

# AGENDA

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**Meeting:** Northern Area Planning Committee  
**Place:** Council Chamber - Council Offices, Monkton Park, Chippenham, SN15 1ER  
**Date:** Wednesday 4 October 2017  
**Time:** 3.00 pm

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Please direct any enquiries on this Agenda to Edmund Blick, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718059 or email [edmund.blick@wiltshire.gov.uk](mailto:edmund.blick@wiltshire.gov.uk)

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

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## Membership:

Cllr Tony Trotman (Chairman)	Cllr Mollie Groom
Cllr Peter Hutton (Vice Chairman)	Cllr Chris Hurst
Cllr Chuck Berry	Cllr Toby Sturgis
Cllr Christine Crisp	Cllr Brian Mathew
Cllr Howard Greenman	Cllr Ashley O'Neill
Cllr Gavin Grant	

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## Substitutes:

Cllr Ben Anderson	Cllr Bob Jones MBE
Cllr Bill Douglas	Cllr Jacqui Lay
Cllr Ross Henning	Cllr Melody Thompson
Cllr Ruth Hopkinson	Cllr Philip Whalley

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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](#).

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**

To approve and sign as a correct record the minutes of the meeting held on Wednesday 6 September 2017.

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 by phone, email or in person no later than 2.50pm on the day of the meeting.

The rules on public participation in respect of planning applications are detailed 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 27 September 2017 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 29 September 2017. 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 7 - 8)*

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

### 7 **Application to Register Land as a Town or Village Green- Land Adjacent to Vowley View and Highfold, Royal Wootton Bassett** *(Pages 9 - 134)*

### 8 **Planning Applications**

To consider and determine the following planning applications.

8a **17/03112/FUL - Land adjacent to Barton Piece, Silver Street, Colerne, SN14 8DY** *(Pages 135 - 160)*

8b **17/06735/FUL - Northwood Barn, Doncombe Lane, North Colerne** *(Pages 161 - 170)*

8c **17/07011/FUL - Land South of Shoe Cottage, The Shoe, North Wraxall, Wiltshire, SN14 8SG** *(Pages 171 - 178)*

8d **17/06617/FUL - Blarney Cottage, Biddestone Lane, Yatton Keynell, Nr Chippenham, SN14 7BD** *(Pages 179 - 190)*

8e **17/06718/FUL - The Old Dairy, 2 Court Farm, Oaksey, Malmesbury, Wiltshire, SN16 9TF** *(Pages 191 - 202)*



- 8f        **17/05460/FUL - Land at Cedar Lodge, 3 Cove House Gardens, Ashton Keynes, Wiltshire, SN6 6NS** (*Pages 203 - 216*)
- 8g        **17/05672/FUL - Land to West of Forest Lane, Forest Lane, Chippenham, Wiltshire, SN15 3PX** (*Pages 217 - 232*)
- 8h        **17.07192.FUL - Land off Abberd Lane, Abberd Lane, Abberd, Nr Calne, Wiltshire, SN11 8TE** (*Pages 233 - 242*)
- 8i        **17/02820/OUT - Land south of Brook Farm, Great Somerford, Chippenham, Wiltshire, SN15 5JA** (*Pages 243 - 256*)

9        **Urgent Items**

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

**Part II**

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

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**Wiltshire Council**  
**Northern Area Planning Committee**  
**4<sup>th</sup> October 2017**

**Planning Appeals Received between 25/08/2017 and 22/09/2017**

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Start Date	Overturn at Cttee
17/00798/FUL	7 Locks Lane Purton, Wiltshire SN5 4HD	PURTON	Conversion of detached outbuilding into a single dwelling & erection of detached double garage	DEL	Written Representations	Refuse	12/09/2017	No
17/01407/FUL	1 Langley Road Chippenham Wiltshire, SN15 1BP	CHIPPENHAM	Conversion of Existing Offices into 5 Flats, Including Rear Extension and Raising the Roof	DEL	Written Representations	Refuse	01/09/2017	No
17/02427/FUL	Holly House 21 Gosditch, Latton Wiltshire, SN6 6DP	LATTON	Single Storey Extensions & Erection of Garage.	DEL	House Holder Appeal	Refuse	21/09/2017	No
17/03706/FUL	Land at No 31 Charles Street Corsham, Wiltshire SN13 0AN	CORSHAM	Erection of studio apartment (C3 Dwelling)	DEL	Written Representations	Refuse	12/09/2017	No

**Planning Appeals Decided between 25/08/2017 and 22/09/2017**

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Decision	Decision Date	Costs Awarded?
16/11358/FUL	88 Bristol Road Chippenham Wiltshire, SN15 1NS	CHIPPENHAM	Erection of two single storey dwellings	DEL	Written Reps	Refuse	Allowed with Conditions	04/09/2017	Not Appropriate for either party to apply for costs

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WILTSHIRE COUNCIL

AGENDA ITEM NO.

NORTHERN AREA PLANNING COMMITTEE

4 OCTOBER 2017

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**COMMONS ACT 2006 – SECTIONS 15(1) AND (3)**  
**APPLICATION TO REGISTER LAND AS A TOWN OR VILLAGE GREEN – LAND**  
**ADJACENT TO VOWLEY VIEW AND HIGHFOLD, ROYAL WOOTTON BASSETT**

**Purpose of Report**

1. To consider the evidence submitted with an application made under Sections 15(1) and (3) of the Commons Act 2006, to register land adjacent to Vowley View and Highfold, Royal Wootton Bassett, as a Town or Village Green in order to determine the application, (please see **Appendices A** and **B**).

**Relevance to Council's Business Plan**

2. Working with the local community to provide a countryside access network fit for purpose, making Wiltshire an even better place to live, work and visit.

**Background**

3. Wiltshire Council is in receipt of an application dated 30 March 2016, made under Section 15(1) of the Commons Act 2006, to register land adjacent to Vowley View and Highfold, Royal Wootton Bassett, as a Town or Village Green (**Appendix B**). Section 15(1) states that:

*“15 Registration of greens*

*(1) Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.”*

4. The application is also made under Section 15(3) of the Act where use of the land for recreational purposes has ceased and the application is made within one year of the cessation of use. Wiltshire Council must therefore consider the evidence in order to determine the following:

*(3) This subsection applies where -*

- (a) a significant number of inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;*
- (b) they ceased to do so before the time of the application but after commencement of this section; and*
- (c) the application is made within the relevant period.*

- (3A) In subsection (3), “the relevant period” means -
- (a) in the case of an application relating to land in England, the period of one year beginning with the cessation mentioned in subsection (3)(b);
  - (b) in the case of an application relating to land in Wales, the period of two years beginning with that cessation.”

### **Main Considerations for the Council**

5. The Council has considered the following evidence in its determination of the application:
- (i) Application to register land as a town or village green from Mr R P Gosnell, received and date stamped by the Registration Authority on 12 April 2016, and found to be validly (duly) made on 15 September 2016 (**Appendix B**).
  - (ii) 27 completed user evidence forms, with maps, submitted with the application, (summary of evidence included at Appendix 1 of the Decision Report which is appended to this report as **Appendix C**).
  - (iii) Objections from Blake Morgan LLP dated 18 November 2016 (enclosing Opinion of Gregory Jones QC dated 18 November 2016), on behalf of the landowners Cooper Estates Ltd, (Appendix 2 of Decision Report attached at **Appendix C**).
  - (iv) Representation of support from Royal Wootton Bassett Town Council, dated 14 November 2016, (Appendix 3 of Decision Report attached at **Appendix C**).
  - (v) Representations of support from Councillor Chris Hurst, Councillor for Royal Wootton Bassett South, dated 5 October 2016 and 13 November 2016, (Appendix 4 of Decision Report attached at **Appendix C**).
  - (vi) Further comments on the objections from Mr R P Gosnell, dated 9 December 2016, (Appendix 5 of Decision report attached at **Appendix C**).
  - (vii) Further comments from Blake Morgan LLP dated 2 March 2017 (enclosing Further Opinion of Gregory Jones QC dated 27 February 2017), on behalf of the landowners Cooper Estates Ltd, (Appendix 6 of Decision Report attached at **Appendix C**).
6. In a town/village green application the Council, as the Registration Authority, has no investigative powers and it is for the applicant to discharge the burden of proof in this case. The standard of proof is the balance of probabilities and each component part of the legal test, as set out under Sections 15(1) and (3) of the Commons Act 2006, must be satisfied in order for the application to succeed. The Council as Registration Authority must deal with the application in a fair and reasonable manner. Officers of the Council have carefully considered the evidence submitted in this case and are satisfied that the applicant has successfully discharged the burden of proof, (please see paragraphs 13.1 – 13.95 of the decision report attached at **Appendix C**, where the evidence is

considered in detail). Furthermore, the objectors do not challenge the evidence submitted in support of the application, (please see correspondence attached at Appendices 2 and 6 of the Decision Report attached at **Appendix C**).

### **Comments on the objections**

7. The landowner, Cooper Estates Ltd, has objected on two grounds, (please see Appendices 2 and 6 of the Decision Report attached at **Appendix C**, for objections in full), including the timing and validity of the application:

*“1. I refer to the letter received from Wiltshire Council, notifying Cooper Estates that a Village Green claim has been made against land at Vowley View which is owned by Cooper Estates (“the site”). The letter is dated 30 September 2016. The letter was received on 3 October 2016. It relates to an application to register land as a village green. The covering letter and notice of application refers to a claim of use by local residents for sports and pastimes since 1975 and possibly since 1969 and last used in May 2015. The letter does not state when the application was made nor explain the reason for the long delay notifying the owners of the land. However, the application itself is dated 30 March 2016 is date stamped by the registration authority as 12 April 2016.*

*2. I do note that [the] application form has amendments dated 11 September 2016 and the plan accompanying the letter has also been modified and dated both 13 and 14 September 2016.*

*3. I pause to observe that it is unsatisfactory that Wiltshire Council’s letter does not state the date upon which it considers the application validly to have been made. The date of a valid application for a village green is highly relevant for a number of reasons.*

*4. Since 1 October 2013 s.14 of the Growth and Infrastructure Act 2013 amended s.15(3) of the Commons Act 2006 so that an application for a village green had to be validly made one year after the last date the land was used for recognised sports and pastimes. In this case, no specified date is given as the end date in May 2015 and the letter and notice does not record when the application was validly made and whether that is only when the application was amended in September 2016. Thus, this application may well be out of time for this reason alone.”*

8. It is helpful at this stage to consider the chronology of events with regard to the application to register the land at Royal Wootton Bassett as a Town or Village Green:

**2006** – A fence is placed around the land which has previously been open to Vowley View and Highfold. Access to the land is still possible via an unlocked gate in the northern boundary fence.

**May 2015** – The applicant claims that use of the application land ceases where the land is no longer accessible upon the locking of the gate in the perimeter fence.

**Summer 2015** – The land is accessed by residents for another BBQ and to mow the land on one or two occasions. Access to the land is gained through gaps in the fence which it is claimed have occurred naturally where the land and the fence have not been maintained by the landowner.

**30 March 2016** – Application to register land at Vowley View and Highfold, Royal Wootton Bassett, as a Town or Village Green, is dated by the applicant.

**12 April 2016** – Town / Village green application received by Wiltshire Council, as the Registration Authority, in the form of Form 44; Statutory Declaration; map Exhibits A and B and 27 completed user evidence forms, and date stamped by the Registration Authority accordingly, (please see **Appendix B**).

**15 April 2016** - The Registration Authority writes to the Planning Authorities requesting them to advise whether or not planning trigger or terminating events are in place over the land which would exclude the right to apply, (Section 16 Growth and Infrastructure Act 2013):

- **27 April 2016** - Wiltshire Council Spatial Planning – *“I confirm that no trigger or terminating event has occurred on the land”.*
- **10 May 2016** - The Planning Inspectorate – *“I confirm that no trigger or terminating event has occurred on the land”.*
- **15 June 2016** - Wiltshire Council Development Control – *“I can confirm that the following applications have been submitted on the land in question:  
Application N/02/02965/FUL – Erection of 1 dwelling – Application withdrawn  
Application N/03/00817/FUL – Two storey detached dwelling – Refused planning permission by the Council and dismissed at appeal  
Application 14/12039/FUL – Detached Dwelling – Refused planning permission by the Council on 01/07/2015. The application was appealed and dismissed at appeal.  
If my understanding is correct the submissions were both Trigger Events and Terminating Events.”*

**25 July 2016** – Where the application is found not to be in order, Form 44; Statutory Declaration and map Exhibits A and B are returned to the applicant, where Regulation 5(4) of The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007, allows the applicant opportunity of putting the application in order.

**15 September 2016** – Application is found to be in order.

**30 September 2016 - 6 October** – Notice of the application is served upon the landowner, applicant and other interested parties; posted on site and placed in a local newspaper. A copy of the application including the evidence placed on public deposit in Wiltshire Council offices and at the offices of Royal Wootton Bassett Town Council. All parties given six weeks to make representations, i.e. by Friday 18 November 2016.

**5 October – 18 November 2016** – Objections and representations:

- **5 October 2016** – Representation of support – Cllr Chris Hurst
- **13 November 2016** – Representation of support – Cllr Chris Hurst
- **14 November 2016** – Representation of support – Royal Wootton Bassett Town Council



- **18 November 2016** – Representation of objection – Blake Morgan LLP acting on behalf of their client Cooper Estates Ltd (the landowners) enclosing Opinion of Gregory Jones QC, also dated 18 November 2016.

**22 November 2016** – Objection and representations forwarded to the applicant for comment (as required under Regulations 6(3) and (4)), response required by 22 December 2016).

**9 December 2016** – Mr Richard Gosnell (the applicant) makes formal written comments on the objections.

**2 March 2017** – Objectors, Blake Morgan LLP submit further representations on the applicants further comments on the objections and include Further Opinion from Gregory Jones QC, dated 27 February 2017.

9. The issues of timing and validity of an application are dealt with in a very detailed manner in case law, in the Court of Appeal before Lady Justice Arden, Lord Justice Richards and Lord Justice Vos - R (Church Commissioners for England) v Hampshire County Council and Anr and Barbara Guthrie [2014] EWCA Civ 643. It concerns a case where Mrs Barbara Guthrie filed an application with the registration authority on 30 June 2008, the application was found to be defective in several respects, finally complying with all the requirements of the regulations on 20 July 2009.
10. Lady Justice Arden states that:
 

*“The primary rule in Section 15 is that the recreational use must be continuing at the date of the application: see Section 15(2). In some cases, however, of which this is said to be one, that use will have ceased before the TVGA [Town Village Green Application]. Sections 15(3) and (4) deal differently with cessation before and after commencement of CA [Commons Act] 2006. Lewison LJ explained in R(Newhaven Port & Properties Ltd) v East Sussex County Council (No.2) EWCA Civ 673, [2013] 3 WLR 1433 at [62] to [63] that this is because it was easier for a landowner to cause the use to cease before that date than afterwards since before that date he simply had to give notice that he consented to the use and not physically prevent use of the land. Accordingly Section 15 provides that an application for registration as a TVG may be made within 5 years of the cessation if cessation occurred before the date of commencement of Section 15 (Section 14(4)). It provides a 2 year period (in the case of England) and a 1 year period (in the case of Wales) where the cessation takes place after the commencement of Section 15 (Section 15(3) and (3A).”*
11. Section 14(3) of the Growth and Infrastructure Act 2013, inserted Section 15(3A) into the Commons Act 2006, which reduced the relevant period in England from two years to one year.
12. In the objection, Gregory Jones QC correctly states that the application for a village green must be made within one year of the date of the cessation of use, so the date at which the Registration Authority accepts the application is highly relevant, is it when the application is date stamped upon receipt by the Registration Authority, (in this case 12 April 2016), or the date on which a defective application is put in order to meet all the requirements contained within the regulations to the Act, (15 September 2016)?

13. The Hampshire case goes on to discuss this. Lady Justice Arden sets out the requirements of an application and states:

*“Form 44 refers to guidance notes, which are published separately. They are thus non-statutory and do not form part of the Regulations. They state in relation to a TVGA that the stamp which the registration authority gives to the application as the date of receipt “may be important, because it is the date against which the time limits on applications in Section 15(3) and 15(4) apply”.”*

14. Mrs Guthrie’s application was filed on 30 June 2008 and was defective in three parts; parallels may be drawn between the Hampshire case and the Royal Wootton Bassett case.

15. There is no requirement within the regulations for the registration authority to serve notice of the application upon the landowner, until it is put in order as Lady Justice Arden states:

*“34. The limited possibility for correction to which I referred in paragraph 1 of this judgement is to be found in Regulation 5(4) of the Regulations. This suspends the registration authority’s right to reject a non-compliant application and thus its obligation to give notice of application to persons interested in the land and to the public, until the applicant has been given a reasonable opportunity to put her application in order:*

*“(4) Where an application appears to the registration authority after preliminary consideration not to be duly made, the authority may reject it without complying with paragraph (1), but where it appears to the authority that any action by the applicant might put the application in order, the authority must not reject the application under this paragraph, without first giving the applicant a reasonable opportunity of taking that action.”*

16. Therefore, the registration authority was correct in not notifying the landowner that the application was made until after the date on which it was put in order and when it did so, it attached notice as per the wording of Form 45, which is set out within the regulations and advised that the application had been made publicly available for inspection as required. The authority has acted correctly in this case.

17. Lady Justice Arden continues:

*“35. Mr Karas contends that Regulation 5(4) is not retrospective so that any corrected application only takes effect from the date of filing of the corrected application. But this argument runs up against this point, pressed by Mr Hobson, that under Regulation 4 (set out in the Annex to this judgement) the Registration authority must stamp every application on receipt. Regulation 5(4) does not suspend this obligation nor is there any provision for altering that date. In response to this difficulty, Mr Karas argues that the expression “made” in Regulation 5(1), which starts with the words “where an application is made under Section 15(1)” of the CA 2006, means “duly made in accordance with the regulations”: see Sections 15 and 24(1). But if that were so, Regulation 5(4) would not have to suspend that obligation...”*

*“...If within the reasonable opportunity so given the applicant corrects the errors, the original application has full force and effect and therefore the Regulation must be retrospective.*

*I reach this conclusion on the basis that the Regulations throughout refer to one and the same application. In addition, the application is given a date on the receipt. Dating the application must be for some purpose...”*

*“...The point remains that it would be wholly misleading for the application to be dated with the date of its receipt if that were not its effective date.*

*42. The guidance note referred to in form 44 is consistent with the view that I have taken (see paragraph 10, above). Although it is non-statutory, it has some weight because it is referred to in form 44 which is a statutory document.*

*43. I agree with the judge that it would have been better if Parliament had provided that the landowner should receive a precautionary notice as soon as an application was received. However, that point seems to me to lead to the conclusion that the period between the date of the application and its due completion should be short.*

*44. Accordingly, I conclude on this issue that Regulation 5(4) provides a means for curing deficiencies in an application which does not provide all the statutory particulars, and, once an application is so cured, it is treated as duly made on the date on which the original defective application was lodged.”*

18. Where the Hampshire judgement is applied in the Royal Wootton Bassett case, the date of the application should be taken as 12 April 2016 when the registration authority date stamped the application upon receipt and therefore the application is correctly made within one year of the cessation of use at the end of May 2015, or late 2015.
19. The landowners also object on the ground that there is a planning “trigger event” in place over the land, which would effectively extinguish the right to apply to register land as a town or village green, where *“the site in question is subject to the adopted Core Strategy”* and *“The current site is within limits for development of Royal Wootton Bassett. Wiltshire Council having considered these policies has previously accepted that the “location of the site is therefore considered appropriate for development in principle...”*

*“It is clear from the wording of the policy that the site in question was identified as land for “potential development” before the application to register the site as a village green was made. The trigger event had thus been triggered before the application was made. Accordingly, the application is invalid and must be rejected.”*

20. The question of planning trigger and terminating events over the land arises from the Growth and Infrastructure Act 2013, which introduced a series of provisions to make it more difficult to register land as a town or village green, this included at Section 16 the removal of the “right to apply” where specified planning events have occurred, (please see part 10 of the decision report attached at **Appendix C** to this report).

21. Accordingly, upon receipt of the application, Wiltshire Council, in its capacity as the Registration Authority, wrote to the planning authorities on 15 April 2016, including a list of trigger and terminating events, requesting details of any trigger/terminating events in place over the land at this time. Correspondence was addressed to Spatial Planning – Wiltshire Council; Development Control – Wiltshire Council and the Planning Inspectorate, all of whom identified that there were no “trigger events” in place over the land at that time, (without corresponding terminating events), which would extinguish the right to apply.
22. Wiltshire Council, as the Registration Authority, must rely upon the responses given by the planning authorities. In this case the objectors’ representations, regarding trigger events in place over the land, were forwarded to Spatial Planning at Wiltshire Council for further comment. The Head of Spatial Planning has given the following advice:

*“I have considered the objector’s assertions that there is a trigger event in place. However, I can confirm that in our opinion no trigger event has occurred in relation to the land in question, as the land/site (subject of the application) is not specifically identified for potential development, although strategic policy for the area exists as set out in the Wiltshire Core Strategy (adopted January 2015).”*
23. Therefore, the right to apply has not been extinguished and the Registration Authority must continue to determine the town/village green application, based upon the available evidence, which is not disputed by the objectors.
24. In correspondence, Royal Wootton Bassett Town Council has submitted the minutes of its Planning Committee meeting held on Thursday 29 January 2015. The Parish Council considers Planning Application No.14/12039/FUL, erection of new dwelling with integral garage on land opposite numbers 8-10 Vowley View, Royal Wootton Bassett and concludes that the development of this site would contravene Core Policies 51 and 52 of the Wiltshire Core Strategy, (please see correspondence attached at Appendix 3 of the Decision Report attached at **Appendix C**).

### **Overview and Scrutiny Engagement**

25. Overview and Scrutiny Engagement is not required in this case. The Council must follow the statutory procedure which is set out under “The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 (2007 SI no.457)”.

### **Safeguarding Considerations**

26. Considerations relating to safeguarding anyone affected by the registration of the land as a Town or Village Green under Sections 15(1) and (3) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

### **Public Health Implications**

27. Considerations relating to the public health implications of the registration of the land as a Town or Village Green under Sections 15(1) and (3) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

### **Corporate Procurement Implications**

28. Where land is registered as a Town or Village Green, there are a number of opportunities for expenditure to occur and these are considered at paragraphs 32-34 of this report.

### **Environmental and Climate Change Impact of the Proposal**

29. Considerations relating to the environmental or climate change impact of the registration of the land as a Town or Village Green under Sections 15(1) and (3) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

### **Equalities Impact of the Proposal**

30. Considerations relating to the equalities impact of the registration of the land as a Town or Village Green under Sections 15(1) and (3) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

### **Risk Assessment**

31. Wiltshire Council has a duty to process applications made under Section 15(1) of the Commons Act 2006, to register land as a Town or Village Green, in a fair and reasonable manner. If the Council fails to pursue its duty it is liable to complaints being submitted through the Council's complaints procedure, potentially leading to complaints to the Local Government Ombudsman. Ultimately, the decision could be challenged through judicial review proceedings in the High Court with a risk of the Council being ordered to pay significant costs if the Council were found to have acted unlawfully.

### **Financial Implications**

32. Presently there is no mechanism by which a Registration Authority may charge the applicant for processing an application to register land as a Town or Village Green and all costs are borne by the Council.
33. It is possible for the registration authority to hold a non-statutory public inquiry into the evidence, appointing an independent Inspector to produce a report and recommendation to the determining authority. There is no clear guidance available to authorities regarding when it is appropriate to hold an inquiry; however, it is the authority's duty to determine an application in a fair and reasonable manner and its decision is open to legal challenge, therefore a public inquiry should be held in cases where there is serious dispute, or the matter is of

great local interest. Even where a non-statutory public inquiry is held, there is no obligation on the authority to follow the recommendation made.

34. The cost of a three day non-statutory public inquiry is estimated to be in the region of £8,000, (based on figures obtained in March 2017 from 3 Paper Buildings Barristers Chambers, of £1,000 per day to include three day inquiry, two days preparation and three days report writing). In the Royal Wootton Bassett case it is not considered that a non-statutory public inquiry is necessary, where there is sufficient evidence provided to enable the Registration Authority to determine the application; the objectors do not dispute the evidence and the main point of objection relating to trigger events in place over the land, is unlikely to be resolved by hearing the witnesses give evidence in chief and through the process of cross-examination of the witnesses at a public inquiry.

### **Legal Implications**

35. If the land is successfully registered as a Town or Village Green, the landowner is able to challenge the Registration Authority's decision by appeal to the High Court under Section 14(1)(b) of the Commons Registration Act 1965, which applies where Section(1) of the Commons Act 2006 is not yet in place, i.e. outside the pilot areas (Wiltshire is not a pilot area). Importantly, an appeal under Section 14(1)(b) of the 1965 Act is not just an appeal, but enables the High Court to hold a complete re-hearing of the application and the facts of law. There is no time limit in bringing these proceedings following the registration of the land, it may be years after the decision and could lead to de-registration of the land.
36. Alternatively, where the Registration Authority determines not to register the land as a Town or Village Green, there is no right of appeal for the applicant; however, the decision of the Council may be challenged through judicial review, for which permission of the court is required and application must be made within three months of the decision. Likewise, judicial review proceedings are also open to a landowner where the land is registered as a Town or Village Green.

### **Options Considered**

37. The options available to the Registration Authority and Members of the Committee are as follows:
  - (i) Based on the available evidence to grant the application to register the land as a Town or Village Green where it is considered that the legal tests for the registration of the land, as set out under Sections 15(1) and (3) of the Commons Act 2006, have been met in full over the whole of the application land, or
  - (ii) Based on the available evidence, to grant the application in part, where it is considered that the legal tests for the registration of the land, as set out under Sections 15(1) and (3) of the Commons Act 2006, have been met in full over only part of the application land, or

- (iii) Based on the available evidence to refuse the application where it is considered that the legal tests for the registration of the land, as set out under Sections 15(1) and (3) of the Commons Act 2006, have not been met in full, or
  - (iv) Where, after consideration of the available evidence, it has not been possible for the Council to determine the application, to hold a non-statutory public inquiry, appointing an independent Inspector to preside over the inquiry and examine the evidence, including the oral evidence and cross-examination of witnesses and to provide a report and recommendation to the determining authority.
38. The Committee must consider only the evidence in making a decision on the application. Where the Committee determines the application against the Officer's recommendation it must give legally valid, evidential reasons for this decision.

