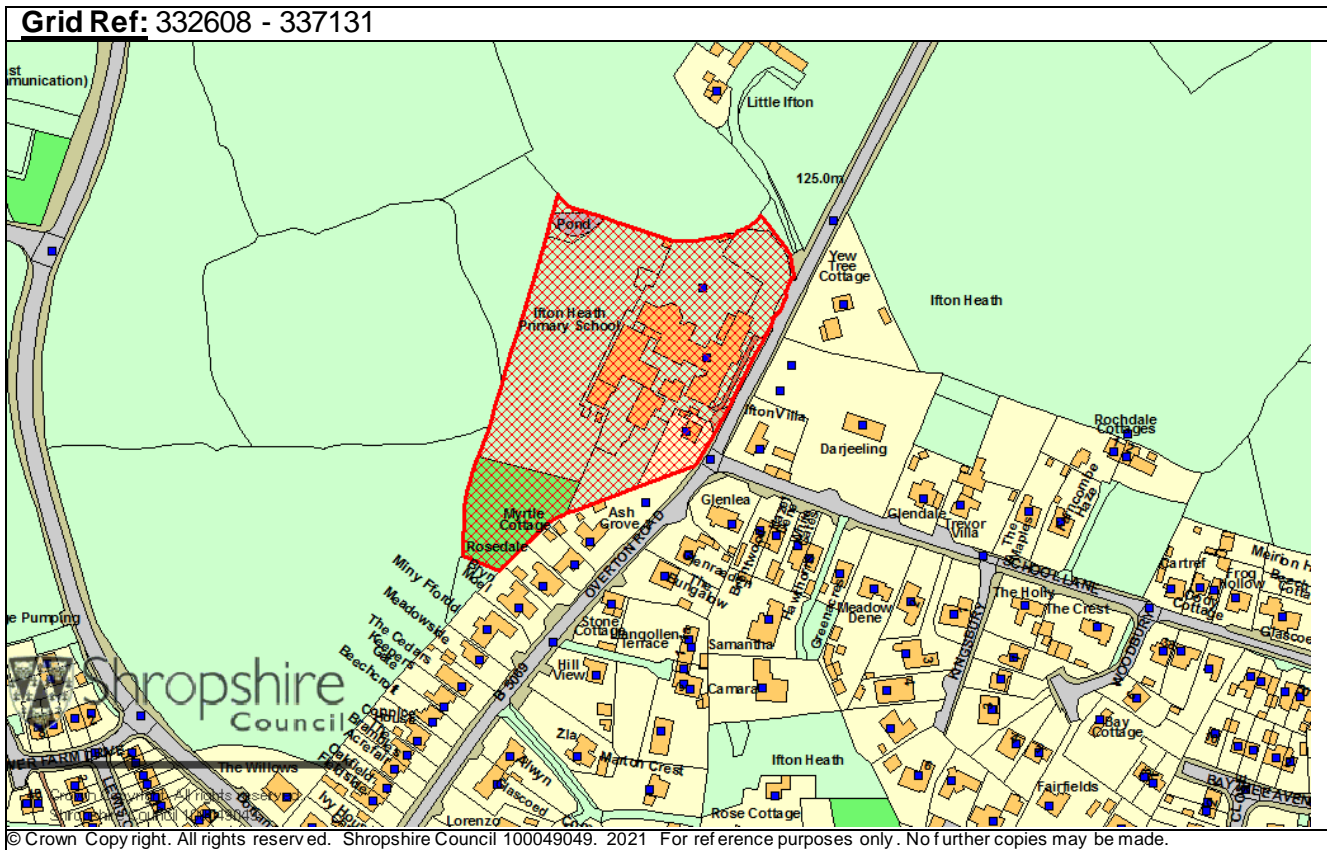


## Development Management Report

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

### Summary of Application

<b>Application Number:</b> 21/05360/VAR	<b>Parish:</b>	St Martins
<b>Proposal:</b> Variation on Condition No.s 2 and 11 attached to planning permission 20/02248/FUL dated 5 November 2021		
<b>Site Address:</b> School House Overton Road Ifton Heath St Martins Oswestry		
<b>Applicant:</b> Cornovii Developments Ltd		
<b>Case Officer:</b> Shannon Franklin	<b>email :</b> shannon.franklin@shropshire.gov.uk	



