



Committee and Date

Northern Planning Committee

28<sup>th</sup> September 2021

Item

9

Public

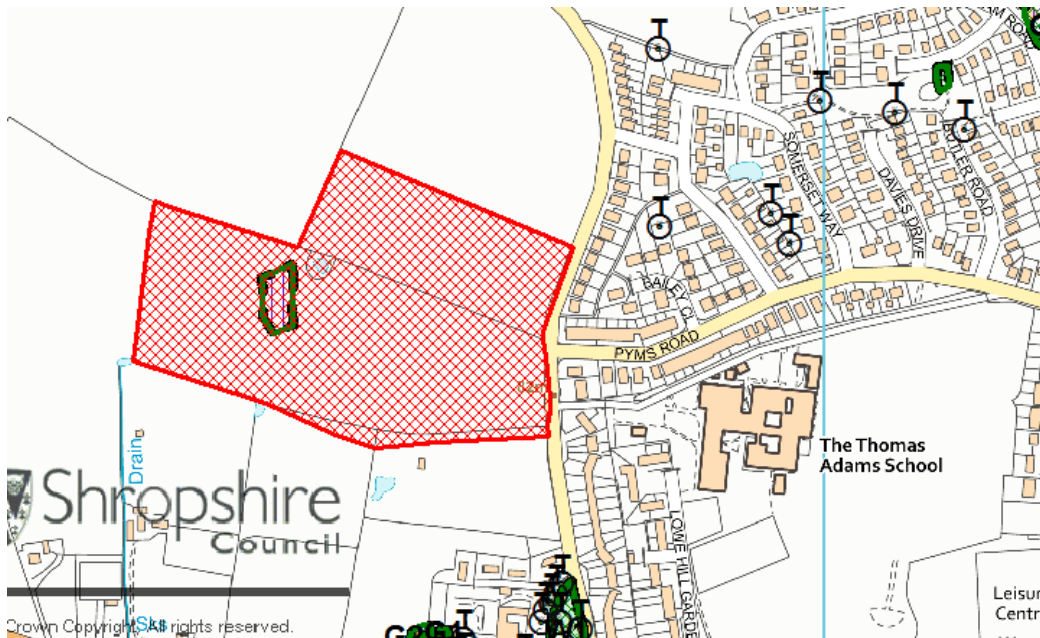
## Development Management Report

Responsible Officer: Tracy Darke, Assistant Director of Economy & Place

### Summary of Application

<b><u>Application Number:</u></b> 21/02768/OUT	<b><u>Parish:</u></b> Wem Urban
<b><u>Proposal:</u></b> Outline planning application for Residential development (Use Class C3) and associated access, public open space, drainage, infrastructure, earthworks and ancillary enabling works. All matters except for access reserved. (Revised scheme) (amended description)	
<b><u>Site Address:</u></b> Land West Lowe Hill Road Wem Shropshire	
<b><u>Applicant:</u></b> Mr John Tootell	
<b><u>Case Officer:</u></b> Philip Mullineux	<b><u>email :</u></b> philip.mullineux@shropshire.gov.uk

**Grid Ref:** 350593 - 329339



**Recommendation: Approval subject to the conditions as outlined in appendix 1 attached to this report and any modifications to these conditions as considered necessary by the Assistant Director and the signing of a Section 106 agreement in order to ensure provision of affordable housing on site, open space provision and maintenance and a financial contribution towards visitor management mitigation measures at Cole Mere Ramsar site**

## **REPORT**

### **1.0 THE PROPOSAL**

1.1 Application is made in outline, with all matters other than access reserved for future consideration, for the erection of up to 100 dwellings and associated access, public open space, drainage, infrastructure, earthworks and ancillary enabling works on land west of Lowe Hill Road, Wem.

1.2 **The application is accompanied by a site location plan, statement of community involvement, landscape plan, an ‘indicative’ master plan on how the site could look in layout, access plan, transport assessment, interim travel plan, landscape and visual impact assessment, heritage statements, flood risk assessment, topographical survey, noise assessment, extended phase one ecological survey and ecological detail, arboricultural impact assessment, planning statement and a design and access statement. During the application processing further information was received in relation to ecology.**

1.3 **A previous application, (reference 20/01054/OUT), for residential development on site was refused permission in accordance with the Council's scheme of delegation on June 12th 2020 for the following reasons:**

- *Whilst it is acknowledged most of the site is allocated for housing in accordance with the Shropshire local development plan, it is considered that based on the information in support of the proposal, that any benefits are not outweighed by the significant visual and biodiversity harm as a result of the proposed development. The site is located sensitively in relation to the surrounding landscape and built environment and insufficient information accompanies the application on which basis to approve the application on landscape and visual impact and biodiversity issues. As such the application is considered contrary to Policies CS3, CS6 and CS17 of the Shropshire Core Strategy, Policies MD2, MD7a, MD12, and S17 of the SAMDev, the National Planning Policy Framework and the Conservation of Habitats and Species Regulations 2017 and/or the Wildlife and Countryside Act 1981 (as amended) on these matters.*
- *Part of the site is not allocated for housing being located outside of the recognised development boundary. Insufficient justification and information has been provided in order to allow residential development on land in policy terms classed as open countryside. As such the application is contrary to Policies CS5 of the Shropshire Core Strategy and Policies MD2 and MD7a of the SAMDev.*

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

2.1 The site, is located to the west of Lowe Hill Road in Wem and comprises two fields totalling approximately 6.26 hectares (15.5 acres). The eastern site boundary is formed by Lowe Hill Road and the built up area of the market town of Wem. Further agricultural land lies to the north, south, and west, with the site being split from

these fields by typical agricultural field boundaries, including hedgerows and trees. The site is generally flat, with a slight rise in the north western corner and is currently in agricultural use. The majority of the site is allocated for future residential development in the adopted Site Allocations and Management of Development (SAMDev) Plan. (Site Allocation Reference 'WEM003'). No Public rights of way run across the Site. However, a footpath (ref. 0231/10/1) is located close to the site, to the north-east, beginning on Lowe Hill Road. Approximately 30% of the total application site area (the northern limb), is located outside of the recognised development boundary for residential development in accordance with the SAMDev policy.

- 2.2 A screening opinion carried out in accordance with the Environmental Impact Assessment Regulations 2017 and dated 31<sup>st</sup> January 2020 concluded that the area of the development would exceed one of the indicative criteria's as set out in the regulations (Schedule 2 – 10(b) for determining significance and whether or not there is a need for EIA, with reference to Schedule 3 criteria of EIA Regulations and to the guidance set out in the NPPG and noting the considerations set out in the assessment, it is concluded in relation to cumulative impacts and sensitivity, that an Environmental Statement is not required in order to ensure adequate and thorough consideration in respect of landscape, visual and historic character impacts, historic environment, archaeology, surface and foul water drainage, highway impacts, amenity and any ecological impacts arising from the proposal. With adequate information, the Council considered that these aspects could be covered and considered satisfactorily in submissions as part of any formal application for development on site. It was considered that all points as outlined in Schedule 3 of the EIA Regulations 2017 and reproduced in the Screening Opinion could be adequately addressed without the need for an Environmental Statement in support of the application.
- 2.3 The Council gave pre-application advice in relation to residential development on site dated 14<sup>th</sup> August 2018. This concluded:

***'Whilst it is considered that detail in support of your request for pre-application advice is limited, it is understood this request refers to the principle of development in relation to up to 100 dwelling units. This complies with the policy in relation to the site which is allocated for housing in accordance with local plan policy, and as such the principle of the proposal is considered acceptable.'***

*You have indicated you wish to add additional land that is not included in the policy as allocated for housing in consideration on site constraints. This will necessitate any formal application including the additional land as indicated, as being advertised as a departure to the local plan. I strongly advise adequate justification demonstrating why this is necessary if you chose to include this additional land as part of any formal application.*

***You are strongly advised to take note of the advice as outlined above and any formal application will need to demonstrate consideration to cumulative impacts with surrounding development and must demonstrate adequate integration with adjacent residential development in layout, scale and character.***

*This advice is given in the context of your request and the information provided in*

*support and has regard to the Council's planning policy. Should you wish to submit a planning application I would recommend that this advice is taken into account. However this advice is offered without prejudice to any future decision the Council may make following the formal consideration of a planning application*

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

3.1 Wem Town Council have raised material considerations on which basis it is considered appropriate for this application to be presented to Committee for consideration.

