

AGENDA SUPPLEMENT (1)

Meeting: Northern Area Planning Committee
Place: Council Chamber - Council Offices, Monkton Park, Chippenham
Date: Wednesday 18 February 2015
Time: 3.00 pm

The Agenda for the above meeting was published on 6 February 2015. Additional documents are now available and are attached to this Agenda Supplement.

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6 **Planning Applications** (*Pages 3 - 30*)

DATE OF PUBLICATION: 18 February 2015

NORTHERN AREA PLANNING COMMITTEE ADDITIONAL INFORMATION

18 February 2015

This is information that has been received since the committee report was written. This could include additional comments or representation, new information relating to the site, changes to plans etc.

Item 6a – 14/11864/VAR- Westinghouse Recreation Ground, Park Avenue, Chippenham, Wiltshire, SN15 0HB

An email was received on 16 February 2014 requesting the withdrawal of the planning application. The planning application has been withdrawn and no decision can be made.

Item 6b– 14/08305/REM - Marden Farm, Calne, Wiltshire, SN11 0LJ

Late Representations

Neighbour Representations

Due to submission of additional details and to avert the risk of not having a Traffic Order under S38 of the Highways Act in place at first occupation, and for consistency with the Inspector's original decision, it is recommended that Condition 12 is amended as follows:

“12 No more than 94 dwellings shall be occupied until the controlled access link on The Rise has been completed in accordance with drawing ref 394-P-05 rev A (‘Restricted Access – Planning, received 22 January 2015). Prior to the opening of the controlled access link onto The Rise a full package of construction details shall be submitted and approved in writing by the Local Planning Authority. The removable bollard shall be secured in situ and only removed only to allow access by vehicles as authorised under a Prohibition of Driving Traffic Order under the Highways Act, after which time it shall be immediately replaced in situ. This arrangement shall be maintained as such thereafter in perpetuity, unless otherwise warranted by the extension of bus routes through the site and agreed in writing by the Local Planning Authority.

REASON: To ensure the access between the site and The Rise is not used by vehicles to the detriment of residential amenity.”

And that the following informative is added:

“INFORMATIVE: As part of the Section 38 Agreement under terms of the Highways Act, the council will require a Prohibition of Driving Traffic Order at the controlled access onto the Rise.”

To ensure adequate protection of retained trees on site, it is also recommended that the following condition is added:

“15 No development shall commence on site until an Arboricultural Method Statement (AMS) prepared by an arboricultural consultant providing comprehensive details of construction works in relation to trees has been submitted to, and approved in writing

by, the Local Planning Authority. In particular, the method statement must provide the following:

- a) A specification for protective fencing to trees during both demolition and construction phases which complies with BS5837:2013 and a plan indicating the alignment of the protective fencing;

- b) A specification for scaffolding and ground protection within tree protection zones in accordance with British Standard 5837: 2013;

- c) A schedule of tree works conforming to British Standard 3998: 2010;

- d) Details of general arboricultural matters such as the area for storage of materials, concrete mixing and use of fires;

- e) Plans and particulars showing the siting of the service and piping infrastructure;

- f) A full specification for the construction of any arboriculturally sensitive structures and sections through them, including the installation of boundary treatment works and the method of construction of access including details of any no-dig specification;

- g) Details of the works requiring arboricultural supervision to be carried out by the developer's arboricultural consultant, including details of the frequency of supervisory visits and procedure for notifying the Local Planning Authority of the findings of the supervisory visits; and

- h) Details of all other activities, which have implications for trees on or adjacent to the site.

All works shall subsequently be carried out in strict accordance with the approved details.

REASON: In the interests of protecting important trees on site."

Neighbour Representations- 2 additional neighbour representation letters have been received. A summary of additional concerns is set out below:

- The additional information seeks a variation to the North East corner of the development to retain a tree in G8, this tree was cut down before Christmas
- Layout plan revision M includes the land and ditch to the rear of Fairway. This land is in fact owned by the properties in Fairway. The land owners should have been served notice when the applicant applied for permission. Given that the ditch forms part of the drainage strategy that seems a very large oversight.
- Details of the additional planting to the rear of existing properties has still not been provide despite a full schedule of planting being provided for the rest of the development.

Redrow Homes- Redrow have looked into the concerns over a suggested boundary discrepancy with the rear of the properties on the Fairway. A number of exercises have been carried out in order to determine whether there is a discrepancy that needs resolving. Subsequently, we can confirm that in legal terms the blue Redrow ownership boundary appears accurately placed on the Site Layout and reads in accordance with Redrow's Title Plan. We have also carried out a similar exercise with the Title Plan for 41 Fairway where the attached drawing illustrates no form of encroachment into the ownership boundary of the neighbouring residents.

After receiving an email from the neighbouring residents, Redrow have been in contact with the owners of 41 Fairway to discuss the legal boundary and we hope to meet with the residents on-site later this week to clarify the situation.

It has only just come to my attention that during clearance of the site prior to the Christmas holidays, the tree 'G8' labelled 'to be retained', was in fact, removed in error. Redrow recognise this as a genuine mistake and will replace with a like-for-like specimen at the earliest opportunity, if planning permission is granted.

The planting proposed to the rear of existing properties has been detailed in the Landscaping drawings submitted as part of the REM planning application; in particular drawings 'RED19412-13F-Sheet2, RED19412-15F-Sheet3' and 'RED19412-15F-Sheet4' where the nature of the planting and species are listed.

Officer Comment: The application site currently under consideration is the same as that considered by the Council and Planning Inspector when permission was granted for the Outline planning permission. The late observations raised by local residents do not alter the officer recommendation.

Ecology- Thank you for consulting me on the above application. Having reviewed the revised plan, I'm satisfied that the revisions address all of the concerns originally raised, and that the plans are in line with the ecological commitments made in the FUL hybrid application (12/04038/FUL). As such I have no objection to the application and am satisfied that condition 21 adequately addresses any ecological issues.

Item 6c– 14/08888/OUT - Land at Arms Farm, High Street, Sutton Benger, SN15 4RE

Late Representations

Housing- Following our consultation response dated 16.10.14, we note that revised plans/details have been received and the proposal is now to reduce from 60 to 28 dwellings on a site area of 1.38 ha. Under the now adopted Wiltshire Core Strategy we note that Sutton Benger is categorised as a large village with a settlement boundary and that this site appears to fall outside of this settlement boundary and is not being proposed as an exception site, under CP44, for affordable housing.

