



Committee and date

South Planning Committee

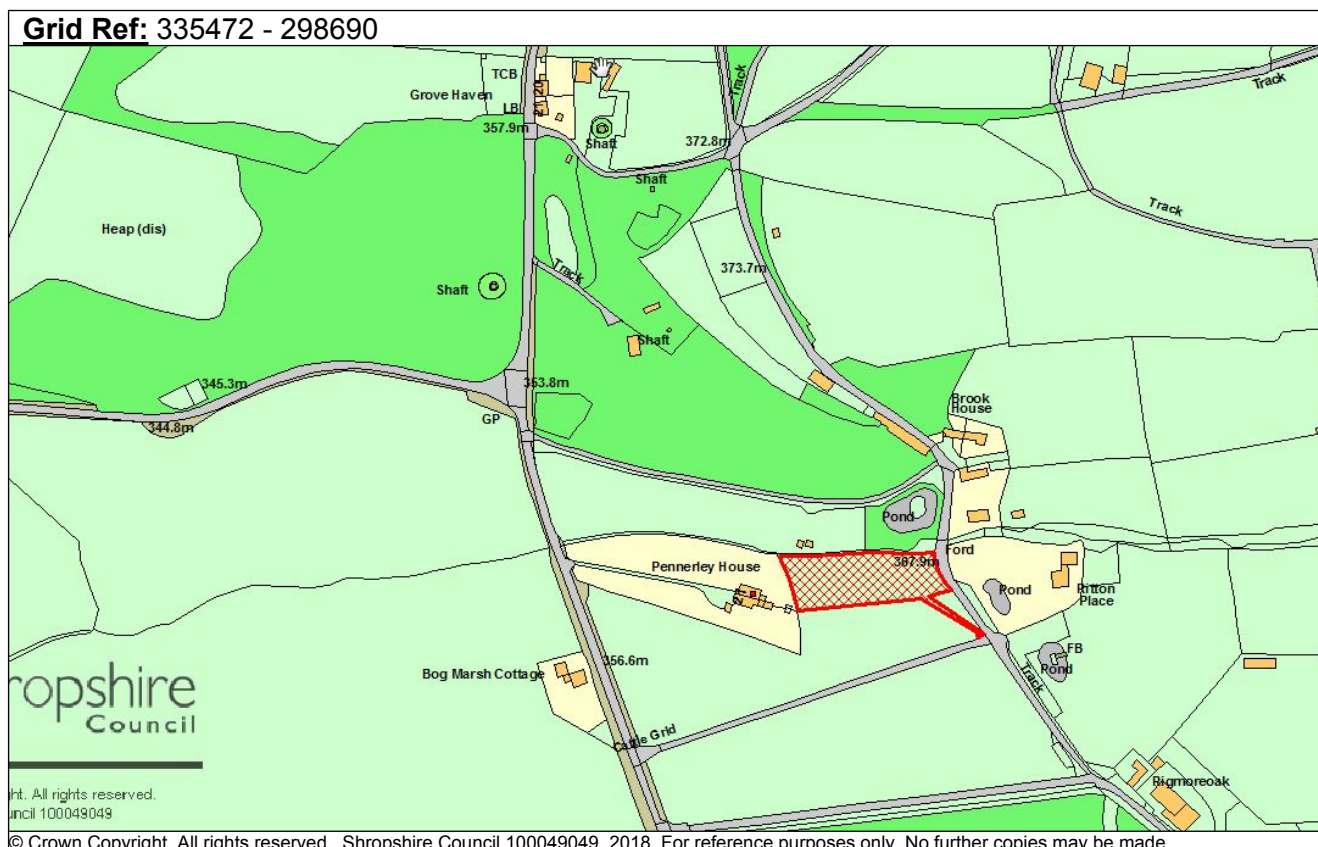
22 October 2019

Development Management Report

Responsible Officer: Tim Rogers
email: tim.rogers@shropshire.gov.uk Tel: 01743 258773 Fax: 01743 252619

Summary of Application

Application Number: 18/04261/OUT	Parish:	Worthen with Shelve
Proposal: Erection of dwelling (outline application to include means of access, but with matters of appearance, landscaping, layout and scale reserved)		
Site Address: Land east of Pennerley House, Pennerley, Shrewsbury, Shropshire, SY5 0NE		
Applicant: Mr A Lawton		
Case Officer: Trystan Williams	email:	planning.southern@shropshire.gov.uk



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

REPORT

1.0 THE PROPOSAL

1.1 This application seeks outline planning permission to erect a new open-market dwelling. Also sought at this stage is approval of the means of vehicular access, which, as shown on an amended site layout/block plan, would be via a new driveway off an existing private road to the south. Matters of appearance, landscaping, layout and scale are reserved for consideration under a separate application in the future, so in those respects the submitted drawings (which now include a site section and a 'typical front elevation') are largely indicative. That said, the elevation drawing does specify maximum eaves and ridge heights to define scale. The block plan also indicates a detached garage.

2.0 SITE LOCATION/DESCRIPTION

2.1 Pennerley is a small but widely scattered former lead mining settlement on the western slopes of the Stiperstones ridge in the Shropshire Hills Area of Outstanding Natural Beauty (AONB). The application site is a 0.2-hectare corner of pasture field rising behind Pennerley House, a two-storey stone property set back off the Class C road towards the neighbouring hamlet of The Bog, and which was originally two semi-detached cottages. The site is bounded to the east by a byway off which access was originally proposed, and beyond which the applicant's existing home, Ritton Place, stands in extensive grounds. Instead the new driveway would now cross the southeast side of the field, joining the aforementioned private road at its junction with the byway. Across that road, with its avenue of young trees, is another field owned by the applicant. Meanwhile beyond a tree-lined stream/ditch along the north boundary is further, unconnected agricultural land, and to the northeast a small farmstead named Brook House.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

3.1 In accordance with the Council's adopted 'Scheme of Delegation', the application is referred to the planning committee because:

- the officer recommendation of approval is contrary to an objection from the Parish Council; and
- Shropshire Council's Local Member and the chairman and vice chair of its planning committee consider that the issues raised warrant the full committee's consideration.

