

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

Date: Monday, 29 January 2024

**Committee:**  
**Northern Planning Committee**

**Date:** Tuesday, 6 February 2024  
**Time:** 2.00 pm  
**Venue:** Shrewsbury/Oswestry Room, Shirehall, Abbey Foregate, Shrewsbury, Shropshire, SY2 6ND

You are requested to attend the above meeting. The Agenda is attached  
There will be some access to the meeting room for members of the press and public, but this will be limited. If you wish to attend the meeting please email [democracy@shropshire.gov.uk](mailto:democracy@shropshire.gov.uk) to check that a seat will be available for you.

Please click [here](#) to view the livestream of the meeting on the date and time stated on the agenda

The recording of the event will also be made available shortly after the meeting on the Shropshire Council Youtube Channel [Here](#)

The Council's procedure for holding Socially Distanced Planning Committees including the arrangements for public speaking can be found by clicking on this link:  
<https://shropshire.gov.uk/planning/applications/planning-committees>

Tim Collard  
Assistant Director – Legal and Governance

**Members of the Committee**

Joyce Barrow  
Garry Burchett  
Geoff Elnor  
Ted Clarke  
Steve Charmley  
Julian Dean  
Roger Evans  
Nat Green  
Vince Hunt (Vice Chairman)  
David Vasmer  
Paul Wynn (Chairman)

**Substitute Members of the Committee**

Roy Aldcroft  
Gerald Dakin  
Steve Davenport  
Mary Davies  
David Evans  
Julia Evans  
Nigel Hartin  
Nick Hignett  
Pamela Moseley

Your Committee Officer is:

**Emily Marshall / Shelley Davies** Committee Officer

Tel: 01743 257717 / 01743 257718

Email: [emily.marshall@shropshire.gov.uk](mailto:emily.marshall@shropshire.gov.uk) / [shelley.davies@shropshire.gov.uk](mailto:shelley.davies@shropshire.gov.uk)

# AGENDA

## 1 Apologies for Absence

To receive apologies for absence.

## 2 Minutes (Pages 1 - 12)

To confirm the Minutes of the meeting of the North Planning Committee held on 31 October 2023 and 7 November 2023, attached.

Contact: Emily Marshall on 01743 257717; or  
Tim Ward on 01743 257713.

## 3 Public Question Time

To receive any public questions or petitions from the public, notice of which has been given in accordance with Procedure Rule 14. The deadline for this meeting is 5.00pm on Wednesday 31 January 2024

## 4 Disclosable Pecuniary Interests

Members are reminded that they must declare their disclosable pecuniary interests and other registrable or non-registrable interests in any matter being considered at the meeting as set out in Appendix B of the Members' Code of Conduct and consider if they should leave the room prior to the item being considered. Further advice can be sought from the Monitoring Officer in advance of the meeting.

## 5 Land South Of Hollins Lane Newport Road Woodseaves Market Drayton Shropshire (19/05127/EIA) (Pages 13 - 52)

Construction of two poultry sheds, feed bins and associated ancillary works

## 6 Ideal Home Bicton Heath House Knowsley Drive Bicton Heath Shrewsbury (23/03972/FUL) (Pages 53 - 78)

Proposed demolition of existing care home wing and proposed new build care home wing (resubmission)

## 7 The Belvidere Crowmere Road Shrewsbury Shropshire SY2 5LA (23/04744/FUL) (Pages 79 - 90)

Demolition of existing public house and the construction of a 2 and 3 bedroom residential development with new vehicular and pedestrian access

## 8 Appeals and Appeals Decisions (Pages 91 - 178)

## 9 Date of the Next Meeting

To note that the next meeting of the North Planning Committee will be held at 2.00 pm on Thursday 15 February 2024 in the Shirehall, Shrewsbury.

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## Committee and Date

Northern Planning Committee

5 December 2023

## **NORTHERN PLANNING COMMITTEE**

### **Minutes of the meeting held on 31 October 2023**

**In the Council Chamber, Shirehall, Abbey Foregate, Shrewsbury, SY2 6ND**

**2.00 - 6.01 pm**

**Responsible Officer:** Tim Ward

Email: emily.marshall@shropshire.gov.uk / shelley.davies@shropshire.gov.uk Tel: 01743 257717 / 01743 257718

### **Present**

Councillor Paul Wynn (Chairman)

Councillors Joyce Barrow, Geoff Elner, Ted Clarke, Julian Dean, Roger Evans, Vince Hunt (Vice Chairman), David Vasmer, Roy Aldcroft (Substitute) (substitute for Garry Burchett), David Evans (Substitute) (substitute for Steve Charmley) and Nigel Hartin (Substitute) (substitute for Nat Green)

### **59 Apologies for Absence**

Apologies for absence were received from Councillors Garry Burchett, Steve Charmley and Nat Green.

Councillor Roy Aldcroft substituted for Councillor Burchett, Councillor David Evans substituted for Councillor Charmley and Councillor Nigel Hartin substituted for Councillor Green

### **60 Public Question Time**

There were no public questions received within the parameters of the Constitution

### **61 Disclosable Pecuniary Interests**

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

Councillor R Evans stated that he was the Chairman of Hanwood Parish Council where the application had been discussed but that he would make his decision based on the information presented and the debate that takes place.

Councillor R Evans questioned whether reports on the Oxon Link Road should have been included in the list of background papers in the report. The Head of Legal and Democratic Services advised that the background papers usually referred to previous planning reports and as the Oxon Link Road had never come to a planning meeting that was why it was not listed.

Councillor R Evans commented that a number of Councillors had held the post of portfolio holder responsible for highways over the time of the application and asked why they had not been listed in the report. The Head of Legal and Democratic Services advised that it was only the current cabinet member that was listed in the report.

## **62 Welshpool Road, Bicton Heath, Shrewsbury, Shropshire (21/00924/EIA)**

The Planning and Development Services Manager introduced the application for the North West Relief Road scheme comprising - construction of 6.9km single carriageway (7.3m wide) road; severance of local roads and footpaths; provision of combined footway/cycleway; erection of three bridged structures over carriageway; diversion of existing bridleway/footpath via an underpass; climbing lane on westbound approach; 670m long viaduct; bridge over railway; two flood storage areas; provision of two new roundabout junctions and improvements to two existing roundabouts; associated traffic calming measures, landscaping and drainage schemes. The Consultant Planner then took Members through the details of the report. He advised the meeting that several routes had been considered over the years and that the scheme before Members had been chosen as it causes the least amount of environmental damage. He outlined the main issues which included visual impact, pollution, noise and climate change, and confirmed that 9 veteran trees would be lost but that a compensation strategy had been developed which included a 6:1 replacement ratio. He also referred to the loss of an area of wet woodland which could not be replaced due to the special ground conditions but that as mitigation an additional area of broadleaved woodland had been included. The Consultant Planner advised the meeting that independent consultants had been engaged to review the Environmental Impact Assessment to ensure that it was robust and comprehensive, and overall it was considered that the application was in accordance with the Development Plan and therefore it was recommended for approval.

Scott Bracken on behalf of Morris Leisure Ltd. spoke against the proposal in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees.

The Head of Legal and Democratic Services read a statement on behalf of Rachel Denyer against the proposal in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees.

Tina Teearu spoke against the proposal in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees.

Frank Oldaker spoke against the proposal in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees.

Heather Streetley spoke against the proposal in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees.

Paul Overall spoke in favour of the proposal in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees.

John Gittins spoke in favour of the proposal in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees.

Cllr Nick Bardsley spoke in favour of the proposal in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees.

Daniel Kawczynski MP spoke in favour of the proposal in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees.

Dave Green on behalf of Better Transport Shrewsbury spoke against the proposal in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees.

Will Read on behalf of the Dalton Drive Residents Group spoke against the proposal in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees.

Peter Gilbert on behalf of Sustainable Transport Shropshire spoke against the proposal in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees.

Councillor Sally Maddox spoke on behalf of Bicton Parish Council in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees.

Councillor Dr Alan Herbert spoke on behalf of Bomere Heath Parish Council in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees.

Councillor Pam Moseley spoke on behalf of Shrewsbury Town Council in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees.

Councillor Rob Wilson, local Ward Councillor made a statement in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees.

Councillor Alex Wagner, local Ward Councillor made a statement in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees.

The Head of Legal and Democratic Services read out a statement from Councillor Nat Green, local ward councillor in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees.

The Head of Legal and Democratic Services read out a statement from Councillor Garry Burchett, local ward councillor in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees.

Matt Johnson, (on behalf of the Applicant), spoke in support of the proposal in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees.

The Policy and Environment Manager advised there was a correction to the final sentence of paragraph 7.14.30 of the officer report. It should read so that conditions referred do not relate to above ground heritage assets only to the below ground assets. In response to comments made in Councillor Green's statement, the Policy and Environment Manager confirmed that it was considered that the proposals would not have an adverse effect on Darwin's House.

A Councillor asked what modelling had been done on the rat runs especially through Baschurch. The Developing Highways Manager confirmed that there was no specific analysis for the rat run route at Baschurch he had specified but that one rat run around Huffley Lane had been modelled.

A Member asked why the route could not be altered to avoid the destruction of the Darwin Oak. The Consultant Planner explain that the road had been designed as a 60mph road and as such it had not been possible to design the road around the tree due to the size of the root protection zone. The County Arboriculturist stated that the applicant had provided additional information around the removal of trees.

Councillor Vasmer made the following statement: -

Committee members will have seen the exchange of views about predetermination. I want to make clear that whatever motion has been passed by Shrewsbury Town Council I come to this meeting with an open mind willing to listen to the arguments both for and against the North-West Relief Road. I hope that you will be able to judge this on the basis of my contribution at this meeting today. With the committee's permission I would like this statement to be included in the minutes.

In response to a query the Developing Highways Manager confirmed that the traffic survey data was taken from 2019 and that the transport model worked out a growth fact on which the 2038 figures were based.

A Member expressed concerns that they were being requested to agree that the agreement of conditions be delegated to Officers and that he felt that the final decisions should be taken by Members. The Assistant Director Economy and Place stated that it was possible for the conditions to be brought back to the Committee for final approval.

A Member asked whether the modelling was based on vehicle size. The Developing Highways Manager stated that the transport modelling used Passenger Car Units (PCUs) which took into account all vehicle types.

In response to a query the Ecologist stated that with regards to biodiversity net gain (BNG) there were irreplaceable habitats that were lost meaning that BNG could not be demonstrated but that there would be an increase in habitat units and that more hedgerow would be created than was lost.



Phil Edge stated that Watermans had been engaged by the Local Planning Authority to carry out a full independent review of the information submitted by the applicants consultant and that as part of this had taken into account comments made by BeST, and that they agreed with the approach taken by the applicant..

It was proposed by Councillor Vasmer and seconded by Councillor Dean that consideration of the application be deferred to allow further discussion with the Environment Agency and updating of the traffic modelling.

On being put to a recorded vote with 5 Members voting for, 6 against and no abstentions as follows:

**FOR:**

Councillors Clarke, Dean, R Evans, Hartin and Vasmer

**AGAINST:**

Councillors Aldcroft, Barrow, Elnor, D Evans, Hunt and Wynn.

The proposition was not supported.

It was proposed by Councillor D Evans and seconded by Councillor Aldcroft that planning permission be granted in accordance with the officer recommendation subject to the agreed conditions being brought to a future meeting of the Committee for confirmation.

On being put to a recorded vote with 6 Members voting for, 5 against and no abstentions as follows:

**FOR:**

Councillors Aldcroft, Barrow, Elnor, D Evans, Hunt and Wynn.

**AGAINST:**

Councillors Clarke, Dean, R Evans, Hartin and Vasmer

It was **RESOLVED:**

That in accordance with Officer recommendation planning permission be approved subject to additional conditions and the final wording of conditions being delegated to the Assistant Director of Economy and Place for agreement with statutory consultees prior to being brought to a future meeting of the Committee for approval and a signed S106 obligation from the relevant landowners as set out in Appendix 1 to deliver off site mitigation and the compensation strategy.

**63 Date of the Next Meeting**

It was noted that the next meeting of the North Planning Committee would be held at 2.00 p.m. on Tuesday 7 November 2023 in the Shrewsbury/Oswestry Room, Shirehall, Shrewsbury.

Signed ..... (Chairman)

Date: .....



## Committee and Date

Northern Planning Committee

6<sup>th</sup> February 2024

## **NORTHERN PLANNING COMMITTEE**

### **Minutes of the meeting held on 7 November 2023**

**In the Shrewsbury/Oswestry Room, Shirehall, Abbey Foregate, Shrewsbury, Shropshire, SY2 6ND**

**2.00 - 3.37 pm**

**Responsible Officer:** Emily Marshall / Shelley Davies

Email: emily.marshall@shropshire.gov.uk / shelley.davies@shropshire.gov.uk      Tel: 01743 257717 / 01743 257718

### **Present**

Councillors Paul Wynn (Chairman), Joyce Barrow, Garry Burchett, Geoff Elner, Ted Clarke, Steve Charmley, Julian Dean, Roger Evans, Nat Green, Vince Hunt (Vice Chairman) and Mary Davies (Substitute) (substitute for David Vasmer)

### **64 Apologies for Absence**

Apologies for absence were received from Councillors David Vasmer (substitute: Councillor Mary Davies).

### **65 Minutes**

#### **RESOLVED:**

That the Minutes of the meeting of the North Planning Committee held on 10<sup>th</sup> October 2023 be approved as a correct record and signed by the Chairman.

### **66 Public Question Time**

There were no public questions or petitions received.

### **67 Disclosable Pecuniary Interests**

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

With reference to agenda item 6, planning application 23/03515/OUT Land North West of The Old Smithy, Longslow, Market Drayton, Shropshire, TF9 3QY, Councillor Paul Wynn declared that he was the local ward councillor for this application and in accordance with procedure rules would make a statement and then move away from the table, taking no part in the debate or vote. Councillor Vince Hunt, Vice-Chairman of the Committee would chair the meeting for this application.

With reference to agenda item 7, planning application 23/01422/FUL, Car Park Barker Street Shrewsbury Shropshire, Page 17  
Councillor Nat Green reported that he was a

member of Shrewsbury Town Council Planning Committee and indicated that his views on any proposals when considered by the Town Council had been based on the information presented at that time and he would now be considering all proposals afresh with an open mind and the information as it stood at this time. He was also the local ward councillor for this application and in accordance with procedure rules would make a statement and then move away from the table, taking no part in the debate or vote.

With reference to agenda item 7, planning application 23/01422/FUL, Car Park Barker Street Shrewsbury Shropshire, Councillor Mary Davies reported that she was a Member of Shrewsbury Town Council's Planning Committee and indicated that her views on any proposals when considered by the Town Council had been based on the information presented at that time and she would now be considering all proposals afresh with an open mind and the information as it stood at this time.

**68 Proposed Poultry Units, NW Of North Farm, Felton Butler, Montford Bridge, Shropshire (17/05151/EIA)**

The Planning Manager North introduced the application for the erection of four poultry rearing buildings, eight feed bins, biomass store and amenity building including landscaping and tree planting. Members' attention was drawn to the information contained within the Schedule of Additional letters.

Having considered the presentation by the Planning Manager North and the information in the Schedule of Additional letters, Members agreed that consideration of the application be deferred to allow for re consultation in accordance with EIA legislation and procedures, following the applicant's submission of a significant amount of additional information in relation to ecology, ammonia emissions, landscape design, public highway access and an addendum to the Environmental Statement.

**RESOLVED:**

That determination of the application be deferred to a future meeting of the Northern Planning Committee to allow for re consultation, in accordance with EIA legislation and procedures, following the applicant's submission of a significant amount of additional information in relation to ecology, ammonia emissions, landscape design, public highway access and an addendum to the Environmental Statement.

**69 Land North West of The Old Smithy, Longslow, Market Drayton, Shropshire, TF9 3QY (23/03515/OUT)**

*Councillor Paul Wynn, Chairman, declared that as the local ward councillor for this item and in accordance with the Local Protocol for Councillors and Officers dealing with Regulatory Matters (Part 5, Paragraph 15.1) he would make a statement and then withdraw from the meeting, taking no part in the debate or vote on this application.*

*Councillor Vince Hunt, Vice-Chairman chaired the meeting for consideration of this item.*

The Senior Planning Officer introduced the outline application for the erection of a single two-storey dwelling to include access. Members' attention was drawn to the information contained within the Schedule of Additional letters.

The Council's Solicitor read out a statement on behalf of Moreton Say Parish Council, against the proposal in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees.

In accordance with the Local Protocol for Councillors and Officers dealing with Regulatory Matters (Part 5, Paragraph 15.1) Councillor Paul Wynn as local ward councillor, made a statement and then left the room, took no part in the debate and did not vote on this item

During the ensuing debate, Members expressed concerns in relation to flooding and the culvert at the access to the site being maintained and kept in a clean condition. It was explained that the maintenance of the culvert could not be conditioned, but that authority could be delegated to planning officers to liaise with the Council's drainage team to investigate the culvert in more detail.

Having considered the submitted plans and listened to the comments made by all of the speakers, the majority of Members expressed their support for the officer's recommendation.

**RESOLVED:**

That planning permission be granted in accordance with the planning officer's recommendation, subject to:

- The conditions set out in Appendix 1; and
- That authority be delegated to the Planning Services Manager in consultation with the Council's drainage team, to include works for cleaning the culvert and an additional condition in relation to drainage to minimise flooding on the highway.

**70 Car Park Barker Street, Shrewsbury, Shropshire (23/01422/FUL)**

The Planning Manager North introduced the application for the proposed mixed use development to include 83 Bed Hotel and 3 No. Retail Units with associated Car Parking and Landscaping and confirmed that the Committee had undertaken a site visit that morning to assess the impact of the proposed development on neighbouring properties and the surrounding area. Members' attention was drawn to the information contained within the Schedule of Additional letters.

In accordance with the Local Protocol for Councillors and Officers dealing with Regulatory Matters (Part 5, Paragraph 15.1) Councillor Nat Green, as local ward councillor, made a statement and then left the room, took no part in the debate and did not vote on this item.

Mr Ian Kilby, Agent on behalf of the applicant spoke in support of the proposal in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees.

During the ensuing debate, some concern was expressed that the application did not meet paragraph 130 of the NPPF or the aspirations for the future of the area as argued by The Big Town Plan. Consideration was also given to significant amount of opposition from various bodies with knowledge of the area. However, members felt that the site visit had been useful and work had been done to mitigate the objections and concerned expressed. Members were also mindful of the extant permission for the site.

However, having considered the submitted plans and listened to the comments made by all of the speakers, the majority of Members expressed their support for the proposals in accordance with the officer's recommendation.

It was agreed that given the high visibility of the site officers give consideration to working times on site.

**RESOLVED:**

That approval be delegated to the Planning Service Manager subject to:

- A Section 106 agreement in relation to landscaping and the taxi drop off and pick up point;
- The conditions as set out in appendix 1 of the planning officer's report and any amendments as considered necessary to these conditions by the Planning Service Manager.
- An additional condition to refer to window detail being submitted for approval prior to any above ground works taking place as set out on the update sheet.

**71 Land South Of Hollins Lane, Newport Road, Woodseaves, Market Drayton, Shropshire (19/05127/EIA)**

The Principal Planning Officer introduced the application for the construction of two poultry sheds, feed bins and associated ancillary works. Members' attention was drawn to the information contained within the Schedule of Additional letters.

The Council's Solicitor read a statement on behalf of Sutton on Tern Parish Council against the proposal in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees.

The Council's Solicitor read out a statement, in accordance with the Local Protocol for Councillors and Officers dealing with Regulatory Matters (Part 5, Paragraph 15.1) on behalf of Councillor Rob Gittins as local ward councillor.

Nick Williams Agent on behalf of the applicant spoke in support of the proposal in accordance with Shropshire Council's Scheme for Public Speaking at Planning Committees.

Having considered the submitted plans and listened to the comments made by all of the speakers, Members unanimously agreed that consideration of the application should be deferred to allow the applicant the opportunity to provide the information that officers consider has been omitted from the submitted odour assessment and to enable officers to assess this.

**RESOLVED:**

That consideration of the application be deferred to a future meeting of the Northern Planning Committee to allow the applicant the opportunity to provide the information that officers consider has been omitted from the submitted odour assessment and to enable officers to assess this.

**72 Appeals and Appeal Decisions**

**RESOLVED:**

That the appeals for the Northern area be noted.

**73 Date of the Next Meeting**

It was noted that the next meeting of the North Planning Committee would be held at 2.00 p.m. on Tuesday 5<sup>th</sup> December 2023, in the Shrewsbury/Oswestry Room, Shirehall, Shrewsbury.

Signed ..... (Chairman)

Date: .....

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## AGENDA ITEM



Committee and date
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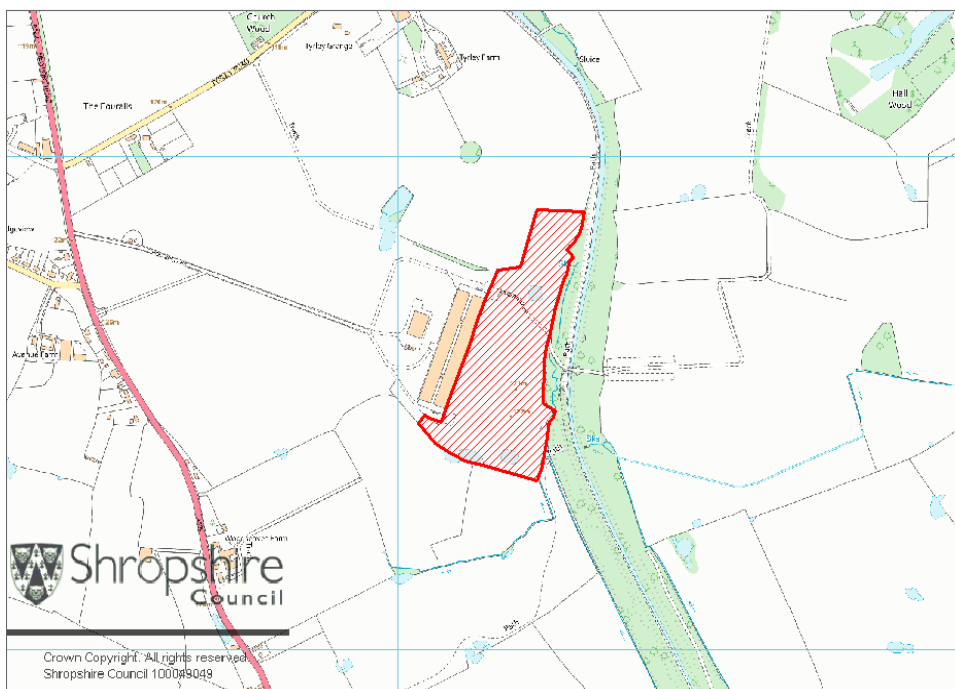
### Development Management Report

Responsible Officer: Tracy Darke, Assistant Director of Economy & Place

#### Summary of Application

<b>Application Number:</b> 19/05127/EIA	<b>Parish:</b> Sutton Upon Tern
<b>Proposal:</b> Construction of two poultry sheds, feed bins and associated ancillary works	
<b>Site Address:</b> Land South Of Hollins Lane Newport Road Woodseaves Market Drayton Shropshire	
<b>Applicant:</b> HLW Farms	
<b>Case Officer:</b> Kelvin Hall	<b>email:</b> kelvin.hall@shropshire.gov.uk

**Grid Ref:** 368674 - 331691



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Recommendation: That delegated authority is granted to the Planning and Development Services Manager to grant planning permission subject to the conditions as set out in Appendix 1, and any amendments to these conditions as considered necessary by the Service Manager.

## REPORT

### **A BACKGROUND TO THE PROPOSAL**

A.1 This application was presented to the North Planning Committee meeting on 7<sup>th</sup> November 2023, with an officer recommendation that planning permission be refused for the following reason:

*'The planning application is accompanied by an Environmental Statement which includes an Odour Impact Assessment. It is considered that there are omissions in this assessment of such significance that insufficient reliance can be place on its findings. The submitted details therefore provide insufficient information to demonstrate that the proposed development would not result in an unacceptable impact on residential and local amenity due to adverse levels of odour. The proposed development is therefore contrary to Core Strategy policies CS6 and CS17, SAMDev Plan policies MD2 and MD7b; and NPPF paragraphs 130 and 185.'*

A.2 At the meeting, Members resolved as follows:

*That consideration of the application be deferred to a future meeting of the Northern Planning Committee to allow the applicant the opportunity to provide the information that officers consider has been omitted from the submitted odour assessment and to enable officers to assess this.*

A.3 A further odour report has now been submitted and this is discussed below, along with other relevant considerations. The report below is a replacement to the one presented to the 7<sup>th</sup> November committee meeting, and includes details of the additional representations that have been received since that meeting.

### **1.0 THE PROPOSAL**

1.1 Planning permission for a poultry broiler unit at Hollins Lane was granted in 2015 (ref. 15/00924/EIA) and the operation commenced in 2016. At present the unit includes four poultry buildings, which are permitted to house up to 260,000 birds under an Environmental Permit. The current application seeks to add an additional four sheds to the site. These would take the form of two sets of linked buildings, as is the case for the existing ones. The proposed buildings would house approximately 232,000 birds (58,000 in each shed), on the same cycle as the existing ones. The buildings would be situated adjacent to the existing sheds. It should be noted that the proposed site has already been levelled for this purpose.

- 1.2 The poultry buildings would each measure 119 metres x 25 metres with a total unit length of 238 metres. Height to the eaves would be 2.64 metres and the ridge height would be 4.82 metres. The highest point would be the top of the fans at 5.41 metres. They would be of portal framed construction with insulated box profile metal sheeting to the walls and roofs. The walls would be finished in slate blue and the roofs in merlin grey colour to match the existing sheds. Air drawn from the sheds would be exhausted through 18no. ridge stacks for each of the four sheds. The proposed sheds would be fitted with heat exchangers in order to optimise energy efficiency. Each of the new poultry houses will be fitted with ammonia scrubbers, through which air would be drawn. It is also proposed that air scrubbers would be added to the eastern two existing poultry houses.
- 1.3 There would be four feed bins situated at each end of the buildings which would measure 6.6 metres in height and 2.8 metres in diameter. The buildings would be heated using the existing biomass boilers which are situated in the biomass building to the west of the existing building. Back up heating would be provided by LPG. The existing yard area would be extended to the ends of the buildings to provide access to all four buildings. Lighting on the site would be limited to a low-wattage, low intensity light above the openings to allow safe working during normal working hours during the winter. Additional lighting may be required during the removal of birds but this would be carried out in low light levels to minimise bird stress.
- 1.4 Proposed operation: The broilers would be brought in as day old chicks from a hatchery with the average crop cycle being 35-36 days plus the clean-out period which is 10 days on average. At the end of the growing period the birds would be collected and transported to a processing plant. This would result in around 7 crops per year. All manure arising from the proposed operation would be exported off site to an anaerobic digester plant or other licensed waste management facility.
- 1.5 Modifications to planning application since original submission:  
Since the application was first submitted the following additional information has been submitted:
- Updated Landscape and Visual Impact Assessment
  - Submission of Landscape Management and Maintenance Plan
  - Revised Odour Impact Assessment
  - Updated plans to show air scrubber units
  - Updated Ammonia Emissions Impact Assessment
  - Revised details of manure management
  - Updated Transport Note
  - Updated Ecological Appraisal
  - Further drainage calculations and clarification
  - Updated noise assessment
  - Updated Environmental Statement
  - Additional odour report

## 2.0 SITE LOCATION/DESCRIPTION

- 2.1 The site is located at the existing Hollins Lane poultry unit, which is approximately 2.5km

to the south-east of Market Drayton, and approximately 500 metres to the east of the settlement of Woodseaves. The application site is approximately 8.5 hectares in size and includes the four proposed poultry buildings and associated infrastructure and ancillary buildings, and an area of proposed woodland planting to the east and south of the sheds. The existing poultry sheds are adjacent to the site, to the west, and beyond those is a biomass boiler building which houses eight biomass boilers to heat the buildings. Approximately 200 metres further west is the site for a battery energy storage facility for which planning permission was granted in 2023. Other surrounding land is in agricultural use for the growing of miscanthus. Approximately 60 metres to the east of the site boundary is the Shropshire Union Canal which runs in a cutting. This section of the canal (over the Shropshire border) is designated as a Conservation Area and a Local Wildlife Site. The Tyrley Canal Cutting SSSI is approximately 330 metres to the south-east. Access to the site would be gained via the existing track which serves the poultry operation and which connects to the A529 to the west.

- 2.2 The nearest residential properties are those at Tyrley Farm and Tyrley Road to the north, approximately 430 metres away; and those along the A529 to the west, the nearest of which is approximately 530 metres away.

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

- 3.1 The proposals comprise Schedule 1 EIA development and the Council's Scheme of Delegation requires that such applications are determined by Planning Committee.

### **4.0 COMMUNITY REPRESENTATIONS**

#### **4.1 Consultee Comments**

##### **4.1.1 Sutton upon Tern Parish Council**

Comments made 2/11/23: Sutton upon Tern Parish Council reaffirm our objections to the proposal of additional development on the site. There is concern the doubling of the number of poultry units will have an overwhelming environmental impact on the area. Along with the multiple odour related complaints from nearby residents there is circumstantial evidence provided by residents that the existing development is causing impact on the Woodseaves cutting and Tyrley Locks towpath being regularly flooded where previously it was a rare occurrence. This makes tourism from boat mooring and access to walks along the canal an issue, which is hindering the Council's aim to promote both these activities.

With biomass boilers in place already on the site and also a yet to be constructed battery energy storage system we believe any additional construction activity will cause further issues and be difficult to mitigate against. Therefore we recommend refusal.

Comments on further information made 3/5/23: The Parish Council's previous objections still stand in that the doubling of the size of the site and environmental impacts will have a detrimental effect on the surrounding area and its population. The Parish Council is

also not entirely convinced that proposing some ammonia removal filtration system will reduce the output into the atmosphere. Also given the local and national impacts of the substantial growth of intense poultry units across the country with run off of waste placed on farmland affecting water courses then the Parish Councils OBJECTION still stands.

The application is further compromised by the claimed route which is currently with The Planning Inspectorate (ROW/3308466) awaiting the appointment of an Inspector to determine the appeal in 2023. As the application is so close to the County Boundary between Shropshire and Staffordshire a view from neighbouring authorities would also be very welcome.

Comments made 9/12/19: Strongly objects, as this is a doubling of the number of sheds on the site and the environmental impact such a development would have on the local amenity of the area. The application would also create additional traffic hindering walkers on Hollins Lane and the potential conflict/danger that would cause on the A529 already receiving a large amount of additional highway investment because it is so dangerous. The application would also have a detrimental effect on the environment particularly so close to the canal and the impact that will have on the areas flora and tourism.

However, if Shropshire Council is minded to grant permission some form of Section 106 agreement would be required for the applicant to invest in the reinstatement of the footpath/bridle way along Hollins Lane given the additional traffic that would be generated and the conflict between the traffic and walkers with additional investment into the junction onto the A529. An Environmental impact assessment should also be commissioned by the applicant to minimise/reduce the developments impact on the areas ecology and 'green' tourism on the canal.

#### 4.1.2 **Environment Agency**

Comments 15/1/24 following submission of Odour Audit report

We have reviewed the Odour Audit Report. We have not technically assessed the findings of this report but note that it is limited to four occasions when odour monitoring was carried out by an employee of Isopleth. The submitted Odour Audit Report concludes that "odours from the existing sheds are expected to be detectable and recognisable, but transient and infrequent at Tyrley Farm". The conclusions are similar to our own odour monitoring findings.

Note, we did not receive any odour complaints from the public between 18 and 26 December 2023 when the odour assessments were carried out. We did however receive odour complaints on the 8, 10, 14 and 15 December 2023 from a single receptor.

As previously advised (letter dated 25<sup>th</sup> May 2023) we have in the past carried out a small number of odour assessments in response to odour complaints but have been unable to substantiate any of the odour complaints. This may be because odours are likely to be transient and short lived and very weather dependent (upon multiple factors such as wind speed, wind direction, air temperature, and humidity).

We are confident that the existing poultry farm complies with its environmental permit and that it is not causing odour pollution. The operator holds an odour management plan and is expected to comply with it. A condition (3.3) of the permit states that:

*“Emissions from the activities shall be free from odour at levels likely to cause pollution outside the site, as perceived by an authorised officer of the Environment Agency unless the operator has used appropriate measures, including, but not limited to, those specified in any approved odour management plan, to prevent or where that is not practicable to minimise the odour.”*

It is not practical for a poultry farm to eliminate odour completely. The European Union has specified that the use of ventilation fans to remove, and disperse odour is a "best available technique".

We note that the applicant has stated that they would install acid scrubber units to remove ammonia from the air leaving the newly proposed sheds (and two existing sheds). It is likely that acid scrubber units would reduce some odour (as the treatment process removes dust and ammonia from the air). However, due to this being very new technology, it is not possible to predict by how much odour would be reduced.

Comments made 25/5/23 following submission of further information: The application now proposes additional infrastructure in the form of acid scrubbers to treat some of the ventilated air leaving the poultry farm (both within the two proposed additional units and two of the existing) in order to reduce odour and ammonia emissions. Based on our current position, we would not make detailed comments on these emissions as part of the current planning application process. It will be the responsibility of the applicant to undertake the relevant risk assessments and propose suitable mitigation to inform whether these emissions can be adequately managed. We would not therefore comment on the efficiency of such infrastructure or whether this new ventilation design would be odour abatement ready. These are matters for your Council to consider and assess where appropriate as part of your planning application determination.

We are likely to consider odour impact through the Environmental Permit (EP) variation process and/or through the compliance/enforcement of that regulatory regime.

Manure Management: Manure disposal within the applicant's ownership (fields) is controlled through the EP. As part of the permit determination, we do not require a Manure Management Plan. However, EP holders are required to operate under a Manure Management Plan, which consists of a risk assessment of the fields on which the manure will be stored and spread, in cases where this is done within the applicant's land ownership. It is used to reduce the risk of the manure leaching or washing into groundwater or surface water. The permitted farm would be required to regularly analyse the manure and the field soil to ensure that the amount of manure which will be applied does not exceed the specific crop requirements i.e. as an operational consideration. More information may be found in appendix 6 of the document titled "How to comply with your environmental permit for intensive farming." Intensive farming: comply with your

environmental permit - GOV.UK ([www.gov.uk](http://www.gov.uk))

As mentioned previously, we do regulate any pollution to water from manure storage or spreading. We also regulate Nitrate Vulnerable Zone (NVZ) compliance. This is undertaken as part of a farm visit or any potential notified operational breach.

In terms of manure management, the application proposes that additional manure from the proposed poultry sheds will be sent to a regulated anaerobic digestion (AD) plant. The AD facility is at a different farm and is managed by a different legal entity to the poultry farm. As the receiving AD facility is subject to an EP, we would control emissions associated with such to land, air and water. Any wider disposal from that facility may be subject to a deployment/digestate spreading 'permit to land spread' or use as product (PAS compliance).

Environmental Permit: The increase in number of birds at this site will require a variation to the existing permit. While a permit variation application was initially received back in February 2020, further information was requested to support this. To date no subsequent variation has been received.

Complaints: We have received a large number of odour complaints from a single sensitive receptor at this location. We have not been able to substantiate any of these complaints however we have only carried out monitoring on a small number of occasions. It is likely that the gardens of the dwelling (external areas) are mainly impacted during times when cooler (denser) air descends to ground level for example late evenings, night times to early mornings. At other times of the day when the air is warmer and rising, the high velocity roof fans will disperse the odour sufficiently for it not to become a nuisance.

An Odour Management Plan (OMP) and Noise Management Plan (NMP), as required under the EP, should help reduce emissions from the site, but it will not necessarily completely prevent all odour and noise. The OMP can reduce the likelihood of odour pollution but is unlikely to prevent odour pollution when residents are in proximity to the units and there is a reliance on air dispersion to dilute odour to an acceptable level.

Previous comments 19/12/19:

The Environmental Permit (EP) controls day to day general management, including operations, maintenance and pollution incidents. The Environmental Permit (EP) will include the following key areas:

- Management – including general management, accident management, energy efficiency, efficient use of raw materials and waste recovery.
- Operations - including permitted activities and Best Available Techniques (BAT).
- Emissions - to water, air and land including to groundwater and diffuse emissions, odour, noise and vibration, monitoring.
- Information – records, reporting and notifications.

Our consideration of the relevant environmental issues and emissions as part of the EP

only apply to the proposed poultry installation and where necessary any Environment Agency regulated intensive farming sites.

**Bio-aerosols and dust:** Intensive farming has the potential to generate bio-aerosols (airborne particles that contain living organisms) and dust. It can be a source of nuisance and may affect human health. Sources of dust particles from poultry may include feed delivery, storage, wastes, ventilation fans and vehicle movements.

As part of the permit determination, we do not normally require the applicant to carry out dust or bio-aerosol emission modelling. We do require a 'risk assessment' be carried out and if there are relevant sensitive receptors within 100 metres of the installation boundary, including the farmhouse or farm worker's houses, then a dust management plan is required. A dust management plan (DMP) will be required similar to the odour and noise management plan process. This will secure details of control measures to manage the risks from dust and bio-aerosols. Tables 1 and 2 and checklist 1 and 2 in 'assessing dust control measures on intensive poultry installations' (available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/297093/g\\_eho0411btra-e-e.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/297093/g_eho0411btra-e-e.pdf)) explain the methods the operator should use to help minimise and manage these emissions.

**Water Management:** Clean Surface water can be collected for re-use, disposed of via soakaway or discharged to controlled waters. Dirty Water e.g. derived from shed washings, is normally collected in dirty water tanks via impermeable surfaces. Any tanks proposed should comply with the Water Resources (control of pollution, silage, slurry and agricultural fuel oil) Regulations 2010 (SSAFO). Yard areas and drainage channels around sheds are normally concreted.

Buildings which have roof or side ventilation extraction fans present, may deposit aerial dust on roofs or "clean" yards which is washed off during rainfall, forming lightly contaminated water. The EP will normally require the treatment of such water, via french drains, swales or wetlands, to minimise risk of pollution and enhance water quality. For information we have produced a Rural Sustainable Drainage System Guidance Document, which can be accessed via: <http://publications.environment-agency.gov.uk/PDF/SCHO0612BUWH-E-E.pdf>

#### 4.1.3 **Natural England** No comments to make on this application.

Natural England has not assessed this application for impacts on protected species. Natural England has published Standing Advice which you can use to assess impacts on protected species or you may wish to consult your own ecology services for advice. Natural England and the Forestry Commission have also published standing advice on ancient woodland and veteran trees which you can use to assess any impacts on ancient woodland. The application is not likely to result in significant impacts on statutory designated nature conservation sites or landscapes. It is for the local planning authority to determine whether or not this application is consistent with national and local policies on the natural environment.



## 4.1.4 SC Ecologist

Comments made 28/6/23 following submission of further information:

No objection. Conditions have been recommended to ensure the protection of designated sites, irreplaceable assets and protected species and to provide ecological enhancements under NPPF, MD12 and CS17.

Ecological Appraisal: An up-to-date Ecological Appraisal has been submitted and the ecology team concur with the conclusions and recommendations of this report.

Ammonia emissions: Ammonia emissions and nitrogen deposition upon sensitive sites has been assessed in 'Hollins Lane, Woodseaves, Ammonia Emissions: Impact Assessment, Report Ref 01.0101.006 v1' by Isopleth dated January 2023.

The following BAT measures are proposed:

- Ammonia scrubber retro-fitted to two of the existing poultry buildings at Land South of Hollins Lane, Newport Road, Woodseaves
- Ammonia scrubbers fitted on the two proposed poultry buildings at Land South of Hollins Lane, Newport Road, Woodseaves

Information from the air quality report regarding existing and proposed ammonia emissions and nitrogen deposition upon designated sites is shown below.

