

Development Management Report

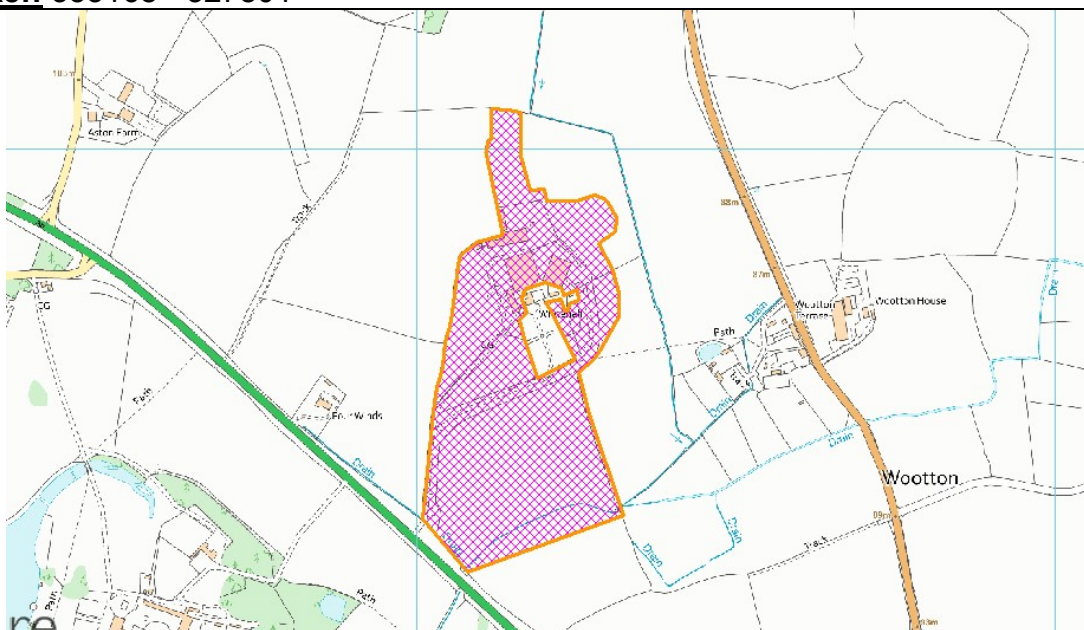
Responsible Officer: Tim Rogers

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Summary of Application

Application Number: 18/02657/FUL	Parish:	Oswestry Rural
<p>Proposal: Application under Section 73A of the Town Country Planning Act 1990 (as amended) for regularisation of extensions to existing buildings together with lawful uses relating to a mixed use rural enterprise (A1, A3, B1, B2 and B8); improvements to existing vehicular access including creation of visibility splay; change of use of land to sculpture park and car parking areas</p>		
<p>Site Address: Black Country Metal Works Ltd Whitehall Farm Queens Head Oswestry Shropshire</p>		
<p>Applicant: Black Country Metal Works Limited</p>		
<p>Case Officer: Philip Mullineux</p>		<p>email: planningdmnw@shropshire.gov.uk</p>

Grid Ref: 333168 - 327801



Recommendation: Delegate to the Planning Services Manager for approval subject to the conditions as outlined in appendix one attached to this report and any modifications to these conditions as considered necessary by the Planning Services Manager.

REPORT

1.0 THE PROPOSAL

1.1 Application is made in 'FULL' under Section 73A of the Town Country Planning Act 1990 (as amended) for regularisation of extensions to existing buildings together with lawful uses relating to a mixed use rural enterprise (A1, A3, B1, B2 and B8); improvements to existing vehicular access including creation of visibility splay; change of use of land to sculpture park and car parking areas at the Black Country Metal Works Ltd, Whitehall Farm, Queens Head, Oswestry, SY11 4JH.

1.2 Information submitted in support of the application includes a planning statement, site location plan, block plan, statement of community involvement, elevation and floor plans of showrooms, storage space, distribution, a plan indicating building areas on site, landscape and visual impact assessment, noise assessment, land classification report, landscape strategy, highway report, highway and access plan, disabled access and highway plan, event traffic management plan, road safety audit, flood risk assessment, drainage report, ecology reports and business review. Further information clarification on aspects of the application were received during the application processing and this includes reference to drainage clarification, events traffic and parking management, a retail impact assessment and economic benefits report.

1.3 In consideration of the various pieces of further information received a full 21 days re-consultation on the application was carried out on 14th February 2019 and this gave all statutory consultees, the Parish Council and neighbours the opportunity to further comment on the application. Detail on this re-consultation was made available on the Council's application website.

1.4 The Planning Statement in support of the application refers to the proposal stating: *that the retrospective application under Section 73A of the Town Country Planning Act 1990 (as amended) is for the extension and alterations to existing lawful buildings with a series of lawful uses relating to a mixed use rural community focused enterprise (A1, A3, B1, B2 and B8) granted in accordance with application OS/09/15876/FUL to include improvements to an existing access and change of use of land (D2) to formalise Shropshire's only sculpture park.* The use of land and buildings within this description is described fully in this report. This application now seeks to regularise the current position on site without any additions at all. For the avoidance of doubt there are no new buildings proposed as part of this application.

2.0 SITE LOCATION/DESCRIPTION

2.1 The Black Country Metal Works Ltd also known as The British Ironworks in accordance with detail on the application form covers an area of 13.92 hectares

and is mainly grade 3 agricultural land in accordance with the agricultural land classification. (A detailed report on the agricultural land classification for the site has been submitted in support of the application and this provides an assessment of the land classification, the largest area of which falls into class 3a). The site is located approximately 3 miles to the east of Oswestry, accessed directly from the A5 public highway leading from Oswestry towards Queens Head. There are rural settlements in the surrounding area, these consist of West Felton approximately 1.5 miles south east of the site and Maesbury Marsh. Queens Head is the immediate and nearest settlement relating to the site. The British Ironwork Centre is located on the rural fringe of Oswestry.. The settlement of Whittington is located just under two miles north of the site. Also alongside on opposite side of the A5 and near to the site is the Oswestry Golf Club, this is immediately south of the site.

2.2 The site is a former working farmstead which was known as ‘Whitehall Farm’; a typical traditional Shropshire farmstead which still retains much of its original character in overall setting, and includes the two storey red brick farmhouse and its former farm buildings now in use as part of The Ironworks with other new buildings added to the site. The site is surrounded by open countryside which has other farmsteads and private dwellings dotted around in its rural landscape. The site is accessed via a private drive directly from the A5 public highway.

2.3 Planning permission was granted on 25th March 2009 (reference OS/09/15876/FUL), for the change of use of the traditional farm buildings to office and business suite, together with use of existing portal framed buildings for storage of trade only ironmongery, mail distribution, and alterations to provide office space. This permission established a B1, B2 and B8 use of the buildings and land within the approved red line. All of those buildings with the exception of the Dutch Barns form part of this current application. The Dutch Barns were later removed from the site and replacement buildings built in their place. (It has been established that this application as approved was also part retrospective). This report is on the basis of the 2009 permission being part prospective and part retrospective. As such the permission is deemed to have been granted from the time at which the retrospective use commenced therefore lawful commencement would have occurred on the grant of the permission and this is not precluded by the conditions which were worded as pre-commencement conditions. As such this report is on the basis that the 2009 permission remains extant. The current application under consideration seeks to regularise the Centre as it exists today.

2.4 Development on site consists of:

- Offices, workshops and storage distribution centre (Use Class B1, B2 and B8. (Much of this was approved use as part of the 2009 permission).
- Workshops
- Educational Room
- Aviary and falconry display sheds.
- Retail Showroom and Café (Use Class A1 and A3)
- Provision of **new** toilet facilities within existing building
- Change of use of land outside the originally approved red line associated with the 2009 permission. The proposed uses are as follows:
 - Creation of external sculpture park
 - Use of land as a landscaped recreational area

2.5 The application has been advertised in the local press as a 'departure to the local plan'. It was also advertised in the press as a major application and development that potentially affects the setting of listed buildings. A site notice was also placed on the entrance to the site from the A 5 public highway and immediate neighbours notified with regard to the proposal.

2.6 A screening opinion dated 19th February 2019 (updated), carried out in accordance with The Town and Country Planning Environmental Impact Assessment Regulations 2017 establishes that the development is not considered to require an Environmental Statement in support of the formal application – see para 6.2 below..

3.0 **REASON FOR COMMITTEE DETERMINATION OF APPLICATION**

3.1 The application is considered to represent significant development and has generated considerable public interest in support as well as some letters opposed to the development. The Planning Services Manager considers it necessary and appropriate for this application to be considered by the Planning Committee.

4.0 **Community Representations**

4.1 **Oswestry Rural Parish Council** has responded to the application indicating:

Further to the Parish Council's response submitted on 1 August 2018 and having studied the various reports and comments concerning this complex application, the Council wishes to respond further. The application states that access and egress will be controlled. However, it would appear that only on-site traffic is being controlled and not traffic exiting onto the busy A5. Indeed, the response from Highways England dated January 2016 and reiterated in an email signed and dated 4 March 2019 states that, in the interests of maintaining highway safety measures should be put in place for the efficient operation of the A5 Trunk Road and the works identified in Condition 1 should be completed in full. The Council therefore feels that traffic issues have not been fully addressed and recommends that the Fire Authority should be consulted. Furthermore, the Council feels that any economic benefit derived from this enterprise in terms of improving Oswestry's appeal as a tourism destination is purely speculative. However, the Council hopes that the applicant's expectations of community benefit will materialise in due course.

The earlier response indicated:

At the meeting of Oswestry Rural Parish Council held on 31 July 2018 the application was considered. The Parish Council noted the complexity of the application. The Council requested its response be submitted after Shropshire's officers and other specialists had reviewed the application and their reports/comments were available to view.

4.2 **Oswestry Town Council** has responded indicating:

I write further to the consultation with the Town Council on the above Planning Application that was considered by our Development & Planning Committee on Wednesday 3rd April 2019.

Firstly, the Councillors wish to strongly highlight their concerns and the precedent that has been set by inviting a Parish and Town Council to comment upon an application that relates to another Parish.

At our meeting we received attendance from several members of the public and, as a result, the Town Council have agreed to outline to you our serious concern that it would appear that Oswestry Rural Parish has not been fully consulted on this Planning Application, and therefore it is considered that any decision making by Shropshire Council on this matter can be open to challenge as a proper consultation has not taken place, then the due process would not appear to have been followed.

On the basis of the above, the Town Council therefore wish to formally object to the Planning Application until Oswestry Rural Parish Council has been properly consulted. At that time the Town Council would be prepared to view their comments and if considered appropriate. At this time, and when the views of Oswestry Rural Parish Council are known, then this Council would ask for an assurance that highway views and opinions will be reflected in any final report from Shropshire Officers to the Northern Area Planning Committee.

