



<u>Committee and date</u>
South Planning Committee
22 July 2014

## Development Management Report

Responsible Officer: Tim Rogers  
email: [tim.rogers@shropshire.gov.uk](mailto:tim.rogers@shropshire.gov.uk) Tel: 01743 258773 Fax: 01743 252619

### Summary of Application

<b>Application Number:</b> 14/00885/OUT	<b>Parish:</b>	Bishops Castle
<b>Proposal:</b> Outline application for mixed residential development and formation of a vehicular and pedestrian access		
<b>Site Address:</b> Land south of Woodbatch Road, Bishops Castle		
<b>Applicant:</b> Mr J M Jones		
<b>Case Officer:</b> Grahame French	<b>email:</b> <a href="mailto:planningdmse@shropshire.gov.uk">planningdmse@shropshire.gov.uk</a>	

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**Recommendation:- Approve as per the officer recommendation in Appendix 1**

### 1.0 BACKGROUND TO THE REPORT

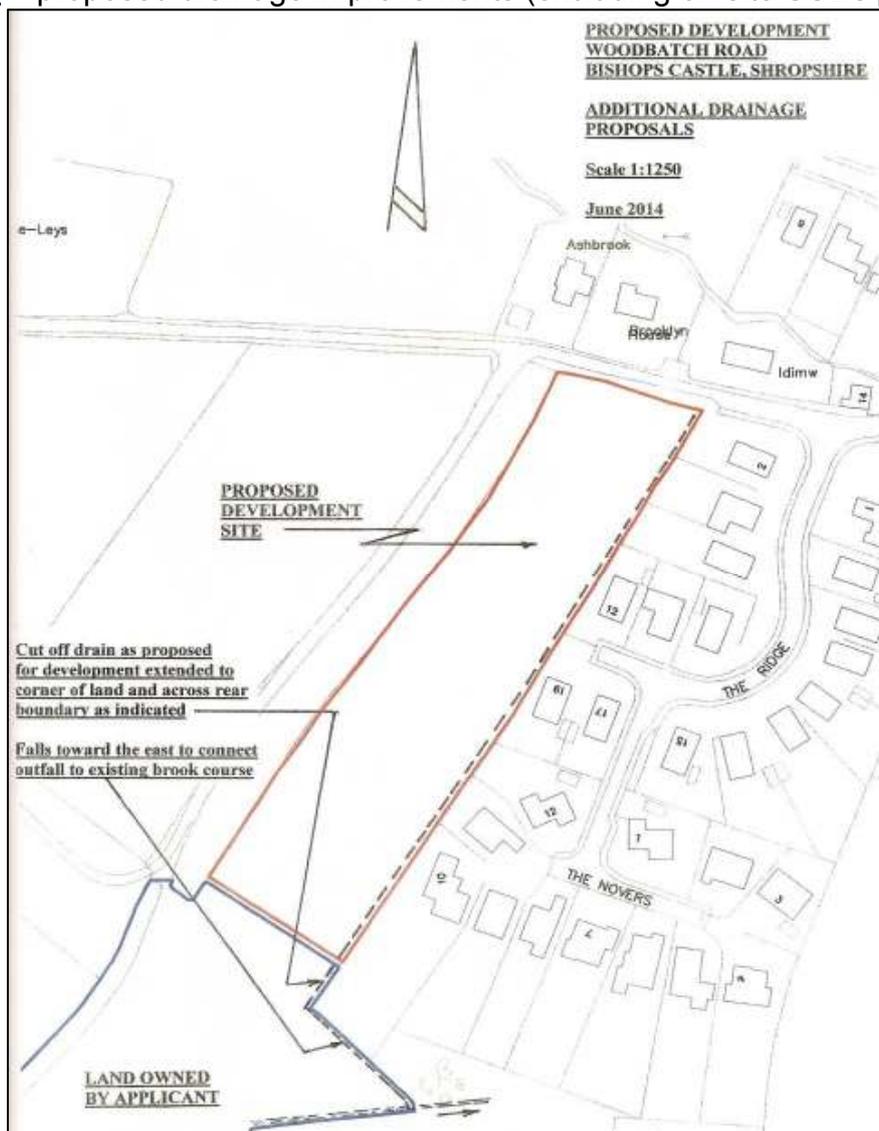
- 1.1 This application was considered at the committee meeting on 27<sup>th</sup> May 2014 and Members also visited the site on the morning of the Committee. The officer appraisal report considered at the time is attached as Annexe 1 to this report.
- 1.2 Members resolved to defer the application after hearing from speakers for and against the proposals. This was in order for the applicant to:
  - i. Review the impact and effect of the proposed development on the local road network and Conservation Area, and
  - ii. Review drainage issues and put forward mitigation measures identified as necessary.
- 1.3 These matters have been progressed in the intervening period and accordingly, the application is being reported back to the committee to allow Members to make a decision.

Contact: Tim Rogers (01743) 258773

**2. DRAINAGE**

- 2.1 The Council’s drainage team did not object to the proposals subject to the imposition of appropriate drainage conditions which were included in the recommended draft conditions. However, Members heard representations at the previous committee meeting from Mr J Percy, a resident living adjacent to the development site. Mr Percy informed Members that water from the site had caused flooding underneath his property at The Novers which had resulted in soil erosion. He stated that he had dug trenches to divert the water into a stream and this had alleviated but not solved the problem. He indicated that as the land was waterlogged in winter the developers Flood Risk Assessment (FRA) should be based on winter conditions.
- 2.2 Following the committee meeting the applicant’s hydrological consultant held a site meeting with the landowner to assess these concerns. Arising from this it was agreed that a cut off drain would be provided / extended along the higher southern margin of the site on land owned by the applicant and also down the eastern site margin (see plan 1).

Plan 1 – proposed drainage improvements (excluding on site SUDs provisions)



- 2.3 The applicant's drainage consultant has confirmed that the effects of this would be to assist in providing a comprehensive drainage solution for the proposed site whilst also providing a drainage improvement for adjacent residential properties. A comprehensive drainage condition is also being recommended in accordance with the advice of the Council's Lane Drainage section. It is considered that the combination of these measures would ensure satisfactory drainage of the site whilst also providing a drainage improvement for the local area. It is concluded on this basis that the proposals comply fully with Core Strategy Policy CS18 (sustainable drainage) and that refusal on grounds of drainage could not be substantiated.

### **3. TRAFFIC / ACCESS**

- 3.1 At the meeting of this committee on 27<sup>th</sup> May 2014 it was reported that the applicant has agreed to make a financial contribution to facilitate improvements to the junction between Woodbatch Road and Kerry Lane as part of a S106 legal Agreement. This would have the effect of prioritising traffic on Kerry Lane, resulting in an overall improvement in local highway safety. Agreement on this measure was reached shortly before the previous committee meeting and the local member Councillor Barnes expressed concern that there had been insufficient consultation with the local community on the proposals. Accordingly, the committee resolved to defer the proposals in order to allow time for relevant meetings / discussions to proceed.
- 3.2 A meeting between relevant stakeholders subsequently took place on 11<sup>th</sup> June at which highway officers were able to confirm that the proposals would result in a highway improvement. The applicant reports that this has been acknowledged by the Town Council representatives.
- 3.3 A further issue discussed at the meeting relates to the proposal to widen Woodbatch Road and provide footway provision across the frontage of the application site. An amended plan has been submitted (plan 2) which details this arrangement. The improvements would be undertaken on land within the applicant's control. As such, they are capable of being conditioned in the event of permission being granted. Highway officers have acknowledged that this would also be beneficial with respect to the current proposals.
- 3.4 It is understood that an affordable housing scheme will be progressed in an area commencing 15m to the west of the current site. This application is yet to be submitted. However, highway officers have also acknowledged that the proposed improvements to the highway frontage would have highway benefits with respect to this forthcoming affordable development.
- 3.5 Highway officers did not object to the proposals as submitted. Since this time further improvements have been agreed with the applicant in response to comments received through the planning consultation process. It is considered that the additional improvement measures referred to above provide an appropriate level of highway improvement to the local area and that refusal on highway grounds could not be substantiated, given in particular the absence of objection from highway officers. (Core Strategy Policy CS7)



is therefore recommended that the application is approved in accordance with the recommendations set out in the original officer report.

## **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 three months 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 1970.

## **6.0 FINANCIAL IMPLICATIONS:**

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

7.0 Additional Information

List of Background Papers: Planning application reference 13/003126/FUL and plans.

Cabinet Member (Portfolio Holder): Cllr M. Price

Local Member: Cllr Charlotte Barnes, Bishops Castle

Appendices: Annex 1 – Officer report to 4<sup>th</sup> March Committee including Appendix 1 – Conditions

**ANNEX 1**

**OFFICER REPORT TO 27<sup>TH</sup> MAY 2014 SOUTH PLANNING COMMITTEE**



<u>Committee and date</u>
South Planning Committee
27 May 2014

<u>Item</u>
<b>11</b>
Public

**Development Management Report**

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**Recommendation:** Grant Permission subject to the conditions and informatives set out in Appendix 1, and subject to a Section 106 legal agreement to secure the payment of an affordable housing financial contribution, in accordance with the Council's affordable housing policy and an off-site highway improvement.

