

## Development Management Report

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### Summary of Application

<b><u>Application Number:</u></b> 13/05139/FUL	<b><u>Parish:</u></b> Kinnerley
<b><u>Proposal:</u></b> Erection of four dwellings; retention of public house; formation of new vehicular accesses and alterations to existing car parking arrangement; associated landscaping	
<b><u>Site Address:</u></b> Cross Keys Inn Kinnerley Oswestry SY10 8DB	
<b><u>Applicant:</u></b> Mr Malcolm Guest	
<b><u>Case Officer:</u></b> Joe Crook	<b><u>email:</u></b> <a href="mailto:planningdmc@shropshire.gov.uk">planningdmc@shropshire.gov.uk</a>

**Grid Ref:** 333769 - 320951



**Recommendation:- Subject to the applicants entering into a S106 agreement to secure affordable housing Grant Permission subject to the conditions set out in Appendix 1.**

## REPORT

### 1.0 THE PROPOSAL

- 1.1 The proposed development is for the erection of 4 semi-detached dwellings; the retention of the existing public house; the formation of new vehicular accesses and alterations to existing car parking arrangement and associated landscaping.

### 2.0 SITE LOCATION/DESCRIPTION

- 2.1 The Cross Keys Inn Public House is located within the Village of Kinnerley. Kinnerley lies to the south of Oswestry and North West of Nesscliffe. The Public House is a large detached building of brick and slate construction which is located within a prominent location within the main core of the village, opposite the Church and close to the main shop in Kinnerley. There is a tarmac/gravelled parking area to the front and east side of the building with a grassed area to the west.

### 3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

- 3.1 Objections have been received from Kinnerley Parish Council and following liaison with the Local Member and the Committee Chair it has been requested that the item be determined by the Northern Planning Committee due to the nature of the issues raised.

### 4.0 COMMUNITY REPRESENTATIONS

#### 4.1.1 - Consultee Comments

**Kinnerley Parish Council** considered the above planning application at its meeting on 28 January 2014.

It strongly **Objects** to the proposals as currently submitted.

The Parish Council strongly supports the retention of the Cross Keys as an important community facility in the centre of our village. The Kinnerley Parish Neighbourhood Plan specifically states (on page 44, paragraph 79) that people are keen to have welcoming, family friendly pubs that can act as focal points for the community.

The reasons for the objection are as follows:

1. Kinnerley Parish Neighbourhood Plan (KPNP): The Housing and Development and Economic and Tourist Development section of the KPNP was adopted for development management purposes by Shropshire Council on 14 November 2012. It is a material planning consideration. Development in Kinnerley Parish should be plan led not developer led. In the KPNP, the Cross Keys site was not identified as a site suitable for future development. The application therefore does not comply with the local development plan.

The Community Group of the KPNP (which was established after its adoption to oversee and monitor the planning and implementation of activities related to the Neighbourhood Plan action ideas, see page 44 of KPNP ) has seen a greater awareness and desire to protect the Cross Keys.

2. Setting: The pub occupies a key and prominent location in the centre of Kinnerley and faces the village green and adjacent church. The visual appearance of the proposed houses on the road side to the north-east would adversely affect the character of this historic village centre. Furthermore, the houses extend beyond the existing natural building line, which will be visually intrusive on an already narrow road.

3. Highways: Access to the proposed properties to the north-east is considered to be unsafe. There will be a need to reverse in, or out, of the drives onto an already dangerous section of road or existing pavement. The level of the ground for the proposed houses is much higher than the road, so driveways to them would be on a pronounced slope thus adding to the potential traffic dangers. Safety concerns about the road through Kinnerley are regularly raised with Highways and, following speed assessments, approval was given to install a Vehicle Activated Speed Sign adjacent to the proposed siting of plots 3 and 4. There is limited visibility due to the Church Wall adjacent to the bend, in the village centre. Only recently, following community concerns raised in the KPNP, Shropshire Council agreed to also install mirrors on the other side of the bend near the shop to improve limited visibility when leaving Church Lane. Vehicles reversing into or out of the drives would cause a significant increased risk to road safety on an already unsafe section of road and to local children using the adjacent play area and BMX track who walk or cycle along this section of road.

4. Heritage: We would recommend that the historic value of the pub and its setting is given further review as part of the planning application process.

5. Design: The Application provides no elevations showing the massing of the proposed houses with the Cross Keys pub or adjacent buildings. This was a matter raised with the architect during pre-application discussions. In any event we consider that the proposed development is out of scale and character to the setting. We prefer, in view of the prominent and key geographic location of the application site, that photomontage views of the development be submitted.

6. Car park: The Parish Council notes a clear and direct link to the economic need and the necessity to retain the existing car park at the Cross Keys, and for it to be laid out properly to make full use of the space available. The Cross Keys will not survive on “walk in” business or people travelling by bus. An adequate car park is essential to allow the Cross Keys to be economically viable. Furthermore it must be a car park that is easy to use and not restricted in space, which would put people off visiting the pub. It is to be noted that the existing car park holds a significantly greater number of cars than that proposed in the planning application.

The KPNP (at page 44) recommended the identification and implementation of suitable measures to control parking in central Kinnerley, e.g. limiting length of stay in the car park by the village green, and encouraging the use of the car park instead of on-road parking by the village shop. Any restriction to the Cross Keys car

parking spaces might exacerbate this village parking problem.

7. Viability: The Cross Keys pub is seen as an essential existing facility as noted in the KPNP. Years of bad management led to the severe decline of the pub and to its eventual sale last year. The recent new management (by a local and well respected family) has brought about a 'sea-change' and it is now a busy, vibrant and friendly pub. The existing situation is simply incomparable to previous managers and any planning decision must take full account of the comments of the current landlords where it pertains to the viability as a pub. The pub now offers an excellent menu as well as being a free house. It is clear that with good management the future of the pub has a far 'safer' future than the Applicant has suggested in the planning documentation.

With the business currently demonstrating its potential for success, more car parking will be needed, not less.

8. Financial information: There is no clear demonstration of financial predictions or 'matter of fact' to back up the statements by the Applicant that the pub is in danger of closing and therefore possibly providing a reason to depart from the KPNP. We consider the application statement to be out of date in that it follows the same arguments presented by the architect in September of last year before the present landlord took a lease on the property and before it was demonstrated that with good management the pub very much has a viable future.

9. Consultation: The Parish Council would have welcomed the opportunity to ask the applicant questions at the Council meeting. An invitation was made but neither the applicant nor his agent were made available. Nevertheless, the Parish Council welcomes further discussions with the owner (Applicant) of the Cross Keys and asks that any new proposal is submitted with financial information to outline the cost of repairing/renovating the pub.

