

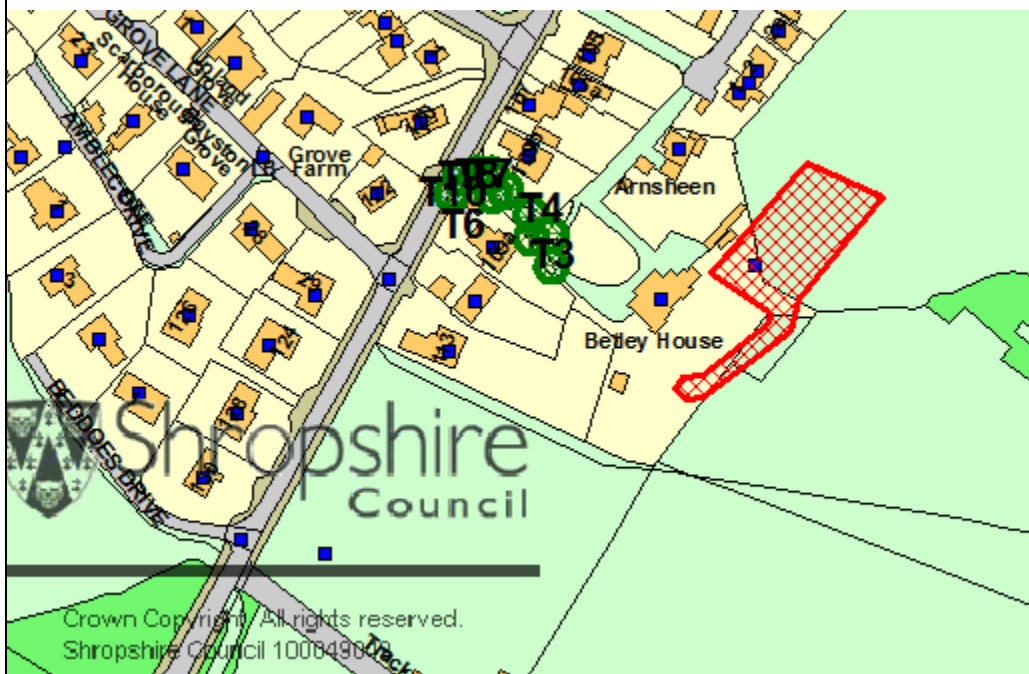
## Development Management Report

Responsible Officer: Tracy Darke, Assistant Director of Economy & Place

### Summary of Application

<b><u>Application Number:</u></b> 21/03387/FUL	<b><u>Parish:</u></b>	Bayston Hill
<b><u>Proposal:</u></b> Erection of 1No dwelling, formation of vehicular access and installation of treatment plant		
<b><u>Site Address:</u></b> Proposed Dwelling North East Of 109 Lyth Hill Road Bayston Hill Shrewsbury Shropshire		
<b><u>Applicant:</u></b> Mr N Freeman		
<b><u>Case Officer:</u></b> Didi Kizito	<b><u>email</u></b>	: didi.kizito@shropshire.gov.uk

**Grid Ref:** 348268 - 308137



**Recommendation:- Grant Permission subject to the conditions set out in Appendix 1.**

## REPORT

### 1.0 THE PROPOSAL

- 1.1 This application seeks planning permission for the erection of one dwelling, vehicle access and treatment plant.

### 2.0 SITE LOCATION/DESCRIPTION

- 2.1 The site is a parcel of land that currently has permission for a garden serving no 109 Lyth Hill Road.

### 3.0 REASON FOR DELEGATED DETERMINATION OF APPLICATION

- 3.1 TBC

### 4.0 Community Representations

#### Consultee Comment

#### 4.1 Bayston Hill Parish Council

At a recent Planning Committee meeting of Bayston Hill Parish Council they considered this application. Members resolved to send a consultee response to OBJECT to this planning application based on the contravention of the Bayston Hill Parish Council's Planning Policy where it is sited outside the SAMDev defined boundary and is a garden development. Concern was raised by the Committee when they considered the earlier Change of Use application - 20/02833/COU resulting in correspondence with the planning officer at the time. They raised concern that a development application would follow. Finally, please reference the recent Housing Needs Survey for Bayston Hill Parish as this proposal is not felt to be in line with the overall survey findings.

