

**REPORT OUTLINE FOR AREA PLANNING COMMITTEES****Report No. 7**

<b>Date of Meeting</b>	19 October 2017
<b>Application Number</b>	17/06469/FUL
<b>Site Address</b>	Land Adjacent to allotments at Down Barn Road Down Barn Road Winterbourne Gunner Salisbury Wiltshire SP4 6JN
<b>Proposal</b>	Construction of one detached dwelling with disabled annexe, including work space for lifelong living and outside space for supported horticultural activities
<b>Applicant</b>	Mr Dan Steedman
<b>Town/Parish Council</b>	WINTERBOURNE
<b>Electoral Division</b>	BOURNE AND WOODFORD VALLEY Councillor M Hewitt
<b>Grid Ref</b>	417733 135623
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	Richard Nash

**Reason for the application being considered by Committee**

The application has been called to committee at the request of the division member, Councillor Hewitt in view of the degree of local support in principle for a specialised dwelling to meet the Applicant's needs.

**1. Purpose of Report**

The purpose of the report is to assess the merits of the proposal against the policies of the development plan and other material considerations and to consider the recommendation that the application be **REFUSED**.

**2. Report Summary**

The main issues to be considered are the principle of development, as the site lies within open countryside, outside of any recognised limits of development, highway safety issues and the impact on the setting of a Grade II listed building. The needs of the Applicant's child are also a primary consideration.

**3. Site Description**

The site comprises agricultural land located on the north east side of Down Barn Road, to the north west of the roundabout linking the road with The Portway and the A338. To the east of the site there are allotments with dwellings in Mill Close and Down Barn Close beyond. Adjoining the north east corner is a Grade II listed windmill tower surrounded by a small area of trees. Otherwise the site is bounded by agricultural land.

**4. Planning History**

16/06517/FUL

Erection of a detached dwelling with disabled facilities included with outside space for horticultural activities - Refused for the following reasons:

- 1 The proposed development would harm the setting of the designated heritage asset, the Windmill Tower, to the North of the site, by reason of the close proximity of the development to this asset, the impact on the setting when viewed from Down Barn Road and the change in historical character through the loss of the current agricultural setting. This would amount to less than substantial harm, as defined in the NPPF, and would conflict with Core Policy 58 of the Wiltshire Core Strategy, which seeks to conserve and enhance the setting of listed buildings.
- 2 The proposal conflicts with the settlement strategy of the Wiltshire Core Strategy, as set out in Core Policies 1, 2 and 18 as the settlement at Winterbourne is not identified as a location for sustainable growth and lies outside of the existing limits of development for settlements in the county and outside the built up limits of the identified small villages in the Amesbury Community Area. The development does not accord with any of the exceptions policies listed at paragraph 4.25 of the Wiltshire Core Strategy 2015 and the site has not been brought forward for development through a neighbourhood plan.
- 3 The proposal by reason of its positioning on a road where the national speed limit applies and without a pavement in the direction of the village of Winterbourne is likely to lead to an increase in pedestrians using the road particularly at night and at periods of inclement weather when the proposed informal footpath is less likely to be used. This in turn is likely to lead to potential increased conflict between pedestrian and vehicle borne traffic to the detriment of highway safety and contrary to policy CP60 of the Wiltshire Core Strategy.

An informative was added to the decision confirming that although the personal circumstances set out by the Applicant were considered to amount to a primary material consideration, it was considered that they did not outweigh the cumulative harm identified in the reasons for refusal.

## **5. The Proposal**

The application proposes the erection of a single storey Z shaped chalet style dwelling with integral garage. A ground floor disabled annexe would comprise a bedroom, bathroom, relaxation and therapy facilities as well as carer's accommodation. This would be contained within one wing of the dwelling but would not be physically internally separate from the remainder of the dwelling, which would contain 4 bedrooms at first floor level with other rooms spread over both floors. The dwelling would be finished with timber cladding on a brick plinth with slate effect roof tiles.

The garden area would include raised beds. A new access is proposed off Down Barn Road with a lengthy drive leading to the dwelling. Extensive landscaping is proposed to assist in screening the development.

The proposal is aimed at meeting the specific needs of the Applicant's son. This is explained in detail in documents submitted by the Applicant, which are available on the Council's web site. Particular points of note around the design of the proposal include the scale and somewhat simplistic layout of the dwelling, required not only for chair and hoist manoeuvrability but also to allow space for carers to work around the child, who is approaching adulthood, and the raised planting beds allowing him to carry out a rewarding and meaningful activity at the only physical plane at which he could work.

## **6. Planning Policy**

*National Planning Policy Framework*

## *National Planning Practice Guidance*

### *Planning (Listed Building and Conservation Areas) Act 1990 (LBCA)*

The Windmill Tower to the North of the site is a Grade II listed building. Section 66 (1) of the LBCA sets out the duty of the Local Planning Authority to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses.