10. National Planning Policy Framework (NPPF): The proposal is contrary to paragraph 17 of the NPPF which seeks a plan led system empowering local people to shape their surroundings, which in this case is embodied in the KPNP. In its requirement for good design as set out in the NPPF this proposal is currently contrary to paragraphs 58 and 61. Paragraph 64 is quite clear in that "permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions".

11. Local development plan: The proposed development is contrary to Policies CS6 and CS8 of the Shropshire Core Strategy in that it does not achieve satisfactory design quality and most importantly does not in itself protect the existing facilities that contribute to the village life.

12. Public opinion: At the Parish Council meeting on 28 January 2014 available seats for members of the public were full and those members of the public who spoke at the meeting expressed little support for this application and strong support to ensure good managers/landlords (such as the present landlord) continue to run the pub, independent of any redevelopment of the grounds. A representation by the current landlord confirmed that; in his view, the changes that are proposed,

particularly the proposed reduction of available car parking space, would be adverse for his business.

Informative comments in addition, and separate to, the Objection noted above.

The Parish Council recognises the efforts being made by the applicant and welcomes further dialogue. The Parish Council also recognises that urgent improvement work is needed to improve the living as well as commercial facilities at the pub. This has also been confirmed by the current landlord.

Taking this on board the Council considers that there may be some merit in exploring the development potential of the garden (plots 1 and 2) on an exceptional basis. The development would still need to have recognition and consideration of its appearance and scale as a frontage plot, in the centre of the village.

The Parish Council could be minded to support in principle development on this west side of the Cross Keys on the basis that this is enabling development. Support would be given only on the condition that a binding legal agreement is put in place to link the proceeds of the sale of this land/development directly for repairs/renovation of the Cross Keys. In so doing the Parish Council considers it would be instigating the core principle of the KPNP to ensure the continued use of the Cross Keys as a public house.

Following the above response, some substantial correspondence was submitted in respect of comments received from the applicant regarding the financial details of the public house in order that it continues to run. The Parish commented that the applicant was making a financial case in respect of the financial issues in order to assist with his planning application, and that the planning application should be considered on relevant planning matters only. They also commented that the planning system is not intended to protect the individual matters in terms of the interests of one party over another. The Parish comments go on to discuss the details of the price paid for the site, the subsidising of the rent for the current occupant of the public house and that, overall, the submitted financial details are inaccurate and seek to portray a false financial situation in order to obtain planning permission.

- 4.1.2 **SC Ecology** – No objections subject to conditions and informatives. Advise that any works to the Public House may mean further surveys are required.
- 4.1.3 **SC Drainage** – Full drainage details required including 50% betterment due to brownfield site. Recommend conditions and informatives in this regard.
- 4.1.4 **Affordable Housing** – The affordable housing contribution proforma accompanying the application indicates the correct level of contribution and therefore satisfies the provisions of the SPD Type and Affordability of Housing.
- 4.1.5 **SC Archaeology** - The proposed development site lies within the core of the historic village of Kinnerley, c. 40m west of St. Mary's Church (Listed Grade II\* - National Heritage List Ref. 1054675). This part of the settlement is therefore likely to have occupied since at least the medieval period. Historic editions of the Ordnance Survey map indicate that the western side of the proposed development site has remained undeveloped since at least the later 19th century, whilst a range

of outbuildings previously stood the north of the current public house. It is therefore possible that archaeological features and deposits relating to the medieval and later development of the village might be present on the proposed development site, particularly to the west of the current building. As a consequence, on present evidence it is deemed to have moderate ' high archaeological potential.

Recommend that a programme of archaeological work, to comprise an archaeological watching brief during all ground disturbance works, be made a condition of any planning permission for the proposed development.

- 4.1.6 **SC Public Protection** - The public house has a license to be open until 12:30 Friday and Saturday and slightly earlier on Sundays and other week days. It is likely that there will be some noise from the public house from time to time however it is noted that facades generally facing the public house have no windows into habitable rooms which will reduce any noise disturbance. It is recommended that double glazing is installed to a higher than normal standard of noise attenuation to ensure that disturbance of residents, particularly in night time hours i.e. after 11pm. The applicant also owns the public house and is advised that building residential properties close to the public house may restrict operations in future and could result in application for later licensing hours or music events.

Recommend Electric Vehicle charging point installation.

- 4.1.7 **SC Trees** – Following the submission of an arboricultural assessment, slight amendments to the positioning of plots 3 and 4 were made to ensure that these were largely outside of the root protection areas for the trees to the north boundary. Following this the Trees Officer confirmed that there were **no objections** to the scheme, subject to a condition being attached to any permission.

- 4.1.8 **SC Conservation** – The proposal is adjacent to the Grade II\* listed Church of St Mary and associated Font within the graveyard and Churchyard Cross and steps are both Grade II listed. The Cross Keys is considered to be an undesignated Heritage Asset.

The proposed site is considered cramped and high density, when viewed within the wider context of the village grain, but this may be a result of trying to achieve smaller properties to add a varied mix to dwellings available in the area.

With the proposal for dwellings (plots 1 and 2) comes the removal the hedgerow and it is questioned as to whether it is necessary to provide a pavement when there is one on the other side of the road and it goes nowhere? The proposal on the other side of the public house (plots 3 and 4) will require the removal of the historic sandstone wall, a vernacular detail along the roadside through the historic core of the village. These alterations are likely to have a cumulative detrimental impact on character of this part of the village and therefore possibly affect the wider setting of the listed church and historic environment.

The visual appearance of the proposed dwellings has some reference to the local vernacular but the fenestration detailing and proportion does not and it is considered that a design which takes a more subservient cottage detail, perhaps with gables to the road would harmonise with the public house rather than try to loosely imitate it, as a consequence detract from it. It is recommended that a design

assessment in accordance with the English Heritage guidance is carried out to inform the design within its wider setting of the listed church and its potential harm. If harm is envisaged there should be clear and convincing justification given for this (NPPF para 132) and if less than substantial harm is revealed as part of the assessment or can be reduced to less than substantial harm through negotiations then para 134 of the NPPF could apply i.e. the retention and reuse of the Cross Keys and minimal impact on setting of church and area.

4.1.9 **English Heritage** – Initial objections raised to the scheme based on its impact on the setting of the Grade II\* St. Mary's Church and the undesignated Cross Keys public house, which is considered to be a heritage asset. Further correspondence was required in order to establish the level of harm considered in respect of St. Mary's Church and to clarify where this harm arises from. The response in this regard confirmed that English Heritage considered the harm to the setting of St Mary's Church as 'less than substantial' in terms of the NPPF definitions and that the submitted heritage assessment within the design and access statement was sufficient for the purposes of the application. However, the English Heritage inspector did comment that the harm to the Grade II\* listed building would still in itself be grounds for refusal but did not quantify the reasons for stating that this is the case. It was also commented that either the removal of plots 3 and 4 to the east or possibly two single dwellings on either side of the building could mitigate against the harm created.