#### 4.2 SC Affordable Houses

No objection

#### 4.3 SUDS

No objection subject to conditions and informatives

#### 4.4 SC Highways

No objection subject to conditions and informatives

#### Public Comments

A total of 33 representations have been received objecting to the scheme. Concerns have been raised over the following

- Policy/development boundary

- Conservation/ecology
- Overlooking/loss of privacy/loss of light
- Highway/Traffic/Noise
- Design, appearance and materials
- Demand for dwellings
- Loss of views
- Capacity of treatment plant
- Not affordable housing

## 5.0 THE MAIN ISSUES

- Principle of development
- Scale and design of structure
- Residential amenity

## 6.0 OFFICER APPRAISAL

### 6.1 Principle of development

6.1.1 The scheme proposes the erection of an open market dwelling in Bayston Hill. The main footprint of the new dwelling would be situated part of the garden of 109 Lyth Hill where it is noted this section of garden is within the recognised development boundary of Bayston Hill. However, the proposed external amenity space and facilities that would serve the proposed dwelling, including garden space, rainwater harvesting attenuation system and treatment plant would be located outside the development boundary and therefore considered open countryside. It is noted that these elements of the development would be sited on land that until recently was classified as agricultural land. However a change of use of the land was permitted enabling it to be part of the residential garden of 109 Lyth Hill. The change of use of land resulted to the dwelling achieving approximately 80% increase in the garden area.

6.1.2 Under section 38(6) of the Planning and Compulsory Purchase Act 2004, all planning applications must be determined in accordance with the adopted development plan unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) also advises that proposed development that accords with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused unless other material considerations indicate otherwise. The NPPF is a material consideration that constitutes guidance for local planning authorities as a material consideration to be given weight in determining applications.

6.1.3 A key objective of both national and local planning policies is to concentrate new residential development in 'sustainable' locations which are easily accessible and which offer a range of services and community facilities.

6.1.4 Policy CS1 of the Shropshire Council Core Strategy (CS) 2011 sets a target of delivering a minimum of 27,500 dwellings over the plan period of 2006-2026 with 35% of these being within the rural area, provided through a sustainable "rural

rebalance” approach. Development in rural areas will be predominantly in Community Hubs and Community Clusters.

- 6.1.5 Policy CS4 of the CS sets out how new housing will be delivered in the rural areas by focusing it in Community Hubs and Community Clusters, which are identified in Policy MD1 of the Shropshire Council Site Allocations and Management of Development Plan (SAMDev) 2015. Policy MD1 of the SAMDev identifies those settlements that fall within a Community Hub or Community Cluster. Policy CS11 of the CS seeks to ensure that development creates mixed, balanced and inclusive communities.
- 6.1.6 Core Strategy policy CS5 and also SAMDev policy MD7a strictly controls development in the countryside whilst providing a number of exceptions for new dwellings. One of the exceptions is affordable housing to meet a local need and further advice is provided within CS11 and the Type and Affordability of Housing Supplementary Planning Document SPD. The SPD outlines the Councils ‘Build Your Own’ affordable home scheme that enables ‘qualifying people to build their own affordable home on single plot exception sites’. The application is not however for a self-build affordable home but for an open market self build dwelling.
- 6.1.7 The Council’s Type and Affordability of Housing Supplementary Planning Document (SPD) 2012 recognises that self-build properties can help to achieve mixed and balanced communities. Neither the Core Strategy nor the SAMDev policies explicitly refer to self-build housing. However, the relevant housing supply policies do allow, amongst other things, housing developments within areas that the Council consider to be suitable locations, i.e. settlements identified for growth. There is nothing preventing these single plot developments being for open market, self-build dwellings. Moreover, Policy CS5 of the Core Strategy and Policy MD7a of the SAMDev allow residential development outside of these areas, albeit subject to further restrictions.
- 6.1.8 The Council’s single plot exception scheme, as referred to in Core Strategy Policy CS5 and SAMDev policy MD7a is largely a self-build initiative. The scheme enables households with a local connection and an identified need, to build their own home in an area where planning permission would not normally be supported. Nevertheless, these policies support self-build dwellings, albeit providing they are secured as affordable dwellings in perpetuity.
- 6.1.9 Therefore, the development plan supports the provision for self-build dwellings, providing they are in suitable locations, as identified in Policies CS4 and CS5 of the CS and Policies MD1 and MD7a of the SAMDev.
- 6.1.10 The NPPF seeks to ensure the delivery of a sufficient supply of homes and advises at paragraph 62 that ‘the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies’ and that this should include ‘people wishing to commission or build their own homes’
- 6.1.11 Comments have been received relating to the proposed development scheme being contrary to planning policies.