## REPORT

### 1.0 THE PROPOSAL

- 1.1 Outline permission is sought for the erection of 10 dwellings off Woodbatch Road, Bishop's Castle, 2 of which would be affordable, the remainder being for 'open market' sale. The application is in outline, with all matters of detail reserved for subsequent approval. Notwithstanding this, the applicant has provided an indicative layout plan and details of the likely housing types. This shows a new junction off Woodbatch Road with winding internal access road running the length of the site with houses alternately to the east or west, associated landscape areas and a turning area at the end.
- 1.2 The open market plots are proposed to be family sized 2-3 bedroom detached homes which the applicant states would satisfy an identified need in the community. The affordable homes would be semi-detached. Adequate parking would be provided and there would be a garage and good-sized garden area for each property. The applicant states that the illustrative site layout plan demonstrates that the site is capable of accommodating dwellings in a configuration which respects the rural nature of the site and the residential amenities of the occupiers of dwellings on The Ridge and The Novers.

### 2.0 SITE LOCATION & DESCRIPTION

- 2.1 The site (area 0.86ha) is located on rising land at the south-western corner of the existing built edge of Bishop's Castle. It comprises a rectangular arable field (193m x 45m oriented north-east to south west) to the immediate west of the existing residential areas of The Novers and The Ridge. It is bounded to the north by Woodbatch Road, to the west by a farm access track (also a right of way) and to the south by the continuation of the arable field. There is a fall of 10m from south west to north east across the site.

### 3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

- 3.1 The application has been referred to the committee by the local member and this decision has been ratified by the Chairman of the Planning Committee and the Development Manager in accordance with the Council's adopted Scheme of Delegation.

### 4.0 COMMUNITY REPRESENTATIONS

- 4.1.1 Bishop's Castle Town Council – No comments received.

- 4.1.2 SC Public Protection - Specialist – No objection. In order to make the properties ready for EV charging point installation isolation switches must be connected so that a vehicle may be charged in the garage or driveway. (an appropriate condition has been included in Appendix 1)
- 4.1.3 SC Affordable Housing: - No objection. Core Strategy Policy CS11 requires all open market residential development to contribute to the provision of affordable housing. If this development is considered to be acceptable then in accordance with the adopted Policy any consent would need to be subject to a Section 106 Agreement requiring an affordable housing contribution. The contribution will need to accord with the requirements of the SPD Type and Affordability of Housing and will be set at the prevailing percentage target rate at the date of a full application or the Reserved Matters application.
- 4.1.4 SC Conservation (Historic Environment): - No comments received.
- 4.1.5 SC Drainage: - No objection subject to conditions covering surface drainage (included in Appendix 1).
- 4.1.6 SC Highways DC: – No objection in principle subject to the following comments: The indicative layout plan, does not show the access to the east of the site, prior to confirming the access is accepted I would ask that the applicant submits details of the proposed access layout to the east, and shows details of the existing footway being extended and any associated carriageway widening. Funding for a priority arrangement along Kerry Lane/ Woodbatch Road junction should be considered. The indicative layout, the layout shown does not appear to meet adoptable standard, therefore it is recommended that further consideration is given to the proposed layout if a reserve matters application is submitted. The proposed layout should provide a suitable turning head.  
(Note: An updated indicative layout plan seeking to address the above points was submitted on 15<sup>th</sup> May 2014).
- 4.1.7i. SC Ecology: – No objection. This application falls within the catchment of the River Clun SAC. Natural England must be consulted on the application and confirmation that they have no objection received before consent can be granted. A draft Habitat Regulation Assessment matrix has been provided to the planning officer and Natural England. The following conditions and informatives should be attached to any consent.
- ii. Development within the River Clun Catchment: This development is within the water catchment for the River Clun and is upstream of the River Teme SSSI and the River Clun SAC. The River Clun SAC is currently failing its water quality targets and its objectives for the conservation of the freshwater pearl mussel. Shropshire Council is working closely with Natural England and Environment Agency on developments within the Clun catchment. *Guidance Note 12: Development within the River Clun Catchment, September 2013* sets out the approach adopted to developments within the catchment. The Site Allocations and Management of Development (SAMDev) Plan Pre-Submission Draft in Policy S2.3 states that all developments in the catchment must clearly demonstrate that it will not adversely affect the integrity of the SAC. This issue has not been specifically addressed in the

submitted Ecological Appraisal or the Drainage and Flood Risk Assessment, however the latter does provide the necessary information.

- ii. The Drainage and Flood Risk Assessment by D.A. Sluce & Partners Feb 2014 states that surface water will be collected for attenuation and storage on site prior to controlled discharge to the water course to the SE of the site at a rate limited to 5 litres per second per hectare. According to Guidance Note 12 for sites more than 10km upstream of the SAC such as this, discharges of less than 5 m<sup>3</sup>/day are regarded as having no likely significant effect. The intention is to discharge foul drainage to the existing sewerage network via a gravity connection (with details to be confirmed). As the Bishop's Castle sewage treatment plant has phosphate stripping any development of less than 10 houses, serviced by the Bishop's Castle works, is considered to be unlikely to have a significant effect on the features of interest as the impact will be picked up by actions identified in the Nutrient Management Plan. Development of 10 houses or more will still have to show how the contribution to the treatment works will affect the site in the interim between now and completion of any upgrade.
- iii. Shropshire Council has considered this application under the Habitat Regulation Assessment process in order to satisfy the Local Authority duty to adhere to the Conservation of Species & Habitats Regulations 2010 (known as the Habitats Regulations). Shropshire Council has concluded that this application as submitted will not have a likely significant effect on the integrity of any European Designated site provided the appropriate conditions are attached to any consent (included in Appendix 1). A Habitat Regulation Assessment matrix has been forwarded to Natural England together with a copy of this memo.
- iv. Bats: Churton Ecology (2013) report that there is no potential for bat roosts in the trees on or near the site. The site hedgerows potentially provide habitat for foraging and commuting bats and link to the riparian corridor which is likely to be favoured. Illumination of the hedgerows should be avoided. A recommended condition is included in appendix 1.
- v. Great crested newt: Churton Ecology (2013) states there is one pond 300m to the north-west of the site but no mapped ponds within 250m. Only the hedgerows appear to be suitable terrestrial habitat but it is unlikely that this species is present on the site due to the overall unsuitability of habitats on and around the site. No development related impact on Great Crested Newt can be reasonably predicted and no further survey or assessment is required.
- vi. Badger: Whilst no setts were located during the Churton Ecology survey, some well-marked trails and latrines were noted in field boundaries. An informative note is recommended.
- vii. Nesting birds: The boundary hedgerows have the potential to support nesting birds. An informative note is recommended.

Public Comments

4.1.10 The application has been advertised in accordance with statutory provisions and the nearest residential properties surrounding the site have been individually notified. Thirty objections have been received. The main issues are as follows:

- i. Traffic: Access from the church along Kerry Lane is narrow and has no footpath in some places. The junction with Corporation Street is also dangerous, and the road is very narrow at the proposed entrance to the development. An increase in traffic along this route can only make things worse and increase the risk of accidents, injury and delay. Access from Kerry Lane to the proposed site on Woodbatch road is mostly if not all single track, due to cars parked on the road because the houses have no parking spaces. Access from Woodbatch road onto Kerry lane has very poor visibility. If you pull out of Woodbatch road onto Kerry lane by car you are nearly half way across the road before you can see clearly to pull out, especially taking a right turn. When you come from Bishops Castle then turn left onto Woodbatch Road there is a Lane, Kerry Green, it runs above Kerry lane. immediately on your left, when cars pull out of here onto Woodbatch road they are half way across before they can see, anything turning off Kerry lane onto Woodbatch road. Coming from proposed site on Woodbatch Road, going round the corner towards Kerry Lane, oncoming vehicles are forced into the middle of the road due to parked vehicles, as before houses have no parking spaces. This proposal, along with potential building sites along Oak Meadow, will increase the traffic flow along Kerry Lane which is already very dangerous in several places. Kerry Lane is a classic example of an ancient track, never designed for motor vehicles and has already been significantly modified to accommodate the relatively modern developments to the West side of Bishops Castle. This narrow lane is barely wide enough for two vehicles to pass in places and it has several blind spots that without significant redesign and costly engineering cannot be improved. The ramp to the park entrance/exit is used by many pedestrians, particularly children, and users already need to exit with extreme care due to the "blind" view of the road to the right. Our own access from Bells Court is also ?blind? due to the slight bend at No.2 Kerry Lane and so exiting in a vehicle is already often difficult and dangerous due to the speed of approaching traffic. Leaving Bells Court on foot, diagonally across Kerry Lane to the safety of the pavement, is often hazardous, made worse by the original planning changes approved by the council at the time when the vehicle/pedestrian access was switched from the Six Bells yard to its existing position. This will only get worse with further traffic flows. Unless the council or a developer is prepared to create a large scale relief road around the edge of town (which would be very difficult and extremely costly), I cannot see how the council can allow further developments in this part of Bishops Castle. Developments always lead to more vehicle movements, which, with the nature of this narrow lane, are likely to lead to more collisions and injuries. Kerry Lane is a single track road, with little or no scope for widening in certain areas due to the land gradient and current housing. The council is currently unable to maintain Kerry Lane in a fit condition, and extra traffic would only exacerbate this problem. Parts of the road are regularly patched up, but the combination of traffic and rainwater runoff ensures that the potholes reappear before long. The junction of Kerry Lane and Woodbatch Road is difficult to negotiate due to the layout and contours of the land, which force cars from Woodbatch Road to move onto Kerry Lane in order to be able

