

## Development Management Report

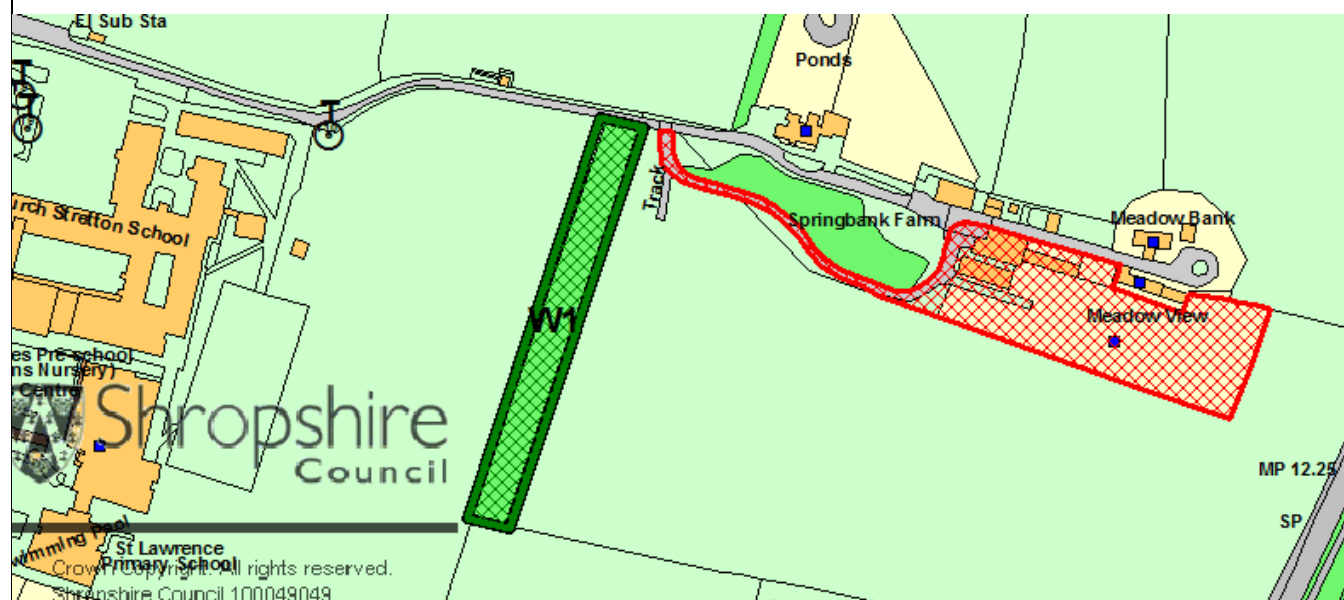
Responsible Officer: Tim Rogers

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### Summary of Application

<b><u>Application Number:</u></b> 18/01258/OUT	<b><u>Parish:</u></b>	Church Stretton
<b><u>Proposal:</u></b> Outline application for the erection of 5 No dwellings, to include means of access (re-submission and amended description)		
<b><u>Site Address:</u></b> Proposed Residential Development Land South East of Springbank Farm Shrewsbury Road Church Stretton Shropshire		
<b><u>Applicant:</u></b> Mr & Mrs JN & SA West		
<b><u>Case Officer:</u></b> Andrew Sierakowski	<b><u>email</u></b> :	<a href="mailto:planning.southern@shropshire.gov.uk">planning.southern@shropshire.gov.uk</a>

**Grid Ref:** 345946 - 294347



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**Recommendation:-** Refuse the application for the reasons set out in the report attached in Appendix 1 with this report.

## **REPORT**

### **1.0 THE PROPOSAL AND THE REASON FOR THIS REPORT**

- 1.1 This is a resubmission of an outline application for the erection of five (previously six) dwellinghouses, including the means of access on land to the south east of Springbank Farm, Shrewsbury Road, Church Stretton.
- 1.2 The application was reported to the meeting of the Southern Committee held on 16<sup>th</sup> February 2021, and Members will recall that the Committee voted to approve the application contrary to officer recommendation. A copy of the Development Management Report on the application is attached as an Appendix 1 to this report.
- 1.3 Because of the decision of the Committee, the application has to be readvertised as a departure from the development plan, and opportunity given for further presentations to be submitted. Two additional representations have been received objecting to the development. Accordingly, the application is represented to this Committee to enable it to reconsider its decision. The Committee may; either ratify the decision previously taken and approve the application; or, reconsider its decision and determine the application in accordance with the Officer Recommendation set out in the report included in Appendix 1; taking into account any material considerations raised in the additional representations that have been submitted, and this report.