- 6.1.12 Within the SAMDev S16.2 (ii) Bayston Hill is a Community Hub with a housing guideline of around 50-60 additional dwellings over the period to 2026, where development by infilling, groups of houses and conversion of buildings may be acceptable on suitable sites within the development boundary identified on the Policies Map. The retention of the gap of undeveloped land between Bayston Hill and Meole Brace, Shrewsbury remains an important objective of the strategy for the village. The development of the village is also constrained by the presence of the A49 running through the village and the major quarry to the east. The provision of affordable housing has been identified by the Parish Council as a priority requirement.
- 6.1.13 Whilst it is acknowledged Bayston Hill has a published Parish Council Planning Policy (2017) which is a material planning consideration, and which indicates that it opposes properties being built in gardens as it undermines the character of the Village as well as encroaching on Environmental corridors, whilst most of the proposed dwelling's curtilage will be on land outside the recognised development boundary for Bayston Hill, the dwelling itself will not be. Use of the land as residential curtilage has already been established by the change of use.

While the above policy considerations have been noted, reference is also made to a recent appeal decision APP/L3245/W/20/3265872 where although dismissed, at paragraphs 18-20 relating to settlement housing guideline the Inspector states as follows:

- 6.1.14 *"18. Bayston Hill is a large village with a range of services and facilities including a convenience store, a primary school, and public transport connections. It is identified as a Community Hub under Policy S16.2 of the Shropshire Core Strategy (2011), which sets a housing guideline for the village of around 50-60 additional dwellings over the plan period to 2026."*

*"19. The Council state that the development would contribute to a 30% oversupply against the housing guideline for Bayston Hill, taking into account recent completions and extant planning permissions. However, Policy S16.2 does not identify this figure as a cap to be applied once the guideline is reached, particularly in an accessible location such as this. Moreover, the provision of a single dwelling would also have only a minor additional impact in this regard."*

*"20. For the above reasons, I conclude that the development would not result in a harmful over provision of housing relative to the settlement housing guideline. It would therefore accord with Policies S16 and S16.2 of the Shropshire Core Strategy (2011)."*

- 6.1.15 Whilst concerns by the Parish Council and residents are acknowledged, deriving from the Inspector's conclusion above and the main footprint of the proposed dwelling being constricted is within the perimeters of the development boundary albeit in the residential garden, the accessibility of the site to existing infrastructure and services, on balance, it is not considered that the proposed addition would result to an excessive harm to the adjacent countryside to warrant a refusal.