4.1.10 **SC Highways** – No objections raised.

4.2.1 - Public Comments

25 public objections have been received which raise the following issues:

- The proposed dwellings opposite the church (plots 3 and 4) are on an elevated piece of land and part demolition of the existing sandstone wall will be detrimental to the character and setting of the historic core of the village, the grade II\* listed church and the overall street scene.
- Plots 3 and 4 will be obtrusive when viewed from the main square in the village given they will be forward of the building line.
- Direct vehicular access onto the main highway through the village is considered to be detrimental to highway safety and close to a blind bend on the road, as well as the Parish Hall car park and the children's play area.
- Children utilising the play area and crossing the road at this juncture will be endangered by the proposal.
- Cars will have to reverse out onto the main road as there is no designated turning inside the site.
- The access point to the Parish Hall was moved due to the risk of being located near to the bend by the church, at the request of the Council.
- Insufficient car parking if pub becomes busy and the Parish Hall car park should not be used as overflow when it is full.
- There should be no loss of car parking, the improvement in the current pub offer has seen an increase in vehicles with 6-12 vehicles regularly parked at the site.
- Why is the additional pavement to the frontage necessary?
- There is no vehicular access to the rear of the pub. What about deliveries etc.
- Semi-detached dwellings in this location are cramped and inappropriate since there are no other semi-detached properties within this area.

- 4 dwellings is excessive and not in proportion with the site.
- The pub is essential to the local community and therefore any works to the public house should be tied to the housing development.
- The housing development requirement within the Kinnerley Parish Plan has been identified for the next 13 years and the proposed development locations do not include the Cross Keys.
- Street scene elevations should be provided in order to establish the visual impact of proposed plots 3 and 4.
- The historic context of the site needs to be taken into account and the development would be detrimental to the heritage importance of a grade II\* listed church, Cleveland House and the Cross Keys itself which is understood to have a medieval cruck frame at its core of possible 15<sup>th</sup> Century date. The modern development would be completely out of character and scale with the historic core of Kinnerley and insensitive to the historic buildings within the vicinity. It would also compromise the village green setting due to the car parking to the front.
- The reduction in the space for the pub will likely see its popularity reduce and could see it close on this basis.
- Without a garden and car park the public house will cease to function as a viable business.
- There is no reference to the refurbishment works to take place and be tied in to the development. The condition of the building should have been reflected in the purchase price. How will it be guaranteed that any money associated with the scheme will be put back into the pub?
- Has the impact of the development on the trees to the northern boundary been considered as development is within the root protection areas and this needs to be considered, along with the depth of the digging and its impact on roots etc.
- Has an ecology survey been submitted?
- Without marked parking spaces it is not realistic to assume that 16 parking spaces will be fully available.
- The design of the proposed houses is banal and inappropriate in its setting.
- Concern regarding tree protection areas as shown.

4.2.2 However, some general support for houses on the plot to support long term viability of public house was included within the above objections, particularly in the location of plots 1 and 2. It was also noted by objectors that the current occupier of public house has made some progress with regard to making the pub more successful. Objectors commented that this should continue and it is evident that it can work with the right people involved to make the pub a viable business proposition (though it should also be noted that the viability of the public house has been disputed by the applicant given it is currently heavily subsidised).

4.2.3 In addition to the above, CPRE Oswestry raised significant concerns in respect of the development due to the impact of the development on an historically important site and its heritage assets. They submitted a heritage statement as part of their objection which raised the following issues:

- The planning application should not be determined without an appropriate heritage statement given the context of the site.
- CPRE have undertaken this in order to ensure that the North Planning Committee are aware of the significant importance of the site within Kinnerley and within the wider area.

Key points made within the submitted heritage statement:

- The core of the village of Kinnerley centred around the Church conforms to a medieval pattern of development. The Church sits on a circular mound, which it shares with the site east of the Cross Keys PH, the road having the appearance of having been cut through this mound. Only very early Churches of the immediately post Roman/early Christian era occupy such circular mounds, which are themselves semi-defensive in nature. It is possible that this cutting through the Saxon enclosure around the Church was a Norman modification to create access from their stronghold at Belan Bank, requiring the revetment of both Churchyard and manorial site with a stone wall. Both the Church and the site of the Cross keys probably occupied the same building platform.
- The fact that the Cross Keys is a cruck-framed open hall would reinforce that it dates from the late 15<sup>th</sup> century as replacement for a possibly earlier building.
- The Cross Keys PH building now has a Georgian external shell which is typical of the late 1700s/early 1800s and this development is also reflected in practically every other house of significance (including the former old Vicarage) within the settlement, and is of historical significance.
- The road pattern has a reversed S which is characteristic of the Saxon and Medieval periods, reflecting the use of the Saxon plough and the fact that it radiates outwards from a typical 'green' – an enclosure for the impounding of animals, and a market place. This Saxon characteristic is still intact.
- The Saxon Green Village - Green villages are a very particular type of early settlement pattern and their form and context needs to be guarded.
- St. Mary's Church clearly had a Saxon foundation, being the Mother Church or Minster for all Churches to the south of Oswestry. A minster Church is of considerable significance. The present Kinnerley Church is truly majestic and rises on its mound about the surrounding buildings but it should not be forgotten that the Cross Keys site is also part of this same site in origin and is of great visual importance to the 'green village' and is the most important building in the village as viewed from the Churchyard. Its environs are thus of considerable visual importance to the Church itself.
- Of even greater significance is that the site for redevelopment immediately east of the Cross Keys is the possible site of the early Christian Preaching Cross (dating from 6<sup>th</sup>-10<sup>th</sup> century), attested to by the field names Cross Field which is attached to the land immediately east of and behind The Cross Keys PH (evidence from Tithe apportionment). It is thus possible that the PH takes its name from a former preaching cross which stood on what appears to be the end of the defensive enclosure before the road was cut through. The cross would have preceded the building of any Church on the site and its site would have been deliberately chosen by a missionary priest to precede the building of the first wooden church from out of which a colony of missionary priests would travel to surrounding areas to convert the pagan Saxons to the Christian religion as early as the 6<sup>th</sup> century.
- The preaching cross in the Churchyard is thought to be 15<sup>th</sup> century in date and could be a replacement. Such features acquired a symbolic significance over the centuries and as the old Saxon Cross crumbled away it necessitated a replacement which could easily have moved its location. The proposed development thus could hardly be described as being a suitable use for such a unique historical site of considerable importance to the foundation of Christianity for the Oswestry area.
- Sandstone walls are a feature of the village. It is thus essential to retain these

important features, especially those that delineate and act as a revetment for what appears to be a deliberate cutting through the early religious/Saxon defensive site.

