

Development Management Report

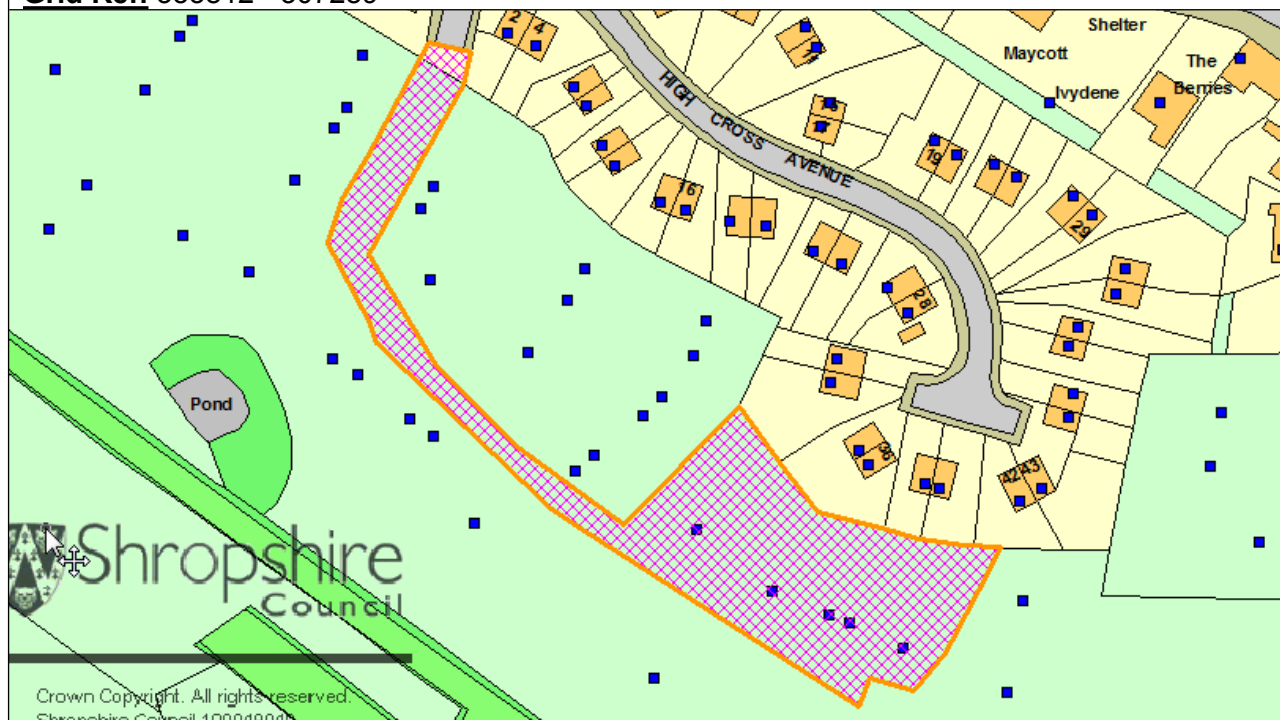
Responsible Officer: Tim Rogers

Email: tim.rogers@shropshire.gov.uk Tel: 01743 258773 Fax: 01743 252619

Summary of Application

<u>Application Number:</u> 18/03427/FUL	<u>Parish:</u>	Berrington
<u>Proposal:</u> Erection of 5No. dwellings with access road to supersede existing consent for plots 17-21 of existing permission 16/00188/REM pursuant to outline consent 14/02406/OUT		
<u>Site Address:</u> Land South of Holcroft Way Cross Houses Shrewsbury Shropshire SY5 6LS		
<u>Applicant:</u> Fletcher Homes (Shropshire) Ltd		
<u>Case Officer:</u> Jane Raymond	<u>email:</u> planningdmc@shropshire.gov.uk	

Grid Ref: 353812 - 307289



© Crown Copyright. All rights reserved. Shropshire Council 100049049. 2016 For reference purposes only. No further copies may be made.

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

REPORT

1.0 THE PROPOSAL

- 1.1 This application relates to the erection of 5 houses on plots 17-21. The houses are identical to those already approved under reserved matters application 16/00188/REM for the erection of 39 houses. The application has been submitted as the houses have been built higher out of the ground and have ground floor finished floor levels higher than that indicated on the approved plans.

