

Committee and Date

North Planning Committee

18 November 2014

Item**10**

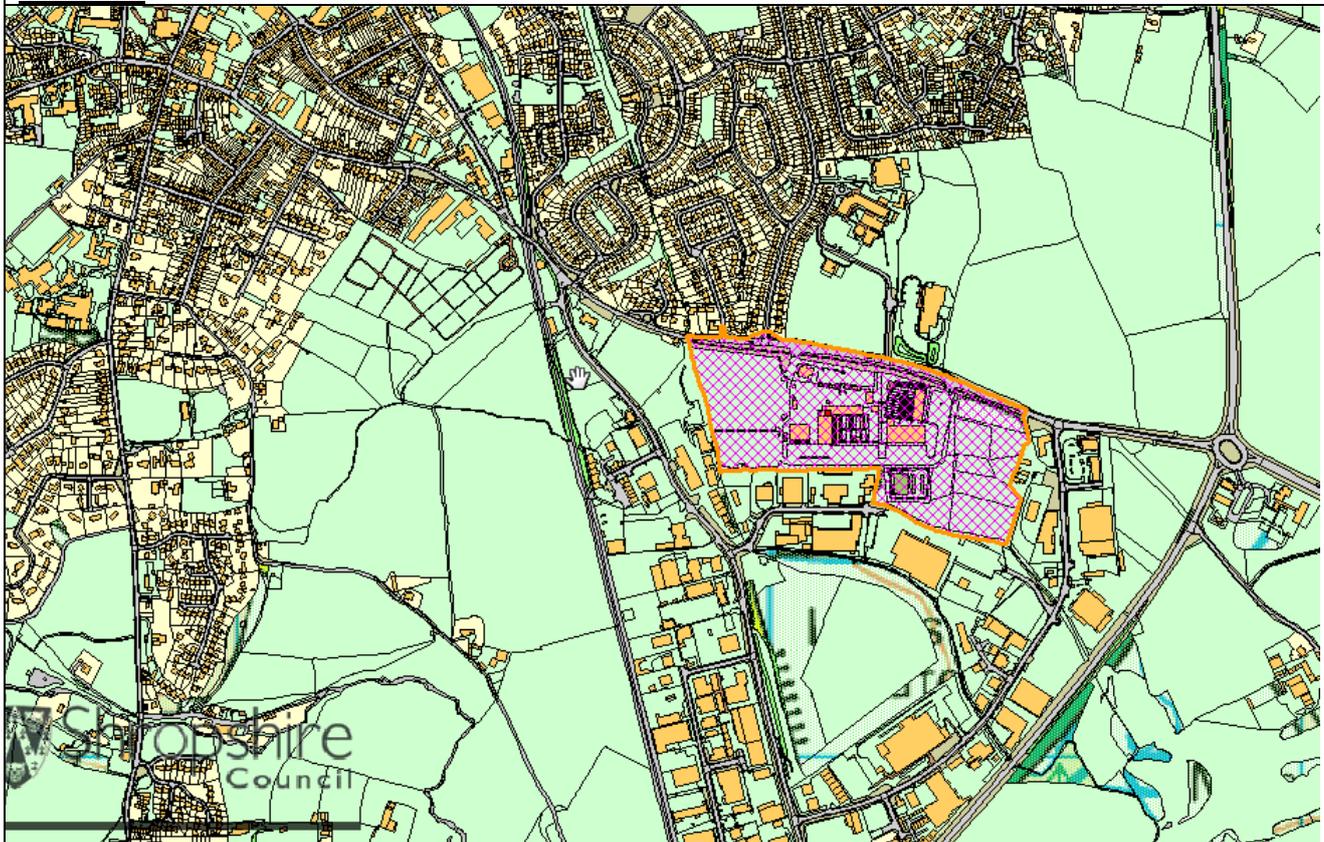
Public

Development Management Report

Responsible Officer: Tim Rogers

Email: tim.rogers@shropshire.gov.uk Tel: 01743 258773 Fax: 01743 252619**Summary of Application**

Application Number: 14/00164/VAR	Parish:	Oswestry Town
Proposal: Variation of Conditions 40 (approved plans) of planning permission 13/01189/VAR		
Site Address: Oswestry Smithfield Livestock Market Shrewsbury Road Oswestry Shropshire SY11 4QA		
Applicant: Optimisation Developments Limited		
Case Officer: Karen Townend	email: planningdmne@shropshire.gov.uk	

Grid Ref: 330110 - 328645

Recommendation:- Grant Permission subject to the conditions set out in Appendix 1 and subject to the applicant entering into a S106 agreement.

REPORT

1.0 THE PROPOSAL

1.1 This application seeks to vary condition 40 attached to the outline planning permission 08/15788/OUT for mixed use redevelopment of the Oswestry Smithfield Livestock Market, including re-organising the livestock market. The outline consent has since been varied under planning reference 13/01189/VAR.

Condition 40 states:

“The development shall be carried out strictly in accordance with the deposited plans and drawings as amended by the revised plan numbers 12/222/TR/002 Rev B received on 18th July 2013.

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

1.2 The variation of conditions is sought to enable the provision of an electricity sub station which was not previously proposed. The effect of the provision of the sub station is the loss of the park and ride parking area on the north western edge of the site. This is proposed to be off set by providing additional parking adjacent to the food store, two bus stops on the main road and a bus turning and stop facility within the site. Full details of the proposed changes and the implications of these changes are detailed within the report.