- The proposed development is an unsuitable use for such a unique historical site of considerable importance to the foundation of Christianity for the Oswestry area.
- The proposed designs are banal and overpowering and will dwarf the Cross Keys PH, tower over the green and create an unfortunate duality with the Church, reducing its importance in the street scene. Under no circumstances can these proposed developments be allowed to disrupt the setting of the Minster Church.
- The settlement as a whole abounds with buildings of listable quality including the larger Georgian and stone houses which undoubtedly have earlier cores; and the whole form of the village itself has potential to be a conservation area. Such 'green villages' are very rare, are known to be associated with Saxon settlement, and its importance as an early foundation of Christianity urgently needs to be recognised.
- The development should be resisted under the National Planning Policy Framework on the basis of the unique character outlined above, and the historic importance of the 'green village' of early origin. It is also detrimental to the setting of a grade II\* listed building of which it was likely originally part of and therefore should be refused on this basis. The application should also not be determined as no heritage statement has been made, and this is essential in light of the above, and in accordance with the NPPF.
- The NPPF states Section 132 states that "when considering the impact of a proposed development on the significance of a heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction. Substantial harm to a grade II\* building should be wholly exceptional"
- Section 133 states that "where a proposed development would lead to substantial harm or total loss of significance of a designated heritage asset the LPA should refuse consent"
- It is urged that the LA regard the mound upon which the east side of the Cross Keys sits as part of the defensive Saxon mound upon which the Church sits and thus an undesignated heritage asset. Also that Section 129 of the NPPF should apply, that is, non-designated heritage assets of archaeological interest that are demonstrable of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets.
- Finally it is urged that in accordance with section 141 LPAs should make information about the significance of the historic environment (at Kinnerley i.e. the defensive mound, the 'green village' and the Minster Church) gathered as part of the development management process, publically accessible and that it should form the basis of a Conservation Area designation.
- The scheme is also contrary to Core Strategy policies CS6: Sustainable Design and Development, CS16: Tourism, Culture and Leisure and CS17: Environmental Networks of the Shropshire Core Strategy.

In addition, when Kinnerley Parish Neighbourhood Plan was adopted by Shropshire Council the Parish was congratulated for identifying more sites for housing development than was proposed in the SAMDev document. KPNP specifically excluded future development in the centre of Kinnerley Village.

- 4.2.4 An assessment of the Conservation Officer comments and the revised design and access statement has also been undertaken by CPRE who have made the following comments:

- A consultation with English Heritage should take place as the application affects the setting of a Grade II\* listed building.
- The response of the Conservation Officer recognises that the scheme represents overdevelopment of the site and should therefore be refused by the Council.
- The Conservation Officer raises a number of key issues, and states that development has a cumulative detrimental impact on the site and setting of the wider area including the listed church. Her comments also reference the removal of hedgerow and sandstone wall, as well as the inclusion of a pavement which goes nowhere.
- Kinnerley Parish has allocated sufficient housing to meet the needs of the Council's housing numbers.

The revised design and access statement (which includes the heritage statement) has failed to address the above issues and confirms a lack of understanding of the impact of the development as it concludes a positive impact on its surrounds.

## 5.0 THE MAIN ISSUES

- Principle of development
- Sustainable development
- Impact on the setting of St. Mary's Church and historic core of Kinnerley
- Design, scale and character
- Highways
- Impact on neighbouring amenities
- Drainage
- Ecology
- Public Protection
- Affordable Housing
- Other issues

## 6.0 OFFICER APPRAISAL

### 6.1 Principle of development

6.1.1 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. Since the adoption of the Councils Core Strategy the National Planning Policy Framework (NPPF) has been published and is a material consideration that needs to be given weight. Paragraph 12 of the NPPF states that '*Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise*'.

6.1.2 With regards to housing development paragraph 49 of the NPPF states that:

*'Housing applications should be considered in the context of the presumption in favour of sustainable development'*.

and that

*‘Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.’*

6.1.3 Shropshire Council has an adopted Core Strategy and CS4 outlines that housing development that is of a scale that is appropriate to the settlement will be allowed in villages in rural areas that are identified as Community Hubs and Clusters within the SAMDev DPD. The SAMDev DPD is at the ‘Revised Preferred Options’ stage and paragraph 216 of the NPPF states that decision-takers should give weight to the relevant policies in emerging plans according to:

- *the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);*
- *the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given);*
- and
- *the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).*

6.1.4 Kinnerley is part of a Community Cluster within this area, also made up of Maesbrook, Dovaston and Knockin Heath and this has an overall target of 50 dwellings for the plan period. However, Kinnerley has undertaken a Community Led Plan which has been endorsed by Shropshire Council’s cabinet and is now adopted for development management purposes. Specific site allocations have been proposed within the Neighbourhood plan and this includes two allocated sites for development in Kinnerley, with a total housing target of 23 dwellings on these sites whilst retaining a development boundary. The Community Led Plan acknowledged the requirement for more housing whilst also identifying that Kinnerley village is by definition a ‘Community Hub’ given the level of services and facilities available including a shop, pub, school, post office, Parish Hall, play areas and bus route. However it also specified that approximately half of the required housing for the cluster should be sited here, and that this is represented within the allocated sites for 23 dwellings. It was also specified within the community questionnaire that the housing should not be on a single large site but on a mix of sites within the area. The site proposed for development is within the designated development boundary but was not included as a site for consideration during the assessment of allocations for the Kinnerley Neighbourhood Plan. It is also noted that smaller dwellings in the form of 1-3 bed houses were largely preferred as opposed to 4-5 bed houses.

6.1.5 A number of residents have objected to the proposed scheme on the basis that the allocation of housing required for Kinnerley and the surrounding area was allocated during the Community Led Plan and therefore additional housing sites would not be in accordance with this adopted plan. The Parish Council have raised this issue and commented that development in Kinnerley Parish should be plan led not developer led and, in the Neighbourhood Plan, the Cross Keys site was not identified as a site suitable for future development. This means that it is the Parish Council’s opinion that the application does not therefore comply with the local development plan and as such the proposal is contrary to paragraph 17 of the

NPPF which seeks a plan led system empowering local people to shape their surroundings and in this case this is embodied in the Kinnerley Parish Neighbourhood Plan.

- 6.1.6 Saved policy H5 of the Oswestry Local Plan is also a relevant local policy in that it supports sustainable housing developments in the larger areas, such as Kinnerley, where a variety of services and facilities are available. This allows suitable windfall sites within development boundaries.
- 6.1.7 As noted above however, the NPPF specifies that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. In this case, greater weight should be the presumption in favour of sustainable development as advocated in paragraph 14 of the NPPF. Due to the current position on meeting the 5 year land supply for Shropshire guidance is such that NPPF paragraph 49 applies. This effectively means that in taking decisions saved local plan policies are not considered up to date and are given less weight than the NPPF guidance, with the emerging SAMDev also given less weight in this regard. The lack of 5 year land supply also reduces the weight given to Parish plans, in this case the Kinnerley Neighbourhood Parish Plan, in determining the location of housing. The consideration of the principle of residential development is therefore largely based on whether the site is considered to be in a sustainable location due to the lack of 5 year land supply for housing.

