



Committee and Date  
North Planning Committee  
12<sup>th</sup> July 2016

Item  
**6**  
Public

## Addendum Development Management Committee Report

Responsible Officer: Tim Rogers

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### Summary of Application

<b>Application Number:</b> 14/03484/OUT	<b>Parish:</b>	Whitchurch Rural
<b>Proposal:</b> Outline application (access for approval) for residential development (some affordable housing) and associated amenity space;		
<b>Site Address:</b> Proposed Residential Development South Of Ash Hall Ash Magna Whitchurch Shropshire		
<b>Applicant:</b> R H Gregory And Company		
<b>Case Officer:</b> Sue Collins	<b>email:</b> <a href="mailto:planningdmne@shropshire.gov.uk">planningdmne@shropshire.gov.uk</a>	

**Recommendation: Refusal as set out in this Addendum to the Committee report dated 17<sup>th</sup> February 2015.**

#### 1.0 Background

- 1.1 At their meeting on the 17<sup>th</sup> February 2015 the North Planning Committee resolved to approve the proposed development subject to the applicants entering into a S106 to ensure that appropriate affordable housing contribution was paid.
- 1.2 Since that meeting a number of circumstance have changed in connection with policy and the title of the site. The applicant has tried to complete a S106 agreement for the development but has had problems proving title to a small portion of the land where the telephone exchange was once located. Therefore amended plans have been provided which remove this section of land from the proposal.
- 1.3 Following receipt of the amended plans, re-consultations have been carried out but no responses have been received.
- 1.4 In view of the changes, it is necessary for the application to be represented to the Planning Committee for reconsideration.

#### 2.0 Policy

- 2.1 At the time of the original decision being taken, Shropshire did not have a five year housing land supply and it was considered that the development would be

sustainable as required by the NPPF. Furthermore the proposal would not only make a contribution to affordable housing, but would also provide an opportunity for the Blacksmith's Forge to be developed and retained. As a non-designated heritage asset this was considered to be a contribution to the sustainability argument for the proposal as well as provision of a contribution towards affordable housing. It was resolved that subject to the applicant entering into a S106 legal agreement for the affordable housing contribution, that planning permission be granted.

- 2.2 Under section 38(6) of the Planning and Compulsory Purchase Act 2004, all planning applications must be determined in accordance with the adopted development plan unless material considerations indicate otherwise. Since the adoption of the Councils Core Strategy the National Planning Policy Framework (NPPF) has been published and is a material consideration that needs to be given weight in the determination of planning applications. The NPPF advises that proposed development that accords with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused unless other material considerations indicate otherwise. The NPPF constitutes guidance for local planning authorities as a material consideration to be given significant weight in determining applications.
- 2.3 On 17<sup>th</sup> December 2015 SAMDev was adopted which identified Ash Magna as part of a community cluster together with Ash Parva. There is a guideline of 15 dwellings being provided up to 2026. As a result of the adoption of SAMDev policies S18.2(ii), CS4, MD1, MD2 and MD7a also become relevant to the proposed development.
- 2.4 In addition to this change recently the matter of affordable housing contributions has altered following a recent high court decision.
- 2.5 The site is located outside the development infill boundary for Ash Magna and as such is considered to be open countryside. At the time of the previous recommendation and acceptance greater weight was given to the NPPF and its requirement for the presumption in favour of sustainable development. However since the adoption of SAMDev this is considered up to date and therefore takes precedence as the Local Plan. As such whilst the site may be adjacent to the development boundary it is outside and therefore is contrary to the up to date policies.
- 2.6 With regard to affordable housing as of the 20<sup>th</sup> June 2016, Shropshire has become a rural county which allows identified parishes to be subject to a lower development level at which affordable housing contributions are required. Whitchurch Rural is one of these parishes and as such Affordable Housing Contribution is payable on developments of five dwellings or more. As this proposal is for seven dwellings it will still meet the criteria for an affordable housing contribution to be made.
- 2.7 Policy CS4 of the Shropshire Core Strategy encourages development to be located within the development boundaries of identified community hubs and clusters and therefore the proposal is contrary to this policy. As open market housing, the proposal would not meet the criteria of policy CS5 which allows for

exception housing to be provided in the countryside.

2.8 Whilst it could be argued that the site remains sustainable, and an affordable housing contribution will still be required, it is considered with consideration to the location, scale of development and overall material considerations that in this instance there that is insufficient justification to approve the scheme contrary to adopted policy.

### 3.0 **Change to Site Area**

3.1 The land that has been removed from the proposal lies between plots 6 and 7 and is the site of the old telephone exchange. This has been removed in order to allow the S106 for the affordable housing contribution to be progressed. The indicative layout plan that has been submitted identifies that sufficient land is still included to allow for seven dwellings. Although plot 6 is reduced in size this would still allow for a modest sized dwelling with a reasonable curtilage.

### 4.0 **Conclusion**

4.1 There have been changes to the adopted policy of the Council since the initial resolution was made to approve the proposed development given that greater weight be attached to the NPPF and the presumption in favour of sustainable development. However with the adoption of SAMDev this now carries more weight as the up to date local plan. Therefore as the site lies outside the development boundary for Ash Magna and with consideration also to all the material considerations, on balance it is considered that this proposal is contrary to policies S18.2(ii), CS4, CS5, and MD1 of the Shropshire LDF and is recommended for refusal.

## 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 first arose.

Both of these risks need to be balanced against the risk of not proceeding to determine the application. In this scenario there is also a right of appeal against non-determination for application for which costs can also be awarded.

## 8.2 **Human Rights**

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

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

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

## 8.3 **Equalities**

The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed in planning committee members' minds under section 70(2) of the Town and Country Planning Act 1970.

## 9.0 **FINANCIAL IMPLICATIONS**

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

## **Reason for Refusal**

The proposed development is on land located in open countryside that is not within the defined development boundary for Ash Magna. The proposal would have an unacceptable impact on the character and appearance of the area and the natural environment and the visual rural landscape. Therefore and as such is considered contrary to the overall aims and objectives National Planning Policy Framework, SAMDev policy S18.2(ii) and policies CS4, CS5 and MD1 of the Shropshire LDF.