

Development Management Report

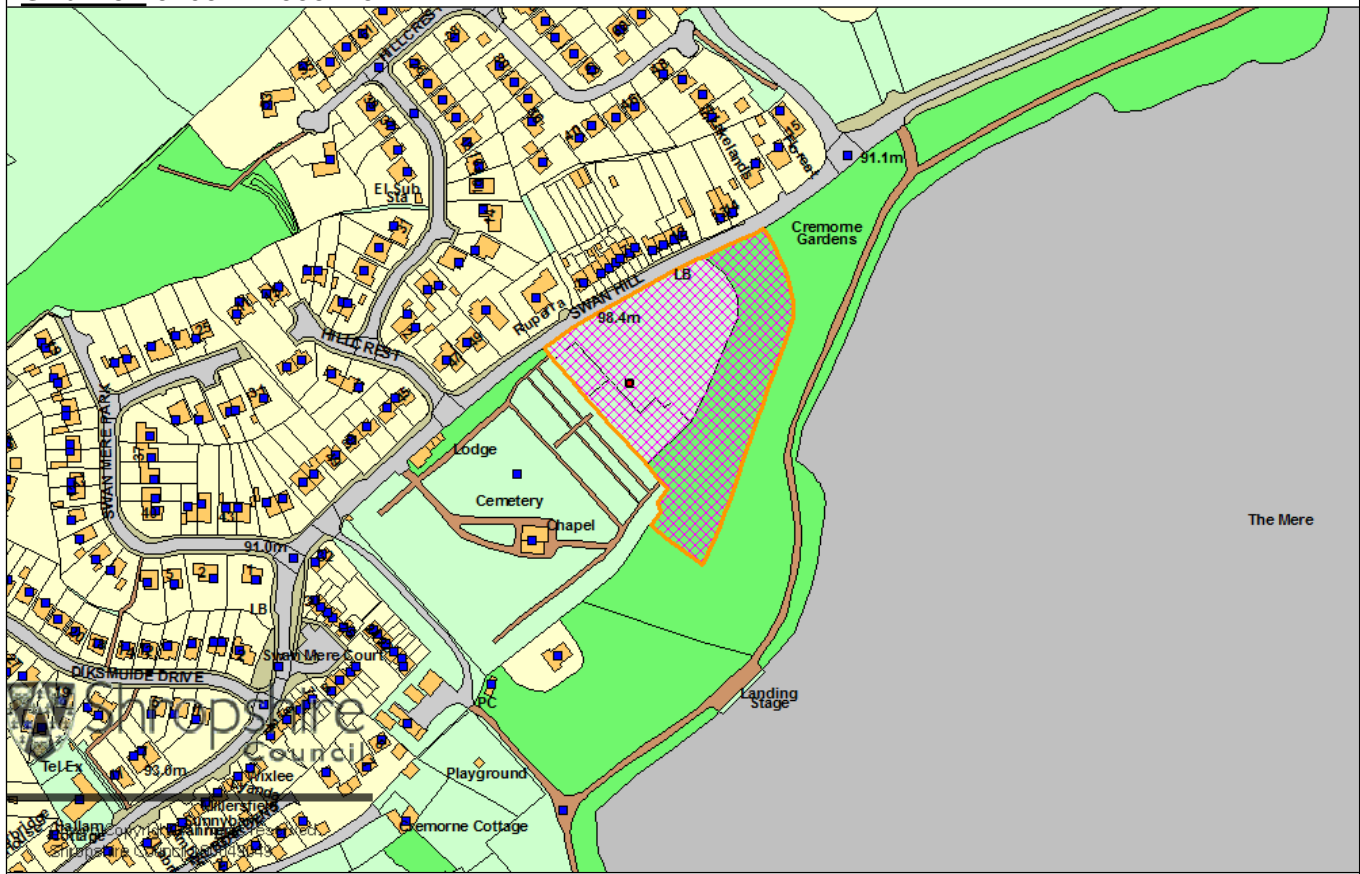
Responsible Officer: Tim Rogers

Email: tim.rogers@shropshire.gov.uk Tel: 01743 258773 Fax: 01743 252619

Summary of Application

<u>Application Number:</u> 15/00291/OUT	<u>Parish:</u> Ellesmere Urban
<u>Proposal:</u> Outline application for residential development to include means of access	
<u>Site Address:</u> Proposed Development Land NE Of Cemetery Swan Hill Ellesmere Shropshire	
<u>Applicant:</u> CMS JAW Ltd	
<u>Case Officer:</u> Mark Perry	<u>email:</u> planningdmnw@shropshire.gov.uk