4.0 COMMUNITY REPRESENTATIONS

4.1 Consultee comments

4.1.1 Shropshire Council Flood and Water Management – comment:

Full surface water and foul drainage details should be secured by condition.

4.1.2 Shropshire Council Ecology:

26/9/18 – objection:

A general ecological assessment and a great crested newt assessment should be carried out.

- 4.1.3 17/10/18 – objection:
A 'Preliminary Ecological Assessment' by a licensed ecologist has now been submitted.
- 4.1.4 A pond approximately ten metres north of the site was found to have excellent suitability for great crested newts, whilst two others twenty and sixty metres away have average suitability. Although the consultant's report recommends reasonable avoidance measures, the close proximity of the first pond suggests there is in fact a significant likelihood of newts being encountered on the site itself. Further survey work is needed to ascertain this, and hence whether or not the development will require a European Protected Species licence.
- 4.1.5 21/11/18 – comment:
There has now been further discussion with the applicant's ecological consultant.
- 4.1.6 The Stiperstones and The Hollies Special Area of Conservation (SAC)/Site of Special Scientific Interest (SSSI) lies approximately 340 metres to the east. The Council has therefore now completed a Habitats Regulations Assessment (HRA), but this has identified no pathways by which the development might affect the SAC.
- 4.1.7 Habitats on the application site itself comprise intensively grazed improved pasture, hedgerows and ruderals. A multi-stemmed laburnum and a number of semi-mature silver birch and holly trees were noted in the north boundary hedge, whilst a standalone oak is situated to the immediate south. The site is also directly adjacent to a brook highlighted as a wildlife corridor. However the latter is unlikely to be affected provided a five-metre buffer is retained between it and the development footprint, and neither is it considered that the scheme would cause any fragmentation of habitats. That said, planning conditions should secure a Construction Environment Management Plan (CEMP) and a landscaping plan as part of any future reserved matters application, to ensure that the environmental network would indeed be retained and enhanced.
- 4.1.8 Despite the proximity of ponds suitable for great crested newts, it has now been confirmed that this species is unlikely to utilise the site itself since it is largely short-grazed pasture unsuitable as terrestrial habitat. Whilst there is a low risk of newts crossing the site to reach breeding ponds or hibernacula/refugia during their terrestrial phase, this can be addressed through the proposed 'reasonable avoidance measures' method statement. Adherence to this should be ensured by a condition requiring a designated ecological clerk of works to submit a verification report.
- 4.1.9 The site contains no potential bat roost features. Whilst the adjacent oak tree has tear-out wounds which may be suitable, its removal is not anticipated. An appropriate protection zone should be established, whilst external lighting should be controlled by condition to ensure that the tree remains unilluminated. A further condition should secure a bat box to enhance roosting opportunities.
- 4.1.10 Although the boundary vegetation could support a number of common passerine bird species, its removal is not anticipated. Nevertheless an 'informative' should advise on the legal status of active nests, and enhanced nesting opportunities should be

secured through a condition requiring bird boxes.

- 4.1.11 No evidence of any other protected or priority species was observed on or close to the site. In any event the newt method statement would also serve to protect other small animals.
- 4.1.12 Shropshire Hills AONB Partnership – comment:
No site-specific comments. However this indicates neither objection nor lack of objection to the application, and in reaching its decision the local planning authority must still satisfy its legal duty to take into account the purposes of the AONB designation, planning policies concerned with protecting the landscape, plus the statutory AONB Management Plan.
- 4.1.13 Natural England – comment:
No significant adverse impacts on any statutorily protected ecological sites are likely. However the Council should also consider possible impacts on the AONB and on protected and priority species and habitats, plus opportunities for environmental enhancements.
- 4.1.14 Shropshire Council Highways Development Control – comment:
The development is likely to be acceptable from a highway safety perspective as the proposed access, parking and turning arrangements are adequate. However it would be preferable for the southern stretch of the byway to be used for access, as the junction at its north end is substandard.
- 4.1.15 Any entrance gates should be set back at least five metres to avoid obstructions, whilst the access apron should be given a bound surface to avoid loose material becoming displaced onto the highway. In fact the whole driveway could be given a bound surface to aid pedestrian access. Alternatively gate-side post and paper boxes could be provided. Occupiers would have to walk to the public highway to put out and retrieve refuse bins on collection days, and the maximum distance recommended is 25 metres. A smooth level space is required for temporary roadside bin storage, without obstructing the access or its visibility splays.
- 4.1.16 Shropshire Council Regulatory Services – comment:
Given the historic lead mining activity nearby, there is a significant risk of ground contamination. Any permission granted should therefore include a condition securing a site investigation report and, as appropriate, remediation strategy, implementation of the remediation strategy, reporting and remediation of any further contamination uncovered during the construction phase, plus a verification report.
- 4.1.17 Shropshire Council Rights of Way – comment:
Access would be via the byway to the east. This is a highway over which the general public have a right to vehicular access, though is used mainly for walking, cycling and horse-riding and is maintained accordingly. Whilst the right of way would not appear to be affected directly, the applicant should be advised to ensure that it remains unobstructed and unaltered at all times.
- 4.1.18 Shropshire Council Affordable Housing – no objection:

Although the Council considers there to be an acute need for affordable housing in Shropshire, its housing needs evidence base and related policy predate a Court of Appeal judgment and subsequent changes to the Government's Planning Practice Guidance (PPG) regarding the use of Section 106 agreements to secure affordable housing contributions. On balance, therefore, if the development is otherwise plan-compliant then at this time national policy prevails and no contribution is required.

