

# AGENDA

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**Meeting:** Western Area Planning Committee

**Place:** Council Chamber - County Hall, Bythesea Road, Trowbridge, BA14 8JN

**Date:** Wednesday 20 December 2023

**Time:** 3.00 pm

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Please direct any enquiries on this Agenda to Ellen Ghey - Democratic Services Officer; direct line 01225 718259 or email [ellen.ghey@wiltshire.gov.uk](mailto:ellen.ghey@wiltshire.gov.uk)

Press enquiries to Communications on direct lines 01225 713114/713115.

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## Membership:

Cllr Christopher Newbury (Chairman)	Cllr Stewart Palmen
Cllr Bill Parks (Vice-Chairman)	Cllr Pip Ridout
Cllr Trevor Carbin	Cllr Jonathon Seed
Cllr Ernie Clark	Cllr David Vigar
Cllr Andrew Davis	Cllr Suzanne Wickham
Cllr Edward Kirk	

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## Substitutes:

Cllr Matthew Dean	Cllr Gordon King
Cllr Jon Hubbard	Cllr Mike Sankey
Cllr Tony Jackson	Cllr Graham Wright
Cllr Mel Jacob	Cllr Tamara Reay
Cllr George Jeans	Cllr Bridget Wayman

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## **Public Participation**

Please see the agenda list on following pages for details of deadlines for submission of questions and statements for this meeting.

For extended details on meeting procedure, submission and scope of questions and other matters, please consult [Part 4 of the council's constitution](#).

The full constitution can be found at [this link](#).

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For assistance on these and other matters please contact the officer named above for details

# AGENDA

## Part I

Items to be considered when the meeting is open to the public

1 **Apologies**

To receive any apologies or substitutions for the meeting.

2 **Minutes of the Previous Meeting** (*Pages 5 - 10*)

To approve and sign as a correct record the minutes of the meeting held on 22 November 2023.

3 **Declarations of Interest**

To receive any declarations of disclosable interests or dispensations granted by the Standards Committee.

4 **Chairman's Announcements**

To receive any announcements through the Chair.

5 **Public Participation**

The Council welcomes contributions from members of the public.

### **Statements**

Members of the public who wish to speak either in favour or against an application or any other item on this agenda are asked to register **no later than 10 minutes before the start of the meeting**. If it is on the day of the meeting registration should be done in person.

The rules on public participation in respect of planning applications are linked to in the Council's Planning Code of Good Practice. The Chairman will allow up to 3 speakers in favour and up to 3 speakers against an application, and up to 3 speakers on any other item on this agenda. Each speaker will be given up to 3 minutes and invited to speak immediately prior to the item being considered.

Members of the public will have had the opportunity to make representations on the planning applications and to contact and lobby their local member and any other members of the planning committee prior to the meeting. Lobbying once the debate has started at the meeting is not permitted, including the circulation of new information, written or photographic which have not been verified by planning officers.

### **Questions**

To receive any questions from members of the public or members of the Council received in accordance with the constitution which excludes, in particular,

questions on non-determined planning applications.

Those wishing to ask questions are required to give notice of any such questions in writing to the officer named on the front of this agenda no later than 5pm on **Wednesday 13 December 2023** in order to be guaranteed of a written response. In order to receive a verbal response, questions must be submitted no later than 5pm on **Friday 15 December 2023**. Please contact the officer named on the front of this agenda for further advice. Questions may be asked without notice if the Chairman decides that the matter is urgent.

Details of any questions received will be circulated to Committee members prior to the meeting and made available at the meeting and on the Council's website.

6 **Planning Appeals and Updates** (*Pages 11 - 56*)

To receive details of completed and pending appeals and other updates as appropriate.

**Planning Applications**

To consider and determine the following planning applications.

7 **PL/2023/05634: Land to the South of The Old Rectory, Warminster Lane North, Upton Scudamore** (*Pages 57 - 80*)

Erection of a building for the purposes of agricultural storage.

8 **Urgent Items**

Any other items of business which, in the opinion of the Chairman, should be taken as a matter of urgency.

**Part II**

***Item during whose consideration it is recommended that the public should be excluded because of the likelihood that exempt information would be disclosed***

## Western Area Planning Committee

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### MINUTES OF THE WESTERN AREA PLANNING COMMITTEE MEETING HELD ON 22 NOVEMBER 2023 AT COUNCIL CHAMBER - COUNTY HALL, BYTHESEA ROAD, TROWBRIDGE, BA14 8JN.

#### **Present:**

Cllr Christopher Newbury (Chairman), Cllr Bill Parks (Vice-Chairman), Cllr Trevor Carbin, Cllr Ernie Clark, Cllr Andrew Davis, Cllr Stewart Palmen, Cllr Pip Ridout, Cllr Jonathon Seed, Cllr Suzanne Wickham, and Cllr Gordon King (Substitute)

#### **Also Present:**

Cllr Nick Botterill

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#### 51 **Apologies**

Apologies for absence were received from:

- Councillor David Vigar, who was substituted by Councillor Gordon King
- Councillor Edward Kirk

#### 52 **Minutes of the Previous Meeting**

The minutes of previous meeting held on 27 September 2023 were considered. Following which, it was:

#### **Resolved:**

**The Committee approved and signed the minutes of the previous meeting held on 27 September 2023 as a true and correct record.**

#### 53 **Declarations of Interest**

Councillor Ernie Clark declared a non-registerable interest by virtue of his relationship with the applicant for Agenda Item 7, and after seeking advice from the Monitoring Officer, Perry Holmes, stated that he would not participate in the debate or vote and would instead speak as a member of the public.

Councillor Jonathon Seed noted that he had worked with the applicant's agent in the past on behalf of Bromham Parish Council.

54 **Chairman's Announcements**

There were no specific Chairman's announcements.

55 **Public Participation**

The Chairman explained the rules of public participation and the procedure to be followed at the meeting.

There were no questions or statements submitted by Councillors or members of the public.

56 **Planning Appeals and Updates**

The Chairman invited Kenny Green, Development Management Team Leader, to update the Committee on the pending and determined appeals as per the appeals report included within the Agenda Pack.

The six determined appeals were detailed, with Members being informed of the successful defence of the appeals for applications 20/09856/FUL, PL/2022/02675, and PL/2022/06812. The appeal decision being allowed for application PL/2022/08288, pertaining to the extension of a dwelling was highlighted, with officers noting that the planning inspector not only went against the Council's reasoning for refusal, but took a different approach to the previous appeal inspector who refused the previous submission.

Following which, it was:

**Resolved:**

**The Committee noted the appeals report for the period 18 August 2023 to 10 November 2023.**

*Councillor Ernie Clark departed the meeting as a Member of the Committee at 15.13pm.*

57 **PL/2023/05787: Field off Whaddon Lane, Whaddon, Hilperton, BA14 7RN**

**Public Participation**

- Mr Ernie Clark, local resident, spoke in objection to the application.
- Mr Ben Pearce, agent for the applicant, spoke in support of the application.

The Senior Planning Officer, Jemma Foster, introduced the report which recommended that the Committee granted planning permission, subject to conditions.

Key material considerations were identified including the principle of development; impact upon the character and appearance of the area; impact upon neighbouring amenity; and highways issues.

Members of the Committee then had the opportunity to ask technical questions of the officer. Details were sought on the emptying of the dog waste bins on site, to which it was confirmed that the applicant would provide waste bags and would instruct a specialist contract company to arrange for the collection and disposal of any dog waste.

The two named public speakers as detailed above, then had the opportunity to present their views to the Committee.

*Mr Ernie Clark departed the meeting as a member of the public at 15.21pm.*

A brief debate followed where members discussed the projected level of additional traffic movements, the existing use of the land, the various users of the lane being a combination of pedestrians, cyclists, and horse riders as well as motorised traffic, and the nature of the lane as a single-track road with a dead-end further to the north beyond the application site.

During the debate, a motion to grant planning permission in line with officer recommendations was moved by Councillor Jonathon Seed and was seconded by Councillor Suzanne Wickham. Following a vote on the motion, it was:

**Resolved:**

**The Committee GRANTED planning permission subject to the following conditions:**

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

**REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.**

- 2. The development hereby permitted shall be carried out in accordance with the following approved plans and documents:**

**Context location plan - LDC2448\_01, location plan - LDC2448\_02a received on 13th July 2023. Proposed layout - LDC2448\_03D, proposed site access gate and fence details - LDC2448\_04C Received on 28th September 2023.**

**REASON: For the avoidance of doubt and in the interests of proper planning.**

- 3. All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first use of the site hereby approved. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.**

**REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.**

- 4. The use hereby permitted shall be restricted to dog exercise and training purposes only taking place 07:00 and 19:00 on Monday to Sunday including Public Holidays.**

**REASON: To ensure the creation/retention of an environment free from intrusive levels of noise and activity in the interests of the amenity of the area.**

- 5. No lighting shall be installed on the site hereby approved.**

**REASON: To ensure that character and appearance of the Avon Vale Open Clay Vale Landscape Character Area and the open countryside is retained and to avoid harm to biodiversity.**

- 6. The development hereby permitted shall not be first brought into use until the first five metres of the access as measured from the edge of the carriageway and/or the whole of the parking area allocated on the approved plans 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.**

- 7. Any gates shall be set back 4.5 metres from the edge of the carriageway, and shall open inwards only.**

**REASON: In the interests of highway safety.**



8. No part of the development hereby permitted shall be first brought into use until the access, turning area & parking space have been completed in accordance with the details shown on the approved plans, and shall be maintained for the lifetime of this use and permission.

**REASON:** In the interests of highway safety.

9. Should the dog exercise land use become obsolete, the area of hardstanding shall be removed from the site and the land shall be restored to its previous agricultural use/condition within 3 months of any such cessation.

**REASON:** In the interests of the character and appearance of the area.

10. Prior to the first use of the dog exercise/training area a dog waste bin container to dispose of dog waste shall be installed on site and remain in perpetuity for as long as the dog exercising/training land use operates.

**REASON:** In the interests of good site management and public amenity.

58 **Urgent Items**

There were no urgent items.

(Duration of meeting: 3.00 - 3.30 pm)

The Officer who has produced these minutes is Ellen Ghey - Democratic Services  
Officer of Democratic Services, direct line 01225 718259, e-mail  
[ellen.ghey@wiltshire.gov.uk](mailto:ellen.ghey@wiltshire.gov.uk)

Press enquiries to Communications, direct line 01225 713114 or email  
[communications@wiltshire.gov.uk](mailto:communications@wiltshire.gov.uk)

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**Wiltshire Council  
Western Area Planning Committee  
20<sup>th</sup> December 2023**

Planning Appeals Received between 10/11/2023 and 08/12/2023

<b>Application No</b>	<b>Site Location</b>	<b>Parish</b>	<b>Proposal</b>	<b>DEL or COMM</b>	<b>Appeal Type</b>	<b>Officer Recommend</b>	<b>Appeal Start Date</b>	<b>Overturn at Cttee</b>
PL/2022/07477	Land Adj 17 Wellhead Lane, Westbury, BA13 3PW	Westbury	Erection of dwelling and associated works	DEL	Written Representations	Refuse	20/11/2023	No
PL/2022/09054	13 Warminster Road, Westbury, BA13 3PA	Westbury	Retrospective reinstatement of previous coach house to a double garage/gym at ground floor level, and formation of a proposed 1-bedroom annexe at first floor level.	DEL	Householder Appeal	Refuse	10/11/2023	No
PL/2023/00859	Elmleaze Farm, Keevil, Trowbridge, BA14 6NF	Keevil	Change of use of a 2-bed holiday let to a dwelling (C3 use class)	DEL	Written Representations	Refuse	06/12/2023	No
PL/2023/01275	16 Halifax Road, Bowerhill, Melksham, Wilts, SN12 6SL	Melksham Without	Retrospective application for the installation of new feather fence to side and front of house, 2 no. garden gates and proposed installation of black steel chimney to side of house	DEL	Householder Appeal	Refuse	20/11/2023	No
PL/2023/01565	Sewage Works, Upper South Wraxall, Wiltshire, BA15 2SB	South Wraxall	Erection of a dwellinghouse	DEL	Written Representations	Refuse	15/11/2023	No
PL/2023/03257	89 Corsham Road, Whitley, Melksham, SN12 8QF	Melksham Without	Proposed side extension	DEL	Householder Appeal	Refuse	30/11/2023	No

Planning Appeals Decided between 10/11/2023 and 08/12/2023

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Decision	Decision Date	Costs Awarded?
PL/2021/10237	The Old Vicarage & Staverton House, 51A New Terrace, Staverton, BA14 6NX	Staverton	Demolition of existing care home with replacement building providing 9 bedrooms on lower ground floor, 9 bedrooms on ground floor and 14 bedrooms on first floor, all with auxiliary space, & together with the existing home would provide 52 bedrooms in total.	WAPC	Written Reps	Refuse	Dismissed	06/12/2023	Appellant applied for Costs - <b>REFUSED</b>
PL/2022/04516	Plot Adjacent 2 Pembroke Road, Melksham, Wilts, SN12 7NA	Melksham	Erection of pair of single bedroom houses with off-street parking	DEL	Written Reps	Refuse	Dismissed	20/11/2023	None
PL/2022/08504	Land South of Western Way, Melksham, Wilts	Melksham/ Melksham Without	Outline application (with all matters reserved except for access) for the erection of up to 210 residential dwellings (Class C3) and a 70 bed care home (Class C2) with associated access, landscaping and open space (Resubmission of 20/08400/OUT)	DEL	Inquiry	Refuse	Allowed with Conditions	14/11/2023	None
PL/2022/09742	Upper Haugh Farm, Haugh, Winsley, Bradford on Avon, Wilts, BA15 2JE	Winsley	Conversion of former squash court building to provide 1No one bedroomed new dwelling.	DEL	Written Reps	Refuse	Dismissed	16/11/2023	None
PL/2023/01435	Yew Tree House, Brokerswood, Westbury, BA13 4EG	North Bradley	Removal of condition 5 on 15/10329/FUL to reinstate permitted development rights	DEL	Written Reps	Refuse	Allowed with Conditions	16/11/2023	None



## Appeal Decision

Site visit made on 2 November 2023

**by Laura Cuthbert BA(Hons) MSc MRTPI**

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

**Decision date: 6<sup>th</sup> December 2023**

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### **Appeal Ref: APP/Y3940/W/23/3321615**

### **The Old Vicarage and Staverton House, 51A New Terrace, Staverton BA14 6NX**

- 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 Ashley Jones of Fidelia Care Ltd against the decision of Wiltshire Council.
  - The application Ref PL/2021/10237, dated 26 October 2021, was refused by notice dated 19 January 2023.
  - The development proposed is Demolition of existing care home with replacement building providing 9 bedrooms on lower ground floor, 9 bedrooms on ground floor and 14 bedrooms on first floor, all with auxiliary space, & together with the existing home would provide 52 bedrooms in total.
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### **Decision**

1. The appeal is dismissed.

### **Application for Costs**

2. An application for costs was made by Mr Ashley Jones of Fidelia Care Ltd against Wiltshire Council. This application is the subject of a separate Decision.

### **Preliminary Matters**

3. The address in the banner heading above has been taken from the Council's decision notice and the appellant's statement of case for clarity purposes.
4. I note that a revised application has been submitted to the Council<sup>1</sup>. Whilst I note that this application has been through the required public consultation procedure, interested parties will be expecting my decision to be based on the plans before the Council at the time the decision was made on the appeal proposal. It is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought<sup>2</sup>.
5. Both parties have provided me with an electronic link to watch the relevant Development Control Committee meeting at which the appeal application was discussed. I have not watched this as I cannot be sure that all relevant interested parties have access to the facilities to watch it. It also does not bear directly on the planning merits of the case and therefore does not materially affect my judgement of the appeal.

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<sup>1</sup> Planning Application Reference PL/2023/04128

<sup>2</sup> Annex M of the Procedural Guide Appeals

## Main Issues

6. The main issues in this case are:

- the effect of the proposal on the living conditions of the existing occupants of 6 Littlebrook, 50b and 52 New Terrace, and 12 Smallbrook Gardens, with respect to privacy and outlook; and
- the effect of the proposal on the Old Vicarage, a non-designated heritage.

## Reasons

### *Living conditions*

7. The Old Vicarage and Staverton House is an existing care home facility. The Old Vicarage, a 2 storey building with a lower ground floor due to the changes in the site levels, has provided extra care facilities since 1984. Staverton House, a 2 storey building situated to the south of the site, was constructed to provide additional bedrooms<sup>3</sup>. A single storey structure runs off the rear of the Old Vicarage towards Staverton House, albeit it does not physically link the 2 buildings. The Old Vicarage and single storey structure have been vacant since November 2021, due to the buildings no longer being fit for purpose.
8. The appeal site is situated in a predominantly residential area and consequently forms a close relationship with the neighbouring residential properties. The proposal involves the erection of a 2-3 storey building, replacing the Old Vicarage towards the north of the site and the introduction of a 3 storey, flat roofed central building, linking the new building to the north to Staverton house to the south.

