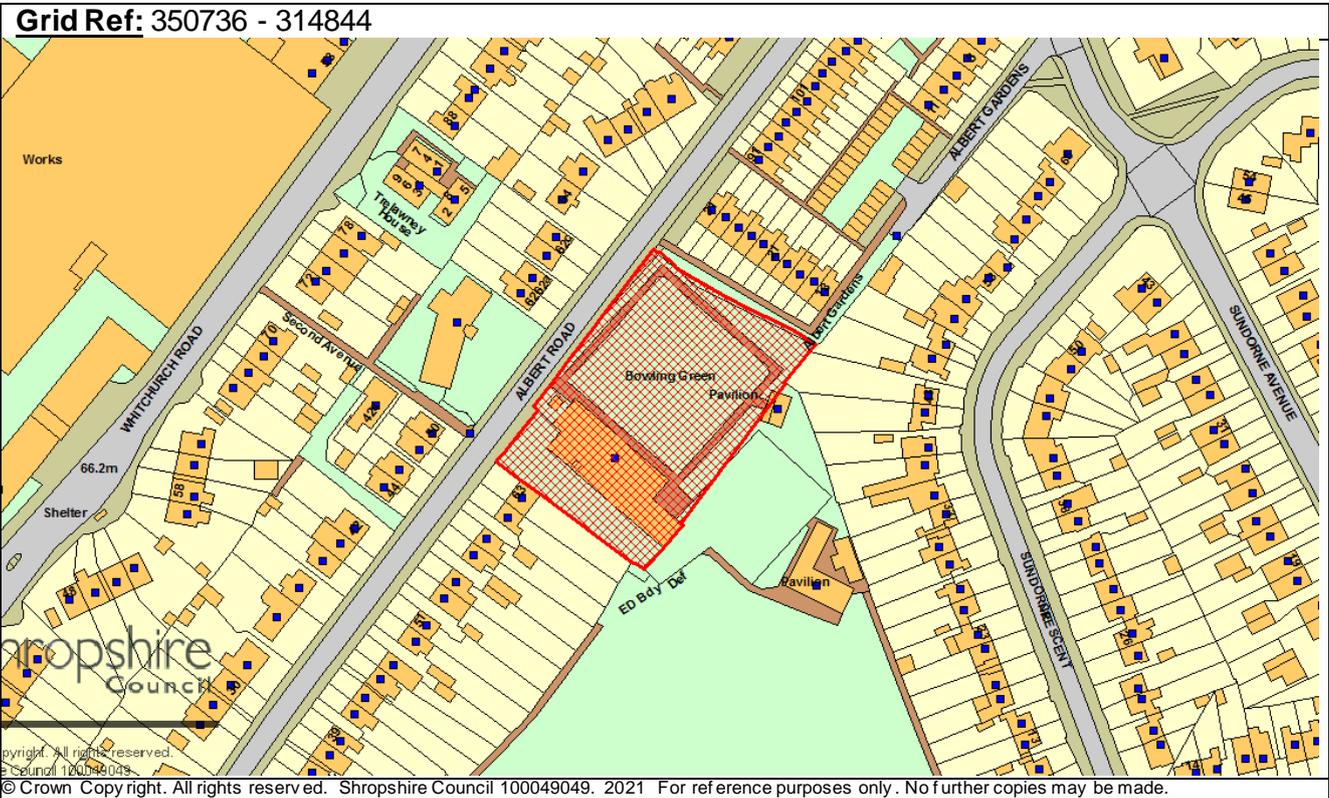


### Development Management Report

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

**Summary of Application**

<b>Application Number:</b> 20/05217/FUL	<b>Parish:</b>	Shrewsbury Town Council
<b>Proposal:</b> Erection of 12No. dwellings (C3 Class) and 14No. supported living flats with Community Hub (C2 Class) and associated external works including ball strike fencing, road access, landscaping and car parking (amended description)		
<b>Site Address:</b> Site Of Former Sports And Social Club And Bowling Green Albert Road Shrewsbury Shropshire SY1 4JB		
<b>Applicant:</b> Bromford		
<b>Case Officer:</b> Jane Raymond	<b>email:</b> jane.raymond@shropshire.gov.uk	



**Recommendation:** Grant Permission subject to the conditions as set out in appendix A and delegate to the Assistant Director of Economy and Place to review and finalise the following revised developer contributions (heads of terms) to be secured by S106 and make any amendments to the recommended conditions as considered necessary following consultation with Sports England:

S106 Heads of terms:

