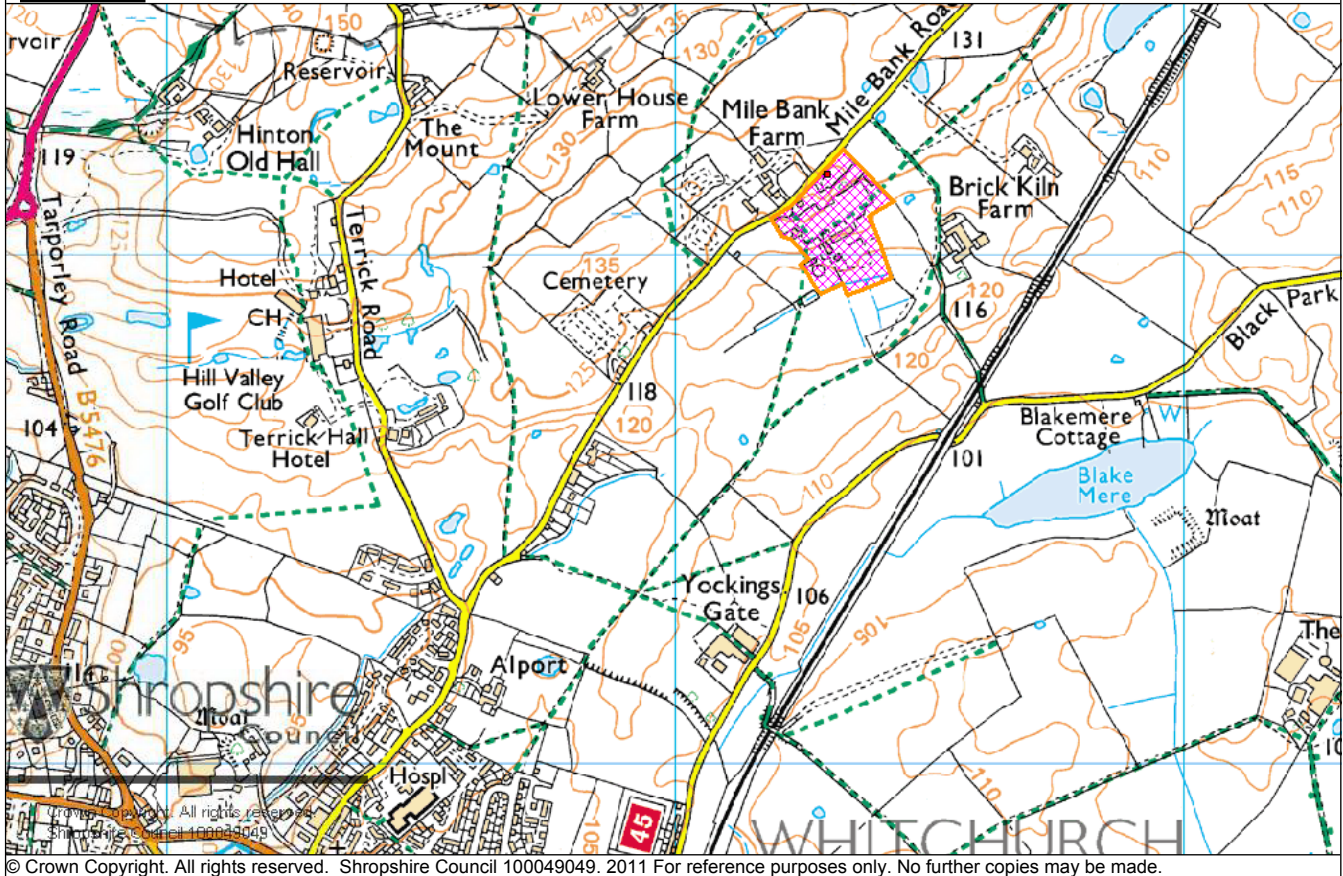


Development Management Report

Responsible Officer: Tim Rogers
Email: tim.rogers@shropshire.gov.uk Tel: 01743 258773 Fax: 01743 252619

Summary of Application

Application Number: 13/03481/OUT	Parish:	Whitchurch Urban
Proposal: Outline application (all matters reserved) for residential development; vehicular access and estate roads; diversion of Public Right of Way; associated highway and landscape works		
Site Address: Storage Land And Premises (former Dairy) Mile Bank Road Whitchurch Shropshire		
Applicant: Ainscough Strategic Land		
Case Officer: Karen Townend	email: planningdmne@shropshire.gov.uk	
Grid Ref: 355300 - 343159		



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Recommendation:- Grant Permission subject to the S106 legal agreement and subject to the conditions set out in Appendix 1.