### 6 Littlebrook

9. No 6 Littlebrook is a modest semi-detached property, situated adjacent to the southern half of the western boundary. Its main external amenity space is its side garden which lies immediately adjacent to the shared boundary with the appeal site. The single storey structure attached to the Old Vicarage is visible from No 6's side garden albeit its impact is relieved by its low height. There are a handful of trees in No 6's garden along the shared boundary, although I noted that the canopies are sparse in places, and the single storey building and associated windows still visible. Staverton House is also an imposing building when viewed from No 6's garden, though its impact is mitigated by its siting.
10. The proposed site plan<sup>4</sup> annotates the distances between the new 3 storey central structure and the side elevation of No 6. This is calculated to be 16m. I note that the Council has calculated the 3 storey structure to be 9.6m high and that it would be 'within 9 metres' of the boundary with No 6. The appellant has not disputed these measurements or distances.
11. I acknowledge that the 3 storey structure would be positioned further away from the boundary with No 6 than the existing single storey structure. However, the introduction of the substantial 3 storey building, by virtue of its size, massing and proximity, would have an unacceptable overbearing effect upon the outlook from the modest external amenity space to the side of No 6.

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<sup>3</sup> Council application Refs - W/03/02197/OUT & W/05/01212/FUL)

<sup>4</sup> Proposed site plan with sight lines - drawing ref: A-840 113 E

The presence of the trees along the boundary would do little to alleviate this harm, given the scale of the proposal. This harm would particularly be felt in the winter months when the trees are not in leaf.

12. I note the windows that would look towards No 6 include angled modules, in order to restrict the potential for future residents of the proposal to overlook No 6. Whilst it is noted that the lower 1.6m of these windows would have opaque glass, the proximity of these windows, which would be at first and second floor level, would lead to the perception of being overlooked.
13. Therefore, for the above reasons, the proposal would harm the living conditions of the existing occupants of No 6, in respect of privacy and outlook.

#### 50b New Terrace

14. No 50b New Terrace is an end of terrace, of a group of 3 properties, situated to the east of the appeal site. At present, the vehicular access to the parking area associated with the care home runs to the west of the shared boundary with No 50b, with the parking area situated along the boundary with No 50b's rear garden. There are no windows in the gable end of 50b.
15. The proposed built form would bring the proposals closer to No 50b and at a greater scale. I also note that it would be approximately 1.1m higher than the existing Old Vicarage. However, the proposed building that would replace the Old Vicarage would be sited roughly in line with No 50b. The siting of the 3 storey central building would be positioned a sufficient distance from No 50b so as not to be materially harmful to the existing outlook and privacy enjoyed by No 50b. Therefore, it is considered that the living conditions of No 50b would not be materially harmed by the proposed buildings.
16. The front garden of No 50b is an open, landscaped area to the side of the access drive serving Nos 50, 50a and 50b New Terrace. It is their rear garden which offers greater privacy as external amenity space. The internal access for the proposal would run alongside the shared boundary with No 50b's front garden and would be slightly elevated. It is considered that the internal access would create some noise, overlooking and car fumes close to the boundary with No 50b. However, the access to the rear parking area of Staverton House is already alongside the boundary with No 50b. Furthermore, the proposal would move the parking associated with Staverton House to the front of the site, which currently lies to the west of No 50b's rear garden. On balance, whilst the proposal would elevate the access track slightly, it is not considered to be materially harmful given the status of the area to the front of No 50b's house, and the existing parking and access arrangements of Staverton House.
17. Whilst the siting of the service area and refuse storage close to the boundary with No 50b, again in a slightly elevated position, is not ideal, it is not considered that any harm by way of noise, smell or overlooking would be significant enough to be materially harmful. They would be positioned adjacent to the blank gable end of No 50b, rather than being adjacent to their rear garden. I also note the suggestion for a landscaping condition to secure some mature evergreen trees around the refuse storage area. It is considered that this would ensure that the privacy of No 50b, in regard to mitigating any overlooking to their rear garden, would not be harmed.

18. Therefore, the proposal would not harm the living conditions of the existing occupants of No 50b, in respect of privacy and outlook.

#### 52 New Terrace

19. No 52 New Terrace is one half of a pair of semi-detached properties situated adjacent to the northern half of the western boundary. It has a long rear garden. No 52 is currently subject to overlooking from the existing first and second floor windows of the Old Vicarage along its western elevation. The siting of the existing Old Vicarage building, as well as the single storey link building, are also prominent in the outlook from No 52's rear garden.
20. Taking in to account the existing situation, the scale and bulk of the proposal would allow the outlook enjoyed by No 52 to not be materially harmed. The new building to the front of the site, whilst it would be positioned closer to the shared boundary with No 52 and would be wider and longer than the existing building, would be further to the south than the existing Old Vicarage. The impact of the new central link building would be largely screened by the new building at the front. It is also positioned close to the bottom of No 52's rear garden. The proposal would therefore not result in a significantly overbearing structure and the outlook enjoyed by No 52 would not be harmed.
21. The positioning of the windows in the new central link building would overlook the southern part of No 52's rear garden. However, the use of opaque glass in the bottom half, as well as their distance from No 52 and their angled view, would ensure that the degree of overlooking that would result would not be materially harmful.
22. Therefore, the proposal would not harm the living conditions of the existing occupants of No 52, in respect of privacy and outlook.

#### 12 Smallbrook Gardens

23. No 12 Smallbrook Gardens is situated to the east of Staverton House, towards the south of the appeal site. Due to its position directly adjacent to the boundary with No 12, Staverton House is highly prominent in the outlook from No 12, both from the rear window of No 12 and from the rear garden. I also note there are 2 existing first floor windows of Staverton House which directly overlook No 12.
24. Whilst I acknowledge that the proposal, in particular the 3 storey central element, would be more visible and prominent in the outlook from the first floor bedroom window and rear garden of No 12, given the distance from the boundary with No 12, it is not considered that the bulk and design of the proposal would be materially harmful to the outlook currently enjoyed by No 12. The distance from the boundary with No 12's garden would also ensure that any windows along the eastern elevation of the 3 storey central building would not result in a material loss of privacy due to overlooking to No 12.
25. Therefore, for the above reasons, the proposal would not harm the living conditions of the existing occupants of No 12, in respect of privacy and outlook.

#### Other Matters in regard to Living Conditions

26. Whilst it did not form part of the reason for refusal, in its Statement of Case the Council has stated that the proposal would cause overshadowing of No 6



and No 52's gardens in morning hours for long periods of the year. In response to this, the appellants have provided a shadow desk based analysis conducted at 9:05 am on July 21, 2023. This demonstrates that there would be minimal variation in the shadows cast on the neighbouring properties to the west when comparing the existing built form on site and the proposed development. Therefore, the amount of light received by the properties to the west would be similar to that which they enjoy currently. Consequently, based on the evidence before me, I consider that the proposals would not be significantly overshadowing to the neighbouring properties. Nevertheless, despite the lack of harm to the amount of light received by No 6, this does not overcome my concerns in regard to their outlook and privacy.

27. For the reasons given above, whilst I have found that the proposals would not be harmful to the outlook or privacy enjoyed by 50b and 52 New Terrace and 12 Smallbrook Gardens, the proposal would harm the living conditions of the occupants of 6 Littlebrook, in respect of privacy and outlook. It would be contrary to Policy 57 of the Wiltshire Core Strategy (adopted 2015) (Core Strategy), which states that proposals should make a positive contribution to the character of Wiltshire through having regard to the compatibility of adjoining buildings and uses and the impact on the amenities of existing occupants. It would also be contrary to paragraph 130 (f) of the National Planning Policy Framework 2023 (the Framework), which states that development should have a high standard of amenity for existing users, which the proposal would fail to achieve.

#### *Non-Designated Heritage Asset*

28. The Old Vicarage, a former Victorian vicarage, was constructed between 1860 and 1886 to serve the vicar of St Paul's Church in Staverton. The 1886–87 map included in the appellants 'Built Heritage Assessment'<sup>5</sup> shows that the vicarage was sited in an isolated location, surrounded by agricultural land. Over time, extensive residential development has occurred in the immediate vicinity of the former vicarage, including that of New Terrace, Smallbrook Gardens and Littlebrook. The vicarage, which subsequently became known as the 'Old Vicarage', was converted to a care home in approximately 1984. Various extensions and alterations were added to facilitate this new use. The significance of the building for the purposes of this appeal is its architectural and historic interest as a former vicarage.
29. The Old Vicarage possesses some aesthetic merit due to its external stonework, including the carved hoodmoulds, porch and windows. However, it is not particularly original in its style and has been considerably altered internally in order to serve its modern use as a care home. Original elements of the building, such as the main entrance, have been covered and have been replaced with modest additions to facilitate its use. On the ground floor, the sills of the former windows in the north and west elevations have been removed to create large doorway openings into the conservatory extensions. Where early floorboards were visible under the modern carpets, these have evidently been cut, presumably in order to install modern services. There are also signs of rot and instability.
30. Internally, some original features remain. These include moulded cornices with typical Victorian profiles, window shutters and a few early ceiling roses at

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<sup>5</sup> Prepared by Pegasus Group, dated 07/03/2023, Pegasus Ref P23-0380

ground-floor level. There is also evidence of some early joinery around the internal doorways and the staircase has 'simple turned balusters and robust but plainly carved newel posts and handrails'. Nevertheless, I consider that those features that do remain are not especially unusual or special for a property of this period.

31. In summary, the building, whilst attractive with some pleasing external and internal architectural features, is typical of its era. There is nothing inherently special about its design that sets it apart from other buildings of this period. It has been extended, unsympathetically in places, and interior features have been lost. It does not meet the criteria for statutory listing. Whilst the Council have not articulated the level of significance, the appellant considers that the building has a moderate level of significance. This has taken into account the modern accretions and alterations which are considered to detract from the architectural and historic interest of the asset.
32. In my view, taking account of the above, I consider it has a moderate level of significance. Demolition of the building, as proposed, would result in its total loss. Paragraph 203 of the Framework, in respect of non-designated heritage assets, requires decision makers to make a 'balanced judgement' having regard to the scale of any harm or loss and the significance of the heritage asset. I return to this matter in the heritage balance.

### **Other Matters**

33. The appeal site is within 4 km of a Greater Horse Shoe bat 'core roost', as identified in the Bath and Bradford on Avon Bat Special Area of Conservation (SAC). The Council's Ecologist state that the proposal 'has potential to result in significant adverse impact either alone or in combination with other projects on the statutorily designated Bath and Bradford on Avon Bats SAC'. Had I been minded to allow the appeal, I would have sought more information on this matter. However, given my conclusion on the main issues, it is not necessary for me to do so as I do not need to carry out an Appropriate Assessment as required under The Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations).
34. I note that the proposal was submitted following pre-application advice from the Council. This did not raise any concerns regarding the loss of The Old Vicarage, nor was the building considered at the time to be of heritage value and a non-designated heritage asset. I also note the Conservation Officer did not comment at the pre-application stage. Nevertheless, at appeal the proposal is considered afresh, and any omission to address or raise a matter as part of any pre-application advice does not warrant allowing the appeal.

### **Heritage Balance**

35. The proposal would result in the total loss of a non-designated heritage asset of moderate significance. The loss of a building of moderate significance would result in a moderate level of harm. Paragraph 203 of the Framework, in respect of non-designated heritage assets, requires decision makers to make a 'balanced judgement' having regard to the scale of any harm or loss and the significance of the heritage asset.
36. The proposal would provide enhanced dementia care at an existing facility and would maximise the number of beds on a viable basis. This is in recognition

that there is a growing demand for dementia care accommodation. It is noted that the Cabinet member for Adult Services recognised the value of the site in providing care that is needed within Wiltshire. They also stated that the need for such forms of care is due to the aging population in the UK, and in particular in Wiltshire. I also note the content of the 'Planning Need Assessment'<sup>6</sup> prepared by Carterwood, in regard to the need for care facilities in Wiltshire. This found that 'even on the basis of minimum market standard care beds, shortfalls are expected to increase to 421 and 1,854 in the market catchment and local authority area, respectively, by 2036.....reflecting the sustained and escalating nature of need'. I therefore attach significant weight to the provision of the care home facilities that the proposal would deliver.

37. It is agreed that the Council is currently unable to demonstrate a 5 year housing land supply. The Council have confirmed that the proposed C2 accommodation can be included in the Council's Housing Land Supply. The proposal would result in a net gain of 12 rooms which, when applying the Wiltshire ratio to the C2 rooms, would equate to a gain of 7 dwellings to the housing shortfall. I attach significant weight to this benefit.
38. An analysis of the existing building has been submitted with the appeal<sup>7</sup>, which discusses the key reasons against the use of the existing Old Vicarage building as part of a refurbishment scheme. The appellant has considered the reuse of the existing vicarage building, showing an attempt to ensure all bedrooms include a full ensuite wet room as standard, and that every room has a minimum of 15m<sup>2</sup> of space for each resident to live in. However, due to the inadequate vertical circulation within the building and particularly the convoluted arrangement within the Old Vicarage, this idea has been dismissed due to the inability to effectively provide quality care within the building. The Council still consider that it has not been adequately demonstrated that the Old Vicarage, alongside 'an appropriate extension behind it linking with Staverton House' could not provide for non-care rooms or an alternative arrangement.
39. However, regardless of whether it would be viable or even feasible to convert the existing Old Vicarage building to provide for modern care needs, having carefully considered all of the evidence, I find that the benefits of the scheme, taken together, outweigh the harm arising from the total loss of a non-designated heritage asset of moderate significance. Hence, there would be no conflict with the relevant criterion of Core Policies 57 and 58 of the Core Strategy or the Framework. These policies, in combination, seek to ensure that distinctive elements of Wiltshire's historic environment, including non-designated heritage assets, which contribute to a sense of local character and identity will be conserved, and where possible enhanced. Proposals should also ensure a high standard of design and enhance local distinctiveness by responding to the value of the historic environment.

### **Planning Balance and Conclusion**

40. Although acceptable in some regards, I have identified that there would be conflict with the development plan as a whole, as the proposal would harm the living conditions of the occupants of 6 Littlebrook, in respect of privacy and outlook. I attach significant weight to this harm. Taking in to account the benefits outlined above, I find that the adverse impacts of the proposed

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<sup>6</sup> Appendix G of Appellant's Statement of Case - Planning Needs Assessment, Carterwood (March 2023)

<sup>7</sup> Appendix F of Appellant's Statement of Case - Existing Building Review, Carless and Adams

development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole.

41. Therefore, considered in total, the material considerations referred to above, including the approach of the Framework, do not outweigh the conflict with the development plan. The appeal is therefore dismissed.

*Laura Cuthbert*

INSPECTOR



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## Costs Decision

Site visit made on 2 November 2023

**by Laura Cuthbert BA(Hons) MSc MRTPI**

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

**Decision date: 6<sup>th</sup> December 2023**

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### **Costs application in relation to Appeal Ref: APP/Y3940/W/23/3321615 The Old Vicarage and Staverton House, 51A New Terrace, Staverton BA14 6NX**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr Ashley Jones of Fidelia Care Ltd for a full award of costs against Wiltshire Council.
  - The appeal was against the refusal of planning permission for Demolition of existing care home with replacement building providing 9 bedrooms on lower ground floor, 9 bedrooms on ground floor and 14 bedrooms on first floor, all with auxiliary space, & together with the existing home would provide 52 bedrooms in total.
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### **Decision**

1. The application for a full award of costs is refused.

### **Reasons**

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and that the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Paragraph 31 of the PGG states that unreasonable behaviour in the context of an application for an award of costs may be either procedural or substantive. Paragraphs 047 and 049 of the PPG sets out some examples of unreasonable behaviour by local planning authorities. The applicant considers that the Council have exhibited unreasonable behaviour on a number of these.

### *The recommendation of approval*

3. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached, the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. Given that the building had been identified as a non-designated heritage asset and given the appeal site's close relationship with the neighbouring properties, it was reasonable of Council Members to consider both of these matters, and their decision on these matters is an exercise of judgement. Clear evidence was provided which substantiated their reasoning. I consider that it was not unreasonable for the Council to come to a different conclusion on these matters.
4. The lack of identification at the pre-application stage that the building was a non-designated heritage asset was not unreasonable. I note that the Council informed the applicant of this designation early on in the application process.

The application form was dated 26 October 2021, and according to the email correspondence provided by the applicant, they were advised of its designation at the site meeting on 8 November 2021.