- Open Space Contribution of £60,139.00 to be paid prior to occupation of the last dwelling.
- 1 affordable dwelling and an affordable housing contribution of £12,668.40 in respect of the balance of 0.2 to be paid prior to the occupation of the last dwelling.
- A clause that the Open Space contribution and the 0.2 Affordable Housing Contribution would not become due if all of the dwellings were provided as affordable.
- Prior to commencement of any material operation (as defined by Section 56(4) of the Town and Country planning Act 1990 but excluding the demolition which has already taken place on site) a payment of £3,000 shall be paid to Shropshire Council to facilitate the relocation of the Albert Green bowling club to Greenfields Bowling Club for the 2022 bowling season.
- Shropshire Council shall transfer the £3,000 to Albert Green Bowling Club on receipt and shall not use for anything else.
- Prior to commencement of any material operation (as defined by Section 56(4) of the Town and Country planning Act 1990 but excluding the demolition which has already taken place on site) a payment of £82,440 to be paid to Shropshire Council to pay for the programme of improvements to the redundant bowling green at Greenfields Bowling Club indicated in the Bromford Bowling Green Assessment 2022 by Alan Lewis.
- That Shropshire Council will not use the £82,440 for anything else other than phased payment to Albert Green Bowling Club or a party nominated by them to be used for the refurbishment of the redundant bowling green at Greenfields in accordance with a funding agreement and the specification indicated in the Bromford Bowling Green Assessment 2022 by Alan Lewis, or if it does not become possible to refurb the redundant bowling green at Greenfields for whatever reason then for the provision or refurbishment of bowling facilities within the urban development boundary of Shrewsbury.
- That a sum of £650 shall be paid to Shropshire Council to pay the legal fees for the preparation of a funding agreement and a sum of £1050 plus VAT to cover the costs of monitoring the agreement and the works being undertaken in accordance with the Alan Lewis specification.

## REPORT

### 1.0 PURPOSE OF THIS REPORT/REASON FOR COMMITTEE CONSIDERATION

- 1.1 This application was previously considered by the Northern Planning Committee at its meeting on 28th September 2021 and the report to that committee is attached at appendix B. Members resolved:

*That planning permission be granted, in accordance with the Officer's recommendation subject to the conditions as set out in Appendix 1 of the report and authority delegated to the Head of Service to make any amendments to these conditions as considered necessary as well as to review and finalise the developer contributions (heads of terms as set out in the report) to be secured by S106 following further consultation and discussion between Shropshire Council Leisure Services, Sports England and the applicant, agent and landowner.*

- 1.2 Since the committee meeting last year negotiations have been ongoing and due to the site at the sports village no longer being available an alternative site for the provision of a replacement bowling green has been sought and secured at Greenfields bowling club. Due to this alternative site for a replacement bowling green being materially different to what was originally considered by members it is necessary for these amendments to the heads of terms to be re-considered by committee.

### 2.0 REVISED HEADS OF TERMS

- 2.1 The heads of terms that are materially different to those that were previously considered by members relate to the replacement bowling green being provided in a different location. Paragraph 99 of the NPPF states the following with regards to development affecting open space and sports and recreation facilities:

*99. Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:*

- a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or*
- b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or*
- c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.*

A bowling green is not a playing field and therefore Sports England are not a statutory consultee with regards to this aspect of the proposal. However, consideration of paragraph 99 remains relevant as development of this site would result in the loss of land used for sport and recreation.

- 2.2 The replacement bowling green was originally to be provided at Sundorne Sports Village which is managed on behalf of Shropshire Council by Shropshire Community Leisure Trust. In negotiations with the Trust, following the committee decision, the Trust advised that the provision of a bowling green at the Sports

Village should not be considered on a piece meal approach, but that it should be considered once the master plan for the Sports Village has been decided. Due to the length of time that decisions regarding the masterplan for the sports village would take this would significantly delay reaching agreement on the exact wording of the S106 and therefore delay the issuing of the decision notice.