### **4.0 Community Representations**

4.1 **Wem Town Council have responded objecting to the application. The response states:**

***The western section of the land in the proposed development site is outside of the site allocation Wem003 and falls outside of the town's development boundary. Therefore the land in this section of the proposed application should not be permitted as it is contrary to the local plan.***

***The Town Council objected to the development of this site in its 2013 response to the Local Plan the Town Council due to Concerns around the impact that the development would have on the town's infrastructure especially the road network***

***The suitability of the site for a development of this size as this area is prone to flooding. Since this correspondence in 2013 the Town Council's position on the suitability of this site for development has not changed.***

***Currently there is no development on the western side of Lowe Hill Road.***

***Lowe Hill Road provides a natural, environmental boundary to the town. The proposed development will lead to urban sprawl and have a negative impact on the setting of the town from the west contrary to policies CS6 and CS17 of Shropshire's adopted Core Strategy. The site is already prone to severe flooding - as photographs will attest. The site therefore fails the sequential test set out in PPS25 and is therefore unsuitable for development in accordance with CS18 of the Core Strategy. Other sites in Wem which have flooding issues which have had swales etc. constructed which residents are having to pay for through high service charges, in addition to Council Tax they must pay. This is an unfair tax and development should not be allowed on such sites in the first place. The flooding issues on the Lowe Hill site will have to be dealt with but why should residents be penalised with service charges?***

***The Town's infrastructure is already under severe strain as a result of development since the 1980s making it unsustainable in accordance with the provisions of the NPPF. It would also be contrary to policy CS8 of the Core Strategy. The Town Council has taken a consistent line that no further development should take place until the infrastructure of previous development has been addressed in the town - we cannot continue to build our way out of the problems.***

***With specific reference to the proposed access from the development the Town Council considers that the simple priority T junction shown on the plan in 2 locations is completely inadequate for the safe effective operation of all the traffic movements in this area at peak times regardless of where it is located along Lowe Hill Road for the following reasons;***

***1. Lowe Hill Road is an important local artery between rural farming community of Whixall and Wem and indeed the county road network generally. Apart from serving the agricultural activities it is a route used by***

***local small industrial enterprises Browns Buildings and P G Skips.***

***2. Thomas Adams School buses in pupils from a wide area who arrive and leave on 14 different buses. The school is currently at capacity, but the potential is there for expansion so this number may increase. The proposed junction for this estate is badly sited, being between Pym's Road exit (which is dangerous) and the school entrance and shows no awareness of the potential conflicts of full size coaches with commuter traffic and agricultural vehicles and parked parents cars at school opening and closing times. Also there is no recognition apparent of the pedestrian pupil movements in this facility. The raised platform added is no more than a gesture.***

***3. The junction of Lowe Hill Road with Ellesmere Road has long been a site of concern regarding the limited visibility to the right when exiting Lowe Hill Road due to the brick boundary wall and curve of Ellesmere Road to the north. An increase in traffic flow will put greater pressure on this poor junction particularly at peak traffic times.***

***4. Access to the town and all routes south, except to Ellesmere will be via Maunds Corner and the town centre: these are narrow roads that are already overloaded and unsuitable for goods vehicles. A vital consideration is that there is no prospect of a relief road being built to remove through traffic as all roads into Wem are B roads. This lack of a relief road is a huge constraint on the ability of Wem to expand as it simply cannot take any more vehicles. Taking all points raised in mind it should be evident that a far more imaginative approach to the access arrangement is required before this application is progressed and prior to making any decision on this application further consultations must take place at the very least with Wem Town***

***Council, Wem Rural Parish Council, Wem Economic Forum, Arriva re 511 service, Thomas Adams School and businesses who use the road for access. Other matters of concern It is mentioned in 4.3 of the Transport Assessment that the site was within walking distance of the town. This does not take into account the age or infirmity of many residents. It also fails to mention that the route involves walking round Maunds Corner (mentioned later) described by one pedestrian as 'the most dangerous footpath in Europe'. The map (4.1) fails to show the actual route that would have to be taken from this site to the town supermarket. The actual distance by pavement is 1000 metres (200 over the stated desirable maximum) The rail accessibility figures in the report are untrue. On weekdays off-peak, there is one train every 2 hours, not every 1 hour as stated. The trains are operated by Transport for Wales, not Arriva Trains Wales.***

***This is a sensitive and controversial development for the town and given this, despite being an allocated site, the application should be considered by the Planning Committee and not under the scheme of delegation.***

**4.2 Consultee Comment**

**4.3 SC Public Rights of Way have responded indicating:**

There are no Public Rights of Way within the development area therefore we have no comments to make.

**4.4 SC Highways have responded indicating:**

As you are aware, I have revisited this application following the previous highway advice given in respect of application reference 20/01054/OUT. I

have considered again the local context of the junction of Pyms Road and the School Entrance. Having done so I do not wish to fundamentally change the highway stance as was set out previously and attached below for ease of reference. You will see however that I have reworded the access and raised table planning Condition. In essence I am satisfied that the raised table scheme can provide a satisfactory means of access to the development and deal with some localised traffic conditions, particularly during the school peak periods. I am satisfied also that these works can be accommodated within the highway limits and the frontage controlled by the applicant.

**Previous highway advice:-**

At the outset it is acknowledged that the development proposal forms part of the SAMDev allocation within Wem (WEM003), although I understand that part of the application site area sits outside of the allocation. From a highway perspective however, the principle of the development of the site has been established and therefore it is the design and detail of the development that is essentially under consideration. At this outline stage only access is being considered, with layout and scale etc to be considered as part of a reserved matters application if outline permission were granted. Access is proposed off Lowe Hill Road and an indicative Masterplan has been submitted as part of the application.

The proposed access location is considered acceptable as is shown on the plan entitled PROPOSED ACCESS OPTION 1 drawing no. 68591 CUR 00 XX DR TP 75001 P04, which includes a raised table extending to the north of the Pyms Road junction and to the south of the access to the school. In essential therefore the raised table provides a school safety scheme as part of the site access proposals, with the view of introducing a 20mph speed limit. The raised table also has the benefit of improving the Pyms Road junction having regard to the restricted measure of visibility at its junction onto Lowe Hill Road in a northerly direction. The access and raised table proposals would be the subject of detailed design and Road Safety Audit prior to the works being implemented together with Traffic Regulation Orders (TRO) in respect of School Keep Clear and Zig Zag markings and other associated TRO requirements.

Highway capacity and safety concerns have been raised by the Town Council, Economic Forum and local residents. A Transport Assessment (TA) has been submitted by the applicant to consider the impact of the development on the local highway network. The TA is accepted as demonstrating that the development will not have a 'severe' impact from a highways and transport perspective, such that would otherwise warrant a highway refusal. The highway authority accept that the TA demonstrates that in the future year with development the junctions scoped in assessment will operate within practical capacity (bar one link that is shown to still operate within theoretical capacity). The highway authority recognise the highway constraints within Wem's highway network and indeed this is a matter currently being considered as part of a wider assessment of traffic movement in Wem. However, as part of this application the highway authority have some concerns regarding increased traffic movements, as a result of the proposed development, at the junction of Lowe Hill Road with the

**Ellesmere Road to the south of the site, due to the restricted measure of visibility at the junction in a westerly direction. There is the potential to introduce a mini-roundabout within the junction layout to improve the current substandard junction, to be funded by the development. Whilst it is considered that this could be dealt with by planning condition, alternatively the requirement could be incorporated into a Section 106 obligation.**

**A condition for a Construction Traffic Management Plan is requested. Particularly prevalent is the need for construction vehicles to route appropriately through Wem especially in relation to minimising the potential impact on the High Street and Maund's Corner.**

**In conclusion the highway authority raise no objection to the granting of outline consent subject to the following Conditions:-**

**Conditions:**

**Approve Access Design**

**\* Notwithstanding the access details as shown on Drawing No.68591-CUR-00-XX-DR-TP-75001-P04 and prior to the commencement of development full engineering details of the access layout, visibility splays and raised table shall be submitted to and approved in writing by the Local Planning Authority; the access scheme and raised table shall be implemented in accordance with the approved details and a phasing programme to be first submitted to and approved in writing by the Local Planning Authority. Reason: In the interests of highway safety and to ensure the comprehensive development of the highway infrastructure to serve the occupation of dwellings within the site.**

**Road Design**

**\* No development shall take place until details of the design and construction of any new roads, footways, accesses together with details of the disposal of highway surface water and phasing programme have been submitted to, and approved by the Local Planning Authority. The agreed details shall be fully implemented in accordance with the approved details.**

**Reason: In the interests of highway safety and to ensure the comprehensive development of the highway infrastructure to serve the occupation of dwellings within the site.**

**Additional Highway Infrastructure**

**\* Prior to the commencement of development a scheme for the provision of a mini-roundabout at the junction of Lowe Hill Road and B5063 shall be submitted to approved in writing by the Local Planning Authority: the mini-roundabout scheme shall be fully implemented in accordance with the approved scheme following the occupation of the 50th dwelling within the site.**

**Reason: In the interests of highway safety.**

**Parking and Turning**

**\* No development shall take place until details for the parking and turning of vehicles have been submitted to and approved by the Local Planning Authority. The approved scheme shall be laid out and surfaced prior to the first occupation of the development and thereafter be kept clear and maintained at all times for that purpose.**

**Reason: To avoid congestion in the surrounding area and to protect the**

amenities of the area.

#### **Construction Traffic Management Plan**

**\* No development shall take place, including any works of demolition, until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the local planning authority, to include a community communication protocol. The CTMP shall be fully implemented in accordance with the approved details for the duration of the construction period.**

**Reason: In the interests of highway safety and to avoid congestion in the surrounding area and to protect the amenities of the area.**

#### **Travel Plan**

**\* The interim travel plan shall be implemented in accordance with the Action Plan set out in the approved details.**

**Reason: In order to promote sustainable travel and associated health benefits and to minimise the use of the private car in the interest of reducing carbon emissions.**

**4.5 SC Drainage** have responded indicating:

**The technical details submitted for this Planning Application have been appraised by WSP UK Ltd, on behalf of Shropshire Council as Local Drainage Authority. All correspondence/feedback must be directed through to Shropshire Council's Development Management Team.**

**1. Shropshire Council's Flood and Water Management Team should be consulted if Ordinary Watercourse Consent is required for the diversion of the land drains.**

**2. Condition:**

**Drainage Comment:**

**No development shall take place until a scheme of surface and foul water drainage has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented before the development is occupied/brought into use (whichever is the sooner).**

**Reason: The condition is a pre-commencement condition to ensure satisfactory drainage of the site and to avoid flooding**

**3. Informative Notes:**

**3.1. The proposed drainage strategy in the FRA is acceptable in principle. However, the final drainage details, plan and calculations should be submitted for approval.**

Information on the proposed maintenance regime for any sustainable drainage system proposed, including details of who will take responsibility should be provided to ensure that the drainage system remains in good working order throughout its lifetime.



