



Committee and Date  
Northern Planning Committee  
18<sup>th</sup> August 2020

Item  
**7**  
Public

## Development Management Report

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### Summary of Application

<b>Application Number:</b> 20/01161/FUL	<b>Parish:</b>	Market Drayton Town
<b>Proposal:</b> Erection of one detached dwelling; formation of vehicular access (Resubmission)		
<b>Site Address:</b> Proposed Dwelling SE Of South Ring Church Street Market Drayton Shropshire		
<b>Applicant:</b> Mr Max Cole		
<b>Case Officer:</b> Sue Collins	<b>email :</b> <a href="mailto:planning.northern@shropshire.gov.uk">planning.northern@shropshire.gov.uk</a>	

**Grid Ref:** 367546 - 334015

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**Recommendation:- Refuse for the following reasons:**

1. The proposed development will have an unacceptable impact on the setting of adjacent designated heritage assets as well as the Market Drayton Conservation Area. this is considered to be contrary to the requirements of the NPPF and policies CS6, CS17, MD2 and MD13 of the Shropshire LDF.

2. Insufficient information has been provided with the application to demonstrate that the proposal will not have a long-term impact on the trees that are adjacent to the site. As these are an important feature of the area and its landscape, their loss would be unacceptable. As such the proposal is contrary to the NPPF and policies CS17, MD12 and MD13 of the Shropshire LDF.

3. The design and proximity of the proposed dwelling to the neighbouring dwelling and its proximity to the churchyard would result in a loss of privacy and significantly alter the perceived enjoyment of the area. As such the proposal is considered to be contrary to policy CS6 of the Shropshire LDF.

## REPORT

### 1.0 THE PROPOSAL

- 1.1 This application seeks planning permission for the erection of a detached dwelling and the formation of a vehicular access.
- 1.2 During the course of dealing with this application amendments have been made and additional information provided. It is on the basis of these that this report is written.

### 2.0 SITE LOCATION/DESCRIPTION

- 2.1 The application site is part of the rear garden to South Ring, Church Street, Market Drayton. To the north east lies St Mary's Church and its associated Church Yard. To the east lies Phoenix Bank which is a sharp bank providing excellent views to the Church as approaching Market Drayton from this route. There are trees and shrubs along the bank and its top. To the south of the site lies The Old Vicarage with the Parish Room lying to the west. Church Street and South Ring lie to the north west of the application site.
- 2.2 The land that is part of the garden is relatively flat and is surrounded by a number of mature/semi-mature trees including trees that are within the adjoining properties.
- 2.3 While there is housing located on the northern side of Church Street, the south side is very open allowing the Church and the Church Yard to have dominance over the character of the area. At present there is the visual and setting connection between The Old Vicarage and St Mary's Church with wide open space to each building.

### 3.0 REASON FOR ~COMMITTEE DETERMINATION OF APPLICATION

- 3.1 Applications where the Parish Council submit a view contrary to officers (approval or refusal) based on material planning reasons the following tests need to be met:

(i) these contrary views cannot reasonably be overcome by negotiation or the imposition of planning conditions; and

(ii) the Area Manager or Principal Planning Officer in consultation with the committee chairman or vice chairman and the Local Member agrees that the Parish/Town Council has raised material planning issues and that the application should be determined by committee

The Local Member also requested that the application be determined at committee due to the contentious nature of the scheme.

#### **4.0 COMMUNITY REPRESENTATIONS full details of the responses can be viewed online**

##### **4.1 Consultee Comments**

###### **4.1.1 Town Council:**

Date comment received: 15th May 2020

Comment: Market Drayton Town Council support the application.

Date comment received: 15th April 2020

Comment: Market Drayton Town Council's Planning Committee have not held a meeting due to the Coronavirus. The comments are those of the Chair and Clerk.

**4.1.2 Affordable Housing:** If the development is policy compliant then whilst the Council considers there is an acute need for affordable housing in Shropshire, the Councils housing needs evidence base and related policy pre dates the judgment of the Court of Appeal and subsequent changes to the NPPG, meaning that on balance and at this moment in time, then national policy prevails and no affordable housing contribution would be required in this instance.