5. Whilst there might not be evidence of a specific request for a Heritage Assessment, it is for an applicant to submit information at the planning application stage in support of his/ her case and it was open to the applicant to submit a heritage assessment during the course of the application. This is particularly so as the applicant was aware of the objection from the Conservation Officer in relation to the proposal.
6. Given the advice set out in paragraph 203 of the National Planning Policy Framework 2023 (the Framework), and whilst I have found in favour of the applicant on this particular matter in my decision, it was not unreasonable for the Council to refuse the application given the total loss of the non-designated heritage asset and the balanced judgement that is required.
7. Furthermore, whilst paragraph 38 of the National Planning Policy Framework 2023 (the Framework) requires local planning authorities to approach decision in a positive of creative way, the Council are under no obligation to defer a decision pending receipt of further information. This is particularly given the length of time the application had been with the Council. The Council determined the application on the basis of the information before it at the time and that was not an unreasonable course of action, in my view.
8. It is clear that the length of time taken to report the proposal to a committee meeting, 'some 15 months', was as a result of complex discussions that naturally occur between local planning authorities and applicants. It was not unreasonable for the Council to request additional information and amendments and I note that amended plans were submitted during the application process, including revised plans in October 2022, which needed further consultation. It is my view that this was not a deliberate obstruction to delay the application process.
9. Given the requirement to conserve non designated heritage assets, it was not unreasonable for the Council to suggest alternative schemes that would utilise the existing Old Vicarage building. I appreciate that this was not initially raised as part of the application process and that this was something new for the applicant to consider at the appeal stage. However, given that this was only a matter raised at the committee meeting, it was not unreasonable for the Council to raise it in their statement. Furthermore, the applicant submitted material in respect of the use of the former vicarage in order to respond to the reasons for refusal<sup>1</sup>. Whilst I note the applicant had to produce further work into the practical re-use of the former vicarage as part of their final comments<sup>2</sup>, this was not unreasonable work to carry out as part of their rebuttal comments.
10. There was no mention of harm to daylight or sunlight in the reason for refusal. I also note that the author of the committee report carried out their own assessment of the shadow cast by the proposal. However, it was raised as a matter of concern in the Council's Statement of Case. Consequently, shadow cast modelling had to be addressed by the applicant as part of the appeal

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<sup>1</sup> Appendix F of Applicant's Statement of Case - Existing Building Review, Carless and Adams

<sup>2</sup> Appendix V of Application's Final Comments - Architect's (Carless & Adams) response to architectural and site layout design matters as well as the practical re-use of the former vicarage raised within Wiltshire Council's Appeal Statement. This includes November 2021 email correspondence with the Wiltshire Council Case Officer.



proceedings in Appendix V of their final comments. However, this was produced as part of the architect's wider response to the Council's Statement of Case, with only part of this document addressing shadow cast modelling. Again, whilst there might not have been a specific request for a shadow cast modelling assessment during the application process, the applicant would have been aware that daylight and sunlight was a relevant matter given the relationship with the neighbours. There would have been the opportunity to submit an assessment to assist the Council's consideration of the proposal.

11. Whilst reference to additional 'harm' in relation to the living conditions is discouraged and could be considered unreasonable, the impact on the living conditions was a relevant matter already raised in the reason for refusal. It did not introduce any new policies into the proceedings. Therefore, the allegation of the Council that there would be harm to daylight or sunlight has not resulted in any unnecessary or wasted expense in the appeal process.

*The failure to apply the presumption in favour of sustainable development as required by national planning policy.*

12. In my view, it was unreasonable behaviour for the committee report to not make the Committee members aware that they should undertake the balancing exercise, required by paragraph 11 of the Framework 2023, particularly given that the applicant state that 'at least one member of the Committee conceded that the considerations were evenly balanced'. However, the Council has undertaken the balancing exercise in its statement of case. Furthermore, I have carried out my own 'planning balance' in my decision and concluded that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole. Therefore, the omission to carry out the balancing exercise has not resulted in any unnecessary or wasted expense in the appeal process.
13. I acknowledge that the lack of progress on the revised application submission<sup>3</sup> must be frustrating for the applicant. However, costs can only be awarded in relation to unnecessary or wasted expense during the appeal process itself. The lack of progress on the revised application, even though it has been submitted in response to the concerns raised by the Committee members, is not therefore a matter related to the appeal proposal before me.

*The determination of the Planning Application*

14. The issue of 'pre-determination' raised by the applicant is a matter between the two parties. The planning committee decided that permission should be refused and that was the Council's formal decision. If the applicant is not satisfied with the response from the Monitoring Officer, then they can ask the Ombudsman to look into the matter. That would be the appropriate channel through which to resolve this matter.

## **Conclusion**

15. For the reasons set out above I conclude that, whilst the Council exhibited unreasonable behaviour in some respects in terms of the PPG, I find that no wasted or unnecessary expense has been incurred by the appellant in the

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<sup>3</sup> PL/2023/04128

appeal process. I conclude therefore, that the application for an award of costs should be refused.

*Laura Cuthbert*

INSPECTOR





## Appeal Decision

Site visit made on 28 September 2023

**by Lewis Condé Msc, Bsc, MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 20 November 2023**

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### **Appeal Ref: APP/Y3940/W/23/3321030**

### **Plot adjacent to No. 2 Pembroke Road, Melksham, Wilts SN12 7NA**

- 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 S. Rowe, D S Developments, against the decision of Wiltshire Council.
  - The application Ref PL/2022/04516, dated 6 June 2022, was refused by notice dated 1 December 2023.
  - The development proposed is 'Erection of a pair of single bedroom houses with off-street parking'.
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### **Decision**

1. The appeal is dismissed.

### **Main Issues**

2. The main issues are the effect of the proposed development on a) the living conditions of future occupiers with regards to the provision of internal space; and b) the living conditions of the neighbouring occupiers of no. 2 Pembroke Road, with regards to overshadowing and loss of light.

### **Reasons**

#### *Living Conditions of Future Occupiers*

3. Core Policy 57 of the Wiltshire Core Strategy (adopted 2015) (the Core Strategy) requires a high-standard of design in all new developments. This includes through taking account of the needs of potential future occupants of new developments and ensuring that appropriate levels of amenity space are provided within the proposed development.
4. Whilst the Council does not have an adopted policy or guidance that specifically identifies its expected space standards for new dwellings, it has referred to the Government's Technical Housing Standards – Nationally Described Space Standards (2015) (the NDSS).
5. The NDSS sets out requirements for the gross internal floor area (GIA) of new dwellings at a defined level of occupancy, as well as floor areas and dimensions for key parts of the home. The NDSS is the most up-to-date expression of national planning policy on this matter, it is therefore a consideration to which I attach significant weight.
6. The NDSS does not include a minimum overall floorspace standard for 1-bedroom, 1-person, two-storey houses. However, from the information before me, it appears that the proposed dwellings, although containing only a single bedroom, could lend themselves to each accommodating two persons. For

example, although the properties' bedrooms would be narrow in width, they would be capable of accommodating double beds due to their overall composition/level of floorspace<sup>1</sup>, while the proposed dwellings both appear to have been provided with two vehicle parking spaces. Indeed, there is no appropriate mechanism which would prevent the proposed dwellings from being occupied as two person homes. I therefore consider it appropriate that the proposal is considered against the standards for a 1 bedroom, two person, two-storey dwelling as expressed within the NDSS.

7. In such circumstances, the NDSS advises that a minimum floorspace of 58sqm should be provided. Although the layout of each of the proposed dwellings appears logical, they would both be very small in scale, with the internal floorspace to be provided (approx. 47sqm) falling significantly below the minimum standards that are advised through the NDSS. Indeed, I find the overall level of space in each dwelling would provide a cramped and unsatisfactory environment for two residents.
8. Consequently, I find that the proposed development would provide inappropriate living conditions for potential future occupiers and would therefore conflict with Core Policy 57 of the Core Strategy.
9. Likewise, the proposal would not adhere to the aims of the National Planning Policy Framework (the Framework) in respect of promoting a high standard of amenity for future users.

#### *Living Conditions of Existing Neighbouring Residents*

10. The appeal site is a vacant plot that previously formed part of the side/rear garden to no. 2 Pembroke Road (no. 2). However, it has been segregated off from no. 2 and I understand that the adjacent property has since been sold separately with its reduced plot size. This has resulted in the private outdoor space serving No. 2 being reduced to a small, north facing, rear garden, of particularly shallow depth.
11. The Council has provided detailed analysis which demonstrates that the garden serving no.2 would experience a near complete loss of direct sunlight for approximately 6 months of the year, due to overshadowing from the proposed development. The analysis also suggests that even during the summer months there would be a significant degree of overshadowing of the garden area. No robust evidence (e.g. sun path/shadowing modelling or analysis) has been provided by the appellant to refute these claims.
12. Indeed, from the evidence before me and my observations on site I consider that the proposal would lead to a harmful level of overshadowing to the rear garden of no. 2. This is due to the overall scale, proximity, and orientation of the proposed development to the adjacent garden, combined with, the diminutive size of the rear garden to no.2 and its orientation. Additionally, I am mindful that the majority of natural light serving no.2's kitchen/dining room is likely to come from the property's north facing windows and patio doors, which overlook its rear garden. The proposed development is therefore also likely to lead to a harmful loss of daylight reaching these rooms, which would result in rather dreary conditions being experienced by the neighbouring occupiers.

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<sup>1</sup> I note the width of the proposed bedrooms are below that recommended for in the NDSS, but it remains that the overall level of floorspace (taking account of built in storage) is akin to what may be expected for a double/twin bedroom.

13. I am informed that the present owners of no. 2 purchased the property despite being made aware of the intention to develop housing on the appeal site. However, this does not negate the need for development proposals to be suitably designed so as not to harm the living conditions of the existing or future neighbouring residents.
14. Overall, I find that the proposed development would also harm the living conditions of the neighbouring occupiers of no.2 Pembroke Road. Accordingly, it further conflicts with Core Policy 57 of the Core Strategy, which also seeks to safeguard the living conditions of existing residents as part of its promotion of development that is of a high-quality design. Similarly, the proposal would again conflict with the Framework which also seeks for developments to provide high standards of amenity for existing users.

### **Other Matters**

15. The appeal scheme has been designed to address issues raised in relation to a previous application (ref: 20/09005/FUL) for residential development at the site that was refused by the Council. I also appreciate that the appeal proposal may accord with other design expectations outlined under Core Policy 57. Nevertheless, the proposed scheme would not provide satisfactory living conditions for future occupiers, whilst also harming the amenity of adjacent neighbouring residents.
16. I note that Melksham Town Council has previously expressed some support for the development of 1 bedroom starter homes and affordable properties. Despite this, the Town Council has seemingly objected to the appeal proposal. In any case, it's support or not, for the proposed development does not alter my above concerns with the appeal scheme.
17. The appellant has referred me to nearby examples of infill development that have taken place, albeit has provided very limited details of those developments. However, their contexts do not appear to be comparable to the scheme before me due to differences in site context (e.g. position of the plots and relationship to adjacent dwellings) and the nature of the proposals (e.g. level of floorspace provided). Additionally, I understand each of the permissions referred to were granted between 2004 to 2007, under different planning policy contexts. My decision therefore does not turn on this matter.
18. The appellant has highlighted research undertaken by the Home Builders Federation, which identifies a sharp fall in planning permission for housing (nationally) despite acute shortages. I do not have the full details of the research/report, while matters of housing supply are dealt with in my planning balance below. Nonetheless, this does not justify the development of housing of an inappropriate quality.
19. I also note the appellant's frustrations with the manner in which the Council dealt with the application. However, the appeal has been determined on its own merits.

### **Planning Balance**

20. The appellant highlights that the Council cannot demonstrate a five-year housing land supply, which has not been contested. Paragraph 11(d)ii of the Framework therefore applies. This requires an assessment of the proposal against the policies of the Framework taken as a whole.

21. Although paragraph 60 of the Framework refers to significantly boosting the supply of housing, the provision of two additional units would make little meaningful difference. When judged against some of the core planning principles, the proposal would perform well in that it would provide a new dwelling, in a sustainable location. However, good design is also a key aspect of sustainable development.
22. Regardless of the precise level of demand for one-bedroom properties in Melksham, the proposal would still provide socio-economic benefits associated with the delivery and subsequent occupation of the proposed dwellings. Such benefits would however be limited, given the scale of the proposal.
23. Against the above, the harm to the living conditions future residents would be significant. Even if it were to be shown that the properties would be occupied as single person dwellings, it remains that there would also be significant harm to the occupiers of neighbouring residents. The Framework attaches importance to achieving well designed development that provides high standards of amenity for existing and future users. Policy CP57 of the Core Strategy is therefore consistent with the Framework. Even taking account of the Council's failure to deliver sufficient housing, the conflict between the proposal and the development plan should be given significant weight in this instance.
24. Overall, when assessed against the policies in the Framework taken as a whole, I find that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits. Consequently, the presumption in favour of sustainable development does not apply.

### **Conclusion**

25. The appeal scheme conflicts with the development plan as a whole and there are no other considerations, including the Framework's provisions, which outweigh this finding. Therefore, for the reasons given above and considering all other matters raised, the appeal is dismissed.

*Lewis Condé*

INSPECTOR



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## Appeal Decision

Inquiry Held on 24 October 2023

Site visit made on 24 October 2023

**by Peter Mark Sturgess BSc(Hons), MBA, MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 14<sup>th</sup> November 2023**

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**Appeal Ref: APP/Y3940/W/23/3324031**

**Land to the South of Western Way, Melksham, Wiltshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Hallam Land Management against the decision of Wiltshire Council.
  - The application Ref PL/2022/08504, dated 2 November 2022, was refused by notice dated 27 April 2023.
  - The development proposed is outline application (with all matters reserved except for access) for the erection of up to 210 residential dwellings (class C3) and a 70-bed care home (class C2) with associated access, landscaping and open space.
- 

### Decision

1. The appeal is allowed and planning permission granted for an outline application (with all matters reserved except for access) for the erection of up to 210 residential dwellings (class C3) and a 70-bed care home (class C2) with associated access, landscaping and open space, in accordance with the details submitted with planning application Ref: PL/2022/08504 on land South of Western Way, Melksham, Wiltshire (Easting 390741 Northing 162689), subject to the conditions set out in Annex A.

### Main Issues

2. The main issues in this appeal are:
  - the suitability of the location for the proposed development having regard to the policies of the development plan;
  - the position of the Council with regard to a 5-year supply of deliverable housing sites, including the status of the Neighbourhood Plan;
  - whether the requirements of the Council in terms of the need for affordable housing, the provision of open space, the provision of public art, healthcare provision, public transport provision, strategic transport provision and waste collection provision are necessary in terms of paragraph 57 of the National Planning Policy Framework (the Framework) and Regulation 122 of the Community Infrastructure Levy Regulations 2010 and, if these requirements are found to be necessary, whether they are capable of being addressed through an agreed planning obligation.

## Reasons

### *Location of the development*

3. The development is located to the south of Melksham town centre and close to two main roads (the A350 and the A365). To the north are footpaths and roads which focus on Melksham's town centre.
4. To the east is a site which appears to be under development which will accommodate a school. To the south is the Bowerhill Industrial Estate. The site is proposed to be accessed via the recently completed Maitland Place. Overall, the site appears as an isolated pocket of agricultural land surrounded by major roads, an established industrial estate, new development and the established area of Melksham itself to the north.
5. In planning policy terms, the site lies outside the settlement boundary of Melksham. However, it appears to me that this boundary is becoming blurred in this location given the amount of new development that has taken place to the south. Furthermore, more construction is due to take place immediately to the east of the appeal site.
6. The development plan for the area is comprised of the Wiltshire Core Strategy (WCS), adopted in 2015 and the Joint Melksham Neighbourhood Plan (MNP) 2020-2026 made in July 2021.
7. The policies that are particularly relevant to this appeal are Policies CP1 and CP2 of the WCS and Policy 6 of the MNP. Policies CP1 and CP2 of the WCS work together in order to achieve the delivery of the Council's housing targets. Policy CP1 sets out a settlement hierarchy and Policy CP2 distributes the required housing across this hierarchy. This distribution is predicated on allocated sites and allowing settlements to take other growth, within the settlement limits.
8. The appeal site is located on the edge of Melksham. Melksham is identified in the policies as a market town which, according to Policy CP1, have potential for significant development to increase the jobs and homes in each town in order to help sustain and where necessary enhance their services and facilities. Therefore, the policy expects Melksham to accommodate growth and sees the benefits of growth for the town. However, Policy CP2 restricts this growth to those sites which lie within the defined development limits.
9. The MNP was made in July 2021 therefore the criteria set out at Paragraph 14 of the Framework do not apply. Policy 6 of the MNP deals with housing in defined settlements and repeats the requirement of Policy CP2 of the WCS where new development will not be permitted outside settlement boundaries.
10. Since April 2022, the Council has had in place a briefing note<sup>1</sup> which states, amongst other things, that it will '*positively consider speculative applications where there are no major policy obstacles material to the decision other than the site being outside settlement boundaries or unallocated*'. Whilst this approach is not part of the development plan it is a material consideration in this decision.
11. Overall, the site lies outside the development limits/settlement boundary of Melksham where the current policies of the development plan restrict new housing development. However, the recently adopted briefing note weakens

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<sup>1</sup> Briefing Note On 5-Year Housing Land Supply And Housing Delivery Test (April 2022)

the Policy stance regarding the importance of settlement boundaries. Consequently, whilst I find that the proposal is in conflict with Policy CP2 of the WCS and Policy 6 of the MNP and therefore the development plan, I find that I cannot give full weight to this policy conflict.

*5-year supply of deliverable housing sites*

12. It is common ground between the parties that the Council cannot currently demonstrate a 5-year supply of deliverable housing sites. There is however a disagreement between the parties about the degree of the shortfall. The Council have calculated that the housing supply in the area lies at around 4.6 years. The appellant on the other hand has calculated that the Council has a land supply of around 3.9 years. The difference in the figures appears to be mainly due to whether some of the sites the Council have identified as 'deliverable' are actually deliverable within the 5-year period.
13. Having heard and read the appellant's evidence on this matter it appears that at least some of the sites the Council is relying on to justify its calculation of the supply of deliverable housing sites do not fall within the definition of 'deliverable' as set out in Annex 2 of the Framework. Therefore, I regard the current position in relation to the 5-year supply of deliverable housing sites in the Council's area as lying somewhere between the appellant's figure of 3.9 years and the Council's figure of 4.6 years. In any event the Council cannot demonstrate a 5-year supply of deliverable housing site as required by the Framework.
14. In cases where the Council cannot demonstrate a 5-year supply of deliverable housing sites the most important policies for determining the proposal are deemed to be out of date. None of the policies in the Framework that relate to protected areas or assets of particular importance apply to the site's location in this case. Therefore, I have to assess whether any adverse impacts of allowing the appeal would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole. I shall carry out this balancing exercise later in this decision.

