

## Development Management Report

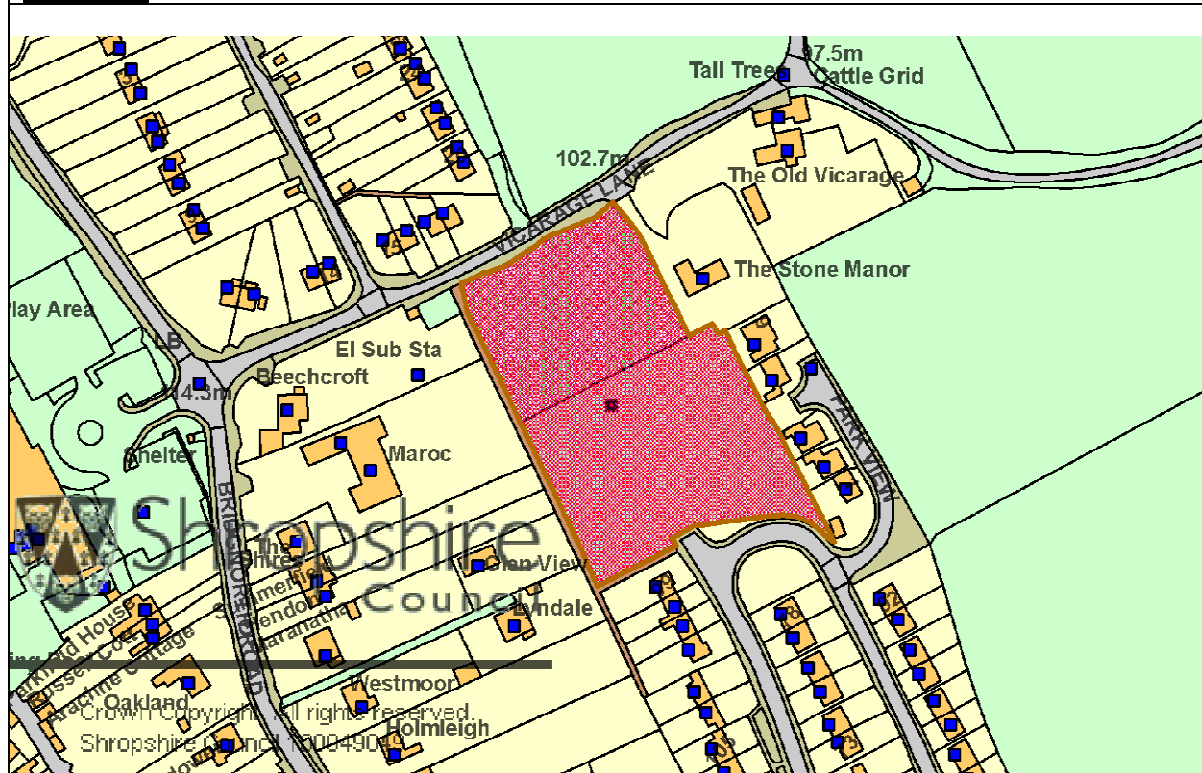
Responsible Officer: Tim Rogers

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### Summary of Application

<b>Application Number:</b> 12/02334/OUT	<b>Parish:</b>	Highley
<b>Proposal:</b> Outline application for residential development with all matters reserved		
<b>Site Address:</b> Land At Rhea Hall Rhea Hall Estate Highley Shropshire		
<b>Applicant:</b> Shropshire Council		
<b>Case Officer:</b> Richard Fortune	<b>email:</b> <a href="mailto:planningdmse@shropshire.gov.uk">planningdmse@shropshire.gov.uk</a>	

**Grid Ref:** 374088 - 283879



**Recommendation:- Grant Permission subject to the completion of a Memorandum of Understanding to secure affordable housing through a Section 106 Agreement and to the conditions set out in Appendix 1.**

## **REPORT**

### **1.0 PURPOSE OF REPORT**

1.1 To amend the resolution to grant Planning Permission subject to Section 106 Agreement relating to affordable housing and the conditions set out in the report to make reference to a Memorandum of Understanding being agreed to secure a Section 106 Agreement for the provision of affordable housing on the site at the prevailing rate when reserved matters are submitted.

### **2.0 BACKGROUND**

2.1 At the 1<sup>ST</sup> April 2014 meeting of the South Planning Committee an application for residential development with all matters reserved on land at Rhea Hall Estate, Highley (ref 12/02334/OUT). A copy of the Committee Report is attached as Appendix 2. The applicant for this application is Shropshire Council and the land is owned Shropshire Council. The recommendation to Grant Permission subject to a Section 106 Agreement relating to affordable housing and the conditions set out in Appendix 1 of the report was accepted by the Committee.

2.2 Advice subsequently received from the Council's Legal Services Team is that, as Shropshire Council is the applicant, it cannot enter into a Section 106 Agreement with itself to secure an element of affordable housing on the site in accordance with Development Plan policy.

