

## Development Management Report

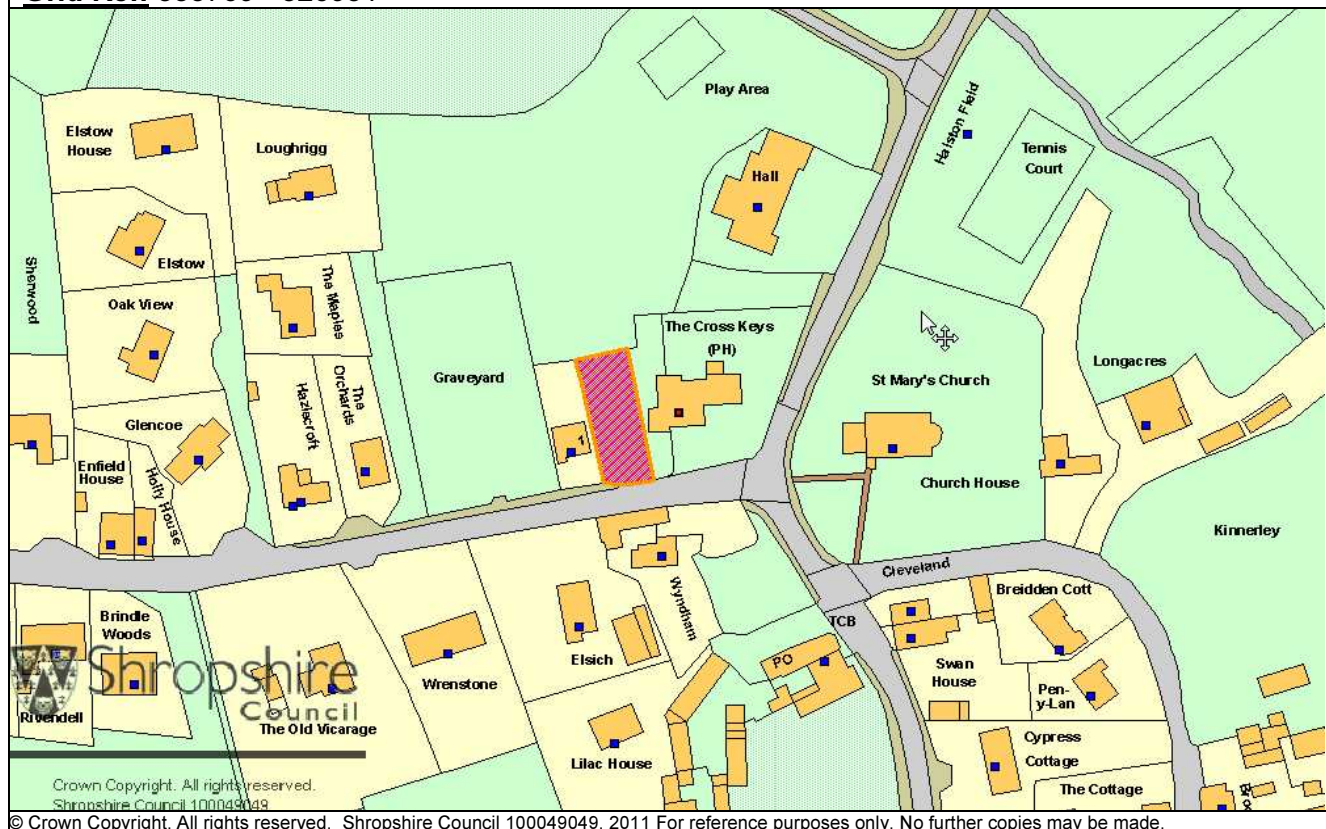
Responsible Officer: Tim Rogers

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> 14/02864/FUL   | <b>Parish:</b> Kinnerley   |
| <b>Proposal:</b> Erection of 1No dwelling with detached garage (revised scheme) |  |
| <b>Site Address:</b> Cross Keys Inn Kinnerley Oswestry SY10 8DB                 |  |
| <b>Applicant:</b> Mr Malcolm Guest  |  |
| <b>Case Officer:</b> Joe Crook  | <b>email:</b> <a href="mailto:planningdmc@shropshire.gov.uk">planningdmc@shropshire.gov.uk</a> |

**Grid Ref:** 333769 - 320951



**Recommendation:- Grant Permission subject to the applicants entering into a S106 agreement to provide an affordable housing contribution and subject to the conditions set out in Appendix 1.**

## REPORT

### 1.0 THE PROPOSAL

- 1.1 The proposed development is for the erection of 1 dwelling with a detached garage (revised scheme following submission for 4 dwellings under 13/05139/FUL)

### 2.0 SITE LOCATION/DESCRIPTION

- 2.1 The Cross Keys Inn Public House is located within the Village of Kinnerley. Kinnerley lies to the south of Oswestry and North West of Nesscliffe. The Public House is a Grade II listed detached building of brick and slate construction which is located within a prominent location within the main core of the village, opposite the Church and close to the main shop in Kinnerley. There is a tarmac/gravelled parking area to the front and east side of the building with a grassed area to the west.

