



Committee and date

Item

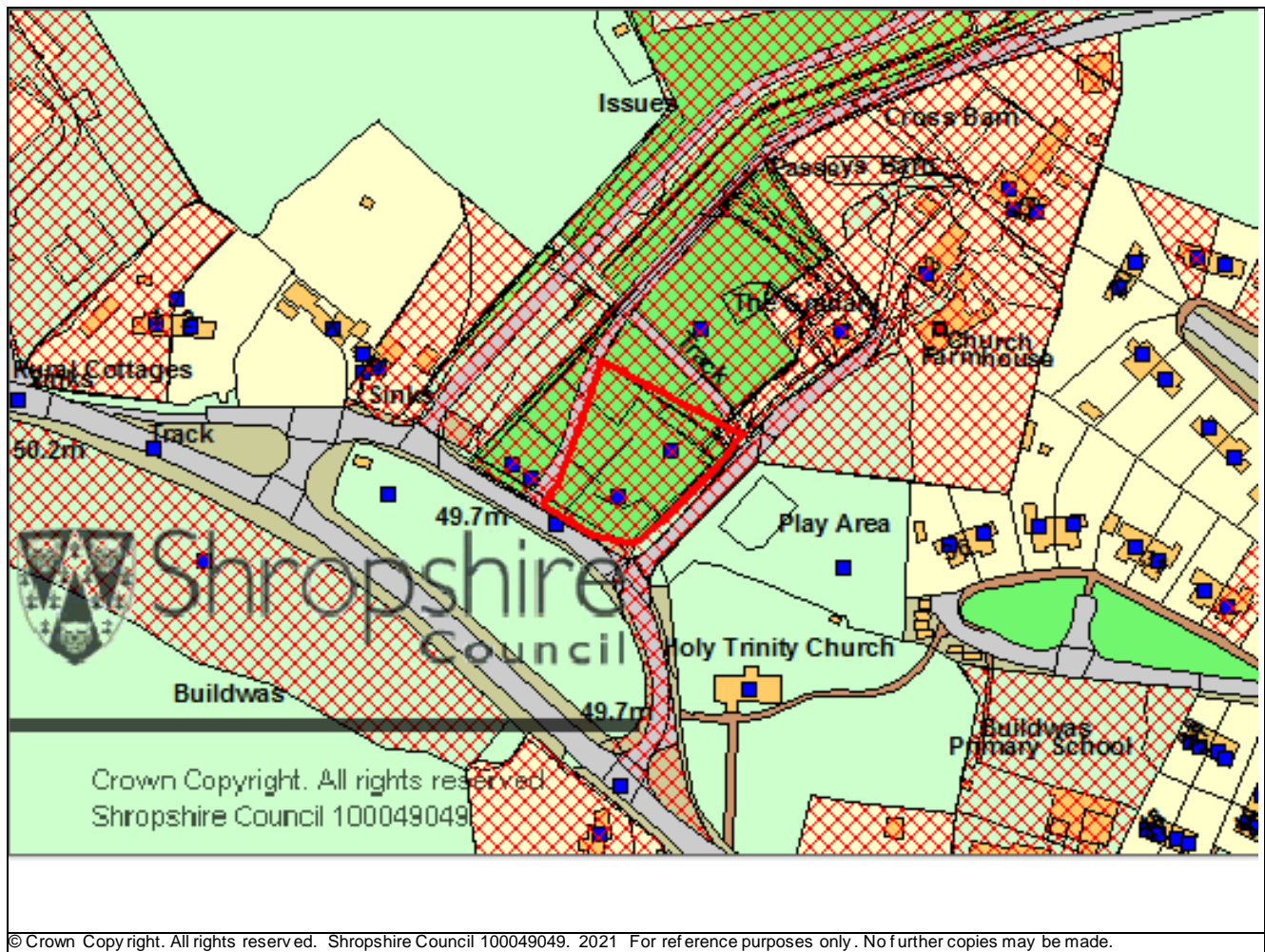
Public

Development Management Report

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

Summary of Application

<u>Application Number:</u> 22/04666/DSA106	<u>Parish:</u>	Buildwas
<u>Proposal:</u> Discharge of S106 Agreement attached to planning permission reference 09/0029/FUL		
<u>Site Address:</u> Land North of B4380, Buildwas, TF8 7DA		
<u>Applicant:</u> FSL SPV (No1) Limited		
<u>Case Officer:</u> Jacob Collett	<u>email</u>	: jacob.collett@shropshire.gov.uk
<u>Grid Ref:</u> 363661 - 304822		



Recommendation: - Approve

REPORT

1.0 THE PROPOSAL

The submitted application proposes the discharge of the Affordable Housing Section 106 for application SA/09/0029/F on the basis of viability. The Section 106 does not include any other obligations beyond affordable housing provision.

Application SA/09/0029/F was granted by committee in 2009 for the provision of four dwellings on the site. Plots three and four were open market with plots one and two being affordable dwellings. The affordable housing requirements were secured initially by the following condition.