*The Planning Obligation*

15. A planning obligation made under s106 of the Town and Country Planning Act 1971 has been submitted in order to make the proposal acceptable in planning terms. However, an assessment needs to be made as to whether the requirements of the obligation comply with paragraph 57 of the Framework and Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010. In order to do this the obligations, need to be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. The Council has supplied a CIL compliance statement to support its position that the obligations it requires meet the requirements set out above.

*Affordable Housing*

16. In terms of affordable housing, it is clear that this is needed throughout the Council's area and policies within the development plan require certain housing developments to provide affordable housing. The 63 houses proposed to be provided within the scheme complies with the Council's requirements on sites such as this. Therefore, I find that the affordable housing required by the

planning obligation meets the tests set out in the Framework and the Regulations

*Education*

17. It is clear that the appeal proposals will increase the pressure on educational facilities in the area. The consultation replies received from education providers in the area confirmed that early year's provision in Melksham is at capacity. Therefore, the necessity and the relationship of the contribution to the development has been confirmed.
18. In terms of the scale of the required provision this has been calculated in accordance with a formula so that the contribution will relate directly in terms of scale and kind to the impact the development will have on the need for early years provision in the area.
19. I therefore find that this contribution meets the requirements of the CIL Regulations (2010) and the tests set out in the Framework.

*Public Art*

20. The WCS contains policies relating to the provision of public art in new developments. These policies relate to improving the public realm. The amount which is required for public art is calculated in accordance with a formula and the public art itself will be provided within the appeal site.
21. I therefore find that the requirement in the obligation for a contribution for public art to be provided within the development to comply with the requirements of the CIL Regulations (2010) and the tests set out in the Framework.

*Open Space and Leisure*

22. Core Policy 3 of the WCS contains requirements for open space and leisure facilities to be provided within new developments. This requirement is consistent with paragraph 98 of the Framework. The precise requirement is based on standards which have been adopted by the Council and the facilities will be provided within the proposed development.
23. I therefore find that the requirement for public open space and leisure facilities comply with the CIL Regulations (2010) and the tests set out in the Framework.

*Waste and recycling*

24. Core Policy 3 of the WCS requires new bins and recycling boxes to be provided within new developments. Each new property will be required to have waste bins and recycling boxes and the contribution required reflects the cost of providing these facilities to each of the dwellings.
25. I therefore find that the requirements comply with the CIL Regulations (2010) and the tests set out in the Framework.

*Highways and safety*

26. The obligation requires a contribution towards creating safe cycling and walking routes from the appeal proposal into the centre of Melksham. This approach is supported in planning policy and directly relates to the pedestrian and cycling



movements generated by the proposal. Moreover, the contribution has been calculated in accordance with a formula.

27. I therefore find that the proposed contribution complies with the CIL Regulations (2010) and the tests set out in the Framework.

*Public transport*

28. There is a requirement that the appeal proposal is served by a bus service which will give its residents satisfactory access to the services in the town. The contribution is required in order to ensure that bus services serve the appeal proposal.
29. I therefore find that the requirement complies with the CIL Regulations and the tests set out in the Framework.

*Rail accessibility*

30. The contribution relates to providing a safe cycling route between the appeal site and Melksham railway station. It is necessary in that it helps to develop safe transport links, it is directly related to the development as it will improve its accessibility to the station, and it is fairly and reasonably related to the development as the development is only expected to fund part of the costs of its provision.
31. I therefore find for the reasons given above that the contribution meets the requirements of the CIL Regulations (2010) and the tests set out at paragraph 57 of the Framework.

*Residential travel plan*

32. Part of the implementation of the sustainable travel arrangements planned for the proposal is to use a residential travel plan to publicise the sustainable travel options available to residents. This will be distributed to every new household created by the development.
33. I therefore find that the provisions for a residential travel plan comply with the requirements of the CIL Regulations (2010) and the tests set out at paragraph of 57 of the Framework.

*Travel monitoring plan*

34. This part of the obligation is related to the delivery of the sustainable transport provisions. It allows the effectiveness of the measures to be assessed. It is therefore necessary, directly related to the development and fair and reasonable in scale and kind. Therefore, it complies with the provisions of the CIL Regulations (2010) and the tests set out at paragraph 57 of the Framework.

*Healthcare contribution*

35. It is clear from the consultation responses received in relation to the planning application that the appeal proposal will place additional pressure on the healthcare facilities in the area. Moreover, there appears to be no existing '*spare primary care floorspace capacity in the local area*'. Therefore, the necessity for the contribution and its direct relationship to the appeal proposal has been demonstrated. The contribution has also been calculated in

accordance with a formula which also indicates that it is fairly and reasonably related in scale and kind to the proposal.

36. I therefore find that the requirement complies with the provisions of the CIL Regulations (2010) and the tests set out in paragraph 57 of the Framework.

### **Other Matters**

#### *Highways and traffic*

37. The vehicular access to the proposed development would be taken from Maitland Place. Maitland Place is currently a cul de sac which serves a number of recently constructed houses and links to Pathfinder Way, a main distributor road. The part of Maitland Place that would give access to the appeal proposal is around 5.5m wide and has recessed parking bays. It has also been designed to incorporate traffic calming measures in order to help regulate traffic speed. The Maitland Place link between Pathfinder Way and the proposed access to the appeal site is also relatively short.
38. Given the configuration of Maitland Place, its width and the distance between the entrance to the appeal site and Pathfinder Way I find that it could reasonably accommodate the additional traffic generated by the proposed development without compromising highway safety or lead to unacceptable congestion. The overall 5.5m width is consistent with the standard for this type of road set out in Manual for Streets. Moreover, the Framework states at paragraph 111 that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
39. In terms of roads around the proposed development these have been designed to accommodate not only local traffic, but traffic passing through Melksham. Whilst the provision of an additional pedestrian/cycle crossing could slow down passing traffic it is unlikely to lead to an unacceptable increase in congestion in the area.
40. In terms of construction traffic, whilst I can appreciate that the residents of Maitland Place might be caused some short-term inconvenience during the construction period this would be temporary. Furthermore, the impact of construction traffic on residents is capable of being mitigated through a Construction Management Plan imposed by an appropriate condition should the appeal be allowed.
41. Overall, for the reasons set out above I find that the appeal proposal is acceptable in terms of its impact on highway safety and congestion in the area.

#### *Living conditions of existing residents*

42. I have had regard to the comments regarding the impact of the proposed development on the living conditions of existing residents, both in Maitland Place and elsewhere around the proposal, in terms of noise, air pollution and effects of additional traffic on the stability of houses. The site is already partly surrounded by main roads and is not located in an area which suffers from poor air quality. In terms of the amount of traffic using the roads around the site the contribution the appeal proposal would make to worsening air quality would be marginal and would not take levels of air pollution to unacceptable levels. I therefore do not consider that the appeal proposal in itself would materially

affect either the noise or air pollution levels experienced by those people living in the area or the stability of houses next to roads.

*Impact on local infrastructure – Doctors Surgery*

43. I heard evidence that the local Doctor's surgery and medical centre is at or over capacity. This has been accepted in the consultation responses received and will be dealt with through a contribution to additional facilities should the appeal be allowed which I have dealt with above.

*Economic development more appropriate*

44. It was put to me at the Inquiry that the site would be more suitable for economic development and accessed through the existing industrial estate located to the south. I have to deal with the application that is before me which is as described in the planning application submitted to Wiltshire Council. Therefore, whilst economic development might well be suitable for the site I have to consider whether it is also suitable for the quantum of houses proposed and the proposed care home. Moreover, from my site visit I noted that there is no direct access between the site and the Bowerhill Industrial Estate to the south.

*Status of the Neighbourhood Plan*

45. The current Neighbourhood Plan is the Joint Melksham Neighbourhood Plan 2020-2026 which was made in July 2021. I understand from submissions made at the Inquiry that this plan is under review and a draft of a reviewed plan has been issued, the Joint Melksham Neighbourhood Plan 2020-2038, Pre-Submission Consultation Draft October 2023. Whilst the draft of the reviewed plan is capable of being a material consideration in this appeal, given the stage it is at it is afforded limited weight in this decision.
46. I also understand the effort local people put into producing Neighbourhood Plans, however once made they become part of the development plan for the area and are subject to the same consideration as all other elements of the development plan in the planning system as a whole. One of the aims of the system is to ensure that areas maintain a 5-year supply of deliverable housing sites so that they meet their housing need. Therefore, policies in the development plan are considered to be out of date where the local planning authority cannot demonstrate a 5-year supply of deliverable housing sites. That applies to the whole of the local planning authority's area and not just part of it.
47. In this case it is accepted by the Council that it cannot demonstrate a 5-year supply of deliverable housing sites. Therefore, the policies that are most important for determining the application are out of date, in particular those policies in the MNP that relate to settlement boundaries. This does not mean that they are set aside or ignored it simply means that they do not carry full weight in this appeal.

**The Planning Balance**

48. The policies of the development plan that apply to the appeal site are those set out above in the WCS and MNP. The most important policies for determining this application are Policies CP1 and CP2 of the WCS and Policy 6 of the MNP. The heart of the objection to the proposal is that it lies outside the settlement

boundary, and this is set out in these policies. However, the Council has accepted that it does not have a 5-year supply of deliverable housing sites. Moreover, it has published a briefing note in order to assist in delivering more houses which sets aside development boundaries where this is the only objection to a proposal. I therefore find that the most important policies for determining the appeal are out of date. Furthermore, and in view of the Council's briefing note and their only substantive objection to the proposal is that the site is outside the settlement boundary, I give these policies limited weight in this decision.

49. In support of the appeal proposal the appellant has set out a range of benefits it would bring, including, a contribution to the 5-year supply of deliverable housing sites, a contribution towards the Council's affordable housing requirement, the delivery of a 70 bed care home, economic benefit through the creation of jobs at the care home and support of local businesses in the area once the development is complete. I give substantial weight to these benefits.
50. In addition, the appellant has outlined that the development would bring jobs during the construction phase. These benefits would be transient. Therefore, I give them limited weight in this decision.
51. I also give limited weight to the benefits related to bio-diversity net gain (BNG), the provision of green infrastructure and the provision of new play areas as these are policy requirements and therefore would be required in order to make the development acceptable in any case.
52. Overall, for the reasons given above, I find that the adverse impacts of allowing the appeal would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

### **Conditions**

53. In addition to the normal conditions relating to times for commencement, the submission of reserved matters and referencing the approved plans, for the avoidance of doubt and to comply with the relevant legislation, I consider that further conditions are necessary in order to make the development acceptable.
54. Whilst the main access to the site is under consideration in this appeal conditions are necessary to control the design of the internal road layout, footpaths, junctions and verges, including street furniture, drainage, materials and surface finishes in order that the development is finished in an acceptable manner. In addition, and in order to achieve this a further condition is necessary to secure the implementation of the approved details.
55. A condition is necessary to ensure that the Toucan Crossing on Western Way is implemented to ensure that the development has safe and convenient access to Melksham town centre.
56. A condition is necessary to ensure that a footpath is delivered along the southern side of Western Way, to an appropriate standard, to ensure that the development has safe and convenient access to Melksham town centre.
57. A condition triggering the installation of the emergency vehicle access and routing is necessary in order to ensure that emergency vehicles have access to

- the site at the appropriate stage of the development in the interests of highways and public safety.
58. A condition is necessary to ensure that a scheme for the installation of electric vehicle charging points is capable of implementation on the site. This condition should also ensure that the approved scheme is implemented in a timely manner. In order to assist in controlling emissions from vehicles to protect public health and to contribute to mitigating the effects of emissions from vehicles on climate change.
  59. Conditions requiring the production, distribution, implementation and monitoring of travel plans to cover the care home and the dwellings are necessary in order to help mitigate the impact of vehicles using the development on the local road network.
  60. Conditions dealing with the disposal of foul and surface water drainage are necessary in order to manage flood risk and to ensure that sewage from the proposed development is adequately dealt with.
  61. A condition requiring the submission of a Landscape and Ecology Management Plan to be submitted and implemented prior to the start of construction is necessary in the interests of nature conservation and the character and appearance of the area.
  62. A condition requiring the submission of a Construction Environmental Management Plan (CEMP) prior to the commencement of work is necessary in order to ensure that ecological assets present on site are protected during the period of construction.
  63. A condition is necessary to control the installation of external lighting within the development in order to protect the habitats used by wildlife species from intrusive light.
  64. A condition is necessary in order to control how the construction of the site is managed through the submission and implementation of a Construction Management Statement which shall be adhered to throughout the construction period in order to minimise the effects of the construction of the proposed development on the living conditions of nearby residents, the natural environment and the safety of those using surrounding public highways.
  65. In order to protect the occupants of the proposed dwellings from unacceptable levels of noise a condition is necessary to ensure that no dwelling is occupied until a scheme for protecting the dwellings from unacceptable noise has been submitted to and approved by the Council.
  66. In order to ensure that the approved landscaping scheme is implemented in a timely manner, a condition is necessary to ensure that a timetable for the implementation of all soft landscaping is submitted to and approved by the Council.
  67. In order to record anything on the site that is of archaeological interest a condition is necessary to ensure a written programme of archaeological work be submitted to and approved by the Council, together with a requirement that it be carried out in accordance with the approved scheme.

## **Conclusions**

68. I have found above that whilst the proposal is in conflict with the policies of the development plan that relate to developments outside settlement boundaries, material considerations relating to the lack of a 5-year supply of deliverable housing sites, accepted by the Council, and the benefits of the proposal are sufficient to outweigh the harm that is caused to these policies. Therefore, the appeal is allowed.

*Peter Mark Sturgess*

INSPECTOR

## **ANNEX A – CONDITIONS**

1. The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
2. No development shall commence on the residential area and care home area or the site respectively until details of the following matters (in respect of which approval is expressly reserved) for each respective area have been submitted to, and approved in writing by the Council:
  - (a) the scale of the development;
  - (b) the layout of the development;
  - (c) the external appearance of the development;
  - (d) the landscaping of the site.

The development shall be carried out in accordance with the approved details.

3. An application for the approval of all of the reserved matters shall be made to the Council before the expiration of three years from the date of this permission.
4. The development hereby permitted shall be carried out in accordance with the following approved plans:
  - site location plan, scale 1:2500 – 22497 – 1000A
  - land use parameter plan, scale 1:2500 – 22497 – 4010C
  - scale parameter plan, scale 1:2500 – 22497 – 4030C
  - landscape parameter plan, scale 1:2500 – 22497 – 4050C
  - density parameter plan, scale 1:2500 – 22497- 4020C
  - access and movement parameter plan, scale 1:2500 230209 – 22497 -4040D
  - proposed access strategy 16307-019-P3
5. No development shall commence on site until details of the estate roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfalls, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car parking and street furniture, including the timetable for the provision of such works have been submitted to and approved by the Council. The development shall not be first occupied until the works have been undertaken in accordance with the approved details and timetable.
6. The roads, including footpaths and turning spaces, shall be constructed so as to ensure that before it is occupied, each dwelling has been provided with a

properly consolidated and surfaced footpath and carriageway to at least base course level between the dwelling and the existing highway.

7. Prior to commencement of the construction of the development the design of the Toucan Crossing off Western Way as detailed on drg no. 019 rev P3 'Proposed Access Strategy' (contained in Appendix L of the Transport Assessment) shall be submitted to and approved in writing by the Council. The Toucan Crossings shall thereafter be provided in full prior to the occupation of the first dwelling on the site and maintained as such thereafter.
8. Prior to the occupation of the first dwelling on the site a minimum of a 2m wide footway connection along the southern side of Western Way (as detailed on drg no. 019 rev P3 'Proposed Access Strategy') shall be designed, submitted to and approved in writing by the Council. The footpath connection shall be provided in full in accordance with the submitted details before the final dwelling on the site is occupied and maintained as such thereafter.
9. Prior to the occupation of the 50<sup>th</sup> dwelling on the site, the design of the proposed emergency vehicle access and routing shall be submitted to and approved in writing by the Council. The approved design shall be completed before the final dwelling on the site is occupied and thereafter maintained.
10. No development shall commence on site until a scheme, including details of the timing of its implementation, of Electric Vehicle Charging infrastructure has been submitted to and approved in writing by the Council. The approved scheme shall be implemented in accordance with the approved details and in accordance with the approved timescale and thereafter permanently retained.
11. Prior to the first occupation of the Care Home Facility, a Care Home Travel Plan, in broad compliance with the submitted Framework Travel Plan shall be submitted to and approved by the Council. The Travel Plan shall include measures to reduce vehicle trips by staff and visitors and these shall include but not be exclusive to the provision of travel information for staff and visitors, personal travel planning for staff, the employment of a Travel Plan Coordinator and the monitoring of travel arrangements through agreed survey methods on every anniversary of first occupation, up to and including the fifth anniversary, with a summary of success or failure and details of all proposed remedial measures to be implemented.
12. Prior to occupation of the first residential dwelling, a Residential Travel Plan, in broad compliance with the submitted Framework Travel Plan shall be submitted to and approved by the Council. The Travel Plan shall include measures to reduce vehicle trips by residents and these shall include but not be exclusive to the provision of Green Travel Vouchers, travel information, offer personal travel planning, the employment of a Travel Plan Coordinator and the monitoring of travel arrangements through agreed survey methods.
13. No development shall commence on site until a scheme for the discharge of surface water from the site, including sustainable drainage systems and all third-party approvals, has been submitted to and approved in writing by the Council in consultation with the Lead Local Flood Authority.