### 3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

- 3.1 Objections have been received from Kinnerley Parish Council and following liaison with the Local Member and the Committee Chair it has been requested that the item be determined by the Northern Planning Committee due to the nature of the issues raised.

### 4.0 Community Representations

- 4.1 - Consultee Comments

- 4.1.1 **Kinnerley Parish Council objects** to this planning application.

Since the Parish Council agreed comments for the previous planning application the Cross Keys Inn has been designated as a Grade II listed public house and registered as an asset of Community Value.

Also, detailed research has shown that Kinnerley was a Saxon village with houses grouped around a village green, and this pattern is reflected in today's village layout, including the green space next to the Cross Keys, which has been used for recreational purposes for many centuries.

The council have agreed that this green space and the historic environment of the Cross Keys and must be protected, and that this proposed development would adversely affect the character of this Grade II listed public house.

This is not sustainable development i.e. one that is without adverse impacts. Sustainable is defined in the foreword of the NPPF document as being 'positive growth- making economic, environmental and social progress for this and future generations'. It talks about sustainable development being a change for the better. Also that 'Planning must be a creative exercise in finding ways to enhance and

improve places in which we live our lives’

The importance and significance of the pub, set in the heart of the village, is paramount and is recognised as a key community amenity. Any development that risks the viability of the pub must be deemed an adverse impact and thus any presumption in favour of development cannot then apply. We believe this development will effectively make the pub unviable. The garden allows external space for public house activities in a rural village setting. A full evaluation as to the viability must be made and is material to this decision.

In total the KPNP envisaged 54 additional houses across the Parish, and a further 18 houses are planned for a windfall brownfield site in Kinnerley village, along with 10 already being built at Maesercroft.

The cumulative effect of all these houses means that Kinnerley Parish has already made more than a fair contribution towards meeting housing demand through the measured considerations given when drawing up the KPNP following extensive public consultation. Accordingly it is felt that there is not a need for any additional houses, including this one next to the Cross Keys.

- 4.1.2 **English Heritage** – The application should be determined in accordance with local specialist conservation advice, and relevant conditions relating to external materials, details and finishes including boundary treatments should be attached.
- 4.1.3 **Conservation** – No objections to the scheme subject to conditions, following amendments to position the garage further back into the site, alter the front first floor window above the entrance, and adjust the eaves/verge dental course etc.
- 4.1.4 **Highways** – No objections to the scheme subject to amendments to include demonstration of the proposed visibility and further removal of vegetation, as well as the inclusion of the 1.5 metre footway to the front of the site.
- 4.1.5 **Drainage** – Drainage details can be conditioned.
- 4.1.6 **Archaeology** – Recommend condition for written scheme of investigation given the archaeological potential of the site.
- 4.1.7 **Affordable Housing** – The affordable housing contribution proforma accompanying the application indicates the correct level of contribution and therefore satisfies the provisions of the SPD Type and Affordability of Housing.
- 4.1.8 **Public Protection** – Given the position of the dwelling adjacent to the public house there is potential for noise though it is noted that facades generally facing the public house have no windows into habitable rooms which will reduce any noise disturbance. It is recommended that double glazing is installed to a higher than normal standard of noise attenuation to ensure that disturbance of residents, particularly in night time hours i.e. after 11pm. The applicant also owns the public house and is advised that building residential properties close to the public house may restrict operations in future and could result in application for later licensing hours or music events requiring a TEN to be conditioned or objected against. Also recommend informative in respect of electric vehicle charging.

4.1.9 **Trees** - No objection to the proposed development. The tree protection details shown on the submitted Tree Constraints Plan that are relevant to this plot must be implemented. It is recommended that an appropriately worded condition be attached to any grant of planning permission.

4.1.10 **Ecology** – No objections subject to conditions and informatives. Advise that any works to the Public House may mean further surveys are required.

