

SOUTH PLANNING COMMITTEE
SCHEDULE OF ADDITIONAL LETTERS

Date: 20 September 2021

NOTE: This schedule reports only additional letters received before 5pm on the day before committee. Any items received on the day of Committee will be reported verbally to the meeting

Item No.	Application No.	Originator:
5	19/05560/OUT	Case officer

1. On 14th September Members received an email from an objector, Mr Mulloy, requesting that the application is deferred in order for a further viability appraisal to be undertaken by the District Valuer and implying that the independent viability assessment undertaken by the Council's consultant Matt Spilsbury cannot be relied upon.
2. This matter is addressed in section 4 of the committee report which confirms that the advice received from Mr Spilsbury whilst working as part of a team at Turleys is independent and that Members should accordingly attribute full weight to this advice. As such, there is no reason to seek a further viability review from the District Valuer or any other valuer.
3. The advice from Turleys was supported by the independent Quantity Surveyor firm RLB and the Council's Housing Enabling Team has accepted that it meets the criteria for viability review which are set out in the NPPF – "Due process has been undertaken and an independent appraisal has verified that the scheme is unable to meet policy requirements" (see section 6.3 of the report). The housing team supports the proposal to deliver assisted living accommodation as part of the affordable mix. They advise that "Harworth's willingness to commit to a legal agreement clause delivering 10% minimum of affordable housing is welcomed in this respect. In addition, overage clauses within a S106 can respond to any uplift to development viability".
4. Harworth has confirmed additionally that the 10% level can be delivered without recourse to Homes England funding and is prepared to make a legal commitment to proactively pursue this funding which HE has confirmed the scheme would potentially be eligible for. Hence it is realistic to assume that affordable provision at the site can increase from the 10% minimum through a range of mechanisms including HE funding, the Government's First Homes initiative and clawback funding from the viability review process.
5. Mr Mulloy has requested that determination is delayed further in order to see if the District Valuer might reach a different conclusion with respect to viability. He asserts that there is plenty of time for this. Contrary to this assertion the committee report confirms why additional delay cannot be entertained. Determination of the application has already taken 10 months longer than was assumed in the applicant's viability calculations and any further delay increases the time when revenue generated from sale of plots can offset the costs of financing the acquisition of the site and works to date. The applicant has stated in the letter setting out their amended proposals that they would have to appeal if there is a refusal or further delay. In these circumstances the viability model would have to be re-run.

6. The outcome of an appeal at Inquiry for a major development such as this could take up to 2 years to be known in addition to the further time already taken in the planning process so far. This delay would increase financing costs and thus affect the calculations on future viability reviews and reduce any amount clawed back for additional affordable housing and infrastructure. It is understood that in a worst-case scenario the potential funding loss could equate to 30-40 affordable homes.

7. On the matter of why the District Valuer was not used rather than a consultant it is confirmed that officers from Shropshire Council and Telford & Wrekin Council carried out a formal tendering exercise with 7 consultants including a detailed brief for the works. The District Valuer was not considered at the time because it was not clear that they could meet the scope of the works which required additional input from a Quantity Surveyor and the capacity to brief Members / answer follow-up queries if necessary. There is no indication on the District Valuer's website that they have the capacity to provide these supplementary services and their website currently provides no examples of previous equivalent work. In contrast, all the consultants invited to tender by the Councils either included examples of previous work on their websites and/or were well known by the Councils to have undertaken equivalent work previously. The bids were carefully reviewed and successful consultant's Turleys / RLB was agreed to offer the best combination of value and quality.

8. The previous report to the 10th August committee explains (from section 2.1 onwards) the procedures for validation and addresses queries from Members regarding the assessment undertaken by Harworth's viability advisor (from section 2.6 onwards). The Council's independent viability advisor has also addressed these queries in his briefing to Members. The methodology and input assumptions adopted by Harworth's viability consultant has been endorsed by the Councils' advisor and the Council's Housing Enabling team is satisfied that due process has been observed.