4.1.19 Worthen with Shelve Parish Council:

2/11/18 – objection:

Councillors strongly object to this application and request that it is determined by Shropshire Council's planning committee.

4.1.20 The development would prejudice delivery of the Site Allocations and Management of Development (SAMDev) Plan by further exceeding the local housing target. Furthermore this is not an infill plot, and is not considered to form part of any designated 'Community Cluster' settlement, loose-knit or otherwise. Instead it has the characteristics of open countryside, the surrounding properties being very sparse and separated by agricultural land. Shropshire Council's local plan review documentation defines infill sites as "land with built development on at least two sides and which is also clearly within the built form of a settlement".

4.1.21 The development would not reflect local distinctiveness or integrate harmoniously into its setting, instead harming the character and appearance of this highly valued landscape within the AONB.

4.1.22 Access would be via a byway which is unmaintained, deeply rutted and often flooded, making it suitable only for walkers, farm vehicles or robust 4x4s.

4.1.23 There are concerns about the drainage given the topography, whilst historic mining activity may have contaminated the ground.

4.1.24 The ecological report submitted appears to relate to another location.

4.1.25 28/11/18 – objection:

The revised access point is noted, but otherwise the previous comments still apply.

4.1.26 29/8/19 – objection:

Councillors remain firmly opposed to this development for the reasons explained previously. Additionally its proximity to neighbouring properties would result in overlooking and loss of amenity.

4.2 **Public comments**

4.2.1 Objections received from or on behalf of eight separate households raise the following concerns:

- There was inadequate public consultation on Pennerley's designation as part of a Community Cluster. It is a small, dispersed settlement with no services or facilities, rather than being discernible as a village, has no allocated development sites, and is therefore unsuitable for market housing under the terms of Core Strategy Policy CS4.
- The number of new dwellings already approved in this Cluster exceeds the

SAMDev Plan guideline.

- Pennerley may lose its status as a Cluster settlement under the current local plan review. Limited weight should therefore be given to Core Strategy Policy CS4 in this instance.
- In any event the site lies outside Pennerley, whose historic rural district and parish boundary with The Bog is still denoted by the tree-lined brook along the site's north boundary. Most existing housing lies much further north, beyond the former mine, whilst south of the boundary there are just three dwellings in proximity to the site. The Bog settlement lies further south beyond open fields, has its own distinctive character and does not form part of a Community Cluster.
- The recent approval of application No. 18/00924/OUT, for a new dwelling opposite Pennerley House and adjacent to Bog Marsh Cottage, sets no precedent since it was determined erroneously under delegated powers, relying on a tenuous interpretation of infill development, and with insufficient weight given to objections made by the AONB Partnership, Shropshire Council's Local Member and local residents.
- Certainly this site is not an infill plot as it does not have contiguous development on at least two sides, being separated from Ritton Place by the byway.
- On the question of infilling, this proposal is comparable with previously refused applications for new housing at Lee (near Ellesmere) and Worthen.
- The development would not meet local needs or any other of the criteria for new housing in the countryside set out in the National Planning Policy Framework (NPPF) or the Council's Core Strategy Policy CS5.
- The plans fail to show a large existing, supposedly agricultural outbuilding at Ritton Place, which in fact appears to be habitable and could potentially end up as yet another dwelling. The implications of this should not be ignored.
- Approving this application could set a precedent for developing other land in the same ownership.
- Combined with recently approved application No. 18/00924/OUT, this scheme would result in a nucleated grouping of seven properties out of character with the area's historic development pattern.
- It is perplexing why elevation details have now been submitted given that this is an outline application with matters of scale and appearance reserved, and that *any* form of development on this site is unacceptable as a matter of principle.
- Given the topography the proposed dwelling could end up being considerably higher than Pennerley House, and hence unduly prominent within the landscape.
- A 1½-storey house as the elevation drawing indicates would provide insufficient headroom.
- The materials indicated (i.e. a brick plinth, rendered upper walls and tiled roof) are out of keeping with the stone and slate of existing buildings here.
- The indicative sectional drawing again fails to depict accurately the existing buildings at Ritton Place, and its differing vertical and horizontal scales are misleading.
- The revised proposal to access the property off the private road to the south would increase the loss of open agricultural land.
- The development would increase light pollution in an area renowned for dark skies.
- Together with application 18/00924/OUT, this scheme would result in new

housing both in front of and behind Pennerley House, significantly altering its outlook.