Grid Ref: 340312 - 335273



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Recommendation:- Refuse the planning application for the following reason:

1. The proposed scheme would provide economic and social benefits including: the provision of a new homes and construction jobs, however, these benefits would be achieved regardless of where the new dwellings would be built. Also, any future occupants would play a role in the community and would be likely to support local services. Future occupiers would have convenient access to the extensive facilities in Ellesmere. However, this must be balanced against the harm that would be caused to the setting of The Mere, Cremorne Gardens, the street scene in Swan Hill, and the setting of the adjacent conservation area which weighs negatively against the proposal. It is considered that the proposal conflicts both with Policy H5 of the North Shropshire Local Plan and CS Policies CS3 and CS5 of the adopted Core Strategy and with the Council's overall strategic approach to delivering sustainable development through the identification of suitable housing sites in the emerging SAMDev DPD.

REPORT

1.0 THE PROPOSAL

- 1.1 This application follows a previous planning appeal against non-determination which was dismissed by the Planning Inspector in 2014 (13/01988/OUT). At that time the appeal scheme was for outline consent for 22 dwellings and also included an extension to the existing cemetery, all matters except access were reserved for later approval. At the time of the appeal the Council did not have a 5 year supply of housing land and therefore the presumption in favour of sustainable development applied meaning that local plan policies were not up to date and therefore paragraph 47 of the NPPF came into effect requiring schemes to be approved unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
- 1.2 This current proposal now proposes a development of up to 9 dwellings and also includes a 0.6ha parcel of land which would be gifted to the Mere Charitable Trust as community land; this could then be used for whatever purposes it wishes. The scheme also includes a strip of land adjacent to the existing cemetery which would be landscaped appropriately to mitigate the impact of the new dwellings on the cemetery.
- 1.3 The Planning Inspector considered in 2014 that the proposal for 22 dwelling conflicted with relevant planning policies that sought to restrict development outside development boundaries, and with the Council's overall strategic approach to delivering sustainable development through the identification of suitable housing sites in the emerging SAMDev. The Inspector also found that the proposed development would be harmful to the character and appearance of the surrounding area in terms of its impact on the setting of the Mere, the Cremorne Gardens, the streetscene in Swan Hill, and also the setting of the adjacent conservation area.

2.0 SITE LOCATION/DESCRIPTION

- 2.1 The site lies to the eastern side of Ellesmere between The Mere and Swan Hill and directly to the east of the existing cemetery and chapel. The site lies outside of the development boundary as defined in the North Shropshire District Council Local Plan which runs along the northern edge of the site. The

appeal site is also outside of the Ellesmere Conservation Area, the boundary of which runs along the south eastern boundary and along the edge of Swan Hill in a north easterly direction.

- 2.2 Historically the site has been used for grazing and more recently for the keeping of poultry. The site is currently unused and overgrown in its appearance. The site is elevated above the adjacent road called Swan Hill by approximately 1 metre, the site then levels out before dropping steeply down towards the Mere. Much of this sloping land is covered with mature trees which provide a buffer between the waters edge of the Mere and the urban area of Ellesmere. The land surrounding the Mere forms part of Cremorne Gardens which is an informal recreation area and includes a children's playground, small BMX track as well as formal footpaths linking a variety of sculptures. The site itself also contains a number of trees that are protected by tree preservation orders.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

- 3.1 The application has been submitted on behalf of a CMS Jaw Ltd which Cllr Claire Wild is a director of. Therefore in accordance with Part 8 of the Scheme of Delegation must be considered by the Planning Committee.

4.0 Community Representations

- Consultee Comments

Town Council-

Members object to this planning application because as a council they are in support of the Localism Act where by the views of the public are recognised as paramount, but this council can not recommend approval as we have grave concerns about its impact to the environment, resulting in possible contamination of the Mere which is central to the quality of our community life, and in addition could have a financial impact on tourism which is an important element in the success of this town with many visitors from other Countries and tourism should not be underestimated in this area. These concerns were demonstrated by a petition signed by the majority of our residents on the earlier application for development at this site (13/01988/OUT) which was dismissed at appeal, but the residents and Town Council Views have not altered. Considerable work has been done to develop leisure and nature experiences at the Mere and Cremorne Gardens and it is essential we maintain a sustainable balance between housing and tourism. This area is outside the 'existing' recognised development boundary but also that the latest revised proposals (e.g. SAMDev preferred sites) will not change that and, furthermore, the Town Council (and recognised in the latest SAMDev proposals) seeks to take the existing development boundary elsewhere around the Mere further away from the Mere side to protect and enhance the ecological, tourist and economic interests of this important natural, environmental and tourist resource for the long term benefit of the town and future generations.