**Recommendation:- Grant Permission subject to the completion of a Deed of Variation to the Section 106, such that its applies to this new permission and the conditions contained in Appendix 1 below.**

**Officers are seeking delegated authority to the Interim Planning and Development Services Manager such that any amendments to the conditions and S106 legal agreement deemed necessary can be undertaken.**

## **REPORT**

### **1.0 THE PROPOSAL**

- 1.1 The application seeks planning permission for the variation of condition No.2 (Approved plans) and No.11 (Noise) attached to planning permission 20/02248/FUL dated 5 November 2021.
- 1.2 Should the application be approved the house types permitted on site would alter. The variation of condition No.11 has been included within the application as the wording of this condition refers to 'the approved plans', as these are altering for clarity the variation of this condition has been included.

### **2.0 SITE LOCATION**

- 2.1 The site is the former Ifton Heath Primary School that closed in 2012 when the primary school moved to the Rhyn Park Secondary School to provide an all-through school known as St Martins Academy. The site includes the former school building to the front of the site which is an early 20<sup>th</sup> century, red brick building under a slate roof and traditional in character, with more modern extensions and buildings to the rear, a hard surfaced area providing a former playground and car park to the side and a playing field bound by trees and hedgerows to the rear.

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

- 3.1 The Councils Scheme of Delegation states 'Applications made by the Council or in relation to land owned by the Council which are not in-line with statutory functions'. The land subject to the application is owned by Cornovii Development Limited (CDL), who are also the applicant. Cornovii are wholly owned by Shropshire Council and therefore the application requires consideration by Committee.

### **4.0 COMMUNITY REPRESENTATIONS**

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

##### **4.1.1 St Martins Parish Council – 13.12.2021 – No comment**

St Martins parish council have no comments to make to these amended plans.  
09/12/2021.

##### **4.1.2 SC Regulatory Services – 07.12.2021 – No Objection**

With the imposition of condition 11 (as in the prior decision) Environmental Protection has no objection to the proposed variation.

#### **4.2 - Public Comments**

- 4.2.1 This application was advertised via notice at the site, advertisements in the local newspaper and the Councils website. At the time of writing this report, no representations had been received in response to this publicity.

### **5.0 THE MAIN ISSUES**

- 5.1
- **Principle of development**
  - **Variation of the conditions**

## 6.0 OFFICER APPRAISAL

### 6.1 Principle of development

6.1.1 The principle of development on site has been established through the approval of permission referenced 20/02248/FUL dated 5<sup>th</sup> November 2021. Whilst the development has not been implemented at this stage, it has only recently been approved, there have been no significant changes in policy in the intervening time and the permission remains extant.

### 6.2 Variation of conditions

#### 6.2.1 Variation of Condition 2

The first condition the application is seeking to vary is condition No.2 which reads as follows:

2. *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.*

The applicant wishes for alternate plans to be approved such that the house types can be altered. Whilst the housing mix approved will remain as is, the changes to the approved plans will involve changes to the floors plans, the dwellings positions and the plot boundaries.

6.2.2 The alterations proposed; primarily subsidising the house types on site, have been made to introduce a home offices space to dwellings reflecting the increase in working from home following the pandemic. Additionally following recent market feedback the four bedroom homes now contain ensuite bathroom. To accommodate the change in house types, small amendments have been made to the layout and the Noise Survey has been updated to reflect these changes.

6.2.3 The changes to each plot are summarised below, as per the applicants submitted cover statement;

- Plot 1 & 2 – house type 4SB replaced with an alternative 4 bed unit D16B, front entrances now to the side elevation. The ‘rear’ of the building has moved closer to Overton Road, this is still within an acceptable location with regards to the noise impact from Overton Road.
- Plot 9 – house type 3BA replaced with an alternative 3 bed bungalow with D05. Minor changes to the boundary with Plot 10 to ensure suitable garden area for each dwelling.
- Plot 10 – house type 4DC replaced with an alternative 4 bed unit D16C, with the dwelling re-angled 90 degrees and the garage now provided as a detached building. The boundary to Plot 9 has been amended as above.
- Plots 18 & 19 – house type 3SE replaced with an alternative 3 bed unit D11.