- Given its higher level the new dwelling would overlook Pennerley House and its garden.
- Changing the access has necessitated repositioning the house and its garage, which would exacerbate overlooking of Pennerley House.
- The additional trees shown to be planted would tower over Pennerley House.
- The adjacent byway is unmaintained and unsuitable for vehicular access.
- Larger vehicles such as delivery lorries and vans, fire engines and oil tankers would be unable to make the sharp turn into the entrance now proposed off the narrow private drive to Ritton Place. Access would only be possible through shunting manoeuvres on the adjacent byway, or by reversing off/back down to the 'main' road.
- The existing driveway to Ritton Place is unsuitable to serve another dwelling as it is long and narrow with no passing places.
- The increasing volume and speed of traffic on the road between Pennerley and The Bog is already of concern, and further new housing would worsen the situation.
- The consultant ecologist's credentials are uncertain and should be verified.
- Inconsistent site boundaries are shown on the various plans within the ecological assessment, making it difficult to understand what has actually been surveyed, and how relevant the report's recommendations are. Certainly the dataset relied upon is actually centred on the site of application No. 18/00924/OUT, and as a consequence another pond known to support great crested newts has not been considered.
- Yet another pond approximately 125 metres to the northwest should also be assessed for great crested newts.
- The possible presence of great crested newts on the site itself should be investigated further.
- There is considerable bat activity over the adjacent pond and possibly in neighbouring buildings, so presumably over the application site as well. Again this should be investigated further.
- The ecological assessment fails to consider the impact on the adjacent watercourse.
- The development would disrupt connectivity between the environmental network along the north boundary and other ecological sites nearby, including a Local Wildlife Site.
- 'Rothamsted' insect trapping shows Pennerley House to be amongst the most diverse of ninety sites involved in the project nationwide, and comparable with flagship Natural England sites. Rare Trichoceridae, plus a previously unknown variety, have been recorded. The surrounding habitat should therefore remain undisturbed.
- The ecological assessment describes the adjacent oak tree as 'over-mature'. It is unclear what this means, but generally the older the tree the more diverse an ecosystem it supports. This tree must therefore be protected from development.
- Already a section of the eastern boundary hedge has been removed, and the proposed access there could also damage overhanging branches of two large oak trees.
- Drainage on this steep and generally damp field could prove problematic, and

cause flooding of neighbouring land and properties.

- The local water supply is inadequate.
- Overhead power lines could be affected.
- The applicant did not consult the community in advance.

5.0 THE MAIN ISSUES

- Principle of development
- Affordable housing contribution
- Layout, scale, design and landscape impact
- Impact on residential amenity
- Access and highway safety
- Ecology
- Other matters raised in representations

6.0 OFFICER APPRAISAL

6.1 Principle of development

6.1.1 A key objective of both national and local planning policy is to concentrate residential development in locations which promote economic, social and environmental sustainability. Specifically the Council's Core Strategy Policies CS1, CS3, CS4, CS5 and CS11 seek to steer new open-market housing to sites within market towns, other 'key centres' and certain smaller settlements ('Community Hubs and Clusters') as identified in the SAMDev Plan (which was adopted in December 2015, and still has seven years left to run). Isolated or sporadic development in open countryside (i.e. outside the designated settlements) is generally unacceptable unless there are exceptional circumstances.

6.1.2 Despite Pennerley being such a small, loose-knit settlement and lacking community services and facilities, it is formally designated as a component of a Community Cluster under SAMDev Policies MD1 and S2. This designation followed extensive consultation in line with the Council's published Statement of Community Involvement and national guidance, and ratification by the Secretary of State. It implies that the location *is* broadly suitable for new housing and carries considerable weight, the NPPF stating that proposals which accord with an up-to-date local plan should be approved without delay. Policy S2 gives a guideline of approximately fifteen additional homes across the Cluster by 2026, and besides conversion schemes the intention is for these to comprise infill development on suitable small-scale 'windfall' sites. The policy also notes a Parish Council preference for no more than five dwellings to be built during each third of the Plan period.

6.1.3 Since these Cluster settlements lack predefined development boundaries, and the Council's current policies do not explicitly define 'infill', the locational suitability of specific sites is a matter for judgment in each case. However the explanatory text accompanying Core Strategy Policy CS4 confirms that, in order to avoid fragmented development, new housing must be located within the settlements themselves and not on adjoining land or in the countryside in-between. Meanwhile the ongoing local plan review proposes the definition quoted by the Parish Council, although that is currently some way off formal adoption.

- 6.1.4 According to the 'Type and Affordability of Housing' Supplementary Planning Document (SPD), a settlement is characterised partly by the relationship between its various properties, its limits being defined by where that relationship peters out. The SPD also acknowledges that this varies from settlement to settlement, depending on the number of houses and their proximity to each other. In this case, despite some objectors arguing that there is a greater concentration of properties to the north, officers have observed that Pennerley's houses are widely dispersed throughout, with very few of them sharing contiguous boundaries and many also lacking road frontages. In this context it is very difficult to identify obvious or 'conventional' infill plots, and it is not considered that the proposed dwelling's separation from Ritton Place by the intervening byway would be out of character.
- 6.1.5 Furthermore, whilst it is appreciated that the tree-lined watercourse to the north was historically a political boundary between Pennerley and The Bog, this is not considered decisive given the presence of Pennerley House, Ritton Place and Bog Marsh Cottage beyond it. Certainly the proposed dwelling would not stand isolated. It should also be noted that The Bog *is* in fact designated part of the same Community Cluster, and again widely dispersed, making it difficult to draw a clear line between where the one ends and the other begins. Overall the consensus among officers is that the visual coherence between Pennerley's existing dwellings, although loose, has not petered out at this point, and indeed is not markedly different to the relationship between most of the properties further north. On balance, therefore, it is judged that the site does lie within the established area of development in accordance with the policy requirements.
- 6.1.6 Regarding housing numbers, the Council's Five Year Housing Land Supply Statement provides the most recent data available. It confirms that, as of 31st March 2018, only one new dwelling had actually been completed in this Cluster. This under-delivery so far can be given some weight, bearing in mind the importance planning policy attaches to delivering housing on the ground. Although 21 more dwellings had received permission and may be built in time, to date only three have been approved in Pennerley itself, and one of them through subdividing an existing house. Furthermore, SAMDev Policy MD3 explains that the settlement housing guidelines are not absolute maxima, and this has been emphasised in appeal decisions elsewhere. It would therefore be difficult to sustain a refusal of the current proposal on the grounds that it would result in an over-proliferation of development in Pennerley, or exceed either the overall Cluster guideline or the Parish Council's phased delivery strategy so greatly that, for example, local infrastructure might be stretched to breaking point, especially as under the local plan review Pennerley *is* currently still indicated as part of a Cluster set to receive an additional housing guideline beyond 2026.
- 6.1.7 With reference to other points made by the objectors:
- Officers do not find the case directly comparable with the Worthen and Lee applications as those settlements have quite different characteristics, being more nucleated and, in the case of Worthen, much larger.
 - This application should be considered on its own merits. Officers maintain that the decision on application No. 18/00924/OUT nearby followed the Council's adopted Scheme of Delegation procedure: Any concerns on the handling of that