REPORT

ADDENDUM TO PREVIOUS OFFICER REPORTS – Re: The SAMDev Plan Main Modifications

1.0 Background

- 1.1 On the 14th January 2014 it was resolved by Northern Planning Committee to grant outline planning permission for residential development (all matters reserved) of the former Dairy, storage land and premises at Mile Bank Road, Whitchurch, subject to conditions and to the signing and completion of a Section 106 Legal Agreement to secure the affordable housing financial contribution in line with Core Strategy policy CS11 and the Councils' adopted SPD on the 'Type and Affordability of Housing'.
- 1.2 A further report was taken on the 23rd September 2014 following the Council issuing a revised 5 year land supply report. The September report was for members to consider whether there had been a change in the balance of considerations following the update to the 5 year land supply. With regard to this site the report advised that the site lay outside the development boundary shown in the North Shropshire Local Plan and was not being proposed as an allocated site in the SAMDev as there were other sites adjacent to the town which could meet the housing need for the area. However, the report also noted that the site is brownfield and that the proposal was sympathetic to the site, local and residential amenities, could be provided with appropriate access, drainage and landscaping without adverse impact on habitats or biodiversity. The proposal also provides for affordable housing, open space and enhancements of connectivity to Whitchurch through the provision of a bus stop and improvements to the footpath to the town. Accordingly in September 2014 members agreed that there were material considerations which weighed in favour of the development being supported although it would be contrary to the development boundary in the SAMDev.
- 1.3 Since that time the applicant has progressed the S106 agreement to a point where it has now been signed and returned to the Council for sealing. There has also been further developments with the Site Allocations and Management of Development (SAMDev) Plan. Since September 2014 the SAMDev examination has been undertaken, main modifications have been published and consulted on and the Council is awaiting the Inspectors report. As such, in accordance with paragraph 216 of the NPPF, the Local planning Authority now considers that the weight which can be given to some policies within the SAMDev has altered.
- 1.4 The following is a review of the 'Principle and Policy of Development' previously presented to Committee for re-consideration in light of the publications of the SAMDev Plan main modifications.

2.0 **Impact of SAMDev progress**

- 2.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The starting point for decision taking is therefore the development plan. Proposals that accord with an up-to-date plan should be approved, whilst proposals that conflict with the plan should be refused, unless other material considerations indicate otherwise (para 12 of the National Planning Policy Framework (NPPF) refers).
- 2.2 The NPPF in itself constitutes guidance for local planning authorities as a material consideration to be given significant weight in determining applications. At para 14 the NPPF sets out the presumption in favour of sustainable development as a golden thread running through plan-making and decision-taking. At para. 197 the NPPF reiterates that in assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development. These considerations have to be weighed alongside the provisions of the development plan. Development plan policies of particular relevance to assessing the acceptability of this housing application in principle are discussed below:
- 2.3 The Development Plan
For the purposes of the assessment of this application the development plan presently comprises of the adopted Shropshire Core Strategy 2011 and a range of Supplementary Planning Documents. The Policies in the North Shropshire Local Plan remain saved policies until the adoption of the SAMDev, however the policies in the NSLP could be argued to be out of date and as the SAMDev progresses the weight that can be given to NSLP policies reduces.
- 2.4 Shropshire Core Strategy policies CS1, CS3 and CS5 - Policies CS1 and CS3 of the Core Strategy set out the strategic approach to housing provision in the market towns, such as Whitchurch. It is envisaged that the market towns will provide for substantial levels of new development, of an appropriate scale and design for each town and on allocated sites or within the development boundaries. Policies CS1 and CS3 are consistent with the objectives of the NPPF to focus new development in sustainable locations.
- 2.5 The site lies outside the development boundary for Whitchurch. Therefore, the proposal conflicts with adopted Core Strategy policies CS1 and CS3 and falls to be assessed against adopted Core Strategy policy CS5. Policy CS5 states that new development will be strictly controlled in the countryside and only allows for exceptions in housing needs, including those to meet an essential rural business need or local need, none of which apply to this proposal. The proposal therefore also conflicts with CS5. It is considered that policy CS5 is consistent with the objectives of the NPPF to protect the intrinsic character and beauty of the countryside.
- 2.6 SAMDev Policy – The SAMDev is now considered to be at an advanced stage. The SAMDev Plan Inspector has recently confirmed the proposed main modifications to the plan following the examination sessions held in November & December 2014. The main modifications were published on 1st June 2015 for a 6

week consultation period. This means that 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.