## 6.2 Sustainable development

- 6.2.1 As referenced above, the Kinnerley Parish Plan itself references the level of services and facilities present within the centre of Kinnerley and that this would typically represent that of a Community Hub under policy CS4 of the Shropshire Core Strategy. The location of the development within the development boundary and the main core of Kinnerley means its siting is close to the variety of services available in the village and as such it can be seen to be a sustainable location which would minimise the requirement for car use and would be easily accessible to all available facilities. Furthermore officers consider that it will be read within the context of the existing development within the village and will not be isolated from it in any way. On this basis it is considered that the principle of the development is acceptable based on the fact the proposal accords with paragraph 49 of the NPPF in terms of a presumption in favour of sustainable development.

## 6.3 Impact on the setting of St. Mary's Church and historic core of Kinnerley

- 6.3.1 Clearly a variety of concerns have been received relating to the impact of the development on heritage assets within the area including St. Mary's Church opposite the site, and the historic core of the settlement of Kinnerley. The Council's Historic Environment Team have made reference to this and the need for a level of assessment of the impact on the Grade II\* listed church. The Parish have commented that the elevated nature of the site to the north east, forward of the building line will have a detrimental impact on the village setting. Furthermore the CPRE have submitted a detailed document which outlines the historic development of the village and the potential importance of the Cross Keys site in its early development. The majority of the detail relating to this can be found above, but some of the main issues raised relate to the Cross Keys site sharing the circular

defensive saxon mound upon which the Grade II\* listed St. Mary's sits with the road having been cut through the mound; the fact the Cross Keys could have dated from the 15<sup>th</sup> century given it was a cruck-framed open hall prior to its Georgian shell; the historical significance of the Georgian Shell from the early 1800s and the reflection of this within the surrounding village; the settlement pattern and context of a Saxon 'Green Village'; the significance of the church and its setting as well as the other significant religious features and buildings of listable quality within the area; and of most significance is that the site for redevelopment immediately east of the Cross Keys is the possible site of the early Christian Preaching Cross dating from 6<sup>th</sup>-10<sup>th</sup> century.

- 6.3.2 On the basis of the above the CPRE objection comments that the scheme should be refused under NPPF Section 132 which states that "when considering the impact of a proposed development on the significance of a heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction"... "Substantial harm to a grade II\* building should be wholly exceptional" as well as Section 133 which states that "where a proposed development would lead to substantial harm or total loss of significance of a designated heritage asset the LPA should refuse consent".
- 6.3.3 The balance of the consideration has to therefore be on the level of impact of the development on a heritage asset, in the form of the Grade II\* listed church and the non-designated asset referred to in the form of the Cross Keys itself. Paragraph 128 of the National Planning Policy Framework states that local planning authorities should require the applicant to describe the significance of any heritage assets potentially affected and any contribution made to their setting. The level of detail of the submission should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. The applicant has included a heritage assessment within their design and access statement which has accessed the relevant historic environment record and has assessed the level of impact of the development. It has been referred to the English Heritage Inspector who has agreed that it represents a sufficient level of information for the application in terms of its assessment of the historic environment. The assessment concludes that there is nil impact on the setting of the grade II\* listed church given the scale and positioning of the dwellings within gaps in built up frontages and within the setting of the Cross Keys itself. However, in addition the level of impact on the Cross Keys is considered to be minimal with the building unaffected in its central position within the site as the focal point as the most distinctive structure. The statement also points out that in accordance with the NPPF, where development includes sites with archaeological interest then appropriate requests for further archaeological investigation should be made. This has been acknowledged by the Local Authority and a condition could be attached in this regard.
- 6.3.4 It is noted that the CPRE comment provides detailed information regarding the historic development of the village, and how the development within the village is of significance to the development of Christianity within the area, the significance of St. Mary's Church and the potential for the Cross Keys site to have been potentially part of the same defensive mound. However, the area is not a designated Conservation Area and it is evident that there has been some modern development

within this historic core of Kinnerley, something noted with the applicant's Heritage Assessment. In this regard the consideration of the development really lies with the assessment of the impact on the Grade II\* listed church and the Cross Keys itself. Paragraph 132 of the NPPF recognises that the weight of consideration should be based on the importance of the asset itself. In this case much greater weight is given to the consideration of the impact on the Grade II\* listed building than on the non-designated heritage asset (which has only recently been described as such).

- 6.3.5 In respect of the above comments from the CPRE with regard to the level of impact and the consideration of the NPPF guidance, it is notable that whilst the English Heritage Inspector has considered there to be some harm in respect of the Grade II\* listed church, this harm is considered to be 'less than substantial'. On this basis the above sections of the NPPF are not entirely relevant and the consideration of this application is within the context of 'less than substantial' harm on a grade II\* listed building and harm to the setting of an undesignated heritage asset in the form of the public house itself. Whilst there has been an application made to English Heritage in order to attempt to list the Cross Keys pub, this can not be given weight in regard to the application given its current undesignated status and it should also be noted that this was clearly undertaken in response to the application being submitted and not based on an independent consideration of the building prior to an application for development of the site. As referenced above, clearly far more weight is given to the level of harm to the Grade II\* listed building than a non-designated asset.
- 6.3.6 Whilst the CPRE comments regarding the potential historical layout of the defensive mound in this location are acknowledged, the current layout of the village has to be given weight as well and the two sites are now separated by the road that has potentially been dug through this mound. Officers consider that visually this creates significant separation between the two sites, particularly with the sandstone walls on either side and this has been included within the development in order maintain a level of continuity and sensitivity in this regard. Furthermore, the existing context within which plots 3 and 4 sit requires consideration as this includes the modern Parish Hall to the north, a tennis court to the north east and a modern dwelling further away to the west. The dwellings will be visually divided from the church by the road and the overall scale, height and setting of the church within a much larger site will be relatively unaffected given the division and the overall prominence of the church on the opposite side of the road. In addition the dwellings will be well screened by existing trees, which are to be protected as part of the development, and will be read much more closely against the Cross Keys itself.
- 6.3.7 In this regard it is considered that there is an impact on the setting of the Grade II\* building, however as confirmed by English Heritage this impact is "less than substantial". As per paragraph 134 of the NPPF, where this is considered to be the case, this should be weighed against the benefits of the proposal and securing the sites optimum viable use. Whilst the English Heritage Inspector has commented that the harm could still be sufficient for a refusal of the scheme, evidently in the consideration of the scheme we need to consider the level of harm against the wider benefits of sustainable housing development at a time when additional housing supply is crucial within Shropshire, as well as the retention of an important community facility within Kinnerley. Based on the fact that the harm is considered to be 'less than substantial' to the Grade II\* listed church and the pub itself is not

designated, along with the assessments made above in respect of the position of the proposed dwellings, their subservience to both the public house and church and the limited vantage points from which they are viewed, officers consider that the balance falls in favour of the benefits of the scheme being given greater weight than the harm to the heritage asset.