2.0 SITE LOCATION/DESCRIPTION

2.1 The site is situated approximately 1.3 kilometres to the east of the centre of Oswestry, adjacent to the southern side of the B4579 Shrewsbury Road approximately 500 metres west of the Mile End roundabout. In total the site is 1.3 hectares currently occupied by the livestock market and a public house and is surrounded by well established trees and hedges.

2.2 Currently the livestock market is a range of old buildings of a mix of concrete, brick and sheet metal set within large areas of hard standing. The land falls gently from the roadside towards the industrial estate at the rear. The part of the site proposed for the new lorry park and park and ride is currently rough grassland, the surrounding area is a mix of industrial and commercial buildings of various sizes and colours.

2.3 To the north of the application site is an area of housing, the Oswestry campus of Walford and North Shropshire college and its recreational fields, the recently completed leisure centre and an agricultural field. The park and ride will be opposite the field, the livestock market opposite the leisure centre and the commercial developments opposite the college and housing.

2.4 The outline consent was granted in July 2011, amended in August 2013 and reserved matters consent for the phasing and some minor changes to the layout was approved in August 2013. Work has commenced on site for phase 1 - the works to provide the livestock market.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

3.1 The application has been put to committee for determination as the Area Planning Manager considers that the proposal is a matter which should be determined by the committee due to the history of the planning permission and conditions and their consideration by previous committees.

4.0 COMMUNITY REPRESENTATIONS

4.1 Consultee Comments

4.1.1 **Oswestry Town Council** – The Council decline to comment on this application acknowledging our landholding.

4.1.2 **Highways Agency** – Having reviewed the Planning Statement available on the planning website, note that variation of the approved plan reference in condition 40 is to move the sub-station and subsequently enlarge the park and ride area, whilst making minor changes to internal site dimensions (moving parking spaces, etc.).

This will have no effect on the traffic generated by the development and consequently the Highways Agency has no objection to the variation of condition 40.

4.1.3 **Highways Officer – No objection.**

From a highway/transportation aspect this application raises 2 specific elements:-

- (i) Changes to the internal layout including the provision of a new electricity sub-station and provision of bus stops on Shrewsbury Road, as shown on Masterplan Drawing PL 04 Rev M.
- (ii) Amendment to the current Section 106 Agreement.

With regard to (i) above, the highway authority have no adverse comments. Whilst the revised scheme results in the loss of the 90 Park & Ride (P&R) spaces on the north-western edge of the site, this is off-set by the allocation and demarcation of 50 P&R spaces located to the immediate west of the Petrol Filling Station. The highway authority have no objection to the proposed site layout changes and would support the P&R spaces being located within the main body of the foodstore and retail park area as this potentially encourages linked trips. The location of the bus stops either side of Shrewsbury Road future proof the potential for bus passengers to board and alighted on Shrewsbury Road dependent upon the services routing along Shrewsbury Road but with the intention to route buses into and out of the site facilitated by the internal bus stop layby and bus turning layout arrangements.

The more fundamental changes requested by the applicant relate to the amendment to the current Section 106 Agreement and more specifically regarding the current commitment within the 106 to provide a free to use Shuttle bus facility for 20 years to both access and provide customer linkage between the site and the town centre. As set out above there is no intention to remove the P&R element although reduced parking provision is specifically allocated to that originally agreed i.e. 90 to 50 P&R spaces.

It is clear from the on-going discussions with the applicant/agents that the main driver behind the request to amend the 106 relates to the increased development costs which were unforeseen at the time the original application was submitted and approved. The agent has specifically highlighted the requirement of a new primary 7.5Mv electricity sub-station which the energy provider has required the developer of the site to undertake at their cost in full. This is acknowledged to be a significant cost in the order of £1.7 million based upon the agents information. Although there is potential claw back of this financial outlay within a 5 year window for development utilising the new sub-station there is risk to the developer of the foodstore and retail park as this is dependent upon development coming forward. The risk however would clearly reduce with the SAMDev housing site coming forward within that timescale and clearly the provision of the new sub-station infrastructure provides greater confidence in the SAMDev housing allocation coming forward.

From the highway authority's position, the infrastructure costs of the development are not a material consideration and it is a matter for the Planning Authority and Members to balance the cost implications against the delivery of the development, although the highway authority recognise that the provision of the new sub-station provides the necessary energy infrastructure to support development growth in Oswestry and in particular the delivery of a major housing allocation site off Shrewsbury Road as set out above.

Notwithstanding the above, the highway authority were heavily involved with the drawing up of the current Section 106 and the delivery of its aims following the resolution by Members to support the development of the new livestock market (nearer completion), new foodstore and retail park. Moreover the current commitment of the 20 years shuttle bus facility and P&R provision were pivotal in Members supporting the development of the Smithfield site against competing sites at J.T.Hughes/ Guttercrest and Richard Burbidge.

However it is important to note that the current Section 106 already provides a default clause in the event that the shuttle bus provision failed to provide the benefits of supporting linkage between the site and the town centre. In short if the shuttle bus ceased to be of benefit after say 3 years the developer would be required to provide funding based upon the capital cost of those 3 years of operation and pro rata that cost for the remaining 17 years. The intention therefore that that funding would be used to provide and promote sustainable transport which linked the site to the town centre. Officers at that time envisaged that in such an event, monies secured following the default of the shuttle bus provision would be invested in current, new or revised bus services in Oswestry.

In essence therefore what the applicant/developer is now proposing is to remove the shuttle bus provision and pay to the Council a single financial contribution of £1.37 million to enable the Council to invest that money in securing and supporting bus services which would link the site to the town centre but also provide a wider benefit to Oswestry. The highway authority would support the principle behind what the applicant/developer is now trying to achieve whilst at the same time acknowledging the need to stay within the boundaries of Section 106 tests.