The development shall not begin until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex B of PPS3 or any future guidance that replaces it. The scheme shall include: i. The numbers, type, tenure and location on the site

of the affordable housing provision to be made which shall consist of not less than 2 affordable houses. ii. The timing of the construction of the affordable housing and its phasing in the relation to the occupancy of the market housing; iii. The arrangements for the transfer of the affordable housing to an affordable housing provider, or the management of the affordable housing. iv. The arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and The occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced. Reason: to comply with affordable housing policy

This condition was satisfied in 2012 with the subsequent signing of the Section 106, which is the focus of this application. Occupation of the open market dwellings cannot be undertaken until the completion of the affordable dwellings. Confirmation in 2012 that the development had been legally implemented was also provided and approved by Shropshire Council.

On review of the permission the affordable housing provision (50%) was a significant factor in the approval of the scheme which was not policy compliant under the Shrewsbury and Atcham Borough Plan. It is noted that there is no evidence that the scheme was unviable at the time of grant.

The applicant in support of removing the obligations has submitted viability information which has been independently evaluated and forms a central document in the assessment of this application.

2.0 SITE LOCATION/DESCRIPTION

The site is located within the rural community cluster of Buildwas (as defined within SamDev) on land located to the west of Buildwas Church. The site is accessed off a minor loop road from the B4380 and is not immediately adjacent to any other domestic curtilage. Land to the north of the site has permission for a further four dwellings.

The site has been partially developed with three of the four units substantially completed.

3.0 REASON FOR COMMITTEE/DELEGATED DETERMINATION OF APPLICATION

- 3.1 In accordance with the 'Scheme of Delegation' this application was resolved at the 13th of April 2023 Agenda Setting Meeting to be determined by planning committee due to parish council objection.

4.0 Community Representations

A Site notice was displayed at the Site on the 20th October 2022.

Buildwas Parish Council – Object

- The parish has little affordable housing

- Although build costs have increased so have sale and rental prices.
- Loss to affordable housing stock due to former power station
- Large amount of development, removal of affordable element is not a good precedent

The viability assessment was made publicly viewable on 14th April 2023.

SC Affordable Homes

- The viability assessment has considered a part implemented 4-unit residential scheme. The implemented planning consent requires that 2 units are provided at a 25% market discount. EC* have determined that there is no financial headroom for the scheme to afford any planning obligations.
- A detailed appraisal of the proposed scheme considering the revenue and costs set out in the ECs* cost plan and that provided by BCIS.
- An assessment of the revenue for the proposed scheme has calculated a Gross Development Value of £1,585,000 for the Discounted Open Market Scheme and £1,710,000 for the 100% Open Market Scheme. This is higher than that put forward by EC*.
- A detailed assessment of development costs has calculated a Gross Development Cost of £2,086,922 for the Discounted Open Market Scheme and £2,209,556 for the 100% Open Market Scheme.
- Assessing the development as a whole, a Residual Land Value for the Discounted Open Market Scheme of (£501,922) and (£499,556) for the 100% Open Market Scheme.
- For the Benchmark Land Value, a value has been applied to the site based on EUV+ of £117,300.
- The scheme is unable to afford the provision of any affordable housing or Section 106 Contributions as our Residual Land Value for both the Discounted Open Market and 100% Open Market Schemes are below our Benchmark Land Value.

*Eudurock Consultants acting for the applicant

On the basis of the conclusion of the independent viability report, SC Affordable Homes support the request to remove the obligation.

- Public Comments

No public representations were received

5.0 THE MAIN ISSUES

Principle of development

6.0 OFFICER APPRAISAL

Principle of Development

The acceptability of the application is considered to focus on two main issues. The first is the viability of completing the development and the second is a review of the scheme against current planning policy.

Viability

Paragraph 58 of the National Planning Policy Framework outlines the following:

Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.

There is a clear responsibility and emphasis on the applicant to prove viability. As the planning policy has changed since the scheme was initially granted, there is a reasonable need for a viability assessment alongside the applicant's assertion of abnormal costs. Given the change in policy and the elapsed time since legal implementation, viability cannot be assumed. Current policy requires significantly less obligations.

Consequently, the applicant submitted, through Endrock Consulting, an assessment of viability. To ensure validity Shropshire Council commissioned its service provider to undertake an assessment of this appraisal. The provider was RCA Regeneration. RCA Regeneration issued a report with the following conclusion:

"On the basis of our assessment of the proposed scheme and BLV, we have determined that the scheme cannot afford the required level of planning obligations as both the 100% Open Market and Policy Compliant appraisals return a Residual Land Value below that of the Benchmark Land Value."

Considering the independent validity of the appraisal it is concluded that the scheme is unable to support the affordable housing obligations as included within the Section 106, a position supported by the housing enabling officer. However, it is also noted that the scheme is unviable (to a lesser extent) even with a 100% open market provision. Therefore, there is no opportunity to mitigate the loss of affordable dwellings by securing monies as a housing contribution. Shropshire should always attempt to secure planning obligations. In this case however there is no scope to do so.