2.0 SITE LOCATION/DESCRIPTION

- 2.1 The site is development land immediately to the south and to the rear of the semi-detached two storey houses situated in High Cross Avenue in the village of Cross Houses.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

- 3.1 The scheme does not comply with the delegation to officers as set out in Part 8 of the Shropshire Council Constitution as the Parish Council have submitted a view contrary to officers that the local member considers to be based on material planning reasons and the Area Planning Manager in consultation with the Committee Chairman and Vice Chairman agrees that the Parish Council has raised material planning issues and that the application should be determined by committee.

4.0 Community Representations

4.1 - Consultee Comments

4.1.1 WSP on behalf of SC Drainage:

1. When comparing the levels of the drainage layout on drawing HW-GA-200 Rev A approved for 16/00188/REM with those shown on Rev I submitted for this application, it would appear that the levels of the storm water drain in the highway where the French drain connects remains unaltered.

2. No French drain is shown on Drawing number HW-GA-200 Rev I.

3. It should be confirmed that the French drain to the rear of plots 17-21 has been installed and connected in accordance with drawing HW-FD-227 Rev A and levels as shown on drawing HW-GA-200 Rev I

4. Any existing drainage system, damaged by the new development should be repaired to pre-commencement condition and operational function.

- ##### 4.1.2 WSP on behalf of SC Highways:
- It is considered that the proposed changes to the previous planning consent detailed in this application are unlikely to change the previously assessed traffic impact on the adjacent highway network. As these details propose minor changes to the currently acceptable design and layout for future

adoption under S38 agreement an appropriate amendment to the S38 should be submitted to the Highway Authority, to maintain the validity of the S38 Agreement and ensure the proposed estate road and surface water drainage infrastructure can be adopted, once completed.

No Objection subject to the development being carried out in accordance with the approved details and in accordance with the suggested conditions and informatives.

- 4.1.3 **SC Affordable Housing:** No adverse comments subject to the completion of a Deed of Variation to safeguard the affordable dwellings permitted under the Outline Consent.

4.2 - Public Comments

- 4.2.1 **Parish Council:** Fletchers obtained planning permission whilst SC did not have a 5yr land supply due to its sustainable location. The PC did not object but decided to work constructively with Fletchers and they attended numerous PC meetings. The M.D. Clive Benfield and Jonathan Westwood attended, the promise to the PC was that they would be considerate constructors keep us fully informed at all time and improve the drainage issues which has caused flooding on High Cross Ave in the past and stick to the approved layout so as not to at any time increase the height of any dwellings. They assured us that the improvements to the French drain at the rear of High Cross Ave would be carried out prior to commencement of construction.

Early in March 2018 there was worse flooding on High Cross Ave than there had ever been, the French drain at the rear hadn't been touched. Fletchers had dug a massive open pit on site to collect the water and pump it out but there was still over 400mm in the gardens on High Cross Ave causing considerable distress to residents. A site meeting was held on 5/04/2018 on High Cross Ave at 6.30pm attended by Clive and Jonathan, the drainage engineer Andy Gough was unavailable! We were told at this point that the works would not be carried out until the road drains were installed, we asked the drainage engineer to attend the next PC meeting. The first enforcement notice in relation to the drainage and height was issued on the 27/04/2018 ref 18/05908/ENF in relation to plots 16 and 17 at this point we do not believe the other plots in question 18,19,20 and 21 had been started. On the 27th April photos were sent to enforcement as residents were concerned about the clay being used to fill the bases inside the foundations and that the foundations were approximately 2 metres above ground level on plot 17, and even if they are reduced by 850mm they are still approximately 1 metre above what was the existing ground level.

Fletchers had been asked to stop work at this stage however they continued to put the Footings' in for 18,19,20 and 21. We again contacted enforcement in June. We understand further discussions took place with enforcement and work stopped in July. Despite invitations to PC meetings in June and July for Fletchers and the drainage engineer no one attended or even offered apologies.

