

Development Management Report

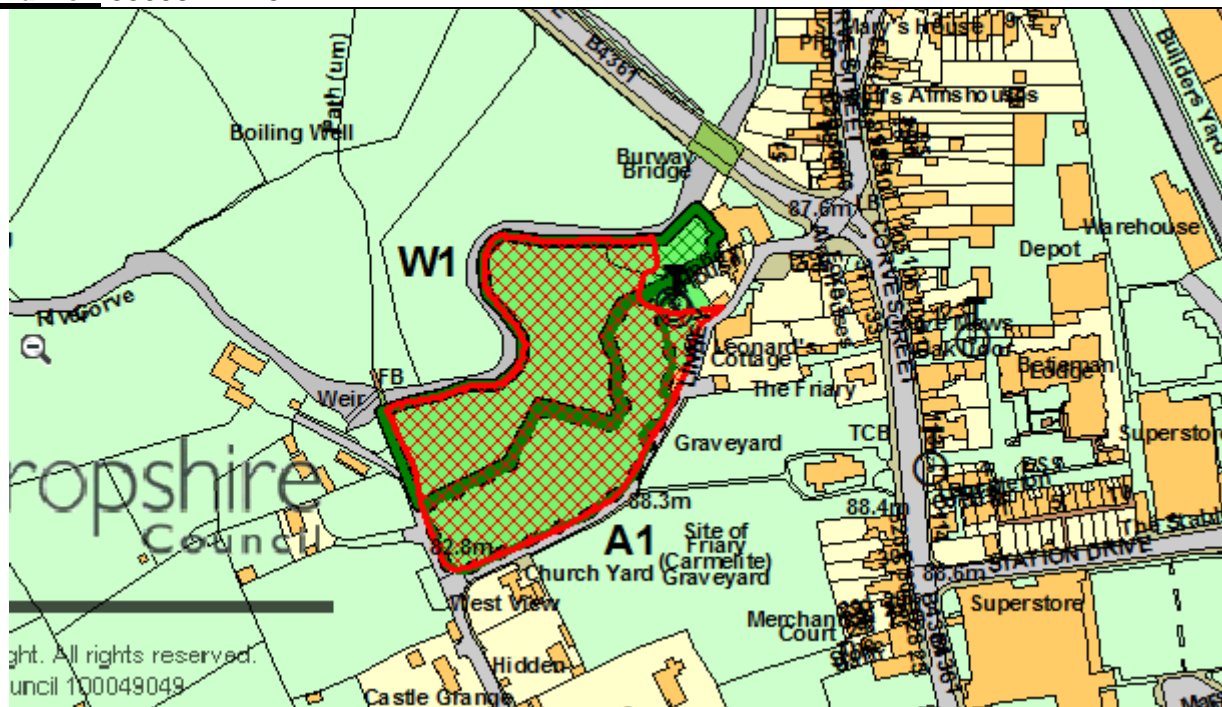
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Summary of Application

Application Number: 19/00826/FUL	Parish:	Ludlow
Proposal: Erection of 8 No Dwellings with Car Shelters, Reprofilng of Ground; Restoration of Stone Boundary Wall and Creation of 2 No Vehicular Access Points.		
Site Address: Land Adjacent Linney House, The Linney, Ludlow		
Applicant: Linney House Developments		
Case Officer: Andrew Sierakowski	email: planning.southern@shropshire.gov.uk	

Grid Ref: 350987 - 275121



Recommendation:- That the Committee indicate to the Secretary of State that it would have been minded to refuse the application for the reasons set out below:

Recommended Reason for Refusal

1. That the proposed development comprising the re-profiling of the ground, erection of eight detached houses with car shelters, the creation of two new access points and the restoration of the stone boundary wall along The Linney, on land adjacent Linney House at The Linney, Ludlow, is not acceptable in terms of the principle of the development as it is located outside the development boundary for Ludlow and is therefore contrary to Core Strategy Policy CS5 and SAMDev Policies MD7a and S10;
2. That the latest figures set out in the Council's Five-Year Housing Land Supply Statement published in March 2020 confirms that the number of completions and Planning Permissions or Prior Approvals is so substantially over the Housing Guideline figure for Ludlow, that there is no case for invoking paragraph 3 of SAMDev Policy MD3; and
3. That by virtue of the significant level of harm that would be caused by the scheme as a result of the loss of the trees and woodland on the site and the resulting in harm to the natural assets of the site, harm to the Environmental Network and the less than substantial harm to the Ludlow Conservation Area, without adequate mitigation, compensation or enhancement, which significantly outweighs the benefits of the scheme, it cannot be considered to acceptable and therefore would be contrary to Core Strategy Policies CS6, CS17 and SAMDev Policies MD2, MD12 and MD13 and the NPPF. There are no other material considerations that lead to the view that the proposed eight house scheme would otherwise offer betterment over the approved three house scheme, that would justify approval of the application.

REPORT

1.0 THE PROPOSAL

- 1.1 This is an application, submitted by Linney House Developments Limited, for the re-profiling of ground, erection of eight detached houses with car shelters, the creation of two new access points and the restoration of the stone boundary wall, on land adjacent to Linney House, at The Linney, Ludlow. The application was submitted in February 2019, and has raised a number of significant issues, which were the subject of extensive discussions with the applicant throughout 2019, resulting the submission of amended reduced scheme for four houses (Planning Application Ref. 19/00519/FUL), in December 2019. It had been anticipated that the applicant would withdraw this application but has instead opted to submit an appeal against non-determination pending determination of the more recent application for the four house scheme. This is due to be presented to the Committee shortly. The appeal is being reported to the Committee to seek its guidance on how it would have determined the application, had the appeal not been submitted, in order to guide the response to be set out the Council's Statement of Case. The appeal is accompanied by a claim for costs.
- 1.2 The application is essentially a substantially altered proposal for residential development on the site, that was first approved in 2012 under Planning Permission Ref. 12/02275/FUL, which was subsequently renewed under Planning Permission Ref. 17/00230/FUL in 2017. This latter permission has been implemented although only

through the undertaking of minimal works to commence the development, and the site remains essentially undeveloped.

- 1.3 The original consents were for a three house, traditionally designed scheme, whereas the current application seeks to increase this to eight dwellings of a more contemporary design. Each dwelling would be either a 3, 4 or 5 bedroom detached house, comprising e a one and half/two storey structure, made up of up to four elements, with largely asymmetrical mono-pitched roofs. Materials would be Ludlow brick, natural stone, natural timber and welsh slate, while the fenestration would comprise generally vertically proportioned, glazed panels. The roofs would include solar panels and/or solar photovoltaics. The intention is that the houses, rather than appearing as single traditional blocks are broken up into a series of smaller elements to give the appearance, the application states, of “a random collection of buildings, on different levels with a highly articulated roofscape, glimpsed through trees”. Double car shelters would be provided on the three of the plots, Plots, 1, 2 and 8. These would be constructed with an oak timber frame and proprietary flat “green roof”, with two car parking spaces per plot.
- 1.4 The house plots take up approximately half to two-thirds of the site, so that each plot extends on average to approximately 0.08ha, although the individual plot sizes vary significantly. The Design and Access Statement submitted with the application stresses that the design and layout of the scheme is intended to integrate the development into its setting. It states that each house has been positioned to allow views through, and across, the site, with the bulk of each building reduced by use of a divided articulated plan form, with an interconnecting mono-pitch roof design. In addition, the highest point on each house being kept as low as possible by having first floor bedrooms in the point of the roof slope. On houses 1,2 & 8, the most sensitive to views onto the site from The Linney and across the meadow, the roof lines would diminish to follow the site topography.
- 1.5 The scheme includes a landscaping plan that involves the provision of landscaped domestic gardens and the creation of a wooded riverside with newly planted trees, low bush areas and planting designed to encourage wildlife. This area is described in the application as being an amenity space for all the houses and is intended to be a “wild” buffer to avoid domestic garden paraphernalia appearing along the river. This included an outdoor seating space and firepit on the initially submitted plan, although an amended plan was submitted. with this deleted, shortly before the appeal was lodged, together with an updated Ecological Impact Assessment The application states that a band of trees outside the individual gardens is to be planted along The Linney and at each of the two entrances to the site, is intended to mature to recreate the green and leafy feel of the Linney today and provide a long term woodland setting for the houses.
- 1.6 Rainwater would be dispersed of via an attenuated scheme with underground storage and controlled release restricting outflow from site. Permeable paving will be used in accordance with SuDS requirements and areas of grass and planting would form part of the attenuation scheme.
- 1.7 As part of the preparatory works it is proposed to reprofile the site to reinstate what the application states was the original profile, which was altered as a result of quarrying activities, to raise the finish floor levels above the flood level. This would comprise terraces at four levels across the site, with ramps between them. Currently, there is a steeply slopping bank that extends from Plot 2 where there is a hollow, up to Plot 8. It is proposed dig out and remove soils along the southern boundary of the site adjacent to

The Linney which are banked up against the stone boundary wall to a depth of up to approximately 1.3m higher than the road surface. The area to be filled would be by a depth of up to 4m although with significant variation, including some reduction in ground levels in places across the eight house plots to create a series of level terraces. The lowest on Plots 1 and 2 would be constructed at 84.50m against an existing level of approximately 82.40m and the highest on Plots 5,6 and 7 at a level of 87.75m against an existing level of Approximately 88.20m.