### *Wiltshire Core Strategy*

#### Core Policy 1: Settlement Strategy

This identifies settlements where sustainable development should take place, with a settlement hierarchy running from Principal Settlements through Market Towns and Local Service Centres to Large and Small Villages. The Winterbournes are collectively identified as a Large Village. The site is however outside of the area of the settlement identified as a sustainable location.

#### Core Policy 2: Delivery Strategy

In order to deliver the sustainable development envisaged in CP1, CP2 sets out the delivery strategy for the plan area. This again states that dwellings should be delivered in sustainable locations, with a presumption in favour of such development within the areas defined on the policy maps.

#### Core Policy 4: Spatial Strategy for the Amesbury Community Area

This reinforces the settlement hierarchy and delivery strategy contained within CP1 and CP2.

Outside of the limits imposed by CP1, CP2 and CP4, development should only be permitted in the circumstances outlined in paragraph 4.25 of the Core Strategy. Paragraph 4.25 identifies 'exception' policies, which seek to respond to local circumstances and national policy, to provide additional sources of employment and housing sites. Of these exception policies, CP34 (Employment Land), CP37 (Military Establishments), CP39 and CP40 (Tourism Development), CP44 (Rural Exception Sites (for Affordable Housing)) and CP48 (Supporting Rural Life) are not relevant to the current proposal. The remaining exception policy is Core Policy 46 (Meeting the Needs of Vulnerable and Older People).

The supporting text in paragraphs 6.53, 6.54 and 6.55 refers to addressing the needs of an aging population. However, CP46 itself refers to the provision in suitable locations of new housing to meet the specific needs of vulnerable **and** older people. The policy therefore has a wider applicability than simply being restricted to older people. The policy states that such accommodation should be provided in sustainable locations, within settlements identified in CP1 (and normally in the Principal Settlements and Market Towns), and in exceptional circumstances outside but adjacent to this category of settlement.

The criteria for these exceptional circumstances are that:

- a genuine, and evidenced, need is justified
- environmental and landscape considerations will not be compromised
- facilities and services are accessible from the site
- its scale and type is appropriate to the nature of the settlement and will respect the character and setting of that settlement

#### Core Policy 41: Sustainable Construction and Low Carbon Energy

This policy requires that new homes should achieve at least Level 4 (in full) of the Code for Sustainable Homes.

#### Core Policy 50: Biodiversity and Geodiversity

This policy requires that development proposals must demonstrate how they protect features of nature conservation and geological value.

#### Core Policy 51: Landscape

Paragraph 6.85 of the supporting text to this policy identifies the need to protect the distinct character and identity of villages and settlements in Wiltshire. Development should protect, conserve and where possible enhance landscape character, and any negative impacts must be mitigated subject to specific criteria.

#### Core Policy 57: Ensuring High Quality Design and Place Shaping

This design based policy requires a high standard of design in all new developments. Development is expected to create a strong sense of place through drawing on local context and being complementary to the locality.

#### Core Policy 58: Ensuring the Conservation of the Historic Environment

This policy requires development to protect, conserve and where possible, enhance the historic environment. Designated heritage assets and their settings should be conserved.

#### Core Policy 60: Sustainable Transport

This policy states that the Council will use its planning and transport powers to help reduce the need to travel particularly by private car, and support and encourage the sustainable, safe and efficient movement of people and goods within and through Wiltshire

#### Core Policy 62: Development Impacts on the Transport network

This policy is concerned with highway safety and requires that development should provide appropriate mitigating measures to offset any adverse impact on the transport network at both the construction and operational stages.

## **7. Summary of consultation responses**

### **Winterbourne Parish Council**

Objection: Parish Council is sympathetic towards the needs of the Applicant (a Winterbourne parishioner) and his family. Recognises that services and facilities available to people in this situation post school are very limited and in principle would have no objection to a development of this type within the parish (either through new development or modification to an existing building). In particular, fully support recognition by Wiltshire Council in their decision on 16/06517/FUL that Applicant's personal circumstances amount to a primary material consideration.

Objections to the proposed development relate to the proposed location for dwelling. These were set out in responses to the previous application and are:

- Although reduced in scale from 16/06517/FUL, this is a large development on land outside the settlement boundary
- The land is not one of 11 land areas currently being assessed as part of development of the Winterbournes' Neighbourhood Development Plan. Therefore unlikely that it will be included within the Neighbourhood Plan, and there has been no opportunity for local consultation on this land, adjacent to allotments, as has been carried out for

the 11 land areas being assessed. There are other areas of land within the parish that are more suitable for housing development.