The Wiltshire Core Strategy states that development outside of settlement boundaries would not normally be permitted unless brought forward through a Site Development Plan or

Neighbourhood Plan process - we are not aware that this has been undertaken here. However, should this site be considered suitable for residential development and brought forward under planning processes, and not as an exception site for affordable housing only, Core Policy 43 would then apply. Core Policy 43 sets out when affordable housing will be required and indicates the proportion which will be sought from open market housing development ie: an affordable housing provision of 40% (net) will be provided on sites of 5 or more dwellings where there is demonstrable need in the Chippenham Community Area. Core Policy 45 requires affordable housing to be well designed, ensuring a range of types, tenures and sizes of homes to meet identified affordable housing need to create mixed and balanced communities.

We can advise that, currently, the total number of households on Wiltshire's Housing Register:

11,270 in priority housing need

Chippenham Community Area:

1168 in priority housing need

Sutton Benger and surrounding Parishes:

17 households on the Housing Register

We can also advised that a Rural Housing Needs Survey is being conducted in the Parish at the current time.

Under the Wiltshire Core Strategy policy CP43, an affordable housing provision of 40% (net) would, therefore, be sought based on current demonstrable need. From the scheme proposed this would mean that 11 affordable homes should be provided on site (tenure split to be confirmed). The affordable housing would need to be provided at nil subsidy, built to at least the minimum sizes and design quality standards of the Homes & Community Agency to meet Housing Quality Indicators and Sustainable Code Level 4. The completed units would be transferred to a Registered Provider, approved by the Council, at nil subsidy and secured via a SI06 Agreement.

Officer comment: The representation is noted but does not alter the officer recommendation.

Highways- With reference to my highway guidance dated 13 November 2014, I can confirm that I adhere to highway objection on the grounds of sustainable transport.

Officer comment- The comments made in relation to sustainability of the proposed development are noted. However, Core Policy 1 sets out the Settlement Strategy for Wiltshire and this identifies the settlements where sustainable development will take place to improve the lives of all those who live and work in Wiltshire. Sutton Benger is identified as a Large Village, these are defined as settlements with a limited range of employment, services and facilities. Just because a site falls beyond the settlement framework boundary of the village does not necessarily mean it is an unsustainable in Highway & transport terms. The site is immediately adjacent to existing residential development and in close proximity to

local services and bus routes. It is considered that that a reason for refusal based on the sustainability of the site could be difficult to justify at appeal.

Firstly, I would like to make the following comments with regard to the amended details received from Carl Tonks dated 8 December 2014. With regard to the speed measurements these are taken a considerable distance from the site and not in the most densely developed part of the village. I therefore consider it reasonable to assume that vehicle speeds are likely to be less than detailed. With regard to the visibility splays detailed on the drawing provided, there is sufficient visibility splays subject to the re-siting of the two telecom /electricity poles. With regard to the traffic calming measures proposed, I therefore do not consider it reasonable or an essential requirement of the proposal. Consideration is also made of the fact the proposal has reduced from 60 units to 28 Units.

Should the objection raised on grounds of sustainable transport not be supported as a reason for refusal I recommend that no highway objection be raised subject to the following conditions:

No development shall commence on site until visibility splays have been provided between the edge of the carriageway and a line extending from a point 2.4m metres back from the edge of the carriageway, measured along the centre line of the access, to the points on the edge of the carriageway 131 metres to the south-west direction and 138 metres to the north-east direction from the centre of the access in accordance with the approved plan 'Proposed Site Access Junction' Fig 4.1 2014-F-013 A. Such splays shall thereafter be permanently maintained free from obstruction to vision above a height of 0.6m above the level of the adjacent carriageway.

REASON: In the interests of highway safety.

No part of the development hereby permitted shall be first brought into use until the access has been completed in accordance with the details shown on the approved plans 'Proposed Site Access Junction' Fig 4.1 2014-F-013 A.

REASON: In the interests of highway safety.

No development shall commence on site until construction details of proposed footway extension in accordance with drawing 'Proposed Improvements to High Street' Fig 4.2 2014-F-013 from the site to the access of 11b High Street have been submitted to, and approved in writing by, the Local Planning Authority. No part of the development shall be occupied until the footway provision has been provided in accordance with the approved details.

REASON: In the interests of highway safety.

No development shall commence on site until full details of the re-siting of the two telecom/ electricity poles adjacent to the site access has been submitted and approved. Prior to development commencing the telecom/ electricity poles shall be re-sited in accordance with the approved details.

REASON: In the interests of highway safety.

Officer comment- Should the application be granted permission the suggested comments meet the six test set out in the online PPG. The conditions could therefore be added to any permission.

Conservation- Arms Farm is an C18 complex of buildings located on the High Street in Sutton Benger village almost directly opposite the Wellesley Arms pub (grade II listed) and within the conservation area. The farmhouse is grade II listed and the barns are also grade II listed in their own right. The farmhouse sits with its gable end against the High Street and the front elevation facing perpendicular to the road, into the farm yard. The main threshing barn sits at the back of the yard, facing into the yard, with the byre and stable range to the east running down the side of the farmyard between the farmhouse and large barn, forming a roughly 'C' shaped farm complex. There is a gateway immediately to the right hand (west) side of the large barn giving access to pasture land behind the farm.

In 2012 consent was granted for the conversion of the listed barns to create three residential units, two in the byres and one in the large barn. Whilst negotiating the details of this scheme great care was taken to ensure that the farmyard remained physically open and without physical subdivision. The surface treatment of the yard area was detailed to give a rolled gravel finish surrounded by grass and with stone paving slabs for the footpaths. Parking spaces were to be subtly marked within the gravel surface and a garage serving the large barn was to be erected on the west side of the site to replace an existing ramshackled outbuilding.

The outline proposals in this application are for the erection of 28 new dwellings each with detached garages, on the pasture land behind the farm complex. The red line shown in this application separates the ownership of the listed farm complex from the agricultural land immediately behind the farm and also separates ownership from the main vehicular route into and through the site, as well as the area of land on the west side of the farmyard where the garage for the large barn was permitted.

The site where the new development is proposed has never been developed and is outside the historic building line for the village. Although the number of proposed units has been reduced from 60 when the application was originally submitted to 28 currently, and there is an area of land behind the barn marked as a Central Green, it is considered that the proposed development will harm the setting of the of the heritage assets. By splitting the farmyard in two and taking away ownership of the main vehicle access, the setting of the farmhouse and barns will be greatly harmed and the sense of space reduced. The yard will become a road and the surface material will need to be altered so that the area no longer retains the rural soft landscaping. The open land behind the barn has houses creeping up the side of the Central Green, encroaching on the listed barn so that views to and from this grade II listed building are reduced.