- 1.8 The reprofiling and redevelopment works will necessitate the felling of almost all of the trees on the higher part of the site adjacent to The Linney to facilitate the ground levelling works and the repair of the boundary wall, with only the large Sycamore tree and Ash tree immediately to the rear of Linney House being retained. On completion of the ground works and construction works, it is intended to re-landscape the upper part of the site, with mixed woodland. By contrast a substantial proportion of the existing woodland immediately adjacent to the River Corve is to be retained and supplemented with largely native species woodland planting.
- 1.9 In addition, it is proposed to restore the stone wall long the frontage of The Linney, although as part of the existing access into the rear to Linney House will be widened and the second, wholly new access will be formed towards the western end of the site, so there are two separate accesses, each serving four dwellings, with visibility splays. The site is split in the middle for cars with a pedestrian access between the two levels leading to directly The Linney and aligned to link with the gateway into the St Leonard's Church Yard and the existing path to Corve Street. The application indicates that the central section of the boundary wall adjacent to the bend in The Linney will be taken back to increase visibility around the bend and facilitate the provision of a passing place.
- 1.10 The existing garage and sheds on the site located the south west of Linney House are to be demolished.
- 1.11 The application has been accompanied by an Archaeological Desktop Evaluation and Written Scheme of Investigation Proposal, an Ecological Impact Assessment, a Flood Risk Assessment and Flood Modelling Study, a Flood Plain Storage Assessment, a Heritage Assessment, an Assessment of the Potential for Land Contamination, a Technical Note on the Transport Issues, an Arboricultural Report, a Statement of Tree and Shrub Planting Objectives, a Landscaping Plan and a Landscape and Visual Impact Appraisal.

2.0 SITE LOCATION/DESCRIPTION

- 2.1 The application site comprises an area over 1.1 ha. in size and forms part of what was the garden and curtilage of Linney House, a Grade II listed 18th century house. The Linney forms the southern boundary of the site, while the winding course of the River Corve delineates the northern boundary. The western boundary adjoins a Public Bridleway and Linney House lies to the east. The site is broadly split into two levels, a higher level adjacent to The Linney and a lower lying area adjacent to the river. There is steeply sloping bank in between.
- 2.2 The site lies within the Ludlow Conservation Area and there is a stone boundary wall, which is an important feature running along the length of the boundary with The Linney. The Linney is a narrow, largely single width, lane with a narrow footpath and low kerb

down the south side, enclosed by stone walls on both sides. This makes it difficult for on-coming vehicles to pass. The only place that it briefly broadens out is on a bend approximately half-way along the length of the boundary of the site. This bend coincides with a pedestrian gateway into the St. Leonard's Church Yard with a path leading to Corve Street. Cars can pass at this point, if west bound vehicles mount the pavement immediately adjacent to the gateway.

- 2.3 The site contains a large number of trees which is it understood are partly self-seeded. These previously covered most of the site, although there has also been some felling and clearance works in the last four to five years. Despite this it includes some mature trees within the former garden, on the former terrace sides and along the riverbanks that in recent decades has resulted in it becoming wooded in character, and now appears to make up a distinct block of woodland on the northern edge of the built up area of the town. This is particularly the case when viewed from the higher ground within the town centre including views from the castle, and from Coronation Avenue from across the open ground to the north.
- 2.4 A substantial part of the site along the river to the north and the bridleway to the west falls within in Flood Zone 2 and 3 of the River Corve, on the Environment Agency's Flood Map for Planning.
- 2.5 The site is understood to have been a former mineral extraction site, although there are contradictory statements from the applicant and third parties (relating to the concurrent application for the amended four house scheme) about when mineral extraction ceased, with a statement by the applicant that it remained an extraction site up to the 1980's and from third parties suggesting that mineral extraction ceased by as early as 1930.
- 2.6 The site has an extensive recent planning history, that not only includes Planning Permission Refs. 12/02275/FUL and 17/00230/FUL for the existing consented three house scheme but also a number of associated applications and consents to vary or discharge the conditions attached to the two permissions. These include most recently, Application Ref. 20/00119/DIS, and a subsequent variation application Ref. 20/01127/VAR that has amended the tree protection plan approved under Planning Permission Ref. 17/00230/FUL to enable the phased implementation of that consent. In addition, there is the current Application Ref.19/05519/FUL, for the alternative four house scheme on the site, which remains to be determined.
- 2.7 There is also an extensive history relating to the trees on the site. This history relates to felling that is understood to have been taken place in May 2015 and then again in the winter of 2015-2016, the former having been undertaken without notice being given under s.211 of the Town and Country Planning Act 1990. The latter it is understood was undertaken as pre-commencement works to the implementation of Planning Permission Ref. 12/02275/FUL. The Tree Officer has provided a detailed statement relating to these activities and to the subsequent compensatory planting that has been undertaken. The Tree Officer's advice is that 256 out the total of 401 trees were felled, but that compensatory planting was undertaken which included 100 whips after the initial unlawful felling. Further compensatory planting comprising a block of 96 additional whips as well 87 standard trees, was also agreed following the approval of the extant Planning Permission Ref. 17/00230/FUL, but it is understood that this has not to date been undertaken. It should be noted that the applicant disputes the accuracy the Tree Officer's assessment of the number of trees previously felled. This form substantive basis for the

applicant's claim for costs in the appeal.

- 2.8 The planning history of the site including, the existing consented scheme and the recent history of the felling and subsequent compensatory planting schemes are of importance in relation to this application in that they set a fallback position, that has to be taken into consideration and the environmental baseline against which the current application has to be assessed.
- 2.9 In addition to being located adjacent to Linney House and within the Ludlow Conservation, other nearby heritage assets include 38 and 39 Corve Street, approximately 50m north west of the site, which are Grade II listed, and St. Leonard's Church, approximately 90m to the west of the site, which is also Grade II listed (as St. Leonards Restorations). There are also a significant number of listed buildings in the wider surround area, notably along the length of Corve Street, 100m west of the site and throughout Ludlow town centre, 450m south of the site. Ludlow Castle which is Grade I listed, and a Scheduled Ancient Monument, lies approximately 360m to the south with direct views to the north towards the site.
- 2.10 The River Teme Site of Special Scientific Interest (SSSI) is located 340m to the west. The River Corve runs along the full length of the site before joining the SSSI c.500m downstream. The site is located outside the development boundary for Ludlow.

3.0 REASON FOR COMMITTEE DETERMINATION OF THE APPLICATION

- 3.1 The Committee in this instance are not being asked to determine the application, only to provide an indication of how it might have determined the application, had the current appeal not been submitted (See paragraph 1.1 above).

4.0 COMMUNITY REPRESENTATIONS

- 4.1 Ludlow Town Council: Has offered a neutral comment.

Public Comments

- 4.2 In addition to the comments from Ludlow Town Council there have been fifteen third party representations from twelve local residents and organisations. Of these representations, twelve including two from the Ludlow Conservation Area Advisory Committee and two from the Ludlow Swift Group, offer objections and three, state that they are neutral.
- 4.3 Those that object to the development in summary make the following points:
- That the development would involve a further loss of trees in addition to the loss that has already taken place and that this will result in a loss of natural habitat and erosion of the screening from Coronation Avenue;
 - That the Council Tree Officer's report on the application sets out clearly the extent of the destruction of the once substantial and important habitat as a buffer on the edge of Ludlow, that has already taken place and details the further destruction necessary to build the proposed eight houses. It also highlights the likely requests to remove trees by future residents. The site is part of an important green corridor along the River Corve, that provides screening from Coronation Avenue, should

remain as such, and the already required replanting, enforced;

- That it should be the Council's top priority to preserve and protect established natural corridors for wildlife and the environment;
- That the proposed development will destroy a valuable resource;
- That there appears to be no plan for the retention of a green corridor linking St Leonard's with the River Corve. This shows a disregard for the natural environment and the character of the local area;
- That the development is out of keeping with the character of The Linney, which does not currently have any concentrated multi-home developments;
- That it is not clear what height the boundary wall along The Linney will be rebuilt to; any reduction in height would have adversely impact on the character of the wall;
- That the development will adversely affect the character and appearance of the Ludlow Conservation Area;
- That the development will result in an increase in traffic along The Linney, which is already a narrow and dangerous road; speed reducing measures are required before there is a serious accident or fatality;
- That the development is not affordable housing and is not necessary to meet any identified housing need in Ludlow, with there being several other ongoing developments which fulfil those needs;
- That the development would take place in an area at risk from flooding and would increase the risk of flooding;
- That the stability of the upper part of the site has not been properly assessed;
- That the geological conservation interest of the site has not been acknowledged, and as with the previous applications has been disregarded, when there is considerable historical geological interest in the quarry face that runs through it. This is of intrinsic interest and is a historically important site that should be scientifically examined and recorded if any development works are to be approved; and that
- This application is contrary to National Planning Policy Framework (NPPF) and should be refused in the light of the comments of the Council's officers;

4.4 In addition, the Ludlow Conservation Area Advisory Committee advise that that whilst the Committee is broadly supportive of the application, they have two objections to it. They consider that:

- The palette of walling and roofing materials is acceptable subject the details being conditioned, but they comment that there is no corresponding detail for the external hard surfaces which are also important and should be agreed before planning permission is granted; and that
- The character of the Conservation Area in the vicinity of the site is defined by the sense of enclosure created by the walls on either side of Linney and are concerned that the proposed alterations to the perimeter wall will undermine this character whilst facilitating higher traffic speeds than are possible at present.

4.5 They are in addition concerned that the additional traffic generation would be disproportionately increased as a result of additional through traffic that the improved sightlines and width would encourage. They therefore consider that traffic calming measures, such as speed humps adjacent to the proposed accesses, should be installed, with the boundary walls and planting being retained on their present alignment.

- 4.6 The Ludlow Swift Group ask, if the application is approved, that integral Swift bricks, which will be used by a range of bird species, including Swifts, House Sparrows and Starlings, are included in the development. These bricks should be built into the fabric of buildings, recreating natural cavities found in older properties. They also ask that artificial nest cups for swallows are also provided in suitable locations.
- 4.7 Those expressing neutral comments in summary make the following points:
- That the proposal is better designed than the previously approved plan for three homes and that the application's approach to design is consistent with the Government's recently published National Design Guide, but that the objections from the Council's Conservation, Tree, Ecology and Highways officers are now so significant and in such conflict with the proposed scheme that the application should be considered by the Council's Southern Planning Committee;
 - That the developer should consider reducing the number of houses to allow greater restoration and enhancement of the wooded landscape and a lower impact on the Conservation Area. This may also ease access issues by reducing the number of vehicle movements;
 - That the modern style of the proposed development is welcome and an improvement on the existing the scheme approved under the existing planning permission, but it could be improved further. The proposed scheme is not yet right. Consideration by the Southern Planning Committee would ensure that the right plans are secured for a sensitive location;
 - That the proposed building materials are laudable but the use of Welsh slate, which is not a locally used material may not be appropriate. That it is also not clear where the 'Ludlow brick' will be sourced from, as the last brick to be made in Ludlow was in 1963, when the Fishmore Road brickworks closed. They were also a bright uniform orange colour; and
 - That the widening of Linney as proposed looks sensible, but that the results of the traffic survey results may not be accurate as this was undertaken in July when schools and college were closed. There are also concerns that the straight section of The Linney is already hazardous for pedestrians and cyclists from speeding vehicles which sometimes mount the pavement. In view of the inevitable increase in traffic, a 20mph speed limit should be introduced.