- 6.3.8 Whilst it is noted that reference is made to the settlement pattern including the roads, this is largely unaffected by the development in many respects and the form of the area is not uniform in any case and includes elements of modern development. Furthermore, the potential for the site to have been used for an early Christian Preaching Cross does not appear to be fully confirmed but obviously any evidence regarding this could be established through the archaeology works to take place as part of the condition requested by Historic Environment.
- 6.3.9 The visual impact of the development on the non-designated asset, the Cross Keys itself, is considered to be minimal. Whilst it is acknowledged that this is a prominent building in its own right it will be retained in its entirety with the proposed dwellings located to the side and rear of the building largely as infill development, reducing the overall visual impact and retaining the focus of the Cross Keys within the site. It is equally considered that the design of the dwellings are such that they reflect the character of the site and surrounding area and this will be discussed further within the next section. It is also acknowledged that the addition of the sandstone wall sections along the frontage of the site to replicate the existing walling are considered to provide visual enhancement with respect to the scheme.
- 6.3.10 It should also be noted that there is some dispute over the location and extent of the Cruck frame within the public house, with objections stating it is within the eastern section of the building, though photographic evidence provided by the applicant appears to show its potential location differently. Whilst such a dispute is not considered to have a major bearing on the application recommendation in itself, it does demonstrate that it is difficult to give any great weight to this at the current stage given that it is entirely internal, and its extent has not been fully established. With the development not proposing to alter the public house, and currently not designated, it is not considered that this would be a reason to delay or refuse the application as submitted.

#### 6.4 **Design, scale and character**

- 6.4.1 Concerns have been raised regarding the design of the dwellings, with objectors referring to the dwellings as banal and visually detrimental to the area, as well as inappropriate in scale and cramped within the site. The Conservation Officer has commented that the dwellings should be altered in design and formed through a design assessment, and that the proposed design whilst taking some reference to local vernacular does not achieve an appropriate visual appearance. A cottage style to the dwellings with fronting gables is suggested. Furthermore the Conservation Officer has commented that the removal of the historic sandstone wall is a vernacular detail within the historic core of the village and its removal would be detrimental to the character of the area. However, this has been reintroduced as part of the scheme following negotiation, with sections of sandstone walling to be included on the side and front of the site (where vehicular access points for the development are not required).

- 6.4.2 The layout of the scheme is dictated by the position of the public house to the centre of the site and officers consider that this ensures a level of balance within the visual appearance of the scheme, retaining the visual dominance of the public house. Whilst objections to the scheme have commented that the dwellings will dominate the existing public house building and will be cramped within the site, this is not considered to be the case. Plots 1 and 2 will be comfortably located as infill development between the Cross Keys and an existing dwelling to the west and will be staggered so that each side is set slightly in from the adjacent building, thus allowing the existing buildings to maintain visual prominence and the proposed dwellings to remain subservient.
- 6.4.3 The dwelling frontages have been staggered with hipped roofs included and this reflects the design of the Cross Keys and is a prominent feature of properties within the area. The width of the properties will be approximately half of the Cross Keys itself with the height of the dwellings to be similar to the main ridge height of the pub (though a condition for finished floor levels will be included) and therefore the overall scale of the dwellings is not considered to be excessive. Whilst the fenestration has been noted to be different to that of the public house, clearly the difference between the uses of the buildings requires for more domestic features to be utilised on the proposed dwellings, and the new properties have included architectural details such as chimneys and windows headers and cills. These features are intended to be sensitive to the character of the area and the public house, but evidently the buildings will be read as domestic properties and are not intended to match exactly the design of the public house. It is also worth noting the plots 1 and 2 will also be read within the context of the existing more modern properties within the vicinity of this part of the site.
- 6.4.4 The Conservation Officer has commented that a change in design could be considered more appropriate and subservient, utilising a cottage detail with gables to the road, formed from a design statement. However, the design of the dwellings proposed is considered by Officers to be sensitive to the local vernacular for the reasons set out above and is not considered to be excessive in scale or visually dominant in any case. The introduction of gables to the frontages as suggested by the Conservation Officer is considered to be a relatively alien feature to the village and it is considered that this would sit uncomfortably within the historic core of the village and the Cross Keys itself.
- 6.4.5 It should also be noted that the design of the dwellings lends itself to smaller semi-detached properties. A number of objectors have commented that detached dwellings would be preferred in this location but it is noted that the Kinnerley Neighbourhood Plan identifies the need for smaller properties and these units would meet such a need given that they be relatively compact 3 bedroom properties. However, objectors have also raised that this leads to a relatively cramped development. This is not considered to be the case, with parking provision for two cars to the front of the properties and relatively generous amenity space to the rear of the all houses. On this basis the density of the development is considered to be appropriate, whilst also meeting a housing need within the area.
- 6.4.6 A number of objections have been received with regard to plots 3 and 4 due to these dwellings being sited opposite the Grade II\* listed church and considered to be forward of the 'building' line of the Cross Keys and obtrusive in this regard. The

issues relating to the impact of these dwellings on the heritage assets within the locality are discussed above. However, in terms of the relationship with the Cross Keys and the wider area, the dwellings will be positioned to the rear of the public house and are not considered to compete with the Cross Keys building, or appear excessive adjacent to it, given that they will be set back from the pub frontage and side facing to the main centre of Kinnerley Village. Whilst they will be on an elevated section of land the distance they are set back from the pub frontage reduces the visual impact of this when viewed from the centre of the village, and with the frontages of the properties onto Vicarage Road and screened by large trees (to be safeguarded as part of the application) when viewed from the north east it is considered that the visual impact of these properties is minimised. A new stone wall will be constructed in front of the side elevation facing towards the main core of the village and as such this will further visually divide plots 3 and 4 from both the pub frontage and the core of the village, and also soften the visual appearance. As such it is not considered that the plots 3 and 4 represent an adverse visual intrusion within the core of the village and are considered to have a relatively minimal impact, allowing the prominent Cross Keys to remain so.

6.4.7 It should be noted that slight amendments were made to plots 3 and 4 following consultation with the Trees Officer, and the garage to plot 3 was removed, with the dwellings moved slightly away from the Tree Root Protection Zone. Given the screening that the trees provide and their amenity value, it is considered that this is an enhancement to the scheme and the revised positions of the dwellings are negligible in their change compared with the original submission.