Notwithstanding that the associated costs of the 20 years shuttle bus service under the current 106 are likely to be significantly reduced in favour of a single payment of £1.37 million, the issue to address is to what extent the current proposal provides in terms of its benefit to provide transport linkage between the site and town centre but also the wider benefits to the people of Oswestry. Whilst the £1.37 million payment proposed is anticipated to support bus provision for a minimum of 10 years, this is based upon a worst case scenario. On the basis of increased patronage and development of the SAMDev housing allocation and other developments along the Shrewsbury Road corridor there is the potential for this contribution to be utilised beyond the 10 year minimum funding period. It is important therefore that should Members support the changes to the 106, that the single payment of £1.37 million allows a degree of flexibility in how the Council utilise that funding towards public transport given the potential development changes in Oswestry.

In support of the applicant/developer's position to amend the 106 it highlights a number of benefits:-

- Provides a frequent service 30 mins during the daytime and evening to run between 08.00hrs to 23.00 hrs Monday to Sunday.
- Allows an existing and viable service route to be altered to serve the foodstore/ retail park and therefore limited impact on the viability of other transport services within Oswestry.
- Can be combined with an existing route and therefore maximises the suitability and viability of a service to the foodstore/ retail park.
- Focus upon linking Oswestry town centre with the site and thus the promotion of linked shopping trips.
- The service would remain 'free' to use at point of contact. A return ticket would be issued which could be used at any stop to return to the site. Potential therefore to widen the number of linked trips/destinations within Oswestry. Also a registered service and which would be advertised and promoted by the foodstore/retail park.

In support of the developers proposal to amend the current 106, it may be relevant to explain Shropshire Councils role in providing subsidised public transport services, and the rationale behind doing so in a wider policy context.

Under the Transport Act 1985 (s63) Shropshire Council has a statutory duty to secure the provision of such public passenger transport services as the Council consider it appropriate, where there are gaps in the network of services provided by commercial operations. The nature and minimum level to be retained through this subsidised network is prescribed in the Shropshire Council Bus Strategy 2011/16, part of the Local Transport Plan supporting documentation. It is to note that under statute, only a Local Authority can contract Local Bus Services. Direct commissioning of a public bus service cannot be undertaken by any other body, including a developer.

Given the size and potential public transport market within a town the size of Oswestry, there are already a mix of fully commercial (where passenger fare income offsets all operator costs), and contracted services (where subsidy is required, in part to meet these costs) in operation. The intention behind a

subsidised service is always to look to “seed” such a service and grow patronage to a point at which there is a future commercial opportunity for an operator. At this point there is no further need for public subsidy. As such, a subsidised service is seen ideally as a time limited and transitional arrangement.

Where such services have an unknown potential market, such as in the case of the Auction Yard development, it is appropriate that the risk of launching any new service is taken by the Council as opposed to the operator, hence the need for a contracted operation. Under the proposed revised 106 agreement, the cost of doing so to the Council, and the financial risk involved, is underwritten by developer contributions.

Based on the fact that the intention in contracting a service is to look for increased patronage and therefore financial sustainability, the proposal to integrate the Auction Yard coverage within existing, contracted services has considerable merit. The existing 400/404 services proposed as amended to incorporate the development will give direct connectivity not only to and from the town centre (as per previous proposals), but will also offer additional direct connections from both the north and west of the town by default based on current service routing. Furthermore, the 2/2a service proposed as offering evening and Sunday services to the development will also offer connections with Gobowen and further afield. Given that the existing services already have established users and income, to incorporate a further sizable generator of trip demand, i.e. the development, will have a substantial potential benefit in reducing the overall costs of the existing services and the extensions of these to the development in time.

Alternative options to provide separate and stand alone connectivity through a dedicated service, particularly where considerable portions of this run at no charge, are by definition unable to secure longer term financial sustainability. Furthermore, such services would also risk abstracting existing users from the town network so affecting their affordability / commerciality in time as well.

In summary, the integration of the site within the existing town network as described above is in line with the stated ambitions within Shropshire Councils current Bus Strategy, brings additional benefits to the site in terms of the larger potential bus market captured by default along the further reaches of the current network, and presents the best opportunity for financial sustainability / commerciality in the long run by presented an integrated network, covered by integrated ticketing opportunities, at a reasonable cost to the Council and therefore the developer.

Having regard to the above the highway authority are supportive of the amendment to the Section 106 as it gives control to Shropshire Council based upon a single up front one off payment of £1.37 million. Moreover it is considered that it achieves the principle aims of the previously agreed 106 in terms of linkage between the site and town centre but also providing a wider benefit to Oswestry. In addition it provides the potential to integrate public transport services with new development along the Shrewsbury Road corridor and potentially also therefore to increased patronage with the ultimate aim of bus services in Oswestry becoming sustainable or with lower levels of subsidy.

4.2 **Public Comments**

4.2.1 A press notice and site have been produced and published for this site and 16 individual neighbours have been notified. No comments have been received as a result of this consultation.

5.0 **THE MAIN ISSUES**

- Policy & principle of development
- Detail of changes
- Impact of changes

6.0 **OFFICER APPRAISAL**

6.1 **Policy & principle of development**

6.1.1 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. Since the adoption of the Councils Core Strategy the National Planning Policy Framework (NPPF) has been published and is a material consideration that needs to be given weight in the determination of planning applications. The NPPF 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 constitutes guidance for local planning authorities as a material consideration to be given significant weight in determining applications.