3.2. Urban creep is the conversion of permeable surfaces to impermeable over time e.g. surfacing of front gardens to provide additional parking spaces, extensions to existing buildings, creation of large patio areas.

The appropriate allowance for urban creep must be included in the design of the drainage system over the lifetime of the proposed development. The allowances set out below must be applied to the impermeable area within the property curtilage:

Residential Dwellings per hectare	Change allowance	% of impermeable area
Less than 25	10	
30	8	
35	6	
45	4	
More than 50	2	
Flats & apartments	0	

3.3. Highway Gully Spacing calculations should be submitted for approval.

Where a highway is to be adopted and gullies will be the only means of removing surface water from the highway, footpaths and paved areas falling towards the carriageway, spacing calculations will be based on a storm intensity of 50mm/hr with flow width of 0.75m, and be in accordance with DMRB CD526 Spacing of Road Gullies (formerly HA102)

Gully spacing calculations must also be checked in vulnerable areas of the development for 1% AEP plus climate change 15 minute storm events. Storm water flows must be managed or attenuated on site, ensuring that terminal gullies remain 95% efficient with an increased flow width. The provision of a finished road level contoured plan showing the proposed management of any exceedance flows should be provided.

Vulnerable areas of the development are classed by Shropshire Council as areas where exceedance flows are likely to result in the flooding of property or contribute to flooding outside of the development site. For example, vulnerable areas may occur where a sag curve in the carriageway vertical alignment coincides with lower property threshold levels or where ground within the development slopes beyond the development boundary.

**Shropshire Council's "Surface Water Management: Interim Guidance for Developers, paragraphs 7.10 to 7.12" (Local Standard D of the SUDS Handbook) requires that exceedance flows for events up to and including the 1% AEP plus CC should not result in the surface water flooding of more vulnerable areas (as defined above) within the development site or contribute to surface water flooding of any area outside of the development site. Exceedance flow path should be provided.**

**3.4. The proposed method of foul water sewage disposal should be identified and submitted for approval, along with details of any agreements with the local water authority and the foul water drainage system should comply with the Building Regulations H2**

- 4.6 **SC Trees have responded to the application indicating: I have read the updated Cameron S Crook and Associates Arboricultural Impact Assessment (AIA) and find that overall proposal can be implemented without the loss of important trees.**

**Of the 5 trees given an “A” category, 4 mature Oaks have been retained in Public Open Space (POS) with sufficient space to allow for their long-term retention - T9 T10 T11 and T12.**

However, I note that T8 described as “A large prominent mature tree in good overall condition” is shown on the indicative layout to be situated in a small back garden South of the proposed properties. This is not sustainable and will lead to shading, proximity and nuisance issues and will detract from such a tree’s amenity value – it should be given the same consideration as the other stand out Oaks on site.

A further application should take account of this tree’s position in relation to the proposed development and the site will also require a Tree Protection Plan (TPP) and Arboricultural Method Statement (AMS) in line with BS 5837: 2012

**An earlier response indicated:**

The submitted Cameron S Crook associates Arboricultural Impact Assessment is dated January 2020 and at section 1.4 states it is valid for 18 months only - therefore this report needs updating for this current application. A further application also requires an Arboricultural Method Statement (AMS) and Tree Protection Plan (TPP) to ensure the mature trees on site are incorporated into the scheme without damage, and have a long term future

- 4.7 **SC Affordable Housing** have responded indicating:  
If this site is deemed suitable for residential development, the scheme would be required to contribute towards affordable housing in accordance with Policy CS11 of the adopted Core Strategy. The level of contribution would need to accord with the requirements of the SPD Type and Affordability of Housing and at the prevailing housing target rate at the time of a full application or a Reserved Matters application. The current prevailing target rate for affordable housing in this area is 10%. A development of 100 homes would need to provide 10 affordable homes on site. The assumed tenure of the affordable homes would be 7 for affordable rent and 3 for Shared Ownership and all would be transferred to a housing association for allocation from the housing waiting list in accordance with the Council’s prevailing Allocation Policy and Scheme. The size, type and tenure of the affordable home will need to be agreed with the Housing Enabling Team before any further application is submitted.

- 4.8 **SC Archaeology Manager has responded indicating: A Heritage Assessment and a Supplementary Heritage Assessment, both by BWB Consulting, and an archaeological geophysical survey by Phase Site Investigations have been submitted with the application. It is advised that these provide a satisfactory level of information about the archaeological interest of the proposed development site in relation to the requirements of Policy MD13 of the Local Plan and Paragraph 189 of the NPPF.**

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 a phased programme of archaeological work is made a condition of any planning permission for the proposed development. This should comprise an initial evaluation, consisting of a measured earthwork survey of the ridge and furrow and other features on the southern part of the site and a targeted trial trenching exercise, followed by further mitigation as appropriate. The archaeological earthwork survey should consist of a Level 2 measured survey as defined within Historic England's guidance 'Understanding the Archaeology of Landscapes' (2017). The trial trenches should be targeted at anomalies identified within the geophysical survey, together with a sample of 'blank' areas, up to a total of 2-3% of the overall site area. Any further mitigation will be informed by the results of the evaluation. An appropriate condition of any such consent would be: -

**Suggested Conditions:**

**No development approved by this permission shall commence until the applicant, or their agents or successors in title, has secured the implementation of a phased 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 development site is known to have archaeological interest.

**4.9 SC Landscape Consultant** has responded to the application in conclusion indicating:

*The methodology for the assessment of these factors would appear to be appropriate, given the scale of the proposal and likely landscape and visual effects, and accords with the best practice set out in GLVIA3. Assessment of magnitude of landscape and visual effects has been undertaken in accordance with the LVIA methodology and GLVIA3.*

***All effects are predicted to be adverse, although it is noted that the principle of development on the site is established through its allocation in the Local Plan.***

**4.10 SC Ecology** have responded indicating:

Conditions have been recommended to ensure the protection of wildlife and to provide ecological enhancements under NPPF, MD12 and CS17.

I have provided a European Protected Species 3 tests matrix at the end of this response. The planning officer needs to complete sections 1 and 2, 'over riding public interest' and 'no satisfactory alternative.' The EPS 3 tests matrix must be included in the planning officer's report for the planning application and discussed/minuted at any committee at which the application is considered.

**A financial contribution, secured through a S106 agreement for visitor management mitigation measures at Cole Mere Ramsar site in order to demonstrate that the proposal will not cause an offence under The Conservation of Habitats and Species Regulations 2017 (as amended) has**

**been agreed by the applicant. A separate Appropriate Assessment has been undertaken and provided already in this regard.**

Comments

Great Crested Newt

Mitigation for GCN is further detailed in the letter from Ecology Solutions Limited (dated August 2021) and accompanying plan ECO1 'Indicative GCN mitigation strategy'. I am satisfied that impacts to GCN can be adequately mitigated as part of development proposals. A GCN mitigation licence from Natural England will be required for this development.

I have provided a European Protected Species 3 tests matrix at the end of this response. The planning officer needs to complete sections 1 and 2, 'over riding public interest' and 'no satisfactory alternative.' The EPS 3 tests matrix must be included in the planning officer's report for the planning application and discussed/minuted at any committee at which the application is considered. The form provides guidance on completing Sections 1 and 2 but please get in touch if additional assistance is required.

### **Biodiversity enhancement**

**Opportunities exist to incorporate areas of wildlife habitat within the development proposals, which are illustrated on the indicative landscape masterplan, and ECO1. A condition is recommended to ensure details of landscaping to enhance biodiversity are submitted as part of reserved matters.**

Recommended conditions

#### **European Protected Species Mitigation Licence condition**

**No development shall take place until a European Protected Species (EPS) Mitigation Licence with respect to great crested newts has been obtained from Natural England and submitted to the Local Planning Authority;**

Reason: To ensure the protection of great crested newt. a European protected species.

#### **Landscaping Plan condition**

**The first submission of reserved matters shall include a landscaping plan.**

**The submitted plan shall include:**

- 1) Planting plans showing creation of wildlife habitats including species-rich grassland, permanent aquatic habitats and hedgerow / tree planting,**
- 2) Written specifications (including cultivation and other operations associated with wildlife habitat establishment);**
- 3) Schedules of plants, noting species (including scientific names, seed mix compositions, planting sizes and proposed numbers/densities where appropriate;**
- 4) Native species used are to be of local provenance (Shropshire or surrounding counties);**
- 5) Details of trees and hedgerows to be retained and measures to protect these from damage during and after construction works;**

**6) Implementation timetables.**

**The plan shall be carried out as approved. Any trees or shrubs which die or become seriously damaged or diseased within five years of completion of the development shall be replaced within 12 calendar months with trees of the same size and species.**

- 4.11 Reason: To provide ecological enhancements under NPPF, MD12 and CS17  
**SC Parks and Recreational Open Space have responded indicating: The Design and Access plan for this development acknowledges the need for open space as set out under SAMDev Policy MD2 and Officers are initially satisfied with the location of the POS within the design layout.**

Officers will need to know how many bed spaces this development provides and what the exact amount of public open space provided is so that the open space calculation can be made to ensure the policy requirement is met.