An urgent meeting was requested and on the 16th July 2018 Fletchers and the drainage engineer Andy Gough finally met with the PC and residents on site. (This was 3.5months after the original meeting which was not in the spirit of our original

agreement) The issue was started when Fletchers had to avoid tree roots, they moved the drainage however the PC believes that at this point Fletchers raised the road drainage and so as a consequence raised the height of the FFH of the houses. This increase in the height of the road drainage has serious consequences for the French drain as the ground naturally slopes down towards High Cross Ave so it is the PCs opinion that the French drainage will not work as the road drainage into which they are supposed to flow are now too high. Some levels were taken by the PC to back this up and we would ask that a condition be placed on the planning application to ensure that these drains work. The drainage engineer did not argue with our point and stated that he couldn't check every measurement and that his plans works but could not certify that the drainage had been built to his plans. He also stated that a temporary measure would have been to temporarily connect the French drain to the main drain but this has not been done.

The drainage drawings given to the PC is not the same as the one submitted with the application originally the drain was much longer and dog legged around number 43 High Cross Ave by at least 20 metres. Again conditions need to be imposed. When Fletchers opened up and put in site entrance off HOLCROFT way they cut through the French drain and flooded the gardens of number 2 High Cross Ave this garden had never previously been flooded. The reinstatement needs to be conditioned.

From reading the planning statement it looks like Fletchers wanted to deal with this under a s73 without any consultation with the PC.

Reference is made to part M of the building regulations, however having read these we do not agree, there are other dwellings on site with slopes on their drives and indeed it states the gradient can be 1:40 or provide disability access by entrance. If the dwellings on the other side of the road are at the correct level then why does the house immediately opposite need to be 850 mm higher. How does the person(s) feel who have bought the plot opposite which is less than 10 metres away feel about having a house opposite that is 850 mm higher? Shouldn't they be protected as presumably they are unaware of the increase in height.

The Parish Council feel that the overbearing nature of the proposal will lead to loss of privacy and being overlooked for residents near these dwellings, and do not agree with them for that reason.

Did the applicant make clear to SC at the section 38 stage that they were in fact raising the FFH by up to 850 mm. Do the drainage team at SC talk to the planning department about such an increase? As considerate constructors are the contractors not duty bound to inform the residents and PC?

On the plans attached to the application general arrangement plan Jan 2016 12 states that Finished floor levels shall be checked and finalised by the architects prior to any works commencing. Clearly this DID NOT happen.

18 states currently most of the existing green field run off discharges into the ditch course.....there is NO evidence of flooding?

To summarise the road drainage should be checked independently and set at the correct level. Plots 17 to 21 should be put back to the correct height. The French Drain should be installed and an undertaking entered into with Fletchers to prevent any future flooding and should be repaired at the site entrance via HOLCROFT way.

The French drains should be connected to discharge into the main drainage system as per the approved drawings.

4.2.2 Five letters of objection summarised as follows:

- ② The finished floor level (FFL) of the house on plot 22 is being built higher than approved and instead of 0.75metres above ground height is 1.4metres above the original ground height and will result in a loss of light and loss of privacy and will be overbearing and intrusive.
- ② The developer is continuing to build when they do not have permission for the houses being built at the height that they are.
- ② The lands slopes towards High Cross Avenue and the surface water drainage from the site will result in flooding of properties in High Cross Avenue.
- ② The ground levels have been raised by at least a metre around plots 18 to 22 and by approximately two metres around plot 17 and now have a greater fall directly into the gardens of the properties 32-43 High Cross Avenue.
- ② The French drain had not been connected to the main drain under the road and even if it was water cannot run uphill.
- ② Wants reassurance that the existing French drain which went from Holcroft Way to the end of the field round the cul-de-sac of High Cross Avenue is maintained in perfect working order, as it was prior to construction and not blocked or damaged.
- ② The ground floor FFLs of plots 17 to 21 have been raised by between 370mm and 850mm, according to the Planning Statement. As the original approved FFLs were already substantially higher than the existing ground levels, to raise them further is unacceptable and results in overlooking and a loss of privacy and will appear overbearing.
- ② Concerned about the validity of the measurements taken by Fletcher Homes and the information provided in their Planning Statement and requests that the levels are independently checked.
- ② The cleverly written Planning Statement is deliberately misleading and the reality can only be seen on site and from the perspective of the neighbouring properties.