### **Reason for Proposal**

39. In the Royal Wootton Bassett application, it is considered that a non-statutory public inquiry is not required because the evidence on the facts provided is not disputed by the objectors and it is considered there is now sufficient evidence provided by all relevant parties to enable the Registration Authority to determine the application.
40. The available evidence, examined by the Registration Authority, supports use of the whole of the application land by inhabitants of the neighbourhood of Vowley View and Highfold, within the locality of Royal Wootton Bassett, for the purposes of lawful sports and pastimes for a period of at least 20 years, as of right, with use of the land ending in May 2015 or late 2015, the relevant user period being 1995 – 2015, on the balance of probabilities. The applicant has successfully discharged the burden of proof and the objectors do not challenge this evidence.
41. With regard to the objectors comments on the timescales and validity of the application and notice given to the landowners, the application of the Hampshire case law, shows that the effective date of the application is the date of its receipt by the registration Authority (12 April 2016), therefore, the application is correctly made within one year of the cessation of use in May 2015 or late 2015. It was correct to allow the applicant opportunity to put the application in order and there was no requirement for the authority to notify the landowners until after this process was completed on 15 September 2016. The Registration Authority has acted correctly.
42. Where the objectors state that there is a trigger event in place over the land, i.e. where there is a presumption in favour of development by the inclusion of Royal Wootton Bassett as a Market Town within the Wiltshire Core Strategy (adopted January 2015), the Registration Authority must rely upon the information provided by the Planning Authorities, who have informed the Registration Authority that there are no trigger or terminating events in place upon the land. Therefore, the right to apply to register the land as a Town or Village Green is not extinguished and the Registration Authority must continue to determine the application based on the available evidence, which is not disputed by the objectors.

## **Proposal**

43. That the application to register land at Vowley View and Highfold, Royal Wootton Bassett, as a Town or Village Green, be accepted and the application land be registered in full under Sections 15(1) and (3) of the Commons Act 2006.

### **Tracy Carter**

Associate Director – Waste and Environment

Report Author:

**Janice Green**

Rights of Way Officer

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### **The following unpublished documents have been relied on in the preparation of this report:**

27 completed user evidence forms and photographs submitted in support of the application

(Please note that these documents are available to be viewed at the offices of Wiltshire Council: Rights of Way and Countryside, Waste and Environment, Wiltshire Council, Unit 9, Ascot Court, White Horse Business Park, Trowbridge, Wiltshire, BA14 0XA)

### **Appendices:**

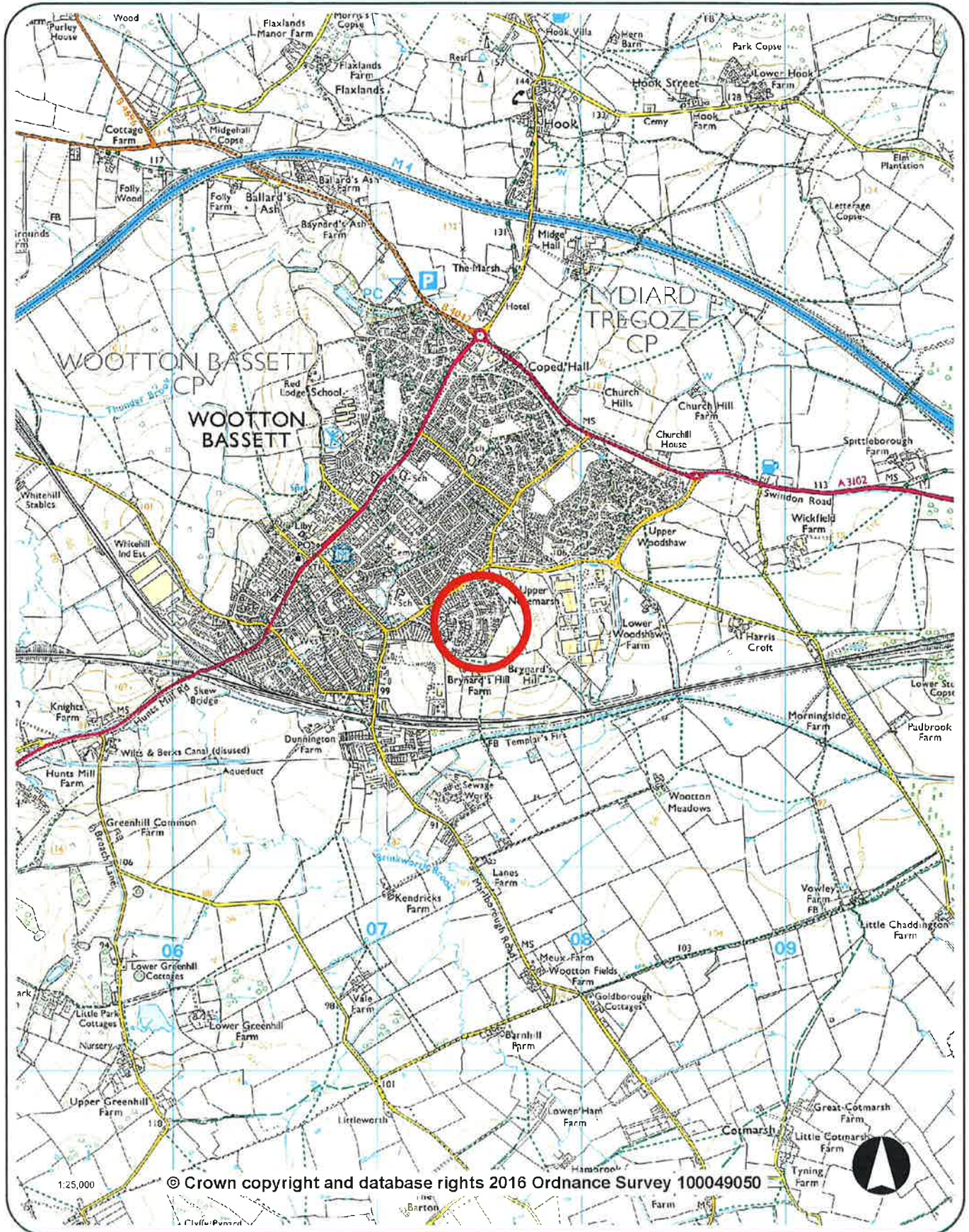
**Appendix A** – Location Plan

**Appendix B** – Application to register land adjacent to Vowley View and Highfold, Royal Wootton Bassett, as a Town or Village Green, (Application dated 30 March 2016 and date stamped by Wiltshire Council as the Registration Authority 12 April 2016)

**Appendix C** – Decision Report (28 June 2017)



Location Plan  
Application to Register Land as a Town / Village Green  
Vowley View and Highfold, Royal Wootton Bassett



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**Commons Act 2006: Section 15**

**Application for the registration of land as a Town or Village Green**

Official stamp of registration authority  
indicating valid date of receipt:

Application number:

2016 / 01

Register unit No(s):

VG number allocated at registration:

(CRA to complete only if application is successful)

**Applicants are advised to read the 'Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green' and to note the following:**

- All applicants should complete questions 1–6 and 10–11.
- Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete questions 7–8. Section 15(1) enables any person to apply to register land as a green where the criteria for registration in section 15(2), (3) or (4) apply.
- Applicants applying for voluntary registration under section 15(8) should, in addition, complete question 9.

**1. Registration Authority**

To the

Wiltshire Council

**Note 1**  
Insert name of  
registration  
authority.



**2. Name and address of the applicant**

**Note 2**

If there is more than one applicant, list all names. Please use a separate sheet if necessary. State the full title of the organisation if a body corporate or unincorporate.

If question 3 is not completed all correspondence and notices will be sent to the first named applicant.

Name:

Full postal address:

Postcode

Telephone number:  (incl. national dialling code)

Fax number:  (incl. national dialling code)

E-mail address:

**3. Name and address of solicitor, if any**

**Note 3**

This question should be completed if a solicitor is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here.

Name:

Firm:

Full postal address:

Post code

Telephone number:  (incl. national dialling code)

Fax number:  (incl. national dialling code)

E-mail address:

**4. Basis of application for registration and qualifying criteria**

If you are the landowner and are seeking voluntarily to register your land please tick this box and move to question 5.

Application made under **section 15(8)**:

If the application is made under **section 15(1)** of the Act, please **tick one** of the following boxes to indicate which particular subsection and qualifying criterion applies to the case.

**Section 15(2)** applies:

**Section 15(3)** applies:

**Section 15(4)** applies:

If **section 15(3) or (4)** applies please indicate the date on which you consider that use as of right ended.

May 2015

If **section 15(6)\*** applies please indicate the period of statutory closure (if any) which needs to be disregarded.

**Note 4**  
For further advice on the criteria and qualifying dates for registration please see section 4 of the Guidance Notes.

\* Section 15(6) enables any period of statutory closure where access to the land is denied to be disregarded in determining the 20 year period.

**5. Description and particulars of the area of land in respect of which application for registration is made**

Name by which usually known:

The Green

Location:

Adjacent to Vouley View and Highfold, Royal Wootton Bassett. Grid ref. SU 075821 as shown coloured blue on Exhibit A attached RPS

Shown in colour on the map which is marked and attached to the statutory declaration, being MAP-A and MAP-B 13 Sep 2016

Common land register unit number (if relevant) \*

**Note 5**

The accompanying map must be at a scale of at least 1:2,500 and show the land by distinctive colouring to enable to it to be clearly identified.

\* Only complete if the land is already registered as common land.

14/9/16

**6. Locality or neighbourhood within a locality in respect of which the application is made**

Please show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or by attaching a map on which the area is clearly marked:

Shown on attached map, as outlined in red on exhibit A attached RPS 13 Sep 2016

14/9/16

Tick here if map attached:

**Note 6**

It may be possible to indicate the locality of the green by reference to an administrative area, such as a parish or electoral ward, or other area sufficiently defined by name (such as a village or street). If this is not possible a map should be provided on which a locality or neighbourhood is marked clearly.

## 7. Justification for application to register the land as a town or village green

### Note 7

Applicants should provide a summary of the case for registration here and enclose a separate full statement and all other evidence including any witness statements in support of the application.

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

The Green was being mowed 3 or more times per year by Council staff from at least 1975 (likely 1969), up to 2006. This on its own suggests the land was intended as public open space. The Council by their own written admission thought they owned it up to end-2002. Then the actual owner came to light as a result of Council enquiries, and the owner commenced a series of 3 plans for a house, lasting 13 years. However, the Council mowing continued 2003-2006. The owner in 2006 placed a wicket fence along the Green's roadside edge, and an unlocked gate in the fence. The Council stopped mowing the Green at the same time as they found the fence/gate prevented their mowing access.

This fence periodically broke over the years, due to high winds, and was repaired by residents with bits or wire etc. In response to the lack of mowing, residents took up the mowing in 2006 and also planted daffodils and shrubs, and attempted to grow vegetables and flowers on the thin southern end. Trimming of the bushes was also done. The Horse Chestnut had been outplanted from a pot onto the Green around 1983 but was cut down by agents of the owner in May 2015.

The owner has never to my knowledge done any repairs or other maintenance throughout the period under review except to send theodolite survey teams ahead of each planning application from 2003 onwards.

"The Green" has been often used by local residents since 1975 by my own observation, and possibly since 1969 when the local housing estate was built. The use was without let or hindrance as of right. Use was by residents or their children for the following activities:- BBQs, street parties, cricket, football, tree-climbing, and occasional blackberry or sloe picking. Two seats were placed therein by a resident about 20 years ago and are still there. The main users were from Vowley View and Highfold. Children unknown to some or all Vowley View residents, as well as some Vowley View children, have been seen climbing the chestnut tree as it grew big enough.

All the above activities were voluntarily stopped after the summer of 2015 while awaiting the outcome of planning and appeal procedures, and of this Green application. Entry to the Green for the 2015 BBQ and 1 or 2 mows, after the locking, was via the gaps in the fence mentioned above and through missing wooden slats which had broken off over the years.

To my knowledge no-one has been verbally told not to use the land, or told they were trespassing. No signs saying the same have ever been affixed to the site.

BBQ dates from my old diaries.. Not exhaustive.

2003 Sept 13 1700 hrs onwards

2006 July 16 1300 hrs onwards

2007 July 15 1300 hrs onwards

2008 20 July

2009 July 19 1400 hrs onwards

2010 July 11 1400 hrs onwards

2011 July 2 1400 hrs onwards

2015 Aug 16



**Note 8**

Please use a separate sheet if necessary.

Where relevant include reference to title numbers in the register of title held by the Land Registry.

If no one has been identified in this section you should write "none"

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

**8. Name and address of every person whom the applicant believes to be an owner, lessee, tenant or occupier of any part of the land claimed to be a town or village green**

Cooper Estates or Cooper Estates  
Strategic Land, Longfield, Kent, DA3 7QT

**9. Voluntary registration – declarations of consent from 'relevant leaseholder', and of the proprietor of any 'relevant charge' over the land**

**Note 9**

List all such declarations that accompany the application. If none is required, write "none".

This information is not needed if an application is being made to register the land as a green under section 15(1).

**10. Supporting documentation**

**Note 10**

List all supporting documents and maps accompanying the application. If none, write "none"

Please use a separate sheet if necessary.

~~Map A 1:1000. May not be Ordnance Survey. RA5~~  
~~MAPBA 1:2200. Ordnance Survey, 1:2336 RA5 11 Sept 2016~~  
Letter ARW/BJW/W/P, from NWDC to Richard Gaskell.  
Letter ARW/LB/W/P on back of above: from NWDC to Richard Gaskell.  
Letter JDB/KR/060. Town Clerk -> RPS.  
24 Evidence questionnaires. Listed on separate sheet on front cover of ring binder

11 Sept 2016  
14/9/16



**Note 11**

There are any other matters which should be brought to the attention of the registration authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.

**11. Any other information relating to the application**

Council appeared to think they owned it and were treating it as amenity land, mowing it 1969-2006.

**Note 12**

The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or unincorporate.

Date:

30 March 2016

Signatures:

[Redacted signature area]

**REMINDER TO APPLICANT**

You are advised to keep a copy of the application and all associated documentation. Applicants should be aware that signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence. The making of a false statement for the purposes of this application may render the maker liable to prosecution.

**Data Protection Act 1998**

The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the registration authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies, other organisations and members of the public.

# Statutory Declaration In Support

To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate, by its solicitor, or by the person who signed the application.

<sup>1</sup> Insert full name (and address if not given in the application form).

Richard Gasnell,<sup>1</sup> solemnly and sincerely declare as follows:—

<sup>2</sup> Delete and adapt as necessary.

1.<sup>2</sup> I am ((the person (~~one of the persons~~) who (has) (~~have~~) signed the foregoing application)) ((~~the solicitor to (the applicant)~~) (~~one of the applicants~~)).

<sup>3</sup> Insert name if Applicable

2. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, nor of any document relating to the matter other than those (if any) mentioned in parts 10 and 11 of the application.

RPS 11 Sept 2016

3. The map now produced as part of this declaration is the map referred to in part 5 of the application.

~~is copy~~

14/9/16

<sup>4</sup> Complete only in the case of voluntary registration (strike through if this is not relevant)

4.<sup>4</sup> I hereby apply under section 15(8) of the Commons Act 2006 to register as a green the land indicated on the map and that is in my ownership. I have provided the following necessary declarations of consent:

- (i) a declaration of ownership of the land;
- (ii) a declaration that all necessary consents from the relevant leaseholder or proprietor of any relevant charge over the land have

Cont/

<sup>4</sup> Continued

been received and are exhibited with this declaration; or  
(iii) where no such consents are required, a declaration to that effect.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

Declared by the said

at 6, Vowley View

this 5<sup>th</sup> day of April, 2016

amendments 11 Sept 2016 RPF



Signature of Declarant

Before me \*

Signature:



Address:

2 Bramscombe Drive  
Royal Wootton Bassett  
SWINDON SN4 8HP

Amendments signed  
14/9/16

Qualification:

J.P.

\* The statutory declaration must be made before a justice of the peace, practising solicitor, commissioner for oaths or notary public.

Signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence.

REMINDER TO OFFICER TAKING DECLARATION:

Please initial all alterations and mark any map as an exhibit

~~MAP-B~~

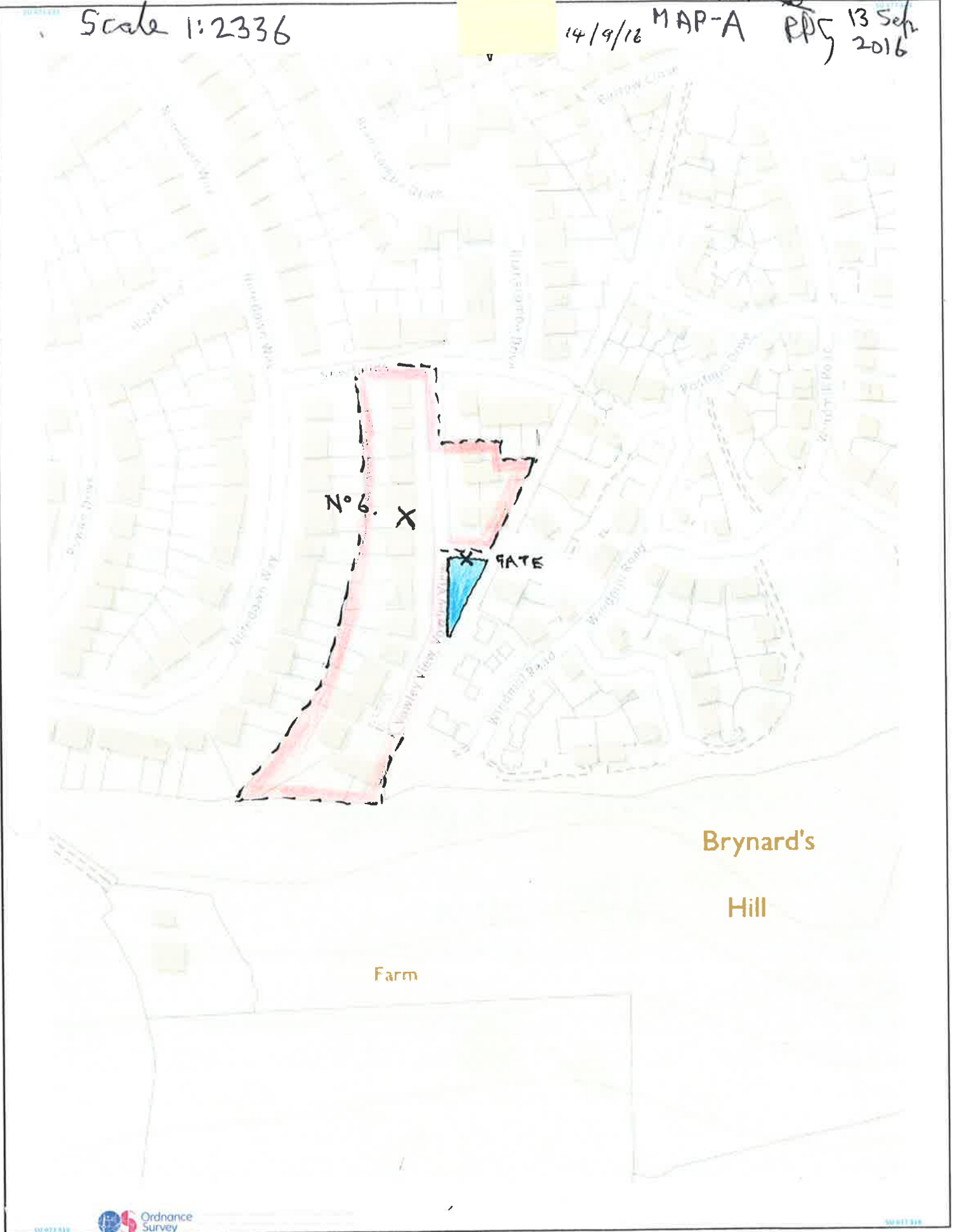
14/9/16

MAP-A

PPS

13 Sept 2016

Scale 1:2336



Brynard's

Hill

Farm

THE GREEN SHOWN THUS:  
NEIGHBOURHOOD SHOWN THUS:



[Redacted]

This is the exhibit marked  
"MAP-B" referred to in the  
statutory declaration of

[Redacted]

J.P.

This Map is herewith re-identified, to become  
the Exhibit marked "MAP-A", referred to in the  
amended Statutory Declaration of  
Richard Gosnell.

[Redacted]

11 Sept 2016

[Redacted]

14/9/16

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**APPENDIX C - DECISION REPORT**  
**COMMONS ACT 2006 – SECTIONS 15(1) AND (3)**  
**APPLICATION TO REGISTER LAND AS A TOWN OR VILLAGE GREEN – LAND**  
**ADJACENT TO VOWLEY VIEW AND HIGHFOLD, ROYAL WOOTTON BASSETT**

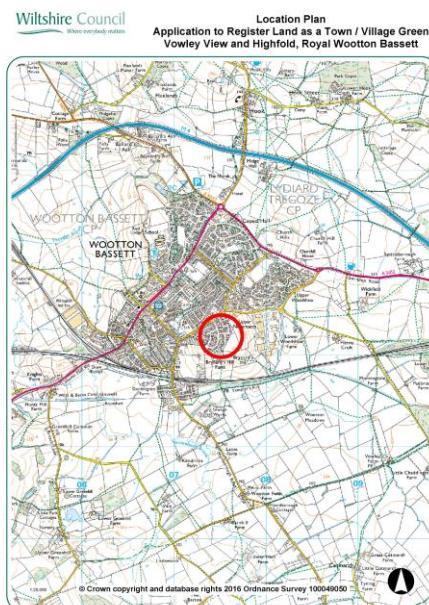
**1. Purpose of Report**

- 1.1. To consider the evidence submitted with an application made under Sections 15(1) and (3) of the Commons Act 2006, to register land adjacent to Vowley View and Highfold, Royal Wootton Bassett, as a Town or Village Green, in order to determine the application.

**2. Relevance to the Council's Business Plan**

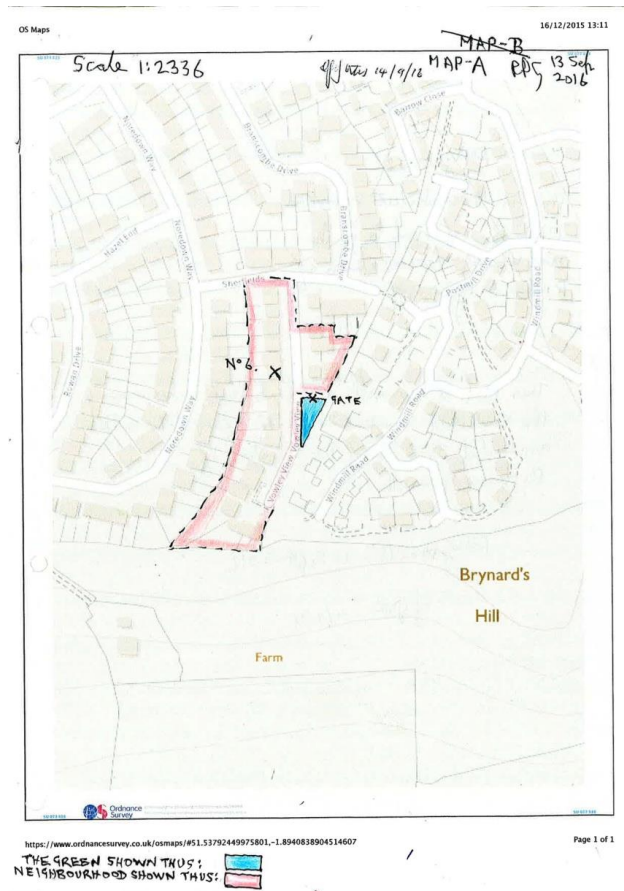
- 2.1. Working with the local community to provide a countryside access network fit for purpose, making Wiltshire an even better place to live, work and visit.