to see traffic coming up. The recently installed mirror does not allow one to see the traffic coming up the hill and so is not only useless but also increases the risk of an accident if drivers rely on it. The problems would be exacerbated by increased traffic and it is unlikely that the council will be able to make the necessary improvements. Woodbatch Road is effectively a single track road in places due to parked cars, which are increasing in number. Parked vehicles also make the junction between The Ridge and Woodbatch Road difficult to negotiate. More homes will mean a huge increase in the amount of traffic to the junction of The Ridge and Woodbatch Road. Near misses happen daily with the present level of traffic. Woodbatch Lane is a single track road, many cars are regularly parked along Woodbatch Road, all the way to the dangerous junction of Kerry Lane. Will there be traffic calming procedures in place, like speed bumps etc? The houses, if only 10 are built, could generate up to 30 more cars with the consequent increase in vehicle movements from these alone. Woodbatch Road and Kerry Lane will not get any wider nor will their junctions with each other get any safer. In particular, unlike the rejected Oak Meadow application all traffic will have to negotiate this difficult and dangerous junction. The road safety issues here are insolvable without the imposition of a serious traffic management plan such as the introduction of a one way system.

- ii. Drainage / Flooding: Woodbatch Road already turns into a river after every substantial rainfall. This problem has increased over the last 5 years, and would need a substantial and expensive infrastructure to prevent major damage to existing as well as new properties. This sort of problem is surely one which we have learned to avoid, this of all years. We are concerned that the issues regarding drainage haven't been fully thought through. Drains already unable to cope with water run off environment agency called when culvert often blocked. Flooding occurs on a regular basis and will affect the application site as it lies at the bottom, bottom being the operative word, of a field which acts as a water catchment area exacerbated by annual up and down ploughing , rather than ploughing along the contours. This means that whatever clever works are carried out to temporarily capture it this water will inevitably be fed much quicker into existing water causes and lead to flooding of existing properties below and beyond the site. I have concerns over the surface water drainage, as the open ditch alongside the boundary and crossing the corner of the development constantly floods during heavy rain. A new development with all its surface water will only increase this problem. I am aware of properties on the Ridge estate suffering from surface water run-off problems from the proposed development site so any developer would need to increase load on open ditch and following culvert to ensure there is no increase in the flood risk to these properties; which in my opinion the open ditch/culvert would not be sufficient, leading to an increase in flooding.
- iii. Site choice / principle: There are much more suitable sites available. There are many fields adjacent to the main roads around Bishop's Castle, would they not be a more sensible place to build new houses? The SAMDev consultation process which is currently being finalised clearly shows that the preferred location for residential developments of this scale should take place on sites to the north west of our town. This would enable easier access to the main trunk road (the A488) and minimise the volume of additional vehicular traffic having to travel through the town's narrow streets. The proposed development involves the provision of 8 market value houses

and 2 affordable houses. There has been little growth in employment opportunities in Bishop's Castle demonstrated by the vacant spaces at the local Business Park. Should there be any demand for the market value houses, the most likely buyers would be people working in more major centres of employment such as Craven Arms, Ludlow and Shrewsbury. It would therefore seem more appropriate to ensure that such housing is made available where there are employment opportunities to minimize the need for people to commute. Given that many of the homes in the residential areas adjacent to the proposed development site are bungalows it would seem that any neighbouring development should also include bungalows and a much larger mix of affordable housing for young people and families in our town. The application is premature as there is other land more suitable for development for housing in Bishops Castle and is relying heavily on the proposition that this is a "windfall" site thereby helping Shropshire Council with their planning difficulties. In fact if granted this development will create more difficulties than it solves in that it will exacerbate existing problems of flooding, sewerage and danger from traffic. The sewerage system, into which the sewerage from this development would run, at the Church Street end of Bishops Castle has always been a problem I am not aware that it has been solved extra sewerage from this development can only lead to further problems. There is a claim in the application that it is only 0.75km away from all of the above mentioned facilities. It is not possible to average this measurement but for example the High Street is nearly 1km away while the Doctors are around 1.25kms. So walking into Bishops Castle will not happen - it does not happen now so why will it change. The development is to be situated on Greenfield site which is outside the development boundary for the area, and could not be considered as infill. There is more suitable land for development of housing with better access, services and infrastructure in Bishops Castle, to meet the current windfall criteria.

- iv. Pressure on services: Bishops Castle is a very small town with very limited resources, there is already pressure on Doctors & Dentists, etc. Bishops Castle has very limited employment prospects most jobs are of minimum wage, so where are these people going to work. Public Transport is very limited & unreliable. Sewerage is already under immense pressure as it is already at full capacity.
- v. Amenity: Living at my address I will be totally overlooked by the new development. The western skyline will be devastated by two story homes, no doubt there will be shrubs and trees, lamposts etc. There is a claim that the residential amenities of the Ridge and The Novers will be respected. This is unrealistic as the site is generally at a higher level particularly so at the southern end where it is considerably higher and where the topography will lead to any development forming part of the skyline totally destroying the rural nature of the site. It will therefore be prominent in the landscape. The planning application is for 10 houses which show the house nearest Woodbatch road will be overlooking our property and, depending on its height, will affect our light with the whole development affecting our privacy. Whilst a household has no right to a view its worth mentioning that the development will affect not only ours and my neighbours views, but will be clearly visible from parts of Bishops castle.
- vi. Other: Concern in relation to the positioning of the site notice. There is a further claim made in the application that the site is surrounded by well-maintained field hedgerows, it is not. The application also claims that there are no legal

impediments which would prevent its development 'my information is that either the Applicant or his Agents have not fully considered whether the applicant owns or has control of all necessary rights to gain unimpeded access to the site or lay and make the necessary drainage connections.

## 5.0 THE MAIN ISSUES

- Policy context and principle of the proposed development;
- Environmental impacts of the proposals – traffic, drainage, sewerage, ecology, visual impact;
- Social impact – residential amenity, public safety, footpath;
- Economic impact;
- Overall level of sustainability of the proposals.

## 6.0 OFFICER APPRAISAL

### 6.1 Policy Context and principle of the development:

6.1.1 Bishops Castle is identified as a Market town and Key Centre in the adopted Core Strategy. Policy S2 of the Pre-Deposit Draft SAMDev site allocations document advises that the town will provide the focus for development in this part of Shropshire, with a housing guideline of around 150 dwellings for the period 2006-2026. New housing development will be delivered through the allocation of a greenfield site (Schoolhouse Lane East - BISH013 – 40 houses) together with a windfall allowance which reflects opportunities within the town's development boundary as shown on the Proposals Map. All development in Bishop's Castle must have regard to the conservation targets for the River Clun catchment as set out in the Nutrient Management Plan and any agreed management strategy for the river catchment.

6.1.2 The proposed site is not allocated in the Pre-Deposit Draft SAMDev and is outside (to the immediate west of) of the development boundary of the town as shown on the relevant SAMDev inset plan. Therefore, the current proposals would not comply with this emerging policy. However, housing land supply in Shropshire has recently fallen beneath the 5 year level required by the National Planning Policy Framework (para. 47). As a consequence, existing saved policies on housing supply are now out of date and this has implications for future planning decisions. The NPPF states (para 14) that 'where the development plan is absent, silent or relevant policies are out-of-date, (permission should be granted) unless:

- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
- specific policies in this Framework indicate development should be restricted'.

6.1.3 As existing housing supply policy is now out of date, permission must be granted for new housing proposals which are 'sustainable' (NPPF 197). This is the case, even where, a proposal would represent a departure from existing saved policy or emerging SAMDev policy. Relevant housing supply information indicates that the level of housing undersupply is continuing to increase so this situation is likely to remain until the SAMDev is adopted. Legal caselaw has established that whilst the SAMDev is at a relatively advanced stage, little weight can be accorded to these

policies in the context of the current housing supply shortfall. The NPPF therefore provides a temporary 'window of opportunity' for developers to come forward which developments which might not otherwise succeed when the SAMDev is adopted.

- 6.1.4 The key policy test to apply therefore at this stage is not whether the proposal complies with emerging policy and the parish plan but whether or not it would be so fundamentally flawed that it should not be regarded as sustainable. If a proposal does not comply fully with some individual sections of the NPPF it may still be regarded as sustainable overall. The NPPF advises that there are three dimensions to sustainable development – environmental, social and economic (NPPF 7). In order to assess the sustainability of a proposal it is necessary therefore to evaluate these three dimensions before deciding whether the development can be regarded as sustainable overall. This is having regard to relevant policies and guidance and also to any benefits offered by the proposals.
- 6.1.5 The main issue to address is whether the proposals would result in any additional impacts on surrounding properties, amenities, the environment, infrastructure, economy and local community relative to the existing situation and, if so, are these impacts capable of being mitigated such that the proposals would be sustainable. If the proposals can be accepted as sustainable then the presumption in favour of sustainable development set out in the NPPF would apply. Sustainable proposals would also be expected to be compliant with relevant development plan policies including Core Strategy Policies CS5 and CS6.