5.0 THE MAIN ISSUES

The principle of development has already been established by the previous permission and the key issue is impact on residential amenity.

6.0 OFFICER APPRAISAL

6.1 Impact on residential amenity

6.1.1 The applicant has provided sound technical reasons for the houses on plots 17-21 being built at the height that they have. It is primarily due to the level that the road was required to be built at (to avoid damage to the roots of a tree), the gradient required for the foul drainage (that lies under the road) to work effectively and due to the proximity of the garage and the house on plot 17 to the road and to provide a drive with a suitable gradient and access that complies with Part M Access of the building regulations. However notwithstanding these reasons for the houses being built higher than originally approved the key issue is whether the dwellings as erected on site are unacceptable in terms of impact on residential amenity.

6.1.2 The impact on residential amenity of the proposed houses was considered at the reserved matters stage and paragraph 6.7.1 of that report stated the following:

The nearest properties to the proposed new houses are those in High Cross Avenue to the North. The new houses are positioned a sufficient distance away and satisfactorily orientated not to result in overlooking or a loss of privacy. The proposal will obviously affect the outlook from these existing properties but there is no right to a view and it is considered that the buildings will not appear unacceptably overbearing or obtrusive. A condition can be imposed to ensure that no additional windows are added to the North facing elevations of the Attingham house type on plot 1 and the Blakemere house type on plot 22 and that the first floor windows which are bathrooms are obscure glazed. Plots 8 and 11 closest to the properties in High Cross Avenue are bungalows.

6.1.3 Other than the bungalows on plots 8 and 11 the house on plot 22 is the closest to the properties in High Cross Avenue. This application does not include plot 22 as Fletchers have confirmed that the house on plot 22 is being built at the height indicated on the approved plans. The council is arranging for the heights of the houses to be independently surveyed and members will be updated at committee.

6.1.4 The difference in heights of the houses on plots 17 -22 when comparing the previously approved plans and the measurements on the submitted plans is indicated in the table below:

Plot number	Approved height	Proposed height	Difference
17	68.400	69.250	0.850
18	68.200	68.500	0.300
19	68	68.370	0.370
20	68	68.370	0.370
21	68	68.370	0.370
22	68	68	0

- 6.1.5 The difference in height ranges from 300mm to 850mm but residents are concerned that the houses have been built even higher than this and that the outlook from their houses and the feeling of being overlooked would be improved if the houses as now built on plots 17 – 21 were a metre or more lower.
- 6.1.6 Members will be updated as to whether the houses have been built higher than that indicated on the submitted plans and in the table above. However notwithstanding these measurements the key issue in determining this application is whether it is considered that the houses as built would appear unacceptably overbearing and intrusive and result in overlooking and a loss of privacy sufficiently significant to justify refusal.
- 6.1.7 Officers have visited the site and consider that the houses as built on plots 17 – 21 do not appear over bearing or obtrusive and would not result in significant overlooking or a loss of privacy to justify refusal. Although officers understand that residents would prefer it if the houses could be reduced in height by half a metre or more it is considered that the houses at the height that they have been built and with a separation distance of over 30 metres, are not unacceptable.
- 6.1.8 If the application at the reserved matters stage had included 3 storey houses on plots 17 – 21 at the FFL indicated, officers would not have found this unacceptable. That the ground levels have been raised and the FFL raised so that the houses appear up to a storey higher than existing residents expected is not considered justification for refusal of the application.
- 6.2 Other matters**
- 6.2.1 Drainage: Residents are concerned that the increased ground levels and floor levels will exacerbate a previous drainage problem where water from the field at the rear of their houses (now the development site) drained towards their properties and flooding their gardens in times of heavy rain. This flooding was due to the ground being heavy clay and there being no effective drainage system to remove the water from the land and the surface water could not soak away from the existing field trench because there was no outfall.
- 6.2.2 The amount of land that can collect surface water will be reduced as the rain falling on the roofs and hard surfaced areas of the development will drain via the surface water drainage system to the attenuation pond. All surface water from these surfaces will be attenuated (held back) in the drainage system before discharging at a slow rate that will be no faster than greenfield run-off rates.
- 6.2.3 The area of land remaining that can collect rainwater to drain naturally or in times of heavy rain drain towards High Cross Avenue is therefore reduced. Any rain that collects and runs off these remaining areas (predominantly gardens and public open space) will be collected in the new and improved French drain to the rear of the properties in High Cross Avenue. This French drain will flow downhill to the large drainage pipes that are deep under the road and then discharge to the attenuation pond. The proposed drop of 740mm will be more than adequate to ensure that the French Drain feeds into the surface water drainage system under the road.