4.2 - Public Comments

4.2.1 The CPRE have objected to scheme and made the following comments: Kinnerley is a unique Saxon Village with houses grouped around a village green. There are few such early cores surviving. It should not be destroyed by development that will adversely affect the character of the Grade II listed public house. The most important facet of any village is its core, and here the emphasis should be on green spaces which can be enjoyed by visitor and local alike. The site proposed is such a green space. Views outwards through green spaces and views inwards into the green core of the village are of the utmost importance for preservation if the village is to retain its identity. In addition green spaces in this village are the very basis of its origin reflecting the former enclosed green. The design is totally unsuitable for its location in terms of bulk, scale and massing. Not only will this building be alien to this ancient village, whose core is clearly Georgian and Victorian in regard of the external elevations, it will dwarf the house adjacent on the west side, and by virtue of its mock Georgian elevation treatment, as well as its bulk and massing, will create an unfortunate duality with the Cross Keys. Far from enhancing the Cross Keys it will compete in style form and scale, thus devaluing the quality of the Cross Keys as an important visual element. By removing the green sward which is the present beer garden it will not only render the use of the building as a public house unviable, (see explanation below) it will remove the essential green setting to the Cross Keys and thus the general green persona of the core which is fundamental to retain if its identity is to be retained. In addition the plot is long and narrow and is surely unsuitable creating a narrow frontage which is incompatible with the style of building being suggested. The site is not suitable for ANY development as the Cross Keys, now a listed building needs to retain its green setting and curtilage of the listed building undisturbed.

The following NPPF policies apply:

126. Local planning authorities should recognise that heritage assets are an irreplaceable resource and conserve them in a manner appropriate to their significance. In developing this strategy, local planning authorities should take into account:

- the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;

129. Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this assessment into account when considering the impact of a proposal on a heritage asset, to

avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal.

131. In determining planning applications, local planning authorities should take account of:

- the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- the desirability of new development making a positive contribution to local character and distinctiveness.

The proposed development makes no contribution to local character and distinctiveness and would reduce the economic viability of the Cross Keys for the reasons set out below.

132. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting.

133. Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent.

139. Non-designated heritage assets of archaeological interest that are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets.

Here the site is known to be part of the Saxon village and may have been associated with the Saxon Minster Church. It is thus vital that it should remain undisturbed in terms of valuable below ground deposits.

With reference to policy 131 above the following is particularly relevant:

Protecting the viability of the Community Asset

The application would destroy the ability of the public house to function, because there needs to be a buffer zone between the actual building and the surrounding properties in terms of noise levels and activity. Houses in such close proximity would veto the use of the external space for the usual public house activity and would make the operation of live music a total impossibility. Loss of the beer garden would render any large scale use in the summer which required a marquee, surely required for weddings, completely out of the question.

The policies set out above are also reflected in the Planning Practice Guidance What is the setting of a heritage asset and how should it be taken into account, which states that a thorough assessment of the impact on setting needs to take into account, and be proportionate to, the significance of the heritage asset under consideration and the degree to which proposed changes enhance or detract from that significance and the ability to appreciate it.

*17 further objections were received which commented as follows:*

- The beer garden is recognised by Shropshire Council as part of the designated 'Asset of Community Value'.
- The setting, attractiveness and viability of the Cross Keys would be seriously degraded by the proposal.
- The adverse impacts of the scheme would clearly outweigh the benefits given the loss of the beer garden and the impact on the Cross Keys.

- The importance of the asset to the village has been identified and if it is to be successful it will require the retention of the garden area.
- The beer garden is set in the centre of the small attractive village and should not be compromised.
- A single dwelling will have no positive impact on the vigour of the village centre.
- The site is not underused.
- There is no link between the proposal and the retention of the public house as part of the application and the profits will not be required to be reinvested.
- The NPPF makes clear the importance of retaining local community facilities. Development that does not comply with the NPPF cannot be considered to be sustainable and there is no presumption in favour.
- Demonstrable harm is created by removing a necessary part of the community facility.
- The proximity of a dwelling to the public house further puts it at risk due to noise issues etc.
- It is questioned if the design adequately reflects the character of the listed building. The garage position is unfortunate and the design lacks architectural flair given its prominent position. There should be concessions with regard to roof pitch, first floor string course, window lintols and ledges in order to echo the feature of the adjacent building.

#### 4.2.2 Support/General comments:

- Difficult to oppose the significantly reduced scheme and as the proposal is for a single, relatively modest dwelling would have no objections. However, would object if this will initiate more development at the site or would curtail the maintenance in trading or the character of the Cross Keys.
- The community should not buy the pub and the building needs a lot of money spending on it.