### ECO 2 & 3 BURNT WOOD SSSI

Maximum Existing Process Contribution % of Critical Level: 1.4%

Maximum Proposed\* Process Contribution % of Critical Level: 1.1%

Change in Critical Level from existing to proposed: -0.003 ug/m<sup>3</sup>

Existing Process Contribution % of Critical Load: 1.1%

Proposed\* Process Contribution % of Critical Load: 0.8%

Change in Critical Load from existing to proposed: -0.023 kg/ha/yr

### ECO 4, 5, 6 & 7 THE DINGLE ANCIENT WOODLAND

Maximum Existing Process Contribution % of Critical Level: 10.6%

Maximum Proposed\* Process Contribution % of Critical Level: 7.1%

Change in in Critical Level from existing and to proposed: -0.035 ug/m<sup>3</sup>

Existing Process Contribution % of Critical Load: 8.3%

Proposed\* Process Contribution % of Critical Load: 5.5%

Change in Critical Load from existing to proposed: -0.278 kg/ha/yr

\* proposed scenario with emission factors for the existing and proposed poultry units with ammonia scrubbers fitted.

The modelling shows that the proposal will result in a betterment to the existing ammonia and nitrogen process contribution at all the sites scoped in for assessment. This is

considered acceptable.

It is noted that an in-combination assessment is not required as the proposals do not give rise to any residual effects, i.e. there is a betterment in terms of the reduction of ammonia from the existing to the proposed situation.

Recommended conditions: It is recommended that conditions are added to require: submission of contingency measures in the event that operation of one or more of the scrubbing units is not possible; submission of evidence that air scrubbers have been installed; use of air scrubbers at all times; bird numbers limited to 232,000; appointment of Ecological Clerk of Works; erection of bat and bird boxes.

- 4.1.5 **Historic England** Does not wish to offer any comments. Suggests that the views of the Council's specialist conservation and archaeological advisors are sought, as relevant.

Comments 27/4/23 following submission of further information: On the basis of this information, we do not wish to offer any comments. We suggest that you seek the views of your specialist conservation and archaeological advisers, as relevant. It is not necessary for us to be consulted on this application again, unless there are material changes to the proposals.

- 4.1.6 **SC Conservation** The proposal site lies adjacent the Shropshire Union Canal and Hollings Bridge (number 58) which is grade II listed building, where these heritage assets lie just over the border within Newcastle under Lyme Borough, Staffordshire. 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, NPPF and the relevant Planning Practice Guidance. Sections 16, 66 and 72 of the Planning (Listed Building and Conservation Areas) Act 1990 (as amended).

Having consulted the submitted Heritage Statement by Richard K Morriss and the Visual Assessment (photos 3 and 4 in particular), it is considered that the proposal would have a negligible impact upon the setting of the relevant heritage assets (Hollings Bridge and the Shropshire Union Canal Conservation Area), where there is a degree of existing screening in the form of existing trees and vegetation along the embankment, where the canal sits within a deep cutting. Whilst there is disagreement with the concluding statements of the Heritage Statement in terms of 'no impact/no harm', there are no principle objections subject to conditions with regards to further supplementary landscaping, such as the construction of a bund type structure in order to safeguard long-range views into the site.

- 4.1.7 **SC Archaeology** No comments to make.

- 4.1.8 **Shropshire Council's landscape consultant**

Executive summary: The LVIA concludes that the proposed development will lead to

# AGENDA ITEM

Land South Of Hollins Lane

one beneficial landscape effect, 3 adverse landscape and visual effects, 8 negligible effects and 2 no effects. None of the effects are predicted to be significant.

Our review concludes that the assessment of landscape and visual effects has been carried out to a robust and compliant standard for an EIA project, and that its findings may be relied on in making an informed planning decision.

All recommendations made in our previous reviews have been adequately addressed and we consider that the proposed development will not lead to unacceptably adverse effects on landscape and visual amenity, and complies with Local Plan policies on landscape and visual amenity.

Conclusions & Recommendations: The assessment of landscape and visual effects has been carried out to a compliant standard for an EIA project in accordance with GLVIA3. None of the effects are predicted to be significant and the findings of the LVIA are set out below:

	At completion	After 5 years
<b>Landscape effects</b>		
Vegetation of the Site and its boundaries	Negligible	Slight Beneficial
Landform of the site	Slight adverse	
Principal Settled Farmlands	Negligible	
Sandstone Hills and Heath	Negligible	
<b>Visual effects</b>		
Users of PRoW 0228/1/2 and PRoW 0228/1/1	Moderate adverse	Slight adverse
Users of PRoW 57 and PRoW 0204/2/2	No effect	
Users of Tyrley Road	Negligible	
Users of A529	Negligible	
Residents of Woodseaves Grange	Negligible	
Residents of Woodseaves Farm and properties near its south	Negligible	
Residents of properties east of the Shropshire Union Canal	No effect	
Residents of Tyrley Road and Upper Castle Barn	Negligible	

All outstanding recommendations from our previous reviews have been satisfactorily addressed and we consider that the proposed development will not lead to unacceptably adverse effects on landscape and visual amenity, and that it complies with Local Plan policies on landscape and visual amenity

4.1.9 **Ministry of Defence – Defence Infrastructure Organisation** Recommends a condition.

The application site is approximately 5.04km from the centre of the runway at RAF Ternhill and falls within the birdstrike statutory safeguarding zone surrounding RAF

Ternhill.

Birdstrike: Within this zone, the principal concern of the MOD is that the creation of new habitats may attract and support populations of large or flocking birds close to the aerodrome. The principal concern of the MOD with this development is the extension to the attenuation pond which has the potential to attract and support hazardous flocking birds such as gulls and other bird species. Therefore, the MOD has concerns that this has the potential to increase birdstrike risk to aircraft safety at RAF Ternhill.

To address the potential of the development to provide a desirable habitat, or spaces for hazardous birds a condition for the submission of a bird hazard management plan is required to prevent the breeding and nesting of gulls and other bird species. To prevent access to the water, the attenuation pond will need to be surrounded by goose proof fencing and dense emergent vegetation.

MOD requests that a condition is imposed to require that a Bird Hazard Management Plan is submitted for approval.

**4.1.10 Ministry of Defence – Defence Infrastructure Organisation** No objections.

The application site is situated 4.5km north east from the end of runway 22 for Ternhill airfield. Ternhill airfield is a relief training ground for the Defence Helicopter Flying School based at RAF Shawbury, as well as providing support for Chetwynd and Nesscliffe Training area.

The county of Shropshire as well as parts of adjacent counties is designated by the Ministry of Defence as Low Flying Area (LFA 9), an area utilised for dedicated training of military helicopter crew which requires intensive low-level flying activity. At Tern Hill, RAF Shawbury and associated training areas (Chetwynd and Nesscliffe) routine activity includes extremely low flying and manoeuvring, helicopters remaining operational (rotors turning) for extended periods after landing and helicopters hovering at full power for several minutes at a time (occasionally between 5 and 10 minutes). This activity, in support of front-line activity, produces a significant amount of low frequency noise which can be disturbing. This low-level helicopter activity tends to be scheduled between Monday and Friday, from 8.30-5pm though night flying is carried out from this airfield. Night Flying operations tend to be completed by 2am though it should be noted that 24-hour flying may occur on any day of the week where operationally required.

On reviewing the submitted noise assessment, it relates to the original 2013 planning application prior to the units being in situ. The report primarily addresses the proposed noise from the development and only references highway noise as an external environmental factor and not military air traffic.

The MOD advises the development will be exposed to noise from aircraft activities at Ternhill airfield. The MOD would not accept responsibility for any losses caused by aircraft, training or any associated activity or noise. This is on the basis the applicant

(and successors in title) would be deemed to have full knowledge of the immediate location, including the location of the application site in context to RAF Shawbury and the general nature of training activity taking place.

Please note this development also occupies the statutory aerodrome and birdstrike safeguarding consultation zone surrounding Tern Hill airfield. Therefore, my colleagues within the DIO Safeguarding Team as statutory consultees will be submitting their comments independently.

#### 4.1.11 **Canal & River Trust** Recommends conditions.

The main issues relevant to the Trust as statutory consultee on this application are:

- a. Implications for the stability of the canal cutting
- b. Implications on water quality
- c. Protection of heritage assets
- d. Protection of biodiversity

Based on the information available our substantive response (as required by the Town & Country Planning (Development Management Procedure) (England) Order 2015 (as amended)) is to advise that suitably worded conditions are necessary to address these matters.

Land instability and drainage The Trust has reviewed the further clarification on land stability and drainage matters provided within the agent's email of 9th September 2023 and notes that the plan indicates no run-off will enter the canal due to the existing ditch between the SUDS pond, the drainage system and the canal. We therefore raise no further concerns regarding the details contained therein, and request the use of suitable compliance-style conditions relating to these submissions on any forthcoming planning consent. This would accord with Policies CS6 (Sustainable Design and Development Principles) and CS18 (Sustainable Water Management) of the Shropshire Core Strategy 2011 and policies MD2 and MD12 of the Shropshire Council (SAMDev) Plan (2015).

Water quality The Trust has reviewed the further clarification regarding water quality matters provided within the agent's email of 9th September 2023 and notes the proposed provision of pit sumps to further control sediment and prevent pollution. We therefore raise no further concerns to the details contained therein, and request the use of suitable compliance-style conditions relating to these submissions on any forthcoming planning consent, to accord with Policies CS6 (Sustainable Design and Development Principles) and CS18 (Sustainable Water Management) of the Shropshire Core Strategy 2011 and policies MD2 and MD12 of the Shropshire Council (SAMDev) Plan (2015).

Regarding the potential for contaminated surface water runoff during construction and before the drainage system is installed, the Trust also continues to recommend submission of a CEMP outlining suitable water quality mitigation measures during construction and operation. It is noted that the applicant is agreeable to the application of a planning condition to this effect, upon which we request to be consulted further so

that we can advise the Council on the adequacy of measures proposed to protect the waterway network during construction and thereafter operationally. These requests accord with Policies CS6 (Sustainable Design and Development Principles) CS17 and CS18 of the Shropshire Core Strategy 2011 and policies MD2 and MD12 of the Shropshire Council (SAMDev) Plan (2015).

Heritage Further to comments included within our responses of 9th June and 31st August 2023 the condition of listed bridge 58 is unchanged since our initial response. It does not appear to be identified for use within the application submissions but for the avoidance of doubt we continue to request that no HGV access to the site via this bridge be conditioned within any future planning consent. This accords with Policy CS6 (Sustainable Design and Development Principles) of the Shropshire Core Strategy 2011 and Policy MD13 (Historic Environment) of the Shropshire Council (SAMDev) Plan (2015).

Biodiversity Further to comments included within our responses of 9th June and 31st August 2023, the Trust welcomes the submission of an updated Ecological Assessment and Landscape Management details and notes that the 10-year management plan appears sufficient. We therefore request the use of suitable compliance-style conditions on any forthcoming planning consent, to accord with Policy CS6 (Sustainable Design and Development Principles) of the Shropshire Core Strategy 2011 and policies MD2 and MD12 of the Shropshire Council (SAMDev) Plan (2015).

#### 4.1.12 **SC Public Protection**

Comments received 25/1/24: The existing poultry sheds hold an environmental permit, regulated by the Environment Agency and the proposed expansion will require a variation application to be submitted and approved to operate the additional sheds. Environmental Permitting guidance recommends that the permit applications and planning consents are twin tracked to make the process more efficient, both for the applicants and regulators. (The Environment Agency advised that a permit variation was submitted in February 2020, further information was requested to support the application, but no subsequent variation was received.)

Environmental Protection has reviewed the latest information submitted including the Odour Audit Report ref: 01.0101.006/v1 prepared by Isopleth, latest comments provided by the Environment Agency dated 15th January 2024 and comments submitted on behalf of Tyrley Residents Group dated 22 Jan 2024.

There are clearly a number of areas where the technical specialists in odour assessment are not in agreement nonetheless the environment agency have advised that they are confident that the existing farm is not causing pollution. The EA have not provided comment as to whether it is considered that the additional sheds are likely to result in pollution, but they have advised that this will be conditioned on any permit granted.

The EA have raised a query regarding how much odour is removed by the scrubbers,

this obviously raises questions about the accuracy of the assumptions of the modelling which assumed 40% of the odour is removed by the scrubbers. Again, as the permit will include a condition that the operations should not cause pollution it can be assumed that the efficiency of the scrubbers can be monitored by the permit and if it does not prove to be sufficient this can be controlled by the environmental permit. If they were found to be inadequate additional scrubbers could be installed on the remaining sheds if required.

It should be noted that the purpose of the environmental permitting regime is to prevent pollution and the definition of pollution in the Environmental Permitting Regulations is: "pollution", other than in relation to a water discharge activity or groundwater activity, means any emission as a result of human activity which may—

- (a) be harmful to human health or the quality of the environment,
- (b) cause offence to a human sense,
- (c) result in damage to material property, or
- (d) impair or interfere with amenities or other legitimate uses of the environment.

NPPF para 194 states "The focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively. Equally, where a planning decision has been made on a particular development, the planning issues should not be revisited through the permitting regimes operated by pollution control authorities."

There are clearly still some questions surrounding the effectiveness of the scrubbers and accuracy of the modelling and assessments. The environmental permit application process and the enforcement of conditions applied to the permit will enable these issues to be monitored and potentially amended if necessary. The environmental permitting regime has the ability and legal framework to do this. To consider the issue of odour management further as part of the planning application would result in duplication as it would need to be revisited as part of the permit regulation. Therefore, as the Environment Agency, as the regulator and statutory consultee, have not raised any objections to the proposal I would assume that the impacts of the proposals can be adequately controlled by the environmental permit with the exceptions detailed below.

Impacts not controlled by the environmental permit.

There are a couple of exceptions where potential impacts that might occur as a result of the development are not within the boundary of the environmental permit and therefore would not be controlled by the permit. For example, if the development results in increased traffic flows that may impact on surrounding properties or where muck from an agricultural use is spread off site and hence may have an impact on the surrounding area. This application indicates that additional manure from the poultry sheds will be sent to a regulated anaerobic digestion plant, emissions from such plant will also be regulated by the Environmental Permitting regime. Therefore Environmental Protection do not have concerns regarding offsite environmental impacts due to manure disposal, but do recommend a condition requiring manure to be disposed of via a regulated

anaerobic digestion plant, this can be incorporated into an agreed manure management plan.

As highlighted in Environmental Protection's previous comments, the increase in HGV movements to 32 movements per hour during de-population is likely to have an adverse impact on nearby receptors particular the property at the site entrance which is located just 30m from the entrance. However, this is limited as it will only occur for 1night at the end of each flock cycle and occur approximately 7 times a year.

#### Comments received 26/10/23

It is recognised that the 150 odour complaints from one receptor have not been verified. It should however be highlighted that the Environment Agency have only been able to attend to monitor on a handful of occasions and therefore while the complaints have not been verified, they have also not been invalidated.

#### Comments 21/9/23

The revised noise report has assessed the potential noise impact with the proposed air scrubbers included. The assessment concludes that noise from the extraction fans and air scrubbing units are not likely to have an adverse impact on the nearby sensitive receptors. It should be noted this assumes a fan with a sound pressure level of 68dB (LpA) at 2m, the report highlights that the choice of fan model is currently not fixed however it should be noted that alternative fans must be selected to achieve the same noise limits. Previous reports had assumed ridge fans with a higher sound pressure level of 70dB (LpA) at 2m.

The report states that all vehicle movements associated with de-population will occur between 0200-0700hours. As highlighted in Environmental Protections previous comments the increase in HGV movements to 32 movements per hour during de-population is likely to have an adverse impact on nearby receptors particular the property at the site entrance which is located just 30m from the entrance although this will only occur for 1night at the end of each flock cycle and occur approximately 7 times a year.

#### Comments 6/7/23

Odour: A revised odour report (Isopleth report dated January 2023 ref: 01.0101.006/Odour v1) has been provided which uses monitoring data from the existing poultry sheds to model likely cumulative odour emissions from both the existing poultry units and the proposed additional units. The odour report models the cumulative impact of the existing and proposed development with the proposed mitigation in place. The proposed mitigation is for scrubbers to be fitted to all new poultry buildings and also retrofitting scrubbers to one of the 2 existing poultry buildings, the remaining will operate as existing. The scrubbers will reduce the ammonia emissions and technical data indicates that it is predicted to reduce odour by 40%.

The model results are presented as the 98th percentile of hourly average concentrations of odour (ouE/m<sup>3</sup>), these values take into account the metrological data from the entire



cycle including the days of peak emissions. This methodology is in accordance with the institute of Air Quality Management (IAQM) guidance on the assessment of Odour for planning and the Environment Agency's H4 guidance on Odour Management.

The IAQM guidance provides the following guidance on classifying the impact of odour from intensive agricultural facilities as;

- 'negligible' at, or below 3 ouE/m<sup>3</sup> as a 98th percentile of hourly means; or
- 'slight adverse' from 3 ouE/m<sup>3</sup>- 5 ouE/m<sup>3</sup> as a 98th percentile of hourly means; or
- 'moderate adverse' impact above from 5 ouE/m<sup>3</sup> as a 98th percentile of hourly means.

The H4 guidance uses of installation-specific exposure criteria based on the 98th percentile of hourly average concentrations of odour modelled over a year at the site/installation boundary. The benchmarks are: 1.5 odour units for most offensive odours; 3 odour units for moderately offensive odours; 6 odour units for less offensive odours.' Intensive livestock rearing is generally classified as moderately offensive.

As highlighted in Environmental Protection's previous comments (dated 10th February 2020) the threshold of 3 odour units at nearby sensitive receptors is the maximum limit that this service considers as acceptable to ensure that section 185 of the NPPF are adhered to and the amenity of sensitive receptors is protected.

The assessment indicates that the proposed additional poultry sheds will result in an increase of the 98th percentile of hourly average odour concentrations measured as ouE/m<sup>3</sup> of between 0.1 and 1.2 ouE/m<sup>3</sup>. The 5 year average modelled odour concentration at the closest receptor, is predicted to be 2.9 ouE/m<sup>3</sup> as a 98th percentile of hourly means. This is just below 3ouE/m<sup>3</sup> which is the maximum threshold that is considered acceptable to meet the requirements of the NPPF. (It should be noted that this is an average of the 98th percentile so this does take account of the peak levels).

It should be noted that the existing poultry sheds hold an environmental permit, regulated by the Environment Agency and the proposed expansion will require a variation application to be submitted for approval. Environmental Permitting guidance recommends that the permit applications and planning consents are twin tracked to make the process more efficient, both for the applicants and regulators.

Paragraph 188 of the NPPF makes it clear that the focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively.

The environmental Permit regime is designed to prevent pollution, the Environmental Permitting Regulations define pollution as:

"pollution", other than in relation to a water discharge activity or groundwater activity, means any emission as a result of human activity which may—

(a) be harmful to human health or the quality of the environment,

- (b) cause offence to a human sense,
- (c) result in damage to material property, or
- (d) impair or interfere with amenities or other legitimate uses of the environment;

This definition suggests that you could assume this means impacts on the amenity such as odour and noise will be adequately regulated by the permit. Para 188 of the NPPF makes it clear that we should assume the permit is effectively regulated and should not be imposing conditions for the purpose of controlling emissions that are regulated by the permit, this includes emissions to air, water or land and emissions of odour and noise.

The only exception is where impacts might occur as a result of the development but are not within the boundary of the environmental permit and therefore would not be controlled by the permit. For example, if the development results in increased traffic flows that may impact on surrounding properties or where muck from an agricultural use is spread off site and hence may have an impact on the surrounding area. These issues may make a site unsuitable for the development.

This application indicates that additional manure from the poultry sheds will be sent to a regulated anaerobic digestion plant, emissions from such plant will also be regulated by the Environmental Permitting regime and therefore EP do not have concerns regarding offsite environmental impacts due to manure disposal.

- 4.1.13 **SC Highways Development Control** No objection. The site benefits from an access onto the A529 within the 40 mph speed limit that was constructed in connection with the biomass building and provides a 8 metres wide access with 10.5 metres junction radii. The access therefore has been constructed to a highway standard and provides visibility in both directions commensurate with DMRB standards.

As part of application 15/00924/EIA, two broiler units were constructed and the current application seeks a further two broiler units. A Transport Assessment has been submitted in support of the application and sets out the vehicle movements based upon the existing and proposed development. Overall the development would increase the capacity from 260,000 to 464,000 broilers operating over a 46 day cycle period.

The current development permissions include the routing of all HGV traffic travelling via the A529 southwards to the A41 at Hinstock and this is to remain the approved routing of all HGV traffic.

Whilst clearly the proposed development would increase HGV traffic movements significantly, it is considered that the highway network can adequately cater for the level of traffic movements anticipated. Moreover, it is considered that a highway objection would not be warranted on the grounds of traffic volume or highway safety. Highways therefore raise no objection to consent being granted.

- 4.1.14 **SC Drainage** No objection. The submitted drainage proposals are acceptable from a flood risk perspective.

- 4.1.15 **SC Rights of Way** The Council have a formal application on file to add a public bridleway along Hollins Lane which needs to be investigated. The applicant is advised to contact the Mapping & Enforcement Team to discuss the matter further. In respect of the planning application, the claimed route is already affected by the existing buildings therefore if an order is recommended to be made then it will require a subsequent diversion if successful.
- 4.1.16 **Fire and Rescue Service** As part of the planning process, consideration should be given to the information contained within Shropshire Fire and Rescue Service's "Fire Safety Guidance for Commercial and Domestic Planning Applications". Further advice has been provided which can be included as informatives on the decision notice.
- 4.1.17 **Newcastle-under-Lyme Borough Council (adjacent authority)** No comments received.
- 4.1.18 **Staffordshire County Council (adjacent authority)** The development area measures 1.67 hectares for an extension to two existing poultry units. There are no objections to the proposals from the perspective of an adjoining minerals and waste planning authority because the site does not fall within a consultation zone associated with any permitted mineral or waste site in Staffordshire. Given the nature of the proposals and the risk of odour, however, Shropshire should consult Newcastle under Lyme Borough Council's Environmental Health (EHO) and Planning Teams so they can comment on the potential visual and air quality/ odour impacts.
- 4.1.19 **Stafford Borough Council (adjacent authority)** No comment to make in respect of application reference 19/05127/EIA, other than to suggest that, if not already consulted, the views of Staffordshire County Council should be sought in respect of highways/transport impacts, public rights of way and landscape/visual assessment.
- 4.2 **Public comments**
- 4.2.1 The application has been advertised by site notice and in the local press. In addition 57 properties in the local area have been directly notified. Objections have been received from twelve individuals. There has been one letter of support. The full representations can be viewed on the planning register, and a summary of the concerns raised is below.
- 4.2.2 Objection comments:
- Adverse effect on landscape
  - Increased traffic
  - No business case for expansion
  - Will double the pollutant emissions; impact on health
  - Unacceptable odour levels
  - Odour model is out of date
  - Many complaints made about odour
  - Closer to SSSI, Wildlife Site and Conservation Area/Canal Waterway
  - Impact on Conservation Area and SSSI and listed buildings

- 
- Impact on listed buildings due to odour
- Impacts on ecological sites from ammonia
- Need to consider cumulative ammonia levels
- Increase in nitrous oxides, dust and particulates
- Odour and dust impacts of shed clearing have not been assessed
- Additional noise
- Flies and rats
- Incomplete traffic information
- Traffic assessment underestimates traffic
- Impact on pond
- Pollution of canal
- Impact on water borehole
- Rainwater contaminated with silt/soil has been entering brook and canal since development started
- Unauthorised ground engineering works
- Approved earthworks were never completed in accordance with approved drawings
- Works have resulted in instability of the canal banks with rainwater polluted by orange clay which kills fish
- Pollution from spreading of manure; health impacts of this
- Increased risk of bird flu
- No demonstrable economic benefit to the locality
- Would not be carbon neutral
- Officers and Members should read “Contesting Countryside Smells: The Power of Intensive Livestock Odours” by Dr Alison Caffyn, Senior Researcher at the Food, Farming and Countryside Commission focusing on Land Use issues.
- Odour model predictions have never been site tested once a poultry unit has been built in Shropshire
- Odour complaints are usually dealt with by the EA, so planning officers rarely hear about them, but officers are fully aware of the current complaints
- The EA has not issued any CAR forms or CCS scored the site as the responsible officer has made hardly any site visits to Tyrley
- complainants are multiple not singular
- EA is the primary body responsible for odour monitoring and enforcement; Shropshire Council need not be expected to duplicate investigation of odour
- An Environmental Permitted site is legally required to control and monitor odour emissions; site operator has consistently ignored complaints
- EA has limited resources to respond to odour complaints and have said they are unable to respond to every environmental incident reported and need to prioritise those incidents that cause serious and significant risk
- Odour is obviously low on EA priorities; their funding has been cut; has been a decline in enforcement actions
- no other site in Shropshire has experienced over 160 odour complaints (and a great many more unreported low level incidents) since inception
- failure to address cumulative impacts
- modelling methodology is unreliable, as highlighted in a recent appeal decision

in Shropshire

- no assessment as to how digestate would be disposed of once it has been taken to anaerobic digester
- impact on health, from odour, ammonia fumes, bioaerosols, particulate matter and nitrous oxides; potential for anti-microbial resistance building up
- risk of avian influenza due to biosecurity risks of sites being too close together
- impact on climate and nature crises from global consumption of meat

4.2.3 In addition a Review of Odour Assessment has been submitted by Michael Bull & Associates, a consultant in air quality and odour assessment, on behalf of Tyrley residents.

- The odour assessment uses a well established modelling technique to predict odour concentrations at nearby receptors. The approach to determining the odour emission rates is considered to be of high quality but limited to measurement at the peak of the rearing cycle
- Assumptions have been made for other parts of the cycle based on published sources. However, the higher odour emissions from clearance of the housing and thinning have not been included in the assessment, this is a significant omission.
- The report erroneously quotes two references to justify potentially less stringent odour standards; neither contain any justification for a lower standard and one paper suggests the opposite; due to this, there is less confidence in other third party sources relied on in the assessment
- The result suggest a marginal compliance with the adopted odour standard of 3.0  $\text{ouE}/\text{m}^3$  as a 98th percentile of hourly means although there was one exceedance observed at one receptor for one year modelled
- Assessment has excluded any consideration of emissions during thinning and house clearance. Although these are not suitable to be included in the type of dispersion modelling undertaken, they should have been considered when discussing the outcome of the modelling.
- The modelled result for the existing case does not accord with the community's own observations of odour and the level of historic odour complaint relating to the operations at the site; the existing complaints are not mentioned in the assessment; the IAQM guidance states that considerable weight should be given to observational methods of assessment when the source exists; observational methods include complaints analysis and sniff testing; the IAQM method also recommends that at least two methods of assessment are used to provide a comprehensive assessment which has not been undertaken.
- Given the existing level of complaint and the discrepancy with the results of the odour modelling it is apparent that the results of the assessment cannot be relied on without further investigation. Sniff testing would be an ideal approach to investigate the impact during thinning and house clearance and to determine whether the results of the modelling are a reasonable assessment of the odour impacts of the housing in normal operation.
- Given that the complaints evidence suggests that the current operation of the site results in unacceptable odour impacts and the isopleth assessment concludes that odour exposure will increase, on the basis of the current evidence it can be

reasonably concluded that the proposed development will exacerbate an already unacceptable odour environment

Further to this, Michael Bull & Associates have, on behalf of Tyrley residents, made comments on the Odour Audit report which was submitted by the applicant's odour consultant in January 2024.

- The sniff testing surveys were carried out in relatively favourable conditions for odour dispersion
- The conclusions reached are erroneous as they do not consider the impact of less favourable weather conditions
- A much greater number of odour sniff tests are required to make a judgement as to whether there is an odour problem
- the sniff testing report provided by the applicant provides no reassurance that adverse odour conditions are not occurring at present and indeed provides confirmation that odours are likely to be readily detectable at residential properties.

4.2.4 The reasons of support are as follows:

- Noise and odour impact would be controlled, and within acceptable limits
- Minimal impact on the locality
- Support expansion of the local business if controls are in place
- Location of sheds adjacent to existing ones is appropriate

## 5.0 THE MAIN ISSUES

5.1

- Environmental Impact Assessment
- Planning policy context; principle of development
- Siting, scale and design; impact upon landscape character
- Historic environment considerations
- Residential and local amenity considerations
- Traffic, access and rights of way considerations
- Ecological considerations
- Impact on water resources

## 6.0 OFFICER APPRAISAL

### 6.1 Environmental Impact Assessment

6.1.1

The planning application is accompanied by an Environmental Statement which has been prepared as the proposal is classed as Schedule 1 EIA development under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2017 due to the number of birds that would be housed as part of this intensive livestock unit.

### 6.2 Planning policy context; principle of development

6.2.1

Planning applications are required to be determined in accordance with the Development Plan, unless material considerations indicate otherwise. In terms of the Development Plan, Core Strategy policy CS5 provides support for appropriate development within the countryside, which maintain and enhance countryside vitality and character where they

improve the sustainability of rural communities by bringing local economic and community benefits, particularly where they relate to specified proposals including: agricultural-related development. Core Strategy policy CS13 states that, in seeking to develop and diversify the Shropshire economy, emphasis will be placed on matters such as supporting rural enterprise and diversification of the economy, in particular areas of activity which include the agricultural and farm diversification sectors.

- 6.2.2 The National Planning Policy Framework (NPPF) is a material planning consideration to be taken into account in the determination of this application. It states that planning decisions should help create the conditions in which businesses can invest, expand and adapt; and that significant weight should be placed on the need to support economic growth (para. 85). In terms of rural areas, the NPPF states that planning decisions should enable the sustainable growth and expansion of all types of businesses, and the development and diversification of agricultural and other land-based rural businesses (para. 88). The NPPF sets out a presumption in favour of sustainable development, which has three overarching objectives: economic, social and environmental.
- 6.2.3 The proposal represents the expansion of an existing established rural business which has been operating since 2016. It would involve significant investment in the enterprise and would support jobs not only directly but also through the increased use of supporting industries. The proposal would therefore make a positive contribution to the rural economy. It is considered that the proposal would bring about economic and social benefits for which there is support under national and local planning policy.
- 6.2.4 Core Strategy CS5 states that proposals for large scale new development will be required to demonstrate that there are no unacceptable adverse environmental impacts, and this is discussed in sections below.

### **6.3 Siting, scale and design; impact on landscape character**

- 6.3.1 Core Strategy policies CS6 and CS17 seek to ensure that development is appropriate in scale and design, and protect and enhance the diversity, high quality and local character of Shropshire's natural environment, and to ensure no adverse impacts upon visual amenity, heritage and ecological assets. Policy CS6 states that development should take into account local context and character, having regard to landscape character assessments and ecological strategies where appropriate, and that development will be designed to a high quality using sustainable design principles. SAMDev Plan policy MD2 requires that development contributes to and respects locally distinctive or valued character and existing amenity value. SAMDev Plan policy MD7b states that applications for agricultural development should be of a size/scale which is consistent with its required agricultural purpose, and where possible sited so that it is functionally and physically closely related to existing farm buildings.
- 6.3.2 Siting and alternatives: The acceptability of the use of this area for poultry rearing has already been established through the existing planning permission. The proposed extension would utilise existing infrastructure such as access roads and attenuation ponds. The proposed development would also incorporate improvements to the existing

operation through the installation of air scrubbers to two of the existing sheds. In addition, the siting adjacent to the existing sheds has the potential to maximise operational efficiency of the business.

- 6.3.3 Landscape and visual impacts: A Landscape and Visual Impact Assessment (LVIA) has been undertaken as part of the EIA. This also takes into account the proposed mitigation plan which is being proposed, and which includes approximately 3.2 hectares of tree and shrub planting on the eastern and southern parts of the site, with approximately 8800 plants being proposed. In terms of visual receptors the LVIA considers that there would be a '91moderate adverse' impact on users of the public footpath which runs around the south-eastern boundary of the site, but that this would reduce to 'slight adverse' as screening vegetation establishes. It should be noted as well that this public right of way terminates at the Shropshire/Staffordshire border and therefore the significance of this path in the network is limited. It is considered that the mitigation planting is likely to have a significant benefit in the long-term, both visually and ecologically. The LVIA concludes that the proposed development would have no significant effects on any of the landscape of visual receptors assessed.
- 6.3.4 The Council's landscape consultant considers that the updated LVIA has addressed previously raised comments and that the proposal would not lead to unacceptably adverse effects on landscape and visual amenity. A 10-year Landscape Management and Maintenance Plan has been submitted and this sets out what works would be undertaken to ensure the successful establishment of the proposed landscape and ammonia mitigation planting, and this can form part of the approved documents should permission be granted.
- 6.3.5 Sustainable design matters: The proposal incorporates sustainable drainage techniques to minimise pressure on the water environment, and proposes that heating would be provided by biomass boilers rather than conventional gas supplies. The proposal also incorporates air scrubbers which would remove significant quantities of ammonia from the process. It is considered that the proposed design incorporates appropriate sustainable principles in line with policy CS6.
- 6.3.6 Impact on canal: The proposed development is situated in proximity of the Shropshire Union Canal to the east. The potential impact of the development on the canal has been considered in detail by the Canal and River Trust and, following the submission of further clarification and information, they have confirmed that they raise no objections subject to the imposition of a number of planning conditions. These can be added to the decision notice if permission is granted, and are included in the listed of recommended conditions in Appendix 1 below.
- 6.4 Historic environment considerations**
- 6.4.1 Core Strategy policy CS17 requires that developments protect and enhance the diversity, high quality and local character of Shropshire's historic environment. SAMDev Plan policy MD13 requires that heritage assets are conserved, sympathetically enhanced and restored by ensuring that the social or economic benefits of a



development can be demonstrated to clearly outweigh any adverse effects on the significance of a heritage asset, or its setting.

6.4.2 A Heritage Impact Assessment (HIA) has been submitted and this identifies that the nearest listed building is the Grade II listed Hollings Bridge across the canal cutting to the east, but that this cannot be seen from the site. The HIA considers that the proposed development would have no impact on the character or setting of the listed bridge. In terms of the canal itself, this part is designated as a Conservation Area. The canal runs in the bottom of a deep cutting with wooded slopes either side, and the HIA considers that the proposed development would have a neutral impact on the character, setting or significance of the Conservation Area, even without the proposed tree planting. The HIA concludes that the proposed development would have either no impact on, or cause no harm to, the character, setting or significance of any designated or non-designated heritage assets. The Council's Historic Conservation Officer considers that the proposal would have a negligible impact upon the setting of relevant heritage assets. As recommended by the Conservation Officer, a condition can be imposed to require landscaping of the site, and this will include a bund.

6.4.3 It is acknowledged that the impact of odour on the setting of a listed building is a relevant consideration. In terms of listed buildings in the area, these include the listed bridge referred to above, a Grade II listed direction post approximately 470 metres to the north-east, another Grade II listed canal bridge approximately 535 metres to the north-east, and a number of Grade II listed cottages and locks approximately 750 metres to the north. Having taken account of the findings of the odour impact assessment in particularly regarding the level and frequency of potential odour emissions, and the location and type of listed buildings, it is not considered that the setting of listed buildings would be adversely affected by odour.

6.4.4 Taking into account the comments of the Council's Conservation Officer on the findings of the HIA it is considered that the requirements of section 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 – that special regard is given to the desirability of preserving the setting of listed buildings and preserving or enhancing the character or appearance of the Conservation area - have been met and the proposal is in line with policies CS17 and MD13. In addition, and with reference to the test in paragraph 208 of the NPPF, any limited harm to heritage assets would be outweighed by the public benefits of the proposal.

## **6.5 Residential and local amenity and health considerations**

6.5.1 Core Strategy policy CS5 requires that proposals for large scale new agricultural development demonstrate that there are no unacceptable adverse environmental impacts. Policy CS6 requires that developments safeguard residential and local amenity. SAMDev Plan policy MD7b states that planning applications for agricultural development will be permitted where it can be demonstrated that there would be no unacceptable impacts on existing residential amenity. Paragraph 191 of the NPPF states that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health and living

conditions.

- 6.5.2 **Environmental Permit:** The poultry operation takes place under an Environmental Permit which was issued by the Environment Agency (EA). The EA has advised that the proposed expansion of the operation would require a variation to this Permit to allow an increase in the number of birds at the site. The EA has confirmed that the Permit would control the day-to-day elements of the operation, including site management, operations and emissions, including those of odour and noise. This is therefore a separate regulatory regime which controls the day-to-day running of the poultry operation. Paragraph 194 of the NPPF states that the focus of planning decisions should be on whether the proposed development is an acceptable use of land, rather than the control of processes or emissions. Furthermore, that planning decisions should assume that these regimes will operate effectively. Nevertheless, the EIA regulations require that likely effects of the development on the environment are identified and taken into consideration in the decision-making process. These effects will include matters that are also regulated by the EA. In addition, planning policy including the NPPF require that planning decisions should take account of the likely effects of pollution on living conditions.
- 6.5.3 **Manure management:** It is proposed that manure arising as part of the proposed operations would be removed from the site and taken to an anaerobic digester (AD) plant for processing or other licensed waste management facility, and would not be spread on farmland. This would ensure that the proposed expansion of the poultry operation would not result in additional amenity impacts that may arise due to the spreading operations, and is considered to be an acceptable arrangement. It is not considered that further assessment is required to be undertaken of impacts from this off-site treatment as these would already have been undertaken as part of the approval of that facility.
- 6.5.4 **Noise:** An updated Noise Assessment has been undertaken which now includes details of the proposed air scrubbers. General vehicle movements would occur during the daytime period. Bird collections would take place at night-time. The report states that noise generated by the proposed extension would fall below the daytime and night-time noise limits. It also provides a cumulative noise assessment which includes noise from the existing poultry sheds, and this concludes that that cumulative levels with all sources running concurrently would not exceed noise limits set out in guidance. In terms of noise from vehicles involved in bird collections the report states that this would result in a 3dB increase in noise level, and that this would be considered to be a 'slight' impact with the greatest impact being experienced at the property which is situated opposite the site access. As noted by the Council's Environmental Protection officer, this would occur once during each rearing cycle and a total of seven times per year. It is not considered that this would be unacceptable levels of noise.
- 6.5.5 **Dust:** Dust can be emitted through the ventilation system, and the application proposes that dust baffles would be fitted to minimise its release. A Defra research project confirmed that particulate matter returned to normal background levels at a distance of 100m from poultry buildings. The EA has advised that a risk assessment for dust or bio-

aerosol emissions would need to be carried out as part of the Environmental Permit were there to be any relevant sensitive receptors within 100 metres. The Permit would cover any dust management plan and, given the location of the site and its distance from sensitive receptors, it is not considered that the proposed development raises significant land-use planning issues that warrant further consideration at the planning stage.

- 6.5.6 **Odour:** An Odour Impact Assessment (OIA) has been submitted which has been prepared by odour consultants and this has predicted odour levels at 29 receptors in the local area. These include the closest residential properties in each direction. The OIA notes that odour concentration increases with bird size and age of litter up to the point that thinning takes place at approximately day 31, when a proportion of the birds are removed. It states that odour levels at the point at which the sheds are fully cleared of birds will always be lower than at thinning stage. The OIA takes into account the proposed use of ammonia scrubbers on the proposed new buildings and on two of the existing ones. The proposed ammonia scrubbers would reduce odour emissions and the report states that this reduction would be expected to be more than 40%. The results show that odour levels would increase at each of the receptors. The OIA refers to Institute of Air Quality Management (IAQM) guidance which states that an odour level at or below 3 ouE/m<sup>3</sup> is 'negligible'. Other than at one of the dwelling receptors, the OIA predicts that the odour concentration level would be below 2 ouE/m<sup>3</sup>. At the closest receptor location (the properties at Tyrley Farm to the north) the odour concentration is predicted to be at an average of 2.9 ouE/m<sup>3</sup>.
- 6.5.7 The OIA concludes that the dispersion modelling predicts that odour would be perceived at the closest locations, but that the proposed development would be unlikely to lead to odour impacts at a level which would be regarded by the EA as unacceptable, when operated in accordance with best practice. The Council's Environmental Protection team have raised no issues with the odour assessment and have noted that the odour levels predicted are 98<sup>th</sup> percentiles and so do take account of peak odour levels.
- 6.5.8 **Review on behalf of residents:** A review of the applicant's odour consultant's OIA has been carried out by another odour consultant, on behalf of local residents at Tyrley which is situated to the north of the site. The review concludes that the approach used in the OIA to determining odour emission rates is of high quality but limited to measurement at the peak of the rearing cycle. The review suggests that the higher odour emissions from clearance of the housing and thinning have not been included and that this is a significant omission. However the review also states that, whilst these should have been considered when discussing the outcome of the modelling, they are not suitable to be included in the type of dispersion modelling undertaken. The review states that IAQM guidance notes that where the process is operational, as is the case at the Hollins Lane site, "considerable weight" should be placed on observational methods such as complaints analysis and sniff testing.
- 6.5.9 A sniff testing survey was subsequently carried out by the applicant's odour consultant in December 2023. This has been reviewed by the residents' odour consultant who considers that the survey was carried out at times when there would have been more

odour dispersal; that they do not consider the impact of less favourable weather conditions; and that a greater number of odour sniff tests would be required to make a judgement as to whether there is an odour problem at present.