## 6.2 Environmental Considerations

- 6.2.1 Traffic: Objectors have expressed concerns that the proposed access would join a dangerous stretch of the public highway and would exacerbate existing traffic capacity issues. Whilst these concerns are noted it is not considered that the proposed development of up 10 houses in this location 500m from the geographic centre of Bishop's Castle would be likely on its own to add to an unsustainable increase in levels of traffic locally. The Applicant has provided indicative access and layout plans which suggest that a safe access compliant with relevant highway visibility standards is capable of being achieved. The applicant has also agreed to fund the provision of a priority junction where Woodbatch Road meets Kerry Lane 220m east of the site, to ensure a safer arrangement at this important junction. Adequate pedestrian provision exists between the site and the centre of the town which begins 500m to the east. Exact details of the junction and internal access roads would be provided at the reserved matters stage. Highway officers have not objected and it is considered on balance that refusal on highway or access reasons could not be justified at this outline stage. (Structure Plan Policy CS7).
- 6.2.2 Ecology: An ecological survey confirms that this existing agricultural field has limited habitat interest. The Natural Environment section has not objected subject to the inclusion of appropriate informative notes referring to ecological interests on any decision notice. The site is located in the Clun Catchment, part of which incorporates a Special Area of Conservation (SAC). A Habitat Risk Assessment (included as Appendix 2) concludes that there would not be any adverse impacts on the ecological interests of the SAC if the development was restricted to 9 properties as adequate phosphate stripping capacity is available to deal with any effluent from

the development at Bishop's Castle Sewage Treatment Works. The applicant has confirmed on this basis that a condition restricting the development to 9 properties would be acceptable. Landscaping is proposed and would add to overall levels of biodiversity within the site. The proposals therefore comply with Core Strategy Policy CS17.

- 6.2.3 Drainage / Flooding: Objectors have raised concerns that the proposals could make existing local flooding problems worse due to replacing agricultural field with less permeable surfaces. It is understood that there are some drainage limitations locally along the eastern side of the site adjacent to existing residential property which is at a lower level. The applicant has confirmed that interceptor drains would be provided along this margin in order to remove any water ingress from higher ground and that a similar arrangement would apply on the site's western margin. A sustainable drainage system (SuDs) would be adopted, including the use of features such as permeable surfacing and oversized pipes. Surface water from roofs would be taken to suitably sized soakaways, the design of which would be dealt with at building regulation stage, and would comply fully with BRE 365. This would ensure that drainage from the site is attenuated to greenfield rates. The council's land drainage section has not objected subject to imposition of appropriate drainage conditions which are included in Appendix 1. The Environment Agency Flood Map indicates that the development is not within an area that is at risk of fluvial flooding. It is not considered that the proposals would result in an unsustainable increase in local drainage levels provided appropriate measures are employed as per the recommended conditions. The proposals are therefore capable of complying in principle with Core Strategy Policy CS18 relating to drainage.
- 6.2.4 Sewerage: The applicant is proposing that foul water from the proposed dwellings would be taken to the existing foul sewer that runs nearby to the site. Local residents have expressed concerns that the proposals could increase the level of strain on local sewerage capacity and may also contribute to flooding. If the applicant achieved an agreement to link to the mains sewer then Severn Trent Water will be statutorily obliged to ensure that the sewerage system has sufficient capacity to accommodate the development. There is no reason to suspect that such an agreement would not be forthcoming. The option of installing a package/biodisc treatment plant at the site would however exist if a main sewer connection was not possible, subject to a separate planning permission. (Core Strategy Policy CS8, CS18)
- 6.2.5 Visual amenity: The proposed site is located 820m north east of the AONB but would not be directly visible from the AONB due to the presence of an intervening ridge. The ground level varies between 200 and 210m Above Ordnance Datum which is higher than the adjacent residential area and the main town but comparable to the elevation of the Castle Green area to the north. The proposals involve landscape planting and the applicant has agreed to consider specifying bungalows or 1½ height houses given the elevation of the site and the characteristics of adjacent residential development. The level of the development platform for the site and the detailed appearance of the properties would also be important considerations in terms of visual amenity and would be confirmed at the reserved matters stage. It is however considered that a properly designed scheme would be capable of integrating visually with the surrounding landscape / townscape. It is

concluded that the proposals are capable of complying with relevant policies covering visual amenity and wider sustainability issues. (CS5, CS6, CS16, CS17)

- 6.2.6 Amenities: Some objectors have expressed concern that the construction period could adversely impact on local residential amenities. A condition requiring submission of a Construction Management Plan has been recommended in recognition of this concern. This would control matters such as hours of working and management of construction traffic. A further concern is that the properties may overlook existing dwellings. Officer inspection of the residential property adjoining the site confirms that a number of these properties are bungalows set down at a lower level and which do not have views across the site from any principal elevations. Two – three properties which adjoin the south-western part of the site (at its highest elevation) are two storey and are afforded some views across the site at present. The proposed properties would be on slightly higher ground and so there is a potential for overlooking in this area. The applicant has however agreed that the properties at the south west end of the site can be restricted to 1½ height maximum. Bungalows may be most appropriate. This would be established at the reserved matters stage. Proposed landscaping would also assist in maintaining privacy between existing and proposed properties. Given the ability to specify appropriately designed and height restricted properties at the reserved matters stage it is not considered that the current proposals would raise any unacceptably adverse privacy issues. Core Strategy Policy CS6.
- 6.2.7 Agricultural land: The site currently comprises agricultural land, some of which may be of best and most versatile quality and protected by the NPPF. However, the area of such land is not great and the site has limitations for modern farming due to the relatively steep slope. It is not considered that an objection on the grounds of effects to agricultural land could be sustained in these circumstances.
- 6.2.8 Archaeology: The application is not accompanied by an archaeological appraisal and formal comments from the Council's natural environment team have not so far been received. However, it is standard practice for sites of this nature on the edge of existing settlements to require some form of desktop archaeological evaluation at the reserved matters stage, supplemented if necessary by field investigations and geophysical survey work. A suitable condition has been recommended in appendix 1 and has been agreed by the applicant. A further update on archaeology will be provided subsequently if appropriate. Core Strategy Policy CS17.
- 6.2.9 Conclusion on environmental effects: The proposals would result in some disturbance to local amenities during the construction phase and there would be a change to some local views. There would also be an additional pressure on the public highway and on local sewerage services and a probable need for archaeological evaluation at the reserved matters stage has been identified. However, available evidence suggests that there would be any unacceptably adverse environmental effects which would justify refusal when available mitigation measures and recommended conditions are taken into account. The outline proposals therefore comply with the environmental sustainability test set out in the NPPF.

### **6.3 Economic sustainability:**

6.3.1 All housing schemes have some benefits to the local economy from building employment and investment in local construction services. The occupants of such properties would also spend money on local goods and services, thereby supporting the vitality of the local community. In addition, the proposals would generate an affordable housing contribution, CIL funding and community charge revenue which would also give rise to some economic benefits. Inappropriate development can potentially have adverse impacts on other economic interests such as existing businesses and property values. In this particular case however it is not considered that there would be any obvious adverse economic impacts. There are no leisure or tourism facilities in the immediate vicinity which would be adversely affected. The site is sufficiently far and visually screened from the AONB for there to be no material effect on the enjoyment of the AONB. A public footpath passes to the north of the site but would not be affected by the development. It is not considered that there would be any material impact on property values provided a sensitive design and landscaping are applied at the reserved matters stage. It is considered overall therefore that the economic effects of the proposals would be positive and that the economic sustainability test set out in the NPPF is therefore met. (Core Strategy Policy CS5, CS13)

### **6.4 Social sustainability:**

6.4.1 The applicant's indicative layout plan indicates that the development would deliver mainly 2-3 bedroom properties of modest size which would be capable of meeting a local need. The details of this would be agreed at the reserved matters stage. The proposals would also bring new people into the community who may potentially contribute to the social vitality of the community.

6.4.3 The proposed site is located close to key community facilities and would be linked to them by an existing footpath network. The indicative layout plan also shows the proposed properties as all possessing generous garden space and a communal green area. There would also be good levels of natural light given the unshaded aspect of the plot. It is considered that these factors increase the overall the level of social sustainability of the proposals.

6.4.4 The proposals would offer benefits to the occupants of the new properties and the existing local community, including through affordable housing provision and funding to provide a priority junction at the Woodbatch Road / Kerry Lane junction. through delivery of a footpath and pedestrian crossing point. These benefits increase the overall level of sustainability of the scheme. It is concluded that the social sustainability test set out by the NPPF is also met on balance.

## **7.0 CONCLUSION**

7.1 The proposal would involve the development of up to 10 dwellings on the existing edge of Bishop's Castle. The site is not being put forward as an allocation in the emerging SAMDev but is in a sustainable location close the centre of Bishop's Castle and associated goods and services. A number of objections have been received from local residents. However, it is considered that these matters can be

addressed by appropriate planning conditions. In the current sub-5 year housing supply situation decisions on housing applications must be taken on the basis of whether a development would be sustainable in the terms meant by the NPPF, rather than with reference to extant or emerging housing policies.