## 5.0 THE MAIN ISSUES

Principle of development  
 Sustainable Development  
 Impact on the setting of the listed buildings and the historic core of Kinnerley  
 Design, scale and character  
 Highways  
 Impact on neighbouring amenities  
 Drainage  
 Ecology  
 Public Protection  
 Affordable Housing  
 Other issues

## 6.0 OFFICER APPRAISAL

### 6.1 Principle of development

6.1.1 Under section 38(6) of the Planning and Compulsory Purchase Act 2004, all planning applications must be determined in accordance with the adopted

development plan unless material considerations indicate otherwise. Since the adoption of the Council's Core Strategy the National Planning Policy Framework (NPPF) has been published and is a material consideration that needs to be given weight. Paragraph 12 of the NPPF states that *'Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise'*.

6.1.2 With regards to housing development paragraph 49 of the NPPF states that:

*'Housing applications should be considered in the context of the presumption in favour of sustainable development'*.

and that

*'Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.'*

6.1.3 Shropshire Council has an adopted Core Strategy and CS4 outlines that housing development that is of a scale that is appropriate to the settlement will be allowed in villages in rural areas that are identified as Community Hubs and Clusters within the SAMDev DPD. The SAMDev DPD has been submitted to the Planning Inspectorate and is therefore at examination stage and paragraph 216 of the NPPF states that decision-takers should give weight to the relevant policies in emerging plans according to:

- *the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);*
- *the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given);*
- and
- *the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).*

6.1.4 The Council's view is that the SAMDev Plan has reached a point, being settlement and site specific and having undergone very substantial public consultation, where some degree of weight can be attached.

6.1.5 Kinnerley is part of a Community Cluster within this area, also made up of Maesbrook, Dovaston and Knockin Heath and this has an overall target of 50 dwellings for the plan period. However, Kinnerley has undertaken a Community Led Plan which has been endorsed by Shropshire Council's cabinet and is now adopted for development management purposes. Specific site allocations have been proposed within the Neighbourhood plan and this includes two allocated sites for development in Kinnerley, with a total housing target of 23 dwellings on these sites whilst retaining a development boundary. The Community Led Plan acknowledged the requirement for more housing whilst also identifying that Kinnerley village is by definition a 'Community Hub' given the level of services and facilities available including a shop, pub, school, post office, Parish Hall, play areas and bus route. However it also specified that approximately half of the required housing for the

cluster should be sited here, and that this is represented within the allocated sites for 23 dwellings. It was also specified within the community questionnaire that the housing should not be on a single large site but on a mix of sites within the area. The site proposed for development is within the designated development boundary but was not included as a site for consideration during the assessment of allocations for the Kinnerley Neighbourhood Plan. It is also noted that smaller dwellings in the form of 1-3 bed houses were largely preferred as opposed to 4-5 bed houses.

- 6.1.6 Saved policy H5 of the Oswestry Local Plan is also a relevant local policy in that it supports sustainable housing developments in the larger areas, such as Kinnerley, where a variety of services and facilities are available. This allows suitable windfall sites within development boundaries.
- 6.1.7 The Parish Council have objected to the proposed scheme on the basis that the allocation of housing required for Kinnerley amounted to 54 additional dwellings across the Parish, with an additional 18 house planned for a windfall brownfield site in the village and 10 already being built. Housing was allocated during the drawing up of the Community Led Plan (KPNP) and therefore additional housing sites are not considered to be needed.
- 6.1.8 However, whilst the above is acknowledged, the current policy position with regard to housing development is such that, whilst local policies are no longer out of date given that the Council has identified sufficient land to address the NPPF 5 year housing land supply requirements, full weight cannot be given to the SAMDev given it has not yet been adopted and is at examination stage. Sustainable sites for housing where any adverse impacts do not significantly and demonstrably outweigh the benefits of the development will still have a strong presumption in favour of permission under the NPPF, as the 5 year housing supply is a minimum requirement and the NPPF aim of significantly boosting housing supply remains a material consideration. In this regard, applications should be approved unless any adverse impacts would significantly and demonstrably outweigh the benefits of the scheme and the boosting of new housing supply. The consideration of sustainability is still relevant in regard to the determination of the application.
- 6.1.9 The applicant has confirmed that they are willing to enter into a S106 agreement to secure the relevant Affordable Housing Contribution, as required by Policy CS11 and the Housing SPD, and the development will also be liable for a Community Infrastructure levy.