14. No development shall commence on site until details of the works for the disposal of sewerage including the point of connection to the existing sewer have been submitted to and approved in writing by the Council. No dwelling shall be occupied until the approved sewage disposal measures have been fully implemented in accordance with the approved details.
15. Prior to the start of construction, a Landscape and Ecology Management Plan (LEMP) shall be submitted to and approved in writing by the Council. The LEMP will include long term objectives and targets, management responsibilities and maintenance schedules for each ecological feature with the development, together with a mechanism for monitoring the success or the management prescriptions, incorporating review and necessary adaptive management in order to attain targets.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured. The LEMP shall be implemented in full and for the lifetime of the development in accordance with the approved details.

16. Prior to the commencement of works, including demolition, ground works/excavations, site clearance, vegetation clearance, boundary treatment works, a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Council. The CEMP shall provide details of the avoidance, mitigation and protective measures to be implemented before and during the construction phase including but not limited to the following:

- identification of ecological protection areas/buffer zones and tree root protection areas and details of physical means or protection e.g., exclusion fencing;
- working method statements for protected/priority species such as bats, nesting birds, reptiles, great crested newts (GCN), badgers and small mammals;
- mitigation strategies already agreed with the Council prior to the determination, such as for reptiles, GCN, birds and bats, this should comprise the preconstruction/construction related elements of strategies only;
- work schedules for activities with specific timing requirements in order to avoid/reduce potential harm to ecological receptors, including details of when a licensed ecologist and/or ecological clerk of works (ECoW) shall be present on site;
- key personnel, responsibilities and contact details (including site manager and ecologist/ECoW);
- Timeframe for the provision of compliance report to the Council to be completed by the ecologist/ECoW and to include photographic evidence;
- The fencing off of the watercourses surrounding the development site to protect them from pollution during construction and to retain a corridor for wildlife;

- a buffer from the top of the river bank towards the development site within the fenced area with riparian vegetation retained.

Development shall be carried out in strict accordance with the approved CEMP.

17.No external lighting shall be installed on the site until detailed plans showing the type of external light appliances, the height and position of the fittings, the illumination levels and light spillage levels in accordance with the appropriate Environment Zone standards as set out by the Institute of Lighting Engineers in their publication 'Guidance Note 1 for the Reduction of Obtrusive Light 2021', have been submitted to and approved in writing by the Council. All external lighting shall be installed and maintained in accordance with the approved details.

18.No development shall commence on site (including any works of demolition), until a Construction Management Statement (CMS), together with a site plan has been submitted to and approved in writing by the Council. The CMS shall include the following:

- point of access into the site for construction vehicles;
- the parking of vehicles of the site operatives and visitors;
- loading and unloading of plant and materials;
- storage of plant and materials used in constructing the development;
- the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- wheel washing facilities;
- measure to control the emission of dust and dirt during the construction;
- a scheme for the recycling/disposing of waste resulting from demolition and construction work;
- working hours, including deliveries
- details of drainage arrangements during the construction phase;
- large vehicle and delivery routing plan;
- communication procedures with the Council and local community regarding key construction issues (newsletters, fliers etc.)

The approved CMS shall be adhered to throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved CMS.

19.Notwithstanding the Noise Assessment by Brookbanks dated September 2022 no dwelling shall be occupied until a scheme for protecting the occupants from unacceptable internal noise levels has been submitted to and approved in writing by the Council. The development shall be implemented in full accordance with the approved scheme.

20. A timetable for the implementation of all soft landscaping comprised in the details of landscaping approved under condition 2 shall be submitted to and agreed in writing with the Council alongside the first reserved matters application for the residential area and the care home area of the site. The works shall be carried out in accordance with the timetable. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of 5-years, die, are removed or damaged, seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development.
21. No development shall commence on site until a) a written programme of archaeological investigation, which shall include on-site and off-site work such as analysis, publishing and archiving of the results, has been submitted to and approved in writing by the Council, and b) the approved programme of archaeological work has been carried out in accordance with the approved details.

**END**

## **APPEARANCES**

### FOR THE COUNCIL:

Gary Grant	Barrister
He called:	
Alwyn Thomas	Solicitor at Wiltshire County Council <sup>2</sup>
Steve Sims	Planning Officer, Wiltshire County Council <sup>3</sup>

### FOR THE APPELLANT:

Christopher Young	Kings Counsel
He called:	
Nick Matthews MA, MTCP, MRTPI	Director (Planning), Savills
Matthew Grist BSc(Hons), Dip UD, CILT, CIHT	Director, Jubb
Ben Pycroft BA(Hons), Dip TP, MRTPI	Director, Emery Planning

### INTERESTED PARTIES WHO SPOKE AT THE INQUIRY

Mrs B Lukes	Local Resident
Nick Holder	Councillor
Alex Jones	Local Resident – Pathfinder Place, Chair of the Residents Association
Richard Wood	Local Resident – Melksham without Parish Council, Chair of Planning Committee
Edward Pafford	Local Resident and Joint Neighbourhood Plan Steering Group (Chair)
Sue Tweedie	Local Resident and Bowerhill Residents Action Group (Secretary)
Mr Lukes	Local Resident
Jane Green	Local Resident
Dion Green	Local Resident
Claire Skelton	Local Resident
Teresa Strange	Local Resident – Melksham without Parish Council

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<sup>2</sup> S106/conditions RTS only

<sup>3</sup> S106/conditions RTS only

**DOCUMENTS SUBMITTED AT THE INQUIRY**

ID1 Opening statement on behalf of the LPA

ID2 Letter dated 11 October 2023 from the local MP, the Rt. Hon. Michelle Donelan MP.

ID3 Appeal decision APP/X2410/W/21/3271340, Land at Maplewood Road, Woodhouse Eaves, LE12 8RA

ID4 Appellant's closing submission

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## Appeal Decision

Site visit made on 31 October 2023

by **C Rose BA (Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 14 November 2023**

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**Appeal Ref: APP/Y3940/W/23/3321990**

**Upper Haugh Farm, Haugh, Winsley, Wiltshire BA15 2JE**

- 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 Ms Luana Edge against the decision of Wiltshire Council.
  - The application Ref PL/2022/09742, dated 20 December 2022, was refused by notice dated 28 March 2023.
  - The development proposed is conversion of former squash court building to provide 1No one bedroomed new dwelling.
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### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. The site falls within a consultation zone for the Bath and Bradford-on-Avon Bat Special Area of Conservation (SAC). I will return to this matter below.

### Main Issue

3. The main issue is whether the appeal site is an appropriate location for housing, with particular regard to the local development strategy.

### Reasons

4. The appeal site comprises a squash court located within an existing detached outbuilding that is ancillary to the main dwelling forming Upper Haugh Farm. The appeal site benefits from a secondary access to Upper Haugh Farm and is set back from the road frontage adjacent to other ancillary outbuildings.
5. The spatial strategy for the location of housing in the area is outlined in Core Policies 1 and 2 of the Wiltshire Core Strategy (January 2015) (CS). Core Policy 1 identifies four tiers of settlements where sustainable development will take place (Principal Settlements, Market Towns, Local Service Centres and Large and Small Villages). Whilst Core Policy 7 of the CS identifies Winsley as a Large Village within the Bradford on Avon Community Area, the site lies a considerable distance outside of Winsley and other settlements. Core Policy 2 of the CS states that outside the defined limits of development, other than the circumstances permitted by other policies in the plan, identified in paragraph 4.25, development will not be permitted. Paragraph 4.25 includes proposals that support rural life under CS Core Policy 48.
6. CS Core Policy 48 supports proposals to convert and re-use rural buildings for employment, tourism, cultural and community uses, subject to the site having reasonable access to local services and subject to a number of other criteria.

7. CS Core Policy 48 further states that where there is clear evidence that these uses are not practical propositions, residential development may be appropriate where it meets the stated criteria. The policy further states that in isolated locations, the re-use of redundant or disused buildings for residential purposes may be permitted where justified by special circumstances in line with national policy.
8. I acknowledge that Core Policy 48 of the CS allows an exception to locating development within the identified settlements, that the conversion of buildings in the countryside will by their nature necessitate some reliance on the use of the car, and that the area is used by dog walkers. Paragraph 105 of the National Planning Policy Framework (the Framework) acknowledges the requirement to take into account that transport solutions will vary between urban and rural areas. However, the site is located a considerable distance from the nearest services and facilities accessed via narrow unlit country lanes without footpaths and necessitating the crossing of the B3108 to access Winsley. Access to Bradford-on-Avon is a considerable distance further. Moreover, the closest bus stop is on the B3108. As a result, and even acknowledging the services and facilities available at Hartley Farm, such journeys other than by the motor car, particularly in the darker and colder months, by future occupants of the development would be unattractive. Future occupiers would therefore be highly reliant on the motor car to access the majority of local services including places of work, social, leisure, health and a range of retail facilities.
9. The criterion relating to reasonable access under CS Core Policy 48 applies to proposals to convert the building to employment, tourism, cultural and community uses. If these uses are not practical propositions, then it applies to residential development. The building has not been marketed for alternative uses. Whilst I note the location of the building adjoining residential development making noisy employment or community uses impractical, I do not have clear and convincing evidence demonstrating why the size of the building would not make it suitable for a small holiday let. Nonetheless, even if I were to determine that there is clear evidence that these non-residential uses are not practical, the appeal site does not benefit from reasonable access to local services as required by Core Policy 48 to justify the residential development.
10. With regard to the other criteria to CS Core Policy 48, from my site visit and the evidence before me, I have no reason to believe that the appeal building is not structurally sound or capable of conversion. The site benefits from adequate access and infrastructure. In light of the minimal and sensitive nature of the external changes proposed, and its location set back from the road, it would not detract from the character or appearance of the area or be detrimental to the living conditions of nearby occupiers and is not a heritage asset. However, these matters do not address or overcome the conflict with CS Core Policy 48 with regard to the location of the site not benefitting from reasonable access to services.
11. I now turn to CS Core Policy 48 where it states that the re-use of redundant or disused buildings for residential purposes may be supported where justified by special circumstances, in line with national policy. Paragraphs 80(c) and (d) of the Framework allow isolated homes in the countryside where it would re-use



- redundant or disused buildings and enhance its immediate setting, and where development would involve the sub-division of an existing residential building.
12. There is no dispute between the parties that the appeal site is isolated, and I have no reason to disagree. With regard to paragraph 80(c) of the Framework, given that the appeal proposal comprises a squash court ancillary to the main house, housing gym equipment at the time of my site visit, I have limited evidence to demonstrate that the building is redundant or disused. Even if I were to conclude that it was redundant or disused, and whilst the external alterations proposed to the building have been sensitively designed, these have a neutral impact upon the immediate setting. As a result, the proposal would not enhance its immediate setting as required by paragraph 80(c).
  13. With regard to paragraph 80(d) of the Framework, the appeal proposal involves the conversion of an outbuilding. The judgement in *Wiltshire Council v SSHCLG & Mr W. House* [202] EWHC 954 (Admin) established that the subdivision of an existing residential dwelling within paragraph 80(d) should be taken to mean the dwelling as one physical building rather than a wider residential unit encompassing other buildings. The judgement established that the sub-division of residential units by allowing separate buildings to become separate dwellings is beyond the limited exception allowed for in national policy. The change to the wording of paragraph 80(d) from 'residential dwelling' to 'residential building' after the judgement does not change the situation or considerations. To my mind this simply reflects the wording used in the judgement and as a result, paragraph 80(d) does not include the sub-division of separated detached outbuildings.
  14. I acknowledge that the General Permitted Development Order includes some Classes that allow the change of use of rural buildings to residential use in the countryside. I further acknowledge that this can result in residential uses a significant distance from services and facilities and demonstrates a commitment to boost the supply of housing. However, this appeal relates to an application for planning permission and as a result I am required to consider the proposal against local and national planning policy.
  15. In light of the above, I conclude that the appeal site is not an appropriate location for housing, with particular regard to the local development strategy. As such, the proposal conflicts with the requirements of Core Policies 1, 2, 7, 48 of the CS and the Framework. I note reference to an appeal<sup>1</sup> decision that states that Core Policies 60 and 61 of the CS underline the spatial strategy and do not seek to thwart the exception policies of the CS. Whilst I have no reason to disagree, the appeal proposal does not comply with Core Policy 48 of the CS due to the reliance upon the use of the car. As a result, the proposal is also contrary to Core Policies 60 and 61 that seek to reduce the need to travel by car and locate new development to reduce the need to travel.

### **Other Matters**

16. The site lies within the Bath and Bristol Green Belt. However, both parties consider that the proposal falls under paragraph 150 (d) of the Framework as it comprises the re-use of a building of permanent and substantial construction with no conflict with the purposes of including land within the Green Belt. I

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<sup>1</sup> 3284520

concur with this and as a result the proposal does not represent inappropriate development in the Green Belt.

17. I acknowledge that the proposal would not result in any harm to the living conditions of nearby occupiers, the character and appearance of the area, openness of the Green Belt, drainage or biodiversity, and would benefit from a suitable access and car parking and not cause harm to highway safety. However, as these are requirements of local or national planning policy, they are neutral in my consideration.
18. The development would be contrary to the local development strategy. The relevant policies are largely consistent with the Framework where it states that planning decisions should guide development towards sustainable solutions. Therefore, the proposed development would be contrary to the development plan as a whole and I give significant weight to the conflict with these policies.
19. The Council cannot demonstrate a five-year supply of deliverable housing sites. Consequently, because of the provisions of footnote 7, paragraph 11 d) ii. of the Framework should be applied. The appeal proposal would provide a number of benefits, including providing much needed housing and social benefit which would contribute towards the supply and mix of housing in the area. It would also result in some short-term benefits to the construction industry. However, given the scale and nature of the development, the benefits would be limited. In contrast, I have found that the appeal proposal would result in significant harm contrary to the local development strategy. Accordingly, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole.
20. The appellant has drawn my attention to two other appeal decisions<sup>2</sup> and other decisions from the Council<sup>3</sup> in the area. However, I have limited details in relation to these appeals and applications and each application and appeal must be determined on its own merits. Furthermore, in relation to the first appeal, the different conclusion reached by the Inspector in weighing the adverse effects against the benefits involved the exercising of planning judgement, which is what I have done in this case.
21. The appeal site falls within the Bat Consultation Zone for the Bath and Bradford-on-Avon Bats Special Area of Conservation. However, as I am dismissing the appeal for other reasons, I do not need to consider this matter or the related duties under the Conservation of Habitats and Species Regulations 2017 further.

## **Conclusion**

22. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

*C Rose*

INSPECTOR

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<sup>2</sup> 3261091 and 3286853

<sup>3</sup> 18/10255/FUL, 16/12385/FUL and 17/12521/FUL



## Appeal Decision

Site visit made on 31 October 2023

by **C Rose BA (Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 14 November 2023**

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### **Appeal Ref: APP/Y3940/W/23/332227**

#### **Yew Tree House, Brokerswood, Wiltshire BA13 4EG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mrs Rachel Clow against the decision of Wiltshire Council.
  - The application Ref PL/2023/01435, dated 21 February 2023, was refused by notice dated 19 April 2023.
  - The application sought planning permission for Change of Use of Public House to residential dwellinghouse; first floor extensions at rear and side without complying with a condition attached to planning permission Ref 15/10329/FUL, dated 10 December 2015.
  - The condition in dispute is No 5 which states that: *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending those Orders with or without modification), no development within Part 1, Classes A-E shall take place on the dwellinghouse hereby permitted or within its curtilage.*
  - The reason given for the condition is: *In the interests of the amenity of the area and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions, extensions or enlargements.*
- 

### **Decision**

1. The appeal is allowed and planning permission is granted for Change of Use of Public House to residential dwellinghouse; first floor extensions at rear and side at Yew Tree House, Brokerswood, Wiltshire BA13 4EG in accordance with the application Ref PL/2023/01435 dated 21 February 2023, without compliance with condition numbers 1, 2, 4 and 6 previously imposed on planning permission 15/10329/FUL dated 10 December 2015 and subject to the conditions in the attached schedule.

### **Background and Main Issue**

2. Planning permission was originally granted in December 2015 for the change of use of a public house to a residential dwelling with first floor side and rear extensions (Ref: 15/10329/FUL). This included a condition (5) removing permitted development (PD) rights for Schedule 2, Part 1 Classes A-E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending those Orders with or without modification) (GPDO). These Classes relate to dwellinghouses and their enlargement, improvement or other alteration, additions to the roof, alterations to the roof, porches and buildings incidental to the enjoyment of a dwellinghouse. The reason for the condition relates to the protection of the character and appearance of the area and to enable the Local Planning

Authority to consider individually whether planning permission should be granted.

