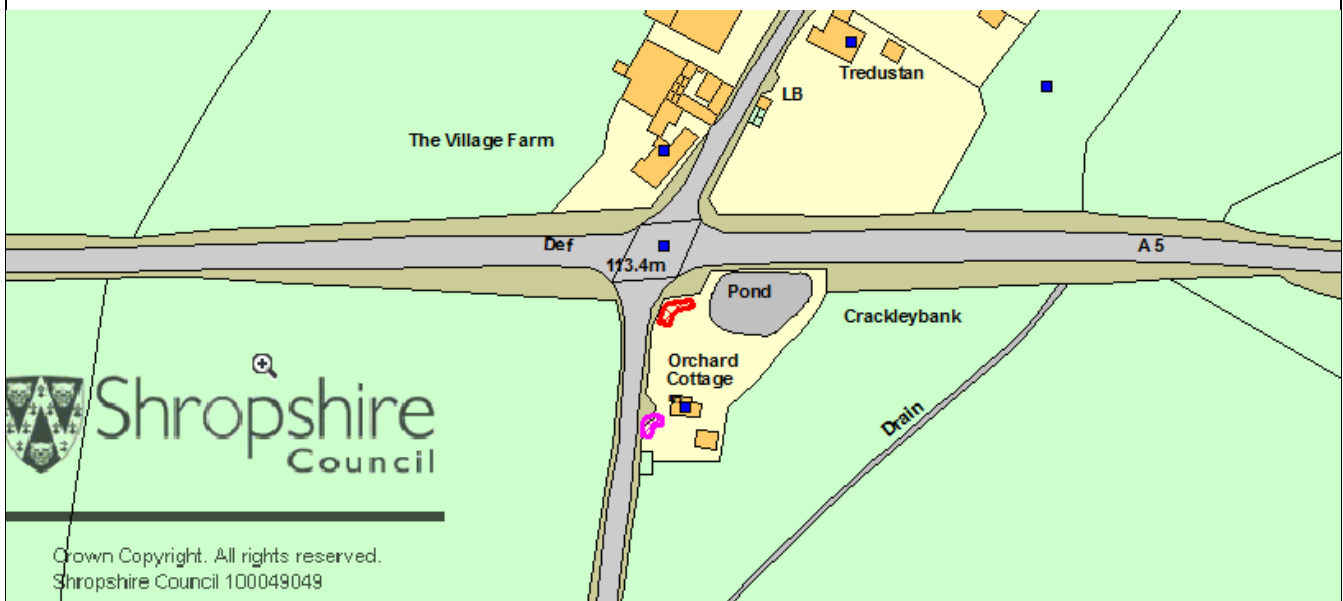
## Development Management Report

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> 20/01219/FUL	<b>Parish:</b>	Shifnal
<b>Proposal:</b> Change of use of private kennels to Boarding Kennels and Dog Grooming		
<b>Site Address:</b> Orchard Cottage 5 Crackleybank Sheriffhales Shifnal Shropshire		
<b>Applicant:</b> Mr Darren Giles		
<b>Case Officer:</b> Mike Davies	<b>email :</b> planning.southern@shropshire.gov.uk	

**Grid Ref:** 375869 - 310842



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

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

- 1.1 This is a retrospective application for the change of use of private kennels to a boarding kennels and dog grooming parlour, at Orchard Cottage, Crackleybank, Sheriffhales.
- 1.2 The change of use relates to two outbuildings from what have been private kennels. The application states that the applicant is a certified breeder under the Kennel Club Assured Breeder Scheme and that the premises have been licensed by Shropshire Council under License Ref. 16/01633/Board. The License permits a total of 8 dogs to be boarded on the premises at any one time.
- 1.3 A previous planning application (ref.17/00715/FUL) was refused under officer delegated powers in November 2019 for the following reason:

*“Because of its proximity of Orchard Cottage to the Crackley Bank crossroads, which is the crossroads of the A5 and the B4379, and because of the close proximity of the entrance of the site to the B4379 and limited space available on the site for car parking and the turning of visiting client's vehicles, there is unacceptably high risk of vehicles parking on or adjacent to the public highway and of pedestrians having to walk along this stretch road. This cannot be controlled by the applicant, and as a result, safe parking and access cannot be achieved and the proposed change of use cannot be considered to acceptable or compliant with Core Strategy Policy CS6 or Paragraphs 84 and 109 of the NPPF (2019).”*

This revised application seeks to address this refusal reason by proposing that the business operates in a manner which would not have members of the public calling at the premises. A collection and delivery service by the business operator who resides at the dwelling on the site would ensure dogs are handed over away from the site, thus alleviating the need for dog owners to visit the site and park vehicles outside thus creating a traffic hazard. Dogs would be returned to their owners in a similar manner and would not be collected from the site by them. The opening hours for the dog grooming business are 09.00-17.00 with the collection and delivery service operating to the same hours as the dog grooming business.

- 1.4 The planning application form advises that there would be one full-time employee.

**2.0 SITE LOCATION/DESCRIPTION**

- 2.1 The application site comprises two sets of sheds within the curtilage of the domestic premises at Orchard Cottage, extending in total to approximately 53 sqm. Orchard Cottage is described in the application as an extended detached property with numerous outbuildings and kennels and as being situated on the corner of the A5 and the B4379 between Shifnal and Sherrifhales. Vehicular access is via a remotely controlled gate into a block paved courtyard from the B4379, approximately 45m south of the junction of the

B4379 with the A5. The gates are set back 3.5m from the rear of the carriageway and operated by an intercom system. The property is bounded by hedging along the roadside (the western boundary), and a mature Leylandii hedge and groups of mature trees around the other boundaries.

2.2 The B4379 runs to the front of the property (to the west), the A5 is to the side (to the north), there is a plantation of trees to the rear (to the east) and fields beyond rising away to Shifnal Cottage Indian Restaurant which is approximately 275m away. To the south, agricultural land gently slopes down away from the site before rising up towards the neighbouring property at Crackley Bank Cottage, which is situated approximately 120m away.

2.3 To the north of the A5 is a residential dwelling, Tredustan and Village Farm and opposite Shifnal Cottage Indian restaurant, is Yew Tree Farm Livery Stables.

2.4 There are two blocks of kennels to which this application relates. Block 1 (as it is described in the application), is located in the garden to the north of the dwellinghouse. The kennels are understood to have been built under domestic permitted development rights for the applicant's own dogs, in 2003, and are of brick-built construction with a tiled roof. The block includes five kennels, providing insulated and heated living quarters, each with an individual run enclosed by black painted bow topped metal railings. Each kennel is monitored by a CCTV camera and background music is piped throughout the block which, the application states, is inaudible beyond the site boundary. The building also includes a whelping pen (for the applicant's own use) and a grooming parlour.

2.5 Block 2 is also of brick and tile construction and comprises four kennels and is located to the south of the entrance into the site and parking area. These are understood to have been constructed in 2011.

2.6 The application states that whilst the kennels were initially constructed to accommodate the applicants breeding dogs, their use has diversified to provide dog boarding and grooming services, initially, for family and friends, but that through word of mouth and recommendation has gradually become a commercial enterprise which has complimented his dog breeding.

2.7 The site is located in the Green Belt and outside any development boundary. There are no natural or historic built environment designations that would be affected by the development of the site, which is located in Flood Zone 1 on the Environment Agency's Flood Map. There have been several previous planning applications relating to the Orchard Cottage and the various extensions and outbuildings, but none relating to the kennels or dog grooming parlour. These include the following:

- BR/APP/FUL/02/0082 for a two-storey rear extension to Orchard Cottage – Approved 13/03/2002;
- BR/APP/FUL/03/0636 for the erection of a first-floor extension to Orchard Cottage - Refused 09/10/2003;
- BR/APP/FUL/06/0097 for the conversion and extension of existing outbuildings to

form garage with storage facility - Refused 29/03/2006;

- BR/APP/FUL/06/0281 for the conversion and extension of outbuilding to form garage/garden store - Approved 02/06/2006.

### 3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

3.1 The Parish Council view is contrary to the Officer recommendation. The Principal Officer and Chair and Vice-Chair of the South Planning Committee consider that the balance of material planning considerations raised in this case warrant determination of the application by Committee.

### 4.0 Community Representations

- Consultee Comments

Shifnal Town Council: Shifnal Town Councillors strongly object to the above planning application as it is detrimental to highway safety, being located so close to a dangerous junction with the A5 and there being inadequate on-site parking and turning space. There has been no change in material circumstances since the refusal last year. Councillors urge that enforcement action be taken quickly against current, unauthorised use.

Local Lead Flood Authority – Have requested the following informative be attached to any consent granted.

A sustainable drainage scheme for the disposal of surface water from the development should be designed and constructed in accordance with the Councils Surface Water Management: Interim Guidance for Developers document. It is available on the councils website at:

<https://www.shropshire.gov.uk/media/5929/surface-water-management-interim-guidance-fordevelopers.pdf>

The provisions of the Planning Practice Guidance, Flood Risk and Coastal Change, should be followed.

Preference should be given to drainage measures which allow rainwater to soakaway naturally.

Soakaways should be designed in accordance with BRE Digest 365. Connection of new surface water drainage systems to existing drains / sewers should only be undertaken as a last resort, if it can be demonstrated that infiltration techniques are not achievable.

Regulatory Services - As with the previous application Regulatory Services have no objection to the proposed development and ask that the full details are submitted up front for any insulation provided. I would like confirmation that the buildings and layout is exactly the same as from the previous application that there are no new kennels or buildings used in relation to dog boarding or similar. I would advise that a condition is placed to ensure that the mitigation measures form part of approved plans. I would like to see a noise

management plan submitted with the measures that will be taken to minimise dog barking. I would advise the applicant to provide this at this stage in the form of a Noise Management Plan. It should note key measures employed to reduce noise from dogs being boarded where necessary etc. If this information is not submitted, a condition to ask for a noise management plan to be submitted for approval in writing no more than three months from the date of any decision notice. Any plan approved shall be carried out in full at all times.

Conditions for noise management plan are recommended to ensure that should the business change hands in future that management of potential noise is given attention in order to satisfy conditions.

Regulatory Services Additional Comments (18.09.2020) - The draft noise management plan appears to be fit for purpose to describe features both physical and operational designed to reduce disturbance of barking to a minimum, if described measures are undertaken. I don't think the dogs would necessarily be inaudible but likely to be significantly reduced. I note that problem dogs will be placed in block 2, and if they still are problematic then returned to owners. Also that liaison with the community, if problems arise, will be undertaken.

Highway Authority – Comment:

The Planning Statement refers to accidents within the vicinity of the A5/B4379 and how the agent expected this data to be provided for free. The agent subsequently used crash map and collision map which are accepted industrywide as robust source of data. The data should be for the proceeding 5 year period (as purportedly requested from the authority) and so this accident study should be resubmitted with 5 years of data for the period up to date. Whilst the agent states that the accidents viewed in their limited study years (2017-2019) do not relate to the application property it is rather accident patterns/trends that can be attributed to a vicinity that the agent should provide a study of, i.e. a study of clusters of accidents could indicate a road safety issue.

It is acknowledged that the traffic signals, in effect, 'meter' the traffic turning onto the B4379 and create bigger gaps for vehicles turning out of the site, as well as potentially slow the speeds of vehicles in the vicinity but the accident study is still required to inform of any highway safety issue.

The site layout plan shows 3 vehicles parking on site and their turning circle to be able to leave the site in a forward gear. Whilst the turning is acceptable the site is still offering no further parking spaces than the application refused under reference 17/00715/FUL, where highways stated there was insufficient parking to serve the development. Confirmation is required as to how many members of staff are employed on site. The Planning Statement indicates that the business will only operate on a collection and delivery basis however further detail is needed as to how this would work in reality; as well as how this could be enforced. Also, is this the case for the dogs in for grooming? As potentially much of the working day could be lost to this collection and delivery service. Confirmation is needed.

In order for the proposed development to be appropriately assessed, from a highways and transport perspective, the following information is required to be submitted, by the applicant:

- A study of accidents at the A5/B4379 junction and on the B4379 adjacent to

Orchard Cottage for the proceeding 5 year period.

- Numbers of Employees
- How the collection and delivery service is working and how it is proposed that this system be enforced, in the interests of highway safety.

- Public Comments:

3 Objection letters have been received which may be viewed in full on the planning file. A summary of the comments made is set out below:

- Noise from barking dogs
- Dangerous access so close to a busy main crossroads with vehicles dropping off and collecting animals
- Not a good or safe place to park
- Still be additional traffic with dogs being collected and delivered
- No mention of additional parking for dog groomers that came to the premises previously
- Traffic lights with queueing on other side of road make it more difficult to enter and exit the property; cars will be travelling faster when lights turn green in their favour
- Buildings were not built as private kennels and were built for boarding and grooming
- Several outbuildings at this property outside of permitted development which are not suitable considering the age and amenity of the original main property

## 5.0 THE MAIN ISSUES

Principle of development  
Highway safety  
Residential Amenity  
Amount of Development

## 6.0 OFFICER APPRAISAL

### 6.1 Principle of development

6.1.1 The application does not raise any significant issues in terms of the principle of the change of use proposed. Under the Council's development strategy set out in the Core Strategy Policies CS1, CS3, CS4 and CS5 the focus for new development is to be in Shrewsbury and the county's Market Towns and other Key Centres. Policy CS1 makes clear that in the rural areas development and investment will be located predominantly in Community Hubs and Community Clusters but that outside these settlements, development will be permitted to facilitate rural economic diversification.

6.1.2 In support of Policy CS1, Policy CS5, which is the main policy applicable in rural areas, states that new development will be strictly controlled in accordance with national planning policies protecting the countryside and Green Belt. Development proposals on appropriate sites which maintain and enhance countryside vitality and character will be permitted where they improve the sustainability of rural communities by bringing local economic and community benefits, particularly where they relate to small-scale new economic development. Where this is the case applicants are required to demonstrate the need and benefit for the development proposed. Such development is expected to



take place primarily in recognisable named settlements or be linked to other existing development and business activity. The policy also allows for the retention and appropriate expansion of existing established businesses, unless relocation to a suitable site within a settlement would be more appropriate.

6.1.3 In addition Policy CS13 which is concerned with developing and diversifying the Shropshire economy, supporting enterprise, and seeking to deliver sustainable economic growth, by encouraging home-based enterprise, live-work schemes and appropriate use of residential properties for home working and in rural areas, supporting rural enterprise and diversification of the economy, subject to it being in accordance with Policy CS5.

6.1.4 In addition, paragraph 83 of the National Planning Policy Framework (NPPF), states that decisions on planning applications should enable the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings.

6.1.5 The application in this case is a retrospective application, so on the one hand does relate to an existing business, but not one that has been lawfully established. However, it is business that has grown incrementally, albeit only to a small scale, and has become established, so that whilst the applicant has not submitted details of need or benefit, including any accounts to demonstrate the viability of the business, it is also not inconsistent with the objectives of Core Strategy Policy CS13 which supports home-based enterprise and home working in rural areas, or the NPPF which seeks to enable and encourage the sustainable growth and expansion of all types of business in rural areas, including as in this case, through the conversion of existing buildings.

6.1.6 Whilst dog kennels are not an unusual insofar as they relate to the use and working of the land (as is the case for agricultural and forestry enterprises) on which, they are situated, they are by their nature better suited to rural areas where they can be located, if not actually away from nearby residential properties and other noise sensitive uses, then at least located in a way that they not immediately adjacent to them.

6.1.7 In terms of the principle of the development, to the extent that the business has established itself, its location and the use site, is not inconsistent with Core Strategy Policies CS5 and can otherwise be considered to be in compliance with Policy CS13 and the NPPF.

## 6.2 Highway Safety

6.2.1 Whilst the principle of the development may be acceptable, the application does raise potentially significant issues in relation to highway safety because of its proximity to the Crackley Bank crossroads, which is the crossroads of the A5 and the B4379, and because of the close proximity of the entrance of the site to the B4379 and limited space available on the site for car parking and the turning visiting vehicles. The matters are closely related and need to be considered as two related aspects of the same issue.

6.2.2 Relevant development plan policy includes Core Strategy Policy CS6 which seek to ensure that all development is safe and includes appropriate car parking provision. In addition

paragraph 108 of the NPPF advises Local Planning Authorities that they should ensure that safe and suitable access to the site can be achieved for all users, that any significant impacts from the development on the transport network, in terms of capacity and congestion, or on highway safety, can be cost effectively mitigated to an acceptable degree. Paragraph 109 further advises that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety. Also, of particular relevance, is paragraph 84 of the NPPF, which states that whilst planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, it will be important to ensure that development does not have an unacceptable impact on local roads

- 6.2.3 Highway and pedestrian safety in this case is significant consideration due to the need for the site to be secure and to ensure that any dogs being delivered to, or collected from, the kennels and dog grooming parlour, cannot get loose or escape on to the highway. Because of the location of Orchard Cottage immediately adjacent to the B4379, there is very limited space between the public highway and the entrance gate into the courtyard on the site. The gate is set only 3.5m back from the edge of the highway, so that there is not the full length of a car between the edge of the highway of the gate, although it is possible to stop a smaller car in front of the gate off the highway. The risk is that vehicles may simply attempt to pull in, parking partly on the gate apron and partly on the public highway. There is no other layby or area for visitor's vehicles to safely pull into immediately adjacent to Orchard Cottage, although there is a narrow informal layby approximately 25m south of the entrance into Orchard Cottage, which is not within the control of the applicant. There is no roadside pavement and only a narrow verge on the west side of the B4379. The road is relatively narrow and closed in the by the adjacent hedgerows on both sides and cannot be considered to be safe location for pedestrians or pedestrians with dogs visiting the kennels. Because of the proximity of the junction with the A5, with no visibility around the corner of the junction, the narrowness of the road, and the lack of a layby and pavement, there is a high risk to any pedestrians walking along this stretch road and a consequential risk for vehicles. There is also a risk of parked vehicles causing an obstruction and of collision.
- 6.2.4 The applicant has sought to respond to the previous refusal by instigating a collection and delivery service only thus no personal callers will be received at the premises. The applicant will operate an appointment system to pick up and drop off customers dogs thus alleviating the need for dog owners to visit the site. The applicant will collect and deliver animals to customers using his own vehicle which will be parked on site as now. The site is gated so that dogs cannot get out onto the road and there is sufficient space on site to allow a vehicle to enter turn and leave again in a forward gear. This therefore addresses the previous concerns expressed in relation to customer's vehicles parking up on the highway causing a hazard to pedestrians and the free flow of traffic and concerns about dogs running loose on the highway.
- 6.2.5 Given the reservations previously expressed in relation to the highway safety issue, it is considered appropriate that a temporary consent should be granted in the first instance to allow the effectiveness of the proposed collection and delivery service to be properly evaluated. Assuming that the service proves to work successfully then it may then be appropriate to grant a personal consent to the applicant for the operation of the site.

### 6.3 Residential Amenity

- 6.3.1 As set out above the Parish Council and objectors have raised concerns about noise from the kennels. The property has no adjoining neighbours; the closest neighbour is located approximately 120m away to south and 60m to the north on the opposite side of the crossroads.
- 6.3.2 Core Strategy Policy CS6 paragraph 127 of the NPPF seek to ensure protection of amenity when determining planning applications.
- 6.3.3 A number of observations of the site have been made, and it is apparent that the background noise levels are relatively high due to the proximity of the site to traffic on the A5 during the daytime, although it is likely that these would be lower at night. For this reason, it is unlikely that the noise from barking dogs would be unduly disturbing for nearby residential properties during the daytime, but it may as a result be an issue at night-time. There is no additional mitigation proposed by the applicant to safeguard undue night-time noise from barking dogs.
- 6.3.4 A noise report was submitted to support the application and Regulatory Services are satisfied with the findings of this report and do not consider the use will unduly impact on the amenities of residents living the vicinity of the site. The change of use can therefore be considered to be acceptable in relation to Core Strategy Policy CS6 and the NPPF. It should be noted that the previous application 17/00715/FUL (See 1.3 above) was not refused in November 2019 for reasons relating to noise.

### 6.4 Development on Site

- 6.4.1 One final brief point is that the amount of development on the site has been raised as an issue by the Parish Council and objectors. It is the case that there has been a substantial amount of development on the site with the construction of a number of sheds and outbuildings, and to a degree this has contributed to the constraints in the amount of space on the site for access, car parking and turning. However, the application in this case is not for any new operational development, so this is not a directly relevant material consideration.

## 7.0 CONCLUSION

The change of use of private kennels to a boarding kennels and dog grooming parlour, at Orchard Cottage, Crackleybank, Sheriffhales, is acceptable in terms of the principle of the development, amenity and the issues related to the amount of development on the site, and can therefore considered to be acceptable in relation to relevant development plan policy including Core Strategy Policies, CS1, CS5, CS6 and CS13 and the NPPF (2019).

The location of the site away from other residential properties means that noise from barking dogs will not unduly disturb any nearby residents. The main issue associated with the use of this site for this purpose relates to highway safety issues and this led to the previous planning application being refused.

The proximity of the site the crossroads of the A5 and the B4379, and the entrance of the site on to the B4379 with limited space available on the site for car parking and the turning of visiting client's vehicles, were deemed to pose an unacceptably high risk of vehicles parking on or adjacent to the public highway and of pedestrians having to walk along this

stretch road in the carriageway as a result.

To address the reason for the previous refusal this application proposes to instigate a collection and delivery service with no customers visiting the site. The applicant is prepared to accept a condition should consent be granted which prevents customers visiting the site with dogs being collected from and delivered to customers away from the site. The adoption of this system will help to address the issues raised in relation to safe parking and access which resulted in the previous refusal.

To allow the Council to monitor the success of the collection and delivery service in relation to dissuading personal callers dropping off dogs at the site and causing a traffic hazard, it is considered appropriate that a temporary consent be granted, so that the impact can be properly assessed and if it is successful then a personal consent could then be granted to the applicant at a later date.

## 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

Shropshire Core Strategy and SAMDev Plan Policies:  
 CS1 - Strategic Approach  
 CS5 - Countryside and Greenbelt  
 CS6 - Sustainable Design and Development Principles  
 CS13 - Economic Development, Enterprise and Employment  
 CS17 - Environmental Networks  
 CS18 - Sustainable Water Management  
 MD1 - Scale and Distribution of Development  
 MD2 - Sustainable Design  
 MD7B - General Management of Development in the Countryside  
 MD12 - Natural Environment  
 Settlement: S15 Shifnal Area

### RELEVANT PLANNING HISTORY:

17/00715/FUL Change of use of private kennels to boarding kennels and dog grooming  
 (retrospective) REFUSE 7th November 2019  
 BR/APP/FUL/03/0636 Erection of a first floor extension REFUSE 9th October 2003

BR/APP/FUL/02/0082 Erection of a two storey rear extension GRANT 13th March 2002

BR/APP/FUL/06/0281 Conversion and extension of outbuilding to form garage/garden store

GRANT 2nd June 2006

BR/APP/FUL/06/0097 Proposed conversion and extension of existing outbuildings to form  
garage with storage facility REFUSE 29th March 2006

BR/81/0441 The erection of a single private garage GRANT 12th August 1981

11. Additional Information

View details online: <https://pa.shropshire.gov.uk/online-applications/simpleSearchResults.do?action=firstPage>

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

Noise Management Plan

Cabinet Member (Portfolio Holder)

Councillor Gwilym Butler

Local Member

Cllr Kevin Turley

Appendices

APPENDIX 1 - Conditions

## APPENDIX 1

### Conditions

#### STANDARD CONDITION(S)

1. The development hereby permitted shall cease before the expiration of one year from the date of this permission.

Reason: To allow the effects of the development to be reviewed in the light of experience of operation of the business operating solely on the basis of a dog collection and delivery service by the operator.

2. The development shall be carried out strictly in accordance with the approved plans and drawings

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

3. There shall be no collection or delivery of dogs by members of the public associated with the boarding kennels and dog grooming business.

Reason: To ensure that the number of vehicular movements connected with the business is minimised and to control on-street parking near the site in the interests of highway safety.

4. The development shall be carried out in accordance with the submitted Noise Management Plan dated 27.07.2020.

Reason: In the interests of Residential Amenity.

**Informatives**

1. A sustainable drainage scheme for the disposal of surface water from the development should be designed and constructed in accordance with the Councils Surface Water Management: Interim Guidance for Developers document. It is available on the councils website at:

<https://www.shropshire.gov.uk/media/5929/surface-water-management-interim-guidance-fordevelopers.pdf>

The provisions of the Planning Practice Guidance, Flood Risk and Coastal Change, should be followed.

Preference should be given to drainage measures which allow rainwater to soakaway naturally. Soakaways should be designed in accordance with BRE Digest 365. Connection of new surface water drainage systems to existing drains / sewers should only be undertaken as a last resort, if it can be demonstrated that infiltration techniques are not achievable.

-





<u>Committee and date</u>
Southern Planning Committee
20 October 2020

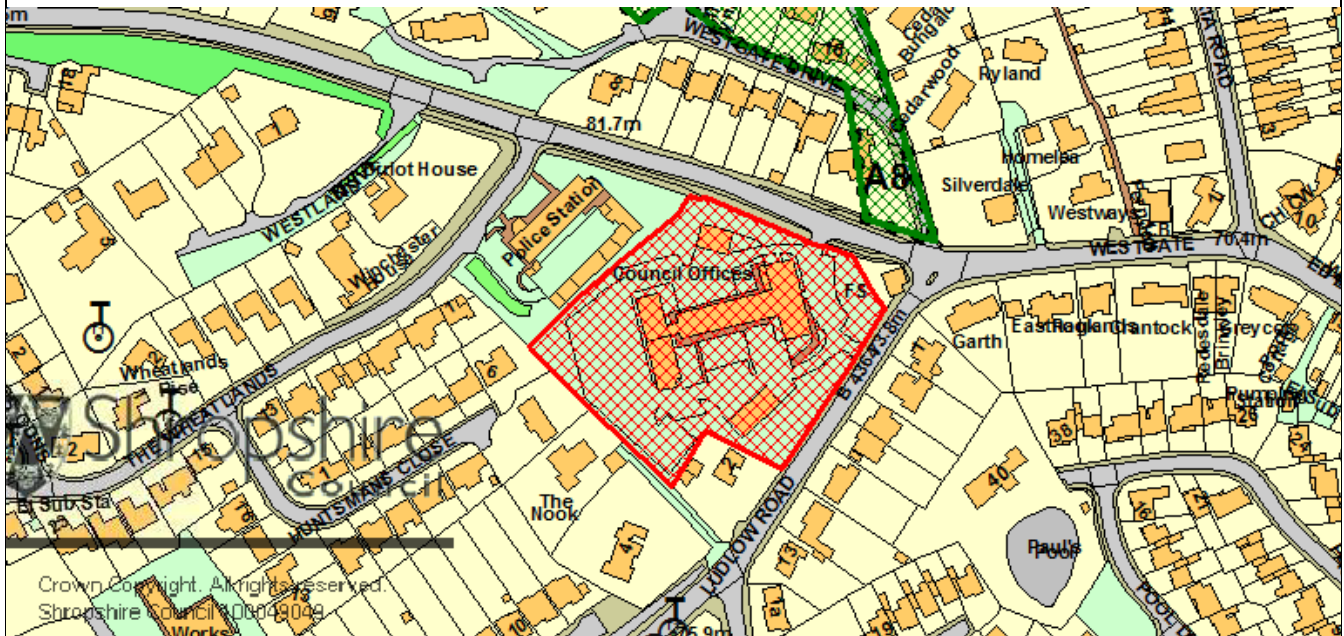
## Development Management Report

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><u>Application Number:</u></b> 20/02056/FUL	<b><u>Parish:</u></b>	Bridgnorth
<b><u>Proposal:</u></b> Demolition of existing buildings; erection of mixed residential scheme of 31 dwellings; highway works; landscaping scheme to include felling of trees; all associated works		
<b><u>Site Address:</u></b> Former Council Offices Westgate Bridgnorth Shropshire		
<b><u>Applicant:</u></b> South Staffordshire Housing Assoc. Ltd		
<b><u>Case Officer:</u></b> Mike Davies	<b><u>email :</u></b> planning.southern@shropshire.gov.uk	

**Grid Ref:** 370847 - 293201



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**Recommendation:-** Grant Permission subject to a Section 106 Agreement in respect of the affordable housing provision within the scheme and a financial contribution for the Traffic Regulation Order, and the conditions set out in Appendix 1.