## 6.2 **Sustainable Development**

- 6.2.1 A number of objections, including from the Parish Council, have commented that the development is not sustainable as it will have an adverse impact on its surrounds and will not be an enhancement to the area. It has also been commented that demonstrable harm can be identified by the loss of the community facility and the presumption cannot therefore be in favour. However, the development is evidently located within a sustainable location with regards to its close proximity to an array of services and facilities and this has been acknowledged in some of the responses received with respect to the application. This is also identified within the Kinnerley Parish Plan which references the level of services and facilities present within the centre of Kinnerley would typically



represent that of a Community Hub under policy CS4 of the Shropshire Core Strategy. The location of the development within the development boundary and the main core of Kinnerley means its siting is close to these services and its siting would minimise the requirement for car use and would be easily accessible. Furthermore, officers consider that it would be read within the context of the existing development within the village and would not be an isolated or sporadic form of development.

6.2.2 Whilst objectors have commented that the adverse impacts of the development significantly and demonstrably outweigh the benefits of the proposed single dwelling, Officers are not of the same view. The loss of the garden area represents only a part of the public house and its surrounds, which has sufficient room to accommodate an alternative garden area where required. Furthermore, the overall impact on the character of the area and the listed structures within the immediate vicinity is not considered to be substantial, with the development not representing a cramped or contrived form of development, and this will be discussed further below.

6.2.3 On the basis of the above it is considered that the principle of the development is acceptable in accordance with saved policy H5 of the Oswestry Local Plan, policy CS4 of the Shropshire Core Strategy and the National Planning Policy Framework.

### 6.3 **Impact on the setting of the listed buildings and historic core of Kinnerley**

6.3.1 A number of concerns have been received within the objections to the scheme, most notably from the CPRE, relating to the impact of the development on the Grade II listed Cross Keys and historic core of the settlement of Kinnerley. The Parish Council have objected with reference to the impact on the Grade II listed public house, and the overall impact on the historic core of Kinnerley, a Saxon village with houses grouped around a village green, with this pattern still reflected in the village layout including the green space next to the Cross Keys, which has been used for recreational purposes for many centuries. These comments have been reflected within the comments of the CPRE who have made reference to the Saxon village core and the importance of retaining this facet of the village and retaining existing green spaces such as the beer garden, which have view inwards from the village green and outwards onto this green area. The comments from the CPRE also refer to the guidance within the NPPF seeking to protect and enhance heritage assets, and that Local Authorities should fully take into account the impact of development upon the heritage asset and ensure this is not detrimental. Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent.

6.3.2 With regard to the listed buildings, the balance of the consideration has to therefore be on the level of impact of the development on these heritage assets. The impact with regard to the Grade II\* listed St Mary's Church is considered to be minimised now that the scheme proposes a single dwelling on the western side of the Cross Keys, and not adjacent to the church on the eastern side, with minimal impact on the setting of this heritage asset given the location of the development. The Cross Keys itself has been listed since the previous application and evidently the proximity of the proposal means consideration has to be given to the impact of the development on the heritage asset in this regard.

6.3.3 Paragraph 128 of the National Planning Policy Framework states that local

planning authorities should require the applicant to describe the significance of any heritage assets potentially affected and any contribution made to their setting. The level of detail of the submission should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. The applicant has included a heritage assessment within their design and access statement which has accessed the relevant historic environment record and has assessed the level of impact of the development. Whilst it is acknowledged that the submitted information was written prior to the listing of the Cross Keys (which was confirmed following the submission of this application), and in any case there has been appropriate assessment of the impact of the development on the Cross Keys within the Heritage Impact Assessment, which has been considered by both English Heritage and the Conservation department with no objections received in this regard.

6.3.4 Whilst the designation of the Cross Keys as a Grade II listed building is acknowledged, the building is unaffected by the proposed development in terms of its cruck frame and historic fabric, and the position of the dwelling infilling between the Cross Keys and the existing relatively modern detached dwelling to the west, in line with the frontage of both these buildings, means the new property is not overly prominent in its location and will not be of significant detriment to the setting of the Cross Keys. The Cross Keys will be unaffected in its central position within the site and as the visual focal point. The objections to the scheme have commented that the proposal will have a detrimental impact on the setting of the building, and that the impact would be substantial and therefore not in line with the NPPF, but there have been no objections from English Heritage or the Conservation Officer in this regard, with the Conservation Officer confirming in the response that the overall impact is considered to be minor and as such have not objected to the scheme as proposed in principle. As noted below, the overall design and scale are considered to be sensitive to the existing buildings and setting of the site, and designed such that there are no objections from the Conservation Officer following some amendments to the details. As highlighted above, the consideration for the authority has to be whether the development proposed represents substantial harm to the heritage asset and, based on the above, this is not considered to be the case. Evidently there is a need to consider the impact of the development against the wider benefits of sustainable housing development at a time when additional housing supply is crucial within Shropshire, and with no objections to the scheme from English Heritage or the Conservation department it is considered that any harm to the designated asset is minimal. Officers therefore consider that the balance falls in favour of the benefits of the scheme being given greater weight than the limited harm to the heritage asset.