**3. Location Plan**

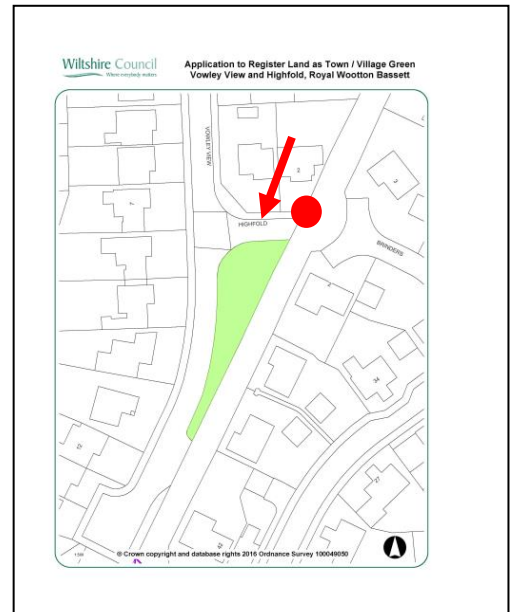




#### 4. Application Plan

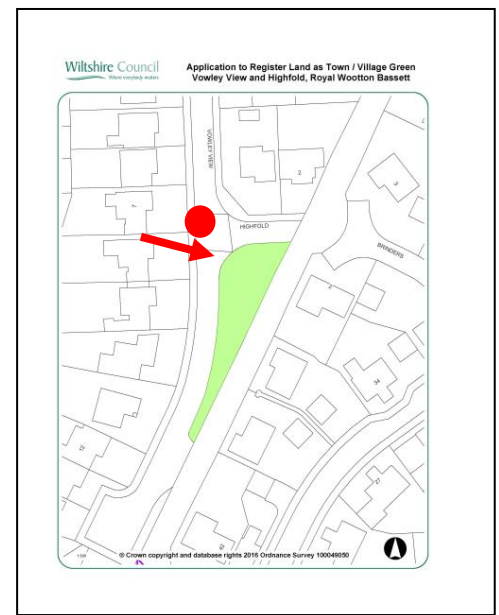
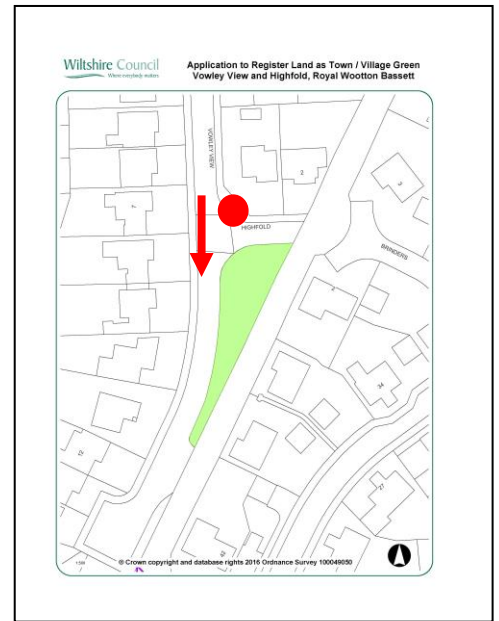


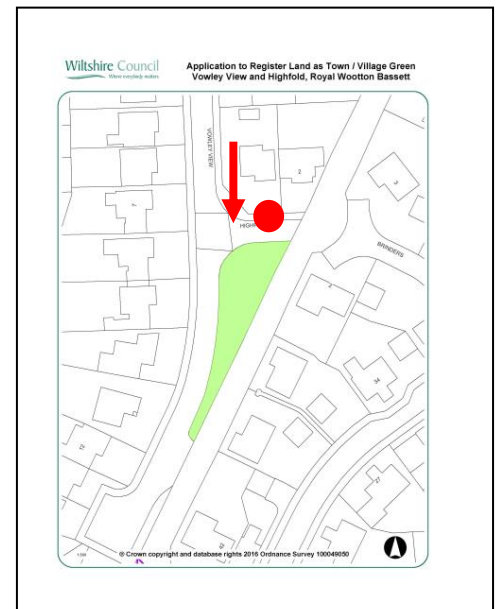
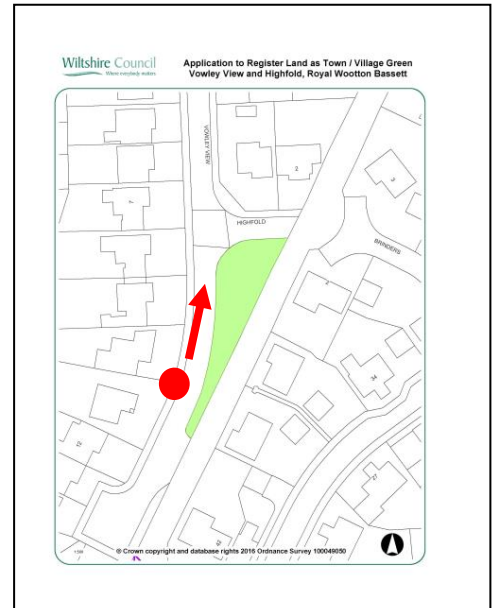
#### 5. Photographs



Commons Act 2006 – Sections 15(1) and (3) - Application to Register Land as a Town or Village Green  
Land Adjacent to Vowley View and Highfold, Royal Wootton Bassett







**6. Applicant**

6.1. Mr Richard Patrick Gosnell  
 6 Vowley View  
 Royal Wootton Bassett  
 Swindon  
 Wiltshire, SN4 8HT

Commons Act 2006 – Sections 15(1) and (3) - Application to Register Land as a Town or Village Green  
 Land Adjacent to Vowley View and Highfold, Royal Wootton Bassett

## 7. Registered Landowners

7.1. Cooper Estates Ltd	Agent:
Claremont House	Mr G McGruer
65C Main Road	Blake Morgan LLP
Longfield	Seacourt Tower
Kent	West Way
DA3 7QT	Oxford
	OX2 0FB

## 8. Legal Empowerment

- 8.1. Under the Commons Registration Act 1965, Wiltshire Council is charged with maintaining the register of Town and Village Greens and determining applications to register new Greens. The application to register land at Vowley View and Highfold, Royal Wootton Bassett, as a Town or Village Green, has been made under Sections 15(1) and (3) of the Commons Act 2006, which amends the criteria for the registration of greens, and states:

*“15 Registration of greens*

*(1) Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies...*

*(3) This subsection applies where-*

*(a) a significant number of inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;*

*(b) they ceased to do so before the time of the application but after the commencement of this section; and*

*(c) the application is made within the relevant period.*

*(3A) In subsection (3), “the relevant period” means –*

- (a) in the case of an application relating to land in England, the period of one year beginning with the cessation mentioned in subsection (3)(b);*
- (b) in the case of an application relating to land in Wales, the period of two years beginning with that cessation...*

*(6) In determining the period of 20 years referred to in subsections (2)(a), (3)(a) and (4)(a), there is to be disregarded any period during which access to the land was prohibited to members of the public by reason of any enactment.”*

## **9. Background**

9.1. Wiltshire Council are in receipt of an application dated 30<sup>th</sup> March 2016, made under Section 15(1) of the Commons Act 2006, to register land adjacent to Vowley View and Highfold, Royal Wootton Bassett, as a Town or Village Green.

9.2. The application is also made under Section 15(3) of the Act, i.e. where use of the land for recreational purposes has ceased and the application is made within one year of the cessation of use.

9.3. Part 7 of the application form requires the applicant to provide a summary of the case for registration. The applicant includes the following comments:

*“The Green was being mowed 3 or more times per year by Council staff from at least 1975 (likely 1969), up to 2006. This on its own suggests the land was intended as public open space. The Council by their own written admission thought they owned it up to end – 2002. Then the actual owner came to light as a result of Council enquiries, and the owner commenced a series of 3 plans for a house, lasting 13 years. However, the Council mowing continued 2003-2006. The owner in 2006 placed a wicket fence along the Green’s roadside edge, and an unlocked gate in the fence. The Council stopped mowing the Green at the same time as they found the fence/gate prevented their mowing access.*



*This fence periodically broke over the years, due to high winds, and was repaired by residents with bits of wire etc. In response to the lack of mowing, residents took up the mowing in 2006 and also planted daffodils and shrubs, and attempted to grow vegetables and flowers on the thin southern end. Trimming of the bushes was also done. The Horse Chestnut had been outplanted from a pot onto the Green around 1983 but was cut down by the agents of the owner in May 2015.*

*The owner has never to my knowledge done any repairs or other maintenance throughout the period under review except to send theodolite survey teams ahead of each planning application from 2003 onwards.*

*“The Green” has been often used by local residents since 1975 by my own observation, and possibly since 1969 when the local housing estate was built. The use was without let or hindrance as of right. Use was by residents or their children for the following activities:- BBQs, street parties, cricket, football, tree-climbing, and occasional blackberry or sloe picking. Two seats were placed therein by a resident about 20 years ago and are still there. The main users were from Vowley View and Highfold. Children unknown to some or all Vowley View residents, as well as some Vowley View children, have been seen climbing the chestnut tree as it grew big enough.*

*All the above activities were voluntarily stopped after the summer of 2015 while awaiting the outcome of planning and appeal procedures, and of this Green application. Entry to the Green for the 2015 BBQ and 1 or 2 mows, after the locking, was via the gaps in the fence mentioned above and through missing wooden slats which had broken off over the years.*

*To my knowledge no-one has been verbally told not to use the land, or told they were trespassing. No signs saying the same have ever been affixed to the site.*

*BBQ dates from my old diaries. Not exhaustive.*

*2003 Sept 13 1700 hrs onwards*

*2006 July 16 1300 hrs onwards*

*2007 July 15 1300 hrs onwards*

*2008 20 July*

*2009 July 19 1400 hrs onwards*

*2010 July 11 1400 hrs onwards*

*2011 July 2 1400 hrs onwards*

*2015 Aug 16”*

- 9.4. The application was received by Wiltshire Council on 12<sup>th</sup> April 2016 and accepted as a complete and correct application (i.e. duly made) on 15<sup>th</sup> September 2016. The application was accompanied by 27 completed witness evidence questionnaires, (please see witness evidence summary at **Appendix 1**). Following notice of the application being posted on site; advertisement in a local newspaper and service upon the landowners, one objection and two representations regarding the application, were received.
- 9.5. The application land is located to the east of Vowley View and the south of Highfold, Royal Wootton Bassett and occupies an area of approximately 380m<sup>2</sup>, laid to grass and bushes, with a fence along its north and western boundaries with Vowley View and Highfold, with a gate (now padlocked) at its northern end.

## **10. Right to apply**

- 10.1. The Growth and Infrastructure Act of 2013 introduced a series of provisions to make it more difficult to register land as a town or village green. This included at Section 16 the removal of the “right to apply” to register land where specified planning “trigger events” have occurred, for example, where an application for planning permission in relation to the land which would be determined under section 70 of the Town and Country Planning Act 1990 (‘The 1990 Act’), is first publicised in accordance with requirements imposed by a development order by virtue of section 65(1) of that Act, the right to apply to register land as a town or village green no longer exists.

- 10.2. The right to apply is revived where a corresponding “terminating event” has taken place, for example, the withdrawal of the planning application; a decision to decline to determine the application is made under section 70A of the 1990 Act; where planning permission is refused and all means of challenging the refusal by legal proceedings in the UK are exhausted and the decision is upheld; or where planning permission is granted and the period within which the development to which the permission relates must be started, expires without the development having begun, (a full list of trigger and terminating events is included at Schedule 1A of the Commons Act 2006 as added by Section 16 of the Growth and Infrastructure Act 2013 and amended by the Commons (Town and Village Greens) (Trigger and Terminating Events) Order 2014, which extends the list of trigger and terminating events).
- 10.3. This amendment to the legislation alters the way in which the Registration Authority deals with new applications to register land as a town or village green. DEFRA has issued Interim Guidance to Registration Authorities which recommends that upon receipt of an application the authority should write to the local planning authority and the Planning Inspectorate, enclosing the application map and requesting information on whether or not there are trigger and terminating events in place in relation to all or part of the application land.
- 10.4. As per the guidance the Registration Authority wrote to the Planning Inspectorate and the Spatial Planning and Development Control Departments at Wiltshire Council on 15<sup>th</sup> April 2016, using the template letter as set out within DEFRA guidance and including links to trigger and terminating events (as amended), to request further details of any planning trigger or terminating events in place over the land. In this case, the local planning authority and the Planning Inspectorate confirmed to the Registration Authority that there were no trigger or terminating events in place over the whole of the application land or any part of it, as follows:

1) 27<sup>th</sup> April 2016 – Wiltshire Council Spatial Planning:

*“I confirm that no trigger or terminating event has occurred on the land”*

In an e-mail dated 27<sup>th</sup> April 2016, the Senior Planning Officer confirms that the adopted Wiltshire Core Strategy (January 2015) and the emerging Royal Wootton Bassett Neighbourhood Development Plan had been considered in confirming that no planning trigger or terminating events had occurred.

2) 10<sup>th</sup> May 2016 – Planning Inspectorate:

*“I confirm that no trigger or terminating event has occurred on the land.”*

3) 15<sup>th</sup> June 2016 – Wiltshire Council Development Control:

*“I can confirm that the following applications have been submitted on the land in question:*

*Application N/02/02965/FUL – Erection of 1 dwelling – Application withdrawn*

*Application N/03/00817/FUL – Two storey detached dwelling – Refused planning permission by the Council and dismissed at appeal*

*Application 14/12039/FUL – Detached Dwelling – Refused planning permission by the Council on 01/07/2015. The application was appealed and dismissed at appeal.*

*If my understanding is correct the submissions were both Trigger Events and Terminating Events.”*

10.5. The Council as the Registration Authority must rely upon the information provided by the planning authorities in relation to planning trigger and terminating events in place over the application land.

## **11. Validity of application**

11.1. The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 at parts 3 and 10, set out the requirements of a valid application. Regulation 5 (4) states that where it



appears to the authority that any action by the applicant might put the application in order, the authority must not reject the application without first giving the applicant a reasonable opportunity of putting their application in order. In this case, upon examination of the application, it was found to be incomplete in 3 areas:

- 1) Although not included as part of the regulations, the statutory declaration attached to the application Form 44, states:

*“REMINDER TO OFFICER TAKING DECLARATION:*

*Please initial all alterations and mark any map as an exhibit”.*

It was noted that whilst the applicant Mr Richard Gosnell had signed the maps included as Exhibits A and B, the notary had not.

- 2) The map of the relevant “neighbourhood within a locality” had no scale attached. The required scale of all maps is not less than 1:2,500 as per regulation 10(3)(a).
- 3) The regulations require that all maps are Ordnance maps, the applicant was therefore requested to confirm the source of Exhibit A as an Ordnance map. Unfortunately, the applicant was unable to confirm the source of Exhibit A as an Ordnance map and therefore Exhibit B was substituted for Exhibit A in the amended application, as it was at an acceptable scale and its source as an Ordnance map could be confirmed.

11.2. The Registration Authority returned Form 44; the Statutory Declaration and map Exhibits A and B, to the applicant on 25<sup>th</sup> July 2016 inviting the applicant to put their application in order. The application was returned to the Registration Authority on 15<sup>th</sup> September 2016 and found to be in order. Wiltshire Council as the Registration Authority is now placed under a duty to

process the application in a fair and reasonable manner, as set out in the case of R (on the application of Whitmey) v Commons Commissioners [2004] EWCA Civ 951, where it was held that:

*“28...the registration authority is not empowered by statute to hold a hearing and make findings which are binding on the parties by a judicial process. There is no power to take evidence on oath or to require the disclosure of documents or to make orders as to costs (as the Commons Commissioners are able to do: section 17(4) of the 1965 Act). However, the registration authority must act reasonably. It also has power under section 111 of the Local Government Act 1972 to do acts which are calculated to facilitate, or are incidental or conducive, as to the discharge of their functions. This power would cover the institution of an inquiry in an appropriate case.*

*29. In order to act reasonably, the registration authority must bear in mind that its decision carries legal consequences. If it accepts the application, amendment of the register may have a significant effect on the owner of the land or indeed any person who might be held to have caused damage to a green and thus to have incurred a penalty under section 12 of the Inclosure Act 1857). (There may be other similar provisions imposing liability to offences or penalties). Likewise, if it wrongly rejects the application, the rights of the applicant will not receive the protection intended by Parliament. In cases where it is clear to the registration authority that the application or any objection to it has no substance, the course it should take will be plain. If however, that is not the case, the authority may well properly decide, pursuant to its powers under section 111 of the 1972 Act, to hold an inquiry...”*

## **12. Public Consultation**

- 12.1. Wiltshire Council served notice of the application upon the landowner, applicant and other interested parties on 30<sup>th</sup> September 2016. Notice was also posted on site and placed in the Wilts Gazette and Herald on Thursday 6<sup>th</sup> October 2016. The application, including the supporting evidence submitted, was placed on public deposit in Wiltshire Council offices and at the offices of Royal Wootton Bassett Town Council. All parties were given 6

weeks to make representations or objections regarding the application, by Friday 18<sup>th</sup> November 2016

- 12.2. Following notice of the application, one objection and 2 representations of support for the application were received. The consultation replies are summarised below, (please note that full copies of all correspondence are available to be viewed with the Rights of Way and Countryside Team, Ascot Court, White Horse Business Park, Trowbridge, Wiltshire, BA14 0XA):
- 12.3. **Letter of objection dated 18<sup>th</sup> November 2016 from Blake Morgan LLP, acting on behalf of their client Cooper Estates Ltd** (the landowners) and enclosing Opinion of Gregory Jones QC, also dated 18<sup>th</sup> November 2016. The Opinion is as follows (**Appendix 2**):

*“1. I refer to the letter received from Wiltshire Council, notifying Cooper Estates that a Village Green claim has been made against land at Vowley View which is owned by Cooper Estates (“the site”). The letter is dated 30 September 2016. The letter was received on 3 October 2016. It relates to an application to register land as a village green. The covering letter and notice of application refers to a claim of use by local residents for sports and pastimes since 1975 and possibly since 1969 and last used in May 2015. The letter does not state when the application was made, nor explain the reason for the long delay notifying the owners of the land. However, the application itself is dated 30 March 2016 is date stamped by the registration authority as 12 April 2016.*

*2. I do note that [the] application form has amendments dated 11 September 2016 and the plan accompanying the letter has also been modified and dated both 13 and 14 September 2016.*

*3. I pause to observe that it is unsatisfactory that Wiltshire Council’s letter does not state the date upon which it considers the application validly to have been made. The date of a valid application for a village green is highly relevant for a number of reasons.*

4. Since 1 October 2013, S.14 of the Growth and Infrastructure Act 2013 amended s.15(3) of the Commons Act 2006 so that an application for a village green had to be validly made one year after the last date the land was used for recognised sports and pastimes. In this case, no specified date is given as the end date in May 2015 and the letter and notice does not record when the application was validly made and whether that is only when the application was amended in September 2016. Thus, the application may well be out of time for this reason alone.

5. However, the exact date of the application is largely of academic importance in this particular case for the reasons set out below.

### **Trigger Events**

6. One of the fundamental changes made by the Growth and Infrastructure Act 2013 to the Commons Act 2006 was to exclude the right for anyone to apply for registration of land in certain specified circumstances.

7. Section 16, which came into force on 25 April 2013, inserted section 15C and Schedule 1A into the 2006 Act to exclude the right to apply for registration of land under section 15 when a “trigger event” has occurred in relation to that land. Such trigger events all relate to events within the planning system. When such a trigger event has occurred, then unless and until a corresponding “terminating event” has occurred in relation to the land, a commons registration authority cannot accept any application to register that land as a town or village green and is bound to refuse to consider it.

8. The full list of 14 trigger events is set out in the first column in schedule 1A. They include:-

- a. the publication for consultation in accordance with regulations by the local planning authority of a draft local plan or neighbourhood plan proposal which identifies the land for potential development; and
- b. the adoption or making by the local planning authority of a local plan or neighbourhood plan which “identifies the land for potential development”.

9. For each trigger event, there are a number of corresponding terminating events, specified in the second column of schedule 1A. Where the right to apply for registration has been excluded because a trigger event has occurred, if and when one of the corresponding terminating events occurs, the right to apply again becomes exercisable. The right to apply to register a new green is not lost for all time by such provisions. Hence, for example, the corresponding terminating events in relation to inclusion of the land for potential development in a draft plan, terminating events include the withdrawal of the plan, the adoption of the plan (but that triggers a new trigger event if the land is identified for development in the adopted plan), and the expiry of a two year period beginning with the day on which the document is first published for consultation.

10. In the present case, the site in question is subject to the adopted Wiltshire Core Strategy (“CS”). The CS was adopted in January 2015. Policy CP 1 of the CS provides:

**“Core Policy 1**

**Settlement Strategy**

The Settlement Strategy identifies the settlements where sustainable development will take place to improve the lives of all those who live and work in Wiltshire.

The area strategies in Chapter 5 list the specific settlements which fall within each category.

**Principal Settlements**

Wiltshire’s Principal settlements are strategically important centres and the primary focus for development. This will safeguard and enhance their strategic roles as employment and service centres. They will provide significant levels of jobs and homes, together with supporting community facilities and infrastructure, meeting their economic potential in the most sustainable way to support better self containment.

The Principal Settlements are: Chippenham, Trowbridge and Salisbury.

### **Market Towns**

*Outside the Principal Settlements, Market Towns are defined as settlements that have the ability to support sustainable patterns of living in Wiltshire through their current levels of facilities, services and employment opportunities. Market Towns have the potential for significant development that will increase the jobs and homes in each town in order to help sustain and where necessary enhance their services and facilities and promote better levels of self containment and viable sustainable communities.*

*The Market Towns are: Amesbury, Bradford on Avon, Calne, Corsham, Devizes, Malmesbury, Marlborough, Melksham, Tidworth and Ludgershall, Warminster, Westbury, and Royal Wootton Bassett.” [Underlining added]*

*CP2 states inter alia*

*“Within the limits of development, as defined on the policies map, there is a presumption in favour of sustainable development at the Principal Settlements, Market Towns, Local Service Centres and Large Villages.” [Underlining added]*

*11. The current site is within the limits for development of Royal Wootton Bassett. Wiltshire Council having considered these policies has previously accepted that the “location of the site is therefore considered appropriate for development in principle...*

### **Conclusion**

*12. It is clear from the wording of the policy that the site in question was identified as land for “potential development” before the application to register the site as a village green was made. The trigger event had thus been triggered before the application was made. Accordingly, the application is invalid and must be rejected.”*

- 12.4. Letter of support from Mr Jonathan Bourne, Town Clerk on behalf of Royal Wootton Bassett Town Council, dated 14<sup>th</sup> November 2016, enclosing copy letter to Councillor Chris Hurst and the Planning Committee resolution, confirming the Town Council’s position (Appendix 3):**

*“...Residents from Highfold and Vowley View first approached the Town Council’s Planning Committee about this piece of land at a meeting held on Thursday 29<sup>th</sup> January 2015, at which Members suggested that a village green application may be worthwhile investigating.*

*Wiltshire Councillor Chris Hurst attended a meeting of the Town Council Planning Committee on 7<sup>th</sup> January 2016 to inform Members that residents of Vowley View and Highfold intended to pursue an application for village green status. At this meeting, the Planning Committee resolved to support any forthcoming application and wrote to Councillor Chris Hurst to this effect once the application process formally commenced in April 2016. Copies of this letter together with the Planning Committee’s resolution of support are enclosed for information.*

*The Town Council fully supports the residents in their application to secure village green status for the land identified in line with the Planning Committee resolution of Thursday 7<sup>th</sup> January 2016...”*

**12.5. Representations of support from Councillor Chris Hurst: e-mail dated 5<sup>th</sup> October 2016 and subsequent letter of support dated 13<sup>th</sup> November 2016 (Appendix 4):**

E-mail dated 5<sup>th</sup> October 2016:

*“I remain very supportive of the application and will likely write a few paragraphs in support of the application in the next few weeks...”*

Letter dated 13<sup>th</sup> November 2016:

*“One of Wiltshire Council’s stated aims is to build strong and resilient communities. This can be done in many ways. But clearly one-way is to defend and protect our open spaces where possible.*

*Royal Wootton Bassett has seen very significant housing development in recent years. Whilst it is understandable that places change in character over time, the effect of such rapid change and urbanization has meant the loss of green spaces. It*

*is therefore crucial that we, as a Council, continue to protect what spaces we can, for the enjoyment of the Royal Wootton Bassett community. The application to formally make the green at Vowley View a community space is an excellent opportunity to do just that.*

*In my time as a Unitary Councillor I have had the great privilege to represent the community who live at Vowley View. I have seen the community spirit of the residents and the care and attention they take in looking after their street.*

*I have also seen the community use the green for social events and gatherings. On one such occasion I happened to be walking along Vowley View and the majority of resident's were out on the green enjoying a community get-together. I was struck then, how important this space is and what a vital community asset this green space is and has been for many decades.*

*By recognizing this open space as a town/village green, it would ensure that the green will continue to be enjoyed by the residents of Vowley View and the generations to come; a lasting legacy Wiltshire Council can be proud of."*

12.6. As part of the statutory procedure (Regulation 6(3) and (4)), any objections received, must be forwarded to the applicant allowing reasonable opportunity for dealing with matters raised. Therefore on 22<sup>nd</sup> November 2016, the applicant was forwarded all of the above-mentioned correspondence, as received within the formal objection period.

12.7. Officers allowed the applicant a reasonable opportunity to respond to the objections with comments to be received, in writing, not later than 5:00 pm on Thursday 22<sup>nd</sup> December 2016. Comments on the objections were received from Mr Richard Gosnell, the applicant on 9<sup>th</sup> December 2016, as follows **(Appendix 5)**:

*"I refer to the Opinion document written by Gregory Jones, Q.C., acting for Cooper Estate, using his paragraph numbering.*



1. *“When the Application is made...” is the date it was submitted, 12 April 2016. The regulations state that the date of reception of the acceptable Application is the only relevant date even if later revisions are needed. It inevitably took time after that date to address the issues on the documents which needed rectifying.*

*“Long delay in notifying the owners...” There is no obligation to provide what would amount to a running commentary on the Application’s evolution between April and October 2016. If the Application had been unsuccessful I would have been informed and there would have been no need for Cooper Estates to be informed of anything.*

2. *“The spread of dated documents between 11<sup>th</sup> and 14<sup>th</sup> September...” is due partly to my withdrawal of one or two maps originally submitted, and procuring new J.P signatures on the front and back of the renamed remaining map. Obviously the date of the simultaneous availability of the J.P. and myself for signing causes delay. The withdrawn map was issued with the Evidence Questionnaires, where there is no stipulation as to a map’s provenance, and the map was used by all respondents to indicate the items required in the Questionnaire.*

3. *“Date of Application validity...” Presumably this is 6<sup>th</sup> October as shown on the Notice of Application, Form 45.*

4. *“Date the land was last used...” I took the date on which the gate became locked as being the date on which the owner indicated that residents’ access was not intended. I am not aware of the exact date on which the gate became locked. I took May 2015 as being the start of the 12 month period within which the Application had to be made, so I ensured that it was submitted no later than April 2016. On my entry for section 7 of Form 44, 5<sup>th</sup> para down, I said use had voluntarily stopped during summer 2015. I should add that that was true at the date of the Application (April 2016) but since then mowing and a BBQ occurred in summer 2016. A resident was told, around September 2016, by Cooper Estates representative “Thank you for keeping it tidy for us”. This suggests they knew about our use, and did not think we were trespassing even though access would have to be via broken fence places.*

6-9. *“Trigger/Terminating Events”*. The Registering Authority made due checks and ascertained that there were no events hindering the Application under this heading.

10-11. *“Core Strategy”*. It is arguable that the Core Strategy referred to does not apply to existing developments, rather being aimed at new green field sites adjacent to the types of settlement referred to in 10-11. The site in question is an amenity forming part and parcel of a long-standing residential estate, therefore I suggest it is not a target for development under the Core Strategy provisions.