Technical Consultees

- 4.8 Shropshire Council - Affordable Homes: The Affordable Homes Officer has advised that there will be a policy requirement for an affordable housing contribution.
- 4.9 Shropshire Council - Highways: Advise that further Information is required, because insufficient detail of the accesses and the passing place have been submitted with the application. They comment that the application is for eight houses, more than double the number of the existing consented scheme, and that the westerly access has been moved from the existing access point at the south west corner of the site, but without any visibility sightlines having been shown for its proposed location. They advise that adequate visibility sightlines could be achieved from the existing westerly access but not from the proposed westerly access without these being demonstrated. They also comment that the easterly access has been erroneously drawn on the submitted plans.
- 4.10 Notwithstanding these points, the also advise that the widening of The Linney with the

provision of a passing place, will assist drivers having to deal with the pinch-point caused by the narrowing of the road and the bend on it, and that the provision of additional land for this purpose will provide a highway safety benefit. They advise that the owner of the land will need to formerly dedicate the additional land to the Shropshire Council Highways and that further details of the passing place will need to be provided as this has not been dimensioned and construction details provided.

- 4.11 In relation to the footpath link to the St Leonard's churchyard and the western side of Ludlow town centre, they express concern that this has been located so that pedestrians are being brought out into the proposed passing place, just at the point where vehicles could suddenly appear and pull up across the entrance. They advise that pedestrians would need to be protected from this likelihood.
- 4.12 They also comment that the footpath within the site does not follow guidelines for Secure by Design and should be capable of being viewed straight through with no blind bends and no nearby foliage. In addition, they comment that footpath the link between the lower half of the site and the upper half of the site is stepped, and that it does not offer a ramped by-pass for wheelchair/pushchair users or those who are mobility impaired.
- 4.13 More generally they advise that the development will provide an opportunity to improve visibility along The Linney which is currently hindered by the overhanging vegetation.
- 4.14 Shropshire Council - SUDS: Have no objection subject to the inclusion of a condition requiring the submission of a scheme for surface and foul water drainage and the inclusion of informatives relating to the use of soakaways, urban creep, drainage on the highway and compliance with the building regulations.
- 4.15 Shropshire Council - Regulatory Services: Advise that two past potentially contaminative land uses have been identified within the site. These include its use as a timberyard and as a quarry. They also comment that the supporting information included with the planning application refers to use of part of the site as a coal yard, an unofficial dump site (within the former quarry) and the levelling of the top terrace with the deposition of material. They therefore advise that if planning permission is granted, that a condition be included requiring the submission of a site investigation report and if subsequently required, a remediation strategy and that in the event that further contamination is found at any time during construction, that was not previously identified, that it must be reported to the Local Planning Authority, and an investigation and risk assessment undertaken. The condition should also require the completion of measures identified in the approved remediation scheme, and the submission of a verification report that demonstrates the contamination identified has been made safe and no longer qualifies as contaminated land under Part 2A of the Environmental Protection Act 1990, in relation to the intended use of the land.
- 4.16 Shropshire Council - Conservation: Advise that due consideration needs to be given to Sections 66 and Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, the policies contained in Chapter 16 of the NPPF, Core Strategy Policies CS6, and CS17, SAMDev Policies MD2 and MD13, the guidance contained in Planning Practice Guidance and Historic England's Historic Environment Good Practice in Planning Advice Note 2 on Managing Significance in Decision-Taking in the Historic Environment and Advice Note 3 on The Settings of Heritage Assets.

- 4.17 They comment, in relation to the requirements set out in SAMDev Policy MD13 and Paragraph 189 of the NPPF, that the applicant has submitted a Heritage Impact Assessment, which provides their assessment of the effects of the proposed development on the built historic environment. With this in mind they make the following comment:
- 4.18 That in relation to the setting of Linney House, the proposed development would introduce buildings, on Plot No. 8, further to the north, and closer to the listed building than would have been the case under the existing extant planning permission. The Heritage Impact Assessment, they identify, acknowledges that "...some harm [to its significance] may be incurred by the encroachment of development closer to the house...", which is assessed as being less-than-substantial. However, they also comment that the Assessment notes that the design and orientation of the dwelling on Plot No. 8 is intended to minimise visual intrusion and that a sizable garden curtilage, that includes the existing mature trees will be created as a buffer against the development.
- 4.19 They comment that there is a wider point made within the Assessment, that the landform on the site was significantly altered by quarrying activity in the 1960s or early 1970s, which had a negative effect on its significance. Taking this in account, they advise that the proposed development would not result in any additional harm being caused to the significance of the listed building as a result of the effects that the development would have on its setting.
- 4.20 In addition to this, they advise that the other key planning considerations in determining this application is the effect that the development would have on the Conservation Area as a designated heritage asset. Of primary importance in this regard is the strong positive legal duty on the decision taker when determining planning applications, imposed by Section 72(i) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires that "...special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area".
- 4.21 With this in mind they comment that the site currently has a wooded character and that the existing extant planning permission for three dwellings was deemed to preserve the character and appearance of the Conservation Area through a landscaping scheme that it was considered would maintain the wooded character of the site.
- 4.22 The current application, they comment, proposes five additional dwellings, i.e. a total of eight dwellings, but of a substantially different design to the extant scheme, which is described in the Heritage Impact Assessment as being of "...a contemporary "Nordic woodland" style.". They comment that the units will utilise a mixed palette of traditional building materials comprising brick, stone and timber and slate and plain tile roofs, which is intended to reflect those within the wider town and surrounding area. In addition, a mixture of pitched, offset and mono roofs will be used to further break-up the form and massing of the dwellings, whilst significant amounts of glazing are intended to provide further interest, providing internal views that integrate the interior and exterior spaces. A mixed palette of hard landscaping materials, comprising gravel and fired clay pavements, is proposed, whilst a soft landscaping scheme has also been submitted. The Assessment, they comment, states that the "landscaping is integral to the design concept serving as a foil to the buildings and creating a soft visual screen with intermittent glimpses of the houses from the public areas beyond."

- 4.23 In terms of the architectural design, the Conservation Officer advises that they welcome the contemporary approach of the scheme and consider that the mixture of forms, layouts and materials will achieve the aim of breaking up the massing of each unit. Likewise, they consider that it would in principle also enable the built form of the development to be better integrated with the reprofiled landform. As such, they comment that it has the potential to provide a greater level of architectural interest within the Conservation Area than the previously approved scheme would otherwise provide. They advise that appropriate planning conditions could be included in the planning permission requiring prior approval of all external materials to ensure the design objective behind the scheme are fully realised.
- 4.24 They further comment that the wall adjacent to The Linney on the southern site boundary, which is currently in a poor state of repair, is acknowledged by the applicant to represent a key element of this part of the Conservation Area. They note that, as with the extant planning permission, two vehicular accesses through the wall are proposed, albeit in different locations, from those approved under the previous scheme. In addition, they observe, that a pedestrian access is proposed roughly midway along the boundary in order to enable residents and visitors to access the St Leonard's churchyard and the town centre on foot. At the same location, the applicant is also proposing to realign the wall to offer some highway improvements, whilst repairing the remaining sections of the existing wall. They comment that the Heritage Impact Assessment argues that these repairs would in principle provide benefit to the wider Conservation Area by ensuring the positive contribution the wall makes to its character and appearance is sustained in the longer term. They advise in the light of the comments submitted by the Highway Authority, that the concerns raised (as set out above) need to be resolved before the Conservation Officer can advise on whether the proposed works to the wall, access and footpath are acceptable. They do however advise that if the issues raised by the Highway Authority can be resolved, that a condition could be attached to the permission to ensure that the new accesses and the realigned sections of the boundary wall are contrasted, and the repairs undertaken, in a manner appropriate to the Conservation Area.
- 4.25 Notwithstanding these positive points, they advise, as the Heritage Impact Assessment acknowledges, that the landscaping scheme for the proposed development is of fundamental importance in terms of maintaining the wooded character of the site, thus allowing the Council (and now under the appeal, the Secretary of State), as the decision taker, to establish that the tests set out in s72 of Planning (Listed Buildings and Conservation Areas) Act 1990 are met. In this respect, they concur with the comments of the Tree Officer (set out below) that the development suffers from fundamental shortcomings and that a revision to the site layout, including a reduction in the proposed number of houses is necessary in order to ensure that the landscaping scheme is viable in the medium to long term. This, the Conservation Officer advises will be necessary before the scheme can be considered to either preserve or enhance the character and appearance of the Conservation Area. The submitted scheme they advise would give rise to less than substantial harm to its significance as a designated heritage asset, contrary to Core Strategy Policies CS6 and CS17, SAMDev Policies MD2 and MD13 and Paragraphs 193, 194, 196 and 200 of the NPPF, and that if such amendments are not made, they would advise that the application be refused.
- 4.26 Shropshire Council - Archaeology: Advise that the site lies adjacent to the former Carmelite Friary, the excavated remains of which date back to the 12th century, a post

medieval graveyard, the Medieval street system, and former open spaces east and west of The Linney. They further advise that the documentary evidence indicates that the land on either side of The Linney was laid out in burgage plots in the 13th century and that ridge and furrow cultivation has been recorded in the area, which was enclosed by the end of the medieval period. They comment that although there is no evidence that the area was occupied in the medieval period, it is possible that the medieval plots were used for various crafts and industrial activities as well as agriculture. Medieval occupation activity has been identified west of The Linney, comprising at least two building structures with a possible domestic plot occupying the street frontage and an ancillary structure to the rear, of later 12th century to the mid-14th century date. Other significant archaeological discoveries include medieval pottery and other artefacts at Linney House.