4.3 **Consultee Comments**

4.4 **Highways England** has responded to the application recommending conditions to be attached to any approval notice issued. The response indicates:

This response represents our formal recommendations with regard the above referenced planning application and has been prepared by Priya Sansoy, Assistant Asset Manager for Highways England.

In our previously issued formal response to the application (dated 6 August 2018) we recommended that a number of planning conditions be imposed in the interests of maintaining highway safety and the efficient operation of the A5 Trunk Road. In the intervening period the applicant has submitted an Events Traffic Management Plan and Parking Management Strategy that will relate to the discharge of two of these recommend conditions. In light of these submissions, and our review of these documents we have identified that an update of our recommend conditions is necessary.

We wrote further to you on 22 January 2019 setting out comments on the draft Events Traffic Management Plan and Parking Management Strategy outlining areas where these could be improved. Following submission of revised versions of both plans and our review of the the amendments made we can confirm we are content that these are suitable for use at this time.

In light of the traffic issues arising from the development and as considered by these plans we consider it will be necessary that they are subject to periodic review as circumstances regarding operation of the site and of traffic on the A5 at the site access are likely to be subject to change over time. The revised planning conditions

(Conditions 2 and 3 below) we have recommended propose that these be subject to an initial review after 12 months and then a further series of reviews at a timescale to be then agreed as part of the ongoing maintenance of these plans. As originally set out in our response of 6 August 2018 the recommend planning condition we have detailed at Condition 1 below requires highway works to the A5 trunk road. This remains an urgent requirement for delivery of the necessary infrastructure required to mitigate the traffic arising from the day-to-day operations of the site. For avoidance of doubt there are no changes to this wording or reason for this condition.

Highways England Planning Response (HEPR 16-01) January 2016

Condition 1:

Prior to the expiration of 12 months following date of this notice, the highways works to the A5 trunk road that form part of this permission, as detailed within drawing no. BI-AP-100, shall commence. These works shall be completed in full.

Condition 2:

The approved Parking Management Strategy shall be implemented in full accordance with the approved details. Following 12 months of the date of this permission the Parking Management Strategy shall be reviewed and an updated version shall be submitted to and be approved by the Local Planning Authority, in consultation with the Highways Authority for the A5 Trunk Road, alongside evidence that demonstrates the effectiveness of the existing strategy. The updated document shall take account of any further measures that may be identified as being necessary and shall be amended to reflect any changes to the site layout, parking provision or management. A strategy for ongoing periodic review of the Parking Management Strategy and any other necessary triggers points for review shall be detailed and agreed with the Local Planning Authority. The plan shall continue to ensure that offsite parking on the A5 trunk road does not occur.

Condition 3:

The Event Management Plan shall be implemented in full accordance with the approved details. Following 12 months of the date of this permission the Event Management Plan shall be reviewed and an updated version shall be submitted to and be approved by the Local Planning Authority in consultation with the Highways Authority for the A5 Trunk Road, alongside evidence that demonstrates the effectiveness of the existing Plan. The updated document shall take account of any further measures that may be identified as being necessary and shall be amended to reflect any changes to the site layout, parking provision or management. A strategy for ongoing periodic review of the Event Management Plan and any other necessary triggers points for review shall be detailed and agreed with the Local Planning Authority. The event management plan shall continue to ensure that volume of traffic utilising the site entrance to the A5 trunk road is managed and controlled where it is identified that the volume of traffic arriving or departing the site may give rise to concerns about the operation of the road.

Reason Conditions 1 to 3

In the interests of maintaining highway safety and the efficient operation of the A5 Trunk Road

An earlier response indicated:

HIGHWAYS ENGLAND (“we”) has been appointed by the Secretary of State for Transport as strategic highway company under the provisions of the Infrastructure

Act 2015 and is the highway authority, traffic authority and street authority for the Strategic Road Network (SRN). The SRN is a critical national asset and as such we work to ensure that it operates and is managed in the public interest, both in respect of current activities and needs as well as in providing effective stewardship of its long-term operation and integrity.

This response represents our formal recommendations with regard the above referenced planning application and has been prepared by Robert Jaffier, Asset and Resource Manager for Highways England.

Following the re-submission of the retrospective planning application for the British Ironwork Centre site, Highways England have undertaken a review of the proposed traffic generation provided by the applicant, which have been based on survey data undertaken between November 2017 and February 2018.

Our review of traffic originating from the development confirms that the levels of traffic likely to arise from the day-to-day operations of the site will require mitigation at the site's access with the A5. The form of improvement to the access has been proposed as part of the application and we can confirm that we agree this is suitable in traffic and engineering terms to manage the daily levels of traffic anticipated to arise.

This scheme is necessary due to the volume of traffic associated with the development which have implications for the continued safe and efficient operation of the A5 trunk road. The proposed access junction mitigation measures therefore should be implemented as soon as practicably possible. We note that management of parking on-site and the avoidance of off-site parking on the A5 trunk road will be necessary to support the physical mitigation measures proposed by the applicant to ensure the safe operation of the A5.

We note however that beyond the typical day-to-day operation of the site that events at the British Ironwork Centre are a common feature of its operation. Events are likely to result in higher than typically development traffic flows utilising the site access. Our review of the event schedule for the British Ironwork Centre, as displayed on their website, notes several music, children's and other events which are likely to prove to be popular. Where the traffic implications of such events may be significant then these should be managed to ensure vehicular traffic can safely access and egress the site via the A5.

Highways England Planning Response (HEPR 16-01) January 2016

We therefore recommend the applicant agree an Event Management Plan which will detail how the applicant intends to manage traffic arising from visitors into and out of the British Ironwork Centre on event days in circumstances where such events are likely to significantly exceed the development traffic flows considered as part of the application. Such a plan should suitably manage the effects of event traffic on the surrounding road network and provide particular consideration to the times when such traffic will coincide with peak hours on the A5 Trunk road.

For the reasons set out above Highways England formally recommends that the following Planning Conditions should be attached to any grant of planning permission

Condition 1:

Prior to the expiration of 12 months following date of this notice, the highways works to the A5 trunk road that form part of this permission, as detailed within drawing no. BI-AP-100, shall commence. These works shall be completed in full.

Condition 2:

A Parking Management Strategy shall be submitted and agreed by the Local Planning Authority in consultation with the Highway Authority for the A5 Trunk Road. The plan shall detail how parking shall be managed within the site to ensure that off-site parking on the A5 trunk road does not occur.

Condition 3:

An Event Management Plan shall be submitted and agreed by the Local Planning Authority in consultation with the Highway Authority for the A5 Trunk Road. The plan shall detail how traffic shall be controlled on days where organised and publicised events take place. The event management plan shall ensure that volume of traffic utilising the site entrance to the A5 trunk road is managed and controlled where it is identified that the volume of traffic arriving or departing the site may give rise to concerns about the operation of the A5 trunk road. The event management plan shall ensure that parking on site is managed in such a way to prevent off-site parking on the A5 trunk road.

Reason Conditions 1 to 3

In the interests of maintaining highway safety and the efficient operation of the A5 Trunk Road.

4.5 The Environment Agency has responded indicating:

An officer from the Environment Agency visited the site on 28 September 2018 to inspect the foul drainage system. The applicant had also been taking water meter readings in order to estimate a daily volume of sewage generated by the business. It is believed that on average the business generates about 3.9 cubic metres of sewage effluent a day. The information provided in the drainage report and in the drainage plan is considered reasonably accurate. The existing system of the two septic tanks is currently unsatisfactory however and has led to localised septic tank pollution of the dry ditch course which flows along the western site boundary.

It is not clear how effluent from the larger three bay septic tank has gained access to the ditch course however the applicant has agreed to replace the tank with a modern sewage treatment plant to British Standard BS EN 12566. We would also require the existing soakaway system to be investigated and improved.

The smaller septic tank (labelled tank 4 on the block plan) is unsatisfactory as it is sited too close to the surface water ditch. There is clear evidence of septic tank effluent from the tank in the adjacent ditch. We would recommend that this septic tank is discontinued and the foul drainage connected to one main package treatment plant.

The Government has allowed certain domestic dwellings and small businesses to operate to General Binding Rules (GBR) without the need for an Environmental Permit in relation to the treatment and discharge of sewage effluent. Black Country Metal Works Limited however would exceed the permitted volume of treated effluent which could be discharged into the ground under the GBR. The Agency has thus recommended that the Company apply for an Environmental Permit in order to regulate this activity.

Condition: The development hereby permitted shall not be commenced until such time as a scheme for the disposal of foul effluent has been submitted to, and approved in writing by, the local planning authority. The scheme shall be implemented as approved.

Reason: To prevent pollution of the water environment.

In summary the Environment Agency is not opposed to planning permission being granted to the Company however improvements are required to the existing septic tanks and soakaway systems which will be secured through the Environmental Permit

4.6 **SC Land Drainage** have responded to the application with **no objections** indicating:

The technical details submitted for this Planning Application have been appraised by WSP UK Ltd, on behalf of Shropshire Council as Local Drainage Authority. All correspondence/feedback must be directed through to Shropshire Councils Development Management Team. The Agent's letter regarding the foul water drainage dated 14 January 2019 is in response to the Environment Agency's consultation. The surface water drainage in the Conclusions & Recommendations in the Drainage Report is acceptable.

Earlier responses indicated:

The technical details submitted for this Planning Application have been appraised by WSP UK Ltd, on behalf of Shropshire Council as Local Drainage Authority. All correspondence/feedback must be directed through to Shropshire Council's Development Management Team.

The Conclusions & Recommendations in the drainage Report are acceptable

An earlier response indicated:

The technical details submitted for this Planning Application have been appraised by WSP UK Ltd, on behalf of Shropshire Council as Local Drainage Authority. All correspondence/feedback must be directed through to Shropshire Council's Development Management Team.

The site is greater than 1.0 Ha. and a FRA has been produced. In the FRA, it states that there will be no alteration to the number or type of buildings with existing internal driveways and parking areas retained. Much of the site drains to soakaways and/or via a piped system to the ditches and watercourse. SuDS

techniques are currently used within the development with the use of water butts and rainwater harvesting.

Therefore the existing surface water drainage arrangements are acceptable

4.7 **SC Public Rights of Way** have responded indicating they wish to make no comment on this application.

4.8 **SC Archaeology Manager** has responded indicating:

We have no comments to make on this application with respect to archaeological matters.

4.9 **SC Tree Officer** has responded to the application indicating:

The proposed development will not impact on significant trees and any loss associated with the removal of vegetation to form visibility splays will be mitigated though the planting undertaken on the site. No objection to the proposed development

4.10 **SC Planning Ecology** has responded to the application indicating:

Recommendation:

Conditions and informatives are recommended.

The Brief Landscape Management Plan (Greenscape Environmental, April, 2017), which was submitted for the previous application (16/04624/FUL), should be attached to this application.