###### **Conservation: Objection**

In considering the proposal due regard to the following local policies and guidance has been taken, when applicable: CS6 Sustainable Design and Development and CS17 Environmental Networks, MD2 Sustainable Design, MD13 Historic Environment and with national policies and guidance, National Planning Policy Framework (NPPF) published February 2019 and Section 66 and 72 of the Planning (Listed Building and Conservation Areas) Act 1990.

Details:

A further document has been submitted by the Agent in support of the application Planning Statement and Statement of Significance. This document is still considered to be deficient in its assessment of the significance of the heritage assets and the contribution made by their setting and each other. We do not consider that it fulfils the requirements para 189 of the NPPF and MD13 of SamDev.

We would suggest that the proposed dwelling is cramped on the site and whilst the Planning Statement suggests that its design has been influenced by surrounding properties, this has not been articulated in either the submitted DAS or Planning Statement. A DAS is expected to explain to LPAs and other parties "...how the proposed development is a suitable response to the site and its setting ... and the analysis that has underpinned the design..." (Para 029 NPPG). We do not consider that the proposed development responds to the character, identity or form of the surrounding area, especially when compared to the properties on the south east side of Church Street, which consist mainly of

large properties in large gardens set in a green area around the Church. As noted in the Market Drayton Snapshot Conservation Appraisal the area is "...85a very quiet area, a great contrast to the centre of town" where further development will not enhance it but will serve to detract from it. There is also no provision for ancillary storage ie lawnmower, bikes, garden furniture etc, which will inevitably lead to more structures proposed on the already cramped site.

**RECOMMENDATION:**

The submitted information is still considered to be insufficient in its assessment of significance and therefore it does not change the comments made previously by the HE Team, which were not supportive. We would still suggest that the level of harm that will be caused by this proposed development to Church of Saint Mary (Grade II\*) and The Old Vicarage (Grade II) is less than substantial harm. Decision takers should refer to para 196 of the NPPF with regard to this and that harm should be weighted against any public benefits of the proposal. We would also remind them of the great weight given to the preserving of the designated heritage assets and their settings through Section 66 of the PLB&CA Act 1990 when carrying out this planning balance.

We would suggest that harm will be caused to the character and appearance of the Market Drayton Conservation Area by a development which does not enhance or better reveal its significance as required by para 200 of the NPPF. Overall we would suggest that the application does not comply with both local and national policy and is therefore not sustainable development.

In considering this application special regard to the desirability of preserving the buildings and their settings, together with its features of special architectural and historic interest which it possesses, has been made in line with Section 66 (1) and special attention has been paid to the desirability of preserving or enhancing the character or appearance of the conservation area in line with Section 72 (1) of the above act.

**4.1.3 Archaeology:** No objection

The proposed development site lies immediately adjacent to the medieval historic core of Market Drayton (HER PRN 06006), as defined by the Central Marches Historic Towns Survey, and a tenement plot which may have contained the site of the medieval vicarage (HER PRN 06003). The latter area was subsequently incorporated into the churchyard in the 19th century, although some local historians have suggested that the proposed development site may have formed part of the medieval churchyard. A plan of Market Drayton on an estate map of 1787, held by Shropshire Archives, indicates that suggests that two buildings may also have previously stood on the South Ring site. For these reasons the site is deemed to have moderate to high archaeological potential.

**RECOMMENDATION:**

In view of the above, and in line with Policy MD13 of the Local Plan and Paragraph 199 of the NPPF, it is advised that that a phased programme of archaeological work, to comprise an initial evaluation followed by further mitigation as appropriate, be made a condition of any planning permission for the proposed development.

**Highways:** No objection subject to the development being constructed in accordance with the approved details and the recommended conditions and

informative notes.

Further to the Highway Advice Note dated 29.04.2020, revised details have been demonstrated on Block Plan Drawing No. SR/MC/2020/2/B published on 29.04.2020. The highway matters previously raised in terms of the access and visibility arrangements are now considered to have been satisfactorily addressed. It is considered that, subject to the conditions listed above being included on any approval, there are no sustainable Highway grounds upon which to base an objection.

It is advised that prior to the submission of the required information for the Traffic Management Plan, the applicant/developer should contact Shropshire Council's Street Works Team on the appropriate link to approve details prior to applying for the discharge of the condition.

**Trees:** Objection

NB Due to current restricted site visits these comments are based on submitted documents, photos and Google images.