- 4.27 They therefore advise that the site is deemed to have some archaeological potential and that any below ground archaeological remains are likely to be affected by the construction of the development, associated services, new vehicular accesses and the landscaping of the site.
- 4.28 They comment that an archaeological desk-based assessment has been produced in support of the application. This assessment recommends that the proposed development be accompanied by an archaeological watching brief (in line with recommendations made in relation to the previous permissions). They concur with this recommendation and comment that a written scheme of investigation (WSI) for a programme of archaeological work produced and approved for a previous application for the site, has been resubmitted as part of the current application.
- 4.29 In view of the above, and in relation to Paragraph 199 of the NPPF and Policy MD13 of the SAMDev, they advise that a programme of archaeological work be made a condition of any planning permission for the proposed development.
- 4.30 Shropshire Council - Ecology: Advise that further information is required to show how Core Strategy Policy CS17 and SAMDev Policy MD12 have been complied with. They comment that the submitted ecological survey is out of date and that an updated survey (except in relation to bats in buildings) is required to determine if ecological features on the site have changed since 2016. (This was submitted just before the appeal was lodged).
- 4.31 In particular, they advise that additional information is required for otters, badgers and the quality of current habitats on site. In the absence of this up to date information they recommend refusal since it is not possible to conclude that the proposal will not cause an offence under The Conservation of Habitats and Species Regulations 2017, the Wildlife and Countryside Act 1981 and the Badgers Act 1992.
- 4.32 They additionally comment that the site lies completely within the Environmental Network due to its proximity to the River Corve and the semi-natural tree/scrub vegetation it supports. Aerial photos show that this is the only area of such vegetation adjacent to the River Corve for some considerable distance. Other than trees on the immediate riverbank, for much of its length the river is surrounded by more or less intensive farmland or meadow. Hence, the benefits it provides for foraging bats, otters and more widespread wildlife are of importance in the local area with the site providing a 'wildlife stepping stone' along the river corridor.

- 4.33 They comment that the Shropshire Core Strategy Policy 'CS17: Environmental Networks' seeks to ensure the protection, maintenance, enhancement and restoration of the Environmental Networks in the county in line with the recommendations of both The Lawton Review and the NPPF.
- 4.34 As the site lies within the Environmental Network, the Ecology Officer comments that the application must clearly demonstrate how the development will 'promote the conservation, restoration and enhancement of priority habitats and ecological networks' as required by Policy CS17 and paragraph 174 of the NPPF, but that this has not been addressed in the submitted documents.
- 4.35 They also comment that the proposed layout would involve loss of a considerable proportion of the remaining trees and the remaining vegetation, leading to urbanisation of the site and that even along the river, beyond the dwellings, the landscape would be relatively manicured with gravel paths, seating and a fire pit. In particular, they comment that the fire pit and seating would result in night-time disturbance of the river habitat, particularly for otters and bats. They advise that this would be a significant intensification of use over the previous permitted development and recommend that the landscape plan should be amended to retain as much semi-natural vegetation as possible.
- 4.36 They comment that the submitted Ecological Impact Assessment states that 'if development were to be on the higher ground only, it would likely result in a reasonable proportion of the existing trees and shrubs being retained (with the conifer content reduced)' which is the case for the existing planning permission (17/00230/FUL).
- 4.37 They identify that the Ecological Impact Assessment goes on to state that the 'increased loss of trees and scrub associated with the larger planned development is likely to have a negative impact of greater significance.' It goes on to advise that this loss appears difficult to mitigate for, with only a relatively small area of undeveloped land available for further tree planting. They advise, that should planning permission be granted, then planting of wildlife friendly shrubs and trees (species with spring blossom and fruits) would be generally beneficial, but that they consider that this would not mitigate for the loss of the previous vegetation and its associated biodiversity. They express concern that there is no guarantee that the wildlife value of garden planting would be maintained by future occupants of the properties.
- 4.38 In addition the Ecology Officer comments that the potential ecological impacts on wildlife associated with the proposed development include disturbance, deterioration and removal of nesting, foraging and commuting habitats, caused by vegetation clearance, artificial lighting, noise, human disturbance and pet disturbance and predation. They comment that otters, bats, badgers and nesting birds are key species groups that would be affected.
- 4.39 They further comment that very few trees are shown to be retained on the landscaping plan and that the retained trees on the north side of the river are not any case located within the red line boundary. They make a number of detailed points which include the following:
- That Macedonian Pine is not a native species as stated in the indicative native woodland mix;
 - That the proposed pond is completely surrounded by a gravel path with a 3m wide

- gravel path adjacent, making this more a formal garden pond than one for wildlife;
- That there are no trees to be retained along the frontage of the Linney;
- That the replacement tree planting ('screen mix' and 'tree planting of medium and large trees') appears from the landscape plan to be only c. 3 to 7m wide, with a distance of only 2 to 4m from the buildings themselves;
- That the species quoted are beech and small leaved lime which grow to considerable height and cast a dense shade and that apart from the effects of tree roots on the buildings themselves, it is almost certain these trees would cast so much shade before they are mature that there will be demands for them to be felled; and
- That the landscaping plan would need revision to provide an indication of the long-term landscape that would be achieved, taking into account the growth of the species to be planted.

4.40 They comment in relation to SAMDev Policy MD12 on the Natural Environment, that it seeks to ensure the avoidance of harm to Shropshire's natural assets and that their conservation, enhancement and restoration will be achieved by ensuring that proposals which are likely to have a significant adverse effect, directly, indirectly or cumulatively, on any of the following:

- priority species;
- priority habitats;
- important woodlands, trees and hedges;
- ecological networks; and
- landscape character and local distinctiveness.

will only be permitted, if it can be clearly demonstrated that there is no satisfactory alternative means of avoiding such impacts through re-design or by re-locating on an alternative site and that the social or economic benefits of the proposal outweigh the harm to the asset. They advise that in all cases, a hierarchy of mitigation and compensation measures should be sought.

4.41 They advise that the development should seek to satisfy this policy, but that the submitted documents do not currently provide details of sufficient mitigation or compensation measures. They comment that the application is not a site which has been allocated for housing in the local plan and that in addition, under the NPPF, the planning authority should be seeking a net gain for biodiversity through development. They advise that it is necessary determine the balance between the socio-economic benefits of the scheme and the harm to natural assets, but that on purely ecological grounds, the previous planning permission would be significantly less damaging to the Environmental Network.

4.42 It should be noted that at the time of writing of this report that updated comments from the Ecology Officer, in response to the submission of the updated Ecological Impact Assessment are still awaited. These will, if received, be verbally reported to the Committee.

4.43 Shropshire Council - Trees: Advise that the development does not meet local and national policy requirements and aspirations for sustainable development in relation to natural assets and they therefore recommend that the application be refused, or that the applicant be given the opportunity to make significant revisions to the proposed layout

density and landscaping. The Tree Officer offers detailed comments on the application including details of the extensive planning history relating to trees, since the applicant acquired it in 2013 (or thereabouts), since when the Tree Officer advises that there have been tree removals that have significantly affected what was a healthy established block of woodland.

4.44 They comment that in recent decades the woodland has provided a significant feature on the landscape that was integral to the resilience of the existing and future habitat corridor and green infrastructure along the River Corve. The extensive loss of tree cover they advise has been tolerated subject to:

- (i) A compensatory planting scheme of 100 trees following substantial felling in 2015 in breach of section 211 of the Town & Country Planning Act 1990; and
- (ii) Implementation of an, as yet, undelivered compensatory landscape (tree planting) scheme associated with felling undertaken as part of applications 12/02275/FUL and 17/00230/FUL. This relates to a large block of woodland planting proposed (but not yet delivered) to compensate for losses associated with measures for the mitigation of offset flood waters that would be caused by level changes proposed under Planning Permission Ref. 12/02275/FUL.

4.45 They comment that this latest application rather than protecting restoring and enhancing the quality of agreed compensatory planting would erode it and would affect areas outside the development boundary of the extant planning permission and in doing so the area and depth of woodland, which they consider would undermine the woodland's long-term quality and functionality as a habitat and as a screen to the site and its contribution to the character and amenity of the area.

4.46 The key reasons for their objection are:

- That of the estimated 387 trees that formed the woodland in 2015 the applicant has felled 234 and proposes to remove a further 104 trees leaving just 49. From an arboricultural perspective they advise that there is not adequate compensation for this level of degradation to the woodland habitat under the proposed scheme;
- That the site is a windfall site that falls outside the development boundary for Ludlow and it would have an adverse effect upon important woodland/green infrastructure and its contribution to amenity and the local ecological network (although they acknowledge that adverse effect needs to be weighed against public benefits of the scheme under SAMDev Policy MD12);
- That the proposed development reneges upon existing landscape agreements against which felling has already been executed, causing a net loss rather than a net gain in green infrastructure;
- That the proposed development would remove a block of compensatory planting (of 100 trees), which were planted following felling in 2015 on approximately 0.2ha of the site in breach of section 211 of the Town & County Planning Act 1990, which would also result in a further net loss of green infrastructure rather than a net gain;
- That the application disregards pre-application advice on layout, landscape and density that has been offered consistently since 2011;
- That the development is over development at the site resulting in the core area (volume) of priority habitat (woodland) and landscape being significantly eroded without identifying appropriate on or off-site compensation for those losses in

breach of SAMDev Policy MD12; and

- Because the landscape proposal is indicative and not to scale, and the lack of detailed information of the level of ground disturbance proposed, it is not possible to assess clearly the likely success of the landscaping scheme or how it would function within the wider area.

4.47 The Tree Officer also comments that there is a disconnect between this application and previous applications in relation to the level of information on flood mitigation and the need for measures to absorb flood water displaced by the proposed flood mitigation measures.