- The land is adjacent to a listed building and the proposed development will impact on this heritage asset. Land also may be of archaeological interest as noted by Wiltshire Council Archaeology on application 16/06517/FUL
- Development on this site would limit opportunities for expansion of the allotments (subject to landowner's agreement). The allotments are used by residents of both Winterbourne and Idmiston parishes and with the forecast housing development for the next 10 years in these two parishes, there is likely to be increased demand for allotments
- Egress onto Down Barn Road without speed restriction or pedestrian path (pavement) is likely to increase risk to road users and pedestrians.
- Consider the reasons for the decision to reject 16/06517/FUL, including that it did not accord with policy CP46, apply also to this application.

### **Idmiston Parish Council**

Objection in support of Winterbourne Parish Council.

### **Conservation Officer**

I note that one of the reasons for refusal of 16/06517/FUL was on heritage grounds. Whilst there are some modifications to the design, it remains an exceptionally large structure visibly detached from the settlement, and in the immediate setting of the listed windmill. There remain no public benefits offered to outweigh the 'less than substantial' harm (NPPF 134), and consequently my conclusions are the same as with the previous application:

The proposal site lies in open countryside to the north of the Portway/A338 roundabout, to the north of a mid-C20 development of bungalows and allotments that are rather peripheral to the village, the centre of which lies some distance away on the south eastern side of the river. A grade II listed windmill, one of only two in south Wiltshire, lies very close to the North East boundary of the proposal site, in a rural setting very little changed since its construction; visible above the trees from Down Barn Road and to a lesser extent from the A338 in West Gomeldon. The windmill is a building at risk, and without a roof, although it appears to be reasonably sound structurally and not in imminent danger. The topography of the area means that the existing housing to the south of the site is not visible from the surrounding roads or countryside, whereas the proposal site is on much higher ground and is clearly visible from Down Barn Road; this would mean that the house would then be visible in very close proximity to the windmill, which stands visually separated from all modern domestic development.

The future of the windmill is of course unknown, but it appears to me to be capable of conversion to an alternative use, such as residential, with little significant alteration. The trees around it appear to be self-sown and of unremarkable quality, and would be likely to be thinned, thereby increasing the visibility of the windmill. The proximity of the proposed structure would be likely to have an intrusive effect on the enjoyment of space around the windmill, and views from it, including from its rooftop, and is likely to create a significant degree of enclosure and possibly overshadowing: we typically say that 20 metres is a tolerable distance in dense urban locations between residential windows – here it would be about 30 metres but in a rural setting this would feel extremely close.

The proposed dwelling is of a truly vast scale, being measurable in multiples of its nearest neighbours, and would have a significant impact on the setting of the listed windmill; it would also fail to relate to the village and its streetscenes. Section 66 of the LBCA places a

statutory duty on decision makers to pay special regard to the desirability of preserving the setting of listed buildings. This special regard has been consistently interpreted by the High Court to mean, 'above all else', not least because harm to heritage assets cannot be undone, and their identification as being of 'national interest' is for the benefit of the wider community, both within and outside of the parish.

Development of new housing and the creation of domestic garden on the proposed site would cause harm to the setting of the listed building, contrary to the LBCA, and there are no public benefits provided by the scheme that might outweigh that harm (NPPF 134). The harm is public, so the benefits must also be; personal benefits have no role in consideration of impacts to designated heritage assets, however sympathetic one might feel.

It is now some months since I became aware that this site was being considered, and I have strongly urged that alternative sites should be explored before consideration of such a level of harm (and exception to other planning policies) be proposed. There appears to be a high number of alternative sites in the vicinity that could be more acceptable in heritage terms, not least those being put forward through the Neighbourhood Planning Process, and other sites put forward to the council through the sites identification work.

I note that there is a brief statement about providing an unspecified donation towards works to the windmill, but this could not be legal within this application process. There is no information provided regarding the extent of necessary works nor has there been any contact from its owners, and the proposal is not made in the guise of 'enabling development'. In heritage terms, I can only say that the application would fail to preserve the setting of a listed building, without any demonstration that the development could not be reasonably achieved elsewhere, that the tests of the NPPF (134) are not met, and that it would not comply with CP57 & CP58 of the Wiltshire Core Strategy.

## **Highways**

I have considered the extent to which the proposed footway might provide some benefit. Given that it will:

- be unlit
- not be properly consolidated or surfaced
- have substandard junctions with Down Barn Road and
- be unlikely to be maintained even to its proposed rudimentary standard

I do not consider the benefits to be significant.

Whilst I acknowledge that the Applicant's personal circumstances might be viewed as a material consideration, the proposals the subject of this application will remain in perpetuity. In the circumstances, I object to this application for the following reasons:

The proposed development is likely to generate an increase in pedestrian traffic across and on a road lacking adequate footways with consequent additional hazards to all users of the road. Whilst the development includes a new pedestrian link along the inside of the field on the southern side of Down Barn Road, it is considered that it is unlikely to be used particularly at night or in inclement weather.