Whilst it is acknowledged that some new housing needs to be built in Wiltshire, the location, quantity of new structures and means of access are considered harmful to the setting and integrity of the heritage assets. The proposals will be contrary to the NPPF para 17 (10) as

they would not conserve the heritage assets in a manner appropriate to their significance, paragraph 131 as they would not sustain or enhance the significance of the heritage assets or put them to a viable uses consistent with their conservation, would not make a positive contribution to local character and distinctiveness, para 134 as the development would lead to less than substantial harm to the significance of the designated heritage assets and although there is some public benefit by building new housing, this does not outweigh the harm caused to the heritage assets and will not secure their optimum viable use. I therefore recommend refusal.

I suggest that the following amendments be made to this application in order to reduce the degree of harm that this development would cause:

1. Remove the houses alongside the Central Green in order to keep views to the large barn open;
2. Remove all garage structures so that the houses have open parking spaces;
3. Change the access to the development site so that it does not cross through the Arms Farm complex but approaches from the opposite end of the site;
4. Ensure that any road and path surfacing are in natural, porous materials in order to minimise the impact of the alterations to what is currently grassed pastureland;
5. restrict physical boundary treatment to post and wire fences, as per the consent granted for Arms Farm.

Should the application be refused the following reason for refusal has been suggested by the conservation officer:

Whilst it is acknowledged that some new housing needs to be built in Wiltshire, the location, quantity of new structures and means of access would be harmful to the setting and integrity of the heritage assets. The proposals are thereby contrary to the NPPF para 17 (10) as they would not conserve the heritage assets in a manner appropriate to their significance, paragraph 131 as they would not sustain or enhance the significance of the heritage assets or put them to a viable uses consistent with their conservation, would not make a positive contribution to local character and distinctiveness, para 132 as the proposed development would not conserve the heritage assets due to the harm caused within their setting, and para 134 as the development would lead to less than substantial harm to the significance of the designated heritage assets and although there is some public benefit by building new housing, this does not outweigh the harm caused to the heritage assets and will not secure their optimum viable use, the proposal would therefore be contrary to Core Policy 58 in the Wiltshire Core Strategy Adopted 2015.

Officer Comment: *The conclusion and recommendation made in the committee report was written prior to the formal comments of the Conservation officer.*

It is implicit in the wording of sec.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 that there is a statutory duty "to have regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest that it possesses."

The NPPF stresses that when considering the impact of a proposed development on the significance of a designated heritage asset such as a listed building “great weight” should be given to the asset’s conservation. It states that the more important the asset, the greater the weight should be. As heritage assets are irreplaceable, any harm or loss requires “clear and convincing justification”.

Where a development would result in less than substantial harm to the significance of an asset, this harm should be weighed against the public benefits of the proposal. The conservation officer has acknowledged that the proposal would have less than substantial harm to the significance of the asset and though some changes could be made to the layout there are objections in principle to the access and the harm this would cause to the assets setting. For the reasons set out above the conservation officer has requested the additional reason for refusal is added to any decision.

Drainage- The amended plans do not change our original response

Ecology- Thanks you for consulting me on the above application. Having reviewed the revised illustrative masterplan and the position note from EDP (ecological consultants for the developer) I note that the amended scheme will involve a smaller built area and will entirely omit the area of informal open space. The smaller area of development will result in significant lower impacts on hedgerows and associated fauna such as breeding birds and reptiles. Potential impacts upon great crested newt and bats are more closely associated with development of the northern half of the site and will remain similar. Loss of the area of informal space and associated landscaping, wildflower grassland, hibernacula, long-term management etc to be provided is a significant loss from the scheme in ecological terms.

On balance, the scheme is probably worse overall for biodiversity as a result of the amendments, but not to the extent where it would offend any national protection species legislation / policy, or CP50 of the Wiltshire Core Strategy. I therefore do not wish to raise an objection to the application, but still recommend conditions to address the issues set out in my original response.

Neighbour Representations- 34 additional neighbour representation letters have been received. All letters were against the development. Many of the comments reiterated previous objections listed in the committee report. A summary of additional concerns is set out below:

- The amendments to this application (reduction in numbers from 60 to 28) do not overcome the previous objections and concerns
- Outside the planning boundary and is green belt that should be used for proper agricultural use
- The listed buildings are being ignored as part of this proposal, there should be an enforcement order applied to them to preserve their setting and character

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- If granted permission phase II would follow shortly after.
 - Wiltshire Core Strategy, approved in January 2015, confirms that the boundaries remain unchanged
 - Submitted plans are inaccurate and misleading
 - Arms Farm listed buildings complex expired in January 2015
 - The proposed s106 contributions will not benefit the community

Parish Council: Object

Item 6d– 14/10601/FUL- Chelworth Lodge, Cricklade, Swindon, Wiltshire, SN6 6HP

Late Representations

Leigh Parish Council- This application is under Cricklade Parish but it is on our border and we feel this would impact on Leigh. Our concerns are set out below:

1. Surface Water- In the introductory letter it states that the site is in Flood Zone 1, and mentions a stream to the south of the site. Yet on the application form it ticks the 'NO' flood risk box because the proximity of the stream is more than 20metres from the site. I suspect that they have set the southern end of the boundary to be at this distance so that they can claim the stream is not relevant to the development! The small stream that runs diagonally across the site is the Parish boundary between Leigh and Cricklade at some point along its route. It crosses the B4040 outside Vanessa Collin's Farm entrance and then crosses the Ashton Road to the west of the proposed site.

In the letter it also states that the flooding is due to the inadequacy of a culvert that is under council control. I'm not sure what they mean by this or where it is. But the area where the stream crosses the B4040 does flood and in Dec2013 the road had standing water on it. This bit of the stream is in the Cricklade Parish, not the Leigh though.

So in my view the development needs to address any increase in water going into this stream. This is also a recommendation in the Landscape Consultation report which suggests that some form of SUDS (Sustainable Urban Drainage Scheme) be included in the development.

2. Foul Water- Not sure if this includes Foul drainage as I would hope that the 'Septic Tank' specified on the application form would be questioned as unsuitable for a development that has 7 units or at least providing insufficient detail on the solution. 7 units with 35 car parking spaces, will clearly generate some volume of foul drainage volume.

3. Traffic- Clearly this will be impacted, but as it is small units then probably mostly van sized movements, so not as bad as heavy artics, but still an increase through Leigh and Cricklade.

4. Location of site- I would prefer the buildings to be further back from the road, thus providing better screening and also potential wildlife ribbon potential.

Items 6 (e) & 6 (f) Home Farm Business Centre, Minety

A Summary of objector representations has been provided and circulated to some members. This is reproduced in full hard copy attached.