- 2.7 Whitchurch was identified in the Core Strategy as a market town. The SAMDev Plan provides a detailed map of showing the development boundary and detailed policy setting out the development guidelines for the town and identifying the allocated sites. Policy S18 advises that Whitchurch should delivery around 1,200 dwellings on allocated sites, infill and windfall development within the boundary. No modifications are proposed in the Main Modifications relating to policy S18. As such the development of the site would also be contrary to the housing development policy in the SAMDev.
- 2.8 The NPPF - As previously mentioned the NPPF sets out the presumption in favour of sustainable development as a golden thread running plan-making and decision-taking and is a material consideration to which significant weight should be attributed. As part of the overall planning balance, it is therefore appropriate to assess this site within the context of the 'presumption in favour of sustainable development'.
- 2.9 At para 10 the NPPF states that policies in local plans should follow the approach of the presumption in favour of sustainable development, with clear policies that will guide how the presumption should be applied locally.
- 2.10 Ultimately the policies contained in the SAMDev Plan will therefore need to comply with the sustainable guidance set out in the Framework in order to proceed to adoption. Under the NPPF sustainable sites for housing where the adverse impacts do not outweigh the benefits of the development will still have a strong presumption in favour of permission when considered against the NPPF as a whole.
- 3.0 **Other material considerations**
- 3.1 As noted at 2.1 above proposals that accord with an up-to-date plan should be approved, whilst proposals that conflict with the plan should be refused, unless other material considerations indicate otherwise (para 12 of the National Planning Policy Framework (NPPF) refers). The development of a site outside of the development boundary conflicts with the housing policies of the local plan. However, officers advise that there are other material considerations which should be taken into account in considering the application.
- 3.2 The January report noted that the site is brownfield and that sufficient evidence was provided to prove that the site is unlikely to see any other viable commercial use and that its current condition was visually harmful to the character of the area. Both the NPPF and local policy supports redevelopment of brownfield sites, providing the development is also sustainable. The January report also considered this matter in detail and concluded that the development of the site would provide social, economic and environmental benefits which would outweigh any environmental harm of developing a site outside the development boundary.

- 3.2 Furthermore, officers consider that the indicative layout and principles set out in the design and access statement would result in a development which would remove the current visual harm and be of benefit to the character of the area. There would not be any harm to existing residential amenity or, as noted above, any harm to ecology, biodiversity or flood risk that could not be mitigated through conditions and the development can be provided with a safe means of vehicular access. The loss of the employment use from the site can be balanced against the traffic movements from the proposed development and it remains officer's opinion, as noted in the January report, that residential development of the site would be far preferable to the site being brought back into commercial/ industrial use.
- 3.18 In conclusion officers would highlight the advanced stage of the application and the following factors which reinforce the sustainable credentials in favour of the application at this point in time:
- The S106 has been signed. The planning permission can therefore be released without undue delay with affordable housing contribution secured.
 - The proposal is for redevelopment of a brownfield site which is visually harmful and unlikely to have a commercial or industrial use
 - The redevelopment will provide an appropriate development which will not have significant detrimental impacts and issues of flood risk and ecology can be overcome by condition
 - Satisfactory access is available and the residential redevelopment of the site is preferred, in traffic terms, to the reuse of the site for industrial or commercial use
 - Bearing in mind the all the above and until the SAMDev Plan is adopted, officers are of the opinion that the balance of planning considerations still tips in favour of permission.

4.0 Conclusion

- 4.1 The site is located outside the current Whitchurch development boundary and is therefore classed as open countryside and a departure from the development plan, contrary to Core Strategy policies CS1, CS3 and CS5. Furthermore, the site has not been identified as a site for future residential development within the emerging SAMDev Plan, and will therefore be contrary to policy S18 when SAMDev is adopted. However, whilst SAMDev is at a stage where significant weight can be given to policy S18, the requirements of this emerging policy and those of adopted policies CS1, CS3 and CS5 must be balanced against the NPPF and other material considerations.
- 4.2 The NPPF promotes sustainable development and also promotes the redevelopment of sustainable brownfield sites. The proposed development will result in the redevelopment of a brownfield site which the Council consider is currently visually harmful and would be unlikely to find a commercial or industrial use and furthermore the Council consider that residential development would be preferred, in traffic terms. The site also benefits from its close proximity to the market town of Whitchurch and the economic and social benefits of housing near to the market town including the provision of affordable housing.
- 4.4 It is also considered that the indicative plans show that the layout will be

sympathetic to the levels of the existing site and that there will be no adverse impact on local or residential amenity. The development can be provided with an appropriate vehicular access and improvements to the public footpaths crossing the site. Furthermore, it can be provided without risk of flooding and drainage matters can be controlled by condition. The development includes suitable measures to safeguard existing trees, hedgerows and local landscape character and will not be harmful to local habitats or biodiversity.