9. Officers have not been made aware of any outstanding queries or challenges which have not previously been addressed by the Councils' advisor and / or Harworth. As the methodology and assumptions are not subject to any outstanding challenge there is no reason to assume that a different viability consultant such as the District Valuer would have reached a different conclusion from that reached by Harworth's consultant and endorsed by the Councils' consultant.

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There is nothing to prevent a planning committee from taking a decision contrary to the officer recommendation Members are however reminded of the need to ensure that any such decision is fully supported by detailed evidence.

An applicant has the opportunity to appeal against refusal. Planning Practice Guidance on appeals advises that *'where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs'*. *'The aim of the costs regime is to:*

- *encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case;*
- *encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay,*
- *discourage unnecessary appeals by encouraging all parties to consider a revised planning application which meets reasonable local objections.*

Unreasonable behaviour in the context of an application for an award of costs may be either:

- *procedural – relating to the process; or*
- *substantive – relating to the issues arising from the merits of the appeal’.*

‘Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include:

- *preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.*
- *failure to produce evidence to substantiate each reason for refusal on appeal*
- *vague, generalised or inaccurate assertions about a proposal’s impact, which are unsupported by any objective analysis.*
- *refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead*
- *acting contrary to, or not following, well-established case law*
- *persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable*
- *not determining similar cases in a consistent manner*
- *failing to grant a further planning permission for a scheme that is the subject of an extant or recently expired permission where there has been no material change in circumstances*
- *refusing to approve reserved matters when the objections relate to issues that should already have been considered at the outline stage*
- *imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not comply with the guidance in the National Planning Policy Framework on planning conditions and obligations*
- *requiring that the appellant enter into a planning obligation which does not accord with the law or relevant national policy in the National Planning Policy Framework, on planning conditions and obligations*
- *refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal*
- *not reviewing their case promptly following the lodging of an appeal against refusal of planning permission (or non-determination), or an application to remove or vary one or more conditions, as part of sensible on-going case management.*
- *if the local planning authority grants planning permission on an identical application where the evidence base is unchanged and the scheme has not been*

amended in any way, they run the risk of a full award of costs for an abortive appeal which is subsequently withdrawn (para 049).

Local Planning Authorities who have refused applications for major housing schemes but have not then been able to evidence their refusal reasons at appeal have been subject to awards of costs against them . This includes situations where applications have been refused on technical matters such as highways against the advice of the Highway Authority and on the basis of insufficient affordable housing where independent evidence on viability has been provided.

Officer advice is clearly that the current application should not be refused on the above grounds without appropriate technical evidence to justify this position.

Item No.	Application No.	Originator:
5	19/05560/OUT	Highway officer

The following summary highway note has been received:

Shropshire Council as Highway Authority raises no objection to the granting of consent in relation to the above-mentioned planning application, subject to a number of planning conditions being attached to any planning consent, together with the delivery of offsite highway works to mitigate the likely impact of the development on the surrounding highway network.

NPPF 2018 paragraph 109 states that: '*Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe*'.

Whilst it is acknowledged that due to the scale of the development, there is likely to be an impact on the surrounding highway network, it is not considered that a highway objection to the application could be sustained in an appeal situation.

Some of the key consideration with regard to this decision are as follows;

- Based on existing travel behaviour, 64.4% - would have an origin and destination in Telford and Wrekin and 11.1% - would have an origin and destination towards the east, on the M54 Corridor. Predominately to the West Midland conurbations. Therefore, the majority of the vehicle movements generated by the development are likely to route towards Telford and Wrekin's network, not Shropshire Council. Telford and Wrekin as Highway Authority are satisfied that sufficient mitigation has been put forward and there will not be a severe impact on their network.
- The transport assessment and model is considered to be robust and assumed a worst case scenario. The Transport Assessment did not take into account any trips that would be undertaken by passenger transport to include the proposed Park and Ride and Light Rail connection. Park and Ride facility forms part of the proposed site and provides opportunities for sustainable travel. The potential for the introduction of Light Rail into the site also present excellent opportunities to promote sustainable travel to and from the site and potentially attract users that would not normally use Park and Ride or local bus services.
- Harworths have actively engaged with Network Rail and potential operators of a Light Rail link, giving a strong indication that they are hoping to promote the use of

the line in the future. Any Light Rail facility will perhaps be a trip attractor so this would be subject to further assessment.