Ecological surveys were carried out on this site in January and March 2017 by Greenscape Environmental. A Brief Landscape Management Plan was also submitted with the previous application (16/04624/FUL); this should be attached to this application.

Below I have repeated the comments I made for 16/04624/FUL.

Habitats

Habitats on the site consist of semi-improved species-poor grazed grassland, amenity grassland, species-poor hedgerows (mostly intact), ditches, drains, mature trees, marshy grassland, a small area of semi-improved grassland with areas of rush, scrub, a small dry pond, disturbed ground, bunds, buildings, hardstanding and post-and-wire fencing.

The Brief Landscape Management Plan (Greenscape Environmental, April, 2017) includes habitat enhancements, planting suggestions and maintenance schedule.

The proposed landscaping and enhancements will improve the value of the site for a wide range of species.

Bats

None of the buildings on the site were considered suitable to support roosting bats.

Many of the mature oak trees around the site contained potential roost features. None of the trees will be directly affected by the development. Should any works to the mature trees be required in the future (e.g. felling, lopping, crowning, trimming) then this should be preceded by a bat survey to determine whether any bat roosts are present and whether a Natural England European Protected Species Licence is required to lawfully carry out the works.

The site, particularly the boundaries, are highly likely to be used by foraging and commuting bats.

Any new lighting on the site must be sensitive to bats and follow the Bat Conservation Trust's guidance.

Bat boxes could be erected on suitable mature trees to enhance the roosting opportunities available.

Great crested newts

In their report, Greenscape identify two ponds within 500m of the site, one which lies 45m to the east of the site boundary and another which lies 160m to the south-west.

The pond which lies 45m to the east was subject to a Habitat Suitability Index assessment which calculated the pond as having 'Below Average' suitability to support great crested newts. The other pond (160m to the south-west) was discounted from assessment due to the presence of a major road which forms a significant barrier to newt dispersal.

There are additional mapped ponds within 500m which haven't been acknowledged in Greenscape's report. These ponds lie 385m to the north (at Yew Tree House), 445m and 470m to the north-west (at The Laurels) and 480m to the south-west. However, given the distances between the ponds and the site, I do not consider that these ponds need to be assessed.

'The pond will not be directly affected by any works on the field, as nearby drains flow away from the pond. The development will enhance the terrestrial habitat for newt species, and perhaps encourage newts into the area if standing water is created.'

Site materials should be stored off the ground, e.g. on pallets or in skips, to prevent them being used as refuges by wildlife.

Trenches should be closed overnight or contain a ramp so that any animals that become trapped have a means of escape.

Greenscape recommend the creation of a pond 'in the low area between the large and the triangular field which make up field 3. The drain can be used to assist with the maintenance of water levels.' The creation of hibernacula and a management plan for the pond ('to include a scheme of vegetation control and best methods of vegetation removal') are also recommended.

Badgers

'Towards the western end [of the southern boundary] there is a historic badger sett. After discussion with the client, it is understood that a badger activity survey was conducted within the last two years which found no activity associated with this sett. Findings from the site visit in March 2017 found nothing to dispute these findings. All the sett entrance[s] were littered with windfall and sticks – objects which would be actively cleared in an occupied sett. Additionally, almost all sett entrances were littered with rabbit droppings, suggesting rabbit occupation rather than badgers. Whilst it is not anticipated that badgers occupy this sett any longer, snuffle holes were found within this field that are of a size expected from badger activity.'

'Various mammal tracks were observed along field margins, but no evidence was found that allowed a specific identification.'

Should any evidence of badgers be discovered prior to or during works, advice should be sought from a suitably qualified ecologist.

Water voles

Although suitable habitat exists in places, no evidence of water voles was observed along the banks of any of the drains and ditches. Should any evidence of water voles be discovered prior to or during works conducted near the ditches or drains, advice should be sought from a suitably qualified ecologist.

Barn owls

In January 2017, an active barn owl nest was observed in a dead tree along the eastern boundary. 'Unfortunately, in the high winds of Storm Doris, this tree has been damaged to the point of unsuitability for barn owl.' 'It is therefore recommended that a barn owl box be installed on another of the mature trees along the same hedgerow.'

Greenscape recommend that the grassland is managed for small mammals to improve the foraging opportunities available for barn owls.

Other birds

The hedgerows, trees and buildings provide potential nesting opportunities for birds.

Works should ideally take place between September and February to avoid harming nesting birds. If this is not possible then a pre-commencement check must be carried out and if any active nests are present, works cannot commence until

the young birds have fledged.

Greenscape recommend the erection of a range of bird boxes on buildings and trees to enhance the nesting opportunities available.

Other species

No evidence of any other protected or priority species was observed on, or in close proximity to, the site and no additional impacts are anticipated.

Conditions and informatives

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

Barn owl box condition

Prior to commencement of development, details for the provision of a barn owl box shall be submitted to and approved in writing by the Local Planning Authority. A nesting box shall be provided for barn owls in a suitably mature tree in the eastern boundary hedgerow. The box shall be erected in accordance with the approved details and thereafter retained for the lifetime of the development.

Reason: To secure the long-term protection of barn owls.

Working in accordance with ecological reports condition

All development, demolition, site clearance, landscaping and biodiversity enhancements shall occur strictly in accordance with the Environmental Appraisal (Greenscape Environmental, March 2017) and Brief Landscape Management Plan (Greenscape Environmental, April, 2017, unless otherwise approved in writing by the Local Planning Authority. Works shall be overseen and undertaken, where appropriate, by a licensed, suitably qualified and experienced ecologist.

Reason: To ensure the protection of and enhancements for wildlife.

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 mid-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 experienced ecologist should be called in to carry out the check. Only if there are no active nests present should work be allowed to commence.

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

General site informative for wildlife protection

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

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

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

Bats and trees informative

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.

During all works on mature trees there is a very small risk of encountering bats which can occasionally be found roosting in unexpected locations. Contractors should be aware of the small residual risk of encountering bats and should be vigilant when working on mature trees, particularly where cracks and crevices or thick ivy covering are present. Any cracks and crevices should be visually inspected prior to the commencement of works on the tree and if any cracks or crevices cannot easily be seen to be empty of bats then an experienced, licensed bat ecologist should be called to make a visual inspection using an endoscope and to provide advice on tree felling.

Works on trees with high bat roosting potential (aged or veteran trees with complex crevices and areas of dead wood) should not be undertaken without having first sought a bat survey by an experienced, licensed ecologist in line with the Bat Conservation Trust's Bat Survey: Good Practice Guidelines (3rd edition). Felling and tree surgery work should only be undertaken in line with guidance from a licensed ecologist and under a European Protected Species Mitigation Licence where necessary.

If a bat should be discovered on site then development works must halt and a licensed ecologist and Natural England (0300 060 3900) contacted for advice on

how to proceed. The Local Planning Authority should also be informed.

Badgers informative

Badgers, their setts and the access to the setts are expressly protected under the Protection of Badgers Act 1992. It is a criminal offence to kill, injure, take, possess or control a badger; to damage, destroy or obstruct access to a sett; and to disturb a badger whilst it is occupying a sett.

No development works or ground disturbance should occur within 30m of a badger sett without having sought advice from an experienced ecologist and, where necessary, without a Badger Disturbance Licence from Natural England. All known badger setts must be subject to an inspection by an experienced ecologist immediately prior to the commencement of works on the site.

There is an unlimited fine and/or up to six months imprisonment for such offences. Items used to commit the offence can also be seized and destroyed.

Water voles informative

Water voles are protected under the Wildlife and Countryside Act 1981 (as amended). It is a criminal offence to kill, injure or take a water vole; to damage, destroy or obstruct access to their places of shelter; and to disturb a water vole while using a place of shelter. There is an unlimited fine and/or up to six months imprisonment for such offences.

Water voles make burrows in stream banks and can be present up to 5m from the watercourse and can be disturbed by activity, especially the use of heavy machinery and vibration occurring within 10m or so of the top of the bank. Care should be taken alongside the stream during the construction and operation of the site. If works are proposed to the stream or banks in the future then an experienced ecologist should be engaged to provide advice prior to any works being carried out.

4.11 **SC Highways** has responded indicating:

No objection - no other highway comment to be added to the previous comments made in the Advice Note dated the 22/1/19.

Observations/Comments

Other than information on parking and event management, no further highway information has been submitted. A parking or an event management problem would not be expected to impact on any highways that are the responsibility of the Council.

Earlier response indicated:

No objection – subject to the recommended planning condition.

Observations/Comments

The development is served from the A5, the A5 is a trunk road and as such is the

responsibility of Highways England. Highways England have assessed the A5 junction to the application site and have stated that the junction should be improved.

Consequently, there is a proposal within this application to improve the A5 junction. This improvement is expected to be included in a planning condition that ensures the improvement happens within an agreed period of time.

No other public highways are included within the red line, within the blue line there is an outline of an access off the A5009. This access has only appeared in recent years, with no record available that it has permission to be there. An access off a classified road requires planning permission.

To ensure this access is not used to service the development site, it is recommended that this access be stopped up permanently, with this action linked to any approval the application may receive. It is recommended that the access hardstanding surface is completely removed with the fence and hedge line reinstated. If it is relative, a recommended planning condition has been prepared below.

Conditions:

For the Lifetime of the Development

Vehicular use of the access that is contained within the blue line area shown on the Location Plan SA29520/01, to the B5009 shall cease with immediate effect and be permanently closed and the boundary hedge and fence reinstated within two months of the date of this planning permission

Reason: In the interests of highway safety

Informative

Works on, within or abutting the public highway

This planning permission does not authorise the applicant to:

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

The applicant should in the first instance contact Shropshire Councils Street works team. This link provides further details

<https://www.shropshire.gov.uk/street-works/street-works-application-forms/>

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

4.12 **SC Conservation Manager** has responded to the application indicating:

Following our previous comments on this retrospective scheme, the residual effects of the extensions and new buildings on the significance of designated assets are negligible. The effect on the character of the farmstead, a non-designated heritage asset, should as a minimum be mitigated through a comprehensive and detailed planting scheme, which incorporates aspects of its historic setting

4.13 **SC Regulatory Services** have responded indicating:

Having considered the proposals and noise assessment previously considered during past planning applications I am of the opinion that the proposals although they may increase noise in the locality from activities on site is unlikely to significantly raise noise levels to a point considered to have a significant impact on amenity of nearby residents. As a result I have no conditions to propose and no objection in principal to the proposals

4.14 **SC Planning Policy** have responded as follows:

Having reviewed the applicant's Retail Assessment (RA) I have the following comments...

The proposed development includes 811sq.m of retail floorspace, made up of retail showrooms and café (717sq.m), mezzanine floorspace (34sq.m) and the reception/visitor information area (60sq.m). The RA correctly points out the proposal is not located within an existing centre and is not in accordance with the Development Plan as the site is not allocated for development. Therefore it is necessary for the proposal to be subject to an Impact Assessment.