Two letters have been submitted by Thrings Solicitors on behalf of a neighbour objector to the applications in respect of the content of the reports. The letters have been circulated to some members and are reproduced in full hard copy attached. Officers respond to the points raised therein as follows:-

1. Comment in relation to section 10 of the report

"The Council has no confirmed statement from the relevant landowners or their representatives at this point in time as to whether or not provision of the land by agreement would be acceptable".

We confirm that Mr Hancock (for whom our client has a Power of Attorney in relation to the trespass proceedings) has absolutely no intention of entering into an agreement with the applicant to enable him (and/ or his successors in title/licensees) to have use of his land (that is the subject of the disputed ownership) for the provision of the passing bays. This has been clearly illustrated by the service of the pre-action protocol letter for trespass which is, as you are aware, the precursor to the commencement of legal proceedings which our client intends to issue shortly.

At present, your Report is, in this respect, grossly misleading.

Officer Comment:

Committee members are requested to note the clarification provided that one of the interested landowners would not make land available to the applicant to provide the passing bays as constructed or otherwise should a court find that the disputed land is within this individual's ownership and not the applicant. Committee Members are also asked to note that further submissions have been made stating that a civil claim for trespass against the applicant has been prepared and will be lodged with Swindon County Court today. The applicant's solicitor confirms that they have responded to the pre-application protocol letter and did so during 2014. This response seeks provision of factual information and formally disputes the claim of trespass as false. It further identifies that the claim of trespass is based on an interpretation of vague and inaccurate information and they present evidence of their own to support their assertion that the applicant owns the land in question. The decision not to make the land available is not necessarily fatal to the provision of passing bays as the applicant would need to investigate the scope for provision of adequate passing bays within land within his ownership or to negotiate including adjoining land within the ownership of the other neighbouring landowner – Trustees of Minety Parish Council.

2. Comment in relation to section 10 of the report

"Should a court later determine that some of the as built right of way is trespassing and the relevant landowner refuses to make the land available for

provision of the passing bays and asserts their right of possession then the applicant would be in breach of condition and that would become a matter for enforcement".

The above is, with respect, misleading. If the Court, in trespass proceedings, were to determine that the applicant has trespassed on land outside of his ownership affecting the access to the Application Site and the landowner were to assert their right of possession (which would inevitably be the case otherwise the point of pursuing a claim in trespass would be pointless) then the premise on which the grant of any permission has taken place falls away since the Applicant would not be able to provide the passing bays required under the proposed condition 11 and which he is already obliged to do by virtue of the extant section 106 Agreement dated 5 September 2002 between Wiltshire County Council and the applicant (the "2002 Agreement") relating to works to bridleway no 21 Minety. Moreover, it will be too late for the Committee to do anything about it.

Officer Comment:

A condition requiring provision and retention in perpetuity of the passing bays is proposed in the report. Should the above position come to pass and the applicant cannot deliver the right of way from either land in his ownership or with the agreement of adjoining owners then he would be in breach of condition which would then become a matter for enforcement. In effect the Committee are invited to determine the applications on the premise that the passing bays as constructed are adequate and conditions are proposed requiring their retention. The uses to be permitted would be conditional on these passing bays being retained. Should that prove not to be the case the uses would be required to cease at the site should an alternative solution not be achievable.

3. Comment in relation to section 10 of the report

We also submit that many of the developer covenants contained within the 2002 Agreement have not been complied with (our previous correspondence refers) and this is a material consideration as it goes to the heart of the track record of the applicant which is, as you will be aware, always a material consideration when determining an application.

In any event, the absence of any specific reference to the 2002 Agreement (and the obligations contained therein) in your Report will mean, we submit, that the Committee will not have before them all the highly relevant material they are required to have regard to in order to make a lawful decision.

Officer Comment:

Committee members are requested to note that the passing bays as constructed are not fully in accord with the details approved under application reference N/02/00499/COU as is referenced and set out in the report on page 86 in the summary of objections and page 91 Highways Section. The Highways Officers' assessment of the proposals in the context of the passing bays as constructed is set out on Page 92 of the report.

In addition members are requested to note that there is insufficient information within the Council's records (historic records received from the then Highway Authority – Wiltshire County Council) to definitively confirm that all the requirements specified in the S106 agreement attached to the N/02/00499/COU permission relating to the construction and provision of the passing bays were met in full. It should be noted that the Local Planning Authority at that time – North Wiltshire District Council was not a signatory to the S106 agreement and so would not have full records of the matter. The Council's Legal Department and Enforcement Department have reviewed the matter in full and provided detailed advice to the objectors and their representatives. In summary

Officers do not consider that the N/02/00499/COU permission as implemented is invalid or that it would be expedient to pursue enforcement action in respect of the actions required in the S106 agreement which may or may not have been complied with in full. The submission refers to the past behaviour of an applicant being a material consideration in the determination of applications including use of conditions. The objection does not cite the legal basis for this assertion and officers are unaware of the case law that supports such an approach. However, it is not considered that the past behaviour of an applicant in and of itself provides a sound basis for the refusal of planning permission.

4. Fallback Position

At page 92 of the Report you state:

"Officers also note the fallback position of agricultural and equestrian uses of buildings A and B and consider that the additional volume of traffic movements generated by the proposed uses would not be significantly greater than that generated by the fall-back position".

As you will be aware, by virtue of s55(2)(e) of the Town and Country Planning Act 1990 agricultural use does not require express planning permission. However, it is submitted that a mixed use of agricultural and equestrian use or an equestrian use would require express planning permission. In any event, there is no evidence of the Applicant seeking to implement any fallback position and therefore any reference to the same is plainly misleading.

Officer Comment:

Committee Members are requested to note that additional equestrian activity and use of land at the site would require permission. The reference in the report is to the use of the Stables and agricultural building and the potential traffic arising from that usage. The Council's records and mapping for the locality are not complete for the period prior to 1947. The first record the Council has of the stables structures being in place is mapping from 1972. There is no record of an application for the stables in the period 1947 – 1972. For the sake of minimising any misunderstanding or lack of clarity officers consider that the traffic generated by the proposed development would not be significantly in excess of that generated by the agricultural use of Home Farm as an agricultural unit and would not result in significant harm to residential amenities, use of the right of way by any rights of way user or use of the site access by any party such that permission ought to be refused on this basis.

5 At page 94 of the Report you state:

"It is not possible to impose Grampian conditions requiring the provision of the passing bays prior to the commencement of development as the applications are retrospective with the development having already taken place".