6.3.5 The comments with regard to the open garden area upon which the development is proposed are also acknowledged, and the impact on the overall setting of the historic Saxon core of Kinnerley. However, this is not a designated Conservation Area, and the proposal itself will be outside of the main green space to the core of the village, and its position between two existing buildings means it will not be on an isolated plot of space and will not be overly prominent within the core of Kinnerley. Whilst the comments relating to the loss of the green space surrounding the Cross Keys are noted, this is not considered to be a reason for refusal of the scheme in itself given that the development is not considered to be cramped or contrived or to be too close to the Cross Keys and thus is not considered to be

detrimental to its setting. On balance the scheme is considered is not considered to have an adverse impact on the character or setting of the listed Cross Keys or St Mary's Church, and is not considered to be detrimental to the character of the surrounding area, in accordance with policies CS6 and CS17 of the Shropshire Core Strategy as well as the NPPF.

#### 6.4 **Design, scale and character**

6.4.1 Comments have been made by objectors relating to the design being inappropriate. The comments refer to the garage location being unsuitable, the scale and massing of the dwelling being detrimental to the adjacent Cross Keys as well as the dwelling to the west, creating a duality with the Cross Keys and competing with this building in style, form and scale. Furthermore it has been commented that there is a lack of architectural detailing relating to windows, string course and roof pitch.

6.4.2 With regard to these points it should first be noted that following amendments to ensure a plain verge and dentil corballing detail to eaves, along with the garage being moved back further within the site and a large front first floor window above the entrance, no objections have been received from the Conservation Officer subject to appropriate conditions being attached should permission be granted. The design of the proposed dwelling is considered to have taken into account the comments of the Conservation Officer from the previous refused scheme and adapted the design of the dwelling in accordance with these comments. It is considered that the subtle detailing of the dwelling to include the above referenced corballing, detailed timber fenestration, bay window to the front elevation, plinth, chimney to the side as well as an overhang to the entrance with decorative edging provide architectural detailing and ensure the dwelling is not a bland 'off the peg' design. Subject to appropriate materials, details of which will be conditioned along with joinery and details of heads and cills, the scheme is considered to be of high quality and is considered of an appropriate design.

6.4.3 Reference is made to the scale, style and form of the dwelling creating a duality with the Cross Keys and competing with this building. However, the proposed scheme has been altered since the previous refusal to ensure it does not compete with the Cross Keys. The introduction of a front gable adjacent to the set back entrance section is considered to provide a simple but visually interesting frontage whilst not mimicking the hipped roof of the Cross Keys as was previously proposed on the refused application for four dwellings at the site. Furthermore, the relatively limited width of the frontage allows for the Cross Keys to retain its visual dominance and with the garage between the dwelling and the Cross Keys (set back into the site following amendment) allows for an appropriate distance to be achieved which reduces any duality between the buildings. The layout of the site is largely dictated by the existing built development and the position of the dwelling as proposed is considered appropriately balanced as an infill plot. As such it is considered that the design, scale and character of the proposed dwelling is acceptable and in accordance with policies CS6 and CS17 in this regard.

#### 6.5 **Highways**

6.5.1 Following consultation with the Highways Officer there has been no objection to the scheme in principle. The plans have been amended to include the necessary visibility splays and the red line extended to include this, with the inclusion of the 1.5 metre footway to the front of the site. This will be conditioned to be retained and

maintained.

## 6.6 **Impact on neighbouring amenities**

6.6.1 The dwelling would sit between the public house and the dwelling to the west. Whilst there is evidently some impact on the adjacent dwelling this is considered to be minimal in terms of sunlight given the suns position generally rising and towards its highest point when facing the side of the proposed properties and that existing. The sun will then fall on the opposite side of the properties. In terms of privacy the dwelling will not be further forward than the existing dwelling adjacent to the west and will have windows only facing directly to the rear and front of the site other than for a bathroom, and this will be obscure glazed. As such it is considered that there will be minimal adverse impact on the amenities of surrounding neighbouring properties.

## 6.7 **Drainage**

6.7.1 The Drainage Engineer confirmed that conditions and informatives could be attached with regard to surface water drainage and connecting to the foul water mains drainage.