## 6.2 Scale and design of structure

6.2.1 Comments relating to the scale, size and design of the proposed dwelling are acknowledged. However, it is not considered that the dwelling would be out of keeping with the character of dwellings along Lyth Hill Road which are of ununiformed scale, style and designs and different external materials. Nevertheless, the proposed scheme has incorporated design features commonly found in the area. Comments directly relating to building control matters are not issues that can be considered with this planning application as these would fall under different legislations. However, it is considered the dwelling would be built to modern environmental standards with solar panels mounted on the roof .

6.2.2 While it is recognised that the proposed dwelling does not fall within the category of affordable housing, it is adjacent to a cluster of residential dwellings within a recognised settlement. The delivery of housing is consistent with Policies MD1 and MD3 of the Samdev plans and CS1, CS3 and CS11 of Core Strategy which all relate to housing delivery relevant to this application. Furthermore, due to the presence of the existing Bentley House, on balance, the scheme is not considered to adversely impact on the character of the settlement.

## 6.3 Residential amenity

6.3.1 Policy CS6 and MD2 seek to ensure that development contributes to the health and wellbeing of communities, including safeguarding residential and local amenity. Whilst the proposed development would create a new focus for domestic activity, given the orientation, separation distances, the length of the adjacent garden areas together with the site being on lower ground, any effects in terms of noise, disturbance or lighting would be consistent with that of existing activity in this primarily residential area. In addition, it is considered that there would be no undue adverse effect on the living conditions of those occupying the existing residential development. The proposed dwelling would be approximately 26 metres away from neighbouring dwelling known as Ansheen. The distance between the proposed plot and this dwelling would also limit effects with regard to outlook and whilst the proposed would be within close proximity to Bentley House, the orientation of the two dwellings would not give rise to unacceptable degree of overbearing or loss of light and privacy impacts.

6.3.2 Concerns have been raised about the impact on the highway and drainage including the capacity of the treatment plant. Both highways and drainage teams have been consulted and no objections have been raised subject to conditions.

6.3.3 In considering the ecology impacts of the proposal officers recognise that the application site at present is a portion of residential curtilage formed of grassed areas and with some shrub planting areas. Whilst part of the application site would accommodate a new single dwelling, the remainder of the site would remain in its current use as a maintained garden. Admittedly, the area of garden was increased through granting permission for change of use of agricultural land to domestic use. Nevertheless, the existing habitat on site is of a low value and no indication that the site accommodates protected species or examples of habitat which should be protected have been identified. Nevertheless, through the imposition of conditions the applicant will be encouraged to improve the biological habitats on site through the planting of native species to the site,s boundaries. As such officers conclude that

the proposal is in accordance with CS17 and MD12 of the adopted development plan and no harm to protected species or habitats worthy of retention has been identified.

## **7.0 CONCLUSION**

On balance, with consideration to all the material consideration, whilst it is acknowledged that part of the application site, (residential curtilage), is located outside the development boundary, the proposed would contribute to the delivery of housing and is therefore consistent with Policies MD1 and MD3 of the SamDev plan and CS1, CS3 and CS11 of the Core Strategy as the policies relate to housing delivery. In addition, the proposed development would provide a single residential unit and contribute to local housing delivery, mix and density in Bayston Hill, a Community Hub settlement that is considered to be in a relatively sustainable location within accessibility to a range of services, infrastructure and community and also identified as appropriate settlement for additional housing. It is considered that the proposed development would not have an adverse impact on amenity space of residents of neighbouring properties and the adjacent rural environment. The scheme is therefore on balance considered to comply with local and national planning policies whereby it is recommended that planning permission is granted.

## **8.0 Risk Assessment and Opportunities Appraisal**

### **8.1 Risk Management**

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

- As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal, i.e. written representations, hearing or inquiry.
- The decision may be challenged by way of a Judicial Review by a third party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will interfere where the decision is so unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its planning merits. A challenge by way of Judicial Review must be made a) promptly and b) in any event not later than six weeks after the grounds to make the claim first arose.

Both of these risks need to be balanced against the risk of not proceeding to determine the application. In this scenario there is also a right of appeal against non-determination for application for which costs can also be awarded.