You will be aware that the PINS website states:

"At a meeting between the Planning Inspectorate and the Planning Officers Society in 2010 it was agreed that it would be helpful for Local Planning Authorities and Inspectors if the Planning Inspectorate published a list of model conditions to supplement those in Circular 11/95 (Welsh Government circular 016/2014). Although publication of DCLG's new Planning Practice Guidance on 6 March 2014 cancelled Circular 11/95, Appendix A on model conditions has been retained. These conditions are not exhaustive and do not cover every situation where a condition may be imposed. Their applicability will need to be considered in each case against the tests in paragraph 206 of the National Policy Framework (Welsh Government circular 016/2014) and the guidance on the use of planning conditions in the Planning Practice Guidance. The wording may need to be amended to address the individual circumstances of the case. Where more than one condition is listed under a heading these are intended to be alternatives."

To this end, we submit that your statement at page 94 is misleading. This is because it is still possible for a condition to be imposed along the lines of the model conditions aforementioned that would require a scheme for (whatever works are required) to be submitted to the LPA in writing for approval (within a fixed period of time from the date of the decision) and that unless that approved scheme was implemented (within a further fixed period of time) following the local planning authority's approval the use of the site shall cease.

However, if you take the view that the model conditions on the PINS website are appropriate then it follows that the Applications ought to be refused since the conditions are fundamental to making the proposed development acceptable in planning terms.

Officer Comment:

Committee Members are requested to note that the statement referring to "Grampian Conditions" is a reference to conditions that are typically phrased as "Prior to the commencement of development....." and then requiring some action to take place. Clearly if development has taken place as is the case with this application then such wording of conditions would not be appropriate as it would not meet the test set out in Planning Practice Guidance in respect of the use of conditions.

6. Conditions

At pages 95 to 97 of the Report you set out various proposed conditions. We submit that condition 10 fails the policy test set out at paragraph 206 of the National Planning Policy Framework ("NPPF") in that a condition requiring submission of a travel plan to include proposals for managing deliveries to the site both in terms of the type of vehicles to be used (which will not exceed 18 tonnes/2 axels) and hours and days of deliveries in accord with condition number 8 fails the enforceability test.

Officer Comment:

Committee Members are requested to note that the representation does not specify why and in what respect the condition would be unenforceable. The purpose of this condition as is set out in it's wording is to require the submission and agreement of a travel plan to include proposals to manage deliveries to the site including in terms of the type of vehicles used. To clarify it is not intended to imply that this condition will in and of itself ensure that the development proposed will never result in vehicular movements to and from the site by vehicles in excess of 18.5 tonnes or 2 axles. The intention of the condition is to agree measures to reduce and minimise such occurrences and thereby mitigate harm to residential amenities or conflicts with rights of way users through disruption and inconvenience. It should be noted that travel plans typically include provisions for monitoring of the plan and reporting to the Local Planning Authority and subsequent review and updating of the plan. It is considered that this offers adequate and appropriate scope for enforcing the implementation of the travel plan. It is also noteworthy that travel plans including measures for controlling the type of vehicles servicing retail stores with deliveries within existing urban areas are often used and found to meet the tests of the planning practice guidance including in terms of enforceability. Members are also requested to note that Highways Officers, Enforcement Officers and Solicitors reviewed the reports including the suggested conditions. No objections were raised as to enforceability in respect of this condition.

7 Moreover, condition 11 provides that the passing bays shall be retained in perpetuity. However, you have already identified in your report at page 94 that *"It is therefore necessary to apply conditions that require the retention in perpetuity of the passing bays to support the development proposed if it is to be approved. Should a Court later determine that some of the as built right of way is trespassing and the relevant landowner refuses to make the land available for provision of the passing bays and asserts their right of possession then the applicant would be in breach of condition and that would become a matter for enforcement"*.

You therefore envisage a situation (that has a very realistic prospect of being borne out) that the applicant will not be able to provide the passing bays which are necessary in order for the permission to be granted. It follows that if the passing bays cannot be lawfully provided then the conditions enabling the grant of planning permission cannot be satisfied and the LPA cannot rationally grant a planning permission. A decision predicated on this premise would be *Wednesbury* unreasonable on any view.

Officer Comment:

Addressed at point 5 above.

- 8 We also submit that conditions 1,2 and 3 are badly drafted in that they envisage the submission of a detailed scheme to be approved by the LPA but make no provision for their subsequent maintenance.**

Officer Comment:

Condition 1 relates to the erection of a sign and it is not considered that this requires maintenance provisions. However retention in perpetuity would be appropriate as such condition 1 is proposed to be amended as follows:-

Within two months of the date of the decision notice a full and detailed scheme of signage along the private road requesting motorists to give way to bridleway users shall be submitted and approved in writing by the Local Planning Authority. The approved scheme shall be constructed in accordance with the approved details, within two months of the date of approval in writing by the Local Planning Authority and retained in perpetuity thereafter.

Condition 2 relates to the widening of the existing shared access to the site. To require the applicant to provide for the maintenance of the widened access alone sole as a consequence of the development proposed is considered disproportionate and unreasonable. The maintenance of the access is a shared responsibility between the landowners present at the site. It is not considered that a requirement on the applicant to provide for maintenance would not meet the tests on the use of conditions set out in the Planning Practice Guidance being unreasonable.

Condition 3 relates to submission of a scheme for upgrading the wearing course of the access. This is considered proportionate to the impact of development proposed. The access is a shared access with shared responsibilities and as such it is considered disproportionate and unreasonable to require the applicant to provide for the long term maintenance of the access road

solely as a consequence of the development proposed. It is not considered that a requirement on the applicant to provide for maintenance would meet the tests on the use of conditions set out in the Planning Practice Guidance being unreasonable and not directly necessary as a consequence of the development permitted.

9 Highways

At page 92 of the Report you state that "Highways officers have reviewed and assessed all of the submissions made in respect of highways matters... Officers have reviewed and re assessed their comments submitted on the applications in the context of further submission by the applicant and objector teams and that ... in short highways officers raise no objection to the scheme proposals".

However, it is unclear whether the highways officers have dealt with our client's concerns set out by Mr Phil Tilly of TPA under cover of Geraint Jones' email of 21 October 2014. Given that the highways officer's comments posted on line are dated August and September 2014. In any event, it is unclear from the Report, why they do not have any concerns given the history of the Application Site and their previous concerns in relation to access in respect of Application reference N/01 /02828/COU when B8 Use was last applied for by the Applicant and refused (our emphasis).