6.1.2 The NPPF sets out the presumption in favour of sustainable development as a golden thread running through plan-making and decision-taking (para. 14). It also promotes economic development; redevelopment of brownfield sites, as is the case with the current application; and retail development where it is proven that there are no sequentially preferable sites and where it is proven that the development will not be detrimental to the viability and vitality of the town centre.

6.1.3 Locally the Shropshire Core Strategy is the key policy. Oswestry is identified as a market town where CS3 seeks to promote economic development and regeneration and where the focus for retail and leisure uses should be to support the rural hinterlands. Policies CS6 and CS7 are also relevant in ensuring sustainable development whilst protecting highway safety and amenity. Policies CS13 and CS15 are the key local policies for economic and commercial development and promote a town centre first approach for retail uses, however the principle for developing this site for the intended uses has been established by the granting of the outline where the sequential test was undertaken.

6.1.4 Notwithstanding that the site already has outline consent, some of the reserved matters have also been approved and work has been undertaken on the livestock market buildings, the reason for granting outline consent for this site rather than any of the other three competing sites at the time of the decision was based on the wider benefits to Oswestry. The Section 106 agreement attached to the outline required the provision of a free shuttle bus for 20 years; park and ride facility; £10,000 for bus shelter improvements; £273,000 for provision of a cycleway and traffic junction improvements between the site and the town centre; £5,000 for off-site signage; and £5,000 for advertising.

6.1.5 It is therefore necessary to consider whether the amended scheme and the associated amendments to the S106 agreement continue to make the development acceptable in planning terms. Officers would advise members that changes to the approved scheme will bring the consent back into risk of judicial review if the consent is not based on sound planning reasons and policy. The authority does have to consider the current proposal and take into account the matters raised within the application. It is a matter of balancing whether what is being proposed continues to make the development of the Livestock Market site for edge-of-town retail acceptable, not result in harm to the viability and vitality of the town centre but also not place unreasonable burdens on the development which would mean that the development did not proceed.

6.2 **Detail of changes to site**

6.2.1 The planning statement submitted with the application advises that there are no changes proposed to the amount of floorspace or the range of uses to be provided. The outline, which has been varied once, remains as detailed in the August 2013 variation, which in principle remains as per the outline originally granted. The changes now proposed are:

- The relocation of the park and ride facility from the north east of the development to the area immediately adjacent to the petrol filling station and the reduction in the number of spaces from 90 to 50
- Provision of two bus stops either side of Shrewsbury Road, north of the petrol filling station
- A new pedestrian walkway to access the bus stops
- A new bus stop within the application site and space for turning of the bus
- Reduction in the parking provision for the remainder of the development from 870 to 822 spaces to allow for the relocated park and ride spaces
- A minor adjustment to the location of the food store and a reduction in the amount of floor space given to comparison goods from 35% to 20%

6.2.2 As noted in the introduction to this report the changes have come about due to the requirement for the developer to provide an electricity sub station. This is being provided on land which was originally set out as part of the park and ride and would have resulted in the reduction of the number of parking spaces available. However rather than providing the park and ride separate from the remainder of the development the current proposal relocates this facility to adjacent to the food store parking. This parking area would continue to be available for all day parking and the remainder of the car park provided with 5 hours free parking.

6.3 **Impact of changes**

6.3.1 The provision of the sub station is a major benefit of the proposed changes to the scheme for both the application site and the wider area. The reduction in the comparison goods percentage in the food store is also a benefit in that it will reduce the potential impact on the viability and vitality of the town centre. The original consent was granted at a time when the end operator of the food store was unknown and as such the comparison goods percentage was set at what was considered to be appropriate for the town, taking into account the averages of different food store operators. As it is now known that the end operator is to be WM Morrison the percentage can be set on the business model of the operator. WM Morrison does not have a high level of comparison goods and as such the

percentage can be reduced. Furthermore, the supporting statement submitted with the application notes that the existing Morrison store close to the town centre is to be retained. Within their submission the agent has also noted that there are other benefits which will come about from the scheme in the form of job creation, inward investment, economic development, new services and facilities for the town and the retention and improvement of the livestock market.

- 6.3.2 It is the applicant's opinion, within the planning statement, that the re-located park and ride is also a benefit in that the spaces close to the petrol filling station will provide a more integrated development which is located close to the commercial uses to be built and also enables new bus stops to be located closer to the residential area opposite and the bus to serve the development site. It is acknowledged that the relocation of the park and ride spaces results in the reduction in the level of parking provided for the food store, however the agent has sought to justify this with a statement which details that the level of parking will continue to comply with the condition on the outline consent.
- 6.3.3 The outline consent details 90 parking spaces in the park and ride area and 870 parking spaces within the remainder of the development (with 380 for the food store). Due to changes to the layout of the car park the provision for the food store will reduce to 326 and the number of park and ride spaces proposed now totals 50, those adjacent to the petrol filling station. At this time the applicant does not propose to construct any park and ride spaces in the originally approved position but the statement submitted with the application does advise that the use of the relocated park and ride will be monitored and if there is a proven need the developer is willing to provide additional spaces in the originally approved location at a later date.
- 6.3.4 The Council Highway Officer has confirmed that the proposed alterations will not have any highway implications, that they support the relocation of the park and ride spaces and the provision of new bus stops and as such it is officers opinion that the proposed changes to the layout of the site are all acceptable and would not significantly alter the overall scheme whilst potentially reducing the impact of the food store on the town centre and providing better linkages between the park and ride parking and the development.