3. Following this, a further application the subject of this appeal (Ref: PL/2023/01435) was submitted to remove condition number 5 and reinstate the PD rights under Schedule 2, Part 1 Classes A-E of the GPDO. This was refused by the Council on the 19 April 2023. The reason for refusal states 'Condition 5 of 15/10329/FUL is retained as its removal would conflict with Core Policies CP51 and CP57 of the Wiltshire Core Strategy'.
4. The main issue is therefore the effect that removing the disputed condition would have on the character and appearance of the area.

### **Reasons**

5. The appeal site comprises a dwellinghouse and its associated garden that adjoins the garden to the adjoining cottages and a field. The appeal site also comprises a sizable area of land broadly to the north of the dwelling fronting the road and adjoining a garden to a neighbouring dwelling and agricultural field. At the time of my site visit, this area was screened from the road by hedge planting and fencing and an existing garage/outbuilding. In addition, the appeal site comprises a further open area of land on the opposite side of the road adjoining agricultural fields and enclosed by a post and rail fence.
6. The area around the appeal site comprises a sporadic layout of mainly detached dwellings adjoining, and separated by, agricultural fields giving the area a semi-rural character.
7. Paragraph 56 of the National Planning Policy Framework (the Framework) states that planning conditions should only be imposed when they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. More specifically, paragraph 54 of the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.
8. The Planning Practice Guidance (PPG)<sup>1</sup> advises that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. It states that the scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the GPDO, so that it is clear exactly which rights have been limited or withdrawn. This paragraph goes on to advise that area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.
9. The Council's position is clear in that it seeks to control any future effects on the character and appearance of the area. It is concerned that given the nature of the appeal site comprising a detached house on a large plot with a long road frontage, it would be feasible to undertake a significant amount of development without the need for planning permission, with the potential to harm the countryside setting.

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<sup>1</sup> Planning Practice Guidance ID: Paragraph 017 Reference 21a-017-20190723

10. Given that the dwelling is located on a road characterised by a varying design of sizable dwellings, the Council has not provided a clear justification for the removal of PD rights for Part 1 Classes A-D. Moreover, the restrictions contained within Classes A-D put a limit on the size and height of extensions that may be permitted with extensions under Class A conditioned to ensure materials used are of a similar appearance to the existing dwellinghouse. Even if those additions were made to the appeal dwelling, they would not result in extensions of such a size that would project excessively beyond the built form of the existing dwelling to an extent that would harm the wider character and appearance of the area.
11. Turning to the removal of PD rights for Part 1 Class E, and although I acknowledge that buildings built under this PD right have limitations placed on them restricting their size and extent, it would nonetheless allow for the provision of a sizable building on the appeal site. This is by virtue of the size of the appeal site and the ground covered by such buildings under Class E being able to cover up to 50% of the total area of the curtilage. As stated above, the GPDO states that the blanket removal of freedoms for small scale alterations are unlikely to meet the tests. However, in this instance a building of a considerable scale could be constructed, and the condition does not represent a blanket wide removal of freedoms.
12. I appreciate that the appeal property is not a listed building and that the appeal site is not within a conservation area. Its location within the countryside also does not, in itself, represent clear justification to warrant removal of permitted development rights. Nonetheless, the part of the appeal site broadly to the north of the dwelling is readily apparent from the road and open fields beyond. Although this space is currently partly screened by an existing outbuilding and fencing, by reason of the frontage hedge and open nature of the site above the fencing and hedge, it provides a visual gap between the appeal property and Green Pastures. This gap aids and contributes towards the semi-rural character and appearance of the area.
13. Although the existing outbuilding, fencing and hedge would filter views of any building on this land, there is no guarantee of their future presence and as a result they would not constitute permanent screening. Moreover, buildings under Class E can be constructed up to 4 metres in height with no condition requiring the use of matching materials. Consequently, significant and unsympathetic development would be possible on this piece of land that would diminish the open gap between the appeal building and Green Pastures.
14. In my judgement, removing the disputed condition and PD right restriction in relation to Class E would therefore have the potential to result in a building of a significant scale that would be highly visible and detract from the character and appearance of the area. Furthermore, the disputed condition precisely defines the relevant provisions of the GPDO and it is clear which rights have been withdrawn given the specific reference to Class E buildings.
15. The removal of the PD right for such buildings would also not preclude the appellant from applying for planning permission for them, in the future, which the Council would need to consider on its own merits. I note that this may involve additional time, expense and inconvenience. However, I find that the imposition of the disputed condition in relation to Class E is clearly justified by

the potential impact of any future permitted development on the character and appearance of the area in addition to the development already permitted.

16. Based on the evidence before me, having regard to the tests set out in paragraph 56 of the Framework, condition 5 is therefore reasonable in relation to Class E only and necessary in the interests of protecting the character and appearance of the area. As such, the development without the disputed condition would have the potential to conflict with Core Policies 51 and 57 of the Wiltshire Core Strategy (January 2015). Amongst other things, these state that development should protect, conserve and where possible enhance landscape character and not have a harmful impact upon landscape character and ensure that development creates a strong sense of place through drawing on the local context and being complementary to the locality.

### **Other Matters**

17. I note the presence of other large dwellings in sizable plots that may retain their PD rights, but the size of the plot and presence of other dwellings with PD rights are not determinative in themselves and do not justify the potential harm identified above. Moreover, I am required to consider the appeal on its merits.
18. Although the officer's report for the original planning permission for the dwelling identified improvements in the neighbour's living conditions, this does not justify potential harm from further development.
19. As the potential harm identified relates to the circumstances of the appeal site rather than the sensitivity of the wider landscape as a whole, it is appropriate to use a condition to remove PD rights rather than relying upon an Article 4 direction covering a wider area.
20. The appellant has drawn my attention to other previous appeal decisions relating to the removal of permitted development rights in the countryside. Whilst I have had regard to these decisions in reaching my findings, the appeal in Trowbridge<sup>2</sup> did not relate to Class E PD rights and each application and appeal must be determined on its own merits. Furthermore, the different conclusions reached by the Inspectors in respect of whether there was clear justification for removing permitted development rights in these appeals involved the exercising of planning judgement, which is what I have done in this case.

### **Conditions**

21. The PPG makes it clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. I have had regard to the conditions suggested by the Council.
22. As the development has already commenced, there is no need for the standard time condition.
23. As the development has been implemented, there is no need for a plans condition or for conditions seeking the submission of details of bat roosting

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<sup>2</sup> APP/Y3940/W/21/3268583



features prior to first occupation or ensuring that the external surfaces of the development be as proposed.

24. Although access, turning and parking areas have been provided on site, a condition requiring the retention of suitable access, turning and parking areas is necessary in the interests of highway safety. As I have no detailed information before me regarding the discharge or subsequent variation of the original condition number 3, I am reimposing the original condition. In the event that the condition has been discharged or subsequently varied, that is a matter which can be addressed by the parties.
25. In light of my findings above, I have re-worded condition 5 to relate to the removal of PD rights for Class E development only in the interests of protecting the character and appearance of the area.

### **Conclusion**

26. For the reasons given above I conclude that the appeal should succeed in relation to the removal of reference to the restriction of PD rights under Classes A-D. However, the removal of PD rights in relation to Class E are justified and therefore remain. As a result, I grant a new planning permission with the wording of the disputed condition amended and restating the condition relating to the provision of an access, turning area and parking spaces.

*C Rose*

INSPECTOR

### **SCHEDULE OF CONDITIONS**

1. No part of the development hereby permitted shall be occupied until an access, turning area and parking spaces have been completed in accordance with a plan to be submitted for Approval in writing by the Local Planning Authority. The areas shall be maintained for those purposes at all times thereafter.
2. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending those Orders with or without modification), no development within Part 1, Class E shall take place within the curtilage of the dwellinghouse.

**\*\*\*END OF SCHEDULE\*\*\***

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## REPORT FOR THE WESTERN AREA PLANNING COMMITTEE

<b>Date of Meeting</b>	20 December 2023
<b>Application Number</b>	PL/2023/05634
<b>Application type</b>	FULL
<b>Site Address</b>	Land to the south of The Old Rectory, Warminster Lane North, Upton Scudamore
<b>Proposal</b>	Erection of a building for the purposes of agricultural storage
<b>Applicant</b>	Mr D Whitewood
<b>Town/Parish Council</b>	Upton Scudamore PC
<b>Electoral Division</b>	Warminster North and Rural ED – Cllr Bill Parks
<b>Case Officer</b>	Julie Mitchell

### Reason for the application being considered by Committee

This application has been ‘called-in’ by Cllr Bill Parks for Committee determination for the following reasons:

- Scale of development
- Visual impact upon the surrounding area
- Relationship to adjoining properties
- Outside settlement boundary
- Scale of building serving agricultural plot size

#### a) Purpose of Report

The purpose of this 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 should be approved subject to planning conditions.

### 2. Report Summary

The key determining planning issues are considered to be:

- Principle of Development (Use/Need)
- Landscape Impact
- Heritage Matters
- Highway Matters/Rights of Way
- Residential Amenity

### 3. Site Description

The application site forms part of an agricultural field in open countryside located to the south of the residential curtilage of The Old Rectory and settlement of Upton Scudamore. There is a newly formed access from the rural highway to the west of the site and the A350 trunk road lies to the south at a distance of approximately 275 metres from the southern edge of the field. The site is surrounded by agricultural land to the south and east, and to the west beyond the rural lane. The curtilage to the Old Rectory lies immediately to the north.



**Site Location Plan of the application site**



**Mapping extract and aerial view of the site location**

As shown in the plan and mapping extracts above, the Old Rectory has a generous residential curtilage which lies to the south of the dwelling. The agricultural land which relates to this application comprises the two parcels of agricultural land which adjoin the south and west boundaries of the garden and has an area of approximately 0.86 hectares. A new vehicular access has recently been formed onto the highway to the west of the field following the grant of planning permission on 16 February 2023 (PL/2022/08528).

The field in which the application site is located slopes from north to south as shown in the submitted landscape plan below, which also shows the position of the site in relation to the approved access.



*Submitted Landscape Plan*

Upton Scudamore is designated as a 'Small Village' in the Wiltshire Core Strategy; there are no limits of development for small villages although the site is clearly in the countryside outside of the built-up area of the village.

The application site is not within or near to a conservation area. The closest listed building is St Mary's Church (Grade II\*) which lies to the northwest of the site at a distance of approximately 150 metres. Parks Court, (Grade II\*) is a residential dwelling located to the northeast of the site at a distance of approximately 220 metres. The site is not within a National Landscape (previously known as Area of Outstanding Natural Beauty) or locally designated Special Landscape Area.

#### **4. Relevant Planning History**

W/08/01611/FUL -Proposed construction of underground bunded oil tank with underground access passage – Approved 1 July 2008

PL/2022/08528 - Formation of agricultural field gate access and pedestrian access on to eastern side of Warminster Lane North and associated landscaping works – Approved 16 February 2023

PL/2023/04343 – Erection of oak framed outbuilding comprising of storage room, entertainment room and BBQ space (with curtilage) – Withdrawn

#### **5. The Proposal**

This is full planning application for the construction of a new building.

The original description of development was for the "*erection of agricultural barn and associated works*" with the proposed building to be used for agricultural storage of plant, machinery, timber coppice and hay associated with the management of the land holding and also to accommodate a biomass boiler and woodchip storage which would serve the applicant's residential property on the adjacent land (known as The Old Rectory).

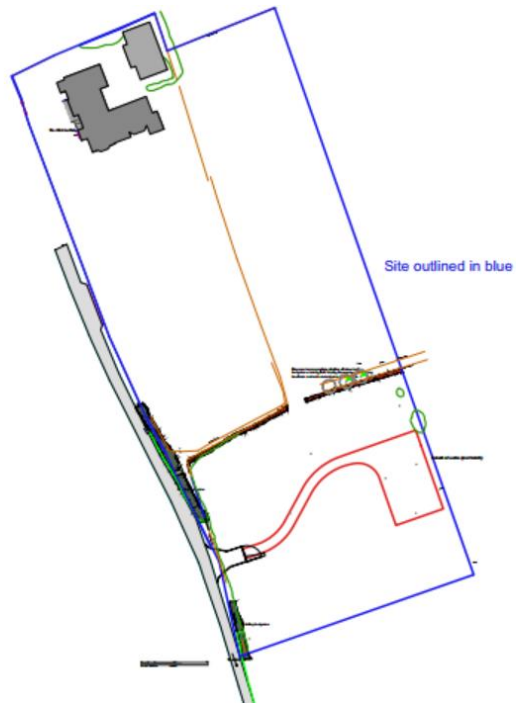
The biomass boiler element was subject to officer discussions with the applicant as such a facility would be ancillary to the domestic use of the adjacent dwelling and would not be for agricultural purposes. This discussion led to the description of development being revised and the removal the bio-mass boiler from the building and the description of the proposal changing to the "*Erection of a building for the purposes of agricultural storage*".

In addition, the siting, design and dimensions of the building were revised, necessitating a re-consultation with consultees and interested parties.

The proposed site plan and superseded plan are shown below for comparison purposes. The revised proposal has resulted in the proposed agricultural building being re-sited closer to the field boundary and the residential property boundary where there is a group of well-established trees which would form a robust backdrop for the building when viewed from the south.

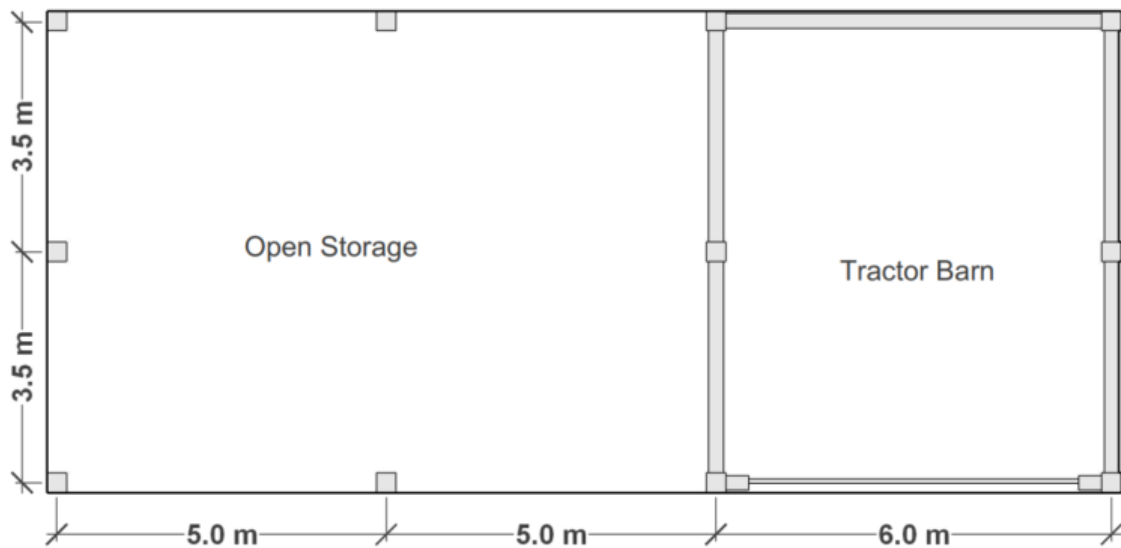


**Proposed Site Plan**



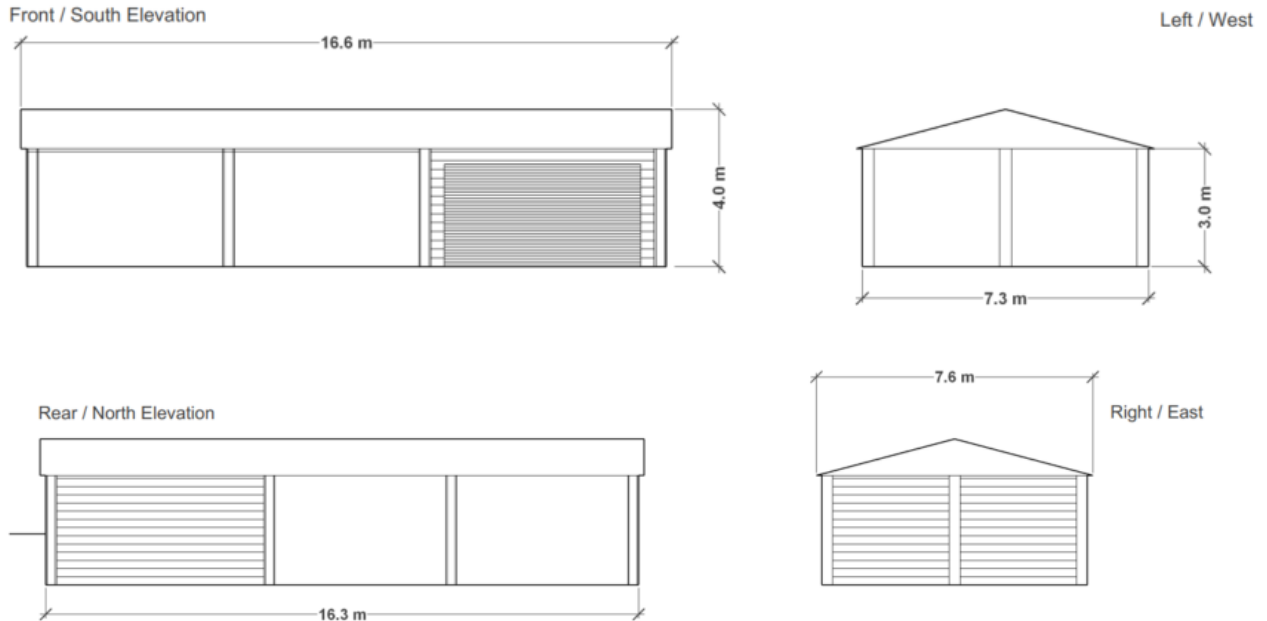
**Superseded Site Plan**

The dimensions of the proposed building are 16 metres by 7 metres. This represents a demonstrable reduction in the footprint of the building from the original proposal (20 by 10 m), with the height of the building also reduced from 5 metres to 4 metres. The intended uses of the building are shown in the floor plan below, comprising two open storage bays and a tractor barn with roller shutter door.