The proposed development is outside any defined policy boundary and is contrary to local and national sustainable transport policy guidance.

However, if you are minded to approve the proposal, I recommend the following conditions be imposed to any permission granted:

(1) The development hereby permitted shall not be first occupied until the first five metres of the access, measured from the edge of the carriageway, has been consolidated and surfaced (not loose stone or gravel). The access shall be maintained as such thereafter.

Reason: In the interests of highway safety.

(2) The gradient of the access way shall not at any point be steeper than 1 in 15 for a distance of 4.5m from its junction with the public highway.

Reason: In the interests of highway safety.

(3) Any gates to close the access shall be set back a minimum distance of 4.5m from the edge of the carriageway and made to open inwards (away from the highway) only.

Reason: In the interests of highway safety.

(4) The development shall not be first occupied until the visibility splays have been formed in accordance with the approved details shown on drawing numbered LDS/13673-TP1. Such visibility splays shall thereafter be permanently maintained free from obstruction to vision above a height of 1.0m above the level of the adjacent carriageway.

Reason: In the interests of highway safety.

(5) The development shall not be first occupied until the proposed pedestrian facilities in the field on the opposite side of the C286 to the application site have been cleared of obstructions, fenced, gated and surfaced as proposed for pedestrian traffic. The footpath shall be maintained as such thereafter.

Reason: To ensure that the development is served by an adequate means of pedestrian access and in the interests of highway safety.

(6) No development shall commence on site until a scheme for the discharge of surface water from the site (including surface water from the access/driveway), incorporating sustainable drainage details, has been submitted to and approved in writing by the local planning authority. The development shall not be first occupied until surface water drainage has been constructed in accordance with the approved scheme.

Reason: To ensure that the development can be adequately drained.

#### Informative

The development hereby granted shall not be construed as authority to carry out works on the highway. The applicant is advised that a licence will be required from the local highway authority before any works are carried out on any footway, footpath, carriageway, verge or other land forming part of the highway. Please contact the Council's Vehicle Crossing Team on [vehicleaccess@wiltshire.gov.uk](mailto:vehicleaccess@wiltshire.gov.uk) and/or 01225 713352.

#### Archaeologist

Site is of archaeological interest as work associated with pipeline that crossed the site identified artefactual remains. Refers to NPPF 128: Desk based assessment which accompanies the application fulfils the first part of this paragraph. Previous advice was that a field evaluation should be undertaken. Refers to NPPF 141: In previous advice had recommended that a trenched evaluation should be undertaken. However, changed advice to condition for archaeological watching brief at time of previous planning application.

Therefore recommended that programme of archaeological works in the form of an archaeological watching brief is carried out as part of any development.

Recommendation:

Full condition (WL26): No development shall commence within the area indicated (proposed development site) until:

- A written programme of archaeological investigation, which should include on-site work and off-site work such as the analysis, publishing and archiving of the results, has been submitted to and approved by the Local Planning Authority; and
- The approved programme of archaeological work has been carried out in accordance with the approved details.

REASON: To enable the recording of any matters of archaeological interest.

Informative: The work should be conducted by a professionally recognised archaeological contractor in accordance with a written scheme of investigation approved by this office and there will be a financial implication for the applicant.

## **Public Protection**

Support Subject to Conditions:

No construction or demolition work shall take place on Sundays or Public Holidays or outside the hours of 07:30 to 18:00 Monday to Friday and 08:00 to 13:00 on Saturdays.

No burning of waste or other materials shall take place on the development site during the demolition/construction phase of the development.

## **Landscape**

No Comment.

## **Ecology**

It appears that no ecology survey work has been submitted in support of this application. I have screened the proposal in light of GIS and protected species information and there is a possibility of protected species (reptiles and breeding birds) being impacted by the development.

The applicant should be advised to commission a suitably qualified and competent ecological consultant to undertake a Phase 1 habitat survey, and any phase 2 surveys deemed necessary by the consultant. The associated survey report(s), which should also include recommendations for avoidance, mitigation, compensation and enhancement measures where necessary, should be submitted for consideration by the council ecologist prior to determination of the application. In conjunction with this, the consultant should also assess the site for presence of reptiles and nesting birds.

This should be carried out prior to the determination of the planning application because in carrying out their statutory duty in line with the National Planning Policy Framework, NERC Act 2006 and the Wiltshire Core Strategy, the local planning authority's ecologist must be provided with sufficient information to facilitate a robust and suitably informed assessment with regards to the potential for the proposed development to impact upon ecological receptors.

NB: No further ecology information has been submitted – the Applicants view is that as the site comprises working agricultural land it could be ploughed over without permission at any point. This issue did not form part of the reasons for refusal and it would therefore be unreasonable to now introduce such a reason.