Officer Comment:

As is set out in the report on pages 83 and 91 Highways officers have reviewed all of the submissions made and have reviewed their consultation response in the light of the submissions made. For absolute clarity this includes the submissions of Mr Phil Tilley via Geraint Jones email date 21/10/2014. Members are requested to note that the objector and his representatives were advised of this position prior to the submission of their letter.

10 Planning Policy

You also, erroneous in our view, make specific reference at page 88 and 95 of the Report to the fact that;

"The Application Site is not so isolated from existing settlements and developments as to be wholly inappropriate in principle for further employment related development of the scale proposed...". In this context highways officers have raised no objection on the grounds that the location is wholly unsustainable in transport terms..." (our emphasis). These references do not, as far as we are aware, appear to be part of any policy test. The Report is therefore misleading in this regard.

Officer Comment:

Members are requested to note that the report does not set out a national or local policy test with references such as "wholly inappropriate..." or "wholly unsustainable...". The assessment of whether or not a development can be considered sustainable is a balanced judgment weighing the impact of development in respect of social, environmental and economic considerations. The point that the Officer is attempting to make here is that the site is not so remote or isolated from existing development and settlements such that the proposals should be considered fundamentally unsustainable and refused as a matter of principle. As is set out in the report officers have given weight to various material considerations in coming to this assessment. For the sake of absolute clarity it is reiterated that the site is not located in or adjacent to a defined or established settlement and is not served by a range of modes of transport. Balanced against this are the economic benefits arising from the scheme proposals and an assessment of the social and other environmental impacts of the proposals alongside other material considerations such as the existing employment uses permitted at the site and the limited scale of development proposed. On balance it is considered that the development is sustainable under the terms of the guidance in the NPPF and Wiltshire Core Strategy.

11 Bridleway

You may be aware that we have previously raised with the LPA (our letter of 7 November 2014) our concerns about the lawfulness of the use of the bridleway by additional vehicles in connection with the B1 permission of 2002 and the present

Applications where vehicles in connection with a B8 use are contemplated (and are in fact already using the Bridleway as the Applications are retrospective.

We have received a reply from the LPA dated 5 February 2015 but regard the same as wholly unsatisfactory and you must understand that we challenge the lawfulness of the use of the Bridleway by vehicles in connection with a B8 use should permission be granted and this is a factor which your Committee ought to consider.

Officer Comment:

The reply was not from the LPA. It was from the Council in regards to a question raised in respect of the Council as Highway authority responsible for bridleways. In the Objector's solicitor's letter of 7 November 2014 they referred to s34 of the Road Traffic Act 1988. 34 (1) (b) of that Act provides:

Subject to the provisions of this section, if without lawful authority a person drives a mechanically propelled vehicle—

(a) ..., or

(b) on any road being a footpath, bridleway or restricted byway,

he is guilty of an offence.

The response that the objector received was; -

(the Council) "understands, and it has never been raised to the contrary, that both the residents and the owner of the underlying subsoil have rights of access for themselves and their invitees over the as built right of way which includes the bridleway. Therefore if this is the case then both the residents and the applicant and their invitees would have lawful authority in terms of s34 of the Road Traffic Act 1988."

The objector has not identified in what way they challenge the lawfulness of the use of the bridleway by vehicles in connection with a B8 use and therefore the rights of access enjoyed by

both the residents and the applicant would mean that neither are at risk of committing a criminal offence by use of a mechanically propelled vehicle on the bridleway.

However as there is likely to be a conflict between vehicular and pedestrian/equestrian traffic who are entitled to use the bridleway then this conflict is a material consideration and has been addressed in the report under the heading "Rights of Way".



Summary of objections made on behalf of Mr & Mrs Cyril Freedman to:

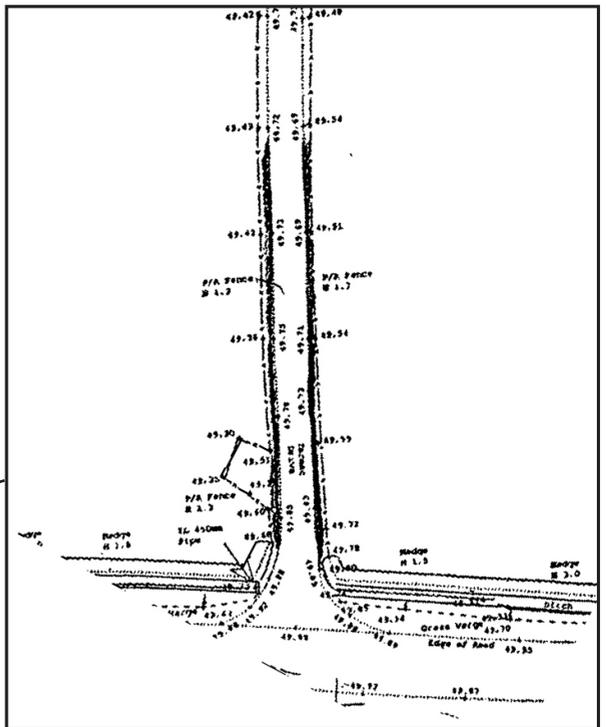
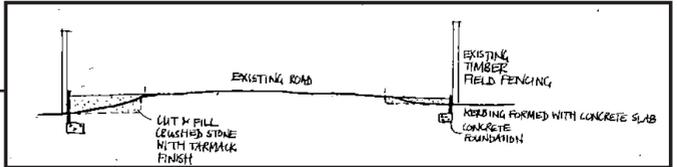
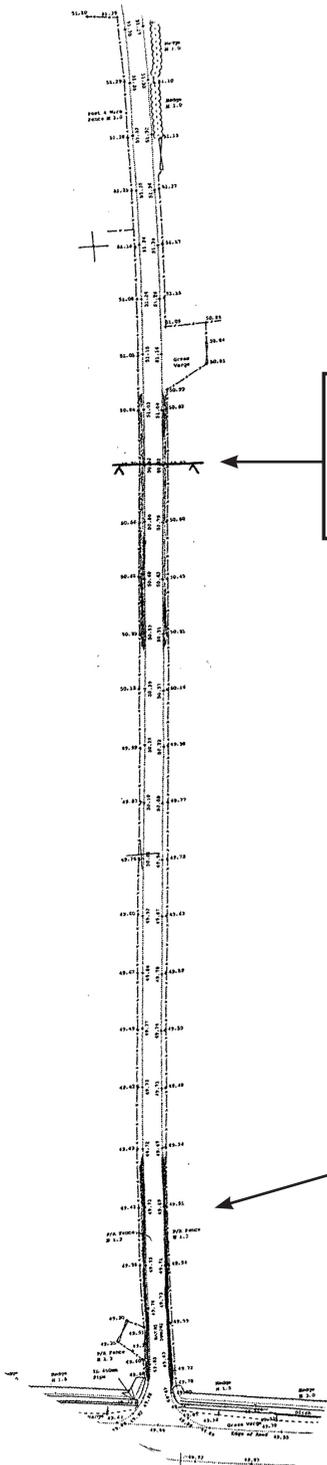
Retrospective change of use of building to Class B1 offices and stable building to
Class B8 (14/04529) &