- 4.12 **Officers also require information about who will be taking on the future maintenance of the Public *open Space*.  
 SC Regulatory Services recommends a condition with regards to noise and protection of occupants of the dwellings is attached to any approval notice issued.**

4.13 **Public Comments**

- 4.14 **Twenty letters of objections have been received from members of the public in relation to this application. Key planning related issues raised can be summarised as follows:**

- Concerns about impacts on the existing public highway infrastructure
- Concerns that local school and doctors surgery are over subscribed.
- Issues in relation to drainage on site.
- Concern about potential loss of trees and hedges and in particular mature Oak.
- Insufficient local employment to warrant development.
- Detrimental impact on rural landscape on fringe of the town of Wem.
- Ecology concerns and surveys considered out of date.
- Historic and cultural heritage survey considered out of date.
- Concerns about impacts on adjacent land use and nearby built development
- Surrounding public highways will be unable to absorb the additional traffic the development will create.

**5.0 THE MAIN ISSUES**

- **Principle of development**
- **Visual impact and landscaping**
- **Ecology**
- **Scale and design and consideration to the land forming part of the application site outside the allocated site.**
- **Drainage**
- **Highways and transportation**
- **The historic environment.**
- **Noise and amenity**
- **Section 106**

**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. 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 development plan in Shropshire consists of the Core Strategy (adopted in February 2011), and the Site Allocations and Management of Development (SAMDev) Plan (adopted in December 2015). While planning applications are considered against the policies of the development plan as a whole, specifically relevant policies to this application are set out further below.**

**6.1.2 Core Strategy Policy CS6: Sustainable design and development principles states that to create sustainable places, development will be designed to a high quality using sustainable design principles, to achieve an inclusive and accessible environment which respects and enhances local distinctiveness and which mitigates and adapts to climate change. It further states that all development will protect, restore, conserve and enhance the natural, built and historic environment and is appropriate in scale, density, pattern and design taking into account the local context and character, and those features which contribute to local character, having regard to national and local design guidance.**

**6.1.3 Policy MD2 of the SAMDev on Sustainable Design indicates for development proposals to be considered acceptable development must respond positively to local design aspirations and contribute to and respect local distinctive or valued character.**

**6.1.4 The application site covers an area which is mostly allocated for residential development in accordance with Policy S17-1a of the SAMDev. (Land off Pyms Road, WEM003). This indicates that development on this site is acceptable subject to an appropriate contribution towards traffic management, appropriate drainage design and appropriate biodiversity and archaeology surveys. The design of the site may include additional land for community facilities.**

**6.1.5 Part of the application site is outside of the recognised development boundary for Wem on land classed as open countryside. (The northern limb of the site). The indicative plan submitted in support of the application indicates residential development on this section of the site.**

**6.1.6 Given the above the principle of development on site is largely acceptable subject to satisfactory consideration to matters as discussed below. Adequate justification with regards to the inclusion of the area of the allocated site and outside of the recognised development boundary is required. It is considered that development on site in principle does comply with the prevalence for sustainable development in accordance with the National Planning Policy Framework. (July 2021).**

**6.2 Visual impact and landscaping**

**6.2.1 The application site is mostly an allocated site for residential development in the countryside on the edge of Wem, whilst the development proposal will result in the loss of agricultural land, this matter is considered acceptable and was subject to consideration when the site was allocated for development in accordance with the procedures in relation to formal**

adoption of the local plan.

- 6.2.2** The site which consists of grade 3 and 4 agricultural land is relatively flat, bordered by hedges and has been subject to agricultural production. Alongside the site's eastern boundary is the adjacent public highway from which access into the site will be obtained. On opposite side of this highway is the built up form of Wem. Otherwise the site is surrounded by agricultural land. As such integration of development into the surrounding landscape is an important material consideration in relation to this application.
- 6.2.3** Policy CS6 sets out sustainable design and development criteria intended to influence the form of new development so that it respects and enhances local distinctiveness. Bullet point 4 of CS6 requires new development to protect, restore, conserve and enhance the natural, built and historic environment. It should also be appropriate in scale, density, pattern and design taking into account the local context and character and those features which contribute to local character, having regard to national and local design guidance, landscape character assessments and ecological strategies.
- 6.2.4** Policy MD2 requires all development to provide adequate open space, set at a minimum standard of 30sqm per person (equivalent to 3ha per 1,000 population). For residential developments, the number of future occupiers will be based on a standard of one person per bedroom. For developments of 20 dwellings and more, the open space needs to comprise a functional area for play and recreation.  
This should be provided as a single recreational area, rather than a number of small pockets spread throughout the development site, in order to improve the overall quality and usability of the provision.
- 6.2.5** Policy MD12 of the SAMDev indicates that there should be support for development which appropriately conserves, enhances, connects, restores or recreates natural assets, particularly where this improves the extent or value of those assets which are recognised as being in poor condition and that support should be given to development that contributes positively to the special characteristics and local distinctiveness of an area.
- 6.2.6** The Council's Tree Officer has been consulted on the application and raises no objections in principle indicating whilst there are concerns with regards potential shading from one Oak tree, it is considered this matter can easily be resolved at the Reserve Matters stage. On balance the application in relation to trees is considered to be potentially acceptable in relation to the principals of policies MD2 & MD12 of the SAMDev local plan
- 6.2.7** The applicants have submitted a Landscape and Visual Impact Assessment in support of the application and this concludes that the proposed development is located on the western edge of Wem, on land partly allocated for residential development in the current local plan. The proposals incorporate a low density housing mix, set within a strong axis of landscape buffers which include the retention of valuable (in arboricultural and amenity terms) trees, improvements to the existing boundary hedgerows, flood and drainage attenuation, the provision of community space and an equipped area of play. The new access will be taken off Lowe Hill Road. The landscape character of the area will remain largely intact. The field itself changes inevitable from grazing/arable use to built form, however the field pattern, the key features (such as the trees) and the overall rural nature of the area between Lowe Hill, Wem and the outlying farms remains. The separation to Lowe Hill and farms off Ellesmere Road and as a whole the development will not appear as dense, solid development but in line with the understanding of built form

generally though this area outside the settlement edge – broken up by vegetation, small groups of buildings in a strong landscape context. Generally, the impact on the landscape character within the study area is considered to be low equating to a Minor significance of effect. Visually, as expected the proposal are most noticeable from the residential, road and PRow users in closest proximity to the site. These receptors will experience clear adverse impacts as the direct rural view is changed. However, the number receptors and the time frame for experiencing the change is limited. Those users of the PRow within the study area are aware of the change but due to the local topography and intervening vegetation their experience is mostly limited and the proposals are not the focus of their view

6.2.8 The Council's Landscape Consultant has responded to the application submission by concluding that the methodology for the assessment would appear to be appropriate, given the scale of the proposal and likely landscape and visual effects, and accords with the best practice set out in GLVIA3. Assessment of magnitude of landscape and visual effects has been undertaken in accordance with the LVIA methodology and GLVIA3. All effects are predicted to be adverse, although it is noted that the principle of development on the site is established through its allocation in the Local Plan.

6.2.9 The application has been made in outline with landscaping reserved for future consideration, as such the applicants' submitted master plan is for indicative purposes only. It is noted the applicants' propose a landscape buffer alongside the southern side, (site of an existing gas main), however the plan offers very little in further landscape mitigation, whilst indicating its location to that of the existing built-up form of Wem town and thus highlighting how necessary it is for landscape mitigation in order to mitigate the development into town and countryside in this rural location. The applicants' landscape character assessment plan also highlights how the development will sit in a primary landscape of 'settled pastoral farmlands'. (Shropshire Council's landscape character assessment). As such landscaping in order to mitigate the development into this rural location is essential and this includes consideration to the boundary treatments. Clearly the site is allocated for housing, (mostly), in the local plan and it is also acknowledged that the local plan review includes provision for additional land to the rear of the site to also be included for residential development. (However, the revisions to the upcoming local plan at this stage can be given very little weight owing to the plan's status in the planning adoption process).

6.2.10 In relation to impacts on the historic environment **the applicants have submitted an historic impact assessment and this concludes that there are no Scheduled Monuments or Listed Buildings within the site but that a brick field was present in the later 19th century and evidence for medieval or later ploughing may survive within the site boundary.** (This issue it is recommended can be addressed via an attachment of an archaeology condition **as recommended by the Council's Archaeology Manager in response to the application**) **The Impact on the setting of nearby assets is likely to be mitigated by intervening buildings and/or mature trees.** In consideration of the fact that the **majority of the site is allocated for residential development in accordance with the local plan**, consideration to landscape impacts as discussed in this section of the report and the **relatively low** presence of historic interest in the immediate surrounding environment, it is considered **with a suitably worded landscape condition that impacts on the surrounding historic environment from a landscape perspective will be acceptable**, detail in relation to scale layout and design will be considered at Reserve Matters stage.



