

Recommendation:- Subject to the conditions set out in Appendix 1.**REPORT****1.0 THE PROPOSAL**

- 1.1 This is a variation of conditions application which relates to the approved plans for a small housing scheme on the edge of Harmer Hill. Planning permission was granted for seven dwellings and included the provision of a roadside footway helping to link up the village. The development is complete, although only a small section of footpath has been constructed along the roadside. This application seeks to vary the approved footway to reduce the length of the footpath.

2.0 SITE LOCATION/DESCRIPTION

- 2.1 The proposed housing development is located to the south of the main B5476 which runs through Harmer Hill from Wem to Shrewsbury. The site was a small enclosed field with residential properties to the north, east and west, whilst agricultural land was to the south. A single vehicular access point has been constructed, together with a small section of roadside pavement. All of the properties are detached and have a bespoke design. Shotton Lane and The Hollow are located to the north and provide junctions with the B5476, whilst the junction with the A528 Ellesmere to Shrewsbury Road is located to the south west. A pavement is provided on the north west side of the B5476 and links in the village.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

- 3.1 The Parish Council and local ward member have submitted a view contrary to officers based on material planning reasons which cannot reasonably be overcome by negotiation or the imposition of planning conditions. The Principal Planning Officer in consultation with the committee chairmen agrees that the Parish Council and local ward member have raised material planning issues having regard that the proposed footpath is surrounded by residential development and the proposal is in relation to a housing scheme consisting of a number of dwellings. It is considered that this application should be determined by committee.

4.0 COMMUNITY REPRESENTATIONS**4.1 Consultee Comments**

- 4.1.1 **Shropshire Council, Highways Development Control** - The application seeks to vary conditions to reduce the length of footway to be constructed along the Class II Road from the site access to Shotton Lane. The application to vary the required footway provision is submitted on the basis that whilst a section of footway has been constructed from the site access in accordance with the planning consent granted on the site, the applicant/developer considers that the full footway connection to Shotton Lane is not necessary and provides reasons in this regard. In considering the current application Shropshire Council as the Highway Authority has to consider whether permission for the residential development would have otherwise been refused if the full length of the footway between the site access and Shotton Lane were not provided. Whilst the Highway Authority supports the provision of a footway, as is

currently required under existing consents and would potentially benefit pedestrian movement in the locality, the Authority considers that the footway provision to the Shotton Lane junction is not a fundamental requirement of the development in the context of the local environment. A continuous footway is available on the opposite side of the Class II road from the site, however it is noted that a dropped crossing point between the new extent of footway and opposite does not exist. This therefore should be provided and should be a pre-requisite of this application being granted.

- 4.1.2 **Myddle and Broughton Parish Council** - Members strongly object to this proposal with the included statement that the footpath is now unnecessary. It was deemed necessary in the original application and planning approval was granted on the understanding that the path would be constructed. With the construction of the new housing it is more essential as it will provide a protected route for pedestrians alongside this busy road with fast moving traffic. It is felt that the terms of the agreed application should be adhered to and this application be refused.

4.2 **Public Comments**

- 4.2.1 Five letters of objection have been received raising the following concerns:

- No path on the Shotton Lane corner so crossing the main road is currently done on the highway.
- Safety to pedestrians.
- The path would be used by local residents.

- 4.2.2 One letter has been received from local ward member Cllr Brian Williams who has raised the following comments:

“I object because I have seldom come across so blatant a case of bad faith by a developer as this application demonstrates. The footpath was voluntarily offered by the developer at planning application stage as a "sweetener" to get local people to not oppose it since there would a general public benefit from the new tarmacked path. It would be much easier for elderly people who need walking sticks or disabled people who use wheelchairs to use a surfaced footway rather than a grass verge. The developer's plea for the welfare of the milestone is a "red herring". there are many milestones on public footways which have survived for generations. It is touching though that the applicants are trying to convince planners that this is not just about saving them money but is due to their new found consideration for the welfare of the natural environment and their concern for the supposed detrimental effect that the footpath would have on the village community. If the developers had brought their case to the Parish Council before putting in their application they would have got a sense of the widespread cynicism that is aroused by their attempted opportunism to save themselves from the cost of something which they had promised.”

5.0 **THE MAIN ISSUES**

- Background
- Highways

6.0 **OFFICER APPRAISAL**

6.1 Background

6.1.1 Planning permission was granted in May 2015 for the erection of six detached dwellings. This application included the provision of a 1.5 metre wide pavement along the B5476 roadside up to Shotton Lane (a distance of approximately 125 metres). This would provide pedestrian access along the south eastern side of the road and provide improved pedestrian linkage within the village and access to local services. The developer has constructed a 27 metre section of this footpath which is located directly in front of the new roadside dwelling approved in December 2011, although it does not extend up to Shotton Lane. The development is complete, although concerns have been raised that the footpath does not link into Shotton Lane as approved and required by condition 2 of the decision notice. This condition states that the footway provision, visibility splays, access, parking and turning areas shall be satisfactorily completed and laid out in accordance with the approved drawings prior to any of the dwellings being occupied. This was to ensure the formation and construction of a satisfactory access and parking facilities in the interests of highway safety. There was no mention in the reason for the condition to provide improved pedestrian access for local residents or justification that the footpath was essential to allow this residential development. This current application now seeks to vary the approved plans to remove the necessity to provide the full length of the footpath.