Parking within 2 barns & adjacent to stable building (14/04555)

At Home Farm Business Centre, Minety, SN16 9PL

Extract from Westlea Surveys drawing 1125A/500/A

(note: shaded areas show where the road was to be widened to 4.8m)



KEY OBJECTIONS

While broadly speaking planning policies support economic growth in rural areas, this is set against the need to assess any harm caused by relevant material considerations. In this instance the key material harm is the impact of vehicle movements. The objections to the access arrangements, particularly focussed on the potential increase in large commercial vehicles using the site, are as follows:

- i) **The application proposes further B1 floorspace and the introduction of B8 use. The proposals do not seek a personal consent, and so there is no certainty regarding the maximum level of vehicle movements that may be generated.**
- ii) **the site access is too narrow to accommodate the traffic likely to be associated with the proposed development, and cannot be widened to an appropriate width;**
- iii) **local users of the bridleway, in particular the residents and visitors of the properties served, would be subject to inconvenience and unacceptable road safety risks: and**
- vi) **the bridleway does not allow the minimum of 3m width to pass a vehicle when alongside a field boundary (vertical boundary), required by Schedule 12 of the Highways Act 1980, as amended by the 1990 Rights of Way Act. The increase in HGV movements would make this situation worse.**



- v) **The application does not provide sufficient detail of the proposed parking areas to assess the layout of spaces and manoeuvring of vehicles. Concerns remain that delivery vehicles will continue to obstruct the access/Bridleway, including obstruction of emergency vehicles to the homes beyond.**

In light of the significant harm that would arise from additional traffic movements associated with intensification of B1 use and the introduction of B8 use at this site, we urge the Committee to refuse the applications.

PROPOSED CONDITIONS

Planning Conditions are required to be necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects.

Mr and Mrs Freedman lack confidence in the enforceability of the proposed conditions, particularly given the scale of the breaches of planning permission that have occurred at the site in the past; which were only identified as a result of work undertaken by concerned residents. Of particular concern is that several conditions require approval of further information, and Condition 10 seeks to limit the type of vehicles to be used to 18 tonne/2 axles but the policing of this would clearly be immensely difficult to enforce.

There is a history of unlawful development at the site, together with breach of conditions and failure to enforce by the Council. The suitability of a retrospective proposal such as this should be resolved prior to the grant of planning permission, not left to conditional controls, particularly where they require further details to be approved.

Contact:
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Pegasus House
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Cirencester
Gloucestershire
GL7 1RT

Tel: 01285 641717
Mobile: 07881 918647

THRINGS

For the attention of Lee Burman
Area Team Leader (North) Development
Services
Wiltshire Council
Monkton Park
Chippenham
Wiltshire
SN15 1ER
Also via email: lee.burman@wiltshire.gov.uk

13 February 2015

Your Reference:
Our Reference: AM/rmk/F3286-1

Direct Line: 0117 9309575
Direct Fax: 0117 9293369
Email: amadden@thrings.com

Dear Sirs

Our Client: Mr and Mrs C Freedman of Minety House, Minety, Malmesbury SN16 9PL

Change of Use of the Old Workshop to Class B1 offices and former stables to Class B8 and parking pursuant to application references: 14/04529/FUL and 14/04555/FUL (the "Applications")

Home Farm Business Centre, Minety, Malmesbury SN16 9PL (the "Application Site")

As you are aware, we represent the above named.

We confirm that we have now had the opportunity to review your Report to the Area Planning Committee (the "Report") in relation to the above Applications.

This letter deals with your comment at Section 10 of your Report and, in particular, your reference to the instigation of trespass proceedings against the Applicant. In your Report you state:

"The Council has no confirmed statement from the relevant landowners or their representatives at this point in time as to whether or not provision of the land by agreement would be acceptable".

We confirm that Mr Hancock (for whom our client has a Power of Attorney in relation to the trespass proceedings) has absolutely no intention of entering into an agreement with the applicant to enable him (and/or his successors in title/licensees) to have use of his land (that is the subject of the disputed ownership) for the provision of the passing bays. This has been clearly illustrated by the service of the pre-action protocol letter for trespass which is, as you are aware, the precursor to the commencement of legal proceedings which our client intends to issue shortly.

At present, your Report is, in this respect, grossly misleading.

Furthermore, you also state at section 10 of your Report the following:

"Should a court later determine that some of the as built right of way is trespassing and the relevant landowner refuses to make the land available for provision of the passing bays and asserts their right

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of possession then the applicant would be in breach of condition and that would become a matter for enforcement".

The above is, with respect, misleading. If the Court, in trespass proceedings, were to determine that the applicant has trespassed on land outside of his ownership affecting the access to the Application Site and the landowner were to assert their right of possession (which would inevitably be the case otherwise the point of pursuing a claim in trespass would be pointless) then the premise on which the grant of any permission has taken place falls away since the Applicant would not be able to provide the passing bays required under the proposed condition 11 and which he has already obliged to do by virtue of the extant section 106 Agreement dated 5 September 2002 between Wiltshire County Council and the applicant (the "2002 Agreement") relating to works to bridleway no 21 Minety. Moreover, it will be too late for the Committee to do anything about it.

We also submit that many of the developer covenants contained within the 2002 Agreement have not been complied with (our previous correspondence refers) and this is a material consideration as it goes to the heart of the track record of the applicant which is, as you will be aware, always a material consideration when determining an application.

In any event, the absence of any specific reference to the 2002 Agreement (and the obligations contained therein) in your Report will mean, we submit, that the Committee will not have before them all the highly relevant material they are required to have regard to in order to make a lawful decision.

We note that your Report to Committee is also erroneous in other respects and we will write to you under separate cover in that regard.

Kindly acknowledge receipt.