- 7.2 It is considered on balance that the proposals are sustainable in environmental, social and economic terms and are compliant with the NPPF and Core Strategy Policy CS6. Outline permission is therefore recommended, subject to appropriate conditions and a legal agreement to deliver the footpath, pedestrian crossing and affordable housing contribution.

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

### **8.1 Risk Management:**

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

As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal - written representations, a hearing or inquiry. If the decision is challenged by way of a Judicial Review by a third party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will intervene where the decision is so unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its planning merits. A challenge by way of Judicial Review must be a) promptly and b) in any event not later than three months after the grounds for making 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 1970.

## **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.

## 10.0 BACKGROUND

### Relevant Planning History

None of relevance to this proposal

Central Government Guidance:

### 10.1 National Planning Policy Framework (NPPF) (DCLG – July 2011)

10.1.1 The National Planning Policy Framework (NPPF) came into effect in March 2012, replacing most former planning policy statements and guidance notes. The NPPF provides a more concise policy framework emphasizing sustainable development and planning for prosperity. Sustainable development 'is about positive growth – making economic, environmental and social progress for this and future generations'. 'Development that is sustainable should go ahead, without delay - a presumption in favour of sustainable development that is the basis for every plan, and every decision'. The framework sets out clearly what could make a proposed plan or development unsustainable.

10.1.2 Relevant areas covered by the NPPF are referred to in section 6 above and include:

- 1. Building a strong, competitive economy;
- 3. Supporting a prosperous rural economy;
- 4. Promoting sustainable transport;
- 7. Requiring good design;
- 8. Promoting healthy communities;
- 10. Meeting the challenge of climate change, flooding and coastal change;
- 11. Conserving and enhancing the natural environment;
- 12. Conserving and enhancing the historic environment;

### 10.2 Core Strategy:

10.2.1 The Shropshire Core Strategy was adopted in February 2011 and sets out strategic objectives including amongst other matters:

- To rebalance rural communities through the delivery of local housing and employment opportunities (objective 3);
- To promote sustainable economic development and growth (objective 6);
- To support the development of sustainable tourism, rural enterprise, broadband connectivity, diversification of the rural economy, and the continued importance of farming and agriculture (objective 7);
- To support the improvement of Shropshire's transport system (objective 8);
- To promote a low carbon Shropshire (objective 9) delivering development which mitigates, and adapts to, the effects of climate change, including flood

risk, by promoting more responsible transport and travel choices, more efficient use of energy and resources, the generation of energy from renewable sources, and effective and sustainable waste management.

#### 10.2.2 Core Strategy policies of relevance to the current proposals include:

i. CS6: Sustainable Design and Development Principles:

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*. This will be achieved by: Requiring all development proposals, including changes to existing buildings, to achieve criteria set out in the sustainability checklist. This will ensure that sustainable design and construction principles are incorporated within new development, and that *resource and energy efficiency and renewable energy generation are adequately addressed* and improved where possible. The checklist will be developed as part of a Sustainable Design SPD; Requiring proposals likely to generate significant levels of traffic to 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 to be reduced; And ensuring that all development: Is designed to be adaptable, safe and accessible to all, *to respond to the challenge of climate change* and, in relation to housing, adapt to changing lifestyle needs over the lifetime of the development in accordance with the objectives of Policy CS11 Protects, restores, conserves and enhances 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, *landscape character assessments and ecological strategies where appropriate; Contributes to the health and wellbeing of communities, including safeguarding residential and local amenity* and the achievement of local standards for the provision and quality of open space, sport and recreational facilities. Is designed to a high quality, consistent with national good practice standards, including appropriate landscaping and car parking provision and taking account of site characteristics such as land stability and ground contamination; Makes the most effective use of land and safeguards natural resources including high quality agricultural land, geology, minerals, air, soil and water; Ensures that there is capacity and availability of infrastructure to serve any new development in accordance with the objectives of Policy CS8. *Proposals resulting in the loss of existing facilities, services or amenities will be resisted unless provision is made for equivalent or improved provision, or it can be clearly demonstrated that the existing facility, service or amenity is not viable over the long term.*

ii. CS13: Economic Development, Enterprise and Employment:

Shropshire Council, working with its partners, will plan positively to *develop and diversify the Shropshire economy, supporting enterprise, and seeking to deliver sustainable economic growth and prosperous communities*. In doing so, particular emphasis will be placed on: Promoting Shropshire as a business investment location and a place for a range of business types to start up, invest and grow, recognising the economic benefits of Shropshire's environment and quality of life as unique selling points which need to be valued, conserved and enhanced Raising the profile of Shrewsbury, developing its role as the county town, growth point and

the main business, service and visitor centre for the Shropshire sub-region, in accordance with Policy CS2 Supporting the revitalisation of Shropshire's market towns, developing their role as key service centres, providing employment and a range of facilities and services accessible to their rural hinterlands, in accordance with Policy CS3 *Supporting the development and growth of Shropshire's key business sectors and clusters, in particular: environmental technologies; creative and cultural industries; tourism; and the land based sector, particularly food and drink production and processing* Planning and managing a responsive and flexible supply of employment land and premises comprising a range and choice of sites in appropriate locations to meet the needs of business, with investment in infrastructure to aid their development or to help revitalise them. Supporting initiatives and development related to the provision of higher/further education facilities which offer improved education and training opportunities to help raise skills levels of residents and meet the needs of employers Supporting the development of sustainable transport and ICT/broadband infrastructure, to improve accessibility/connectivity to employment, education and training opportunities, key facilities and services Encouraging home based enterprise, the development of business hubs, live-work schemes and appropriate use of residential properties for home working In rural areas, recognising the continued importance of farming for food production and *supporting rural enterprise and diversification of the economy, in particular areas of economic activity associated with agricultural and farm diversification, forestry, green tourism and leisure, food and drink processing, and promotion of local food and supply chains.* Development proposals must accord with Policy CS5.

v. CS17: Environmental Networks

*Development will identify, protect, enhance, expand and connect Shropshire's environmental assets, to create a multifunctional network of natural and historic resources. This will be achieved by ensuring that all development: Protects and enhances the diversity, high quality and local character of Shropshire's natural, built and historic environment, and does not adversely affect the visual, ecological, heritage or recreational values and functions of these assets, their immediate surroundings or their connecting corridors.* Further guidance will be provided in SPDs concerning the natural and built environment; Contributes to local distinctiveness, having regard to the quality of Shropshire's environment, including landscape, biodiversity and heritage assets, such as the Shropshire Hills AONB, the Meres and Mosses and the World Heritage Sites at Pontcysyllte Aqueduct and Canal and Ironbridge Gorge Does not have a significant adverse impact on Shropshire's environmental assets and does not create barriers or sever links between dependant sites; Secures financial contributions, in accordance with Policy CS8, towards the creation of new, and improvement to existing, environmental sites and corridors, the removal of barriers between sites, and provision for long term management and maintenance. Sites and corridors are identified in the LDF evidence base and will be regularly monitored and updated.

vii. Other relevant policies:

- CS4 - Community hubs and community clusters
- Policy CS5: Countryside and Green Belt;
- Policy CS7: Communications and Transport;

- Policy CS8: Facilities, services and infrastructure provision.
- CS11 - Type and affordability of housing;

#### 10.2.3 Supplementary Planning Guidance: Type and affordability of housing (March 2011)

### 10.3 Emerging Planning Guidance

#### 10.3.1 SAMDev

##### i. MD1 – Scale and Distribution of Development

Further to the policies of the Core Strategy:

1. Overall, sufficient land will be made available during the remainder of the plan period up to 2026 to enable the delivery of the development planned in the Core Strategy, including the amount of housing and employment land in Policies CS1 and CS2;
2. Specifically, sustainable development will be supported in Shrewsbury, the Market Towns and Key Centres, and the Community Hubs and Community Cluster settlements identified in Schedule MD1.1, having regard to Policies CS2, CS3 and CS4 respectively and to the principles and development guidelines set out in Settlement Policies S1-S18 and Policies MD3 and MD4;
3. Additional Community Hubs and Community Cluster settlements, with associated settlement policies, may be proposed by Parish Councils following formal preparation or review of a Community-led Plan or a Neighbourhood Plan and agreed by resolution by Shropshire Council.

