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## Appeal Decision

Hearing Held on 16 November 2021

Site visit made on 16 November 2021

**by M Aqbal BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 2 December 2021**

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**Appeal Ref: APP/L3245/W/21/3267148**

**Land to south of the Meole Brace Retail Park, Shrewsbury SY3 9NB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Diageo Pension Trust Limited, Care of Savills Investment Management against the decision of Shropshire Council.
  - The application Ref 19/04389/OUT, dated 19 September 2019, was refused by notice dated 31 July 2020.
  - The development proposed is outline planning application (all matters reserved other than access) for the development of up to 150 residential dwellings.
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### Decision

1. The appeal is allowed and planning permission is granted for outline planning application (all matters reserved other than access) for the development of up to 150 residential dwellings at Land to south of the Meole Brace Retail Park, Shrewsbury SY3 9NB in accordance with the terms of the application, Ref 19/04389/OUT, dated 19 September 2019, and the plans submitted with it, subject to the conditions set out in the Schedule to this Decision.

### Preliminary Matters

2. The application is submitted in 'outline' including access details, with layout, scale, landscaping and appearance reserved for future consideration. Prior to the Hearing the appellant submitted a revised site layout drawing (9473A-110 Rev B). This is intended to show the ability of the site to accommodate 150 units whilst adhering to the Council's noise mitigation and open space requirements. Because layout is a reserved matter, this drawing is for indicative purposes only. Therefore, I have accepted this revised drawing and I do not think that the interests of any party have been prejudiced by my having done so.
3. The submitted 'access' details drawing (16121-011 Rev B) shows a new access into the site and extending across it, to the Meole Brace Park and Ride ('P&R') which lies immediately to the south of the appeal site. The extent of this access is within the appeal site and would link to the P&R. On the information before me, I am satisfied that this forms part of the proposal and I have proceeded with the appeal on this basis.
4. At appeal, under the provisions of S106 of the Town and Country Planning Act 1990 a legal agreement was provided by the appellant. I shall return to this later on in my Decision.

## **Main Issue**

5. The main issue is whether the appeal site is in a suitable location for housing having regard to the development plan, and if not, are there any other considerations sufficient to mean that the proposal should be determined otherwise than in accordance with the development plan.

## **Reasons**

6. The appeal site comprises a field with a road running through it, located between the Meole Brace Retail Park which lies to the north of it, and the P&R.
7. Policy CS1 of the Shropshire Council Core Strategy (February 2011) ('CS') sets out Shropshire's housing requirement of providing 27,500 new homes by 2026 and highlights that Shrewsbury will be the focus for significant growth within Shropshire and will need to accommodate approximately 25% of Shropshire's residential development over the plan period. The proposal does not conflict with the strategic aims of this Policy. Policy CS2 of the CS, states, amongst other things, that Shrewsbury will provide approximately 6,500 dwellings and 90 hectares of employment land, achieving a significant level of housing and economic growth. However, the supporting text to this Policy references the SAMdev for identifying sites for housing.
8. Policy MD1 of the Shropshire Council Site Allocations and Management of Development Plan (December 2015) ('SAMDev') relates to the scale and distribution of development and outlines that sustainable development will be supported in Shrewsbury, the Market Towns and Key Centres, and the Community Hubs and Community Cluster settlements identified in Schedule MD1.1. Shrewsbury is identified as the county town and sub-regional centre. The appeal site is adjacent but outside the southern part of the development boundary for Shrewsbury, as identified in settlement Policy S16 of the SAMDev and is therefore situated in the countryside. The proposal is not for development that would be permitted in the countryside under policies CS5 of the CS and MD7a of the SAMDev.
9. Therefore, having regard to the development plan, the site is not in a suitable location for housing, and is in conflict with the above policies of the CS and SAMDev with the exception of CS Policy CS1.

## *Other considerations*

10. Although the appeal site forms part of the countryside, on the ground it is bound by transport infrastructure or development on all sides with the P&R access road running through it. Consequently, it has a stronger physical relationship to the existing built development and because of this makes a limited contribution towards the quality of the open countryside. Furthermore, the appeal site is reasonably accessible to a range of services and facilities by means of travel other than private motor vehicles. Indeed, other than being located outside the development boundary, the Council has not identified any harm arising for the proposal.
11. Moreover, the appeal site has been put forward as a site allocation (SHR145) for residential development as part of the Shropshire Local Plan ('emerging Local Plan').