application are not material in determining the present case.

- Officers agree that Pennerley does not necessarily meet any formal definition of a *village*, but nevertheless it is a recognisable settlement and its designation as part of a Community Cluster is beyond the scope of any individual planning application. In fact the wording of Core Strategy Policy CS4 itself refers to Cluster ‘settlements’ rather than ‘villages’, whilst its explanatory text uses the terms interchangeably.
- If the site is accepted as being within Pennerley an unfettered open-market dwelling would comply with Policy CS4. Consequently Policy CS5 concerning development in open countryside would not be engaged, and the applicant would not be required to demonstrate a specific need or other exceptional circumstances.
- Concerns over the use of the agricultural building at Ritton Place should again be raised through the proper channels, and have no material bearing on the current application. Certainly any future application to convert that building, or for that matter any other proposals for new dwellings in Pennerley, would need to be considered on their own merits based on the particular circumstances.

6.1.8 Given the above the application is, on balance, considered acceptable in principle.

6.2 **Affordable housing contribution**

6.2.1 The Affordable Housing Team’s comments reference the Court of Appeal decision which led to the reinstatement of a Written Ministerial Statement and Government PPG advising against the use of planning obligations to secure tariff-style affordable housing contributions below certain thresholds. This is now reinforced by the revised NPPF, which states categorically (at Paragraph 63) that affordable housing provision should not be sought in connection with small-scale developments. It must therefore be accepted that the Council’s policies in this respect are out-of-date and can no longer be given significant weight. An affordable housing contribution cannot be sought in this case.

6.3 **Layout, scale, design and landscape impact**

6.3.1 Core Strategy Policy CS4 requires development in Community Clusters to be of a scale and design sympathetic to the character of the settlement and its environs, and to satisfy the more general design requirements under Policy CS6 and SAMDev Policy MD2. These expect all development to reinforce local distinctiveness in terms of building forms, scale and proportion, heights and lines, density and plot sizes, as well as materials and architectural detailing. Meanwhile the NPPF requires great weight to be given to conserving landscape and scenic beauty in AONBs.

6.3.2 It is emphasised that scale is among the reserved matters in this case, and there is no longer any statutory requirement for outline applications to specify upper and lower limits for the height, width and length of proposed buildings. Nevertheless planning authorities can still request additional information where there is room for doubt that a development can be designed in a way which would actually be acceptable, for example because the location is visually sensitive. Meanwhile applicants can choose to supply illustrative plans to amplify their intentions, and certainly if such plans show desirable features and it is reasonable to do so, these can be secured through a specific planning condition.

6.3.3 Here, without prejudice to the committee's ultimate decision on the principle of developing the site, officers sought clearer assurance that the scale of the house would not cause landscape harm, bearing in mind the elevated and sloping levels, and the particularly scenic setting below the landmark of the Stiperstones ridge. In response the agent has firmly committed to maximum eaves and ridge heights of 3.3 and 7.4 metres, as can be reinforced by condition. Whilst the elevation drawing is otherwise indicative, these parameters would at most equate to a 1½-storey dormer form as shown. Though the low roof would obviously restrict headroom somewhat it does not appear to be unworkable, and indeed would reflect the modest scale and humble character of traditional former miners' cottages in the area. Other aspects such as materials and detailing, and also landscaping of the plot, would be subject to agreement at the reserved matters stage.

6.3.4 The sectional drawing indicates how a dwelling of the height specified would sit between the levels of Pennerley House and the main building at Ritton Place. Though the latter's orientation appears incorrect the drawing is to an identified and consistent scale, and hence still useful in showing the three properties' relative heights. Additionally officers have observed that from the road to the southwest the new dwelling should sit just below the skyline of the hillside behind, and be filtered by the trees along the driveway to Ritton Place. As mentioned already it would also be seen in the context of Pennerley House rather than in isolation, yet without appearing cramped, whilst from the north and west it would be well screened by the established vegetation along the stream. Inevitably there would be some landscape impact, but on balance, in the context of Pennerley's designation as a Cluster settlement and the dispersed character of the established housing, it is suggested that a modest and sympathetically designed dwelling here would be visually acceptable.

6.3.5 The external materials do not form part of the current application, although officers consider that those indicated would not necessarily be unsuitable. Meanwhile, with appropriate controls over landscaping (at the reserved matters stage) and external lighting (see Condition 10), the revised vehicular access and light spillage are also unlikely to impact significantly on the wider landscape.