**6.2.11 In consideration of the site's residential principle in accordance with the local plan, it is considered that with an appropriate landscaping condition attached to any approval notice issued to ensure adequate landscaping consideration at 'Reserve Matters' stage, that the principle of the development is acceptable and in accordance with Policies CS6, CS17, S17.1a, MD2, MD7a, MD12 and MD13 of the local plan and the NPPF on this matter.**

### 6.3 Ecology

- 6.3.1 The NPPF places high importance on protection of biodiversity interests and new development should minimise impacts on biodiversity. Planning permission should be refused where significant harm from a development cannot be avoided. It also places great weight on conserving and enhancing the natural environment. Core Strategy Policies CS6 and CS17 require development proposals to respect the natural environment of Shropshire and its biodiversity interests. Policy MD12 of the SAMDev, amongst other matters, encourages development which appropriately conserves, enhances, connects, restores or recreates natural assets, particularly where this improves the extent or value of those assets which are recognised as being in poor condition. Development should minimise impacts upon biodiversity and provide net gains in biodiversity wherever possible.
- 6.3.2 The applicants have submitted an ecological impact assessment in support of the application, this concludes that overall, with the exception of bats and great crested newts, there was no conclusive evidence of any specifically protected species occurring on site or closely adjacent to the site that are likely to be adversely affected by the proposals. Similarly, no important habitats were identified that will be adversely affected. Several breeding birds that are protected in general terms during the breeding season, including several Priority Species, do occur on site and there will be an initial loss of breeding habitat. However, with adequate mitigation and the implementation of a number of relatively minor precautions as outlined in the report, it is considered that the proposed development will result in negligible overall ecological impact. With respect to bats, whilst there were no conclusive signs of roosting, several trees suitable for roosting occur on site and bats use the western parts of the site for foraging and commuting to a moderate extent. Retention of this important habitat and improvements to the wildlife will ensure there is no residual impact upon bats and a favourable conservation status will be maintained. There are no extant ponds on site but a pond some 40m to the south and another pond some 160m to the west do support small populations of great crested newts. To ensure that no amphibians will be harmed, all suitable marginal habitat will be retained and enhanced where appropriate, being linked into the wider wildlife corridor, and prior to commencement of any works on site, all habitat suitable for use by amphibians located within 250m of the ponds concerned, shall be initially enclosed by appropriate protective fencing and by means of a trapping scheme, shall be removed from site and relocated in a designated receptor site. This work shall be undertaken as part of a Natural England EPS licence. Whilst there is a modest diversity of invertebrates on site, none of the species recorded are of any significant importance and most of the optimal habitat such as mature trees, hedgerows and wetland, will be retained and managed appropriately. Overall, providing mitigation and habitat compensation proposals are implemented as recommended, there should be no negative ecological impact resulting from proposals to develop the site in question. In addition, to compensate for any loss of habitat and increase biodiversity of the wider area, a significant area of land situated to the south and northwest will be set aside with new ponds created and subsequently managed for great crested newts and other important species. This is

likely to result in a net positive impact in respect of the local great crested newt population which appears to be currently in decline

- 6.3.3 SC Planning Ecologist has responded to the application indicating no objections subject to conditions being attached to any approval notice issued to ensure adequate consideration to landscaping and the protection of wildlife and to provide ecological enhancements under NPPF, MD12 and CS17. The response also refers to a European Protected Species 3 tests matrix which is attached as appendix 2 to this report. The Ecology response requests consideration to a financial contribution, secured through a S106 agreement for visitor management mitigation measures at Cole Mere Ramsar site in order to demonstrate that the proposal will not cause an offence under The Conservation of Habitats and Species Regulations 2017 (as amended), this has been agreed by the applicant. A separate appropriate assessment has been undertaken and provided already in this regard
- 6.3.4 In relation to ecological/biodiversity issues, whilst it is acknowledged the previous application on site subsequently refused permission owing to issues primarily in relation to ecological/biodiversity and landscape issues, it is considered the applicants have as part of the application currently under consideration addressed these matters to a satisfactory conclusion with conditions attached as recommended in this report. Therefore on biodiversity/ecological issues the application is considered to be in accordance with Policies CS6 and CS17 of the Shropshire Core Strategy, Policies MD2 and MD12 of the SAMDev, the NPPF and the Conservation of Habitats and Species Regulations 2017 and/or the Wildlife and Countryside Act 1981 (as amended).
- 6.4 **Scale and design and consideration to land outside the allocated site**
- 6.4.1 Section 12: Achieving well-designed places of the NPPF advocates optimising the potential of the site to accommodate development, create and sustain an appropriate mix of uses (including incorporation of green and other public space as part of developments) and support local facilities and transport networks. The NPPF seeks to improve and enhance places where people live. This national policy is reinforced and expressed locally in Core Strategy Policy CS6 and SAMDev Policy MD2.
- 6.4.2 The application is made in 'outline' with all matters other than access reserved for future consideration, as such scale and design are to be considered at a future 'Reserve Matters' stage. Accompanying the application is an 'indicative site layout plan' which indicates a proposed site layout including provision for public open space. This matter it is considered will be assessed in more detail at the Reserve matters stage should permission be granted.
- 6.4.3 As previously indicated part of the site is located outside of the recognised development boundary for Wem, on land classed as open countryside in accordance with the local plan. It is recognised that a 'gas main' pipe runs through a section of the southern part of the site and that this does create a land constraint. It is noted the masterplan for the application site indicates residential development on the land in the northern section outside of the development boundary. Whilst the gas main is a planning constraint, it is noted the site allocation in accordance with Policy S17.1a of the SAMDev indicates that the design of the site may include additional land for 'community facilities', it does not indicate or make reference to further housing. The Council's pre-application advice acknowledged that any formal application could include additional land as part of the application site, but this would need to be justified by the applicants. In consideration of the land constraint, (gas pipe), and the requirement for a clearance zone within its close proximity and justification as submitted by the applicants in support of the application, as well as

amount of open space indicated, on balance use of the land as suggested on the 'indicative site layout plan is acceptable in principle. (Application has been advertised as a departure to the local plan). The proposal considered by utilising the adjacent land will allow for a character of development which has a lower, and more appropriate density in consideration of the adjacent built environment. (SAMDev policy indicates up to 100 dwellings on this allocated housing site). The indicative layout demonstrates that appropriate areas of open space can be provided, allowing residents access to multi-functional accessible spaces, a community use area and sustainable drainage schemes set within a potentially high quality landscaping. Overall, this considered significant material reasons which on balance to support the application.

6.4.4 The Planning Statement in support of the application refers to the local plan review and the fact that further land adjoining the site is being considered for inclusion into the local plan. Whilst this is correct in that land as indicated to the north of the existing allocated site has been suggested for inclusion into the local plan, this at present carries little planning weight, as the review of the Local Plan is only in its very early stages. The objection to the application is noted from Wem Town Council and thus at this stage in the plan review, it would be premature and prejudicial to pre-judge the progress of the local plan review.

6.4.5 Policy S17:1a of the SAMDev indicates extra land may be considered acceptable in relation to the overall design of the site for the provision of community facilities

6.4.6 Whilst scale, layout and design are important material considerations, these are reserved for future consideration. The indicative site plan in support of the application along with the material considerations and justification as suggested by the applicants, tip the balance in support of the application in relation to this matter and the inclusion of land (approx. 25% - 30% of the application site), outside of the recognised housing allocated site and therefore considered by Officers to be acceptable and overall in accordance with the local plan policies as a whole.

## 6.5 **Drainage**

6.5.1 Core Strategy policy CS18 relates to sustainable water management and seeks to ensure that surface water will be managed in a sustainable and coordinated way, with the aim to achieve a reduction in the existing run-off rate and not result in an increase in run-off

6.5.2 The Council's Drainage Manager in response to the application has indicated that the proposed drainage strategy in the FRA is acceptable in principle. However, the final drainage details, plan and calculations should be submitted for approval. The response recommends a condition to be attached to any approval notice subsequently issued with regards to a scheme of surface and foul water drainage

6.5.3 Whilst the concerns as raised by Wem Town Council and objectors to the application on drainage and flooding issues are noted, it has to be acknowledged that the Council's Drainage consultee raises no objections on this matter. Therefore on balance the application considered to be in accordance with Policies CS6 and CS18 of the Shropshire Core Strategy and the National Planning Policy Framework on flood and drainage matters.

## 6.6 **Highways and transportation**

6.6.1 The NPPF, at section 9, seeks to promote sustainable transport. At paragraphs 110 and 111, it states that decisions should take account of whether safe and suitable access to the site can be achieved for all people and whether improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are

severe.”

- 6.6.2 Core Strategy policy CS6 seeks to ensure that proposals likely to generate significant levels of traffic be located in accessible locations, where opportunities for walking, cycling and use of public transport can be maximised and the need for car based travel reduced.
- 6.6.3 A transport assessment accompanies the application and this concludes that the site is accessible by sustainable modes of transport and that the surrounding area exhibits levels of pedestrian and cycling infrastructure, and there are several public transport opportunities within acceptable walking distance. Following a review of road collision statistics, it is not considered that there is an existing safety issue that is likely to be exacerbated by the proposals. Based on the quantum of development, a single highway access would be sufficient for the site. This would be taken off the existing access, with minor realignment of the road within the site such that it would be perpendicular to Lowe Hill Road. Due to the proximity of the Thomas Adams School, and the associated reduction in speed limit on Lowe Hill Road to 20mph which commences in the north, a raised table has been proposed. This is in line with the Shropshire Council document ‘91’91’91 Specification for Residential/Industrial Estate Roads’ and as stated within Manual for Streets, that raised tables at junctions reduce speeds and facilitate pedestrian movement. A highway impact assessment has been undertaken which demonstrates that traffic generated by proposed development will not have a material impact on the surrounding highway network in the years 2021 and 2026. A review of relevant local and national transport planning guidance has been undertaken. It is considered that the proposed development is in general in accordance with such policies and guidance. From a traffic and transportation perspective, the transport assessment states there are no reasons why the development proposals should not be granted planning approval
- 6.6.4 The application has generated a number of letters of objections from members of the public on public highway and transportation issues and this includes reference to Wem Town Council. As a consequence the SC Highways Manager has visited the site and has responded to the application indicating he has considered again the local context of the junction of Pyms Road and the School entrance. Having done so he does not wish to fundamentally change the highway stance as was set out previously and attached in relation to the previous application refused permission on site. He has however reworded the access and raised table planning condition. In essence the Council's Highways Manager is satisfied that the raised table scheme can provide a satisfactory means of access to the development and deal with some localised traffic conditions, particularly during the school peak periods. He is satisfied also that these works can be accommodated within the highway limits and the frontage controlled by the applicant.(SC Highways Manager's response is copied out in full in paragraph 4.4 above).
- 6.6.5 The SC Highways Manager does not object to the proposal on highway and transportation grounds recommending conditions with regards to access design, road design, highway infrastructure, parking and turning, a construction management plan and a travel plan.
- 6.6.6 Whilst Officers acknowledge there are a number of concerns raised on public highway grounds by members of the public and Wem Town Council, it must be acknowledged that the majority of the site is allocated for housing in accordance with the local plan and further land to the rear is proposed for future housing growth. As such public highway matters in principle would of been considered at land allocation stage into the local plan.The SC Highways Manager appears to

have looked at the application in considerable detail, comparing the latest proposals subject to this application to that of his comments in relation to the previous application that was subsequently refused last year, in accordance with the Council's scheme of delegation. It is considered based on the SC Highways Manager's response as indicated in paragraph 4.4 above, that with conditions attached, as recommended by the Highways Manager, to any approval notice subsequently issued, that in highway and transportation matters this application on balance is acceptable and in accordance with Policies CS6, MD2 and S17 of the Local Plan and the National Planning Policy Framework.