12. The emerging Local Plan has gone through several rounds of consultation and notwithstanding some objections to the overall level of housing growth proposed for Shropshire and Shrewsbury, there are a minimal number of site-specific objections to the proposed allocation of the appeal site. However, the emerging Local Plan has only recently been submitted for Examination in Public. Therefore, having regard to Paragraph 48 of the National Planning Policy Framework ('Framework, 2021'), I attach limited weight to the proposed allocation of the site for residential development in the emerging Local Plan. Nevertheless, this still lends some support to the site's suitability for housing and weighs in favour of the proposal.
13. In addition, a number of benefits associated with the proposal are detailed in the appellant's submissions. These are summarised in the Statement of Common Ground which is signed by the main parties. Despite this, the Council's position is, that because the site's allocation for residential development includes the requirement for a new access road to the P&R, this and the other benefits arising from the development of the appeal site for up to 150 dwellings would be realised as policy requirements or through the delivery of the development. Consequently, the Council only identifies the provision of 5% affordable housing above the Council's requirement of 20% as a benefit of the proposal.
14. In my view, these are benefits of the proposal and it is a matter of planning judgement for the decision maker, as to how much weight is attached to these. Whilst I have attached some weight to the proposed allocation of the appeal site in the emerging Local Plan, this does not guarantee a planning permission for the development or the delivery of the benefits associated with this. Whereas if the appeal is allowed and planning permission granted, this provides greater certainty of the development and its associated benefits being delivered, which weighs in favour of the proposal.
15. Although the Council has more than a 5-years supply of deliverable housing land, housing requirements are set as minima. Therefore, the delivery of up to 150 dwellings would positively support the Government's objective of significantly boosting the supply of homes. There would also be significant social benefits associated with this in terms of the greater availability and choice of new housing.
16. In particular, the proposed scheme includes the provision of affordable housing. Policy CS11 of the CS requires all applications for open market housing to contribute towards affordable housing. The Council applies affordable housing targets on a geographical basis (as set out within the Type and Affordability of Housing Supplementary Planning Document, September 2012). The target for Shrewsbury south and the appeal site is 20%.
17. The appellants evidence on affordable housing<sup>1</sup> shows that the Council is aiming to deliver 9,000 affordable homes over the period 2006-2026. This equates to about 33% of the total housing target (27,500) and requires delivery at a rate of nearly 450 affordable homes per annum, and in general the Council has failed to achieve this rate. Despite the Council's assertions that the appellant's evidence does not take account of affordable housing delivered on rural developments, the information before me confirms that there are more than 5000 households requiring affordable housing in Shropshire and the

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<sup>1</sup> Land to the south of Meole Brace Retail Park, Shrewsbury – Affordable Housing Note, 22 October 2021

number of new affordable homes being delivered is significantly below this requirement.

18. Accordingly, the proposed level of affordable housing, which is above the Council's requirement would positively contribute to the Council's strategic objective for delivering affordable homes and is a significant benefit of the proposal, which would address the needs of a group with specific housing requirements, to which I attach substantial weight.
19. There would also be substantial economic benefits associated with the delivery of this scale of major development, including direct and indirect jobs during construction, along with the increase in resident spend to the benefit of local facilities and other financial receipts.
20. The revised access to the P&R would improve its efficiency and customer experiences, thereby providing a more effective and alternative transport mode to driving into the town centre, which supports the Council's wider transport objectives for Shrewsbury and would be a positive environmental benefit arising from the proposal. The provision of the new signal-controlled pedestrian crossing over Hereford Road would improve pedestrian accessibility and safety.
21. The appellant had previously suggested that the new access for the P&R could be delivered earlier. At the Hearing the Council advised that this along with the early delivery of the development would be a potential benefit, adding that if the appeal were to succeed, conditions attached to the planning permission should require the submission of reserved matters within 1 year of outline permission being granted and the commencement of the development within 1 year of the approval of the final reserved matters.
22. Notwithstanding that the improved access to the P&R would bring benefits, other than being secured before the proposed development for practical purposes, I have not been provided with any strong reasons to secure the earlier delivery of this. Given that the Council has more than a 5-year supply of housing land, the reduced timescales for the submission of reserved matters and the commencement of the development are not necessary.
23. One of the Council's suggested conditions sets out a requirement for electric vehicle charging points to all properties, a minimum of 10% of the predicted energy needs of the development from on-site renewable and low carbon energy sources and Gigabit-capable broadband infrastructure. These requirements are based on policies from the emerging Local Plan. The appellant is willing to incorporate these requirements based on my findings.
24. I have attached some weight to the emerging Local Plan and the above requirements are also broadly consistent with the Framework, 2021 with regard to supporting sustainable development. As such, the incorporation of these requirements would be a benefit arising from the proposal, which also weigh in its favour.

