



Committee and date

Central Planning Committee

18 June 2015

## Development Management Report

Responsible Officer: Tim Rogers

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### Summary of Application

<b>Application Number:</b> 13/03197/OUT	<b>Parish:</b>	Minsterley
<b>Proposal:</b> Renewal of Extant Planning Permission SA/08/1506/O - Outline application for the erection of twelve business units (consisting of eight B1(a) office units and four B1(c) light industry units) and thirteen dwellings together with a three metre and six metre high acoustic fence to include access and layout		
<b>Site Address:</b> The Garage Minsterley Shrewsbury Shropshire SY5 0BW		
<b>Applicant:</b> Bovale Limited		
<b>Case Officer:</b> Andrew Gittins	<b>email:</b> <a href="mailto:planningdmc@shropshire.gov.uk">planningdmc@shropshire.gov.uk</a>	

**Grid Ref:** 337917 - 305304



**Recommendation: Grant permission subject to a Section 106 Legal Agreement requiring the submission of a written Viability Appraisal of the Development to allow the Council to assess the level of Affordable Housing Contribution due from the Landowner (if any) if the Total Scheme Surplus is more than a percentage to be agreed by the Developer and the Council.**

## REPORT

### 1.0 THE PROPOSAL

1.1 The application seeks approval for the renewal of planning permission SA/08/1506/O which at appeal received outline consent for the erection of twelve business units (consisting of eight B1(a) office units and four B1(c) light industry units) and thirteen dwellings together with three and six metre high acoustic fence to the western boundary, to include access and layout.

1.2 The scheme consists of:

Houses:

- A – Two 4 bed, 2 storey
- B – Four 3 bed, 2 storey
- C – Two 5 bed, 2.5 storey
- D – Two 5 bed, 2.5 storey
- E – Three 4 bed, 2.5 storey

Each dwelling benefits from two parking spaces. Three of the units have proposed garages.

Office units:

- Eight B1(a) Offices not within Class A2
- Four B1(c) Light Industry

### 2.0 SITE LOCATION/DESCRIPTION

2.1 The site which extends to 0.54ha is located within the Village Boundary of Minsterley as defined by the Proposals Map of the Shrewsbury and Atcham Borough Council Local Plan. A small portion (0.17ha) in the western corner of the site was previously a bus depot and previously a Protected Employment Site as allocated by Policy EM2: Protection of Employment Land. This Policy has been replaced by Shropshire Core Strategy Policy CS14: Managed Release of Employment Land. This Policy states that the portfolio of employment land and premises will be supported by protecting existing strategic employment land and premises to secure these sites for employment uses. The Policy sets sites above 0.1 hectares as the threshold for designation as strategic employment land.

### 3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

3.1 The application is presented to Committee as Minsterley Parish Council have submitted a view contrary to Officers recommendation for approval based on material planning reasons. These contrary views cannot reasonably be overcome by negotiation or the imposition of planning conditions; and the Area Manager and Principal Planning Officer in consultation with the committee chairman and vice chairman and the Local Member agrees that the Parish Council has raised material planning issues and that the application should be determined by committee.

### 4.0 Community Representations

#### 4.1 Consultee Comments

4.1.1 **Minsterley Parish Council:** This application is flawed and is unlikely ever to be built resulting in waste and unsightly area in the main route into the village. The site is adjacent to the ammonia store at Muller Dairy and in a potentially explosive and catastrophic situation if there is a leak from the store. The site is over crowded makes no public space available. The residential units are too dense for the site.

4.1.2 **Shropshire Council Highways:** The highway authority raises no objections to the renewal of this extant planning consent.

Conditions:- None recommended.

Informative(s):- None.

Key Issues:- None.

Background:- No additional comment.

4.1.3 **Shropshire Council Ecologist:** No comments.

4.1.4 **Shropshire Council Drainage:** A drainage condition should be attached to the Renewal of Extant Planning Permission SA/08/1506/O.