6.4 **Impact on residential amenity**

6.4.1 It is acknowledged that Pennerley House, whose occupiers have been used to very opening surroundings, would to some extent be enclosed both front and rear assuming planning permission No. 18/00924/OUT is also implemented. However there is no legal right to unobstructed views across neighbouring land, and in planning terms the impact of the proposed dwelling would be acceptable, despite the site's elevation, given that the houses themselves are likely to be separated by a distance of around 60-70 metres plus Pennerley House's large outbuilding. Similarly tree planting on the site is unlikely to cause excessive shading.

6.4.2 No other properties would have a direct view of the development.

6.5 **Access and highway safety**

6.5.1 There is an established field gate where access is now proposed off the private drive to Ritton Place, and a grass verge in front of it, so presumably agricultural vehicles have been able to enter and exit reasonably easily. Although larger vehicles may

need to join the byway briefly then reverse into the access, the byway does carry vehicular access rights and is certainly passable at this point, whilst the reversing manoeuvre should not prove dangerous since both the byway and the private drive are very lightly trafficked. Moreover the driveway's straightness would afford drivers entering it good visibility of any obstructions or oncoming vehicles, and they could simply wait at the bottom.

6.5.2 The driveway's junction with the 'main' road again has reasonably good visibility, bearing in mind likely traffic volumes and average speeds. Concerns about instances of speeding are not a matter for the planning authority.

6.6 Ecology

6.6.1 As summarised above, both the Council's Ecology Team and Natural England accept that significant effects on the nearby SAC/SSSI are unlikely. The full HRA is available on the 'Planning' pages of the Council website, appended to the Ecology Team's comments dated 21st November 2018.

6.6.2 As per those comments, the ecological value of the adjacent watercourse and an associated buffer strip could be safeguarded through a condition (No. 4) requiring a detailed CEMP concurrent with any reserved matters application. Landscaping is one of the reserved matters themselves, and details would be secured by standard condition No. 1.

6.6.3 Despite the presence nearby of ponds suitable for great crested newts, the Ecology Team also now accepts that this species is unlikely to be affected given the site's poor terrestrial habitat, and that work would be subject to the precautionary method statement submitted. Adherence to this should indeed be controlled by condition, but, based on the fundamental principle that this would be complied with it any event, it would be unreasonable to require a further, verification report.

6.6.4 The landscaping scheme would be expected to include satisfactory tree and hedgerow protection measures, whilst as mentioned already, external lighting would be controlled under the suggested Condition 10. Thus, although bats doubtless use the site for foraging and commuting, and may roost in the adjacent oak, they should not be affected unduly and survey work is unnecessary. In fact supplementary planting (including plugging gaps in hedges), together with the provision of bat and bird boxes as per the suggested Condition 7, would enhance the site's value.

6.6.5 Regarding other points made by the objectors:

- The applicant's ecological consultant is well known to the Council's Ecology Team, who have no concerns over his competency or qualifications. He is known to hold the relevant protected species licences from Natural England.
- Although the site boundaries vary between some of the figures in the ecological assessment, they are sufficient for identifying the location and relevant features. The Ecology Team is satisfied that the correct field was surveyed and that no relevant habitats were omitted. Moreover, whilst the wider data search does appear to be the same as that used for application 18/00924/OUT, given the two sites' proximity a further search centred exactly on the current location is unlikely to make any material difference to the report's conclusions.

- The site itself does not form part of any mapped environmental network, and supplementary planting will improve wildlife connectivity between the adjacent watercourse and other habitats nearby.
- It is recognised that there are areas of high quality habitat nearby, seemingly including the gardens of Pennerley House. However since the site itself is primarily intensively grazed improved pasture, it is unlikely to provide the flora necessary to support rare or priority invertebrates. In fact, the change to a domestic garden with supplementary planting is likely to increase its diversity long-term, potentially benefitting the species recorded by the neighbour as part of the Rothamsted study.

6.7 Other matters raised in representations

6.7.1 The Flood and Water Management Team is content for drainage details to be secured by condition. The aim of sustainable surface water drainage systems would be to mimic greenfield attenuation rates and hence avoid increasing flood risk to neighbouring land and property.

6.7.2 The issue of contaminated land is addressed by the suggested Condition 5. Meanwhile the adequacy of the public water supply, and any diversion of power lines, would be matters for the applicant to resolve with the utility providers.

6.7.3 Finally, although the Council encourages applicants to consult the community in advance they are under no legal obligation to do so.

7.0 CONCLUSION

7.1 Given the site's location adjacent to two existing residential properties and proximity to other scattered housing, it is, on balance, judged to form part of the loose-knit Cluster settlement of Pennerley, and hence an open-market dwelling is acceptable in principle. Whilst there would be some impact on the landscape the indicative drawings show how the site could potentially accommodate a modest dwelling without causing undue harm in this particular context. There are no significant or insurmountable concerns regarding access, residential amenity, ecology, drainage or contamination, whilst other issues pertaining to the development's layout, landscaping, scale and design would be addressed at the reserved matters stage. Furthermore, greater weight is given to Paragraph 63 of the updated NPPF than to the Council's own policy requirement for an affordable housing contribution. Overall, therefore, the application is felt to accord with the principal determining criteria of the relevant development plan policies and approval is recommended, subject to conditions to reinforce the critical aspects.

8.0 RISK ASSESSMENT AND OPPORTUNITIES APPRAISAL

8.1 Risk management

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

- As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal, i.e. written representations, hearing or inquiry.
- The decision may be challenged by way of a Judicial Review by a third party. The

courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will interfere where the decision is so unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its planning merits. A challenge by way of Judicial Review must be made a) promptly and b) in any event not later than six weeks after the grounds to make the claim first arose.

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

8.2 **Human rights**

8.2.1 Article 8 of the First Protocol of the European Convention on Human Rights gives the right to respect for private and family life, whilst 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.