### **8.2 Human Rights**

Article 8 gives the right to respect for private and family life and First Protocol Article 1 allows for the peaceful enjoyment of possessions. These have to be balanced

against the rights and freedoms of others and the orderly development of the County in the interests of the Community.

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

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

### **8.3 Equalities**

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

### **9.0 Financial Implications**

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

## **10. Background**

### Relevant Planning Policies

Central Government Guidance:

West Midlands Regional Spatial Strategy Policies:

Core Strategy and Saved Policies:

### RELEVANT PLANNING HISTORY:

14/00883/TPO To fell 1No Holly Tree protected by SABC (Land at or adjacent to Betley Orchard, 111 Lyth Hill Road, Bayston Hill) TPO 2008 GRANT 9th April 2014

14/01914/FUL Erection of extensions and alterations to dwelling; erection of detached garage GRANT 19th February 2015

14/02296/OUT Outline application (access for approval) for residential development of one dwelling WDN 17th November 2014

15/01106/FUL Erection of 1No dwelling GRANT 25th April 2016

16/04062/FUL Conversion of existing stables to a 1bedroom dwelling and detached 3 open bay garages WDN 16th November 2016



17/01918/FUL Erection of one dwelling with integral garage with parking and amenity area following demolition of existing buildings to include works to, and removal of, trees GRANT 28th July 2017

20/02833/COU Change of use from agricultural to domestic curtilage (garden) GRANT 22nd September 2020

21/03387/FUL Erection of 1No dwelling, formation of vehicular access and installation of treatment plant PDE

SA/89/0680 Erection of a steel framed fire escape. PERCON 25th August 1989

21/03387/FUL Erection of 1No dwelling, formation of vehicular access and installation of treatment plant PDE

## 11. Additional Information

[View details online:](#)

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)
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Cabinet Member (Portfolio Holder) Councillor Ed Potter
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Local Member Cllr Ted Clarke Cllr Tony Parsons Cllr Rosemary Dartnall
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Appendices APPENDIX 1 - Conditions
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**APPENDIX 1****Conditions****STANDARD CONDITION(S)**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 91(1) of the Town and Country Planning Act, 1990 (As amended).

2. The development shall be carried out strictly in accordance with the approved plans and drawings

Reason: For the avoidance of doubt and to ensure that the development is carried out in accordance with the approved plans and details.

3. The development hereby permitted shall not be brought into use until the areas shown on the approved plans for parking and turning of vehicles has been provided properly laid out, hard surfaced and drained. The space shall be maintained thereafter free of any impediment to its designated use.

Reason: To ensure the provision of adequate vehicular facilities, to avoid congestion on adjoining roads and to protect the amenities of the area.

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

4. No development shall take place until a scheme of surface and foul water drainage has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented before the development is occupied/brought into use (whichever is the sooner).

Reason: The condition is a pre-commencement condition to ensure satisfactory drainage of the site and to avoid flooding.

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

5. All hard and soft landscape works shall be carried out in accordance with the approved plan P/2021/77/04. The works shall be carried out prior to the occupation / use of any part of the development hereby approved. Any trees or plants that, within a period of five years after planting, are removed, die or become, in the opinion of the Local Planning Authority, seriously

damaged or defective, shall be replaced with others of species, size and number as originally approved, by the end of the first available planting season.

Reason: To ensure the provision, establishment and maintenance of a reasonable standard of landscape in accordance with the approved designs.

6. Prior to the above ground works commencing samples and/or details of the roofing materials and the materials to be used in the construction of the external walls shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in complete accordance with the approved details.

Reason: To ensure that the external appearance of the development is satisfactory.

7. Demolition, construction works and associated deliveries shall not take place outside 7.30am - 6.00pm Monday to Friday, and 8.00am - 1pm Saturdays, with no work taking place on Sundays, Bank or Public holidays.

Reason: To protect the amenities of occupiers of nearby properties from potential nuisance.