6.4 **Changes to S106**

- 6.4.1 However the changes proposed to the layout also require change to be made to the S106 which sets out the total number of parking spaces to be provided. Furthermore the requirement for the developer to provide an electricity substation has also resulted in the cost of the development increasing. This cost of over £1m, in addition to other build costs which were not fully understood at the outline application stage, has resulted in the developer seeking to negotiate the terms of the S106 beyond the car parking levels. The proposal is to remove the obligation on the developer to provide a free shuttle bus and to replace this with a financial contribution. The financial contribution would then be used to fund the diversion of existing bus services to the site. The agent has commented that, in their view, the free shuttle bus makes the development unviable and also would draw passengers from the existing bus service and as such promotes the diversion of the existing bus as providing better service for the town and the new development.

- 6.4.2 The applicant's highway consultant has provided a document which seeks to identify the positives and negatives of the shuttle bus versus the diversion of the existing bus. The positives of the shuttle bus would be the frequency of the service (20min intervals), the cost to users and the length of the day the service was to run for. However, the negatives are the impact on existing service routes which are chargeable to users, the loss of income from town centre parking and the loss of the service after 20 years. In favour of diverting the existing service is the potential for increased hours at a frequency of 30min intervals serving both the development and the existing route, linking the site to the town centre, greater potential for long term viability of the route and that this would still operate free from the development site. However, they have accepted that the frequency would be less than the shuttle bus, the majority of bus users already benefit from concessionary travel and that the diversion may adversely affect an existing route.
- 6.4.3 Following lengthy negotiations with the agent and Morrisons the latest proposal is to extend the existing route of the 400/ 404 'circular' bus service from 7:40am to 6pm, Monday to Saturday, on at least 30 min intervals and to also extend the route of the 2/2A bus service from the town centre to serve the site between 6pm and 11pm Monday to Saturday and 8am to 5pm on Sundays. Both services would enter the site and turn using the proposed mini-roundabout and stop at a new bus stop within the site. It is proposed that passengers boarding the bus from within the site would do so for free and could therefore access the town centre from the site for free.
- 6.4.4 The financial contribution proposed is £1.37m which is proposed to be paid in one single sum at the time of the commencement of the food store. The agent has suggested that this would pay for the proposed diversion of the existing two bus routes, as detailed above, for 10 years which they consider would be sufficient time to establish the viability of the service. All of the other requirements of the S106 set out in 6.1.4 above are to remain.
- 6.4.5 In assessing whether the current proposal is appropriate to make the development acceptable and also whether it achieves the primary aim of the free shuttle bus members need to take account of the fall back position set out in the original S106 as noted by the Council Highway Officer. The requirement was to provide a free shuttle bus for 20 years but that this provision was subject to periodic review which at the set times either the Council or the operator could request cessation of the shuttle bus provision and its replacement with a financial contribution. The original S106 required the contribution to be made to the Council to be used on providing alternative means of sustainably linking the site to the town centre. . The intention therefore that that funding would be used to provide and promote sustainable transport which linked the site to the town centre. Officers at that time envisaged that in such an event, monies secured following the default of the shuttle bus provision would be invested in current, new or revised bus services in Oswestry.
- 6.4.6 As noted by the Highway Officer what the applicant is now proposing is to go direct to the fall back payment. The value which has been placed on this payment has been the result of negotiations with the Council and bus operators to establish an appropriate and viable route. Some weight can be given to the applicant's argument relating to viability, but less weight should be placed on this argument

than the weight to be given to the need to provide a suitable service in replacement for the free shuttle bus. The Area Transport Planning Commissioner has confirmed that the offer from the applicant of £1.37m will provide for the diversion of the existing service for a minimum of 10 years, but, as noted in the detailed Highway Officer response above, could support the service for a longer period if passenger income increases and if the future development of the SAMDev site close to Mile End roundabout comes forward.

- 6.4.7 Overall the Highway Officer, in consultation with the Area Transport Planning Commissioner, has advised that the proposal to integrate the Auction Yard coverage within existing, contracted services has considerable merit, positive benefits and may also reduce the overall costs of the existing services and the extensions of these to the development in time. The integration of the site within the existing town network is in line with the stated ambitions within Shropshire Councils current Bus Strategy, brings additional benefits to the site in terms of the larger potential bus market captured by default along the further reaches of the current network, and presents the best opportunity for financial sustainability / commerciality in the long run by presented an integrated network, covered by integrated ticketing opportunities, at a reasonable cost to the Council and therefore the developer.
- 6.4.8 In conclusion, it is acknowledged that the current proposal does not provide a free shuttle bus linking the site to the town centre for a period of 20 years. However, it does provide financial underwriting to enable the diversion and extension of the existing services to link the site to the town centre and other parts of the town for a minimum of 10 years which officers consider is sufficient time to establish the route. Furthermore the diversion of existing services will provide greater benefits to the town than the free shuttle bus would have and as such the current proposal more than achieves the principle aims of the previously agreed section 106. As such officers support both the proposed amendments to the site layout and development proposals and also the proposed changes to the section 106 agreement.

7.0 CONCLUSION

- 7.1 The variation of condition 40 proposed in the current application is acceptable and the detailed alterations to the scheme do not result in any adverse impacts to amenity, character or highway safety and will not result in any greater impact on the vitality or viability of the town centre of Oswestry. Accordingly the scheme is recommended for approval subject to the conditions listed below and also subject to the applicants entering into a new S106 agreement, in the form of a deed of variation of the previous agreement.

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 - written representations, a hearing or inquiry.