### **2.0 SITE LOCATION/DESCRIPTION**

- 2.1 The site extends to 0.55ha, with the main part of the site located approximately 800m north-east of Church Stretton town centre, between the Shrewsbury Road to the west and the Shrewsbury to Hereford railway line and A49 to the east. Church Stretton School lies immediately to the west of the main part of the site. Full details are set out in the attached report included in Appendix 1.

### **3.0 REASON FOR COMMITTEE/DELEGATED DETERMINATION OF APPLICATION**

- 3.1 The proposed development does not accord with development plan policy. Craven Arms Town Council has however not objected to the application, but the officer recommendation is contrary to the view of the Town Council, and these contrary views cannot reasonably be overcome by negotiation or the imposition of conditions. The Principal Planning Officer in consultation with the Committee Chairman and Vice Chairman and the Local member, consider that it raises material issues and that it should therefore be referred to the Committee for determination.

### **4.0 ADDITIONAL REPRESENTATIONS**

- 4.1 As detailed above, two additional representations have been received from the

Save Snatchfield Group and All Stretton Village Society and, the Clive Avenue Residents Association, following the decision of the Committee at its meeting on 16<sup>th</sup> February 2021. These are relatively lengthy and full copies of the two letters are attached in Appendix 2. They raise what are largely procedural matters, but In summary they both state that they have been written to “challenge” the validity of the decision and make the following points:

- That the key conclusions from the officers’ report are that planning permission should not be granted because the proposed site is located in an area designated as countryside by the current SAMDev and is outside the town’s development boundary. Further, the site is located within an AONB but the proposals make no reference to the requirements of NPPF172 nor of the enhanced requirements laid down by the Waverley case (Secretary of State for Housing, Communities and Local Government and others v Waverley BC [2021] EWCA Civ 74). In addition, by being outside the town’s development boundary the additional houses will not count towards the town’s windfall targets, and it is unclear how what were referred to by a Committee Member as “five £750,000 houses” will help satisfy any need for affordable housing;
- The Southern Planning Committee erred when reaching its decision to approve planning permission;
- The proposal had been materially changed from the outline case filed in 2018, and as such these new proposals should have been consulted upon, and that to have deprived those entitled to be consulted is manifestly unfair and a proper subject for Judicial Review;
- The matters relied upon by Members and cited during their discussion, most particularly the housing need numbers within Church Stretton and the status of the land, were incorrect and that if they had been correctly presented it is likely that Members would have voted against granting permission;
- The rationale of Members to place reliance on policy MD3 was flawed, and had been explicitly rejected by officers in their written report;
- That in seeking to establish the views of the local community, the comments of Councillors representing Church Stretton were accorded great weight and several Members made reference to the views as they were reported.
- The views of residents in Church Stretton and All Stretton, the communities between which the proposed Spring Bank Farm development is located, are well known and have been recorded by surveys for the Community Led Plan. These views are categorically that the green space between the communities should be retained;
- That in reporting the views of Church Stretton to be in conflict with these recent published surveys it is unclear from which source or on which authority these assertions are made. There are no minutes or other record which show a discussion by the Council;
- The recusal by the Chair from the item concerning Springbank Farm as a result of his pecuniary interest in the site was welcomed and respected. In normal times any such Member would physically leave the meeting and be unable to monitor or take part. However, the operation of Covid rules appears to have inadvertently compromised this impartiality, and in particular

the recused Member, having explained their pecuniary interest, then read a personal statement. This Member was then asked to turn off their microphone, but was still able to hear the debate. That not only is justice done but seen to be done is critically important and that principle appears to be compromised in this instance;