The impact assessment is proportionate, but does seek to address the key issue of potential impact on Oswestry town centre. It is recognised the methodology used by the applicant varies from more traditional retail impact assessments given the more specialist nature of the products being sold from the retail floorspace. However, it is recognised that the applicant has sought to quantify this within Tables 1 and 2 of the RA by setting out the likely sales density of the proposal (£1,000 per sq.m); establishing the available expenditure within the Oswestry and Shropshire area; and setting out what percentage of the turnover from the retail floorspace they predict will come from this expenditure.

The applicant considers the proposed retail floorspace is ancillary to the overall operation of the proposal and that to this end the retail floor space is not a destination in its own right. I consider this is a reasonable conclusion given the scale and nature of the current and proposed use of the space. The RA assumes a 'like for like' impact, which again is reasonable to assume. On this basis the applicant notes there is no competing offer for the specialist products sold at the works. The point is also made that in practice the floorspace will also be used for other non-retail uses, such as exhibits and educational initiatives, although importantly and correctly the RA assumes the impact in a scenario where the retail floorspace is in constant use for this purpose.

The applicant provides evidence of electronic membership data in estimating only 15% of the expenditure spent at the floorspace originates from Oswestry. This is important in looking at the overall impact on the level of trade diversion from Oswestry town. Whilst the retrospective nature of the application is unfortunate, it does at least allow for this more robust evidence of actual trading data to inform the assessment. To this end it is accepted that the trade diversion projections from Oswestry are robust in nature.

Working this through the conclusion of the RA is that there will be a very marginal impact on Oswestry town centre resulting from trade diversion, and in fact the applicant points to the positive outcomes of 'linked trips' between the works and Oswestry town centre. To this end I would agree with the conclusions of the RA that the application meets the Impact test set out in the NPPF and Policy MD10b of the SAMDev Plan.

Given the conclusions of the RA are based upon the ancillary and 'specialist' nature of the proposed retail floorspace, it is considered necessary for any approval to be subject to a condition restricting the total retail floorspace to no more than 811sqm, and for the floorspace to be restricted to principally the sale of goods relating to home and garden metal products.

4.15 **Public Comments**

Numerous letters in support of the application (in excess of 200), have been received from members of the public. Many of these are forms filled in support and forwarded to the Council from the business operating from the site. These also include letters on behalf of charitable organisations. Key points raised can be summarised as follows:

- The existing business on site is a welcome attraction in the Oswestry area.
- The business supports local causes and organisations.
- Significant economic benefits to the surrounding area.
- Business operating from the site supports and assists charitable organisations and what are considered good causes mainly through fundraising etc.
- Popular tourist attraction

Letters of objections have also been received however these are in the minority. (single figures, seven separate households). Key issues raised can be summarised as follows:

- Concerns with regards to site's planning history and that conditions attached to a previous planning approval for the site have not been adhered to and therefore existing development is all unlawful.
- Concerns about highway safety.
- Foul drainage on site.
- Supporting this development will create a precedent for other unauthorised development.

- Location not considered a suitable tourist attraction location.
- Detrimental impact on Oswestry town centre.
- Building Regulations concerns in respect of existing site.
- Concerns about animals buried on site as a result of foot and mouth.
- On site security
- Biodiversity concerns.

5.0 THE MAIN ISSUES

- Background to the application
- Environmental Impact Assessment
- Principle of development
- Economic and viability impacts
- Siting, scale and design
- Visual impact and landscaping (Including historic impacts).
- Ecology
- Public highway and transportation issue.
- Drainage.
- Residential and amenity issues.

6.0 OFFICER APPRAISAL

6.1.1 Background to the application.

6.1.2 Planning permission was granted on 25th March 2009 for change of use of traditional farm buildings to office and business suit, plus use of portal farm buildings for storage of trade only, ironmongery, plus mail distribution plus alterations to office spaces at Whitehall Farm together with associated works. (Reference number OS/09/15876/FUL).

6.1.3 Whilst not considered clear it is accepted that this application was in part retrospective as the application appears to have referred to use of an existing steel framed building for storage of trade only. Planning records appear to indicate this porta framed building as being in use in relation to ironmongery trade. Conversion to office suite works were proposed and managed by conditions 2, 5, 6,7 and 8 as attached to the approval notice.

6.1.4 There were a number of pre-commencement conditions attached to the planning permission including 10,11, 12 and 13. Of most significance to the current application under consideration is condition 13 which deals with necessary highway improvements and reads as follows:

“ Prior to the commencement of the development the applicant shall undertake access improvements the design of which shall be in accordance with Highways Agency design standards and to be certified as being complete by the Local Planning Authority in consultation with the Highways Agency.

Reason: To ensure that the A5 Trunk Road continues to serve its purpose as part

of the national system of routes for through traffic in accordance with Section 10(2) of the Highways Act 1980 by minimising disruption to the flow of traffic expected to be generated by the development and to protect the interests of road safety on the trunk road.”

- 6.1.5 The original planning application form indicated that “ *the building, work or change of use already started*” and provided the date of August 2005 as the date from which “*Existing buildings being used for storage* “. The box responding to “*Has the building, work or change of use been completed?*” ticks No. It is noted that the site area is identified as 0.98 ha.
The 2009 Design and Access Statement which indicates that the application was, in part, a retrospective application in that as it stated that, “*The planning application is to regulate the change of use into their present use of storage and distribution of ironmongery to the trade.*” Moreover, the references to the change of use within the policy section seem to refer to it in the past tense, as for example is the case under policy LE10.
- 6.1.6 The Planning Statement in support of the current application states that the site has been lawfully home to Black Country Metals t/a British Ironwork Centre since circa 2005.
- 6.1.7 The British Ironworks Centre is served by an access from the main A5 Trunk Road. The access that was the subject of condition 13 on the original planning approval for the site has not been provided. On the basis that the 2009 permission was part retrospective and commencement had therefore already occurred retrospectively, it is considered that the conditions framed as pre-commencement conditions do not have effect as pre-commencement conditions. Therefore the development permitted by the 2009 permission has not been commenced unlawfully and remains extant
- 6.1.8 Despite the assurances to the contrary within the 2009 application the site has developed well beyond that allowed for under the 2009 planning permission and includes a significant ‘out-of-town’ retail offer.
- 6.1.9 Clearly the existing use and development on site does not all have the benefit of planning permission and consequentially the owners of the site were invited to submit a planning application to regularise the position. Initially they applied for additional development and this provided difficulty in differentiating the retrospective and prospective elements of the proposal. The most recent application is intended to be restricted to regularising the existing position.
- 6.1.10 The application under consideration reference 18/02657/FUL is described as an “*application under Section 73A of the Town Country Planning Act 1990 (as amended) for regularisation of extensions to existing buildings together with lawful uses relating to a mixed use rural enterprise (A1, A3, B1, B2 and B8); improvements to existing vehicular access including creation of visibility splay; change of use of land to sculpture park and car parking areas at Black Country Metal Works Ltd Whitehall Farm Queens Head Oswestry Shropshire SY11 4JH*”.
- 6.1.11 The application was considered a departure from the Local Plan and therefore has

been advertised as such.

6.1.12 As such two main issues of principle which this application raises are:

- Whether the proposal represents sustainable development in the countryside.
- Does it support and promote tourism, leisure and economic development.

6.2 Environmental Impact Assessment

6.2.1 As stated in paragraph 2.6 above the development has been subject to a Screening Opinion dated 19th February 2019, and this was carried out in accordance with The Town and Country Planning Environmental Impact Assessment Regulations 2017 and establishes that the development is not considered to require an Environmental Statement in support of the formal application (Schedule 2: 12(d) – Tourism and Leisure). The proposed development considered to fall within Schedule 2, Section 2, Paragraph 12 “Tourism and Leisure” developments, namely: (d) Theme parks. The development as proposed falls into this category as it is considered that The Ironworks has an underlining unifying setting or idea based on an original idea and the site offers a number of different attractions to members of the public such as workshops and entertainment, café, sculpture park, (D2 class use), retail and buggy and cycle hire. The conclusions to the Council’s Screening Opinion indicate that although the area of the development would exceed one of the indicative criteria’s set out in the regulations (site area is more than 0.50 ha), for determining significance, with reference to the guidance as set out in National Planning Policy Guidance, it is concluded that an EIA is not required, notwithstanding the importance of giving thorough consideration to landscape character, visual impact, highway impact and any ecological impacts arising from the proposals. A copy of the Council’s EIA Screening Opinion is available for inspection on the Council’s application website.

6.3 Principle of development

6.3.1 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. Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused, unless other material considerations indicate otherwise.

6.3.2 Core Strategy policy CS5 advises that within the countryside proposals will be supported in principle where they relate to sustainable and rural tourism and leisure and recreation proposals which require a countryside location, in accordance with policies CS16 and CS17. Policy CS16 supports new and extended tourism development and cultural and leisure facilities that are appropriate to their location and enhance and protect the existng offer within Shropshire. It specifies that in rural areas proposals must be of an appropriate scale and character for their surroundings and, if not close to or within settlements,.

- 6.3.3 The above Development Plan policies are considered to be wholly in accordance with the National Planning Policy Framework (2019) which advises at paragraph 12 that the presumption in favour of sustainable development does not change the statutory status of the Development Plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan permission should not usually be granted and that local planning authorities may take decisions that depart from an up-to-date development plan, but only where material considerations in a particular case indicate that the plan should not be followed. The NPPF is supportive of a prosperous rural economy and at paragraph 83 states that planning policies and decisions should enable sustainable rural tourism and leisure developments which respect the character of the countryside.
- 6.3.4 Paragraph 84 indicates that decisions should recognise that sites should meet local business and community needs in rural areas may be found adjacent to or beyond existing settlements and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable and that the use of previously developed land and sites that are physically well-related to existing settlements should be encouraged where suitable opportunities exist.
- 6.3.5 In this instance it is considered that there is no in-principle planning policy objection to the proposals contained in this application when assessing the overall material considerations as to the acceptability or otherwise of the proposals which rest on the detail matters considered in turn below.
- 6.4 **Economic and viability impacts**
- 6.4.1 Paragraph 80 of the NPPF indicates that planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. It also requires that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.
- 6.4.2 Paragraph 82 of the NPPF indicates that planning policies and decisions should recognise and address the specific locational requirements of different sectors.
- 6.4.3 Paragraph 83 of the NPPF indicates that planning policies and decisions should enable the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings, the development and diversification of agricultural and other land-based rural businesses and sustainable rural tourism and leisure developments which respect the character of the countryside
- 6.4.4 Paragraph 84 of the NPPF indicates that planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make

a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.