## 6.7 **The Historic Environment.**

6.7.1 Section 16: Conserving and enhancing the historic environment in the National Planning Policy Framework, (NPPF), indicates:

*'When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance' (para 199).*

***'The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset'***. (para 203)

*'Local planning authorities should not permit the loss or harm of the whole or part of a heritage asset without taking all reasonable steps to ensure the new development will proceed after the loss has occurred'.(para 204)*

*'Local planning authorities should assess whether the benefits of a proposal for enabling development, which would otherwise conflict with planning policies but which would secure the future conservation of a heritage asset, outweigh the dis-benefits of departing from those policies' In this instance heritage assets, are dispersed in the surrounding area and the application does include land classed as open countryside and not designated for unencumbered housing development.*

Paragraph 194 of the NPPF indicates: ***'In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation'***.

Paragraph 195 indicates that, ***'Local planning authorities should identify and***

***assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal'.***

- 6.7.2** The applicants have submitted in support of their application a heritage assessment and supplementary historic landscape statement and these conclude that there are no Scheduled Monuments or Listed Buildings within the site, but that a brick field was present in the later 19th century and evidence for medieval or later ploughing may survive within the site boundary. The Impact on the setting of nearby assets is likely to be mitigated by intervening buildings and/or mature trees. The reports also conclude that field patterns and the town itself have changed over time. Given the relatively undeveloped nature of the proposed development site, particularly the field to the south, a geophysical survey is recommended to determine the potential for archaeology to survive within the site. (This matter has been considered earlier in this report with the recommendation for a condition to be attached to any approval notice issued with regards to an archaeology condition). Though it is recognised that the proposed development will have some minor impact through the loss of a parcel of land, the overall level of encroachment in the landscape character areas is negligible when taken into context with the wider historic landscape as a whole, and reflects the gradual but consistent development of both Wem and the historic landscape over time.
- 6.7.3** In consideration of the revised heritage impact assessment the Council's Conservation Officer to the previous application for development on site concluded that the applicants appear to use the phrase 'substantively' rather than 'harm'. The Conservation Manager considered that potentially with sensitive landscaping mitigation to the wider boundary of the site that on historic matters that Section 66(1) is engaged in terms of adding great weight when balancing harm against public benefits. The reason for this statement is that whilst the application site and the heritage assets assessed do share reciprocal views this does not necessarily mean that the site will cause harm to their significance, especially as the land in question does not have any formal connection to any of the heritage assets such as designed parkland, for example. As a consequence the Council's Conservation Officer did not object on heritage grounds but still had reservations as to how the site might be developed and mitigations measures put in place which do not cause harm, especially as the site it extended beyond the allocated site.
- 6.7.4** The comments as made by the Council's Conservation Officer are noted and in consideration of the fact that on this matter in relation to the previous application subsequently refused and material considerations, (Biodiversity and landscape impacts), of concern and the fact that whilst the Council's Landscape Consultant whilst maintaining that development on site will have an adverse impact on the landscape, does not object with suitable mitigation in place and the reality that the site is mainly allocated for residential development, in accordance with the local plan, with no objections to the current proposal on either landscape or ecology grounds, the balance tips in favour of support from an historic environment perspective as layout, scale and design are reserved for future consideration.

**6.7.5** On balance with consideration to all the material considerations, with adequate consideration to landscape mitigation as a consequence of development on site, it is considered that development on site in relation to the historic environment is broadly in accordance with Policies CS5, CS6 and CS17 of the Shropshire Core Strategy, Policies MD2, MD12 and MD13 of the SAMDev, and the National Planning Policy Framework.

**6.8** Noise and amenity.

**6.8.1** The applicants have submitted a noise assessment in support of the application and the Council's Regulatory Services Manager responded to the previous application indicating that

*'the acoustic report submitted with the application indicates that some parts of the development will not achieve recommended noise standards without mitigation.*

*Good acoustic design solutions should be used to provide mitigation where required and acoustic glazing which requires windows to be kept shut should only be considered where it is not possible to resolve the issues by other design measures (such as increasing the distance between the road and the properties, changing the internal or external layout and/or construction of noise barriers). As the measures required to protect the amenity of the properties is likely to require changes to the proposed layout and design of the site I recommend that these measures are agreed at outline stage'.*

**6.8.2** In response to this the applicants responded indicating that their noise consultants calculations indicate that the proposed stand-off, as shown in the indicative layout plan, introduced between Lowe Hill Road and the nearest dwellings is sufficient to achieve the internal noise guideline levels during the daytime, with open windows for ventilation. However, with open windows used for ventilation, the night-time noise levels may be exceeded. In order to achieve the night-time internal noise levels with open windows used to provide ventilation, bedrooms, where possible, could be located on the screened facades of dwellings closest to the road. We would however stress that there are no technical requirements for all rooms of new dwellings to have ventilation provided by open windows, and standard thermal glazing together with alternative ventilation methods are commonly used noise mitigation methods on sites such as Lowe Hill Road. Dwellings further into the proposed development site will achieve the internal noise levels on all facades with open windows used for ventilation, but all dwellings would have openable windows to allow for purge ventilation as required by occupant. Overall, it is stressed that as part of the detailed design process at reserved matters stage, the design, alignment and location of units closest to Lowe Hill Road will be reviewed in terms of noise impacts.

**6.8.3** The Council's Regulatory Services Manager indicated that whilst there is no technical requirement for all habitable rooms to be ventilated by openable windows, ProPG does make it clear that, good acoustic design principles should be used to ensure optimum acoustic standards are achieved without adversely affecting the quality of life of the occupants, ProPG also provides advice on good acoustic design, in particular it recommends:

*"Using fixed unopenable glazing for sound insulation purposes is generally unsatisfactory and should be avoided; occupants generally prefer the ability to have control over the internal environment using openable windows, even if the acoustic conditions would be considered unsatisfactory when open.*

***Solely relying on sound insulation of the building envelope to achieve acceptable acoustic conditions in new residential development, when other methods could reduce the need for this approach, is not regarded as good acoustic design. Any reliance upon building envelope insulation with closed windows should be justified in supporting documents.***

**6.8.4 *Planning applications for new residential development should include evidence that the following aspects of good acoustic design have been properly considered***

- ***Check the feasibility of relocating, or reducing noise levels from relevant sources.***
- ***Consider options for planning the site or building layout.***
- ***Consider the orientation of proposed building(s).***
- ***Select construction types and methods for meeting building performance requirements.***
- ***Examine the effects of noise control measures on ventilation, fire regulation, health and safety, cost, CDM (construction, design and management) etc.***
- ***Assess the viability of alternative solutions.***
- ***Assess external amenity area noise”.***

**6.8.5 It should be possible to design this site so that it achieves the recommended noise standards whilst maintaining the quality of life of future occupants, as such the Council’s Regulatory Services recommend that the possibility of acoustic design solutions, as detailed in ProPG, is explored further. As this could involve a significant redesign of the site they recommend that this application is not decided until a scheme of mitigation has been agreed.**

**6.8.6 The present application is made in outline with all matters other than highway access reserved for future consideration and this includes site layout. Clearly the site is in a semi-rural location and it is considered on balance that this matter can be satisfactorily resolved with the attachment of a suitably worded condition to any approval notice issued, so as the matter is addressed at the Reserve Matters stage should the application be subsequently approved.**

**6.9 Section 106**

**6.9.1 THE APPLICANTS HAVE SUBMITTED DETAIL IN SUPPORT OF A DRAFT SECTION 106 AGREEMENT TO ACCOMPANY ANY APPROVAL NOTICE ISSUED. THIS IS CURRENTLY UNDER PREPARATION. THE KEY POINTS TO BE INCLUDED IN ANY SECTION 106 AGREEMENT AS HEADS OF TERMS ARE AS FOLLOWS:**

- Affordable housing provision to include 10 affordable homes on site. (10%). The tenure of the affordable homes would be 7 for affordable rent and 3 for Shared Ownership and all would be transferred to a housing association for allocation from the housing waiting list in accordance with the Council’s prevailing Allocation Policy and Scheme.
- Open space provision on site in accordance with criteria as set out in Policy MD2 and detail in relation to its subsequent management and maintenance.
- A financial contribution, for visitor management mitigation measures at Cole Mere Ramsar site. (To demonstrate that the proposal will not cause an offence under The Conservation of Habitats and Species Regulations 2017 (as amended)).

**7.0 CONCLUSION**

**7.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that**



where regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.