Having read the submitted Old Oak Tree Care tree report my comments are as follows:

The report has demonstrated that with special engineering measures and cutting back of adjacent trees the site can be developed in line with BS5837 2012 "Trees in relation to development".

Trees and hedges to be removed from inside the site are category "C" in particular a laburnum and I have no objection to their removal with no loss of public amenity.

In order to construct the driveway and footings the use of no dig methods of construction and a three-dimensional grid system has been proposed in the areas affecting rooting areas of the adjacent trees. If done correctly root protection areas can be protected using these methods and are within the recommended limits of rooting area which can be safely covered over in the above British Standard.

Trees over-hanging the site but not in the applicant's ownership will need to be pruned repeatedly, namely a Yew tree currently by 2m and a Holly tree by 1m – concern has been raised about the possible long-term effect on the Yew of repeated pruning, but I am unable to predict if this would lead to any dieback. There are Common Law rights about cutting back encroachment over boundaries which may apply, so again I raise no objection to this aspect of the application.

Shading and dominance of the proposed new building by the trees had not been addressed and as can be seen in the Google image picture below (taken in the summer months) it is apparent that this could be an issue leading to the requirement for more tree cutting to allow for a reasonable enjoyment of the property.



As the site is in a Conservation Area and the trees affect the setting of a listed building, any erosion of tree cover would be considered detrimental, albeit with limited loss of public amenity if viewed from Church Street, but from an overall landscape perspective. As this proposal has the potential to affect important trees which they in turn may be detrimental to the reasonable enjoyment of the proposed new property, I am unable to support the proposal on arboreal grounds.

**Ecology:** No objection subject to consideration of standing advice'

**Drainage:** No objection

**Regulatory Services:** No comment

#### 4.2 **Public Comments**

4.2.1 Sixty letters of representation have been received. The concerns raised relate to:

##### Policy

- There are inconsistencies in the responses from Consultees in relation to the application
- It is clear that there are irregularities in the application and that it should not be unlawful and not be considering making a decision.
- The existing building is an eyesore and the applicant should be made to repair this before building new dwellings.
- All previous applications made since 2005 have been refused for development of this site and they should continue to do so.
- Policy states that where development will harm or affect the significance of the heritage asset, planning permission should not be granted. With the NPPF this urges planning officers to be sympathetic to local character and history. This includes where there is substantial harm to heritage assets.

##### Historic Environment

- The NPPF sets out the consideration for impact of development on Heritage Assets. For Grade II\* buildings any consent that may harm the listed building and its setting should be granted only in wholly exceptional circumstances. For Grade II buildings then exceptional circumstances are required.
- The NPPF points out that where substantial harm would be caused to the significance of a heritage asset planning permission should not be granted.
- The proposal will have substantial harm and unacceptable impact on the setting of the Grade II\* Church and the Grade II The Old Rectory.
- This area of the town is the most beautiful and largely unspoilt.
- The development will separate the historic connection between the Grade II\* St Mary's Church and the Grade II dwelling The Old Rectory.
- Ignoring the details in the Listing would be a breach of Statutory Duty by the Council.
- The proposal is contrary to adopted local and national policies as well as details set out in the Planning (Listed Building and Conservation Areas) Act 1990.
- This area is an ancient burial ground and will therefore involve human remains being disturbed. If approved a thorough archaeological survey should be undertaken
- The size, design and materials to be used will demean any heritage protection of the listed buildings and the Conservation Area. Heritage assets are required to use high quality materials to protect their buildings and the Conservation Area. The new dwelling must do likewise.
- The Group Value of the The Old Rectory and the Church is quoted in the listing for The Old Rectory as the two buildings are historically linked and this connection should remain visible.
- Features exist such as boundary walls which link the Church and The Old Vicarage.
- Vegetation in the area is deciduous and therefore would not screen views of the new building during the winter months. Furthermore these are not permanent unlike a new dwelling. As such the wide open gap referred to in the report remains.
- The heritage statement fails to refer to views from within the Churchyard itself or the Old Rectory. Therefore its findings are biased and are not a full reflection of the potential impact of the proposal.
- The heritage report is inviting the council to ignore the listing details. This is contrary to the requirements of the duty of the Council to protect heritage assets.
- Errors have been made in the heritage statement where the listing details of The Old Rectory are more recent than the construction of South Ring and as such would take this into consideration in its description. Also there has been a failure to acknowledge that the listed status applies to all structures and erections within the curtilage of the listed building including boundary walls.
- The opinion of the Conservation Officer that the proposal is less than substantial is incorrect taking into consideration the Barnwell decision and Section 11 of the 1990 Act.