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

- 1.1 The proposal is for 31 dwellings including highway works, landscaping, the felling of trees and associated works. The housing offer consists of a mixture of detached and semi-detached properties. There will be 3 x 2 bed semis, 15 x 3 bed semis, 2 x 4 bed semis and 6 x 3 bed detached units.
- 1.2 Of the above properties, six of the above properties are proposed to have their own integral garages with two detached garages at the Site. All other properties will have dedicated parking bays or driveways. Excluding the garages, a total of 62 parking spaces will be provided, representing 2 spaces per dwelling.
- 1.3 In total, 20% of the properties provided on Site will be 'affordable' and the unit mix and tenure is proposed to be:
- 1 x 2 bedroom semi-detached (Shared Ownership)
  - 1 x 3 bedroom semi-detached (Shared Ownership)
  - 2 x 2 bedroom semi-detached (Affordable Rent)
  - 2 x 3 bedroom semi-detached (Affordable Rent)
- 1.4 It is proposed to close the existing site access points from Wenlock Road and Ludlow Road and provide a new singular access point into the main development via Wenlock Road further away from the junction with Ludlow Road. Dwellings which front onto Ludlow Road will have individual private drives which can be accessed from the main road.
- 1.5 The site provides an area of open space to the north of the site alongside Wenlock Road. That area has been identified to provide a green frontage to the site that is accessible for use by future residents of the scheme and to provide informal recreation opportunities. As set out within the accompanying Arboricultural Appraisal, that area will be utilised to provide a managed area for existing and replacement trees to mitigate for tree loss elsewhere on the site.

**2.0 SITE LOCATION/DESCRIPTION**

- 2.1 The application site is located at the former Shropshire Council offices at Westgate in the east of the market town of Bridgnorth. The site is situated between the Wenlock Road and the B4364 Ludlow Road and is bounded by established residential properties set in mature gardens to the north, east, south and west and the Bridgnorth Police Station to the north-west. The site area is 0.955 hectares and within walking distance of all the shops, facilities and amenities of Bridgnorth town centre. There is currently vehicular and pedestrian access on Wenlock Road and an exit on Ludlow Road (Although the latter was closed with a bollard when the office use ceased). Mature and semi-mature trees, shrubs, walls and hedgerows surround the site.

- 2.2 The site has established vehicular and pedestrian accesses, with an entrance on Wenlock Road and an exit on Ludlow Road. These are expected to be retained as part of any future residential scheme.
- 2.3 The Former Council Offices were constructed in the 1960s and were bespoke for its former purpose of two storeys in height. The building is constructed of buff brick with a pitched pan tiled roof and is orientated to face the junction of Wenlock Road and Ludlow Road; its main elevation is symmetrical in appearance with an ornate central doorway.
- 2.4 The site is located within Flood Zone 1 and lies to the west of the Bridgnorth Conservation Area.
- 2.5 The site is located within an area characterised by residential uses. To the north of the site, on the opposite side of Wenlock Road, is the rear of detached two storey properties that front onto Westgate Drive. Detached residential properties are also to the south west fronting onto The Wheatlands, and the south fronting Huntsmans Close and Ludlow Road respectively. All these properties look to have been constructed at a similar time during the 1950s and are of a similar style, using materials such as redbrick with tiled roofs. Residential properties are also to the east on the opposite side of Ludlow Road however, these are detached and semi-detached and date from the 1920s/30s.
- 2.6 The Police Station, situated immediately adjacent to the Site. The Wheatlands provides access to the Station, and is also where its primary elevation is orientated, facing away from the Site. The Police Station looks to have been built in the 1970s and is constructed of a dark brown/grey brick with facing tiles on the first floor.

**3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION**

- 3.1 The Town Council have raised some concerns in relation to the details of the scheme. The Ward member has also requested that the application be considered by Planning Committee. The site is also in the ownership of Shropshire Council and formerly in use as Council Offices. In these circumstances, and given the material planning considerations raised, it is considered the application should be determined by Committee.

**4.0 Community Representations**

- 4.1 - Consultee Comments

- 4.1.1 **Bridgnorth Town Council** - Whilst the proposed development would allow a much needed redevelopment of a derelict brownfield site and contribute to the vitality of the town centre (by virtue of it being in such close proximity to the main shopping area), Bridgnorth Town Council has 3 major areas of concern:

- 1. The effects on traffic and its unacceptable impact on highway safety.

a. The Transport Analysis states (6.2.1) that "No committed developments have been identified by SCC; none have been included as part of our assessments." However, SAMDev includes approval for a significant number of houses around Tasley, which will result in a significant increase in traffic along Wenlock Road. This traffic growth needs to be included in the analysis before making an informed decision.

b. In relation to the location of units 25-31 inclusive - This area of the Ludlow Road experiences high traffic levels during peak times; being on a main route into the town and to primary schools in the area. With direct access onto Ludlow Road for these 7 units, we have serious concerns regarding visibility for road users and residents of the proposed and neighbouring properties in such close proximity to a busy junction. The proposed layout for these 7 units will undoubtedly lead to visitors parking on the roadside or part way across the pathway and increase road safety hazards.

c. In relation to units 1 - 24 the limited on-site parking available (in a cul-de-sac) is likely to force visitor/overflow parking to head towards making use of the busy Wenlock Road which will add to the already existing traffic safety and congestion problems.

## 2. Inappropriate density.

a. The density of the site appears to be completely out of character with adjoining properties and changes the vista significantly; the area is currently very open and light as are the vast majority of properties in the vicinity. The internal road appears to be wholly insufficient to accommodate visiting traffic, be that relatives and friends, delivery vans or other services. The entrance to the site is also the only exit. There are no turning circles at the ends of the cul-de-sac. As a prime example; there appears to be insufficient space for a refuse truck or fire engine to enter the site and turn around (the previous plans for a slightly larger site did include such provision). The solution offered in the applicants Transport Statement of turning around at the internal T Junction is seen as unsatisfactory in allowing for the efficient delivery of goods and access by service and emergency vehicles.

b. The apparent need to maximise the number of properties appears to have resulted in the 7 properties being accessed from the Ludlow Road as opposed to being from an internal road on the site. This makes the proposal look like 2 adjoining developments rather than one flowing development. The proposed design lacks innovation and does not demonstrate a desire to improve the character of the area. We note that the land available to the development has been reduced (now that the land occupied by the police station is longer available) by some 30%, yet the number of properties has only been reduced by approximately 20%.

c. The scale of housing apparently requires a compromise on Shropshire Council's policy on open space requirements (MD2/CS6) and results in excessive loss of established trees.

### 3. Insufficient regard for achieving sustainable development

a. The proposals do not specify a target SAP rating to be achieved - just an indication of how building regulation SAP ratings may be achieved. We would expect Shropshire Council to insist on specification of a suitable low energy approach, capable of net zero carbon emissions by 2030 at the latest. This should include a specific standard, such as the BREEAM Home Quality Mark. We can find no mention solar energy or charge points for electric vehicles, for example.

4.1.2 **County Arborist** - I appreciate the financial restrictions and other constraints to development imposed by this site, as discussed in the Updated Planning Statement (Barton Wilmore, May 2020, registered 15<sup>th</sup> June 2020). Sections 3.6 – 3.8 of that document explain why the applicant considers that 31 units, 6 of which are to be 'affordable', is the minimum number of units necessary to make the development viable. The assessment leading to this conclusion contains confidential information that has not been made public. However, fitting 31 units into the site has significant implications for the retention or otherwise of existing trees, as well as the delivery of future open space and new tree planting in the completed development. I would therefore recommend that the viability assessment is made available to Shropshire Council and scrutinised by appropriate persons, in order to be certain that this number of units is absolutely necessary for commercial viability. I suggest that this basic assumption should be verified prior to determination of this application, because of the implications it has for the trees, open space and landscape of the site. My concerns regarding these implications are discussed below.

The proposed development of 31 units will provide 102 bed spaces, which in accordance with SAMDev Policy MD2 generates a requirement for  $30 \times 102 = 3,060$  square metres of open space. The Open Space Provision plan (LL575-150-0005) shows that less than 50% of this amount is to be available as usable open space within the proposed scheme (assuming that shared street surface and private gardens do not qualify as usable open space).

In addition to this substantial shortfall in open space provision, the development will entail the loss of many existing trees from the site. Section 7.19 ('Trees') of the Planning Statement is misleading in this regard. It states that 15 individual trees are to be removed but does not mention the 5 tree groups that are also to be removed, the most significant of which, groups G2 and G4, comprise an additional 18 birch trees between them. Were more space available to be set aside within the site, it might have been possible to retain one or other of these groups of birch. However, as described in the Tree Schedule to the Arboricultural Appraisal (SC:349, Salopian Consultancy Ltd, 19.05.2020), the component trees in both these groups have limited prospects due to their etiolated stem form and mutually suppressed canopies. Pruning for clearance of adjacent overhead power lines has further disfigured the trees on the west of group G2. On balance, in my opinion, the loss of these category 'B' groups (trees of moderate quality and value) can be accepted, subject to satisfactory replacement planting.

Other notable proposed tree losses include the early-mature birch T1, which provides screening of the site from the rear of the neighbouring property at 2, Ludlow Road, and the six early-mature or mature cypress trees T4 – T9 and the two early-mature field maple trees T10 and T11, which form a visually dominant group fronting Ludlow Road. Unfortunately, the ground level changes required to construct the proposed dwellings precludes the retention of these trees. Their removal will expose the existing houses on the opposite side of Ludlow Road to a full and uninterrupted view of the new development. Mitigation planting is proposed to replace tree T1 with a new tree in a similar place and trees T4 – T11 are to be replaced with 6 fastigate 'Koster' oaks in front of the new properties. I consider that this would provide sufficient compensation in the mid- to long term for loss of the existing trees, but there will undeniably be a short to mid-term visual impact until the new trees establish and grow to any significant degree.

Overall, in terms of simple numbers, the proposed new tree planting will outweigh the loss of the 33 existing trees to be removed. Analysis of the Tree Proposal plan (LL575-150-0072) shows a total of 57 new trees are proposed. However, 31 of these are small species of tree and of those, 26 are to be located within private rear gardens and therefore of limited public amenity. 13 medium sized trees are to be planted, 12 of which are in front of house locations and therefore in public view. 2 large trees and the 6 fastigate 'Koster' oaks are also to be planted in front of house locations in public view. However, it is Shropshire Council Tree Team's experience that trees planted in private curtilage, be that front or back garden, are often removed by incoming residents for one reason or another. Furthermore, it would be difficult to make and defend a tree preservation order to protect small trees of limited amenity value. I therefore consider it unlikely that all of the planned new tree planting will be retained in the long term. Only 5 new large trees are proposed to be planted in public open space, where they might be expected to have good prospects of survival to full maturity. Given the limited amount of open space available, and the presence of existing trees to be retained within it, I do not think there is room to plant a greater number of new trees than has been proposed within the area of public open space.

On a general point, I am concerned that even for the small and medium sized tree species proposed, there may be insufficient soil rooting volume available to allow the trees to grow to their full sizes at maturity, where they are to be planted at the front of properties and adjacent to road and block paving hard standing. I suggest that soil volume requirements for the chosen species should be calculated and assessed against the amount of soil available as soft landscape at each front of house planting station. Where there is a shortfall in available soil volume, this should be made good by using subterranean structural soil cells underneath hard surfaces, to supplement the soil available in the adjacent soft landscape area and ensure the planted trees have access to enough soil rooting volume to survive and flourish. I would also recommend that proprietary root barriers are used to protect adjacent hard surfaces, where trees are to be planted close to paths, patios and parking areas etc. The following link gives more information on calculating soil volume requirements:  
<https://www.greenblue.com/gb/resource-centre/soil-volume-calculator/>

The use of subterranean soil cells, where necessary, will add significantly to the cost

of planting. Therefore, it may not be possible within the available budget to plant as many trees as currently proposed. However, Shropshire Council Tree Team would rather see fewer trees, better planted in appropriate locations, with a good chance of success, than many trees poorly planted with little chance of survival or flourishing in the future. Failed or failing tree planting detracts from the appearance and quality of the development.

As a final comment, I would draw attention at this stage to a few points of specific concern, as opposed to the general issues raised above. These being as follows:

- Oak tree T12 is proposed to be retained and is located immediately to the east of Unit 25. The Site Layout Plan (001-A100-41-P Rev B) shows the canopy of this tree would already be touching the roof of the dwelling and overhanging its drive. I consider it important that this tree be retained – it would be the only surviving tree fronting Ludlow Road, following the removal of trees T4 to T11. The tree has the potential to increase significantly in size and I consider it likely to be a cause of conflict if the house is built as shown on the plan. I therefore object to the layout of this Unit and request that the dwelling be moved away from the tree, so as to achieve a successful and sustainable juxtaposition between tree and dwelling.

In this regard, I note that Unit 28 has an attached garage to the west side of the property. If this garage was removed, so as to match the adjacent Unit 27 for example, this would appear to give scope to shift all the Units 28 to 25 to the south-west, thereby creating more clearance from the oak tree T12.

- The Tree Proposal plan shows a pair of *Carpinus betulus* (hornbeam) to be planted in front of Units 7 and 17. I consider these large trees will ultimately grow too big for their location close to the houses and would therefore recommend substituting these trees for smaller species, such as a narrow growing form of *Acer campestre* (field maple), such as 'Streetwise', for example.
- *Prunus avium* (wild cherry) and *Betula pendula* (silver birch) are proposed to be planted at Units 8, 12, 13, 15 and 31. These species are known to cause problems on residential estates due to dropping fruit and shedding prolific seed respectively. They are also both prone to shallow rooting that can cause problems with cracking or distortion of nearby hard surfaces. I would therefore recommend that these species are also substituted, perhaps with a field maple as suggested above, or *Liquidambar* (sweet gum), which is well known for its attractive autumn foliage. These alternative species are put forward merely as suggestions and of course other species could be equally suitable.

I would request that the issues raised in this response are considered and addressed prior to determination of this application. If, however, it is decided to move to a decision with the application as submitted, I would welcome the opportunity to provide some recommended tree protection and landscaping conditions to be applied in the event of permission being granted.

4.1.3 **Conservation Officer** - The proposal affects a site to the west of Bridgnorth town centre approximately 200 meters to the east of the boundary Bridgnorth Conservation Area. The site also lies adjacent a Conduit Head which is a grade II listed structure that lies on junction of Ludlow Road and Wenlock Road. The proposal includes the demolition (as noted on the submitted Demolition Plan) the former Bridgnorth District Council (Westgate) offices, where according to the historic mapping post-dates 1954 where it is assumed that the existing buildings date from circa 1960 with later additions being added more towards the rear of the plot during the 1970s. It is not considered that the existing buildings are a non-designated heritage asset (as defined under Annex 2 of the NPPF), but as a previous significant civic building serving Bridgnorth, it is acknowledged that it has some historic and architectural interest with its symmetrical appearance and central portico which showcases its civic status. The principal building is constructed in brick with a hipped concrete tiled roof and is a contrast to the typical early post-war civic building, being more inter-war in fashion and less utilitarian in its architectural articulation and use of materials (ie panels and concrete). In considering the proposal due regard to the following local and national policies and guidance has been taken, when applicable: policies CS6 and CS17 of the Core Strategy and policies MD2 and MD13 of SAMDev, and with national policies and guidance, National Planning Policy Framework (NPPF) revised and published in February 2019 and the relevant Planning Practice Guidance. Sections 16, 66 and 72 of the Planning (Listed Building and Conservation Areas) Act 1990 (as amended).

The existing building would have been constructed for Bridgnorth Rural District Council that became Bridgnorth District Council as part of the 1974 Local Government reorganisation where this in turn was followed by a further organisation where the District Council was abolished following unitary status in 2009. Given the most recent reorganisation, the existing offices are surplus to requirements and is therefore subject to redevelopment/repurposing. It is noted that the adjacent police headquarters has been subject to similar exercise, though a decision has been made for them to stay put in the existing building where it is noted that this site no longer forms part of the proposal as per the original 2014 scheme.

Given the building's origins and similar to other Council offices, local government was responsible for certain roles during the Cold War, where certain parts of the buildings were dedicated to civil defence including monitoring and having to deal with any possible nuclear attack that was prevalent especially during following the World War II including the early 1960s (Cuban Missile Crisis) and the 1980s with the provision of radios, as well as rooms and bunkers that could be sealed off and used post attack. For instance the former South Shropshire District Council offices had a bunker room. It is noted that these offices had a 'control room' or some form of communications centre. The documentary evidence seems somewhat scant without the benefit of consulting the relevant archives. However given this historic significance it is requested that the existing building should be subject to Level 2 recording in accordance with Historic England's document 'Understanding Historic Buildings: A Guide to Good Recording Practice', prior and during demolition, where



this should be conditioned accordingly.

The proposed design and layout of the site is noted. The site is a key gateway into the historic town of Bridgnorth from the west and therefore this site needs to be carefully considered. The area is generally leafy and suburban in character with soft boundaries consisting of trees with building lines set back in their plots which gives a spacious and leafy feel as part of the transition from the historic core to the rural hinterland beyond. The proposed landscaping is noted where it is welcomed that many of the existing open areas and trees, especially along Wenlock Road shall be preserved. In turn retaining such natural features should aid the site to have a more established character as well as screening the development.

The proposed design of the dwellings is generally contemporary with gabled frontages. The general design approach is generally supported where there is an opportunity to use materials and fenestration in a more innovative way such as the articulation of the brickwork. However the proposed materials should be more locally distinctive such as the use of Broseley brick. The proposed hard landscaping and the use of Dutch clay pavers is noted.

A HIA should be submitted to assess the setting of the Conduit Head and adjacent conservation area.

No objections subject to (HIA) and conditions for all facing materials and finishes including Level 2 recording as recommended above.

Additional Comments - These comments supplement those previously submitted on 11/6/20. The two key principal issues were the provision of a proportionate Heritage Impact Assessment (HIA) in order to take account of the setting of the adjacent Bridgnorth Conservation Area and the grade II listed Conduit that lies on the junction of Wenlock Road and Ludlow Road. The second issue was the recommendation of a Level 2 recording condition to record the former Westgate offices.

The revised submitted Planning Statement covers the issues with regards to the setting of the adjacent Bridgnorth Conservation Area and the conduit, where having consulted the content of the revised statement and the relevant accompanying correspondence, this is considered to be satisfactory. It is still however considered that there should be a recording condition attached to any approval, though SC Conservation would be more than happy to liaise with the appointed recording contractor in order to discuss the relevant elements of the building in order to ensure that the most significant components of the building are recorded and illustrated in the end report which shall be incorporated into the Historic Environment Record (HER).

Should approval be given, conditions should be attached with regards to all facing materials and finishes with locally distinctive materials.

**County Archaeologist - No Comments**

4.1.4 **Local Lead Flood Authority** - The technical details submitted for this Planning Application have been appraised by WSP UK Ltd, on behalf of Shropshire Council as Local Drainage Authority.

4.1.5

Condition:

No development shall take place until a scheme of surface and foul water drainage has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented before the development is occupied/brought into use (whichever is the sooner).

Reason: The condition is a pre-commencement condition to ensure satisfactory drainage of the site and to avoid flooding.

Informative Notes:

1. The Environment Agency has updated the guidance on Climate Change and a 35% should be used for residential development in the Severn catchment. The drainage calculations and plan should be amended accordingly.
2. On the Surface Water Flood Map, the site is at risk of surface water flooding. The applicant should ensure that the finished floor levels are set at least 300mm above the ground level. The Finished Floor Level and the Ground Level for each individual dwelling should be shown clearly on the Proposed Site Levels Plan.
3. Highway Gully Spacing calculations should be submitted for approval. Where a highway is to be adopted and gullies will be the only means of removing surface water from the highway, footpaths and paved areas falling towards the carriageway, spacing calculations will be based on a storm intensity of 50mm/hr with flow width of 0.75m, and be in accordance with DMRB CD526 Spacing of Road Gullies (formerly HA102).

Gully spacing calculations must also be checked in vulnerable areas of the development for 1% AEP plus climate change 15 minute storm events. Storm water flows must be managed or attenuated on site, ensuring that terminal gullies remain 95% efficient with an increased flow width.

The provision of a finished road level contoured plan showing the proposed management of any exceedance flows should be provided.

Vulnerable areas of the development are classed by Shropshire Council as areas where exceedance flows are likely to result in the flooding of property or contribute to flooding outside of the development site. For example, vulnerable areas may occur where a sag curve in the carriageway vertical alignment coincides with lower property threshold levels or where ground within the development slopes beyond the development boundary.

Shropshire Councils Surface Water Management: Interim Guidance for Developers, paragraphs 7.10 to 7.12 (Local Standard D of the SUDS Handbook) requires that exceedance flows for events up to and including the 1% AEP plus CC should not result in the surface water flooding of more vulnerable areas (as defined above)

within the development site or contribute to surface water flooding of any area outside of the development site.

4. The proposed method of foul water sewage disposal should be identified and submitted for approval, along with details of any agreements with the local water authority and the foul water drainage system should comply with the Building Regulations H2.

4.1.6 **Affordable Housing** - 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.

The current affordable housing contribution rate for this area is 20% and as such a proposal for 31 dwellings would be liable to make a contribution equivalent to 6.2 i.e. six affordable dwellings and a financial contribution for the remaining fraction. The six affordable dwellings being proposed are acceptable in respect of their tenure, siting and size.

As part of the application process the applicant should be requested to complete and submit an Affordable Housing Contribution Proforma so that the correct level of financial contribution can be calculated and agreed.

The development and financial contribution should be secured through a S106 Agreement.

4.1.7 **Regulatory Services** - Given the close proximity of the proposed development to existing residential dwellings there is potential for amenity impact during construction of the development. I would therefore recommend that any required pre- commencement construction management plan must include details of construction noise and dust control measures and working time restrictions.

4.1.8 **SC Waste Management** - It is vital new homes have adequate storage space to contain wastes for a fortnightly collection (including separate storage space for compostable and source segregated recyclable material).

Also crucial is that they have regard for the large vehicles utilised for collecting waste and that the highway specification is suitable to facilitate the safe and efficient collection of waste. Any access roads, bridges or ramps need to be capable of supporting our larger vehicles which have a gross weight (i.e. vehicle plus load) of 32 tonnes and minimum single axle loading of 11 tonnes.

I would recommend that the developer look at the guidance that waste management have produced, which gives examples of best practice. This can be viewed here:

<https://new.shropshire.gov.uk/media/7126/shropshire-refuse-and-recycling-planning-guidance-july-2017-002.pdf>

We would prefer to see a vehicle tracking of the vehicle manoeuvring the road to ensure that the vehicle can access and turn on the estate. Details of the vehicle size and turning circles are in the document linked above.

**Highway Authority** - The principle of the development is acceptable from a transport and highways perspective.

- 4.1.9 The TA demonstrates that there is a low number of accidents and no clusters or patterns of accidents. It also satisfactorily demonstrates that the proposed traffic generated by the development will have an acceptable impact on the highway network.

However there are a number of issues queries that need addressing. In order for the proposed development to be appropriately assessed, from a highways and transport perspective, the following information is required to be submitted, by the applicant:

- There is mention in the Planning Statement of a Framework Travel Plan. This does not seem to be included within the submitted documents.
- A pre-application (which appears to be related with this application) has recently been returned for the site in which the local highways authority wished for pedestrian connectivity in the vicinity of the site.

In particular, it was requested that a standard tactile crossing to be implemented in the vicinity of the main site access on Wenlock Road, that allows pedestrian to cross onto the footpath on the opposite side of the road. The pedestrian crossing arrangements at the Wenlock Road/Westgate/Ludlow Road junction aren't ideal (splitter island), so this would give pedestrians an alternative, potentially safer route into Bridgnorth town centre as well as the inbound bus stop on Westgate.

Consideration should also be given to any possible upgrade to the pedestrian crossing arrangements at the junction of Wenlock Road/Westgate/Ludlow Road.

**County Ecologist** - Conditions and informatives have been recommended to ensure the protection of wildlife and to provide ecological enhancements under NPPF, MD12 and CS17.

- 4.1.10

I have provided a European Protected Species 3 tests matrix at the end of this response. The planning officer needs to complete sections 1 and 2, 'over riding public interest' and 'no satisfactory alternative.' The EPS 3 tests matrix must be included in the planning officer's report for the planning application and discussed/minuted at any committee at which the application is considered. The form provides guidance on completing sections 1 and 2 but please get in touch if additional assistance is required.

The bat surveys observed a single common pipistrelle bat re-entering a weep hole

above a ground-floor window of Building 4 during one of the three activity surveys.

Works to Building 4 will have to take place under a European Protected Species Licence from Natural England. A low impact class licence is considered suitable at this site.

Section 9.3 of the report sets out the mitigation and compensation measures which will form part of the licence application.

I have provided a European Protected Species 3 tests matrix at the end of this response. The planning officer needs to complete sections 1 and 2, 'over riding public interest' and 'no satisfactory alternative.' The EPS 3 tests matrix must be included in the planning officer's report for the planning application and discussed/minuted at any committee at which the application is considered. The form provides guidance on completing sections 1 and 2 but please get in touch if additional assistance is required.

I have recommended the erection of additional bat and bird boxes to provide replacement and additional roosting and nesting opportunities.

The following conditions and informatives are recommended for inclusion on the decision notice:

*European Protected Species Mitigation Licence condition*

No works shall take place to Building B4 until a European Protected Species (EPS) Mitigation Licence with respect to bats has been obtained from Natural England and submitted with the approved method statement to the Local Planning Authority. Reason: To ensure the protection of bats, which are European Protected Species.

*Working in accordance with method statement condition*

All works to Building 4 shall occur strictly in accordance with section 9.3 of the Ecological Survey and Assessment (ERAP, September 2019).

Reason: To ensure the protection of and enhancements for bats, which are European Protected Species.

*Bat and bird boxes condition*

Prior to first occupation / use of the buildings, the makes, models and locations of bat and bird boxes shall be submitted to and approved in writing by the Local Planning Authority. The following boxes shall be erected on the site:

- A minimum of 6 external woodcrete bat boxes or integrated bat bricks, suitable for nursery or summer roosting for small crevice dwelling bat species.
- A minimum of 6 artificial nests, of either integrated brick design or external box design, sparrows (32mm hole, terrace design).
- A minimum of 6 artificial nests, of either integrated brick design or external

box design, suitable for swifts (swift bricks or boxes).

The boxes shall be sited in suitable locations, with a clear flight path and where they will be unaffected by artificial lighting. The boxes shall thereafter be maintained for the lifetime of the development.

Reason: To ensure the provision of roosting and nesting opportunities, in accordance with MD12, CS17 and section 175 of the NPPF.

#### *Lighting Plan condition*

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 lighting plan shall demonstrate that the proposed lighting will not impact upon ecological networks and/or sensitive features, e.g. bat and bird boxes (required under a separate planning condition). The submitted scheme shall be designed to take into account the advice on lighting set out in the Bat Conservation Trust's Guidance Note 08/18 *Bats and artificial lighting in the UK*. The development shall be carried out strictly in accordance with the approved details and thereafter retained for the lifetime of the development.

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

#### *European Protected Species Mitigation Licence informative*

No works shall take place to Building 4 until a European Protected Species (EPS) Mitigation Licence with respect to bats has been obtained by the developer from Natural England, in accordance with section 9.3 of the Ecological Survey and Assessment (ERAP, September 2019).

#### *Nesting birds informative*

The active nests of all wild birds are protected under the Wildlife and Countryside Act 1981 (as amended). An active nest is one being built, contains eggs or chicks, or on which fledged chicks are still dependent.

It is a criminal offence to kill, injure or take any wild bird; to take, damage or destroy an active nest; and to take or destroy an egg. There is an unlimited fine and/or up to six months imprisonment for such offences.

All vegetation clearance, tree removal, scrub removal and/or conversion, renovation and demolition work in buildings (or other suitable nesting habitat) should be carried out outside of the bird nesting season which runs from March to August inclusive.