*Other points.*

*The Open Spaces and Rights of Way legislation with the “20-year unhindered use as of right” at their heart, have a long history within English law. I suggest none of it is unpicked, reduced, modified or annulled by Core Strategy legislation.”*

- 12.8. The applicant’s comments were then forwarded to the objectors for further response, which was received on 2<sup>nd</sup> March 2017 (**Appendix 6**):

E-mail from Blake Morgan LLP – 2 March 2017:

*“As a matter of fact, the trigger events have occurred before the making of the application and that matter is not in any dispute. Section 15C(1) of the Commons Act 2006 excludes the right to apply when a trigger event has occurred within the planning system in relation to that land. I would also refer you to the Guidance to Commons Registration Authorities in England and Sections 15A to 15C of the Commons Act 2006 published by the Department for Environment Food and Rural Affairs in December 2016. Paragraph 60 confirms that at any time when the right to apply is excluded in respect of land, a commons registration authority cannot accept any application to register that land as a green. This rule applies whether or not the trigger event occurred prior to the commencement of Section 15C (para 67). As a result, the Council must now reject the application...”*

Further Opinion from Gregory Jones QC dated 27<sup>th</sup> February 2017:

*“1. I have read the consultation responses from Mr Richard Gosnell, dated 9 December 2016, Royal Wootton Bassett Town Council 14 November, 2016; and Cllr Chris Hurst, 5 October, 2016.*

*2. It is only Richard Gosnell’s letter which purports to deal with elements contained to my Opinion. The key issue is whether a trigger event occurred before the submission of the application to register a village green. Nothing in Mr Gosnell’s letter seriously challenges anything in my Opinion. I do not know whether the Council purported to check whether any trigger events had occurred. It does not matter whether or not it did. The key question is whether a trigger event has in fact occurred prior to the application having been made. For the reasons set out in my opinion the trigger events have occurred before the making of the application.*

*3. Mr Gosnell states that it is “arguable that the Core Strategy referred to [in my Opinion] does not apply to existing developments, rather than being aimed at new green field sites adjacent to the types of settlement referred to in 10-11 [of my Opinion]. The site in question is an amenity formation part and parcel of a long-existing residential estate, therefore I suggest it is not a target for development under the core strategy provision.”*

*4. I do not accept that the site is part of an existing residential estate. However the question is irrelevant. The key question as I identified is whether the local plan “identifies the land for potential development.” [Underlining added]. Consistent with paragraphs 154 and 157 bullet point 7 of the NPPF, CP” states inter alia “Within the limits of development, as defined on the policies map, there is a presumption in favour of sustainable development at the Principal Settlements, Market Towns, Local Service Centres and Large Villages.” [Underlining added]*

*5. The site is within the limits of development in the policy as defined and indeed goes even further than simply identifying a “potential” site for development but carries within it a presumption in favour of development of the site for sustainable development.”*

12.9. These comments would only need to be returned to the applicant again for further comment, where further clarification is required and it has been concluded that the documents already submitted, provide sufficient evidence to enable the authority to determine the application.

12.10. Unlike rights of way claims, Wiltshire Council as the Registration Authority in this case, has no investigative powers and now relies upon the following evidence it has received in its determination of this application:

- 1) Application to register land as a town or village green from Mr R.P. Gosnell, date stamped by the Registration Authority on 12<sup>th</sup> April 2016, validly made on 15<sup>th</sup> September 2016.
- 2) 27 completed user evidence forms, with maps, submitted with the application (summary of evidence included at **Appendix 1**).
- 3) Objections from Blake Morgan LLP dated 18<sup>th</sup> November 2016 (including Opinion of Gregory Jones QC dated 18<sup>th</sup> November 2016), on behalf of the landowners Cooper Estates Ltd (**Appendix 2**).
- 4) Representation of support from Royal Wootton Bassett Town Council, dated 14<sup>th</sup> November 2016, enclosing letter of support for the application to register the land as a Town/Village Green dated 1<sup>st</sup> April 2016 from Royal Wootton Bassett Town Council to Councillor Chris Hurst, Wiltshire Councillor for Royal Wootton Bassett South and Minutes of the Royal Wootton Bassett Town Council Planning Committee meeting dated 29<sup>th</sup> January 2015 (**Appendix 3**).
- 5) Representations of support from Councillor Chris Hurst, Councillor for Royal Wootton Bassett South, dated 5<sup>th</sup> October 2016 and 13<sup>th</sup> November 2016 (**Appendix 4**).

- 6) Further comments on the objections from Mr R.P Gosnell, dated 9<sup>th</sup> December 2016 (**Appendix 5**).
- 7) Further comments from Blake Morgan LLP dated 2<sup>nd</sup> March 2017 (including Further Opinion of Gregory Jones QC dated 27<sup>th</sup> February 2017) on behalf of the landowners Cooper Estates Ltd (**Appendix 6**).

### **13. Main Considerations for the Council**

- 13.1. Under Section 15(1) of the Commons Act 2006, it is possible (where the right to apply is not extinguished), to apply for land to be registered as a Town or Village Green where a significant number of inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of 20 years or more and in this particular case, under Section 15(3) of the Act, where use of the land has ceased not more than one year prior to the application date.
- 13.2. The applicant has submitted evidence that the application land was left when the houses in Vowley View and Highfold were built in around 1969. He provides evidence that when he moved to Wootton Bassett in 1975, the area was being mowed by North Wiltshire District Council and assumed that the plot was Council owned and maintained. The Council even temporarily stored building materials there for a few weeks in the 1980's or 1990's whilst working nearby. Mr Gosnell enquired about purchasing the land in 2002, only to discover that the land was in the ownership of Cooper Estates Ltd. A letter to Mr Gosnell from North Wiltshire District Council, dated 14<sup>th</sup> August 2002, states that the Council intended this plot to be amenity land and they would be contacting the landowners to ask them to formally transfer the title of the land to the Council, however it would appear that this either did not take place, or was unsuccessful.

13.3. There have been 4 planning applications on the land in question, as follows:

(i) December 2002 – Planning Application no. N/02/02965/FUL for erection of 1 no. dwelling – application withdrawn.

(ii) March 2003 – Planning Application no. N/03/00817/FUL for erection of 2 storey detached dwelling and garage – refused, dismissed at appeal (no documents available – information provided by Development Control, Wiltshire Council).

(iii) January 2015 – Planning Application no. 14/12039/FUL for erection of dwelling with internal garage – refused on the grounds that its proximity to the neighbouring property in Brinders Close, would have an overbearing impact on the amenity of the neighbouring property. Appeal dismissed.

(iv) October 2016 – Planning Application no. 16/10012/FUL for erection of 3 bed dwelling – refused on the grounds that its proximity to the neighbouring property in Brinders Close, would have an overbearing impact on the amenity of the neighbouring property. (This application was received by Wiltshire Council as the Planning Authority, after the submission of the Town/Village Green application on 12<sup>th</sup> April 2016).

13.4. In 2006, a picket fence appears to have been erected around the northern and western boundaries of the site (against Vowley View and Highfold), with an unlocked gate in the northern boundary fence. The landowners have made no comments regarding why a fence was erected and in evidence Mr David Pope states: “A picket fence was erected in 2006 or 2007, but there was never any suggestion that this was other than to denote ownership of the land, as an unbolted and unlocked gate was provided, with a latch and a handle on both sides of the gate.” Mowing by the Council continued from 2002 (when the true landowner was identified) – 2006, but ceased when the fencing and gate prevented access with the Council mower. From 2006 onwards the applicant and other

residents mowed the land about 3 times per year (summer) and maintained the bushes etc. In 2010 – 11 an attempt was made by the residents to grow vegetables and flowers on the southern tip of the land and c.2012 daffodils and shrubs were planted on the land. Residents also repaired the fence. There are two benches present on the land which evidence suggests were put in by local residents about 20 years ago. Mrs Laurette Pope confirms in evidence that she has observed neighbours *“sitting and talking on the benches that those in the road put on The Green. The benches are still there today locked in and unable to be used.”* In May 2015 the gate was padlocked.

- 13.5. The legal tests set out under Sections 15(1) and (3) of the Commons Act 2006 can be broken down into a number of components, each of which must be satisfied in order for the application to succeed. The burden of proving that each of the statutory qualifying requirements are met, lies with the applicant and there is no duty placed upon the Registration Authority to further investigate the claim. The standard of proof is the balance of probabilities.

### **Significant number of inhabitants**

- 13.6. The meaning of the word “significant” has never been defined, but was considered at the High Court in *R (McAlpine) v Staffordshire County Council* (2002). It was held that this did not mean a considerable or substantial number, as a small locality or neighbourhood may only have a very small population, but that the number of people using the land must be sufficient to show that the land was in general use, by the local community, for informal recreation, rather than just occasional use by individuals as trespassers.
- 13.7. The requirement is that the users include a significant number of inhabitants of the claimed locality or neighbourhood in order to establish a clear link between the locality or neighbourhood and the proposed green, even if these inhabitants do not comprise most of the users. In this case the Council has received 27 completed witness evidence questionnaires from individuals who

claim to have used the land. 17 of the witnesses are currently residents of Vowley View and Highfold, 10 being former residents of Vowley View and Highfold, which represents a significant number of residents of Vowley View and Highfold.

13.8. As well as their own use of the land, all but one of the witnesses refer to others using the land:

<b>Witness</b>	<b>Use of the land by family</b>	<b>Others seen using the land</b>
1	2 sons and husband – social; meeting friends; playing as children	Yes, daily – social activities; wild fruit picking; children playing; grass cutting
2	All 4 members of family – BBQ's and sports activities	Yes, weekly – sports activities
3	Daughters and partner – Party BBQs, photography	Yes, daily – community events
4	All members of family (Mother/Father/Brother/Sister/ Granddaughter) – Play and parties	Yes – Children playing and communal gatherings
5	My parents – Adult garden parties	Yes
6	Mother, father, brother, sister – playing and street events	Yes, most days – children playing and community events
7	Parents and children – Leisure activities, national events	Yes, frequently – playing / nature
8	All our family - recreational	Yes, weekly – football
9	All family - recreational	Yes, weekly – playing football, tree climbing
10	Family, grandchildren – meetings; get togethers; BBQ's	Yes, frequently – meetings
11	Family, grandchildren, friends	Gardening – vegetables, grass cutting
12	Mother, father, brothers and their children – Social event	Yes, warmer weather – social event
13	Husband – gardening, maintenance, blackberrying, veg patch	Yes, all the time until 5/15 – chatting
14	Wife – BBQ's, gardening, trimming bushes	Yes, 3-4 times per year – BBQ's, helping with maintenance and repairs



15	Mum, dad and sister – social events, national celebrations, meeting point, grass cutting	Yes, frequently – golf, cricket, football, tree climbing, dog walking
16	All of us – football, BBQ with residents, blackberry picking	Yes, weekly – same activities as me
17	Parents and children – Games, BBQ's and picnics, social activities	Yes, as required – recreation
18	Whole family (4 people) – social events and pleasure	Yes, daily – games and walking, leisure
19	Dad, mum, sister – national celebrations, social events, meeting friends, grass cutting.	Yes, frequently – Climbing tree, football, walking dogs, childrens parties
20	Husband and two daughters – Children played and met friends there, social activities	Yes, weather permitting daily – dog walkers, blackberrying and sloe picking, football, cricket, tea parties
21	My wife and 2 daughters – Social activities and child meeting area and play	Yes, daily weather permitting – Country walking, dog walkers, blackberry picking, limited sporting activities
22	Wife and children since 1980 – childrens games on a safe grassed area, picnic and BBQ's	Yes, children playing daily – football, cricket, tree climbing, children's games
23	Myself, husband and 3 children – playing, BBQ's, picnics	Yes, daily – football practice, cricket practice, putting, maintenance, gardening, playing, talking, sitting on benches.  Moved to 13 Vowley View in Sept 1980, there were a number of children living in the street at that time and I would often see them kicking a football, sitting chatting or playing with friends on the green. I didn't know their names then but later learnt they were the Causleys from no.14; the Withams from no.16, the Princes from no.18 and the Batterhams from 1 Highfold.
24	Parents, sisters – sports, games, street parties, BBQ's	Yes, daily – Sports, street parties, BBQ's

25	The whole family, 2 adults, 2 children – Games and social events	Yes, daily - childrens games
26	No	No information given
27	Parents and sister – play and street parties	Yes, weekly – Play or parties

13.9. Mrs Pope, (witness no.23 above), provides further evidence that generations of children from Vowley View and Highfold have used the land: “...many children have used The Green to play on. As each group became older a new one arrived to take their place. After the original group that I used to see when we first moved into the road, came the Hirsts (2 Highfold), the Hooper-Smiths (no 10 Vowley View – the previous owner to us. We moved 3 doors down to No.10 in 1985) and the Thornhills from No.18.

*After that our children were old enough to play there along with the Coles (No.14) and the Palmers (No.8). Together with friends from Branscombe Drive they formed the ‘Vowley Venturers’ and used to play regularly on the green during the evenings, weekends and school holidays. They have been followed by various other children up to and including the children who now live in numbers 1, 2, 5, 16 and 17 until the gate was locked last year.”*

13.10. Additionally the witnesses refer to community activities taking place on the land. These are listed within the application form, at part 7, by Mr R Gosnell:

*“BBQ dates from my old diaries. Not exhaustive.*

*2003 Sept 13 1700 hrs onwards*

*2006 July 16 1300 hrs onwards*

*2007 July 15 1300hrs onwards*

*2008 20 July*

*2009 July 19 1400 hrs onwards*

*2010 July 11 1400 hrs onwards*

*2011 July 2 1400 hrs onwards*

*2015 Aug 16”*

13.11. Mr Gosnell confirms that access to the land for the 2015 BBQ, was gained via gaps in the fence, as a result of no maintenance of the fence being undertaken by the landowners: *“The owner in 2006 placed a wicket fence along the Green’s roadside edge and an unlocked gate in the fence...This fence periodically broke over the years, due to high winds, and was repaired by residents with bits of wire etc...The owner has never to my knowledge done any repairs or other maintenance throughout the period under review...Entry to the Green for the 2015 BBQ and 1 or 2 mows, after the locking, was via the gaps in the fence mentioned above and through missing wooden slats which had broken off over the years.”*

13.12. The witnesses also refer to community events taking place on the land on a regular basis:

<b>Witness</b>	<b>Community Events</b>	<b>Frequency</b>
1	Celebration events, BBQ	43 years (photographs included)
2	No	No information given
3	BBQ’s, parties, meetings, fireworks (5 <sup>th</sup> November)	1970’s and 1980’s
4	Queens Jubilee parties, BBQ’s	Since 1980’s
5	Residents have been tending this piece of land and growing vegetables. Parties, fetes etc.	No information given (years of user 1969/70 – 2010) Since fence it was hard to hold parties and BBQ’s
6	BBQ’s, picnics, celebrations (e.g. Royal Wedding)	Since early 1980’s (when I was a child), until last year
7	Gardening, play, BBQ’s (annually), national events	About 30 years before May 2015 (photographs included)
8	Street BBQ	4-5 years (annually)
9	Street BBQ	4-5 years (annually)
10	BBQ’s etc, (music, meetings)	34+ years (yearly, monthly as required)
11	Family gathering	30+ years
12	Children playing (warmer weather), BBQ’s (annually), Royal weddings, jubilees	40 years
13	BBQ’s, street parties, Royal Jubilees	Since 1977 – 1977, 1982, 2003, 2006,

		2007, 2008, 2009, 2010, 2011, 2012, 2015 (photographs included)
14	BBQ's and Street parties	1977 – 2015 (mainly annually), (photographs included)
15	BBQ's, national celebrations	Certainly annually since left by previous developer as green space. Used for this purpose since my birth in 1975 so assume before this also. (photographs included)
16	BBQ (at least annually), Queens Golden Jubilee	30+ years
17	National holidays etc, social gatherings, picnic, BBQ's, maintenance of area	Since 1984 (32 years), as required, annually and maintenance of land (photographs included)
18	Royal National Celebrations, BBQ's, grass cutting	Since 1984, 35 years (annually / regularly / monthly (photographs included)
19	National celebrations, BBQ	Since land left as a green space by previous developer (annually sometimes more frequently). Land used for this purpose since I was born in 1980 and before that. (photographs included)
20	Celebration BBQ, children playing, grass cutting	35 years (annually and when required) (photographs included)
21	Celebration BBQ or similar, Childrens Leisure activities, grass cutting	35 years approx. (annually and when required) (photographs included)
22	Picnics and BBQ's	At least since 1980, when I moved to Vowley View (annual summer BBQ) (photographs included)
23	BBQ's and picnics	Since at least 1981 to my knowledge, 35 years (annually). 1981 BBQ was for the wedding of Prince Charles and Princess Diana and was such a success that we continued to meet each year. (photographs included)

24	Street Parties, BBQ's	Since I can remember, every few years
25	National celebrations, Royal Weddings / Anniversaries	Since mid 1970's (annual community BBQ) (photographs included)
26	Parties, BBQ's, Childrens play area	Since 1985 (annually, but children played daily – weekly).
27	Street parties, often Royal celebrations (Royal jubilees, Royal weddings)	Over 30 years (photographs included).

13.13. Many of the witnesses have included photographs of the local community attending the events, such as BBQ's on the land (the photographs are considered further at paragraphs 13.48.and 13.49 of this report). From the photographs the land is identifiable as the application land and the events appear to be very well attended, adding evidence to support use of the land by a significant number of inhabitants of the locality or neighbourhood within a locality.

13.14. This evidence is also supported by Cllr Chris Hurst who states (please see **Appendix 4**):

*“...On one such occasion I happened to be walking along Vowley View and the majority of resident's were out on the green enjoying a community get together...”*

13.15. Officers consider that given the size of the locality or neighbourhood identified as Vowley View and Highfold, 21 households over an area of approximately 1.06 hectares, the number of witnesses and their evidence of use with family members; others seen using the land and use by generations of children for lawful sports and pastimes, including photographs, are sufficient to suggest general use by the local community for informal recreation, rather than just occasional use by individuals as trespassers.

13.16. The objectors do not challenge the evidence regarding use of the land by a significant number of inhabitants of the locality or neighbourhood within a locality.

## **Of any locality or of any neighbourhood within a locality**

13.17. A town or village green is subject to the rights of local inhabitants to enjoy general recreational activities over it. The “locality” or “neighbourhood within a locality” is the identified area inhabited by the people on whose evidence the application relies, (although it is acknowledged that there is no requirement for most of the recreational users to inhabit the chosen “locality” or “neighbourhood within a locality”, as long as a “significant number” do, other users may come from other localities and/or neighbourhoods), however, it is the people living within the identified locality or neighbourhood who will have legal rights of recreation over the land if the application is successful.

13.18. The definition of “locality” and “neighbourhood within a locality” were reiterated in the recent case of *Paddico (267) Ltd. v Kirklees Metropolitan Council (2011)* as follows: a “locality” being an administrative district or an area with legally significant boundaries, such as a borough or parish, whilst a “neighbourhood” does not need to be an area known to law, but must be a cohesive area which is capable of meaningful description, such as a housing estate. So, for example, a housing estate can be a neighbourhood, but not just a line drawn around the addresses of the people who have used the claimed green.

13.19. In the *Royal Wootton Bassett* case, the applicant has identified Vowley View and Highfold, as the relevant “neighbourhood within a locality” as identified on Exhibit A included with the Application Form 44 and Statutory Declaration. Although no locality is expressly identified within the application form at part 6, there is no requirement for the applicant to do so where the applicant may *“...show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or attaching a map on which the area is clearly marked.”* The applicant does not need to do both and Exhibit A clearly shows the neighbourhood within the

locality, as outlined in red. Officers consider the locality to be Royal Wootton Bassett.

13.20. Although there is no known Housing Association for Vowley View and Highfold, the area pre-dates the recent development of Brynard's Hill to the east of Vowley View. In the Trap Grounds case Lord Hoffman pointed out the "deliberate imprecision" of the expression neighbourhood within a locality *"...and that contrasts with the insistence of the old law upon a locality defined by legally significant boundaries."*

13.21. This identified neighbourhood is supported by the witnesses. 24 of the 27 witnesses consider themselves to be local inhabitants in respect of the land (one of these states *"previously yes"*, Mrs Laurette Churchill, (formerly of 10 and 13 Vowley View), having moved away from the area in 2010, using the land from 1980 – 2010). Only 2 users do not consider themselves to be local inhabitants – Mrs Pamela Batterham confirms that she moved away from No.1 Highfold in 2008 and Mr M J Engley answers this question in the negative, although the address given in his witness evidence form, is Vowley View. Mr Ian Dowse gives no reply to this question although he does confirm that the land is opposite his house and his address is Highfold.

13.22. All witnesses now reside at Vowley View or Highfold, or have previously lived there. In his own evidence Mr Nigel Brewer confirms that whilst using the land, he lived at Rowan Drive 1978-1985; Vowley View 1985-1987 and Sheridan Drive 1987-2010, all in Royal Wootton Bassett, and whilst he still visits his mother regularly, he states that his own use ended in 2010, where he now resides in Malmesbury, (he is still aware of the land). Mrs Joan Roe lived in Vowley View 1971-1977 and then from 1979 to the present day at Longleaze, which is about half a mile away, but still uses the land. Mrs Maxwell-Lindsley confirms that she lived at 8 Vowley View until 2006 and moved away to Swindon, with use continuing after that date when visiting her parents. Emma Hoekman, (also formerly of 8 Vowley View), moved away in

2000, but still uses the land to the present day when visiting family. Mrs Charman moved away and ceased using the land in 2010, having lived opposite the land, but now visits her mother 3 times a week and is aware of the land. Mrs Sally Thornhill, (formerly of 19 Vowley View), now lives at Middle Ground in Wootton Bassett and used the land until 1999, she is still aware of the land. Mr Mike Brewer, (formerly of 11 Vowely View), now lives in High Street, Royal Wootton Bassett, last using the land in 1995.

13.23. Witnesses are also asked if the neighbourhood or locality has an identifiable name: 14 witnesses agree that the area is known as "Vowley View"; 5 witnesses agree that it is known as "The Green" plus one variation on this as "Vowley View Green". Mr Richard Pope considers that *"Its part of the Noremarsh Estate"*. 3 witnesses have given no reply to this question and 3 witnesses have replied that there is no identifiable name for the locality or neighbourhood. Where Vowley View is identified as the neighbourhood, Highfold forms only 2 houses, surrounded by properties in Vowley View.

13.24. Witnesses are also asked where people using the land come from, with varying replies:

Immediate locality; Vowley View and Highfold; Vowley View and surrounding area; Vowley View and surrounding roads; Vowley View residents; Vowley View, Highfold and Neighbouring streets; Local residents; Residents and visiting families/friends; Vowley View, Highfold, Others unknown; Neighbourhood and walkers; Locally to Vowley View, Highfold, Sherfields, ex residents invited; Vowley View and rest of estate; Vowley View, Highfold, Sherfields and locality; Neighbourhood local community; Neighbourhood; Neighbourhood/locality; Vowley View, Highfold and some surrounding streets; Mainly from the street, but also some neighbouring streets; Local neighbourhood; They live in the residential area close to the land; Mostly



Vowley View residents and surrounding streets; Residents of Vowley View and other nearby streets. One witness confirms that this is “*Not Applicable*”.

13.25. Two of the witnesses, when asked to list the activities they have undertaken on the land and the purpose for which they have gone onto the land, state that the community events have fostered good neighbourhood relations and many of the witnesses refer to the “Street BBQ” and “Street parties”.

13.26. The Noremarsh Estate which Mr Richard Pope refers to, appears to be a reference to “Noremarsh” which is a historical settlement area within the parish of Wootton Bassett, originating as settlement around the common of Nore Marsh. Nore Marsh Common along with others in the south part of the parish survived long after the parish was enclosed, until 1821 when the commons were enclosed by an Act of Parliament. Where rights in them were so small, no allotments were made and the land was added to adjoining farms. The existing farm house was surrounded by the 1967 housing development on the south side of the town, (Victoria County History, Volume 9).

13.27. “Noremarsh” is a suburb of Royal Wootton Bassett with a Manor House and junior school (Noremarsh Junior School). Officers consider that Vowley View and Highfold form part of the Noremarsh Estate, but the neighbourhood within a locality indentified in this application, does not extend that far and appears to be limited to Vowley View and Highfold, as evidenced by witnesses.

13.28. Within the evidence forms, a number of witnesses include on the map the extent of the neighbourhood which they consider to form the application neighbourhood. The witnesses are not required to record the locality/neighbourhood on the map attached to the witness evidence form, however, 20 witness do outline the area: 6 outline the neighbourhood as per the application, i.e. Vowley View and Highfold only; 11 record Vowley View,

Highfold and properties 5-8 Sherfields; 3 record Vowley View, Highfold and 5 Sherfields.

13.29. Cllr Chris Hurst, in his letter of support for the application dated 13<sup>th</sup> November 2016 states (please see **Appendix 4**):

*“In my time as Unitary Councillor I have had the great privilege to represent the community who live at Vowley View. I have seen the community spirit of the residents and the care and attention they take in looking after their street.”*

(Underlining added).

13.30. The witness evidence supports the neighbourhood of Vowley View and Highfold (Highfold forming only 2 houses surrounded by houses in Vowley View), within the locality of Royal Wootton Bassett, where a housing estate can meet the criteria of “Neighbourhood within a locality”. There appear to be others coming from outside this identified neighbourhood, i.e. from Sherfields and other neighbouring streets, but this is acceptable where a significant number of inhabitants come from the identified neighbourhood within a locality, (24 of the 27 witnesses consider themselves to be inhabitants of the neighbourhood within a locality, but all are residents or former residents of Vowley View and Highfold). Officers therefore consider that the applicant has successfully discharged the burden of proof with regard to identifying a “neighbourhood within a locality”, as Vowley View and Highfold, Royal Wootton Bassett.