- 6.2.4 The proposed drainage is therefore an improvement on the previous situation where the existing field trench did not connect to any drainage system and therefore in times of heavy rain could not cope and the rear of High Cross Avenue would flood.
- 6.2.5 The particularly high rain fall in March resulted in flooding as the drainage pipes under the road, into which the French Drain will discharge, were not yet complete and therefore there was no outfall for the French Drain to connect to. Once all the drainage is complete and connected the proposal will result in an improvement to the flooding issues experienced in March and historically before the development commenced.
- 6.2.6 The previously approved drawings did not show the existing field trench or the now proposed and improved French drain being connected to the main surface water drainage system so this proposal is not only an improvement to the historic situation but is an improvement to the previously approved drainage system for this site.
- 6.2.2 Highways: The proposed road layout serving the proposed development has not changed from the Reserved Matters and Highways have no objection to the proposal subject to a condition to ensure satisfactory access to the site and that an appropriate amendment to the S38 is submitted to the Highway Authority to ensure the proposed estate road and surface water drainage infrastructure can be adopted, once completed.
- 6.2.3 Affordable Housing: The affordable housing team has requested that a deed of variation is required. However as this application is a full application for planning permission for 5 open market houses it does not affect the affordable housing secured by the S106 attached to the outline consent for the whole of the site.

7.0 CONCLUSION

- 7.1 Whilst officers agree with the local member that approving this application gives out the wrong message to developers about not adhering to the approved plans and that they are being allowed to carry on regardless this is not a justifiable reason to refuse this application. In this instance the applicant has provided sound technical reasons for the increase in height. However notwithstanding these reasons for the houses being built higher than originally approved the key issue is whether the dwellings as erected on site are unacceptable in terms of impact on residential amenity.
- 7.2 It is considered that the proposed houses at the height constructed on plots 17 -21 will not appear obtrusive or overbearing or result in unacceptable overlooking and a loss of privacy due to the distance between the existing and proposed houses of approximately 30 metres. The proposed drainage is considered to not only be an improvement to the historic situation but is an improvement to the previously approved drainage system for this site. The proposed development is therefore considered to accord with CS6 and MD2.

8.0 Risk Assessment and Opportunities Appraisal

8.1 Risk Management

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

- ⑦ 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.
- ⑦ 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:
CS6 and MD2

RELEVANT PLANNING HISTORY:

14/02406/OUT Outline application for residential development to include means of access
GRANT 4th February 2015

16/00188/REM Approval of Reserved Matters (appearance, landscaping, layout and scale)
pursuant to 14/02406/OUT (Phase 1) for residential development to include means of access
GRANT 8th June 2016

11. Additional Information

List of Background Papers

18/03427/FUL: Application documents associated with this application can be viewed on the
Shropshire Council Planning Webpages

Cabinet Member (Portfolio Holder): Cllr R. Macey

Local Member: Cllr Claire Wild

Appendices

APPENDIX 1 – Conditions

APPENDIX 1

Conditions

STANDARD CONDITION(S)

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

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

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

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

CONDITION(S) THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES

3. Prior to commencement of the development an application for amendments to the S38 to include the amended design for the construction of the roads, footways and accesses together with details of the disposal of highway surface water shall be submitted to the Highway Authority for approval. The agreed details shall be fully implemented before the development hereby approved is first occupied.

Reason: To ensure a satisfactory access to the site and to maintain the validity of the S38 Agreement and ensure that the proposed estate road and surface water drainage infrastructure can be adopted, once completed.

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

4. The surface water drainage hereby approved and indicated on the drawing reference HW-FD-227 Rev A and drawing HW-GA-200 Rev K shall be fully implemented prior to the occupation of the dwellings.

Reason: To ensure satisfactory drainage of the site.

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

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

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