- 6.5.10 Odour complaints: The EA has advised that they have received a large number of odour complaints from a single sensitive receptor in the vicinity of the existing poultry farm. They advise that they have carried out monitoring on a small number of occasions and have not been able to substantiate any of the complaints. They note that external areas of the dwelling may be impacted during times when there is cooler air, and that when air is rising during warmer conditions the high velocity roof fans would disperse odour sufficiently for it not to become a nuisance. They suggest that odour is likely to be detected at locations downwind of the site at certain times of the crop cycle. As noted in the OIA, the EA advise that peak odour levels occur during the thinning operation which takes place part way through the rearing cycle, and that there will also be odour generated when the sheds are cleared of birds and manure. They advise that these activities are short term. It is understood that no formal action has been taken regarding the odour complaints to date.
- 6.5.11 The Council has been copied into odour complaints that have been sent to the Environment Agency, and also logged a complaint under the planning enforcement process in 2020. In relation to these the Council's Environmental Protection team have advised that they contacted the complainant to offer to investigate the matter on a number of occasions, but that the complainant advised that no investigation from their team was required as the matter was being pursued with the EA. Information from the complainant in one email suggested that the source of the odour may be from spreading of manure onto fields rather than direct emissions from the poultry houses. The planning enforcement case was subsequently closed down on the basis that the matter was the subject of an ongoing investigation by the EA and that the EA would be the appropriate body to pursue the matter through the regulation of the Permit.
- 6.5.12 The EA has advised that an Odour Management Plan would be required under the Environmental Permit and that this should help to reduce emissions from the site, but acknowledges that this would not necessarily prevent all odour. The EA advises that the Permit is unlikely to prevent odour pollution where there are residents in proximity of the site. The odour report states that potential odour impacts would be reduced further if odour control measures detailed in a site Odour Management Plan as part of the Permit are followed.
- 6.5.13 The proposed air scrubber units would reduce odour emissions, and this would mean that the doubling of the capacity of the poultry farm would not result in a corresponding level of increase in odour. This, in conjunction with the proposed transport of manure off site to an anaerobic digester facility rather than spreading it on local fields where it would release odour in the local area, would reduce the level of odour impact.
- 6.5.14 Further assessment and consideration following deferral of application at the 7<sup>th</sup> November 2023 NPC meeting

The applicant's odour consultant carried out four odour surveys in over three days in December 2023. The report states that these were undertaken when odour from the poultry units would be expected to be close to its highest, and during times when weather conditions were suitable for such surveys. The report states that, based upon the survey, odour from the existing sheds will be detectable on occasion at Tyrley Farm, when the birds are towards the end of the crop and winds are from the south (expected for approximately 10% of the year for all wind speeds). It concludes that odours from the existing sheds are expected to be detectable and recognisable, but transient and infrequent at Tyrley Farm.

- 6.5.15 The previous officer recommendation for this proposal, as presented to Members at the 7<sup>th</sup> November planning committee meeting, was that the application should be refused on the grounds that the submitted Odour Impact Assessment was deficient. In particular, the original Odour Impact Assessment did not acknowledge the existing complaints that had been made in relation to odour from the existing operation, and undertake sufficient observations of these. Additional information has now been submitted in relation to odours generated by the existing poultry buildings. The concerns over this which have been raised by an odour consultant on behalf of residents are acknowledged. Nevertheless it has provided an additional element to the odour impact assessment process, in line with IAQM guidance.
- 6.5.16 Officers recognise that residential receptors which are situated within proximity of poultry sites may experience some odour on some occasions. Additionally it is noted that IAQM guidance suggests that odour assessment tools have their own inherent uncertainties. The closest residential dwelling is approximately 430 metres away from the nearest existing poultry house, and would be approximately 458 metres away from the nearest proposed poultry house. The modelling undertaken by the applicant's odour consultant suggests that the increase levels of odour that would arise as part of the proposed operation would not be unacceptable. Based upon the available information officers acknowledge that some residents would experience odour from the site on occasions, as is the case at present. It is considered that a satisfactory level of assessment has been provided to demonstrate that the proposed operation would not result in an unacceptable level of impact on residential amenity from odour.
- 6.5.17 The management of the site including emissions of odour is a matter that is regulated by the EA under the Environmental Permitting regime. This is significant. The EA have advised that they are 'confident that the existing poultry farm complies with its environmental permit and that it is not causing odour pollution' and have not objected to the proposal which would increase the number of birds at the site. The Permit controls day to day general management, including operations, maintenance and pollution incidents, and odour emissions. The NPPF requires that planning decisions should assume that this regime will operate effectively.

## **6.6 Traffic, access and rights of way considerations**

- 6.6.1 Core Strategy policy CS6 requires that all development is designed to be safe and accessible. SAMDev Plan policy MD8 states that development should only take place

where there is sufficient existing infrastructure capacity. Policy CS17 seeks to protect and enhance environmental networks, including public rights of way.

- 6.6.2 The existing poultry farm is accessed directly from the A529 via a wide access which was constructed to accommodate both rigid and articulated heavy goods vehicles to and from the site. The access includes security gates which are set back from the public highway. All vehicles associated with the proposed operation would use this access. The submitted Transport Note states that at present there are approximately 113 2-way movements to and from the site per cycle that are associated with the poultry operation. The majority of these are associated with feed delivery (22 movements), bird collections (34 movements) and manure removal (33 movements). Traffic movements fluctuate throughout the cycle with the peak periods being during thinning on days 30-31 and during full collection on days 35-36. The proposed expansion of the operation would result in 2-way movements increasing from 113 to 198. Thinning and clearance operations would take place over a longer period.
- 6.6.3 The Council's highways team note that the proposal would increase HGV movements significantly but consider that these can be accommodated on the highway network and by the existing site access. The application states that the existing routing arrangements, which are that vehicles would approach from and leave to the south, would continue to apply. Overall it is considered that the proposal is acceptable in relation to highway safety matters.
- 6.6.4 Rights of way considerations: The Parish Council has requested that the applicant invests in the reinstatement of a footpath/bridleway along Hollins Lane given the additional traffic that would be generated and the conflict between traffic and walkers. It is understood that a matter relating to a claimed footpath route which crosses the site is being dealt with by an inspector. The Council's Rights of Way team has advised that if an order is made to include the route on the definitive map then, as the claimed route passes through existing site buildings, that a formal diversion would be required. It is considered that this is a matter which is separate to the consideration of the planning application and that it is not reasonable to require that the applicant provides a right of way across the site as part of any planning permission.
- 6.7 Ecological consideration**
- 6.7.1 Core Strategy policies CS6 and CS17 seeks to protect and enhance the diversity, high quality and local character of Shropshire's natural environment and to ensure no adverse impacts upon visual amenity, heritage and ecological assets. SAMDev Plan policies MD2 and MD12 require that developments enhance, incorporate or recreate natural assets. Policy MD12 states that proposals which are likely to have a significant adverse effect, directly, indirectly or cumulatively, on specified ecological assets should only be permitted if it can be clearly demonstrated that:
- a) there is no satisfactory alternative means of avoiding such impacts through re-design or by re-locating on an alternative site and;
  - b) the social or economic benefits of the proposal outweigh the harm to the asset. It states that in all cases, a hierarchy of mitigation then compensation measures will be

sought.

- 6.7.2 The NPPF requires that planning decisions should contribute to and enhance the natural and local environment and provide net gains for biodiversity (para. 180). It states that if significant harm to biodiversity cannot be avoided, adequately mitigated, or compensated for then planning permission should be refused (para. 186).
- 6.7.3 The principal ecological issues relate to the direct impacts of the development on the ecological value of the area, and the indirect impacts due to the release of ammonia from the resultant poultry manure.
- 6.7.4 Direct ecological impacts: The application is supported by a Preliminary Ecological Appraisal which replaces the original one and is up-to-date. A preliminary roost assessment did not identify any trees or structures suitable for bats. The ecology report states that there is a very low likelihood of encountering great crested newt on the site, and no evidence of other protected species was found. The Council's ecologist concurs with the conclusions of the submitted report that no significant impacts upon protected species are likely subject to the implementation of the recommendations in the report. A planning condition can be imposed to require that these are adhered to. The proposed development would result in biodiversity enhancements in the area, including through the planting of substantial areas of woodland adjacent to the proposed poultry buildings.
- 6.7.5 Indirect ecological impacts: The principal potential indirect ecological impacts would be from the release of ammonia from the poultry buildings and from any spreading of manure. Ammonia emissions can cause significant damage to sensitive ecological receptors. There are no sites with a European ecological designation within 10km of the site. The Tyrley Canal Cutting SSSI that is located to the south-east is a geological designation and is not sensitive to ammonia or nitrogen. There are two ammonia/nitrogen sensitive SSSIs within 10km of the site, and areas of ancient woodland.
- 6.7.6 An Ammonia Emissions Impact Assessment has been submitted with the application. The principal measures to limit ammonia emissions would be the use of ammonia scrubbing units on the four proposed poultry buildings, and on two of the existing poultry houses. With the incorporation of these scrubbers the Ammonia Assessment has calculated that the contribution of the proposed four additional sheds together with the existing ones on sensitive sites would be lower than at present. The proposed development therefore represents a betterment over the existing situation. The Council's ecologist has confirmed that the proposal is acceptable subject to condition. These conditions include a requirement to ensure that the scrubbers are in operation prior to the commencement of each rearing cycle and that a scheme for contingency measures is agreed.
- 6.7.7 Overall it can be concluded that the proposed development is in line with Core Strategy policies CS6 and CS17, SAMDev Plan policies MD2 and MD12, and relevant sections of the NPPF relating to ecological protection.

## **6.8 Impact on water resources**

- 6.8.1 Core Strategy policy CS18 seeks to reduce flood risk and avoid adverse impact on water quality and quantity. Policy CS6 requires that development safeguards natural resources, including soil and water.
- 6.8.2 Surface water drainage: The site is located within Flood Zone 1 which denotes areas where there is a low risk of surface water flooding. The proposals for surface water drainage would follow the same principles as for the existing development, and would include the collection of water from the buildings in a mix of open and stone-filled trenches. This would direct water to a piped system with the outfall to an existing attenuation pond, to be enlarged for this purpose, located adjacent to the site.
- 6.8.3 Dirty water drainage: Dirty water from the clean-out process would be collected through a dedicated sealed drainage system to an underground pumping chamber. This would then be emptied at the end of each cycle. The Environmental Permit would impose controls over this element of the operation.
- 6.8.4 In relation to public concerns raised over the potential for contaminated water to enter private water supplies it is not considered that there are any particular reasons why the drainage scheme would not be able to prevent this through satisfactory collection and management of dirty water. No issues have been raised by the Council's drainage team and it is considered that detailed designs for the drainage system can be agreed as part of an appropriate scheme to be submitted through a planning condition.

## **7.0 CONCLUSION**

- 7.1 The proposed extension of the existing poultry rearing unit at Hollins Farm to provide a further four sheds represents a significant investment in the expansion of the rural business which has been in operation since 2016, and would bring about economic and social benefits for which there is national and local planning policy support. The proposed additional buildings would match the existing ones in terms of appearance and scale, and would be sited adjacent to them so as to minimise additional landscape impact. The siting, design and landscaping would ensure that significant effects on landscape and visual receptors would be avoided. It is not considered that the proposal would adversely affect the setting of heritage assets in the area, and the existing access and public highway can accommodate the additional traffic without adversely impact on highway safety. The use of air scrubbers on the proposed buildings, and on two of the existing ones, would provide betterment in terms of the amount of ammonia released from the operation. The drainage strategy is considered to be appropriate to avoid pollution and adverse impact on the nearby canal, and detailed matters can be agreed as part of a planning condition. Indirect impacts from manure spreading would be avoided through the proposed export of manure to anaerobic digester plant. Appropriate measures are incorporated within the designs to minimise dust emissions, and noise impacts, particularly in relation to traffic movements, are not anticipated to be unacceptable.
- 7.2 The scope of the odour impact assessment has been widened to take into account



complaints that have been raised in relation to the existing operation. Some investigations into these have been carried out by the Environment Agency as part of their controls under the Environment Permit for the facility. The proposal is predicted to increase odour levels at the nearest receptors, due to the additional number of birds that would be housed. The modelling provided in the Odour Impact Assessment predicts that this would be at a level that would be deemed to be 'negligible' under relevant guidance. The proposed operation, including matters relating to site management and emissions, would be regulated under the Environmental Permitting regime by the Environment Agency. Officers consider that, notwithstanding any inherent uncertainties that may exist in odour modelling, taking into account the available information the likely level of odour that would arise as part of the proposed development would not result in an unacceptable impact on residential amenity.

7.3 In conclusion and on balance, it is considered that the proposed accords with the Development Plan overall and that it is recommended that, subject to the conditions as set out in Appendix 1, planning permission is granted.

## 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 give the right to respect for private and family life and First Protocol Article 1

allows for the peaceful enjoyment of possessions. These have to be balanced against the rights and freedoms of others and the orderly development of the County in the interests of the Community.

First Protocol Article 1 requires that the desires of landowners must be balanced against the impact on residents.

This legislation has been taken into account in arriving at the above recommendation.

## 8.3 Equalities

The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed in Planning Committee members' minds under section 70(2) of the Town and Country Planning Act 1990.

## 9.0 Financial Implications

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

## 10. Background

### Relevant Planning Policies

Central Government Guidance:  
National Planning Policy Framework

### Core Strategy and Saved Policies:

CS5 - Countryside and Greenbelt  
CS6 - Sustainable Design and Development Principles  
CS13 - Economic Development, Enterprise and Employment  
CS17 - Environmental Networks  
CS18 - Sustainable Water Management  
MD2 - Sustainable Design  
MD7B - General Management of Development in the Countryside  
MD12 - Natural Environment

### Relevant planning history:

15/00924/EIA Erection of two poultry sheds and feed bins, ancillary works including access track and associated landscaping works GRANT 15th September 2015  
11/04052/FUL Erection of a building for pelleting/storage of biomass crop (Miscanthus) with

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Land South Of Hollins Lane

attached office; installation of roof mounted PV solar panels; provision of a weighbridge; provision of visibility splay and associated works; landscaping scheme to include earth bund (Amended Description) GRANT 5th April 2013  
14/05167/SCO Scoping opinion for the erection of four poultry units, feedstock clamps and anaerobic digester plant SCO 17th February 2015  
15/01108/MAW Installation of an 800kW agricultural Anaerobic Digester (AD) Plant and associated infrastructure GRANT 11th September 2015  
17/05286/FUL Application under Section 73A of the Town and Country Planning Act 1990 for the alterations to approved agricultural building and installation of six additional biomass boilers and a drying floor GRANT 28th June 2018  
20/02536/FUL Installation of ground source heat pumps; associated ground arrays, and enhanced ventilation units PCO  
23/00223/FUL Installation of a battery energy storage system (BESS) compound GRANT 17th May 2023

## 11. Additional Information

View details online: <http://pa.shropshire.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=Q1C27JTDJC700>

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)
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Cabinet Member (Portfolio Holder) - Councillor Chris Schofield
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Local Member
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Cllr Rob Gittins
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Appendices Appendix 1 - Conditions
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## 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, drawings and documents as listed in Schedule 1 below.  
Reason: For the avoidance of doubt and to ensure that the development is carried out in accordance with the approved plans and details.

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

3. 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.
  
4. No development shall take place until a Construction Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. The plan shall include:
  - a) details of measures proposed to prevent water pollution during construction works and prior to the completion of the drainage scheme, and
  - b) identification of persons responsible for implementation of the approved CEMP:

All construction activities shall be implemented strictly in accordance with the approved plan.  
Reason: To protect the water environment from pollution.
  
5. Prior to the commencement of the development a scheme shall be submitted in writing detailing contingency measures to be adopted to in the event that the operation of one or more of the scrubbing units is not possible, such as plant breakdown, and set out procedures to ensure that the time without the use of air scrubbing is minimised. The poultry rearing operation shall be undertaken in accordance with the approved scheme.  
  
Reason: to mitigate adverse impact on biodiversity from ammonia emissions consistent with the SAMDev Plan policy MD2 and the NPPF.

6. Prior to commencement of development, an appropriately qualified and experienced Ecological Clerk of Works (ECoW) shall be appointed to ensure that the Reasonable Avoidance Measures Methods (RAMs), as set out in Appendix 3 of the Preliminary Ecological Appraisal by Salopian Ecology dated 11 May 2023 is adhered to. Prior to first use of the development, the ECoW shall provide a report to the Local Planning Authority demonstrating implementation of the great crested newt RAMS.  
Reason: To secure RAMS and demonstrate compliance with the great crested newt RAMs to ensure the protection of great crested newt which are European protected species.
7. No development shall take place until a Bird Hazard Management Plan has been submitted to, and approved in writing by, the Local Planning Authority, in consultation with MOD. The Bird Hazard Management Plan shall include a provision to prevent birds from accessing (using appropriate licensed means) the attenuation pond. The development shall be carried out strictly in accordance with the details set out in the approved Bird Hazard Management Plan in perpetuity or until RAF Ternhill is no longer operational.  
Reason: To minimise the potential of the works approved to provide a habitat desirable to hazardous large and/or flocking birds which have the potential to pose a considerable hazard to aviation safety which is exacerbated by the proximity of RAF Ternhill.

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

8. Prior to first beneficial use of the development, evidence (prepared by a suitably qualified industry professional) shall be submitted to the LPA to confirm that the air scrubbers to a minimum of the specification as used in the preparation of the 'Ammonia Emissions: Impact Assessment' report by Isopleth dated January 2023' the 'Environmental Statement' by Berrys dated April 2023 and shown on drawing number SA22638 BRY 03 Rev E have been installed on all four of the new buildings and on two of the existing buildings immediately adjacent to the redline boundary and are fit for purpose. The air scrubbers shall be maintained and operated thereafter, in accordance with the manufacturer's instruction for the lifetime of the development.  
Reason: To prevent adverse impact on biodiversity from ammonia emissions consistent with the Shropshire Council Site Allocations and Management of Development (SAMDev) Plan Policy MD12 and the policies of the National Planning Policy Framework.

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

9. No birds shall be brought to any of the poultry units hereby permitted, or to the two existing poultry units fitted with ammonia scrubbers, unless the associated air scrubbing unit is in effective working order.  
Reason: To prevent adverse impact on biodiversity from ammonia emissions consistent with the Shropshire Council Site Allocations and Management of Development (SAMDev) Plan Policy MD12 and the policies of the National Planning Policy Framework.

10. The number of birds in the poultry buildings hereby approved shall not exceed 232,000.  
Reason: To restrict the number of birds to be kept in the buildings at any one time in order to prevent adverse impact on biodiversity from ammonia emissions consistent with the Shropshire Council Site Allocations and Management of Development (SAMDev) Plan Policy MD12 and the policies of the National Planning Policy Framework.
11. A minimum of two external woodcrete bat box, suitable for nursery or summer roosting for small crevice dwelling bat species and a minimum of three artificial nest boxes suitable for small tit species (26mm and 32mm hole size) shall be erected upon selected larger trees situated in the eastern boundary tree group prior to first use of the development. The boxes shall be sited at least 3m 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.  
Reason: To ensure the provision enhancements for biodiversity, in accordance with MD12, CS17 and NPPF.
12. Vehicle access to the site shall not be gained other than via the existing access road as shown on the approved plan ref. SA22638 BRY 01 B.  
Reason: To maintain highway safety and protect the canal network.
13. The landscape mitigation works, including bunding, which are shown on the approved Mitigation Planting Plan no. 3049-001 shall be implemented no later than by the end of the first planting season following the commencement of bird rearing operations hereby approved. The development shall thereafter be undertaken in accordance with the approved 10 Year Maintenance and Management Plan, ref. Revision A: 05/05/2023 Ref: T1051-LMP revision A, dated 5.5.23.  
Reason: To ensure a satisfactory maintenance of landscaping in the interest of enhancing visual character and minimising impacts on the canal network and heritage assets.
14. (a) There shall be no more than 8 bird growing cycles per calendar year.  
(b) Records of the start and finish date of each growing cycles shall be made and shall be made available to the local planning authority on request.  
Reason: To ensure that the number of bird growing cycles does not increase significantly over that proposed in order to limit the potential for adverse impacts due to odour and ammonia emissions.
15. (a) All manure arising from the poultry buildings hereby permitted shall be taken off site to an anaerobic digester or other suitable disposal or management facility.  
(b) Records of the destination of each load of manure arising from the poultry buildings hereby permitted shall be made and these shall be made available to the local planning authority on request.  
Reason: To minimise adverse impacts on residential amenity and avoid pollution to groundwater.

## **Informatives**

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.

Your attention is specifically drawn to the conditions above that require the Local Planning Authority's approval of materials, details, information, drawings etc. In accordance with Article 21 of the Town & Country Planning (Development Management Procedure) Order 2010 a fee is required to be paid to the Local Planning Authority for requests to discharge conditions. Requests are to be made on forms available from [www.planningportal.gov.uk](http://www.planningportal.gov.uk) or from the Local Planning Authority. The fee required is £145 per request, and £43 for existing residential properties.

Failure to discharge pre-start conditions will result in a contravention of the terms of this permission; any commencement may be unlawful and the Local Planning Authority may consequently take enforcement action.

The Applicant/developer is advised to contact the Canal & River Trust's Utilities Team to discuss any direct or indirect surface water discharges from the development to the adjacent canal, including any continued use of existing discharges, as it may be necessary to obtain a fresh agreement from the Trust to do so. Please contact Phillipa Walker, Utilities Surveyor, at [Phillipa.Walker@canalrivertrust.org.uk](mailto:Phillipa.Walker@canalrivertrust.org.uk) in the first instance.

As part of the planning process, consideration should be given to the information contained within Shropshire Fire and Rescue Service's "Fire Safety Guidance for Commercial and Domestic Planning Applications" which can be found using the following link:  
<https://www.shropshirefire.gov.uk/safety-at-work/planning-applications>

Specific consideration should be given to the following:

Enclosed Agricultural Buildings over 280m<sup>2</sup>

Access for Emergency Fire Service Vehicles

It will be necessary to provide adequate access for emergency fire vehicles. There should be sufficient access for fire service vehicles to within 45 metres of every point on the projected plan area or a percentage of the perimeter, whichever is less onerous. The percentage will be determined by the total floor area of the building. This issue will be dealt with at the Building Regulations stage of the development. However, the Fire Authority advise that early consideration is given to this matter.

'THE BUILDING REGULATIONS, 2000 (2006 EDITION) FIRE SAFETY APPROVED DOCUMENT B5.' provides details of typical fire service appliance specifications.

## AGENDA ITEM

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Land South Of Hollins Lane

### Water Supplies for Fire fighting - Building Size

It is important to note that the current Building Regulations require an adequate water supply for firefighting. If the building has a compartment of 280m<sup>2</sup> or more in area and there is no existing fire hydrant within 100 metres, a reasonable water supply must be available. Failure to comply with this requirement may prevent the applicant from obtaining a final certificate



## AGENDA ITEM



Committee and date
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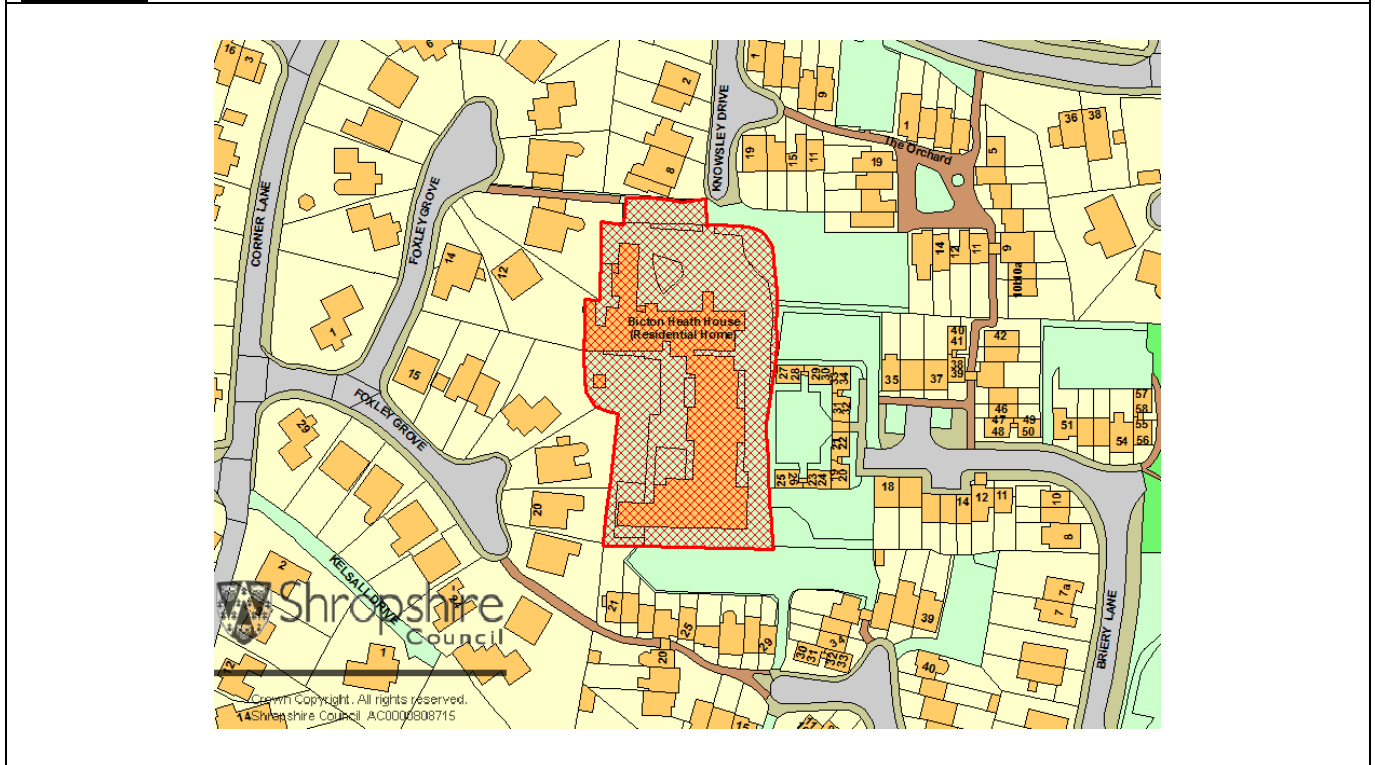
### Development Management Report

Responsible Officer: Tracy Darke, Assistant Director of Economy & Place

#### Summary of Application

<b>Application Number:</b> 23/03972/FUL	<b>Parish:</b> Shrewsbury Town Council
<b>Proposal:</b> Proposed demolition of existing care home wing and proposed new build care home wing (resubmission)	
<b>Site Address:</b> Ideal Home Bicton Heath House Knowsley Drive Bicton Heath Shrewsbury	
<b>Applicant:</b> Minster Care	
<b>Case Officer:</b> Kelvin Hall	<b>email:</b> kelvin.hall@shropshire.gov.uk

**Grid Ref:** 345276 - 313164



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## REPORT

**Recommendation:** Delegate authority to the Planning and Development Services Manager to grant planning permission subject to the conditions included in Appendix 1 and any amendments or additions to these as considered necessary by the Service Manager.

### 1.0 THE PROPOSAL

- 1.1 Planning permission for the demolition of part of the existing care home at Bicton Heath House and the erection of a replacement wing was refused earlier this year under delegated powers (ref. 23/00765/FUL). The current application is a re-submission of that application. Similar to the refused application, the current proposal includes the demolition of the northern wing of the care home, and the erection of a replacement building in order to improve the standard of accommodation being provided.
- 1.2 The southern part of the care home would be retained. The northern wing, to be demolished, currently contains 22no. bedrooms, 4no. lounge rooms, sanitary and laundry facilities, a kitchen, dining room and a small office. Some of the existing bedrooms have WC facilities however most use shared facilities. The proposed replacement building would be mainly two storey with some single storey elements. It would provide 30 bedrooms, each with en-suite facilities. It would include a kitchen, two dining rooms, four lounge rooms, a nurses station on each floor, staff room, offices, laundry facilities, and shared sanitary facilities. It would also incorporate residential amenity spaces both as first floor terraces and shared external space at the ground floor level.
- 1.3 The proposed building would include a series of pitched roofs. There would be terraces at first floor level. The walls would be mainly red brick with blue/black brickwork to some of the single storey elements. The roof tiles would be grey. Single storey elements would have green roofs. Window and door frames would be anthracite grey powder-coated aluminium.
- 1.4 The application seeks to address the reasons for refusal of the previous application, which were:
1. *The proposed development would provide an unsatisfactory level of private amenity and on-site open space thereby resulting in an unacceptable level of amenity for occupants of the care home. There are no mitigating circumstances put forward to demonstrate why open space standards should not be met on site. The proposal is therefore contrary to Core Strategy policy CS6, SAMDev Plan policy MD2 and para. 130 of the NPPF.*
  2. *The level of tree loss necessary to implement the development would have a moderate adverse impact on the tree resource on the site and on the wider area, and would adversely affect canopy cover levels and public amenity. Insufficient*

*information has been submitted to demonstrate that satisfactory compensatory planting could be provided, particularly given the constraints on the site which include the existing buildings, the proposed drainage infrastructure and the proximity of site boundaries. It has not been demonstrated that the proposed building works would not adversely affect the root system of two trees T4 and T6. In the absence of this it is not possible to conclude that the proposal would not have an adverse impact on trees on site. The proposal is therefore contrary to Core Strategy policies CS6 and CS17 and SAMDev Plan policies MD2 and MD12.*

*3. By virtue of its scale, massing and positioning in relation to site boundaries and adjacent residential properties, and the positioning and size of first floor windows on the western elevation, the proposal would constitute overdevelopment and result in a cramped and dominating appearance which would adversely affect the character of the area and adversely impact upon residential amenity of properties to the west due to potential overlooking. The proposed tree planting along the western side of the site would not provide sufficient mitigation against these impacts. The proposal is therefore contrary to Core Strategy policy CS6, SAMDev Plan policy MD2 and para. 2.15 of the Type and Affordability of Housing SPD.*

*4. Insufficient details have been provided regarding parking requirements for the number of staff and deliveries that would be associated with the development. The application therefore does not demonstrate that the site layout provides satisfactory car parking provision within the site to accommodate the likely demand which would be required to avoid the need for vehicles to park in surrounding residential area to the detriment of highway safety and local amenity. The proposal is therefore contrary to Core Strategy policy CS6.*

*5. Insufficient information has been submitted to address the apparent conflict between the routing of proposed drainage infrastructure and the root protection areas of significant trees within the site. It has not been satisfactorily demonstrated that the drainage scheme can be implemented without adversely impacting on these trees. The proposed development would therefore be in conflict with Core Strategy policy CS18.*

*6. The proposed development would result in the complete loss of the heritage significance of the existing building which is a non-designated heritage asset, and result in less than substantial harm to the asset. The benefits of providing a replacement building, including the likely improved layout and energy efficiency, are acknowledged. Nevertheless it is not considered that sufficient justification has been put forward for the complete demolition of the existing building over the benefits of retaining the non-designated heritage asset. Furthermore the benefits of the proposal are not sufficient to outweigh the harm that would be caused to the non-designated heritage asset. The proposal is therefore contrary to Core Strategy policies CS6 and CS17, SAMDev Plan policies MD2 and MD13, and para. 203 of the NPPF.*

- 1.5 In seeking to address the above, the current proposal has been re-designed and includes the following changes to the previous scheme:
- Private amenity and on-site open space: the application provides additional justification for the amount of open space being provided
  - Residential amenity impacts: the revised application proposes a revised roof form and building design
  - Compensatory tree planting: the revised application includes a tree planting scheme
  - Parking: the revised application is supported by a Highways Statement which assesses the parking demands for the proposal in relation to parking capacity being provided
  - Impact on existing trees: the revised application provides information and clarification on measures proposed to avoid damage to trees from working within their root protection areas
  - Demolition: additional information has been provided regarding the standard of the existing accommodation and the need for improvements in order to justify its replacement with a new building.

## 2.0 SITE LOCATION/DESCRIPTION

2.1 The existing residential care home is located within Bicton Heath, at the north-western side of Shrewsbury. The property occupies a total area of approximately 0.33 hectare and includes amenity space and a car park. It is accessed from the head of Knowsley Drive, a short cul-de-sac. Surrounding land is in residential use, predominantly two storey dwellings with two bungalows adjacent to the northern boundary of the site.

2.2 The care home has 50 beds, across two sections. The current application relates to the main house (northern wing) which contains 22 bedrooms and which provides personal care for younger adults over the age of 30 who have mental health conditions. This wing, which is the part to be demolished, is constructed of some white painted brick and some red brick. To the rear of this is the southern wing which is a purpose-built extension, This provides personal care for older residents with dementia. This part would be retained.

## 3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

3.1 The Town Council's views are contrary to the officer recommendation. It was agreed at the agenda-setting meeting that the Town Council had raised material reasons for their objection and that it was appropriate for the application to be determined by Planning Committee.

## 4.0 COMMUNITY REPRESENTATIONS

### 4.1 Consultee Comments

4.1.1 **Shrewsbury Town Council** The Town Council object to this re-submitted application. Members agree that the applicant has looked at different designs for

the proposed building, but they still did not agree with the demolition of most of the existing building. The demolition would result in harm to this heritage asset. Members fully support the comments raised by the Conservation Officer.

4.1.2 **SC Ecology** No objection. Recommends conditions and informatives. The level of survey work is appropriate. Conditions should be added to require bat and bird boxes; and a lighting plan.

4.1.3 **SC Trees** No objection. The proposed planting is sustainable and will maintain canopy cover on the site and is acceptable. As for the foundations, the proposed re-use of the existing subbase can be managed by a detailed method statement and some site supervision. The foundations are a bit different. It is doubtful that you could build a structure of this sort of the existing subbase and certainly not without further compaction, so a specialised type of foundation is required. Probably pile and beam and these were the details that were being sought as part of the previous application. That said, there is no reason not to use this type of foundation and we could probably require these details through a condition. If so then no objection is raised.

Relevant previous comments:

The AIA has identified 10 individual trees, 5 groups of trees and 2 hedges which have been assessed in accordance with BS 5837 (2012) and includes a categorisation of the trees based on their current and potential public amenity value. This categorisation forms the basis for how much weight should be put on the loss of a particular tree and helps to inform the site layout and design process. I have reviewed the categories allocated to the trees and would agree that these are appropriate.

The proposed development would require the removal of 4 individual trees, 2 category B, moderate value and 2 category C low value. The loss of these trees would have a moderate impact on the tree resource on site and the wider area and would affect canopy cover levels and public amenity to some degree. This could be compensated for through new planting on the site.

In addition to the tree loss, the proposed building encroaches into the Root Protection Areas of 2 trees, T4 & T6. To mitigate the impact of this it is proposed that a specialised foundation design and installation method is used. Having visited the site, it is noted that there is existing hard surface in the areas that would be encroached upon. It is considered that it may be possible to limit damage to the root system of the trees through the use of specialised foundation design, however details of this would be required before this could be verified.

The relationship between the trees and the proposed building is similar to the existing situation and, given the nature of the occupancy and the fact that the site is commercially managed it is unlikely that significant conflicts will arise between the trees and residential amenity.

There is also a requirement to replace hard surface within the RPA of the T4 & T6. The AIA notes that this will be done using the existing subbase and would not be damaging to the trees. This would be acceptable, however a detailed method statement, including arboricultural supervision, would be required.

- 4.1.4 **SC Conservation** This is a resubmitted planning application following the refusal of application 23/00765/FUL, where we would highlight refusal reason number 6 which references the complete loss of the non-designated heritage asset, which comprises the mid-19th Century former Sion Villa.

The historic north range of the building complex is denoted as Sion Villa on historic OS mapping where it is shown in a then isolated rural position down a long access lane from the main highway on the 1881 surveyed First Edition OS map, where there is a range of outbuildings positioned to the Villas immediate west side. Sion Villa is indicated on the subsequent OS revised 1900 map with the same configuration, and then on the following 1925 revised OS map as Bicton Heath House. Referring to Archives holdings online, there are references to Sion Villa as early as 1853, meaning that the existing historic building dates to at least the mid-19th Century.

We had previously highlighted in our subsequent consultee comments that the prepared Heritage Statement advises that the main built form of the pre-1844 and pre-1881 rural villa still remain, with some survival of traditional features internally.

That Statement noted that the development proposal would see the full demolition of this historic original rural villa which now forms the northern historic wing of the Bicton Heath House facility, where this would result in the total loss of heritage significance of that building, and also notes the impact that modern extensions and alterations have had on the significance of the historic villa.

That Statement noted the proposal to demolish the building would result in less than substantial harm to the non-designated heritage asset, and while the Statement sets this harm at a low level of heritage significance, we would emphasize that this is harm none the less, resulting in complete loss of the heritage asset which formed the basis of the present care facility in this neighbourhood.

Referring to the resubmitted plans, there have been revisions to the design of the proposed new building however the proposal in the main remains the same with the complete demolition of the former villa still proposed.

We would again highlight the 2021 planning application which aimed to retain the historic former villa as part of the facility's further extension, where retention of the historic building form as viewed from Knowsley Drive was explained as a key part of the proposal in the Planning Statement submitted at that time.

Retaining the historic built form of the original building while undertaking internal upgrades and further modernisation of this part of the facility is the recommended approach on heritage grounds, rather than full demolition of the original building form comprising this facility, as full demolition would result in direct harm to the heritage asset at the less than substantial level.

We would again note that if in the planning assessment and planning balance the application is however supported, a full photographic recording exercise should be completed in accordance with standard condition JJ30, Level 2 minimum, so that a complete point in time record of this building is secured.

4.1.5 **SC Highways** No objection. It is recommended that in the event planning permission is granted a planning condition requiring a Demolition and Construction Management Plan to be submitted and approved prior to commencement, should be attached to any permission granted.

4.1.6 **SC Drainage** The foul and surface water drainage strategy contained in the Flood Risk Assessment and Drainage Strategy ref TC/T20706/2023/01 are acceptable.

One minor amendment to the layout would be to include a linear drainage channel cross the entrance to ensure surface water flows are intercepted prior to being conveyed to the public highway. Given the degree of betterment, this connection could be downstream of the flow control chamber.

4.1.7 **SC Regulatory Services** Recommends a condition. Given the development sites proximity to existing housing there is some potential for noise and dust impact upon the locality during demolition and construction phase. I would therefore recommend that if permission is granted that a condition is applied which requires the submission and implementation of a construction management plan which includes measures to control noise and dust impact.

4.1.8 **Shrewsbury Civic Society** Objects. Shrewsbury Civic Society has objected to the previous application and there is nothing in this one to change our original view.