### **Other matters**

25. The signed and completed S106 Agreement dated 22 November 2021, includes an obligation relating to the on-site provision of 25% affordable housing. The S106 Agreement also includes a requirement for a financial contribution towards primary and secondary education. Having regard to the evidence before me including the established need for affordable housing, it has been

demonstrated that the obligations are necessary in order to make the development acceptable in planning terms, directly related to the development, and reasonable in scale and kind. They accord with the tests that are set out in the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations (as amended).

26. In addition to some of the above matters, I have had regard to a number of issues raised by third parties. These include the acceptability of the appellant's Transport and Noise Assessments, the increased traffic arising from the proposal and the effects of this, and the proposed highway works on existing congestion and highway safety, along with noise and air pollution on existing and new residents. These issues were addressed by the Council in its Development Management Report, and I have also considered these, and I have not been provided with any substantive technical reasons to take a contrary view.
27. Any financial motives of the appellant and the alleged lack of consultation with local residents do not affect the planning merits of the proposal. There is also nothing precluding the appellant from bringing the site forward for development through the planning application process instead of securing its allocation via the adoption of the emerging Local Plan. Matters raised in respect of design, layout and landscaping of the site would be dealt with under reserved matters if this appeal were to succeed.

### **Conditions**

28. In imposing conditions, I have had regard to the Framework, 2021 and the Planning Practice Guidance. I have proposed the standard conditions for the submission of reserved matters and implementation of the permission. The standard timescales specified in these are for the reasons set out above. I have imposed a condition specifying the relevant plans as this defines the permission and provides certainty.
29. I have specified conditions for the delivery of the access to the development site and the P&R at the outset of the development. These, along with the design and construction of other roads, footways, accesses are to ensure accessibility and safety of highway users. A condition to minimise the disruption caused by construction activity on the highway by requiring a Construction Management Statement is also necessary in the interests of highway safety.
30. Conditions are also necessary to safeguard any archaeological and heritage interests of the site. In the interests of protecting and enhancing biodiversity, I have imposed conditions requiring a lighting plan along with the provision of bird and bat boxes. A condition relating to surface water and foul drainage is necessary to avoid local pollution and to secure satisfactory drainage of the site and manage flood risk.
31. For the reasons given above, it is necessary to require a scheme for electric vehicle charging points to all properties, a minimum of 10% of the predicted energy needs of the development from on-site renewable and low carbon energy sources and Gigabit-capable broadband infrastructure wherever practical.

32. Conditions requiring a landscape plan and a landscape management plan are necessary to ensure the satisfactory quality of the development.
33. Given the scale of the proposed development (up to 150 dwellings) it is necessary to secure a phasing scheme to indicate the order and timescales of development phases in relation to the delivery of strategic infrastructure to ensure the proper planning of the development.
34. A condition requiring a Layout Plan specifying the location of the proposed on-site affordable housing units is necessary to ensure that these are delivered in accordance with the Council's requirements for affordable housing. A Layout Plan specifying the location of the proposed open space is necessary to ensure that the provision of this meets the needs of the occupiers of the development in accordance with the Council's requirements.
35. To ensure that the approved development provides a satisfactory living environment for its occupiers it is necessary and reasonable to require a noise mitigation scheme. Also, to safeguard the living conditions of residents, I have specified a condition controlling the times of any construction works and deliveries associated with the development.
36. Where necessary and in the interests of clarity and precision, I have altered some of the suggested conditions to better reflect the relevant guidance.

#### **Planning balance and conclusion**

37. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that decisions on planning applications should be made in accordance with the development plan unless material considerations indicate otherwise.
38. In this case I have identified a conflict with the development plan in relation to settlement strategy. However, the appeal site is being promoted in the emerging Local Plan as a site allocation for residential development, this weighs in favour of the proposal. Also, as set out above, there would be significant economic, social and other benefits arising from the development of the site while its impact on the countryside is limited due to it being bounded by development and transport infrastructure. Cumulatively, these considerations are sufficient to mean the proposal should be determined otherwise than in accordance with the development plan. I, therefore, conclude that the appeal should be allowed.