##### ii. MD2 – Sustainable Design

Further to Policy CS6, for a development proposal to be considered acceptable it is required to:

1. Achieve local aspirations for design, wherever possible, both in terms of visual appearance and how a place functions, as set out in Community Led Plans, Town or Village Design Statements, Neighbourhood Plans and Place Plans.
2. Contribute to and respect locally distinctive or valued character and existing amenity value by:
  - i. Responding appropriately to the form and layout of existing development and the way it functions, including mixture of uses, streetscape, building heights and lines, scale, density, plot sizes and local patterns of movement; and
  - ii. Reflecting locally characteristic architectural design and details, such as building materials, form, colour and texture of detailing, taking account of their scale and proportion; and
  - iii. Respecting, enhancing or restoring the historic context, such as the significance and character of any heritage assets, in accordance with MD13; and
  - iv. Enhancing, incorporating or recreating natural assets in accordance with MD12.
3. Embrace opportunities for contemporary design solutions, which take reference from and reinforce distinctive local characteristics to create a positive sense of place, but avoid reproducing these characteristics in an incoherent and detrimental style; 4. Incorporate Sustainable Drainage techniques, in accordance with Policy CS18, as an integral part of design and apply the

requirements of the SuDS handbook as set out in the Water Management SPD 5. Consider design of landscaping and open space holistically as part of the whole development to provide safe, useable and well-connected outdoor spaces which respond to and reinforce the character and context within which it is set, in accordance with Policy CS17 and MD12 and MD13, including; i. Natural and semi-natural features, such as, trees, hedges, woodlands, ponds, wetlands, and watercourses, as well as existing landscape character, geological and heritage assets and; ii. providing adequate open space of at least 30sqm per person that meets local needs in terms of function and quality and contributes to wider policy objectives such as surface water drainage and the provision and enhancement of semi natural landscape features. For developments of 20 dwellings or more, this should comprise an area of functional recreational space for play and recreation uses; iii. ensuring that ongoing needs for access to manage open space have been provided and arrangements are in place for it to be adequately maintained in perpetuity. 6. Ensure development demonstrates there is sufficient existing infrastructure capacity, in accordance with MD8, and should wherever possible actively seek opportunities to help alleviate infrastructure constraints, as identified with the Place Plans, through appropriate design; 7. Demonstrate how good standards of sustainable design and construction have been employed as required by Core Strategy Policy CS6 and the Sustainable Design SPD.

iii. MD3 - Managing Housing Development

Delivering housing:

1. Residential proposals should be sustainable development that:
  - i. meets the design requirements of relevant Local Plan policies; and
  - ii. for allocated sites, reflects any development guidelines set out in the relevant settlement policy; and
  - iii. on sites of five or more dwellings, includes a mix and type of housing that has regard to local evidence and community consultation.

Renewing permission:

2. When the proposals are for a renewal of planning consent, evidence will be required of the intention that the development will be delivered within three years.

Matching the settlement housing guideline:

3. The settlement housing guideline is a significant policy consideration. Where development would result in the number of completions plus outstanding permissions exceeding the guideline, decisions on whether to exceed the guideline will have regard to:
  - ii. The likelihood of delivery of the outstanding permissions; and
  - iii. Evidence of community support; and
  - iv. The benefits arising from the development; and
  - v. The presumption in favour of sustainable development.
4. Where a settlement housing guideline appears unlikely to be met by the end of the plan period, additional sites beyond the development boundary that accord with the settlement policy may be acceptable subject to the criteria in paragraph 3 above.

iv. MD7a – Managing Housing Development in the Countryside

1. Further to Core Strategy Policy CS5 and CS11, new market housing will be strictly controlled outside of Shrewsbury, the Market Towns, Key Centres and Community Hubs and Community Clusters. Suitably designed and located exception site dwellings and residential conversions will be positively considered where they meet evidenced local housing needs, other relevant policy requirements and , in the case of market residential conversions, a scheme provides an appropriate mechanism for the re-use and retention of buildings which are heritage assets. In order to protect the long term affordability of affordable exception dwellings, they will be subject to size restrictions and the removal of permitted development rights, as well as other appropriate conditions or legal restrictions;
2. Dwellings to house essential rural workers will be permitted if:-
  - a. there are no other existing suitable and available affordable dwellings or other buildings which could meet the need, including any recently sold or otherwise removed from the ownership of the rural enterprise; and,
  - b. in the case of a primary dwelling to serve an enterprise without existing permanent residential accommodation, relevant financial and functional tests are met and it is demonstrated that the business is viable in the long term and that the cost of the dwelling can be funded by the business. If a new dwelling is permitted and subsequently no longer required as an essential rural workers' dwelling, a financial contribution to the provision of affordable housing will be required, calculated in accordance with the current prevailing target rate and related to the floorspace of the dwelling; or,
  - c. in the case of an additional dwelling to provide further accommodation for a worker who is required to be present at the business for the majority of the time, a functional need is demonstrated and the dwelling is treated as affordable housing, including size restrictions. If a new dwelling is permitted and subsequently no longer required as an essential rural workers' dwelling, it will be made available as an affordable dwelling, unless it can be demonstrated that it would not be suitable. Where unsuitability is demonstrated, a financial contribution to the provision of affordable housing, equivalent to 50% of the difference in the value between the affordable and market dwelling will be required.
3. Such dwellings will be subject to occupancy conditions. Any existing dwellings associated with the rural enterprise may also be subject to occupancy restrictions, where appropriate. For primary and additional rural workers' dwellings permitted prior to the adoption of the Core Strategy in March 2011, where occupancy restrictions are agreed to be removed, an affordable housing contribution will be required in accordance with Policy CS11 at the current prevailing target rate and related to the floorspace of the dwelling.
4. In addition to the general criteria above, replacement dwelling houses will only be permitted where the dwelling to be replaced is a permanent structure with an established continuing residential use. Replacement dwellings should not be materially larger and must occupy the same footprint unless it can be demonstrated why this should not be the case. Where the original dwelling had

been previously extended or a larger replacement is approved, permitted development rights will normally be removed;

5. The use of existing holiday let properties as permanently occupied residential dwellings will only be supported if:
  - a. the buildings are of permanent construction and have acceptable residential amenity standards for full time occupation; and,
  - b. the dwellings are restricted as affordable housing for local people; or,
  - c. the use will preserve heritage assets that meet the criteria in Policy CS5 in relation to conversions and an affordable housing contribution is made in line with the requirements set out in Core Strategy Policy CS11.

v. MD7b – General Management of Development in the Countryside

Further to the considerations set out by Core Strategy Policy CS5:

1. Where proposals for the re-use of existing buildings require planning permission, if required in order to safeguard the character of the converted buildings and/or their setting, Permitted Development Rights will be removed from any planning permission;
2. Proposals for the replacement of buildings which contribute to the local distinctiveness, landscape character and historic environment, will be resisted unless they are in accordance with Policies MD2 and MD13. Any negative impacts associated with the potential loss of these buildings, will be weighed with the need for the replacement of damaged, substandard and inappropriate structures and the benefits of facilitating appropriate rural economic development;
3. Planning applications for agricultural development will be permitted where it can be demonstrated that the development is:
  - a. Required in connection with a viable agricultural enterprise and is of a size/ scale and type which is consistent with its required agricultural purpose and the nature of the agricultural enterprise that it is intended to serve;
  - b. Well designed and located in line with CS6 and MD2 and where possible, sited so that it is functionally and physically closely related to existing farm buildings; and,
  - c. There will be no unacceptable impacts on environmental quality and existing residential amenity.

vi. MD8 –Infrastructure Provision

Existing Infrastructure

1. Development should only take place where there is sufficient existing infrastructure capacity or where the development includes measures to address a specific capacity shortfall which it has created or which is identified in the LDF Implementation Plan or Place Plans. Where a critical infrastructure shortfall is identified, appropriate phasing will be considered in order to make development acceptable;
2. Development will be expected to demonstrate that existing operational infrastructure will be safeguarded so that its continued operation and potential expansion would not be undermined by the encroachment of incompatible uses on adjacent land;

New Strategic Infrastructure:

3. Applications for new strategic energy, transport, water management and telecommunications infrastructure will be supported in order to help deliver national priorities and locally identified requirements, where its contribution to agreed objectives outweighs the potential for adverse impacts. Particular consideration will be given to the potential for adverse impacts on:
  - i. Residential and other sensitive neighbouring land uses;
  - ii. Visual amenity;
  - iii. Landscape character and sensitivity, including impacts on sensitive skylines;
  - iv. Recognised natural and heritage assets and their setting, including the Shropshire Hills AONB (Policy MD12);
  - v. The visitor and tourism economy including long distance footpaths, cycle tracks and bridleways (Policy MD11);
  - vi. Noise, air quality, dust, odour and vibration;
  - vii. Water quality and resources;
  - viii. Impacts from traffic and transport during the construction and operation of the infrastructure development;
  - ix. Cumulative impacts.

Development proposals should clearly describe the extent and outcomes of community engagement and any community benefit package.....

vii. MD12: The Natural Environment

In accordance with Policies CS6, CS17 and through applying the guidance in the Natural Environment SPD, the conservation, enhancement and restoration of Shropshire's natural assets will be achieved by:

1. Ensuring that the social or economic benefits of development can be demonstrated to clearly outweigh the harm to natural assets where proposals are likely to have an unavoidable significant adverse effect, directly, indirectly or cumulatively, on any of the following:
  - i. the special qualities of the Shropshire Hills AONB;
  - ii. locally designated biodiversity and geological sites;
  - iii. priority species;
  - iv. priority habitats
  - v. important woodlands, trees and hedges;
  - vi. ecological networks
  - vii. geological assets;
  - viii. visual amenity;
  - ix. landscape character and local distinctiveness.In these circumstances a hierarchy of mitigation then compensation measures will be sought.
2. Encouraging 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.
3. Supporting proposals which contribute positively to the special characteristics and local distinctiveness of an area, particularly in the Shropshire Hills AONB, Nature Improvement Areas, Priority Areas for Action or areas and sites where development affects biodiversity or geodiversity interests at a landscape scale, including across administrative boundaries.