## **8. Publicity**

The application has been advertised by way of a site notice and press notice (setting of a listed building and departure from the development plan) and by letter to nearby properties.



The proposal is also supported by the medical staff involved in the care of the Applicant's son. The full comments of all those responding to the application are set out in the letters on the Council's web site. In summary:

3 responses have been received expressing no objection to, and/or support for, the proposal.

3 responses have been received objecting to the proposal on the grounds that:

Although smaller in size than previous proposal, it is close enough to the listed building to affect it adversely;

Development is outside existing limits of development and not included in Neighbourhood Plan sites;

Detrimental impact on allotments, a valuable village amenity;

Development is extremely large and not in keeping with surrounding houses;

Development will be accessed from main road where national speed limit applies thus presenting a safety hazard;

Both Winterbourne and Idmiston Parish Councils have stated that the application should be refused;

Planning permission was refused in 2016 for same site for the same reasons stated above. Nothing has changed and the same reasons for objection apply.

## **9. Planning Considerations**

Section 38(6) of the Planning and Compulsory Purchase Act states that: "*determination must be made in accordance with the development plan unless material considerations indicate otherwise*". Paragraphs 2 and 11 of the NPPF reiterate and confirm this requirement. The Wiltshire Core Strategy, adopted in January 2015, is the relevant development plan for the purposes of this proposal.

### **9.1 Principle of Development**

The Winterbournes are collectively identified as a Large Village within the settlement hierarchy set out in the Core Strategy. However, the proposal is situated outside the local plan settlement boundary. As a result, new residential development is not considered to be sustainable in principle and would only be supported where the proposal meets the criteria of one of the 'exception' policies or if the site has been brought forward through a Neighbourhood Plan. There is no Neighbourhood Plan for the Winterbournes yet (although one is in preparation) and thus it is only the exceptions policies that can be considered, although these must be taken in conjunction with the other relevant policies relating to development.

As discussed above, CP46 is the exceptions policy relating to meeting the needs of vulnerable people. Whilst the supporting text and much of the policy is specifically directed at the needs of older people, the Applicant's son would clearly meet any reasonable definition of a vulnerable person, and thus the policy must be considered. However, the policy states that accommodation should only be provided in the sustainable locations identified in CP1, or in exceptional circumstances outside, but adjacent to them.

The criteria for these exceptional circumstances are that:

- a genuine, and evidenced, need is justified
- environmental and landscape considerations will not be compromised

- facilities and services are accessible from the site
- its scale and type is appropriate to the nature of the settlement and will respect the character and setting of that settlement

There is no dispute that there is a genuine and evidenced need for specialised accommodation in this case. However, the exclusion of the site from the area of The Winterbournes where development would be considered sustainable would suggest that a range of facilities and services are not readily accessible. Furthermore, the proposal would compromise environmental and landscape considerations in respect of the listed building, would be of a scale and type not appropriate to the nature of the nearby settlement and would not respect the character and setting of that settlement.

The Applicant has submitted a detailed analysis of other sites considered in The Winterbournes and this will be made available to Members prior to the meeting, although it is not for general publication due to commercial sensitivity in some cases. This analysis provides a number of reasons for discounting the sites (which are included in the SHLAA and/or Neighbourhood Plan). In the main sites are either not physically suited to the particular needs of the development and/or are not affordable to the Applicant as landowners are hoping for a higher number of units to achieve the desired land value. This process was preceded by a search over a wider area and over a ten year period, evidence of which will also be forwarded to Members.

The Applicant has also submitted an appeal decision for consideration, wherein the Planning Inspector allowed a similar proposal in Yorkshire. Material differences in that case were that the site was already developed with buildings in residential use, was in an Area of Outstanding Natural Beauty rather than adjacent to a listed building, and the Core Strategy did not contain an exception policy for new dwellings in the countryside specifically for health reasons, but did allow for exceptions in general to meet 'an identified local need'.

Members should be aware that in his decision the Inspector concluded that: *It would not be appropriate to impose a personal occupancy condition on the new bungalow. When the appellant ceases occupation it would end up as open market housing in a location poorly related to services. However...the personal circumstances before me are a material consideration and one which will not be repeated on many occasions. Allowing this appeal would not set a general precedent for more dwellings in the open countryside.*

However, this conclusion is drawn in relation to a principle only and not to specific criteria as would be required by CP46. The Inspector's view was also that: *Personal health needs are not specifically mentioned in Policy...but it seems to me that this is a real and properly evidenced local housing need supported by the Parish Council and those local residents who have responded to the proposal.*

This differs from the current proposal in that health needs can specifically be considered under CP46, but subject to criteria beyond the accepted need and local support (the latter of which does not apply to the specific site now under consideration). In other words CP46 is more specific and therefore more restrictive in its scope.