*M Aqbal*  
INSPECTOR

### **Schedule of Conditions**

- 1) Details of appearance, layout, scale, and landscaping (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority before the expiration of 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) This permission relates to the site as edged red on approved location plan - Drawing number 9473A-100 and includes the provision of a new access to the site and the Meole Brace Park and Ride as shown on Proposed Site Access: Drawing 16121-011 Rev B and Indicative Site layout: Drawing 9473A-110 Rev B.
- 5) The first submission of reserved matters shall include a phasing scheme to be approved in writing by the local planning authority. The phasing scheme shall indicate the order and timescales of development phases and the submission of reserved matters in relation to them, and the provision of highway and drainage infrastructure; strategic utility infrastructure; strategic landscaping, open space and recreation facilities and pedestrian and cycle route connections.  
  
No development shall commence for a particular phase, until the details for that phase have been approved. Thereafter, the development shall be carried out in accordance with the approved phasing scheme.
- 6) The first submission of reserved matters shall include a Layout Plan specifying the location of the proposed on-site affordable housing units (in accordance with the associated Section 106 Agreement, dated 22 November 2021). No works shall commence on any phase of the development until the location of affordable housing within it has been approved in writing by the local planning authority.
- 7) The first submission of reserved matters shall include a Layout Plan specifying a policy compliant amount of open space.
- 8) The first submission of reserved matters shall include a landscaping plan. The submitted plan shall include: a) Planting plans, creation of wildlife habitats and features and ecological enhancements [e.g. tree and hedgerow planting, wildflower grassland creation, hedgehog-friendly gravel boards]; b) Written specifications (including cultivation and other operations associated with plant, grass and wildlife habitat establishment); c) Schedules of plants, noting species (including scientific names), plant sizes and proposed numbers/densities where appropriate; d) Native species used are to be of local provenance (Shropshire or surrounding counties); e) Details of trees and hedgerows to be retained and measures to protect these from damage

during and after construction works; f) Implementation timetables. Thereafter, any approved landscaping shall be undertaken in accordance with the approved landscaping plan.

9) The first submission of reserved matters shall include details for the provision of bat boxes. A minimum of 30 external woodcrete bat boxes and/or integrated bat bricks, suitable for nursery or summer roosting for small crevice dwelling bat species, shall be erected on the site. The boxes shall be sited at least 3m above the ground on a variety of aspects (either south, south-east or south-west), sheltered from prevailing winds with a clear flight path and where they will be unaffected by artificial lighting. The bat boxes shall be provided prior to occupation of the property or use of the phase of the development to which they relate to and shall be retained for the lifetime of the development.

10) The first submission of reserved matters shall include details for the provision of bird boxes. A minimum of 30 artificial nests of integrated brick design and/or external box design, suitable for sparrows (32mm hole, terrace design), starlings (42mm hole, starling specific), and small birds (32/28 mm holes, standard design) shall be erected on the site. The boxes shall be sited at least 2m from the ground on a suitable tree or building at a northerly or shaded east/west aspect with a clear flight path. The bird boxes shall be provided prior to occupation of the property or use of phase of the development to which they relate to and retained for the lifetime of the development.

11) The first submission of reserved matters shall include a lighting plan. The lighting plan shall demonstrate that any proposed lighting will not impact upon ecological networks and/or sensitive features, e.g., bat and bird boxes, trees, and hedgerows. The submitted scheme shall be designed in consideration of the advice on lighting set out in the Bat Conservation Trust's Guidance Note 08/18 Bats and artificial lighting in the UK. The lighting shall be provided and retained in accordance with the approved details.

12) The first submission of reserved matters shall include a scheme for the following: Domestic electric vehicle charging points to all properties; A minimum of 10% of the predicted energy needs of the development from on-site renewable and low carbon energy sources; and Gigabit-capable broadband infrastructure or alternative gigabit-capable technologies using 'fibre to the premises' technology wherever practical. Thereafter, the development shall be completed in accordance with the approved details.

13) The development hereby approved shall not commence until the following details have been submitted to and approved by the Highway Authority: a) A s278 application for the proposed highway works; b) A s38 application for the proposed new access road to the Meole Brace Park and Ride; and c) A construction management plan for the proposed s278 and s38 works.

Thereafter, the highway works shall be completed in accordance with the approved details and construction management plan, prior to any other above ground works associated with the approved development taking place.

The highway works shall be maintained, and any visibility splays shall be kept permanently clear of all obstructions.

14) Not less than a period of 3 months from the commencement of the development hereby approved, Shropshire Councils Historic Environment Team shall be notified of the commencement date and provided with reasonable access to monitor the ground works and to record any archaeological evidence as appropriate.

15) No development hereby approved shall commence until a programme of archaeological work in accordance with a Written Scheme of Investigation ('WSI') has been submitted to and approved in writing by the local planning authority. Thereafter, the archaeological works shall be carried out in accordance with the approved WSI.