4.1.5 **Shropshire Council Public Protection:** Having considered the site and past information provided I would like to specify the need for conditions stated in the Appeal Decision APP/L3245/A/10/2127350 on application SA/08/1506/O to be placed upon this decision specifically conditions 6, 7, 10 and 12 which related to noise, contaminated land and lighting.

4.1.6 **Shropshire Council Housing Enabling:** Comments to follow.

#### 4.2 Public Comments

4.2.1 The application was advertised by way of a Site Notice and an advert published in the Shropshire Star on the 20<sup>th</sup> August 2013, together with neighbour notification letters sent to 35 properties on the 13<sup>th</sup> August 2013. In response to this consultation one letter has been received objecting on the following grounds:

- Principle of additional industrial development and associated rubbish and

- litter.
- Traffic
- Noise
- Foul and surface water drainage

## 5.0 THE MAIN ISSUES

### **Material changes in planning policy since granting of appeal Affordable housing contribution**

## 6.0 OFFICER APPRAISAL

### 6.1 Material changes in planning policy since granting of appeal

#### 6.1.1 The original application was refused on the following grounds:

1. The proposed residential development would result in the loss of Class B employment land and accordingly the scheme is contrary to Policy EM2 of the adopted Shrewsbury and Atcham Borough Local Plan.
2. The Local Planning Authority considers that the existing noise levels generated by the adjacent creamery would be detrimental to the amenities which the occupiers of the proposed dwellings would reasonably expect to enjoy and therefore would be contrary to Planning Policy Guidance Note 24.

6.1.2 Since the granting of the appeal on the 9<sup>th</sup> September 2013 unless saved the policies of the Shrewsbury and Atcham Borough Local Plan have been replaced by the Shropshire Core Strategy (March 2011). The application site is located within the Minsterley Development Boundary as defined by saved SABC Policy HS3. The application site continues to be located within the Minsterley Development Boundary as proposed in CD3 policy maps s12 Minsterley and Pontesbury Inset Map which is a Core Document to the emerging SAMDev Plan. As such the application will be assessed against Core Strategy Policies CS3: The Market Towns and Other Key Centres, which outlines that as a combined Key Centre Minsterley and Pontesbury will accommodate the development of up to 260 houses and approximately 2 hectares of employment land to enhance their linked roles providing employment and services in the local area, whilst retaining their distinctive and separate identifies.

#### 6.1.3 Employment Land Supply

Policy EM2: Protection of Employment Land of the Shrewsbury and Atcham Borough Plan has been replaced by Shropshire Core Strategy Policy CS14: Managed Release of Employment Land.

6.1.4 A small section of the site is still classified as protected employment land under CS14. However, the level of protection is proportionate to the size of the site, which is relatively small in comparison to other protected sites. The application has been referred to Shropshire Council's Planning Policy who responded positively to this proposal as it guarantees delivery of half of the site for employment use which is preferable to the site remaining undeveloped or being developed purely for housing. As such the proposal is considered to be in overall compliance with Core

Strategy Policies CS3 and CS14.

## **6.2 Affordable housing contribution**

**6.2.1** Core Strategy Policy CS11: Type and Affordability of Housing requires all new open market residential development to make an appropriate contribution towards local needs affordable housing in accordance with the prevailing rate as set out in the Supplementary Planning Document. In the case of outline proposals the level of contribution is determined by the rate current at the time of the submission of the reserved matters application. At present the prevailing rate is 15% which on a 13 dwelling scheme would require the delivery of one on-site dwelling and an off-site contribution of 0.95.

**6.2.2** During determination of the previous appeal the Inspector determined (paragraph 51) that the provision of an affordable housing contribution of 35% would render the scheme unviable at that time, and the appeal was allowed subject to a Planning Obligation which required that a further viability appraisal be undertaken during the course of the development, with a view to a payment of an affordable housing contribution, depending on the scheme surplus, at that stage.