To this end it is significant that the Inspector has stated that: *In meeting a site specific personal need for a new dwelling I do not find any conflict with Policy...No other harm has been put forward. In particular the new bungalow would be seen as part of the existing building group and there is agreement that as designed and located it would not cause significant harm to the character or appearance of the...AONB.*

In this case other policy concerns exist in relation to the design, scale and siting of the proposal, particularly in terms of its relationship with the adjacent listed building and the character of the locality, and the impact of the proposal on highway safety.

The personal needs of the Applicant are not disputed and are a material planning consideration. Furthermore, the desire to remain in the community is understood. However, Policy CP46 does not make allowances for a 'sequential' approach to site selection and the proposed site must therefore be judged on its own policy merits.

Officers' views are that the proposal is not in accordance with any of the housing distribution or exception policies of the WCS and is therefore contrary to the provisions of the development plan. Notwithstanding this, other policies must also be considered in relation to the wider aims of sustainability.

## **9.2 Highways Impact**

The full comments of the Highways Officer are noted above. In summary, the proposed development is considered likely to generate an increase in pedestrian traffic across and on a road lacking adequate footways with consequent additional hazards to all users of the road. Whilst the development includes a new pedestrian link along the inside of the field on the southern side of Down Barn Road, it is considered that it is unlikely to be used particularly at night or in inclement weather. The proposed development is outside any defined policy boundary and is therefore contrary to local and national sustainable transport policy guidance.

The proposal does not accord with the policies of the development plan. It is not in a sustainable location, and would be detrimental to highway safety.

## **9.3 Impact on Heritage Assets**

The designated heritage asset affected by the proposal is the Grade II listed windmill tower to the north of the site. The Conservation Officer's comments are set out in full above and in summary are that the proposal would fail to preserve the setting of a listed building, that the tests of the NPPF (paragraph 134) are not met, and that the proposal would not comply with Policies CP57 and CP58 and would cause less than substantial harm to the setting of a listed building.

## **9.4 Other material considerations**

### **9.4.1 Housing land supply**

The site is located within the Southern Housing Market Area where the latest housing land supply figures showed a land supply in excess the 5.25 years required by paragraph 14 of the NPPF. The policies of the development plan can therefore be considered to be up-to-date in terms of paragraph 14 and can be given full weight.

### **9.4.2 Personal Circumstances**

The personal circumstances of the Applicant's son are set out in detail in the planning application, in terms of his needs and the healthcare that he requires. This is a material consideration. The advantages of being close to relatives are set out in the supporting information and the application is supported by the medical team that provides care at present. The proposal has been designed to provide for his needs. The Applicant states that they have been unsuccessful in locating any other plots for a specially adapted home, and

that a self-build custom home will meet their requirements in a manner that would not be readily achieved through the purchase and adaptation and/or extension of an existing dwelling. The Applicant has supplied a great deal of material, all of which has been considered in making the recommendation below.

### **9.4.3 – Equality Act/Human Rights**

In determining planning applications the Local Planning Authority has to have regard to the requirements of the Equality Act (2010). This requires public bodies to have *due regard* to the need to:

- eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act;
- advance equality of opportunity between people who share a protected characteristic and people who do not share it; and
- foster good relations between people who share a protected characteristic and people who do not share it.

Having *due regard* means consciously thinking about the three aims of the Equality Duty as part of the process of decision-making, this the Council has clearly done. The Equality Duty also explicitly recognises that disabled people's needs may be different from those of non-disabled people. Public bodies should therefore take account of disabled people's impairments when making decisions about policies or services. Core Policy 46 does address the housing needs of vulnerable people.

In relation to Human Rights, the Courts have held that 'the best interests of a child shall be a primary consideration'. However, they have made it clear that this does not make the best interests of a child determinative, paramount, or *the* primary consideration. The approach to be taken is to seek to identify the child's best interests and to keep these at the forefront of the decision makers mind as all material considerations are examined and the exercise of planning judgement made.

In this case, the best interests of the child lie in providing suitable accommodation. This proposal would provide suitable accommodation, built for the child's needs and close to family support. However, it does not follow that this is the only site or property where his needs can be physically met, and that those needs override all other material considerations. The adverse impacts of not approving the application would mean that the search for a suitable site or property would continue whilst the family remain in other accommodation. It must be decided whether this adverse impact is proportionate.

## **10. Conclusion (The Planning Balance)**

The Council has a difficult judgement to make. It has to determine applications in accordance with the development plan, except where material considerations indicate otherwise. A primary consideration in this case is the needs of the Applicant's son, but the law makes it clear that this by itself is not determinative.