- Plots 20 & 21 – house type 3SD replaced with an alternative 3 bed unit D10.
- Plots 22 & 23 – house type 3SE replaced with an alternative 3 bed unit D11.
- Plot 24 – house type 4DC replaced with an alternative 4 bed unit D16C, with the dwelling re-angled 90 degrees and the garage now provided as a detached building. The dwelling will maintain windows to the internal access road to ensure interest to the streetscene.
- Plot 25 – house type 4DC replaced with an alternative 4 bed unit D16C, with the dwelling re-angled 90 degrees and the garage now provided as a detached building. The dwelling will maintain windows to the internal access road to ensure interest to the streetscene.
- Plots 26 & 27 – house type 3SE replaced with an alternative 3 bed unit D11.
- Plots 28 & 29 – house type 3SE replaced with an alternative 3 bed unit D11.
- Plots 30 & 31 – house type 4SA replaced with an alternative 4 bed unit D16A.
- Plot 32- house type 2BA replaced with an alternative 2 bed bungalow D03.
- Plots 33 & 34 – house type 3SB replaced with an alternative 3 bed unit D11.
- Plot 35 – house type 4DC replaced with an alternative 4 bed unit D16C, with the dwelling reangled 90 degrees and the garage now provided as a detached building. The dwelling will maintain windows to the internal access road to ensure interest to the streetscene and will include the provision of the plaque from the school, agreed to be retained within the development.

6.2.4 Officers have reviewed the proposed changes and the conclusions of the original report still apply. The minor changes in the housetypes may result in an increase in CIL payments as some floor areas are increasing, however the number of bedrooms and number of dwellings provided is unaltered so the public open space provision and affordable housing provision remains unaltered.

6.2.5 The scheme involves no alterations to the highways layout, or the level of parking provisions, and such remains acceptable from a highways perspective. Similarly, having reviewed the revised house types and the re-angling of plots 10, 24, 25, 35, the residential amenity impact on the resultant plots is considered to be acceptable, where a minimum of 21.0m separation distance has been maintained. Resultantly, no concerns are raised in this regard.

6.2.6 Variation of Condition 11

The first condition the application is seeking to vary is condition No1 which reads as follows:

*11. The noise mitigation contained within the Nova report dated 07.2021 (including the erection of 2m high acoustic fencing as indicated within the report and the approved plans, and the installation of glazing and mechanical ventilation according to the specification set out within the Nova report) shall be implemented prior to the first occupation of the relevant dwellings and permanently retained.*

*Reason: To ensure a satisfactory internal noise and external noise environment for future residents.*

As the approved plans are to be varied, and the wording of condition 11 refers to the

approved plans, in the interests of completeness the applicant is seeking to vary condition 11, solely so that the revised plans approved under the variation of condition 2 discussed above, are referred to.

- 6.2.7 The SC Regulatory Services (Environmental Health) have confirmed that subject to the reimposition of the condition on the decision to this current application, no objection is raised. The noise assessment at the site has been updated to reflect the minor changes in layout and is considered to be acceptable.

## **7.0 CONCLUSION**

- 7.1 The application seeks to vary condition 2 and 11 of the decision 20/02248/FUL dated 5 November 2021. The variation of condition No.2 seeking alternate approved plans, making changes to the house types, their reorientation and minor associated changes, does not give rise to any conflict with policy and is acceptable in all regards. Similarly, the variation of condition 11, such that it refers to the approved plans subject to condition No.2 is also acceptable.

As the application 20/02248/FUL is subject to a S106 agreement a legal agreement securing a deed of variation to the S106 will need to be completed prior to the formal decision being issued.