13.31. The objectors make no submissions regarding the identified locality or neighbourhood within a locality.

### **Have indulged as of right**

13.32. Use “as of right” means use without force, without secrecy and without permission. In the Town/Village Green case of R v Oxfordshire County

Council Ex p Sunningwell Parish Council (2000), Lord Hoffman commented on use as of right:

*“It became established that such user had to be, in the Latin phrase, nec vi, nec clam, nec precario: not by force, nor stealth, nor the licence of the owner...The unifying element in these three vitiating circumstances was that each constituted a reason why it would not have been reasonable to expect the owner to resist the exercise of the right – in the first case, because rights should not be acquired by the use of force, in the second, because the owner would not have known of the user and in the third, because he had consented to the user, but for a limited time.”*

### **Permission**

13.33. The witness evidence questionnaire asks users if they have ever been given permission to use the land, or requested permission to use the land during their period of use. The following responses are given:

<b>User</b>	<b>Period of User</b>	<b>Permission</b>
1	1971 – 2015	No
2	1979 – 2008	No
3	1969 – 1995	No
4	1969 – 2010	No
5	1970 - 2010	No permission needed as no one other than the residents looked after the land, no one to ask for permission as it had been left for the residents to look after it
6	1980 – 2010	No
7	1985 - May 2015	No
8	2002 – 2015	No
9	2002 – 2015	No
10	34+ years	No
11	1982 – 2016	No
12	1970's – 2015	No
13	1975 – 2016	No
14	1975 – 2015	No

15	Feb 1975 – 2000 and 2000 – present if visiting	No
16	Aug 1999 to present day	No
17	1980 – May 2015	No
18	1980 – May 2015	No
19	Dec 1980 – 2006 and 2006 – present if visiting	No
20	Dec 1982 – May 2015 when fenced and locked	No
21	Dec 1982 – May 2015 (yr of the locked fencing)	No
22	1980 – May 2015	No
23	Summer 1985 – May 2015	No
24	1980(ish) – 2015	No, I always believed it to be owned by the Council
25	1971 – 1977 frequently, 1979 – present returning to join friends for social occasions	No
26	1985 – 2015	No – Tacit permission by virtue of it having been an open, free area
27	1979 – 1999	No

13.34. None of the witnesses claim to have requested or been given permission during their relevant user periods. Mrs Charman states that there was no one to ask for permission as the land was looked after by the residents and it had been left to the residents to look after. Mr Richard Pope suggests that no permission was required as he considered that the land was owned by the Council.

13.35. The evidence suggests that there was a period of time within the relevant user period, where the North Wiltshire District Council were maintaining the land, from at least 1975, (likely to be 1967/1969 around the time the houses were built), up until 2006 when the fence was erected around the land and it was no longer accessible for the Council mower. In a letter to Mr Gosnell dated 14<sup>th</sup> August 2002, Peter Jeremiah, Solicitor for North Wiltshire District Council,

confirms that the land is in the registered ownership of Cooper Estates Ltd, but that it has been treated by the Council as amenity land for some considerable time and the Council had cut the grass and maintained the site. The Council wished the land to be retained in the public domain as an amenity for the neighbourhood and it was his intention to write to the registered landowner requesting that the land be transferred to the ownership of the Council. This process appears to have not been undertaken or failed and Mr Gosnell's evidence suggests that even where the Council were aware that the land was in private ownership in 2002, they continued to maintain the land until 2006 and then only ceased to do so because they were unable to access the land as a result of the fencing erected at that time. After that, the maintenance of the land was undertaken by residents.

13.36. In this case, there is no issue of implied permission being granted over the land where the District Council maintained the land only and were not the owners of the land. There is a private landowner, whom, the evidence suggests, did not grant permission to use the land.

### **Without force**

13.37. None of the users claim to have used force to enter upon the land, for instance breaking locks or damaging fences to gain access and this is not challenged by the landowners. From the evidence before the Council it would appear that the application land was not fenced until 2006 and an unlocked gate was provided at this time. The gate was locked shut in May 2015, at which time the majority of witnesses ceased using the land. There is no evidence of gates and fences etc. on the land prior to 2006 and it follows that the public were not required to use force to enter the land, where it was open and freely accessible.

13.38. Use by force does not just mean by physical force, but also where use is deemed contentious, for example by erecting prohibitory notices or signs in relation to the use in question. In the Supreme Court Judgement R (on the application of Lewis) (Appellant) v Redcar and Cleveland Borough Council and another (Respondents) (2010), Lord Rodger commented that:

*“The opposite of “peaceable” user is user which is, to use the Latin expression, vi. But it would be wrong to suppose that user is “vi” only where it is gained by employing some kind of physical force against the owner. In Roman law, where the expression originated, in the relevant context vis was certainly not confined to physical force. It was enough if the person concerned had done something which he was not entitled to do after the owner has told him not to do it. In those circumstances what he did was done vi.”*

13.39. The witnesses do not refer to any acts carried out by the landowners to make user contentious, i.e. the erection of notices prohibiting use of the land and the landowners produce no evidence that they did so.

### **Without Secrecy**

13.40. Only two of the witnesses, Mr and Mrs Doyle, claim to have been seen by the landowner during their user period. When asked what the landowner said when they saw them, both reply “N/A”, which suggests that the landowners made no comment. Mrs Judith Gosnell confirms that when she and her husband moved to Vowley View in 1975, she soon realised that North Wiltshire District Council were maintaining this area of land, with routine grass cutting and occasional tidying up. This continued every year until about 2006 and until 2002 it was believed that the Council owned the land. Mr R Gosnell supports that the land was being mowed by Council staff 2 or 3 times per summer, from 1975. The landowners, Cooper Estates Ltd, provide no evidence that they were aware of the use, however, in evidence Mr David Pope states: *“Since the erection of the fence maintenance of the Green has been*

*performed by residents, including cutting the grass each summer and repairing the fence when it blew down in high winds. This maintenance must have been obvious to the owners, as they did not perform any maintenance to the property themselves, and no objection to this has ever been raised.”*

13.41. In his letter dated 9<sup>th</sup> December 2016 (please see **Appendix 5**), Mr R Gosnell states: “...A resident was told, around September 2016, by a Cooper Estates representative “Thank you for keeping it tidy for us”. This suggests they knew of our use, and did not think we were trespassing even though access would have been via broken fence places.” Although this acknowledgment was made outside the relevant user period, in this case of May 1995 – May 2015, it suggests that the landowners were aware of past use of the land and the residents’ activities to keep the land tidy prior to that date. When a fence was erected in 2006 the gate was not locked, which suggests that the landowners were aware of use of the land at that time, but did not take sufficient actions to prevent it. In evidence Mr David Pope states: “A picket fence was erected in 2006 or 2007, but there was never any suggestion that this was other than to denote ownership of the land, as an unbolted and unlocked gate was provided, with a latch and a handle on both sides of the gate.” Mrs Laurette Pope provides photographic evidence of “...our gatherings in 2010 and 2014 after the fencing had been erected, showing we were still able to use The Green by utilising the open gate.” She also states that “...in some respects the fencing did us a favour – the Green became more private and it stopped dog walkers, on their way to the fields, from allowing their dogs to defecate on the grass, thus making it safer for children to play on it.”

13.42. In conclusion, Officers are satisfied that, based on the evidence before the Council, user of the land has been “as of right”, on the balance of probabilities.

## Have indulged in lawful sports and pastimes

13.43. Witnesses claim to have undertaken the following activities on the land:

<b>Witness</b>	<b>Lawful sports and pastimes undertaken on the land</b>	<b>Seasonal activities</b>
1	Normal recreation activities, social gatherings, picnics, BBQ's, collecting wild fruit	Grass cutting, childrens activities, social meeting. Mostly summers or special occasions, annually and when decided. 43 years
2	BBQ's for local residents, athletics by my son	Street BBQ August/June/July since 2003
3	BBQ's, parties, photography	Fireworks party in the past
4	Recreational, parties, play, general access/recreation	No
5	Parking my brothers jeep (1980), garden parties, fetes, played on the piece of land from 1969/70 – 1980 as a child. Parties, games, blackberry picking, social events for all the children in the road, planting vegetables	Parties and BBQ's but since the fence it was hard to hold them
6	To play as a child and for community events; BBQ's, picnics etc	BBQs, picnics Summer, at least annually since early 1980's
7	Neighbourhood gatherings and safe play area, picnics, BBQ's, play area	Before May 2015 – BBQ's and National events Mainly summer months Annual BBQ pre-May 2015 About 30 years
8	Recreational, playing football, BBQ	Street BBQ 4-5 years, annually
9	Recreational, playing with children, community get together for 'street BBQ'	'Street BBQ' 4-5 years, annually
10	Meetings, family BBQ's, music concerts,	BBQ's etc.



	residents meeting place	34+ years, yearly/monthly as required
11	Annual street BBQ gathering, music recitals	Family gathering 30+ years, regularly, dependent on climate
12	Social event, BBQ	BBQ's Summer, once a year, 40+ yrs
13	Celebrations, maintenance, tree planting and plants, BBQ's, picnics, street parties, garden maintenance	Blackberry, sloe picking Autumn every year
14	BBQ's, mowing, planting bushes and flowers, 2 trees, vegetables, trimming bushes talking to NWDC mower before 2005 One BBQ in 2015, 1-2 mowing sessions in 2015, none since	No
15	Playing as a child, meeting friends, street BBQ, picnics, street parties, blackberry picking	Social Road BBQ Summer annually, since my birth in 1975 so assume before this also
16	Blackberry and sloe picking, children used to play football and climb tree, annual Vowley BBQ	Annual BBQ Summer, annually, 30+ yrs
17	Communal activities, i.e. BBQ's and picnics with family, games etc. National celebrations i.e. Queens birthday etc	Picnics, BBQ's plus maintenance of area Summer time and spring, annually and maintenance of land, since 1984 (32 years)
18	Vowley View picnics and BBQ's, childrens games, Royal celebrations	BBQ, grass cutting In the summer annually and monthly for 35 years
19	Playing when I was a child, picnics, tea parties with friends, street BBQ, picking blackberries.	Road BBQ Summer, annually since I was born in 1980 and before that
20	Pre May 2015 annual BBQ, national events, grass cutting all making for good neighbourhood relations. Royal weddings, jubilees, social events, childrens parties, fireworks.	Children playing, BBQ, cutting grass Summer usually, annually but when needed, 35 years
21	Pre-May 2015 – foster good neighbourhood	BBQ events, childrens leisure

	relations by annual BBQ's, celebrate national events, nature activities, grass maintenance, social events, royal weddings, jubilees, general husbandry.	activities, grass cutting Mostly summer, annually and selectively, 35 yrs approx.
22	Neighbourhood BBQ's, picnics, celebration of royal events (weddings, jubilees) to cut the grass after fence erected and to mend the fence	Summer picnic/BBQ June – August, annually since before we moved here in 1980
23	For street BBQ's, to collect blackberries, to play with my children, to talk to neighbours, to plant shrubs, gardening, social events.	Street BBQ/picnic Summer (date depends on weather and/or peoples vacations), annually, 35 years
24	I played on the land daily as a child, especially during summer months, football, tag, hide and seek etc. The last time was a street BBQ a few years ago (prior to fence).	BBQ's, street parties Summer, every year or two as long as I can remember
25	For childrens games, the community BBQ and other celebrations, games, street parties.	BBQ July each year, annually for more than 30 years
26	Social and community gatherings, BBQ's, assist with general maintenance, celebratory parties	No
27	Regularly played as a child, street parties – royal wedding, street BBQ's, football, general play	No information given

13.44. Witness evidence suggests that these activities stopped when the gate was locked in May 2015. Mr R Gosnell refers to a BBQ held after that date and mowing of the land by residents on one or two occasions, where access to the land had been gained using gaps in the fence which had naturally appeared since its erection in 2006 and where the landowners had carried out no maintenance of the fence.

13.45. In order for the land to be successfully registered as a town or village green, it must be established that there is use of the land generally rather than use being concentrated on a linear route/s across the land, which could give rise to a claim for public rights of way rather than a town or village green. There are no recorded public rights of way over the land and in this case, there is a

distinct lack of evidence of use of the land for the purposes of walking or dog walking. More, the evidence suggests that inhabitants of the neighbourhood, have used all of the land for social events and gatherings and play, which is supported by the photographs of these events included by witnesses. Additionally activities such as blackberry picking and playing would have required users to stray off a linear route and use the land more widely.

13.46. In this case the witness evidence suggests that the land was used regularly as a social gathering point for many years. The witnesses refer to periods of 30 years plus. Cllr Chris Hurst supports this in his letter dated 13<sup>th</sup> November 2016 (please see **Appendix 4**):

*“I have also seen the community use the green for social events and gatherings. On one such occasion I happened to be walking along Vowley View and the majority of resident’s were out on the green enjoying a community get-together. I was struck then, how important this space is and what a vital community asset this green space is and has been for many decades.”*

13.47. This is also supported by the minutes of the Royal Wootton Bassett Planning Committee, 29<sup>th</sup> January 2015, in its consideration of Planning Application no. 14/12039/FUL, erection of new dwelling with integral garage on land opposite no’s 8-10 Vowley View, Royal Wootton Bassett, as follows (please see **Appendix 3**):

*“Subsection 6.59 (Wiltshire Core Strategy) on the delivery of this objective (to build resilient communities) highlights the need to ‘foster a sense of community belonging, social inclusion and self sufficiency’. This space has been able to provide all these benefits to the local community since the 1970’s through informal leisure activities and use of the site for street parties and celebrations.”*

13.48. The witnesses have provided photographic evidence of use of the land for community and social events, as follows:

Witness	Details of photographs provided
1	3 Photographs of at least 2 social gatherings on the land. The land can be identified from the houses in Vowley View. No dates are given, but two of the photographs show that user pre-dates the erection of the fence in 2006 and the development of the houses to the east of the application land. The horse-chestnut tree, felled in 2015, is present and mature (outplanted from a pot onto the green in 1983). Looking at the persons present at the event it is possible that the photographs may be dated 2005, when considered alongside dated photographs provided by witness 21. The final photograph provided shows the fencing erected in 2006 and the horse chestnut, dating the photograph between 2006 and May 2015, when the tree was felled, during the relevant user period of 1995 – 2015.
3	3 photographs of a jeep parked on the land. The land can be identified from the Vowley View houses. No dates are given but the photographs pre-date the development to the east of the application land.
7	2 photographs of social gatherings on the land, which may be identified by the houses in Highfold. No dates are given, but the horse chestnut tree is present (planted 1983, felled 2015). Looking at the persons present at the event it is possible that at least one of the photographs may be dated 2005, when considered alongside dated photographs provided by witness 21. This falls within the relevant user period.
13	4 photographs of “Vowley View BBQ – 20 July 2008”. The fence has now been erected and the land may be identified by the houses in Vowley View and Highfold.
14	4 photographs of “Green BBQ 2003-09-13”. The land is identified by the properties in Vowley View and Highfold and the “Highfold” street sign. 3 further photographs of another social event on the land are provided. Again the land can be identified by the houses in Vowley View and Highfold. There are no dates provided for these photographs, but no fence is present and the horse chestnut tree is visible and mature (planted as a sapling in 1983 and felled in May 2015). Looking at the persons present at the event it is possible that these photographs may be dated to 2004, when considered alongside dated photographs provided by witness 21.
15	3 photographs of at least 2 social events taking place on the land, which may be identified by the houses in Vowley View. There are no dates provided for the photographs, but two of them pre-date the development to the east of the application land and the horse chestnut is present and mature. There is no fence present and looking at the persons present at the event it is possible that the photographs may be dated to 2005, when considered alongside dated photographs provided by witness 21. The final photograph provided shows the fencing erected in 2006 and the horse

	chestnut, dating the photograph from 2006 - May 2015, when the tree was felled, within the relevant user period of 1995-2015.
17	3 photographs of social gatherings on the land, which may be identified by the houses in Vowley View. There are no dates provided, but the photographs pre-date the development to the east of the land and there is no perimeter fence. Looking at the persons present at the event, it is possible that at least one of the photographs may be dated 2005, when considered alongside dated photographs provided by witness 21.
18	5 photographs of at least two separate social events taking place on the land, which may be identified by the properties in Highfold. There are no dates given for the photographs, but they pre-date the development to the east of the application land and the horse chestnut tree is present and mature, there is no fencing around the land. Looking at the persons present at the event, it is possible that at least one of the photographs may be dated 2005, when considered alongside dated photographs provided by witness 21.
19	3 photographs provided of at least 2 social events taking place on the land, which may be identified by the houses in Vowley View. Two of the photographs do not show the fencing and may be dated between 1980 and 2006 (given the witnesses period of user from December 1980 – present day). The other photograph may be dated after 2006 where the fencing is present but it is not possible to ascertain whether or not the tree, which was felled in May 2015 is present, where Officers are aware that there was an additional BBQ on the land in 2016, outside the relevant user period of 1995-2015. It is claimed that after May 2015 and the locking of the gate, users accessed the land via gaps in the broken fence (where no maintenance of the fence had been carried out by the landowners) and gaps in the fence can clearly be seen.
20	As per 15.
21	4 photographs are provided of social events taking place on the land in 2004 and 2005. The land may be identified by the houses in Vowley View and Highfold. There is no fencing of the land and the horse chestnut tree is present.
22	Photographs are provided of 2 cattle grazing the land in 1997; Royal Wedding celebrations on 29 <sup>th</sup> July 1981; social gathering in summer 1982 and a BBQ on the green on 16 <sup>th</sup> July 2006, attended by “Residents from Vowley View and Highfold”. The land may be identified by the houses in Highfold and Vowley View, there is no fencing present and the horse chestnut tree is visible in the 2006 photographs.
23	The same photographs as above are provided for social gatherings in Summer 1981, 1982 and 2006. In addition 2 photographs are provided of a social gatherings on 11 <sup>th</sup>

	July 2010 (with the fencing and the horse chestnut visible) and 2014? (after the erection of the fencing). However, Officers would query the date given for this photograph, where the horse chestnut tree is not visible and the new development to the east of the application land may be seen. This would suggest that this photograph is more likely to be taken after May 2015 when the tree was felled and is more likely to show the summer 2015 BBQ. The land may be identified by the horse chestnut tree (2010), the fencing and the houses in Highfold and Vowley View.
25	Photographs of at least 2 separate community events taking place on the land which may be identified by the properties in Vowley View and Highfold. In two of the photographs there is no fencing of the land, the horse chestnut is present and the development to the east of the application land is not yet commenced. Looking at the persons present at the event, it is possible that the photographs may be dated to 2005, when considered alongside dated photographs provided by witness 21. The final photograph is dated post 2006, where the fence is present and pre-May 2015, when the horse chestnut tree was felled.
27	4 photographs provided of a social event taking place in 1982. The land may be identified by the houses in Highfold and Vowley View.

13.49. The photographs do provide evidence of use for the purposes of community events and social gatherings, within the relevant user evidence period of 1995-2015. There is also photographic evidence of use for these purposes outside the user period in question, the earliest dating from 1982, which suggests a long history of use of the land for these purposes.

13.50. The witnesses refer to their maintenance of the land following the construction of a perimeter fence around the site in 2006, (prior to this date there is evidence to suggest that the land had been maintained by North Wiltshire District Council and it was believed that the Council owned the land, until 2002). Locals have also planted the site and erected benches, although the land is in private ownership.

### **On the land**

13.51. All witnesses who have completed evidence questionnaires have confirmed their use of the land by attaching and signing a plan outlining the area in question. All witnesses have themselves annotated the map to include the area of land which they have used. The majority of witnesses have also included what they consider to be the relevant neighbourhood within the locality, or where the main users of the land are coming from to use the land.

13.52. There is no evidence that users have used only part of the land and the objectors do not suggest that this is the case. In fact use of the land for social events and celebrations and the supporting photographs, suggest use of the whole of the application land.

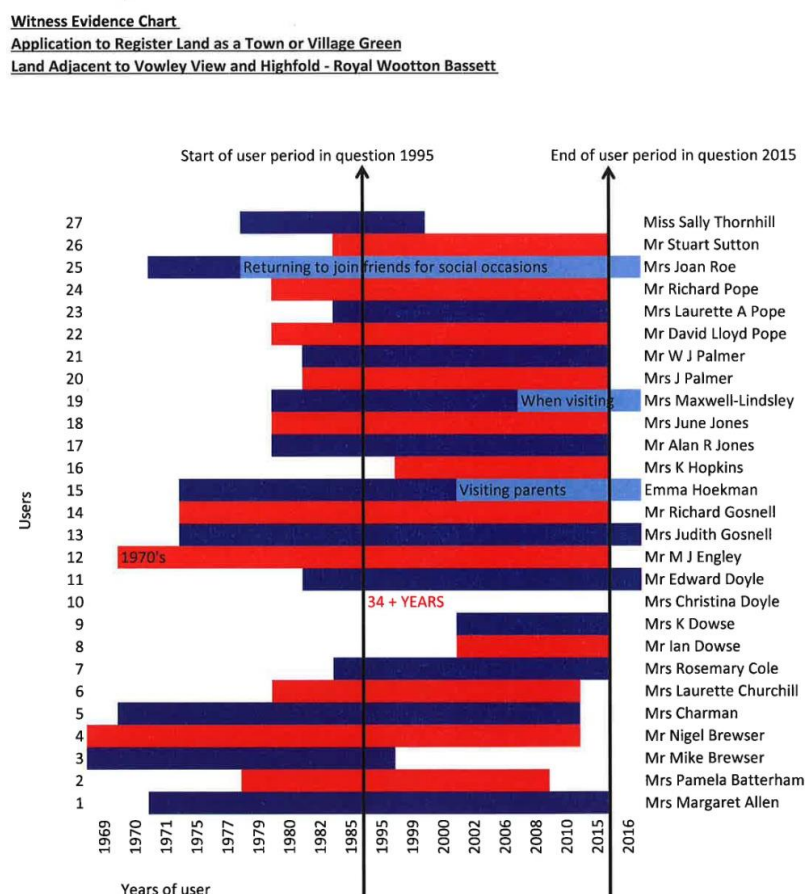
13.53. This application is made under Section 15(1) of the Commons Act 2006 and also Section 15(3) which applies where use of the land has ceased but application is made within one year of the cessation of use. From the evidence before the Council it would appear that the land was fenced in 2006, but it was still accessible via the unlocked gate at its northern end. This gate was padlocked in May 2015, preventing access and the majority of witnesses ceased their use of the land at that time.

13.54. The objectors provide no additional evidence regarding use of the application land.

### **For a period of at least 20 years**

13.55. To satisfy the 20 year user test, with use ending in May 2015 when the gate in the fence was padlocked, the period of user in question is May 1995 – May 2015, with the application made no later than one year of the cessation of

use, (in this case the application is received by the Registration Authority on 12<sup>th</sup> April 2016). Please see user evidence chart below:



13.56. There is no requirement for all of the witnesses to have used the land for a period of 20 years, rather the evidence may have a cumulative effect to demonstrate public user for a period of 20 years. In this case the user period in question is identified as 1995 – 2015 (when the gate was locked). 17 of the witnesses have used the land for the full 20 year user period in question, (3 of



those being former residents of the identified neighbourhood of Vowley View and Highfold, returning to use the land when visiting family or friends). 9 users have not used the land for the full period, but have used the land at some point within the relevant user period. Mrs Christina Doyle does not give any dates within her evidence form, but states that she used the land for 34 years plus. This is likely to be within the relevant user period at some point, also given her husband's use of the land between 1982 and 2016, where both Mr and Mrs Doyle claim to have used the land with family and grandchildren, (Mr Doyle has completed a separate witness evidence form). Even if Mrs Doyle's evidence of 20 year user is removed, where no specific dates of user are given, there remain 26 witnesses who have used the land within the relevant user period and Mrs Doyle's evidence still provides useful supporting evidence of the use of the land by inhabitants of a locality or neighbourhood within a locality, as of right, for lawful sports and pastimes.

13.57. Many of the witnesses refer to use of the land for a period of 30 plus years. This is supported by the minutes of the Royal Wootton Bassett Planning Committee, dated 29<sup>th</sup> January 2017, in their consideration of Planning Application no.14/12039/FUL, erection of new dwelling with integral garage on land opposite no's 8-10 Vowley View, Royal Wootton Bassett, as follows:

*"Subsection 6.59 (Wiltshire Core Strategy) on the delivery of this objective (to build resilient communities) highlights the need to 'foster a sense of community belonging, social inclusion and self sufficiency'. This space has been able to provide all these benefits to the local community since the 1970's through informal leisure activities and used of the site for street parties and celebrations."*

13.58. Officers consider that the applicant has successfully discharged the burden of proof with regard to 20 year user of the land and the objectors produce no evidence to dispute user of the land by local inhabitants, for a period of 20 years.

## Use has Ceased

13.59. The application is made under Sections 15(1) and (3) of the 2006 Act, where use has ceased and the application to register the land as a town/village green is made within 1 year of the cessation of use. It is claimed in the application that use of the land ended in May 2015, upon the locking of the gate and the application, being received by Wiltshire Council on 12<sup>th</sup> April 2016, is therefore a valid application made within 1 year of the cessation of use.

13.60. However, it has been brought to the attention of the Registration Authority that a BBQ was held on the land in August 2015 and residents entered the land for the purposes of mowing on 1 or 2 occasions in the summer of 2015, after the gate was locked and the applicant further states that users “voluntarily” ceased using the land “*during the summer 2015*” or “*after the summer of 2015*” (late 2015). When stating their period of user, 5 users claim to have used the land until 2016 or the “present”, (completing witness evidence forms between March and April 2016). E Hoekman and Mrs Maxwell-Lindsley claim to have used the land until the present day, however when giving further details in the evidence forms, both witnesses suggest that their use ended in May 2015 on the locking of the gate and when asked how often they use the land now, both reply “*occasionally when visiting*”. Mr E Doyle claims to have used the land from 1982-2016, but when asked how often do you use the land now, he replies “*gate locked No access*”. Mrs Roe claims use from 1971 to the present day, but confirms in her evidence that the when the fence was erected in 2006, whilst access was still possible through the unlocked gate, the gate is now locked and she used the land up until May 2015, (a former resident of Vowley View, Mrs Roe now lives elsewhere in Royal Wootton Bassett and from 1979 - present day, she has returned to join friends for social occasions). Mrs J Gosnell now only uses the land for essential maintenance where access is still possible as the fence is not maintained.

13.61. 5 witnesses (including Mrs Gosnell who claims a period of user until 2016, as above), confirm that use of the land continued after the locking of the gate in May 2015, specifically referring to the locked gate as an event which restricted/prevented use of the land, (5 other witnesses confirm that their use continued following a restriction, but make no reference to the event which restricted/prevented access, or refer to their use continuing after the erection of the fence in 2006). Mrs Margaret Allen confirms that use after May 2015 was for limited husbandry and Mr and Mrs Palmer, (who have completed separate witness evidence forms), confirm use after May 2015 was not social, but for limited husbandry of the land.