S2: Bishop’s Castle Area

Bishops Castle is identified as a Market town and Key Centre in the adopted Core Strategy. Policy S2 of the Pre-Deposit Draft SAMDev site allocations document advises that the town will provide the focus for development in this part of Shropshire, with a housing guideline of around 150 dwellings for the period 2006-2026. New housing development will be delivered through the allocation of a greenfield site (Schoolhouse Lane East - BISH013 – 40 houses) together with a windfall allowance which reflects opportunities within the town’s development boundary as shown on the Proposals Map. All development in Bishop’s Castle must have regard to the conservation targets for the River Clun catchment as set out in the Nutrient Management Plan and any agreed management strategy for the river catchment.

11. ADDITIONAL INFORMATION

List of Background Papers: Planning application reference 14/00885/OUT and associated location plan and documents
Cabinet Member (Portfolio Holder) Cllr M. Price
Local Member: Cllr Charlotte Barnes (Bishop’s Castle)
Appendices: Appendix 1 – Conditions

## APPENDIX 1

### Legal Agreement

1. Affordable housing contribution;
2. Funding for a priority junction at the intersection between Woodbatch Road and Kerry Lane.

### Planning Conditions

#### STANDARD CONDITIONS:

- 1 The development hereby permitted shall not be commenced until the Local Planning Authority has approved the following details (hereinafter referred to as the 'reserved matters'):
  - i. The siting and ground levels of the dwellings;
  - ii. The design and external appearance of the dwellings;
  - iii. Details of the materials, finishes and colours of the dwellings;
  - iv. Details of the landscaping of the site.

Reason: The application was made as an outline planning application in accordance with Article 3 of the Town and Country Planning (General Development Procedure) Order 1995 and the provisions of Section 92 of the Town and Country Planning Act 1990.

- 2 Application for the approval of the reserved matters shall be made to the Local Planning Authority within three years from the date of this permission.

Reason: In accordance with the provisions of Section 92 of the Town and Country Planning Act 1990.

- 3 The development hereby permitted shall be commenced either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

Reason: In accordance with the provisions of Section 92 of the Town and Country Planning Act 1990.

#### CONDITIONS THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES OR PRIOR TO THE OCCUPATION OF THE PROPERTIES:

- 4a. Construction of the development hereby permitted shall not be commenced until details and sizing of the proposed soakaways have been submitted to and approved in writing by the Local Planning Authority.

- b. If non permeable surfacing is used on the driveway and parking area or the driveway slopes toward the highway, the applicant shall submit for approval a drainage system to prevent water flowing onto a public highway.
- c. A contour plan of the finished road levels shall be provided to the local planning authority prior to the commencement of the development. The contour plan shall be accompanied by a confirmation that the design has fulfilled the requirements of Shropshire Council's Interim Guidance for Developers on Surface Water Management (paragraphs 7.10 to 7.12) to ensure that the development site does not contribute to surface water flooding of any area outside of the development site.

Reason: To ensure that soakaways, for the disposal of surface water drainage, are suitable for the development site to minimise the risk of surface water flooding (4a) and to ensure that no surface water runoff from the new driveway runs onto the highway (4b) and to ensure that any flows from internal road surfaces are managed acceptably on site (4c).

Notes:

- i. *Percolation tests and the sizing of the soakaways should be designed in accordance with BRE Digest 365 to cater for a 1 in 100 year return storm event plus an allowance of 30% for climate change. Full details, calculations and location of the percolation tests and the proposed soakaways should be submitted for approval. A catchpit should be provided on the upstream side of the proposed soakaways. If soakaways are not feasible, drainage calculations to limit the discharge rate from the site equivalent to a greenfield runoff rate should be submitted for approval. The attenuation drainage system should be designed so that storm events of up to 1 in 100 year + 30% for climate change will not cause flooding of any property either within the proposed development or any other in the vicinity.*
  - ii. *The applicant should consider employing measures such as the following:*
    - *Swales*
    - *Infiltration basins*
    - *Attenuation ponds*
    - *Water Butts*
    - *Rainwater harvesting system*
    - *Permeable surfacing on any new access road, driveway, parking area/ paved area*
    - *Attenuation*
    - *Greywater recycling system*
    - *Green roofs*
  - iii. *Consent is required from the service provider to connect into the foul main sewer.*
5. The proposed foul water drainage shall be installed in accordance with the Drainage and Flood Risk Assessment by D.A. Sluce & Partners Feb 2014 prior to the first use of the development hereby approved.

Reason: To ensure appropriate sewage treatment and ensure the protection of the River Clun SAC, a European protected site.

6. No development shall commence at the site until a Heritage Assessment has been submitted to and approved in writing by the local planning authority in consultation with the Local Planning Authority's Archaeology service. This shall take the form of a desk based assessment accompanied by the results of walk over and a geophysical surveys of the site. If the results of the heritage survey indicate that further survey work is required before the development commences then such works shall be undertaken in accordance with the recommendations of the heritage survey.

Reason: To allow appropriate opportunities for inspecting any archaeological remains present within the site prior to the commencement of the development.

7. 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 development shall be carried out in accordance with the approved details and thereafter retained for the lifetime of the development. The submitted scheme shall be designed to take into account the advice on lighting set out in the Bat Conservation Trust booklet Bats and Lighting in the UK.

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

- 8a. Within the first planting and seeding season following the completion of the dwellings hereby permitted, a scheme of new tree and hedge planting shall be implemented within and bordering the grounds of the dwellings, in accordance with full details to be submitted to and approved by the Local Planning Authority.
- b. Any new trees and hedges planted as part of the required planting scheme which, during a period of five years following implementation of the planting scheme, are removed without the prior written approval of the Local Planning Authority or die, become seriously diseased or are damaged, shall be replaced during the first available planting season with others of such species and size as the Authority may specify.

Reason: To ensure that new planting is undertaken, in order to enhance the appearance and privacy of the site (and in accordance with Policy CS6 of the Shropshire Core Strategy)(10a). To ensure that the approved planting scheme is effective and in accordance with Policy CS6 of the Shropshire Core Strategy (11b).

9. Existing shrubs and hedges within and around the margins of the site shall be retained and protected from damage for the duration of the construction works. No such shrubs or hedges shall be removed unless this has first been approved in writing by the Local Planning Authority.

Reason: To ensure that the screening and amenity effect of existing shrubs and hedges around the margin of the site is protected in the interests of residential amenities.

Notes:

- i. All species of bats found in the UK are European Protected Species under the Habitats Directive 1992, the Conservation of Species and Habitats Regulations 2010 and the Wildlife & Countryside Act 1981 (as amended). If a live bat should be discovered on site at any point during the development then work must halt and Natural England should be contacted for advice. The single in-field ash tree has some potential for bat roosts. If this tree will be removed, it should be inspected for bat roosts prior to felling or works.*
- ii. The active nests of all wild birds are protected under the Wildlife & Countryside Act 1981 (as amended); an active nest is one being built, containing eggs or chicks, or on which fledged chicks are still dependent. All clearance, conversion and demolition work should if possible be carried out outside the bird nesting season, which runs from March to September inclusive. If it is necessary for work to commence in the nesting season then a pre-commencement inspection of the vegetation and buildings for active birds' nests should be carried out. If vegetation cannot be clearly seen to be clear of birds' nests then an experienced ecologist should be called in to carry out the check. Only if there are no active nests present should work be allowed to commence.*
- iii. Badgers, the setts and the access to the sett are expressly protected from killing, injury, taking, disturbance of the sett, obstruction of the sett etc by the Protection of Badgers Act 1992. No works should occur within 30m of a badger sett without a Badger Disturbance Licence from Natural England in order to ensure the protection of badgers which are legally protected under the Protection of Badgers Act (1992). All known Badger setts must be subject to an inspection by an experienced ecologist immediately prior to the commencement of works on the site.*
- iv. Where possible trenches should be excavated and closed in the same day to prevent any wildlife becoming trapped. If it is necessary to leave a trench open overnight then it should be sealed with a closefitting plywood cover or a means of escape should be provided in the form of a shallow sloping earth ramp, sloped board or plank. Any open pipework should be capped overnight. All open trenches and pipework should be inspected at the start of each working day to ensure no animal is trapped.*
- v. The active nests of all wild birds are protected under the Wildlife & Countryside Act 1981 (As amended). An active nest is one being built, containing eggs or chicks, or on which fledged chicks are still dependent. All clearance in association with the approved scheme shall be carried out outside of the bird nesting season which runs from March to September inclusive. If it is necessary for work to commence in the nesting season then a pre-commencement inspection of the vegetation and buildings for active bird nests should be carried out. If vegetation cannot be clearly seen to be clear of bird's nests then an experienced ecologist should be called in to carry out the check. Only if there are no active nests present should work be allowed to commence.*

**CONDITIONS THAT ARE RELEVANT FOR THE LIFETIME OF THE DEVELOPMENT:**

10. The outline permission hereby approved shall be for a maximum of nine dwellings, as confirmed in the email from Les Stephan Partnership to Shropshire Council dated 15<sup>th</sup> May 2014.