4.48 In support of the above points the Tree Officers comments as follows:

4.49 Impact on Landscape Setting: That the existing extant planning permission was originally granted due to its low density, i.e. three dwellings, which would be screened by the depth and maturity of the surrounding woodland. Given the site's position in the foreground, and its potential to compete with the iconic skyline, of Ludlow skyline as seen from Coronation Avenue, and its visibility from the town walls and St Lawrence's Church, it is unlikely that planning consent would have been granted in the first place if the site had been open paddocks or limited to a thin band of riverside trees as it will be if this application is granted planning consent as it in its current form.

4.50 Need for development of this scale: That the applicant has an extant (implemented) Planning Permission (Ref. 17/00230/FUL) to build three houses at the site that was originally approved in the absence of a five year housing land supply, which significantly lowered the bar for what could be refused. This new application seeks to expand the development despite the following:

- (i) That the site falls outside the Ludlow development boundary;
- (ii) That there is now an adequate provision of housing sites in the Ludlow area; and
- (iii) That there are four major developments with planning consent in the Ludlow area these will deliver approximately 630 dwellings in the coming years, with further sites being considered under the development plan review.

4.51 In the light of these points and the effects on the natural assets at the site the applicant should be expected to demonstrate how the proposed development meets the hierarchy that defines the principles behind SAMDev Policy MD12;

4.52 Extent of the development: That the proposed development extends outside the development boundary for the extant planning consent 17/00230/FUL thus reducing the potential for sustainable on and off-site compensatory planting. If the hierarchy for mitigation and compensation set out in SAMDev Policy MD12 cannot be met then from a natural assets perspective the merits of this application over the extant one do not appear to provide a better form of development, and the original may be of more merit.

4.53 Policy considerations: That in considering the proposal due regard should be had where applicable to the following local and national policies and guidance; Core Strategy Policies CS6 and CS17, SAMDev Policies MD2 and MD12, and national policies and guidance for the natural environmental assets and habitats set out in the NPPF, Sections 2 (Achieving Sustainable Development) and 15 (Conserving and Enhancing the Natural Environment); all of which put a clear emphasis on the need to conserve, enhance,

connect, restore or recreate natural assets. Demolishing/fragmenting a functional woodland, as proposed as part of the current application does not meet with these aspirations.

- 4.54 Recent government strategy papers such as the “Clean Growth Strategy” and “A Green Future: Our 25 Year Plan to Improve the Environment” set a top down intention for not just the protection, restoration and enhancement of the country’s natural assets and green infrastructure but for a net gain. In these documents the fragmentation of these features as undesirable. This drive from above raises the profile of relevant policies and the need for new infill development to demonstrate that the public benefits of the development clearly outweigh the value of any assets affected and provide adequate compensation and or mitigation for any full or partial harm or loss.
- 4.55 Visual Impact and Heritage Assessments: That the justification for the development in the Landscape and Visual Impact Appraisal refers to small losses of mature trees but avoids making clear reference to large areas of mature woodland and trees already lost that are subject to existing or conditioned replacement planting. The appraisal gives a false impression of the impact of the development by not addressing in aggregate the impacts already accrued and requiring compensation from the applicant’s previous activities.
- 4.56 Appropriate Use of the Site: That both the Heritage Assessment and the Landscape and Visual Impact Appraisal follow the concept that the use of the site for a housing estate is more appropriate than as a functional woodland. Given the extensive evidence for the benefits to communities from the presence of strong green infrastructure in towns, on local economies and on mental and physical health; and given the extent of development already planned for Ludlow, there is a strong case for the conservation, protection and enhancement of functional blocks of woodland in close proximity to the town centre. This concept is very much supported by the governments policy papers discussed above.
- 4.57 Missed Viewpoints: That the use of nine viewpoints informing the landscape and visual impact assessment is helpful but incomplete, because a number of very key views into and across the site have been missed. These key locations include:
- (i) St Lawrence’s Church tower and the gardens of rest and the town walls carpark. These are locations where residents and visitors are openly encouraged to enjoy the view across The Linney to the open countryside beyond; a development adjacent to Linney House coupled with tree losses would be prominent in these views; and
 - (ii) A further missed viewpoint is from Coronation Avenue when approaching the Corve Bridge, where there is parking at the roadside and where the path is heavily used as part of linked walks across The Linney meadows and also by students and locals walking to and from Ludlow School and the associated sports facilities. As a gateway to the old town the view for vehicle users and pedestrians opens up from being enclosed by banks and trees to offering a presently uncontested view of the town’s historic skyline. Plot 8 in particular would stand out in competition with that view.
- 4.58 Development on the north-east end of the upper plateau brings the building line onto high ground that is clearly visible from the Coronation Avenue. Existing trees and cover would not screen this and due to the proximity of the plots to the site boundary and Plot No 8 in

particular. The effect is unlikely to be effectively mitigated. As a result, the limited space between the top terrace and the river means the use of large structural planting as a screen would need to be in close proximity to the buildings and it is predictable there would be an ongoing conflict between residents and the trees resulting in pressure to fell or prune them as they developed into maturity.

- 4.59 Development on the north-east end of the upper plateau also brings people and their property into proximity with the mature Ash and Sycamore trees with potential for proximity issues to drive future pressure to prune or remove these two prominent trees. This consideration was integral to the removal of the fourth plot from Planning Application Ref. 12/02275/FUL and has been raised regularly during pre-application discussions.
- 4.60 As has been highlighted above, for this development to proceed would require the complete removal of all remaining trees on the site barring a strip of 40 or so trees scattered along the boundary with the River Corve. On their own these would provide at best a permeable barrier and almost none in winter. To offset this fact the landscape appraisal relies heavily on the contribution of the trees located on the north side of the river, which are outside the site boundary and outside the control of the applicant. Many of them are mature or over mature and in decline and the long-term retention of these trees is in no way secure. It is neither reasonable nor sustainable to rely on off-site trees to provide cover for the development when the site is large enough to provide better on-site mitigation.
- 4.61 The indicative landscaping proposal: That this introduces the concept of a manicured woodland garden rather than a functioning naturally evolving block of woodland. It is likely that trees would be crown lifted to give clear site lines and that regeneration and shrubs such as thorn and bramble patches would be removed in the residents' desire to "manage the site". The extant consent was granted on the premise that the riparian woodland would be of a depth and density for natural processes to help it evolve and change and that there was a clear division between formal garden space and the more natural woodland. To move away from this concept represents an erosion and fragmentation of the natural infrastructure and habitat corridor.
- 4.62 Plots 2, 4, & 5 are located close to The Linney with small gardens in the intervening space, dominated by trees. Due to the close proximity of these trees these small south facing gardens and the properties will be end up being heavily shaded. This and the fall of detritus will predictably be seen as a burden effecting residents' enjoyment of their properties leading to pressure from residents to remove or prune the trees. Without the trees and until they have established sufficient height and volume, the development will be highly visible from both The Linney and the viewpoints along the town walls and St Lawrence's Church.
- 4.63 The landscape proposal is indicative and not to scale which given the site constraints resulting from a dense development and the level of ground disturbance, it is not possible to assess clearly the likely success of the indicative proposal or how it would function within the wider area. Of particular concern is the extent of level changes which will affect almost all of the southern two thirds of the site and are likely to render soil horizons as inhospitable to the successful establishment and ongoing good condition of mitigation planting.
- 4.64 Sustainable Design: That given the nature of the site and its potential prominence in the

landscape, the success of any development here is reliant on the quality of landscape mitigation and how it integrates with the development and surrounding area. It is therefore essential that all measures for landscape provision, aftercare and evidence that it will function within the local landscape, need to be provided for consideration prior to the determination of the application and not left to be negotiated as a reserved matter or through conditions, when complications associated with layout and density have not yet been resolved. The same is true for the design and provision of services, lighting and SUDS provisions. The submission of the detail before the application is determined, is essential and to ensure the development is in accordance with the expectations of SAMDev Policy MD2.

- 4.65 Pre-Application Advice: That almost all the points discussed above were raised during pre-application and other discussions going back to 2011 and Application Ref PREAPP/11/01118.
- 4.66 Recommendations: In light of the above comments the Tree Officer recommends reducing the layout and density of development to within the extant consent's boundary together with a redesign of the layout to ensure a sustainable long-lived landscape buffer along The Linney.
- 4.67 They recommend that the core area of the riparian woodland buffer needs to be increased to a depth were losses can be accommodated without significant effects on its density, and that it is not reasonable to rely on trees outside the site to deliver this.
- 4.68 They also comment that the integrity and durability of the woodland buffer needs to be bolstered through increased depth and that it should be clearly separated from the development as an independent feature from the proposed private garden space. This they advise would accord with the existing landscape arrangements agreed in relation to the extant planning consent. They advise that they envisage protecting this feature with a woodland Tree Preservation Order once any final agreement is offered up for consent.
- 4.69 The also comment that the level of detail on the functionality, specification and delivery and maintenance of landscape provision (i.e. its management) needs to be significantly improved in order to prove that appropriate mitigation and compensatory planting meets the requirements of SAMDev Policy MD2 and addresses the hierarchy behind the principles of Policy MD12. Clarification of the details of flood zone compensation are also required.
- 4.70 On the basis of the comments set out above, the Tree Officer advises that the application cannot in its current form be supported. The amendments to the landscaping scheme deleting the outdoor seating space and firepit do not alter the substantive comments from the Tree Officer.
- 4.71 Environment Agency: Do not object and the have offered comments as follows:
- 4.72 Flood Risk: That the site is (partially) located in Flood Zone 3, which is the high-risk zone as defined the Agency's Flood Zone Map with a 'high probability' of fluvial flooding and comprises land assessed as having a 1 in 100 year, or greater, annual probability of river flooding;
- 4.73 Sequential Test: That the NPPF details the requirement for a risk-based sequential test in

determining planning applications. This requires decision-makers to steer new development to areas at the lowest probability of flooding by applying the sequential test. It states that 'Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding'. This is matter for the Local Planning Authority to consider. If it is satisfied that the sequential test has been passed, then the following comments apply:

- In relation to the Flood Risk Assessment (FRA), that the Environment Agency does not have a model for the River Corve, but it is understood that the Local Lead Flood Authority do have access to a model for the river. The Environment Agency does have model for the River Teme. It is understood that the flooding on this site would be primarily from the River Corve as opposed to directly from the River Teme, however the flood conditions on the Teme will impact on the flooding regime of the River Corve. As a result of the updating of the model this will represent the best available data for this site;
- That the proposal will include some ground works to raise levels to enable additional properties in the south western section of the site. The model has taken a precautionary approach and included updated climate change guidance for both 35% and 70%. The model indicates that the 1 in 100 year plus climate change would be at a level of 82.44mAOD;
- That as the developable area of the site is to be set no lower than 84.5mAOD which is in excess of 2 metres above the design flood level (82.44mAOD), the proposed dwellings will be safe and also afforded dry access in a flood event; and
- That the development fits within the existing Flood Zone 1 boundary for the majority of the properties, although it appears the properties in the south west section of the development are only considered to be in Flood Zone 1 following proposed ground works. They comment that the Flood Risk Assessment Flood Modelling Study states that the impact on areas outside the site boundary is negligible, with the land reprofiling predominantly on land above the 1 in 1000 flood level and that what loss of storage within the floodplain that there would be (40m³), would be minimal and would be offset by improvements in conveyance;

4.74 River Corridor Easement: That similar to the previous application, they advise that the area of land within 8 metres of the top of bank from the River Corve (as a Main River) should be kept free of structures, including fencing. The use of a small part of the area within the easement as a 'social space' is acceptable, although they advise the inclusion of a condition to ensure that no new structures (including gates, walls and fences) are installed or constructed within 8 metres of the top of the bank of the River Corve and an informative referring to the need a permit under the Environmental Permitting (England and Wales) Regulations for any such work; and

4.75 Foul Drainage: That they have no objection to the connection of foul water to the mains foul sewer, as proposed.

5.0 THE MAIN ISSUES

- 5.1
- **Principle of the Development;**
 - **Impact on Trees;**
 - **Impact on Ecology;**
 - **Impact on the Conservation Area;**
 - **Traffic, Highway and Pedestrian Safety;**

- **Flood Risk;**
- **Design;**
- **Affordable Housing;**
- **Ground Contamination;**
- **Comparison Against Consented Scheme and the Fallback Position**
- **Overall Public Benefit v Harm – Planning Balance**

6.0 OFFICER APPRAISAL

6.1 Principle of the Development

- 6.1.1 The key issue in relation to the principle of the development is that the site is located immediately adjacent to, but outside, the development boundary for Ludlow, and that approval of the application would potentially be a departure from the development plan. As a site outside the development boundary the application raises the issue of whether there is an argument under SAMDev Policy MD3, for granting consent for the scheme, as a windfall site, under Paragraph 3 (of Policy MD3), taking into consideration the current settlement housing guideline figure for Ludlow and whether this is being met. Even then, if there is not case for granting consent under Paragraph 3, then insofar as there is an existing consented three house scheme approved on the site, there is also a fallback position to take into account in terms of whether this lends weight, as justification for the approval of the current eight houses scheme, and particular because the proposed eight house scheme, offers any or sufficient betterment or enhancement over the existing three house scheme.
- 6.1.2 In terms of the development strategy, Core Strategy Policy CS1 sets out the overall Strategic Approach to development in Shropshire, with development concentrated in Shrewsbury and County's Market Towns and Other Key Centres. Ludlow is identified in Core Strategy Policy CS3 and the SAMDev Policy MD1 and Schedule MD1.1 as one of the Market Towns and Key Centres, and SAMDev Policy S10 and S10.1 identify it as the largest market town in southern Shropshire, providing a focus for development. It includes a housing guideline figure of around 875 new dwellings in the period between 2006 and 2026 and it states that new housing development will be delivered primarily on the allocated housing sites east of the A49, set out in schedule S10.1a and identified on the Policies Map, alongside additional infill and windfall development, within the town's development boundary. The development boundary is shown on the Adopted Policies Map 2015 – Ludlow Area Place Plan (Inset 1). This shows the development boundary extending along The Linney on the south side of the application site, with the site itself just outside the development boundary. As such it falls within the area of land to be treated as countryside under Core Strategy Policy CS5 and SAMDev Policy MD7a.
- 6.1.3 Neither Core Strategy Policy CS5 nor SAMDev Policy MD7a envisage the development of new open market housing in the countryside and both make clear that new development will be strictly controlled in accordance with national planning policies protecting the countryside. However, Paragraph 3 of SAMDev Policy MD3 sets out that the circumstances in which planning permission may exceptionally be approved for sites outside settlement development boundaries.
- 6.1.4 Paragraph 3 states that where a settlement housing guideline appears unlikely to be met, additional sites outside settlement development boundaries that accord with the settlement policy may be acceptable subject to the considerations set out in Paragraph 2.

The considerations set out in paragraph 2 include:

1. The increase in number of dwellings relative to the guideline; and
2. The likelihood of delivery of the outstanding permissions; and
3. The benefits arising from the development; and
4. The impacts of the development, including the cumulative impacts of a number of developments in a settlement; and
5. The presumption in favour of sustainable development.

- 6.1.5 The starting premise of paragraph 3 is that it applies only in instances where a settlement housing guideline appears unlikely to be met. Therefore, the first issue is whether the current settlement housing guideline for Ludlow has or has not been met or is unlikely to be met.
- 6.1.6 The latest figures are set out in the Council's Five-Year Housing Land Supply Statement published in March 2020. This indicates that as of the 31st March 2019, there had been 480 completions and Planning Permissions of Prior Approvals for 802 additional dwellings, providing a total of 1282 completed sites or dwellings with Planning Permission. There are no outstanding additional allocations. Therefore, when set against the Housing Guideline figure of 875, it is clear that there is already substantially over provision in Ludlow. Because the numbers are so substantially over the Housing Guideline figure, it cannot be considered there is any justification in terms of the numbers and consequently no case at all for invoking paragraph 3 of the Policy MD3. As such in terms of development plan policy there is on the face of it, no case for the development being justified in terms of policy set out in the development strategy of the development plan. The applicant does not dispute this and does not attempt make a case that the Policy MD3 should be invoked. There is no disagreement between the Council and the applicant on this basis.
- 6.1.7 There are alternatively potentially two significant material considerations to set against this, the first being that the NPPF, sets out policies for rural housing on Paragraphs 77 to 79. These make clear, in paragraph 77, that in rural areas, planning policies and decisions should be responsive to local circumstances and support housing developments that reflect local needs and, in paragraph 78, that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. As a site on the edge of Ludlow, the issue of the sustainability of rural village communities, is not a relevant consideration. Paragraph 79 then states that planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of a number of specified circumstances apply, but none in this case are applicable or are being argued by the applicant. In the current situation of an oversupply of housing completions and permissions against the identified requirement, there is therefore no case in terms of national planning policy outweighing, development plan policy as a material planning consideration.
- 6.1.8 The only other case to consider then is whether the fallback to the existing consented scheme lends weight as justification for approval of the current eight houses scheme and/or whether the proposed eight house scheme, offers any, or sufficient, betterment or enhancement over the existing three house scheme, as a material consideration.
- 6.1.9 Setting aside the issue of the fallback to the consented three house scheme, unless the development can be considered to offer any or sufficient betterment or enhancement

over the existing three house scheme to warrant approval of the application, then in terms of the principle of the development, it has to be considered to be contrary to the development plan, and in particularly Core Strategy Policy CS5 and SAMDev Policies S10 and MD7a, because of its location outside the development boundary for Ludlow.

- 6.1.10 The fallback is of significance insofar as it establishes the principle of the development of three houses on the site, and that if the eight scheme is not approved, the applicant can still implement the approved three house scheme. It does not however provide justification for the approval of additional dwellings on the site. What it does however do is raise the issue of whether there is justification for approving an alternative scheme with more than three houses, in this case, eight, because the resulting development may provide sufficient betterment or enhancement over the existing three house scheme to warrant approval of the application. This then comes down to the consideration of the main impacts of the development and the extent to which it either gives rise to either harm or benefit compared with the existing approved scheme. To consider this the main impacts of the development need to be considered. This is essentially the argument of the applicant.

6.2 Impact on Trees

- 6.2.1 The impact on the trees on the site is by far the most significant aspect of the scheme because of its significance as an area of established woodland and because it requires the felling of almost all the trees and the clearance of the upper level and part of the lower level to enable the proposed site reprofiling works to be undertaken. Consideration of the impact on the trees, is quite a complex matter, which to fully understand, it is necessary to consider it in the context of; the overall recent history of the tree cover on the site and the resulting environmental baseline prior to the approval of the existing consented scheme; what the existing consented scheme proposes and in terms of felling and replanting and the additional felling and replanting that has been undertaken; what the current application proposes and how this differs from the consented scheme; and what is now proposed by way of replanting, landscaping and management of the site and what the end result will be. This is complex, but important to understand in terms of justification for the recommendation on this application and its determination (now on appeal).

The overall recent history of the tree cover on the site

- 6.2.2 As set out above, the site historically is understood to have been worked as a mineral extraction site. As detailed above, there is some disagreement between the applicant and third parties on when mineral extraction ceased. The Design and Access Statement submitted with the 2012 Planning Application Ref. 12/02275/FUL suggested that the upper part of the site adjacent to the Linney was used as a coal merchants yard, while the lower part of the site adjacent to the river was used by Jolly's Circus for overwintering animals and caravans, although it is unclear exactly when this would have been. Photographs submitted with that application, which it states, date from c.1989-1990 and some from 1995, show the site as largely open but with scattered trees, at least some of which, were planted 25 years earlier, i.e. in the mid to late 1980s by the previous owner.