**6.2.3** The current application has been submitted with a viability appraisal which is being assessed by the Council's Housing Enabling Officer. Should the Council agree with the Inspector's determination that the scheme would not be viable with an affordable housing contribution then, as per the original appeal if approved the proposal would be subject to a Section 106 legal agreement with a 'overage' clause. The Viability Appraisal demonstrates that the scheme would not be viable with a CIL contribution. However, this would not be an issue which would be considered until the submission of Reserved Matters when the proposed chargeable floor area is known.

## **7.0 CONCLUSION**

**7.1** In accordance with the Inspector's previous appeal decision Officer's continue to be of the opinion that the loss of a small part of the designated employment land is acceptable as it guarantees delivery of half of the site for employment use which is preferable to the site remaining undeveloped or being developed purely for housing. The proposal would provide acceptable living conditions for future occupiers of the dwellings with regard to noise from the adjoining factory and there are no other material planning objections to the scheme from internal or statutory consultees. The proposal is therefore considered to comply with:

### Shropshire Core Strategy Polices:

CS3 – Market Towns and Other Key Centres

CS6 – Sustainable Design and Development Principles

CS9 – Infrastructure Contributions

CS11 – Type and Affordability of Housing

CS13 – Economic Development Enterprise and Employment

CS14 – Managed Release of Employment Land

CS17 – Environmental Networks

CS18 – Sustainable Water Management

National Planning Policy Framework

## **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 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. Background

### Relevant Planning Policies

Central Government Guidance:  
National Planning Policy Framework  
Planning Practice Guidance

Core Strategy and Saved Policies:  
CS3 – Market Towns and Other Key Centres  
CS6 – Sustainable Design and Development Principles  
CS9 – Infrastructure Contributions  
CS11 – Type and Affordability of Housing  
CS13 – Economic Development Enterprise and Employment  
CS14 – Managed Release of Employment Lane  
CS17 – Environmental Networks  
CS18 – Sustainable Water Management

### RELEVANT PLANNING HISTORY:

SA/94/0699 Residential development and alterations to existing vehicular and pedestrian accesses. REFUSE 14th December 1994

SA/08/1506/O Outline application for the erection of twelve business units (consisting of eight B1(a) office units and four B1(c) light industry units) and thirteen dwellings together with a three metre and six metre high acoustic fence to include access and layout REFUSE 15th January 2010

SA/07/0826/O Outline application for the erection of 32 residential dwellings to include layout of the site, scale of buildings and means of access to the site WDN 5th October 2007

SA/06/1593/O Outline application for the erection of 32 residential dwellings to include layout of the site, scale of the buildings and means of access to the site. WDN 17th January 2007

### Appeal

10/01754/REF Outline application for the erection of twelve business units (consisting of eight B1(a) office units and four B1(c) light industry units) and thirteen dwellings together with a three metre and six metre high acoustic fence to include access and layout  
ALLOW 9th September 2010

11. Additional Information

[View details online:](#)

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)
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Cabinet Member (Portfolio Holder)
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Cllr M. Price
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Local Member
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Cllr T. Bebb
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Appendices
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APPENDIX 1 - Conditions
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## APPENDIX 1

### Conditions

#### STANDARD CONDITION(S)

1. Details of the appearance, landscaping and layout (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 1(2) of the Town and Country Planning General Development (Procedure) Order 1995 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 hereby permitted shall begin before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

Reason: This condition is required to be imposed by 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 means of enclosure of the site  
The levels of the site  
The means of access for disabled people  
The finished floor levels

Reason: To ensure the development is of an appropriate standard.

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

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

Reason: To ensure satisfactory surface water drainage of the site and to minimise flood risk elsewhere as a result of the development and also to ensure that the foul water drainage system complies with the Building Regulations H2.

6. No development shall take place until a scheme for the insulation of all the dwellings hereby approved in respect of noise has been submitted to and approved in writing by the Local Planning Authority. The insulation shall be carried out in accordance with the

approved details prior to the first occupation of each dwelling and shall thereafter be retained.

Reason: In order to protect the amenities of the occupants of the proposed dwellings.

7. No development shall take place until details of the acoustic fence hereby approved have been submitted to and approved in writing by the Local Planning Authority. The acoustic fence shall be constructed in accordance with the approved details prior to the first occupation of any dwelling and shall thereafter be retained.