Any other conditions imposed on the previous decision (20/02248/FUL) which have not been discharged at the point of determination of the application, will be reimposed on the VAR decision.

## **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:

CS6 - Sustainable Design and Development Principles

MD2 - Sustainable Design

MD3 - Managing Housing Development

National Planning Policy Framework

CS17 - Environmental Networks

CS11 - Type and Affordability of housing

### RELEVANT PLANNING HISTORY:

20/02248/FUL Erection of 35 dwelling units and associated operational development following demolition of existing school buildings and retention of the former schoolhouse as a single dwelling (amended description) GRANT 5th November 2021

21/05360/VAR Variation on Condition No.s 2 and 11 attached to planning permission

20/02248/FUL dated 5 November 2021 PCO

22/00307/DIS Discharge of Conditions 3 (CMS), 4 (Tree Protection), 5 (Tree Protection), 6 (Photographic Survey), 7 (Contract), 8 (EPS), and 9 (Ecology) of planning permission 20/02248/FUL PCO

#### 11. Additional Information

[View details online:](#)

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)
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Cabinet Member (Portfolio Holder) Councillor Ed Potter
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Local Member
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Cllr Steven Davenport
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Appendices APPENDIX 1 - Conditions
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**APPENDIX 1****Conditions****STANDARD CONDITION(S)**

1. The development hereby permitted shall be begun before the 5th November 2024.

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

2. The development shall be carried out strictly in accordance with the 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**

3. No development shall take place, including any works of demolition, until a Construction Method Statement (CMS) has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- the parking of vehicles of site operatives and visitors;
- loading and unloading of plant and materials;
- storage of plant and materials used in constructing the development;
- the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- wheel washing facilities; - measures to control the emission of dust and dirt during construction;
- a scheme for recycling/disposing of waste resulting from demolition and construction works;
- a construction traffic management (and HGV routing plan) and community communication protocol;
- construction and delivery times.



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

4. No works associated with the development permitted shall commence and no equipment, machinery or materials shall be brought onto the site for the purposes of said development until all tree protection measures specified in the submitted and approved Tree Protection Plan have been fully implemented on site and the Local Planning Authority have been notified of this and given written confirmation that they are acceptable. All approved tree protection measures must be maintained throughout the development until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered nor any excavation be made, without the prior written consent of the Local Planning Authority. A responsible person will be appointed for day to day supervision of the site and to ensure that the tree protection measures are fully complied with. The Local Planning Authority will be informed of the identity of said person.

Reason: This information is required before development commences to ensure the protection of trees is in place before ground clearance, demolition or construction commences to safeguard existing trees and/or hedgerows on site and prevent damage during building works in the interests of the visual amenity of the area.

5. Notwithstanding condition 4, no works associated with the development permitted shall commence and no equipment, machinery or materials shall be brought onto the site for the purposes of said development until a method statement providing details of tree protection measures to be implemented during the installation of the no dig drive has been submitted and approved by the Local Planning Authority. This method statement must make provision for supervision of these works by the applicant's arboriculturist or other competent person, as agreed in writing by the Local Planning Authority.

Reason: This information is required before development commences to ensure the protection of trees is in place before ground clearance, demolition or construction commences to safeguard existing trees and/or hedgerows on site and prevent damage during building works in the interests of the visual amenity of the area.

6. Demolition of the school buildings considered to be a non-designated heritage asset shall not commence until a photographic Level 1 survey (as defined in English Heritage's guidance 'Understanding Historic Buildings: A Guide to Good Recording Practice') of the interior/ exterior of the school building has been submitted to and approved in writing by the Local Planning Authority.

Reason: This information is required before development commences to record the historic fabric of the building prior to development.

7. Demolition of the school buildings shall not commence until contracts for the redevelopment of the site have been submitted to the LPA.

Reason: To ensure that new development will proceed after the loss of the heritage asset has occurred as required by Paragraph 204 of the NPPF

8. No works shall take place to Buildings B1, B2 or B3 until a European Protected Species (EPS) Mitigation Licence with respect to bats has been obtained from Natural England and submitted with the approved method statement to the Local Planning Authority.