Design

- The design of the proposed building is inappropriate. It would be invasive and out of keeping with the Conservation Area and its setting with the adjacent listed buildings.
- The proposal will result in a cramped form of development in comparison to its surroundings and is considered to be overdevelopment.
- The proposed two storey building would be clearly visible from the A529 on the approach into Market Drayton.
- If the building is to be occupied by potential wheelchair users or vulnerable people it is not fit for purpose with first floor accommodation.

#### Highways

- The high boundary walls at the access will cause a loss of visibility and as such cause a highway hazard both to drivers and pedestrians.
- As there are no pavements along Church Street, all pedestrians have to walk along the road. With the neighbouring social uses – the Church, Parish Rooms etc this is considerable. Increasing traffic will increase the risk to other road users.
- The parking and turning indicated on the plans are inaccurate and not possible.
- No cycle parking provision has been included in the scheme.
- The proposed access is unsuitable for emergency services and therefore will put lives at risk.
- The narrowness of Church Street does not allow for the free flow of traffic. Obstruction by parked emergency vehicles could exacerbate the existing situation.
- Despite the comments of WSP UK the access will remain dangerous and accidents will happen.
- The works required to carry out the works are outside of the application site and the ownership of the applicant. Therefore it is not possible to condition that they be carried out.

#### Ecology

- Insufficient information has been provided regarding the impact of the proposal on the wildlife in the area. The empty property is a home for bats and hedgehogs.

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#### Drainage

- No drainage details have been provided therefore it is not possible to assess the impact the proposal will have.

#### Impact on Neighbours

- The development is close to The Old Rectory resulting in a loss of privacy.
- The development will cause unacceptable disturbance to neighbouring properties.
- The height and proximity of the building to The Old Rectory will have an overbearing impact.

#### Trees

- Significant trees could be impacted upon by the development

- Some neighbouring trees are protected. The applicant cannot give a guarantee that these will not be damaged as a result of the construction works.
- The removal of any trees on this site will cause potential damage to the stability of Phoenix Bank.
- Some important trees have been omitted from the details and information provided.

#### Other Matters

- There are inconsistencies in the application form submitted with the application. These include the ownership of the application site, that South Ring is occupied and the number of bedrooms to the dwelling.
- There have been issues in the past with the stability of Phoenix Bank. The construction of a building in this location is likely to cause issues which would endanger people. A report has indicated that provided no further developments take place the bank will remain stable.
- The dwelling would result in restrictive views from The Old Rectory.
- There is potential for contaminants on South Ring such as asbestos.
- Demolition works have been carried out at South Ring without consent.
- It is alleged in the statement that South Ring is occupied. This is not the case. The dwelling has been vacant for at least 10 years.
- An extension has already been demolished at the dwelling to make space for the proposed means of access.
- The applicant has encroached over the boundary to The Old Vicarage
- The proposal is for commercial gain and not for the benefit of the area or the town.
- The Ecology report has been carried out on behalf of someone who is not connected with the application. Therefore, how reliable is it.
- There is also a discrepancy between Land Registry Title plans and the red line edging on the application plans.
- The number of objections to the proposal indicate the level of feeling to the proposed development.
- Market Drayton Town Mayor, Cllr Aldcroft has stated in the press that the views of residents should be considered more thoroughly when Council's make planning decisions.
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#### **THE MAIN ISSUES**

- Policy and Principle of Development
- Impact on Historic Environment
- Affordable Housing
- Design, Scale and Character
- Impact on Residential Amenity
- Highways
- Trees
- Ecology
- Archaeology
- Drainage
- Other Matters.

## **6.0 OFFICER APPRAISAL**

### **6.1 Policy & 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 in the determination of planning applications. The NPPF advises 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. The NPPF constitutes guidance for local planning authorities as a material consideration to be given significant weight in determining applications.