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

8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development relating to schedule 2, Part 1 shall be erected, constructed or carried out.

Reason: To maintain the scale, appearance and character of the development and to safeguard residential and / or visual amenities.

### **Informatives**

1. In arriving at this decision Shropshire Council has used its best endeavours to work with the applicant in a positive and proactive manner to secure an appropriate outcome as required in the National Planning Policy Framework, paragraph 38.

2. 1. The use of soakaways should be investigated in the first instance for surface water disposal. Percolation tests and the sizing of the soakaways should be designed in accordance with BRE Digest 365. Full details, calculations, dimensions and location plan of the percolation tests and the proposed soakaways should be submitted for approval.

Surface water should pass through a silt trap or catchpit prior to entering the soakaway to reduce sediment build up within the soakaway.

Should soakaways are not feasible, drainage calculations should limit the discharge rate from the site equivalent to 5.0 l/s runoff rate should be submitted for approval. The attenuation drainage system should be designed so that storm events of up to 1 in 100 year + 35% for climate change will not cause flooding of any property either within the proposed development or any other in the vicinity.

2. Urban creep is the conversion of permeable surfaces to impermeable over time e.g. surfacing of front gardens to provide additional parking spaces, extensions to existing buildings, creation of large patio areas.

The appropriate allowance for urban creep must be included in the design of the drainage system over the lifetime of the proposed development. The allowances set out below must be applied to the impermeable area within the property curtilage:

Residential Dwellings per hectare	Change allowance	% of impermeable area
Less than 25	10	
30	8	
35	6	
45	4	
More than 50	2	
Flats & apartments	0	

3. If non permeable surfacing is used on the new access, driveway and parking area or the new access slopes toward the highway, the applicant should submit for approval a drainage system to ensure that no surface water runoff from the new access run onto the highway.

4. The proposed method of foul water sewage disposal should be identified and submitted for approval, along with details of any agreements with the local water authority and the foul water drainage system should comply with the Building Regulations H2.

If main foul sewer is not available for connection, full details, plan and sizing of the proposed package sewage treatment plant including percolation tests for the drainage field should be submitted for approval including the Foul Drainage Assessment Form (FDA1 Form). British Water 'Flows and Loads: 4' should be used to determine the loading for the package sewage treatment plant and the sizing of the package sewage treatment plant and drainage fields should be designed to cater for the correct number of persons and in accordance with the Building Regulations H2. These documents should also be used if other form of treatment on site is proposed.

### 3. Works on, within or abutting the public highway

This planning permission does not authorise the applicant to:

- construct any means of access over the publicly maintained highway (footway or verge) or
- carry out any works within the publicly maintained highway, or
- authorise the laying of private apparatus within the confines of the public highway including any new utility connection, or
- undertaking the disturbance of ground or structures supporting or abutting the publicly maintained highway

The applicant should in the first instance contact Shropshire Councils Street works team. This link provides further details

<https://www.shropshire.gov.uk/street-works/street-works-application-forms/>

Please note: Shropshire Council require at least 3 months' notice of the applicant's intention to commence any such works affecting the public highway so that the applicant can be provided with an appropriate licence, permit and/or approved specification for the works together and a list of approved contractors, as required.

4. The applicant is responsible for keeping the highway free from any mud or other material emanating from the application site or any works pertaining thereto.

5. The applicant's attention is drawn to the need to ensure that appropriate facilities are provided, for the storage and collection of household waste, (i.e. wheelie bins & recycling boxes).

Specific consideration must be given to kerbside collection points, in order to ensure that all visibility splays, accesses, junctions, pedestrian crossings and all trafficked areas of highway (i.e. footways, cycleways & carriageways) are kept clear of any obstruction or impediment, at all times, in the interests of public and highway safety.

<https://shropshire.gov.uk/media/2241/supplementary-planning-guidance-domestic-waste-storage-and-collection.pdf>

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