- 6.2.3 Aerial images of the site from 1999 show the site substantially covered in trees, albeit with some paths and rides through it, so that it had by that date developed as a substantial block of woodland. Additional aerial images show that this continued to develop and mature through to 2015.
- 6.2.4 The report of the tree survey undertaken in 2012 and submitted as part of Planning Application Ref. 12/02275/FUL indicated that at that time there were approximately 250 individual recorded trees plus groups comprising approximately 100 further trees on the site. The report indicates that these were a mixture of self-set native species and planted ornamental trees including some conifers.
- 6.2.5 The 2012 planning application initial identified that 64 trees would be felled, but that these would largely be confined to the areas where four initially proposed dwellings were to be located, the idea being to retain as many of the trees on-site as possible. The submitted application was subsequently amended to omit one of the proposed dwellings, reducing it to a three-house development which was what was approved in June 2014. Details of the tree protection and landscaping of the site were reserved by condition, and a discharge condition application (Ref. 16/01767/DIS) was subsequently submitted and approved in November 2016. In addition, there were two subsequent amendments (Refs. 16/02803/AMP and 16/05582/AMP) which made a revision to the siting of the house on Plot 2 to avoid a mains sewer and the removal of an additional tree that had not been plotted on the originally submitted tree survey plan. As result of the submitted and approved landscaping plan, it was identified that in total 100 trees would need to be felled (rather than the originally proposed 64), but as a result 194 trees would be planted as mitigation. The scheme nevertheless retained the substantive tree cover on the upper part of the site adjacent to The Linney. Following the amendments, the net effect is that the total proposed loss would be 99 trees and that total to be replanted would be 183 new trees (which have yet to be planted).
- 6.2.6 What however also happened at this time is that the applicant, before the submission of the discharge of condition application, felled 157 other additional trees, without first giving notice under s.211 of the Town and Country Planning Act 1990, because of the location of the site in a Conservation Area. It is understood that some of these trees were those included in the number in the subsequent discharge of condition application. These trees were as such unlawfully felled. The applicant however, as a result agreed to a voluntary replanting scheme comprising 100 replacement trees planted as whips and these have been planted.
- 6.2.7 The subsequent 2017 Planning Application Ref. 17/00230/FUL essentially took into account the details approved in the 2014 permission and in the subsequent discharge of conditions application and amendments. It is understood that the additional 99 trees have been felled as pre-commencement works. The currently submitted Tree Constraints Plan appears to represent the current position on site in terms of the trees remaining, i.e. 145 trees, although for the reasons set out in paragraph 6.2.8 below it is not considered to present a complete and accurate record of the tree on the site.

What the current application proposes and how this differs from the consented scheme

- 6.2.8 The Arboricultural Report submitted with the current application states that 105 trees and groups of trees will need to be removed out of a total of 145. It states that the majority of trees to be lost are small or moderately sized category C specimens with low amenity

value. The two most important trees within the former garden area of Linney House, the Sycamore and the Ash located adjacent to the site entrance to Plots 5 to 8 are to be retained. The report is accurate in stating that the majority of the trees are not particularly significant trees as individual trees and the loss of each as an individual tree does not give rise to significant harm. However, the report has inadequately considered the impact of the collective loss of the trees and is even misleading in understating the loss that will result. As stated above, there has been disagreement between the Tree Officer and the applicant about the number of trees that have been felled. The Tree Officer has included an Addendum with his comments that details the recent tree history on the site and identifies that there were 256 trees felled in 2015-2016, 157 of which were unlawfully felled and then a further 99 that were additional felled as part of the authorised pre-commencement works to the implementation of the 2014 Planning Permission (Ref. 12/02275/FUL). This is now largely of historical significance, but what is relevant, is that the applicant agreed and undertook the planting of 100 trees as compensatory planting for the unlawful felling and also agreed to the planting of a further 183 tree as additional compensatory planting, pursuant to the discharge of conditions on the 2014 Planning Permission. This planting has yet to be undertaken. Whilst these trees do not exist on the site, they do form part of the baseline for the consented scheme, now implemented under the 2017 Planning Permission. The Arboricultural Report submitted with the current application should have identified these as part of the environmental baseline on the site and is inadequate and misleading in that respect, If however the currently submitted scheme is intended to supersede that approved under the now implemented 2017 consent, as it is, then the correct environmental baseline can be considered to the current position before the felling of any additional trees (even if they do not remain on site) as part of the implementation of that consent, the approved replanting required arising from that consent and/or the subsequent discharge and variation of condition applications attached to that consent.

- 6.2.9 Notwithstanding these inadequacies in the submitted details, it is clear from the application that all the trees on the part of the site to be affected by the reprofiling works will need to be felled and that these will be lost, regardless of any dispute over the exact numbers of and accuracy the Arboricultural Report. In that respect the substantive issue is one of what is proposed by way of replanting on the site, once the re-profiling has been undertaken.

What is now proposed by way replanting, landscaping and management of the site

- 6.2.10 This is a further source of inadequacy in the information provided by the applicant in that only an indicative landscaping plan has been submitted. The submitted Landscape and Visual Appraisal describes the scheme as incorporating the following “principal elements”:

- Planting of groups of native species trees and shrubs on 2m high mounds at both the western and eastern site entrances and along the southern boundary will assist in filtering and partially screening views of the proposed residential properties from the Linney and the inside of Westview (the property opposite on the south west corner of the site);
- Native tree and shrub planting and areas of wildflowers to be established on the new embankment to be formed along the northern boundary of the developed area in order to assist in filtering views of the proposed development from the public footpath to the north and to provide understorey habitat for wildlife;

- New ecological pond on floodplain in north-west corner of site with associated informal seating area (now deleted);
- Informal bound gravel and woodchip footpaths creating riverside walk in the floodplain open space corridor;
- Informal woodland area seating adjacent to the River Corve (also now deleted); and
- Low shrubs in front gardens of some of the properties, selected to be of value to wildlife.

6.2.11 The submitted details include a landscaping plan, which until the recently submitted amendment, showed an “Indicative Woodland Mix” and “Indicative Screen Mix” and the accompany Tree and Shrub Planting Schedule provided details of the types, numbers (1647) and sizes of trees and shrubs proposed, which included some heavy and extra heavy standard trees. Notwithstanding that the information provided, and the subsequent amendment, the advice from the Tree Officer, is that the amended scheme remains inadequate, and that the fundamental objection to it, because of the substantial tree loss on the site, remains. The Tree Officer, and the Ecology Officer advise that the application needs to demonstrate that there will be not only an adequate level of mitigation by way of new tree planting to re-establish the woodland on the site, but also that it justifies the substantial loss of the existing woodland block for up to twenty years, by providing a significant level enhancement, which the Tree Officer and the Ecology Officer advise the currently submitted details fail to provide.

6.2.12 Notwithstanding the above advice, they also comment that once the woodland replanting scheme is secured, there is then a key issue of how retention of the scheme will be managed, and in particular how the common areas outside the curtilages of the eight houses, will managed going forward. The submitted Tree and Shrub Planting Objectives statement refers to the site being subject to a ten year management plan, but no details are provided, and it is unclear how the common areas of the site would be managed, either initially or on an on-going basis in the longer term.

6.2.13 Notwithstanding these inadequacies, the fundamental difficulty with the scheme is that it will result in the loss of a significant proportion of the trees on the site, and in essence almost all of the trees on the upper part of the site adjacent to The Linney. Furthermore, because of the number of dwellings proposed, the advice is that it simply not possible to provide adequate mitigation by way of replanting/re-landscaping scheme, that would make up for the loss. The Tree Officer, the Ecology Officer and the Conservation Officer have all advised that the current scheme is unacceptable and that for an alternative development proposal on the site to be acceptable, a reduced level of development with an enhanced tree planting and landscaping scheme together with a secured management plan for the site is required. This in essence is what the negotiated amended four houses scheme included in Planning Application Ref. 19/05519/FUL has sought to secure. This has yet to be brought to the Committee for consideration.

6.2.14 One further point to note is that the existing consented three house scheme, was approved on the basis that much of the existing tree cover on the site would be retained and enhanced by further replanting as set out about. In that respect the existing scheme is a preferable option to the what is proposed under the current eight house scheme. On the other hand, the approved scheme has not secured a management plan for the future of the woodland on the site, and it would be a benefit that could be secured through the approval of a new consent.

6.2.15 Overall, however the loss of the trees and woodland on the site without adequate mitigation, and enhancement would give rise to what could only be considered to be a significant and unacceptable level of harm, from an arboricultural, ecological and conservation perspective. The comments of objectors are well founded. The proposal simply does not represent an acceptable scheme, and refusal could be justified on the grounds of the impact on trees alone. It would be contrary to Core Strategy Policies CS6 and CS17 and SAMDev Policies MD2 and MD12 and paragraph 170 of the NPPF.

6.3 Impact on Ecology

6.3.1 In relation to the impacts on Ecology, the comments of the Ecology Officer as set out above are self-explanatory and make clear that the proposal would result in significant damage to the Environmental Network and that the application as submitted does not provide details of sufficient mitigation or compensation measures for the harm to natural assets of the site. They therefore advise that the consented three house scheme would be significantly less damaging to the Environmental Network and that the submitted scheme does not provide adequate details or adequately demonstrate that the harm will be appropriately mitigated in accordance with the hierarchy of mitigation.

6.3.2 The requirement of Core Strategy Policies CS6 and CS17 is that new development should protect, restore, conserve and enhance the natural environment and under SAMDev Policy MD12 should only be permitted if it can be clearly demonstrated that there is no satisfactory alternative means of avoiding such impacts through re-design or by re-locating on an alternative site and the social or economic benefits of the proposal outweigh the harm to the asset and that in all cases, a hierarchy of mitigation and compensation measures will be sought. As detailed further below, whilst there are public benefits arising from the scheme, including the repair of the boundary wall and improvements to access along the Linney with the provision of the proposed passing place, an affordable housing contribution and an improved architectural design, the advice to the Committee is that these are so substantially outweighed by the damage cause by the loss of the trees and woodland and the inadequacy of the landscaping scheme and the impacts arising from the resulting harm, that the public benefits cannot be considered to outweigh the harm. The proposal therefore must be considered to be contrary to Core Strategy Policies CS6 and CS17, SAMDev Policies MD2 and MD12 and the relevant paragraphs of the NPPF.