6.1.2 Market Drayton is defined in the SAMDev as a Market Town where residential and commercial development is to be focussed. Under policies S11, CS3 and MD1 new housing within the development boundary would normally be considered acceptable. As such no objection to the principle of development can be made. However, other matters also need to be considered and balanced with this agreement to the principle of development.

### **6.2 Impact on Historic Environment**

6.2.1 As indicated above the site is located in a very sensitive location between the Grade II\* Listed Parish Church and the Grade II Listed the Old Rectory. It is also set within the Market Drayton Conservation Area. When approaching the town from the south east the church is highly visible at the top of Phoenix Bank. In winter the Old Vicarage is also visible with the deciduous trees being bare of leaves. Therefore this site will be equally as visible in the townscape. Within the public realm the site is also readily visible from the Churchyard

6.2.2 The objections received to the proposed development raise serious concerns at the impact the development will have on the setting of the two listed buildings as well as the character and appearance of the Conservation Area. Of particular concern is the separation the development will have on the Church and The Old Vicarage which are historically linked.

6.2.3 A Statement has been provided by the applicant to support the proposal. This alleges that the linkage between the Church and The Old Vicarage has already been severed or reduced by the construction of South Ring in 1947. The growth in trees and vegetation has further separated the buildings. It is indicated that the listed statement stating that the buildings have "Group Listing" is no longer applicable. Their architectural features and importance can continue be enjoyed separately. It also identifies that the proposed dwelling would be no further south facing than the existing cemetery wall and the west facing wall will be towards outbuildings at The Old Vicarage. Store is set that the existing trees and vegetation screen the existing buildings and the site so that there is no "linkages". It also references an application reference 14/00263/OUT which was recommended for approval but refused as the applicant refused to enter into a S106 to ensure an Affordable Housing Contribution be made.

6.2.4 The Conservation Officer has reviewed the Statement and the application. They

are concerned that the submitted statements are deficient in their assessment of the significance of the heritage assets and the contributions they make to their setting and each other. The development is considered to be cramped on to the site and while supporting documents cite that the building has been designed using influence from surrounding properties this has not been fully articulated.

- 6.2.5 Further they consider that the proposed development does not respond to the character identity or form of the surrounding area. This is particularly in relation to buildings on the south east side of Church Street. The Conservation Appraisal of the area states that it is "... a very quiet area, a great contrast to the centre of town ...". There is also a concern that the proposal includes no provision for the storage of domestic paraphernalia such as lawnmower, bikes etc and this could result in further development being required resulting in an even more cramped development of the site.
- 6.2.6 As there has been insufficient information submitted in relation to the impact on the heritage assets and the Conservation Area, the Conservation Officer is not supportive of the proposal. It is advised that any decision should be made taking into consideration para 196 of the NPPF with regard to this and the harm should be weighted against any public benefits of the proposal. Great weight should also be given to the preserving of the designated heritage assets and their settings through Section 66 of the Planning (Listed Building and Conservation Area) Act 1990.
- 6.2.7 In the Officer's opinion it is suggested that the level of harm is less than substantial as set out in the NPPF. While a representation indicates that the level of harm is significant, the Conservation Officer has balanced this with the context and nature of the development which is significantly different to the case referred to in the Barnwell case which was for a wind turbine within 1km of a listed building. Furthermore, it is considered that harm will be caused to the character and appearance of the Market Drayton Conservation Area. The proposal does not enhance or better reveal its significance within the Conservation Area as required by para 200 of the NPPF.
- 6.2.8 Overall from the representations received and the comments of the Conservation Officer there is a clear concern that the construction of a building on this site will permanently sever the visual linkage between the Church and The Old Rectory. While the Statement submitted with the application suggests that the group value is no longer relevant, the listing detail for The Old Vicarage was written in 2010 when South Ring had been in existence for many years. Therefore, this should not be ignored in determining this application. On this basis it is recommended that the application be refused as being contrary to the NPPF, policies CS17 and MD12 of the Shropshire LDF and the requirements of the Planning (Listed Building and Conservation Area) Act 1990.
- 6.3 **Design, Scale and Character**
- 6.3.1 Policy CS6 'Sustainable Design and Development Principles' of the Shropshire Core Strategy requires development to protect and conserve the built environment and be appropriate in scale, density, pattern and design taking into account the local context and character. The development should also safeguard residential and local amenity, ensure sustainable design and

construction principles are incorporated within the new development. The National Planning Policy Framework indicates that great weight should be given to outstanding or innovative designs which help raise the standard of design more generally in the area. In addition, policy MD2 of SAMDev builds on policy CS6 and deals with the issue of sustainable design.