- The Shropshire Council Solicitor read a statement from Church Stretton Council. This statement referred to ‘attachments’ which the solicitor confirmed had previously been circulated to Committee Members. Having listened closely to the recording of the Planning Committee, these ‘attachments’ would seem to be key documents. However, none were available on the Planning Portal. As such, neither public scrutiny nor challenge was possible;
- There was a failure of the Planning Committee to observe and adhere to the proper protocols and property of public service as set out in Local Government guidance “Probity in Public Office”;
- The courts have expressed the view that the Committee’s reasons should be clear and convincing. The Committee’s points were based on incorrect information and the rationale for disregarding Planning Officer recommendations were neither evident nor clear;
- That if a councillor is concerned about an officer’s recommendations, they should discuss their areas of difference and the reasons for that with officers in advance of the committee meeting. There was no indication or evidence that this has happened and none presented at the meeting as far as I am aware.
- That if there was a concern about the validity of reasons, the Committee should have considered deferring the decision to another meeting to have the reasons tested and discussed. There has been no consultation or delay to the decision process in order to accommodate this assurance process;
- If the Planning Committee makes a decision contrary to the officers’ recommendation (whether for approval or refusal or changes to conditions or s.106 planning obligations), a detailed minute of the Committee’s reasons should be made and a copy placed on the application file. Two weeks after the meeting this had not happened;
- The officer should also be given an opportunity to explain the implications of the contrary decision, including an assessment of a likely appeal outcome based on policies set out in the development plan and the NPPF, and chances of a successful award of costs against the local authority, should one be made.
- The implication of the decision, because it is contrary to the updated Local Plan and recent consultations, will result in a great deal of negative sentiment within the community and an appeal is highly likely as the implications are far wider than this single application.
- All applications that are clearly contrary to the development plan must be advertised as such and are known as ‘departures’ from the development plan. If it is intended to approve such an application, the material considerations leading to this conclusion must be clearly identified;
- The decision was contrary to the updated development plan. The information relied upon at the meeting was incorrect and out of date;

- The committee decision went against the recommendation of the Planning Officers and the reasons cited were based on outdated and incorrect information and did not refer to the updated local plan;
- Local Residents and stakeholders, including the AONB were entitled to have been consulted and have not been despite the previous decision for this site and despite recent decisions relating to Church Stretton in the local development plan; and
- That the decision of the Southern Planning Committee should not be approved, the latest proposals should be openly consulted upon, and the decision should then be returned to the Southern Planning Committee to be considered afresh.

## **5.0 THE KEY ISSUES FOR CONSIDERATION**

- 5.1 The issue for consideration as set out above, whether the Committee wishes to either ratify the decision previously taken and approve the application or reconsider its decision and determine the application in accordance with the Officer Recommendation set out in Appendix 1. The relevant matters are set in the report included in the report in Appendix 1, although the additional representations included with this report must also be taken into consideration.
- 5.2 The matter set out in the comments included in the two additional representations largely relate to procedural matters, and do not given rise to any substantive reasons that would lead officers to making a different recommendation from that set out in the original Development Management Report included in Appendix 1.
- 5.3 There are a number of additional points to note arising out of the representations that have been made as follows:
- (i) It is stated that the amended plans (reducing the number of dwelling proposed from six to five) had not be re-consulted on. This was the case but as the amended plans resulted in a reduced scheme compared with that originally proposed, they were not considered to give rise to any additional material considerations. Notwithstanding that this was the case, the application has, following the Committee's original determination, been readvertised as a departure from the development plan and opportunity given to make additional representations;
  - (ii) It is stated that the decision was contrary to the updated development plan and that the information relied upon at the meeting was incorrect and out of date. It is unclear if this is reference to the Shropshire Local Plan Review. If it is intended as such, then the Committee should note, as set out in Section 6.1 of the Development Management Report to the February 2021 Committee, that little or no weight can, as yet, be attached the Shropshire Local Plan Review;

It also unclear what the information referred to is, on which it is stated the Committee relied. However, since the application was considered by the

Committee in February 2021, the Council's updated Five-Year Housing Land Supply Statement (2021) for the period to the 31<sup>st</sup> March 2020 have been published. These show for Church Stretton, that up to 31<sup>st</sup> March 2021, there had been 216 completions and that there were planning permission for an additional 65 dwellings, giving a total of 281 completions or sites with planning permission against a housing guideline of about 370 dwellings in the period between 2006 and 2026.