If it is necessary for work to commence in the nesting season then a pre-commencement inspection of the vegetation and buildings for active bird nests should be carried out. If vegetation or buildings cannot be clearly seen to be clear of nests then an appropriately qualified and experienced ecologist should be called in to carry out the check. Only if there are no active nests present should work be allowed to commence.

If during construction birds gain access to any of the building and begin nesting, work must cease until the young birds have fledged.

*General site informative for wildlife protection*

Widespread reptiles (adder, slow worm, common lizard and grass snake) are protected under the Wildlife and Countryside Act 1981 (as amended) from killing, injury and trade. Widespread amphibians (common toad, common frog, smooth newt and palmate newt) are protected from trade. The European hedgehog is a Species of Principal Importance under section 41 of the Natural Environment and Rural Communities Act 2006. Reasonable precautions should be taken during works to ensure that these species are not harmed.

The following procedures should be adopted to reduce the chance of killing or injuring small animals, including reptiles, amphibians and hedgehogs.

If piles of rubble, logs, bricks, other loose materials or other potential refuges are to be disturbed, this should be done by hand and carried out during the active season (March to October) when the weather is warm.

Areas of long and overgrown vegetation should be removed in stages. Vegetation should first be strimmed to a height of approximately 15cm and then left for 24 hours to allow any animals to move away from the area. Arisings should then be removed from the site or placed in habitat piles in suitable locations around the site. The vegetation can then be strimmed down to a height of 5cm and then cut down further or removed as required. Vegetation removal should be done in one direction, towards remaining vegetated areas (hedgerows etc.) to avoid trapping wildlife.

The grassland should be kept short prior to and during construction to avoid creating attractive habitats for wildlife.

All building materials, rubble, bricks and soil must be stored off the ground, e.g. on pallets, in skips or in other suitable containers, to prevent their use as refuges by wildlife.

Where possible, trenches should be excavated and closed in the same day to prevent any wildlife becoming trapped. If it is necessary to leave a trench open overnight then it should be sealed with a close-fitting plywood cover or a means of escape should be provided in the form of a shallow sloping earth ramp, sloped board or plank. Any open pipework should be capped overnight. All open trenches and pipework should be inspected at the start of each working day to ensure no animal is trapped.

Any common reptiles or amphibians discovered should be allowed to naturally disperse. Advice should be sought from an appropriately qualified and experienced ecologist if large numbers of common reptiles or amphibians are present.

If a great crested newt is discovered at any stage then all work must immediately halt and an appropriately qualified and experienced ecologist and Natural England (0300 060 3900) should be contacted for advice. The Local Planning Authority should also be informed.

If a hibernating hedgehog is found on the site, it should be covered over with a cardboard box and advice sought from an appropriately qualified and experienced ecologist or the British Hedgehog Preservation Society (01584 890 801).

Hedgerows are more valuable to wildlife than fencing. Where fences are to be used, these should contain gaps at their bases (e.g. hedgehog-friendly gravel boards) to allow wildlife to move freely.

4.2 - Advertised by press and site notice; 29 neighbour notification letters sent. 13 Public Comments received (Some submitting more than one set of comments) which have been categorised as 2 neutral, 7 in support and 4 objections. Issues raised in the responses are summarised as follows and may be read in full on the file:

- Flooding risk increased off site
- Highway Safety
- On Street Parking
- Need for TRO on Ludlow Road
- Traffic calming required
- Overlooking from high level windows
- Loss of Privacy
- High density development not in keeping with character of the area
- Lack of community engagement by developer
- Loss of mature Trees
- No details of services and utilities for the site
- Construction noise
- Loss of car parking for town centre

## 5.0 THE MAIN ISSUES

Principle of development  
Siting, scale and design of structure  
Visual impact and landscaping  
Affordable Housing  
Highway Safety and Parking  
Ecology  
Residential Amenity  
Flood Risk and Drainage

## 6.0 OFFICER APPRAISAL

### 6.1 Principle of development



- 6.1.1 The National Planning Policy Framework (NPPF) sets out a presumption in favour of sustainable development, and notes planning law requires that applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise. The NPPF sets out core planning principles which include, among other matters, encouraging the effective reuse of land that has been previously developed.
- 6.1.2 For the purposes of the assessment of this application the development plan presently comprises the adopted Shropshire Council Local Development Framework Core Strategy 2011, the Site Allocations and Management of Development (SAMDev) Plan and a range of Supplementary Planning Documents.
- 6.1.3 A key objective of both national and local planning policy is to concentrate residential development in locations which promote economic, social and environmental sustainability. Specifically, the Council's Core Strategy Policies CS1, CS3, CS4, and CS11 state that new open market housing will only be permitted on sites within market towns, other 'key centres' and certain named villages ('Community Hubs and Clusters'), as identified in the SAMDev Plan. Policy CS11 sets out the Council's affordable housing requirements arising from residential developments.
- 6.1.4 The application site falls within the development boundary for Bridgnorth in the SAMDev Plan Policies Map. Policy S3 advises that, in addition to allocated sites, residential development will be permitted on appropriate sites within the development boundary of Bridgnorth. Core Strategy policy CS3 identifies Bridgnorth as a Market Town which will provide a focus for development within the constraints of its location on the edge of the Green Belt and on the River Severn, with Core Strategy policy CS1 stating that the Market Towns and other key centres will accommodate around 40% of Shropshire's residential development over the plan period. The achievement of this proportion of housing in Market Towns includes an allowance for windfall sites, of which the current proposal would be an example. To boost significantly the supply of housing in sustainable locations, such as Bridgnorth Town, remains a key objective of the National Planning Policy Framework.
- 6.1.5 An outline application for proposed residential development, including the creation of new vehicular and pedestrian access roads was considered at the January 2015 meeting of the South Planning Committee (ref. 14/02693/OUT). That application was submitted by Shropshire Council. The Committee resolved to grant planning permission subject to the completion of a Memorandum of Understanding to secure affordable housing and maintenance of any public open space by an appropriate body through a Section 106 Agreement when the site is sold by Shropshire Council. (The reason for this reference to a Memorandum of Understanding is because Shropshire Council cannot have a Section 106 Agreement with itself). The assessment of the principle of re-development of an employment site, against the criteria set out in SAMDev Plan policy MD9, was considered in detail at that time and the Committee accepted the report's conclusion that a refusal on the grounds of loss of an employment site would be most unlikely to be sustained at appeal.

There has been no material change in planning circumstances since 2015 concerning the retention of the site for employment purposes to now warrant a different conclusion on this issue. The principle of the development proposed in the current full planning application is considered acceptable.

## 6.2 **Siting, scale and design of structures**

6.2.1 The nature of the site means that the layout is quite regulated in its form. The density whilst higher than the immediate surrounding area, is not uncommon in a town centre location and is therefore not considered inappropriate in the context of the site location on the edge of the town centre.

The properties have been designed as traditional two storey houses across the site with the majority being semi-detached with 6 detached dwellings also being included. Minimum privacy distances have been achieved across the site and with surrounding existing properties so the scheme is considered to adequately address privacy/overlooking concerns that have been expressed.

The triangular shape of the site itself and its constrained nature means that the layout of the site is very much dictated by the need to get a sufficient quantum of development on site to make the scheme viable. The majority of scheme will be accessed off Wenlock Road via a single spine road which will branch out in the form of a T junction within the site. Seven properties will front onto Ludlow Road with direct access onto the carriageway.

## 6.3 **Visual impact and landscaping**

6.3.1 On-site Open Space provision is below the quantity that would normally be expected on a development of this size. However, it is important to consider the proximity of the site to the town centre along with the quality and usability of the open space which is arguable a better measure of its value than its quantity.

6.3.2 An area of open space will be provided along the Wenlock Road frontage of the development which will be split by the new access road into the site. The open space will be planted with native species trees.

6.3.3 The County Arborist has also expressed concern at the loss of existing trees across the site. However, as previously mentioned the constrained nature of the site effectively dictates the layout of the site and most of the trees to be lost would be in the back gardens of new properties which means they would have little amenity value within the street scene and would no doubt cause issues during construction as well as likely be removed by future residents at some point due to them overshadowing gardens and houses.

## 6.4 **Affordable Housing**

6.4.1 Core Strategy Policy CS11 seeks to meet the diverse housing needs of Shropshire residents now and in the future and to create, mixed, balanced and inclusive communities by securing an affordable housing contribution on all new open market residential development. Policy CS11 and the associated SPD on the Type and Affordability of Housing applies. The current prevailing rate for affordable housing in

Bridgnorth is 20%, meaning there is an expectation that at least 6 of the dwellings would be affordable units.

- 6.4.2 The development provides for 6 affordable units in line with planning policy requirements under CS11 and the accompanying SPD. The provision will be in the form of 4 affordable rent units and 2 shared ownership units. The provision of this affordable housing will be secured by way of a section 106 agreement.

## 6.5 Highway Safety and Parking

- 6.5.1 The NPPF, at section 9, seeks to promote sustainable transport. At paragraph 109 it states that decisions should take account of whether safe and suitable access to the site can be achieved for all people and that:

“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or where the residual cumulative impacts on the road network would be severe.”

- 6.5.2 Core Strategy policy CS6 seeks to secure safe developments. The site is triangular in shape and tails down to the junction of Ludlow Road (B4364) and Wenlock Road, where Wenlock Road traffic has right of way. The development of the site will result on development on both sides of these roads with vehicles accessing the road close to the junction. It is therefore important to ensure that any displaced parking that currently uses the site does not result in vehicles being parked on the street around this junction creating a highway safety issue (The site has now been closed to prevent public parking).

- 6.5.3 As part of the scheme crossing improvements will be implemented to assist in getting pedestrians to and from the town centre safely. A Traffic Regulation Order (TRO) would also be introduced to prevent parking around the Ludlow Road/Wenlock Road junction and the new access into the development.

- 6.5.4 A travel plan will also be required to be submitted via condition.

## 6.6 Ecology

- 6.6.1 An ecological assessment has been provided in support of the application. The County Ecologist is satisfied with the contents of the report and has recommended a series of planning conditions and informatives to mitigate the impact of the development on flora and fauna should planning permission be granted. At Appendix 2 of this report is the completed European Protected Species three test form, due to the presence of bats in building B4 (A single common pipistrelle bat day roost having been observed in August 2019 in the front section of the main office building). With respect to test 1, the re-development of this brownfield site is in the public interest in securing the delivery of housing in a sustainable location; putting the site to a viable long term use and to ensuring the efficient use of land in this urban area in a manner which would not detract from residential and visual amenity. With respect to test 2, without re-development the site is likely to become increasingly derelict and a danger to public health and public safety.

6.7

**6.7.1 Residential Amenity**

The site layout has been designed to ensure minimum privacy distances are achieved between new and existing dwellings. It is not considered that the development will have any long term impact on future or existing residents amenities.

6.7.2

A condition limiting the hours of construction will be imposed on any consent granted along with a requirement for a detailed construction management plan to safeguard the amenity of residents during the build phase of the development.

6.8

**6.8.1 Flood Risk**

The site is with Flood Risk Zone One which is the lowest level of flood risk. A condition will be attached requiring the submission and agreement of drainage details prior to the commencement of development.

7.0

**CONCLUSION**

The site is situated within an existing settlement and the principle of the residential redevelopment of the site is acceptable in planning policy terms. The site is a previously developed site which is no longer in use. (An October 2020 site inspection revealed that the site is no longer accessible for parking which had been taking place following the closure of the offices). The development therefore has significant overheads in terms of site clearance on and therefore the developer has sought to maximise the density of development on the site having regard to the prevailing urban character of its surroundings. It is accepted that the development is more dense in character than its immediate surroundings however, it is considered that the proposed scheme incorporating some contemporary design details is unduly out of character in this respect. It should also be noted that housing delivery in Bridgnorth is significantly behind the levels envisaged in the Development Plan and this development will go some way towards boosting these figures.

There is a deficiency in the provision of open space provided on site. However, it is considered that given the quality of the landscaping/open space along with the mitigation planting proposed will help to address this issue. Clearly, the constrained nature of the site and the abnormalities associated with site clearance have impacted the viability of the scheme which has led the developer to the current scheme. The proposal provides affordable housing at the required rate and taking all other factors into account it is considered that on balance the proposals should be supported despite the open space deficiency on site.

A S.106 Agreement will be required to secure the affordable housing in perpetuity along with a financial contribution of £3,000 to cover the cost of the TRO.

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

Shropshire Core Strategy and SAMDev Plan Policies:

CS1 - Strategic Approach  
 CS3 - The Market Towns and Other Key Centres  
 CS6 - Sustainable Design and Development Principles  
 CS9 - Infrastructure Contributions  
 CS11 - Type and Affordability of housing  
 CS17 - Environmental Networks  
 CS18 - Sustainable Water Management  
 MD1 - Scale and Distribution of Development  
 MD2 - Sustainable Design  
 MD3 - Managing Housing Development  
 MD8 – Infrastructure Provision  
 MD9 – Protecting Employment Areas  
 MD12 - Natural Environment  
 MD13 - Historic Environment  
 Settlement: S3 – Bridgnorth

SPD Type and Affordability of Housing

### RELEVANT PLANNING HISTORY:

BR/74/0696/FUL Use of existing garage and store buildings for the repair and maintenance of Council vehicles for a period of three years NPW 23rd January 1975

14/02693/OUT Proposed Residential Development including creation of new vehicular and pedestrian access roads (Outline Proposal) PDE

BR/84/0266 Alterations to garage/store to form additional office accommodation GRANT 5th June 1984

BR/79/0493 The use of part of Council depot as offices and alterations to include the installation of new door and windows GRANT 26th September 1979

20/02056/FUL Demolition of existing buildings; erection of mixed residential scheme of 31 dwellings; highway works; landscaping scheme to include felling of trees; all associated works

## PDE

BR/APP/REG3/04/0163 Erection of extension and alteration to entrance ramp and steps

GRANT 30th March 2004

BR/APP/REG3/04/0062 Erection of a prefabricated building GRANT 2nd March 2004

BR/APP/REG3/04/0038 Erection of a portable building as an office extension REFUSE 2nd March 2004

BR/APP/FUL/03/0978 Erection of a two storey extension and external staircase and alterations to main entrance ramp and steps REFUSE 4th February 2004

BR/APP/REG3/03/0995 Renewal of temporary permission for stationing of portable building GRANT 3rd February 2004

BR/APP/FUL/03/0900 Erection of a portable building as an office extension GRANT 7th January 2004

BR/APP/REG3/03/0173 Erection of one block of temporary office accommodation GRANT 1st April 2003

BR/APP/REG3/02/0820 Erection of one block of temporary office accommodation GRANT 10th December 2002

BR/APP/REG3/02/0766 Renewal of planning permission 00/0534 for the erection of two blocks of temporary office accommodation GRANT 12th November 2002

BR/APP/REG3/02/0582 Extension, including access ramps, to magistrates court, and conversion to offices and replacement roof, external alterations and extension to print block, to form additional offices GRANT 16th September 2002

BR/APP/FUL/05/0175 Renewal of temporary planning permission ref 03/0173 approved 1/4/03 for the erection of one block of temporary office accommodation GRANT 26th April 2005

BR/APP/FUL/00/0534 Renewal of planning permission ref:98/0846 for the erection of two blocks of temporary office accommodation GRANT 19th September 2000

BR/TRE/TCA/00/0001 This is a test application raised by Tim REC

BR/88/0677 INSTALLATION OF NEW WINDOW GRANT 6th September 1988

BR/94/0023 RENEWAL OF APPLICATIONS REF: 89/0063 AND 93/0387 FOR THE ERECTION OF TWO BLOCKS OF TEMPORARY OFFICE ACCOMMODATION GRANT 21st February 1994

## 11. Additional Information

View details online: <https://pa.shropshire.gov.uk/online-applications/simpleSearchResults.do?action=firstPage>

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

Design and Access Statement  
Flood Risk Assessment and Drainage Strategy  
Ecological Report  
Noise Impact Assessment  
Planning Statement  
Site Investigation Report  
Tree Report  
Waste Management Plan  
Transport Statement  
Air Quality Assessment

Cabinet Member (Portfolio Holder)

Councillor Gwilym Butler

Local Member

Cllr Les Winwood  
Cllr Elliot Lynch

Appendices  
APPENDIX 1 – Conditions  
APPENDIX 2 – EPS Three tests

## APPENDIX 1

### Conditions

#### STANDARD CONDITION(S)

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 91(1) of the Town and Country Planning Act, 1990 (As amended).

2. The development shall be carried out strictly in accordance with the approved plans and drawings

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



3. Prior to the above ground works commencing samples and/or details of the roofing materials and the materials to be used in the construction of the external walls shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in complete accordance with the approved details.

Reason: To ensure that the external appearance of the development is satisfactory.

4. No above ground works shall be commenced until full details of both hard and soft landscape works (in accordance with Shropshire Council Natural Environment Development Guidance Note 7 'Trees and Development') have been submitted to and approved in writing by the local planning authority. The landscape works shall be carried out in full compliance with the approved plan, schedule and timescales. Any trees or plants that, within a period of five years after planting, are removed, die or become seriously damaged or defective, shall upon written notification from the local planning authority be replaced with others of species, size and number as originally approved, by the end of the first available planting season.

Reason: To ensure the provision, establishment and maintenance of a reasonable standard of landscape in accordance with the approved designs

5. No ground clearance, demolition, or construction work shall commence until a scheme has been submitted to and approved in writing by the local planning authority to safeguard trees to be retained on site as part of the development. The approved scheme shall be implemented in full prior to the commencement of any demolition, construction or ground clearance and thereafter retained on site for the duration of the construction works.

Reason: To safeguard existing trees and/or hedgerows on site and prevent damage during building works in the interests of the visual amenity of the area, the information is required before development commences to ensure the protection of trees is in place before ground clearance, demolition or construction.

6. Prior to the commencement of the development the design and construction of any roadways, footways, accesses shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be fully implemented before the use hereby approved is commenced or the building(s) occupied (whichever is the sooner).

Reason: This detail is required prior to commencement to ensure a satisfactory means of access to the highway.

7. Prior to the commencement of the development, including any works of demolition, a Construction Method Statement shall have been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period.

Reason: This detail is required prior to commencement to avoid congestion in the surrounding area and to protect the amenities of the area.

8. No construction (and/or demolition) works and associated deliveries to and removal of

materials from the site shall take place outside the hours of 07:30 to 18:00 Mondays to Fridays; 08:00 to 13:00 on Saturdays nor at anytime on Sundays, Bank or Public Holidays.

Reason: To protect the amenities of occupiers of nearby properties from potential nuisance.

9. No development shall take place until a scheme of surface and foul water drainage has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented before the development is occupied/brought into use (whichever is the sooner).

Reason: The condition is a pre-commencement condition to ensure satisfactory drainage of the site and to avoid flooding.

10. No development, demolition or site clearance procedures shall commence until a European Protected Species (EPS) Licence with respect to (EPS name) has been obtained and submitted to the local planning authority.

Reason: To ensure the protection of (species), a European Protected Species. This a pre-commencement condition due to the requirement for the information to be submitted before any works commence as commencement of work may adversely affect European Protected Species.

11. All works to Building 4 shall occur strictly in accordance with section 9.3 of the Ecological Survey and Assessment (ERAP, September 2019).

Reason: To ensure the protection of and enhancements for bats, which are European Protected Species.

12. Prior to first occupation / use of the buildings, the makes, models and locations of bat and bird boxes shall be submitted to and approved in writing by the Local Planning Authority and installed in accordance with the approved details. The following boxes shall be erected on the site:

-A minimum of 6 external woodcrete bat boxes or integrated bat bricks, suitable for nursery or summer roosting for small crevice dwelling bat species.

-A minimum of 6 artificial nests, of either integrated brick design or external box design, sparrows (32mm hole, terrace design).

-A minimum of 6 artificial nests, of either integrated brick design or external box design, suitable for swifts (swift bricks or boxes).

The boxes shall be sited in suitable locations, with a clear flight path and where they will be unaffected by artificial lighting. The boxes shall thereafter be maintained for the lifetime of the development.

Reason: To ensure the provision of roosting and nesting opportunities, in accordance with MD12, CS17 and section 175 of the NPPF.

13. 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 lighting plan shall demonstrate that the proposed lighting will not impact upon ecological networks and/or sensitive features, e.g. bat and bird boxes (required under a separate planning condition). The submitted scheme shall be designed to take into account the advice on lighting set out in the Bat Conservation Trust's Guidance Note 08/18 Bats and artificial lighting in the UK. The development shall be carried out strictly in accordance with the approved details and thereafter retained for the lifetime of the development.

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

14. A Full Travel Plan shall be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of any element of the development. The approved Travel Plan shall be implemented within one month of the first occupation of any part of the development and thereafter be adhered to.

Reason: In order to minimise the use of the private car and promote the uses of sustainable modes of transport, in accordance with the NPPF, Policy CS6 of the Shropshire Core Strategy and Policy MD2 of the Shropshire Sites and Management of Development Plan.

15. The development hereby permitted shall not be brought into use until the areas shown on the approved plans for parking, loading, unloading and turning of vehicles has been properly laid out, hard surfaced and drained. The space shall be maintained thereafter free of any impediment to its designated use.

Reason: To ensure the provision of adequate vehicular facilities, to avoid congestion on adjoining roads and to protect the amenities of the area.

16. Before the development is brought into use, visibility splays of a depth of 2.4 metres and a length of 43 metres from the centre point of the junction of the main access road and the parking spaces associated to the properties along Ludlow Road, with the public highway, shall be provided and thereafter be kept clear of all obstructions to visibility over a height of 600mm above the adjacent carriageway level.

Reason: To ensure the provision of adequate vehicular facilities, to avoid congestion on adjoining roads and to protect the amenities of the area.

17. Notwithstanding any of the submitted details the development shall not take place until full construction detail of any new roads, footways, retaining features, accesses, street lighting, transition features, full block paved surfacing of shared space areas together with details of disposal of surface water to a suitable outfall have been submitted to, and approved in writing by the Local Planning Authority. The agreed details shall be fully implemented before the use hereby approved is commenced or the buildings occupied.

Reason: To ensure the development is completed to the required standards for future adoption.

18. Development shall not take place until a detailed design for:

- a) Tactile crossing points at the main access into the site and in the vicinity of the main site access (off of Wenlock Road), that allows pedestrians to cross onto the footpath on the opposite side of the road
- b) And any other associated engineering works

have been submitted and approved by the Local Planning Authority. The works shall be carried out in accordance with the approved plans and fully implemented prior to the first occupation of any dwelling within the development.

Reason: In the interests of pedestrian safety.

### **Informatives**

1.

No works shall take place to Building 4 until a European Protected Species (EPS) Mitigation Licence with respect to bats has been obtained by the developer from Natural England, in accordance with section 9.3 of the Ecological Survey and Assessment (ERAP, September 2019).

2. Nesting birds

The active nests of all wild birds are protected under the Wildlife and Countryside Act 1981 (as amended). An active nest is one being built, contains eggs or chicks, or on which fledged chicks are still dependent.

It is a criminal offence to kill, injure or take any wild bird; to take, damage or destroy an active nest; and to take or destroy an egg. There is an unlimited fine and/or up to six months imprisonment for such offences.

All vegetation clearance, tree removal and scrub removal and/or conversion, renovation and demolition work in buildings [or other suitable nesting habitat] should be carried out outside of the bird nesting season which runs from March to August inclusive.

If it is necessary for work to commence in the nesting season then a pre-commencement inspection of the vegetation and buildings for active bird nests should be carried out. If vegetation or buildings cannot be clearly seen to be clear of nests then an appropriately qualified and experienced ecologist should be called in to carry out the check. Only if there are no active nests present should work be allowed to commence.

[Netting of trees or hedges to prevent birds from nesting should be avoided by appropriate planning of work. See guidance at <https://cieem.net/cieem-and-rspb-advise-against-netting-on-hedges-and-trees/>.]

[If during construction birds gain access to [any of] the building[s] and begin nesting, work must cease until the young birds have fledged.]

### 3. General site informative for wildlife protection

Widespread reptiles (adder, slow worm, common lizard and grass snake) are protected under the Wildlife and Countryside Act 1981 (as amended) from killing, injury and trade. Widespread amphibians (common toad, common frog, smooth newt and palmate newt) are protected from trade. The European hedgehog is a Species of Principal Importance under section 41 of the Natural Environment and Rural Communities Act 2006. Reasonable precautions should be taken during works to ensure that these species are not harmed.

The following procedures should be adopted to reduce the chance of killing or injuring small animals, including reptiles, amphibians and hedgehogs.

If piles of rubble, logs, bricks, other loose materials or other potential refuges are to be disturbed, this should be done by hand and carried out during the active season (March to October) when the weather is warm.

Areas of long and overgrown vegetation should be removed in stages. Vegetation should first be strimmed to a height of approximately 15cm and then left for 24 hours to allow any animals to move away from the area. Arisings should then be removed from the site or placed in habitat piles in suitable locations around the site. The vegetation can then be strimmed down to a height of 5cm and then cut down further or removed as required. Vegetation removal should be done in one direction, towards remaining vegetated areas (hedgerows etc.) to avoid trapping wildlife.

The grassland should be kept short prior to and during construction to avoid creating attractive habitats for wildlife.

All building materials, rubble, bricks and soil must be stored off the ground, e.g. on pallets, in skips or in other suitable containers, to prevent their use as refuges by wildlife.

Where possible, trenches should be excavated and closed in the same day to prevent any wildlife becoming trapped. If it is necessary to leave a trench open overnight then it should be sealed with a close-fitting plywood cover or a means of escape should be provided in the form of a shallow sloping earth ramp, sloped board or plank. Any open pipework should be capped overnight. All open trenches and pipework should be inspected at the start of each working day to ensure no animal is trapped.

Any common reptiles or amphibians discovered should be allowed to naturally disperse. Advice should be sought from an appropriately qualified and experienced ecologist if large numbers of common reptiles or amphibians are present.

If a great crested newt is discovered at any stage then all work must immediately halt and an appropriately qualified and experienced ecologist and Natural England (0300 060 3900) should be contacted for advice. The Local Planning Authority should also be informed.

If a hibernating hedgehog is found on the site, it should be covered over with a cardboard box and advice sought from an appropriately qualified and experienced ecologist or the British Hedgehog Preservation Society (01584 890 801).

[Hedgerows are more valuable to wildlife than fencing. Where fences are to be used, these should contain gaps at their bases (e.g. hedgehog-friendly gravel boards) to allow wildlife to move freely.]

4. Under the Highways Act 1980 - Section 184(11) you are required to submit an application to form a crossing within the highway over a footway, grass verge or other highway margin. Please note that there will be a charge for the application. Applications forms can be obtained through the web site [www.shropshire.gov.uk/hwmaint.nsf](http://www.shropshire.gov.uk/hwmaint.nsf). If you wish further advice please contact the Shropshire Council's Highway Development Control Team.
5. Where there are pre commencement conditions that require the submission of information for approval prior to development commencing at least 21 days notice is required to enable proper consideration to be given.
6. The above conditions have been imposed in accordance with both the policies contained within the Development Plan and national Town & Country Planning legislation.
7. THIS PERMISSION DOES NOT CONVEY A BUILDING REGULATIONS APPROVAL under the Building Regulations 2010. The works may also require Building Regulations approval. If you have not already done so, you should contact the Council's Building Control Section on 01743 252430 or 01743 252440.
8. You are obliged to contact the Street Naming and Numbering Team with a view to securing a satisfactory system of naming and numbering for the unit(s) hereby approved. At the earliest possible opportunity you are requested to submit two suggested street names and a layout plan, to a scale of 1:500, showing the proposed street names and location of street nameplates when required by Shropshire Council. Only this authority is empowered to give a name and number to streets and properties, and it is in your interest to make an application at the earliest possible opportunity. If you would like any further advice, please contact the Street Naming and Numbering Team at Shirehall, Abbey Foregate, Shrewsbury, SY2 6ND, or email: [snn@shropshire.gov.uk](mailto:snn@shropshire.gov.uk). Further information can be found on the Council's website at: <http://new.shropshire.gov.uk/planning/property-and-land/name-a-new-street-or-development/>, including a link to the Council's Street Naming and Numbering Policy document that contains information regarding the necessary procedures to be undertaken and what types of names and numbers are considered acceptable to the authority.
9.
  1. The Environment Agency has updated the guidance on Climate Change and a 35% should be used for residential development in the Severn catchment. The drainage calculations and plan should be amended accordingly.
  2. On the Surface Water Flood Map, the site is at risk of surface water flooding. The applicant

should ensure that the finished floor levels are set at least 300mm above the ground level. The Finished Floor Level and the Ground Level for each individual dwelling should be shown clearly on the Proposed Site Levels Plan.