The fact that through community supported housing developments elsewhere in the town area Ellesmere is making a significant contribution (c. 800 new homes) in a phased way over the next plan period to support Shropshire Council to achieve its required housing targets.

In the conclusion of the appeal decision to application 13/01988/OUT, the investigating Inspector Neil Harrison stated "I conclude that the proposal conflicts both with saved LP Policy H5 and CS Policy CS3 in relation to the restriction of development outside development boundaries, and with the Council's overall strategic approach to delivering sustainable development through the identification of suitable housing sites in the emerging SAMdev DPD. Significantly in the balancing exercise I have also found that the proposed development would be harmful to the character and appearance of the surrounding area in terms of its unacceptable impact on the setting of The Mere, the historic designated parkland of Cremorne Gardens, the street scene in Swan Hill, and the setting of the adjacent conservation area." Before dismissing the appeal he ended his report in the following way "I have taken into account all other material considerations raised but they are insufficient to persuade me that the appeal should be determined other than in accordance with the development plan.

As far as Ellesmere Town Council and local residents are concerned they can see that the amount of housing has been reduced the actual footprint size of this application is the same as the previously proposed application, and they do acknowledge that the height of the housing has being slightly reduced, but they feel that this development will still be harmful to the character and appearance of the surrounding area in terms of its unacceptable impact on the setting of The Mere with this in mind the Town Council makes the following material planning objections:

Roof silhouettes would redefine landscape despite being slightly reduced in height since the original application.

Concerns of the nearness of the houses to the buffer zone.

The terms of location for housing in this area is completely inappropriate.

There should be a covenant on the buffer land to protect these areas this must be owned by the applicant as it is not in the ownership of Shropshire Council.

Parking and access on Swan Hill is also a major concern and could also have an impact on the Cemetery.

Outdoor Recreation-

Following discussions and a site visit of the proposed development at Swan Hill, Ellesmere, we are of the opinion that there is enough recreational land outlined for transfer, to add value to the Mere Charitable Trust site. We feel that there is an opportunity to create a circular walk from the existing Mere path leading to the Peneley Gate and returning via the proposed transfer land to the corner of the cemetery land. This could be created as part of the development or monies set aside within a S106 agreement. The proposed transfer area is currently scrub land and again this would need to be cleared and treated to create a suitable area to fit in with the existing park land . The old fencing would need to be removed and a tree survey undertaken on any trees being passed over and any resulting works identified. SC would then be looking for a commuted sum for ongoing maintenance over a 20 year period.

Public Protection-

Land is unlikely to be contaminated due to the presence of the adjoining cemetery.

Ecology-

no objection subject to conditions

Archaeology-

no comments to make on the application

Drainage-

no objection in principle subject to appropriate conditions.

Trees-

It is expected that any proposed development would make provision to retain any trees identified as significant or potentially significant in the terms of public amenity or provide substantial justification and mitigation where their removal is proposed. As this is an outline application the information should demonstrate that there is adequate space to allow for the proposed numbers of structures and associated infrastructure and to provide the required protection / separation zones around retained trees.

- Public Comments

41 letters of objection received commenting on the following issues:

Scheme would be less than 50m from used footpaths

Affect peace and tranquillity

Detrimental visual Impact

Loss of privacy

Over bearing impact

Impact on the peace of the cemetery

Poor access

Impact on infrastructure

Land is needed for cemetery expansion

Conflicts with current and new planning policies

Will harm the character of the area

Impact upon tourism

Impact on wildlife

Loss of access for cemetery workers

Imp[act on the Mere from pollution

5.0 THE MAIN ISSUES

Principle of development

Siting, scale and design of structure

Visual impact and landscaping

6.0 OFFICER APPRAISAL**6.1 Principle of development**

6.1.1 Central government guidance in respect of this application is contained within the National Planning Policy Framework (NPPF), at the heart of the frameworks there is a presumption in favour of delivering sustainable development, the NPPF describes this as being a “golden thread running through plan making a decision taking”. In paragraph 7 of the NPPF it identifies the three dimensions to sustainable development, these are economic, social and environmental, all three

aspects must be sought to be able to deliver sustainable development.