13.62. There is evidence that entry to the land after May 2015 was gained via gaps in the fence which had occurred naturally where the landowner had not carried out any maintenance to the fence since its erection in 2006. 4 of the 5 witnesses who claim that user continued after the locking of the gate in May 2015, confirm that access was gained via the broken/damaged fence, with 4 references to a lack of maintenance of the fence. The applicant also confirms in the application that *“the fence periodically broke over the years, due to high winds...Entry to the Green for the 2015 BBQ and 1 or 2 mows, after the locking, was via the gaps in the fence mentioned above and through missing wooden slats which had broken off over the years.”*

13.63. The applicant states that the activities on the land were voluntarily stopped after the summer of 2015, whilst awaiting the outcome of the planning and planning appeal procedures and in order to await the outcome of the town/village green application. This is supported by 4 of the witnesses who claim that use continued after the locking of the gate in May 2015, who state 2015 as the end of their own period of user. Therefore, even where the cessation of user is moved forward several months to late 2015, the application is still compliant with Section 15(3) of the Commons Act 2006, where use has ceased and the application is made within 1 year of the cessation of use. In the application Form 44 the applicant is asked *“If section*

*15(3) or (4) applies, please indicate the date on which you consider that use as of right ended*", to which the applicant has replied "*May 2015*". The wording of the application, i.e. using the term "*which you consider*" suggests that this reference is not "set in stone" and where a different user period is discovered upon examination of the available evidence, the application is still "in order", as long as the application is made with 1 year of the cessation of use.

13.64. Additionally, there may be an element of user by "force" after May 2015, where the landowners had locked the gate as a clear indication that access to the land was not permitted. In evidence, at question 13 of the evidence form, 21 users confirm that their use of the land has been prevented or restricted; 6 of those users refer to the erection of the fence as the restriction/prevention and 12 users refer to the locked gate as preventing or restricting use and 4 users include the fence and the gate. As Mrs Joan Roe points out, it is likely that "*since the fence was erected in 2006 access has been hindered and since May 2015 padlocked gate has prevented access*".

13.65. The landowners erected the fence in 2006, but included an unlocked gate in the fence, which permitted access, (although perhaps hindered when considering the previous open access to the unenclosed land). User continued after 2006 and the inclusion of the unlocked gate did not indicate to those using the land that they were not permitted to do so. The action of locking the gate and denying access sends a message to users, that they were not permitted to use the land and 16 users refer to this event. Although access through the broken fence, is not necessarily use by force, where the damage has been caused through a lack of maintenance of the fence, it may be user by force where the landowner has implied that access is prohibited by the locking of the gate. Where it is considered that use after May 2015 is not "as of right" and therefore not qualifying user, the cessation of use occurs in May 2015, but the application is still valid and correctly made under Section 15(3) of the Act, i.e. within 1 year of the cessation of use.

13.66. The landowners do make representations where “*no specified date is given as the end dated in May 2015...*” The end date does affect the validity of the application where, under Section 15(3) of the Commons Act 2006, the application must be made within one year of the cessation of use. In this case the application was received by Wiltshire Council on 12<sup>th</sup> April 2016, (the reasoning for this date being taken as the application date, not when it was put in order on 15<sup>th</sup> September, are explored at paragraphs 13.75 – 13.85 of this report), and whether use as of right ended in May 2015 when the gate was locked, or it is taken that the use after this date, is user “as of right” and the end period is the voluntary cessation of use “after the summer of 2015”, the application is still correctly made and it serves simply to push the relevant user period forward to late 1995 - late 2015. There is sufficient user evidence to suggest that a significant number of inhabitants of a locality or neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of 20 years or more, in either of these periods.

### **Planning Applications**

13.67. The planning applications affecting the site have been open to public consultation and the replies support the use of the land by inhabitants of a neighbourhood within a locality, for lawful sports and pastimes for a period of 20 years or more. Please note that the planning consultation replies have not been submitted as evidence by any party and Wiltshire Council as the Registration Authority is not relying upon these documents in its determination of the town/village green application, where the planning system is an entirely separate process and planning issues cannot be taken into consideration when determining an application made under the Commons Act 2006.

13.68. Planning Application no.14/12039/FUL (January 2015) – erection of new dwelling with integral garage on land opposite numbers 8-10 Vowley View,

Royal Wootton Bassett, Wiltshire, SN4 8HT: The majority of consultation replies are received from residents of Vowley View and Highfold, as expected and Royal Wootton Bassett Town Council, in objection to the development. They support use of the land by local residents for a period since the houses in Vowley View and Highfold were built in the 1970's, including use of the land for community activities; informal leisure activities and recreation; street parties and celebrations; annual summer BBQs; jubilee and royal wedding celebrations; a central gathering point for residents and young children; ball games; den making; observing flora and fauna and as a safe place for children to play.

13.69. They also support that the District Council and (after the fence was erected), the local community/residents, have maintained/planted the land and repaired the fence, whilst the landowners have taken no action to maintain the land.

13.70. There is a claim that the land formed half of a roundabout intended to be built, which was never completed and in her witness evidence form submitted in support of the town/village green application Mrs Charman states "*The original builders owned it and it was going to be a roundabout but my understanding was that they went bankrupt and so couldn't complete the build and the land was rejected from then on.*" Other representations suggest that the land, now subject of the town/village green application, was provided as a green area for the local community as part of the original development of the Gough Cooper Estate in the early 1970's. This reflects the comments made in the town/village green application, e.g. Mrs Margaret Allen considers that the land was "*Open Space gifted by original house builder*".

13.71. It is clear that respondents consider the land to have been a valued amenity for the community for several decades and as such the objectors to the planning application submit that the development of this site would be contrary to the North Wilts Plan 2011 – C3iii, where the development would be an unacceptable loss of existing amenity to the residents and CF3 –

inappropriate to look to financial contribution where the area is now unique. The Town Council also claim that the development contravenes Core Policy 52 of the Wiltshire Core Strategy, on green infrastructure, which states that “*development shall make provision for the retention and enhancement of Wiltshire’s Green Infrastructure*”. Retaining the area as a green space for use by the local community also assists with the delivery of Strategic Objective 4 of the Core Strategy which aims to build resilient communities. Subsection 6.58 on the delivery of this objective highlights the need to “*foster a sense of community belonging, social inclusion and self sufficiency*”.

13.72. These comments in relation to the January 2015 planning application, show that even before the town/village application was made in 2016, residents were making reference to their use of the land for a long period before that date and these comments would have made the landowners aware of the use of the land, (perhaps leading to the locking of the gate in May 2015).

13.73. Planning Application no.16/100127/FUL (October 2016) - erection of detached single three bedroomed dwelling at land opposite no.s 8 and 10 Vowley View, Royal Wootton Bassett, SN4 8HT: This application was received after the making of the town/village Green application (12<sup>th</sup> April 2016). The respondents repeat the comments made in 2015, regarding longstanding use of the land for lawful sports and pastimes, by local residents.

13.74. The planning application responses with regards to both applications, are consistent with the evidence submitted in support of the town/village green application.

### **Comments on the objections**

13.75. The landowner, Cooper Estates Ltd, have objected on a number of grounds including the timing and validity of the application (please see correspondence at paragraphs 12.3 and 12.8 of this report and **Appendices 2 and 6**).

13.76. The issues of timing and validity of an application are dealt with in a very detailed manner in case law, in the Court of Appeal before Lady Justice Arden, Lord Justice Richards and Lord Justice Vos – R (Church Commissioners for England) v Hampshire County Council and Anr and Barbara Guthrie [2014] EWCA Civ 643. It concerns a case where Mrs Barbara Guthrie filed an application with the registration authority on 30<sup>th</sup> June 2008, however, the application was defective in several respects, finally complying with all the requirements of the regulations on 20<sup>th</sup> July 2009.

13.77. Lady Justice Arden states that:

*“The primary rule in section 15 is that the recreational use must be continuing at the date of the application: see section 15(2). In some cases, however, of which this is said to be one, that use will have ceased before the TVGA [Town Village Green Application]. Sections 15(3) and (4) deal differently with cessation before and after commencement of CA [Commons Act] 2006. Lewison LJ explained in R(Newhaven Port & Properties Ltd) v East Sussex County Council (No.2) EWCA Civ 673, [2013] 3 WLR 1433 at [62] to [63] that this is because it was easier for a landowner to cause the use to cease before that date than afterwards since before that date he simply had to give notice that he consented to the use and not physically prevent use of the land.*

13.78. Section 14(3) of the Growth and Infrastructure Act 2013, inserted Section 15(3A) into the Commons Act 2006, which reduced the relevant period in England after cessation of use for the purposes of Section 15(3) of the Act, from 2 years to 1 year.

13.79. The Wootton Bassett application is made under Section 15(3) of the Commons Act 2006 which states:



*“(3) This subsection applies where –*

- (a) a significant number of inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;*
- (b) they ceased to do so before the time of the application but after the commencement of this section; and*
- (c) the application is made within the relevant period.*

*(3A) In subsection (3), “the relevant period” means –*

- (a) in the case of an application relating to land in England, the period of one year beginning with the cessation mentioned in subsection (3)(b);*
- (b) in the case of an application relating to land in Wales, the period of two years beginning with that cessation.”*

13.80. In the objection, Gregory Jones QC correctly states that the application for a village green must be made within one year of the date of cessation of user, so the date at which the registration authority accepts the application is highly relevant here. Is the application “made” when it is received and date stamped by the Authority, (in this case 12<sup>th</sup> April 2016), or the date on which a defective application is put in order to meet all the requirements contained in the regulations of the Act, (in the Royal Wootton Bassett case 15<sup>th</sup> September 2016)?

13.81. The Hampshire case goes on to discuss this. Lady Justice Arden sets out the requirements of an application and states:

*“Form 44 refers to guidance notes, which are published separately. They are thus non-statutory and do not form part of the Regulations. They state in relation to a TVGA that the stamp which the registration authority gives to the application as the date of receipt “may be important, because it is the date against which the time limits on applications in section 15(3) and 15(4) apply”.*”

13.82. Mrs Guthrie’s application was filed on 30<sup>th</sup> June 2008 and was defective in 3 parts, parallels may be drawn here between the Hampshire case and the Royal Wootton Bassett case. There is no requirement within the regulations for the registration authority to serve notice of the application upon the landowner, until it is put in order as Lady Justice Arden states:

*“34. The limited possibility for correction to which I referred in paragraph 1 of this judgement is to be found in Regulation 5(4) of the Regulations. This suspends the registration authority’s right to reject a non-compliant application and thus its obligation to give notice of application to persons interested in the land and to the public, until the applicant has been given a reasonable opportunity to put her application in order:*

*“(4) Where an application appears to the registration authority after preliminary consideration not to be duly made, the authority may reject it without complying with paragraph (1), but where it appears to the authority that any action by the applicant might put the application in order, the authority must not reject the application under this paragraph, without first giving the applicant a reasonable opportunity of taking that action.”*

13.83. Therefore, the registration authority was correct in not notifying the landowner that the application was made until it was put in order and when it did so, it attached notice as per the wording of Form 45, which is set out within the regulations and advised that the application had been made publicly available for inspection as required. The authority has acted correctly in this case.

13.84. Lady Justice Arden continues:

*“35. Mr Karas contends that Regulation 5(4) is not retrospective so that any corrected application only takes effect from the date of filing of the corrected application. But this argument runs up against this point, pressed by Mr Hobson, that under Regulation 4 (set out in the Annex to this judgement) the Registration Authority must stamp every application on receipt. Regulation 5(4) does not suspend this obligation*

*nor is there any provision for altering that date. In response to this difficulty, Mr Karas argues that the expression “made” in Regulation 5(1), which starts with the words “where an application is made under section 15(1)” of the CA 2006, means “duly made in accordance with the regulations”: see sections 15 and 24(1). But if that were so, Regulation 5(4) would not have to suspend that obligation...”*

*“...If within the reasonable opportunity so given the applicant corrects the errors, the original application has full force and effect and therefore the Regulation must be retrospective.*

*I reach this conclusion on the basis that the Regulations throughout refer to one and the same application. In addition, the application is given a date on the receipt. Dating the application must be for some purpose...”*

*“...The point remains that it would be wholly misleading for the application to be dated with the date of its receipt if that were not its effective date.*

*42. The guidance note referred to in form 44 is consistent with the view that I have taken (see paragraph 10, above). Although it is non-statutory, it has some weight because it is referred to in form 44 which is a statutory document.*

*43. I agree with the judge that it would have been better if Parliament had provided that the landowner should receive a precautionary notice as soon as an application was received. However, that point seems to me to lead to the conclusion that the period between the date of the application and its due completion should be short.*

*44. Accordingly, I conclude on this issue that Regulation 5(4) provides a means for curing deficiencies in an application which does not provide all the statutory particulars, and, once an application is so cured, it is treated as duly made on the date on which the original defective application was lodged.”*

13.85. Where the Hampshire judgement is applied in the Royal Wootton Bassett case, the date of the application should be taken as 12<sup>th</sup> April 2016 when the Registration Authority date stamped the application upon receipt and

therefore the application is correctly made within one year of the cessation of use at the end of May 2015, or late 2015.

13.86. The landowners also object on the ground that there is a planning “trigger event” in place over the land, which would effectively extinguish the right to apply to register land as a town/village green, where *“the site in question is subject to the adopted Core Strategy”* and *“The current site is within limits for development of Royal Wootton Bassett. Wiltshire Council having considered these policies has previously accepted that the “location of the site is therefore considered appropriate for development in principle...”*

*“It is clear from the wording of the policy that the site in question was identified as land for “potential development” before the application to register the site as a village green was made. The trigger event had thus been triggered before the application was made. Accordingly, the application is invalid and must be rejected.”*

13.87. Upon receipt of the town/village green application Wiltshire Council, in its capacity as the Registration Authority, wrote to the planning authorities on 15<sup>th</sup> April 2016, including a list of trigger and terminating events and requesting details of any trigger/terminating events in place over the land at this time. Correspondence was addressed to Spatial Planning – Wiltshire Council; Development Control – Wiltshire Council and the Planning Inspectorate, all of whom identified that there were no “trigger events” in place over the land at that time, (without corresponding terminating events), which would extinguish the right to apply (please see paragraph 10.4).

13.88. Wiltshire Council as the Registration Authority must rely upon the responses given by the planning authorities. In this case the objectors’ representations regarding trigger events in place over the land, were forwarded to Spatial Planning at Wiltshire Council. The Head of Spatial Planning made the following comments regarding the objectors’ representation:

*“I have considered the objector’s assertions that there is a trigger event in place. However, I can confirm that in our opinion no trigger event has occurred in relation to the land in question, as the land/site (subject of the application) is not specifically identified for potential development, although strategic policy for the area exists as set out in the Wiltshire Core Strategy (adopted January 2015).”*

13.89. The Council’s Core Strategy identifies broad locations in Wiltshire for future development to provide a framework and identify areas of growth where development could be focused and provides the basis for future decision on potential development in identified settlements (such as the Market Towns). In effect this means that a policy for a strategic area may exist without having identified specific sites for potential development. Therefore although Royal Wootton Bassett has been identified as an area for growth through its designation as a Market Town, the Council’s Core Strategy does not identify land for development as this would be for the neighbourhood planning process or the sites development plan. As land has not been identified for development at Royal Wootton Bassett within the neighbourhood planning process or sites development plan, the Council has concluded that no trigger event has taken place in this case.

13.90. Therefore, the right to apply is not extinguished and the Registration Authority must continue to determine the Town/Village Green application, based upon the available evidence, which is not disputed by the objectors.

13.91. In correspondence Royal Wootton Bassett Town Council have submitted the minutes of their Planning Committee meeting held on Thursday 29<sup>th</sup> January 2015 (please see **Appendix 3**). At this meeting the Parish Council considers Planning Application no.14/12039/FUL, erection of new dwelling with integral garage on land opposite numbers 8-10 Vowley View, Royal Wootton Bassett and concludes that the development of this land would contravene Core Policies 51 and 52 of the Wiltshire Core Strategy.

13.92. There have been 4 planning applications over the land. Application no.16/10012/FUL is dated October 2016, after the receipt of the Town/Village Green application (12<sup>th</sup> April 2016) and therefore cannot be a valid trigger event. Applications N/02/02965/FUL (December 2002); N/03/00817/FUL (March 2003) and 14/12039/FUL (January 2015), each have corresponding terminating events which mean that they are no longer valid trigger events, however, Officers have considered whether these events may be considered as an interruption to user as of right, for a period of at least 20 years. On this point Officers have taken into account the DEFRA “Guidance to Commons Registration Authorities in England on Sections 15A to 15C of the Commons Act 2006” and have concluded that the guidance makes clear that it is only the right to apply which is suspended by the trigger event and that there is no further effect. The Growth and Infrastructure Act 2013 introduces Section 15A into the Commons Act 2006 and landowner statements which may be deposited with the authority and which serve to bring to an end any period of recreational use “as of right” over land, rather than the occurrence of a planning trigger or terminating event.

13.93. At paragraph 60 of the guidance it is stated that: *“At any time when the right to apply is excluded in respect of land, a commons registration authority cannot accept any application to register the land as a green. The right to apply remains excluded until and if a corresponding ‘terminating event’ occurs in respect of the land.”* It is not stated that the trigger event may also suspend user “as of right”.

13.94. At paragraph 86, of the guidance it is stated that “You (the Registration Authority) can consider an application as normal where either:

- a) no trigger event has occurred; or
- b) a trigger event has occurred but a corresponding terminating event has also occurred in relation to the land, which has therefore caused the exclusion of the right to apply to lift.”

There is again no mention of user “as of right” being interrupted by the trigger/terminating event.

13.95. In the Royal Wootton Bassett case there is evidence that user was still taking place, despite the trigger events being in place. The trigger events did not prevent use of the land or bring home to local inhabitants that their right to use the land was being challenged and therefore cannot give rise to an interruption in the user.

#### **14. Overview and Scrutiny Engagement**

14.1. Overview and Scrutiny Engagement is not required in this case. The Council must follow the statutory procedures which are set out under “The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 (2007 SI no.457)”.

#### **15. Safeguarding Considerations**

15.1. Considerations relating to safeguarding anyone affected by the registration of the land as a town or village green under Sections 15(1) and (3) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

#### **16. Public Health Implications**

16.1. Considerations relating to the public health implications of the registration of the land as a town or village green under Sections 15(1) and (3) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

## **17. Corporate Procurement Implications**

- 17.1. Where land is registered as a Town or Village Green, there are a number of opportunities for expenditure to occur and these are considered at paragraphs 21.1. – 21.3. of this report.

## **18. Environmental and Climate Change Impact of the Proposal**

- 18.1 Considerations relating to the environmental or climate change impact of the registration of the land as a town or village green under Sections 15(1) and (3) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

## **19. Equalities Impact of the Proposal**

- 19.1. Considerations relating to the equalities impact of the registration of the land as a town or village green under Sections 15(1) and (3) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

## **20. Risk Assessment**

- 20.1. Wiltshire Council has a duty to process applications made under Section 15(1) of the Commons Act 2006 to register land as a town or village green, in a fair and reasonable manner. If the Council fails to pursue its duty it is liable to complaints being submitted through the Council's complaints procedure, potentially leading to complaints to the Local Government Ombudsman. Ultimately, the Council's decision could be challenged through an application to judicially review the decision with the risk of a significant costs order being made against the Council if the Court found the Council had acted unlawfully.



## **21. Financial Implications**

- 21.1. Presently there is no mechanism by which a Registration Authority may charge the applicant for processing an application to register land as a town or village green and all costs are borne by the Council.
- 21.2. It is possible for the registration authority to hold a non-statutory public inquiry into the evidence, appointing an independent Inspector to produce a report and recommendation to the determining authority. There is no clear guidance available to authorities regarding when it is appropriate to hold an inquiry, however, it is the authority's duty to determine the application in a fair and reasonable manner and it's decision is open to legal challenge, therefore a public inquiry should be held in cases where there is serious dispute, or the matter is of great local interest, (please see R (on the application of Whitmey) v Commons Commissioners [2004] EWCA Civ 951, at paragraph 11.2). Even where a non-statutory public inquiry is held, there is no obligation upon the authority to follow the recommendation made.
- 21.3. The cost of a 3 day public inquiry is estimated to be in the region of £8,000, (based on figures obtained in March 2017 from 3 Paper Buildings Barristers Chambers, to appoint a Barrister experienced in town/village green matters, to preside over a public inquiry and to make a recommendation to the registration authority, at £1,000 per day to include 3 day inquiry, 2 days preparation and 3 days report writing). In the Royal Wootton Bassett case it is not considered that a non-statutory public inquiry is necessary, where there is sufficient evidence provided to enable the Registration Authority to determine the application; the objectors do not dispute the evidence and the main point of objection relating to trigger events in place over the land, is unlikely to be resolved by hearing the witnesses give evidence in chief and through the process of cross-examination of the witnesses at a public inquiry.

## **22. Legal Implications**

- 22.1. If the land is successfully registered as a town or village green, the landowner is able to challenge the Registration Authority's decision by appeal to the High Court under Section 14(1)(b) of the Commons Registration Act 1965, which applies where Section(1) of the Commons Act 2006 is not yet in place, i.e. outside the pilot areas (Wiltshire is not a pilot area). Importantly an appeal under Section 14(1)(b) of the 1965 Act is not just an appeal, but enables the High Court to hold a complete re-hearing of the application and the facts of law. There is no time limit in bringing these proceedings following the registration of the land, it may be years after the decision and could lead to the de-registration of the land.
- 22.2. Alternatively where the Registration Authority determines not to register the land as a town or village green, there is no right of appeal for the applicant, however, the decision of the Council may be challenged through judicial review, for which permission of the court is required and application must be made within three months of the decision. Likewise, judicial review proceedings are also open to a landowner where the land is registered as a town or village green.

## **23. Options Considered**

- 23.1. The options available to the Registration Authority are as follows:
- (i) Based on the available evidence to grant the application to register the land as a town or village green where it is considered that the legal tests for the registration of the land, as set out under Sections 15(1) and (3) of the Commons Act 2006, have been met in full over the whole of the application land, or

- (ii) Based on the available evidence, to grant the application in part, where it is considered that the legal tests for the registration of land, as set out under Sections 15(1) and (3) of the Commons Act 2006, have been met in full over only part of the application land, or
- (iii) Based on the available evidence to refuse the application where it is considered that the legal tests for the registration of the land, as set out under Section 15(1) of the Commons Act 2006, have not been met in full, or
- (iv) Where after consideration of the available evidence, it has not been possible for the Council to determine the application, to hold a non-statutory public inquiry, appointing an independent Inspector to hold the inquiry and examine the evidence, including the oral evidence and cross-examination of witnesses and to provide a report and recommendation to the determining authority.

## **24. Reason for Proposal**

- 24.1. In the Royal Wootton Bassett application, it is considered that a non-statutory public inquiry is not required because the evidence on the facts provided is not disputed by the objectors and the Registration Authority considers there is now sufficient evidence provided by all relevant parties to enable the Registration Authority to determine the application.
- 24.2. In its determination of the application Wiltshire Council has relied upon the evidence listed at paragraph 12.10. The available evidence, examined by the Registration Authority, supports use of the whole of the application land by inhabitants of the neighbourhood of Vowley View and Highfold, within the locality of Royal Wootton Bassett, for the purposes of lawful sports and pastimes for a period of at least 20 years, as of right, with use of the land

ending in May 2015 or late 2015, the relevant user period being 1995 – 2015, on the balance of probabilities. The applicant has successfully discharged the burden of proof and the objectors do not challenge this evidence.

24.3. With regard to the objectors comments on the timescales and validity of the application and notice given to the landowners, the application of the Hampshire case law, shows that the effective date of the application is the date of its receipt by the Registration Authority (12<sup>th</sup> April 2016), therefore the application is correctly made within 1 year of the cessation of use in May 2015 or late 2015. It was correct to allow the applicant opportunity to put the application in order and there was no requirement for the authority to notify the landowners until after this process was completed on 15<sup>th</sup> September 2016. The Registration Authority has acted correctly.

24.4. Where the objectors state that there is a trigger event in place over the land, i.e. where there is a presumption in favour of development by the inclusion of Royal Wootton Bassett as a Market Town within the Wiltshire Core Strategy (adopted January 2015), the Registration Authority must rely upon the information given by the Planning Authorities, who have informed the Registration Authority that there are no trigger to terminating events in place over the land. Therefore, the right to apply to register the land as a Town or Village Green is not extinguished and the Registration Authority must continue to determine the application based on the available evidence, which is not disputed by the objectors. The main point of objection relating to trigger events in place over the land, is unlikely to be resolved by hearing the witnesses give evidence in chief and through the process of cross-examination of the witnesses, at a public inquiry.

## **25. Proposal**

25.1. That the application to register land at Vowley View and Highfold, Royal Wootton Bassett, as a Town or Village Green, be accepted and the application land be registered in full under Sections 15(1) and (3) of the Commons Act 2006.