6.4.8 Overall, officers consider that the design and appearance of the dwellings is not banal or standardised 'off the peg' house designs, and the scheme is considered to be sensitive in its design and layout to the main village 'green' area and the Cross Keys site itself. They are not considered to be excessive in scale or to have an adverse impact on the character of the site. Appropriate conditions can be attached in respect of materials, finished floor levels and fenestration details and as such it is considered that the scheme is acceptable in accordance with policies CS6 and CS17 of the Shropshire Core Strategy.

## 6.5 **Highways and access**

6.5.1 The highway authority have comment as follows:-

A number of issues have been raised in respect of the scheme and the associated accesses, parking and impact on the highway network. Concern firstly has been raised in respect of the car parking for the public house being reduced and that there is a direct correlation between the success of the public house and the need for maximum parking in order for it to operate and be economically viable. However, details submitted with the application show that with some of the existing grassed area to the front of the site included for additional parking under the proposed scheme, the overall level of parking for the public house is no different to that existing. Given it will create a more formalised layout it is actually considered to be beneficial in this regard. Whilst the parking provision would not meet the parking standards of the Oswestry Borough Plan, which is one space for every 3 square metres of public house, it does not currently meet these requirements. With the parking provision matching that existing, and possibly slightly more generous with a formalised layout, it is considered that this is sufficient in this case and a refusal

would be difficult to sustain purely on these grounds. Whilst reference is made to a parking problem within the village, and the potential for overflow to park in the Village Hall car park, it is considered that the allocation of commensurate parking with the existing public house provision means the current offer at the public house, if successful, would create the same issues and therefore the highway authority do not consider that this can be given significant weight.

- 6.5.2 Concerns have been raised with respect to the vehicles reversing out onto Vicarage Road adjacent to the church, and that safety concerns already exist which has led to the installation of a vehicle activated speed sign in this location, with limited visibility due to the Church Wall adjacent to the bend at this point. Vehicles reversing would therefore increase risk to road safety on this section and it should be noted that children utilising the adjacent play area and BMX track would be at increased danger. It was also noted that the Parish Hall access was moved further from the bend in order to overcome visibility concerns.
- 6.5.3 Whilst these concerns are noted, it is considered that the additional sections and widening of the pavement wrapping around the site improves the safety issues in respect of those attempting to access the surrounding facilities, and represent a minimal impact in terms of the vehicles accessing the parking facilities for the dwellings given that this will be at slow speeds where pedestrians would be clearly visible.
- 6.5.4 Whilst the concerns regarding the access points of plots 3 and 4 are also acknowledged, the access from plot 3 would largely have visibility beyond the bend in order to see oncoming traffic, with the access point to plot 4 of sufficient distance from the bend in order to have adequate visibility, in both directions. The highway speeds in this location are considered to be at or around 30 mph and whilst the comments are noted regarding the requirement for additional signage, this is considered to be an enforcement issue and the proposed scheme can only be considered within the context of the prevailing speed limit within the local highway network. On balance it is considered that the highway access points are acceptable within the context of a 30mph speed limit and is therefore acceptable in this regard.
- 6.5.5 It has been queried why the additional pavement to the frontage of the site is necessary, but this was requested by the highway authority prior to the application being submitted in order to improve the pedestrian safety and to integrate the site with its surrounding area. The fact that the development proposal provides the opportunity to provide a uniform footway width across the site road frontage is considered to be of benefit to the wider community.
- 6.5.6 A further query has been made relating to no vehicular access being available to the rear of the pub, making deliveries difficult. However, deliveries would still be able to be taken from the front of the pub and these would arrive at times when the car park is unlikely to be fully utilised such as in the mornings or during weekdays. This is considered to be a management issue and if necessary a planning condition could be imposed requiring a Delivery/Waste Management Plan being submitted for subsequent approval. It is not therefore considered that this issue could be considered as a reason for refusal of the scheme.

## 6.6 **Impact on neighbouring amenities**

6.6.1 Plots 3 and 4 would not be detrimental to the amenities of any neighbouring properties given that they will be located to the rear/side of the public house and facing on to the road, with the Parish Hall to the north. Plots 1 and 2 would sit between the public house and the dwelling to the west. Whilst there is evidently some impact on the adjacent dwelling this is considered to be minimal in terms of sunlight given the suns position generally rising and towards its highest point when facing the side of the proposed properties and that existing. The sun will then fall on the opposite side of the properties. In terms of privacy the dwellings will be set slightly further back than the existing dwelling and will have windows only facing directly to the rear and front of the site other than for a bathroom, and this will be obscure glazed. As such it is considered that there will be minimal adverse impact on the amenities of surrounding neighbouring properties.

## 6.7 **Drainage**

6.7.1 The Drainage Engineer confirmed that conditions and informatives could be attached with regard to surface water drainage and connecting to the foul water mains drainage. It was commented that as the site is a brownfield site then 50% betterment to current flows would be required and the applicant will be made aware of this via an informative, along with the prioritisation of soakaways as a method of drainage in the first instance.

## 6.8 **Ecology**

6.8.1 Following consultation with the Planning Ecologist it has been established that no further ecological surveys are required for the construction of 4 houses and conditions and informatives in respect of bird and bat box provision as well as external lighting should be included on any permission granted. They have also stated that any works to the public house may require further surveys to be undertaken and the applicant has been made aware of this, though obviously the scheme under consideration does not involve any works to the public house, only its retention.

## 6.9 **Public Protection**

6.9.1 The Public Protection Officer has commented that the proximity of the dwellings to the public house means there will be some potential noise from the public house which has a license to open until 12:30 Friday and Saturdays. It is therefore recommended that double glazing to a higher standard of noise attenuation than normal is installed, and submission of joinery details will be required by condition. It is also noted that the proximity of the houses may mean future restrictions or issues in terms of licensing hours or music events. Whilst this is acknowledged it is not considered to be a reason for refusal of the scheme and can be adequately controlled through public protection and licensing requirements for public houses.

It is recommended to include a condition regarding charging point installation for low emission vehicles, but this will be included as an informative in this case.

## 6.10 **Affordable Housing**

6.10.1 Following the submission of the affordable housing contribution proforma, the affordable housing department confirmed that the level of contribution submitted was correct. This will be subject to a section 106 agreement should the application be approved.

**6.11 Trees**

6.11.1 Some concern has been raised regarding the impact on the trees at the site, and that full consideration has been given to the impact on tree roots. An arboricultural assessment has been submitted with the application and following consideration by the Trees Officer it was considered that this was acceptable following the removal of the garage to plot 3 to allow for plots 3 and 4 to be moved over and out of the tree root protection areas for the trees to the northern boundary. The Trees Officer confirmed that this was sufficient to overcome any concerns subject to an appropriately worded condition in respect of the development. The development is therefore considered to be acceptable in this regard.