- Mitigation to key junctions on Shropshire Councils network where capacity is likely to be reduced to an unacceptable level as a result of the development has been put forward and is considered appropriate and meets the relevant legal tests.

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Councillor Claire Wild has sought further reassurances regarding the traffic calming works to be undertaken at Leighton on the B4380. The proposal is to construct 'build-outs' at both entrances to the village which establish a priority flow for outgoing traffic, thereby slowing down traffic, through the village. The Highway Authority has advised that the 'build-outs' would need to be accompanied by lighting and advance signage.

Harworth has confirmed that it is willing for the relevant draft planning condition (Cond 20) to be updated so that it is clearer what is expected to be delivered. An amended wording for Condition 20 is as follows (additional wording in italics):

Highways - Traffic Calming works at Buildwas, Leighton and Atcham

20a. Prior to the occupation of the 50th dwelling full engineering details of the proposed traffic calming works on B4380 at Buildwas, Leighton and Atcham shall be submitted to and approved in writing by the Local Planning Authority. This is in accordance with the legal agreement accompanying this permission. The works shall be fully implemented in accordance with the approved details prior to the occupation of the 50th dwelling within the permitted site.

b. The works at Leighton shall include the provision of build-outs on both entrances to the village on the B4380 which shall be accompanied by appropriate advanced signage and illumination levels.

c. The works at Buildwas shall include the provision of additional parking places and a minibus turning area at Buildwas Academy School.

Reason: In the interest of highway safety (20a, b) and to ensure adequate parking and turning provision at the Buildwas Academy School in the interval prior to bringing into use of the proposed new primary school.

Additionally, Councillor Wild has sought further reassurances regarding amenity mitigation for Crossings Cottage on Much Wenlock Road which is located opposite the proposed construction access.

The Highway officer has advised that where the amenity of existing property is affected by new highway infrastructure then the property owner has the potential right to make a compensation claim against the developer under S278 of the Highway Act. However, Harworth has indicated that they are willing in principle to accept an amendment to the relevant draft planning condition (Cond 19) which requires submission and implementation of a mitigation scheme for Crossings Cottage. This might include provision for additional screening / noise attenuation at the property and consideration of detailed junction design. A recommended amendment to the condition is included in italics below:

Highways - Construction Access

- 19a. Prior to the first occupation of the permitted development full engineering details of the proposed construction access on to A4169 Much Wenlock Road as shown on drawing ADC1776-DR-101 P2 shall be submitted to and approved in writing by the Local Planning Authority. The works shall be fully implemented in accordance with the approved details before the occupation of the 250th dwelling.
- b. CCTV shall be installed at the proposed construction access on to the A4169 Much Wenlock Road so that all construction vehicles are traceable.
- c. *Prior to the first occupation of the permitted development a scheme to mitigate the effects of increased turning movements from the development at Crossings Cottage opposite the construction access shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details and shall include consideration of measures to provide additional screening and noise attenuation at the property and a review of detailed junction design to reduce headlight glare from turning movements.*

Reason: To ensure a satisfactory means of access to the highway (19a), to allow appropriate monitoring of construction traffic (19b) and in the interests of residential amenity.

Item No.	Application No.	Originator:
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Members should note that the emerging Shropshire Local Plan has now been submitted to the Secretary of State for examination, following full Council approval. As stated in the original committee report the site is put forward as a proposed strategic settlement within the Plan. Additionally, the outline application has been subject to a comprehensive planning consultation process and there are no remaining objections from technical consultees. As such Members may give some additional weight at this stage to the draft allocation status of the site.

Additionally, it should be noted that whilst the Council has demonstrated an ability to maintain its housing supply at above the 5-year minimum level set out in the NPPF, the delivery of a major strategic site such as this would underscore this conclusion, as well as supporting longer term supply beyond the 5-year period and may further reduce the potential for unallocated housing sites to come forward as speculative applications.