16) Prior to the commencement of each phase of the development hereby approved, a scheme for surface and foul water drainage for that phase shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented before any dwelling on that phase of the development is occupied.

17) No development shall take place until a Construction Method Statement ('CMS') has been submitted to and approved in writing by the local planning authority. The CMS shall include the following details: a) areas for the parking of vehicles of site operatives and visitors; b) areas for the loading and unloading of plant and materials and storage of plant and materials used in constructing the development; c) wheel washing facilities; and a Traffic Management Plan. Thereafter, the development shall be undertaken in accordance with the approved CMS.

18) Prior to the commencement of the development hereby approved, details of the design and construction of any new roads, footways, accesses together with details of the disposal of highway surface water and street lighting shall be submitted to and approved in writing by the local planning authority. The approved works shall be implemented before any property within that particular phase is occupied.

19) Prior to the commencement of any phase of the development hereby approved, details of a noise mitigation scheme, based on the principles in ProPG and supplementary guidance for acoustically insulating all habitable rooms within the dwellings, such that internal noise levels do not exceed the criteria specified in Table 4 of British Standard BS 8233: 2014, 'Guidance on sound insulation and noise reduction for buildings', shall be submitted to and approved in writing by the local planning authority. The noise mitigation scheme shall include the layout of the site and details of acoustic glazing and acoustically controlled alternative means of ventilation and thermal comfort, where necessary.

Any properties along the western boundary of the site adjacent to Hereford Road ('A5112') shall retain a minimum lateral separation distance of 14m (or more, if necessary, to ensure that the above referenced criteria will be achieved) between the nearside carriageway edge and the buildings. All private gardens for any such properties must be located to the rear of the

buildings. The internal layout of those buildings shall seek to minimise the number of habitable room windows directly overlooking the A5112.

Any properties along the eastern boundary of the site adjacent to the railway, shall retain a minimum lateral separation distance of 28m (or more, if necessary, to ensure that the above referenced criteria will be achieved) between the nearside track edge and the buildings. All private gardens for any such properties must be located to the rear of the buildings. The internal layout of those buildings shall seek to minimise the number of bedrooms on facades facing the railway.

The noise mitigation scheme shall demonstrate that typically (e.g., on average) no more than 3 passing trains per night-time (2300-0700hrs) will give rise to an internal noise level of greater than 45dB LAmax, within any bedrooms directly overlooking the railway (to be based on the data set out in IDOM Merebrook environmental acoustic assessment report reference: ENA-21105-17-426, dated November 2017).

Thereafter, prior to first occupation, properties requiring noise mitigation shall be constructed in accordance with the approved noise mitigation scheme.

20) Prior to the occupation of the first dwelling hereby approved, details for an on-site public information scheme about the presence of the prehistoric double ring-ditch shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be provided within 3 months of the occupation of the first dwelling and retained in perpetuity.

21) Prior to the first occupation of any phase of the development hereby approved, a landscape management plan to include management responsibilities and a maintenance schedule for all open space and landscaped areas (other than privately owned, domestic gardens) shall be submitted to and approved in writing by the local planning authority. Thereafter, the open space and landscaped areas shall be maintained in perpetuity in accordance with the approved landscape management plan.

22) Demolition or construction works, and associated deliveries shall only take place between the hours of 7.30am - 6.00pm Monday to Friday, and 8.00am - 1pm Saturdays, and not at any time on Sundays, or on Bank or Public Holidays.

## **APPEARANCES**

### FOR THE APPELLANT

Andrew Barton	Mercian Developments
Nicholas Bradshaw	Connect Consultants
Paul Newton	Barton Wilmore
Robert Walton QC	Counsel for appellant

### FOR THE LOCAL PLANNING AUTHORITY

Philip Mullineux	Shropshire Council
Jane Raymond	Shropshire Council
Edward West	Shropshire Council

### INTERESTED PERSONS

Shaun Jones	Bayston Hill Parish Council
Henry Merricks-Murgatroyd	Bayston Hill Parish Council

### DOCUMENTS SUBMITTED AT OR AFTER THE HEARING

1. Copy of draft S106 Agreement.
2. Copy of signed and completed S106 Agreement, dated 22 November 2021.
3. Summary of representations on the Regulation 18 and Regulation 19:  
Pre-Submission Draft of the Shropshire Local Plan.
4. Inspector's Initial Questions regarding the emerging Shropshire Local Plan dated 3 November 2021 and response letter from Shropshire Council dated 11 November 2021.
5. Transcript of representation made at the Hearing by Henry Merricks-Murgatroyd (Bayston Hill Parish Council).