### **3.0 OFFICER COMMENTARY**

3.1 A solution to this legal technicality has been developed, which would take the form of a Memorandum of Understanding (MOU) between The Planning Services Manager; The Strategic Asset Manager; The Group Manager Public Protection and Enforcement and The Managing Director of Shropshire Towns and Rural Housing Limited. The MOU would state:

- (i) The Planning Services Manager will notify the Strategic Asset Manager and the Group Manager Public Protection and Enforcement when planning permission is granted for the Development;
- (ii) The Strategic Asset Manager and the Group Manager Public Protection and Enforcement confirm that should the Development be undertaken by or on behalf of the Council including by Shropshire Towns and Rural Housing Limited the terms of the draft section agreement appended to this MOU will be complied with and that they understand that planning permission for the development would not have been granted without an obligation as set out in the section 106 agreement attached to this MOU
- (iii) The Managing Director of Shropshire Towns and Rural Housing Limited confirms that should the Development or any part of it be undertaken Shropshire Towns and Rural Housing Limited it will comply with the obligations set out in the draft section 106 agreement appended to this MOU

- (iv) The Strategic Asset Manager and the Group Manager Public Protection and Enforcement further confirm that the Land will not be disposed of for the Development to be carried out by any third party or for any other purpose unless and until a section 106 agreement substantially in the form of that attached to this MOU to secure the necessary affordable housing contributions has been completed to the satisfaction of the Planning Services Manager in consultation with the Head of Legal and Democratic Services.
- (v) In order to ensure compliance with (iii) above the Strategic Asset Manager and the Group Manager Public Protection and Enforcement confirm that they will ensure that any marketing and procedures connected with the disposal of the Land for the purposes of carrying out the Development or otherwise will clearly set out the requirement for any prospective transferee to enter into a section 106 agreement as set out above and will inform the Planning Services Manager of any such proposed disposition.

In the event of any difference(s) or disputes(s) arising out of the interpretation or application of the provisions of this MOU, the Parties shall immediately consult each other with the view to expeditiously resolving such differences or disputes in the interests of the Council and its obligations under the proposed section 106 agreement.

It is intended that the obligations of the Parties in this MOU will survive until the obligations referred to in the proposed section 106 Agreement have been discharged or the Land has been disposed of and (iii) above has been complied with.

- 3.2 In addition, it is recommended that an additional condition is attached to the outline planning permission (no. 14 in Appendix1) which states:

No development shall be commenced by any freehold owner of the site save for Shropshire Council (acting by themselves or through their nominees) until an agreement under section 106 of the Town and Country Planning Act 1990 has been completed with the Council to secure affordable housing in accordance with the Council's adopted Type and Affordability of Housing Supplementary Planning Document (adopted September 2012 or any subsequent replacement of it).

Reason: To secure the provision of element of affordable housing within the development, in accordance with Shropshire Core Strategy policies CS9 and CS11.

This would provide a further safeguard in the event of the land being sold on.

#### **4.0 CONCLUSION**

- 4.1 The land is likely to be developed by Shropshire Towns and Rural Housing and it is considered that the Memorandum of Understanding approach would ensure that the residential development of this site is in accordance with Shropshire Core Strategy and saved Local Plan policies.

## 5.0 Risk Assessment and Opportunities Appraisal

### 5.1 Risk Management

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

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

Both of these risks need to be balanced against the risk of not proceeding to determine the application. In this scenario there is also a right of appeal against non-determination for application for which costs can also be awarded.

### 5.2 Human Rights

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

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

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

### 5.3 Equalities

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

## 6.0 Financial Implications

There are likely financial implications if the decision and / or imposition of conditions is challenged by a planning appeal or judicial review. The costs of defending any decision will be met by the authority and will vary dependent on the scale and nature of the proposal. Local financial considerations are capable of

being taken into account when determining this planning application – insofar as they are material to the application. The weight given to this issue is a matter for the decision maker.

## 7. Background Papers

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

Planning File 12/02334/OUT

Report on 12/02334/OUT to 1<sup>st</sup> April 2014 South Committee

Minutes of 1<sup>st</sup> April 2014 South Committee

**Cabinet Member (Portfolio Holder)**

Cllr M. Price

**Local Member**

Cllr Dave Tremellen

**Appendices**

APPENDIX 1 - Conditions

APPENDIX 2 – Officer Report to 1<sup>st</sup> April 2014 Committee

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

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

Reason: The application is an outline application under the provisions of Article 4 of the Town and Country Planning Development Management Procedure Order 2010 and no particulars have been submitted with respect to the matters reserved in this permission.

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

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

3. The development to which this permission relates must be begun no later than whichever is the later of the following dates: (i) the expiration of five years from the date on which this permission is granted; or (ii) the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason: To comply with Section 92 of the Town and Country Planning Act 1990.

4. The following information shall be submitted to the local planning authority concurrently with the first submission of reserved matters:

The foul and surface water drainage of the site.

Reason: To ensure the development is of an appropriate standard to safeguard amenity and the water environment..

5. Nothing in this permission shall be construed as giving approval to the details shown on the plans accompanying this application (as such details which were included on the plans accompanying the application are intended for illustration purposes only).

Reason: To define the permission and to retain planning control over the details of the development.