## 6.8 **Ecology**

6.8.1 Following discussion with the Ecologist it was confirmed that the details submitted do not vary from the previous refusal application in ecological terms (13/05139/FUL), with no works proposed to the public house, and therefore the same conditions and informatives could be attached as previously advised.

## 6.9 **Public Protection**

6.9.1 A number of issues have been raised relating to the impact of noise on the dwelling proposed from the Public House. The Public Protection Officer has commented that the proximity of the dwellings to the public house means there will be some potential noise from the public house which has a license to open until 12:30 Friday and Saturdays. It is therefore recommended that double glazing to a higher standard of noise attenuation than normal is installed, and submission of joinery details will be required by condition. It is also noted that the proximity of the houses may mean future restrictions or issues in terms of licensing hours or music events. Whilst this is acknowledged it is not considered to be a reason for refusal of the scheme and can be adequately controlled through public protection and licensing requirements for public houses.

6.9.2 It is recommended to include an informative regarding charging point installation for low emission vehicles, but this will be included as an informative in this case.

## 6.10 **Affordable Housing**

6.10.1 The affordable housing officer has confirmed that the contribution proforma accompanying the application indicates the correct level of contribution and this would be subject to the associated Section 106 legal agreement.

## 6.11 **Trees**

6.11.1 The Trees Officer has confirmed no objections to the scheme subject to a condition relating to further details being submitted for tree protection, maintenance and cutting of the trees, as well as service line routing within the site.

## 6.12 **Other Issues**

- 6.12.1 The Cross Keys has been registered as an asset of community value since the previous application. Whilst this is acknowledged, the main impact of this is that the registration of the property as a asset of community values gives the community a fair chance to make a bid to buy it in the event the public house comes up for sale again. However, with regard to the determination of this application this is not considered to be a reason for refusal. The comments relating to the beer garden being lost are noted, but as stated previously there is adequate room for a new beer garden area to be allocated without loss to parking etc given the relatively spacious area within surrounding the site.
- 6.12.2 It should also be noted that should approval be granted for the scheme, this would change the use of the land and it would be removed from the asset of community value listing, effectively altering the boundary of the public house. However, it would have no impact on the status of the public house itself or the chance for the community to bid for the remainder of the site.

## 7.0 **CONCLUSION**

The proposed development for a single dwelling is considered to be within a sustainable location and given that the scheme is not considered to have a significant impact on the heritage assets in the form of the Grade II listed Cross Keys, and the Grade II \* listed St. Mary's Church it is considered that the impact of the proposal does not demonstrably outweigh the benefits of sustainable housing development in this case. The impact of the scheme on the historic core of Kinnerley is also considered to be minimal and there is not considered to be any detrimental impacts with regard to the amenities of neighbouring properties, protected species or highway safety. As such the scheme is considered to be acceptable in accordance with policies CS4, CS6, CS11 and CS17 of the Shropshire Core Strategy, H5 of the Oswestry Borough Local Plan and the National Planning Policy Framework. In arriving at this decision the Council has used its best endeavours to work with the applicant in a positive and proactive manner to secure an appropriate outcome as required in the National Planning Policy Framework paragraph 187.

## 8.0 **Risk Assessment and Opportunities Appraisal**

### 8.1 Risk Management

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

As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal, i.e. written representations, hearing or inquiry.

The decision may be challenged by way of a Judicial Review by a third party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will interfere where the decision is so unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its

planning merits. A challenge by way of Judicial Review must be made a) promptly and b) in any event not later than 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.

## 8.2 Human Rights

Article 8 gives the right to respect for private and family life and First Protocol Article 1 allows for the peaceful enjoyment of possessions. These have to be balanced against the rights and freedoms of others and the orderly development of the County in the interests of the Community.

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

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

## 8.3 Equalities

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

## 9.0 Financial Implications

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

## 10. Background

### Relevant Planning Policies

Central Government Guidance:

NPPF

Core Strategy and Saved Policies:

CS4 - Community Hubs and Community Clusters

CS6 - Sustainable Design and Development Principles  
 CS11 - Type and Affordability of housing  
 CS17 - Environmental Networks

**RELEVANT PLANNING HISTORY:**

13/05139/FUL Erection of four dwellings; retention of public house; formation of new vehicular accesses and alterations to existing car parking arrangement; associated landscaping REFUSE 9th May 2014

14/03518/CPL Application for Lawful Development Certificate for the change of use of (A4) drinking establishment to 2No ground floor shops (A1) hours - 8am to 10pm (7 days a week) PCO

**11. Additional Information**

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

Cabinet Member (Portfolio Holder)

Cllr M. Price

Local Member

Cllr Arthur Walpole

Appendices

APPENDIX 1 - Conditions

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

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

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

2. The development shall be carried out strictly in accordance with the deposited and amended plans and drawings.

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

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

3. No built development shall commence until samples of all external materials including hard surfacing, have been first submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the approval details.