- 6.3.2 As the site is within the setting of adjoining Listed Buildings and the Market Drayton Conservation Area policies CS17 and MD12 are also relevant in the consideration of this application.
- 6.3.3 Concerns have been expressed by a number of representatives that the proposed design and scale of the development is inappropriate in this location.
- 6.3.4 The proposal is for a dwelling that will have a kitchen, conservatory, and master bedroom suite on the ground floor with three further bedrooms, lounge and bathroom on the first floor a lift is to be installed to provide access to both floors. The maximum dimensions for the proposed building are approximately 10.2 metres by 9.45 metres with a height to ridge of 7 metres. Externally, the building is to be clad in brick with natural slate to the roof and natural stone details. UPVC windows are proposed. It should be noted that the scale of the submitted drawings appears to be incorrect at 1:200 when in fact they measure more as 1:100
- 6.3.5 Little information is provided with the background information as to where the influence for this design has been obtained and it certainly bears little reflection of either the Church, South Ring or The Old Rectory which are the nearest buildings. Also, the use of UPVC windows in such a historic setting would also be considered inappropriate. Policy requires any development in these areas to be carried out to a high standard and quality of detail.
- 6.3.6 Most buildings along Church Street are of brick construction with clay tiles or slate for the roof. The Church is of stone construction with South Ring painted white. The Old Rectory is of brick construction. Very few have the ornate stone finishes proposed on the new dwelling.
- 6.3.7 Overall it is considered that the design of this proposed dwelling is not in keeping with its surroundings and as such is contrary to the NPPF and policies CS6, MD2, CS17 and MD12 of the Shropshire LDF.
- 6.4 **Affordable Housing**
- 6.4.1 Comments have been made by the Affordable Housing Officer in relation to the amount of Affordable Housing Contribution. Whilst the Council considers there is an acute need for affordable housing in Shropshire, the Council's housing needs evidence base and related policy pre-date the Court of Appeal decision and subsequent changes to the NPPG, meaning that on balance and at this moment in time, National Policy prevails and no affordable housing contribution will be required.
- 6.5 **Impact on Residential Amenity**
- 6.5.1 Policy CS6 'Sustainable Design and Development Principles' of the Shropshire Core Strategy indicates that development should safeguard the residential and

local amenity.

- 6.5.2 Concerns have been expressed that the proposed building and the associated works will have an unacceptable impact on the residential amenities of the neighbouring dwelling, The Old Rectory. This is through a loss of privacy and the dominant nature of the building.
- 6.5.3 At present the very open and spacious level of development in this area, gives this area a definitive character and as such each of the buildings on the south side of Church Street benefit from this open feeling. While there are trees within the landscape these add to the peaceful and landscape quality of the area. As such the infilling of this area would impact on this openness of the area and introduce a built form much closer to the existing boundaries to neighbouring properties. This will also impact on those who wish to use the churchyard.
- 6.5.4 The openings on the south west elevation will face towards the Old Rectory and not only the outbuildings as specified in accompanying statements. The windows on this elevation will give direct views to the neighbouring property from habitable rooms. The site plan shows a distance of 7.5 metres between the side wall of the dwelling and the boundary. This would only allow for approximately 15 metres to be between the two side walls of the dwellings and as such be within the minimum distance that is a guide to prevent loss of privacy. While there are currently trees within the application site that would limit any potential views, these could be removed and the loss of privacy be felt. The first floor windows would also have views across part of the garden to the Old Vicarage. While a significant area would still remain private some would lose their privacy.
- 6.5.5 As such there remains a concern on the part of officers that the proposal will have an unacceptable impact on the residential amenities of the area and those of the neighbouring churchyard.
- 6.6 **Highways**
- 6.6.1 A large number of concerns have been raised in relation to the impact the new dwelling would have on highway safety. There are concerns that cars will be reversing onto the road which is already severely restricted by its narrowness, the parking of other vehicles and that all pedestrians have to walk along the road as there are no footpaths. Concerns have also been raised that the proposed access will not allow emergency vehicles to gain access to the premises if required.
- 6.6.2 Initially objections were raised by the Council's Highways Development Control Manager. Amended plans have been submitted and the issues raised in terms of the access and visibility have now been adequately addressed. Conditions have been recommended for inclusion on any planning permission that may be granted to ensure that information is provided and the access carried out to the required standard. As part of their assessment the consultee would have taken into consideration the requirements for emergency vehicles. Therefore on the basis of the response from the Highways Development Control Manager no objection is raised to the proposal in relation to highway issues.