6. The first submission of reserved matters shall include submission of a scheme of mitigation for slow worms which complies with the Reptile Mitigation Strategy and Precautionary Method Statement dated December 2013, unless otherwise agreed in writing by the Local Planning Authority and these works shall be carried out as approved.

Reason: To ensure the protection of slow worm, protected under the Wildlife and Countryside Act 1981 (as amended)

7. Bat boxes and building features suitable for nursery or summer roosting for small crevice dwelling bat species shall be erected on the site in accordance with a schedule which has been agreed in writing with the local planning authority prior to the first occupation of a dwelling on this site. The schedule shall include details of the locations and types of bat boxes and form of building features, and all boxes must be permanently retained.

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

8. Nesting opportunities for small birds shall be provided on site in accordance with a schedule which has been agreed in writing with the Local Planning Authority prior to the first occupation of a dwelling on this site. The schedule include details of the location and form of nesting opportunities, which shall be permanently retained.

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

9. The site must be subject to a further inspection for badger setts by an experienced ecologist immediately prior to the commencement of works on the site.

Reason: 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.

10. Prior to the commencement of any development related activity on site, a tree survey and arboricultural implications assessment shall be submitted to the Local Planning Authority (LPA), in accordance with British Standard 5837: 2012 Trees in Relation to Design, Demolition and Construction. The survey shall accurately plot and identify all trees and hedges on and adjacent the site, evaluating their condition and suitability for retention. A Tree Protection Plan shall be submitted to the LPA, detailing those trees and hedges to be removed and those retained, along with their root protection areas and the measures to be taken for their protection. An Arboricultural Method Statement shall be submitted to the LPA for approval in writing, for any development works that could affect retained trees and hedges and their root protection areas, as defined on the tree protection plan. The development shall be carried out in accordance with the approved arboricultural method statement and the tree and hedge protection measures shall remain in place for the duration of the construction works.

Reason: To protect during development trees and hedges that make a contribution to the character of the scheme and the neighbourhood.

11. Demolition or construction works shall not take place outside the following times:
  - Monday to Friday 07:30hrs to 18:00hrs
  - Saturday 08:00hrs to 13.00hrs
  - Nor at any time on Sundays, bank or public holidays.

Reason: In the interest of the amenity of the occupants of surrounding residential properties.

12. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning

authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i. the parking of vehicles of site operatives and visitors
- ii. loading and unloading of plant and materials
- iii. storage of plant and materials used in constructing the development
- iv. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
- v. wheel washing facilities
- vi. measures to control the emission of dust and dirt during construction
- vii. a scheme for recycling/disposing of waste resulting from demolition and construction works

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

13. A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than small, privately owned, domestic gardens, shall be submitted to and approved by the local planning authority prior to the occupation of the development or any phase of the development, whichever is the sooner, for its permitted use. The landscape management plan shall be carried out as approved.

Reason: To ensure the long term maintenance of landscaped areas, in the interests of visual and neighbour amenity.

14. No development shall be commenced by any freehold owner of the site save for Shropshire Council (acting by themselves or through their nominees) until an agreement under section 106 of the Town and Country Planning Act 1990 has been completed with the Council to secure affordable housing in accordance with the Council's adopted Type and Affordability of Housing Supplementary Planning Document (adopted September 2012 or any subsequent replacement of it).

Reason: To secure the provision of element of affordable housing within the development, in accordance with Shropshire Core Strategy policies CS9 and CS11.

### **Informatives**

1. 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.

2. 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 in association with the approved scheme shall be carried out outside of the bird nesting season which runs from March to September inclusive



Note: 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.

3. 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 by the National Planning Policy Framework, paragraph 187.
4. Your attention is specifically drawn to the conditions above that require the Local Planning Authority's approval of materials, details, information, drawings etc. In accordance with Article 21 of the Town & Country Planning (Development Management Procedure) Order 2010 a fee is required to be paid to the Local Planning Authority for requests to discharge conditions. Requests are to be made on forms available from [www.planningportal.gov.uk](http://www.planningportal.gov.uk) or from the Local Planning Authority. The fee required is £97 per request, and £28 for existing residential properties.

Failure to discharge pre-start conditions will result in a contravention of the terms of this permission; any commencement may be unlawful and the Local Planning Authority may consequently take enforcement action.

5. In arriving at this decision the Local Planning Authority gave consideration to the following policies:

Central Government Guidance:

National Planning Policy Framework

Technical Guidance to the National Planning Policy Framework

Shropshire Core Strategy and Saved Bridgnorth District Local Plan Policies:

CS1 Strategic Approach

CS3 The Market Towns and other Key Centres

CS5 Countryside and Green Belt

CS6 Sustainable Design and Development Principles

CS9 Infrastructure Contributions

CS10 Managed Release of Housing Land

CS11 Type and Affordability of Housing

CS17 Environmental Networks

CS18 Sustainable Water Management

S1 Development Boundaries

D6 Access and Car Parking

H3 Residential Development in Main Settlements

HIG1 Rhea Hall allocated housing site

SPD on the Type and Affordability of Housing

Open Space Interim Planning Guidance