The previous comments of the SCS are as follows:

*This is an attractive and relatively old building and the proposal would demolish most of the existing building. The applicants do not seem to have considered the realistic option of upgrading the existing building, by retro-fitting to modern standards, thus avoiding the need for demolition.*

## 4.2 **Public Comments**

4.2.1 The application has been advertised by a site notice. Nine public objections have been received. The objections are on the following grounds:

- disturbance from construction works

- Insufficient parking provision
- Surrounding roads are inadequate for additional service and other vehicles
- Insufficient planting being proposed
- May result in additional crime in the area
- Impact of proposed drainage scheme on boundary hedge which would result in light pollution if lost
- Impact on birds and bats
- Other options to need to be considered which have a better carbon footprint

#### 4.2.3 **Cllr Alex Wagner – Local Member**

I objected to this application back in February echoing comments made by Knowsley Drive and The Orchard residents, the Town Council, and Shrewsbury Civic Society. The resubmission has not improved the case sufficiently in my eyes.

The scale and negative impact that this would have on heritage, as commented on by Shrewsbury Civic Society, still stands. Similarly the points raised by residents about a lack of consideration for the impact on parking in the area, already poorly-policed, have not been addressed. There is not enough change here to justify a change in my original position so I wish to object to this again.

## 5.0 **THE MAIN ISSUES**

- Policy & Principle of Development
- Design, scale and character; open space and tree considerations
- Residential and local amenity considerations
- Ecological considerations
- Highways and access considerations
- Drainage considerations

## 6.0 **OFFICER APPRAISAL**

### 6.1 **Policy and Principle of Development**

6.1.1 The property provides residential care to both elderly and younger adults over the age of 30 who have mental health conditions. The proposal would increase the capacity of the younger adult section and improve the standard of accommodation. Core Strategy policy CS11 supports the provision of specialist housing, including residential and extra care facilities. The NPPF recognises the importance of meeting the specific housing needs of certain groups including the elderly and people with disabilities. National planning practice guidance on Housing for older and disabled people states that “the need to provide housing for older people is critical”. In addition, its states that “the provision of appropriate housing for people with disabilities, including specialist and supported housing, is crucial in helping them to live safe and independent lives. Unsuitable or unadapted housing can have a negative impact on disable people and their carers”. The proposal to improve the standard of accommodation provided within the curtilage of the existing site is acceptable in principle. The wider planning issues raised by the proposal are discussed below.



## 6.2 **Design, Scale and Character; open space and tree considerations**

6.2.1 Core Strategy policies CS6 and CS17 require development to protect and conserve the built, historic and natural environment and be appropriate in scale, density, pattern and design taking into account the local context and character. SAMDev Plan policy MD2 requires that development contributes to and respects locally distinctive or valued character and existing amenity value. SAMDev Plan policy MD12 seeks the avoidance of harm to Shropshire's natural assets. SAMDev Plan policy MD13 requires that Shropshire's heritage assets are protected, conserved, sympathetically enhanced and restored.

6.2.2 Planning permission for renovations and extensions to the care home remains in place, but has not been implemented. This would allow: a first floor extension along the northern side; a part two storey and part single-storey extension on the western side; and two storey extensions along the eastern side. The applicant advises that they have reviewed this option of upgrading the existing building and retrofitting it to modern standards. They advise however that due to the condition of the building this has been assessed as unachievable.

6.2.3 The recently-refused application proposed a replacement building with a flat roof, as shown below:



Fig 4.0a: Recently refused 3D Massing

6.2.4 In the officer report, it was acknowledged that this design would provide a modern and contemporary building. However officers raised concerns over its massing and scale. One of the refusal reasons stated that the proposal would “constitute overdevelopment and result in a cramped and dominating appearance which would adversely affect the character of the area and adversely impact upon residential amenity of properties to the west due to potential overlooking”.

6.2.5 The current proposal seeks to address these concerns, as shown in the image below:



Fig 4.0b: Proposed 3D Massing taking on board Officers comments regarding recently refused application.

6.2.6 The revised design largely mimics the footprint of the existing building, and includes pitched roofs which would reduce the massing of the building. Although the footprint would be similar to the refused scheme, the revised design would be significantly less overwhelming in its plot. It is considered that it would also be more in keeping with the residential nature of the surrounding area, which predominantly comprises two storey red brick dwellings with pitched roofs.

6.2.7 The image below has been provided in the application to illustrate the vertical scale of the proposed replacement building in comparison to the existing building (shown outlined in blue).



6.2.8 The application states that the current building is somewhat chaotic in appearance, with various additions having been made in different forms over the years. It is considered that the proposed replacement building would provide a simplified building form than exists at present, of a similar vertical scale, and would be of an acceptable design which would also meet the objective of improving the standard of accommodation.

6.2.9 Impact on heritage asset: As noted by the Council’s Conservation Officer, the part of the care home which is proposed to be demolished is a historic building which dates back to at least the mid-19<sup>th</sup> century. The Conservation Officer advises that the building can be considered to be a non-designated heritage asset. The Heritage Statement notes that the core of the existing building survives from an early to mid 19<sup>th</sup> century former country villa. It considers that, following heavy alterations and modern developments within the building plot, what survives is the shell of the former villa. It states that there is some survival of traditional features

but considers that the site holds only a limited amount of evidential architectural interest, assessed as at best of 'low significance'. It acknowledges that the building is a non-designated heritage asset and concludes that the proposed development would result in less than substantial harm to the asset.

- 6.2.10 One of the reasons for refusal of the previous scheme was that insufficient justification had been put forward for the complete demolition of this asset over the benefits of retaining it. The current application provides additional information on this point, and states that the existing building is unsuitable for retention taking into account the latest Care Quality Commission (CQC) standards that would need to be adhered to. The applicant states that the new building would improve the quality of accommodation for residents, and would be built to current regulations, including acoustic, thermal and accessibility, which could not be retrofitted into the existing building due to issues such as narrow corridors and uneven floors.
- 6.2.11 It is noted that previous planning permissions ensured the retention of the historic building form and its appearance from the main entrance way to the north. However the current proposal would result in the complete loss of the heritage asset. The Conservation Officer has recommended that the built form of the original building should be retained as part of any upgrading and modernisation required. Paragraph 209 of the NPPF requires that, in determining applications, the effect of an application on the significance of a non-designated heritage asset is taken into account. It states that a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. This is considered further in the planning balance below.
- 6.2.12 Open space considerations: The existing care home currently has 50 beds, across two sections. The northern wing, which is the part which is proposed for demolition, currently has 23 bedrooms. Five of these are doubles, so the current capacity is for 28 residents. The application states that the garden space at the existing care home amounts to 693m<sup>2</sup>. Based upon the standards set out in SAMDev Plan policy MD2, of 30m<sup>2</sup> of open space per person, the care home at present provides less than 50% of this.
- 6.2.13 The site does have extant planning permission for single and two-storey extensions to the building (ref. 21/01030/FUL) which would provide 29 ensuite bedrooms in this section of the care home. The current application would increase this to 30 bedrooms. The Council has therefore previously accepted a redevelopment scheme at this site which provides a lower amount of open space to that referred to in policy MD2. Nevertheless one of the reasons for refusal of the previous scheme raised concern over the lack of justification for the limited amount of amenity space that would be provided.
- 6.2.14 The current application has provided additional information to address this. At present, outdoor space is not fully accessible for the residents on the first floor, as staff assistance may be required. Although the current proposals would not

increase the amount of open space at the site, it is considered that they would increase the quality of both internal and external amenity space. For example, the proposals include a quiet lounge, dining room and secondary lounge. Each resident would also benefit from a larger bedroom and ensuite bathroom. Views from bedrooms would also be improved which is considered to constitute a benefit over the existing situation. In terms of outdoor space, external first floor balconies would be provided, which would be accessible to all residents. Additionally, and of particular relevance, is that not all residents would be able to enjoy the outside areas at any one time given the care needs of the majority of residents which may require them to be supported by staff members.

- 6.2.15 It is considered that the revised application does provide satisfactory justification for the amount of open space, with reassurance that this is appropriate for the needs of residents in conjunction with the wider improvements to internal and external spaces. The proposal can therefore be supported in relation to policy MD2.
- 6.2.16 Impact on trees: In relation to the previous application the Council's Tree Officer noted that the proposal tree loss would have a moderate impact on the tree resource on site and on the wider area; and would affect canopy cover levels and public amenity. One of the reasons for refusal of the previous application concerned the lack of information to show that the level of tree loss could be satisfactorily compensated for by new planting within the site. The refusal reasons also referred to concerns that building works would have on the root system of two trees within the site.
- 6.2.17 The current, revised application is supported by a tree planting scheme. This proposes nine replacement trees across the site, including two trees in the car park to replace the one proposed for removal; and three trees to both the eastern and western site boundaries. These would be visible from surrounding properties and as such would improve the public amenity value of the site.
- 6.2.18 The revised application provides additional information to demonstrate that potential damage to the roots of two existing trees can be avoided by a 'no dig' method. Precise details of this can be agreed as part of a method statement along with arboricultural supervision during the works, which can be secured by a planning condition.
- 6.2.19 In addition to the above, one of the reasons for refusal of the previous scheme raised concern over the conflict between proposed drainage infrastructure and the root protection areas of on-site trees. The submitted Arboricultural Impact Assessment sets out how this should be avoided. This includes: the use of trenchless insertion methods where necessary or, where this is not feasible, the use of hand-held tools; and ensuring that inspection chambers are positioned outside of root protection areas. It is considered that, subject to these methods being employed, the risk of damage to tree roots can be avoided.

6.2.20 It is considered that the revised application satisfactorily addresses the previously-raised concerns in respect of impacts on trees. The proposal is therefore acceptable in relation to policies CS6 and CS17 of the Core Strategy, and policies MD2 and MD12 of the SAMDev Plan.

### 6.3 **Residential and local amenity considerations**

6.3.1 Core Strategy Policy CS6 (Sustainable Design and Development Principles) states that development should safeguard residential and local amenity. One of the reasons for refusal of the previous application was that the scale, massing and positioning of the building in relation to adjacent residential properties, and the positioning and size of first floor windows on the western elevation, would adversely impact upon residential amenity of properties to the west due to potential overlooking.

6.3.2 It is considered that these concerns have been addressed as part of the revised design. In relation to the western boundary which adjoins residential properties, the proposed building would be further away from this than the existing building. There would be some single storey elements along this elevation. The windows to the two-storey element have been reduced in size in relation to the previous scheme and positioned in a way which ensures there is no direct overlooking. The nearest windows at first floor level to adjacent residential properties would be those serving a corridor and these are proposed to be obscure glazed. Other windows of the proposed building would be no less than approximately 20 metres away from the nearest windows of adjacent dwellings. It is proposed that three trees would be planted along this boundary which would provide screening and visual enhancement. It is considered that the design of the replacement building, and its distance from residential properties, would avoid adverse impacts on amenity. The application also proposes the retention of a short section of brick wall along the western boundary, which has been requested by the neighbouring resident.

### 6.4 **Ecological considerations**

6.4.1 Core Strategy policies CS6 and CS17 require that development protects and enhances the natural environment. CS17 requires that development does not have a significant adverse impact on Shropshire's environmental assets. SAMDev Plan policy MD2 requires that developments enhance, incorporate or recreate natural assets. Policy MD12 seeks the avoidance of harm to natural assets and their conservation, enhancement and restoration.

6.4.2 It is noted that the preliminary ecological assessment states that no further surveys or mitigation work is required. The Biodiversity Net Gain Assessment states that the proposed development would result in a small increase in biodiversity. As recommended by the Council's ecologist, it is recommended that if planning permission were to be granted then additional measures to increase biodiversity further should be required, to include the installation of bat and bird boxes.

## 6.5 Highways and access considerations

6.5.1 Core Strategy policy CS6 requires that development is safe and accessible. Vehicle access to the site would be from the existing access point. The proposed development would result in additional residents and an additional member of staff. One of the reasons for refusal of the previous application was that details had not been provided as to the parking requirements for the development. It was not therefore possible to establish that the layout and parking provision was appropriate. The current application is supported by a Transport Statement. This advises that the proposed development would result in a maximum of 1 to 2 additional vehicles spread across the working day. The proposal would increase the number of car parking spaces by five, from eight to thirteen. It is therefore accepted that there will be a betterment in terms of parking provision over the current situation.

### 6.5.2

In terms of refuse collections and servicing, swept path analysis drawings have been provided and these demonstrate that the layout provides satisfactory manoeuvring space for such vehicles. No objections have been raised by the Council's highways officer. It is considered that the proposal does not raise any significant highway safety or amenity issues. A planning condition can be imposed to require that a Demolition and Construction Management Plan is submitted and approved prior to commencement.

## 6.6 Drainage considerations

6.6.1 Core Strategy policy CS18 requires that development incorporates sustainable water management measures to reduce flood risk; to avoid an adverse impact on water quality and quantity; and provide opportunities to enhance biodiversity. The submitted Flood Risk Assessment and Drainage Strategy proposes that surface water would be drained via existing connections. SuDS features proposed would include geocellular storage tanks and flow control chambers. Foul water would be managed utilising existing connections. The Council's Drainage team have confirmed that the drainage layout plans are acceptable, but has suggested an amendment to ensure that surface water does not flow onto the public highway. This can be agreed as part of a planning condition.

## 7.0 Planning balance and conclusion

7.1 The proposed replacement building would improve the standard of accommodation for residents and staff of the care home, whilst also increasing its capacity. It is considered that the concerns raised in relation to the previous application, in relation to design, scale, appearance, parking, trees and landscaping, and open space, have been satisfactorily addressed with the current revised scheme.

7.2 One of the reasons for refusal of the previous scheme was that it was not considered that the benefits of the proposal were sufficient to outweigh the harm that would be caused to the non-designated heritage asset. Paragraph 209 of the NPPF requires that a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. SAMDev Plan

policy MD13 states that proposals which are likely to have an adverse effect on the significance of a non-designated heritage asset will only be permitted if it can be clearly demonstrated that the public benefits of the proposal outweigh the adverse effect.

7.3

The current proposal would result in the complete loss of the heritage significance of the former villa. However the submitted Heritage Statement assesses this heritage significance as low and the Council's Conservation Officer does not disagree with this. The proposal to replace this with a new building would provide significant benefits to residents and staff, by providing a purpose-built facility for the care of young adults, whilst also increasing the number of beds. The improvements would include more communal facilities, better proportioned rooms, and ensuite bathrooms. Other benefits include improved energy efficiency and insulation.

7.4

The revised application has addressed negative elements of the previous refused proposal. Whilst the loss of the building is unfortunate, officers now consider that the benefits of the scheme overall outweigh the harm that would arise from the loss of the non-designated heritage asset, particularly given its limited level of heritage significance. Therefore, on balance, it is considered that the proposal is acceptable in relation to Development Plan policy and other considerations, and it is recommended that planning permission is granted subject to conditions.

## 8.0 RISK ASSESSMENT AND OPPORTUNITIES APPRAISAL

### 8.1 Risk Management

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

- As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal - written representations, a hearing or inquiry.
- The decision is challenged by way of a Judicial Review by a third party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will interfere where the decision is so unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its planning merits. A challenge by way of Judicial Review must be a) promptly and b) in any event not later than six weeks after the grounds to make the claim first arose.

Both of these risks need to be balanced against the risk of not proceeding to

determine the application. In this scenario there is also a right of appeal against non-determination for application for which costs can also be awarded.

## 8.2 **Human Rights**

Article 8 give the right to respect for private and family life and First Protocol Article 1 allows for the peaceful enjoyment of possessions. These have to be balanced against the rights and freedoms of others and the orderly development of the County in the interests of the Community.

First Protocol Article 1 requires that the desires of landowners must be balanced against the impact on residents.

This legislation has been taken into account in arriving at the above recommendation.

## 8.3 **Equalities**

The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed in planning committee members' minds under section 70(2) of the Town and Country Planning Act 1990.

## 9.0 **FINANCIAL IMPLICATIONS**

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

## 10. Background

### Relevant Planning Policies

Central Government Guidance:

West Midlands Regional Spatial Strategy Policies:

Core Strategy and Saved Policies:



## RELEVANT PLANNING HISTORY:

PREAPP/10/01140 Erection of a 4 bedroom single storey extension, conversion of dayroom to two bedrooms, extension to dayroom and additional six bedrooms REC

13/00795/FUL Erection of single storey and two storey extensions including part demolition and reconfiguration of existing building to create additional beds to the younger persons unit from 23 beds to 27 beds with en-suites GRANT 17th May 2013

16/03943/VAR Variation of condition 1 attached to 13/00795/FUL dated 17/05/2013 to allow a further three years for construction to commence.

Condition Number(s): Condition 1

Conditions(s) Removal:

Adjusted to give a further 3 years to construct.

Adjust to give 3 years from date of new permission. NPW 19th September 2016

16/04669/FUL Erection of single storey and two storey extensions and reconfiguration of existing building to create a total of 29 bedrooms with en-suites; to include some demolition GRANT 27th January 2017

18/02005/FUL Erection of a single storey extension and associated internal alterations. GRANT 11th July 2018

21/01030/FUL Re submission of approved scheme (16/04669/FUL - Erection of single storey and two storey extensions and reconfiguration of existing building to create a total of 29 bedrooms with en-suites; to include some demolition) GRANT 22nd October 2021

23/00765/FUL Proposed demolition of existing care home wing and proposed new build care home wing REFUSE 23rd June 2023

23/03972/FUL Proposed demolition of existing care home wing and proposed new build care home wing (resubmission) PDE

SA/86/0898 Alterations and additions to provide additional accommodation for the elderly with connecting link to main building and the provision of car park and driveway PERCON 20th November 1986

SA/76/0125 Use land for residential development surrounding Bicton Heath House. WDN 5th October 1979

SA/85/0133 Alterations and additions to provide additional accommodation for the elderly with connecting link to main building and the provision of driveway and car park. REFUSE 4th April 1985

SA/85/0013 Erection of a mono-pitched roof entrance porch and provision of a chimney on warden's accommodation. PERCON 21st February 1985

SA/84/1064 Alterations and additions to provide additional accommodation for the elderly with connecting link to main building and the provision of driveway and car park (in accordance with amended plans received 8/1/85). REFUSE 31st January 1985

SA/83/0555 Alterations and additions to change the use of existing outbuildings into staff accommodation providing a 2 storey pitched roof private garage with additional bedrooms above including provision of dormer windows, change the use of existing stable block into

private garage with new access drive from existing gateway and the erection of a pitched roof front entrance porch and a flat roof rear ablution block. PERCON 26th July 1983  
SA/83/0039 Change the use of house into residential home for the elderly and change the use of garage buildings into staff accommodation. PERCON 1st March 1983  
SA/88/1071 Erection of an extension to provide enclosed external staircase. PERCON 28th October 1988  
SA/88/0207 Proposed first floor extension to provide additional accommodation for the elderly. REFUSE 2nd June 1988  
SA/98/0856 Renewal for temporary permission for staff room and garden store as dated 3/9/97 ref: 96/0688/310/95. PERCON 28th October 1998  
SA/78/0770 Erection of dwellings, formation of vehicular and pedestrian accesses and laying of associated roads and sewers GRANT 16th October 1980  
SA/96/1151 Erection of a single storey extension to provide 5 additional bedrooms, toilets, sitting room, office accommodation and an occupational therapy unit. REFUSE 21st May 1997  
SA/96/0688 Siting of buildings to be used as staff rest room and garden store (Retrospective). REFUSE 2nd October 1996  
SA/96/0689 Siting of a mobile home for use as rest room for residents (retrospective). REFUSE 11th September 1996  
SA/95/1081 Erection of extensions to provide conservatory and bathroom and internal alterations to convert garage into bedroom accommodation. Retrospective (amended description). PERCON 4th January 1996  
SA/95/1080 Siting of a mobile home for use as a rest room for residents. (Retrospective). REFUSE 13th December 1995  
SA/00/1101 Renewal of temporary planning permission no. 98/856/310/95, granted 27/10/98, to allow the siting of buildings to be used as staff rest room and garden store for a further period of 3 years. PERCON 11th December 2000  
SA/78/1031 Laying of foul and storm water sewers PERCON 1st May 1979  
SA/07/1480/F Siting of two timber buildings as staff room and store (retrospective) REFUSE 6th December 2007

## Appeal

97/00240/REF Siting of buildings to be used as staff rest room and garden store (Retrospective). ALLOW 5th September 1997

## Appeal

97/00250/REF Erection of a single storey extension to provide 5 additional bedrooms, toilets, sitting room, office accommodation and an occupational therapy unit. ALLOW 3rd December 1997

## Appeal

86/00452/REF Alterations and additions to provide additional accommodation for the elderly with connecting link to main building and the provision of driveway and car park. PARTAD 24th March 1986

## Appeal

96/00595/REF Siting of a mobile home for use as rest room for residents (retrospective). WTHDRN 19th June 1997

## Appeal

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[Ideal Home](#)

88/00665/REF Proposed first floor extension to provide additional accommodation for the elderly. DISMIS 31st March 1989

## 11. Additional Information

View details online: <http://pa.shropshire.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=S00IAPTDJXV00>

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)
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Cabinet Member (Portfolio Holder) - Councillor Chris Schofield
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Local Member
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Cllr Alex Wagner
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Appendices APPENDIX 1 - Conditions
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## 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, drawings and documents as listed in Schedule 1 below.

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

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

3. 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.

4. No development shall take place until a scheme of foul drainage, and surface 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 (which ever is the sooner).

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

5. 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.

6. No development hereby permitted shall commence until a method statement for the building work has been submitted and approved in writing by the local planning authority. The submitted statement should include details of the foundation design and installation method. The development hereby permitted shall be undertaken in accordance with the approved method statement.

Reason: To protect existing trees from damage during and after construction works.

7. 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.

8. Prior to the commencement of the development a suitably qualified tree specialist shall be appointed to undertake supervision and monitoring of the tree protection works at pre-commencement stage and throughout the construction period as outlined in the method statement and submit to the local planning authority a satisfactory completion statement to demonstrate compliance with the approved tree protection measures.

Reason: To safeguard the amenities of the local area by protecting trees.

9. No development approved by this permission shall commence until a photographic survey (Level 1,2,3,4 (Specify as appropriate) survey, as defined in English Heritage's guidance 'Understanding Historic Buildings: A Guide to Good Recording Practice') of the interior/ exterior of the buildings 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 building prior to development.

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

10. No above ground works shall be commenced until full details of both hard and soft landscape works 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 time scales. 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.

11. 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 2 external woodcrete bat boxes or integrated bat bricks, suitable for nursery or summer roosting for small crevice dwelling bat species.
- A minimum of 6 swift bricks. Swift bricks should be positioned: 1) Out of direct sunlight; 2) At the highest possible position in the building's wall; 3) In clusters of at least three; 4) 50 to 100cm apart; 5) Not directly above windows; 6) With a clear flightpath to the entrance; and 7) North or east/west aspects preferred. (See <https://www.swift-conservation.org/Leaflet%20-%20Swift%20Nest%20Bricks%20-%20installation%20%26%20suppliers-small.pdf>)
- A minimum of 1 artificial nest, of either integrated brick design or external box design, suitable for starlings (42mm hole, starling specific).
- A minimum of 1 artificial nests of either integrated brick design or external box design, suitable for sparrows (32mm hole, terrace design).

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 180 of the NPPF.

12. 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.

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

13. The windows in the western elevation, shown on drawing no. XX-XX-EL-3100 rev. P02 as 'windows to be obscured' shall be permanently formed as a fixed light and glazed with obscure glass with a transparency level of no less than 3, and shall thereafter be retained for the lifetime of the development. Other than as shown on this drawing, no further windows or other openings shall be formed above ground floor level in that elevation.  
Reason: To preserve the amenity and privacy of adjoining properties.

## **Informatives**

1. Your attention is specifically drawn to the conditions above that require the Local Planning Authority's approval of materials, details, information, drawings etc. In accordance with Article 21 of the Town & Country Planning (Development Management Procedure) Order 2010 a fee is required to be paid to the Local Planning Authority for requests to discharge conditions. Requests are to be made on forms available from [www.planningportal.gov.uk](http://www.planningportal.gov.uk) or from the Local Planning Authority. The fee required is £145 per request, and £43 for existing residential properties.

Failure to discharge pre-start conditions will result in a contravention of the terms of this permission; any commencement may be unlawful and the Local Planning Authority may consequently take enforcement action.

## **2. BATS INFORMATIVE**

All bat species found in the U.K. are protected under the Habitats Directive 1992, The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 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.

## **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 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 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



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Ideal Home

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).

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## AGENDA ITEM



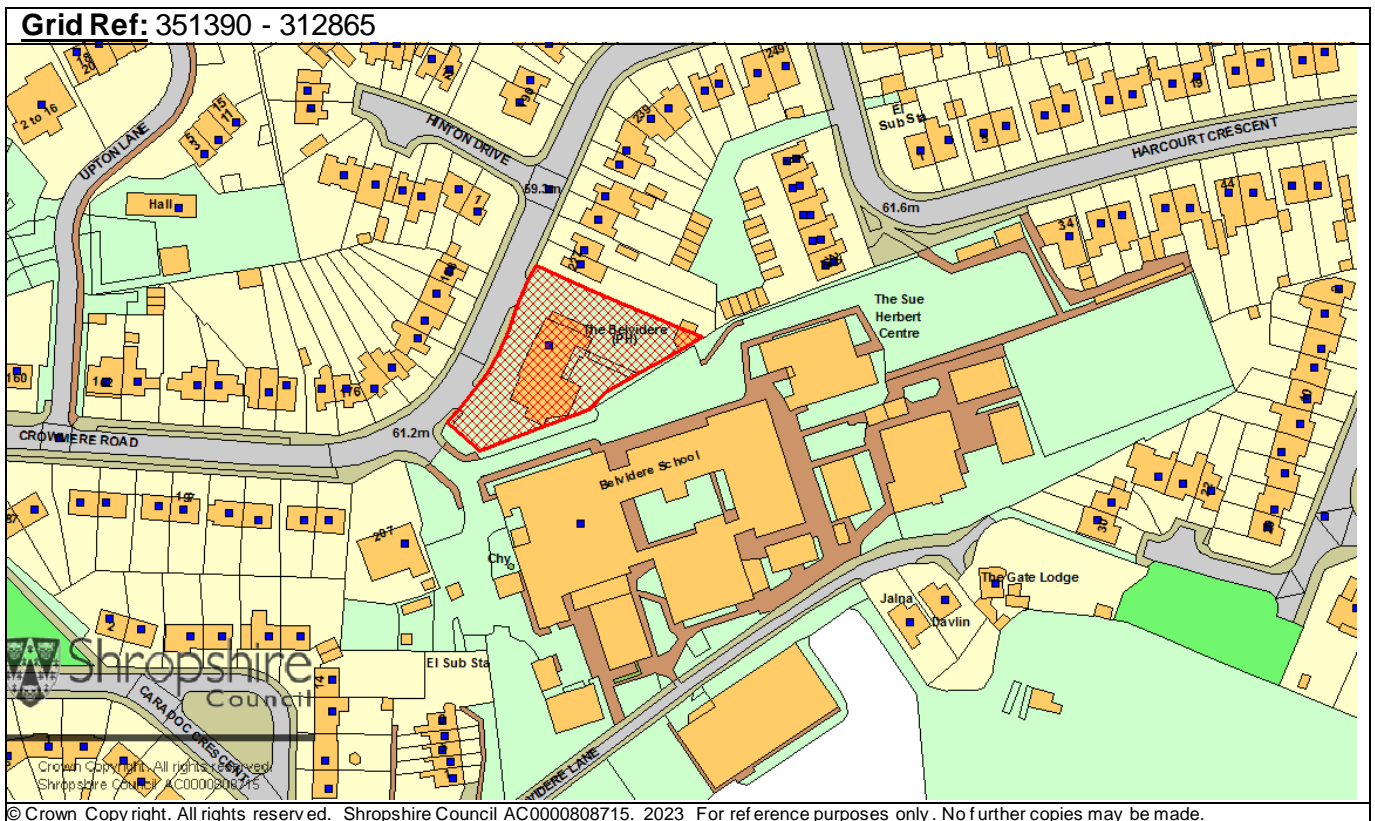
Committee and date
NORTHERN 6 Feb 2024

### Development Management Report

Responsible Officer: Tracy Darke, Assistant Director of Economy & Place

#### Summary of Application

<b>Application Number:</b> 23/04744/FUL	<b>Parish:</b> Shrewsbury Town Council
<b>Proposal:</b> Demolition of existing public house and the construction of a 2 and 3 bedroom residential development with new vehicular and pedestrian access.	
<b>Site Address:</b> The Belvidere Crowmere Road Shrewsbury Shropshire SY2 5LA	
<b>Applicant:</b> Mr David Knight	
<b>Case Officer:</b> Jane Raymond	<b>email:</b> jane.raymond@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 the existing building and the erection of 9 dwellings (4 two bed and 5 three bed), providing a total of 23 bedrooms.
- 1.2 It follows the approval on this site for 7 dwellings that were all three bed roomed, providing a total of 21 bedrooms.

### 2.0 SITE LOCATION/DESCRIPTION

- 2.1 The site is situated in a residential area to the north east of Shrewsbury and is occupied by a derelict Public House and a small garage in the corner of the site.
- 2.2 The site is triangular in shape and fronts Crowmere Road to the north west, shares a boundary with a dwelling to the north east, and adjacent to the site to the south is the access drive to Belvidere Secondary School.
- 2.3 The area is characterised by a mix of semi-detached and terraced houses of varying periods and styles.

### 3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

- 3.1 The Town Council has submitted a view contrary to officers and the application has been requested by the Local Member to be referred to committee, and the Area Planning Manager in consultation with the Committee Chairman and Vice-chairman agree that they have raised material planning issues and that the application should be determined by committee.

### 4.0 Community Representations

#### 4.1 Consultee Comment

- 4.1.1 SC Affordable House: *The proposed development falls below the threshold by which the Local Planning Authority are able to require a contribution towards affordable housing. Therefore no affordable housing obligations can apply to the proposed development. Whilst not a current policy requirement we encourage all residential development to meet Nationally Described Space Standards.*
- 4.1.2 SC Drainage: Advises that Severn Trent should be consulted and recommends a drainage condition and provides informative advice.

4.1.3 Severn Trent: Confirms that they have no objections to the proposal subject to the inclusion of a drainage condition and provides informative advice regarding the public sewer.

4.1.4 SC Highways: *Shropshire Council as Local Highway Authority raise no objection in principle to the proposed development, however whilst it is acknowledged that the applicant is seeking for the proposed access road to be adopted, it is not considered that the proposed layout is suitable for future adoption and has therefore been considered on this basis.*

Recommends conditions to be attached to any permission granted.

4.1.5 SC Regulatory Services: *No comments*

4.1.6 SC Ecology: Requested a Phase 1 Preliminary Roost Assessment to establish whether Phase 2 Bat roosting surveys are required to be carried out.

## 4.2 Public Comments

4.2.1 Shrewsbury Town Council: *The Town Council object to this application on the grounds of over development now that a total of 9 properties are proposed for the location. There were concerns for the number of dwellings and bin storage was also a concern as a bin lorry would struggle to gain access and turn around in the road which would lead to it being a main road collection. The potential impact on the sewage system also needed to be considered. The applicant also failed to mention any energy efficient savings or solar panel installations.*

4.2.2 Councillor Pam Moseley: *The site at present is occupied by the former Belvidere Public House, which closed several years ago. It is in a state of dilapidation, has been badly vandalised and has been, and continues to be the focus of anti-social behaviour in the evenings, which has caused disturbance for local residents. As such, its redevelopment for housing is, in principle, welcome.*

*However, I feel that there are some aspects of the proposed development which are not satisfactory.*

*I think that the site is too small for 9 houses. Whilst the lapsed planning consent (19/03292/FUL) was under consideration, I commented that I felt that 7 units was one too many, and now another 2 are proposed. I feel that this is overdevelopment. The houses are small, and there is certainly a local need for smaller units, but these are out of character with the properties in the surrounding area in terms of size, design, plot size and density, which is exacerbated by their being at right angles to Crowmere Road.*

*Unlike the previous consent, there is no provision for area(s) for the gathering of domestic waste in wheelie bins and bags. On recycling collection day, there is the*

*potential for there to be 18 bins and 9 bags to be collected. Whilst the new road is to be an adopted highway, there is no swept path analysis for a refuse lorry, so this appears to suggest that the bins/bags would be brought to the front of the site, and likely the pavement. Not only would this impede pedestrians (and it is a well-used footpath, and a route to school), but the visibility splays would also be adversely affected. This is unacceptable.*

*There is no elevational image of a street view of the site. Whilst it is stated that the Crowmere Road frontage would consist of fencing between brick piers, there is no height given, although being adjacent to a highway, this should not exceed 1m in height, unless this application would seek to vary this, but this is not indicated. A solid high fence at the back edge of pavement would probably be a desirable feature to residents of plots 1 and 9, for privacy reasons, but not an attractive addition to the street view.*

*I also note that the SC ecologist is not satisfied with the information provided, and suggesting that a refusal would be recommended if information with regard to a bat survey (it being best practice to be conducted between May to September) and other aspects is not submitted.*

*Additionally, the resident of the adjacent house has raised the issue as to the proposed demolition of the garage on their joint boundary, and how this will be treated; this issue needs to be addressed. Another resident has also raised the issue of existing sewerage problems and I hope that these are taken into consideration by the Council's SUDS team and also Severn Trent.*

#### 4.2.3 Two objections and one representation from local residents summarised as follows:

Will potentially exacerbate the existing sewerage system.

The main sewage drain is at 243 Crowmere Road which connects the drain from the existing Belvidere pub through to the flats on Harcourt Crescent.

There is already major problems with this sewage system with continuous flooding of this garden with sewage that Severn Trent agree there is an issue with.

The current sewerage infrastructure, designed to accommodate the housing development at the time of the Crowmere Road estate's establishment, is already strained and barely manages to handle the current usage.

Introducing an additional nine dwellings would put further pressure on a failing sewage system inevitably lead to sewage system problems for the downstream properties and damage to existing properties.

Cannot support the application until a thorough assessment is conducted by Severn Trent and the developer can provide concrete evidence that the sewerage

system has been comprehensively evaluated and can withstand the increased demand from the proposed development.

The boundary wall is an integral part of an outdoor garage at the rear of the pub which forms part of the wall facing the adjacent property and seeks confirmation regarding maintenance of the pub boundary wall with the neighbouring property and the school and ensuring the security of this property.

## 5.0 THE MAIN ISSUES

Principle of development  
Scale, design, character, and appearance  
Residential amenity  
Access and parking  
Ecology  
Drainage

## 6.0 OFFICER APPRAISAL

### 6.1 Principle of development

6.1.1 The provision of housing within the urban area of Shrewsbury accords with policy CS2 and MD1 that identifies Shrewsbury as the primary focus for housing development for Shropshire. The site is situated within the urban development boundary and is also brownfield land. The proposal therefore represents sustainable development making effective use of a brownfield site.

6.1.2 CS8 seeks to protect and enhance existing facilities, services and amenities that contribute to the quality of life of residents and visitors. CS6 states that '*proposals resulting in the loss of existing facilities, services or amenities will be resisted unless provision is made for equivalent or improved provision, or it can be clearly demonstrated that the existing facility, service or amenity is not viable over the long term*'.

6.1.3 The loss of a community facility is of particular concern in rural areas where the local village pub is often the only community facility remaining and the next nearest pub or local facility may be many miles away. This is not the case in this urban location where there are a variety of accessible services and facilities nearby.

6.1.4 The public house closed several years ago and has therefore not been recently used by the local community. It is in a very poor state of repair being badly vandalised over the years. It is considered that the major works required and re-opening as a public house would not be a viable or realistic proposition.

6.1.5 Although resulting in the loss of the existing building (previously a community facility) its use ended several years ago and there are other facilities of equivalent

or improved provision available in the area. The erection of 9 dwellings in this sustainable location, in place of the existing building, makes effective use of a brownfield site and is considered acceptable in principle which has already been established by the earlier permission.

## 6.2 Scale, design, character, and appearance

6.2.1 SAMDev Policy MD2 (Sustainable Design) and Core Strategy Policy CS6 (Sustainable Design and Development Principles) 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 and should also safeguard residential and local amenity. MD13 and CS17 seek to ensure that development protects and enhances the local character of the built and historic environment.

6.2.2 The layout indicates 9 dwellings (6 semi-detached and 3 detached houses). Some concern has been raised that the proposal represents over development of the site and that it would be out of character with the properties in the surrounding area in terms of size, design, plot size and density and being at right angles to Crowmere Road. The orientation and alignment of the development is the same as the proposal already approved and although the number of dwellings has increased the footprint of built development is much the same.

6.2.3 The plot sizes are considered to be comparable to those immediately opposite in Crowmere Road and Hinton Drive, where 9 houses occupy approximately the same area of land. The density of the development is considered to be approximately the same as that of dwellings in the surrounding area, being roughly the same as those opposite to the north-west, slightly higher than the semi-detached homes further to the west and to the north, but much lower than some nearby in Harcourt Crescent to the north east for example.

6.2.4 Hinton Drive opposite is a cul-de-sac off Crowmere Road (the same as being proposed) and the corner house is at right angles to Crowmere Road rather than facing it. There is a 1.8 metre high boundary fence facing Crowmere Road that provides privacy for the rear garden of this property. As future residents of the 2 end houses proposed will also require privacy in their rear garden it is recommended that this is provided by a combination of dwarf wall and fence or a fence with hedge behind rather than a high fence or wall. Detailed landscaping will be subject to condition and a fence or wall any higher than 1 metre at a later date would need planning permission. It is considered that the landscaping of the site and appropriate boundary treatments will provide a visual enhancement.

6.2.5 The floor area of the proposed houses all meet the national minimum space standards for the number of bedrooms, and satisfactory sized private gardens are provided. The proposed development will provide more affordable two and three bedroom dwellings that will make effective use of this brownfield site. It is



considered that the scale and design of the dwellings and the layout of the site is acceptable and would have no adverse impact on the character and appearance of the locality and would be an enhancement compared to the derelict building and the dilapidated condition and appearance of the site.

## 6.3 Residential amenity

6.3.1 Policy CS6 and MD2 seek to ensure that development contributes to the health and well-being of communities, including safeguarding residential and local amenity.

6.3.2 The nearest property that the proposal might affect is 227 Crowmere Road to the north-east. The proposal includes rear gardens along the north-east boundary with this property. Due to the distance and orientation, it is considered that the proposal would not have a significant adverse impact with regards to overlooking and a loss of privacy and would not appear overbearing or result in a loss of light. Compared to its former use as a public house, and the current condition of the site that is subject to vandalism and anti-social behaviour, the proposed development would be an improvement.

6.3.3 The resident of this property has queried the proposals for the boundary wall with the neighbouring property and the school once the garage is removed that is part of that existing wall. The revised drawings indicate that the existing garage will be carefully dismantled, and the adjoining rear boundary wall with the school boundary will be reinstated to match the existing. The agent has confirmed that they will liaise with the neighbour and the boundary treatment here will be retained as existing (brick dwarf wall, brick piers and close board fencing) and repaired as necessary. Future maintenance is subject to ownership.

## 6.4 Access and parking

6.4.1 The proposal indicates a single access of Crowmere Road to a short cul-de-sac development providing access to private drives. The junction with Crowmere Road is the same as previously approved with 43.0m visibility splays. Each house is provided with 2 off-road parking spaces and in addition two of the houses each have a single garage. An amended plan indicates a dedicated bin storage area sited off the pavement fronting Crowmere Road so that the refuse lorries do not have to enter the cul-de-sac.

6.4.2 It is considered that a satisfactory and safe means of access and adequate parking spaces are proposed to be provided. The proposed residential development of this site is considered acceptable from a highway perspective subject to compliance with the recommended conditions.

## 6.5 Ecology

6.5.1 An internal and external inspection of the building has been carried out and an

assessment of the potential for bat roosts to be present submitted. Since the previous surveys in 2019 the building has suffered significant vandalism. Many of the ceilings are torn down permitting visibility of the loft throughout. No bat droppings were seen in the remaining loft, nor among the detritus beneath the holes. The insulation is clean and none of the timber exhibit greasing typical of bat roosts. As no evidence of bats was seen in the derelict public house further survey work is not required. Conditions are recommended regarding landscaping which will enhance the bio-diversity of the site, and the provision of bat and bird boxes in the new dwellings will enhance the roosting opportunity. The proposal will therefore provide ecological enhancement compared to the existing site.