It is recognised that these needs include a requirement for relatively large spaces for manoeuvrability and caring, leading to a necessarily large scale of proposal. It is also acknowledged that the Applicant has nevertheless reduced the height, bulk and shape of the proposal from that previously refused. However, the revised proposal is in conflict with the development plan, in that it would result in the construction of a dwelling in a location where new dwellings would not normally be permitted. Furthermore, the proposal would cause

harm (albeit less than substantial in NPPF terms), to the setting of the listed building to the north of the site and would be detrimental to highway safety.

In the final analysis, it is considered that whilst the personal circumstances of the Applicant and their son amount to a primary and significant material consideration, it does not outweigh the harm, in planning terms, that would be caused by allowing a development that in this particular location would have an irreversible adverse impact on the area, cause harm to the setting of a heritage asset, and be detrimental to highway safety, on a site that has not been brought forward for development by the local community.

## **RECOMMENDATION**

**It is recommended that the application be refused for the following reasons:**

- 1 The proposal conflicts with the settlement strategy of the Wiltshire Core Strategy, as set out in Core Policies 1, 2 and 4, as the site lies outside of the existing limits of development for settlements in the county and outside the built up limits of the identified small villages in the Amesbury Community Area. The development does not accord with any of the exceptions policies listed at paragraph 4.25 of the Wiltshire Core Strategy and the site has not been brought forward for development through a neighbourhood plan.
- 2 The proposed development would harm the setting of the designated heritage asset, the Grade II listed windmill tower to the North of the site, by reason of the close proximity of the development to this asset, the impact on the setting when viewed from Down Barn Road and the change in historical character through the loss of the current agricultural setting. This would amount to less than substantial harm, as defined in the NPPF, and would conflict with Core Policy 58 of the Wiltshire Core Strategy, which seeks to conserve and enhance the setting of listed buildings.
- 3 The proposed development is considered likely to generate an increase in pedestrian traffic across and on a road lacking adequate footways with consequent additional hazards to all users of the road. Whilst the development includes a new pedestrian link along the inside of the field on the southern side of Down Barn Road, it is considered that it is unlikely to be used particularly at night or in inclement weather. The proposed development is outside any defined policy boundary and is therefore contrary to local and national sustainable transport policy guidance. The proposal would therefore conflict with Core Policies 60 and 62 of the Wiltshire Core Strategy.

Informative: Although the personal circumstances set out by the Applicant are considered to amount to a primary material consideration, it is not considered that they outweigh the cumulative harm identified in reasons 1-3 above.

## APPENDIX: PLANNING INSPECTORATE APPEAL DECISION

Site visit made on 4 November 2015

by B.Hellier BA(Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 10 November 2015

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Appeal Ref: APP/T2350/W/15/3129411

Skirden Hall Farm, Tosside, Skipton, North Yorkshire, BD23 4SX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - . The appeal is made by Mr James Waddington against the decision of Ribble Valley Borough Council.
  - . The application Ref 3/2014/0961, dated 6 October 2014, was refused by notice dated 16 January 2015.
  - . The development proposed is a new bungalow with garage to provide suitable accommodation for a disabled child.
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### Decision

1. The appeal is allowed and planning permission is granted for a new bungalow with garage to provide suitable accommodation for a disabled child at Skirden Hall Farm, Tosside, Skipton, North Yorkshire, BD23 4SX in accordance with the terms of the application, Ref 3/2014/0961, dated 6 October 2014, subject to the conditions set out in the accompanying Schedule.

### Main issue

2. I consider the main issue is whether this would be a sustainable form of development having regard to the policy presumption against new housing in the open countryside and to the accommodation needs of the appellant and his family, particularly those of his son George.

### Planning policy

3. The development plan includes the Core Strategy<sup>1</sup>. Its development strategy envisages most new development taking place in the towns and larger villages and for development outside these settlements to be strictly limited. In the open countryside Policy DMH3 allows

development in only a limited number of circumstances. One of these circumstances is for housing which meets an identified local need. The glossary to the Core Strategy explains that local housing need refers to need that is evidenced by a local housing needs survey, the housing waiting list or a strategic housing market assessment.

4. The Core Strategy reflects national policy set out in the National Planning Policy Framework (NPPF). This states that local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances.

5. There is an emerging Neighbourhood Plan<sup>1</sup>. This has not yet been adopted and its approach to local housing need in the consultation draft has resulted in a number of interpretations coming forward. I give it little weight at this stage.

#### Reasons

6. Skirden Hall Farm lies at the end of a track some 200m from the road and a further 300m from the hamlet of Tosside where there is a pub and village institute. There is also a daily bus service to Long Preston and Settle. The appellant lives in the farmhouse. The adjoining barn has been converted to a dwelling and is in a different ownership. To the rear a detached barn has also been converted to a dwelling and is occupied by his brother. Nearby is a modern barn.