Reason: To ensure the protection of bats, which are European Protected Species.

9. All works to the site shall occur strictly in accordance with the mitigation measures regarding birds, hedgehogs, Great Crested Newts and reptiles as provided in Section 7 of the Ecological Assessment (Star Ecology, May 2020) and all works to Buildings B1, B2 or B3 shall occur strictly in accordance with Section 7 of the Dusk Emergence and Dawn Re-entry Bat Survey & Mitigation Strategy (Middlemarch, Environmental Ltd, February 2021), or in accordance with alternative surveys and mitigation measures/strategy submitted to and approved in writing by the LPA.

Reason: To ensure the protection of and enhancements for bats and Great Crested Newts, which are European Protected Species, birds which are protected under Section 1 of the 1981 Wildlife and Countryside Act (as amended) and other protected wildlife.

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

10. No above ground works (other than demolition and site clearance) 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 first occupied.

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

11. The noise mitigation contained within the Nova report dated 07.2021 (including the erection of 2m high acoustic fencing as indicated within the report and the approved plans, and the installation of glazing and mechanical ventilation according to the specification set out within the Nova report) shall be implemented prior to the first occupation of the relevant dwellings and permanently retained.

Reason: To ensure a satisfactory internal noise and external noise environment for future residents.

12. Prior to the occupation of any dwelling the proposed traffic calming measures shown for illustrative purposes on the approved Drawing No.SK01 Rev PS shall be implemented in accordance with full engineering details to be first submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety.

13. Prior to first occupation each dwelling shall be provided with an electric vehicle charging point.

Reason: To promote more sustainable transport including electric vehicles in accordance with draft local plan policy DP28.

14. The carriageways and footways within the development shall be laid out in accordance with the approved drawings, and prior to any dwelling being first occupied the access road and footway serving that dwelling to be occupied shall be constructed to base course level in accordance with an engineering specification to be first submitted to and approved in writing by the Local Planning Authority.

Reason: To provide an adequate means of pedestrian and vehicular access to each dwelling.

15. Prior to the occupation of the 35th dwelling within the development the estate roads as shown on the approved drawings shall be final surfaced in accordance with an engineering specification to be first submitted to and approved in writing by the Local Planning Authority.

Reason: To coordinate the completion of the estate road construction to serve the development.

16. Prior to the above ground works commencing details of the roofing materials, the materials to be used in the construction of the external walls and the details of all doors and windows shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in complete accordance with the approved details.

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

17. All hard and soft landscape works including boundary fencing shall be carried out in accordance with the approved plans. The works shall be carried out prior to the occupation of any part of the development hereby approved. Any trees or plants that, within a period of five years after planting, are removed, die or become, in the opinion of the Local Planning Authority, seriously damaged or defective, shall be replaced with others of species, size and number as originally approved, by the end of the first available planting season.

Reason: To ensure the provision, establishment and maintenance of a reasonable standard of landscape in accordance with the approved designs.

18. The date plaque from the former school shall be included within the gable of plot 35 and details of on-site interpretation of the sites former school use shall be submitted to and approved in writing by the LPA prior to the first occupation of any of the dwellings. The approved scheme shall be fully implemented before the development is first occupied.

Reason: To maintain an-on-site record of the sites former use and significance.

19. Prior to the occupation of any part of the development a landscape management plan (to include a maintenance schedule and management responsibilities) for all open space and landscape areas (other than privately owned, domestic gardens) including the on-site interpretation approved under condition 18 shall be submitted to and approved in writing by the local planning authority. The landscape management plan shall be carried out as approved in perpetuity or in accordance with an alternative management plan to be submitted to and approved in writing by the LPA.

Reason: To ensure the adequate future management and maintenance of open space and landscaped areas that are outside privately owned gardens.

20. Prior to first occupation / use of the buildings, the makes, models and locations of bird boxes and hedgehog boxes shall be submitted to and approved in writing by the Local Planning Authority. The approved boxes shall be erected on the site prior to the first occupation / use of the buildings and shall therefore be maintained for the lifetime of the development.