## 6.6 Drainage

6.6.1 Severn Trent have been consulted on the application and have no objections to the proposal subject to the inclusion of a drainage condition. The provision of 9 houses instead of 7 larger houses and in place of the existing public house would not make any significant difference to foul or surface water drainage. The provision of gardens and a reduction in hard surfaced areas will increase the permeable area of the site. Subject to the submission of a satisfactory drainage proposal it is considered that the proposal would not exacerbate any existing foul or surface water drainage issues and is likely to provide improvements.

## 7.0 **CONCLUSION**

7.1 The proposal makes efficient use of a brownfield site in a sustainable location within the urban development boundary of Shrewsbury and is therefore acceptable in principle. The development will improve the appearance of a currently derelict site, enhancing the character and appearance of the area and would have no significant adverse impact on the character and appearance of the locality or residential amenity. A satisfactory access with adequate visibility splays and space for the siting of bins off the pavement on bin collection day will be provided in addition to adequate parking provision. Subject to compliance with the recommended conditions regarding landscaping and ecology the proposal will secure improved soft and hard landscaping and boundary treatments, and ecological enhancement.

## 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

Core Strategy and Site Allocations and Management of Development (SAMDev) Plan:  
CS2, CS6, CS8, CS17, MD2 and MD12.

## Relevant Planning History:

19/03292/FUL Demolition of existing public house and erection of 7 new residential dwellings  
GRANT 25th September 2019  
22/04130/DIS Discharge of Condition 3 (Construction Management Statement) on Planning  
Permission 19/03292/FUL for the demolition of existing public house and erection of 7 new  
residential dwellings DISAPP 5th October 2022

## **11. Additional Information**

View details online: <http://pa.shropshire.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=S3EQ9XTDL5A00>

Cabinet Member (Portfolio Holder): Councillor Chris Schofield

Local Member: Councillor Pam Moseley

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, drawings and documents as listed in Schedule 1 below.

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

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

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

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

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

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

4. 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.

5. Prior to above ground works commencing full details of the means of access, including the location, layout, construction and sightlines and details of the reinstated dropped crossings including tactile paving and details for the relocation of the existing lighting column (if required) shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be fully implemented before the development is occupied.

Reason: To ensure a satisfactory means of access to the highway and to ensure pedestrian continuity and priority across the frontage along Crowmere Road.

6. The development hereby permitted shall not be brought into use until the car parking shown on the approved plans has been provided, properly laid out, hard surfaced and drained, and the space shall be maintained thereafter free of any impediment to its designated use.

Reason: To ensure the provision of adequate car parking, to avoid congestion on adjoining roads, in the interest of highway safety, and to protect the amenities of the area.

7. The development hereby permitted should not commence (other than demolition) 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 first brought into use.

Reason: To ensure that the development is provided with a satisfactory means of drainage as well as to prevent or to avoid exacerbating any flooding issues and to minimise the risk of pollution.

8. Notwithstanding the details of boundary fencing and walls indicated on the submitted and approved plans no above ground works shall be commenced until full details of both hard and soft landscape works (to include boundary fences/walls, hedgerow and tree planting) 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 details prior to the first occupation of any part of the development hereby approved. Any trees or plants that, within a period of five years after planting, are removed, die or become, in the opinion of the Local Planning Authority, 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

9. Prior to first occupation of the development details of the makes, models and locations of bat and bird boxes shall be submitted to and approved in writing by the Local Planning Authority. The boxes shall be provided in accordance with the agreed details prior to occupation of the dwellings and 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.

10. Prior to the erection of any external lighting on the site, a lighting plan shall be submitted to and approved in writing by the Local Planning Authority. The 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 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.

## SCHEDULE OF APPEALS AS AT COMMITTEE 6 February 2024

<b>LPA reference</b>	22/04269/FUL
<b>Appeal against</b>	Refusal
<b>Committee or Del. Decision</b>	Delegated
<b>Appellant</b>	Mr. Simon Roberts
<b>Proposal</b>	Erection of a building to house swimming pool and games room to serve approved holiday accommodation
<b>Location</b>	Proposed Holiday Let Barn At Onneley Hall Farm Newcastle Road Woore
<b>Date of appeal</b>	15.04.2023
<b>Appeal method</b>	Written Representations
<b>Date site visit</b>	
<b>Date of appeal decision</b>	
<b>Costs awarded</b>	
<b>Appeal decision</b>	

<b>LPA reference</b>	23/01995/FUL
<b>Appeal against</b>	Refusal
<b>Committee or Del. Decision</b>	Delegated
<b>Appellant</b>	Mr Paul Chadwick
<b>Proposal</b>	Proposed extension and garage
<b>Location</b>	Tobar Tigh 3 Birchwood Grove Higher Heath Whitchurch
<b>Date of appeal</b>	16.08.2023
<b>Appeal method</b>	Fast Track
<b>Date site visit</b>	
<b>Date of appeal decision</b>	
<b>Costs awarded</b>	
<b>Appeal decision</b>	

<b>LPA reference</b>	23/1504/FUL
<b>Appeal against</b>	Refusal
<b>Committee or Del. Decision</b>	Delegated
<b>Appellant</b>	Mr & Mrs Good
<b>Proposal</b>	Proposed Change of use of part of existing curtilage from agricultural field to residential use and Proposed extensions
<b>Location</b>	Northwood Cottage, The Hill, Grinshill, Shrewsbury
<b>Date of appeal</b>	17.08.2023
<b>Appeal method</b>	Written Representation
<b>Date site visit</b>	
<b>Date of appeal decision</b>	
<b>Costs awarded</b>	
<b>Appeal decision</b>	

<b>LPA reference</b>	23/02118/FUL
<b>Appeal against</b>	Appeal Against Conditions Imposed
<b>Committee or Del. Decision</b>	Delegated Decision
<b>Appellant</b>	Miss Desi Koleva
<b>Proposal</b>	Application under Section 73A of the Town and Country Planning Act 1990 for the erection of a two storey side extension
<b>Location</b>	41 Roseway Shrewsbury
<b>Date of appeal</b>	17.07.2023
<b>Appeal method</b>	Written Representations
<b>Date site visit</b>	
<b>Date of appeal decision</b>	
<b>Costs awarded</b>	
<b>Appeal decision</b>	



<b>LPA reference</b>	22/05712/FUL
<b>Appeal against</b>	Appeal Against Refusal
<b>Committee or Del. Decision</b>	Delegated Decision
<b>Appellant</b>	Ms Anna Iley
<b>Proposal</b>	Change of use of land to dog exercise area and erection of a building to provide indoor facility for dog daycare business (retrospective)
<b>Location</b>	Proposed Dog Daycare Centre North Of Forton Montford Bridge Shrewsbury
<b>Date of appeal</b>	08.06.2023
<b>Appeal method</b>	Written Representations
<b>Date site visit</b>	
<b>Date of appeal decision</b>	
<b>Costs awarded</b>	
<b>Appeal decision</b>	

<b>LPA reference</b>	23/00573/FUL
<b>Appeal against</b>	Appeal Against Refusal
<b>Committee or Del. Decision</b>	Delegated Decision
<b>Appellant</b>	Mr J Owen
<b>Proposal</b>	Erection of two storey boat house, following the removal of the existing single storey boat house.
<b>Location</b>	Boat House Water Lane Shrewsbury
<b>Date of appeal</b>	05.10.2023
<b>Appeal method</b>	Written Representations
<b>Date site visit</b>	
<b>Date of appeal decision</b>	
<b>Costs awarded</b>	
<b>Appeal decision</b>	

<b>LPA reference</b>	23/00149/OUT
<b>Appeal against</b>	Refusal
<b>Committee or Del. Decision</b>	Delegated
<b>Appellant</b>	Mrs Jennifer Lamb
<b>Proposal</b>	Outline application for the erection of 1No dwelling (all matters reserved)
<b>Location</b>	Land Rear 59 And 61 Alexandra Road Market Drayton
<b>Date of appeal</b>	28.12.2023
<b>Appeal method</b>	Written Representations
<b>Date site visit</b>	
<b>Date of appeal decision</b>	
<b>Costs awarded</b>	
<b>Appeal decision</b>	

<b>LPA reference</b>	23/00699/FUL
<b>Appeal against</b>	Refusal
<b>Committee or Del. Decision</b>	Delegated
<b>Appellant</b>	Mr Roger Jones
<b>Proposal</b>	Erection of garage and change of use of land to extension of domestic curtilage
<b>Location</b>	2 Ivy Villas, Criftins, Ellesmere
<b>Date of appeal</b>	09.01.2024
<b>Appeal method</b>	Written Representations
<b>Date site visit</b>	
<b>Date of appeal decision</b>	
<b>Costs awarded</b>	
<b>Appeal decision</b>	

## APPEALS DETERMINED

<b>LPA reference</b>	22/05588/ADV
<b>Appeal against</b>	Refusal
<b>Committee or Del. Decision</b>	Delegated
<b>Appellant</b>	Mr N Willcock
<b>Proposal</b>	Erect and display 1No digital advertising screen
<b>Location</b>	Land At Griffiths Hire Shops Unit Mc8 Maes-y-clawdd Oswestry Shropshire SY10 8NN
<b>Date of appeal</b>	28.07.2023
<b>Appeal method</b>	Written reps
<b>Date site visit</b>	26.09.23
<b>Date of appeal decision</b>	02.11.23
<b>Costs awarded</b>	
<b>Appeal decision</b>	<b>DISMISSED</b>

<b>LPA reference</b>	22/04125/FUL
<b>Appeal against</b>	Appeal Against Refusal
<b>Committee or Del. Decision</b>	Delegated Decision
<b>Appellant</b>	Mr O Humphreys
<b>Proposal</b>	Erection of extensions to form garage and utility room, porch and covered area
<b>Location</b>	37 Lansdowne Road Bayston Hill Shrewsbury
<b>Date of appeal</b>	12.01.2023
<b>Appeal method</b>	Householder
<b>Date site visit</b>	26.09.2023
<b>Date of appeal decision</b>	25.10.2023
<b>Costs awarded</b>	
<b>Appeal decision</b>	<b>ALLOWED</b>

<b>LPA reference</b>	23/01843/FUL
<b>Appeal against</b>	Appeal Against Refusal
<b>Committee or Del. Decision</b>	Delegated Decision
<b>Appellant</b>	Mr & Mrs Warner
<b>Proposal</b>	Extension and Conversion of existing double garage to form live-in carer's accommodation including associated hard paving.
<b>Location</b>	West Lodge Little Ness Shrewsbury
<b>Date of appeal</b>	31.07.2023
<b>Appeal method</b>	Householder
<b>Date site visit</b>	10.10.2023
<b>Date of appeal decision</b>	26.10.2023
<b>Costs awarded</b>	<b>COSTS REFUSED</b>
<b>Appeal decision</b>	<b>ALLOWED</b>

<b>LPA reference</b>	22/03468/FUL
<b>Appeal against</b>	Refusal
<b>Committee or Del. Decision</b>	Delegated
<b>Appellant</b>	Mr Wardle
<b>Proposal</b>	Change of Use of Agricultural Land to a site for two caravans including alterations to existing access, parking and drainage
<b>Location</b>	Site Adjacent Woodside, Yorton Heath, Shrewsbury
<b>Date of appeal</b>	23.08.2023
<b>Appeal method</b>	Written Representation
<b>Date site visit</b>	07.11.2023
<b>Date of appeal decision</b>	07.12.2023
<b>Costs awarded</b>	
<b>Appeal decision</b>	<b>DISMISSED</b>

<b>LPA reference</b>	21/00524/OUT
<b>Appeal against</b>	Refusal
<b>Committee or Del. Decision</b>	Delegated
<b>Appellant</b>	Mr and Mrs Bryn Jones
<b>Proposal</b>	Outline application (access and layout for consideration) for the erection of one agricultural worker's dwelling
<b>Location</b>	East Of Nantgoch Pen-y-bont Llanerch Emrys
<b>Date of appeal</b>	27.06.2023
<b>Appeal method</b>	Hearing
<b>Date site visit</b>	12.9.23
<b>Date of appeal decision</b>	05.12.23
<b>Costs awarded</b>	
<b>Appeal decision</b>	<b>DISMISSED</b>

<b>LPA reference</b>	22/01295/CPL
<b>Appeal against</b>	Refusal
<b>Committee or Del. Decision</b>	Delegated
<b>Appellant</b>	Mr And Mrs Mayer
<b>Proposal</b>	Application for a Lawful Development Certificate for the proposed conversion and change of use of existing agricultural building to residential use under Class Q of the GPDO
<b>Location</b>	Hilltop Farm, Hampton Wood, Ellesmere
<b>Date of appeal</b>	24.10.2023
<b>Appeal method</b>	Written Representations
<b>Date site visit</b>	
<b>Date of appeal decision</b>	14.12.2023
<b>Costs awarded</b>	No
<b>Appeal decision</b>	<b>ALLOWED</b>

<b>LPA reference</b>	21/02806/FUL
<b>Appeal against</b>	Appeal Against Refusal
<b>Committee or Del. Decision</b>	Delegated Decision
<b>Appellant</b>	Mr P Roberts
<b>Proposal</b>	Application under Section 73A of the Town And Country Planning Act 1990 for the reinstatement of fire damaged garage workshop, with no intensification of the existing business
<b>Location</b>	Brickfield Cottage Hanwood Road Shrewsbury
<b>Date of appeal</b>	10.09.2021
<b>Appeal method</b>	Inquiry
<b>Date site visit</b>	28.06.2023
<b>Date of appeal decision</b>	30.11.2023
<b>Costs awarded</b>	<b>COSTS REFUSED</b>
<b>Appeal decision</b>	<b>DISMISSED</b>

<b>LPA reference</b>	21/03337/CPE
<b>Appeal against</b>	Appeal Against Refusal to Grant Certificate of Lawful Use or Development
<b>Committee or Del. Decision</b>	Delegated Decision
<b>Appellant</b>	Mr and Mrs P and R Roberts
<b>Proposal</b>	Application for a Certificate of Lawful Development and use of land at Brickfield Cottage, Edgebold as a car repair/maintenance business having been carried out on site for well in excess of ten years including the parking and and storage of cars as illustrated edged red on the plan. In effect this is a mixed use planning unit of residential and business C3 and E (formerly B2 and or sui generis) under the Use Classes Order.
<b>Location</b>	Brickfield Cottage Hanwood Road Shrewsbury
<b>Date of appeal</b>	28.09.2021
<b>Appeal method</b>	Inquiry
<b>Date site visit</b>	28.06.2023
<b>Date of appeal decision</b>	30.11.2023
<b>Costs awarded</b>	<b>COSTS REFUSED</b>
<b>Appeal decision</b>	<b>DISMISSED</b>

<b>LPA reference</b>	21/04686/CPE
<b>Appeal against</b>	Appeal Against Refusal to Grant Certificate of Lawful Use or Development
<b>Committee or Del. Decision</b>	Delegated Decision
<b>Appellant</b>	Mr Phil Roberts
<b>Proposal</b>	Application for a Certificate of Lawful Development and use of land at Brickfield Cottage, Edgebold as a car repair/maintenance business having been carried out on site for well in excess of ten years including the parking and storage of cars as illustrated edged red on the plan. In effect this is a mixed use planning unit of residential and business C3 and E (formerly B2 and or sui generis) under the Use Classes Order. (amendment to previous application removing the section where the physical building was sited from the red line)
<b>Location</b>	Brickfield Cottage Hanwood Road Shrewsbury
<b>Date of appeal</b>	30.11.2021
<b>Appeal method</b>	Inquiry
<b>Date site visit</b>	28.06.2023
<b>Date of appeal decision</b>	30.11.2023
<b>Costs awarded</b>	<b>COSTS REFUSED</b>
<b>Appeal decision</b>	<b>DISMISSED</b>

<b>LPA reference</b>	20/07589/ENF
<b>Appeal against</b>	
<b>Committee or Del. Decision</b>	
<b>Appellant</b>	Mr Phil Roberts
<b>Proposal</b>	Appeal against - i. Material change of use of the Land from use for residential to a mixed use for residential and motor vehicle repair and maintenance; and ii. Operation development on the Land consisting of the erection of two buildings to facilitate the motor vehicle repair and maintenance business.
<b>Location</b>	Brickfield Cottage Hanwood Road Shrewsbury
<b>Date of appeal</b>	16.07.2021
<b>Appeal method</b>	Inquiry
<b>Date site visit</b>	28.06.2023
<b>Date of appeal decision</b>	30.11.2023
<b>Costs awarded</b>	<b>COSTS REFUSED</b>
<b>Appeal decision</b>	<b>DISMISSED &amp; ENFORCEMENT NOTICE UPHELD</b>

<b>LPA reference</b>	23/03163/REF
<b>Appeal against</b>	Refusal
<b>Committee or Del. Decision</b>	Delegated
<b>Appellant</b>	Frontier Estates Ltd
<b>Proposal</b>	Redevelopment of site to provide a circa 60 Bed care home (use class C2) including access, parking and landscaping
<b>Location</b>	Former Phoenix Garage, Great Hales Street Market Drayton
<b>Date of appeal</b>	05.06.2023
<b>Appeal method</b>	Hearing
<b>Date site visit</b>	08.11.2023
<b>Date of appeal decision</b>	22.12.2023
<b>Costs awarded</b>	
<b>Appeal decision</b>	<b>DISMISSED</b>

<b>LPA reference</b>	23/03169/REF
<b>Appeal against</b>	Refusal
<b>Committee or Del. Decision</b>	Delegated
<b>Appellant</b>	LNT Care Developments
<b>Proposal</b>	Erection of a two storey 66-bed Care Home for Older People (Use Class C2) and associated outbuildings with associated access and parking, including the demolition of existing buildings
<b>Location</b>	Sych Farm Adderley Road Market Drayton
<b>Date of appeal</b>	21.06.2023
<b>Appeal method</b>	Hearing
<b>Date site visit</b>	25.10.2023
<b>Date of appeal decision</b>	02.01.2024
<b>Costs awarded</b>	
<b>Appeal decision</b>	<b>DISMISSED</b>

<b>LPA reference</b>	22/05708/FUL
<b>Appeal against</b>	Refusal
<b>Committee or Del. Decision</b>	Delegated
<b>Appellant</b>	Gwyneth Edwards
<b>Proposal</b>	Erection of 3 stables, tack room/feed store and hay store, formation of hard standing and alterations to existing field access.
<b>Location</b>	Land Adj. Tyn Y Wern, Hengoed, Oswestry
<b>Date of appeal</b>	05.07.2023
<b>Appeal method</b>	Written Representations
<b>Date site visit</b>	
<b>Date of appeal decision</b>	08.01.2024
<b>Costs awarded</b>	
<b>Appeal decision</b>	<b>ALLOWED</b>





## Appeal Decision

Site visit made on 26 September 2023

by **G Sibley MPLAN MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 2<sup>nd</sup> November 2023**

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**Appeal Ref: APP/L3245/Z/23/3319649**

**Griffiths Tool Hire, Maes Y Clawss Ind Est, Shrewsbury Road, Oswestry SY10 8NU**

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
  - The appeal is made by Mr N Willcock of Now Display against the decision of Shropshire Council.
  - The application Ref 22/05588/ADV, dated 12 December 2022, was refused by notice dated 7 February 2023.
  - The advertisement proposed is described as "proposed digital advertising screen outdoor advertising."
- 

### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. The National Planning Policy Framework (the Framework) was updated in September 2023. As the updates do not affect that part referred to by the parties, it has not been necessary to consult them further.

### Main Issue

3. The council raised no objection in relation to public safety or aural amenity, subject to conditions, and from the submitted evidence I have no reason to disagree with those findings. Consequently, the main issue is the effect of the proposed advertisement on the visual amenity of the area.

### Reasons

4. The proposed advertisement would be located on a parcel of land close to the Griffiths Tool Hire building which itself is located next to the vehicular access to the Maes Y Clawss Industrial Estate. The industrial estate is located on the outskirts of Oswestry and is accessed via the B4579 which is one of the main thoroughfares into Oswestry. The industrial estate is commercial in character however, the land on opposite the B4579 is open countryside.
5. Along this section of the road there are advertisements related to the uses within the industrial estate as well as highway signage. Whilst several of these advertisements are quite tall with the intention of attracting the attention of passing drivers, they are relatively narrow as would typically be expected of totem pole advertisements. Within the industrial estate itself there are large advertisement hoardings although these are generally located on, or in front of buildings.

6. The proposed advertisement would be a substantial free-standing digital display, supported on poles and given the change in ground levels the advertisement would appear taller than the adjacent Griffiths Tool Hire building.
7. Whilst the site is located at the edge of an industrial estate where advertisements are not uncommon, the site itself is in a prominent position next to the B4579 and there is a pedestrian footpath that passes the site. Given the significant height and width of the advertisement it would loom over the footpath and Griffiths Tool Hire building and would be unduly imposing in the street scene, especially when viewed in the pedestrian environment. Even when viewed in this commercial setting, because of the siting and scale, I find that the display would be an overbearing visual feature.
8. There are other advertisements within the industrial estate which are visible along the B4579, however they are typically set further back from the highway and not as large as that proposed. The other larger advertisements are not generally in such a prominent position as they are located further within the estate. Accordingly, their contexts are different to that proposed.
9. The proposal is located next to an industrial estate where advertisements would not necessarily appear out of character. However, the display would not be a positive addition because it would be harmful to the visual quality of the commercial environment as well as the more rural landscape opposite the site.
10. For the reasons outlined above, the proposed digital advertisement would be unacceptably harmful to the visual amenity of the area. The proposal would therefore conflict with paragraph 136 of the Framework which states that the quality and character of places can suffer when advertisements are poorly sited and designed.
11. I have taken into account Policies CS6 and CS17 of the Shropshire Local Development Framework: Adopted Core Strategy and Policy MD2 of the Shropshire Council Site Allocations and Management of Development Plan. These seek, amongst other matters, to protect visual amenity and so are material in this case. The proposal would harm the visual amenity of the area and as a result it would conflict with these policies.

### **Other Matters**

12. I note the representations received regarding highway safety concerns. However, given that I am dismissing the proposal the harms alleged would not arise. As these matters could not affect the outcome of the appeal, I have not considered them further.

### **Conclusion**

13. For the reasons given above, I conclude that the appeal should be dismissed.

*G Sibley*

INSPECTOR



## Appeal Decision

Site visit made on 26 September 2023

by **G Sibley MPLAN MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 25<sup>th</sup> October 2023**

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**Appeal Ref: APP/L3245/D/23/3314588**

**37 Lansdowne Road, Bayston Hill, Shrewsbury, Shropshire SY3 0HY**

- 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 Oliver Humphreys against the decision of Shropshire Council.
  - The application Ref 22/04125/FUL, dated 6 September 2022, was refused by notice dated 20 October 2022.
  - The development proposed is proposed extensions to form garage and utility room, porch and covered area.
- 

### Decision

1. The appeal is allowed and planning permission is granted for proposed extensions to form garage and utility room, porch and covered area at 37 Lansdowne Road, Bayston Hill, Shrewsbury, Shropshire SY3 0HY in accordance with the terms of the application, Ref 22/04125/FUL, dated 6 September 2022, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan dated 18 February 2021; Site Plan dated 18 February 2021; and Plans as Proposed dated August 2022.
  - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.

### Main Issue

2. The main issue is the effect of the proposed development upon the character and appearance of the area.

### Reasons

3. 37 Lansdowne Road is a semi-detached property and along this section of Lansdowne Road the dwellings are typically semi-detached although the design of the attached pairs can vary. Despite these variations the properties are generally built along a consistent building line set back behind deep driveways and gardens. This consistent building line as well as the balanced appearance of each semi-detached pair establishes a pattern of development.
4. Between each semi-detached pair there is typically hedgerow or fencing and because of this when the dwellings are viewed as a group the ground floor of the houses are partly screened by this boundary treatment. The first floor of

the buildings are however viewed together and the consistency in the building line is evident at this level.

5. The proposal would incorporate a narrow single storey side extension as well as a shallow porch and covered area that would extend across around half the width of the dwelling. These elements of the scheme are proposed to be built using similar materials to the house and given the limited scale of these extensions, they would be subordinate to the dwelling. Accordingly, these elements of the proposal would retain the balanced appearance across the attached dwellings.
6. Within the wider area there are examples of garages that have been built forward of houses. The proposed garage would be single storey with a pitched roof and again would be built using similar materials. The garage would be built next to, albeit forward of the main elevation of the house and would have a large garage door. As a result, it would appear as a separate outbuilding, despite being physically attached. Considering the limited scale of the garage in relation to the dwelling, it would appear subordinate to it and would not erode the balanced appearance across the two attached dwellings.
7. Given the deep driveway at No 37 the garage would be set back a moderate distance from the road and this set back alongside the low profile of the garage would ensure it would not appear prominent in the street scene. The screening effect of the boundary treatment as well as the limited profile of the proposed garage would retain the legibility of the building line at first floor level.
8. Even if this boundary treatment was to be removed given the subordinate appearance of the proposal, the principal elevation of the house would retain its prominence. As such, the extended dwelling and garage would not appear incongruous within the street scene. Accordingly, the proposal would not appear out of character with the established pattern of development.
9. Therefore, the proposed development would not harm the character or appearance of the area. Consequently, the proposal would accord with Policy CS6 of the Shropshire Local Development Framework: Adopted Core Strategy and Policy MD2 of the Shropshire Council Site Allocations and Management of Development Plan. These seek to ensure development proposals respond appropriately to the form and layout of existing development.

### **Conditions**

10. Further to the statutory commencement condition a condition requiring the scheme to be carried out in accordance with the approved plans is necessary in the interest of certainty. Furthermore, a condition requiring the materials to match the dwelling is necessary in the interest of character and appearance.

### **Conclusion**

11. For the reasons given above the proposal would accord with the development plan as a whole and the other considerations would not indicate that a decision should be made other than in accordance with it. Therefore, the appeal should be allowed.

*G Sibley*

INSPECTOR



## Appeal Decision

Site visit made on 10 October 2023

**by Andrew Dale BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26 October 2023

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### **Appeal Ref. APP/L3245/D/23/3327008**

### **West Lodge, Adcote, Little Ness, Shrewsbury SY4 2JU**

- 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 & Mrs M Warner against the decision of Shropshire Council.
  - The application ref. 23/01843/FUL, dated 27 April 2023, was refused by notice dated 29 June 2023.
  - The development proposed is "*Extension and Conversion of existing double garage to form live-in carer's accommodation including associated hard paving*".
- 

### **Decision**

1. The appeal is allowed and planning permission is granted for *Extension and Conversion of existing double garage to form live-in carer's accommodation including associated hard paving* at West Lodge, Adcote, Little Ness, Shrewsbury SY4 2JX in accordance with the terms of the application ref. 23/01843/FUL, dated 27 April 2023, subject to the conditions contained in the Schedule at the end of this Appeal Decision.

### **Preliminary matters**

2. In the heading and decision above, I have taken the postcode for the site from the planning appeal statement submitted on behalf of the appellants. I believe this to be the correct postcode.
3. An application for a full award of costs has been made by Mr & Mrs M Warner against Shropshire Council. This application will be the subject of a separate decision.

### **Main issue**

4. The main issue is whether the proposed accommodation may be considered as a residential annexe ancillary to the use of the host dwelling, or whether a separate dwelling would be created and allied to that matter, whether there would be overdevelopment affecting the character and appearance of the original dwelling, the site and the surroundings.

### **Reasons**

5. West Lodge is a distinguished stone-fronted 2-storey house which has been extended since its original construction. It stands near the centre of a large plot at the junction of the classified road with a minor lane. There is only sporadic
-

development in the near vicinity. The surroundings and setting of the site are resolutely rural in character. The proposal concerns a characterful detached single-storey building in the garden between the house and the classified road. It contains a double garage set an angle and a washing/utility room at the rear.

6. The appellants wish to extend and convert that detached building to provide a 2-bedroom residential unit with their future care and living arrangements very much uppermost in their minds. I have read the letter from Mr Warner's doctor which lists his medical conditions and age. Having regard to this information, it seems reasonable that the appellants should plan for and anticipate their future health needs. They are clearly in the best position to do so, including the timing and nature of any care options. The occupiers of the unit would be a live-in carer (and any dependants) or the appellants themselves, if ground floor accommodation becomes a pressing requirement. The intended occupation of the extended building is therefore as a residential annexe.
7. I have not been made aware of any development plan policies which specifically cover the creation of residential annexes whether that be through extensions to existing dwellings, the erection of new detached buildings or the extension and conversion of existing buildings in a domestic garden as proposed here. The Council said that in general annexe accommodation could be supported in principle at the site but came to the view that the proposal would effectively amount to an open market dwelling, separate from the main house, in the open countryside. It is important that I consider the proposal as applied for in the first instance. There is no separate dwelling before me. The application was registered, validated and advertised as a proposal to form live-in carer's accommodation in accordance with the description of the proposal on the application form. The red edge of the application site surrounds the whole residential curtilage of West Lodge.
8. Even though the outbuilding as extended, looked at in isolation, would be a substantial structure in its own right, being akin to a bungalow in terms of the internal floor area, it would not physically challenge the dominance of the main 2-storey dwelling in terms of its overall size, scale, bulk, height and massing and would not appear to overdevelop the site when taking in the generous proportions of the garden areas that would remain on all sides of the main dwelling. The detailed design has been carefully thought through to reflect the high-quality features and materials of the existing building including the use of matching timber cladding and steeply hipped roofs of matching clay tiles.
9. The extension's roof would be marginally lower than the existing garage roof. The Council's reference to a ridge height "*of approximately 8m*" was incorrect but I doubt if this was ever carried into the assessment of visual impact (6.3.1 of the officer's report) because reference is only made there to the development resulting in "*some visual impact*". A height of 8 m equates to the height of a tall 2-storey house so a building that high would have had a notable and damaging visual impact on the area's rural character and appearance. Such an objection would likely to have been front and centre of the Council's decision notice but the matter of height is not directly referred to therein.
10. As it is, I consider that reasonable observers are likely to associate the resulting structure with a well-designed ancillary outbuilding. With the substantial boundary hedges (mainly of holly) retained, the single-storey

development would have only a limited visual impact on the 2 local rural street scenes. I consider that the development would be designed in a manner that would reinforce local distinctiveness. On balance, I am satisfied that overdevelopment adversely affecting the character and appearance of the original dwelling, the site and the surroundings would not arise.

11. Whilst the annexe would offer the facilities required for independent day-to-day living and would not require access through West Lodge itself, it would not necessarily become a separate planning unit from the main dwelling. That any occupiers would experience a degree of independence is not untypical of annexes. This and the building's internal floor area would not in themselves undermine its ancillary purpose.
12. As a matter of fact and degree, the accommodation would plainly be capable of being occupied as an annexe, taking into account the following: the intended occupiers would be a live-in carer (and any dependants) employed by the family, who are likely to share various living activities with the family in the main dwelling, or the appellants themselves, if ground floor accommodation becomes a pressing requirement, whilst close family members move into the main dwelling; the internal floor space provided would not obviously exceed those stated needs and would be smaller than the floor space of the main dwelling; no subdivision of the plot is proposed; the whole site of West Lodge would remain owned by the appellants with no suggestion of there being separate titles, bills or postal addresses or any letting to tenants; the annexe would be closely related to the main house and a reasonable proportion of the windows to habitable rooms would be found in its south-east elevation looking directly towards the main dwelling and its parking and garden areas; the access, parking and garden areas would be and are clearly capable of being shared; and an existing utility/washing room would remain in the outbuilding and be available for the occupiers of the annexe and the main house.
13. Whilst there are some inevitable similarities with the Council's decisions and the appeal decisions presented with the appellants' planning appeal statement in terms of the intended occupation as an annexe, those decisions were not dealing with identical proposals, plans, sites or contexts. I have sought to assess the appeal before me on its own merits.
14. I am aware that the development is likely to remain in place long after the need which gave rise to the application has gone. I have noted the wording in the draft Unilateral Undertaking (dUU) which seeks to address the future occupancy and potential disposal of the annexe outbuilding. However, it would be possible through the imposition of a planning condition to ensure the outbuilding is not occupied or used at any time other than for purposes ancillary to the residential use of the dwelling known West Lodge or sold separately from the remainder of the application site. This will reflect the purposes stated by the appellants and the wording in the dUU, whilst the outbuilding's use for other purposes might well raise wholly different considerations which could well be unacceptable in planning terms in this countryside location.
15. With such a condition imposed, I find on the main issue that the proposed accommodation may be considered as a residential annexe ancillary to the use of the host dwelling and would not amount to overdevelopment adversely

affecting the character and appearance of the original dwelling, the site and the surroundings. The scheme would not give rise to any material harm. It would accord with Policies CS5, CS6 and CS17 of the Shropshire Local Development Framework Adopted Core Strategy and Policies MD2 and MD7a of the Site Allocations and Management of Development Plan which, when read together, seek to restrict new dwellings in the countryside and ensure development is designed to a high quality and contributes to and respects locally distinctive or valued character and existing amenity value. I also find no conflict with the Type and Affordability of Housing Supplementary Planning Document or the National Planning Policy Framework.

### **Conditions**

16. In addition to a condition setting a time limit for the commencement of development, a condition requiring that the development is carried out in accordance with the relevant approved drawings is necessary as this provides certainty. I have also imposed a condition regarding the use of the building for the reasons I gave in paragraph 14 above.
17. I have imposed a condition relating to external materials to safeguard the character and appearance of the building and the locality. The Council gave 2 options on this matter. In the Questionnaire the use of matching materials was recommended, whilst in the separate list of conditions provided there was a preference for samples or details of the materials to be submitted for approval. It is quite sufficient for the former option to be followed.
18. Having regard to the rural surroundings of the site, the interests of biodiversity and the observations of the Council's Planning Ecologist and the ecological appraisal by Arbor Vitae commissioned by the appellants, I have imposed conditions to ensure the provision of roosting opportunities for bats and nesting opportunities for birds and to control external lighting on the site.

### **Conclusion**

19. My findings on the main issue are decisive to the outcome of this appeal. For the reasons given above and having regard to all other matters raised and the lack of objections from local residents, members and organisations, I have concluded that this appeal should succeed.

*Andrew Dale*

INSPECTOR

### **Schedule of Planning Conditions**

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- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan; Block Site Plan (drawing no. 397/51D); Garage Elevations as Existing (drawing no. 08/35); Annex Floor Plan New Garage Plan (drawing no. 397/52D); Elevations 1 (drawing no. 397/53B); and Elevations 2 (drawing no. 397/54B).
- 3) The self-contained annexe hereby permitted shall not be occupied or used at any time other than for purposes in connection with and ancillary to the enjoyment of the existing single dwelling on the site known as West Lodge and at no time shall it be occupied as a separate dwelling, sold separately from the remainder of the application site, which shall be retained as one whole, or used for commercial or business purposes beyond a level that is incidental to the primary residential use.
- 4) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those of the double garage.
- 5) Prior to first occupation/use of the annexe building hereby permitted, details of the makes, models and locations of bat and bird boxes shall be submitted to and approved in writing by the Local Planning Authority. The details to be submitted shall provide for the following boxes to be erected on the site and include a timetable for their implementation:
  - a minimum of 1 external woodcrete bat box or integrated bat bricks, suitable for nursery or summer roosting for small crevice-dwelling bat species;
  - a minimum of 1 artificial nest, of either integrated brick design or external box design, suitable for starlings (42 mm hole, starling-specific) or sparrows (32 mm hole, terrace design).

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 be erected strictly in accordance with the approved details and timetable and shall thereafter be maintained for the lifetime of the development.
- 6) 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. The submitted scheme shall be designed to take into account the advice on lighting set out in Guidance Note 08/18 *Bats and artificial lighting in the UK* produced by the Bat Conservation Trust and the Institution of Lighting Professionals. The development shall be carried out strictly in accordance with the approved details and thereafter retained for the lifetime of the development.

**End of Schedule**

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## Costs Decision

Site visit made on 10 October 2023

**by Andrew Dale BA (Hons) MA MRTPI**

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

**Decision date: 26 October 2023**

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### **Costs application in relation to appeal ref. APP/L3245/D/23/3327008 West Lodge, Adcote, Little Ness, Shrewsbury SY4 2JU**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr & Mrs M Warner for a full award of costs against Shropshire Council.
  - The appeal was made against the refusal of planning permission for "*Extension and Conversion of existing double garage to form live-in carer's accommodation including associated hard paving*".
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### **Costs decision**

1. The application for a full award of costs is refused.

### **Reasons for the costs decision**

2. The Government's Planning Practice Guidance (the Guidance) advises that all parties in appeals are expected to behave reasonably to support an efficient and timely process and that where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
3. This application for costs has been considered on its merits in the light of the costs advice found within the Guidance, the appeal papers, the costs correspondence and all the relevant circumstances relating to the planning application and the appeal. The parties are also referred to my appeal decision.
4. The costs application seeks a substantive award against the local planning authority. The substantive case made includes some of the topics that appear in paragraph 049 of the Guidance in the main section headed *Behaviour that may lead to an award of costs against appeal parties*.
5. The applicants submit that the Council has behaved unreasonably by: (a) preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; (b) vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; (c) failure to produce evidence to substantiate each reason for refusal on appeal; (d) not working proactively during the application's consideration; (e) refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead; (f) acting contrary to, or not following, well-established case law and established appeal decisions; (g) not determining similar cases in a consistent manner;

- (h) incorrect dimensions stated in the officer's report upon which the recommendation was based; and (i) the Council's incorrect assertion regarding as to when someone should submit an application regarding their specific health conditions at a particular time.
6. Central to the appeal case was the ancillary nature of the accommodation proposed and in particular whether the Council had been reasonable in treating the development as being tantamount to the creation of a new dwelling, even though the submitted householder application form made it clear that the scheme was for an annexe and a planning condition could be imposed to restrict the future use of the building. Whilst well-established case law was not put before me, I was referred to other decisions made by the Council and other appeal decisions.
  7. The Council had to be satisfied that if the building was to be restricted, it would need to be of a reasonable size, scale and design for the ancillary use in question. This required a planning judgement to be made on a site specific basis, as had happened with the other cases referred to, particularly bearing in mind the apparent absence of any development plan policies which specifically cover the creation of residential annexes. Even though, as a matter of fact and degree and on balance, I reached a different view to the Council on this key matter, it was not unreasonable for the Council to consider that the building as extended would be too large to be an annexe and I consider that the officer's report substantiated its position adequately.
  8. All in all, I was satisfied that overdevelopment adversely affecting the character and appearance of the original dwelling, the site and the surroundings would not arise. It is well established that the resolution of such issues involves a matter of judgement. Having found that the scheme was tantamount to a new dwelling, the Council was entitled to find that the increase in floor area would amount to overdevelopment. Although I did not agree with the Council, sufficiently robust evidence was put forward in the decision notice and the officer's report to show that the Council did not apply its judgement in an erratic or unreasonable manner.
  9. In general terms, the Council's reason for refusing planning permission did not lack logic, substance or objectivity. It was supported by relevant development plan policies. The accusation that the Council did not work proactively during the application's consideration is misplaced. Pre-application advice was given before the refusal of an earlier application and insofar as I can tell, the Council did not totally disregard the further justification and the appellants' personal circumstances that accompanied the appeal application. The Council simply afforded these factors more limited weight in the overall planning judgement.
  10. Thus, the applicants have not clearly demonstrated unreasonable behaviour in respect of points (a) to (g) inclusive as set out in paragraph 5 above.
  11. With regard to (h), the Council may well have erred with its reference to a ridge height "of approximately 8m". However, I covered this matter in detail in paragraph 9 of my appeal decision. As I concluded there, I do not believe this incorrect measurement was ever seriously considered in the main reasoning for the decision. Turning lastly to (i), it seemed reasonable to me that the applicants should plan for and anticipate their future health needs. They are clearly in the best position to do so, including the timing and nature of any care options. That does not mean the Council was wrong to point out that the

potential level of care that one day may be needed is not required currently or to favour adaptations to the existing dwelling and/or to the existing garage building to achieve a more modest annexe.