**Proposed floor plan**

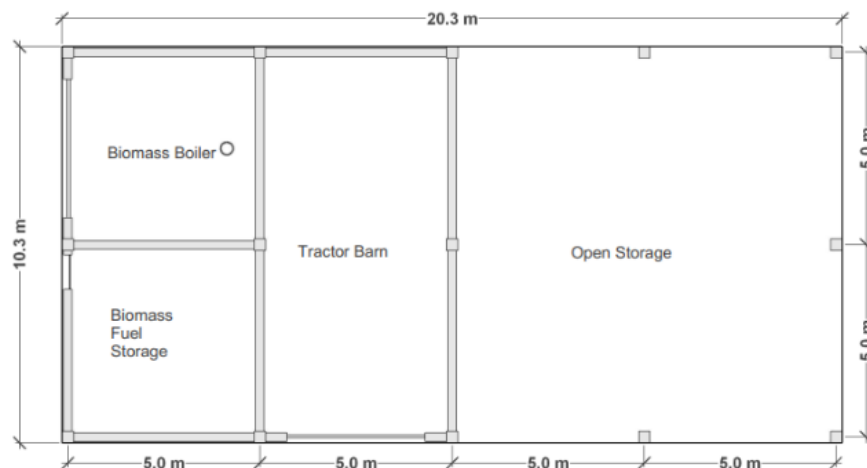
The building is proposed to be constructed of a steel frame with external walls comprising concrete blockwork clad in timber and a roof of corrugated metal sheeting in Juniper Green. The open bay and enclosed bay with a roller shutter door are shown in the elevation drawings below.

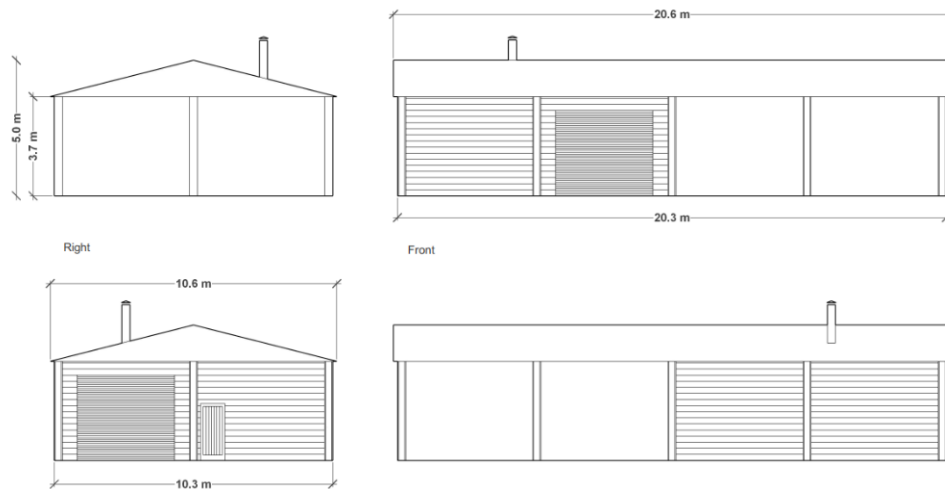


**Proposed elevations**

Access to the barn is provided by the established access from the highway, which would be extended with a 3-metre-wide reinforced grass track. There is also pedestrian access via a gate from the grounds to The Old Rectory. Tree and mixed native hedgerow planting are proposed around the perimeter of the field as illustrated in the proposed landscape plan which is included earlier in the report to show the gradient of the site.

For comparison purposes the floor plan and elevations of the building, as originally submitted, are shown below:





***Superseded floor plans and elevations***

## **6. Planning Policy**

### National Context:

The National Planning Policy Framework 2023 (NPPF) and Planning Practice Guidance (PPG)

The General (Permitted Development) Order 1995 as amended

### Local Context:

Wiltshire Core Strategy (adopted Jan 2015):

Core Policy 1 – Settlement Strategy; Core Policy 2 - Delivery Strategy;

Core Policy 3 - Infrastructure Requirements;

Core Policy 31 - Spatial Strategy – Warminster Community Area;

Core Policy 48 – Supporting Rural Life

Core Policy 50 - Biodiversity and Geodiversity; Core Policy 51 - Landscape;

Core Policy 57 - Ensuring High Quality Design and Place Shaping; Core Policy 58 - Ensuring

the Conservation of the Historic Environment; Core Policy 60 - Sustainable Transport;

Core Policy 61 - Transport and Development;

Core Policy 62 - Development Impacts on the Transport Network;

## **7. Consultations**

Upton Scudamore Parish Council – Upton Scudamore Parish Council has provided 2 consultation responses for this application as a result of changes to the siting and design of the proposed building. At the time of writing the report (at the beginning of December), updated comments from the parish council on the applicant's further revisions removing the initially proposed biomass boiler, are awaited and, if submitted before the committee meeting, these will be presented to the committee verbally.

4 August 2023 – Objection

Upton Scudamore Parish Council object to the application and request Cllr Parks, as the unitary Councillor, calls the application 'into planning committee' should the planning officer be looking to approve it. The following reasons for objection: -

1. As Upton Scudamore is a very small village it does not have its own development plan and, instead, is covered by the Wiltshire Council Core Strategy Policy (CP) within the Warminster Community Area. The CP defines Upton Scudamore as a small village. CP2 states development will be limited to infill within the existing built area. Proposals for development at the Small Villages will be supported where they seek to meet housing needs of settlements or provide employment, services and facilities provided that the development:
  - i) Respects the existing character and form of the settlement
  - ii) Does not elongate the village or impose development in sensitive landscape areas
  - iii) Does not consolidate an existing sporadic loose knit areas of development related to the settlement.

As the proposed building would be outside of any development limits it would be an unsustainable form of development and not meet CP2

2. In order to meet the requirement for an agricultural holding the site should be a minimum of 5ha. There is, therefore, no functional requirement for a building of this size to house plant and machinery to maintain 1ha of land and to provide storage for hay and wood farmed from a plot of this size.
3. 25% of the building is to be used for a biomass boiler. This would be an inappropriate use for a building on agricultural land. In addition, there is no indication of how the power generated is to be accessed by the main residence and the adjoining property. We would also question the semi-commercial use of this element of the proposed building.
4. The harmful impact on the landscape
5. English Heritage should be consulted in respect of the development being in sight line of a listed building, known as Parks Court.

25 October 2023 – Objection

*Upton Scudamore Parish Council continue to object.*

*The Councils objections remain as submitted to planning department on the 4th August 2023 with the following in additions: -*

1. *The proposed barn is a considerable distance from the existing built environment and encroaches on the space between Upton Scudamore and Warminster which protects the integrity of the village.*
2. *The revised landscape plan submitted clearly shows the extent of the 1ha agricultural land which will be taken up by the proposed barn and the trees planted to screen the development. This only serves to emphasise that there is no functional requirement for a building of this size.*



3. *In spite of the comments made in the letter accompanying the amended proposal, the revised plan shows 40% of the building is to be used for a biomass boiler which indicates a significant change with much less space available for agricultural use. This would be an inappropriate use for a building on agricultural land. In addition, there is still no indication of how power generated is to be accessed by the main residence.*
4. *Concerns over emissions from the biomass boiler could be extremely harmful to the village environment particularly if the plan is to use wood coppice from adjacent area.*
5. *The applicants and the planning department should also consider that the existence of a public footpath across the land is currently being investigated by Wiltshire Council.*
6. *If the proposed barn is permitted it would set a precedent for agricultural land of 1ha.*

The Council requested Cllr Parks call the application 'into planning committee' should the planning officer be looking to approve it.

12 December 2023 – Objection maintained.

*Upton Scudamore Parish Council objections remain as previously submitted: -*

1. *Upton Scudamore is designated a small village in both the current and the proposed Wiltshire Local Plan. Any development is limited to infill within the existing built environment and this barn is considerably outside of this.*
2. *The application does not meet the requirements for an agricultural barn given the size of the plot which has been described as 0.5 ha in one application and 1.0 in another, both of these falling considerably short of the 5 ha minimum requirement for permitted development. The latest plan submitted shows not only the extent of the agricultural land which will be taken up by the proposed barn and the trees planned to screen the development, but also adds plans for the laying of a driveway and heavy-duty material round the building's perimeter further reducing the area for agricultural use. This emphasises still further there is no functional need for a building of this size. Once the trees for coppicing have been planted there will be even less space for any other crop. If the proposed barn is permitted it would set a precedent for agricultural land of 1ha.*
3. *We note that the biomass boiler has been removed from the current revision but given the large area for storage for crops from such a small plot, we would seek assurances that domestic storage would not be permitted within this agricultural barn.*
4. *We would also argue that CP48, CP50 and CP51 do not apply in this case as not only has most of the existing biodiversity been damaged by the removal of the established trees and hedgerows, but the structure would also have a negative visual impact on the site and the surrounding area.*
5. *The applicant has now made 3 applications for a building on this site and a further application for a building including an entertainment area immediately adjacent to the current site. A total of 4 submissions, each with a different stated purpose. We would therefore ask that, if any permission is granted, strict conditions are attached regarding any future change of use, allowing Wiltshire Council to adhere to its priorities regarding the protection of the rural*

*landscape and its environment and give the appropriate protections for Upton Scudamore as a “small village”.*

6. *There has been considerable opposition within the village as shown by the registered consultation comments and attendance at Parish Council meetings.*

Wiltshire Council Highways Officer – No highway objection is raised.

## **8. Publicity**

The application was publicised by neighbour notification letter. Reconsultation was undertaken following significant changes to the siting of the proposal and again as a result of the removal of the bio-mass boiler.

**At the time of drafting the report, the consultation period for the final public consultation remains open and any further representations received will be verbally reported to the committee.**

In response to the publicity exercise, a total of 10 third party representations of objection were received with most indicating that their initial objections were not addressed by the revised scheme. A summary of comments is set out below.

### Objections:

Comments made prior to amendments:

- Invalid application
- No agricultural justification
- There are no crops or livestock
- Agricultural land is not large enough to be classified as an agricultural holding
- The need for tractor storage is disproportionate to the size of the land
- Barn is oversized relative to intended use/land holding
- Buildings are not permitted on agricultural holdings of less than 5 ha
- No detail given for proposed coppicing
- Coppicing and hay bales from this holding would not require 100 m<sup>2</sup> of storage space
- Biomass boiler is for domestic not agricultural use.
- Boiler is not connected to the house it is supposed to serve
- Ugly design better suited to industrial estate
- Inappropriate structure in inappropriate location
- Questionable usage now and in future
- Dangerous precedent for expansion which would fundamentally change character of village
- Outside boundary line of village, contrary to Core Policies 1 and 2
- Additional traffic on single lane access road
- Development motivated by future change of use for housing or commercial
- Obscures the view of Grade II\* listed manor house, consultation with Historic England required
- Proposed landscaping is inadequate mitigation for felled trees and screening
- Materials to fuel biomass boiler needs to be carefully prepared to avoid emission of noxious gases

- Boiler could be accommodated within grounds of the house
- Unclear what services to the field/barn are intended
- Precedent for development outside village boundary and incremental planning creep
- Concern for future use for 'entertainment' purposes/commercial venue or small bungalow
- Contrary to NPPF p85
- Insensitive to surroundings due to scale and location
- Ground source heat pump would be preferable to biomass boiler
- No information on utility connection necessary for the boiler
- Unsustainable development
- Contrary to aims of Core Policy 51
- Traffic/safety implications on narrow village road

Comments made subsequent to amended siting and design:

- Agricultural land falls well short of the minimum 5 hectares
- Extremely large-scale building, with its flue and large metal doors, still resembles an industrial unit
- The site can be seen from a public road, this busy narrow road offers the first sight of the village from the south
- Would be exposed even with proposed screening
- Outside village building line
- Disrespectful to village
- Will disfigure the area
- Negative polluting effects of biomass boilers are well documented
- Domestic service unit should be sited within existing garden which is screened and lessens potential dispersal of dangerous gaseous emissions and particulates on road users
- Biomass boiler not required by neighbouring property as stated
- Not proven that source of heat so far from user is viable or would reduce CO2 emissions
- A small shed in garden would be more appropriate
- Unnecessary development
- Not justified by the 0.5 ha of agricultural land to be serviced
- By law, no building is allowed on agricultural land of this area
- It is not an agricultural building due to substantial element of domestic/commercial use
- Outside boundary for built area of village which has been in place for decades
- Contrary to Core Policy 2, outside built area and elongating village
- Encourages ribbon development/sets precedent for development
- Visible from A350, the lower road into village and public footpath to the east
- Visual impact is effectively unchanged from original proposal
- Contrary to Core Policy 51 due to potential public nuisance and pollution from noise, smell and light
- Domestic/commercial use contrary to approved use of land (agricultural)
- The revisions go some way to mitigating the impact on the landscape
- Concern remains to stated use of building as agricultural barn
- The two parcels of land constitute less than 5 hectares and are not used for agricultural purposes (Agricultural Act 1947 S109 (1) and (3) and Agricultural Holding Act 1986)
- Land has been subsumed into the curtilage of a domestic residence

- Intended use potentially for entertainment space (following withdrawal of previous application in curtilage)
- The building does not contribute to rural life
- Negative effect of biodiversity and geodiversity
- Landscape and rural locality will be poorer for this building
- Spurious reference to neighbouring property's use of biomass boiler
- A Definitive Map Modification Order (DMMO) application is being prepared which was not claimed in 1952 as a right of way
- This footpath crosses the applicants land although the revised position will not block the footpath
- Part of the height of the barn is not underground as suggested by the applicant at the PC meeting
- The very wide access and splay will leave the industrial looking unit extremely exposed to view
- The revised building will still be visible from various directions
- The visual impact will permanently scar the main approach to the village and adversely change the character of the village
- The village risks losing its unique appeal and charm which can never be regained
- There is a public footpath across the site

Further comments received following further reduction in size and removal of biomass boiler:

- Fourth iteration of this application
- Raises further questions about whether the building is needed or establish the principle of a building for other uses
- Lack of clarity on use of land, now described as a paddock
- Hay and timber are not current crops
- 1ha plot is small to gain a crop of hay/coppice wood
- Proportionality of land size and building is questionable
- Use appears to relate to domestic purposes
- Disproportionate amount of land is lost to hard standing and footprint of building
- Legislation indicates that the application cannot be determined as agricultural
- Any building on this land is inappropriate
- Visual impact of access is already considerable
- Very large intrusive building
- Would set a precedent
- The site outlines both curtilage and agricultural land in blue as one plot
- Design and access statement '77 m2 gross internal area' is misleading, the gross external area is 112 m2/119 m2
- Does not meet Core Strategy policies CP48, CP50 or CP51
- Biodiversity and geodiversity adversely affected by previous removal of trees and hedgerow
- No protection of historic landscape and skylines
- Landscaping works do little to shield building and planting would take a long to mature to a height of 4 m
- Use of 'Truckpave' material for the driveway and heavy duty SUDS suggests heavy traffic and parking not occasional agricultural use
- Domestic style gate has been installed on access

- Past applications to build outside the historic development boundary line have been refused or withdrawn
- The substantial new driveway and access could be considered a site for residential/leisure/business use
- Storage of machinery could be accommodated in a smaller building within the curtilage of the dwelling.

## **9. Planning Considerations**

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan unless material considerations indicate otherwise.

### **9.1 Principle of Development (Use/Need)**

The Wiltshire Core Strategy (WCS) sets out a ‘Settlement Strategy’ and ‘Delivery Strategy’ for development across the County. WCS Core Policy 1 defines the Settlement Strategy and identifies four tiers of settlement– ‘Principal Settlements’, ‘Market Towns’, ‘Local Service Centres’ and ‘Large and Small Villages’. Within the settlement strategy (and the Warminster Community Area at Core Policy 31), Upton Scudamore is defined as a ‘Small Village’. The Principal Settlements, Market Towns, Local Service Centres and Large Villages have defined limits of development, beyond which, is countryside.

WCS Core Policy 2 sets out the delivery strategy for development of new employment land and homes. CP2 states that development will not be permitted outside the limits of development, as defined on the policies other than in the circumstances as permitted by other policies within this plan, identified in paragraph 4.25, unless the limits of development are altered through subsequent site allocations DPDs or neighbourhood plans. However, it continues that development in small villages, which do not have limits of development, will be limited to infill within the existing built area where they meet the housing needs of settlements or provide employment, services and facilities. A proposal for a building on agricultural land for agricultural purposes falls outside of the scope of CP2. A proposal for ancillary domestic buildings also falls outside of the scope of CP2, in recognition that such buildings would ordinarily be sited within the established residential curtilage(s) of existing dwellings such that there would be no associated change of use of land. As noted above, the domestic element of the initial proposal i.e., the bio-mass boiler element no longer forms part of the application submission.