6.2 Highways

6.2.1 The application seeks to vary conditions to reduce the length of footway to be constructed along the Class II road from the site access to Shotton Lane. The application to vary the required footway provision is submitted on the basis that whilst a section of footway has been constructed from the site access in accordance with the planning consent granted on the site, the applicant/developer considers that the full footway connection to Shotton Lane is not necessary.

6.2.2 The developer has indicated that pedestrian traffic along Wem Road is minimal with only the Bridgewater Arms providing a local facility. Any pedestrians that do need to walk can use the existing footpath on the other side of the road. The replacement of a soft grass verge in this rural village with a tarmac footpath would result in a more urban appearance and be detrimental to the rural character. An existing listed mile stone sits in the grass verge close to the entrance of Orchard House and would be affected by the pavement works. Concerns are also raised that the proposed footpath would not be served by street lights which are provided on the existing footpath on the opposite side of the road.

6.2.3 The proposed pavement would only serve 3 dwellings along the south eastern side of the B5476 and 11 dwellings along Shotton Lane. There is no pavement along the south eastern side between Shotton Lane to Godings Lane and therefore those residents would have to cross the road and use the pavement to the north western side of the B5476.

6.2.4 Harmer Hill has limited services which include the Bridgewater Arms public house, a Premier Inn hotel and village hall. The most direct and safest pedestrian route is for residents living to the south east of the B5476 is to cross the road and use the existing pavement. This allows residents to gain access to the crossing point at the junction

of the A528 and B5476 to gain access to the public house and hotel or walk along The Hollow to the A528 which provides access towards the village hall. The only benefit the pavement would provide would be to enable residents living to the south east of the B5476 to visit each other without crossing the road.

- 6.2.5 In considering the current application the Highway Authority has to consider whether permission for the residential development would have otherwise been refused if the full length of the footway between the site access and Shotton Lane were not provided. Whilst the Highway Authority supports the provision of a footway which would potentially benefit pedestrian movement in the locality, the Authority considers that the footway provision to the Shotton Lane junction is not a fundamental requirement of the development in the context of the local environment. A continuous footway is available on the opposite side of the Class II road from the site, however it is noted that a dropped crossing point between the new extent of footway and opposite does not exist. Highways have therefore requested that this crossing point should be a pre-requisite of this application being granted. The developer has agreed to install a crossing point and this would be completed within 6 months from the date of any decision due to the necessity to have formal highway agreements in place with the highways authority.

7.0 CONCLUSION

- 7.1 The reduction in the length of the footway and provision of pedestrian crossing point will not result in any pedestrian highway safety concerns and will enable residents of the approved dwellings to provide easy access to local facilities within Harmer Hill.
- 7.2 In arriving at this decision the Council has used its best endeavours to work with the applicants in a positive and proactive manner to secure an appropriate outcome as required in the National Planning Policy Framework.

8.0 RISK ASSESSMENT AND OPPORTUNITIES APPRAISAL

8.1 Risk Management

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

- As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal - written representations, a hearing or inquiry.
- The decision is challenged by way of a Judicial Review by a third party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will interfere where the decision is so unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its planning merits. A challenge by way of Judicial Review must be a) promptly and b) in any event not later than 6 weeks after the grounds to make the claim first arose.

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

8.2 Human Rights

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

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

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

8.3 Equalities

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

9.0 FINANCIAL IMPLICATIONS

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

10.0 BACKGROUND

10.1 Relevant Planning Policies

Policies material to the determination of the Application. In determining this application the Local Planning Authority gave consideration to the following policies:-

National Planning Policy Framework:

Shropshire Council Core Strategy (February 2011):

CS6 : Sustainable Design and Development Principles

Site Allocations and Management Development Plan (December 2016):

MD2 : Sustainable Design

10.2 Relevant Planning History

16/4839/AMP - Non material amendment to reduce in size of single storey element

and internal alterations to plot 7 attached to planning permission reference 14/04893/REM. Granted 1st November 2016.

16/02585/AMP - Non material amendment for alterations to garage block so as to serve plots 4 and 5 attached to planning permission reference 14/04893/REM for the approval of reserved matters (access, appearance, landscaping, layout and scale) pursuant to planning permission 13/04939/OUT for residential development of 6 houses including new access and associated drainage works. Granted 13th June 2016.

14/04893/REM - Erection of 6 houses including new access and associated drainage works. Granted 11th May 2015.

13/04939/OUT - Outline planning application for a residential development of 6 houses including new access and associated drainage works. Granted 29th July 2014.

11/02366/FUL - Erection of one detached dwelling and formation of new vehicular access. Granted 13th December 2011.

11.0 ADDITIONAL INFORMATION

List of Background Papers - Planning Application reference 19/02525/VAR

Cabinet Member (Portfolio Holder) - Cllr Gwilym Butler

Local Member - Cllr Brian Williams

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. Details of the provision of uncontrolled crossing points on the site side and at a corresponding point on the opposite side of the Class II Road shall be submitted to and approved by the Local Planning Authority and the agreed details shall be fully implemented within 6 months of the granting of consent.
Reason: To ensure a satisfactory means of access to the highway.