12. Thus, the applicants have not clearly demonstrated unreasonable behaviour in respect of points (h) and (i) as set out in paragraph 5 above.
13. The Council's approach to the available facts did not fully match any of the types of behaviour listed in the Guidance that may give rise to a substantive award against a local planning authority.
14. This application for costs falls short of demonstrating that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has occurred. An award of costs is not therefore justified.

*Andrew Dale*

INSPECTOR

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## Appeal Decision

Site visit made on 7 November 2023

**by L C Hughes BA (Hons) MTP MRTPI**

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

**Decision date: 7 December 2023**

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**Appeal Ref: APP/L3245/W/23/3320328**

**Land adjacent to Woodside, Yorton Heath, Shrewsbury, Shropshire SY4 3EU**

- 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 Robert Wardle against the decision of Shropshire Council.
  - The application Ref 22/03468/FUL, dated 25 July 2022, was refused by notice dated 17 October 2022.
  - The development proposed is Change of Use of Agricultural Land to a site for two caravans including alterations to existing access, parking and drainage.
- 

### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. In the interests of clarity and conciseness, I have used the site address as given on the appeal form as opposed to that stated on the application form.
3. As is clear from the appellant's submissions (including those made at application stage), the purpose of the proposal is to provide holiday accommodation at the site. I shall consider the appeal on this basis.

### Main Issues

4. The main issues are:
  - a) whether the appeal site represents a suitable location for the proposed development, having regard to relevant provisions of the development plan; and
  - b) the effect of the proposed development on the character and appearance of the area.

### Reasons

#### *Location*

5. Policy CS16 of the Shropshire Council Adopted Core Strategy (CS) (March 2011) provides a policy framework for considering proposals for tourism development. It places emphasis on high quality visitor accommodation in accessible locations, and in rural areas the policy requires that proposals must be close to or within settlements, or serve an established and viable tourism enterprise where accommodation is required.

6. The appeal site is located in open countryside outside of any defined development boundary. Although CS Policy CS16 provides no guidance as to the meaning of 'close to a settlement', the site is experienced as divorced from Yorton Heath, a very small settlement that contains no substantive facilities and that is principally comprised of a loose linear row of residential development. Furthermore, the site lies approximately 1 mile from the settlement of Harmer Hill and approximately 1.5 miles from the village of Clive, each of which is small-sized and containing of a narrow range of facilities and services. Further, from my site visit I noted that many of the roads which serve the site are narrow, single width with no street lighting or pavements, which would discourage visitors from walking along them to reach the nearest settlements, especially in poor light. This is even though I understand these routes to be lightly trafficked.
7. The nearest settlements with a wide range of facilities and services on offer include the small market town of Wem, located approximately 5 miles from the appeal site to the north, and the market town of Shrewsbury situated a broadly comparable distance to the south. Visitors would therefore have to take relatively long journeys in order to access a good range of amenities realistically capable of serving their full day-to-day needs. Furthermore, although access is possible by rail via a request stop at Yorton Station, the route from this station to the site is neither short nor geared for movements on foot. Thus, due to the distances involved to reach settlements and the absence of conveniently accessible public transport options, it is to my mind inevitable that the proposal would promote travel by private car.
8. The appeal site is in an attractive setting and a tranquil rural area. From my site visit I could clearly see how holiday makers would find it an attractive place to stay given the landscape and opportunities for walking and cycling nearby. However, whilst the appellant has highlighted that the area is likely to attract walkers and cyclists, and that the proposal envisages cycling tourism, there is no guarantee all future visitors would be of this ilk nor that walkers and cyclists would not, during their stays, place reliance on private car travel to serve their amenities. Moreover, due to the site's location, it is very likely that future occupiers of the proposed holiday caravans would arrive by car and utilise this mode of private transport during the course of their stays.
9. The appellant has stated that there would be a supply of locally sourced provisions to reduce the need for visitors to travel. I have little evidence of what this would entail, and in any case it is likely that visitors would need to supplement these provisions or access additional facilities and services during their holiday, which would be likely to necessitate a car journey.
10. Having regard to the relevant provisions of the development plan, the site does not represent a suitable location for the proposed development and is not required as part of an existing tourism enterprise so as to be in conflict with Policy CS16 of the CS. I also identify conflict with Policy CS5 of the CS insofar as this policy seeks rural tourism and leisure and recreation proposals which require a countryside location to be sustainable. The scheme also conflicts with the National Planning Policy Framework (the Framework), which, whilst supporting rural tourism, encourages the use of sites that are physically well-related to settlements where opportunities exist.



### *Character and appearance*

11. The appeal site is located in a tranquil and attractive landscape characterised by undulating open fields, narrow lanes, trees and hedgerows. Whilst the topography of the surrounding area and the presence of existing woodland/planting restricts the proposal's visual envelope, the site is comprised of upward sloping open land adjacent to the property Woodside and is visible, at least in part, from publicly accessible locations to the southeast including from the unclassified road that runs its frontage. This is not withstanding the existence of a mature hedgerow.
12. The hedgerow has a small access point which would need to be widened to accommodate adequate access onto the site and an acceptable visibility splay. This, along with the proposed parking spaces, would detract from the character and appearance of the surrounding area, adding a more urban feel to the site. As the site is sloping the proposed caravans would be elevated above the hedge line, and would be visible, at least in part, from points on the surrounding road network and from neighbouring countryside, representing a prominent intrusion visually out of keeping with the surrounding landscape. This would be the case even should future external lighting be secured via condition. Due to the sloping nature of the site which necessitates the elevated siting of the proposed caravans, planting and landscaping could not realistically offer adequate screening to mitigate this impact. Moreover, any new planting would take time to properly establish and could not fairly be relied upon to provide permanent or robust buffers to views.
13. The proposed development would therefore not be in conformity with CS Policies CS6 and CS17 which seek to ensure that development conserves and enhances the natural environment. It also conflicts with Policies MD2, MD11 and MD12 of the Shropshire Council Site Allocations and Management of Development Plan (December 2015) which together strive to ensure that all developments should enhance natural assets, not have a significant adverse effect on visual amenity and landscape character, and should be well screened and sited. The scheme also conflicts with the Framework insofar as it seeks to ensure that development is sympathetic to local character and recognises the intrinsic and natural beauty of the countryside.

### **Other Matters**

14. I have noted objections/concerns raised by interested parties with respect to matters including highway safety and the effect upon neighbouring living conditions. However, as I have found the proposal to be unacceptable for other reasons, it is not necessary for me to explore such matters further here.

### **Planning Balance**

15. The proposal would benefit the local economy and would provide tourism accommodation which could encourage recreational activities such as walking and cycling. However, any economic, social or environmental benefits to be drawn from the scheme would be relatively modest and would not, in my judgement, outweigh the harm that I have found would be caused to the plan led strategy or the character and appearance of the area.

**Conclusion**

16. For the reasons that I have set out, I conclude that the proposal would conflict with the development plan taken as a whole and there are no material considerations to indicate that a decision should be made other than in accordance with it. Therefore the appeal is dismissed.

*L C Hughes*

INSPECTOR



## Appeal Decision

Hearing held on 12 September 2023

Site visit made on 12 September 2023

**by A Berry MTCP (Hons) MRTPI**

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

**Decision date: 05 December 2023**

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**Appeal Ref: APP/L3245/W/22/3302014**

**Nant Goch, Pen-Y-Bont, Oswestry SY10 9JG**

- 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 and Mrs Bryn Jones against the decision of Shropshire Council.
  - The application Ref 21/00524/OUT, dated 16 March 2021, was refused by notice dated 5 January 2022.
  - The development proposed is described as "outline application (access and layout for consideration) for the erection of one agricultural worker's dwelling".
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The site address varies in the submitted documents. Therefore, the site address in the banner heading above was agreed by the main parties at the Hearing.
3. The planning application form did not include a description of development. Therefore, the description of development in the banner heading above is taken from the Council's decision notice and the appellants' appeal form, which was agreed by the main parties at the Hearing.
4. Outline planning permission is sought with access and layout considered at this stage. Drawings have been submitted which include details of scale and information has been provided within the submitted documentation regarding appearance, matters which are reserved for future consideration. I have therefore treated this information as illustrative in this regard. I have determined the appeal on this basis.
5. Within the submitted written evidence there was a dispute between the main parties as to which sections of Policy MD7a of the Shropshire Council Site Allocations and Management of Development (SAMDev) Plan Adopted Plan, adopted 2015 ('the DP') were applicable to the proposed development, with the Council stating parts (a) and (c) and the appellant stating just part (c). At the Hearing, the appellant conceded that both parts (a) and (c) were applicable. I have therefore determined the appeal on this basis.
6. The Council's first reason for refusal refers to paragraph 79 of the National Planning Policy Framework ('the Framework'). However, it is clear from the submitted evidence that this is a typographical error, and it should in fact refer

to paragraph 80. The appellant has commented upon paragraph 80 of the Framework and therefore has not been prejudiced.

7. The Council's officer report raised concerns regarding the submitted Financial Budgets document<sup>1</sup> in respect of wage costs and fuel/oil costs remaining constant rather than fluctuating. At the Hearing, the appellant agreed that costs and income would fluctuate and therefore, they conceded that the financial information should have reflected this position. Despite this, the Council stated at the Hearing that they were satisfied that the enterprise could absorb the cost of the proposed dwelling and they did not wish to contest this matter further.

### **Main Issues**

8. The main issues are:
  - a) whether the proposed development would be an isolated new home in the countryside, and if so, whether there is an essential need for a third dwelling associated with the farm; and
  - b) the effect of the proposed development on the character and appearance of the surrounding area.

### **Reasons**

#### *Background and Policy Context*

9. The farm comprises an existing dairy farm with a milking herd of approximately 760 cows calving year round. The land that is farmed extends to approximately 1091 acres, the majority of which is rented. The current accommodation comprises the original farmhouse occupied by the appellants, and a bungalow located on the opposite side of the lane from the farmhouse (known as The Brooklands) that is subject to an agricultural occupancy condition and is occupied by the appellants' son. The farmhouse and bungalow are located adjacent to the farmstead that contains both brick built and modern agricultural buildings. The appellants and their son work on the farm full-time and are supported by various full-time and part-time staff who live off-site.
10. The proposed dwelling would be located to the east of the main farm buildings at Nant Goch, separated by a field and an unnamed road. The proposed dwelling would be occupied by the appellants, their son would move from the bungalow into the farmhouse, and the bungalow would be occupied by a herd manager. The appeal site is not located within any settlement boundaries and is remote from any other form of development. In respect of paragraph 80 of the Framework, the term "isolated" simply connotes a dwelling that is physically separate or remote from a settlement. The proposal would therefore comprise an isolated new home in the countryside.
11. Policy CS5 of the Shropshire Local Development Framework: Adopted Core Strategy, adopted March 2011 ('the CS') states that new development in the countryside will be strictly controlled and should relate to a closed list of exceptions including, dwellings to house agricultural, forestry or other essential countryside workers in accordance with national planning policies and Policies CS11 and CS12. The policy states that in respect of this type of development,

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<sup>1</sup> Financial Budgets Years ending Mar 22 & Mar 26, dated January 2021, prepared by Kite Consulting

applicants are required to demonstrate the need and benefit for the development proposed and it will be expected to take place primarily in recognisable named settlements or be linked to other existing development and business activity where this is appropriate. CS Policy CS11 refers to the type and affordability of housing, while CS Policy CS12 is not applicable to the proposed development.

12. Policy MD7a of the DP permits dwellings to house essential rural workers if (a) there are no other existing suitable and available affordable dwellings or other buildings which could meet the need and, (c) in the case of an additional dwelling to provide further accommodation for a worker who is required to be present at the enterprise for the majority of the time, a functional need is demonstrated and the dwelling is treated as affordable housing, including size restrictions. Such dwellings will be subject to occupancy conditions. Part (b) of the policy is not applicable to the proposed development as it refers to proposals for a primary dwelling for an essential rural worker.
13. These policies are consistent with paragraph 80 of the Framework in seeking to ensure that isolated residential development in the countryside is strictly controlled unless, amongst other things, there is an essential need for a rural worker to live permanently at or near their place of work in the countryside.

#### *Essential Need*

14. The main parties agreed that the farm generates an essential need for one or more workers to live permanently on site to provide stock welfare to the cows. From the evidence before me and from what I saw during my site visit, I am satisfied that there is a need for more than one worker to live on site to attend to the dairy operations and any emergencies that may arise at all times of the day and night, throughout the year. Therefore, the matter in dispute is how many agricultural workers are needed to permanently reside on site to meet the essential need of the farm.
15. There are currently three full-time workers living on-site, within sight and sound of the buildings used for the dairy farm operation. I accept that additional workers are required to support farm operations during a typical working day and that the milking operation has changed with the introduction of a new automated milking machine. However, the additional workers live off-site and there is no suggestion that this would need to change. Instead, the proposed dwelling is said to be required to allow the existing bungalow to be occupied by a herd manager.
16. Although located on land that forms part of the farm and within proximity of the main dairy buildings, the proposed dwelling would not be within sight or sound of those buildings. Consequently, the occupation of the proposed dwelling by the appellants would reduce the number of on-site permanent full-time workers within sight and sound of the farm from three to two. It has not been demonstrated from the evidence before me how the essential needs of the farm would be met by a reduction in the number of on-site staff.
17. The farm does not currently employ a herd manager. Consequently, it is uncertain whether one will be employed or whether the existing bungalow would be suitable. Therefore, at this time it has not been demonstrated that there is a need for the proposed dwelling to accommodate the appellants.

18. I accept that there may be a requirement for a herd manager to support the farm operations. However, no substantive evidence has been provided that the herd manager could not live off-site and support the existing employees. The appellants assert that they have been unable to appoint a replacement herd manager due to the lack of on-site living accommodation. However, this has not been supported with evidence. Even if evidence could be provided, it would not justify an essential need for a fourth full-time worker to live permanently at the farm. I am also uncertain why the proposed dwelling is to be occupied by the appellants rather than the proposed herd manager, particularly as they confirmed at the Hearing that they were not retiring and would still be involved in the farm's day-to-day operation.
19. The appellants state that they are overstretched, are unable to go on holiday, and find it difficult to find cover if one of them falls ill. However, these are management issues associated with the farm and I am not persuaded that such matters could not be addressed by other measures. Furthermore, the appellants conceded at the Hearing that holiday cover could be provided by a person(s) residing in the vacated dwelling for the period of the holiday, and in terms of both illness and holidays, this would likely be infrequent and therefore would not justify a permanent need for an additional worker to live on-site.
20. I observed during my site visit that there was a brick built linear barn to the east of the farmhouse that was predominantly used for domestic purposes and a building described by the appellants as the "former milking parlour" which did not appear to be used for any discernible purpose. No substantive evidence has been provided to discount the suitability of these buildings to house a rural worker.
21. The existing buildings are located on land that is rented from the Wynnstay Estate through a Farm Business Tenancy that is restricted in date until the appellants' son reaches 65 years of age. However, it has not been demonstrated from the evidence presented that the Wynnstay Estate would not be agreeable to the conversion of the existing buildings, or that the tenancy would not be extended in the future. Furthermore, the majority of the modern farm buildings including the new milking parlour are located on rented land and therefore, it would seem that consent from the Estate has been gained for other developments and the farm had no reservations in investing in these buildings. I acknowledge that constructing a dwelling on land owned by the appellants rather than rented is preferable. However, this is the personal choice of the appellants and does not override the policy requirement to first look to existing buildings to provide the accommodation.
22. I accept that a quick response time to deal with emergencies would be beneficial. However, the proposed dwelling, although close to the farmstead, would not be within sight or sound of the main dairy buildings which suggests that a property further away from the farmstead would be acceptable. It was stated at the Hearing that a response time of between 5-10mins to tend to an injured cow would result in an 80% survival rate. However, the evidence before me does not suggest that emergencies cannot be dealt with by the three full-time workers residing within the existing two dwellings.
23. At the Hearing both parties presented opposing verbal arguments of properties available to buy within the surrounding area. However, neither party submitted these findings as evidence and therefore I afford them limited weight. I accept

that it would be cost effective to build a dwelling on land owned by the appellants. However, evidence has not been provided to demonstrate that the enterprise could not absorb the cost of buying an existing dwelling in the locality. Therefore, I have not been provided with substantive evidence to suggest that there are no suitable and available affordable existing dwellings in proximity of the farmstead which could be occupied by an agricultural worker.

24. In view of all the above, having regard to national and local planning policies that seek to avoid isolated new homes in the countryside, an essential need does not exist for an additional agricultural worker to live permanently on or near the farm. Even if an essential need could be demonstrated, I am not satisfied that it could not be met by an existing dwelling or that an existing building could not be converted to meet this need.
25. In reference to the first main issue, the proposal would comprise an isolated new home in the countryside, and it has not been demonstrated that there is an essential need for a third dwelling associated with the farm. It would therefore conflict with Policy CS5 of the CS and Policy MD7a of the DP which, amongst other things, permit dwellings to house essential rural workers if there are no other existing suitable and available affordable dwellings or other buildings which could meet the need. It would also conflict with the Type and Affordability of Housing Supplementary Planning Document ('the SPD') which sets out the criteria to consider when granting occupational dwellings, and paragraph 80 of the Framework which seeks to avoid isolated dwellings in the countryside unless an exception is met.
26. The Council's decision notice also references CS Policies CS6 and CS11. However, these policies are not directly relevant to this main issue and are therefore not applicable.

#### *Character and Appearance*

27. The appeal site comprises part of an existing field that, at the time of my site visit, was mainly used for growing maize. The field gently slopes downwards towards the B4396, is bounded by a single width unnamed road to the west, while the field to the north rises steeply upwards. The surrounding landscape is undulating and is characterised by isolated farms and dwellings interspersed with fields, trees and woodlands. The field is bounded by roadside hedgerows to the west and south.
28. The layout of the proposed dwelling would be rectangular and positioned adjacent to the unnamed road. A detached garage would be sited to the east of the proposed dwelling and a new access would be created within the existing roadside hedge. The planning application form indicates that the dwelling would have three bedrooms and, although scale and appearance is reserved for subsequent approval, the Agricultural Appraisal/Design and Access Statement indicates that the dwelling would be two-storeys in height and would be constructed of traditional building materials in keeping with other properties in the area.
29. The proposed dwelling would be viewed against the backdrop of the rising hillside which would reduce its prominence. Views of the proposed dwelling would be limited when travelling along the B4396 due to the height of the field boundary hedge and its proximity to the road. The unnamed road is narrow and is bounded on either side by hedgerows that largely restrict views of the

appeal site. While the proposed new access could enable a view of the proposed dwelling when travelling along the unnamed road, this would be fleeting.

30. I acknowledge that part of the hedgerow fronting the unnamed road would be removed to achieve the necessary visibility splays. However, the submitted drawings indicate that a new hedgerow would be planted 1m behind the visibility splays and therefore any view of the proposed dwelling would be temporary. Furthermore, matters such as the height and species of hedgerow to be planted and the timing of the planting could be secured when considering the reserved matter of landscaping. This could ensure that the proposed dwelling would be appropriately screened from an early stage.
31. The proposal is for an isolated dwelling in the countryside and therefore its siting away from other buildings could be acceptable if it can be demonstrated that it would meet an exception to development in the countryside. However, an essential need has not been demonstrated to justify the provision of an isolated dwelling in the countryside. Therefore, the proposed development would result in an unacceptable sporadic and isolated form of development that would erode the spaciousness of the countryside.
32. In reference to the second main issue, the proposed development would have a detrimental effect on the character and appearance of the surrounding area. It would therefore conflict with Policies CS5, CS6, and CS17 of the CS and Policy MD2 of the DP which, amongst other things, seek to ensure that development proposals are on appropriate sites which maintain and enhance the countryside vitality and character. It would also conflict with the SPD, and the Framework that seeks to ensure that developments are sympathetic to local character and landscape setting.
33. The Council's decision notice also references CS Policies CS4 and CS11, LP Policies MD1, MD7a and MD12 and the SPD. However, these policies are not directly relevant to this main issue and are therefore not applicable.

### **Other Matters**

34. I have been directed to evidence that the appellants are recognised on a regional basis and have worked on a number of initiatives to benefit the dairy industry. However, these do not outweigh the harm I have identified.
35. A completed and signed Section 106 Agreement ('the s106') was submitted after the adjournment of the Hearing that sets out the occupational restriction of the proposed dwelling and a restriction preventing the creation of additional internal floorspace. However, as I am dismissing the appeal on other substantive issues, it is not necessary for me to look at it in detail.

### **Conclusion**

36. For the reasons given above and having regard to the development plan as a whole and all other material considerations, I conclude that the appeal should be dismissed.

*A Berry*

INSPECTOR



## **APPEARANCES**

### FOR THE APPELLANT:

Mr C Lawson	Planning Agent – Forge Property Consultants
Mr N Blackburn	Planning Agent – Kite Consulting
Mr B Jones	Appellant
Mrs B Jones	Appellant
Mr M Jones	Appellants' son

### FOR THE LOCAL PLANNING AUTHORITY:

Mr P Mullineux	Planning Manager – Shropshire Council
Mr J Shaw	Principal Planning Officer

## **DOCUMENTS**

1. Email dated 5 September 2023 from Council's solicitor to Mr P Mullineux regarding the planning obligation.
2. Email dated 12 September 2023 from the Council's solicitor to Mr P Mullineux regarding the planning obligation.

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## Appeal Decisions

Dates of Inquiry 27 and 28 June 2023

Site visit made on 28 June 2023

**by Grahame Kean B.A. (Hons) MRTPI, Solicitor HCA**

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

**Decision date: 30 November 2023**

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### **Appeal A: APP/L3245/C/21/3278441**

#### **Land at Brickfield Cottage, Edgebold, Shrewsbury, Shropshire SY5 8NT**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Phillip John Roberts against an enforcement notice issued by Shropshire Council.
- The notice was issued on 15 June 2021.
- The breach of planning control as alleged in the notice is without planning permission:
  - i. Material change of use of the Land from use for residential to a mixed use for residential and motor vehicle repair and maintenance; and
  - ii. Operation [sic] development on the Land consisting of the erection of two buildings to facilitate the motor vehicle repair and maintenance business.
- The requirements of the notice are:
  - i. Cease the use of the Land for motor vehicle repair and maintenance
  - ii. To demolish/dismantle and remove from the Land the two buildings, garage marked 'X' and timber building marked 'Y' in the approximate positions on the attached plan and make good the Land returning it to its former condition prior to the erection of the buildings.
- The period for compliance with the requirements is:
  - (i) 7 days from the date the notice takes effect to comply with 5(i)
  - (ii) 3 months from the date the notice takes effect to comply with 5(ii)
- The appeal is proceeding on the grounds set out in section 174(2)(a) (c) (d) (f) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary Decision: The appeal is dismissed, and the enforcement notice is upheld as corrected and varied in the Formal Decision below.**

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### **Appeal B: APP/L3245/X/21/3283806**

#### **Brickfield Cottage, Hanwood Road, Shrewsbury SY5 8NT**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 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 Phil Roberts against the decision of Shropshire Council.
- The application Ref 21/03337/CPE dated 5 July 2021 was refused by notice dated 24 August 2021.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is for the mixed use of land at Brickfield Cottage, Edgebold as a residential use and a car repair/maintenance business use including the parking and storage of cars as illustrated edged red on the plan.

**Summary Decision: The appeal is dismissed.**

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### **Appeal C: APP/L3245/X/21/3288035**

#### **Brickfield Cottage, Hanwood Road, Shrewsbury SY5 8NT**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 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 Phil Roberts against the decision of Shropshire Council.
- The application Ref 21/04686/CPE dated 28 September 2021 was refused by notice dated 16 November 2021.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is for the mixed use of land at Brickfield Cottage, Edgebold as a residential use and a car repair/maintenance business use including the parking and storage of cars as illustrated edged red on the plan.

**Summary of Decision: The appeal is dismissed.**

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### **Appeal D: APP/L3245/W/21/3282667**

- 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 Phil Roberts against the decision of Shropshire Council.
- The application Ref 21/02806/FUL, dated 2 June 2021, was refused by notice dated 22 July 2021.
- The development proposed is: garage workshop.

**Summary of Decision: The appeal is dismissed.**

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### **Applications for costs**

1. Applications for costs in respect of all appeals were made by the appellant against the Council. This matter is the subject of a separate Decision.

### **Procedural matters**

#### *Invalid statutory declarations prepared by interested person*

2. The statutory declarations (one from the appellant and others made in support) were sworn before a solicitor whose name was unclear and there was no printed name or details of what the practice/firm was. It turned out that he had been acting for the appellant, and indeed was now the advocate at the inquiry.
3. Section 183(3) Legal Services Act 2007 requires that a relevant authorised person may not carry on the administration of oaths in any proceedings in which that person represents any of the parties or is interested (my emphasis). If that requirement is not met, a declaration should not be accepted as properly sworn (although it can be accepted as a statement). To be effective as a statutory declaration it should be sworn (or re-sworn) in front of an independent oath taker. I raised this matter before the inquiry began. Laudably without demur from the advocate H, the declarations were re-sworn in front of an independent oath-taker.
4. The need for declarations to be taken before someone who is disinterested in the proceedings, is in my view an important one because it re-inforces the solemnity and sincerity with which the person being sworn must give their evidence. It avoids suspicion of collusion between oath-taker and oath-giver

that might be perceived to be something other than the deponent's independent and genuine knowledge and opinion of the facts stated.

*Claim that the enforcement notice was invalid*

5. On behalf of the appellant H questioned the validity of the enforcement notice. In his statement he said that the time for compliance was unreasonably short, it would prejudice the appellant if the notice were varied to extend the period, and therefore as it could not be amended the notice must be invalid and quashed. That is a nonsensical argument. The power to vary the notice in s176 of the 1990 Act includes extending a compliance period precisely to avoid prejudice or injustice to the appellant.
6. However, at the inquiry H did pursue an entirely new and previously unannounced claim of invalidity, based on a claimed lack of proper authority to issue the notice. It is well established that usually an allegation of procedural impropriety over the issue of the notice should be the subject of an application for judicial review. H continued to argue the invalidity point without identifying any matter that might have put me on prior notice that there was a procedural impropriety. The matter took up much time at the inquiry and reference was eventually made to the absence of an officer's report to explain how the matter was considered before enforcement action was authorised. The Council then volunteered detailed documentation which I had to consider at the inquiry. This satisfied me that the required delegations were in place. I am further satisfied that the enforcement notice is not invalid or a nullity.

*The position of H as a planning witness*

7. In planning inquiries there are no special provisions in the rules for expert evidence, and for procedural purposes expert evidence is treated in the same way as lay witness evidence. That said, concerns were raised as to how H's evidence should be received since he was not a professional planning witness. His "proof of evidence" was almost exclusively summaries of statements of case made in the appeals, planning history and legal and costs submissions.
8. I expressed reservations that if this material were led (and an additional complicating factor was that H was also a witness) and cross-examined on, there would be a significant danger that much time would be spent in exchanges between the Council's advocate and H on legal matters related to the appeals, when time could be saved by making submissions directly to me in opening and closing submissions.
9. I was also concerned at the heavily repetitive nature of H's proof, lack of coherent structure and lack of clarity as to the nature of his client's case. I allowed cross-examination on the parts of the proof that appeared to reflect his own independent professional judgement on the planning issues relevant to the appeals. The Council challenged his expertise as a planning witness but that does not prevent me giving such weight to it as is appropriate.
10. That said, his proof of evidence was to all intents and purposes a regurgitation of factual matters described above save in a few instances discussed below and where I have given appropriate weight to his experience and position as director of the planning agency instructed by the appellant and previous experience in senior local government positions in law and administration. In

closing H did clarify that after my pre-inquiry note he had not envisaged giving evidence, however my note included in terms the following statement:

*I note the Council wish to reserve 3 hours for its advocate to cross-examine Dr Hooper which is excessive, particularly if, as I hope can be agreed, most of his proof can instead be treated as legal submissions rather than evidence in the appeals, and/or as an adjunct to the costs application. (emphasis supplied).*

11. Therefore the prospect of his giving evidence in whatever capacity was still live as far as I was concerned.

### **Main issues in the appeals**

12. As agreed with the parties, broadly speaking, the first main issue is whether there is a lawful use of the site as a whole for a mixed residential and car repairs/maintenance, with particular reference to the "2014 Permission" ie permission granted in 2014 for "*use of domestic garage as base for car repair business*", and the alleged continued use of the wider site. The second issue is whether the unauthorised operational development and mixed use should be granted permission. These matters are subsumed within the legal grounds of appeal of the notice, the LDCs and the planning merits of the deemed application and s78 appeal. In addition, in Appeal A ground (f) and ground (g) need to be considered.

### *Preliminary matter*

13. I have noted in passing that the enforcement notice was issued before the LDC1 and LDC2 applications were made. Section 191(2) sets out what is lawful development which includes consideration of whether the development constitutes a contravention of the requirements of any enforcement notice then in force. "In force" has been taken as meaning that where there was no appeal the notice takes effect on the date specified and is therefore "in force", but an appeal against a notice would render it no longer "in force" during the appeal.
14. However, it has also been held (*The Queen on the application of Ocado Retail Limited v London Borough of Islington v Telereal Trillium Limited, Concerned Residents of Tufnell Park [2021] EWHC 1509 (Admin)*) that Parliament did not wish an extant notice "*to be negated by the subsequent application of a time limit in s.171B to something which contravened the requirements of that notice*". In adding that "*the position would be different if at the time the relevant period in s.171B expired the notice had ceased to be in force, e.g. because it had been withdrawn...or quashed*" the court was looking at when a notice would be "in force" for the purposes of s191(2)(b), which appear to be when it is in existence, is not withdrawn or otherwise quashed, declared invalid or a nullity.
15. On that basis, the appellant would not be entitled to succeed in either LDC appeal if there were a contravention of the enforcement notice, since at the time of the LDC applications the notice had already been issued and it would continue in force despite the later LDC appeals.
16. I mention this matter because I think that is the correct position but as it was not discussed at the inquiry, I am entirely content to base my decision on all the appeals on the agreed main issues.

## Background and summary of planning history

17. In relation to Appeals A, B and D, the appeal site, Brickfield Cottage, is in the hamlet of Edgebold, 0.5km west of Shrewsbury. Agricultural fields lie to the east, south and west of the site and to the north are three dwellings. Access to the site is via a driveway to the north and along a private track leading to Hanwood Road.
18. Brickfield Cottage is a residential plot whose main dwelling is set back from the highway behind 1 and 2 Brickyard Cottages and Lilac Cottage. A large garage building in the appeal site is to the north-west, west of Brickfield Cottage and immediately to the rear of Lilac Cottage, whose occupant made several complaints about the use of the site. Lilac Cottage has a domestic garage abutting the boundary where the appellant's large garage building is situated.
19. The appeal site for Appeal C differs only in that it excludes the area where a smaller garage used to exist (over which area the larger garage building is now in situ). I shall use the term appeal site to refer to the wider site in Appeals A, B and D unless the context clearly refers to the smaller site in Appeal C.
20. The appellant bought Brickfield Cottage in 2006. The smaller garage, the "original garage", next to Lilac Cottage was apparently converted from an outbuilding in 2010/11 as part of the vehicle repair business. Before then the appellant worked from and outside a "wooden scruffy shed" alongside the west elevation of the main house, as declared by his wife who supplied a photograph of the shed (which was subsequently removed).
21. A complaint as to the use of the original garage was made in 2013. The Council officer who visited requested a planning application to retain the garage. Planning permission was then granted in 2014 (the 2014 permission) for "*use of domestic garage as base for car repair business*". The use was strictly limited by condition in accordance with the approved plans that clearly confined the approved use to the area of the building itself which was the red line boundary of the application site as submitted, despite the application form specifying the site area as 1ha. and proposing the retention of several parking spaces but these were not identified anywhere on a plan.
22. In 2017 the then enforcement officer told a complainant that the 2014 permission gave permission for: "*the immediate curtilage i.e. driveway for use of customers cars and it comes with associated use of surrounding ground for general footfall i.e. getting to and from the garage*". The appellant placed some reliance on this but what the Council might confirm as the planning status of land is not equivalent to a planning permission or an LDC.
23. However, also in 2017 the appellant extended the garage space and claimed this was for domestic use. Indeed he told the Council in September 2017: "*the building that is being erected at my home is a domestic garage. I gave much consideration as to whether planning permission was required before starting on the building and concluded from your website that it wasn't necessary.*"
24. In light of that statement no enforcement action was taken at the time. However, further complaints were received by the Council about the effect the car repair use was having on nearby occupants, from 2016 onwards.

25. In October 2020 there was a fire, probably due to fault in a customer's car left unattended on site. The garage, described in the fire report as a "triple garage" (ie the original garage as extended) was severely damaged and all three sections had to be demolished apart from, as I understand it, the north wall and a part of the floor surface. Each section contained a burnt-out car. It is probable from the evidence that the fire started in the middle section of the garage that contained the customer's car. Unfortunately the adjoining garage at Lilac Cottage was also significantly damaged by the fire.
26. Following an enforcement investigation in 2020 the Council issued the enforcement notice in June 2021 as described in the banner heading above for Appeal A. It is understood that at that time and without planning permission, the appellant was in the course of constructing a large garage building with three bays as a replacement for what was there before the fire.
27. On 5 July 2021 the appellant applied for an LDC (LDC1) on grounds that the appeal site had been in mixed use as a car repair/maintenance business for more than ten years, including the parking and storage of cars, and residential use. LDC1 was refused by the Council giving rise to Appeal B. In September 2021 LDC2 was applied for, exactly as for LDC1 but excluding the footprint of the original garage building. That was also refused, and Appeal C was made.
28. The record of the Council's building control section shows a notification in December 2020 for "*erection of a replacement workshop for the use of car mechanics and repairs & associated works*" but it failed to mention any domestic use of, or for the new building. Shortly after the enforcement notice was issued, in June 2021 the appellant sought planning permission to "reinstate" the fire-damaged garage which was also refused (Appeal D).
29. It is common ground that one of the buildings cited in the enforcement notice was removed, hence the remaining operational development targeted is the large three-bay garage.

## **Appeal A**

### **Appeal A on ground (d) and Appeals B and C**

30. The appellant's case in the LDC appeals and the appeal on ground (d) in Appeal A is of a piece, therefore the evidence is considered together. The planning merits of the proposed use are irrelevant here as decisions are made on facts, relevant law and judicial authority. If the Council has no evidence itself, or from others, to contradict or make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
31. As to the LDC appeals, the overriding issue taking into account, but ultimately irrespective of, the reasons of the Council, is whether the refusals of the applications were well-founded.
32. For the use to be immune from enforcement action the appellant must show on the balance of probability that what is alleged in the notice occurred ten years prior to the issue of the notice and that the use has been continuous before that date for a full ten-year period. It is settled law that the approach to evidence for LDCs is appropriate in the context of ground (d).



*The applicable time limits*

33. For Appeals B and C the relevant dates from which continuous use must be demonstrated are respectively 5 July 2011 and 28 September 2011, ie for a period of ten years prior to the date of the applications, however a prior period of ten years might be established which had not subsequently been lost through abandonment, a new chapter in the planning history and so forth. The relevant period in ground (d) is ten years from 15 June 2011.
34. I read the notice, in referring to the erection of buildings "to facilitate" the use, as alleging that the operational development is part and parcel of the use and therefore subject to the ten-year period as for the use itself.
35. The appellant's case was that the use and a garage building had been in place since he started work full time from home in 2011. It relies on an alleged continuous use throughout that period, including that the building latterly erected was by way of reinstating the previous triple bay garage (original garage as extended) damaged by fire and then demolished.
36. It is well established (*Iddenden v Secretary of State for the Environment [1972] 1 W.L.R. 1433*) that if a landowner pulls down old buildings and erects new ones without planning permission, an enforcement notice requiring demolition of the new is valid, even though it does not require restoration of the old. It was noted there that if applicants had lost an established use attached to the buildings they pulled down and are thereby worse off, they can only blame themselves and not the planning authority.
37. It is argued on behalf of the appellant that a replacement building can be put to the existing lawful use of the planning unit as was held in *Jennings Motors v SSE [1982] JPL 181*. That is correct in principle, however where a building is demolished and replacement buildings are erected without the benefit of planning permission, the only lawful use is that of the land. There are no existing rights to have buildings on the site as was held in *Hancock v SSCLG & Windsor and Maidenhead RBC [2012] EWHC 3704*.
38. Ultimately it is *Iddendum* that controls here, for a use cannot survive the destruction of buildings and installations necessary for it to be carried on. Here, the original garage building was necessary for the authorised use to be carried on, given the nature of the 2014 permission and condition requiring strict adherence to the approved plans.
39. Furthermore, the appellant seeks to use the 2017 email from the enforcement officer, where it refers to the extended garage building then in situ as permitted development. The officer had stated:

*"The recent outbuilding is physically permitted development under the law. No material change of use has occurred and as per the written agreement with the owner it can only be domestic/low impact business use (non-material). For example, a workshop, storage or hobby room is fine, again any noise issues can be dealt with by environmental services as a non-planning issue. It can be used for business purposes but in order for it to remain a non-material change it must remain wholly subordinate to the residential use of the property"*
40. The appellant appears now to accept that the extension to the garage accommodation was not permitted development but maintained that the

customer car that caused the fire was lawfully parked in the bay ostensibly meant for domestic use, whilst waiting for the main business bay to become available. In any event however, the extended garage or "recent outbuilding" was unauthorised as it did not benefit from planning permission.

41. As to the wider use of the site, if in 2014 for example it was being used for repairs to the extent that it displaced the sole primary residential use of the plot, the appellant did not make this at all clear in the planning application. I agree with the Council's planning witness that the 2014 permission created two planning units. The original garage became a separate entity from the domestic curtilage of the plot due to the specific and restricted scope of the permission. I note it was set to one side of the plot away from the main house and driveway. Parking of customers' cars at the garage entrance or close by would be an incidental or ancillary use to the main industrial use of the garage (and there would have been a minor overlap in uses where part of the driveway may inevitably have been used for residential and customer use). However the 2014 permission never encompassed industrial activity or ancillary use outside the original garage. Any such external ancillary use might have served to extend the planning unit and ultimately to gain immunity but would have ceased with cessation of the primary use.
42. The appellant made the application himself, initially including a plan with the red line boundary covering the whole site and the garage footprint edged blue. He says he was asked to amend the plan to show the red line tightly drawn around the garage which he did. Heavy emphasis is laid on the supposition that he was given no choice in the matter. However it would be perfectly proper for the Council to suggest to him that the red line should go around the precise area of the site in which he was interested in obtaining planning permission. The permission logically linked the permitted car repair use to use inside the existing building. In his statement sent in with the application he described the wider site as a family home and owner's work base but also clearly stated: "*I work from the existing garage*".
43. It was not until 2019 that business rates were paid for a "*workshop, Brickfield Cottage*". An accountant supplied a summary of trading for financial years 2013/14 up to and including December 2020. However the accountant was only employed from 2016 and stated that figures before then were based on "*accounts and records which we did not prepare for the previous two years*".
44. I have carefully considered the evidence including those tables showing names of customers invoiced, vehicle registrations, dates and payments received, and an email of June 2021 from R's supplier of car parts stating: "*we have been delivering car parts [at the appeal site] from April 2011 on a daily basis*". I was told that the appellant worked on 3 to 4 cars per week but it was "*double that*" when the business "*took off*" although it was unclear exactly when that was.
45. Of the aerial photographs submitted, that taken in October 2017 shows 4 cars parked on site and nothing that suggests a wider business activity. However as R stated in his declaration "*I have always consciously [sought] to maintain the look of a residential property and not allowed the business to dominate.*"
46. In the image dated April 2021 8 vehicles are shown on site. Further images from the enforcement officer's visit show that the garage was operating as an industrial activity, but no evidence of it spilling out into the wider curtilage.

Photographs at the time of the 2014 application show the internal appearance of the original garage and surrounding site. I agree with the Council that it was then domestic in character and appearance, with no evidence of industrial activity outside the confines of the garage. It could not have reasonably concluded a breach of planning control was continuing when it visited such that it could have taken enforcement action elsewhere on the wider site.