- 6.4.5 Policy CS5 states that new development will be strictly controlled in the countryside but encourages small-scale new economic development diversifying the rural economy and uses appropriate to a countryside location, including farm diversification, sustainable rural tourism and leisure proposals where they require a countryside location and the retention and appropriate expansion of an existing established business unless relocation to a suitable site within a settlement would be more appropriate. However this policy does put an emphasis on development taking place primarily in recognisable named settlements or be linked to other existing development and business activity where this is appropriate.
- 6.4.6 Policy CS13 of the Shropshire Core Strategy states that in rural areas there should be recognition for the continued importance of farming for food production and supporting rural enterprise and diversification of the economy and that development proposals must accord with Policy CS5.
- 6.4.7 Policy CS16 of the Shropshire Core Strategy indicates support for new and extended tourism development, cultural and leisure facilities that are appropriate to their location and enhance and protect the existing offer within Shropshire and supports schemes aimed at diversifying the rural economy for tourism culture and leisure uses that are appropriate in terms of their location, scale, and nature and which retain and enhance existing natural features where possible and do not harm Shropshire's tranquil nature.
- 6.4.8 Policy CS15 indicates that recognised town and key centres will be the locations for new retail, office and other town centre uses.
- 6.4.9 Policy MD10b of the SAMDev indicates that in order to ensure development does not cause significant adverse impacts on the vitality and vibrancy of Shropshire's town and rural centres, applicants will be required to prepare Impact Assessments for new retail, leisure and office proposals where they are located outside a defined town centre, or are more than 300 metres from a locally recognised high street or village centre and exceed 300 square metres floor space in relation to a Principal Centre and 200 square metres floor space in relation to a District Centre. The policy further states that the Council will not permit proposals which have a significant adverse impact on town centres or where it is considered the scope of the impact assessment is insufficient.
- 6.4.10 Policy MD11 of the SAMDev makes reference to permitting tourism, leisure and recreation development that require a countryside location where any such proposal complements the character and qualities of the site's immediate surroundings and meets the requirements of Policies CS3, CS16, MD7b, MD12 and MD13 and relevant local and national guidance.
- 6.4.11 Policies MD7b, MD12 and MD13 refer to the rural environment and ensuring development is appropriate to its location.

- 6.4.12 Policy CS3 refers to development in market towns and key centres, which will maintain and enhance their roles in providing facilities and services to their rural hinterlands and providing foci for economic development and regeneration.
- 6.4.13 The application under consideration is clearly large scale consisting of a variety of different class uses, some of which can be considered more appropriate to a town centre location, (A1- retailing). Whilst it makes use of a former farmstead and some of its surrounding farmland, it is not a diversification of the former working farm, as the former farmstead is solely in use in connection to the business operated and known as The British Ironworks. Clearly this does result in some conflicts with local plan policies, and as such the overall sustainability of the proposed use, and in particular landscape and visual impact along with degree of uses more associated with a town or key centre use, (A use classes), is a key material consideration in relation to this application.
- 6.4.14 However it is also recognised that the existing development on site, (all be it largely subject to a retrospective application), does provide some economic and social benefits to the surrounding area.
- 6.4.15 In support of their application, the applicants have submitted an economic benefits summary and this concludes that the benefits associated with the approval of the retrospective proposal will allow the Centre to continue to make positive contributions to the local and regional economy and that the Centre's operations deliver direct economic benefits, through providing employment opportunities as indicated in the Planning Policy response to the application in paragraph 4.14 above.
- 6.4.16 The application under consideration includes provision for 811square metres of retail floor space, made up of retail showrooms and café (717 square metres), mezzanine floor space (34 square metres) and the reception/visitor information area (60 square metres). The Retail Assessment correctly points out the proposal is not located within an existing recognised centre and is not in accordance with the Local Development Plan as the site is not allocated for development. Therefore it is necessary for the proposal to be subject to an Impact Assessment.
- 6.4.17 The impact assessment is considered proportionate, and considers a key issue of potential impacts on Oswestry town centre. It is recognised the methodology used by the applicant varies from more traditional retail impact assessments given the more specialist nature of the existing products being sold from the retail floor space and this is considered reasonable, establishing the available expenditure within the Oswestry and Shropshire area; and setting out what percentage of the turnover from the retail floor space they predict will come from this expenditure.
- 6.4.18 The applicants consider the proposed retail floor space is ancillary to the overall operation of the proposal and that to this end the retail floor space is not a destination in its own right. Based on current operations on site, this is considered a reasonable conclusion given the scale and nature of the use of the space. The retail assessment assumes a 'like for like' impact, which again is considered reasonable to assume. On this basis the applicants note there is no direct

competing offer for the specialist products sold at the works. The point is also made that in practice the floor space will also be used for other non-retail uses, such as exhibits and educational initiatives, although importantly and correctly the retail assessment assumes the impact in a scenario where the retail floor space is in constant use for this purpose.

- 6.4.19 The applicants have also provided evidence of electronic membership data in estimating only 15% of the expenditure spent at the floor space originates from Oswestry. This is important in looking at the overall impact on the level of trade diversion from Oswestry town. Whilst the retrospective nature of the application is unfortunate, it does at least allow for this more robust evidence of actual trading data to inform the assessment. To this end it is accepted that the trade diversion projections from Oswestry are robust in nature.
- 6.4.20 Working this through, the Council's Planning Policy response considers the conclusion of the retail assessment is that there will be a very marginal impact on Oswestry town centre resulting from trade diversion, and in fact the applicants points to the positive outcomes of 'linked trips' between the works and Oswestry town centre. As such it is considered that the conclusions of the retail assessment meets the Impact test set out in the NPPF and Policy MD10b of the SAMDev Plan.
- 6.4.21 As the conclusions of the applicants retail assessment are based upon the ancillary and 'specialist' nature of the proposed retail floor space, it is considered necessary for any planning permission to include a condition restricting the total retail floor space to no more than 811 square metres as is presently in use and for the floor space to be restricted to principally the sale of goods relating to home and garden metal products only. This should also include reference to the existing café outlet which is ancillary to the existing main retail indoor themed display and educational initiatives.

6.5 **Siting, scale and design.**

- 6.5.1 Policy CS6 of the Core Strategy is concerned with delivering high quality sustainable design in new developments that respect and enhance local distinctiveness. This is further bolstered by SAMDev Policy MD2. In summary, these policies expect new development to be designed to be sustainable in the use of resources, including during the construction phase and future operational costs, reduced reliance on private motor traffic, be respectful of its physical, landscape setting and context and to incorporate suitable mitigation in the form of materials and landscaping. Significantly, Policy MD2 allows for appropriate modern design and promotes *“embracing opportunities for contemporary design solutions, which take reference from and reinforce distinctive local characteristics to create a positive sense of place, but avoid reproducing these characteristics in an incoherent and detrimental style.”*
- 6.5.2 The site make use of a former traditional farmstead and is located in open countryside which, as with much of the surrounding area, is characterised by gently undulating plain, limited tree cover and strong field patterns with generally well maintained boundaries and hedgerows. While the site is relatively open, it is not covered by any statutory landscape designation. The site has expanded

significantly since the original 2009 planning application for a wholesale distribution business associated with metal goods. This was based within a set of agricultural buildings around the edge of the Whitehall Farm house and was a relatively low-key and small scale business. Over the intervening years the business has developed and evolved into something quite different and has physically expanded far beyond the original site. In terms of scale, it is much greater than before and this has an effect upon the character and appearance of the area.

- 6.5.3 The development on site and as proposed does have a physical impact on the landscape both through new buildings. New uses such as the sculpture park, recreational area and associated paraphernalia associated with the business carried out on site, along with the widening of the access onto the A5. The new build on site is mostly limited in height to small scale sculptures and low rise buildings. Whilst in EIA terms the development is considered similar to a 'Theme Park' it is without doubt unique in concept, a visitor attraction, but plainly not an "Alton Towers" or "Thorpe Park" and as a consequence landscape and visual impact is an important material consideration which is discussed in detail below.
- 6.5.4 In relation to scale and design the development is considered acceptable in accordance with Policy CS6 of the local plan subject to the further consideration to landscape and visual impact as discussed below.

6.6 **Visual impact and landscaping**

- 6.6.1 Policy CS5 'Countryside and Green Belt and Policy CS6 'Sustainable Design and Development Principles' of the Shropshire Core Strategy encourage development that improves the sustainability of rural communities whilst requiring development to protect and conserve the natural, built and historic environment and be appropriate in scale, density, pattern and design taking into account the local context and character. The development should also safeguard residential and local amenity, and ensure sustainable design and construction principles are incorporated within the new development.
- 6.6.2 In addition SAMDev Policy MD2 Sustainable Design builds on Policy CS6 providing additional detail on how sustainable design will be achieved. To respond effectively to local character and distinctiveness, development should not have a detrimental impact on existing amenity value but respond appropriately to the context in which it is set.
- 6.6.3 Policy CS17 'Environmental Networks' states that development will identify, protect, enhance, expand and connect Shropshire's environmental assets and does not adversely affect the visual, heritage or recreational values and functions of these assets, their immediate surroundings or their connecting corridors. In addition, SAMDev Policy MD12: The Natural Environment builds on Policy CS17 providing development which appropriately conserves, enhances, connects, restores or recreates natural assets.
- 6.6.4 Also, SAMDev Policy MD13: The Historic Environment states that in accordance with Policies CS6 and CS17 and through applying the guidance in the Historic Environment SPD, Shropshire's heritage assets will be protected, conserved,

sympathetically enhanced and restored.

- 6.6.5 Landscape and visual impact is a key material consideration in relation to this application. The site is located in open countryside and the existing building complex comprises various sections that were added during its original development as a farmstead and more recently in relation to the current use as The British Ironworks attraction centre. Many of the buildings retain an agricultural theme with more modern and adaptable structures added that complement the site's use in relation to the Ironworks.
- 6.6.6 A Landscape and Visual Impact Assessment (LVIA) has been submitted in support of the application and this explains the site in some detail referring to aspects that require retrospective planning permission as primarily extensions to approved lawful buildings including the showrooms, workshops and stores along with the aviary and falconry display sheds. Also considered as part of the assessment is the formalisation of the 'external sculpture park' and the 'use of land as a landscaped recreational area' which provide the setting to built aspects of development at the site.
- 6.6.7 The site is surrounded by and includes mature vegetation, this would be retained and is in the process of being enhanced by the Shropshire Wildlife Trust; notably by a planting scheme which commenced in February 2018, and will extend into the coming months and years. As indicated by the viewpoint analysis the presence of this vegetation is key to mitigating visual effects. Also, it is often difficult to distinguish between existing aspects that are requiring retrospective permission and those which are approved; mostly because they form an extension that utilises similar materials / form. With regard to the sculpture park / recreational area, the general aesthetics are akin to adjacent 'managed' landscapes and broadly consistent with the appearance of the surrounding 'Estate Farmlands' context. The assessment concludes that the visual effects of the development that requires retrospective permission are localised and very limited. The pre-developed nature of the site and characteristics of the development along with inherent mitigation provided by mature peripheral vegetation means that the development requiring retrospective permission has integrated into its local context.
- 6.6.8 The Council's retained Landscape consultants have commented on the application indicating that they consider that the landscape and visual impact assessment has been carried out in an appropriate and proportionate manner using a robust methodology which has been consistently applied and which would indicate that the proposals subject to this planning application are unlikely to represent a significant change to the baseline conditions. The initial response did raise some concerns with regard to the applicant's approach to effects on landscape character and visual effects and mitigation. The applicants gave further consideration to the concerns as raised and the Council's Landscape Consultant responded indicating that based on the information in the revised LVIA and the landscape strategy they believe that the recommendations made in their August 2018 review of the LVIA have been fully addressed and that the findings of the applicants LVIA may be relied upon.
- 6.6.9 Whilst it is appreciated and acknowledged that the applications LVIA has been

carried out in an appropriate and proportionate manner, the scale of existing development on site is significant and further expansion in the areas marked as 'Sculpture Park' in accordance with detail as set out on the landscape strategy plan (BIC LDS1), has the potential to have a significant landscape and visual effect when viewing the site from the adjacent A5 public highway. It has to be recognised that this is largely a 'retrospective application and presently the field nearest the A5 public highway indicated as a 'sculpture park' contains very few sculptures on site, other than one or two objects, the field having in part been laid down to roadways and understood to be used on occasions as overflow car parking. Concerns with regards to landscape and surrounding clutter are echoed in the response to the application from the Council's Conservation Manager which indicates that at a minimum, consideration should be given to landscape mitigation through a comprehensive and detailed planting scheme, which incorporates aspects of the site's historic setting.