3. Highway Gully Spacing calculations should be submitted for approval.

Where a highway is to be adopted and gullies will be the only means of removing surface water from the highway, footpaths and paved areas falling towards the carriageway, spacing calculations will be based on a storm intensity of 50mm/hr with flow width of 0.75m, and be in accordance with DMRB CD526 Spacing of Road Gullies (formerly HA102).

Gully spacing calculations must also be checked in vulnerable areas of the development for 1% AEP plus climate change 15 minute storm events. Storm water flows must be managed or attenuated on site, ensuring that terminal gullies remain 95% efficient with an increased flow width.

The provision of a finished road level contoured plan showing the proposed management of any exceedance flows should be provided.

Vulnerable areas of the development are classed by Shropshire Council as areas where exceedance flows are likely to result in the flooding of property or contribute to flooding outside of the development site. For example, vulnerable areas may occur where a sag curve in the carriageway vertical alignment coincides with lower property threshold levels or where ground within the development slopes beyond the development boundary.

Shropshire Councils Surface Water Management: Interim Guidance for Developers, paragraphs 7.10 to 7.12 (Local Standard D of the SUDS Handbook) requires that exceedance flows for events up to and including the 1% AEP plus CC should not result in the surface water flooding of more vulnerable areas (as defined above) within the development site or contribute to surface water flooding of any area outside of the development site.

4. The proposed method of foul water sewage disposal should be identified and submitted for approval, along with details of any agreements with the local water authority and the foul water drainage system should comply with the Building Regulations H2.

10. The land and premises referred to in this planning permission are the subject of an Agreement under Section 106 of the Town and Country Planning Act 1990. The S106 may include the requirement for a financial contribution and the cost of this should be factored in before commencing the development. By signing a S106 agreement you are legally obliged to comply with its contents, irrespective of any changes to Planning Policy or Legislation.

11. This planning permission does not authorise the applicant to:

- o authorise the laying of private apparatus within the confines of the public highway including any new utility connection, or
- o undertaking the disturbance of ground or structures supporting or abutting the publicly maintained highway

The applicant should in the first instance contact Shropshire Councils Street works team.

Please note: Shropshire Council require at least 3 months' notice of the applicant's intention to commence any such works affecting the public highway so that the applicant can be provided with an appropriate licence, permit and/or approved specification for the works together and a list of approved contractors, as required.

## APPENDIX 2

EUROPEAN PROTECTED SPECIES: The 'three tests'

Application reference number, site name and description:

20/02056/FUL

Former Council Offices Westgate Bridgnorth Shropshire

Demolition of existing buildings

Date:

27th June 2020

Officer:

Sophie Milburn

Ecology Officer

sophie.milburn@shropshire.gov.uk

Tel.: 01743 254765

Test 1:

Is the development 'in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment'?

The re-development of this brownfield site is in the public interest in securing the delivery of housing in a sustainable location; putting the site to a viable long term use and to ensuring the efficient use of land in this urban area in a manner which would not detract from residential and visual amenity.

Test 2:

Is there 'no satisfactory alternative?'

Without re-development the site is likely to become increasingly derelict and a danger to public health and public safety.

Test 3:



Is the proposed activity ‘not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range’?

Bat surveys between July and August 2019 identified a day roost of a single common pipistrelle in Building 4.

EPS offences under Article 12 are likely to be committed by the development proposal, i.e. damage or destruction of an EPS breeding site or resting place and killing or injury of an EPS.

Section 9.3 of the Ecological Survey and Assessment (ERAP, September 2019) sets out the following mitigation and compensation measures, which will form part of the low impact class licence application:

The Registered consultant will provide a toolbox talk to site workers.

A single crevice bat box will be erected on a suitable tree prior to the commencement of works.

‘The Registered Consultant will carry out an examination of the roost areas and determine the presence of any bats prior to the commencement of works.’

‘The Registered Consultant will then instruct and supervise the careful removal, by hand, of the roof slates / tiles and the fascia at the known roost and any other features determined to have opportunities suitable for use by roosting bats.’

‘If a single (or a low number of) pipistrelle bat is present the Registered Consultant will carefully collect the bat (using a hand held static net or by direct handling), place the bat in an appropriate container and either release the bat at the site later the same day or place the bat in the bat box, as detailed below. Instruction will then be provided to proceed carefully with the removal of the remainder of the relevant parts of the roof under the supervision of the Registered Consultant, as appropriate.’

‘If bat(s) are found unexpectedly in cold or adverse weather conditions then the protocol in Appendix II of the BMCL will be followed.’

‘If any other species of bat is present or a large number of bats are present it is essential under the terms and conditions of the BMCL that the Registered Consultant contacts Natural England immediately for advice.’

‘Based on the results of the surveys and the types of roost present there is no timing restriction on the commencement of works.’

‘If bats are discovered during the works when the licensed bat worker / Registered Consultant is not present, all workers must withdraw from the area and the bat worker must be contacted for guidance’.

‘If the licensed bat surveyor / Registered Consultant has any concerns regarding the quality of workmanship or there is non-compliance with the terms and conditions of the BMCL and the mitigation strategy and / or guidance provided by the licensed bat worker then this will result in additional site visits to make inspections.’

I am satisfied that the proposed development will not be detrimental to the maintenance of the population of common pipistrelles at favourable conservation status within their natural range, provided that the conditions set out in the response from Sophie Milburn to Consultee Access (dated 27th June 2020) are included on the decision notice and are appropriately enforced. The conditions are:

Working in accordance with protected species survey;

European Protected Species Licence;  
Erection of bat boxes; and  
Lighting plan.



Committee and date

Southern Planning Committee

20 October 2020

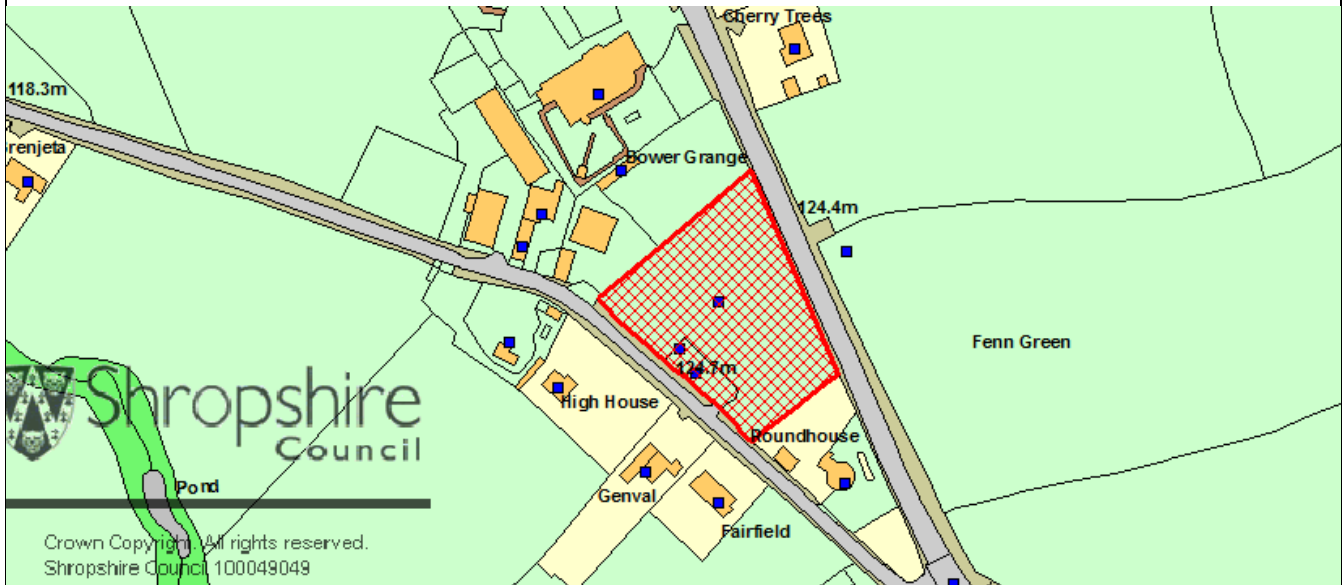
## Development Management Report

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> 20/02669/FUL	<b>Parish:</b>	Alveley And Romsley
<b>Proposal:</b> Application under Section 73A of the Town and Country Planning Act 1990 for use of land as travellers caravan site comprising of 3No. caravans (retrospective)		
<b>Site Address:</b> Land Adjacent The Round House Fenn Green Alveley Shropshire		
<b>Applicant:</b> Mrs Roberts		
<b>Case Officer:</b> Mike Davies	<b>email :</b> planning.southern@shropshire.gov.uk	

**Grid Ref:** 377093 - 283378



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**Recommendation:- Refuse**

**Recommended Reasons for refusal:**

1. The site is situated within the Green Belt where there is a presumption against inappropriate development. The stationing of residential gypsy mobile homes and touring caravans is inappropriate development that would erode the openness of the Green Belt and detract from the visual amenity and rural character of the area. No very special circumstances of sufficient weight have been demonstrated to justify a departure from Green Belt policy. The proposal is therefore contrary to Shropshire Core Strategy policies CS5, CS6, CS11 and CS12, the Shropshire Sites and Management of Development Plan policy MD6, MD7a and S3, the National Planning Policy Framework section 13: Protecting Green Belt Land, and policy E of the Planning Policy for Traveller Sites.
2. The proposal does not represent a sustainable form of development due to its isolated nature placing high reliance on motor vehicles to access services and it is therefore contrary to Section 2 of the NPPF, Policy B of DCLG Planning Policy for Travellers Sites (2015), Policy CS6 of the Shropshire Core Strategy (2011) and Policy MD2 of the Shropshire Council Site Allocations and Management of Development Plan (2015).

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

- 1.1 This is a retrospective application for three Gypsy and Travellers pitches on a site adjacent the Round House at Fenn Green, Alveley. The application proposes the siting of one static caravan for permanent residential occupation by the applicant and for two hardstanding areas for two touring caravans for use by the applicant's immediate family who also reside on the site.
- 1.2 The applicant's family has occupied the site since the summer of 2011 and it is therefore important to understand the site history to fully evaluate the proposals.
- 1.3 An application was submitted in 2010 for under application 10/03292/FUL however, this application was never validated and was subsequently withdrawn.
- 1.4 Following on from this a further application 11/01163/FUL was submitted for the siting of one gypsy caravan for permanent residential occupation by the applicant and his immediate family and for two hardstanding areas for two touring caravans for use by the applicant's extended family when they are visiting. This application was subsequently refused on 21st June 2011, The reasons for refusal were as follows:

*1). The site is situated within the Green Belt where there is a presumption against inappropriate development. The stationing of residential caravans is inappropriate development that would erode the openness of the Green Belt and detract from the visual amenity and rural character of the area. No very special circumstances of sufficient weight have been demonstrated to justify a departure*

*from Green Belt policy. The proposal is therefore contrary to Shropshire Core Strategy policy CS5, Bridgnorth District Local Plan saved policy S3 and Planning Policy Guidance Note 2: Green Belts.*

*2). The site previously contained a lido and following the closure of that facility the land was used for the tipping of waste. There is no record of the materials/substances disposed of on the land. There is the potential for contamination to be present on site but no information in the form of a phase 1 desk top assessment has been submitted to allow an assessment to be made of whether the land is, or can be, made fit for human habitation. It has not, therefore, been demonstrated that the proposed development has been designed to take account of ground contamination, as required by Shropshire Core Strategy policy CS6.*

- 1.5 Following on from this a further application was submitted under 11/04897/FUL on 26th October 2011 and this was subsequently refused again for the following reason on 17th July 2012:

*The site is situated within the Green Belt where there is a presumption against inappropriate development. The stationing of a residential gypsy mobile home is inappropriate development that would erode the openness of the Green Belt and detract from the visual amenity and rural character of the area. No very special circumstances of sufficient weight have been demonstrated to justify a departure from Green Belt policy. The proposal is therefore contrary to Shropshire Core Strategy policies CS5, CS6 CS11 and CS12, the Bridgnorth District Local Plan saved policy S3, the National Planning Policy Framework section 9: Protecting Green Belt Land, and policy E of the Planning Policy for Traveller Sites.*

- 1.6 Following on from this refusal, an appeal was submitted to the Planning Inspectorate. The Planning Inspector who dealt with the appeal considered that based on the personal circumstances of the applicant a temporary five year planning permission should be granted. However, the appeal was subsequently recovered by the Secretary of State who disagreed with the conclusions of the inspector and refused planning permission.
- 1.7 Following on from this decision the applicant joined a class action against a host of decisions relating to Gypsy and Traveller appeals that had been recovered by the Secretary of State. The timeline of which is set out below.
- 1.8 **Shane Roberts v Secretary of State for Communities and Local Government and Shropshire Council – CO/37/2015 & CO/130/2015**
1. Appeal against the Secretary of States ("the SoS") decision to refuse to grant permission for a change of use of the land to a "...private gypsy and traveller caravan site comprising one mobile home and two touring caravans.." under s288 Town and Country Planning Act 1990 ("the 1990 Act"); and
  2. Judicial review challenge to the SoS decision not to de-recover the appeal

following the judgement in Moore and Coates v SSCLG [2015] EWHC 44 (Admin)

**Timeline of events (17 July 2012 to present):**

- 17 July 2012 – Shropshire Council refused Mr Robert’s application for planning permission for change of use of land at The Round House, Fenn Green, Alveley, Shropshire – Mr Roberts subsequently appealed that decision under s78 of the 1990 Act
- The SoS appointed an inspector to determine the appeal which was conducted via a hearing on 6 March 2013
- SoS directed recovery of the appeal on 3 July 2013 and the Inspector provided a report on the same date in which he recommended granting temporary permission
- On 27 November 2014, the SoS issued his decision disagreeing with the inspector’s recommendation and dismissing the s78 appeal
- On 6 January 2015, Mr Roberts issued an application under s288 of the 1990 Act seeking an order to quash the 27 November 2014 decision – CO/37/2015
- On 11 May 2015 - Mr Roberts issued a further claim (CO/130/2015) challenging the SoS decision not to de-recover his appeal following the judgement in Moore and Coates v SSCLG [2015] EWHC 44 (Admin)
- The Council did not make any representations in this matter as the Interested Party, the SoS filed and served an acknowledgment of service confirming that they would be contesting these claims
- The Roberts case, via consent order, along with others, were stayed pending the determination of Mulvenna v SSCLG (C1/2016/0374) and Connors v SSCLG (C1/2014/2651) which were conjoined by the Court of Appeal as they shared a common point of principle, namely the effect, if any, of an unlawful decision to recover a planning appeal on the subsequent substantive determination of that appeal
- The Mulvenna case was heard in May 2017 and reserved judgement was handed down on 17 November 2017 with the Court of Appeal dismissing both appeals – see [2017] EWCA Civ 1850
- The appellants in Connors applied to the Supreme Court for permission to appeal (UKSC 2017/0233)
- The appellants in Mulvenna confirmed they had the intention to do the same but subject to obtaining public funding and as subsequently their time limit for applying to the Supreme Court was extended to 28 days after the final determination of the application for funding
- The Roberts case, along with others, was further stayed further pending the application for permission to appeal to the Supreme Court in the Connors case and awaiting the outcome of the Mulvenna public funding application

which was still pending

- On 18 February 2019 the Council was notified that the public funding application for Mulvenna was refused but had been appealed and a further 2 month stay was agreed until the outcome of the appeal
- 29 April 2019 the Council was notified that Ms Mulvenna's Supreme Court public funding appeal had been adjourned to an oral hearing yet to be scheduled and a further 2 month stay was requested
- By Order dated 27 June 2019, the Council was notified that the Supreme Court had refused permission to appeal in the Connors case. The permission decision for the Mulvenna case had been suspended pending confirmation of Mulvenna's public funding appeal which was listed for 10/11 September 2019
- By email dated 06 August 2019 the solicitor for the Government Legal Department wrote to Angus Murdoch (Shane Roberts legal representative) setting out that the Mr Roberts s288 claim raises similar ground of to those pursued in the Connor and Mulvenna case in particular grounds 5-9) inviting Angus to withdraw the claim and should Mr Roberts continue with the claim to withdraw the afore mentioned grounds – to which and based on my records no response was received
- The Mulvenna public funding appeal was subsequently pushed back on numerous occasions for numerous reasons including a panel member getting ill (apparently catching COVID-19) and a further stay was requested until 1 June 2020
- By email dated 2 June 2020, the Government Legal Department confirmed that the legal representative for Mulvenna has confirmed he had no further instructions/funding to pursue the Supreme Court application
- By email dated 30 June 2020 the Government Legal Department contacted Angus in relation to; (1) CO/2130/2015 and inviting him to agree to the stay to be lifted and the claim dismissed accordingly, with costs and (2) CO/37/2015, again, inviting them to agree to the claim to be dismissed, with costs or in the alternative to withdraw grounds 5-9 of the claim which following the Connors case they considered had no prospects of success
- By email dated 1 July 2020, Angus Murdoch notified the parties that his client Shane Roberts passed away in 23 August 2018. The Government Legal Department noted that Mr Roberts family was still living on the site and requested confirmation whether they will continue to pursue this matter
- Legal Services have chased a further update on this matter from the Government Legal Department and kindly requested that they should apply to the Court to have both matters dismissed accordingly in the absence of an indication from applicant that they want to continue with the litigation.

## 2.0 SITE LOCATION/DESCRIPTION

- 2.1 The site is situated within the Green Belt, to the south of the Alveley village development boundary. The application site is a small grassed paddock sandwiched between the A442 to the west and a minor country lane to the east. To the south of the site is the Round House a residential property which sits on the junction of the A442 and the lane which runs in front of the site.
- 2.2 It is bounded by hedging to the side boundaries with more mature hedge screening to the rear boundary and a post and rail fence on the boundary with the A442. Vehicular access to the site is gained via the lane to the rear of the site.
- 2.3 This site is situated in a prominent countryside location distinctly removed from the main recognised settlement of Alveley. The site is sandwiched between the A442 from Kidderminster to Bridgnorth, and the unclassified public highway giving access from the A442 to Alveley village.
- 2.4 The predominant character of the area is that of open countryside with some sporadic minor settlements and isolated dwellings interspersed in the landscape.
- 2.5 Despite a degree of screening by boundary trees, the development is still visible to substantial passing motorists passing the site on the A442.
- 2.6 It is noted that additional conifer planting has taken place. The planting of leylandii species around a boundary perimeter tends to draw attention to a site; it gives it a domestic, suburban character. It may well obscure the development from view but it does little to successfully assimilate the development into the rural landscape.

### 3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

- 3.1 The Parish Council has expressed a view contrary to the officer recommendation and the Shropshire Council Ward Member has requested Committee determination. The Principal Officer and Chair and Vice-Chair of the South Planning Committee in consultation consider the application warrants committee determination due to recent site history and the matters to be weighed in the planning balance here with respect to the occupants and the Green Belt.

### 4.0 Community Representations

#### 4.1 - Consultee Comments

- 4.1.1 **Alveley and Romsey Parish Council** – . The Parish Council supports the application for a permanent establishment of no more than three residential caravans on this site, subject to a requirement for immediate testing of any area where groundworks are required to confirm that the ground is free from contamination.



4.1.2 **Highway Authority** - The proposal is likely to be acceptable from a highways and transport perspective. The access is of suitable layout and material to serve the development and the Design and Access Statement refers to 2 car parking spaces per pitch being provided which is acceptable (with just 1 car and 1 LGV being on the site as detailed in the application form).

However in order for the proposed development to be appropriately assessed, the following information is required to be submitted, by the applicant:

- Visibility splays should be submitted, on a plan. The splays should be commensurate with the actual free-flow speed of traffic passing the site.
- The applicant owns a larger area than that proposed in this application – is there any plans for any further residents and/or caravans? This is to inform an assessment of the vehicular movements and suitability.
- The Design and Access Statement refers to Planning Policy for Traveller Sites (2015) where the definition of traveller includes those that “...have ceased to travel temporarily...” which seems to be relevant to the families on site, who have been on site since 2011. However, confirmation is sought as to the future movements of any caravans to assess in terms of vehicular movements.

4.1.3 **Local Lead Flood Authority** - The technical details submitted for this Planning Application have been appraised by WSP UK Ltd, on behalf of Shropshire Council as Local Drainage Authority.

A sustainable drainage scheme for the disposal of surface water from the development should be designed and constructed in accordance with the Councils Surface Water Management: Interim Guidance for Developers document.

The provisions of the Planning Practice Guidance, Flood Risk and Coastal Change, should be followed.

Preference should be given to drainage measures which allow rainwater to soakaway naturally. Soakaways should be designed in accordance with BRE Digest 365. Connection of new surface water drainage systems to existing drains / sewers should only be undertaken as a last resort, if it can be demonstrated that infiltration techniques are not achievable.

4.1.4 **SC Regulatory Services** – In 2011/2012, Regulatory Services were consulted on and provided comments on two planning applications (11/01163/FUL & 11/04897/FUL) in respect of contaminated land, due to concerns about the infilling of a historic swimming pool that used to occupy part of the site.

A report by Ground Investigation Specialists Ltd (GIS), ‘Desk Study & GeoEnvironmental Investigation for New Mobile Home on Land North of Genva, Fenn Green Alveley; Report No.1077, Jul/Aug 2011’ was submitted to support

these applications

The results of the ground investigation identified asbestos fibres in near surface soils (TP1 – chrysotile; TP4 – chrysotile and amosite).

Therefore, in a memorandum dated 20<sup>th</sup> June 2012, Regulatory Services advised the following:

*I have reviewed the Desk Study and Geoenvironmental Investigation report (No.1077) submitted with the above application. The site investigation found evidence of asbestos fibres in two of the samples taken from the site. Asbestos fibres are only hazardous if they are made airborne and hence would only be considered a risk if the soil is disturbed in any way. Expert advice should be sought to assess the risk from asbestos contamination and develop an appropriate remediation scheme for the site. The scheme should detail what mitigation measures are going to be implemented to control any identified risk from asbestos fibres.*

*In principle, there are no substantive objections to the proposed end use of the site, but it is important that a remediation scheme is submitted and approved prior to any works starting on site.*

*Accordingly, if the application is successful, I recommend that the following conditions be attached to any approval:*

*Unless otherwise agreed by the Local Planning Authority, development other than that required to be carried out as part of an approved scheme of remediation must not commence until the condition detailed below has been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until condition 4 has been complied with in relation to that contamination.*

### **G1 Contaminated land**

- a) *No development shall take place until a Site Investigation Report has been undertaken to assess the nature and extent of any contaminated on the site. The Site Investigation Report shall be undertaken by competent person and be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'. The Report is to be submitted to and approved in writing by the Local Planning Authority.*
- b) *In the event of the Site Investigation Report finding the site to be contaminated a further report detailing a Remediation Strategy shall be submitted to and approved in writing by the Local Planning Authority. The Remediation Strategy must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.*
- c) *The works detailed as being necessary to make safe the contamination shall be*

*carried out in accordance with the approved Remediation Strategy.*

- d) *In the event that further contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of (a) above, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of (b) above, which is subject to the approval in writing by the Local Planning Authority.*
- e) *Following completion of measures identified in the approved remediation scheme a Verification Report shall be submitted to and approved in writing by the Local Planning Authority that demonstrates the contamination identified has been made safe, and the land no longer qualifies as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land.*

**Reason:** *To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to human health and offsite receptors.*

The above applications were both refused and as far as we know, the conditions recommended by Regulatory Services were not acted upon.

This application is again for use of the land as travellers caravan site, comprising of 3 caravans, but is retrospective and the supporting planning, Design and Access Statement confirms occupancy of the site since 2011.

Potential risks from asbestos fibres in near surface soils were identified in 2011 and as stated above, Regulatory Services is not aware of any further assessment or remediation works at the site and therefore there remains a potential risk in respect of the residential use of the land.

Given that there is insufficient information concerning the risks posed by asbestos in near surface soils and there is no detailed risk assessment or methodology on how these potential risks will be managed, Regulatory Services requires further assessment/remediation to manage the potential risks.

It is possible that more detailed quantification to identify the % asbestos fibres in soil could be carried out to inform any risk assessment.

Therefore, having regard to the fact that the GIS site investigation identified potential risks but did not recommend any remedial works, the following conditions are required:

- a) A site investigation has identified potential risks from asbestos in near surface soils and a further report detailing a Remediation Strategy shall be submitted to and approved in writing by the Local Planning Authority. The

Remediation Strategy must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

- b) The works detailed as being necessary to make safe the contamination shall be carried out in accordance with the approved Remediation Strategy.
- c) In the event that further contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of (a) above, which is subject to the approval in writing by the Local Planning Authority.
- d) Following completion of measures identified in the approved remediation scheme a Verification Report shall be submitted to and approved in writing by the Local Planning Authority that demonstrates the contamination identified has been made safe, and the land no longer qualifies as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land.

**Reason:** To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to human health and off site receptors.

#### - Public Comments

9 Objections have been received. The full comments may be viewed on the file and are summarised below:

4.2

- Contrary to Green Belt policy
- No Special Circumstances
- The applicants are not travellers they have lived on the site 9 years without moving
- The applicants are not part of the community as they claim and there is no local connection
- Applications to build houses for local people in the Green Belt have been refused and this application should be treated the same
- Granting approval will set undesirable precedent
- Existing Development unauthorised and should be enforced against
- Site is contaminated and dangerous to health
- Plans submitted are incorrect and show a larger site than is owned by the applicant
- Granting consent would be a green light for further expansion of the site in the future
- Should consent be granted then strict limitations need to be placed on the site and enforced

- Previous applications refused and should be refused again

## 5.0 THE MAIN ISSUES

Principle of Development  
 Personal Circumstances  
 Siting, scale and design of structure  
 Visual impact and landscaping  
 Highway Safety  
 Residential Amenity  
 Flood Risk and Drainage  
 Land Contamination  
 Planning Balance

## 6.0 OFFICER APPRAISAL

### 6.1 Principle of development

6.1.1 The relevant Development Plan Policies are provided within the Shropshire Core Strategy (2011); Site Allocations and Management of Development Plan (2015); Sustainable Design SPD (July 2011) and National Planning Policy Framework (NPPF) (2019). The DCLG Planning Policy for traveller sites' (August 2015) also needs to be taken into account. Those policies of relevance to the proposal are considered below as part of the appraisal.

6.1.2 The planning policy context for this development is that the site falls within the Green Belt. The National Planning Policy Framework advises at paragraph 143 that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. It continues at paragraph 144 stating:

*“When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist until the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.”*

6.1.3 The change of use and structures to which this application relates constitute inappropriate development in the Green Belt, as confirmed by the DCLG ‘Planning policy for traveller sites’, August 2015, Policy E which relates specifically to Traveller Sites in Green Belt. It states at paragraph 16 that:

*“Subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.”*

6.1.4 At Policy H (Decision taking) of the above DCLG policy document a number of issues are set out as relevant matters when considering applications for traveller

sites. These are set out in paragraph 24 as:

- a) The existing level of local provision and need for sites
- b) The availability (or lack) of alternative accommodation for the applicants
- c) Other personal circumstances of the applicant
- d) That the locally specific criteria to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites
- e) That they should determine applications for sites from any travellers and not just those with local connections.

6.1.5 However it does re-iterate paragraph 16 quoted in 6.1.1 above with respect to the Green Belt.

6.1.6 There is a requirement under paragraph 25 of the DCLG policy for local planning authorities to very strictly limit new traveller sites in open countryside that is away from existing settlements or outside areas allocated in the development plan. It continues that sites in rural areas should respect the scale of, and not dominate, the nearest settled community and avoid placing an undue pressure on the local infrastructure. Paragraph 26 states when considering applications local planning authorities should attach weight to the following matters:

- a) Effective use of previously developed (brownfield), untidy or derelict land
- b) Sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness
- c) Promoting opportunities for healthy lifestyles, such as ensuring adequate landscaping and play areas for children
- d) Not enclosing a site with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community.