47. I return to the erection of the new garage building. The level and significance of complaints made in the last two or three years is disputed but the Council was notified in February 2021 that works had begun on footings for the new 3 bay garage to replace what went before. Its increased size provides some indication of an increase in activity. H was unable to counter the evidence that the new garage is bigger than what was there before the fire, it being some 124 sqm x 117 sqm and with an increased height. I saw that although it may have had some part of the original floor and the northern wall retained, to all intents and purposes it was a new and enlarged building embracing all three bays with a uniform roof and structural steel frame.
48. I questioned H about the apparent contradiction between his firm's statements that the garage was or had been permitted development, and yet his case seemed to be that there was a mixed use that had gained immunity through the passage of time. It is commonly understood that a mixed use is a sui generis use which by its very nature does not benefit from permitted development rights. I queried whether there could be any dormant uses that might assist the appellant, over the footprint of the original garage and/or the wider site. Although the case for the appellant confirmed in closing, was that there were indeed two established primary uses on the land, ie residential and car repairs, I am not persuaded of this by the evidence.
49. Clearly, some car repair use occurred in the immediate curtilage of the original garage. Also, it is likely that the appellant's use of the site from 2006 up to the 2014 permission being granted, included some use for car repairs. According to his wife who knew him at the site from 2010 and lived there from 2013, the repair business was carried on "*anywhere and everywhere*". The appellant was a vehicle technician, employed elsewhere when he moved to Brickfield Cottage. He supplemented his income by working for himself at evenings and weekends at the appeal site, as he put it "*discreetly wherever I can.*" On 1 April 2011 he left his job and developed his business full-time on the site.
50. I readily accept that over the years some of his work has occurred in places such as the afore-mentioned scruffy shed, the lawn at the rear of the house and another shed that was for a time erected by the entrance gate. Despite the wide-ranging spaces claimed to form the basis of an established primary use over the whole land, the appellant's own declaration sought to play down the intensity of the industrial activity, to "*maintain the look of a residential property and not allow...the business to dominate*".
51. The view expressed by the Council's planning witness was that such use was insufficient to sustain a finding of a material change in the use of the property. I agree. The original garage was clearly in domestic use until renovated for car repairs around 2010/2011 after which there was an unlawful non-residential use which was regularised by the 2014 permission.

52. Several parts of the appellant's own testimony under oath I found to be variously evasive, blasé, and at times argumentative, even belligerent towards the Council's advocate. Despite the twists and turns of his replies I am in no doubt that he regarded a garage building as essential to carry on his business at the appeal site. What became and remained the primary focus of such use was indeed the buildings he used, the original garage (in which the car lift was introduced in 2011 and noise insulated to prevent disturbance to neighbours), which was then unlawfully extended to form additional bays, and the new steel framed structure erected after the fire without planning permission.
53. I do not accept on the evidence that it was likely that the appellant's activities around the wider site ever established a primary use. It is more likely that his use of the wider site was never significant enough to change the primary use from residential other than when, after the fire in 2020 he clearly moved the repair activities to whatever place he could, including in temporary structures until the new unauthorised garage was serviceable, prompting the enforcement notice attacking that building and the material change of use of the wider site.
54. The evidence does suggest that cars were inspected and in good weather could sometimes be repaired on the drive in front of the original garage, ie outside the red line boundary of the 2014 permission. However, vehicle repair outlets are usually classified in a similar way to B2 industrial units where noisy works occur and need to be controlled. The application form stated that industrial processes and machinery were to be used, ie "*diagnostics, servicing & maintenance of cars & small vans. vehicle lift/tyre changing machine/wheel balance/hydraulic press/wheel alignment gauges.*" It would have been for that reason that the use was restricted to within the building. There might possibly have been tolerated some ancillary or de minimis parking activity found to be necessary at the entrance. However, anything of that nature would be lost with destruction of the subject matter of the permission.
55. The evidence of neighbours, customers and relations is imprecise about numbers of vehicles, the works occurring, location, timings and periods of observations. They do not provide robust support to a finding on the balance of probability of a continuous car repair use for the wider site for any 10 year period. Statutory declarations support the appellant's case in generalised terms, they do not materially add anything potentially determinative of this issue as to the precise extent or continuous periods of car repair activity at the site. I am of the view that this evidence is insufficient to demonstrate continuous use for car repair and maintenance use on the site for ten years without interruption.
56. The onus is on the appellant to prove his case on this issue, on the balance of probability, using evidence that is precise and unambiguous. In short, the fire in October 2020 interrupted the lawful use of the original garage. The unlawful extension or additional bays constructed in 2017 were also destroyed. I find that the material change of use of the land described in the notice from use for residential to a mixed use for residential and motor vehicle repair and maintenance did not on the balance of probability subsist until sometime in 2021 when the original garage had been destroyed, and the appellant began operating his industrial business from the timber garage in front of the main dwelling (now also removed) and the large new garage building, still very much in evidence.

57. Accordingly I find that the wider site was not in a mixed use continuously from June 2011 to June 2021. Therefore, Appeal A on ground (d), Appeal B and Appeal C fail.

**Ground (c)**

58. Success on this ground requires the appellant to show on the balance of probability that the matters stated in the enforcement notice do not constitute a breach of planning control. The appellant's case in his statement was that the 2014 permission could not "*lawfully be withdrawn*", the Council's report at that time showed it was aware the business operated at the same capacity as from April 2011, and therefore the business use was lawful.

59. I do not accept this argument, as appears from the matters discussed on ground (d) above. The notice clearly extends to the use of the wider site and to operational development outside the confines of the red line boundary subject to the 2014 permission. The building now in situ requires planning permission. The 2014 permission only permitted a use to be carried on inside the specified building, ie the original garage. It cannot be effective without that building.

60. The appellant made additional arguments at the inquiry, that the actual use of the land for car repairs could continue as approved by the 2014 permission despite the subject matter being destroyed. It was claimed that "*no changes or operational development to the land took place*". That is patently incorrect. After the fire the appellant replaced what was there before with a new and different structure. For a use to be lawfully capable of being continued, I would agree with the appellant that a permission could be expressly sought for the rebuilding of a structure, but no such permission was granted. It is accepted that the building in situ was not lawfully erected as permitted development.

61. Therefore, the appeal on ground (c) does not succeed.

**Appeal A on ground (a) and Appeal D**

62. The appeal site and its surroundings are described earlier in this Decision. I recognise that the site is bounded largely by agricultural fields but the northern part especially, derives its character more from the small group of residential dwellings that it adjoins.

63. The new garage has a substantial scale, size and mass although it sits in one corner of a large plot where it is prominent but subsidiary in basic form (not design) to the dimensions of the large main dwelling that sits centrally within the front part of the curtilage. However, the garage presents as an overbearing development in relation to the plot at Lilac Cottage where it abuts the boundary. Furthermore, its industrial appearance detracts considerably from the character of the main dwelling and the domesticated nature of the rest of the plot. Over time a significant amount of vegetation has been removed from where the garage is sited to facilitate building works, now not allowing for landscaping that might otherwise be secured by condition to visually attenuate impacts on wider views of the site or neighbouring property.

64. I agree with the Council that the new garage significantly harms the character and appearance of and is significantly out of keeping with the main house and the surrounding residential plots.

65. It is claimed that only one bay is to be used for the car repair business use. When I visited some items of domestic use were apparent but all three bays were unpartitioned inside, and full of various items of specialised equipment associated with an industrial car repair and maintenance use. Such a use is inherently a noisy activity use that potentially would impact and has clearly impacted adversely on the living conditions experienced by neighbours close by. Something was made of the fact that the appellant has or would ensure that the car repair and maintenance activities would take place in the bay furthest from Lilac Cottage but the effect in my judgement would be marginal if not negligible, given the building's location so close to the boundary and the inevitable noisy activity that would take place from time to time in close proximity to the garage entrance. The potential for harm by reason of noise and disturbance as a result of such industrial activities is considerable.
66. I have considered whether a condition or conditions could mitigate the potential for noise complaints emanating from neighbours and present or future occupants of Lilac Cottage in particular. Without understanding what level of impact has been assessed if at all against ambient noise levels, or any specific and measurable controls that might be put in place I am not confident that the potential harm to surrounding residents including future residents, from such noisy industrial activity would be adequately mitigated. The history of complaints from neighbouring property adds to my concern, as does the size of the new building and its propensity for increased industrial activity that it presents, including potential for disturbance from an increase in non-residential traffic along the access close to other residential plots.
67. There would be some economic benefits to the use. The loss of personal economic benefits and the loss of the business operating from within the site would likely cause some hardship to the appellant and his family. A section of the local community clearly use the appellant's services. The wider economic benefit to customers many of whom live or work locally, carries weight. I mentioned in a pre-inquiry note the possible relevance of the dictum of Lord Scarman in *Westminster City Council Appellants v Great Portland Estates Plc [1985] 1 AC 661*. In addition the National Planning Policy Framework (NPPF) supports the creation of jobs and in general significant weight should be given to supporting sustainable economic growth. Shropshire Core Strategy 2011 (CS), Policy CS5 does not materially assist the appellant in this regard because it qualifies support for beneficial rural development with the need to consider the scale and design of proposals, where development is most appropriately sited, and what would be the environmental and other impacts.
68. Although submissions were made on these matters and I took account of the appellant's own testimony and of others given in support, there is not a sufficiently specific case advanced to quantify the benefit to the wider community such that I could accept it as an exception to the relevant planning policies. Sustainable growth implies a balance to be considered among all three elements of sustainability, including social and environmental effects.

*Other matters*

69. There is no "fall-back" of being able to have a garage for domestic purposes on the site of the new garage building that the appellant says would be permitted development. At issue is the industrial use of the site for car repairs and maintenance and the erection of a building with a single frame and structure.

Permitted development rights attach to lawful development and if the notice is upheld and complied with, such rights may be exercised but they do not weigh in favour of granting permission here for the matters covered by the notice.

70. The local highway authority for the area was consulted on the proposal leading to Appeal D and had no objection. The proposed access shown on the block plan submitted with the application in principle provides a suitable means of vehicular access and egress to and from the site. However that does not reduce the concern expressed above as to the potential effect on living conditions.
71. I agree in large part with the opinions expressed by the Council's planning witness. Suffice it to say that hers was an object lesson in how to set out a proof of evidence. Despite having limited planning experience and the attack made on her credibility as a planning witness, I found her evidence to be considerably more succinct and helpful about matters of planning judgement than any other. If professional judgement is defined as applying knowledge, skills and experience, in a way that is informed by professional standards, although the person concerned may not yet be fully professionally qualified, as a member of a relevant planning professional body they would be entitled in my view to refer to their expert professional judgment in such matters.

#### *Conclusion*

72. I find that the development would cause harm in particular to the character and appearance of the host dwelling and garden area and of Lilac Cottage in particular, as well as to the wider area. The harm is considerable and conflicts with Shropshire Core Strategy 2011 (CS), Policy CS6 and Policy MD2 of the Council's Site Allocations and Management Development Plan 2015 (SAMD). These policies seek new development that is sympathetic to the size, mass, character and appearance of the original property and the surrounding area.
73. The development would also cause very significant harm to the living conditions of the present and future occupiers of Lilac Cottage especially, by reason of the potential for noise and disturbance, as well as to other residents including future residents in the immediately surrounding area. Such harm is contrary to the aims of CS Policy CS6 by failing to demonstrate how the development would contribute to the health and well-being of communities and safeguard residential amenities of nearby residents including future residents.
74. The conflict with the above key policies of the development plan would not be overcome by the benefits of the development, having regard to the case put forward by the appellant, and support given in national and local policy to economic growth that is sustainable. The overall balance is that the weight I give to the adverse environmental and social effects of the development clearly outweighs the economic benefits. Further in this respect I find that CS Policy CS5 is not an overriding factor here and the development conflicts with the development plan as a whole.
75. Accordingly I shall refuse planning permission in respect of Appeal D and for the deemed application arising from Appeal A under s177(5).

#### **Appeal A on ground (f)**

76. An appeal on ground (f) is that the requirements of the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to

- remedy any harm to amenity resulting from the breach. From the requirements of the notice I take its purpose to be to remedy the breach of planning control.
77. The differences between the original and new building in situ are more than marginal only. I have already made findings about the unacceptability of the new building in situ on the planning merits. Accordingly, and since the aim of the notice is clearly to remedy the breach of planning control that has occurred, I find that subject to the matter of the north wall, there is no obvious alternative that might be pursued at lesser cost.
78. The north wall may be part of the original garage. On site it was difficult to determine what support if any was given by this wall to the garage within Lilac Cottage. I asked whether there was in effect a party wall arrangement but the position was unclear. But if the appellant is right in that it formed part of the original garage owned by him, and the garage at Lilac Cottage was built up against it without constructing their own wall, this is a type of party wall such that its removal could in certain circumstances cause difficulty for the adjoining owner. The appellant requests its retention and I see no good reason to require its removal, although I obviously disagree with the suggestion made on his behalf that such an amendment to the requirements in the notice would work an injustice to the appellant.
79. Otherwise, the requirements of the notice to remove the buildings and cease the unauthorised use are not excessive to remedy the breach of planning control. The appellant has not submitted any other alternative steps for me to consider. The appeal on this ground succeeds only to the extent that the requirements of the notice will be varied accordingly.

**Appeal on ground (g)**

80. Demolition and removal of the remaining building subject to the enforcement notice could be effected within a matter of days. A period of 3 months is quite reasonable within which to make the necessary arrangements for that work to be undertaken.
81. There is no evidence before me that practical difficulties exist in complying with the requirements of the enforcement notice, save that a little more time than 7 days may be required to arrange matters with customers and prospective customers before the use must cease. Therefore I will extend the period for compliance with section 6(i) to 21 days.
82. The appeal on ground(g) succeeds to that extent.

***Conclusion on Appeal A***

83. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed application.

***Conclusion on Appeal B***

84. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a mixed use of land as a residential use and a car repair/maintenance business use 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.

**Conclusion on Appeal C**

85. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a mixed use of land as a residential use and a car repair/maintenance business use 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.

**Conclusion on Appeal D**

86. For the reasons given above I conclude that the appeal should be dismissed.

**Formal Decisions**

**Appeal A**

87. It is directed that the enforcement notice be corrected and varied as follows:

- In section 3, replace "operation" with "operational".
- In section 5 before "demolish/dismantle" delete "To" and replace "demolish" with "Demolish".
- In section 6(i) replace "7 days" with "21 days".
- In section 5(ii) insert after "garage marked 'X'", "save only for the wall on its northern elevation abutting the boundary with Lilac Cottage".

88. Subject to these alterations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

**Appeal B**

89. The appeal is dismissed.

**Appeal C**

90. The appeal is dismissed.

**Appeal D**

91. The appeal is dismissed.

*Grahame Kean*

INSPECTOR



- CD4 3 letters in support of the appeals
- CD5 Opening statement by Council
- CD6 Bundle of 17 statutory declarations
- CD7 Appendices to Dr Hooper's proof as exchanged with the Council
- CD8 Policy CS5 submitted by appellant
- CD9 Extract from delegation scheme, date unknown submitted by appellant
- CD10 Expediency Report submitted by Council
- CD11 Delegation Scheme, art 8 submitted by Council
- CD12 Delegation of planning functions submitted by Council
- CD13 [see CD8]
- CD14 Policy CS5 and supporting text submitted by Council
- CD15 Unilateral undertaking dated 27 June 2023
- CD16 Land Registry copy register of title and plan
- CD17 Reply of Council to costs application

Documents submitted after the hearing:

- CD18 Closing submissions of Council
- CD19 Closing submissions of appellant

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## Costs Decisions

Dates of Inquiry 27 and 28 June 2023

Site visit made on 28 June 2023

**by Grahame Kean B.A. (Hons) MRTPI, Solicitor HCA**

an Inspector appointed by the Secretary of State

Decision date: 30 November 2023

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### Costs applications in relation to:

**Appeal A: APP/L3245/C/21/3278441**

**Appeal B: APP/L3245/X/21/3283806**

**Appeal C: APP/L3245/X/21/3288035**

**Appeal D: APP/L3245/W/21/3282667**

**Land at Brickfield Cottage, Edgebold, Shrewsbury, Shropshire SY5 8NT**

- The applications are made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The applications are made by Mr Philip Roberts for a full award of costs and a partial award of costs against Shropshire Council (the Council).
  - Appeal A was an appeal against an enforcement notice issued by Shropshire Council seeking the cessation of the use of land for motor vehicle repair and maintenance and removal of a garage and timber building.
  - Appeals B and C were against the refusal of applications for lawful development certificates (LDC) seeking certification of the use of the land for a mixed use for residential and car repair/maintenance use including the parking and storage of cars.
  - Appeal D was against the refusal of planning permission for a garage workshop.
- 

### Decisions

1. The applications are all dismissed.

### The applications and the Council's response

2. Written applications for an award of costs against the Council in respect of Appeal A and Appeal D were received by the Planning Inspectorate and responded to in writing by the Council in advance of the Inquiry.
3. At the inquiry the applicant clarified through his solicitor that in respect of Appeal A, an application was being made for a partial award of costs related to the appeal process for grounds (a) and (d) only.
4. The applicant further clarified that a full award of costs was sought in respect of Appeals B, C and D.
5. The Applicant made oral submissions to supplement his written applications and in respect of Appeals B and C. The Council then provided a further written response to these submissions and the applicant made a further oral reply.

## **Case for the applicant**

### *Appeals A and D*

6. The business use on the site had already been established so permission was not required for this use. Two garages were for domestic use and only one for business use. The applicant was put to unnecessary cost in the appeal and had to pay for a company to produce the appeal and to pay the Council for development that was already permitted on site.

### *All Appeals*

7. The Council failed properly to evaluate the evidence before it took enforcement action or decided the appealed application for planning permission or the LDC applications. There was no engagement with the applicant in respect of the content of the statutory declarations. Overall the Council acted unreasonably in not dealing with the applications based on the evidence. It failed to consider granting an LDC with a reduced area. Similar considerations applied to the evidence supplied for the LDC appeals as for the ground (d) appeal in Appeal A.
8. Advice from the Council's enforcement officer had been incorrect. The witnesses in support of the appeals were persons of integrity. The local plan policies were not properly assessed by the Council and there was no material harm from the development in question.
9. Appeals B, C and D were a necessary consequence in light of the enforcement action taken by the Council. The Council should have made enquiries using powers to obtain information before issuing the enforcement notice.

## **Case for the Council**

10. The statement by the enforcement officer that to re-build the garage would not require planning permission was unfortunate but did not justify a costs award. The mistake was corrected by the Council before the notice was issued. The advice had no legal effect on the lawful status of the garage, nor would it have had if the destroyed garage were re-built or a new building were erected. The officer's mistake was compounded by the applicant's architects and previous planning consultants who confirmed the new building did not need permission.
11. The Council had reasonable grounds to consider that the demolition of the previous building on site and its replacement with a new larger building and erection of a separate timber building was a new planning chapter for the site, due to the substantial change from that granted in the 2014 planning permission.
12. After an earlier planning application [not appealed] was refused, the enforcement team sought to engage with the applicant to resolve the breach of planning control but was unable to do so and the notice was issued on 15 June 2021.
13. The Appellant failed properly to consider the Planning Policy Guidance (PPG) on costs awards. There was good reason to refuse the various applications and issue the notice. The planning merits of the garage building enforced against were not sufficiently strong as to make it unreasonable for the Council to refuse permission for its retention.

14. The applicant's suggestions that the unauthorised development was resisted due to the neighbour using her connections with the Council, were unsubstantiated.
15. The Council acted reasonably at all stages of the enforcement process and the issuing of an enforcement notice was necessary. The maxim "*he who comes into equity must come with clean hands*" should be applied. The applicant's agents acted unreasonably in that voluminous documentation was supplied of which little was referred to, they lacked knowledge of some of their own evidence, and introduced numerous new issues and documents, namely as to a putative historic use of the site, a unilateral undertaking, and a claimed lack of authority to issue the notice, the latter being a serious matter which the Council felt obliged to resolve during the inquiry. Thus the applicant did not make these applications with 'clean hands' but himself acted through his agents unreasonably.

### **Reasons**

16. PPG advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour directly caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour can be procedural or substantive, relating to the issues arising from the merits of the appeal. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviours and actions at the time of the application can be taken into account.
17. In general the applicant's behaviour or that of his agent, which may itself have been unreasonable, should not be relevant to the merits of their own application for costs unless the actions of applicant and respondent are inextricably linked. And, on examination of the maxim said to apply here (a succinct version is "*ex turpi causa non oritur actio*" which I translate as "out of a bad act, motive or reason, no (good) cause of action will arise") it appears that this criterion is built into the proper application of the principle, at least what I will call the narrow principle in which it is often understood.
18. In short, the behaviours alleged are unconnected to those of the Council. For example, the late evidence submitted to the inquiry and abrupt changes in the theory of the appeals did not cause the claimed unreasonable behaviour of the Council. The loss suffered by the appellant was of his own making because, as was found in the appeal decisions after due enquiry, he failed to discharge the burden of proof necessary to establish continuous use over any precisely defined area for the requisite period, and failed to persuade the decision-maker that the benefits to retention of the development outweighed the harm. But in any case, it is not the Secretary of State's policy as I understand it to deny such a person the opportunity of applying for a costs award where specific unreasonable behaviour in the appeals process causes them identifiable loss.
19. Furthermore, in the wider sense in which the principle is sometimes invoked, and I fear is being invoked here, to allow a simple distinction between a "deserving" and "undeserving" applicant in a statutory appeal process, would be more invidious and divisive in the long run, than would the occasional public outcry at the supposed inconsistency between a failure on the substantive issues but a procedural "win" for the loser.

20. All that said, the applications largely re-run the merits of the appeals, which were lost. The Council plainly evaluated the evidence robustly before it took enforcement action or decided the planning and LDC applications. The advice from the previous enforcement officer had been incorrect but this did not cause unnecessary expense in the appeals process. Overall, it acted reasonably based on the evidence. Therefore I find that there was no unreasonable behaviour that caused unnecessary expense and the applications are not granted.

*Grahame Kean*

INSPECTOR





## Appeal Decision

Hearing held on 8 November 2023

Site visit made on 8 November 2023

**by Helen Hockenhull BA (Hons) B.PI MRTPI**

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

**Decision date: 22 December 2023**

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### **Appeal Ref: APP/L3245/W/23/3323546**

#### **Former Phoenix Garage, Great Hales Street, Market Drayton, TF9 1JW**

- 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 Frontier Estates Ltd against the decision of Shropshire Council.
  - The application Ref 22/01176/FUL, dated 7 March 2022, was refused by notice dated 6 December 2022.
  - The development proposed is redevelopment of site to provide a circa 60 Bed care home (use class C2) including access, parking and landscaping.
- 

### **Decision**

1. The appeal is dismissed.

### **Preliminary Matters**

2. The Council refused planning permission for four reasons relating to the impact of noise and odours from the adjacent brewery and public house on the living conditions of future residents, the protection of groundwater resources, ecology and the provision of open space. During the appeal process, the appellant provided additional information on the issues of groundwater protection and ecology. These matters have been resolved so that they are no longer in dispute. I do not therefore address these issues in my decision.
3. On the 19 December 2023 a revised National Planning Policy Framework (the Framework) was published. The changes do not relate to the issues raised in this appeal. References to the Framework in my decision relate to the paragraphs in this new document.
4. The appeal site is located within Market Drayton Conservation Area (CA) and is also adjacent to several Grade II listed buildings. Whilst not forming a reason for refusal, I must consider this matter in light of my duties under section 66(1) and 72(1) of the Planning (Listed Buildings and Conservation area) Act 1990.

### **Main Issues**

5. The main issues in this case are :
  - Whether the proposed development provides satisfactory living conditions for future residents with particular regard to noise, odour and outdoor amenity space.

- Whether the proposed development would protect or enhance the character and appearance of the Market Drayton Conservation Area and whether it would affect the setting of nearby listed buildings.

## **Reasons**

### Background

6. The appeal site is located to the north of Great Hales Street in Market Drayton. It is an irregular shaped piece of land, formerly occupied by Phoenix Garage. The site drops in level to the north with the rear of the site being approximately 3 metres lower than the rest of the site.
7. The site lies in a mixed-use area with both commercial and residential properties. To the western boundary of the site lies the Red Lion Public House and Joules Brewery. Residential properties lie to the south west and north east as well as on the opposite side of Great Hales Street. The site lies within Market Drayton CA and there are a number of Grade II listed buildings in the vicinity including the Red Lion public house and No. 9 Great Hales Street to the west, 19/21 Great Hales Street to the east, and No's 14,16 and 16a Great Hales Street to the south.
8. The appeal proposes the redevelopment of the site to provide a 60-bed care home (Use Class C2), including access, parking and landscaping. The main parties agree that the principle of the development within the settlement is appropriate in compliance with Shropshire Core Strategy Policy CS3. I have no reason to disagree.

### **Living Conditions**

#### *The impact of noise*

9. The appeal site is affected by several sources of noise emanating from the activities at the adjacent public house and brewery as well as traffic noise from the adjoining road. The proposed building would be around 8 metres from the western boundary of the site with the commercial uses and 13 metres from the public house building. The appellant has prepared an Acoustic Report to assess the noise sources and recommend appropriate mitigation measures.
10. The report concluded that in terms of traffic noise, the daytime noise level (LAeq16hr) was measured to be 59 dB(A) and the night time (LAeq8hr) noise level noted to be 53 dB(A). In line with the Planning and Noise Professional Practice Guidance (ProPPG), which provides a recommended approach to dealing with noise in the planning process, the site has a low to medium noise risk, with the effect level between the Lowest and Significant Observed Adverse Effect Levels. This means that there could be an adverse effect due to traffic noise, and mitigation to reduce noise levels for future residents would be necessary.
11. In terms of entertainment noise, the report found that noise levels from live music from a 17-piece band within the building, on the Saturday night surveyed, were generally below background noise. This assessment was one night only and I accept that a large number of musicians, could generate more noise than other performances such as solo artists or duets. However, I am advised this performance did not involve amplified music which could exceed background noise.

12. The assessment did not survey noise from music being played outside the premises, which I understand can take place on a weekly basis in the summer and extend up to 11pm. I acknowledge that the pub building itself may act as a barrier to sound, however I have no evidence before me to demonstrate the extent to which outside entertainment noise would impact on the amenity of occupants of the proposed care home.
13. Noise from the pub car park and brewery yard was found to be infrequent and of short duration. However, most notably, noise from deliveries was found to be significant with LAmax levels regularly above 60 dB, the level at which sleep disturbance could be caused, and peak levels up to 87 dB being recorded. I understand that the brewery has a single incoming delivery each week with goods being dispatched two to three times a day. Most deliveries take place in the morning and can last around 10 minutes, though some can take up to 50 minutes.
14. Plant noise from the kitchen extract at the pub, which operates from late morning to approximately 9.30pm, was found to exceed background noise by +3 dB in the daytime and +7 dB in the evening. If left unmitigated, this would result in an adverse impact on amenity for the occupants of the care home.
15. With regard to noise in the external amenity areas, BS8233 advises that it is desirable that external noise levels do not exceed 50 dB with an upper guideline value of 55 dB. The Acoustic Report estimates that with the shielding effect of the building, noise levels within external amenity areas would be below the upper limit of 55 dB. Recognising the existing background noise levels emanating from traffic noise, this would just be acceptable.
16. I acknowledge that the nature of some of the noise sources described above, makes it difficult to assess their impact and that in this case, it is the cumulative noise impact that needs to be considered. All parties agree that there would be a significant adverse noise impact resulting in unacceptable internal noise levels which would require mitigation to maintain the amenity of the future residents of the care home. Based on the evidence before me I agree with this position.
17. The appellant has put forward a scheme of mitigation which has three elements. Firstly, an acoustic barrier on the north western site boundary, secondly a high specification of glazing and thirdly the provision of mechanical ventilation to the rooms on the north west elevation of the building.
18. It is proposed that the acoustic barrier be constructed at a height of 3 metres. I am advised that a barrier of this height would reduce noise levels by around 9dB for ground floor rooms and 12.5dB for lower ground floor rooms. However, in terms of first floor and second floor rooms, the barrier would be less effective.
19. The provision of glazing in line with the specification suggested in the Acoustic Report would achieve noise levels of 5 dB below the minimum requirements for bedrooms set out in BS8233. It is acknowledged that the measures proposed would achieve an acceptable level of noise for the occupants of the rooms affected, however this would only be if the windows were closed. When windows were open, internal noise levels could exceed recommended maximums. Therefore, to achieve ventilation and prevent overheating, mechanical ventilation would be required to rooms on the north west elevation

- of the building. With 34 rooms facing the noise source, this means that just over half of the rooms proposed in the care home, would require mitigation.
20. The question is whether in terms of acoustic design, the provision of mechanical ventilation to so many rooms is acceptable. Planning Practice Guidance advises that for noise sensitive developments, mitigation measures may include avoiding noisy locations altogether or designing the development to reduce noise impacts from adjoining activities. Mitigation measures should only be considered where it is not possible to resolve the issues by other design solutions.
  21. The appellant has explained that the orientation and layout of the building has been designed with noise in mind and that the optimum layout has been put forward in terms of acoustic design.
  22. The building would have to be sited approximately 33 metres from the site boundary with the pub and brewery to avoid the need for noise mitigation. This would leave very little of the site available for development and would not be an efficient use of land. An alternative would be for a single aspect building with no rooms on the north western elevation, however, this would mean losing up to 34 bedrooms and result in the scheme being unviable.
  23. Whilst I accept the appellant has looked at other design solutions, there is little evidence before me that other changes to the internal layout have been explored. For example, communal areas with mechanical ventilation could be located on the north west elevation facing the commercial uses with fewer bedrooms on that elevation.
  24. A care home is a particular noise sensitive use, with the impact of daytime noise being greater than in a normal residential property. The communal lounges and dining rooms are to be located on the quieter south east elevation, not facing the brewery and pub. I accept that some residents will be in the communal areas during the day, where there may be noise from talking or the television which would assist to mask any perceptible external noise. However, it is also likely that other residents may be resting in their rooms during the day, particularly if they are unwell, and require a quiet environment.
  25. The appellant brought my attention to other schemes where mechanical ventilation has been accepted by the Council. The McCarthy and Stone development to the north of the appeal site, also raised issues relating to noise, this time from the adjacent supermarket delivery yard and the brewery yard. The scheme was re-designed to significantly reduce the number of bedrooms overlooking the commercial use and therefore requiring mechanical ventilation. I understand in that case, the rooms were around 30 metres from the brewery yard, a much greater distance than the rooms in the appeal scheme. This proposal therefore has limited comparability.
  26. The appellant also highlighted another scheme approved by the Council in Oswestry, again close to a supermarket where noise from early morning deliveries was an issue. That proposal also relied on the provision of mechanical ventilation for mitigation in certain rooms. I accept that mechanical ventilation has been used in several schemes in Shropshire, but each development should be considered in terms of its context, the type and frequency of the noise source and the necessary mitigation required to achieve

acceptable amenity for occupiers. In the appeal case, a high number of rooms would be potentially affected by noise resulting in a need for mitigation.

27. It is important to consider the frequency at which windows may need to be closed. In this case it would not just be for the morning delivery times but would also be at various times in the day and evening due to the noise from the general operation of the brewery and public house. It is likely that future residents would prefer to have open windows to get fresh air and cool down a room. Having to close a window to achieve acceptable living conditions would represent a material change in behaviour.
28. I am mindful that an occupant would be more tolerant of a noise without a specific character such as traffic noise. However, in this case, significant noise impacts would occur from adjacent commercial operations e.g. from deliveries, fork lift trucks, plant noise etc. There would therefore be a risk that opening a window could lead to a complaint which may affect the operation of the adjacent brewery and pub.
29. Given the above, I conclude that the noise impacts from the adjacent uses and the necessary mitigation measures, would result in unacceptable living conditions for future residents.

#### *Odour*

30. The main source of odour would be from the extract to the pub kitchen located close to the north west site boundary, approximately 18 metres from the proposed care home building. The appellant's odour assessment predicts that odours from the kitchen extract would be discernible at a distance up to 4.5 metres. This would affect the car park area only.
31. Whilst the Council have no concerns about the methodology employed in the odour assessment, they still have concerns that odours could be unacceptable, particularly as the extract has no odour abatement installed. Additionally, odours could be trapped by a building of the height and location proposed and would not be able to disperse effectively. The appellant has used a dispersion model to determine that the proposed building would have a small impact on odour dispersion. However, modelling has shown that the limit of detection of odours associated with the pub under average conditions is still likely to be some distance from the facade of the proposed building.
32. Based on the evidence before me, I have no reason to doubt that odours would not be an issue within the building. The Council also agreed at the hearing that odours would be unlikely to be observed in the external amenity areas. On this basis, whilst I accept that odours may be perceptible in the car park for those visiting the care home, they would in my view be minimal. I therefore conclude that odours would not adversely affect the amenity of future residents.

#### *External Amenity Space*

33. Policy MD2 of the Site Allocations and Management of Development (SAMDev) Plan 2015 concerns amongst other things, the design of landscaping and open space as part of a development. It requires open space of at least 30 square metres (sqm) per person to meet the local needs in terms of function and quality. The Council calculates that the appeal scheme would provide around 18 sqm per resident. This figure excludes the terraced areas proposed in the

building. If these are included the open space per resident increases to approximately 19 sqm per resident.

34. The appellant has brought to my attention a High Court Challenge, R (Fraser) v Shropshire Council [2021] EWHC 31 (Admin), which related to the application of Policy MD2. The Court held that a scheme which does not provide the required 30 sqm of amenity space per person can nonetheless fully comply with the policy. The overarching test is whether the scheme provides a suitable amount of amenity space, and this involves a planning judgment to be made.
35. The amount of open space provided in the appeal scheme must take account of the nature of the use. Residents would not generally be seeking active open space but rather areas of social space which can provide places to sit, enjoy the sun and fresh air and have some interaction with staff, other residents and visitors. Many would need assistance to access external areas. In this context, it is reasonable to conclude that a lower level of outdoor space would be acceptable. The Council conceded at the hearing that they had accepted around 21 sqm per resident in a care home scheme in Oswestry. The appeal scheme is providing only a little below this figure.
36. The appellant brought my attention to the fact that the Care Quality Commission requirement is for 4.1 sqm of amenity space per resident, well below the Council's requirement. The appellant also highlighted that in other schemes they had provided, open space was on average 17 sqm per resident, and that due to the high quality of development, design awards had been achieved.
37. On balance, I am of the view that, bearing in mind the nature of the residential use, the amount of amenity space being provided in the scheme is acceptable to provide adequate living conditions for future residents.

#### *Conclusion on Living Conditions*

38. I have found that whilst the appeal scheme would provide acceptable living conditions for future residents in terms of odour and the provision of outdoor amenity space, it would not do so with regard to noise impacts from adjacent land uses and the extent of the mitigation required. Accordingly, the proposal would fail to comply with paragraph 135 of the Framework, Policy CS6 of the Shropshire Local Development Framework Core Strategy 2011 and Policy MD2 of the SAMDev. These policies seek to achieve sustainable design and amongst other things, safeguard amenity for existing and future users.

#### ***Heritage matters.***

39. The appeal scheme lies within Market Drayton Conservation Area (CA) and is also adjacent to a number of Grade II listed buildings. I must therefore assess whether the proposal would preserve or enhance the character or appearance of the CA and whether it would harm the setting of the listed buildings.
40. The character and appearance of Market Drayton CA derives from its past as a market town. Two and three storey buildings, dating from the 15<sup>th</sup> to the 21<sup>st</sup> Century are evident fronting the highway along narrow streets. The buildings are constructed in brick or are timber fronted with plain tiled pitch roofs. The significance of the CA derives from its tightly mixed urban form and mix of architectural styles with the retention of timber framing, red brick and tiled pitch roofs.

41. The part of the CA in which the appeal site is located, Great Hales Street, consists of two and three storey residential buildings set close to the road, forming a continuous built form. The design and form of the proposed development would be in keeping with the surrounding townscape. In terms of scale, it is proposed that the building be two storeys high to the east and three storeys to the west reflecting that of the buildings in the vicinity. Whilst more modern elements are included with larger areas of glazing, their framing respects the adjacent built form and local character. The proposed materials, brick and render, connect the development to the surrounding area. The site is partially vacant and currently does not contribute to the character and appearance of the CA. Overall I find the proposal would be a positive addition, preserving the character and appearance of the CA.
42. There are a number of listed buildings in close proximity to the appeal site. I assess those closest to the site whose setting may be impacted by the proposal.
43. The appeal site lies across the road from Nos. 14, 16 and 16a Great Hales Street, Hesketh House and St Mary's and St Martha's Cottages. It is also to the east of Forge House. These are all Grade II listed buildings.
44. Nos. 14, 16 and 16a were constructed in the early 18<sup>th</sup> century and form good examples of early Georgian town houses. These factors contribute to significance. Hesketh House is a mid-18<sup>th</sup> century Georgian townhouse with three even bays of three storeys with plain tiled gables roof and dentilled brickwork running along the eaves. It is significant as a good example of a Georgian residence incorporating many traditional architectural features. St Mary's Cottage and St Martha's Cottage form two storey residences constructed towards the end of the 18<sup>th</sup> century. Their significance lies in their traditional exteriors with their materials in keeping with the surrounding area. Forge House forms an early to mid-19<sup>th</sup> century cottage built of brick which has been painted, with an adjoining one and half storey garage bay. Its significance derives from it being a good example of an early to mid 19<sup>th</sup> century house retaining many historic features.
45. The appeal proposal would impact on the setting of the above buildings. However due to the quality of design of the appeal scheme, retaining the historic character of the CA, their setting and significance would be preserved.
46. No 9 Great Hales Street lies immediately to the east of the appeal site and is currently being renovated to form a dentist surgery. It lies next to the Red Lion pub which is also listed Grade II. Currently there is no boundary feature between the site and No.9. The scheme provides a boundary wall which will serve to separate the heritage asset from the proposed development, benefiting the understanding of its curtilage and improving its setting. Its significance would therefore be preserved.
47. With regard the Red Lion pub itself, the proposed scale and massing of the appeal scheme, which I have found to be appropriate, preserving the character of the CA, would not in my view diminish the significance of this asset.
48. West of the appeal site lies 19-21 Great Hale Street, which forms a mid 17<sup>th</sup> century timber framed house. It has two storeys and a basement and is sited on a brick plinth. Its significance lies in it being a good example of a property of its age.

49. The appeal scheme involves the demolition of the disused garage on the site. An external boundary wall of this building is attached to the listed building and will therefore need to be removed. The proposed development would be set away from the listed dwelling which would allow an increased appreciation of the building and a separation between the historic asset and the more modern development proposal. This however must be balanced against the scale of the proposal, with the building wrapping around the side and rear of the dwelling. Overall, I find that the setting of the nearby listed building would be preserved.
50. For the above reasons, the proposed development would preserve the character and appearance of the Market Drayton CA as a whole and the setting of the nearby Grade II listed buildings. It would therefore accord with section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and with section 16 of the Framework. As a result, there would be no conflict with Core Strategy Policy C6 and SAMDev Policy MD13 which amongst other things, aim to protect, conserve, restore and enhance the built and historic environment.

### **Other Matters**

51. Concern has been raised about the impact of the proposal on the living conditions of nearby residents in particular with regard to outlook and overlooking. The building would be sited close to the rear boundary of residential properties in Great Hale Street. Most of the scheme achieves a separation distance of around 21 metres which is generally accepted to be sufficient to maintain privacy to habitable rooms. The proposed terrace area would have a 1.6-metre-high screen which would prevent overlooking. Additionally, as the building would be north of the residential properties, it would not block sunlight to the rear gardens and rooms on the rear elevations. I accept that a building of the height proposed would result in a significant change in outlook for occupants of properties bounding the site. However, I am of the view that this would not be so detrimental to amenity, as to render the scheme unacceptable in this regard.
52. Concern has also been expressed about car parking for the proposal particularly as there is limited on street parking in the vicinity. The scheme includes an 18 space car park. The site is in a sustainable location close to the town centre and public transport. Visitors could make use of nearby town centre car parks if necessary. Additionally cycle parking is provided in the scheme. Given the above, I consider that the proposal would not cause parking or highway safety issues. The scheme would therefore comply with SAMDev Policy C6 which amongst other things, requires a proposal to be located in an accessible location where opportunities for walking, cycling and the use of public transport can be maximised.
53. I acknowledge that the appeal scheme will address a need for this type of residential accommodation in the Market Drayton area. It would also provide employment and contribute to the local economy during the construction phase. Whilst these factors provide support to the scheme, they do not outweigh my concerns about the living conditions for future residents.