- 6.6.10 These views are shared by Officers, and whilst it is acknowledged that the site does not form part of any landscape designations, landscaping mitigation is welcomed, and it is considered necessary for conditions to be attached to any planning consent in order to ensure a robust planting scheme to assist in integrating this unique development and its associated paraphernalia into the surrounding Shropshire countryside. Use as a sculpture park of the field adjacent to the A5 public highway is not considered acceptable and this field in accordance with detail as submitted has the potential to lead to sporadic cluttered development that would not blend in with the existing site campus, representing sporadic development when viewing the site from the adjacent A5 public highway which could also potentially form a distraction to passing motorists. However if this section was to be omitted, then overall impact will be significantly improved. Detail in support of the application also refers to this field as being used in relation to overflow car parking on occasions when 'one off events' take place on site, clearly car parking in such events is a temporary impact and this is considered acceptable. With consideration to these issues and mitigation as discussed, on balance when considered against relevant national and local planning policies, (Policies CS5, CS6, CS13, CS16 and CS17 of the Core Strategy and Policies MD2, MD7b, MD11, MD12 and MD13 of the SAMDev and the overall aims and objectives of the NPPF), with regards to landscape and visual impact the proposal is acceptable. This is considered a significant material planning consideration in relation to the application.

6.7 **Impact on surrounding historic environment.**

- 6.7.1 In accordance with the Planning (Listed Buildings and Conservation Area Act 1990, in the exercising of its planning functions local planning authorities must pay special regard to the desirability of preserving listed buildings and their settings or any features of special architectural or historic interest which it possesses.
- 6.7.2 Paragraph 192 of the NPPF indicates that when determining planning applications, local planning authorities should take account of the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation. Paragraph 196 of the NPPF indicates where a development proposal will lead to less than substantial harm to the significance of a

designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. Paragraph 197 of the NPPF refers to the effect of an application on a non-designated heritage asset which should be taken into account in determining the application and that a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

- 6.7.3 As part of their Landscape and Visual Impact Assessment and Planning Statement the applicants have referred to historic impacts. Whitehall Farm and associated outbuildings has been used as the base for the Ironworks centre for a number of years, which has expanded over time to incorporate a number of modern agricultural buildings, and includes the conversion of a range of historic barns to the rear and side of the main house. The majority of these additions are modern steel framed warehousing and storage buildings, and site landscaping is also affected in order to create a sculpture park and new access. The farmhouse is considered to be a non-designated heritage asset, and sits within close proximity to a number of listed buildings, outside of the site, including Aston Hall, Wootton House and associated parkland buildings and structures, which are Grade II listed. It has been determined that the development as amended will not affect the significance of the above designated assets due to any adverse impacts on their setting. The significance of the late 18th century farmhouse is largely due to its age, condition and character, and its relationship to the historic barn ranges to the north, east and west. It has some architectural value as its position and orientation is a deliberate element of its character, with its principal facade being orientated towards the grounds and former orchard to the south east. The buildings proposed and erected on site are all of an agricultural/industrial style, which are not uncommon in the context of modern farmsteads, and are positioned mainly to the rear of the farmhouse and as extensions to existing modern buildings. Whilst there are wider landscape and visual impacts, the impact from the development on the significance of the farmhouse is negligible; although the character of the historic farmstead as a whole will be altered, this may be viewed as part of an inevitable and sustainable re-use of the historic site, encouraging public access.
- 6.7.4 It is considered that the development under consideration is acceptable in relation to the surrounding historic landscape, its setting and designated historic assets within the surrounding landscape, This includes the farm house at Whitehall Farm, considered a non-designated heritage asset along with the remaining traditional former farm buildings.
- 6.7.5 As such on historic issues with consideration to further native planting mitigation, the proposed development is considered acceptable and in accordance with Policy CS17 of the Shropshire Core Strategy, Policy MD13 of the SAMDev and national legislation and policy as discussed in this section of the report
- 6.8 **Ecology.**
- 6.8.1 The Conservation of Habitats and Species Regulations 2017 requires local planning authorities to give due weight to the presence of protected species on a development site. Planning permission may be granted provided there is no detriment to the maintenance of the species population at favourable conservation

status in their natural range. The Regulations advise that if any detriment would be caused by the proposed development, planning permission should only be granted provided:

- There is no satisfactory alternative; and
- The development is in the interests of public health and safety, or other imperative reasons of over-riding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment.

- 6.8.2 The NPPF places high importance on protection of biodiversity interests and new development should minimise impacts on biodiversity. Planning permission should be refused where significant harm from a development cannot be avoided. Policies CS12 and MD12 of the Core Strategy and SAMDev Plan respectively are concerned with the conservation and enhancement of the district's biodiversity resources. New development will be expected to contribute a net gain in biodiversity where appropriate. Any adverse impacts upon designated sites will be resisted unless they are unavoidable and can be fully mitigated.
- 6.8.3 It is considered adequate ecological species surveys have been carried out and these have been updated with regards ecological matters in the update report dated 2019.
- 6.8.4 The development site occupies a former farmstead and green field site close to a number of mature trees. The site itself is of limited ecological importance, as explained in the Ecological Appraisal Report. The Council's Planning Ecologist has agreed that the site's ecological importance is limited to potential bat foraging around the existing trees and recommends that any grant of planning permission includes a condition requiring provision of an Owl box and that development is carried out in accordance with the ecological reports submitted in support of the application. Standard informatives' are also recommended to be attached to any approval notice issued as set out in the Ecological response in paragraph 4.10 of this report.
- 6.8.5 Whilst consideration has been given to issues of concerns raised by members of the public, on balance the application on ecological issues is considered acceptable and no Habitats Regulations Assessment is required in relation to this development. As such the application is considered to be in accordance with Policies CS6 and CS17 of the Shropshire Core Strategy and Policy MD12 of the SAMDev and the NPPF in relation to ecological matters.
- 6.9 **Public highway and transportation issues**
- 6.9.1 Policy CS6 of the Core Strategy requires development to be inclusive and accessible. The application site is located alongside the A5 public highway and therefore Highways England are a statutory consultee in relation to this application. This is a busy trunk road route. Paragraph 109 in the NPPF indicates that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe. Paragraph 111 of the NPPF indicates all developments that will generate significant amounts of movement

should be required to provide a travel plan, and the application should be supported by a transport assessment so that the likely impacts of the proposal can be assessed.

- 6.9.2 Highway access and transportation is an issue that has been a significant concern in relation to this application, (a matter widely commented upon in the local press). Whilst disappointing, it is fully appreciated that the applicants have not complied with condition number 13 attached to the previous planning approval for the site, (reference OS/09/15876/FUL dated 25th March 2009), and that development on site has significantly expanded since the granting of the 2009 planning permission. Condition number 13 states:

“Prior to the commencement of the development the applicant shall undertake access improvements, the design of which shall be in accordance with Highways Agency design standards and to be certified as being complete by the Local Planning Authority in consultation with the Highways Agency.

Reason: To ensure that the A5 Trunk Road continues to serve its purpose as part of the national system of routes for through traffic in accordance with Section 10(2) of the Highways Act 1980 by minimising disruption to the flow of traffic expected to be generated by the development and to protect the interests of road safety on the trunk road.”

- 6.9.3 Highways England as the statutory consultee in relation to the trunk road network have responded to the application recommending that a number of planning conditions be imposed in the interests of maintaining highway safety and the efficient operation of the A5 Trunk Road. The response acknowledges that the applicants have submitted an Events Traffic Management Plan and Parking Management Strategy that will relate to the discharge of two of their recommended conditions and that following a review of these and further clarification from the applicants that they are content that development on site is suitable subject to conditions attached to any approval notice subsequently issued. However with consideration to the site’s planning history and potential traffic issues arising from the development, Highways England considers it will be necessary that events are subject to periodic review as circumstances regarding operation of the site and traffic on the A5 past the site access are likely to be subject to change over time. The response from Highways England indicates that recommended conditions 2 and 3 be subject to an initial review after 12 months and then a further series of reviews at a timescale to be then agreed as part of the ongoing maintenance of these plans. The response is clear in that highway works to the A5 trunk road remains an urgent requirement for delivery of the necessary infrastructure required to mitigate the traffic arising from the day-to-day operations of the site.

- 6.9.4 The suggested conditions and reasons suggested by Highways England are:

“Condition 1:

Prior to the expiration of 12 months following date of this notice, the highways works to the A5 trunk road that form part of this permission, as detailed within drawing no. BI-AP-100, shall commence. These works shall be completed in full.

Reason: In the interests of maintaining highway safety and the efficient operation of the A5 Trunk Road

Condition 2:

The approved Parking Management Strategy shall be implemented in full accordance with the approved details. Following 12 months of the date of this permission the Parking Management Strategy shall be reviewed and an updated version shall be submitted to and be approved by the Local Planning Authority, in consultation with the Highways Authority for the A5 Trunk Road, alongside evidence that demonstrates the effectiveness of the existing strategy. The updated document shall take account of any further measures that may be identified as being necessary and shall be amended to reflect any changes to the site layout, parking provision or management. A strategy for ongoing periodic review of the Parking Management Strategy and any other necessary triggers points for review shall be detailed and agreed with the Local Planning Authority. The plan shall continue to ensure that offsite parking on the A5 trunk road does not occur.