Current Policy

Since the original grant of approval in 2009 significant planning policy and operations have changed. Firstly, Shrewsbury and Atcham became joined into the Unitary Council of Shropshire alongside the adoption of the Core Strategy in

the same year (2012). This strategy became the core policy document overriding the Shrewsbury and Atcham Borough Plan (SABP). Furthermore, SamDev was adopted in 2015.

The 2009 planning permission was assessed against the SABP. Under policy HS4 Buildwas was considered an eligible settlement for developments of up to two open market houses. However, amended policy HS8 allowed these acceptable sites to have three dwellings provided one was affordable. This was because the threshold for affordable contributions in rural areas was three houses at this time. Consequently, the issue of the fourth dwelling was not policy compliant, and therefore on balance it was concluded that if the fourth dwelling was also affordable (bringing the provision to 50%) it could be supported. A decision ratified by the planning committee.

With this context a review of the site against current planning policy has been undertaken.

CS4 outlines support for housing development within community clusters (of which Buildwas is) as long as they are appropriate, provide a mix of housing types and help balance rural communities. This is further supported in MD7a. Furthermore, SamDev policy 13.2 outlines the following;

The settlement of Buildwas in the Parish of Buildwas is a Community Cluster settlement where development by limited infilling and conversions may be acceptable on suitable sites. The housing guideline for the Cluster is around 10 additional dwellings over the period to 2026. The Parish Council have expressed a preference that development should be phased so that no more than 5 houses are developed in each half of the Plan period and that no more than 3 dwellings should be developed on any single site.

The most recent housing supply statement outlines that two dwellings have been fully completed in Buildwas, with a further sixteen having outstanding permission. This includes the four on the site. Therefore, the guideline for Buildwas has been exceeded. However, as the site has a lawfully implemented permission for four dwellings a reserve position is presented, reducing the relative weight of the housing guidelines significantly. Consequently, the erection of four dwellings on this site would be supported in principle.

The next consideration would then be the affordable housing requirements. Since 2009 the thresholds for requirement of affordable housing/contributions have been changed. As outlined within the Type and Affordability of Housing SPD, thresholds for affordable housing obligations/contributions are currently five houses within a rural area or a site that is over 0.5 hectares. The site falls below both these thresholds and therefore no affordable contributions would be required.

As a point of reference, another site (18/00186/OUT) within Buildwas was granted permission in 2018 under the same current policies for four dwellings. No affordable houses or contributions were required.

If a new application was to be submitted, the principle of four open market dwellings would be acceptable. This position is considered to have moderate weight although it is recognised that securing of agreed obligations should be pursued by Shropshire Council. Especially in cases where it tipped the balance in favour of a scheme. It is therefore only when the current planning position would be supportive, **and** the viability assessments clearly evidence there is no money/options for obligations, that the planning balance is in favour of discharging the Section 106.

Other considerations

Even if the affordable housing requirement is removed, the provision of two smaller properties is of value in providing a mixture of sized dwellings within rural areas of Shropshire.

7.0 CONCLUSION

The applicant has evidenced that the scheme is not viable with the affordable housing obligations and that there are not any monies available to reduce this to only contributions. Furthermore, a review of the site and scheme against current planning policy, would support in principle four open market dwellings without any affordable housing obligations. Consequently, only in consideration of these two moderately weighted factors together can it be concluded that the planning balance is in favour of discharging the Section 106. The application is recommended for approval.

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:

CS4 - Community Hubs and Community Clusters

CS5 - Countryside and Greenbelt

CS6 - Sustainable Design and Development Principles

MD7A - Managing Housing Development in the MD7A - Managing Housing Development in the Countryside

MD7B - General Management of Development in the Countryside

National Planning Policy Framework

SPD Type and Affordability of Housing

RELEVANT PLANNING HISTORY:

- 22/04361/AMP Amendments to planning permission 09/0029/F and 22/03492/AMP - alterations to garaging to plots 3 and 4 GRANT 4th November 2022
- SA/09/0029/F Erection of four dwellings including two affordable homes and creation of new vehicular and pedestrian accesses PERCON 10th March 2009
- 12/00470/FUL Renewal of extant Planning Permission Ref: 09/0029/F for the erection of four dwellings including two affordable homes and creation of vehicular and pedestrian access WDN 22nd March 2012
- SA/09/0029/F Erection of four dwellings including two affordable homes and creation of new vehicular and pedestrian accesses PERCON 10th March 2009
- 12/00470/FUL Renewal of extant Planning Permission Ref: 09/0029/F for the erection of four dwellings including two affordable homes and creation of vehicular and pedestrian access WDN 22nd March 2012
- 12/00470/FUL Renewal of extant Planning Permission Ref: 09/0029/F for the erection of four dwellings including two affordable homes and creation of vehicular and pedestrian access WDN 22nd March 2012

11. Additional Information

Cabinet Member (Portfolio Holder) - Councillor Richard Marshall
Local Member
Cllr Claire Wild