Reason: In order to protect the amenities of the occupants of the proposed dwellings.

8. No development shall take place until details of the access, including its detailed layout, construction and visibility splays have been submitted to and approved in writing by the Local Planning Authority. The access shall be constructed in accordance with the approved details and no building shall be occupied until the approved details are fully implemented. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking, re-enacting or modifying that Order), no fences, walls, other structures or hedges shall be erected or grown within the approved visibility splays.

Reason: In the interests of highway safety.

9. No development shall take place until details of the parking, turning, loading and unloading facilities, the surfacing material, and a programme for the implementation of the work, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and in accordance with the approved programme, and the parking, turning, loading and unloading facilities shall thereafter be retained clear of obstruction at all times.

Reason: In the interests of highway safety.

10. The works contained in the Remediation Method Statement (Geotechnical Developments (UK) Ltd (June 2008)) must be carried out prior to the commencement of the development (other than such works as are required to carry out the remediation). The local planning authority must be given two weeks prior written notification of the commencement of the remediation works. Following the completion of the measures identified in the Remediation Method Statement a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation shall be submitted in writing to the local planning authority and approved in writing prior to the occupation of any of the buildings.

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

11. Prior to construction and/or demolition activities occurring on site a dust management statement detailing how the developer will reduce dust from spreading off the site shall be submitted to the local planning authority for approval in writing. Any methods

contained within any approved statement shall be implemented on site. Reason: to protect the amenity of the area and the health and wellbeing of local residents.

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

12. Prior to the first occupation of any of the business units, details of covered and secure cycle parking shall be submitted to and approved in writing by the local planning authority. The cycle parking shall be provided in accordance with the approved details prior to the first occupation of any business unit and shall thereafter be retained.

Reason: In order to promote sustainable travel choices.

13. Prior to the first occupation of any of the business units, details of floodlighting and/or external lighting of the units and/or open areas, including the associated car parking and servicing areas, shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details prior to the first occupation of any business unit and no additional lights shall be erected.

Reason: In order to protect the residential amenities of the properties.

14. Dwellings nos. 4 - 13 (inclusive) as shown on plan SK012D shall not be occupied until after the B1(a) buildings hereby approved has been erected.

Reason: In order to ensure the appropriate provision of the commercial element of the scheme in a phased manner.

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

15. No open storage of materials, products, plant or equipment shall take place within the curtilage of the business units, and no goods or products shall be displayed for sale and no retail sale of any description shall take place on the open parts of the site.

Reason: In the interests of the visual amenity of the area.

16. The business units shall be used for B1(a) offices and B1(c) light industry as shown on plan SK012D and for no other purpose (including any other purpose in Class B1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order (with or without modification).

Reason: In order to restrict the use of the premises in the interest of the amenities of the area.

17. The gradient of the access from the edge of the highway carriageway shall not exceed 1 in 24 for a distance of 15 metres.

Reason: To provide a safe access to the development in the interests of highway safety.

18. No construction and/or demolition work shall commence outside of the following hours: Monday to Friday 07:30 – 18:00, Saturday 08:00 – 13:00. No works shall take place on Sundays and bank holidays.

Reason: to protect the health and wellbeing of residents in the area.

19. No burning shall take place on site including during clearance of the site.

Reason: to protect the amenity of the area and protect the health and wellbeing of local residents.

### **Informatives**

1. The land and premises referred to in this planning permission are the subject of an Agreement under Section 106 of the Town and Country Planning Act 1990.
2. In order to make the properties ready for electric vehicles, the applicant should consider the installation of charging point isolation switches should be connected so that a vehicle may be charged where off road parking is provided. This should involve the provision of an independent 32 amp radial circuit isolation switch at each property for the purpose of future proofing the installation. The charging point must comply with BS7671. A standard 3 pin, 13 amp external socket will be required. The socket should comply with BS1363, and must be provided with a locking weatherproof cover if located externally to the building.

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