6.1.7 It continues at paragraph 27 by stating that where a local planning authority is unable to demonstrate an up-to-date 5 year supply of sites, that this would be a significant material consideration when considering applications for the grant of temporary planning permission. It clarifies however that there are some exceptions to this statement, which include where the proposal is on land designated as Green Belt.

6.1.8 Shropshire Core Strategy policy CS5 relates to the Countryside and Green Belt and seeks to restrict housing to house agricultural, forestry or other essential countryside workers and other affordable housing/accommodation to meet a local need in accordance with national planning policies and policies CS11 and CS12. It advises that there will be additional controls over development in the Green Belt in line with Government Guidance. SAMDev Plan policy MD6 also relates to the Green Belt, requiring it to be demonstrated that proposals do not conflict with the purposes of the Green Belt.

6.1.9 Shropshire Core Strategy Policy CS12 relates to Gypsy and Traveller provision and

pre-dates both the National Planning Policy Framework (NPPF) and the August 2015 DCLG Planning policy for traveller sites. It states that sites will be allocated to meet identified needs and would be supportive of suitable development proposals close to Shrewsbury, the Market Towns, and Community Hubs and clusters. The policy also indicates that suitable development proposals for small exception sites (under 5 pitches), where a strong local connection is demonstrated, may be acceptable under policy CS5 (Countryside and Green Belt). It was anticipated when the Core Strategy was adopted that the provision of new sites would be largely made in the Site Allocations and Management of Development (SAMDev) Plan. However, in the event the SAMDev Plan adopted in December 2015 does not include site allocations for this purpose. The matter was considered by the SAMDev Inspector in her October 2015 report at paragraphs 71 to 79 (Issue 3). It was the Inspector's conclusion that the Council will be able to demonstrate a five year supply of pitches and sufficient supply for the remainder of the plan period, having regard to the expected turnover of pitches on Council owned sites. She stated that the evidence confirms that it is not necessary for the SAMDev Plan to make further provision to meet the accommodation needs of the gypsy and traveller community and travelling show persons.

- 6.1.10 The latest assessment of the need for gypsy and traveller and travelling show persons accommodation in Shropshire (2019) was published in February 2020. It summarises the need for gypsy and traveller pitches, transit pitches and travelling show person's plots in Shropshire as assessed in the Gypsy and Traveller Accommodation Assessment 2014 (updated January 2015), with the SAMDev Plan Inspector's Report (20th October 2015) providing additional clarification of baseline figures.
- 6.1.11 The calculation of pitch/plot requirements in the GTAA is based on DCLG modelling as advocated in the withdrawn document, *Gypsy and Traveller Accommodation Assessment Guidance* (DCLG, 2007). The DCLG Guidance requires an assessment of the current needs of Gypsies and Travellers and Travelling Showpeople and a projection of future needs. The Guidance advocates the use of a fieldwork survey to supplement secondary source information and derive key supply and demand information.
- 6.1.12 As of July 2019, there were a total of 148 Gypsy and Traveller Pitches across Shropshire (147 permanent authorised and 1 private tolerated). The GTAA 2019 has evidenced an overall cultural need for 113 additional pitches over the plan period to 2037/38 and as a subset of this number a PPTS need for 43 pitches. However, there is evidence of a high degree of turnover on existing pitches which offsets identified need. Detailed site management data reports an annual average of 11 pitches coming available for occupancy over the past 5.5 years. If turnover from households moving between pitches from within the County is excluded, the annual average turnover is 9.3 or 205 over the plan period - exceeding the level of identified need.
- 6.1.13 It is recommended that the Local Plan acknowledges the overall need (excluding turnover) for 113 additional pitches based on a cultural interpretation of need and

43 based on a PPTS interpretation of need. For the purposes of planning policy, it is however concluded that turnover on local authority pitches is expected to address this need, and that there is no current requirement for site allocations or the identification of sites for longer term provision. Although there is no overall shortfall in pitches once turnover is considered, the Council should continue to consider planning applications through its criteria-based policy for appropriate small sites to address any arising needs of Gypsy and Traveller families should they be forthcoming over the plan period.

- 6.1.14 The Council's Gypsy Liaison Officer has verified that the applicant and the occupiers of the site are all Romany Gypsies.
- 6.1.15 While taken on their own the latest Shropshire Council figures, when turnover is taken into account, indicate that there is no shortfall in provision in Shropshire, account needs to be taken of the geography of the Bridgnorth area, effectively bounded to the east and south by Authorities with a shortfall in provision, and the information provided by the Council's Gypsy Liaison Officer to the effect that there are no pitches available at present on Council operated sites to accommodate the applicants.
- 6.1.16 The above national planning policy and Development Policy context demonstrates that any shortfall in Shropshire to providing a 5 year supply of deliverable pitches, the condition of the land and the personal circumstances of the adults are unlikely to amount to very special circumstances sufficient to justify inappropriate development in the Green Belt. The weight to be accorded to the best interests of the children in addition to any other positive attributes that the site has for the use sought is considered in the Planning Balance section of the report below.
- 6.1.17 In addition to the issue of harm to the Green Belt caused by the inappropriateness of the proposed use and associated built development, consideration must also be given to whether a key characteristic of Green Belt – openness – would be harmed. Openness is both a feature of the quantum of development and the visual impact of the proposal. (Court of Appeal judgement in *John Turner v SSCLG and East Dorset Council* [2016] EWCA Civ 466). In this case the structures comprising of one static caravan, two touring caravans, storage structures and parked vehicles would, by their very presence, impact upon openness in comparison with the previous agricultural use of the land. However, all these items are concentrated in an area along the back edge of the site adjacent the high hedgerow and the visual impact is limited due to the extent of the hedgerows surrounding the site, although still clearly visible to passing traffic travelling along the A442. The harm to openness is considered to be significant in this case and is a matter to which weight must be attached. This factor is also included in the Planning Balance below. It is considered that a decision to permit this application would need to be referred to the Secretary of State as a departure from the development plan with reference to the relevant guidance.

## 6.2 Personal Circumstances



- 6.2.1 Policy CS12 advocates support for suitable development proposals for small exception sites (under 5 pitches) in accordance with Policy CS5, where a strong local connection can be demonstrated. In this particular case the applicant's family has lived on this site since 2011. The two siblings of the applicant a son and daughter have lived on the site from a young age and now both have or are expecting young families of their own. The children resident on site are currently of an age where they do not attend school at present.
- 6.2.2 The presence of children of school age has in the past been a strong argument for allowing Gypsy and Traveller pitches in terms of personal circumstances, but as the children are currently too young to attend school then this does not present a particularly compelling reason to deviate from Green Belt policy.
- 6.2.3 The applicant has not offered any other compelling evidence to support the application except a local connection which is based on the family occupying the site for the last 9 years whilst the planning and judicial process has rumbled on.
- 6.2.4 It is therefore considered that there are no overwhelming personal circumstances that would lead to the conclusion that on balance the personal circumstances of the applicant should override other material planning considerations in this instance.
- 6.3 **Siting, scale and design of structure**
- 6.3.1 Core Strategy policy CS6 seeks to ensure that development is appropriate in scale, density, pattern and design taking into account the local context and character. SAMDev policy MD2 requires development to respect locally distinctive or valued character and existing amenity value.
- 6.3.2 The three pitches are sited in open countryside within the Green Belt. It is located away from the nearest settlement of Alveley which lies to the north. The development is not related to any other development in the locality and appears as an isolated feature in the landscape. The site is screened from view by a well-established hedgerow along the boundary with the highway. The site itself though is very open in character and performs an important role in the Green Belt. It is therefore considered that the proposal will result in substantial harm in terms of Green Belt and its purpose.
- 6.3.3 Policy CS12 advocates support for suitable development proposals for small exception sites (under 5 pitches) in accordance with Policy CS5, where a strong local connection can be demonstrated. In this particular case the local connection relates to the time the site has been occupied by the applicants family which amounts to 9 years. However, policy CS12 pre-dates both the current NPPF and the DCLG Planning Policy which must therefore assume greater weight as a material consideration in this context.
- 6.3.4 Policy CS6 and Policy MD2 relate to the sustainability of development and in this case the isolated location of the site away from any local amenities mean that it is not considered to be a sustainable location. There are no shops, schools, medical facilities within easy walking distance and therefore the development would

promote vehicular use to get to any amenities as the site. Policy B of the DCLG Planning Policy for Travellers sites makes it clear that the same considerations for sustainability of housing sites should be applied to Gypsy and Traveller sites and given this site is in an isolated location it is considered that it is contrary to principles of sustainable development.

6.3.5 The Green Belt location of the site in open countryside means that the development is considered to be inappropriate in policy terms as it impacts on the openness of the Green Belt. Maintaining the openness of the Green Belt is a primary objective of both national and local policy and as such development which negatively impacts on this aim must be considered to be inappropriate development in this context.

#### 6.4 **Visual impact and landscaping**

6.4.1 A primary function of the Green Belt is to protect the openness between settlements and prevent them merging into one another.

6.4.2 The site is well screened from view and views in and out of the site are very limited by due to the mature hedgerow which bounds the site on three sides. The nature of the site situated in open countryside which is interspersed with sporadic residential properties means that whilst it is designated as Green Belt it is also strategically important in this respect in terms of the aims of National Green Belt policy.

6.4.3 It is noted that additional conifer planting has taken place. The planting of leylandii species around a boundary perimeter tends to draw attention to a site; it gives it a domestic, suburban character. It may well obscure the development from view but it does little to successfully assimilate the development into a rural landscape.

6.4.4 The use of the land for the siting of a static mobile home, the provision of hardstanding for two touring caravans and the improvements to the existing access will all result in the character of the site assuming the appearance of a permanent residential development.

6.4.5 The residential caravan development, with all its associated domestic activity and paraphernalia, would appear as an alien feature, out of keeping with its rural location. The development could be further screened by additional landscaping within the field. That being said, the development proposed would create a degree of adverse impact on its rural surroundings such that it would fail to maintain and enhance countryside character and in particular it will undermine the openness of the character of the green belt.

6.4.6 The development is contrary to the preservation of the open countryside, and the protection of the Green Belt and its acknowledged importance in terms of its openness. Weight is also to be apportioned to this consideration.

#### 6.5 **Highway Safety**

6.5.1 The NPPF, at section 9, seeks to promote sustainable transport. At paragraph 108 it states that decisions should take account of whether safe and suitable access to the site can be achieved for all users and whether improvements can be

undertaken to improve highway safety that cost effectively mitigate the impact of the proposal. Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety

- 6.5.2 Core Strategy policy CS6 seeks to ensure that proposals likely to generate significant levels of traffic be located in accessible locations, where opportunities for walking, cycling and use of public transport can be maximised and the need for car based travel reduced. It seeks to achieve safe development and pertinent matters to consider include ensuring the local road network and access to the site is capable of safely accommodating the type and scale of traffic likely to be generated.
- 6.5.3 The site is accessed from an unclassified country lane which links the A442 to the centre of Alveley. The lane is wide enough to accommodate single file passing traffic.
- 6.5.4 The entrance to the site comprises a pair of substantial timber gates with a thick leylandii hedge running along the back of the carriageway, screening the site from this road. The hedgerow does however interfere with visibility for vehicles leaving the site and the Highway Authority have requested that sight lines be provided and maintained to ensure highway and pedestrian safety should consent be granted.
- 6.6 **Residential Amenity**
- 6.6.1 Core Strategy policy CS6 seeks to safeguard residential amenity. The site is in an isolated location. Therefore the impact of the development on the amenities of neighbours is unlikely to be harmful in terms of overlooking and privacy considerations.
- 6.6.2 The development will however be visually prominent in the landscape and does impact on the outlook and visual amenities of the locality. Whilst, the leylandii hedgerow does screen the development to an extent, it will be much more visually intrusive in the landscape during the winter months. It is therefore considered that is visual impact on the Green Belt and the landscape character of the area is unacceptable.
- 6.7 **Flood Risk and Drainage**
- 6.7.1 The site is within Flood Zone One so is not susceptible to a significant flood risk. The LLFA have requested that a sustainable drainage scheme be implemented on the site.
- 6.7.2 Core Strategy policy CS18 relates to sustainable water management and seeks to ensure that surface water will be managed in a sustainable and coordinated way, with the aim to achieve a reduction in the existing run-off rate and not result in an increase in run-off. The Council's Drainage Team have assessed the proposal and are content that the drainage matters could be addressed through an informative on any planning permission that is issued, given the land area available and that it is not within a flood risk zone.

**6.8 Land Contamination**

- 6.8.1 The Parish Council and several objectors have raised concerns in relation to the site being contaminated.
- 6.8.2 Land Contamination was the second reason for refusal on the first application. In support of the subsequent application the applicant submitted a Desk Study and Geo-environmental Investigation Report.
- 6.8.3 The site investigation found evidence of asbestos fibres in two of the samples taken from the site. The findings contained within the report were considered by the Council's Public Protection Specialist Officer at the time. Confirmation has been received that the likely contamination is not so deleterious as to preclude development.
- 6.8.4 The nature of the development, being use of land, involves minimal ground disturbance unlike building works associated with a permanent structure.
- 6.8.5 Third parties have raised concern regarding the efficacy of the report submitted. However, it was been prepared by a specialist firm and there is no evidence to suggest the information contained therein is anything but sound.
- 6.8.6 A condition is recommended for inclusion by the Council's Regulatory Services team, and this should give further assurances that the land is safe to be developed as proposed.

**6.9 Planning Balance**

- 6.9.1 There is a presumption against inappropriate development in the Green Belt. The use of the land as a gypsy traveller site is inappropriate development in the Green Belt and permission should only be granted if very special circumstances are identified. The NPPF advises at paragraph 144 that very special circumstances will not exist unless the harm to the green belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. A key characteristic of Green Belts is openness, to which there would be moderate harm by the presence of structures and caravans on this land. Substantial weight must therefore be attached to the harm to the Green Belt caused by the development.
- 6.9.2 There are a number of other factors to weigh in the planning balance against this harm to the Green Belt, which are considered to be material planning considerations, and these are set out below:
- 6.9.3 It has been established that there is currently no provision available on existing Shropshire Council sites to accommodate this extended family group and adjacent authorities in their GTAA assessments acknowledge under provision of sites. This must be tempered by paragraph 27 of the DCLG Planning Policy for traveller sites (DCLG 2015) which states that even if a LPA is not able to demonstrate a 5 year supply (Shropshire Council's position is that it has sufficient supply if turnover is taken into account), the absence of such a supply is not a significant material consideration where a proposal is within the Green Belt.

- 6.9.4 Whilst it is not for individual planning applications to review Green Belt boundaries (Policy E DCLG 2015) the observation can be made that, with regard to the five purposes of the Green Belt set out in paragraph 134 of the NPPF, the site is located in open countryside within the allocated Green Belt in the adopted SAMDev Plan. The site plays an important role in checking unrestricted urban sprawl, acts as a buffer zone preventing neighbouring settlements merging and assists in preventing encroachment into the countryside. By tightly controlling development in the Green Belt this also encourages the redevelopment of brownfield sites. The site given its open nature plays an important part in the visual amenities and rural character of the area.
- 6.9.5 The applicant has been confirmed by the Council's Gypsy Liaison Officer to be Romany Gypsy, and the applicant and her family are confirmed as having resided on this site since 2011. Whilst, the applicant has put forward personal circumstances to justify a relaxation in Green Belt policy, Policy E, paragraph 16 of DCLG 2015 advises that personal circumstances are unlikely to clearly outweigh the harm to the Green Belt.

For the purposes of planning policy the Annex 1: Glossary defines gypsies and travellers as "*Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.*"

- 6.9.6 In determining whether persons are "gypsies and travellers" for the purposes of this planning policy, consideration should be given to the following issues amongst other relevant matters:
- a) whether they previously led a nomadic habit of life
  - b) the reasons for ceasing their nomadic habit of life
  - c) whether there is an intention of living a nomadic habit of life in the future, and if so, how soon and in what circumstances.
- 6.9.7 The site is isolated from village facilities being situated out in open countryside. It is therefore considered to be in an unsustainable location. Paragraph 13 of Policy B of DCLG 2015 states that LPAs should ensure traveller sites are sustainable economically, socially and environmentally and should ensure that, among other matters which are listed, site locations ensure that children can attend school on a regular basis. The location of this site fails to satisfy these requirements.
- 6.9.8 Weight must therefore be attached to the unsustainable nature of the site identified above. The family group on this site consists of three generations, but no children of school age. There are no other immediate or extended family members resident on this site or in the immediate locality and it is therefore considered that, in the light of the contents of the DCLG Planning Policy for Gypsy Sites August 2015 (DCLG 2015), the planning balance in this case would be such that no very special circumstances to outweigh the harm to the Green Belt have been advanced, which

would justify a departure from the adopted Development Plan.

- 6.9.9 Whilst, paragraph 13 of DCLG 2015 references the need to ensure that children can attend school on a regular basis. The contents of Policy E of DCLG 2015 relating to Traveller Sites in Green Belt is prefaced by “Subject to the best interests of the child...” The applicants at present have no children of school age resident on site at present, although there are two children of pre-school age with a further baby due in the near future. The children are not of primary school age and therefore not registered to attend a local school at present. Whilst it is considered that the future needs of the children are a material consideration relevant to the determination of this application, it is not considered an overriding factor. On balance this consideration, when coupled with the negative attributes of the site identified, cumulatively are not considered to amount to very special circumstances of sufficient weight to outweigh the harm to the Green Belt in this particular case.
- 6.9.10 Policy H of The DCLG Planning Policy for Travellers sites is clear that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. Given the Green Belt designation of this sites these other material considerations would have to constitute ‘very special circumstances.’ The case put forward by the applicant does not provide a compelling case as to why this site is required above any other and is essentially based on the site being in the ownership of the family. Clearly, many people own land in the Green Belt and all are subject to the same restrictions in terms of developing their land. To allow such a development would set an undesirable precedent and in the absence of any compelling evidence to the contrary as to why it is necessary to be located at this site as opposed to another more appropriate site it is clear that this proposal also conflicts with the settlement policies of the SAMDev Plan namely MD7a and S3, along with Policy CS12 of the Core Strategy which relates to Gypsy and Traveller sites.
- 6.9.11 Whilst the scale of the site does not dominate the nearest settled community and impact on local infrastructure (Para. 25 of DCLG 2015), it's countryside location means that it unduly impacts on the openness of its surroundings which is exacerbated by the leylandii hedgerow which has been planted around the site to screen it from view.
- 6.9.12 The site is not close to village facilities which include a range of shops, health facilities and a primary school. Paragraph 13 of DCLG 2015 states that LPAs should ensure traveller sites are sustainable economically, socially and environmentally and should ensure that, among other matters which are listed, site locations ensure that there is access to appropriate health services, the need to ensure that children can attend school on a regular basis. The contents of Policy E of DCLG 2015 relating to Traveller Sites in Green Belt is prefaced by “Subject to the best interests of the child...” On this site there are children, but these are all below primary school age at present.
- 6.9.13 A further consideration to bear in mind relates to the letter dated 31 August 2015, from the then Department of Communities and Local Government Chief Planner

Steve Quartermain, to Chief Planning Officers which enclosed a) statement which sets out revisions to National Planning Policy to make intentional unauthorised development a “material consideration” when determining appeals and retrospective planning applications. The policy applies to all new planning applications and appeals received from 31 August 2015. The statement does not define what intentional unauthorised development is. The only explanation given is that developing land without prior authorisation prevents measures being taken to mitigate or limit the harm that would be caused and that taking enforcement action against unauthorised development costs Local Planning Authorities (LPAs) time and money.

6.9.14 Having considered the merits of the case, it is difficult to make a reasoned justification for granting planning permission in the circumstances. The Local Planning Authority have previously refused planning permission for the development twice and a subsequent appeal was dismissed by the SoS. The only significant change in circumstances is that this application is retrospective, which is not a reason in itself to grant consent. It is therefore concluded that the harm to the openness of the Green Belt significantly outweighs the personal circumstances put forward as justification for a departure from the development plan and as such planning permission should be refused.

## 7.0 **CONCLUSION**

7.1 The applicant has failed to advance any special or personal circumstances to support the application, which outweigh the Development Plan policies relating to Green Belt. With this in mind the proposal is considered to be inappropriate development in the Green Belt and therefore contrary to both national and local planning policy. Given the site is located in open countryside as well the development will appear as a prominent intrusion in the landscape and as a stand alone proposal it is difficult to find any justification to support its location here except that the site has been acquired by the applicant.

7.2 The site is located in the Green Belt and is considered to be strategically important in terms of the Green Belt as it is situated in open countryside. Therefore, allowing the site to become a permanent Gypsy and Travellers site would create an undesirable precedent which would encourage others to follow this example. The NPPF and DCLG guidance is clear on this that it should be done through the development plan process rather than through the planning application process.

7.3 The site is not in a sustainable location being situated in an isolated countryside area with poor access to amenities, such as shops, schools and medical facilities. The location of the site means that the majority of trips emanating to and from the site will be by motor vehicle as the distance to amenities means that walking is not an attractive alternative.

7.4 Balancing the main planning considerations, as a matter of judgement the clear harm identified to the countryside and in particular the green belt, contrary to Shropshire Core Strategy Policies CS5, CS6 and CS12 and Policies MD6 and

MD7a of the SAMDev Plan would not be outweighed by the general and personal needs of the applicant and her family to an extent sufficient to justify the permanent permission sought. Refusal is therefore recommended.

7.5 Finally, given the applicant and their family have resided on this site for 9 years, if the recommendation to Refuse planning permission is supported, then it will also be expedient to serve an enforcement notice requiring the use of the site to cease. If an authorised use continues on a site for a period of 10 years without an enforcement notice being served then the use becomes immune from enforcement action and the applicant can then apply for a Certificate of Lawfulness. Given that any refusal of planning permission is likely to be appealed to the Planning Inspectorate it is imperative that an enforcement notice is served to stop the clock in relation to the use becoming lawful.

## 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 Policy for Traveller Sites

Shropshire Core Strategy and SAMDev Plan Policies:  
CS1 - Strategic Approach  
CS5 - Countryside and Greenbelt  
CS6 - Sustainable Design and Development Principles

CS12 - Gypsies and Traveller Provision  
CS17 - Environmental Networks  
CS18 - Sustainable Water Management  
MD1 - Scale and Distribution of Development  
MD2 - Sustainable Design  
MD6 - Green Belt & Safeguarded Land  
MD7A - Managing Housing Development in the Countryside

Settlement: S3 – Bridgnorth Area

RELEVANT PLANNING HISTORY:

10/03292/FUL Formation of gypsy caravan site to accommodate 3 caravans installation of septic tank drainage system INV

11/01163/FUL Formation of gypsy caravan site to accommodate 3 caravans; installation of septic tank drainage system REFUSE 21st June 2011

11/04897/FUL Change of use of land to private gypsy and traveller caravan site REFUSE 18th July 2012

Appeal

12/01996/REF Change of use of land to private gypsy and traveller caravan site DISMIS 27th November 2014. Recovered by Secretary of State

11. Additional Information

View details online: <https://pa.shropshire.gov.uk/online-applications/simpleSearchResults.do?action=firstPage>

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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Planning, Design and Access Statement
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Cabinet Member (Portfolio Holder)
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Councillor Gwilym Butler
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Local Member
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Cllr Tina Woodward
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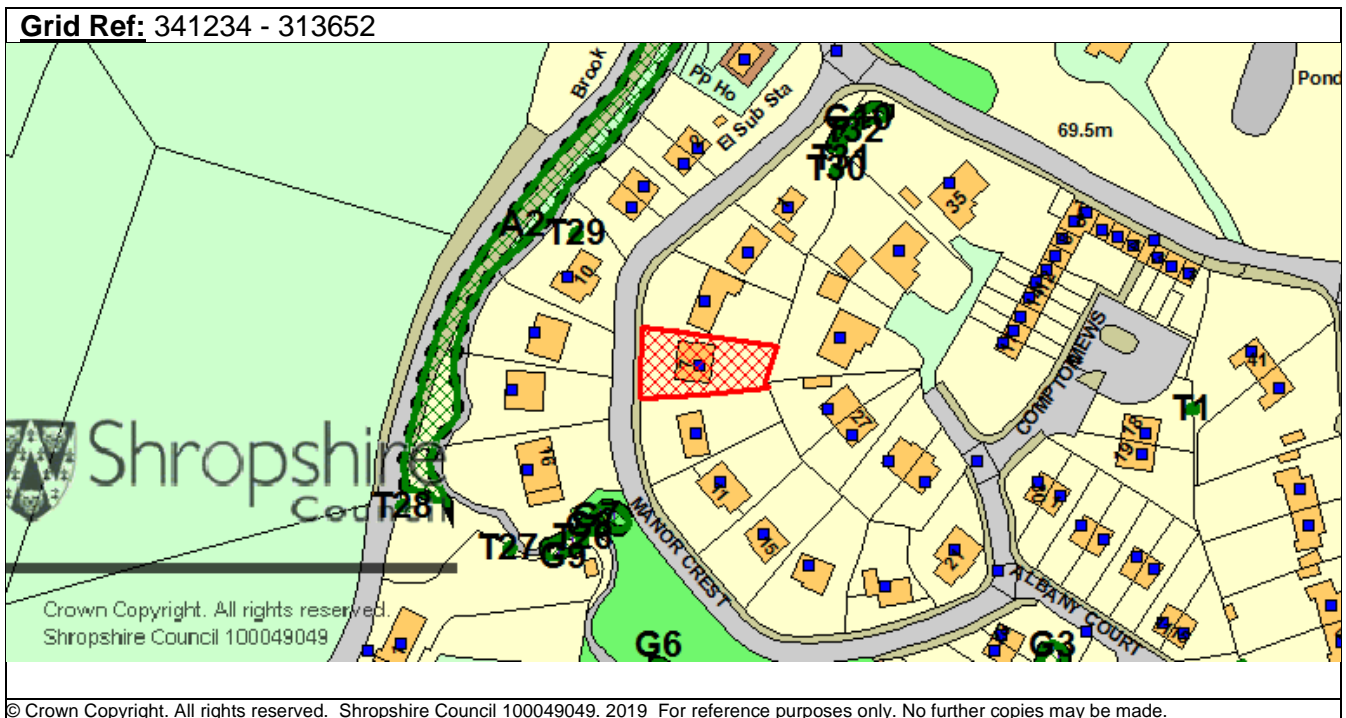
<u>Committee and date</u>
Southern Planning Committee
20 October 2020

## 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><u>Application Number:</u></b> 20/03129/FUL	<b><u>Parish:</u></b>	Ford
<b><u>Proposal:</u></b> Erection of single storey extensions and covered areas to side and rear (following demolition of existing outbuildings and conservatory); construction of single storey inglenook fireplace with flue to side elevation; conversion of garage to habitable room to include elevational amendments; and re-modelling of driveway. (amended description)		
<b><u>Site Address:</u></b> 7 Manor Crest Ford Shrewsbury SY5 9NZ		
<b><u>Applicant:</u></b> Mr Alastair Dunning		
<b><u>Case Officer:</u></b> Alison Tichford	<b><u>email :</u></b> planning.southern@shropshire.gov.uk	



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

## REPORT

### 1.0 THE PROPOSAL

1.1 This application relates to:

- the demolition of an existing single storey conservatory extension and its replacement with a new sun room
- the construction of a single storey inglenook fireplace with flue to the side elevation
- the removal of two small outbuildings to the north elevation and their replacement with a lean to roofed area supported by oak timber posts.
- the conversion of the garage to a habitable room
- alterations to driveway

### 2.0 SITE LOCATION/DESCRIPTION

2.1 The existing detached dwelling is sited on a late C20 residential estate road in Ford Conservation Area. There are similar detached dwellings to the north and south and opposite on the other side of the estate road to the west. The rear garden adjoins the rear gardens of a semi-detached dwelling and a further detached dwelling of similar age to the east.

2.2 The dwelling is set back appx.8.5m from the road at a higher ground level, and has a spacious and attractive appearance to the front with a generous driveway and lawn area.

2.3. The existing conservatory to the rear (for part demolition under this application) was permitted in 1994, and rooflights to a loft space conversion were permitted on appeal in 2009.

### 3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

3.1 The applicant is a member of staff reporting to the Planning Services Manager the Scheme of Delegation, as set out in Part 8 of the Shropshire Council Constitution, requires consideration by Planning Committee.