- 2.3 Bromford are keen to develop this site which will be subject to Homes England funding to provide 12 affordable dwellings and 14 much needed affordable tenure supported living flats with Community Hub (C2 use) referred to as the 'My Place' scheme. Shropshire Adult Social care fully support the proposed 'My Place' scheme as there is a shortage of supported living accommodation in Shrewsbury and this results in out of county placements at a high cost to the Council. If the decision isn't issued soon the Homes England funding will be lost, the development will not proceed, and Albert Green Bowling Club will have nowhere to play as no replacement will be secured for the bowling green at Albert Road that has already closed and is no longer available for play.
- 2.4 It is accepted that the original replacement bowling green was a new green and what is now proposed is refurbishment of an existing green at Greenfields. However, this bowling green is not often used by Greenfields bowling club or any other bowling club and is therefore redundant and surplus to requirements. It also needs significant works and upgrading to bring it up to the required standard for play as outlined in a Bowling Green Assessment recently undertaken by Alan Lewis.
- 2.5 The bowling green at Albert Road is no longer available for play and the revised heads of terms for the S106 negotiated with the applicant will ensure that the recommendations outlined in the Alan Lewis report are carried out and fully funded by the developer. The revised heads of terms also ensures that the works are fully monitored and that the cost of monitoring the works and the provision of the funding agreement are also paid for by the developer. The developer has also agreed that they will pay £3000 to Albert Green bowling club to cover the costs of playing at Greenfields for the 2022 season.
- 2.6 Condition 5 included within the recommended conditions at appendix A of this report will ensure that a maintenance and management plan for the refurbished bowling green at Greenfields Bowling Club is submitted to include a maintenance schedule and management responsibilities and the legal and financial means of how future repairs and maintenance will be secured.
- 2.7 If the revised heads of terms are secured by a S106 it is considered that the proposal accords with paragraph 99 of the NPPF as the loss of the existing bowling green as a result of development of this site would be replaced by an improved provision in a suitable location that has been agreed with Albert Road bowling club.

### 3 Other Matters

- 3.1 In addition to the loss of the bowling green the development has the potential to affect the use of the adjacent cricket ground which meets the NPPF definition of a playing field and therefore Sports England are a statutory consultee.

- 3.2 Sports England's latest formal consultation comments referred to ball stop fencing (to protect the proposed dwellings from ball strike) and recommended a planning condition (condition 10 within appendix A of the original report to committee). In addition, the heads of terms also included that a commuted sum should be payable to the Cricket Club to pay for the future maintenance of the ball stop fencing. This requirement has now been removed from the heads of terms for the S106 and incorporated into the revised condition 10 which is now condition 8 within the recommended conditions at appendix A of this report. This condition in addition to requiring details of the ball stop fencing also requires details of the financial means of how future repairs and maintenance will be secured to be submitted to and approved by the LPA.
- 3.3 The condition regarding maintaining vehicular access to the cricket ground carpark at all times remains unchanged and is now condition 6 within the recommended conditions at appendix A of this report.
- 3.4 Sports England have been consulted on the revised wording of condition 10 (now condition 8) but their response has not yet been received. This condition may be subject to further revision following receipt of Sports England response and further consultation on this matter.
- 3.5 It is considered that subject to agreement with Sports England on the exact wording of the planning conditions relating to the cricket ground the proposal would not prejudice the use, or lead to the loss of use, of land being used as a playing field.

#### 4 **CONCLUSION**

- 4.1 Subject to the revised heads of terms to be secured by a S106 and the recommended conditions in appendix A it is considered that the proposal accords with paragraph 99 of the NPPF as the development would not prejudice the use, or lead to the loss of use, of land being used as a playing field (the cricket ground), and the loss of the existing bowling green would be compensated for by an improved replacement provision in a suitable location.
- 4.2 Delegated authority to officers is therefore sought to make any amendments to the conditions in appendix A and to agree the final wording of the S106.
- 4.3 All other matters remain unchanged from when the application was first considered by the Northern Planning Committee at its meeting on 28th September 2021.
- 5.0 Risk Assessment and Opportunities Appraisal
- 5.1 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.

## 5.2 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.

## 5.3 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.

## 6.0 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.

## 7. Background

### Relevant Planning Policies

Central Government Guidance: NPPF

Core Strategy and Saved Policies: CS1, CS2, CS6, CS8, CS11, CS17, MD2 and MD12

11. Additional Information

**List of Background Papers**

20/05217/FUL - Application documents associated with this application can be viewed on the Shropshire Council Planning Webpages <https://pa.shropshire.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=QLEAAKTDJBX00>

Cabinet Member (Portfolio Holder): Councillor Ed Potter

Local Member: Cllr Dean Carroll

Appendices

APPENDIX A – Recommended Conditions

APPENDIX B – Report to Northern Planning Committee 28 September 2021 (Item 6)

**APPENDIX A: Recommended Conditions**

**STANDARD CONDITION(S)**

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

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

2. The development shall be carried out strictly in accordance with the 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. a) No development, with the exception of demolition works where this is for the reason of making areas of the site available for site investigation, shall take place until a Site Investigation Report has been undertaken to assess the nature and extent of any contamination on the site. The Site Investigation Report shall be undertaken by a competent person and conducted in accordance with current Environment Agency guidance 'Land Contamination: Risk Management (LCRM)'. The Report is to be submitted to and approved in writing by the Local Planning Authority.