Reason: To ensure the provision of nesting opportunities for wild birds and breeding and/or hibernating opportunities for Hedgehogs, in accordance with MD12, CS17 and section 175 of the NPPF.

21. Prior to the erection of any external lighting on the site, a lighting plan shall be submitted to and approved in writing by the Local Planning Authority. The lighting plan shall demonstrate that the proposed lighting will not impact upon ecological networks and/or sensitive features, e.g. bat and bird boxes (required under a separate planning condition). The submitted scheme shall be designed to take into account the advice on lighting set out in the Bat Conservation Trust's Guidance Note 08/18 Bats and artificial lighting in the UK. The development shall be carried out strictly in accordance with the approved details and thereafter retained for the lifetime of the development.

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

22. Prior to first occupation / use of the buildings, an appropriately qualified and experienced Ecological Clerk of Works (ECW) shall provide a report to the Local Planning Authority demonstrating implementation of the Bat Mitigation and enhancement measures (include photographs of installed features) at the site as set out in Section 7 of the Dusk Emergence and Dawn Re-entry Bat Survey & Mitigation Strategy (Middlemarch Environmental Ltd, February 2021) or in accordance with alternative mitigation and enhancement measures submitted to and approved in writing by the LPA.

Reason: To demonstrate compliance with the bat mitigation and enhancement measures to ensure the protection of bats, which are which are European Protected Species and to ensure the provision of roosting opportunities for bats, in accordance with MD12, CS17 and section 175 of the NPPF.

23. Prior to first occupation / use of the buildings, an appropriately qualified and experienced Ecological Clerk of Works (ECW) shall provide a report to the Local Planning Authority demonstrating implementation of the GCN Risk Avoidance Measures (RAMs), as set out in Section 7.4.3 of the Ecological Assessment (Star Ecology, May 2020) or in accordance with alternative RAMS submitted to and approved in writing by the LPA.

Reason: To demonstrate compliance with the GCN RAMS to ensure the protection of great crested newts, which are European Protected Species.

24. No dwelling hereby approved shall be occupied until, detailed arrangements for the provision of additional affordable housing as part of the development have been submitted to and approved in writing by the Local Planning Authority. The details shall include:

- (a) the identification of the number and location of dwellings which shall be constructed as an affordable unit;
- (b) the type, size and the affordable tenure of each affordable dwelling to be provided as part of the development;
- (c) the arrangements to ensure that all of the affordable dwellings are allocated in accordance with the Council's adopted Housing Allocations Policy and together with the requirements of any Local Lettings Plan and advertised as available through its preferred Choice Based Lettings System;
- (d) shared ownership dwellings shall be allocated to persons as a form of low cost home ownership on a part buy/part rent basis in accordance with Homes England Model Lease.
- (e) confirmation of any funding conditions associated with the affordable housing units.

The affordable dwellings shall be occupied in accordance with the agreed detailed arrangements for additional affordable housing SAVE THAT the provisions of this condition shall not be binding on a mortgagee or chargee or any receiver (including an administrative receiver appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a receiver)) of the whole or any part of the dwellings or any persons or bodies deriving title through such mortgagee or chargee or receiver PROVIDED THAT

a. such mortgagee or chargee or receiver shall first have given written notice to Shropshire Council of its intention to dispose of the affordable dwellings and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the affordable dwellings to another registered provider or to Shropshire Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies interest and costs and expenses;

and

b. if such disposal has not been completed within the three month period the mortgagee chargee or receiver shall be entitled to dispose of the affordable dwellings free from this condition

Reason: To secure the provision of additional affordable units and to ensure a satisfactory standard of control over the occupation of the affordable units as required by policies CS1, CS4, CS9 and CS11 of the Shropshire Core Strategy.

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

25. No construction (and/or demolition) works shall take place before 7:30am on weekdays and 09:00am on Saturdays nor after 18:00pm on weekdays and 14:00pm on Saturdays; nor at anytime on Sundays, Bank or Public Holidays.

Reason: To protect the amenities of occupiers of nearby properties from potential nuisance.