The samples required shall include the erection of sample panels of both brickwork and the proposed sandstone walls, including mortar, of at least 1 metre square, on site for the approval of the Local Planning Authority.

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

4. No development shall take place until a scheme of surface water drainage has been submitted to, and approved by the Local Planning Authority. The approved scheme shall be completed before the development is occupied.

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

5. Details of the roof construction and rainwater goods, including details of eaves, ridges, valleys and verges shall be submitted to and approved in writing by the Local Planning Authority before the commencement of works. The development shall be carried out in accordance with the approved details.

Reason: To safeguard the setting of the adjacent Designated Heritage Asset

6. Details of the materials and form of the heads and sills to new openings in the external walls of the building shall be submitted to and approved in writing by the Local Planning Authority before any works commence. The development shall be carried out in accordance with the approved details.

Reason: To safeguard the setting of the adjacent Designated Heritage Asset



7. No development approved by this permission shall commence until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI). This written scheme shall be approved in writing by the Planning Authority prior to the commencement of works.

Reason: The site is known to hold archaeological interest.

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

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

b) No works associated with the development permitted will commence and no equipment, machinery or materials will be brought onto the site for the purposes of said development until a Tree Protection Plan and Arboricultural Method Statement has been submitted and approved in writing by the Local Planning Authority. All tree protection measures detailed in the approved Tree Protection Plan and Arboricultural Method Statement must be fully implemented as approved before any equipment, machinery or materials are brought onto the site for the purposes of the development. All approved tree protection measures must be maintained throughout the development until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered nor any excavation be made, without the prior written consent of the Local Planning Authority.

c) All services will be routed outside the Root Protection Areas indication on the TPP or, where this is not possible, a detail method statement and task specific tree protection plan will be submitted and approved in writing by the Local Planning Authority prior to any work commencing.

d) No works associated with the development permitted will commence and no equipment, machinery or materials will be brought onto the site for the purposes of said development until a responsible person has been appointed for day to day supervision of the site and to ensure that the tree protection measures are fully complied with. The Local Planning Authority will be informed of the identity of said person.

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

9. No development approved by this permission shall commence until details of the proposed finished floor levels have been submitted to and approved by the local planning authority.

Reason: In the interest of maintaining the amenity and character of the area.

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

10. No joinery works shall commence until precise details of all external windows and doors and any other external joinery have been submitted to and approved in writing by the Local Planning Authority. These shall include full size details, 1:5 sections and 1:20 elevations of each joinery item which shall then be indexed on elevations on the approved drawings.

Reason: To safeguard the architectural and historic interest and character of the Listed Building.

11. A total of 1 woodcrete artificial nests suitable for small birds such as robin, blackbird, tit species, sparrow and swallow shall be erected on the site as shown on a site plan prior to first occupation of the buildings hereby permitted.

Reason: To ensure the provision of nesting opportunities for wild birds

12. A total of 1 woodcrete bat boxes suitable for nursery or summer roosting for small crevice dwelling bat species shall be erected on the site prior to first use of the buildings hereby permitted as shown on a site plan. All boxes must be at an appropriate height above the ground with a clear flight path and thereafter be permanently retained.

Reason: To ensure the provision of roosting opportunities for bats which are European Protected Species

13. 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.

14. The access and parking layout shall be satisfactorily laid out and completed in accordance with the amended plan 1049 09 Rev B prior to the dwellings being occupied.

Reason: In the interests of highway safety.

15. Details of the construction of the 1.5 metre deep pedestrian footway to the front of the site shall be submitted and agreed to the Local Authority prior to the occupation of the dwelling hereby approved. The footway shall be provided prior to the occupation of the dwelling and shall be retained and maintained in accordance with the submitted approved details.

Reason: In the interests of highway safety.

16. Prior to the occupation of any buildings on site details of all walls, fences and hedges shall have been submitted to and approved by the Local Planning Authority. The approved details shall be completed prior to the occupation of any of the buildings on the site and thereafter retained.

Reason: To provide adequate privacy and an acceptable external appearance.

17. The first floor window in the west facing side elevation shall be glazed with obscure glass and shall thereafter be retained. No further windows or other openings shall be formed in that elevation.

Reason: To preserve the amenity and privacy of adjoining properties.