The decision is 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 a) promptly and b) in any event not later than three months 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 give 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 1970.

9.0 **FINANCIAL IMPLICATIONS**

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

10. **BACKGROUND**

10.1 **Relevant Planning Policies**

Central Government Guidance:
National Planning Policy Framework

Core Strategy and Saved Policies:
CS3 The Market Towns and Other Key Centres

CS6 Sustainable Design and Development Principles
 CS7 Communications and Transport
 CS15 Town and Rural Centres

10.2 **Relevant planning history:**

OS/08/15788/OUT Proposed replacement livestock market and mixed use regeneration scheme GRANT 27th July 2011

13/01189/VAR Variation of Conditions 40 (approved plans) & 41 (approved details) attached to Planning Reference 08/15788/OUT(mixed use regeneration) to allow for alteration to siting of buildings and highways alterations GRANT 8th August 2013

13/01600/REM Approval of Reserved Matters, Phasing (as required by condition 4) and other details required by condition 5 of planning permission ref: OS/08/15788/OUT (Dated 27 July 2011) including minor material amendments to siting and access via the variation of conditions 39,40 and 41 as detailed in planning application 13/01189/VAR (Validated on 22 March 2013) GRANT 20th August 2013

13/04871/AMP Relocation of entrance lobby, minor extension to presenter booth, internal reconfiguration, extension of wooden battens to corner shield, alterations to windows on eastern and western elevations. This relates to 13/01600/REM. GRANT 6th January 2014

11. **ADDITIONAL INFORMATION**

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) Cllr M. Price
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Local Member Cllr Martin Bennett Cllr Peter Cherrington

Appendices APPENDIX 1 - Conditions

APPENDIX 1

Conditions

STANDARD CONDITION(S)

1. Details of the layout, landscaping and appearance of the buildings, hereinafter called "the reserved matters" shall be submitted to and approved in writing by the local planning authority for any one phase of the development before any development begins within the respective phase and the development shall be carried out as approved for that phase.

Reason: The application is an outline application under the provisions of Article 1(2) of the Town and Country Planning General Development (Procedure) Order 1995 and no particulars have been submitted with respect to the matters reserved in this permission.

2. Application for approval of reserved matters shall be made to the local planning authority before the expiration of five years from the date of the original outline planning permission numbered 08/12788/OUT.

Reason: This condition is required to be imposed by Section 92 of the Town and Country Planning Act 1990.

3. The development hereby permitted shall begin before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

Reason: This condition is required to be imposed by Section 92 of the Town and Country Planning Act 1990.

CONDITION(S) THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES

4. (a) No work shall commence on site until a masterplan identifying phasing for the development has been submitted and approved in writing by the local planning authority and (b) the development shall thereafter be carried out in accordance with the approved phasing.

Reason: To ensure the orderly development of the site in the interests of ensuring that the development provides the identified economic benefits and protects the amenities of the area.

5. For each phase of the masterplan approved under Condition 4 above:
 - (a) The following information shall be submitted to the local planning authority concurrently with first submission of reserved matters for any part of the development.
 - Means of enclosure of the site
 - Levels of the site
 - Drainage of the site
 - b) The following information shall be submitted concurrently with the submission of reserved matters for a building / works within a specific phase of the development:
 - Drainage for the building / works involved

- Means of access for disabled people
- Finished floor levels

Reason: To ensure the development is of an appropriate standard

6. (a) No work shall commence on site until a detailed programme for the relocation of the livestock market within the site has been submitted to and approved in writing by the Local Planning Authority; and (b) no retail unit, cinema, restaurant or building for B1 use shall be brought into use until the livestock market is completed and available for trading.

Reason: To ensure the timely provision of the livestock market within the site and the continuity of the facility.

7. No built development shall commence until samples of all external materials for that particular building or phase of development have first been submitted to and approved by the local planning authority. The development shall thereafter be carried out in accordance with the approved details.

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

8. No development shall commence within each phase of development as identified in the masterplan approved under Condition 4 above until there has been submitted to and approved by the local planning authority a scheme of landscaping and these works shall be carried out as approved. The submitted scheme shall include:

Means of enclosure

Hard surfacing materials

Minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting)

Planting plans

Written specifications (including cultivation and other operations associated with plant and grass establishment)

Schedules of plants noting species, planting sizes and proposed numbers / densities where appropriate

Implementation timetables allowing for phased development.

Reason: to ensure the provision of amenity afforded by appropriate landscape design.

9. No ground clearance, demolition or construction work shall commence until a scheme has been submitted to and approved in writing by the local planning authority to ensure no damage to any existing trees or hedgerows within or adjoining the site identified to be retained. The submitted scheme shall have regard to BS5837

Reason: To prevent trees or hedgerows on site from being damaged during building works.

10. a) No work on the construction of the highway works associated with this development shall commence until a detailed engineering scheme for these works relating to that particular phase of development, including the provision of bus lay bays, treatment of all boundary walls and fences has been approved in writing by the local planning authority in association with the highways authority; and

(b) No part of that phase of the development shall be opened to the public until the scheme approved under Condition 10(a) above has been completed in accordance with the approved details.

Reason: In the interests of highway safety and maintaining the free flow of traffic through the town.

11. No development shall take place, including any works of demolition for each phase of the development, until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The approved statement shall be adhered to throughout the construction period of that phase. The Statement shall provide for:
- i. The parking of vehicles of site operatives and visitors
 - ii. Loading and unloading of plant and materials
 - iii. Storage of plant and materials used in constructing the development
 - iv. The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - v. Wheel washing facilities
 - vi. Measures to control the emission of dust and dirt during construction
 - vii. A scheme for recycling / disposing of waste resulting from demolition and construction works

Reason: To avoid congestion in the surrounding area and to protect the amenities of the area.