8.2.2 Article 1 also requires that the desires of landowners must be balanced against the impact of development upon nationally important features and on residents.

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

8.3 **Equalities**

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

9.0 **FINANCIAL IMPLICATIONS**

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

10.0 **BACKGROUND**

Relevant Planning Policies:

Central Government Guidance:

National Planning Policy Framework

Shropshire Local Development Framework:

Core Strategy Policies:

- CS1 - Strategic Approach
- CS4 - Community Hubs and Community Clusters
- CS5 - Countryside and Greenbelt
- CS6 - Sustainable Design and Development Principles
- CS7 - Communications and Transport
- CS9 - Infrastructure Contributions
- CS11 - Type and Affordability of housing
- CS17 - Environmental Networks
- CS18 - Sustainable Water Management

SAMDev Plan Policies:

- MD1 - Scale and Distribution of Development
- MD2 - Sustainable Design
- MD3 - Managing Housing Development
- MD7A - Managing Housing Development in the Countryside
- MD12 - Natural Environment
- S2 – Bishop’s Castle Area Settlement Policy

Supplementary Planning Documents:

Type and Affordability of Housing

Planning History:

None of relevance

11.0 ADDITIONAL INFORMATION

View details online:

<https://pa.shropshire.gov.uk/online-applications/applicationDetails.do?activeTab=details&keyVal=PEYL30TDGB300>

<p>List of Background Papers: Application documents available on Council website</p>
<p>Cabinet Member (Portfolio Holder): Cllr G. Butler</p>
<p>Local Member: Cllr Heather Kidd</p>
<p>Appendices: Appendix 1 – Conditions and Informatives</p>

APPENDIX 1 – CONDITIONS AND INFORMATIVES

STANDARD CONDITIONS

1. Details of appearance, landscaping, layout and scale (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before any development begins, and the development shall be carried out as approved.

Reason: The application is an outline application under the provisions of Article 5 of the Development Management Procedure Order 2015 and no particulars have been submitted with respect to the matters reserved in this permission.

2. The development hereby permitted shall begin before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

Reason: In accordance with Section 92 of the Town and Country Planning Act, 1990.

3. Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.

Reason: In accordance with Section 92 of the Town and Country Planning Act, 1990.

CONDITIONS THAT REQUIRE APPROVAL BEFORE DEVELOPMENT COMMENCES

4. Concurrent with the submission of the first application for reserved matters approval, a Construction Environment Management Plan (CEMP) shall be submitted to and approved in writing by the local planning authority. This shall include:

- a) an appropriately scaled plan identifying 'wildlife/habitat protection zones' where construction activities will be restricted/prohibited, and where protective measures will be implemented or installed and ecological enhancements provided;
- b) precise details of protective measures (both physical measures and sensitive working practices) to avoid/minimise ecological impacts during and post-construction;
- c) a timetable setting out phasing of construction activities so as to avoid periods during which bats and other wildlife would be most vulnerable to adverse impacts;
- d) identification and definition of the roles of persons (including an appropriately qualified ecological clerk of works) responsible for ensuring compliance with planning conditions relating to ecological conservation (including the installation, inspection/monitoring and maintenance of physical protection measures and sympathetic working practices during construction), and for briefing/training construction personnel in respect of the wildlife/habitat protection zones; and
- e) pollution prevention measures.

The development shall be carried out in accordance with the approved details, and any post-development protective measures shall be maintained for the lifetime of the development.

Reason: To safeguard the ecological value of the adjacent watercourse and associated habitats/species, in accordance with Policies CS6 and CS17 of the Shropshire Local Development Framework Adopted Core Strategy. This information is required prior to commencement of the development since it relates to matters which need to be confirmed before subsequent phases proceed, in order to ensure a sustainable development.

5. a) No development, with the exception of demolition works where this is for the reason of making areas of the site available for investigation, shall commence until a Site Investigation Report (SIR) assessing the nature and extent of any contamination on or under the application site has been submitted to and approved in writing by the Local Planning Authority. The SIR shall be undertaken by a competent person and conducted in accordance with DEFRA's and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11).
- b) In the event of the SIR finding the site to be contaminated no development shall commence until a further report detailing a remediation strategy has been submitted to and approved in writing by the Local Planning Authority. The remediation strategy must ensure that, following remediation, the site would not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to its intended use.
- c) The works detailed as being necessary to make safe the contamination shall be carried out in accordance with the approved Remediation Strategy.
- d) In the event of any further, previously unidentified contamination being found during the course of development it shall be reported immediately in writing to the Local Planning Authority. Before development proceeds an investigation and risk assessment shall be undertaken in accordance with the requirements of (a) above, and where remediation is necessary a remediation scheme shall be prepared in accordance with the requirements of (b) above and implemented in full.
- e) Following completion of the measures identified in the approved remediation strategy/strategies, and prior to the first occupation/use of the development hereby permitted, a verification report demonstrating that the contamination identified has been made safe and that the land no longer qualifies as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to its intended use shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that any contamination associated with historic mining activity in the vicinity is addressed satisfactorily, thereby minimising potential risks to developers, future users of the site and off-site receptors, in accordance with Policies CS6 and CS17 of the Shropshire Local Development Framework Adopted Core Strategy. This information is required prior to commencement of the development since it relates to matters which need to be confirmed before subsequent phases proceed, in order to ensure a sustainable development.