- 7.2 The development as proposed has been assessed in relation to the relevant local plan policies. Material planning considerations have also been considered in the assessment of the merits of the case. The proposed development mainly forms part of an allocated site for housing in accordance with the local plan.(SAMDev).
- 7.3 It is considered that the proposal is finely balanced, as development on site will it is considered have an adverse impact on the surrounding landscape, however it is considered this impact can be mitigated with additional landscaping, and it is also acknowledged the majority of the application site is allocated for residential development in accordance with the local plan and the local plan review, (although at this stage can only be given very little weight), does include provision for further residential development within the site's immediate area.The relevant local plan policy, (SAMDev Policy S17.1a), indicates the site, (Site allocation reference WEM003), as suitable for additional land outside of its allocation for community uses. The housing site itself does have a significant constraint in that a service pipe crosses it and therefore a restraint to development over its land and buffer area, with this in mind, as well as the landscape and visual impact, it is considered that development on site will require significant landscaping and will need to be at the lower end of density patterns and will need open space provision on site in accordance with the criteria of SAMDev policy MD2 criteria as **a minimum**.
- 7.4 The previous application subsequently refused on site, (presently subject to an appeal), was refused mainly owing to biodiversity issues, (landscape and ecology), however it is considered that the ecological issues have been satisfactorily addressed as part of the current application under consideration.(Landscape and Conservation issues containing further information). Impacts on the surrounding historic environment with carefully consideration to density and layout at Reserve Matters stage with appropriate landscaping, it is considered can be addressed satisfactorily.
- 7.5 It is noted there are significant concerns to the application on highway and transportation matters from both members of the public and Wem Town Council, however with appropriate conditions attached to any approval notice issued, it is considered this matter is addressed satisfactorily, as confirmed by the SC Highways Manager and discussed in this report.
- 7.6 With a condition attached to any approval notice issued, in order to ensure a sustainable means of surface and foul water drainage, it is considered detail included in the applicants flood risk assessment and supporting information in support of the application on drainage issues is acceptable. (This matter it is also acknowledged was a reason for a number of objections from members of the public and Wem Town Council).
- 7.7 The concerns with regards to potential noise issues are noted, however the layout plan in support of the application is 'indicative only' and matters in relation to scale, design and layout are reserved for future consideration. With consideration to the site's mainly rural setting and with consideration to the proximity to the site and type of surrounding public highways, as well as adjoining land uses, it is considered this matter can be addressed adequately at the Reserve Matters stage.
- 7.8 It is noted there are objections to the application owing to what some perceive as lack of infrastructure and essential service provision within Wem. This matter it is considered will be addressed via the Community Infrastructure Levy, (CIL) where

considered necessary. The Local Parish Council's comments in relation to this application, as well as Wem Civic Society and those of members of the public who have commented on the current application have been taken into consideration in relation to the processing of this application.

- 7.9 On balance and with careful consideration to all the material considerations, acknowledging the site is mainly allocated for housing in accordance with the local plan, (application was advertised as a departure to the local plan, owing to the additional land included in the application site that is not allocated for housing in the current local plan), this application is recommended for approval, as it is considered overall to comply with Policies CS3, CS5, CS6 and CS17 of the Shropshire Core Strategy, Policies MD1, MD2, MD3, MD7a, MD12, MD13 and S17 of the SAMDev, the National Planning Policy Framework, (July 2021), the Conservation of Habitats and Species Regulations 2017 and/or the Wildlife and Countryside Act 1981 (as amended) and that of the revised local plan under review, whilst acknowledging this plan at this stage in its adoption process carries very little planning weight.
- 7.10 The recommendation is therefore one of approval subject to the conditions as outlined in appendix 1 attached to this report and any modifications to these conditions as considered necessary by the Assistant Director and the signing of a Section 106 agreement in order to ensure provision of affordable housing on site, open space provision and maintenance and a financial contribution towards visitor management mitigation measures at Cole Mere Ramsar site

## 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 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 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 1990.**

### **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:

### **West Midlands Regional Spatial Strategy Policies:**

Core Strategy and Saved Policies:

**CS1 - Strategic Approach**

**CS3 - The Market Towns and Other Key Centres**

**CS5 - Countryside and Greenbelt**

**CS6 - Sustainable Design and Development Principles**

**CS11 - Type and Affordability of housing**

**CS17 - Environmental Networks**

**CS18 - Sustainable Water Management**  
**MD1 - Scale and Distribution of Development**  
**MD2 - Sustainable Design**  
**MD3 - Managing Housing Development**  
**MD8 - Infrastructure Provision**  
**MD12 - Natural Environment**  
**MD13 - Historic Environment**  
**Settlement: S17 - Wem**  
**SPD Sustainable Design Part 1**  
**SPD Developer Contributions**  
**National Planning Policy Framework**

**RELEVANT PLANNING HISTORY:**

**20/01054/OUT Outline planning application (to include access) for the erection of up to 100 dwellings and associated access, public open space, drainage, infrastructure, earthworks and ancillary enabling works REFUSE 12th June 2020**

**21/02768/OUT Outline planning application for Residential development (Use Class C3) and associated access, public open space, drainage, infrastructure, earthworks and ancillary enabling works. All matters except for access reserved.  
(Revised scheme) (amended description)**

**PDE**

**Appeal**

**21/02909/REF Outline planning application (to include access) for the erection of up to 100 dwellings and associated access, public open space, drainage, infrastructure, earthworks and ancillary enabling works INPROG**

11. Additional Information

**View details online:**

<b>List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)</b>
<b>Cabinet Member (Portfolio Holder)</b> <b>Councillor Ed Potter</b>
<b>Local Member</b>  Cllr Peter Broomhall Cllr Edward Towers
Appendices APPENDIX 1 - Conditions

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

**1. Approval of the details of the appearance of the development, access arrangements, layout, scale, and the landscaping of the site (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.**

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

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

**Reason: This condition is required to be imposed by Section 92 of the Town and Country Planning Act, 1990.**

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

**Reason: This condition is required to be imposed by Section 92 of the Town and Country Planning Act, 1990.**

**4. The development shall be carried out strictly in accordance with the approved plans and drawings**

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

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

**5. Notwithstanding the access details as shown on Drawing No.68591-CUR-00-XX-DR-TP-75001-P04 and prior to the commencement of development full engineering details of the access layout, visibility splays and raised table shall be submitted to and approved in writing by the Local Planning Authority; the access scheme and raised table shall be implemented in accordance with the approved details and a phasing programme to be first submitted to and approved in writing by the Local Planning Authority.**

Reason: In the interests of highway safety and to ensure the comprehensive development of the highway infrastructure to serve the occupation of dwellings within the site.

6. No development shall take place until details of the design and construction of any new roads, footways, accesses together with details of the disposal of highway surface water and phasing programme have been submitted to, and approved by the Local Planning Authority. The agreed details shall be fully implemented in accordance with the approved details.

**Reason: In the interests of highway safety and to ensure the comprehensive development of the highway infrastructure to serve the occupation of dwellings within the site.**

7. **Prior to the commencement of development a scheme for the provision of a mini-roundabout at the junction of Lowe Hill Road and B5063 shall be submitted to approved in writing by the Local Planning Authority: the mini-roundabout scheme shall be fully implemented in accordance with the approved scheme following the occupation of the 50th dwelling within the site.**

Reason: In the interests of highway safety.

8. No development shall take place until details for the parking and turning of vehicles have been submitted to and approved by the Local Planning Authority. The approved scheme shall be laid out and surfaced prior to the first occupation of the development and thereafter be kept clear and maintained at all times for that purpose.

**Reason: To avoid congestion in the surrounding area and to protect the amenities of the area.**

9. **No development shall take place, including any works of demolition, until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the local planning authority, to include a community communication protocol. The CTMP shall be fully implemented in accordance with the approved details for the duration of the construction period.**

Reason: In the interests of highway safety and to avoid congestion in the surrounding area and to protect the amenities of the area.

10. **No development shall take place until a scheme of surface and foul water drainage has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented before the development is occupied/brought into use (whichever is the sooner).**

Reason: The condition is a pre-commencement condition to ensure satisfactory drainage of the site and to avoid flooding

11. No development approved by this permission shall commence until the applicant, or their agents or successors in title, has secured the implementation of a phased 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 development site is known to have archaeological interest.**

**12. No development shall take place until a European Protected Species (EPS) Mitigation Licence with respect to great crested newts has been obtained from Natural England and submitted to the Local Planning Authority;**

Reason: To ensure the protection of great crested newt. a European protected species.

13. The first submission of reserved matters shall include a landscaping plan. The submitted plan shall include:

- 1) Planting plans showing creation of wildlife habitats including species-rich grassland, permanent aquatic habitats and hedgerow / tree planting,
- 2) Written specifications (including cultivation and other operations associated with wildlife habitat establishment);
- 3) Schedules of plants, noting species (including scientific names, seed mix compositions, planting sizes and proposed numbers/densities where appropriate;
- 4) Native species used are to be of local provenance (Shropshire or surrounding counties);
- 5) Details of trees and hedgerows to be retained and measures to protect these from damage during and after construction works;
- 6) Detail of boundary treatment which will include provision for hedges.
- 7) Implementation timetables.
- 8) Recreational space and landscaping/plantings in relation to this.

The plan shall be carried out as approved. Any trees or shrubs which die or become seriously damaged or diseased within five years of completion of the development shall be replaced within 12 calendar months with trees of the same size and species.

**Reason: To provide ecological enhancements under NPPF, MD12 and CS17**

**14. Any subsequent planning application/reserve matters for development on site will include reference to a scheme for protecting the occupants of the proposed development from the traffic noise on Lowe Hill Road, to be submitted to, and approved in writing by the Local Planning Authority. The scheme shall ensure that all properties have been designed so that the following good noise standards can be achieved: 35dBA LAeq in habitable rooms in the day, 30dB LAeq in bedrooms at night, 45dB LMax in bedrooms at night and 50dB LAeq in external amenity areas. Acoustic glazing which requires windows to be kept shut should only be used where it is not possible to resolve the issues by other design measures and where there is a clear planning need for the proposed design. The approved scheme shall be completed prior to the first occupation of the development and shall thereafter be retained**

Reason: In order to ensure adequate consideration to residential amenity.