b) In the event of the Site Investigation Report finding the site to be contaminated a further report detailing a Remediation Strategy shall be submitted to and approved in writing by the Local Planning Authority. The Remediation Strategy must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

c) The works detailed as being necessary to make safe the contamination shall be carried out in accordance with the approved Remediation Strategy.

d) In the event that further contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the

Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of (a) above, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of (b) above, which is subject to the approval in writing by the Local Planning Authority.

e) Following completion of measures identified in the approved remediation scheme a Verification Report shall be submitted to and approved in writing by the Local Planning Authority that demonstrates the contamination identified has been made safe, and the land no longer qualifies as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to human health and offsite receptors.

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

4. No above ground works shall commence until a hard and soft landscaping plan has been submitted to and approved in writing by the Local Planning Authority. The plan shall include:

a) Planting plans, creation of wildlife habitats and features and ecological enhancements (e.g. hibernacula, integrated bat and bird boxes, hedgehog-friendly gravel boards and amphibian-friendly gully pots);

b) Where fences are to be used, these should contain gaps at their bases (e.g. hedgehog-friendly gravel boards) to allow wildlife to move freely;

c) Written specifications (including cultivation and other operations associated with plant, grass and wildlife habitat establishment);

d) Schedules of plants, noting species (including scientific names), planting sizes and proposed numbers/densities where appropriate;

e) Native species used are to be of local provenance (Shropshire or surrounding counties);

f) Details of trees and hedgerows to be retained and measures to protect these from damage during and after construction works;

Reason: To ensure the provision, establishment and maintenance of a reasonable standard of landscape in accordance with the approved designs. Reason: To ensure the provision of amenity and biodiversity afforded by appropriate landscape design.

5. Prior to the first occupation of the development a maintenance and management plan for the refurbished bowling green at Greenfields Bowling Club to include a maintenance schedule and management responsibilities and the legal and financial means of how future repairs and maintenance for a 10 year period following the refurbishment being carried out in accordance with the specification indicated in the Bromford Bowling Green Assessment 2022 by Alan Lewis, shall be submitted to and agreed in writing with the local planning authority. The maintenance and management of the refurbished bowling green must be implemented in accordance with the approved maintenance and management plan for the first 10 years following the refurbishment being carried out.

6. Vehicular access to the Sentinel Cricket Club car park off Albert Road must be maintained at all times both during construction of the development and on completion and occupation of the development. Prior to the commencement of development and for entirety of the construction phase the access shall be first provided via the temporary access indicated on the plan reference 21C received 17 September 2021 and this access shall not be closed until the

new access via the new estate road indicated on the approved plans has been provided and made available for use.

Reason: To ensure that access to the cricket club is maintained.

7. The Construction Environmental Method Plan (CEMP) hereby approved shall be adhered to throughout the demolition and construction period.

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

8. Prior to commencement of works other than demolition full details of the design and specification of ball stop mitigation (ball strike fencing), including details of management and maintenance responsibilities, and the legal and financial means of how future repairs and maintenance will be secured, have a) been submitted to and b) approved in writing by the Local Planning Authority following consultation with Sport England. The approved ball stop mitigation shall be installed in full before any part of the development is first occupied and thereafter be managed and maintained in accordance with the approved details.

Reason: To protect the proposed development from ball strike.

9. All hard and soft landscape works shall be carried out in accordance with the approved landscaping plan. The works shall be carried out prior to the occupation / use 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.

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

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

b) No works associated with the development hereby approved shall commence and no equipment, machinery or materials will be brought onto the site for the purposes of said development until all tree protection measures specified in the approved landscaping plan have been fully implemented on site. 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.

c) All services will be routed outside the Root Protection Areas indicated on the approved landscape plan or, where this is not possible, a detailed method statement and task specific

tree protection plan will be submitted and approved in writing by the Local Planning Authority prior to any work commencing.

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

11. Prior to first occupation of the buildings, the makes, models and locations of bat and bird boxes shall be submitted to and approved in writing by the Local Planning Authority. The boxes shall be sited in suitable locations, with a clear flight path where appropriate, and where they will be unaffected by artificial lighting. The boxes shall thereafter be maintained for the lifetime of the development.

Reason: To ensure the provision of roosting and nesting opportunities, in accordance with MD12, CS17 and section 175 of the NPPF.

12. 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.

13. No above ground works 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.

**APPENDIX B – Report to Northern Planning Committee 28 September 2021 (Item6)**