## 6.7 **Impact on Trees**

- 6.7.1 There are large number of trees in and around the application site, some of which are protected. A number of concerns have been expressed regarding the impact any development may have on these trees.
- 6.7.2 It is noted in the Ecology Appraisal submitted by the applicant that their Ecologist comments that the root protection areas for the trees needs to be identified and adhered to for the installation of the protected fencing. The Ecologist has also recommended that hedgerows and trees be retained where possible to ensure that the foraging and commuting habitats for bats at the site are not lost.
- 6.7.3 The Council's Tree Officer has reviewed the application and the submitted information. She also has concerns regarding the proposed development. While there are trees and shrubs within the site which there would be no objection to them being removed, there are significant trees adjacent to the site. There is a concern that this will cause shadowing problems for future occupiers of the dwelling and require the constant pruning of these. This may harm the trees over time and cause their loss. It is considered by the Tree Officer that as the site is in a Conservation Area and the trees affect the setting of listed buildings, any erosion of the tree cover would be considered detrimental from an overall landscape perspective. As the trees may impact on the reasonable enjoyment of the new dwelling it is not possible to support the proposed development on arboreal grounds.
- 6.7.4 From the above there are clear concerns that the impact of the proposed development could have a long lasting impact on the trees and hedgerow in and adjacent to the site. This would potentially have a devastating impact on the landscape and the character of the area.

## 6.8 **Ecology**

- 6.8.1 The NPPF and policy CS17 of the Shropshire Core Strategy require consideration to be given to the impact of the proposed development on the natural environment. This particularly relates to the impact on statutorily protected species and habitats. Policy MD12 of SAMDev further supports the principle of protecting and enhancing the natural environment.
- 6.8.2 Objections to the proposed development include the potential impact the development may have on protected species such as bats and hedgehogs.
- 6.8.3 An ecological survey was submitted with the application dated April 2020. From the information contained within the report, while it remains a question as to who the client is, the report definitely relates to the application site. It is noted that the survey would only be for the application site and not the adjacent dwelling South Ring. However as no works to South Ring are included in this application, a survey of the building would not be required. The report has made a number of recommendations which have been accepted by the Council's Ecologist. Therefore should planning permission be granted a condition requiring the recommendations to be followed would be needed as noted on the Standing Advice from our Ecology Team.

- 6.8.4 In view of the above it is considered that the proposed development will not have a detrimental impact on statutorily protected species and habitats. Therefore the proposal meets the requirements of the NPPF policy CS17 of the Shropshire Core Strategy and policy MD12 of SAMDev
- 6.9 **Archaeology**
- 6.9.1 A number of concerns have been raised that the site is part of the original graveyard to the Saxon church originally constructed in the area. Also that the site was used as a medieval graveyard and that bodies may still be present. As such a survey must be undertaken before any works commence on the site.
- 6.9.2 The Council's Archaeologist has reviewed the application and has identified that the site is of moderate to high archaeological potential. As such in accordance with policy MD13 of SAMDev and para 199 of the NPPF a phased programmed of archaeological works are required. As such should planning permission be granted a condition is recommended for inclusion to ensure the necessary works are carried out.
- 6.10 **Drainage**
- 6.10.1 The NPPF and policy CS18 of the Shropshire Core Strategy require consideration to be given to the potential flood risk of development.
- 6.10.2 While comments regarding the means of draining the site have been raised, the Council's Drainage Engineer has raised no objection to the proposed development.
- 6.10.3 In view of the above it is considered that an appropriate drainage system can be installed to meet the requirements of the NPPF and policy CS18 of the Shropshire Core Strategy.
- 6.11 **Other Matters**
- 6.11.1 Planning History: comment has been made by the applicant that a previous application reference 14/00263/OUT was recommended for approval and only refused as the applicant did not complete the required S106 to ensure the provision of affordable housing contribution was made. Firstly this was an outline application with only the access and layout to be considered. It is noted that the Conservation Officer raised objections at that time too. In addition since the recommendation for approval was made in 2014 there have been significant changes made both in national and local policies which have impacted upon the current recommendation.
- 6.11.2 The inconsistencies and inaccuracies within the application form are noted. However there is no evidence to suggest that Mr M Cole does not own the land that is the subject of this application as shown on the amended plans. It is noted that the previous applicant was also Mr M Cole. The boundary has been amended to line up with the red line edging shown on the Land Registry Plans for South Ring. Furthermore the comment made regarding the occupation of South Ring are immaterial in the determination of this application as they have no relevance in assessing the application. The impact on the amenity of the dwelling would be assessed whether it is occupied or empty.