### **Conclusion**

54. Whilst the scheme would preserve the character and appearance of the CA and have no adverse impacts on the setting of nearby listed buildings, it would result in unacceptable living conditions for future residents due to noise



impacts and the mitigation required. Accordingly, the proposal would not comply with the development plan and material considerations do not indicate that a decision should be made other than in accordance with it.

55. For the reasons given above, and having had regard to all other matters raised, the appeal is dismissed.

*Helen Hockenhull BA (Hons) B.Pl MRTPi*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Robert Walton KC  
Alex King  
Nick Hawkins  
Noel Orr  
Sophie Kowalski

Sam Rous

Counsel  
Mission Town Planning  
Hawkins Environmental  
Omni Architects  
Development Manager Frontier  
Estates  
Development Director Frontier Estates

### FOR THE LOCAL PLANNING AUTHORITY:

Philip Mullineux  
John Shaw  
Liam Cowden  
Jane Chanter

Development Manager  
Principal Planning Officer  
Principal Policy Officer  
Environmental Health Officer

### INTERESTED PARTIES:

Steve Nuttall  
Cllr Byron Chapman

Managing Director Joules Brewery  
Deputy Mayor and Chair of the Market  
Drayton Town Planning Committee

### **Documents submitted at the event.**

1. Application ref 21/02720/FUL, Development Management Report, Proposed Nursing Care Home, Victoria Road, Oswestry

### **Documents submitted after the event.**

1. Covering Letter from appellant dated 5 June 2023 enclosing:
2. R(Fraser) v Shropshire Council [2021] EWHC 31 (Admin)
2. Revised schedule of conditions



## Appeal Decision

Hearing held on 24 October 2023

Site visit made on 25 October 2023

**by M Cryan BA(Hons) DipTP MSc MRTPI**

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

**Decision date: 2 January 2024**

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**Appeal Ref: APP/L3245/W/23/3324562**

**Sych Farm, Adderley Road, Market Drayton TF9 3SW**

- 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 LNT Care Developments against the decision of Shropshire Council.
  - The application Ref 22/04423/FUL, dated 28 September 2022, was refused by notice dated 23 December 2022.
  - The development proposed is a two storey 66-bed Care Home for Older People (Use Class C2) and associated outbuildings with associated access and parking, including the demolition of existing buildings.
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### Decision

1. The appeal is dismissed.

### Procedural Matter

2. The Government published an amended version of the National Planning Policy Framework ("the Framework") on 5 September 2023, replacing the July 2021 version extant at the time the planning application was determined. Following the Hearing, a further revision of the Framework was published on 19 December 2023. The amendments made did not have any bearing on the issues in this appeal, and it was therefore not necessary to seek comments from the main parties on the updated Framework. Where I have referred to specific paragraphs of the Framework, the numbering is that of the December 2023 version.

### Main Issues

3. The main issues are:
  - Whether the appeal site is an appropriate location for the proposed scheme, having particular regard to effects on the supply of employment land, and local need for the development;
  - Whether the proposed development would provide satisfactory living conditions for future residents with particular regard to noise disturbance and any mitigation proposed; and
  - Whether or not Sych Farm should be considered a non-designated heritage asset, the effect of the proposed development on the architectural and historic significance of any heritage assets, and whether any harm to or loss of heritage assets would be outweighed by the benefits of the proposed development.

## Reasons

4. The appeal site comprises the farmhouse and related agricultural buildings, and an area of associated land, of Sych Farm. The site is on the northern edge (and within the development boundary) of the town of Market Drayton. Access is from Western Way on the site's northern edge; this becomes Burnside Road alongside the Gingerbread Man public house to the west of the site. Beyond this a roundabout connects to the wider highway network, including the busy A53 Market Drayton bypass which runs along the southern edge of the appeal site. To the east of the site is open agricultural land, while across Western Way to the north is a large commercial area which includes the town's livestock market.
5. The farmhouse is a two-storey building, with a block of one- and two-storey outbuildings around a regular courtyard to the west. The buildings are of red brick, though while the farmhouse has a slate roof the outbuilding has clay tiles. They were built in the mid-19<sup>th</sup> century as a model farm. The proposed development is the demolition of the existing buildings on the site, and the erection of a purpose-built 66-bed residential care facility for older people. Its facilities would include lounges and dining rooms, a café/bar, family rooms, a TV/cinema room, and services such as a shop, a clinic and a hair studio. The scheme would also include associated infrastructure, access, car parking and landscaping. The proposed development would create employment for around 50 to 60 people, which it was suggested at the Hearing would amount to around 48 full-time equivalent jobs.

### *Whether an appropriate location for the proposed development*

#### Relevant development plan policies

6. The development plan comprises the 2011 Shropshire Core Strategy ("the SCS"), and the 2015 Site Allocations and Management of Development Plan ("the SAMDev"). The Council is currently preparing a new local plan (the Draft Shropshire Local Plan – "the DSLP") which was submitted to the Secretary of State for examination in September 2021; Examination Hearings have taken place during 2022 and 2023. Reference was also made at the Hearing to a neighbourhood plan being prepared for the "Three Parishes" of Adderley, Norton in Hales, and Moreton Say. It is my understanding however that, although the appeal site lies within the parish of Adderley (and the parish council was supportive of the scheme), it is outside the area covered by the Three Parishes plan, the emerging policies of which therefore would not be relevant in this appeal.
7. Policy CS6 of the SCS and Policy MD2 of the SAMDev set out sustainable design and development requirements. They seek development of a high quality; among other things it requires all development to respect and enhance local distinctiveness, and state that proposals likely to generate significant levels of traffic should 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.
8. Policy CS11 of the SCS seeks to meet the diverse housing needs of Shropshire residents by, among other things, supporting the provision of housing for vulnerable people and specialist housing provision, including nursing homes,

- residential and extra care facilities, “in appropriate locations and where there is an identified need”.
9. Policy CS13 of the SCS seeks to develop and diversify the Shropshire economy, including by planning and managing a responsive and flexible supply of employment land and premises comprising a range and choice of sites in appropriate locations to meet the needs of business. Policy CS14 aims to manage the supply of employment land, with the aim of delivering around 290 hectares during the 2006-2026 plan period; among other things, it seeks to do this by protecting existing strategic employment land and premises to secure these sites for employment uses.
  10. Policy MD4 of the SAMDev seeks to manage and maintain the supply and provision of employment land and premises. It is broadly supportive of proposals for Class B or *sui generis* uses which include industrial or commercial employment opportunities on committed or allocated sites. It states that proposals for alternative uses on these “portfolio sites” will only be acceptable in certain circumstances; these are where there are no other suitable development sites for the proposal, where the development will provide significant employment opportunities or other significant benefits for the sustainability of the community, and where the development will not adversely affect the range and choice of employment sites in terms of location, quality, type and size. The supporting text to the policy includes Class C2 among alternative uses, while reiterating that the plan’s “presumption in favour of protecting portfolio sites from alternative uses” means that “clear and compelling evidence” will be required in respect of the policy tests before such uses will be permitted.
  11. Policy MD9 of the SAMDev seeks to protect existing employment areas for “Class B and appropriate *sui generis* employment uses”. It indicates that this protection will be “proportionate to the significance of the employment area” (with reference to the hierarchy set out in the plan), and having regard to factors including the availability of other suitable sites, the impact on the range and choice of employment land, the business case for the proposed use, and the potential for conflict with neighbouring uses. The policy goes on to state that where proposals for alternative uses would lead to the loss of the protected employment area, evidence of appropriate marketing over a sustained period will be required to demonstrate that the land or premises are no longer commercially viable for the preferred uses.
  12. Turning to the DSLP, emerging Policy SP13 seeks to deliver around 300 hectares of employment during the 2016—2038 plan period. It distinguishes between “primary” and “secondary” employment uses including, in the secondary category, uses within Class C2. It states that there is a presumption to protect allocated employment land and established employment areas primarily for Class B employment uses. Proposals for other uses will only be supported where it is demonstrated that the supply of employment land would not be compromised, where the proposed use would make a significant contribution to the local economy, and where a comprehensive marketing exercise demonstrates that the site is not suitable or viable either for the established use, or for any other employment use.
  13. Emerging Policy DP1 seeks to ensure that residential development provides a mix of dwelling sizes, types and tenures in order to meet the identified needs

of local communities. Among other things, it states that the development of sites of 50 or more dwellings should provide an appropriate range of specialist housing designed to meet the diverse needs of older people, which could include residential care homes and nursing homes.

14. I was also directed to another emerging policy, Proposed Draft Policy DP2. Somewhat confusingly, this is not the Draft Policy DP2 in the submission version of the DSLP (which addressed self-build and custom-build housing); it was explained at the Hearing that it is a new policy which had been prepared in response to direction from the examining Inspectors that the development plan needed to specifically address housing provision for older people and those with disabilities and special needs. Among other things, the policy seeks to ensure that specialist housing for older people is integrated into, rather than set apart from (including gated-off from) existing and new communities, and in locations where future occupiers can benefit from access to existing services and facilities. It also provides further detail in respect of the level of provision of specialist housing for older people on larger sites allocated for housing development referred to in Policy DP1.
15. The DSLP is not yet adopted, and its emerging policies were not referred to on the decision notice issued by the Council, but it is nevertheless a relevant material consideration. Given the stage of the plan's preparation, I afford draft policies SP13 and DP1 moderate weight for the purposes of determining this appeal. The position in respect of "Proposed Draft Policy DP2" is slightly different; it is a very recent addition to the DSLP and, notwithstanding that it appears to have been prepared at the prompting of the local plan Inspectors, it has not yet been tested at examination, and I therefore afford it only limited weight. All this said, the adopted policies of the SCS and the SAMDev continue to be afforded full weight for the purposes of determining this appeal.
16. Both parties referred to other development plan policies in their written evidence and at the Hearing. However, I consider that those summarised in this section are the ones which are of greatest relevance to this main issue.

#### Employment land

17. The appeal site falls within the Sych Farm Phase 1 employment area, which also encompasses the adjacent Gingerbread Man pub, the business units and large livestock market to the north of the site, and the various commercial and industrial units extending north along Western Way. It is therefore part of a protected employment area designated in the SAMDev. The open fields to the north-east and east of the site are part of an area allocated as an employment site (Sych Farm Phase 2) by the SAMDev. It is not proposed that these designations would change under the emerging DSLP.
18. The Sych Farm employment area is defined as a "key local site" by the employment land and sites study within the SAMDev evidence base ("the SEAS")<sup>1</sup>. This is the third tier within the SAMDev hierarchy, and Table MD9.1 in the SAMDev describes such sites as being "expected to deliver good quality development providing strategic and local employment opportunities with clear economic benefits for the Shropshire economy".

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<sup>1</sup> *Shropshire Strategic Sites and Employment Areas Study: Phase 2 – Market Towns and Key Centres*: BE Group for Shropshire Council (2013)

19. I was told at the Hearing that the owners of Sych Farm are no longer living in the farmhouse, having relocated to another property they own elsewhere in the area. At the time of my site visit parts of the agricultural buildings were still being used to house cattle, although it was explained that these belong to a neighbouring farmer who is renting the space from the site owners. One of the reasons put forward for the owners' relocation was that the landholdings at Sych Farm have been progressively reduced over the years by the sale of land for commercial development, leading to the other property becoming a more efficient base for farming operations. This change was, however, anticipated by (and is in line with) the identification and allocation of Sych Farm and surrounding land for employment purposes in the development plan; the apparent gradual winding down of the site as a working farm is not, in itself, a significant or decisive matter in this appeal.
20. Planning permission was granted in 2009 for the redevelopment of much of the site (not including the farmhouse itself) for a "live-work" scheme comprising six new dwellings and the conversion of the farm outbuildings to six "office-style" units ("the 2009 permission" – LPA Ref: 09/01335/FUL). That permission included conditions restricting the commercial units to (then) Class B1 uses, and limiting occupancy of the six dwellings to the occupiers of the business floorspace and their dependants. The 2009 permission was granted under different development plan policies, and I was not provided with a full officer report for it. However, the decision notice states that the scheme had been approved because, among other things, it would "utilise and<sup>2</sup> allocated employment site for a sustainable development that would encourage new enterprise".
21. The 2009 permission was not implemented and has now lapsed; none of the evidence put before me clearly explained why it had not been developed, although of course I recognise that these things happen, and often. The appellants argued that the appeal site has been protected for employment purposes for an "excessively long" period, and that there is no prospect of the type of scheme preferred by the development plan coming forward. In 2015 the SEAS referred to the 2009 permission (although even by then it had presumably expired) and described the landowners as "waiting for an improving market before offering the site to developers (the land has previously been marketed for these uses, unsuccessfully)".
22. Given the varying degrees of uncertainty which the economy has faced over the last decade and a half it is questionable whether the market has improved to the extent which the site owners have apparently been hoping for since 2009. I was told at the Hearing that a marketing board was visible on Google Maps imagery of the site from 2021, and during my site visit I saw an old "for sale" board among the various bits and pieces discarded around the site. However, there was nothing to explain how much or how long the site had been marketed for, to whom, and what (if any) expressions of interest or feedback the marketing agents may have received. The evidence which was available to me does not demonstrate that the development plan requirements in respect of appropriate marketing of the site over an extensive period have been met.

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<sup>2</sup> Sic – my assumption is that this should read "an".

23. The Council referred at the Hearing to the recent announcement of government funding for the Shrewsbury North West Relief Road, but there was little solid information to show that this on its own would be likely to make the appeal site more attractive to industrial investors. At the same time, none of the evidence I saw or heard demonstrated that the site is not suitable for the "primary" employment uses sought by the development plan.
24. In terms of possible alternative sites for a proposed C2 use, the appellants stated that all the residential sites in Market Drayton allocated by the SAMDev have been built out, and that therefore "only employment allocations remain developable". However, there was little to demonstrate the extent to which potential "windfall" sites within the town had been considered and discounted. The appellants drew my attention to another site, at the rear of the Aldi store across the A53 and only 150m or so from the appeal site, where outline planning permission had been granted for a residential care home (LPA Ref: 19/01639/FUL). I understand that that no operator had been identified for that other scheme, and the permission has now lapsed.
25. Contrary to what was said in the appellants' statement, the SAMDev policy map shows that the other site is not within a Protected Employment Area. Regardless of its proximity to the appeal site, the planning considerations in respect of that other site are very different. The fact that the Council approved that application "without any request for demonstration of need" does not therefore weigh in favour of the appeal proposal. However, it does illustrate the potential availability of a "windfall" site which may be appropriate for the proposed use.

#### Need for the development

26. The appellants' case was supported by a "needs assessment", with an updated version of that submitted with the planning application provided at the appeal stage<sup>3</sup>. This looked at a catchment area of an eight-mile drive<sup>4</sup> from the appeal site, analysed the demographics of the elderly population, the current and future supply of care home beds (using the measure of "market standard" beds with wet rooms<sup>5</sup>), and projected future demand for such spaces. It estimated that, within the selected catchment area, there would be a shortfall of around 283 beds by 2027, and that this would increase to around 317 beds by 2032.
27. The appellants' study found that around two thirds of the existing supply of bedrooms in care homes within the Market Drayton area are within converted properties, with the remainder being in older purpose-built facilities. It also found that only around nine percent of bedrooms meet the market standard including wet room facilities, and that therefore the existing stock was not "future proofed". The appellants' evidence at the Hearing emphasised the quality of the accommodation which the proposed development would offer. The smaller, more local catchment area was suggested to be reflective of people's "real lives" and wishes to remain close to established family and social networks.
28. The Council's analysis of the North East Shropshire catchment area, including Market Drayton, indicated that there was presently adequate capacity to meet

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<sup>3</sup> *Sych Farm Planning Needs Assessment*, June 2023, Knight Frank. The original version was dated March 2022.

<sup>4</sup> Rather than a simple radius.

<sup>5</sup> i.e. Bedrooms with WC, wash basin and ensuite wet room or shower/bath facility.



the need for all types of care home provision, and that combined with pipeline supply it would provide sufficient capacity to meet the demand in that part of the county. The Council also referred to the approach of the Shropshire Adult Social Care Strategy, which aims to assist people to stay in their own homes, including by providing support with domestic or self-care needs, thereby deferring moves into care facilities until much later in life than might have been the case recently. It disagreed that there would be a shortfall in care home capacity, and considered that the scheme would not therefore meet an identified local need. It explained at the Hearing that considering a wider catchment area in planning for social care needs enabled it to ensure that efficient use was made of capacity.

29. The main parties' assessments of need are based on different catchment areas, timeframes, and criteria, and are therefore not directly comparable. The discussions at the Hearing did not appear to narrow the differences of interpretation and analysis between the Council and the appellants. However, based on all the written submissions, and what I was told at the Hearing, I have no substantive reason to discount the evidence of either party, including the appellants' case that there is a local need for additional care home accommodation within the Market Drayton area.
30. The appellants suggest the appeal site is a highly sustainable and accessible location, close to day-to-day services and amenities. The site is certainly well-integrated with the major road infrastructure into and around Market Drayton – as I have already described above, it is next to the town's bypass. There are level pedestrian and cycle routes around the site, but using them to get to and from the nearest bus stops at Prospect Road (a 900m walk to the south) and the shops and amenities in the town centre beyond that requires crossing the A53 next to the Gingerbread Man roundabout. I walked part of that route myself after my site visit, and saw that the A53 was very busy with large numbers of heavy goods vehicles passing by. It is not an easy road to cross on foot.
31. My visit was carried out on what was clearly a busy auction day at the nearby livestock market, and numerous vehicles were parked or manoeuvring on Western Way and Burnside Road between the appeal site entrance and the Gingerbread Man public house. In places, the parking was obstructing the footway. There were also other lorries and commercial vehicles passing along Western Way, and that road would be likely to become even busier still at such time as the remaining parts of the designated employment land it serves are developed. In my view, the highway environment around the appeal site is essentially a hostile one for pedestrians and cyclists.
32. It seems extremely unlikely to me that most people visiting the proposed development would choose to do so other than by private car. This would also limit the potential usefulness of nearby amenities for staff and residents of the home. I note also the appellants' suggestion that the site's location next to the livestock market, which serves a large catchment area, would allow care home residents' families to combine visiting them with trips to the auctions. That may be so, although there was no substantive evidence to explain the proportion of local residents who are regular market users. In any event, beyond that possible moderate locational advantage, the site's position between two roads carrying commercial and industrial traffic, and alongside a busy existing industrial area which is allocated for further development (and noting that I

turn to specifically address the question of noise in a moment), means that its surroundings would not provide the pleasant sort of environment which residents of the proposed development, or their families, would be likely to be looking for in a care home.

#### Findings on this main issue

33. Tying all the foregoing points together, I consider that the creation of the equivalent of around 48 full-time jobs would be a positive benefit of the scheme. However, the proposed development would not fall within the former B1 (offices, research and development and light industrial processes suitable within residential areas), B2 (industrial processes not covered by B1), or B8 (storage or distribution) use classes which the relevant policies of the SCS and the SAMDev prioritise for employment land and sites, and an inevitable consequence of it going ahead would be to reduce the availability of sites suitable for those priority uses.
34. The policies of the SAMDev *do* open up the use of sites within protected employment areas for other employment-generating purposes, but this is subject to compliance with a range of criteria (described in paragraphs 10 and 11 above) which clearly aim to make this the exception rather than the rule. The same is true of the emerging policies in the DSLP, with their distinction between “primary” and “secondary” employment uses. The appellants have not demonstrated that the site is not suitable or commercially viable for the preferred uses and that it has been appropriately marketed over a sustained period, or that there are no other suitable sites for the proposed use. The evidence put forward to support the loss of the employment site is not therefore clear and compelling.
35. I acknowledge that there is likely to be a local need for additional care home accommodation over the coming decade or so, and that the proposed development would make a contribution to meeting this need. However, notwithstanding the fact that Sych Farm is only 1km or so from Market Drayton town centre (and closer still to the nearby Aldi and Morrisons supermarkets), the busy A53 is a significant barrier between the appeal site and the town. The site’s surroundings, including the various industrial and commercial uses to the north, also mean that it is not, in my view, a suitable location for the proposed development.
36. I therefore conclude that the proposed development would conflict with Policies CS6, CS13 and CS14 of the SCS, and Policies MD2, MD4 and MD9 of the SAMDev, the principal relevant provisions of which I have set out in paragraphs **Error! Reference source not found.** to 11 above. For the same reasons, I also conclude that it would conflict with emerging policies DP1, DP2 (“Housing Provision for Older People...”) and SP13 of the DSLP, the principal relevant provisions of which are set out in paragraphs 12 to 14 above (though, as I have explained in paragraph 15, the emerging status of the DSLP means that I do not give full weight to conflict with these policies). I also find that the proposal would conflict with the provisions of the Framework, notably the requirements set out in paragraph 125 that developments function well, support local facilities and transport networks, and create places which are safe, inclusive and accessible.

### *Noise disturbance*

37. The planning application was accompanied by a noise impact assessment report and addendum (which for simplicity I refer to together as “the NIA”). This examined the likely impacts on the proposed care home from a range of surrounding noise sources: traffic noise from the A53 and Western Way/ Burnside Road, the lorry park on the north side of Western Way, the livestock market, and the Gingerbread Man public house.
38. The NIA predicted that road noise levels at the northern and southern façades of the care home would, with open windows, exceed the BS8233:2014 criteria<sup>6</sup> during both daytime and night-time. In respect of the Gingerbread Man, the NIA predicted that noise from a freestanding cooler condenser unit at the rear of that building would lead to night-time noise levels at the south-west corner of the care home being +11.6dB above the background sound level which, unchecked, would be likely to have a significant adverse effect on health and quality of life. By the Council’s calculation, which was not disputed by the appellants, 53% of rooms in the building would only be able to achieve acceptable internal noise levels with closed windows.
39. The appellants said at the Hearing that the approach to site layout had been led by two main considerations; the presence of a watercourse at the north of the site, and then the surrounding noise sources. This appears at odds with the statement in the NIA that the noise consultants were commissioned at a point when “the proposed layout plan [had] already been created”. I have no reason to doubt the technical evidence that was put to me on this matter. However the “ProPG” guidance<sup>7</sup>, while not having any statutory status, advises that “using fixed unopenable glazing for sound insulation purposes is generally unsatisfactory and should be avoided”, and that “relying on sound insulation of the building envelope to achieve acceptable acoustic conditions in new residential development, when other methods could reduce the need for this approach, is not regarded as good acoustic design”.
40. While I acknowledge that occupiers of the care home would be able to spend time using the various communal spaces for leisure and recreation, it is also inevitable in such accommodation that there would be some residents who could not or would not do so, and they would therefore be likely to spend long periods within their bedrooms. For those people in particular, though more generally for all affected residents, fixed glazing may well represent an unwelcome lack of control over their living environment which would be detrimental to their quality of life. It is also of note that daytime noise levels at the southern façade would be 58dB LAeq; BS8233 recommends an upper limit of 55dB LAeq for gardens, suggesting that a substantial portion of the space between the care home and the A53 would not in fact be particularly suitable for its proposed use as a garden.
41. Discussion of the condenser at the rear of the Gingerbread Man during the Hearing did see agreement between the parties that it would be technically feasible to erect an acoustic barrier to limit the noise reaching the nearest windows of the care home. However, in order to be effective (by blocking “line of sight” sound) any such barrier within the appeal site would have to be

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<sup>6</sup> For the LAeq measure

<sup>7</sup> *Guidance in Professional Practice Guidance on Planning and Noise*, May 2017, Association of Noise Consultants, Institute of Acoustics, and Chartered Institute of Environmental Health

almost as tall as the buildings eaves, so would be unlikely to be acceptable aesthetically. The appellants suggested that it would be reasonably straightforward to erect a smaller and less intrusive barrier close to the condenser within the pub site. That would be dependent on a suitably robust and enduring agreement being agreed with the pub operator and secured by a planning obligation, and no such mechanism was provided.

42. The Council drew my attention to a recent residential development ("Montgomery Place") a little way further west along the A53, where new houses had been permitted at what were said to be similar, or shorter, distances from the highway. The Council suggested during the Hearing that differences of layout may have had a bearing on the sound environment at that scheme, although I have no reason to dispute the opinion the appellants' noise consultant that that would have been unlikely to have made a significant difference in itself. I was able to view that site after carrying out my site visit, but there was no further evidence put before me setting out either the reasoning in that case or any measures that development may include to avoid or mitigate noise impacts. I cannot therefore be sure that it is directly comparable to the case before me.
43. I conclude that the proposed development would not provide satisfactory living conditions for future residents, with particular regard to noise disturbance and the mitigation proposed. It would therefore conflict with Policy CS6 of the SCS and Policy MD2 of the SAMDev, which together seek to ensure that development is sustainably designed and contributes to the health and wellbeing of communities.

#### *Heritage assets*

##### Local and national planning policy

44. The farmhouse and traditional farmstead buildings at Sych Farm are not statutory listed buildings, nor are they within a conservation area. The Council does not maintain a local list of heritage assets, although the buildings appear on the Shropshire Historic Environment Record. Being locally listed is not an essential criterion for a non-designated heritage asset ("NDHA"), as set out in the definition in the Framework's glossary.
45. Historic England considered the buildings for statutory listing during 2023, but concluded that they do not fulfil the criteria for listing (though this does not undermine any local significance they possess)<sup>8</sup>. Nevertheless, despite having initially referred in their appeal statement to "so-called 'non-designated heritage assets'", the submitted statement of common ground indicated that the main parties agreed that the buildings are to be regarded as NDHAs, and that the appeal scheme would result in their demolition "and therefore the loss of whatever heritage value they may or may not have".
46. Paragraph 195 of the Framework states that heritage assets are "an irreplaceable resource, and should be conserved in a manner appropriate to their significance". In respect of NDHAs specifically, Paragraph 209 of the Framework states:

*"The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing*

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<sup>8</sup> Historic England Advice Report, 12 July 2023

*applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset."*

47. Policy CS17 of the SCS and Policy MD13 of the SAMDev seek to protect the historic environment of the county, including NDHAs. Policy MD13 states that "proposals which are likely to have an adverse effect on the significance of a non-designated heritage asset, including its setting, will only be permitted if it can be clearly demonstrated that the public benefits of the proposal outweigh the adverse effect".

#### Significance of Sych Farm

48. Based on the evidence before me, including what I was told at the Hearing and saw on site, I consider that there are three main elements which contribute to the significance of the farm: its development as a model farm, the quality of its architecture, and its association with the prominent local Corbet family.
49. The development of Sych Farm as a model farm took place during the "high farming" period between 1840 and 1870, when farming and farmstead planning advanced to reflect the increased availability of commercial feeds and fertilisers. The farm buildings show some architectural elaboration, including reticulated stone details and dentil courses of brickwork, which perhaps elevate them above the commonplace in the area at the time they were constructed, although they have been much altered over time. While the Corbet family was a significant landowner in the area, it is of limited interest or significance outside the locality.
50. In assessing the buildings for listing, Historic England noted among other things that neither the architectural distinction nor the connection with the Corbet family was sufficient to demonstrate that the farmhouse is of special interest. In respect of the outbuildings, it commented that the arrangement is not sufficiently innovative or experimental to be of special interest in terms of the development of farming practices, and that while they are "of interesting design with some good detailing", the degree of interest (and the cumulative extent of alterations) means that they fall short of the level required for national listing.
51. Neither of the main parties disagreed with Historic England's reasoning or conclusions; clearly though while the appellants considered that the overall significance of the buildings as an NDHA is low, the Council continued to rate it somewhat more highly.

#### Benefits arising from the development

52. The appellants consider that opportunities for a viable and beneficial alternative use for the buildings are extremely limited. As I have described above, the proposed development would provide residential care accommodation for up to 66 people, and jobs for 50 to 60. They also consider that the redevelopment of the site would contribute positively to the character and appearance of the area and, through the creation of habitat zones alongside the watercourse at the northern edge of the site, provide ecological benefits.
53. For its part, although the Council acknowledged that the proposal would create some jobs, it stressed throughout the Hearing that it was keen to see "primary" employment, and that it did not consider there to be a demonstrated local need

for the care home accommodation (as covered at length under the first main issue above). It therefore remained of the view that any positive factors which might be identified would not outweigh the heritage harm caused by the loss of the farm buildings.

#### Findings on this main issue

54. I saw on my site visit that the farmhouse and farmstead outbuildings are relatively neat and attractive buildings of their type, albeit that they are not apparently remarkable, and in need of some TLC. The farmhouse is typical of its time and place, and therefore not especially striking in and of itself. The "model" farmstead outbuildings are perhaps more noteworthy; they have a pleasing combination of robust brick sturdiness and a formal plan layout, with interesting and pleasing details picked out in brick and stone.
55. Beyond these positive factors, it is evident that the buildings have been altered many times over the years. Their current condition means that they would be likely to require considerable investment in order to bring them into viable use as anything other than farm buildings (though I note that neither main party appeared to have prepared any outline costings to demonstrate the extent to which this may or may not be realistic). While Historic England's observations, and its decision not to statutorily list the buildings, are not determinative, in my view they summarise the buildings' features and significance very well.
56. In summary then, I consider the heritage significance of Sych Farm to be moderate and local, and derived primarily from its architectural value. As the proposal would involve the complete demolition of the farm buildings, it would mean the total loss of an NDHA; the scale of harm to that asset would therefore be substantial. However, given the limited architectural and historic significance of Sych Farm this does not weigh solely in favour of its retention.
57. Weighed against the loss of the NDHA would be the benefits from creating a number of jobs on the site and providing care home accommodation for elderly people. The value and weight of these benefits is reduced somewhat because of the harm which I have identified in assessing the first two main issues; the proposal would result in the loss of designated employment land which has not been adequately justified, and which could therefore significantly undermine the strategy for future economic growth in Shropshire. The care accommodation would be in a place with, to all practical intents, limited access by means other than the private car, and where noise impacts would mean that future occupiers would not have acceptable living conditions. I therefore give the public benefits of the proposal only moderate weight, and find that this would not outweigh the heritage harm caused by the total loss of the heritage asset.
58. The proposed development would therefore conflict with Policy CS17 of the SCS and Policy MD13 of the SAMDev, the principal relevant provisions of which I have set out in paragraph 47 above. It would also conflict with the provisions of the Framework which seek to conserve and enhance the historic environment, as summarised in paragraph 46 above.

#### **Other Matters**

59. I was told at the Hearing that the site behind Aldi south of the appeal site, where outline planning permission had been granted for a care home in 2019,

had recently been the subject of another planning application for a care home, though I was not provided with any further information about that proposal. Regardless of its outcome though, the differences between the two sites including their allocations within the development plan, which I have considered above, mean that it is not directly comparable to this appeal scheme.

### **Conclusion**

60. I have found that the proposed development would conflict with the development plan taken as a whole. There are no material considerations, including the Framework, which indicate that a decision should be made other than in accordance with the development plan.

61. For the reasons given above, the appeal is therefore dismissed.

*M Cryan*

Inspector

## **Appearances**

### FOR THE LOCAL PLANNING AUTHORITY

Liam Cowden	Shropshire Council
Ruth Hitchen	Shropshire Council
Nick Hughes	Shropshire Council
Philip Mullineux	Shropshire Council
Andy Wigley	Shropshire Council

### FOR THE APPELLANT

Alistair Wood	LNT
Jo Kemp	LNT
Thomas Davidson	LNT
Anthony Robertshaw	Dynamic Response





## Appeal Decision

Site visit made on 26 September 2023

by **G Sibley MPLAN MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 8<sup>th</sup> January 2024**

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**Appeal Ref: APP/L3245/W/23/3319142**

**Land adjacent to Tyn-y-Wern, Hengoed, Oswestry SY10 7EP**

- 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 Mrs Gwyneth Edwards against the decision of Shropshire Council.
  - The application Ref 22/05708/FUL, dated 19 December 2022, was refused by notice dated 17 February 2023.
  - The development proposed is erection of 3 stables, tack room/feed store and hay store, formation of hard standing and alterations to existing field.
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### Decision

1. The appeal is allowed and planning permission is granted for erection of 3 stables, tack room/feed store and hay store, formation of hard standing and alterations to existing field at land adjacent to Tyn-y-Wern, Hengoed, Oswestry SY10 7EP in accordance with the terms of the application, Ref 22/05708/FUL, dated 19 December 2022, subject to the conditions contained in the schedule at the end of this decision.

### Preliminary Matter

2. Following the issuing of the council's decision notice the National Planning Policy Framework (the Framework) has been updated. As the updates do not fundamentally alter that part referred to by the parties, it has not been necessary to consult them further.

### Main Issue

3. The main issue is the effect of the proposed development upon the character and appearance of the area.

### Reasons

4. The proposal is for stabling and associated development within the countryside as defined in the Shropshire Local Development Framework: Adopted Core Strategy (CS). Policy CS5 of the CS seeks to support leisure and recreation proposals which require a countryside location, where proposals are in accordance with other policies that seek to protect character and appearance. The policy is consistent with the Framework where it supports leisure development that respects the character of the countryside.
5. The appeal site comprises an undeveloped field located in the open countryside. Next to the site is a dwelling which is set back a considerable distance from the road and this is accessed via a long driveway with a gate set back from the road. The road itself is relatively narrow and bound by tall hedgerows. Within the wider area there are buildings of various design

- sporadically located and in a variety of uses. Given the undulating landscape these existing buildings can be seen from public roads and footpaths. The hedges and narrow rural lane leading to the appeal site, together with open, undeveloped fields and sporadically placed buildings provide an attractive landscape with a traditional open, rural character and appearance.
6. The appeal site is a large open field with the frontage to the road defined by a well-established boundary hedge. Notwithstanding the substantial hedge to the front boundary, the open field affords long distance views over it of the wider countryside.
  7. Buildings associated with equestrian uses are typically required to be located in countryside locations which normally provide appropriate space, facilities, grassland and environment for horses. As such, equestrian buildings generally do not appear out of character in the countryside. The proposed timber stable block would be a U-shaped single storey building with a shallow pitched roof. The building would be modestly sized and located close to the road. It would be visible from the road above the hedge line and from the vehicular access but given its modest size and siting towards the edge of the field it would not be prominent or inconsistent with the surrounding rural character. In addition, the hardstanding would be modest in size and visually insignificant in the context of the wider open field with little visibility from the road or adjacent land.
  8. Nevertheless, conditions requiring visibility splays and an increased radii have been suggested by the council. The effect of such conditions would be the reduction in the height of the hedge for a significant distance in both directions. If these were imposed, the hedge would no longer replicate the relatively high hedge rows that run along the site frontage and attention would be drawn to the appeal site and the proposed development. In this respect, I note the Parish Council's concerns about the effect of reducing the height of the hedge.
  9. The proposed access arrangements would set the gate back from the roadside. This would allow a vehicle with a trailer to be parked within the site without overhanging the road. Having exited the site in a vehicle via the existing access, when looking in the same direction as the access to Tyn-y-Wern I note that I was able to see for a significant distance because of the vehicular access to that dwelling. In the opposite direction, there was sufficient visibility to see oncoming road users for a moderate distance. The larger proposed access would also provide more space for manoeuvrability when entering and exiting the site.
  10. Taking into consideration the proposed use, existing visibility and proposed larger access, there is no substantive evidence that the significant visibility splays and increased radii would be necessary in this instance to serve the modest development with limited traffic generation. As such I see no reason to impose the suggested visibility splay and radii conditions.
  11. Consequently, for the reasons I have set out the design, use and siting of the building would not harm the character and appearance of the area. Therefore, the proposal would accord with Policies CS5, CS6 and CS17 of the CS and Policies MD7b and MD12 of the Shropshire Council Site Allocations and Management of Development Plan. These seek, amongst other matters, to ensure development protects, restores, conserves and enhances the natural, built and historic environment and is appropriate in scale, density, pattern and design taking into account the local context and character. They also support

Leisure proposals which require a countryside location. Additionally, the proposal would accord with the Framework insofar as it seeks to ensure developments are sympathetic to local character, including the surrounding built environment and landscape setting.

### **Other Matters**

12. I have been directed to applications for similar development that have either been refused or approved in the local authority area. Given that this scheme was refused based on the effect of the proposal upon the character and appearance of this area, the matter is specific to this site, as was the case for those other schemes. As such my conclusions on this matter are not necessarily comparable to other sites.

### **Conditions**

13. I have considered the planning conditions suggested by the council and the appellant, having regard to the tests set out in the Framework. Where appropriate, I have amended the wording to ensure they are reasonable given the scale of the development and site context and to ensure that they meet all other Framework tests for conditions.
14. Further to the statutory commencement condition, it is necessary in the interest of certainty that the development is carried out in accordance with the approved plans.
15. Whilst not suggested by the council a materials condition is necessary in the interest of the character and appearance of this countryside location.
16. A condition requiring a scheme of surface and foul water drainage is necessary to ensure the satisfactory drainage of the site in an area identified as at risk of surface water flooding. The appellant has agreed to the condition being pre-commencement which is necessary to ensure a satisfactory drainage system can be achieved.
17. A condition securing the provision of the bird and bat boxes is necessary to secure ecological enhancements to the site.
18. A condition requiring the access is laid out prior to the use of the stables is necessary in the interest of highway safety. For the reasons I have set out earlier specific visibility splay, and radii requirements are not necessary or reasonable conditions.
19. The Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. A condition was suggested to restrict permitted development rights to install floodlighting. The site is in the open countryside and includes the installation of a bat box and artificial lighting could affect the habitability of it which could affect a protected species. The site is also located close to a dwelling where external lighting could affect the occupiers' living conditions. Accordingly, it is necessary to control the installation of external lighting which would include floodlighting. However, a condition controlling external lighting would serve the same purpose as restricting permitted development rights.
20. Given the location of the site in the open countryside, if it was used for commercial purposes the use of the site would be substantively intensified.

Accordingly, in the interest of highway safety, as well as the living conditions of the neighbouring occupiers a condition requiring that the stables shall only be for private use is necessary and reasonable.

**Conclusion**

21. For the reasons given above I conclude that the proposed development would accord with the development plan as a whole. Therefore, the appeal is allowed.

*G Sibley*

INSPECTOR

### Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: DWG No. TYW/PP/01; DWG No. TYW/PP/02; DWG No. TYW/PP/03; and DWG No. TYW/PP/04.
- 3) No development shall be carried out 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 implemented before the development hereby approved is brought into use and retained thereafter.
- 4) No development shall be carried out above slab level until full details of all materials and finishes to be employed in the implementation of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and retained as such thereafter.
- 5) The access shown on DWG No. TYW/PP/03 shall be satisfactorily completed and laid out prior to the use of the stables hereby permitted commencing and shall thereafter be maintained at all times for that purpose.
- 6) Prior to the development hereby approved being brought into use the makes, models and locations of the 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 1 external woodcrete bat box, integrated bat brick or other roosting opportunity (such as raised timber cladding), suitable for nursery or summer roosting for small crevice dwelling bat species.
  - A minimum of 2 swallow nesting cups.
  - A minimum of 1 open-fronted nest box suitable for robins.
  - A minimum of 1 wren nest (wren specific).

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 be installed prior to the building being brought into use and thereafter be maintained for the lifetime of the development.
- 7) Details of any external lighting shall be submitted to and approved in writing by the Local Planning Authority before the development hereby permitted is brought into use. The development shall be carried out in accordance with the approved details and retained thereafter and no other external lighting shall be installed.
- 8) The development hereby permitted shall be used solely in connection with the private keeping of horses for the personal enjoyment of the owners of the site and no commercial use, including livery, riding lessons or schooling purposes shall take place at the site.

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