- 6.1.2 Also of relevance is the Shropshire Core Strategy which Polices CS3, CS5, CS6, CS7, CS8, CS9 and CS17. The emerging policies contained within the Council's SAMDev document should also be awarded significant weight. However, full weight cannot yet be awarded as it is not yet fully adopted by the Council although it is now at the stage where the Inspector has provided her proposed modifications which are currently under consultation. SAMDev identifies locations considered suitable for housing development such as locations promoted by the Town Council. The application site (ref: ELL016) was considered at the preferred options stage of SAMDev but it was not carried forward into the final draft plan submitted to the Planning Inspector to be considered at the examination in public. No changes are suggested in the proposed modifications which would affect this particular site.
- 6.1.3 Therefore, in accordance with SAMDev the site has to be assessed as open countryside in accordance with the Council's SAMDev plan. The previous Planning Inspector considered that CS3 should apply, and this says that balanced development of appropriate scale and character that respects a town's distinctive character will take place within the development boundaries and on sites allocated for development". The explanation for Policy CS5 says areas outside the development boundaries identified through the SAMdev process are considered to be open countryside for planning policy purposes, where, subject to local need exceptions, there will be a presumption against residential development. The CS also makes clear that any future changes to development boundaries will be determined through future review of the CS.
- 6.1.4 At the present stage the Council considers that it is able to demonstrate a sufficient 5 year land supply as required by the NPPF and this has been acknowledged in many recent Shropshire appeal decisions in relation to residential development. (The Council published a five year land supply statement in August 2014 which demonstrates that the Council has a five year land supply). The SAMDev Plan Inspector has now confirmed the proposed main modifications to the plan following the examination in public and are currently subject to a 6 week consultation. As such any plan content not included in the schedule of proposed main modifications may be considered to be sound in principle in accordance with NPPF paragraph 216. Therefore significant weight can now be given to SAMDev policies in planning decisions where these are not subject to modifications. This applies in the case of this application.
- 6.1.5 It is considered that neither the adopted planning policies contained within the adopted Local Plan or those contained within the emerging SAMdev document support the principle of housing development on this site. The Planning Inspector also took a similar view despite SAMDev being earlier in the adoption process, he concluded that the development conflicted with relevant planning policies that sought to restrict development outside development boundaries, and with the Council's overall strategic approach to delivering sustainable development through the identification of suitable housing sites in the emerging SAMDev. The Inspector also found that the proposed development would be harmful to the character and appearance of the surrounding area in terms of its impact on the setting of the Mere, Cremorne Gardens, the street scene in Swan Hill, and the setting of the

adjacent conservation area.

6.2 **Siting, scale and design of structure**

- 6.2.1 Since the previous appeal was dismissed the area proposed for housing has been reduced to just 9 dwellings as a maximum. The applicant has also provided an indicative layout to show how the site could be developed. The scheme includes a single point of access into the development.
- 6.2.2 Whilst the scale of the development site has been reduced, so that dwellings are moved further away from the Mere and that all of the dwellings would be bungalows or dormer bungalows it is considered that these would still have a visual impact when viewed from the Mere and from Swan Hill. The applicant has stated that the inclusion of a buffer would mean that no dwelling would be less than 50m from the main path that skirts the Mere, the dwellings would however be less than 50m away from the more informal paths that extend away from the Mere.
- 6.2.3 The appeal Planning Inspector recognised the importance of the Mere in terms of its recreational and ecological value and its contribution towards tourism. The fewer dwellings now proposed and the lower height would likely avoid the creation of a new skyline previously referred to by the appeal Inspector.
- 6.2.4 The residential use of the site would significantly change the character and appearance of the site and its surroundings. What is presently down to rough grass land would take on a domestic character. There are likely to be enclosing fences, lawns, patio area, shrub and flower bed planting, and a range of domestic paraphernalia such as washing lines, garden furniture and perhaps children's play equipment. It is likely that, once established, there would be the subsequent (and entirely reasonable) wish to introduce outbuildings such as a garage, sheds and similar structures some of which are very likely to be visible through the trees when viewed from the Mere. The Inspector agreed with the Council previously that the land provides an area which affords a visual transition between the urban area on the north side of Swan Hill and the wooded areas and rural character of Cremorne Gardens and The Mere. Whilst this new application helps to preserve this visual transition by providing a larger buffer there would still be some detrimental impact when viewed from the Mere side of the site.
- 6.2.5 The appeal Inspector also recognised the semi-rural character of this section of Swan Hill adjacent to the application site and how the site is elevated above Swan Hill. The reduced density has provided an opportunity to push the dwellings further back from Swan Hill by including driveways running across the front of the site, as shown on the indicative plan. However, it is considered that providing dwellings, even one and a half storey dwellings, on the site would continue to be a prominent feature of the site and erode the semi-rural character of the Swan Hill. The applicant has shown that the existing hedgerow would be replaced behind the visibility splays, however, it is considered that this would not mitigate against the visually detriment caused by the development of the site.
- 6.2.6 The applicant is proposing that a substantial area of land would be gifted to the Mere Charitable Trust to provide a buffer between the Mere and the proposed development. It is acknowledged that there would be some community benefit to