Reason: In the interests of maintaining highway safety and the efficient operation of the A5 Trunk Road

Condition 3:

The Event Management Plan shall be implemented in full accordance with the approved details. Following 12 months of the date of this permission the Event Management Plan shall be reviewed and an updated version shall be submitted to and be approved by the Local Planning Authority in consultation with the Highways Authority for the A5 Trunk Road, alongside evidence that demonstrates the effectiveness of the existing Plan. The updated document shall take account of any further measures that may be identified as being necessary and shall be amended to reflect any changes to the site layout, parking provision or management. A strategy for ongoing periodic review of the Event Management Plan and any other necessary triggers points for review shall be detailed and agreed with the Local Planning Authority. The event management plan shall continue to ensure that volume of traffic utilising the site entrance to the A5 trunk road is managed and controlled where it is identified that the volume of traffic arriving or departing the site may give rise to concerns about the operation of the road.

Reason: In the interests of maintaining highway safety and the efficient operation of the A5 Trunk Road

- 6.9.5 The development on site generates significant transport movements and is heavily dependent on private motor car use as beyond the typical day-to-day operation of the site, special events at the British Ironwork Centre are a common feature of its operation. Events are likely to result in higher than typical development traffic flows utilising the site access. A review of the event schedule for the British Ironwork Centre, as displayed on its website, notes several music, children's and charitable orientated events which are likely to prove to be popular. Where the traffic implications of such events may be significant then these should be managed to ensure vehicular traffic can safely access and egress the site via the A5. With this in mind as well as consideration to the site's planning history it is considered that the Highways England suggested conditions with slight re-wording are reasonable

and necessary.

- 6.9.6 Detail as contained in the applicants Transport Assessment have also been reviewed by the Council's highways officer. Their comments are also set out above. In summary, the response acknowledges that as the development is served by the A5 it is the responsibility of Highways England. No other public highways are included within the red line, on the site plan, however within the blue line there is an outline of an access off the B5009. It is understood this access has only appeared in recent years, with no record available that it has permission to be there. An access off a classified road requires planning permission. To ensure this access is not used to service the development site, it is recommended by SC Highways, that this access be stopped up permanently, with this action linked to any approval the application may receive. It is recommended that the access hardstanding surface is completely removed with the fence and hedge line reinstated. As such on highway matters it is considered necessary to also attach to any approval notice issued a further condition stating:

“Vehicular use of the access that is contained within the blue line area shown on the Location Plan SA29520/01, to the B5009 shall cease with immediate effect and be permanently closed and the boundary hedge and fence reinstated within two months of the date of this planning permission

Reason: In the interests of highway safety”.

- 6.9.7 Whilst the development is considered significant and is heavily reliant on private means of transport, and the comments made by Oswestry Rural Parish Council are noted,, it is considered that development on site is well placed in relation to a satisfactory highway network and that with conditions attached to any approval notice as discussed in this report that on balance the development is considered acceptable in relation to highway and transportation matters.

6.10 **Impact on the Public Rights of Way**

- 6.10.1 Public footpaths no's 79 and 80 run along the access driveways to and from the Ironworks site. The Council's Public Rights of Way Manager raises no objections.

6.11 **Drainage**

- 6.11.1 Policy CS18 of the Core Strategy requires developments to integrate measures for sustainable water management to reduce flood risk, to avoid adverse impacts upon water quality and quantity and to provide opportunities for biodiversity, health and recreation enhancements. SAMDev Policy MD2 encourages the incorporation of sustainable drainage techniques in new developments. Policy MD8 refers to the provision of water treatment infrastructure and the need to consider impacts on water quality and on the sewerage network.
- 6.11.2 A flood risk assessment and drainage strategy accompanies the application and these raise no issues of concern in relation to surface and foul water drainage.
- 6.11.3 However with consideration to concerns raised by a member of the public an officer

from the Environment Agency visited the site on 28 September 2018 to inspect the foul drainage system. The applicant had also been taking water meter readings in order to estimate a daily volume of sewage generated by the business. It is believed that on average the business generates about 3.9 cubic metres of sewage effluent a day. The information provided in the drainage report and in the drainage plan is considered reasonably accurate. The existing system of the two septic tanks is currently unsatisfactory however and has led to localised septic tank pollution of the dry ditch course which flows along the western site boundary.

- 6.11.4 It is not clear how effluent from the larger three bay septic tank has gained access to the ditch course however the applicant has agreed to replace the tank with a modern sewage treatment plant to British Standard BS EN 12566. The EA have also indicated they would also require the existing soakaway system to be investigated and improved.
- 6.11.5 The smaller septic tank (labelled tank 4 on the block plan) is unsatisfactory as it is sited too close to the surface water ditch. There is clear evidence of septic tank effluent from the tank in the adjacent ditch. The EA recommend that this septic tank is discontinued and the foul drainage connected to one main package treatment plant.
- 6.11.6 The Government allows small businesses to operate to General Binding Rules (GBR) without the need for an Environmental Permit in relation to. Black Country Metal Works Limited however will exceed the permitted volume of treated effluent which could be discharged into the ground under the GBR. The Agency has thus recommended that the Company apply for an Environmental Permit in order to regulate this activity.
- 6.11.7 With consideration to advice received from the Environment Agency it is recommended that a condition is attached to any approval notice issued in order to ensure a scheme for the disposal of foul effluent has been submitted to, and approved in writing by, the local planning authority, and is then implemented in a reasonable time.
- 6.11.8 Otherwise the site is located in Flood Zone 1 (low probability), and while there is a change of use from agricultural land, the site will remain essentially open land. It is noted the Council's Drainage Manager has assessed the proposal and confirms that he has no objections, drainage as proposed considered acceptable. As such, and with consideration to the advice from the Environment Agency, with a condition attached to any approval notice as recommended, it is considered that the proposed development is overall in accordance with Policies CS18 and MD2 of the SAMDev and the NPPF on this matter.

6.12 **Residential and amenity issues.**

- 6.12.1 Policy CS6 in the Core Strategy indicates that all development should contribute to the health and wellbeing of communities which includes safeguarding residential and local amenity. Whilst it is considered that the site itself (and especially the centre of the site centred on the former farmstead), is a suitable distance from the nearest residential receptors outside the applicants control, light and noise pollution

could still be a potential issue.

- 6.12.2 The applicants have submitted a noise assessment, and its conclusions are considered acceptable. The Council's Regulatory Services Manager raises no objections to the application indicating that whilst the proposals may increase noise in the locality from activities on site, it is unlikely to significantly raise noise levels to a point considered to have a significant impact on amenity of nearby residents.
- 6.12.3 External lighting matters are also considered acceptable based on information as submitted and it is recommended that this matter is subject to a condition attached to any planning approval granted.
- 6.12.4 As such on balance in relation to residential amenity and privacy matters the application is considered acceptable.
- 6.13 **Other matters.**
- 6.13.1 Concerns have been raised that as the application is mostly retrospective and that the site is visited by members of the public and that Building Regulations is an issue of concern. This is a separate matter that is being looked into by the Council's Building Regulations Team and is not a direct material planning consideration in relation to this application.
- 6.13.2 In accordance with recognised good practice the applicants have submitted, a report on Community involvement, and whilst this recognises that there was no formal consultation process, the business on site regularly gathers and encourages public feedback and engagement. The business is involved in charity related activities and there has been considerable support of the application from recognised 'good causes' as well as many letters of support from members of the public. Further detail on this aspect is available on the Council's application website.
- 6.13.3 Concerns have been raised in a letter of objection with regards to animals buried on site as a result of foot and mouth. This matter has been brought to the attention of the Council's Regulatory Services and they have concluded that they do not consider there to be any significant risk to be assessed.
- 6.13.4 Comment has been made with regards to concerns that this application is largely retrospective in relation to unauthorised development. The planning system and its processes allow for retrospective applications for planning permission, which in itself is not unlawful. It is at the applicants risk, as to whether planning permission is granted or not. All applications have to be assessed in relation to relevant planning policies and material planning considerations.
- 6.13.5 Comment has also been made with regards to on-site security, this is not a direct planning matter and in any case Officers are aware that the applicants have an on-site CCTV security system that appears to operate satisfactorily.

7.0 **THE PLANNING BALANCE.**

- 7.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that where regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise. The starting point must be the Development Plan and then other material considerations must be considered.
- 7.2 Having carefully considered the proposal against adopted planning policy and guidance, it is clear that the development is in some instances contrary to the local development strategy. The application was advertised as a departure to the development plan.
- 7.3 The NPPF identifies three mutually dependent dimensions to sustainable development, which should be sought jointly and simultaneously through the planning system, namely: an economic role; a social role; and an environmental role. Officers consider there will be some economic, social and environmental benefits arising from the development, mainly attributable to economic activity in relation to the surrounding area, location of the site in a suitable location in relation to adjacent public highway, and landscape and visual impact, (site has no detrimental impact on landscape designations or on the historic environment), and no adverse impacts on surrounding residential amenity and privacy etc. (all be it with consideration to conditions as discussed in this report), These all weigh in favour of the development.
- 7.4 However, as also referred to in the report the development as existing on site does not in totality accord with all local plan policies and in particular in relation to retailing from the site and as such this issue needs careful consideration. However the site is unique in its origins being primarily themed on metal works and acts as a focal point in relation to charity and fundraising events which includes educational activities, For example, the business is well known for its sculpture 'the Knife Angel' which is currently being put on display in a number of UK Cities in order to draw attention to concerns about knife crime, This is aimed at the educating of the public with regard to the consequences of knife crime. As indicated the site is based on a theme and the retail impact assessment has demonstrated that impacts on the nearby town of Oswestry and its surrounding area are acceptable subject to a condition attached to any approval notice issued in order to control the amount and type of retailing from the site.
- 7.5 Also of significant concern with regard to the present unauthorised development is public highway access into and out of the site onto the A5 public highway. Based on information submitted in support of the application Highways England consider this matter can be addressed to a satisfactory level subject to suitably worded conditions attached to any approval notice .
- 7.6 Another significant and key matter in relation to development on site is landscape and visual impact and it is considered that this matter is crucial in the decision making process and a very important material consideration. The site is focused on a former traditional farmstead which retains much of its original character all be it as part of a much wider built form and scale than the original development on site.

The site is not affected by any landscape designations and impacts on the surrounding historic environment are considered acceptable. Nevertheless development on site as indicated in this report is unique and not typical of the Shropshire landscape. However as part of the planning balance weight has to be given to the social and economic benefits which in this case appear significant. It is considered that the environmental harm will not be significant with consideration to area of the Sculpture Park being in accordance with conclusions drawn in this report and conditions attached to any approval notice issued in order to ensure adequate and satisfactory landscape mitigation. With these in place it is considered landscape and visual impacts can be addressed satisfactorily. This tips the balance in favour of supporting the application despite it being advertised as a departure from the local plan as with acceptable landscape and visual impacts, there are significant economic and social reasons on which basis to support this application.