### 4.0 COMMUNITY REPRESENTATIONS

#### 4.1 Consultee Response

4.1.1 **Ford Parish Council** – No comments received.

4.1.2 **SC Drainage** consultees have provided comments indicating that they have no objections to the scheme

4.1.3 **SC Archaeology** were consulted but had no comments to make in regard to this application.

4.1.4 **SC Conservation** consultees have provided comments indicating that they have no concerns on heritage grounds provided that all external materials are a good

match to the existing particularly to the front elevation. They do not require a pre commencement condition but are satisfied with a standard condition requiring materials to match. They note that a tall flue is proposed and require this to have a recessive matte black finish, but otherwise do not consider that it should be unduly visually dominant.

#### **4.2 Public Response**

**4.2.1** A site notice has been displayed as required, and an advertisement placed in “The Shropshire Star” and no responses have been received as a result of this publicity.

**4.2.2** 7 neighbouring properties have been notified as regards this application and no comments have been received.

### **5.0 THE MAIN ISSUES**

#### **Principle of development Design, Scale and Character Impact on Residential Amenity**

### **6.0 OFFICER APPRAISAL**

#### **6.1 Principle of development**

**6.1.1** Within the development plan policy, there is a general presumption in favour of householder development provided that the scale, siting and design do not overwhelm or dominate the appearance of the original dwelling or that the extension does not have any detrimental impact on residential amenities. The proposal is considered to comply.

The proposed site is situated within the Shrewsbury Conservation Area. The proposal therefore has to be considered against Shropshire Council policies CS6 and CS17, SAMDev Policies MD2 and 13, and with national policies and guidance including chapter 16 of the National Planning Policy Framework (NPPF)(revised 2018). Special regard has to be given to preserving or enhancing the character or appearance of the Conservation area as required by section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

#### **6.2 Design, Scale and Character**

**6.2.1** Policy CS6 ‘Sustainable Design and Development Principles’ of the Shropshire Core Strategy requires development to protect and conserve the built environment and be appropriate in scale, density, pattern and design taking into account the local context and character. The development should also ensure sustainable design and construction principles are incorporated within the new development. In addition SAMDev Policy MD2 Sustainable Design builds on Policy CS6, providing additional detail on how sustainable design will be achieved. To respond effectively to local character and distinctiveness, development should not have a detrimental impact on existing amenity value but respond appropriately to the context in which it is set.

Policy CS17 and SAMDev Policy MD13 require that all development protects and enhances the diversity, high quality and local character of Shropshire's natural, built and historic environment, and does not affect the visual and heritage value and functions of these assets and their immediate surroundings.

- 6.2.2** The existing conservatory dates from the 1990s and is at the end of its life. The new sunroom will be of brick construction with a plain clay tile roof to match the existing dwelling and will be an improvement to the existing. The new sunroom will extend past the side wall of the dwelling but will be set behind the new flue to this elevation and will not be prominent.
- 6.2.3** The inglenook fireplace with flue will require a small brick projection across a small section of the north elevation, which will be visible from the front elevation, but not prominent behind an existing 1.8m wooden fence which separates the front from rear garden.
- 6.2.4** The removal of two small outbuildings to the north elevation and their replacement with a lean-to plain clay tile roof supported by oak posts will make a positive contribution to the appearance of the property. The roof will be visible above the existing 1.8m fence but is set well back from the road and will have no significant impact on the visual appearance of the property.
- 6.2.5** The conversion of the garage will entail a new upvc window to the front elevation which will match the existing windows in style with brickwork infill below to match the existing dwelling.
- 6.2.6** The access to the property remains unaltered, but the driveway is to be extended a little across a currently lawn area. Sufficient grass lawn will remain to the north and the front elevation to provide an attractive and appropriate frontage within the street scene. The top of the driveway is to be lowered by 70cm to enable a flatter surface for safer access to the property. A 0.65m gabion wall will be installed in proximity to the dwelling to support access paths to the front door. The tarmac surface will be replaced with a permeable stone gravel and new pathways and steps will also have a stone effect finish. which will make a positive contribution to the Conservation Area.
- 6.2.7** Overall, the proposed scale, design and appearance of the extensions and alterations will respect the existing character of the dwelling and will not result in any detrimental visual impact in the local streetscene or Conservation Area.
- 6.3 Impact on Residential Amenity**
- 6.3.1** Policy CS6 'Sustainable Design and Development Principles' of the Shropshire Core Strategy indicates that development should safeguard the residential and local amenity.
- 6.3.2** No objections to the proposed works have been received from neighbouring properties.
- 6.3.3** The proposed sunroom extension is shallower in depth than the existing

extension and offers reduced glazing. While the north wall is a little closer to no. 5 it remains appx. 1m from the boundary, is single storey with a low eaves height and pitched roof away from the boundary and will not have any significant impact in terms of shadowing, light or outlook for no.5, which itself has a conservatory immediately adjacent the boundary, already screened by existing boundary treatments.

**6.3.4** There is no additional glazing to the north elevation, the new window to the front west elevation faces onto the road and then garaging to the dwelling opposite, and there is no increased potential for overlooking of any neighbouring properties or public areas. Any activity arising from the new potting area will replace existing use of the sheds in this location and will not have a significant impact on the amenity of no.5 to the north which has no glazing to its south wall. The properties are separated by an existing 1.8m fence and there remains an appx. 0.8m to 1.2m gap to the boundary from the new roofed area.

**6.3.5** The new fireplace and flue will be used for normal residential purposes and there will be no significant impact on the amenity of neighbouring properties.

**6.3.6** The reduced incline to the driveway may provide a safer access and parking area, and with boundary areas to the north and south remaining at existing levels, will otherwise have no impact on the amenity of neighbouring properties.

## **7.0 CONCLUSION**

**7.1** The proposed scale, design and appearance of the extensions are appropriate within the residential space available, will respect the existing character of the dwelling and will appropriately preserve the character and appearance of the Conservation Area. Neither will there be any detrimental impact on neighbouring properties. The proposed development is considered to accord with the requirements of the adopted Core Strategy Policies 6 & 17, and SAMDev Policies MD2 and 13.

Recommend permission is granted with standard conditions as to materials and a specific condition relating to the external appearance of the proposed flue.

## **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 three months 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 of application for which costs can also be awarded.

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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.

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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 – 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

## Shropshire Core Strategy and SAMDev Plan Policies:

CS6 - Sustainable Design and Development Principles

CS17 - Environmental Networks

MD2 - Sustainable Design

MD13 - Historic Environment

RELEVANT PLANNING HISTORY:

20/03129/FUL Erection of single storey extensions and covered areas to side and rear (following demolition of existing outbuildings and conservatory); construction of single storey inglenook fireplace with flue to side elevation; conversion of garage to habitable room to include elevational amendments; and re-modelling of driveway. (amended description) PDE SA/86/0418 Erection of 23 no. detached dwelling houses 7 No. detached bungalows with integral garages, 22 No. semi-detached houses and 6 no. semi-detached bungalows with separate garages and the formation of new vehicular and pedestrian accesses. (Ref. Outline application No. S84/722/580/77 dated 21/3/85) REFUSE 9th May 1986

SA/84/0722 Residential development with the formation of new vehicular and pedestrian accesses (7.40 acres) (Renewal of Outline S81/332/580/77 dated 28/7/81). PERCON 21st March 1985

SA/81/0332 Residential development with the formation of new vehicular and pedestrian accesses (7.40 acres) (Renewal of Outline 77/990/580/77 dated 20/6/78). PERCON 28th July 1981

SA/77/0990 Erection of dwellings and formation of vehicular and pedestrian accesses. PERCON 20th June 1978

SA/87/0716 Layout and landscaping of estate, construction of roads and sewers and erection of dwelling houses on Plots 3 and 4. (Ref. Outline application No. S84/722/580/77 dated 21st March 1985). PERCON 18th February 1988

SA/89/0422 Residential development comprising of 10 no. 2 bed cottages, 8 no. 3 bed cottages with associated garages. PERCON 14th March 1990

SA/94/1282 Erection of a conservatory. PERCON 6th January 1995

SA/91/0662 Erection of 2 no detached cottages with garages and construction of new vehicular and pedestrian accesses. PERCON 31st July 1991

SA/09/0193/F Installation of 3 rooflights to rear elevation and 2 rooflights to front elevation in association with conversion of loft space to an additional bedroom (retrospective) REFUSE 15th April 2009

Appeal

86/00831/REF Erection of 23 no. detached dwelling houses 7 No. detached bungalows with integral garages, 22 No. semi-detached houses and 6 no. semi-detached bungalows with separate garages and the formation of new vehicular and pedestrian accesses. (Ref. Outline application No. S84/722/580/77 dated 21/3/85) DISMIS 9th March 1987

Appeal

09/01047/REF Installation of 3 rooflights to rear elevation and 2 rooflights to front elevation in association with conversion of loft space to an additional bedroom (retrospective) ALLOW 25th January 2010

11. Additional Information

View details online: <https://pa.shropshire.gov.uk/online-applications/simpleSearchResults.do?action=firstPage>

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) Councillor Gwilym Butler
Local Member Cllr Roger Evans
Appendices APPENDIX 1 - Conditions

**APPENDIX 1**

**Conditions**

**STANDARD CONDITION(S)**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 91(1) of the Town and Country Planning Act, 1990 (As amended).

2. The development shall be carried out strictly in accordance with the approved plans and drawings

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

3. The external materials shall match in colour, form and texture those of the existing building.

Reason: To ensure that the works harmonise with the existing development.

4. The flue approved by this permission shall be fitted as indicated on the approved plans

and will be matt black in colour

Reason: To ensure it is appropriate to the local character and streetscene and has no visual dominance within the Conservation Area.

### **Informatives**

1. In arriving at this decision Shropshire 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 38.

2. A sustainable drainage scheme for the disposal of surface water from the development should be designed and constructed in accordance with the Councils Surface Water Management: Interim Guidance for Developers document. It is available on the councils website at:<https://www.shropshire.gov.uk/media/5929/surface-water-management-interim-guidance-fordevelopers.pdf>

The provisions of the Planning Practice Guidance, Flood Risk and Coastal Change, should be followed.

Preference should be given to drainage measures which allow rainwater to soakaway naturally. Soakaways should be designed in accordance with BRE Digest 365. Connection of new surface water drainage systems to existing drains / sewers should only be undertaken as a last resort, if it can be demonstrated that infiltration techniques are not achievable.

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**SCHEDULE OF APPEALS AS AT COMMITTEE 20 October 2020**

<b>LPA reference</b>	19/04606/FUL
<b>Appeal against</b>	Non Determination
<b>Committee or Del. Decision</b>	n/a
<b>Appellant</b>	Mrs M J Kemp
<b>Proposal</b>	Erection of 2no self-build dwellings, garages and associated infrastructure
<b>Location</b>	Proposed Residential Development Land West Of Bigwood Farmhouse Snowdon Road Beckbury Shifnal
<b>Date of appeal</b>	15/06/2020
<b>Appeal method</b>	Written representations
<b>Date site visit</b>	11/08/2020
<b>Date of appeal decision</b>	14/09/20
<b>Costs awarded</b>	
<b>Appeal decision</b>	Dismissed

<b>LPA reference</b>	19/04986/FUL
<b>Appeal against</b>	Refusal
<b>Committee or Del. Decision</b>	Delegated
<b>Appellant</b>	Mr David Ruggles
<b>Proposal</b>	Demolition of 2No. agricultural buildings and erection of 3No. single storey detached dwellings; formation of access and parking, change of use agricultural access to domestic vehicular access and change of use of agricultural land to domestic curtilage (part-retrospective)
<b>Location</b>	Proposed Residential Development Hunger Hill Farm Sheriffhales
<b>Date of appeal</b>	15.06.20
<b>Appeal method</b>	Written representations
<b>Date site visit</b>	11.08.20
<b>Date of appeal decision</b>	14.09.20
<b>Costs awarded</b>	
<b>Appeal decision</b>	Dismissed

<b>LPA reference</b>	19/03538/OUT
<b>Appeal against</b>	Refusal
<b>Committee or Del. Decision</b>	Delegated
<b>Appellant</b>	Mr G Smith
<b>Proposal</b>	Outline application (access, scale for consideration) for the erection of 3 detached houses and garages; creation of new vehicular access and installation of private treatment plant
<b>Location</b>	Proposed Dwelling North West Of Lower House Corfton Shropshire
<b>Date of appeal</b>	17/06/2020
<b>Appeal method</b>	Written representation
<b>Date site visit</b>	25/08/2020
<b>Date of appeal decision</b>	15/09/2020
<b>Costs awarded</b>	Refused
<b>Appeal decision</b>	Dismissed

<b>LPA reference</b>	18/03863/OUT
<b>Appeal against</b>	Refusal
<b>Committee or Del. Decision</b>	Committee
<b>Appellant</b>	Mr R Burgoyne
<b>Proposal</b>	Outline application for the erection of detached cottage and garage to include means of access
<b>Location</b>	Proposed Dwelling To The East Of Corfton Shropshire
<b>Date of appeal</b>	29.01.20
<b>Appeal method</b>	Written representations
<b>Date site visit</b>	25.08.20
<b>Date of appeal decision</b>	15.09.20
<b>Costs awarded</b>	Refused
<b>Appeal decision</b>	Dismissed

<b>LPA reference</b>	18/04261/OUT
<b>Appeal against</b>	Refusal
<b>Committee or Del. Decision</b>	Committee
<b>Appellant</b>	Mr A Lawton
<b>Proposal</b>	Erection of dwelling (outline application to include means of access, but with matters of appearance, landscaping, layout and scale reserved)
<b>Location</b>	Land To The East Of Pennerley House, Pennerley, Shrewsbury Shropshire
<b>Date of appeal</b>	17.06.2020
<b>Appeal method</b>	Written representations
<b>Date site visit</b>	25.08.2020
<b>Date of appeal decision</b>	15.09.2020
<b>Costs awarded</b>	N
<b>Appeal decision</b>	Dismissed

<b>LPA reference</b>	20/00899/CPL
<b>Appeal against</b>	Refusal
<b>Committee or Del. Decision</b>	Delegated
<b>Appellant</b>	Mr Phil Broome
<b>Proposal</b>	Application for a Lawful Development Certificate for the proposed erection of single storey leisure area
<b>Location</b>	The Birches Cross Road Albrighton WV7 3BJ
<b>Date of appeal</b>	24.06.2020
<b>Appeal method</b>	Written representations
<b>Date site visit</b>	No site visit necessary
<b>Date of appeal decision</b>	02.10.2020
<b>Costs awarded</b>	N
<b>Appeal decision</b>	Dismissed

<b>LPA reference</b>	19/04951/PMBPA
<b>Appeal against</b>	Refusal
<b>Committee or Del. Decision</b>	Delegated
<b>Appellant</b>	Mr Brindley
<b>Proposal</b>	Change of use from agricultural to two residential units
<b>Location</b>	Barn At Roundabout Farm Roughton Bridgnorth
<b>Date of appeal</b>	15.06.2020
<b>Appeal method</b>	Written representation
<b>Date site visit</b>	11.08.2020
<b>Date of appeal decision</b>	05.10.2020
<b>Costs awarded</b>	
<b>Appeal decision</b>	Allowed

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## Appeal Decision

Site visit made on 11 August 2020

**by K Savage BA MPlan MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 14 September 2020**

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**Appeal Ref: APP/L3245/W/20/3250255**

**Bigwood Farm, Snowdon Road, Beckbury, Shifnal TF11 9DG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Mrs MJ Kemp against Shropshire Council.
  - The application Ref 19/04606/FUL, is dated 15 October 2019.
  - The development proposed is residential development of 2 self-build dwellings, garages and associated infrastructure.
- 

### Decision

1. The appeal is dismissed.

### Background and Main Issues

2. The appeal arises from the failure of the Council to determine the application within the prescribed period. As such, no formal reasons for refusal exist, but I have based my main issues on the reasons set out by the Council in its statement of case.
3. The appeal site is located within an area of Green Belt. Therefore, the main issues are:
  - Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and local development plan policies;
  - The effect of the proposal on the openness of the Green Belt and the purposes of including land within it;
  - The effect on the character and appearance of the area;
  - If the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

### Reasons

*Whether inappropriate development*

4. The Government attaches great importance to Green Belts. Paragraph 145 of the Framework states that the construction of new buildings within the Green Belt is inappropriate development, but lists certain forms of development which

- are not regarded as inappropriate, of which criterion e) limited infilling in villages is the only one potentially applicable to the appeal scheme.
5. Policy CS5 of the Shropshire Local Development Framework Adopted Core Strategy (March 2011) (the CS) seeks to control development in the Green Belt in line with government guidance. Though this policy refers to the now withdrawn PPG2 and not the Framework, both set out the general presumption against inappropriate development in the Green Belt and therefore I find Policy CS5 is consistent with the Framework and attracts significant weight. Policy MD6 of the Shropshire Council Site Allocations and Management of Development (SAMDev) Plan (December 2015) further requires development to demonstrate that it does not conflict with the purposes of the Green Belt and is also consistent with the Framework in this respect.
  6. The appeal site is located on Snowdon Lane to the east of Beckbury village. The site comprises a paddock area located between a dwelling, Big Wood Farmhouse, and a cluster of agricultural buildings. Another dwelling, The Croft, stands beyond these in the direction of Beckbury, after which there is a short gap, then two further dwellings and a large, open playing field. This is adjacent to the primary school which lies within the main built-up area of the village, although the Council indicates the inset boundary of the Green Belt lies further to the north-west and does not include the school or several properties on Badger Lane.
  7. The Council's putative reason for refusal states that the proposal would not constitute limited infilling in a village as the site is location outside the main built envelop of the village and is located someway outside the boundary of the inset area.
  8. The proposal would amount to infilling in so far as it would largely fill the existing gap between the farmhouse and the agricultural buildings, and would form part of a short run of development to The Croft. A proposal for two dwellings would also be limited in scale. Therefore, the determinative question is whether the proposal would fall within a village.
  9. The Framework does not define or qualify 'village' for the purposes of applying Green Belt policy or guidance. The Council refers to the site falling outside the inset boundary of the village, but case law has established that whilst a village boundary as defined in a Local Plan is a relevant consideration, it is not necessarily determinative, particularly where the boundary as defined does not accord with the Inspector's assessment of the extent of the village on the ground.
  10. I saw the built-up area of Beckbury to comprise compact linear development along Badger Lane and Caynton Road. The site is not far from the continuous built-up area of the village along Badger Lane and there is development between this and the site. However, it is interspersed with tangible tracts of open space, including the playing fields, with expansive open countryside to the north and south which serve to physically detach it from the village. Accordingly, whilst I find that the extent of the village on the ground includes some properties falling within the Green Belt, it does not include the development along Snowdon Lane or the appeal site.
  11. Therefore, taking these considerations together, I find that the proposal would not amount to limited infilling within a village within the meaning of criterion e)

of Paragraph 145 of the Framework, and in conflict with Policies CS5 and MD6. Consequently, the proposal would constitute inappropriate development within the Green Belt.

*Effect on Openness and Green Belt Purposes*

12. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Openness in terms of the Green Belt has a spatial aspect as well as a visual aspect.
13. The proposal would result in development of two dwellings and two detached garages on land which is presently open and free of any built form. This would lead to an inevitable and demonstrable loss of openness, in both visual and spatial terms, and any gaps maintained between the buildings would not be comparable to the existing situation.
14. With respect to the purposes of the Green Belt, given my findings above that the proposal would not amount to infilling within a village, the proposal would lead to encroachment of development into the countryside and would impact on the related Green Belt purpose.

*Effect on character and appearance*

15. The Council does not take issue with the design of the proposed dwellings, nor do I given their scale, design and materials reflect a rural vernacular. However, the Council refers to the loss of the existing gap and creation of a continuous line of development as harmful to the character and appearance of the countryside. The flat, expansive topography of the surroundings means that the existing buildings along Snowdon Lane are visible across the fields and prominent in the landscape, but the gaps between them, including the appeal site, reduce their cumulative visual impact. The proposed dwellings would infill one of these gaps, creating a longer stretch of development which would be more prominent in the landscape and would detract from the open, rural surroundings and harm the character and appearance of the countryside. I accept this effect would be localised and the harm arising would be limited, but it would nonetheless conflict with Policies CS5, CS6 and CS17 of the CS and Policies MD7a and MD12 of the SAMDev which together seek to maintain and enhance countryside and landscape character and the natural environment. There would also be conflict with the Framework's recognition of the intrinsic character and beauty of the countryside.

*Other Considerations*

*Location for housing*

16. The appellant refers to the Council's Policy CS5 being inconsistent with the Framework as it seeks to apply a blanket protection of the countryside for its own sake, citing recent case law<sup>1</sup> in support of her position. However, I agree with the Council, and the Inspector in a decision in Shrewsbury<sup>2</sup> referred to me by the appellant, that Policy CS5 is supportive of certain forms of development in the countryside, and in doing so is consistent with the balanced approach of

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<sup>1</sup> Borough of Telford And Wrekin v Secretary of State for Communities and Local Government [2016] EWHC 3073 (Admin)

<sup>2</sup> Appeal Ref: APP/L3245/W/18/3206619

the Framework to development in the countryside. Accordingly, I do not consider the policy out-of-date and the presumption in favour of sustainable development at Paragraph 11 of the Framework is not engaged for this reason.

17. In view of the harm I have identified above, the proposal would not be an 'appropriate site' for development under Policy CS5, and it would not constitute any of the other forms of development supported in the countryside by Policy CS5 or Policy MD7a of the SAMDev and so would conflict with those policies. The appellant also refers to Policy MD3 of the SAMDev supporting residential development on windfall sites both within and outside of settlement development boundaries. However, this is subject to compliance with other policies, including CS5 and MD7a, and therefore the proposal would not enjoy support under this policy.
18. I have had regard to the Hierarchy of Settlements document (November 2018) referred to by the appellant, and to her disagreement with the Council's scoring of services in Beckbury. The Council indicates this document forms part of the evidence base for the on-going local plan review and the description of Beckbury as a 'recognised named settlement' has no status as part of the development plan, and is not an indication of a future elevated status for Beckbury in the settlement hierarchy. Indeed, the Council has published its Pre-Submission Draft Local Plan 2016 to 2038 in July 2020, and though still at an early stage in its preparation, it does not list Beckbury as a Community Hub or Cluster.
19. Arguments over scoring aside, I recognise that the village has a number of services, including the school, a local shop, a church, a pub/restaurant, village hall, play areas, a playing field and a bus service to Telford, which future occupants could avail of. The site would be located sufficiently close for occupants to access these services on foot or bicycle, reducing the need to use the private car, though the scale of the proposal means this the environmental benefits arising would be small. Additional custom from new residents would provide some economic benefit, as would the construction of the dwellings, but these benefits would be limited in view of the scale of the proposal.

#### *Self-build housing*

20. I have paid close attention to the evidence put to me with respect to the dwellings being self-build plots, including the provisions of the Self Build and Custom Housebuilding Act 2015, and recent appeal decisions<sup>3</sup> relating to this issue. In short, I concur with the Inspector's findings in the decisions in Shropshire that the development plan is supportive of self-build housing where it accords with relevant policies for the supply of housing generally, and that the self-build legislation is not carte blanche for development in otherwise unsuitable locations.
21. In this case, the Council indicates that it has met its duty with respect to granting sufficient permissions for self-build plots, and I have no firm evidence to contradict this position. Moreover, the evidence before me does not indicate that the Council is suffering a shortfall in its overall housing supply. However, I recognise that the proposal would add two self-build dwellings to the local

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<sup>3</sup> Appeal Refs: APP/L3245/W/19/3224985 and APP/L3245/W/19/3224318 (both 20 June 2019) and APP/G2435/W/18/3214451 & APP/G2435/Q/18/3214498 (both 25 June 2019)

housing stock, but given the small scale of the proposal, the benefit of this would be limited.

*Loss of best and most versatile agricultural land*

22. The Council indicates the site falls within an area of Grade 2 best and most versatile (BMV) agricultural land. The extent of land to be lost would be small in this case, and I have no evidence to suggest its loss would result in an agricultural enterprise becoming unviable. Therefore, the very limited economic harm arising from its loss would weigh only modestly against the proposal.

**Planning Balance**

23. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. In addition, there are adverse impacts on openness, on the Green Belt purpose of safeguarding the countryside from encroachment and on the character and appearance of the area. Paragraph 144 of the Framework indicates that substantial weight should be given to the harm to the Green Belt, and very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations.
24. As explained, I give limited weight to each of the material considerations in support of the proposal and conclude that, taken together, they do not *clearly* outweigh the harm the scheme would cause. Consequently, there are not the very special circumstances necessary to justify inappropriate development in the Green Belt.
25. Paragraph 11(d)(i) states that the presumption in favour of sustainable development does not apply where application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Land designated as Green Belt is one such area or asset, as made clear by Footnote 6 of the Framework. In view of the harm to the Green Belt that I have identified, the presumption in favour of development is not engaged in this case.

**Conclusion**

26. For the reasons given, the proposal would result in conflict with the development plan, taken as a whole, which would not be outweighed by the other material considerations, including the Framework. The appeal is therefore dismissed.

*K Savage*

INSPECTOR

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## Appeal Decision

Site visit made on 11 August 2020

**by K Savage BA MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 September 2020

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**Appeal Ref: APP/L3245/W/20/3251782**

**Hunger Hill Farm, Kettlemore Lane End to Common Farm, Sheriffhales TF11 8SA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr David Ruggles against the decision of Shropshire Council.
  - The application Ref 19/04986/FUL, dated 8 November 2019, was refused by notice dated 27 March 2020.
  - The development proposed was originally described as 'the erection of 3 single storey detached dwellings'.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The description of development above is that given on the application form, though I have omitted the words 'part-retrospective' as this does not describe and act of development. There is dispute between the parties as to the description, which was amended by the Council during the course of the application to add reference to demolition of existing agricultural buildings, formation of access and parking, and change of use of an agricultural access and land to a domestic vehicular access and curtilage. Correspondence on file indicates that the appellant's agent agreed to the change in description, however, in view of the objections maintained by the appellant, I have proceeded on the basis of the original description.
3. I saw on site that partly built structures exist in positions similar to those proposed, but for the avoidance of doubt, I have determined the appeal on the basis of the submitted plans.

### Background and Main Issues

4. The appeal site is located within the countryside outside of the village of Sheriffhales, and comprises a farmyard with a number of agricultural barns used for storage and, at the time of my visit, three partially built structures in the position of a former farm shop building and barn previously in situ on the site. A dwelling stands opposite the site, whilst to the north is a modern agricultural shed and a caravan/camping site which extends to the field on the opposite side of Kettlemore Lane.
5. I have had regard to the evidence before me relating to the recent planning history, which includes decisions by the Council that its prior approval was not required in respect of two applications to respectively convert the former shop

and barn to residential uses under permitted development, and subsequent works on site.

6. The appellant disputes that the previous buildings have been demolished, but accepts that neither building was structurally sound and works undertaken included replacement blockwork walls and supporting beams. This was apparent to me on site and most of the structures which I saw appeared to be new construction, with the structures which have replaced the former barn limited to just walls and lacking roofs, floors and windows. The former shop building appeared to have newly constructed floors, walls and roof structures, and both differ noticeably in appearance from photographs submitted by the Council from May 2018 which show the site before works commenced.
7. It is not my role in this appeal to judge the lawfulness or otherwise of works undertaken. However, the evidence before me, in particular the appellant's concession that the works required exceed the parameters of a conversion under the relevant classes of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPD0); the agreement of the appellant's agent to the inclusion of demolition of existing buildings in the description of development; and the extent of works I observed on site, mean I am not persuaded that the proposals would constitute conversion of existing buildings, but would amount to the construction of new dwellings on the site.
8. With this background, I consider the main issues are i) whether the proposal would represent a suitable location for housing, having regard to the strategic and accessibility requirements of the development plan for the area and ii) its effect on the character and appearance of the area.