having this additional land and as confirmed by the Council's Parks and Green Space Team Leader as it would allow the opportunity to provide a circular walk which could either be provided as part of the development of with monies secured by a S106 agreement which would include a commuted sum for ongoing maintenance for a period of 20 years. This proposal is a positive benefit which can be awarded some weight in the consideration of the application. The draft unilateral undertaking submitted as part of the application includes provisions for the transfer of the land and does not include any mechanisms for making the land usable or for its ongoing maintenance.

6.3 **Highway Safety**

6.3.1 The scheme proposes a single point of access to the site from Swan Hill. The applicant has confirmed on the plans that visibility splays measuring 2.4 by 43m in both directions. Although the Council's Highways Officer has not commented on this current application he didn't raise any objection to the previous scheme which involved more dwellings and a similar central access arrangement.

6.4 **Ecology**

6.4.1 The Mere is an important site in terms of its ecology, it is a Local Wildlife Site which supports a wide range of protected and priority species and habitats. As part of the application an independent phase 1 Environmental Survey was provided and considered by the Council's Ecologist. The Council's Ecologist considered that no surface water from the proposed development should be able to drain into the Mere. It is considered that the impact of the development on ecology can be dealt with by appropriate planning conditions.

6.5 **Affordable Housing**

6.5.1 A S106 will secure a financial contribution towards the provision of affordable housing in accordance with the Shropshire Viability Index as set out in the adopted SPD.

6.5.2 Officers note the recent Ministerial statement and amendments to the National Planning Practice Guidance as a material consideration in determining a planning application. However, following a subsequent decision by the Cabinet of the Council, the Council continues to give full weight to Policy CS11 of the adopted Core Strategy and Type and Affordability of Housing SPD and continues to seek on site provision of affordable housing and/or developer contributions to the provision of affordable housing in relation to all sites.

6.5.3 Given the above, it is considered that should planning permission be granted only subject to the satisfactory completion of a legal agreement to secure the provision of affordable housing in accordance with the terms of the policy. Non compliance with the requirements of adopted Core Strategy Policy CS11 would mean that the proposal would be in clear conflict with the aims and requirements of the Development Plan and should therefore be refused, unless other material considerations indicate otherwise.

7.0 **CONCLUSION**

7.1 The proposed scheme would provide economic and social benefits including: the provision of a new home and construction jobs are recognised. However, these benefits would be achieved regardless of where the new dwellings would be built.

Also, any future occupants would play a role in the community and would be likely to support local services. Future occupiers would have convenient access to the extensive facilities in Ellesmere, including employment, schools, medical services shops and the recreational benefits the Mere has to offer. Therefore, the site is broadly sustainable. However, this must be balanced against the harm that would be caused to the character and appearance of the area which weighs negatively against the proposal.

7.2 It is considered that the proposed development conflicts with both adopted and emerging planning policies and the identified benefits of the scheme do not outweigh the harm.

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 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.

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 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

Core Strategy and Saved Policies:
CS3- Market Towns and Other Key Centres
CS4- Community Hubs and Clusters
CS5- Countryside and Greenbelt
CS6- Sustainable Design and Development Principles
CS11- Type and Affordability of Housing
CS17- Environmental Networks

SAMDEV

RELEVANT PLANNING HISTORY:

PREAPP/13/00096 Proposed construction of 22 houses and 5 metre extension to cemetery. NPW 16th October 2013
13/01988/OUT Construction of 22 no. dwellings and extension to existing cemetery
NONDET 27th January 2014

Appeal

13/02058/NONDET Construction of 22 no. dwellings and extension to existing cemetery
DISMISSED 27th January 2014

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 Ann Hartley

Appendices

APPENDIX 1 - Conditions