12. (a) No work shall commence on the construction of the livestock market until details of the car park to serve the cattle market including grading, construction details and drainage have been approved in writing by the local planning authority.
(b) The livestock market shall not be brought into use until all the car park referred to in 12(a) above has been completed in accordance with the approved details; and
(c) The car park facility shall thereafter be retained and maintained in accordance with the approved details.

Reason: To provide parking facilities in the interests of highways safety.

13. a) No work shall commence on the Retail phase of the development until details of the construction of the permanent car park to serve the superstore, cinema and associated restaurants and facilities including grading, construction details and drainage have been approved in writing by the local planning authority. The car park area referred to above shall provide a minimum of 819 parking spaces including spaces for parent and child and disabled persons parking and pick-up points;
(b) the superstore, cinema and associated restaurants shall not be brought into use until all the permanent car park referred to in 13(a) above has been completed in accordance with the approved details and
(c) The permanent car park shall thereafter be retained and maintained in accordance with the approved details.

Reason: To provide parking facilities in the interests of highway safety.

14. (a) No part of the development within its relevant phase shall be commenced until cycle parking arrangements in relation to the main uses of the site have been submitted to and approved in writing by the local planning authority; and
(b) the relevant building shall not be brought into use until the cycle parking for that building has been provided in accordance with the approved details; and
(c) the cycle parking shall thereafter be maintained in accordance with the approved details.

Reason: To ensure provision for a choice of means of access to the services provided.

15. For each phase of the masterplan approved under Condition 4 above, an investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the local planning authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the local planning authority. The report of the findings must include:
- (i) a survey of the extent, scale and nature of the contamination;
 - (ii) an assessment of the potential risks to:
 - Human health,
 - Property (existing or proposed) including buildings, crops, livestock, pets woodland and service lines and pipes,
 - Adjoining land,
 - Ground waters and surface waters,
 - Ecological systems,
 - Archaeological sites and ancient monuments
 - (iii) an appraisal of remedial options, and proposal of the preferred option(s).
- This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.
16. For each phase of the materplan approved under Condition 4 above, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historic environment must be prepared, and is subject to the approval in writing of the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
17. For each phase of the masterplan approved under Condition 4 above the approved remediation scheme must be carried out in accordance with its terms prior to the commencement of the development other than that required to carry out remediation. The local planning authority must be given two weeks written notification of commencement of the scheme works.
Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the

effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the local planning authority.

18. No construction shall take place for that phase of the development until a detailed construction noise management plan has been submitted to and approved by the local planning authority. The plan must include details of proposed works and equipment to be used along with operational procedures (such as plant maintenance and inspection), management responsibilities on site, interventions in the case of observed operational conditions which may lead to excessive noise emissions, response to complaints including a noise monitoring plan and a complaints handling procedure. The approved noise management plan shall be implemented at all times throughout that phase of development.

Reason: In the interests of the amenities of the local area

19. (a) No development relating to the installation of cooking equipment shall commence until a scheme for the installation of equipment to control the emission of fumes and smell from the premises has been submitted to and approved in writing by the local planning authority
(b) the equipment approved under Condition 19 (a) above shall be installed before the relevant building is brought into use and thereafter be operated and maintained in accordance with the approved scheme.

Reason: In the interests of air quality and protecting the amenities of the local area.

20. (a) No work shall commence on the petrol filling station hereby approved until such time as a scheme to install the underground fuel tank(s) and provisions for petrol vapour recovery have been submitted to and approved in writing by the local planning authority. The scheme shall include the full structural details of the installation, including details of excavation, the tanks, tank surround, associated pipe work and monitoring system and
(b) the petrol filling station shall thereafter be fully implemented and maintained in accordance with the details approved under Condition 20 (a) above.

Reason: In the interests of safety of the local area; protection of ground water and air quality and the amenities of the local area.

21. (a) No work shall commence on each phase of the development hereby approved until details of all external lighting for the relevant buildings, plant and open areas including associated car parking and servicing areas, have been submitted to and approved in writing by the local planning authority; and
(b) each development phase shall thereafter be carried out and maintained in accordance with the details approved under Condition 21(a).

Reason: In the interests of visual amenity

22. No development shall take place until a plan for the management and long term maintenance of the watercourse and its 8 metre buffer zone (from the top of both banks) within the boundary of the site, has been submitted to and approved in writing by the local planning authority in consultation with the Environment Agency.

The plan shall incorporate the recommendations of the Revised Phase 1 Habitat Survey found on pages 7 and 8 and dated June 2009, ref.2006/54. The plan shall also detail timing and provision for implementing and updating the plan.
The plan shall thereafter be implemented in accordance with the approved details.

Reason: To conserve and enhance the watercourse and its corridor through the site.

23. For each phase of the masterplan approved under Condition 4 above development shall not be commenced until a scheme for the provision and implementation of a surface water regulation system including the use of Sustainable Drainage Systems, as detailed within paragraph 7.2.6 of the Flood Risk Assessment (FRA) dated 10th August 2009 has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details.

Reason: To prevent the increased risk of flooding and provide water quality benefits by ensuring the provision of a satisfactory means of surface water disposal.

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

24. The buildings hereby permitted shall not be brought into use until the areas shown on the approved plans for parking, loading, unloading and turning of vehicles within that particular phase have been provided, laid out, hard surfaced and drained in accordance with the submitted scheme. The spaces shall thereafter be maintained free of any impediment to their 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.