## **Reasons**

### *Location for housing*

9. The site lies outside of any defined settlement in the development plan and within the countryside for planning purposes. Policy CS5 of the Shropshire Adopted Core Strategy (March 2011) (the CS) seeks to strictly control development in the countryside with the exception of specific types of development proposals on appropriate sites which maintain and enhance countryside vitality and character which will be permitted where they improve the sustainability of rural communities.
10. Policy MD7a of the Shropshire Council Site Allocations and Management of Development (SAMDev) Plan (December 2015) sets out that new market housing will be strictly controlled outside of Market Towns, Key Centres and Community Hubs and Community Clusters. The site is not located in any of these settlements, the dwellings are not promoted as rural exception sites and none of the types of development supported in the countryside under Policies CS5 and MD7a would be applicable to the proposal. Therefore, there would be conflict with the spatial strategy of the development plan in this regard.

The physical location of the site opposite an existing dwelling and the campsite means the proposal would not amount to 'isolated homes' in the countryside for the purposes of the National Planning Policy Framework (the Framework), and none of the exceptions at Paragraph 79 are therefore required to be met. The appellant nonetheless argues that Policies CS5 and MD7a are more restrictive than Paragraph 79, as they only support conversions of heritage



assets to market housing, and so are inconsistent with the Framework. However, they form part of the Council's overall approach to sustainable development which directs development to the hierarchy of rural settlements. As such, I find the policies are consistent with the approach of the Framework to locating housing where it will enhance or maintain the vitality of rural communities. As the development plan is the starting point for consideration of the proposal, the conflict I have identified weighs significantly against it.

11. The site is located around 0.6 miles east of Sheriffhales, which has few facilities, limited to a primary school, village hall and church which are more than 1 mile from the site. These would be reached along a narrow, unlit rural lane which is unlikely to encourage occupants to walk or cycle. Whilst the appellant advances the potential for cycle journeys to other settlements of between 10 and 25 minutes duration, such journeys are unlikely to be undertaken on a regular basis, or at night or during inclement weather, and residents are therefore likely to rely heavily on the private car to access settlements beyond Sheriffhales which provide more facilities, services and employment opportunities.
12. I acknowledge that the Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and I have had regard to the appeal decision in Hart district referred to by the appellant. However, I do not have full details of this case, such as the number or type of services the Inspector found would be within walking distance, and therefore it is not clear that this is a comparable situation, which limits the weight I afford it. In any case, judgement in these respects will depend on the particular circumstances of the case and I have considered this appeal on its own merits.
13. The proposal would not encourage walking or cycling and I therefore find that the dwellings would not be located in an accessible location and would conflict with the development plan which indicates that the proposed dwellings should be directed to more sustainable locations. There would also be conflict with Paragraph 102 of the Framework which requires development proposals to take account of opportunities to promote walking, cycling and public transport.
14. Taking these considerations together, I find that the proposal would not represent a suitable location for housing, and would conflict with Policies CS5 of the CS and MD7a of the SAMDev. It would also conflict with the aims of the Framework to locate housing where it will enhance or maintain the vitality of rural communities.

#### *Character and appearance*

15. The proposed dwellings would largely reflect the scale and shape of the buildings which previously stood on site, with Plots 1 and 2 sitting within the envelope of the former barn, and Plot 3 within the footprint of the former shop. Plots 1 and 2 would resemble modern barns in shape having a broad footprint and low profile with a shallow pitched roof and Plot 3 a low, elongated cottage. It is indicated that the walls to all three would be finished in a combination of off-white render and cedar cladding, with timber windows and powder coated steel roof to Plots 1 and 2, and plain clay roof tiles to Plot 3.
16. The dwellings would match the scale of the previous buildings, and therefore would not have a greater impact in the landscape in terms of massing or

visibility. The form of the buildings would replicate the designs submitted under the prior approval applications, though these were necessarily influenced by the fact that the buildings were being converted rather than replaced. I recognise that the dwelling opposite is seen by the Council as an example of a vernacular design appropriate to the rural area. However, there are also a number of modern agricultural buildings within and adjacent to the wider appeal site, as well as areas of external storage and the camping and caravan site. Despite the somewhat industrial appearance of Plots 1 and 2, their general 'barn' form would not appear out of place within the varied rural development of the immediate surroundings, and would reflect typical agricultural buildings in longer views. Plot 3 would have a more traditional shape and location with a higher pitched roof and position close to the lane. It would appear relatively modest in scale compared to the surrounding development and whilst the external finishes would give it a more contemporary appearance, it would not appear discordant within its surroundings.

17. I recognise that the creation of dwellings would bring with it paved driveways and parking areas, landscaped gardens and other domestic paraphernalia within the grounds, as well as domestic use of an agricultural access. In this case, I saw that dwellings would be set at a lower ground level to the lane, and the gardens would be mainly to the rear of the dwellings. I also saw that boundary trees and hedging would filter views into the site which would prevent the site becoming 'urbanised'. As such, I find that the access, driveways and other external features would not add harmfully to the presence or impact of the dwellings in the immediate area.
18. I acknowledge that the Framework supports the re-use of brownfield land in principle, although only the former shop would meet the definition of previously developed land (PDL) in the Framework. Nonetheless, I recognise that the proposal would facilitate re-development of the wider site which I saw was overgrown and scattered with various waste and building materials.
19. Overall, I find that the proposed dwellings would preserve the character and appearance of the area, and so would not conflict with Policies CS6 and CS17 of the CS or Policies MD2 and MD12 of the SAMDev, which together seek appropriate design which maintains and enhances countryside and landscape character and the natural environment; nor with the Framework's recognition of the intrinsic character and beauty of the countryside.

### **Other Considerations**

20. The appellant argues that the prior approval decisions of the Council are significant material considerations. However, the appellant acknowledges that works undertaken have exceeded the parameters of the relevant classes of the GPDO, and based on the present condition of the buildings, which are no longer the same structures that stood at the time of the prior approval applications, it seems that the appellant can no longer rely on permitted development rights as a fall-back position in this case. Moreover, prior approval consent relates to a narrow list of criteria and does not involve wider planning considerations relevant to a Section 78 appeal. Therefore, these decisions are not directly comparable with the proposals which apply to this appeal and they have little bearing on my findings.
21. Similarly, the appellant refers to the possibility of returning the buildings to their former uses, and then seeking to convert them to dwellings. Whether that

- is a realistic prospect, either in planning terms or practically, is unclear from the evidence, though should it involve a further planning application, it would be similar to the present appeal, and therefore there is no certainty that this approach would be successful. Moreover, even if it were a feasible option, there is little firm evidence to indicate the appellant would pursue a time consuming, two-stage process given the site has remained in the same state for more than a year. Therefore, I afford little weight to these purported fall-back positions.
22. The proposals are promoted as highly energy efficient homes, including use of ground source heat pumps, photovoltaic panels, a heat recovering ventilation system and reduced water consumption. However, Policies CS6 and CS18 of the CS require new development to incorporate sustainable design and water management principles, as does the Framework. I accept that the proposals would enable a high level of energy efficiency to be achieved, which weighs in favour of the proposal, though the small scale of the development means the environmental benefits would attract limited weight in favour of the proposal.
23. I note the documents submitted relating to the appellant's pursuit of a complaint against the Council. Ultimately, this relates to matters between the parties before and during the application stage. Beyond the question of demolition and rebuilding, upon which I have already commented, the complaint is not central to the planning merits of the proposal and does not alter my findings on the main issues.

### **Planning Balance and Conclusion**

24. For the reasons set out above, I find that the policies most important for determining the application, namely Policies CS5 and MD7a, are consistent with the Framework and should be afforded significant weight. Given this, and the Council's ability to demonstrate a five year supply of deliverable housing land, which is not disputed by the appellant, I find that the 'tilted balance' is not engaged in this case, and the proposal falls to be determined against the development plan, taking account of other material considerations.
25. I recognise that the proposal would add to the housing supply. However, the benefits of this would be limited in view the small scale of the proposal and the Council's housing supply position. Benefits arising from construction activity and economic activity by future occupants would be similarly limited in scale, as would the additional Council Tax and New Homes Bonus revenue it would deliver for the Council. There would be limited environmental benefits from the energy efficiency measures proposed, but this would be countered by reliance of future occupants on the private car.
26. The benefits of the proposal, taken together, would not amount to material considerations which would outweigh the conflict with the development plan, to which I afford significant weight, and would not justify a decision being made other than in accordance with the development plan, taken as a whole.
27. Therefore, for the reasons given, the appeal is dismissed.

*K Savage*

INSPECTOR

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## Appeal Decision

Site visit made on 25 August 2020

**by Stuart Willis BA Hons MSc PGCE MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 15 September 2020**

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**Appeal Ref: APP/L3245/W/20/3251667**

**Lower House, The Sun Inn Junction B4368 To Beechwood, Corfton SY7 9DE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr Gary Smith against the decision of Shropshire Council.
  - The application Ref 19/03538/OUT, dated 24 July 2019, was refused by notice dated 2 April 2020.
  - The development proposed is construction of 3 detached houses and garages (gross external size to be approved) and creation of new vehicular access and installation of private treatment plant.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. I have taken the description of development above from the application form. While different to that on the decision notice, no confirmation that a change was agreed has been provided to me.
3. Outline planning permission is sought with all matters reserved except for access and scale. I have had regard to the details provided on the Indicative Site Plan (10586-002) in relation to these matters and have regarded all other elements as illustrative. I have determined the appeal on this basis.
4. The National Planning Policy Framework (Framework) states that the weight given to relevant policies in emerging plans should be according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency of the plan with the Framework. While reference has been made to a Local Plan review, I am not aware if there are any unresolved objections and it is at an early stage. Moreover, limited details of the relevant parts of the document have been provided. Consequently, it carries little weight in my decision.
5. I am also considering an appeal at a nearby site<sup>1</sup>. I have dealt with both schemes on their own individual merits.

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<sup>1</sup> APP/L3245/W/19/3242933

### **Application for costs**

6. An application for costs was made by Mr Gary Smith against Shropshire Council. This application is the subject of a separate Decision.

### **Main Issues**

7. The main issues of the appeal are;
  - Whether the site is a suitable location for housing, having regard to the Council's housing strategy; and
  - The effect of the proposal on the character and appearance of the area, including the scenic beauty of the nearby Shropshire Hills Area of Outstanding Natural Beauty (AONB).

### **Reasons**

#### *Whether suitable location*

8. Policy CS1 of the Shropshire Council Adopted Core Strategy (CS) 2011 sets a target of delivering 27,500 additional new homes over the plan period of 2006-2026. A "rural rebalance" approach would accommodate 35% of these within rural areas to make them more sustainable. Development in rural areas is to be located predominantly in Community Hubs and Community Clusters.
9. Policy CS4 of the CS states that investment in rural areas will be focused into Community Hubs and Community Clusters at a scale appropriate to the settlement. The supporting text indicates that development in these areas will be within the village, or on land that has been specifically allocated for development. It also comments that windfall development adjoining a village is not acceptable unless for an exception site for affordable housing or development under Policy CS5.
10. Policy MD1 of the Shropshire Council Site Allocations and Management of Development Plan (SAMDev) 2015 identifies Corfton, along with Bache Mill, Bouldon, Broncroft, Middlehope, Peaton, Seifton, (Great/Little) Sutton, and Westhope as a Community Cluster within the Craven Arms Area.
11. Policy S7.2(ii) of the SAMDev states it is expected that each settlement in this cluster would deliver around 5 additional dwellings, but not exceeding 10, on small sites or through conversion over the plan period to 2026 in the form of infilling and conversions. The supporting text refers to the housing numbers as guidelines and having regard, amongst other things, to the aspirations of those communities as well as matters such as past rates of development and site suitability.
12. There is no defined boundary for the settlement of Corfton. While the Council's Type and Affordability of Housing Supplementary Planning Document 2012 provides guidance on whether a site is part of a settlement, this guidance relates explicitly to exception sites, which the proposal is not for. Moreover, while there is said to be a definition of infill in the Local Plan review, there is not one within the current development plan.
13. Consequently, my assessment of whether the site lies within the settlement and is infill development has been based on the evidence before me and my observations on site.

14. There is a cluster of development around the crossroads adjacent to the Sun Inn. However, there is further development to the rear of the appeal site towards Corfton View which is located on the B road frontage beyond the site. The appeal site sits within this existing development. Travelling towards the Sun Inn junction from the direction of Corfton View, this property appears as the beginning of the settlement on that side of the road. From near the Sun Inn junction itself, while currently an undeveloped field, the appeal site is viewed with development to part of its rear boundary. The appeal site is within the context of existing properties and therefore within the settlement of Corfton.
15. There are no properties directly opposite much of the site along the B road. Nonetheless, there are properties and other buildings located to the rear. Moreover, while there are lanes at either end of the field, there are properties in close proximity to the site along the same B road frontage. Although there is some variation in plot sizes, the indicative layout shows that the proposed plots could be arranged to have a frontage width that would not be at odds with the existing pattern of development. Given the development would be bookended by existing properties along the same side of the road, rather than appearing fragmented, by filling the existing gap, the appeal scheme would appear as creating a relatively continuous frontage. Therefore, it would be infill development.
16. The Council confirm that Corfton has already exceeded the housing guideline for the settlement with a total of 12 completions and commitments.
17. SAMDev Policy MD3 states that the housing guidelines is a significant policy consideration and sets out criteria for the consideration of schemes which would result in the figure being exceeded. These are i) the increase in the number of dwellings relative to the guideline; ii) the likelihood of delivery of the outstanding permissions; iii) the benefits arising from the development; iv) the impacts of the development, including the cumulative impacts of a number of developments in a settlement; and v) the presumption in favour of sustainable development.
18. If allowed, the appeal proposal would result in the number of commitments and completions further exceeding housing guidelines, being 5 properties above the anticipated level of development for Corfton. In this context, I consider this exceedance to be significant. I have no specific evidence before me to suggest that any of the committed sites will not come forward for development in the settlement.
19. The proposal would contribute to the housing stock in the area and the Framework seeks to significantly boost the supply of housing. There would also be benefits associated with spending and job creation during the construction period and from the future occupants of the properties with regard to local services and facilities. Nonetheless, being for 3 dwellings, these benefits would be moderate.
20. Paragraph 3.21 of the SAMDev supporting Policy MD3 states that the guideline figures reflect detailed consideration by the local planning authority and the community on what level of development is sustainable and appropriate during the plan period. Moreover, while not a maximum figure, going beyond it by too great a degree could result in unsustainable development that stretches infrastructure and community goodwill towards breaking point.

21. Even if Corfton does not display any evidence of being overwhelmed by development at present, this shows that the current policy approach is being effective. I am also mindful that there are permissions yet to be implemented. Over-provision, that the scheme would add to, could undermine other elements of the development strategy for the area such as to direct development to areas with greatest access to facilities whilst protecting the countryside. I am mindful of the objections to the scheme submitted by the Parish Council and other residents with regard to community goodwill.
22. Therefore, the proposal would not be a suitable site for housing, having regard to the Council's housing strategy and would fail to accord with Policy CS4 of the CS and Policies MD1, MD3 and Policy S7.2(ii) of the SAMDev regarding the scale and distribution of housing development in the area.
23. I have found that the proposal does not accord with the up to date development plan. The presumption in favour of sustainable development, as set out in paragraph 11 of the Framework, therefore does not apply in this case.

#### *Character and Appearance*

24. The appeal site is located in close proximity to the AONB which begins opposite the site. It is clearly visible along the main road and is currently an open, undeveloped field. There are views to and from the AONB across the site and the surrounding area which can be appreciated from several public vantage points.
25. The absence of built form and the presence of mature boundary landscape features contribute to the rural character and appearance of the area. The Management Plan<sup>2</sup> supports a vision of sustainable rural communities. The appeal scheme would introduce 3 new dwellings, and this would inevitably alter the appearance of the site. However, there is built development to the rear and at either end beyond minor roads. The site would be seen with these and as part of the settlement rather than encroaching on the open countryside.
26. While there is a tighter cluster of buildings at the junction by the Sun Inn, much of the rest of the settlement and wider area has a more open character with generous plots. The proposal is in outline. Nonetheless, the indicative layout shows that similarly generous plots, with detached dwellings set back from the road with gaps between buildings could be accommodated. This would provide a spacious feel to the scheme retaining much of the openness and would not be at odds with the existing pattern of development nearby. Consequently, the proposal would be read as part of the existing development along the main road, rather than separate to, or extending, the settlement.
27. A single access is proposed. This would allow the majority of the roadside vegetation to be retained, in keeping with the green and pleasant frontages frequently found in the area. Although scale is to be considered, appearance is a reserved matter. Therefore, the materials and form of the proposed dwellings are not before me as part of this appeal and would be subject to future submissions.

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<sup>2</sup> Shropshire Hills AONB Management Plan 2019-24



28. There are listed buildings in the vicinity of the site<sup>3</sup> and a Scheduled Ancient Monument<sup>4</sup>. The Council have not raised any concerns over the effect of the development on the setting of these. I have found that the site would assimilate with the existing pattern and form of development in the area. This along with the separation between these assets and the site as well as with the intervening landscape and built form, would prevent the scheme causing any harm to the setting of these.
29. Therefore, the proposal would not be harmful to the character and appearance of the area including the scenic beauty of the nearby AONB. It would accord with Policies CS4, CS6 and CS17 of the CS as well as Policies MD2 and MD12 of the SAMDev. These, amongst other things, require development to conserve and enhance the natural, built and historic environment, local context and distinctiveness.
30. Moreover, it would comply with the Framework where it seeks to ensure development is sympathetic to local character, contributes to and enhances the natural and local environment, recognises the intrinsic character and beauty of the countryside as well as the scenic beauty of AONB's.
31. Policy S7.2(ii) of the SAMDev is included in this refusal reason. However, as this does not relate to character and appearance considerations it weighs neither for nor against the proposal in regard to this issue.

### **Other Matters**

32. The Council have not included refusal reasons relating to flooding, highway safety, ecology or access to services and public transport. As I have found harm sufficient to dismiss the appeal on other issues, there is no need for me to consider these matters further. In any event, a lack of harm would only be a neutral factor.
33. I appreciate that the appellant sought pre-application advice and note comment on the approach of the Council in their handling of the application. However, I have dealt with the appeal on its planning merits based on the evidence before me and found it would result in unacceptable harm.
34. I acknowledge that there have been a number of permissions at other sites nearby for residential development<sup>5</sup>. However, these relate to developments of varying scale and I do not have full details of the considerations, including housing guideline figures, that were relevant at the time of their determination. Therefore, they are materially different to this appeal scheme.

### **Conclusion**

35. While I have found the proposal would not lead to an unacceptably harmful effect on the character and appearance of the area, my finding with regard to locational suitability is determinative.

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<sup>3</sup> Nos.1-2 Lower Corfton, No.9 Lower Corfton, Hill House Farm, Corfton House, No.16 Upper Corfton, Elsie Manor  
<sup>4</sup> Corfton Castle

<sup>5</sup> 18/03863/OUT, 18/03510/FUL, 16/04550/OUT, 17/03549/OUT, 16/04746/FUL, 16/02751/OUT, 20/00629/FUL, 14/05307/OUT, 16/04173/REM, 17/05800/FUL, 16/03699/FUL, 18/02934/FUL and 16/03628/FUL

36. Therefore, for the reasons given, and having taken into account all matters raised, I conclude that the appeal is dismissed.

*Stuart Willis*

INSPECTOR



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## Appeal Decision

Site visit made on 25 August 2020

**by Stuart Willis BA Hons MSc PGCE MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 15 September 2020**

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**Appeal Ref: APP/L3245/W/19/3242933**

**The Sun Inn, B4368 From Pedlars Rest B4365 junction to start of 30mph section Diddlebury, Corfton SY7 9DF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr Roger Burgoyne against the decision of Shropshire Council.
  - The application Ref 18/03863/OUT, dated 17 August 2018, was refused by notice dated 10 October 2019.
  - The development proposed is erection of detached cottage and garage.
- 

### Decision

1. The appeal is dismissed.

### Procedural Matters

2. I have taken the address and description of development above from the application form. While different to those on the decision notice, no confirmation that a change was agreed has been provided to me.
3. Outline planning permission is sought with all matters reserved except for access. I have had regard to the details provided on the Proposed Block Plan (72401/18/03 Rev A) and Street Scene (72401/18/04 Rev A) in relation to this matter and have regarded all other elements as illustrative. I have determined the appeal on this basis.
4. The National Planning Policy Framework (Framework) states that the weight given to relevant policies in emerging plans should be according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency of the plan with the Framework. While reference has been made to a Local Plan review, I am not aware if there are any unresolved objections and it is at an early stage. Moreover, limited details of the relevant parts of the document have been provided. Consequently, it carries little weight in my decision.
5. I am also considering an appeal at a nearby site<sup>1</sup>. I have dealt with both schemes on their own individual merits.

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<sup>1</sup> APP/L3245/W/20/3251667

### **Application for costs**

6. An application for costs was made by Mr Roger Burgoyne against Shropshire Council. This application is the subject of a separate Decision.

### **Main Issues**

7. The main issues of the appeal are:
  - Whether the site is a suitable location for housing, having regard to the Council's housing strategy; and
  - The effect of the proposal on the character and appearance of the area, including the scenic beauty of the Shropshire Hills Area of Outstanding Natural Beauty (AONB).

### **Reasons**

#### *Whether suitable location*

8. Policy CS1 of the Shropshire Council Adopted Core Strategy (CS) 2011 sets a target of delivering 27,500 additional new homes over the plan period of 2006-2026. A "rural rebalance" approach would accommodate 35% of these within rural areas to make them more sustainable. Development in rural areas is to be located predominantly in Community Hubs and Community Clusters.
9. Policy CS4 of the CS states that investment in rural areas will be focused into Community Hubs and Community Clusters at a scale appropriate to the settlement. The supporting text indicates that development in these areas will be within the village, or on land that has been specifically allocated for development. It also comments that windfall development adjoining a village is not acceptable unless for an exception site for affordable housing or development under Policy CS5.
10. Policy MD1 of the Shropshire Council Site Allocations and Management of Development Plan (SAMDev) 2015 identifies Corfton, along with Bache Mill, Bouldon, Broncroft, Middlehope, Peaton, Seifton, (Great/Little) Sutton, and Westhope as a Community Cluster within the Craven Arms Area.
11. Policy S7.2(ii) of the SAMDev states it is expected that each settlement in this cluster would deliver around 5 additional dwellings, but not exceeding 10, on small sites or through conversion over the plan period to 2026 in the form of infilling and conversions. The supporting text refers to the housing numbers as guidelines and having regard, amongst other things, to the aspirations of those communities as well as matters such as past rates of development and site suitability.
12. There is no defined boundary for the settlement of Corfton. While the Council's Type and Affordability of Housing Supplementary Planning Document 2012 provides guidance on whether a site is part of a settlement, this guidance relates explicitly to exception sites, which the proposal is not for. Moreover, while there is said to be a definition of infill in the Local Plan review, there is not one within the current development plan.
13. Consequently, my assessment of whether the site lies within the settlement and is infill development has been based on the evidence before me and my observations on site.

14. There is a cluster of development around the crossroads adjacent to the Sun Inn and other groups of dwellings beyond the junction. Travelling uphill from the Sun Inn, the field where the appeal scheme would be located marks the beginning of a distinct gap without built form on this side of the road to the next small group of properties which I note has been referred to as Corfton Bache by some parties. These are visually and physically separate from the appeal site. The appeal scheme would therefore not be within the settlement of Corfton.
15. The appeal site would occupy only part of the frontage of the wider field with space either side. It would be separate from any dwellings uphill, to the rear or opposite. The proposal would not fill any obvious gap in a continuous built up frontage or form part of a clear row of properties. The appeal scheme would be visually separate from other dwellings as the surrounding land would remain largely open and undeveloped. Therefore, the appeal proposal, would not represent infill development.
16. The Council confirm that Corfton has already exceeded the housing guideline for the settlement with a total of 12 completions and commitments.
17. SAMDev Policy MD3 states that the housing guidelines is a significant policy consideration and sets out criteria for the consideration of schemes which would result in the figure being exceeded. These are i) the increase in the number of dwellings relative to the guideline; ii) the likelihood of delivery of the outstanding permissions; iii) the benefits arising from the development; iv) the impacts of the development, including the cumulative impacts of a number of developments in a settlement; and v) the presumption in favour of sustainable development.
18. If allowed, the appeal proposal would result in the number of commitments and completions further exceeding housing guidelines, being 3 properties above the anticipated level of development for Corfton. In this context, although the appeal scheme is for a single dwelling, I consider this exceedance to be significant. I have no specific evidence before me to suggest that any of the committed sites will not come forward for development in the settlement.
19. The proposal would contribute to the housing stock in the area and the Framework seeks to significantly boost the supply of housing. I note the potential for the access to be used as a passing place. There would also be benefits associated with spending and job creation during the construction period and from the future occupants of the property with regard to local services and facilities. Nonetheless, being for one dwelling, as with energy efficiency, these benefits would be limited. Furthermore, while additional planting may add to overall levels of biodiversity on the site, there is no detailed information before me in this regard.
20. Paragraph 3.21 of the SAMDev supporting Policy MD3 states that the guideline figures reflect detailed consideration by the local planning authority and the community on what level of development is sustainable and appropriate during the plan period. Moreover, while not a maximum figure, going beyond it by too great a degree could result in unsustainable development that stretches infrastructure and community goodwill towards breaking point.
21. Even if Corfton does not display any evidence of being overwhelmed by development at present, this shows that the current policy approach is being

effective. I am also mindful that there are permissions yet to be implemented. Over-provision, that the scheme would add to, could undermine other elements of the development strategy for the area such as to direct development to areas with greatest access to facilities whilst protecting the countryside. I am mindful of the objections to the scheme submitted by the Parish Council and other residents with regard to community goodwill.

22. Consequently, the proposal would not be a suitable site for housing, with regard to the Council's housing strategy and would fail to accord with Policy CS4 of the CS and Policies MD1, MD3 and Policy S7.2(ii) of the SAMDev regarding the scale and distribution of housing development in the area.
23. I have found that the proposal does not accord with the up to date development plan. The presumption in favour of sustainable development, as set out in Paragraph 11 of the Framework, therefore does not apply in this case.

#### *Character and Appearance*

24. The absence of built form and the presence of the boundary features contribute to the rural character and appearance of the area in this part of the AONB.
25. The appeal site would be located off the narrow, gently curved lane that separates the development at the junction adjacent to the Sun Inn from the group of properties beyond the appeal site. The tall banks, walls and mature landscaping either side tightly enclose the lane giving it a distinctly different character to the wider and more open feel at the junction and along the 2-way road through Corfton.
26. From the evidence before me part of the existing bank, walls and landscaping would be removed or set back to create the access and visibility splays. This would erode the existing feeling of enclosure they currently create on this part of the lane. Along with the alterations to land levels that would be required, the proposal would create an obviously artificial arrangement at odds with the current appearance of the lane and significantly alter its character.
27. Views into the appeal site are limited at present. However, there are glimpses of the field from the lane, the existing access to the field and nearby properties. The proposal would result in the site having a residential appearance given the need for the access, driveways, parking and the domestic paraphernalia that would be associated with the dwelling itself. This would unacceptably damage the largely undeveloped qualities of the site. While landscaping conditions can be appropriate in certain instances, they should not be used to try to hide development which is unacceptable.
28. Details relating to the appearance, scale and layout of the proposal are not part of this outline application. While I acknowledge indicative details were provided, were the appeal to be allowed, details of the dwelling itself could be conditioned to form part of a reserved matters submission.
29. Notwithstanding this, the proposal would have a significant harmful effect on the character and appearance of the area and the scenic beauty of the AONB. It would be contrary to Policies CS6 and CS17 of the CS as well as Policies MD2 and MD12 of the SAMDev. These policies, amongst other things, require development to conserve and enhance the natural environment, local context and distinctiveness.

30. Moreover, it would fail to accord with the Framework where it seeks to ensure development is sympathetic to local character, contributes to and enhances the natural and local environment, recognises the intrinsic character and beauty of the countryside as well as the scenic beauty of AONB's.
31. Policy CS4 of the CS is included in this refusal reason, however, as I have found the site is not within the settlement and therefore community cluster, it weighs neither for nor against the proposal in regard to this issue.