**6.12 Other issues**

6.12.1 As raised above within the Parish Comments section, the applicant and the Parish Council had some correspondence regarding the submitted financial information and there were varying assessments of this information. However, with the full contributions being made in respect of the Community Infrastructure Levy and Affordable Housing, the determination of the application is being made purely on the addition of four houses within a sustainable location, and the retention of the existing public house. The financial details of the public house are not therefore entirely relevant and are not given substantial weight to the recommendation, which is actually being based on the details given in the 'Principle of development' described above i.e. sustainable housing development.

6.12.2 Concerns have been raised within objections in relation to the potential impact on the popularity of the public house, and its overall viability, based on the proposed scheme reducing the amount of space for pub garden and car park. However, as referenced above, the number of car parking spaces is largely the same as currently provided within the ad hoc parking area for the pub and the formalised layout means the viability of the pub is not threatened in this regard. A garden area for the public house will be retained and all the internal facilities, and therefore the scheme is not considered to represent a substantially different offer to that existing, particularly when it is considered that a large amount of the area surrounding the public house is currently unused.

6.12.3 An objector has commented that there is no reference to the refurbishment works to take place at the public house, and that this should be tied to the development and if not how will it be guaranteed that any money associated with the scheme be put back into the pub. As noted above, the scheme put forward is effectively to consider the addition of four dwellings in this location, with the retention of the public house. As officers consider the scheme to be acceptable in terms meeting the housing requirements of Shropshire and being within a sustainable location in this regard, it is not considered that refurbishment of the public house is required to make the scheme acceptable in planning terms. As such the proposal is being considered purely on its merits as a housing scheme, and obviously the retention of the public house is welcomed as this is a community facility within the local area and is widely supported in its retention.

**7.0 CONCLUSION**

The proposed scheme is considered to represent a sustainable housing development close to local services and facilities, and is considered to be of an appropriate design, scale and siting. The impact on the surrounding area and in

particular the setting of the adjacent grade II\* listed building is not considered to be substantial and there is not considered to be a detrimental impact in terms of trees, drainage, protected species or highway safety. As such it is considered that the scheme accords with policies CS4, CS6 and CS17 of the Shropshire Core Strategy, saved policy H5 of the Oswestry Borough Plan and the National Planning Policy Framework. 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 187.

## **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, 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 three months after the grounds to make the claim first arose.

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

### **8.2 Human Rights**

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

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

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

### **8.3 Equalities**

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

## 9.0 Financial Implications

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

## 10. Background

### Relevant Planning Policies

Central Government Guidance:

NPPF

Core Strategy and Saved Policies:

CS4 - Community Hubs and Community Clusters  
 CS6 - Sustainable Design and Development Principles  
 CS17 - Environmental Networks  
 H5 – Larger Settlements

## 11. Additional Information

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 M. Price
Local Member  Cllr Arthur Walpole
Appendices APPENDIX 1 - Conditions

**APPENDIX 1****Conditions****STANDARD CONDITION(S)**

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

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

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

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

**CONDITION(S) THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES**

3. No built development shall commence until samples of all external materials including hard surfacing, have been first submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the approval details.

The samples required shall include the erection of sample panels of both brickwork and the proposed sandstone walls, including mortar, of at least 1 metre square, on site for the approval of the Local Planning Authority.

Reason: To ensure that the external appearance of the development is satisfactory.

4. No development shall take place until a scheme of surface water drainage has been submitted to, and approved by the Local Planning Authority. The approved scheme shall be completed before the development is occupied.

Reason: To ensure satisfactory drainage of the site and to avoid flooding.

5. In this condition 'retained tree' means an existing tree, large shrub or hedge which is to be retained in accordance with the approved plans and particulars; or any tree, shrub or hedge plant planted as a replacement for any 'retained tree'. Paragraph a) shall have effect until expiration of 5 years from the date of occupation of the building for its permitted use.

a) No existing tree shall be wilfully damaged or destroyed, uprooted, felled, lopped, topped or cut back in any way other than in accordance with the approved plans and particulars, without the prior written approval of the Local Planning Authority. Any approved tree surgery works shall be carried out in accordance with British Standard BS 3998: 2010 - Tree Work, or its current equivalent.

b) No works associated with the development permitted will commence and no equipment, machinery or materials will be brought onto the site for the purposes of said development until a Tree Protection Plan has been submitted and approved in writing by

the Local Planning Authority. All tree protection measures detailed in the approved Tree Protection Plan must be fully implemented as approved before any equipment, machinery or materials are brought onto the site for the purposes of the development. All approved tree protection measures must be maintained throughout the development until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered nor any excavation be made, without the prior written consent of the Local Planning Authority.

Reason: To safeguard the amenities of the local area and to protect the natural features that contribute towards this and that are important to the appearance of the development.

6. No development approved by this permission shall commence until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI). This written scheme shall be approved in writing by the Planning Authority prior to the commencement of works.

Reason: The site is known to hold archaeological interest.

7. No development approved by this permission shall commence until details of the proposed finished floor levels have been submitted to and approved by the local planning authority.

Reason: In the interest of maintaining the amenity and character of the area.

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

8. A total of 1 woodcrete artificial nests suitable for small birds such as robin, blackbird, tit species, sparrow and swallow shall be erected on the site as shown on a site plan prior to first occupation of the buildings hereby permitted.

Reason: To ensure the provision of nesting opportunities for wild birds

9. A total of 1 woodcrete bat boxes suitable for nursery or summer roosting for small crevice dwelling bat species shall be erected on the site prior to first use of the buildings hereby permitted as shown on a site plan. All boxes must be at an appropriate height above the ground with a clear flight path and thereafter be permanently retained.

Reason: To ensure the provision of roosting opportunities for bats which are European Protected Species

10. Prior to the erection of any external lighting on the site a lighting plan shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and thereafter retained for the lifetime of the development. The submitted scheme shall be designed to take into account the advice on lighting set out in the Bat Conservation Trust booklet Bats and Lighting in the UK.

Reason: To minimise disturbance to bats, a European Protected Species.

11. No joinery works shall commence until precise details of all external windows and doors and any other external joinery have been submitted to and approved in writing by the Local Planning Authority. These shall include full size details, 1:5 sections and 1:20 elevations of each joinery item which shall then be indexed on elevations on the approved drawings. The work shall be carried out strictly in accordance with the approved details.

Reason: To safeguard the character of the surrounding area.

12. The accesses, parking layout and parking spaces shall be satisfactorily laid out and completed in accordance with the amended plan 1045 05 Rev D prior to the dwellings being occupied.

Reason: In the interests of highway safety.