8.0 **CONCLUSIONS**

8.1 Taking into consideration the significant material considerations as discussed in this report, with appropriate and suitably worded conditions the development is in accordance with many of the local plan policies. Furthermore, on balance any material harm in relation to aspects of the development that do not accord with the relevant local plan policies is outweighed by the material considerations and economic and social benefits associated with the development on site.

8.2 As such with careful consideration to all the material considerations both for and against, it is recommended that this application be approved subject to the conditions as outlined in appendix 1 and any amendments to these conditions as considered necessary by the Head of Service.

9.0 **Risk Assessment and Opportunities Appraisal**

9.1 **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.

9.2 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.

9.3 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.

10.0 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.

11. Background

Relevant Planning Policies

Central Government Guidance:

National Planning Policy Framework
National Planning Policy Guidance.

:

Local Plan Policies in the Core Strategy and Site Allocations and Management of Development DPD.:

CS1 - Strategic Approach

CS3 - The Market Towns and Other Key Centres

CS5 - Countryside and Greenbelt
 CS6 - Sustainable Design and Development Principles
 CS13 - Economic Development, Enterprise and Employment
 Economic Development, Enterprise and Employment
 CS15 - Town and Rural Centres
 CS16 - Tourism, Culture and Leisure
 CS17 - Environmental Networks
 CS18 - Sustainable Water Management
 MD1 - Scale and Distribution of Development
 MD2 - Sustainable Design
 MD4 - Managing Employment Development
 MD7B - General Management of Development in the Countryside
 MD10A - Managing Town Centre Development
 MD10B - Impact Assessments for Town and Rural Centres
 MD11 - Tourism Facilities and Visitor Accommodation
 MD12 - Natural Environment
 MD13 - Historic Environment
 National Planning Policy Framework

RELEVANT PLANNING HISTORY:

OS/09/15876/FUL Change of use of farm buildings to office and business suite, plus use of porta farm building for storage of trade only, ironmongery, plus mail distribution plus alterations to office space at Whitehall Farm together with associated works. Approved 25th March 2009.

16/04624/FUL Retrospective section 73A application for a mixed use rural enterprise scheme comprising of retail (A1), café (A3), business, storage/distribution and warehouse (B1, B2 and B8), recreational outdoor activities (D2), Drinking establishment (A4), alterations to existing access, formation of visitor parking, retention of existing buildings on site together with erection of new buildings, associated landscaping, outdoor theatre (sui generis) and external engineering operations including internal access tracks, mini railway and crazy golf course.
 WDN 21st December 2017

18/02657/FUL Application under Section 73A of the Town Country Planning Act 1990 (as amended) for regularisation of extensions to existing buildings together with lawful uses relating to a mixed use rural enterprise (A1, A3, B1, B2 and B8); improvements to existing vehicular access including creation of visibility splay; change of use of land to sculpture park and car parking areas PCO

12. Additional Information

The Council's application website

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)
Cabinet Member (Portfolio Holder) Cllr Gwilym Butler.
Local Member Cllr Joyce Barrow
Appendices APPENDIX 1 - Conditions

APPENDIX 1

Conditions

STANDARD CONDITION(S)

1. 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.

2. Prior to the expiration of 12 months following the date of this notice, the highways works to the A5 trunk road that form part of this permission, as detailed within drawing no. BI-AP-100, shall be completed in full.

Reason: In the interests of maintaining highway safety and the efficient operation of the A5 Trunk Road.

3. Notwithstanding the approved plans a Parking Management Strategy shall be submitted to the Local Planning Authority within 6 months of the date of this decision notice. The plan shall detail how parking shall be managed within the site to ensure that off-site parking on the A5 trunk road does not occur. All works identified in the strategy shall be completed within 12 months of confirmation of the strategy being acceptable in writing from the Local Planning Authority (in consultation with the Highway Authority for the A5 Trunk Road) and shall be retained for the lifetime of the development as approved.

Reason: In the interests of maintaining highway safety and the efficient operation of the A5 Trunk Road and to address concerns raised by Highways England.

4. Within 6 months of the date of this decision notice, an Event Management Plan shall be submitted to the Local Planning Authority for approval in writing in consultation with the Highway Authority for the A5 Trunk Road. The plan shall detail how traffic shall be controlled on days where organised and publicised events take place. The Event Management Plan shall ensure that traffic using the site entrance to the A5 trunk road is managed and controlled where it is identified by the Local Planning Authority in conjunction with Highways England that the volume of traffic arriving or departing the site may give rise to concerns about the operation of the A5 trunk road. The event management plan shall ensure that parking on site is managed in order to prevent off-site parking on the A5 trunk road. and this shall be adhered to for the lifetime of the development as approved.

Reason: In the interests of maintaining highway safety and the efficient operation of the A5 Trunk Road.

5. Vehicular use of the access that is contained within the blue line area shown on the Location Plan SA29520/01, onto the B5009 public highway shall cease with immediate effect and be permanently closed and the boundary hedge and fence reinstated within 8 months of the date of this planning permission in accordance with detail to be submitted to the Local

Planning Authority and approved in writing. Works will be carried out and maintained as approved.

Reason: In the interests of highway safety

6. Within 3 months of the date of this planning approval a scheme for the disposal of foul effluent will be submitted to the Local Planning Authority for approval in writing. The scheme shall be fully implemented as approved in accordance with an agreed timetable.

Reason: To prevent pollution of the water environment.

7. Notwithstanding the approved plans, the field located adjacent to the A5 public highway indicated as use for a Sculpture Park on the southern side of the site as indicated on landscape strategy plan number BIC LDS1 shall not be used for the display of sculptures and shall, only be used for overflow car parking use in accordance with any details approved as part of the Parking Management Strategy approved under the requirements of Condition 3 to this permission

Reason: In consideration of visual and landscape impact.

8. Landscaping shall be undertaken strictly in accordance with the details in the application together with further native tree and hedge planting, details of which shall be submitted for approval to the Local Planning Authority within 6 months of the date of this decision notice. All landscaping and planting shall be carried out as agreed within the first recognised planting season following approval of the further details. Any species that fail within the first five years of planting will be replaced with species of similar variety and size.

Reason: In consideration of landscape and visual impact.

9. The total retail floor space on site including provision for onsite cafe facilities and reception/visitor information area is to be no more than 811 square metres in total in accordance with the current use as indicated on the approved plans and in the Retail Impact Assessment submitted in support of the application. The use will be restricted to the sale of goods relating to home and garden ironmongery related products only and this includes the present areas in use for 'indoors' on site themed displays and educational initiatives.

Reason: In order to control the amount and type of retailing on site in consideration of impacts on Oswestry Town Centre and the surrounding area.

10. Within 6 months of the date of this decision notice, details for the provision of a barn owl box shall be submitted for approval in writing by the Local Planning Authority. A nesting box shall be provided for barn owls in a suitably mature tree in the eastern boundary hedgerow. The box shall be erected in accordance with the approved details and thereafter retained for the lifetime of the development.

Reason: To secure the long-term protection of barn owls.

11. All development, demolition, site clearance, landscaping and biodiversity enhancements shall occur strictly in accordance with the Environmental Appraisal (Greenscape Environmental, March 2017) and Brief Landscape Management Plan (Greenscape Environmental, April, 2017). Works shall be overseen and undertaken, where appropriate, by a

licensed, suitably qualified and experienced ecologist. All necessary works will be completed within 12 months of the date of this decision notice.

Reason: To ensure the protection of and enhancements for wildlife.

12. Within 2 calendar months of the date of this decision notice details will be submitted to the local planning authority for approval with regard to all external lighting on site. Detail will be carried out as agreed in writing within 6 months of the date of confirmation that the detail as submitted is acceptable. External lighting on site will avoid light spill off site and no light glare with all lighting set to shine down below the horizontal to reduce sky glow.

Reason: In consideration of the amenity of the surrounding area and to avoid adverse light pollution.

Informatives

1. This planning permission does not authorise the applicant to:
 - o construct any means of access over the publicly maintained highway (footway or verge) or
 - o carry out any works within the publicly maintained highway, or
 - o authorise the laying of private apparatus within the confines of the public highway including any a new utility connection, or
 - o undertaking the disturbance of ground or structures supporting or abutting the publicly maintained highway

The applicant should in the first instance contact Shropshire Councils Street works team. This link provides further details

<https://www.shropshire.gov.uk/street-works/street-works-application-forms/>

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

2. 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 mid-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 experienced ecologist should be called in to carry out the check. Only if there are no active nests present should work be allowed to commence.

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

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

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

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

4. 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.

During all works on mature trees there is a very small risk of encountering bats which can occasionally be found roosting in unexpected locations. Contractors should be aware of the small residual risk of encountering bats and should be vigilant when working on mature trees, particularly where cracks and crevices or thick ivy covering are present. Any cracks and crevices should be visually inspected prior to the commencement of works on the tree and if any cracks or crevices cannot easily be seen to be empty of bats then an experienced, licensed bat ecologist should be called to make a visual inspection using an endoscope and to provide advice on tree felling.

Works on trees with high bat roosting potential (aged or veteran trees with complex crevices and areas of dead wood) should not be undertaken without having first sought a bat survey by an experienced, licensed ecologist in line with the Bat Conservation Trust's Bat Survey: Good Practice Guidelines (3rd edition). Felling and tree surgery work should only be undertaken in line with guidance from a licensed ecologist and under a European Protected Species Mitigation Licence where necessary.

If a bat should be discovered on site then development works must halt and a licensed ecologist and Natural England (0300 060 3900) contacted for advice on how to proceed. The Local Planning Authority should also be informed.

5. Badgers, their setts and the access to the setts are expressly protected under the Protection of Badgers Act 1992. It is a criminal offence to kill, injure, take, possess or control a badger; to damage, destroy or obstruct access to a sett; and to disturb a badger whilst it is occupying a sett.

No development works or ground disturbance should occur within 30m of a badger sett without having sought advice from an experienced ecologist and, where necessary, without a Badger

Disturbance Licence from Natural England. All known badger setts must be subject to an inspection by an experienced ecologist immediately prior to the commencement of works on the site.

There is an unlimited fine and/or up to six months imprisonment for such offences. Items used to commit the offence can also be seized and destroyed.

6. Water voles are protected under the Wildlife and Countryside Act 1981 (as amended). It is a criminal offence to kill, injure or take a water vole; to damage, destroy or obstruct access to their places of shelter; and to disturb a water vole while using a place of shelter. There is an unlimited fine and/or up to six months imprisonment for such offences.

Water voles make burrows in stream banks and can be present up to 5m from the watercourse and can be disturbed by activity, especially the use of heavy machinery and vibration occurring within 10m or so of the top of the bank. Care should be taken alongside the stream during the construction and operation of the site. If works are proposed to the stream or banks in the future then an experienced ecologist should be engaged to provide advice prior to any works being carried out.

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