- (iii) One of the letters includes reference to paragraph 172 NPPF, which as the attached Development Management Report (at paragraph 6.1.4) identifies that "great weight should be given to conserving and enhancing landscape and scenic beauty in Areas of Outstanding Natural Beauty and that they should be attributed the highest status of protection in relation to these issues" and that "the scale and extent of development...should be limited".

The same letter refers to Waverley case (Secretary of State for Housing, Communities and Local Government and others v Waverley BC [2021] EWCA Civ 74). This relates to an appeal against the refusal of planning permission based on the correct interpretation of Paragraphs 11(d)(i) and 172 of the NPPF. Paragraph 11(d) applies in situations where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date. It states that planning permission should be granted in these circumstances unless the application of policies in the Framework (the NPPF) that protect areas of particular importance provides clear reason for refusing the development proposed. It was concluded that the weight to be given to conserving Areas of Outstanding Natural Beauty (AONB) set out in Paragraph 172 was capable of providing a clear reason for refusing planning permission under Paragraph 11(d)(i).

In relation to the current application whilst Paragraph 11(d) cannot be considered to apply as the relevant development plan policies are not out of date, the case nevertheless expressed the importance of the weight to be given to the conserving and enhancing of AONBs, and that it was capable of providing a clear reason for refusing planning permission under 11(d)(i).

- 5.4 If the Committee is minded to ratify its previous decision, to approve the application, it will need to ensure that it gives clear and convincing planning reasons for approval against officer recommendation and how these considerations justify overriding the development plan. Equally, if the Committee minded to refuse the application, it will need to give clear reasons for doing so.

## 6.0 CONCLUSION

- 6.1 The conclusions remain as set out in the Development Management Report attached in Appendix 1.

## 7.0 Risk Assessment and Opportunities Appraisal

## **7.1 Risk Management**

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

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

7.1.2 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.

## **7.2 Human Rights**

7.2.1 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.

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

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

## **7.3 Equalities**

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

## **8.0 Financial Implications**

8.1 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.

## 9. Background

### Development Plan Policy

Shropshire Local Development Framework: Adopted Core Strategy (March 2011)

Shropshire Council Site Allocations and Management of Development (SAMDev) Plan Adopted Plan (December 2015)

### National Planning Policy

National Planning Policy Framework (NPPF) (February 2019)

### Relevant Planning History

### Planning Applications

- SS/1981/552/P/ for the use of land as a caravan site for 12 static holiday caravans. Refused 15/01/1982;
- SS/1/98/ 009369/CE for the use of land as a Touring Caravan site. Approved 08/03/2000;
- SS/1/99/009910/F for the Conversion of a building to form a service block for the caravan park. Withdrawn 26/04/1999;
- 17/01212/OUT Outline application for the erection of 6 no. dwellings to include means of access. Withdrawn 9th June 2017.

## 10. Additional Information

View details online: <https://pa.shropshire.gov.uk/online-applications/simpleSearchResults.do?action=firstPage>

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

- Letter dated 28<sup>th</sup> February 2021 from Save Snatchfield Group and All Stretton Village Society; and
- Letter, undated from Clive Avenue Residents Association
- Shropshire Council, Five Year Housing Land Supply Statement, Data to: 31st March 2020, Published: 19th March 2021.

Cabinet Member (Portfolio Holder)  
Councillor Gwilym Butler



Planning Committee – 13 April 2021

Proposed Residential Development Land  
South East of Springbank Farm Shrewsbury  
Road Church Stretton Shropshire

Local Member

Cllr. Lee Chapman  
Cllr David Evans

Appendices

Appendix 1 - Development Management Report on Planning Application Ref. 18/01258/OUT  
Appendix 2 - Letter dated 28<sup>th</sup> February 2021 from Save Snatchfield Group and All Stretton Village Society and Letter, undated from Clive Avenue Residents Association