Janice Green

Rights of Way Officer, Wiltshire Council

Date of Report: 28<sup>th</sup> June 2017

### **Appendices:**

**Appendix 1** – Witness Evidence Summary

**Appendix 2** – Objections from Blake Morgan LLP, 18<sup>th</sup> November 2016 (including Opinion of Gregory Jones QC) on behalf of Cooper Estates Ltd

**Appendix 3** – Representations of support from Royal Wootton Bassett Town Council, 14<sup>th</sup> November 2016

**Appendix 4** – Representations of support from Councillor Chris Hurst, Councillor for Royal Wootton Bassett South, 5<sup>th</sup> October 2016 and 13<sup>th</sup> November 2016

**Appendix 5** – Further comments on the objections from Mr R P Gosnell, 9<sup>th</sup> December 2016

**Appendix 6** – Further comments from Blake Morgan LLP, 2<sup>nd</sup> March 2017 (including Further Opinion from Gregory Jones QC, 27<sup>th</sup> February 2017) on behalf of Cooper Estates Ltd

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**APPENDIX 1 – Witness Evidence Summary**

**Decision Report – Commons Act 2006 – Sections 15(1) and (3) – Application to Register Land as a Town or Village Green – Land Adjacent to Vowley View and Highfold, Royal Wootton Bassett**

	Name & Address	Within Neighbourhood within locality	Where do people using land come from	Ever seen by landowner	Permission	Ever prevented from using land	Signs/ notices/ obstruction	Lawful Sports and Pastimes	Community Activities	Seasonal Activities	Activities seen	Always lived in locality	Area of land known to you	Frequency of use	Used only part of the land	Period of use	Continued use at time of application
	Mrs Margaret Allen 7 Vowley View RWB SN4 8HT	Yes	Immediate locality	No	No	Yes – Cooper Estates fenced in 2006 then padlocked gate May 2015	No	Normal recreation activities, social gatherings, Picnics, BBQ, collecting wild fruit	Celebration events, BBQ	Grass cutting, childrens activities, social meetings mostly summer or special occasions	Yes daily: Social activities, wild fruit picking, children playing, grass cutting, people meeting, country walkers, BBQ's, picnics, tree climbing, childrens sports	Since house was built 1967	1971 – present day	Because of my age occasionally, anytime	No	1971-2015	Denied access May 2015 by padlocked gate, unlocked wooden gate until May 2015
	Mrs Pamela Batterham Ruby Cottage The Maltings RWB SN4 7EZ	No	Vowley View and Highfold	No	No	No – Fence erected 2006	No	BBQ's for local residents, athletics by my sons	No	Street BBQ, August / June / July since 2003	BBQ's, Athletics, football, cricket	Moved away from No.1 Highfold in 2008	1979 - 2016	Seasonal	No	1979 - 2008	Padlocked gate May 2015
	Mr Mike Brewser 69 High Street RWB SN4 7AR	No	Vowley View and surrounding area	No	No	No – Fence erected by unknown persons	No	BBQ's, parties, photography	BBQ's, parties, meetings, fireworks Nov 5th	Fireworks party in the past	Parties, BBQ's, fireworks displays, photo opportunity	Grew up at no.11 Vowley View and played on the land	48 years	Weekly		1969 - 1995	Unable to use the land now due to fencing and locked gate
	Mr Nigel Brewser Milbourne Manor Cottage Milbourne Malmesbury SN16 9JA	No	Vowley View and surrounding area	Don't know	No	Yes – Fence 2014/15 but continued use	No	Recreational, parties, play	Queens Jubilee, parties, BBQ, since 1980's	No	Varied – children playing, communal gatherings	Rowan Drive – 1978 -1985, Vowley View 1985 – 1987, Sheridan Drive 1987 - 2010	1969 – present day	When our daughter was young she played on it frequently	No	1969 - 2010	Not used now
	Mrs Charman Hopelands Tetbury Hill Gardens Malmesbury Wiltshire SN16 9JP	No	Vowley View residents	No – to my knowledge the owner never visited this site until a few years ago so for at least 40 years it was left	No permission needed as no one other than the residents looked after the land, no one to ask for permission as it had been left for the residents to look after it	Yes – only since the fence gate was locked about 1 year ago	No	Parking my brothers jeep 1980, garden parties, fetes, played on this piece of land from 1969/70 – 1980 as a child. Parties, games, blackberry picking, social events for all the children on the road, planting vegetables	Residents here have been tending this piece of land and growing vegetables. Parties, fetes etc	Parties and BBQ's but since the fence it was hard to hold them	Other neighbours children playing on the land, parties	Lived in the house since they were built and now visit mother 3 times a week	1970 - 2016		No, used all of it	1970 - 2010	
	Mrs Laurette Churchill 8 Speedwell Avenue St George Bristol	No	Vowley View, Highfold and neighbouring estates	No	No	No	No	To play as a child and for community events, BBQ's, picnics etc.	BBQ's, picnics, celebrations (e.g. Royal Wedding), since early 1980's when I was a child. Street events at least annually	BBQ's, picnics, summer at least annually since early 1980's.	Most days - children playing, community events, people sitting on bench, chatting / relaxing, neighbours maintaining the land (mowing, growing flowers), people picking blackberries	13 Vowley View 1980 – 1985, 10 Vowley View 1985 -2010,	1980 - present	Daily as a child, seasonally as an adult	No	1980 - 2010	Can't use the land now – gate locked
	Mrs Rosemary Cole 14 Vowley View RWB	Yes	The immediate locality	No – not to my knowledge	No	Yes – by Cooper Estates May 2015 – Erection of fence 2006, locked gate May 2015	No	Neighbourhood gatherings and safe play area, picnics, BBQ's	Gardening, play, BBQ's. Annual BBQ during summer over the last 30 years before May 2015	Before May 2015 BBQ's and national events mainly summer months, annual BBQ pre May 2015 for about 30 years	Frequently playing / nature, leisure activities involving local inhabitants	14 Vowley View, lived here for the past 30 years.	1985 – present day	Seasonal	No	1985 – May 2015	Access denied May 2015 – padlocked gate
	Mr Ian Dowse 2 Highfold RWB SN4 8HX	Yes	Local residents	No	No	Yes – by landowner May 2015, padlocked gate fitted	No	Recreational, playing football and BBQ	Street BBQ, 4-5 years annually	Street BBQ	Weekly, football, family and friends playing ball games	2 Highfold	2002-2015	Seasonal	No	2002-2015	Not used now, cannot use as padlocked gate
	Mrs K Dowse 2 Highfold RWB SN4 8HX	Yes	Local residents	No	No	Yes, landowner padlocked gate May 2015	No	Recreational – playing with children, community get together for street BBQ	Street BBQ, 4-5 years annually	Street BBQ	Weekly, playing football, tree climbing, children playing ball games	Current address	2002 - 2015	Seasonal	No	2002 - 2015	No, May 2015 gate padlocked
	Mrs Christina Doyle 18 Vowley View RWB SN4 8HT	Yes	Residents and visiting families / friends	Yes	No	Yes – Continued use from "in our street". Steel fence removed by intervention of MP Mr James Gray	No	Meetings, family BBQ's, music concerts	BBQ's etc for 34+ years, yearly or monthly as required, music, meetings	BBQ's, music, meetings	Frequently – meetings	Vowley View	34+ years	When required	Yes, as marked on the map	34+ years	No, gate locked
	Mr Edward Doyle 18 Vowley View RWB SN4 8HT	Yes	N/A	Yes	No	No	No	Annual street BBQ gathering, music recitals	Family gathering 30+ years, meeting place	Family gathering 30+ years, meeting place	Gardening (vegetables), grass cutting, family BBQ's, meetings, music	Lived adjacent	1982 - 2016	Weekly	Yes, as marked on the map	1982-2016	Yes. Gate locked no access
	Mr M J Engley 9 Vowley View RWB SN4 8HT	Yes	Local residents	No	No	Yes, perimeter fence 2006, use continued	No	Social event, BBQ	Children playing 40 years, BBQ's, Royal Weddings, Jubilees, over the last 40 years	BBQ's, summer, annually 40 years +	In the warmer weather, social events, children playing ball games, cricket, tree climbing the horse chestnut tree which was felled last year by the landowner	9 Vowley View	Since 1972 – moved house with my parents	Seasonal	No	1970's - 2015	Yes, Seasonal use now
	Mrs Judith Gosnell 6 Vowley View RWB SN4 8HT	Yes	Local residents	No	No	Locked gate May 2015, fence not maintained access possible. Fence and gate installed 2006 and subsequently locked	No	Celebrations, maintenance, tree planting and plants, BBQ's, picnics, street parties, garden maintenance	BBQ's, street parties since 1977 (1977, 1982, 2003, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2015), Royal Jubilees and local parties	Blackberrying and sloe picking each autumn every year	All the time until May 2015, chatting, dog walkers, locals, football, cricket, tree climbing (before felled) , gardening, grazed by deer and cattle	No.6 Vowley View	1975 - 2016	Seasonal	No	1975 -2016	Yes. Only used for essential maintenance now
	Mr R P Gosnell 6 Vowley View RWB SN4 8HT	Yes	Vowley View, Highfold, others unknown	No	No	Gate became locked May 2015. Access gained through missing slats and broken fence	No	BBQ, mowing, planting bushes and flowers, 2 trees, vegetables, trimming bushes, talking to NWDC mower before 2006	BBQ's and street parties, 1977 – 2015, mainly annually	No	3-4 times per year BBQ, helping with maintenance and repairs, cricket, football, tree climbing, blackberry picking, dog walking before Brynards Hill housing began opposite	6 Vowley View	1975 to present	About 4 times per year	No	1975 - 2015	No, Refrained from using it since summer 2015 pending outcome on planning issues, since August 2015 BBQ
	Emma Hoekman 63 Briedveldsingel 3055 PJ Rotterdam	No - Formerly 8 Vowley View RWB SN4 8HT	Neighbourhood and walkers	No – originally open space	No	Cooper Estates prevented access since May 2015	No	Playing as a child, meeting friends, street BBQ, picnics, street parties, blackberry picking	BBQ, national celebrations, annually	Social road BBQ, annually in summer, since birth in 1975 so assume before this also	Frequently, golf, cricket, football, tree climbing, dog walking	8 Vowley View. Moved from my previous home in 2000	Feb 1975 to present day	All the time, part of the locality	No	Feb 1975 – 2000 and 2000 to present if visiting	Yes, Occasionally when visiting
	Mrs K Hopkins	Yes	Locally to Vowley	No	No	Yes – gate and lock put up	No	Blackberry and sloe picking.	Annual Vowley BBQ	Annual BBQ, summer,	Football, BBQ with	Aug 1999 – present	Aug 1999 to	Weekly	No	Aug 1999 to	No, fenced and

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	1 Vowley View RWB SN4 8HT		View, Highfold, Sherfields, ex- residents invited			with fence, big tree cut down. Obstruction still in existence, since 2015		Children used to play football and climb the tree	(each summer), queens golden jubilee	annually for 30 plus years	residents, blackberry picking. Veggie patch, children playing, people using the bench to read	day	present day			present day	locked
17	Mr Alan R Jones 12 Vowley View RWB SN4 8HT	Yes	Vowley View and rest of estate	No	No	Yes – Cooper Estates in May 2015 it was their decision to erect fencing and locked gate, still in place. In 2006 fence was erected but access allowed via unlocked gate	No	Communal activities, i.e. BBQ's and picnics with family, games etc. National celebrations , i.e. Queens birthday etc	National holidays etc since 1984, social gatherings since 1984	Picnics and BBQ's plus maintenance of the area, summertime and spring since 1984 (32 years)	Recreation as required. Recreational games, communal picnics and BBQ's and social get together	Moved to 12 Vowley View in August 1980	1980 to present	When weather permitted	No	1980 – May 2015	Yes, before 2015 when access gate locked
18	Mrs June Jones 12 Vowley View RWB SN4 8HT	Yes	Vowley View, Highfold, Sherfields and locality	No	No	Yes – Cooper Estates in May 2015 as the owner of the land, erected the fence and padlocked wooden gate. The whole community was prevented from using the land. Fence was erected in 2006 after rejection of planning application.	No	Vowley View picnics and BBQ's, childrens games and royal celebrations	Royal national celebrations, since 1984, annually	BBQ's, grass cutting, in the summer, annually and monthly for 35 years	Daily, games and walking, leisure	Since 1980	1980 - present	Whenever weather permitted	No	1980 to May 2015	Yes, prior to 2015 – land not available since fenced in and gated
19	Mrs Maxwell-Lindsley 20 Avenue Road Swindon SN4 8HT	No	Neighbourhood, local community	No, was open land	No	Yes – Cooper Estates May 2015, as the landowners prevented use and the hindrance / obstruction is still in place. After planning application rejected, developer erected a fence	No	Playing when I was a child, picnics, tea parties with friends, street BBQ. Picking blackberries	National celebrations, BBQ parties since the area was left as a green space by the previous developer. Annually, sometimes more frequently	Road BBQ, summer, annually since I was born in 1980 and before that	Frequently – climbing tree, football, walking dogs, childrens parties	From birth to 2006	Dec 1980 to present day	All the time, part of the road	No	Dec 1980 to 2006. 2006 to present day when visiting	Yes, Occasionally when visiting my parents
20	Mr W J Palmer 8 Vowley View RWB SN4 8HT	Yes	Neighbourhood	No	No	Cooper Estates in May 2015 padlocked wooden gate and fence with stakes which are broken and missing. The fence is broken and owner does not maintain. After planning application rejected, developer erected fencing	No	Pre-May 2015 – annual BBQ, national events, grass cutting. Royal weddings, jubilees, social events, childrens parties, fireworks	Celebration BBQ for 35 years, annually and when required	Children playing, BBQ, cutting grass, summer, annually, but when needed. 35 years	Weather permitting, daily – dog walkers, blackberry and sloe picking, football, cricket, tea parties	Lived opposite this land since 1982	1975 – present day	All the time	No	Dec 1982 – May 2015 when fenced and locked.	No – try to keep it looking tidy
21	Mrs J Palmer 8 Vowley View RWB SN4 8HT	Yes	Neighbourhood / Locality	No	No	Yes – Cooper Estates in May 2015 – Fence down not maintained by owner, fence with stakes missing, padlocked wooden gate. Developer erected fencing following rejection of a planning application	No	Pre May 2015 – Foster good neighbourhood relations by annual BBQ, celebrate national events, nature activities, grass maintenance. Social events, royal weddings, jubilees, general husbandry	Celebration BBQ or similar, 35 yrs approx, annually and when required.	BBQ events, childrens leisure activities, grass cutting. Mostly summer, annually and selectively, 35 yrs approx	Daily weather permitting – country walking, dog walkers, blackberry picking, limited sporting activities	Resident opposite this land since 1982	1975 – present day	Constantly	No	Dec 1982 – May 2015 (yr of the locked fencing)	No not as an amenity, try externally to keep it looking respectable – denied access since 2015, try to externally maintain it
22	Mr David Lloyd Pope 10 Vowley View RWB SN4 8HT	Yes	Vowley View, Highfold and some surrounding streets	No (not to my knowledge)	No	Locked gate May 2015, still in place. A picket fence was erected in 2006/7, with an unlocked gate. This seemed to be to confirm ownership rather than to deny access. Gate locked from May 2015	No such notices have ever been erected	Neighbourhood BBQ's, picnics, celebration or royal events (weddings, jubilees) to cut the grass after fence erected and to mend the fence	Picnics and BBQ's at least since 1980 when I moved to Vowley View. Annual summer BBQ	Summer picnic / BBQ, June – August, annually, occurring since before we moved here in 1980	Children playing daily. Football, cricket, tree climbing, childrens games	Yes – I live at 10 Vowley View, opposite the green	1980 - present	I walked on it weekly as opposite my house	No	1980 –May 2015	No – not since gate locked in May 2015
23	Mrs Laurette A Pope 10 Vowley View RWB SN4 8HT	Yes	Mainly from the street, but also some neighbouring streets	No	No	Landowner put up a fence, gate was left unlocked 2006-2007, access still gained through the open / unlocked gate. The gate has been locked since May 2015	No	For street BBQ's, to collect blackberries, to play with my children, to talk to neighbour, to plant shrubs, gardening, social events	BBQ's and picnics since at least 1981 to my knowledge, annually. 1981 was to celebrate the wedding of Prince Charles and Princess Diana and was such a success we continued to meet each year	Street BBQ / picnic in summer, date depends on the weather and/or peoples vacations, annually for 35 years	Daily football practice, cricket practice, putting, maintenance, gardening, playing, talking, sitting on benches	Yes – I live opposite the land. 1980 – 1985 at 13 Vowley View, 1985 – present at 10 Vowley View	Sept 1980 to present day.	When the children were small at least weekly and possibly daily if the weather was good enough for them to play outside	No	Summer 1985 – May 2015	No, stopped when gate was locked May 2015
24	Mr Richard Pope 1 Eastwood Avenue RWB SN4 8BX	No	The local neighbourhood	No	No, I always believed it to be owned by the Council	Gate was locked in 2015, someone applied for planning and the restriction is still present on the land	No	I played on the land daily as a child, especially during the summer months. Football, tag, hide and seek etc. The last time was a street BBQ a few years ago (prior to fence)	Street parties, BBQ's ever since I can remember, took place every few years	BBQ's, street parties, summer every year or two for as long as I can remember.	Daily – sports, street parties, BBQ's	I live near the land and my parents live opposite	1980 (ish) to present	Daily in summer, fairly regularly outside of summer (probably weekly)	No	1980 (ish) - 2015	No, fenced off with locked gate
25	Mrs Joan Roe 89 Longleaze RWB SN4 8AU	No	They live in the residential area close to the land	No	No	Coopers Estates said they owned the land and have restricted access since May 2006 through a gate which was unlocked, the gate is now locked and the hindrance / obstruction still exists	No	For childrens games, the community BBQ and other celebrations, street parties	National celebrations, Royal weddings, anniversaries, annual community BBQ. Since mid 1970's	BBQ, July each year, annually for more than 30 years.	Daily – childrens games	Lived in Vowley View for 6 years (1971 – 1977 at 3 Vowley View) and now return frequently for social functions (1979- present at 89 Longleaze about half a mile away	1971 - present	Frequently, seasonal	No	1971 – 1977 – frequently. 1979 – present – returning to join friends for social occasions	Yes, Used the land up until May 2015
26	Mr Stuart Sutton 13 Vowley View RWB SN4 8HT	Yes	Mostly Vowley View Residents and Surrounding Streets	No	No – Tacit permission by virtue of it having been an open, free area	2013? Wooden fence erected, entered via a gate until a padlock was added in 2015. Hindrance or obstruction is still in place	No	Social and community gatherings, BBQ's, assist with general maintenance, celebratory parties	Parties, BBQs, childrens play area, since 1985, annually, but children played daily / weekly	No		I live about 25 yards away	1985 - 2016	Monthly	No, Used all of it	1985-2015	No – gate padlocked
27	Miss Sally Thornhill 8 Middle Ground RWB SN4 8LJ	No	Residents of Vowley View and other nearby streets	No	No	No - not personally but a fence and locked gate erected so residents can no longer use it	No	Regularly played as a child, street parties, Royal wedding, street BBQ's, football, general play	Street parties over 30 years, often royal celebrations: Royal Jubilees, weddings		Weekly play or parties, sometimes other children playing	19 Vowley View	1979 – 2016 (36 yrs)	Weekly	No	1979 - 1999	No, never use the land now



**APPENDIX 2 – Objections from Blake Morgan LLP, 18<sup>th</sup> November 2016  
(including Opinion of Gregory Jones QC) on behalf of Cooper Estates Ltd**

**Sent:** 18 November 2016 16:20  
**To:** Green, Janice  
**Cc:** david@cooperestates.co.uk; gill@cooperestates.co.uk;  
gregory.jones@ftbchambers.co.uk; Paul Watson; McGruer, Guthrie  
**Subject:** Commons Act 2006 - Section 15(1) and (3) : Notice of Application to Register Land as a  
Town or Village Green - Land Adjacent to Vowley View and Highfold, Royal Wootton  
Bassett - Reference No 2016/01 [BMG-Legal.FID38930313]  
**Attachments:** 201611181624.pdf; OPINION.DOC; image26b02b.JPG  
**Importance:** High

Dear Madam

Please see attached letter and Opinion.

Yours faithfully

Blake Morgan LLP



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18 November 2016

Our ref: 014237/000200

Your ref: JG/PC/258 2016/01

**SENT BY EMAIL**

Dear Madam

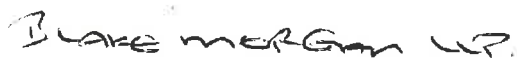
**Commons Act 2006 – Section 15(1) and (3)  
Notice of Application to Register Land as a Town or Village Green  
Land Adjacent to Vowley View and Highfold, Royal Wootton Bassett  
Reference No 2016/01**

We act for Cooper Estates Limited and our clients have passed to us your letter of 30 September 2016 and enclosed Notice of the application to register the above land as a Town or Village Green.

By way of objection to the proposals we submit the attached Opinion of Gregory Jones QC. In Leading Counsel's opinion the application is not valid and should be rejected without further steps and costs being incurred. This is without prejudice to any further submissions our clients might have on the merits of the application.

Kindly acknowledge receipt.

Yours faithfully



Blake Morgan LLP

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## OPINION

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### **Re: Validity of Village Green application made against land at Vowley View**

#### **Introduction**

1. I refer to the letter received from Wiltshire Council, notifying Cooper Estates that a Village Green claim has been made against land at Vowley View which is owned by Cooper Estates (“the site”). The letter is dated 30 September 2016. The letter was received on 3 October 2016. It relates to an application to register land as a village green. The covering letter and notice of application refers to a claim of use by local residents for sports and pastimes since 1975 and possibly since 1969 and last used in May 2015. The letter does not state when the application was made nor explain the reason for the long delay notifying the owners of the land. However, the application itself is dated 30 March 2016 is date stamped by the registration authority as 12 April 2016.
2. I do note that application form has amendments dated 11 September 2016 and the plan accompanying the letter has also been modified and dated both 13 and 14 September 2016.
3. I pause to observe that it is unsatisfactory that Wiltshire Council’s letter does not state the date upon which it considers the application validity to have been made. The date of a valid application for a village green is highly relevant for a number of reasons.

4. Since 1 October 2013 s.14 of the Growth and Infrastructure Act 2013 amended s.15(3) of the Commons Act 2006 so that an application for a village green had to be validly made one year after the last date the land was used for recognised sports and pastimes. In this case, no specified date is given as the end date in May 2015 and the letter and notice does not record when the application was validly made and whether that is only when the application was amended in September 2016. Thus, this application may well be out of time for this reason alone.
5. However, the exact date of the application is largely of academic importance in this particular case for the reasons set out below.

### Trigger Events

6. One of the fundamental changes made by the Growth and Infrastructure Act 2013 to the Commons Act 2006 was to exclude the right for anyone to apply for registration of land in certain specified circumstances.
7. Section 16, which came into force on 25 April 2013, inserted section 15C and Schedule 1A into the 2006 Act to exclude the right to apply for registration of land under section 15 when a “*trigger event*” has occurred in relation to that land. Such trigger events all relate to events within the planning system. When such a trigger event has occurred, then unless and until a corresponding “*terminating event*” has occurred in relation to the land, a commons registration authority cannot accept any application to register that land as a town or village green and is bound to refuse to consider it.
8. The full list of 14 trigger events is set out in the first column in schedule 1A. They include:-
  - a. the publication for consultation in accordance with regulations by the local planning authority of a draft local plan or neighbourhood plan proposal which identifies the land for potential development; and
  - b. the adoption or making by the local planning authority of a local plan or neighbourhood plan which “*identifies the land for potential development*”.

9. For each trigger event, there are a number of corresponding terminating events, specified in the second column of schedule 1A. Where the right to apply for registration has been excluded because a trigger event has occurred, if and when one of the corresponding terminating events occurs, the right to apply again becomes exercisable. The right to apply to register a new green is not lost for all time by such provisions. Hence, for example, the corresponding terminating events in relation to the inclusion of the land for potential development in a draft plan, terminating events include the withdrawal of the plan, the adoption of the plan (but that triggers a new trigger event if the land is identified for development in the adopted plan), and the expiry of a two year period beginning with the day on which the document is first published for consultation.
10. In the present case, the site in question is subject to the adopted Wiltshire Core Strategy (“CS”). The CS was adopted in January 2015<sup>1</sup>. Policy CP 1 of the CS provides:

**“Core Policy 1  
Settlement Strategy**

The Settlement Strategy identifies the settlements where sustainable development will take place to improve the lives of all those who live and work in Wiltshire.

The area strategies in Chapter 5 list the specific settlements which fall within each category.

**Principal Settlements**

Wiltshire’s Principal Settlements are strategically important centres and the primary focus for development. This will safeguard and enhance their strategic roles as employment and service centres. They will provide significant levels of jobs and homes, together with supporting community facilities and infrastructure, meeting their economic potential in the most sustainable way to support better self containment.

The Principal Settlements are: Chippenham, Trowbridge and Salisbury.

**Market Towns**

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<sup>1</sup> <https://pages.wiltshire.gov.uk/wiltshire-core-strategy-web-version-new-june.pdf>

Outside the Principal Settlements, Market Towns are defined as settlements that have the ability to support sustainable patterns of living in Wiltshire through their current levels of facilities, services and employment opportunities. Market Towns have the potential for significant development that will increase the jobs and homes in each town in order to help sustain and where necessary enhance their services and facilities and promote better levels of self containment and viable sustainable communities.

The Market Towns are: Amesbury, Bradford on Avon, Calne, Corsham, Devizes, Malmesbury, Marlborough, Melksham, Tidworth and Ludgershall, Warminster, Westbury, and Royal Wootton Bassett." [Underling added]

CP2 states *inter alia*

"Within the limits of development, as defined on the policies map, there is a presumption in favour of sustainable development at the Principal Settlements, Market Towns, Local Service Centres and Large Villages." [Underlining added]

11. The current site is within the limits for development of Royal Wootton Bassett.<sup>2</sup> Wiltshire Council having considered these policies has previously accepted that the "location of the site is therefore considered appropriate for development in principle..."<sup>3</sup>

## Conclusion

12. It is clear from the wording of the policy that the site in question was identified as land for "potential development" before the application to register the site as a village green was made. The trigger event had thus been triggered before the application was made. Accordingly, the application is invalid and must be rejected.

---

<sup>2</sup> This confirmed for example in the Wiltshire Council officer's report in respect of application reference 14/12039/FUL.

<sup>3</sup> Ibid.

**GREGORY JONES QC**

**FTB**

**Francis Taylor Building**

**Temple**

18 November 2016

Within the limits of development, as defined on the policies map, there is a presumption in favour of sustainable development at the Principal Settlements, Market Towns, Local Service Centres and Large Villages.