7. There is no dispute that, whilst some social facilities and a bus service are within walking distance, for policy purposes the location is in open countryside where, as set out in Policy DMH3, new housing development would not normally be permitted.

8. The appellant has an 18 year old son George who has severe epilepsy and a learning disability. The new bungalow would provide purpose built, wheelchair accessible accommodation for him, including a wet room with a hoist. His consultant paediatrician supports the proposal and provides an up to date assessment of his needs. I think it helpful to use her words.

9. George is inattentive and falls easily. He has periods of prolonged non-convulsive status which results in him having reduced consciousness and awareness for a period of days and during these periods he requires nursing care and is at risk of falling..... he requires assistance and prompting with personal care..... George continues to have daily seizures (often during the night) despite medication with 4 different drugs and a vagal nerve stimulator, therefore provision will be required in the long term and it is probable that his mobility and dependence will increase as he becomes older.

10. The existing accommodation is limited. George sleeps upstairs with his parents above steep stairs. There is a small bathroom and two other small rooms and downstairs a kitchen/living room and a sitting room. There is an unquestioned need for significantly improved ground floor accommodation for George. The Council considers this could be provided by an extension to the existing farm house. The obvious location for an extension would be to the side of the house. However there is a step up here so that floor levels could not be aligned without substantial excavation. It would also mean that the stairs would continue to be a falling hazard and would be likely to separate George from his parents.

11. A new bungalow is the solution favoured by his consultant paediatrician and by his paediatric occupational therapist. In considering a disabled facilities grant the relevant Council housing and building control staff found that adapting the current property would be significantly complicated and costly and agreed that the grant could be put towards a bungalow. I too find that a new specially adapted bungalow built at the same level as the access track would be the most appropriate housing provision for George and his family. Personal health needs are not specifically mentioned in Policy DMH3 but it seems to me that this is a real and properly evidenced local housing need supported by the Parish Council and those local residents who have responded to the proposal.

12. The Council rightly notes that it would not be appropriate to impose a personal occupancy condition on the new bungalow. When the appellant ceases occupation it would end up as open market housing in a location poorly related to services. However any planning decision must have regard to the development plan in the first instance and also then to other material considerations. The personal circumstances before me are a material consideration and one which will not be repeated on many occasions. Allowing this appeal would not set a general precedent for more dwellings in the open countryside.

#### Planning balance

13. The policy presumption against new housing in the open countryside and location of the appeal site away from a service centre must count against it. I give significant weight to the environmental and social harm associated with this. However in meeting a site specific personal need for a new dwelling I do not find any conflict with Policy DMH3 as set out above. No other harm has been put forward. In particular the new bungalow would be seen as part of the existing building group and there is agreement that as designed and located it would not cause significant harm to the character or appearance of the Forest of Bowland AONB.

14. On the other hand there is a pressing need for a bungalow in this particular location to satisfy the accommodation needs of the appellant and his family to which I give substantial weight. In sustainability terms the social benefits of meeting this need clearly outweigh the environmental and social harm and I therefore conclude that this would be a sustainable form of development.

#### Conditions

15. The Council has suggested conditions and I have also taken into account the tests for conditions in paragraph 206 of the NPPF. Standard conditions are needed on commencement, development in accordance with the approved plans and details of materials. I also agree that parking spaces should be provided before occupation of the bungalow and details of any subsequent boundary treatment reserved for subsequent approval.

16. The new bungalow will be constructed partly on an existing hard surfaced access/parking area and partly on the field to the north east. It is integral to the need case that it is constructed all on one level, that level being set by the existing hard surface. I



consider the development should be informed by a site survey and supported by a layout incorporating existing retained features and identifying levels. I have imposed a further condition to this effect.

Conclusion

17. For the reasons given above I conclude that the appeal should be allowed.

Bern Hellier  
INSPECTOR  
Schedule of Conditions overleaf

## Schedule of Conditions (6)

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans and drawings: No.1 (floor plan); No.2 (SE and NE elevations); No.3 (SW and NW elevations); No.5 (site layout at 1:100); and No.5 (location at 1:1250).
- 3) No development shall take place until precise specifications or samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) Prior to the first occupation of the bungalow three parking spaces shall have been formed within the curtilage of the dwelling as shown on the approved 1:100 site layout. Thereafter, these spaces shall be kept permanently clear of any obstruction to their designated use.
- 5) The curtilage of the bungalow shall be restricted to the area outlined in red on the approved 1:1250 location plan. No boundary walls or fences shall be erected on the boundaries of the curtilage, or elsewhere within the curtilage, unless details of their location, height, materials of construction and external appearance/colour have first been submitted to and approved in writing by the local planning authority.
- 6) No development shall take place until a site survey has been carried out and a plan showing existing and proposed levels and the relationship of the bungalow to existing features has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.