Reason: To ensure appropriate sewage treatment and ensure the protection of the River Clun SAC, a European protected site.

11. The dwellings hereby permitted shall consist of no more than two floors of living accommodation.

Reason: In order to be in keeping with the character of the existing nearby dwellings and to protect the amenities of neighbouring residents (and in accordance with Policy CS6 of the Shropshire Core Strategy).

12. An independent 32 amp radial circuit isolation switch shall be supplied at each property for the purpose of future proofing the installation of an electric vehicle charging point. The charging point must comply with BS7671. A standard 3 pin, 13 amp external socket will be required. The socket shall comply with BS1363, and shall be provided with a locking weatherproof cover if located externally to the building.

Reason: Paragraph 35 of the NPPF states; "Plans should protect and exploit opportunities for the use of sustainable transport modes for the movement of goods and people. Therefore, developments should be located and designed where practical to, amongst other things, incorporate facilities for charging plug-in and other ultra-low emission vehicles."

**Statement of Compliance with Article 31 of the Town and Country Development Management Procedure Order 2012**

The authority worked with the applicant in a positive and pro-active manner in order to seek solutions to problems arising in the processing of the planning application. This is in accordance with the advice of the Governments Chief Planning Officer to work with applicants in the context of the NPPF towards positive outcomes. Further information has been provided by the applicant on indicative layout and highway matters. The submitted scheme has allowed the identified planning issues raised by the proposals to be satisfactorily addressed, subject to the recommended planning conditions.

**Regulation Assessment (HRA) Screening Matrix**

Application name and reference number:

14/00885/OUT

Outline application for mixed residential development and formation of a vehicular and pedestrian access

Proposed Development Land South Of Woodbatch Road, Bishops Castle, Shropshire

Date of completion for the HRA screening matrix:

14<sup>th</sup> April 2014

HRA screening matrix completed by:

Alison Slade  
Planning Ecologist  
Shropshire Council

01743 252578

[alison.slade@shropshire.gov.uk](mailto:alison.slade@shropshire.gov.uk)**Table 1: Details of project or plan**

Name of plan or project	14/00885/OUT  Outline application for mixed residential development and formation of a vehicular and pedestrian access  Proposed Development Land South Of Woodbatch Road Bishops Castle
Name and description of Natura 2000 site	River Clun SAC (14.93ha) supports a significant population of Freshwater Pearl Mussel <i>Margaritifera margaritifera</i> . The River Clun SAC is currently failing its water quality targets particularly relating to ortho-phosphates. The current phosphate target for the river and particularly at the SAC is 0.02mg/l. Shropshire Council is working closely with Natural England and Environment Agency on developments within the Clun catchment. Shropshire Council formally consults Natural England on any planning application within this area. Annex II Species that are a primary reason for selection of site: <ul style="list-style-type: none"> <li>Freshwater pearl mussel <i>Margaritifera margaritifera</i></li> </ul>
Description of the plan or project	The Amended Illustrative Layout Plan Dwg03 Rev A dated Feb 2014 indicates 9 detached dwellings. This is revised from the original proposal for 10 dwellings.  The Drainage and Flood Risk Assessment by D.A. Sluce & Partners Feb 2014 states that surface water will be collected for attenuation and storage on site prior to controlled discharge to the water course to the SE of the site at a rate limited to 5 litres per second per hectare.  The intention is to discharge foul drainage to the existing sewerage network via a gravity connection (with details to be confirmed).  No effect pathways have been identified resulting from this development as proposed, which would have the potential to impact on the River Clun SAC.
Is the project or plan directly connected with or necessary to the management of the site (provide details)?	No

Are there any other projects or plans that together with the project or plan being assessed could affect the site (provide details)?	No
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**Statement**

An interim 'Guidance note for developers on requirements for waste water management for any development in the Clun Catchment' (see attached) has been published by Shropshire Council, based on information and discussions with Natural England and the Environment Agency who have subsequently endorsed it. This guidance will be followed by the planning authority when making planning decisions until the Nutrient Management Plan for the Clun Catchment has been finalised by NE and the EA.

**CONNECTION TO MAINS SEWAGE TREATMENT WORKS**

It is proposed that the development will connect to Bishops Castle Sewage Treatment Works.

According to the Interim Guidance Note:

4.2 The two largest treatment plants within the catchment, Bishop's Castle and Bucknell, currently have phosphate stripping and in terms of individual houses make the smallest contribution to the phosphate in the river of all works. They both have potential catchment transfer schemes that would remove any impact they have within the catchment. Further if catchment transfer is not possible then both will be able to be fitted with a more rigorous phosphate treatment if required within the next two rounds of the Five Year Asset Management Planning (AMP) process. **Any development of less than 10 houses, serviced by these two treatment works, is considered to be unlikely to have a significant effect on the features of interest as the impact will be picked up by actions identified in the NMP.** In the interim period, development connecting to mains sewer leading to Bucknell or Bishop's Castle sewage treatment works can be put forward for a planning decision. **Development of 10 houses or more will still have to show how the contribution to the treatment works will affect the site in the interim between now and completion of any upgrade.**

The amended proposals consist of 9 dwellings. In view of the above, and providing the development is carried out according to the details submitted, the proposal will not lead to significantly increased concentrations of nutrients within the River Clun. Hence there should be no adverse effect on the integrity of the River Clun SAC through this development.

In view of the above, and providing the development is carried out according to the details submitted and the following conditions are attached to any decision notice, the proposal will not lead to significantly increased concentrations of nutrients within the River Clun. Hence there should be no adverse effect on the integrity of the River Clun SAC through this development, either alone or in combination with other projects.

**Conditions:**

1. The proposed foul water drainage shall be installed in accordance with the Drainage and Flood Risk Assessment by D.A. Sluce & Partners Feb 2014 prior to the first use of the development hereby approved.

**Reason: To ensure appropriate sewage treatment and ensure the protection of the River Clun SAC, a European protected site.**

2. The outline permission hereby approved is for a maximum of nine dwellings.

**Reason: To ensure appropriate sewage treatment and ensure the protection of the River Clun SAC, a European protected site.**

**The Significance test**

It was concluded that the proposed works in application No 14/00885/OUT:

Outline application for mixed residential development and formation of a vehicular and pedestrian access at Proposed Development Land South Of Woodbatch Road Bishops Castle

Will not have a likely significant effect on the River Clun SAC (give reason). An Appropriate Assessment is not required.

**The Integrity test**

It was concluded that the proposed works in application No 14/00885/OUT:

Outline application for mixed residential development and formation of a vehicular and pedestrian access at Proposed Development Land South Of Woodbatch Road Bishops Castle

Will not adversely affect the integrity of the European Designated Site at the River Clun SAC providing waste water from the development is treated as conditioned and detailed in the submitted documents.

**Conclusions**

There is no legal barrier under the Habitat Regulation Assessment process to planning permission being granted in this case.

**Guidance on completing the HRA Screening Matrix****The Habitat Regulation Assessment process**

Essentially, there are two 'tests' incorporated into the procedures of Regulation 61 of the Habitats Regulations, one known as the 'significance test' and the other known as the 'integrity test'. If, taking into account scientific data, we conclude there will be no likely significant effect on the European Site from the development, the 'integrity test' need not be considered. However, if significant effects cannot be counted out, then the Integrity Test must be researched. A competent authority (such as a Local Planning Authority) may legally grant a permission only if both tests can be passed.

The first test (the significance test) is addressed by Regulation 61, part 1:

61. (1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for a plan or project which –
- (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and
  - (b) is not directly connected with or necessary to the management of that site, must make an appropriate assessment of the implications for that site in view of that site's conservation objectives.

The second test (the integrity test) is addressed by Regulation 61, part 5:

61. (5) In light of the conclusions of the assessment, and subject to regulation 62 (consideration of overriding public interest), the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

In this context 'likely' means "probably", or "it well might happen", not merely that it is a fanciful possibility. 'Significant' means not trivial or inconsequential but an effect that is noteworthy – Natural England guidance on The Habitat Regulation Assessment of Local Development Documents (Revised Draft 2009).

**Habitat Regulation Assessment Outcomes**

**A Local Planning Authority can only legally grant planning permission if it is established that the proposed plan or project will not adversely affect the integrity of the European Site.**

**If it is not possible to establish this beyond reasonable scientific doubt then planning permission cannot legally be granted unless it is satisfied that, there being no alternative solutions, the project must be carried out for imperative reasons of over-riding public interest, and the Secretary of State has been notified in accordance with section 62 of the Conservation of Habitats and Species Regulations 2010. The latter measure is only to be used in extreme cases and with full justification and compensation measures, which must be reported to the European Commission.**

**Duty of the Local Planning Authority**

It is the duty of the planning case officer, the committee considering the application and the Local Planning Authority as a whole to fully engage with the Habitats Regulation Assessment process, to have regard to the response of Natural England and to determine, beyond reasonable scientific doubt, the outcome of the 'significance' test and the 'integrity' test before making a planning decision.