Yours faithfully


Thrings LLP

THRINGS

AMADDEN

For the attention of Lee Burman
Area Team Leader (North) Development
Services
Wiltshire Council
Monkton Park
Chippenham
Wiltshire
SN15 1ER
Also via email: lee.burman@wiltshire.gov.uk

13 February 2015

Your Reference:
Our Reference: AM/rmk/F3286-1

Direct Line: 0117 9309575
Direct Fax: 0117 9293369
Email: amadden@thrings.com

Dear Sirs

Our Client: Mr and Mrs C Freedman of Minety House, Minety, Malmesbury SN16 9PL

Change of Use of the Old Workshop to Class B1 offices and former stables to Class B8 and parking pursuant to application references: 14/04529/FUL and 14/04555/FUL (the "Applications")

Home Farm Business Centre, Minety, Malmesbury SN16 9PL (the "Application Site")

We write further to our earlier letter of today's date.

As we have already alluded to, your report to committee (the "Report") contains several errors that ought to be addressed prior to the determination of the above Applications. We understand that our client's planning consultant, Geraint Jones of Pegasus Planning, will be writing to you under separate cover and this letter ought to be read in conjunction with the same.

We have numbered the following paragraphs for ease of future reference:

1. Fallback position

1.1 At page 92 of the Report you state:

"Officers also note the fallback position of agricultural and equestrian uses of buildings A and B and consider that the additional volume of traffic movements generated by the proposed uses would not be significantly greater than that generated by the fall-back position".

1.2 As you will be aware, by virtue of s55(2)(e) of the Town & Country Planning Act 1990 agricultural use does not require express planning permission. However, it is submitted that a mixed use of agricultural and equestrian use or an equestrian use would require express planning permission. In any event, there is no evidence of the Applicant seeking to implement any fallback position and therefore any reference to the same is plainly misleading.

2. The use of *Grampian* conditions

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2.1 At page 94 of the Report you state:

“It is not possible to impose Grampian conditions requiring the provision of the passing bays prior to the commencement of development as the applications are retrospective with the development having already taken place”.

2.2 You will be aware that the PINS website states:

2.3 “At a meeting between the Planning Inspectorate and the Planning Officers Society in 2010 it was agreed that it would be helpful for Local Planning Authorities and Inspectors if the Planning Inspectorate published a list of model conditions to supplement those in Circular 11/95 (Welsh Government circular 016/2014). Although publication of DCLG’s new Planning Practice Guidance on 6 March 2014 cancelled Circular 11/95, Appendix A on model conditions has been retained. These conditions are not exhaustive and do not cover every situation where a condition may be imposed. Their applicability will need to be considered in each case against the tests in paragraph 206 of the National Policy Framework (Welsh Government circular 016/2014) and the guidance on the use of planning conditions in the Planning Practice Guidance. The wording may need to be amended to address the individual circumstances of the case. Where more than one condition is listed under a heading these are intended to be alternatives.”

2.4 To this end, we submit that your statement at page 94 is misleading. This is because it is still possible for a condition to be imposed along the lines of the model conditions aforementioned that would require a scheme for (whatever works are required) to be submitted to the LPA in writing for approval (within a fixed period of time from the date of the decision) and that unless that approved scheme was implemented (within a further fixed period of time) following the local planning authority’s approval the use of the site shall cease.

2.5 However, if you take the view that the model conditions on the PINS website are appropriate then it follows that the Applications ought to be refused since the conditions are fundamental to making the proposed development acceptable in planning terms.

3. Conditions

3.1 At pages 95 to 97 of the Report you set out various proposed conditions. We submit that condition 10 fails the policy test set out at paragraph 206 of the National Planning Policy Framework (“NPPF”) in that a condition requiring submission of a travel plan to include proposals for managing deliveries to the site both in terms of the type of vehicles to be used (which will not exceed 18 tonnes/2 axles) and hours and days of deliveries in accord with condition number 8 fails the enforceability test.

3.2 Moreover, condition 11 provides that the passing bays shall be retained in perpetuity. However, you have already identified in your report at page 94 that *“It is therefore necessary to apply conditions that require the retention in perpetuity of the passing bays to support the development proposed if it is to be approved. Should a Court later determine that some of the as built right of way is trespassing and the relevant landowner refuses to make the land*

available for provision of the passing bays and asserts their right of possession then the applicant would be in breach of condition and that would become a matter for enforcement”.

3.3 You therefore envisage a situation (that has a very realistic prospect of being borne out) that the applicant will not be able to provide the passing bays which are necessary in order for the permission to be granted. It follows that if the passing bays cannot be lawfully provided then the conditions enabling the grant of planning permission cannot be satisfied and the LPA cannot rationally grant a planning permission. A decision predicated on this premise would be *Wednesbury* unreasonable on any view.

3.4 We also submit that conditions 1,2 and 3 are badly drafted in that they envisage the submission of a detailed scheme to be approved by the LPA but make no provision for their subsequent maintenance.

4. Highways

4.1 At page 92 of the Report you state that *“Highways officers have reviewed and assessed all of the submissions made in respect of highways matters... Officers have reviewed and re-assessed their comments submitted on the applications in the context of further submission by the applicant and objector teams and that ... in short highways officers raise no objection to the scheme proposals”.*

4.2 However, it is unclear whether the highways officers have dealt with our client’s concerns set out by Mr Phil Tilly of TPA under cover of Geraint Jones’ email of 21 October 2014. Given that the highways officer’s comments posted on line are dated August and September 2014. In any event, it is unclear from the Report, why they do not have any concerns given the history of the Application Site and their previous concerns in relation to access in respect of Application reference N/01/02828/COU when B8 Use was last applied for by the Applicant and **refused** (our emphasis).

5. Planning Policy

5.1 You also, erroneous in our view, make specific reference at page 88 and 95 of the Report to the fact that;

5.2 *“The Application Site is not so isolated from existing settlements and developments as to be wholly inappropriate in principle for further employment related development of the scale proposed...”. In this context highways officers have raised no objection on the grounds that the location is wholly unsustainable in transport terms...”* (our emphasis). These references do not, as far as we are aware, appear to be part of any policy test. The Report is therefore misleading in this regard.

6. Bridleway

6.1 You may be aware that we have previously raised with the LPA (our letter of 7 November 2014) our concerns about the lawfulness of the use of the bridleway by additional vehicles in connection with the B1 permission of 2002 and the present Applications where vehicles in

connection with a B8 use are contemplated (and are in fact already using the Bridleway as the Applications are retrospective.

- 6.2 We have received a reply from the LPA dated 5 February 2015 but regard the same as wholly unsatisfactory and you must understand that we challenge the lawfulness of the use of the Bridleway by vehicles in connection with a B8 use should permission be granted and this is a factor which your Committee ought to consider.

You will, of course, understand from the contents of this letter and previous submissions that our view is that the Applications are wholly inappropriate and ought to be refused.

Kindly acknowledge safe receipt.

Yours faithfully


T. G. LLP