6. No development shall commence until precise details of surface water and foul drainage systems have been submitted to and approved in writing by the Local Planning Authority. These shall include:
- Percolation test results and sizing calculations for any surface water soakaways, and provision for a silt trap or catch pit upstream of the drainage field

- Details of other/alternative means of surface water drainage, to include measures to avoid run-off onto adjacent land
- Sizing calculations and a specification for a package treatment plant or septic tank, and details of its means of discharge
- Details of any alternative foul drainage system
- A drainage layout plan

The approved drainage system(s) shall be implemented in full prior to the first use/occupation of the development, and shall thereafter be retained.

Reason: To ensure that the development is provided with satisfactory means of drainage and avoid causing or exacerbating flooding or pollution on the site or elsewhere, in accordance with Policies CS6, CS17 and CS18 of the Shropshire Local Development Framework Adopted Core Strategy. This information is required prior to commencement of the development since it relates to matters which need to be confirmed before subsequent phases proceed, in order to ensure a sustainable development.

CONDITIONS THAT REQUIRE APPROVAL DURING CONSTRUCTION/PRIOR TO OCCUPATION OF THE DEVELOPMENT

7. Prior to the first use/occupation of the dwelling hereby permitted, artificial roosting opportunities for bats and nesting opportunities for wild birds shall be provided at the site in accordance with details which shall first be submitted to and approved in writing by the local planning authority. These shall include:
- a minimum of one external Woodcrete bat box or integrated bat 'brick', suitable for nursery or summer roosting for small crevice-dwelling bat species; and
 - a minimum of one nesting box or integrated 'brick' suitable for sparrows (32mm hole, terrace design).

These shall be retained for the lifetime of the development.

Reason: To maintain and enhance roosting opportunities for bats and nesting opportunities for wild birds, in accordance with Policy CS17 of the Shropshire Local Development Framework Adopted Core Strategy.

CONDITIONS RELEVANT FOR THE LIFETIME OF THE DEVELOPMENT

8. The development, including site clearance works, shall be carried out in accordance with the 'Reasonable Avoidance Measures' method statement set out in Sections 3.7 and 3.8 of the 'Preliminary Ecological Appraisal' report by Salopian Consultancy Ltd., referenced SC:208_v2, 26th September 2018 and received by the local planning authority on 27th September 2018.

Reason: To ensure the protection of great crested newts, which are a European Protected Species, in accordance with Policy CS17 of the Shropshire Local Development Framework Adopted Core Strategy.

9. The dwelling hereby permitted shall have eaves no higher than 3.3 metres above ground level, and roof ridges no higher than 7.4 metres above ground level.

Reason: To define the consent, and to help safeguard the visual amenity of the Shropshire Hills Area of Outstanding Natural Beauty, in accordance with Policies CS6 and CS17 of the Shropshire Local Development Framework Adopted Core Strategy.

10. No external lighting shall be installed or provided on the site other than in strict accordance with a detailed scheme which shall first be submitted to and approved in writing by the local planning authority. This shall be designed so as to take into account the guidance contained in the Bat Conservation Trust document 'Bats and Lighting in the UK'.

Reason: To minimise disturbance to bats, and to help safeguard the visual amenity of the Shropshire Hills Area of Outstanding Natural Beauty, in accordance with Policies CS6 and CS17 of the Shropshire Local Development Framework Adopted Core Strategy.

INFORMATIVES

1. Your attention is drawn specifically to the conditions above which require the Local Planning Authority's prior approval of further details. In accordance with Article 27 of the Town and Country Planning (Development Management Procedure) Order 2015 a fee (currently £116) is payable to the Local Planning Authority for each request to discharge conditions. Requests are to be made on forms available from www.planningportal.gov.uk or from the Local Planning Authority.

Where conditions require the submission of details for approval before development commences or proceeds, at least 21 days' notice is required in order to allow proper consideration to be given.

Failure to discharge conditions at the relevant stages will result in a contravention of the terms of this permission. Any commencement of works may be unlawful and the Local Planning Authority may consequently take enforcement action.

2. This development may be liable to a payment under the Community Infrastructure Levy (CIL) which was introduced by Shropshire Council with effect from 1st January 2012. For further information please contact the Council's CIL team (cil@shropshire.gov.uk).
3. This planning permission does not authorise the applicant to:
 - construct any means of access over the publicly maintained highway (including any footway or verge);
 - carry out any works within the publicly maintained highway;
 - authorise the laying of private apparatus within the confines of the public highway, including any a new utility connection; or
 - disturb any ground or structures supporting or abutting the publicly maintained highway.

Before carrying out any such works the developer must obtain a licence from Shropshire Council's Street Works Team. For further details see <https://www.shropshire.gov.uk/street-works/street-works-application-forms/>.

Please note that Shropshire Council requires at least three months' notice of the developer's intention to commence any works affecting the public highway, in order to

allow time for the granting of the appropriate licence/permit and/or agreement of a specification and approved contractor for the works.

4. This planning permission does not authorise the obstruction, realignment, reduction in width, resurfacing or other alteration of any public right of way, temporarily or otherwise. Before carrying out any such operation you should consult Shropshire Council's Outdoor Recreation Team and obtain any closure order or further consents which may be required.
5. 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, containing eggs or chicks or on which fledged chicks are still dependent. If possible all demolition, clearance and/or conversion work associated with the approved scheme should be carried out outside the nesting season, which runs from March to September inclusive. If it is necessary for work to commence during the nesting season a pre-commencement inspection of buildings and vegetation for active nests should be carried out. If vegetation is not obviously clear of nests an experienced ecologist should be called in to carry out the check. Only if no active nests are present should work be allowed to commence.
6. In arriving at this decision the Council has used its best endeavours to work with the applicant in a positive and proactive manner to secure an appropriate outcome as required in the National Planning Policy Framework Paragraph 38.