- 6.11.3 A number of concerns have raised the issue of the stability of Phoenix Bank. This has been a problem in relation to landslips and many are worried that any building works will cause the bank to collapse. While these concerns are understandable, the issue of ground stability is not a reason for the Local Planning Authority to base a refusal. It would be for the future developer to be able to demonstrate that any works to build the development would not affect the ground conditions and as such would be part of the Building Regulations. There are considerable engineering options which would potentially be able to allow the development to be carried out without issue. A Geotechnician would need to be employed by a developer to make this assessment.
- 6.11.4 It has been alleged that demolition works have been carried out at South View and that Asbestos was or may have been present. This matter was investigated separately and it was determined that the section of the building that was removed was of later construction and not of any architectural merit. As such its loss has no impact on the character of the building or the Conservation Area. Also there is no evidence to suggest the presence of contaminated land on the premises. Any Asbestos would have to be removed as required by other Legislation but this is outside of the remit for planning to deal with.
- 6.11.5 Any encroachment on to land by another person that is not within their ownership is a civil matter and the Local Planning Authority has no power to intervene in such matters. It is for the two parties to resolve.

## **7.0 CONCLUSION**

- 7.1 It is clear on the basis of discussion within this report that there is strong opposition to the proposal on the basis of its location, design and the impact this will have on the setting of the Grade II\* Listed Church and the Grade II Listed Old Vicarage and the separation to the historic linkages. In addition concerns have been raised regarding the impact it will have on the character of the Conservation Area. These views are supported by the Conservation Officer. There is also an issue about the potential impact a dwelling in this location may have on the trees adjacent to the site which have roots and branches which may be affected. There is also the potential for the proposal to have an impact on the residential amenities of the area. Therefore while in principle the proposal may comply with the NPPF and policies S11 and CS3, it is the opinion of officers that overall the proposal is contrary to the NPPF, and policies CS6, CS17, MD2 and MD12 and MD13 due to its impact on the setting of the designated heritage assets, the impact on the Conservation Area, as well as the potential impact on residential amenities and the trees in the area. The recommendation is one of refusal for the reasons as outlined at the start of this report.

## **8.0 RISK ASSESSMENT AND OPPORTUNITIES APPRAISAL**

### **8.1 Risk Management**

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

- As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal - written

representations, a hearing or inquiry.

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

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

## 8.2 Human Rights

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

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

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

## 8.3 Equalities

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

## 9.0 FINANCIAL IMPLICATIONS

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

## 10. Background

Relevant Planning Policies

Central Government Guidance:

West Midlands Regional Spatial Strategy Policies:

Core Strategy and Saved Policies:

National Planning Policy Framework

Settlement: S11 - Market Drayton

CS3 - The Market Towns and Other Key Centres

CS6 - Sustainable Design and Development Principles

CS17 - Environmental Networks

CS18 - Sustainable Water Management

MD2 - Sustainable Design

MD12 - Natural Environment

MD13 - Historic Environment

RELEVANT PLANNING HISTORY:

19/05253/FUL Erection of one detached bungalow; formation of vehicular access WDN 16th January 2020

20/01161/FUL Erection of one detached dwelling; formation of vehicular access (Resubmission) PDE

## 11. Additional Information

View details online:

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) Councillor Gwilym Butler
Local Member  Cllr Roger Hughes Cllr David Minnery
Appendices None