Core Policy 34 supports the principle for development in the countryside that support sustainable farming and food production through allowing development required to adapt to modern agricultural practices and diversification, or new and existing rural based businesses within or adjacent to Large and Small Villages. Core Policy 48 does not include provision for new agricultural buildings and as identified by the parish council and third parties, is not the applicable policy for this proposal.

As a proposed agricultural building, the primary consideration would be whether the building is sited and is of a scale which meets the needs of the agricultural holding. In this case the agricultural land extends to less than 1 ha in total. Third party representations indicate that buildings are either not to be permitted on units of less than 5 ha or that a unit of less than 5 ha

is not an agricultural unit, and further that the area of land which includes the site is not agricultural in use.

The land to which the application relates is agricultural land since there has been no application for its change of use to domestic curtilage or for any other use. Whilst it is stated by third parties that the use of the land has been subsumed into the applicant's garden, the land use would remain 'agricultural' until such time as an application for change of use or development, or a certificate of lawful use, is granted which changes the planning status of the land.

From the information provided, it is not the intention of the landowner to change the use of the land. The design and access statement asserts that the building is proposed in order *"to meet the functional need for secure storage of plant and machinery, and storage of timber and hay from the agricultural land holding"*.

In the interests of clarity, Section 366 of the Town and Country Planning Act 1990 provides a definition of agriculture as follows:

*"agriculture" includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly;*

Whilst the applicant does not operate an agricultural business, the definition includes 'meadow land' which is essentially grassland which may or may not be used for hay production. The LPA is satisfied that the management of agricultural land by a person whose sole or primary occupation is not agriculture does not alter the fact that the land to which this application relates to, is agricultural.

The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), at Part 6, sets out the permitted development rights for Agricultural and Forestry development.

Class A of Part 6 relates to agricultural development on units of 5 hectares or more. That does not apply to this case as the landholding is less than 5 hectares.

It should be fully acknowledged that the applicant is not seeking to rely on Class A of the permitted development allowances hence the submission of this application.

Class B of Part 6 provides some Permitted Development allowances for agricultural development on units of less than 5 hectares.

This includes some allowances to extend or alter an agricultural building but not the construction of a new building, as is proposed in this case.

The applicant is not seeking to rely on Class B either.

For the avoidance of doubt, the permitted development rights set out what development can be undertaken without seeking full planning permission. This does not preclude a full planning application being made for agricultural development where the criterion for permitted

development is not met.

Whilst the permitted development rights are not applicable to the determination of this application, it is useful to note the reference to the area of an agricultural holding of anything over 0.4 hectares to refute the assertion that the holding being less than 5 hectares, is not used for agricultural purposes.

In response to the questions raised on the validity of the application, officers maintain that it is a valid application seeking full planning permission for the erection of an agricultural building on agricultural land.

The acceptability of such an application must be determined on its merits having regard to the impacts of the development and the use/need for a building.

Officers accept that the management of the agricultural land is likely to require non-domestic equipment and its suitable storage. Whilst the original application submission openly included a non-agricultural element, that was removed from the submission, and consequently, the associated impacts are no longer relevant to the consideration of this application.

The dimensions of the building measure as 16 m by 7 m, providing a secure storage area for a tractor and an open storage area suitable for hay/timber.

Compared with the dimensions of a typical domestic outbuilding such a garage/workshop, which would normally be no less than 4 m by 6 m for a single garage or 7 m by 6 m for a double garage, this proposed building would not appear excessive when considering its multiple uses to store a tractor, tools, hay and timber from the small holding.

The proposed height of 4 metres is considered acceptable in planning terms.

As the storage of machinery is intended for maintenance of the agricultural land and officers do not consider it would be reasonable to require that the applicant stores the agricultural associated equipment within the residential curtilage of the applicant's property since it would be not for purposes related to the residential occupation and enjoyment of the dwellinghouse.

It is therefore concluded, in principle, that the scale and siting of the building in respect of its proposed use for agricultural storage is acceptable. No precedent is set for the consideration of other buildings in the countryside, which would be considered on the individual need and impact.

In respect of concerns relating to future uses, and potential inclusion of a biomass boiler, a planning condition is recommended setting out the permitted uses of the building should planning permission be granted, as such any breach of condition would be investigated.

Procedurally there is a requirement for all other land within the ownership of an applicant to be outlined in blue. This does not indicate that the residential and agricultural land is of the same use.

## **9.2 Landscape Impacts**

Core Policy 51 requires that development should protect, conserve and where possible enhance landscape character and must not have a harmful impact upon landscape character, while any negative impacts must be mitigated as far as possible through sensitive design and landscape measures.

The site is not within a National Landscape (previously known as an Area of Outstanding Natural Beauty) or a Special Landscape Area but is within the countryside of which views are afforded from the surroundings, including the A350 highway which lies to the south of the site and public rights of way to the west.

The building has been re-sited from where the applicant's initially proposed location position (from the middle of the field to a position further towards the edge of the field, and closer to the boundary with the residential property which is within the same ownership).

Whilst the proposed site is exposed to open public views from the south, but at some distance and, these would mostly be seen against the significant treed backdrop of trees, and the existing built forms of development further to the north, as evidenced below.

The series of photographs on the following page illustrate the site from various vantage points taken from various positions along the A350.



*Views across open countryside towards the site*

Views of the site from Upton Scudamore would be limited due to the proposed siting being beyond the existing dwelling and curtilage. The closest range views would be from the unclassified highway to the immediate west of the site, as shown below, which forms one of the main approaches to the village from the A350.





*Photograph of site from public highway to west of the site*

Views of the site have undoubtedly increased following the formation of the field entrance earlier this year. The photograph above looks towards where the proposed agricultural storage building would be constructed.

The building would be visible at fairly close range from this vantage point, however the sight of the proposed agricultural building in the countryside, and outside of the village, is not considered unacceptable.

To provide some local context, and aided by the following aerial insert, planning permission was granted on land south of 37 Upton Scudamore for stabling of a comparable size to what is proposed under this application.



The proposed structure would have a steel frame, timber clad exterior and sheet roofing – which are considered appropriate materials, and with the revised siting of the building with a reduced height, the proposal in land scape terms, is considered acceptable, and would not appear as a discordant feature in the countryside.

Additionally, it is noted that applicant proposes to level the site and construct the storage building on lowered ground levels, to reduce the visual impact of the structure. The bulk of the building has been reduced by 3 metres, and with these revisions, officers are satisfied that the proposal is of a scale and appearance that would not harm the immediate and wider landscape setting.

It is noted that the applicant includes a commitment set out within the revised design and access statement to provide additional mitigation with perimeter tree and hedge planting, which can be secured by planning condition.

The effects from any external lighting on the landscape could be suitably controlled by planning condition.

### 9.3 Heritage Assets Impacts

Upton Scudamore does not have a designated Conservation Area. The mapping extract below identifies the nearest listed buildings, the Grade II\* Church of St Mary, the Grade II\* Parks Court and the Grade II The Grange. The original siting of the building was identified by third parties to obscure the view of the Grade II\* 'manor house' believed to refer to Parks Court.

The revised siting of the proposed building to the immediate south of the boundary to The Old Rectory and behind the well-established boundary of The Old Rectory would ensure that the 4m high agricultural storage building would not obscure views of the aforementioned listed building and would not affect its setting. Consequently, this proposal falls outside of the criteria for a consultation with Historic England.



*Listed Buildings within the vicinity of the site*

There are views towards the Grade II\* listed Church of St Mary from the access into the field which has recently been created, as demonstrated by the photograph below. The extract site plan shows the building set in from the field boundary/highway by several metres. There is however significant separation between the site and the church, including the highway and field

boundaries.



*View towards Church of St Mary from site access*

Whilst there may be long range views from the A350 or public footpaths in which both the Church and the proposed building would be visible, it is considered that due to the height and scale of the proposed building and its separation from the church, the proposed building would not affect the setting of the Grade II\* church and it is not considered that it would fall within the criteria for consultation with Historic England.

On the basis of the above, it has been concluded that the proposal would not cause harm to heritage assets.

#### **9.4 Highway Matters/Rights of Way**

The site is served by an existing access which has been formed following the grant of an earlier planning permission. The Council's highway officer has confirmed that there are no objections to the current proposal on highway grounds.

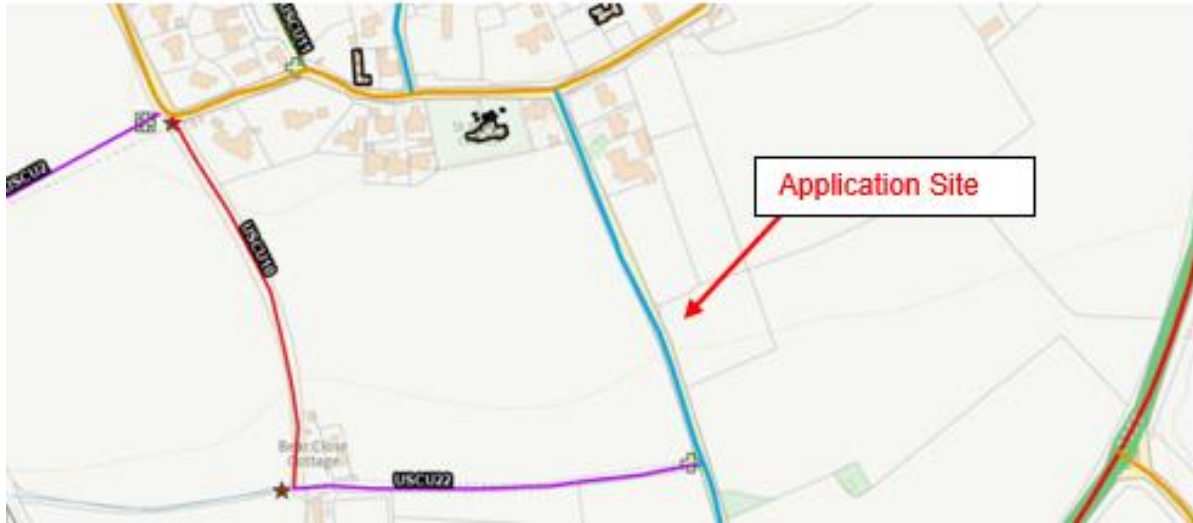
There are no public rights of way on the definitive map directly affecting the site/proposal.

Third party representations have stated that there is a right of way across the site for which an application is being made, however the sketch provided in the third-party letter confirms that the siting of the building as proposed does not affect the routing of any right of way application.

There are no grounds to refuse the proposal on the above.

The application site would be visible from unclassified highway (denoted by the light blue line) even if there were to become a PRoW, but as argued above, the impacts of the development are considered acceptable in landscape terms, and allowing this application would not prevent any such PRoW application for the blue-coloured existing route to the west.





*Public rights of way in relation to the site*

### **9.5 Residential Amenity Impacts**

The proposed building would share a common boundary with any neighbouring residential property. Given the separation distances (over 130m distant) the proposal would have no detrimental impact on residential amenity, and as such, the application complies with the aforesaid local plan policies.

The agricultural nature of the building, which is not designed for accommodating livestock, would not give rise to concerns of noise and/or odour.

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

Following officer discussions and negotiations during the application and in response to local objections, the applicant revised this application for agricultural storage purposes only. The character and use of the land is agricultural, and officers are satisfied there is a need for a storage building. Having regard to the siting, size, use of materials, and having due regard to the well-established landscape backdrop, officers are moreover satisfied the proposal would not lead be harmful in terms of landscape impacts. The closest heritage asset and third-party properties would be sufficiently distant to ensure this proposal would not result in causing harm. There is no definitive right of way across the land where the building would be constructed and, officers are satisfied that the proposal would not affect the use of the unclassified highway to the immediate west.

In view of the above, it has been concluded that the planning balance falls in favour of the proposed development and the application is supported by officers subject to planning conditions.

### **Recommendation**

**To grant planning permission subject to the following planning conditions -**

Planning Conditions:

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

the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved plans and documents:

Location Plan dated 17 November 2023

Site/Block Plan dated 17 November 2023

Floor Plan and Site Elevation/Section dated 17 November 2023

Elevations dated 17 November 2023

Revised Landscape Plan V5 dated 4 December 2023

REASON: For the avoidance of doubt and in the interests of proper planning.

3. The building hereby approved shall be used for the purposes of storage of agricultural machinery and associated materials and for no other purpose (including any purpose in Class B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provisions equivalent to that class in any statutory instrument revoking or re-enacting that Order with or without modification).

REASON: The proposed use is acceptable having regard to the needs of the agricultural holding.

4. No external lighting shall be installed on-site other than in accordance with the appropriate Environmental Zone standards set out by the Institute of Lighting Professionals in their publication GN01:2021, 'Guidance for the Reduction of Obtrusive Light' (ILP, 2021), and Guidance note 08/18 "Bats and artificial lighting in the UK", issued by the Bat Conservation Trust and Institution of Lighting Professionals to demonstrate that bat habitat (trees, scrub and hedgerows) on the perimeter of the site will remain below 1 lux.

REASON: In the interests of the amenities of the area and to minimize impacts on biodiversity caused by light spillage to areas above and outside the development site.

5. All planting and soft landscaping comprised in the approved details of landscaping (Revised Landscape Plan V5 dated 4/12/23) shall be carried out in the first planting and seeding season following the first use of the building or the completion of the development whichever is the sooner; All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the use/occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.

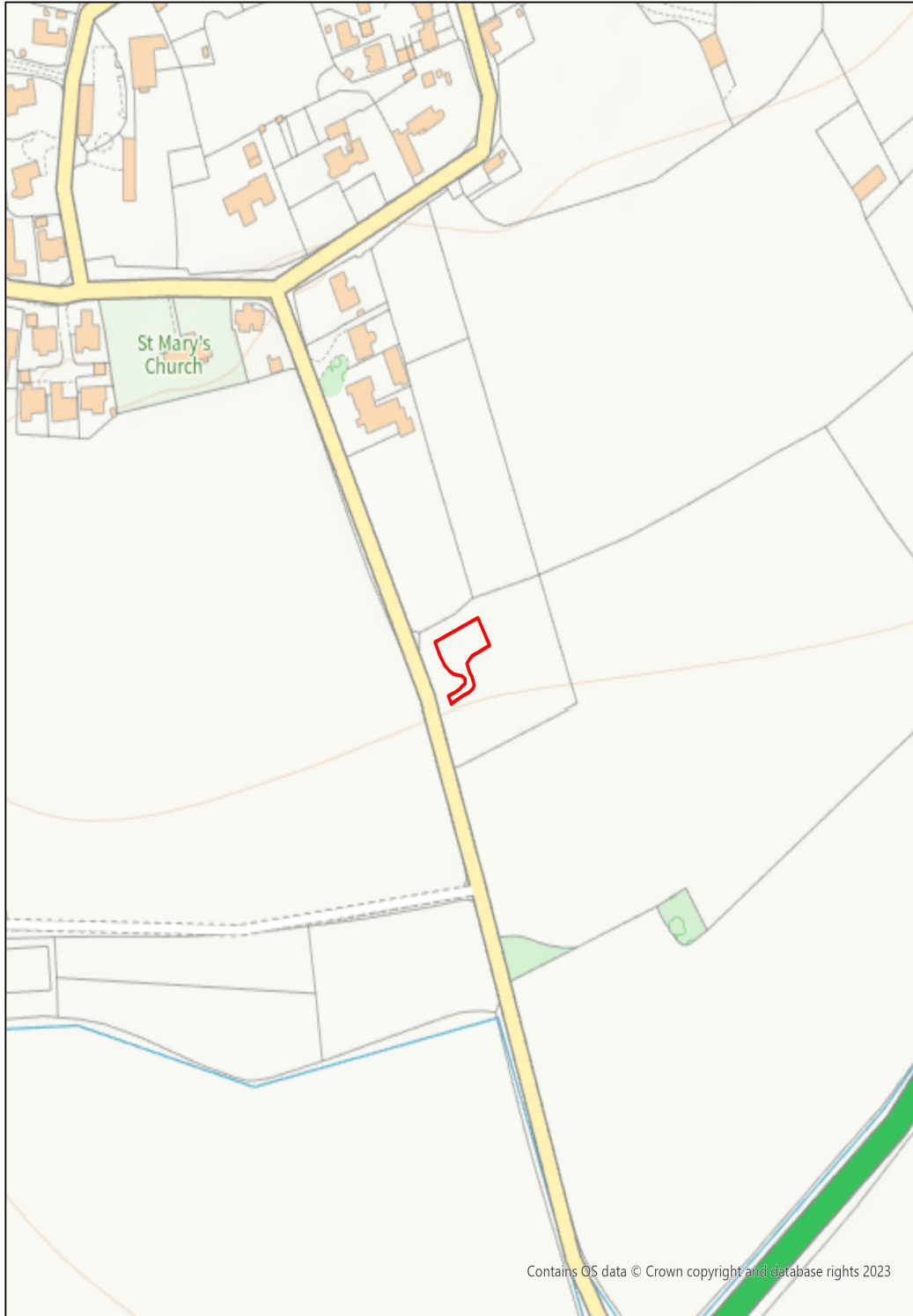
REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

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**Wiltshire Council**

PL/2023/05634

Land to the south of The Old Rectory,  
Warminster Lane North, Upton  
Scudamore



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1:2,500



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