4.5 The advanced stage of the application whereby the S106 is ready to be signed and a draft permission agreed is noted and it is accepted that the development would constitute sustainable development and result in the redevelopment of a brownfield site and therefore comply with national planning policy priorities relating housing provision and sustainable development.

4.6 Accordingly the recommendation remains one of approval, subject to the S106 and subject to the conditions set out in appendix 1.

8.0 RISK ASSESSMENT AND OPPORTUNITIES APPRAISAL

8.1 Risk Management

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

- As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal - written representations, a hearing or inquiry.
- The decision is challenged by way of a Judicial Review by a third party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will 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 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 give 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**

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

10.0 **BACKGROUND**

Relevant Planning Policies

National Planning Policy Framework

CS01 – Strategic Approach

CS03 – The Market Towns and Other Key Centres

CS5 - Countryside and Greenbelt

CS6 - Sustainable Design and Development Principles

CS11 - Type and Affordability of housing

CS17 – Environmental Networks

CS18 – Sustainable Water Management

SPD Type and Affordability of Housing

11.0 **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 Thomas Biggins Cllr Peggy Mullock
Appendices APPENDIX 1 - Conditions

APPENDIX 1

Conditions

STANDARD CONDITION(S)

1. Details of the layout, scale, appearance, landscaping and access (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. This permission does not purport to grant consent for the layout shown on the deposited plan submitted with this application.

Reason: To enable the Local Planning Authority to consider the siting of the development when the reserved matters are submitted.

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

The number of units

The means of enclosure of the site

The levels of the site

The means of access for disabled people

The foul and surface water drainage of the site

The finished floor levels

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

6. Work shall be carried out strictly in accordance with the Ecological Assessment incorporating Phase 2 survey results August 2013 by Tyler Grange.

Reason: To ensure the protection of European Protected Species as well as species protected under the Wildlife and Countryside Act 1981 (as amended)

7. An Ecological management plan shall be submitted to and approved by the local planning authority as part of the Reserved Matters. The plan shall include:

- a) Description and evaluation of the features to be managed;
 - b) Ecological trends and constraints on site that may influence management;
 - c) Aims and objectives of management;
 - d) Appropriate management options for achieving aims and objectives;
 - e) Prescriptions for management actions;
 - f) Preparation of a works schedule (including a 5 year project register, an annual work plan and the means by which the plan will be rolled forward annually);
 - g) Personnel responsible for implementation of the plan;
 - h) Monitoring and remedial/contingencies measures triggered by monitoring.
- The plan shall be carried out as approved, unless otherwise approved in writing by the local planning authority, for the lifetime of the development.

Reason: To protect features of recognised nature conservation importance, including great crested newts, a European Protected Species

CONDITION(S) THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES

8. No development, demolition or site clearance procedures shall commence until a European Protected Species (EPS) Mitigation Licence with respect to bats and great crested newts has been obtained and submitted to the local planning authority for the proposed work prior to the commencement of works on the site. Work shall be carried out strictly in accordance with the granted EPS Mitigation Licence.

Reason: To ensure the protection of bats and great crested newts, European Protected Species.

9. No development or clearance of vegetation shall take place until a Wildlife Protection (mitigation) plan has been submitted to and approved in writing by the local planning authority. The plan shall include:

- a. An appropriately scaled plan showing 'Wildlife/habitat Protection Zones' where construction activities are restricted and where protective measures will be installed or implemented;
- b. Details of protective measures (both physical measures and sensitive working practices) to avoid impacts during construction;
- c. A timetable to show phasing of construction activities to avoid periods of the year when sensitive wildlife could be harmed (such as the bird nesting season);
- d. Method statement for the great crested newt translocation
- e. Persons responsible for:
 - i) Compliance with legal consents relating to nature conservation;
 - ii) Compliance with planning conditions relating to nature conservation;
 - iii) Installation of physical protection measures during construction;
 - iv) Implementation of sensitive working practices during construction;
 - v) Regular inspection and maintenance of physical protection measures and monitoring of working practices during construction;
 - vi) Provision of training and information about the importance of 'Wildlife protection zones' to all construction personnel on site.

All construction activities shall be implemented in accordance with the approved details and timing of the plan unless otherwise approved in writing by the local planning authority.

Reason: To protect features of recognised nature conservation importance including great crested newts, a European Protected Species.

10. Prior to the commencement of work on site a minimum 10m buffer shall be fenced off parallel to the banks along the length of the water course, put in place within the site to protect the watercourse during construction works. No access, material storage or ground disturbance should occur within the buffer zone. Details of the fencing shall be submitted with reserved matters.

Reason: To ensure the protection of Water Voles, a protected species under the Wildlife & Countryside Act 1981 (as amended)

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

11. 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.