6.4 Impact on the Conservation Area

6.4.1 The impact of the proposal on the Conservation Area is summarised in the comments of the Conservation Officer as set out above, so that there is no need to repeat these. If the Committee was determining the application, it would need to be mindful of the obligations under s.66 and s.72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

6.4.2 Again, in relation to the impact on the Conservation Area, as set out in the Conservation Officer's comments, because the harm is assessed as being less than substantial, this has, in accordance with paragraph 196 of the NPPF to be weighed against the public benefits of the proposal. In part those benefits in fact also relate in part to the character and appearance of the Conservation Area insofar as they arise from the works to the repair and restoration the boundary wall along The Linney. This is currently in a poor state of repair and is or will be at risk of collapse if works to it are not undertaken. The

detail of the precise nature of the works to the wall are not included in the application, but as well as realignment in its central section to allow for the construction of the passing place, some rebuilding is also likely to be required. This will need to be handled with considerable care and attention to the detail, including clearly defining the extent of any demolition and rebuilding and details of the pointing and any replacement stonework. This can be reserved by condition. The details of the works to The Linney and the construction of the passing place would similarly need to be conditioned to ensure that they are acceptable and sensitive to the character and appearance of the Conservation Area and the setting of the adjacent Listed Buildings.

- 6.4.3 Notwithstanding these positive points, the major shortcoming with the scheme, as set out above in the comments of the Conservation Officer, arise from the loss of the trees and the woodland cover on the site and the inadequacy the landscaping scheme, as result of the level of development proposed. This is significant to the character and appearance of the Conservation Area, giving rise to the less than substantial harm to its significance as a designated heritage asset, contrary to Core Strategy Policies CS6 and CS17, SAMDev Policies MD2 and MD13 and Paragraphs 193, 194, 196 and 200 of the NPPF. In relation to the requirement set out in paragraph 196, as detailed above the public benefits arising from the proposal again must be considered to be substantially outweighed by the damage caused by the loss of the trees and woodland, the inadequacy of the landscaping scheme and the impacts arising from the resulting harm. The proposal therefore must be considered to be contrary to Core Strategy Policies CS6 and CS17, SAMDev Policies MD2 and MD13 and the relevant of the NPPF.

6.5 Traffic, Highway and Pedestrian Safety

- 6.5.1 In relation to traffic, highway and pedestrian safety, the key consideration is that The Linney is very narrow and includes a bend halfway along the southern boundary of the site. This limits the visibility of on-coming vehicles in both directions. The bend is also where the proposed crossing point for pedestrians would be located, adjacent to the gateway into the St Leonard's Church Yard. The development of the site would give rise to additional traffic on a road that does present some difficulties, but the scheme does offer mitigation by way of the provision of the proposed passing place and also the repair of the boundary wall along The Linney, which directly fronts the road without any intervening kerb or verge. These would be benefits of the scheme. Although not all the details have been submitted as requested by the Highway Authority, there is no in principle objection on highway and pedestrian safety grounds subject to the submission of further details, so that there is no basis at this stage for considering that the proposal would not be acceptable in relation to traffic, highway and pedestrian safety considerations. Securing of the provision of the passing place could be achieved by the imposition of a Grampian style condition requiring it provision before the development is occupied.

6.6 Flood Risk

- 6.6.1 Although part of the site is located in Flood Zones 2 and 3, the Environment Agency has advised that the development fits within the existing Flood Zone 1 boundary for the majority of the properties, and that it is satisfied that what loss of storage within the floodplain that there would be, would be minimal and offset by improvements in conveyance. With regard to the reprofiling works proposed, it further advises that if the

developable area of the site is to be set no lower than 84.5mAOD which is in excess of 2 metres above the design flood level (82.44mAOD), that the proposed dwellings will be safe and also afforded dry access in a flood event. As such the site cannot be considered to raise any significant issues in terms of flood risk.

6.7 Design

6.7.1 The application does not give rise to any significant issues, purely in terms of the architectural design. As set out above the Conservation Officer, welcomes the contemporary design concept behind the scheme as being an improvement on the existing consented scheme, which should be recognised as a benefit. However, in terms of the overall design of the scheme, taking into account the loss of the existing woodland cover and the inadequacy of the landscaping scheme to provide adequate level of mitigation for the harm caused, essentially because of the level development proposed on the site, the design cannot be considered to be acceptable or therefore policy compliant with the key relevant development plan and national policies. These include Core Strategy Policy CS6 and SAMDev Policy MD2, as well as Chapter 12 of the NPPF. The proposal also cannot be considered to be acceptable in relation to the Principle 2 (Local Distinctiveness) set out in the West Midlands Design Charter, which has recently (on 1st June 2020) been endorsed by Cabinet as a material consideration to inform decisions on planning applications.

6.8 Affordable Housing

6.8.1 As set out in the comments of the Affordable Homes Officer, the proposal exceeds the threshold for an affordable housing contribution. Under Core Strategy Policy CS11, the proposal should include on-site affordable homes provision, which is required for developments of five dwellings or more. This is however not proposed. A contribution would instead be provided in lieu of on-site provision at the Prevailing Target Rate of 15%. It should be noted that although the site is located outside the development boundary for Ludlow, it is still located within the Ludlow Town Council area, so that the Target Rate is the lower 15% band applicable in the town, rather than the higher 20% applicable in the surrounding rural area.

6.8.2 A s.106 agreement would be required to secure the contribution and the applicant has, as part of the submitted appeal, included a draft Planning Obligation for a contribution of £108,000. Whilst having included this they also state that they considered that such a payment should not be necessary, because the financially significant costs of the highway improvements that are proposed. Where viability of a development is affected by a required financial contribution, then the normal route to dealing with this is for the applicant to request open book accounting to assess the financial aspects of the development, as set out in the Council Type and Affordability of Housing Supplementary Planning Document (SPD) (2012). In this case no such request has been submitted by the applicant.

6.8.3 Notwithstanding, the issue over any request for open book accounting, if the required affordable housing contribution is offered then there is no reason for it to be considered to be a determining issue and the requirement can be considered to add to balance of the public benefit that would be provided by the scheme.

6.9 Contamination

6.9.1 This is not a major or determining issue and can be addressed by condition as recommended by the Regulatory Services Officer.

6.10 Comparison Against Consented Scheme and the Fallback Position

6.10.1 As set out above the application needs to be considered, having regard the existing consented three houses scheme compared with the proposed eight house scheme in terms of the relative merits and harm of the two proposals.

6.10.2 As set out above the primary concern in relation to the existing scheme is with its relatively mediocre quality, on what is a key site, in Ludlow. The proposed dwellings, of the consented scheme, are of a more traditional although mixed design, but add little of merit to the character and appearance of the Conservation Area. On the other hand, as noted above, and in the comments of the Tree Officer, Ecology Officer and Conservation officer, it is intended to retain the existing trees to a greater extent than the proposed eight house scheme, and there is additional compensatory planting that is still to be undertaken. There is, however, no agreed management plan for the long-term future management of the retained woodland. The proposed eight house undoubtedly provides a more interesting design response than the existing consented scheme, but what is of most significance is that the development of the proposed eight house scheme would require the almost wholesale removal of the trees on the upper part of the site adjacent to the Linney, and the level of development proposed will make it impossible to re-establish anything close to the existing level of woodland cover on the site, given rise to the harm identified, as set out above. In that respect the proposed eight house scheme would give rise to significant harm that the approved three house scheme would not.

6.11 Public Benefit v Harm – Planning Balance

6.11.1 As set out above, the public benefits of the scheme can be considered to include. the repair of the boundary wall and the improvements to access along the Linney, the affordable housing contribution that would be secured and an improved architectural design. However, the harm caused by the loss of the trees and woodland in the absence of an adequate level of re-planting and landscaping to re-establish the lost woodland and habitat, as a result of the level of development proposed on the site, would substantially outweigh that public benefit in terms of the overall planning balance. An amended scheme involving the development of fewer houses, may provide an acceptable alternative proposal, but the currently proposed eight house scheme does not do that.

7.0 CONCLUSION

7.1 That the proposed development comprising the re-profiling of the ground, erection of eight detached houses with car shelters, the creation of two new access points and the restoration of the stone boundary wall along The Linney, on land adjacent Linney House at The Linney, Ludlow, is not acceptable in terms of the principle of the development as it is located outside the development boundary for Ludlow and is therefore contrary to Core Strategy Policy CS5 and SAMDev Policies MD7a and S10.

7.2 That the latest figures set out in the Council's Five-Year Housing Land Supply Statement published in March 2020 confirms that the number of completions and Planning Permissions or Prior Approvals is so substantially over the Housing Guideline figure for

Ludlow, that there is no case for invoking paragraph 3 of SAMDev Policy MD3;

7.3 That by virtue of the significant level of harm that would be caused by the scheme as a result of the loss of the trees and woodland on the site and the resulting in harm to the natural assets of the site, harm to the Environmental Network and the less than substantial harm to the Ludlow Conservation Area, without adequate mitigation, compensation or enhancement, which significantly outweighs the benefits of the scheme, it cannot be considered to acceptable and therefore would be contrary to Core Strategy Policies CS6, CS17 and SAMDev Policies MD2, MD12 and MD13 and the NPPF. There are no other material considerations that lead to the view that the proposed eight house scheme would otherwise offer betterment over the approved three house scheme, that would justify approval of the application.

7.4 Accordingly, the committee is advised to indicate to the Secretary of State that it would have been minded to refuse the application for the reasons set out in recommendation at the beginning of this report.

8.0 Risk Assessment and Opportunities Appraisal

8.1 Risk Management

8.1.1 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; and
- The decision may be challenged by way of a Judicial Review by a third party.

8.1.2 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.

8.1.3 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

8.2.1 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.

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

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

8.3 Equalities

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

9.0 Financial Implications

9.1 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.

10.0 Background

Relevant Planning Policies

National Planning Policy Framework (2019)

West Midland Design Charter (2020)

Shropshire Local Development Framework Adopted Core Strategy (2011)

Shropshire Council Site Allocations and Management of Development Plan (SAMDev) (2015)

Shropshire Local Development Framework - Type and Affordability of Housing Supplementary Planning Document (SPD) (2012)

11.0 Additional Information

View details online:

<https://pa.shropshire.gov.uk/online-applications/applicationDetails.do?activeTab=details&keyVal=PN6SUDTDK2M00>

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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As set out above

Cabinet Member (Portfolio Holder)

Councillor Gwilym Butler

Local Member

Cllr Andy Boddington.

Appendices

None