### **Other Matters**

32. The Council have not included refusal reasons relating to highway safety or ecology. As I have found harm sufficient to dismiss the appeal on other issues, there is no need for me to consider these matters further. In any event, a lack of harm would only be a neutral factor.
33. My attention has been drawn to the potential formation of an access at the site under permitted development rights. Nonetheless, there is no certificate of lawful development, little information and no specific design of such a scheme provided. Consequently, it is not clear what proposals under such development rights would entail or what effect they would have. Furthermore, there is no guarantee that any potential scheme would be built were the appeal dismissed. As an access alone would not have a dwelling and associated paraphernalia it would not be directly comparable to the scheme before me and I give this potential fallback position little weight.
34. I appreciate that the application was recommended for approval by officers. Nonetheless, Members ultimately came to a different conclusion, as have I.
35. I acknowledge that there have been a number of permissions at other sites nearby for residential development<sup>2</sup>. Nonetheless, while some relate to single dwellings, none are located off the same lane as the appeal scheme. Therefore, they are materially different to the proposal before me. Moreover, I do not have full details of the considerations, including housing guideline figures, that were relevant at the time of their determination.

### **Conclusion**

36. For the reasons set out above, and having taken into account all matters raised, I therefore conclude that the appeal is dismissed.

*Stuart Willis*

INSPECTOR

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<sup>2</sup> 18/03510/FUL, 16/04550/OUT, 17/03549/OUT, 19/0358/OUT, 16/04746/FUL, 16/02751/OUT, 20/00629/FUL, 14/05307/OUT, 16/04173/REM, 17/05800/FUL, 16/03699/FUL, 18/02934/FUL and 16/03628/FUL

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## Appeal Decision

Site visit made on 25 August 2020

**by Stuart Willis BA Hons MSc PGCE MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 15 September 2020**

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**Appeal Ref: APP/L3245/W/20/3249305**

**Land to the east of Pennerley House, Pennerley, Shrewsbury SY5 0NE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr A Lawton against the decision of Shropshire Council.
  - The application Ref 18/04261/OUT, dated 31 August 2018, was refused by notice dated 23 October 2019.
  - The development proposed is dwelling east of Pennerley House.
- 

### Decision

1. The appeal is dismissed.

### Procedural Matters

2. I have taken the description of development above from the application form. While different to that on the decision notice, no confirmation that a change was agreed has been provided to me.
3. Outline planning permission is sought with all matters reserved except for access. I have had regard to the details provided on the Site Plan (SA29847\_PL\_05 Rev B) and Proposed Site and Surrounding Cross Section Typical Elevation showing Maximum Heights (SA29847\_PL-06) in relation to this matter and have regarded all other elements as illustrative. I have determined the appeal on this basis.
4. The National Planning Policy Framework (Framework) states that the weight given to relevant policies in emerging plans should be according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency of the plan with the Framework. While reference has been made to a Local Plan review, I am not aware if there are any unresolved objections and it is at an early stage. Moreover, limited details of the relevant parts of the document have been provided. Consequently, it carries little weight in my decision.

### Background and Main Issues

5. Albeit not in the refusal reasons, issues have been raised by third parties in relation to the suitability of the appeal site with regard to development plan policies, including the number of potential dwellings in the area. The appellant has had the opportunity to comment on these matters and the relevant policies. As such, they would not be prejudiced by my approach below.

6. Therefore, the main issues of the appeal are;
- Whether the site is a suitable location for housing, having regard to the Council's housing strategy; and
  - The effect of the proposal on the character and appearance of the area, including the scenic beauty of the Shropshire Hills Area of Outstanding Natural Beauty (AONB).

## **Reasons**

### *Whether suitable location*

7. Policy CS1 of the Shropshire Council Adopted Core Strategy (CS) 2011 sets a target of delivering 27,500 additional new homes over the plan period of 2006-2026. A "rural rebalance" approach would accommodate 35% of these within rural areas to make them more sustainable. Development in rural areas is to be located predominantly in Community Hubs and Community Clusters.
8. Policy CS4 of the CS states that investment in rural areas will be focused into Community Hubs and Community Clusters at a scale appropriate to the settlement. The supporting text indicates that development in these areas will be within the village, or on land that has been specifically allocated for development. It also comments that windfall development adjoining a village is not acceptable unless for an exception site for affordable housing or development under Policy CS5.
9. Policy MD1 of the Shropshire Council Site Allocations and Management of Development Plan (SAMDev) 2015 identifies Pennerley, along with Snailbeach, Stiperstones, Tankerville, Black Hole, Crows Nest and The Bog as a Community Cluster within the Bishop's Castle Area.
10. Policy S2.2(viii) of the SAMDev states the housing guidelines for the cluster is around 15 additional dwellings in the form of infill and conversion over the plan period to 2026. The supporting text refers to the housing numbers as guidelines and having regard, amongst other things, to the aspirations of those communities as well as matters such as past rates of development and site suitability.
11. There is no defined boundary for the settlement of Pennerley. While the Council's Type and Affordability of Housing Supplementary Planning Document 2012 provides guidance on whether a site is part of a settlement, this guidance relates explicitly to exception sites, which the proposal is not for. Moreover, while there is said to be a definition of infill in the Local Plan review, there is not one within the current development plan.
12. Consequently, although I note reference to alternative definitions put forward outside of the adopted development plan, my assessment of whether the site lies within the settlement and is infill development has been based on the evidence before me and my observations on site.
13. There is no distinct core to the settlement of Pennerley. It is characterised by loose knit development in the form of individual farmsteads and properties with occasional small groups of dwellings. There is a considerable area beyond the appeal site towards The Bog with an absence of residential development and built form. This gives that area the characteristics and appearance of open

countryside. I acknowledge the presence of roadside signage as well as historical and political interpretations of where Pennerley extends to. However, while not viewed with all of them, there are several properties that are physically relatively close to the appeal site including Pennerley House, Ritton Place, Bog Marsh Cottage and Brook House. I consider these properties from part of Pennerley. The appeal scheme would not appear divorced from these. Therefore, the appeal site would be within the settlement.

14. The appeal site adjoins the garden area of Pennerley House with a further residential property opposite. Nonetheless, Ritton Place is set back in its plot across a lane, creating a visual separation from the appeal site in that direction. Moreover, where the main part of the site adjoins the lane there is no adjacent residential development or buildings along the same frontage. Other than the proposed access, one side of the site would remain an open field. To the other side a wooded area would separate the site from the nearest built form further along the lane.
15. I note comments regarding the loose knit nature of the settlement potentially preventing infill plots. Notwithstanding this, there would be a visual and physical separation of the proposed dwelling from others along the same side of the lane it fronts. The appeal scheme would not fill any obvious gap in a continuous built up frontage or result in a clear row of properties with the land adjacent to the appeal site remaining largely undeveloped. Therefore, the appeal site would not represent infill development.
16. My attention has been drawn to a permission at Bog Marsh Cottage for a single dwelling<sup>1</sup>. That scheme had a property adjacent to one side of the same road frontage and therefore while not a significant distance from the site, the locational context is materially different to the appeal scheme. In any event, I have assessed the appeal on its own individual merits.
17. The Council confirm that the housing guideline for the Community Cluster has already been exceeded. While they indicate there has only been 5 completions, there are a further 17 dwellings with planning permission.
18. SAMDev Policy MD3 states that the housing guideline is a significant policy consideration and sets out criteria for the consideration of schemes which would result in the figure being exceeded. These are i) the increase in the number of dwellings relative to the guideline; ii) the likelihood of delivery of the outstanding permissions; iii) the benefits arising from the development; iv) the impacts of the development, including the cumulative impacts of a number of developments in a settlement; and v) the presumption in favour of sustainable development.
19. If allowed, the appeal proposal would result in the number of commitments and completions further exceeding the housing guidelines, being 8 properties above the anticipated level of development for the cluster. I acknowledge the suggestion that Pennerley may receive an additional housing guideline beyond 2026 in the local plan review and that permissions in Pennerley include sub-division of an existing property. Nevertheless, in this context, although the appeal scheme is for a single dwelling, I consider the exceedance would be significant.

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<sup>1</sup> (18/00924/OUT).

20. There is no guarantee all approvals will be built out. However, I have no specific evidence before me to suggest that any of the committed sites will not come forward for development in the cluster during the plan period or in relation to the low build rate the appellant suggests.
21. The proposal would contribute to the housing stock in the area and the Framework seeks to significantly boost the supply of housing. There would also be benefits associated with spending and job creation during the construction period and from the future occupants of the property with regard to local services and facilities. Nonetheless, being for 1 dwelling, these benefits would be limited.
22. Paragraph 3.21 of the SAMDev supporting Policy MD3 states that the guideline figures reflect detailed consideration by the local planning authority and the community on what level of development is sustainable and appropriate during the plan period. Moreover, while not a maximum figure, going beyond it by too great a degree could result in unsustainable development that stretches infrastructure and community goodwill towards breaking point.
23. Even if Pennerley and the wider community cluster do not display any evidence of being overwhelmed by development at present, this shows that the current policy approach is being effective. I am also mindful that there are permissions yet to be implemented. Over-provision, that the scheme would add to, could undermine other elements of the development strategy for the area such as to direct development to areas with greatest access to facilities whilst protecting the countryside. I am mindful of the objections to the scheme submitted by the Parish Council and other residents with regard to community goodwill.
24. Therefore, the proposal would not be a suitable site for housing, having regard to the Council's housing strategy and would fail to accord with Policy CS4 of the CS and Policies MD1, MD3 and Policy S2.2(viii) of the SAMDev regarding the scale and distribution of housing development in the area.
25. I have found that the proposal does not accord with the up to date development plan. The presumption in favour of sustainable development, as set out in paragraph 11 of the Framework, therefore does not apply in this case.

#### *Character and Appearance*

26. The site is a largely open field with mature boundary landscape features. As such, it contributes to the character and appearance of the area in this part of the AONB.
27. The Management Plan<sup>2</sup> supports a vision of sustainable rural communities. While there is a loose scattering of development in the area, small groups of properties are characteristic of Pennerley and the wider area. These groups vary in size, number and density with no consistent pattern or arrangement. In addition, there is variation in terms of the design and scale of the properties.
28. The appeal scheme would introduce a new dwelling and associated features. This would inevitably alter the appearance of the site. Nonetheless, the site would be seen in many views with other properties and as part of the settlement rather than encroaching on the open countryside. Other views

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<sup>2</sup> Shropshire Hills AONB Management Plan 2019-24

would be contained by the wooded area adjacent. The land continues to rise beyond the site towards Ritton Place and landscape features would filter views, reducing the prominence of the site. The proposal would be seen as abutting the garden of another property and forming part of a small group of properties within a settlement. It would not appear isolated or encroaching on the open countryside and would be set in a generous plot, comparable to those nearby. Even in the context of another property granted permission in the area<sup>3</sup>, the density of this small group would not be incongruous with the general loose knit pattern of development in the area. Therefore, the presence of residential development at the site would not be discordant.

29. The Management Plan states that housing developments need to be of appropriate scale to the location and its landscape sensitivity, and of a high standard in terms of design. Details relating to the appearance, scale and layout of the proposal are not part of this outline application. While I acknowledge indicative details were provided, were the appeal to be allowed, details of the dwelling itself could be conditioned to form part of a reserved matters submission.
30. Therefore, the proposal would not be harmful to the character and appearance of the area including the scenic beauty of the AONB. It would accord with Policies CS4, CS6 and CS17 of the CS as well as Policies MD2 and MD12 of the SAMDev. These, amongst other things, require development to conserve and enhance the natural, built and historic environment, local context and distinctiveness.
31. Moreover, it would comply with the Framework where it seeks to ensure development is sympathetic to local character, contributes to and enhances the natural and local environment, recognises the intrinsic character and beauty of the countryside as well as the scenic beauty of AONB's.

### **Other Matters**

32. As I have found other harm sufficient to dismiss the appeal, the development will not take place and thus there would be no resultant effect on the Stiperstones and The Hollies Special Area of Conservation SAC/SSSI. Consequently, I have no need to consider this matter or the Habitats Regulations further. This is also the case for highway safety considerations that have been raised. In any event, the lack of harm would be a neutral factor.
33. I appreciate that the appellant sought pre-application advice and that the application was recommended for approval by officers. Nevertheless, Members ultimately came to a different conclusion. I have dealt with the appeal on its planning merits based on the evidence before me and found it would result in unacceptable harm.

### **Conclusion**

34. While I have found the proposal would not lead to an unacceptably harmful effect on the character and appearance of the area, my finding with regard to locational suitability is determinative.

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<sup>3</sup> 18/00924/OUT

35. Therefore, for the reasons given, and having taken into account all matters raised, I conclude that the appeal is dismissed.

*Stuart Willis*

INSPECTOR



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# Appeal Decision

**by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip**

**an Inspector appointed by the Secretary of State**

**Decision date: 02 October 2020**

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**Appeal Ref: APP/L3245/X/20/3251865**

**The Birches, Cross Road, Albrighton WV7 3BJ**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mr Philip Broome against the decision of Shropshire Council.
  - The application Ref 20/00899/CPL, dated 28 February 2020, was refused by notice dated 28 April 2020.
  - The application was made under section 192(1)(b) of the 1990 Act as amended.
  - The development for which a certificate of lawful use or development is sought is a single storey leisure area.
- 

## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. I consider that this appeal can be determined without the need for a site visit. This is because I have been able to reach a decision based on the information already available.
3. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.
4. For the avoidance of doubt, the planning merits of the proposal are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act as amended.

## Main Issue

5. The main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

## Reasons

6. The appeal property is a relatively large, detached house with an existing detached outbuilding set within spacious grounds. The proposed leisure facility would be accommodated within a flat roofed building with a porch and entrance lobby. The floor plans indicate the layout would include a swimming pool, with an associated sitting area and changing rooms, and a gym/garden room also with access to separate rooms. The building would have a floor area 151.5 sqm and would be sited to the side and rear of the main house.
7. The appellant's case is that the proposed development would fall within that 'permitted' under Article 3 and Schedule 2, Part 1, Class E to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), which concerns buildings within the curtilage of a dwellinghouse. E.(a) states that *the provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse* is permitted development subject to conditions and limitations. The main dispute between the parties concerns whether the building would be reasonably required or would be wholly used for purposes incidental to the enjoyment of the dwellinghouse.
8. E.4 says that for the purposes of Class E, "purpose incidental to the enjoyment of the dwellinghouse as such" includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse. The Technical Guidance<sup>1</sup> advises the rules also allow, subject to the conditions and limitations, a large range of other buildings on land surrounding a house. Examples could include common buildings such as garden sheds, other storage buildings, garages, and garden decking as long as they can be properly described as having a purpose incidental to the enjoyment of the house. The Guidance continues, a purpose incidental to a house would not, however, cover normal residential uses, such as separate self-contained accommodation nor the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen.
9. In addition, case law has established that permitted development rights under Class E extend only to buildings required for a purpose incidental to the enjoyment of the dwellinghouse as such, not to buildings required for a purpose integral to the use as a dwellinghouse. Whether this is the case will depend on a fact and degree assessment<sup>2</sup>. Incidental uses are not distinguished by scale, although that may be relevant.
10. The Court in *Emin*<sup>3</sup> confirmed that regard should be had not only to the use to which the Class E building would be put, but also to the nature and scale of that use in the context of whether it was a purpose incidental to the enjoyment of the dwellinghouse. The physical size of the building in comparison to the dwellinghouse might be part of that assessment but is not by itself conclusive. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and answer the question as to whether the proposed building is genuinely and reasonably required in order to accommodate the proposed use or activity and thus achieve that purpose. The use of the building should be subordinate to the use of the house as a dwellinghouse.

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<sup>1</sup> Permitted Development Rights for Householders: Technical Guidance, MHCLG (September 2019).

<sup>2</sup> *Pêche d'Or Investments v SSE* [1996] JPL 311; *Holding v FSS* [2004] JPL 1405.

<sup>3</sup> *Emin v SSE & Mid Sussex DC* [1989] JPL 909.



11. I acknowledge that a home gym for the use of the occupants of the dwellinghouse, within an outbuilding, could be considered incidental to the enjoyment of the dwellinghouse. Also, I accept that a compact garden room, or summerhouse, can be incidental as a means of enjoying the garden in a position away from the main house. Such buildings can be sited to take advantage of a particular view, feature or sunlight. However, they tend to be low key or utilitarian style buildings. Crucially, they should not comprise primary accommodation and should remain subordinate.
12. In this case, the proposed home gym/garden room would occupy half the floor area of a relatively large building of substantial construction. The space, including the lobby, is large enough to accommodate multiple pieces of equipment, three cubicles including a WC, and a seating area. The swimming pool area would also include space for seating and two further separate cubicles, one of which would be relatively spacious. This level of accommodation appears to be a duplication in terms of the number of changing/toilet facilities and seating areas that would reasonably be required to serve the household.
13. It is indicated that the garden room would also be used for the purposes of entertaining, which goes beyond the more traditional use of a garden room as a space for the occupants to sit and relax away from the main house. This room would be in addition to the swimming pool area. Notwithstanding the multiple pieces of gym equipment shown on the plans, the garden room as proposed could have a function and purpose not unlike a reception room in a dwellinghouse. In my opinion, it would comprise additional primary living accommodation that would supplement the accommodation provided in the main house.
14. While it is not necessary for the appellant to demonstrate a requirement for the outbuilding, it must be shown to be required for a purpose incidental to the enjoyment of the dwellinghouse as such. Given the extent of primary accommodation that would be provided by the garden room in conjunction with the seating area alongside the swimming pool, a significant proportion of the building would be for purposes integral to the use as a dwellinghouse, as opposed to incidental uses.
15. I note that an LDC application for a leisure building, garages and a garden room was approved in 2019<sup>4</sup>. The approved development included a leisure area with pool (floor area 88sqm), and a garden room (floor area 64sqm). The works to implement the development have commenced.
16. The appellant argues that the lawfulness of the scheme before me should be presumed due to the Council's decision on the previous scheme. However, I consider the schemes to be materially different. The approved development comprises separate buildings, each with a specific function and purpose. The garden room would be relatively compact with a dual aspect and extensive glazing, which would enable users to fully appreciate the side and rear garden. The design is consistent with the stated function. The garden room/gym in the revised scheme includes a seating area and bifold doors, but a large proportion of the floorspace in this part of the building appears would be given over to a gym. This could be accommodated in the pool area where changing facilities would have a dual use. There is no explanation for this design.

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<sup>4</sup> Ref 18/05707/CPL, 6 February 2019.

17. In addition, the aspect of the garden room in the scheme before me does not appear to take full advantage of the garden or the position of the sun. The appellant's reasons for placing these buildings together do not address these apparent anomalies.
18. Overall, there is no clear justification for an additional building of the size and layout proposed for the purposes described. I am not satisfied that the building is genuinely and reasonably required or necessary to accommodate the proposed use or activity, because a significant proportion of those uses would not be incidental. Furthermore, the use of the whole building would not be subordinate to the use of the house as a dwellinghouse but would be supplementary. In reaching this view, I have had regard to the personal circumstances of the appellant. While, I accept a need for facilities of the nature proposed, I am not persuaded that they need to be of the size and design shown to achieve their stated purpose. It has not been adequately demonstrated that a development of this scale and design is reasonably required for purposes incidental to the enjoyment of the dwellinghouse.

### **Conclusion**

19. The totality of the evidence presented in support of the appellant's claim does not show that, on the balance of probability, the proposal would satisfy the test of being required for a purpose incidental to the enjoyment of the dwellinghouse as a matter of fact and degree. Accordingly, it would not be permitted development by virtue of the rights conveyed by Article 3 and Schedule 2, Part 1, Class E to the GPDO.
20. I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a single storey leisure area was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

*Debbie Moore*

Inspector



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## Appeal Decision

Site visit made on 11 August 2020

by **J Gibson BUEP MPIA**

an Inspector appointed by the Secretary of State

Decision date: 5 October 2020

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### Appeal Ref: **APP/L3245/W/20/3252790**

#### **Barn adjacent Roundabout Farm, Roughton Lane, Roughton**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class Q(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
  - The appeal is made by Mr R Brindley against the decision of Shropshire Council.
  - The application Ref 19/04951/PMBPA, dated 11 November 2019, was refused by notice dated 15 January 2020.
  - The development proposed was originally described as "the conversion of an existing agricultural barn to a residential dwelling (Class C3) at Roundabout Farm, Roughton".
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#### **Decision**

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class Q(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) for the change of use and conversion of an agricultural building to two residential units at the barn adjacent Roundabout Farm, Roughton Lane, Roughton in accordance with details submitted pursuant to Article 3(1) and Schedule 2, Part 3, Paragraph Q.2(1) of the GPDO through application Ref 19/04951/PMBPA, dated 11 November 2019, subject to the conditions in the attached schedule.

#### **Procedural Matters**

2. The description of development in the above heading has been taken from the appellant's submitted cover letter and proposed plans of development. This description, as well as those shown on the submitted Application Form, Appeal Form and Decision Notice, include unnecessary details and do not accurately describe the full extent of the proposed development. Based on the various descriptions presented, I have determined the appeal on the basis that the proposed development is for a change of use and conversion of an agricultural building to two residential units. This represents the most accurate and concise description of the proposed development.
3. The appellant submitted an amended plan of development during the application stage to remove the proposed cladding on the exterior of the converted building in response to grounds of refusal raised by the Council ahead of their decision. It is clear from the Council's statement of case that they determined the application based on the original drawings submitted as part of the application. In the interest of fairness, I have therefore determined the appeal based on the original plans.

## **Background and Main Issue**

4. Class Q of the GPDO permits development consisting of a change of use of a building and any land within its curtilage from use as an agricultural building to a dwellinghouse, including any building operations reasonably necessary to convert the building. However, there are a number of circumstances where such development is not permitted, which are listed in Paragraph Q.1. These include that the site was not used solely for an agricultural use as part of an established agricultural unit on or before a specified date and that the external dimensions of the building would exceed those of the existing building.
5. The main issue is therefore whether the proposal would be permitted development under the provisions of Class Q of the GPDO, with particular regard to whether the site was used solely for an agricultural use as part of an established agricultural unit on 20 March 2013; and whether the proposed development would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point.

## **Reasons**

6. The appellant has described the barn as having been used for the storage of agricultural paraphernalia, such as tractors, agricultural implements/machinery and storage of animal food, in support of the agricultural use of the surrounding farmland for the rearing of sheep since the property was purchased in 1992. The agricultural use of the barn was said to have ceased from at least 2015 and has remained vacant since. Signed statements from the appellant, agricultural tenant of the barn and current landowner of the adjacent Roundabout Farm have been submitted to support the purported agricultural use of the barn and indicative timeline over which this occurred.
7. The Council have expressed concerns over whether the barn was solely in agricultural use on the 20<sup>th</sup> March 2013 due to their site visit observations undertaken as part of their application assessment in 2019. They observed that domestic paraphernalia was being stored in the barn, described as comprising of clothes, material, a cool box cuddly toy and building materials, which is also captured in photos in the appellant's submitted Structural Report.
8. Nevertheless, this does not in itself demonstrate that the barn was not solely used for an agricultural use on the relevant date. On the balance of probabilities and in the absence of substantive evidence to the contrary, I am satisfied that the barn was solely being used for agricultural purposes on the 20<sup>th</sup> March 2013.
9. With respect to the external dimensions of the existing barn, the Council has not adequately demonstrated that the proposed cladding would extend the dimensions of the building at any given point. The proposed plans of development and the submitted Structural Report show that the existing dimensions of the building would maintain the dimension of the existing barn. As such the external dimensions of the existing barn would in my view be maintained at any given point as part of the proposal.
10. Accordingly, I am satisfied that the proposed development would comply with the limitations set out by Paragraph Q.1 of Schedule 2, Part 3, Class Q of the GPDO, and as such benefits from permitted development rights.

11. I have subsequently considered the matters under Paragraph Q.2(1) of the GPDO and based on the evidence before me am satisfied that none of the matters would require prior approval. The Council reached the same conclusion in their assessment of the application.

### **Other Matters**

12. The appellant submitted a Preliminary Ecological Appraisal and Bat Survey for consideration of the potential ecological impacts of the proposed development. The survey identifies potential impacts to protected bat species and nesting birds and offers recommendations to mitigate against these effects. Based on the evidence provided, I am satisfied that although no evidence of bats being present was found a precautionary approach is justified in this case taking account of the nature and condition of the building. However, bearing in mind the survey's findings and the comments of the Council's ecology officer adverse effects on any protected species can be mitigated against by way of appropriate conditions and therefore the proposal would be acceptable in this regard. The Council's assessment similarly supports this position. Notwithstanding the prior approval limitations previously stated, consideration of such ecology matters is necessary in accordance with the Wildlife and Countryside Act 1981 (as amended) and legislation relating to the protection of European Protected Species.
13. The Council note that the existing private access track off Roughton Lane serving Roughton Farm and the appeal site is recorded as a public footpath. They have confirmed that the public footpath would not be affected by the proposed development and note that permission to utilise the track for vehicle access is a private matter which must be secured by any future owner/occupiers of the proposed development and the owner of the track. As such, this does not alter my determination of this appeal.

### **Conditions**

14. Paragraph Q.2(3) of the GPDO specifies that development under Class Q must be completed within a period of three years starting with the prior approval date.
15. Paragraph W(13) of the GPDO allows conditions to be imposed that are reasonably related to the subject matter of the prior approval. To ensure certainty and clarity it is necessary to impose a condition setting out the approved plans of development.
16. It is also necessary to impose conditions to mitigate the potential effects on protected bat species and nesting birds as identified within the submitted Preliminary Ecological Appraisal and Bat Survey. Specifically, the submitted survey includes recommendations relating to timing of development works/vegetation clearing, external lighting, erection of bat and bird boxes and general wildlife protection during construction. Although the appellant has undertaken a recent survey for protected species it is necessary in this case to require an additional survey as a final check to ensure that there will be no adverse effects on breeding birds.
17. The Council has suggested conditions in line with these recommendations and are in my view appropriate. However, the Council has also suggested a landscaping condition surplus to the recommendations of the submitted survey.

As such the landscaping condition would represent enhancement works, not mitigation, and there is no evidence to suggest that this would be necessary.

18. I have amended the Council's suggested conditions where necessary to adhere to the Planning Practice Guidance.

**Conclusion**

19. For the reasons given above I conclude that the proposal constitutes permitted development. The appeal should therefore be allowed and prior approval granted.

*J Gibson*

INSPECTOR

### **Schedule of Conditions**

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: OS Plan (Dwg No 569: Roughton Barn); Location Plan Land Ownership (Dwg No 569/B10a, Rev A, dated 19.11.2019); Survey Drawing Floor Plan, Section and Elevations (Dwg No 569/B1b, Rev B, dated 01/10/2019); Scheme Drawing Floor Plan, Section and Elevations (Dwg No 569/B2a, Rev A, dated 28/10/2019); Scheme Drawing Site Plan (Dwg No 569/B3b, Rev B, dated 29/10/2019).
- 2) No development works or vegetation clearing shall take place at any time within the bird breeding season (March 1st to August 31st inclusive) unless and until the developer submits written confirmation from a suitably qualified ecologist to the Local Planning Authority that a survey has been undertaken and found that there are no breeding birds, their young, nests or eggs that would be disturbed by the works to be carried out. If breeding birds, their young or eggs are found, no works may take place until the bird breeding season is completed or they have left the nest and there is no evidence of their returning.
- 3) 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 lighting plan shall demonstrate that the proposed lighting will not impact upon ecological networks and/or sensitive features (e.g. bat and bird boxes, trees, and hedgerows). The submitted scheme shall be designed to take into account the advice on lighting set out in the Bat Conservation Trust's Guidance Note 08/18 Bats and artificial lighting in the UK. The development shall be carried out strictly in accordance with the approved details and thereafter retained for the lifetime of the development.
- 4) A minimum of two bird nest boxes shall be erected on the site prior to either dwelling hereby permitted being first occupied. The boxes shall be sited at least two metres above the ground on a suitable tree or structure at a northerly or shaded east/west aspect with a clear flight path, and thereafter maintained for the lifetime of the development.
- 5) A minimum of one external woodcrete bat box or integrated bat bricks, suitable for nursery or summer roosting for small crevice dwelling bat species, shall be erected on the site prior to either of the dwellings hereby permitted being first occupied. The boxes shall be sited at an appropriate height above the ground, with a clear flight path and where they will be unaffected by artificial lighting. The boxes shall thereafter be maintained for the lifetime of the development.

### **End of Schedule**

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