25. All hard and soft landscape works shall be carried out in accordance with the approved details for that phase and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standard 4428:1989. The works shall be carried out prior to the occupation of any part of the development within the particular phase or in accordance with the timetable agreed with the local planning authority. 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 numbers 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.

26. All existing trees, shrubs and hedgerows proposed to be retained within and bordering the site shall be protected, retained and maintained to the satisfaction of the local planning authority for the duration of any development works and for 5 years thereafter.

Reason: In the interests of maintaining the amenity value of the area.

27. Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 1995 (or any Order revoking and re-enacting that Order with or

without modification), no access other than that shown on the approved plans shall be formed to the site.

Reason: To prevent the formation of additional accesses which could lead to conditions detrimental to highway safety.

28. In the event that contamination is found at any time when carrying out the approved development that was not previously identified, it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with the requirement of Condition 15, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 16, which is subject to the approval of the local planning authority.

Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the local planning authority in accordance with condition 17.

29. A monitoring and maintenance scheme to include monitoring the long term effectiveness of the proposed remediation over a period of 5 years, and the provision of reports on the same must be prepared, both of which are subject to the approval in writing of the local planning authority.

Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be produced and submitted to the local planning authority.

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

Reason (common to 19-23): To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

30. Piling and other foundation operations using penetrative methods shall not be permitted other than with the express consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.

Reason: To prevent pollution of surface and ground waters.

31. (a) The development shall be carried out and maintained in accordance with the Air Quality Assessment and its associated mitigation measures; and (b) Monitoring shall be carried out in accordance with the agreed scheme with provision made for the mitigation measures to be amended should the monitoring results indicate a need in accordance with a scheme previously approved in writing by the local planning authority.

Reason: In the interests of ensuring protection of local air quality.

32. Demolition or construction works shall not take place outside 07:00 hours to 19:00 hours on weekdays and 08:00 hours to 13:00 hours on Saturdays with no working activities on Sundays or Public Holidays.

Reason: In order to maintain the amenities of the area.

33. No infiltration of surface water drainage into the ground is permitted other than with the express consent of the local planning authority, which may be given for those parts of the site where it is demonstrated that there is no unacceptable risk to controlled waters.

Reason: To prevent pollution of controlled waters.

34. Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water drainage from parking areas and hard standings shall be passed through an oil interceptor designed and constructed to have a capacity and details compatible with the site being drained. Roof water shall not pass through the interceptor.

Reason: To protect ground and surface waters ("controlled waters" as defined under the Water Resources Act 1991).

35. The net sales floor area of the food store shall not exceed 2787 sq. metres. No more than 976 sq. metres(35%) of the net floor area of the food store shall be used for the sales of comparison goods. Comparison goods are defined as per the COICOP definition

Reason: Permission is granted on the basis that the site should provide a food store and the increase of net-comparison sales floor area beyond that specified could lead to the loss of a competitive food sales and adversely affect the vitality and viability of the town centre, contrary to Policies SP1 of the adopted and saved Oswestry Borough Local Plan, Policy CS 15 of the adopted Shropshire Core Strategy and PPS 4 Planning for Sustainable Economic Growth

36. Notwithstanding the provisions of the 1987 Town & Country Planning (Use Classes) Order or succeeding orders, the foodstore hereby approved shall not include the following dedicated ancillary retail facilities:
- (a) post office
 - (b) dry cleaners
 - (c) Travel agents
 - (d) Pharmacy
 - (e) Opticians

The provision of any other ancillary facilities within the foodstore must be submitted to and agreed in writing by the local planning authority prior to opening

Reason: To maintain planning control over the type of goods and services available in store and to safeguard the vitality and viability of Oswestry town centre.

37. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 or any subsequent re-enactments, other than the superstore hereby permitted all

other retail units shall be used for the sale of non-food bulky goods, such as DIY and Home Improvement goods; garden products, furniture and furnishings, carpets and floor coverings, pet foods and pet supplies, motor parts, accessories and cycles and electrical goods only.

Reason: The site lies outside the Retail Development Area and Primary Shopping Area boundaries as identified in the adopted and saved Oswestry Borough Local Plan and the Nathaniel Lichfield Retail Study and its use for the retailing of a greater range of items would be contrary to the Council's policies for protecting the vitality and viability of the town centre.

38. Notwithstanding the provisions of the Town and Country Planning (General permitted Development) Order 1995 or any succeeding document, the Restaurant and hot food facilities hereby permitted shall not be used for any purpose under Class A1 Shops.

Reason: To control the extent of retail floor space in order to protect the viability and vitality of the Oswestry town centre.

39. The retail units excluding the food store hereby permitted shall have a maximum floor area of 3809 sq. metres gross floor area (excluding the external area to the garden centre as identified on Plan No. PL-30 Rev D, received 1st August 2013).

Reason: To control the extent of retail floor space in order to protect the viability and vitality of the Oswestry town centre.

40. The development shall be carried out strictly in accordance with the deposited plans and drawings as amended by the revised plan numbers 12/211/PL04 Rev K received on 13th January 2014.

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

41. The development of this site shall be carried out in substantial accordance with the details included within the Design and Access Statement and Landscape and Visual Effects Statement submitted as part of the application and shown on drawing no. PL-30 Rev D, received 1st August 2013.

Reason: The retail, commercial and livestock market development is subject to an Environmental Impact Assessment and any material alterations to the scheme may have an impact which has not been assessed by that process.