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

## **CONDITION(S) THAT ARE RELEVANT FOR THE LIFETIME OF THE DEVELOPMENT**

15. The interim travel plan shall be implemented in accordance with the Action Plan set out in the approved details.

**Reason: In order to promote sustainable travel and associated health benefits and to minimise the use of the private car in the interest of reducing carbon emissions.**

### **Informatives**

1. The proposed drainage strategy in the FRA is acceptable in principle. However, the final drainage details, plan and calculations should be submitted for approval.

**Information on the proposed maintenance regime for any sustainable drainage system proposed, including details of who will take responsibility should be provided to ensure that the drainage system remains in good working order throughout its lifetime.**

Urban creep is the conversion of permeable surfaces to impermeable over time e.g. surfacing of front gardens to provide additional parking spaces, extensions to existing buildings, creation of large patio areas.

**The appropriate allowance for urban creep must be included in the design of the drainage system over the lifetime of the proposed development. The allowances set out below must be applied to the impermeable area within the property curtilage:**

Residential Dwellings per hectare	Change allowance	% of impermeable area
Less than 25	10	
30	8	
35	6	
45	4	
More than 50	2	
Flats & apartments	0	

**Highway Gully Spacing calculations should be submitted for approval.**

Where a highway is to be adopted and gullies will be the only means of removing surface water



from the highway, footpaths and paved areas falling towards the carriageway, spacing calculations will be based on a storm intensity of 50mm/hr with flow width of 0.75m, and be in accordance with DMRB CD526 Spacing of Road Gullies (formerly HA102)

**Gully spacing calculations must also be checked in vulnerable areas of the development for 1% AEP plus climate change 15 minute storm events. Storm water flows must be managed or attenuated on site, ensuring that terminal gullies remain 95% efficient with an increased flow width. The provision of a finished road level contoured plan showing the proposed management of any exceedance flows should be provided.**

Vulnerable areas of the development are classed by Shropshire Council as areas where exceedance flows are likely to result in the flooding of property or contribute to flooding outside of the development site. For example, vulnerable areas may occur where a sag curve in the carriageway vertical alignment coincides with lower property threshold levels or where ground within the development slopes beyond the development boundary.

**Shropshire Council's "Surface Water Management: Interim Guidance for Developers, paragraphs 7.10 to 7.12" (Local Standard D of the SUDS Handbook) requires that exceedance flows for events up to and including the 1% AEP plus CC should not result in the surface water flooding of more vulnerable areas (as defined above) within the development site or contribute to surface water flooding of any area outside of the development site. Exceedance flow path should be provided.**

The proposed method of foul water sewage disposal should be identified and submitted for approval, along with details of any agreements with the local water authority and the foul water drainage system should comply with the Building Regulations H2

**EUROPEAN PROTECTED SPECIES: The ‘three tests’**

**Application reference number, site name and description:**

**21/02768-OUT**

**Outline planning application for Residential development (Use Class C3) and associated access, public open space, drainage, infrastructure, earthworks and ancillary enabling works. All matters except for access reserved. (Revised scheme) (amended description);** Land West Lowe Hill Road Wem Shropshire

**Date:**

05 August 2021

**Officer:**

**Suzanne Wykes  
Specialist Practitioner (Ecology)**

**Test 1:**

Is the development ‘**in the interests of public health and public safety**, or for other imperative reasons of **overriding public interest**, including those of a social or economic nature and beneficial consequences of primary importance for the environment’?

**Mainly an allocated site for residential development in accordance with the local plan.**

**Test 2:**

**Is there ‘no satisfactory alternative?’**

**No site allocated for housing.**

**Test 3:**

Is the proposed activity '**not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status** in their natural range'?

**There are fourteen ponds within 500m of the site boundaries, four of which support small populations of great crested newts, though only two of these occurs within 250m of the site boundaries where there is direct habitat linkage.**

Of the two ponds within 250m of the site boundaries, one (P1) is approximately 40m to the south, the second (P2c) 160m to the west. No extant ponds occur within the site. Four ponds shown on OS maps within/ directly adjacent to the site had either been filled (ie were completely absent) or were all but dried out, with no aquatic vegetation present.

**Surveys of ponds in 2020 by Cameron S Crook identified a small population of GCN in pond P2c.**

With regard to pond P1, a small population of great crested newts was recorded in 2017 with a maximum count of one adult male during the third survey visit with no females, no eggs and no juveniles found. However, presence could not be confirmed during the 2020 survey.

**Except for the habitat along the site and field margins, comprising mainly hedgerows, rank grassland and scrub, most of the site proposed for development comprises improved grassland, terrestrial habitat that is relatively poor in quality.**

In the absence of mitigation, European Protected Species (EPS) offences are likely to be committed by the development proposal, i.e. damage or destruction of an EPS resting place and killing or injury of an EPS.

**Section B of the Ecological Survey & Assessment by Cameroon S Crook and Associates dated January 2021 and the letter from Ecology Solutions Limited (dated August 2021) and accompanying plan ECO1 - *Indicative GCN mitigation strategy*' sets out appropriate mitigation measures, which will form part of the licence.**

These includes a receptor area (along the southern site boundary), exclusion fencing and hibernacula, shown in indicative locations on plan EC01.

**I am satisfied that the proposed development will not be detrimental to the maintenance of the populations of great crested newt at favourable conservation status within their natural range. Mitigation measures for GCN can be appropriately integrated into the development and detailed at reserved matters stage.**

Conditions requiring the submission of both a GCN mitigation licence from Natural England and a detailed landscaping scheme including semi-natural habitat provision, prior to the commencement of development are recommended.

**Guidance**

**The 'three tests' must be satisfied in all cases where a European Protected Species may be affected by a planning proposal and where derogation under Article 16 of the EC Habitats**

**Directive 1992 would be required, i.e. an EPS licence to allow an activity which would otherwise be unlawful.**

In cases where potential impacts upon a European Protected Species can be dealt with by appropriate precautionary methods of working which would make derogation unnecessary (since no offence under the legislation is likely to be committed), it is not necessary to consider the three tests.

**The planning case officer should consider tests 1 (overriding public interest) and 2 (no satisfactory alternative).** Further information may be required from the applicant/developer/agent to answer these tests. **This should not be a burdensome request as this information will be required as part of the Natural England licence application. If further information is required, it can be requested under s62(3) of the Town and Country Planning Act 1990.**

Test 3 (favourable conservation status) will be considered by SC Ecology, with guidance from Natural England.

**A record of the consideration of the three tests is legally required. This completed matrix should be included on the case file and in the planning officer's report, and should be discussed and minuted at any committee meeting at which the application is discussed.**

As well as the guidance provided below, pages 6 and 7 of the Natural England Guidance Note, ***Application of the Three Tests to Licence Applications***, may assist the planning officer to answer tests 1 and 2.

### **Answering the three tests**

#### **Test 1**

Is the development 'in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment'?

**Preserving public health or public safety** must also be shown to constitute a reason of **overriding public interest**. You need to demonstrate that action is required to alleviate a clear and imminent danger to members of the general public, e.g.:

1. If an unstable structure (e.g. a building or tree) is involved, either through neglect or outside influences (e.g. severe weather or seismic events), supporting evidence from an appropriately qualified person such as a structural engineer, arboriculturalist or tree surgeon should be sought.
2. If vandalism or trespass is used as an argument, evidence of reasonable measures to exclude the general public from the site must be presented. Evidence may be provided by the local police or fire services in relation to the number of incidents dealt with.

#### **Imperative reasons of overriding public interest**

**Only public interests can be balanced against the conservation aims of the EC Habitats Directive (1992). Projects that are entirely in the interest of companies or individuals would generally not be considered covered.**

#### **Test 2**

Is there 'no satisfactory alternative'?

**An assessment of the alternative methods of meeting the need identified in test 1 should be provided. If there are any viable alternatives which would not have an impact on a European Protected Species, they must be used in preference to the one that does. Derogations under the EC Habitats Directive (1992) are the last resort.**

Where another alternative exists, any arguments that it is not satisfactory will need to be convincing. An

alternative cannot be deemed unsatisfactory because it would cause greater inconvenience or compel a change in behaviour.

**This test should identify a) the problem or specific situation that needs to be addressed, b) any other solutions, and c) whether the alternative solutions will resolve the problem or specific situation in (a).**

### **Test 3**

Is the proposed activity 'not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range'?

**Assessment of the impact of a specific development will normally have to be at a local level (e.g. site or population) in order to be meaningful in the specific context.**

Two things have to be distinguished in this test: a) the actual conservation status of the species at both a biogeographic and a (local) population level; and b) what the impact of the proposal would be.

**In such cases where the conservation status is different at the different levels assessed, the situation at the local population level should be considered first, although ultimately both should be addressed.**

No derogation under the EC Habitats Directive (1992) can be granted if the proposal would have a detrimental effect on the conservation status or the attainment of favourable conservation status for a European Protected Species at all levels. The net result of a derogation should be neutral or positive for a species.

**In the case of the destruction of a breeding site or resting place it is easier to justify derogation if sufficient compensatory measures offset the impact and if the impact and the effectiveness of compensation measures are closely monitored to ensure that any risk for a species is detected.**

Compensation measures do not replace or marginalise any of the three tests. All three tests must still be satisfied.