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**APPENDIX 3 – Representations of support from Royal Wootton Bassett Town Council, 14<sup>th</sup> November 2016**



Janice Green  
Rights of Way Officer  
Wiltshire Council Rights of Way and Countryside Team  
Waste and Environment  
County Hall  
Bythesea Road  
Trowbridge  
Wiltshire  
BA14 8JN

14<sup>th</sup> November 2016

Dear Ms Green

**RE: Notice of Application to Register Land as a Town or Village Green – Land Adjacent to Vowley View and Highfold, Royal Wootton Bassett – Ref 2016/01**

Thank you for the information regarding the application to register land at Vowley View as a town or village green. Residents from Highfold and Vowley View first approached the Town Council's Planning Committee about this piece of land at a meeting held on Thursday 29<sup>th</sup> January 2015, at which Members suggested that a village green application may be worthwhile investigating.

Wiltshire Councillor Chris Hurst attended a meeting of the Town Council Planning Committee on 7<sup>th</sup> January 2016 to inform Members that residents of Vowley View and Highfold intended to pursue an application for village green status. At this meeting, the Planning Committee resolved to support any forthcoming application, and wrote to Councillor Chris Hurst to this effect once the application process formally commenced in April 2016. Copies of this letter together with the Planning Committee's resolution of support are enclosed for your information.

The Town Council fully supports the residents in their application to secure village green status for the land identified in line with the Planning Committee resolution of Thursday 7<sup>th</sup> January 2016. Should you require any further information please do not hesitate to contact the Office on 01793 850222.

Yours sincerely

**Johnathan Bourne**  
Town Clerk

Enc.

Councillor Chris Hurst  
Cleverton House  
Cleverton  
Nr Brinkworth  
Chippenham  
Wiltshire SN15

EM/JDB

1<sup>st</sup> April 2016

Dear Councillor Hurst

**RE: Village Green Status, Vowley View and Highfold**

Many thanks for keeping Royal Wootton Bassett Town Council's Planning Committee up to date regarding the Village Green application currently being prepared by residents for the parcel of land at Vowley View which has been used for leisure and recreation purposes since the 1970s.

The Town Council is happy to formally support this application for Village Green status, and to offer any assistance to the residents should this be required.

The Town Council would like to wish the residents well in their endeavors; please do not hesitate to contact the Planning Committee should any further assistance or support be required.

Yours sincerely,

**Johnathan Bourne**  
Town Clerk

**ROYAL WOOTTON BASSETT TOWN COUNCIL**

Minutes of a Meeting of the Planning Committee held on Thursday 29<sup>th</sup> January 2015 in the Council Chamber, Civic Centre, Station Road, Royal Wootton Bassett

PRESENT: Councillors: Ian Ferries, Mike Farrow, Janet Georgiou, Paul Heaphy, Michael Page, Audrey Wannell, Chris Wannell and John Wilks.

Also in attendance: Councillors: Steve Bucknell, Mike Leighfield and Marion Sweet.

Officers in Attendance: Johnathan Bourne, Town Clerk, Michelle Temple, Administrative Services Manager, Emily Maiden, Committee Clerk and Administrative Assistant.

**Question Time**

*Mr John Palmer*, resident of Vowley View, was in attendance to voice concerns over planning application 14/12039/FUL for the erection of a new dwelling on land opposite numbers 8-10 Vowley View. Mr Palmer explained that the planning application was not consistent with Wiltshire Council's planning policies regarding greenspace and provision of amenity, and that the land would offer green relief when the Wain Homes development is completed to the rear of this site. Under the North Wiltshire Local Pla, Mr Palmer explained that the development would be in contravention of policy C3 paragraph three, as an unacceptable loss of amenity, and policy CF3 on the provision of open space. The piece of land has been used and tended to by the neighbouring residents for over 40 years, and has become a unique and important space to those who live nearby. Mr Palmer feels that no financial mitigation could be negotiated as the land is worth a great deal to those who use it for informal leisure and recreation activities.

*Councillor Steve Bucknell joined the meeting, 7.49pm*

*Mr D Pope of 10 Vowley View* spoke in support of the views expressed by Mr Palmer, and added that any development of the land would represent a detrimental impact upon the environment. The hedgerows removed on the Wain Homes development site have meant that the hedgerow on the Vowley View land has become even more significant as a habitat for a wide range of birds and other animals. Mr Pope explained that the loss of this amenity would be in contravention of the North Wiltshire Local Plan policy C3 paragraph 2.

The Chairman thanked the residents for their input and attendance at the meeting, and explained that the application for Vowley View would be discussed in full during the course of the meeting.

### **36. APOLOGIES**

There were no apologies given as all members of the Committee were in attendance.

### **37. DECLARATIONS OF INTEREST**

To receive Declarations of Interest in accordance with sections 10 and 12 of Wiltshire Council's Members Code of Conduct, as adopted by Royal Wootton Bassett Town Council at a meeting held on 12<sup>th</sup> July 2012.

RESOLVED to note that no Declarations of Interest were made.

### **38. CHAIRMAN'S ANNOUNCEMENTS**

The Chairman informed the Committee that the Wiltshire Core Strategy has now been formally adopted. A link to the relevant page of the Wiltshire Council website will be circulated to all Members to allow Councillors to view the document.

In light of the adoption of the Core Strategy, a slight change in the way planning applications are called in has been suggested. An email explaining this suggestion, the reasons behind it and the benefits that will be gained was circulated to all Members earlier in the week. The Committee are supportive of this amendment in the call-in procedure in

principle; therefore a report on the matter will be taken to Full Council for adoption.

### **39. MINUTES**

RESOLVED to confirm and sign Minutes of a meeting of the Planning Committee held on Thursday 11<sup>th</sup> December 2014 [P/6/14-15]. Copies previously circulated.

### **40. JUNCTION 16 PRESENTATION**

Rob Powe and Tim Mann of the Wichelstowe Development Team were in attendance to give a presentation on the Junction 16 Improvement Scheme. The Committee invited Rob Powe to return with a colleague to provide details on the changes to Junction 16, after he gave a presentation previously on the Wichelstowe planning applications.

Members were given a brief history of the Junction 16 Improvement Scheme and its links with Wichelstowe; a timetable for the approval, procurement and delivery of the scheme was outlined. A question and answer session followed.

### **41. PLANNING APPLICATIONS**

[a] To make observations on the following planning applications detailed on Schedule 1588.

*Planning Application 14/11967/FUL*, New dwelling at 51 Swindon Road, Royal Wootton Bassett, Wiltshire, SN4 8EU.

RESOLVED to object to the application due to concerns over highway safety, particularly when exiting the development site onto the Swindon Road. It was felt that this access was dangerous, and therefore in contravention of Policy 61 of the Core Strategy, notably paragraph 2, which states that any proposal should be 'capable of being served by safe access to the highway network'.

*Planning Application 14/12039/FUL, Erection of new dwelling with integral garage on land opposite numbers 8-10 Vowley View, Royal Wootton Bassett, Wiltshire, SN4 8HT.*

Members discussed the application and the issues raised during the public question time. The residents in attendance were asked whether an attempt had ever been made to obtain the piece of land as a village green; it was established that an unsuccessful attempt had been made to purchase the land, but no application for village green status had ever been made. It was suggested that this might be something that the residents would like to pursue.

RESOLVED to object to the application for the following reasons: -

- The application contravenes Core Policy 52 of the Wiltshire Core Strategy on Green Infrastructure, which states that ‘development shall make provision for the retention and enhancement of Wiltshire’s Green Infrastructure’. Core Policy 52 aims to enhance and retain Green Infrastructure, which ‘provides socio-economic and cultural benefits which underpin individual and community health and wellbeing...Green Infrastructure provides a wide range of opportunities for engagement and active citizenship, relaxation and quiet contemplation, sport, recreation and children’s play’. Retaining the area as a green space for use by the local community not only corresponds with the objectives of Core Policy 52, but assists with the delivery of Strategic Objective 4 of the Wiltshire Core Strategy, which aims to build resilient communities. Subsection 6.59 on the delivery of this objective highlights the need to ‘foster a sense of community belonging, social inclusion and self-sufficiency’. This space has been able to provide all these benefits to the local community since the 1970s, through informal leisure activities and the use of the site for street parties and celebrations.
- Development on the area of land identified would result in a loss of visual amenity, which contradicts Core Policy 51 of the Wiltshire Core Strategy, in particular paragraphs 6 and 8.

[b] To make observations on planning applications received since the preparation of the Agenda.



*Planning Applications 15/00315/FUL and 15/00317/LBC* for the demolition of outbuildings and erection of three coach-house dwellings and rear extension to existing shop and associated works at 42 High Street, Royal Wootton Bassett, Wiltshire, SN4 7AF.

Members expressed concerns about access to the dwellings to the rear of 42 High Street, particularly when considering the delivery and shop access that is also present at that location for premises in Borough Fields such as Sainsburys. There was a fear that vehicular access for future residents of the three coach-houses would mean that any deliveries of stock to 42 High Street would have to be via the High Street frontage as opposed to the rear access as is currently the case. Whilst this is not a problem for deliveries of smaller items such as those sold at present at 42 High Street; should the property be used in future for the sale of bulky goods, delivery access could become problematic.

For this reason, it was **RESOLVED** to express concern in relation to how this development will achieve the aims as set out in Core Policy 61, paragraph 3 of the Wiltshire Core Strategy, which states that ‘fit for purpose and safe loading/unloading facilities can be provided where these are required as part of the normal functioning of the development’.

#### **42. DELEGATED POWERS**

Consideration of Planning Applications detailed on Schedule 1586

14/10990/FUL	33 New Road	No Objections
14/11237/TPO	10a Honeyhill	No Objections
14/10692/FUL	43 Station Road	No Objections

Consideration of Planning Applications detailed on Schedule 1587

14/11610/FUL	12 Home Ground	No Objections
14/11351/FUL	2 Shakespeare Road	No Objections

14/11566/FUL	143 High Street	No Objections
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Consideration of Planning Applications detailed on Schedule 1588

15/00159/TCA	Miranda House	No Objections
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14/11991/WCM	Park Grounds	No Objections
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14/12184/FUL	97 Dunnington Road	No Objections
--------------	--------------------	---------------

14/11751/FUL	57 Parsons Way	No Objections
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**APPENDIX 4 – Representations of support from Councillor Chris Hurst,  
Councillor for Royal Wootton Bassett South, 5<sup>th</sup> October 2016 and 13<sup>th</sup>  
November 2016**

**Subject:** Re: Application to Register Land as a Town or Village Green - Royal Wootton Bassett

Dear Janice,

Many thanks for this. I have spoken with your colleague Sally today, who has outlined the process for me.

I remain very supportive of the application and will likely write a few paragraphs in support of the application in the next few weeks and send them to you.

Many thanks,  
Chris

Chris Hurst  
Wiltshire Councillor Royal Wootton Bassett South

Sent from my iPhone

On 30 Sep 2016, at 13:47, Green, Janice <[janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)> wrote:

Dear Cllr Hurst,

**Commons Act 2006 – Section 15(1) and (3)**  
**Notice of Application to register Land as a Town or Village Green – Land Adjacent to Vowley View and Highfold, Royal Wootton Bassett**  
**Reference no.2016/01**

Please find attached notice of application to register land adjacent to Vowley View and Highfold, Royal Wootton Bassett, as a town or village green.

If you would like to make any representations of objections regarding the proposals, I would be very grateful if you could forward them to me in writing, before 5:00pm on Friday 18<sup>th</sup> November 2016.

Kind regards,

Janice Green  
Rights of Way Officer  
Wiltshire Council Waste and Environment  
Ascot Court Trowbridge BA14 0XA  
Telephone: Internal 13345 External: +44 (0)1225 713345  
Email: [janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)

Web: [www.wiltshire.gov.uk](http://www.wiltshire.gov.uk)

Follow Wiltshire Council  
<image001.png> <image002.png>

Follow Wiltshire Countryside  
<image001.png> <image002.png>

## Green, Janice

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**From:** Chris Hurst  
**Sent:** 13 November 2016 19:07  
**To:** Green, Janice  
**Subject:** Letter in support of granting Town/Village green status, Vowley View, RWB  
**Attachments:** Vowley View Green - Letter of Support.docx

Dear Janice,

Please find attached my letter in support of granting Town/Village Green status to the open space at Vowley View. If you can acknowledge the safe receipt of the attachment that would be great.

Kind regards,  
Chris

Chris Hurst  
Wiltshire Councillor  
Royal Wootton Bassett South

Letter in support of granting Town/Village Green status to the open space adjacent to Vowley View, Royal Wootton Bassett. Reference no. 2016/01

One of Wiltshire Council's stated aims is to build strong and resilient communities. This can be done in many ways. But clearly one-way is to defend and protect our open spaces where possible.

Royal Wootton Bassett has seen very significant housing development in recent years. Whilst it is understandable that places change in character over time, the effect of such rapid change and urbanization has meant the loss of green spaces. It is therefore crucial that we, as a Council, continue to protect what spaces we can, for the enjoyment of the Royal Wootton Bassett community. The application to formally make the green at Vowley View a community space is an excellent opportunity to do just that.

In my time as a Unitary Councillor I have had the great privilege to represent the community who live at Vowley View. I have seen the community spirit of the residents and the care and attention they take in looking after their street.

I have also seen the community use the green for social events and gatherings. On one such occasion I happened to be walking along Vowley View and the majority of resident's were out on the green enjoying a community get-together. I was struck then, how important this space is and what a vital community asset this green space is and has been for many decades.

By recognizing this open space as a town/village green, it would ensure that the green will continue to be enjoyed by the residents of Vowley View and the generations to come; a lasting legacy Wiltshire Council can be proud of.

Yours sincerely,  
Chris Hurst  
Wiltshire Councillor Royal Wootton Bassett South

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**APPENDIX 5 – Further comments on the objections from Mr R P Gosnell, 9<sup>th</sup>  
December 2016**

**Comments by Richard Gosnell on objections to Town/Village Green Application 2016/01**

**I refer to the Opinion document written by Gregory Jones, Q.C., acting for Cooper Estates, using his paragraph numbering.**

**1 "When the Application is made.." is the date it was submitted, 12 April 2016. The regulations state that the date of reception of the acceptable Application is the only relevant date even if later revisions are needed. It inevitably took time after that date to address issues on the documents which needed rectifying.**

**"Long delay in notifying the owners..." There is no obligation to provide what would amount to a running commentary on the Application's evolution between April and October 2016. If the Application had been unsuccessful I would have been informed and there would have been no need for Cooper Estates to be informed of anything.**

**2 "The spread of dated documents between 11th and 14th September"... is due to my withdrawal of one of two maps originally submitted, and procuring new J.P. signatures on the front and back of the renamed remaining map. Obviously the date of the simultaneous availability of the J.P. and myself for signing causes delay. The withdrawn map was issued with the Evidence Questionnaires, where there is no stipulation as to a map's provenance, and the map was used by all respondents to indicate the items required in the Questionnaire.**

**3 "Date of Application validity"... Presumably this is 6th October 2016 shown on the Notice of Application, Form 45.**

**4 "Date the land was last used..." I took the date on which the gate became locked as being the date on which the owner indicated that residents' access was not intended. I am not aware of the exact date on which the gate became locked. I took May 2015 as being the start of the 12-month period within which the Application had to be made, so I ensured that it was submitted no later than April 2016. On my entry for section 7 of Form 44, 5th para down, I said use had voluntarily stopped during summer of 2015. I should add that that was true at the date of the Application (April 2016) but since then mowings and a BBQ occurred in summer 2016. A resident was told, around September 2016, by a Cooper Estates representative "Thankyou for keeping it tidy for us". This suggests they knew of our use, and did not think we were trespassing even though access would have to be via broken fence places.**

**6-9 "Trigger/Terminating Events" The Registering Authority made due checks and ascertained that there were no events hindering the Application under this heading.**

**10-11 "Core Strategy". It is arguable that the Core Strategy referred to does not apply to existing developments, rather being aimed at new green field sites adjacent to the types of settlement referred to in 10-11. The site in question is an amenity forming part and parcel of a long-existing residential estate, therefore I suggest it is not a target for development under the Core Strategy provisions.**

**Other points.**

**The Open Spaces and Rights of Way legislation with the "20-year unhindered use as of right" at their heart, have a long history within English law. I suggest none of it is unpicked, reduced, modified or annulled by Core Strategy legislation.**

**Richard Gosnell. 9th December 2016**

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**APPENDIX 6 – Further comments from Blake Morgan LLP, 2<sup>nd</sup> March 2017  
(including Further Opinion from Gregory Jones QC, 27<sup>th</sup> February 2017) on  
behalf of Cooper Estates Ltd**

**Subject:** Application to Register Land as Town or Village Green - Royal Wootton Bassett [BMG-Legal.FID38930313]  
**Attachments:** FURTHER OPINION.DOC  
**Importance:** High

Dear Ms Green

Thank you for your letter of 10 February and enclosed comments.

I attach a further written Opinion from Gregory Jones QC which makes it clear that nothing in Mr Gosnell's letter seriously challenges anything in Mr Jones' original Opinion.

As a matter of fact, the trigger events have occurred before the making of the application and that matter is not in any dispute. Section 15C (1) of the Commons Act 2006 excludes the right to apply when a trigger event has occurred within the planning system in relation to that land. I would also refer you to the Guidance to Commons Registration Authorities In England on Sections 15A to 15C of the Commons Act 2006 published by the Department for Environment Food & Rural Affairs in December 2016. Paragraph 60 confirms that at any time when the right to apply is excluded in respect of land, a commons registration authority cannot accept any application to register that land as a green. This rule applies whether or not the trigger event occurred prior to the commencement of Section 15C (para 67).

As a result, the Council must now reject the application and I look forward to your confirmation shortly.

Yours sincerely

**Guthrie McGruer**  
Partner  
For and on behalf of Blake Morgan LLP



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## FURTHER OPINION

### **Re: Validity of Village Green application made against land at Vowley View**

1. I have read the consultation responses from Mr Richard Gosnell, dated 9 December 2016, Royal Wotton Bassett Town Council 14 November, 2016; and Cllr Chris Hurst, 5 October, 2016.
2. It is only Richard Gosnell's letter which purports to deal with elements contained to my Opinion. The key issue is whether a trigger event occurred before the submission of the application to register a village green. Nothing in Mr Gosnell's letter seriously challenges anything in my Opinion. I do not know whether the Council purported to check whether any trigger events had occurred. It does not matter whether or not it did. The key question is whether a trigger event has in fact occurred prior to the application having been made. For the reasons set out in my opinion the trigger events have occurred before the making of the application.
3. Mr Gosnell states that it is "arguable that the Core Strategy referred to [in my Opinion] does not apply to existing developments, rather being aimed at new green field sites adjacent to the types of settlement referred to in 10-11 [of my Opinion]. The site in question is an amenity forming part and parcel of a long-existing residential estate, therefore I suggest it is not a target for development under the core strategy provisions."
4. I do not accept that the site is part of an existing residential estate. However, the question is irrelevant. The key question as I identified is whether the local plan "*identifies the land for potential development.*" [Underlining added]. Consistent with paragraphs 154 and 157 bullet point 7 of the NPPF, CP2 states *inter alia*

"Within the limits of development, as defined on the policies map, there is a presumption in favour of sustainable development at the

Principal Settlements, Market Towns, Local Service Centres and Large Villages.” [Underlining added]

5. The site is within the limits of development in the policy as defined and indeed goes even further than simply identifying a “potential” site for development but carries within it a presumption in favour of the development of the site for sustainable development.

**GREGORY JONES QC**  
**FTB**  
**Francis Taylor Building**  
**Temple**

**27 February, 2017**

## REPORT OUTLINE FOR AREA PLANNING COMMITTEES

<b>Date of Meeting</b>	4 <sup>th</sup> October 2017
<b>Application Number</b>	17/03112/FUL
<b>Site Address</b>	Land adjacent to Barton Piece, Silver Street, Colerne, SN14 8DY
<b>Proposal</b>	Conversion of an existing dilapidated garage into a 2 bedroom house
<b>Applicant</b>	Mr Aleem Hosein
<b>Town/Parish Council</b>	COLERNE
<b>Electoral Division</b>	BOX AND COLERNE – Cllr Brian Mathew
<b>Grid Ref</b>	381799 171129
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	Rose Fox

### Reason for the application being considered by Committee

The application was due to be considered at Planning Committee on 9<sup>th</sup> August 2017 but was deferred at the meeting as the applicant had proposed changes to the scheme to address neighbours' concerns. Following consultation in respect of revised plans submission a new call-in form has been received from Cllr Mathew for the committee to consider the scale of the development.

The changes to the scheme comprise the replacement of car ports to an integral garage and a modest increase in the dimensions of the proposed building. The length of the building would be increased by approximately 1.2m to increase the floorspace within the garage (to address neighbour concerns over parking). A minor amount of additional usable floorspace would also be gained at first floor level to increase bedroom space. The ridge height would be increased by approximately 500mm and the width of the building would be increased by approximately 300mm above the previously proposed scheme.

### 1. Purpose of Report

The purpose of the report is to provide an update to the previous report submitted to members ahead of the 9<sup>th</sup> August Planning Committee following the further public consultation in respect of the revised scheme proposals and deferral in that respect. The 9<sup>th</sup> August Committee Report is appended to this Committee Report (hereafter in this report referred to as Annexe A) and should be read alongside this update report, which will assess the merits of the revised proposal against the policies of the development plan and other material considerations and to consider the recommendation that the application be approved, subject to conditions.

### 2. Report Summary

The critical issues in the consideration of the application are as follows:

- Principle of Development
- Impact on Heritage Assets
- Design/Character and Appearance of the Area (AONB)
- Highways and Parking
- Residential Amenity

The application has met with objection from Colerne Parish Council. Whilst there was previously objection from members of the public (please see Annexe A), no representations have been received from members of the public further to the most recent revisions to the scheme and reconsultation.

### **3. Site Description**

The site comprises a single storey garage and amenity space to the rear which is mainly grassed with some shrubs. The building is finished in stone, set beneath a terracotta tiled roof. It has timber shutters and doors to the front, two timber doors to the side, two ground floor windows to the rear and a first floor circular window to the rear. It is enclosed by a stone boundary wall and the neighbouring building's flank wall along the western boundary.

The application site is located centrally within the settlement limits of Colerne, which is defined as a Large Village within the Core Strategy. It is situated to the east of Silver Street, accessed via a private drive to the north which serves a cluster of residential properties. The surrounding residential properties comprise a mix of 1 and 2 storey buildings, which are finished in stone, with some variance in roof materials. The site is situated within the Colerne Conservation Area and Cotswolds AONB.

### **4. Planning History**

16/11202/PREAPP – Conversion of garage to residential  
 15/11988/FUL - Proposed Conversion of Existing Garage into 3 Bedroom Dwelling (Resubmission of 14/11032/FUL) – Withdrawn  
 15/09384/PREAPP - Conversion of garage to residential  
 14/11032/FUL - Conversion & Extension of Existing Double Garage with Loft Over to Create Residential Unit with Integral Garage & Parking - Withdrawn  
 N/04/01225/FUL - ERECTION OF WORKSHOP – Approve with Conditions

### **5. The Proposal**

The proposal comprises the conversion of the existing garage into a two bedroom dwelling. To facilitate the conversion there would be a modest increase in the height, length and width of the building through extensions with stone to match. The accommodation is to comprise an open plan kitchen/diner/living room, bathroom, storage and car port for two parking spaces on the ground floor and two bedrooms and a bathroom at first floor.

The two timber doors to the front would be removed and replaced with new timber doors for a double garage. The timber shutter above would be replaced with a single window. A single rooflight is proposed in the existing roof (eastern side) above the staircase, and the rear flat roofed extension would include bifold doors to the rear and a rooflight. It is proposed that the existing terracotta tiles are replaced with slate tiles to match

neighbouring properties. There would be an area of timber decking to the rear of the property, and paving and a gate to the side.

## 6. Local Planning Policy

The following policies of the Wiltshire Core Strategy (Jan 2015) (WCS) are relevant:

Core Policy 1 (Settlement strategy)

Core Policy 2 (Delivery strategy)

Core Policy 11 (Community Area strategy: Corsham Community Area)

Core Policy 45 (Meeting Wiltshire's Housing Needs)

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 61 (Transport and development)

Core Policy 64 (Demand management)

National Planning Policy Framework (NPPF)

Paragraphs 7, 11, 14, 17, 55, 58, 115, 129, 133, 134 and Sections 4 (Promoting sustainable transport), 6 (Delivering a wide choice of high quality homes), 7 (Requiring good design), 11 (Conserving and enhancing the natural environment) and 12 (Conserving and enhancing the historic environment) of the National Planning Policy Framework are also relevant.

## 7. Summary of consultation responses

### Colerne Parish Council

*"Colerne Parish Council request that this application be CALLED IN.*

- 1. Overdevelopment of site in an already congested area with little or no parking.*
- 2. Covenant exists on land regarding building development.*
- 3. No legal right of vehicular access"*

In considering the above comment, it is understood there is a legal right of access but any covenant is a legal/property issue between the relevant parties and not a material planning consideration.

### Conservation Officer

No objection to revisions

### Highways

*"I note the parking is contained within a 6 m by 6 m garage (plan A1.00 Rev 02) and thus complies with current parking standards.*

*As the site can be accessed via private agreement to the public highway at Silver Street I can raise no highway objection."*

### Drainage

*"Site is in FZ 1 and not in an area at risk of surface water flooding for 1 in 30/100 events according to EA mapping*

*Application form states foul and storm drainage disposal will be to main sewer – not aware of location of sewers or whether there are any storm sewers in the area (nothing on Wessex Water drawings) and Wessex Water would not want storm water flows into the foul system*

*No drainage disposal information within the submission*

*Recommendation could be support but with drainage conditions (although if no storm sewers exist it would mean a condition which may not be able to be met) or a holding objection pending submission of drainage disposal arrangements”*

After discussing further with the Drainage Officer, given the proposal is for a conversion within a built up area, and there is not a significant increase in hardstanding, a suitable drainage solution is considered achievable in principle. Drainage details will be conditioned.

#### Environmental Health

No objection but following condition suggested: *“No construction or demolition work shall take place on Sundays or Public Holidays or outside the hours of 07:30 to 18:00 Monday to Friday and 08:00 to 13:00 on Saturdays.”*

Given there is the ability to disturb adjoining residents during construction, it is considered necessary to apply the condition to require a Construction Method Statement which will agree hours of construction amongst other construction details e.g. parking of construction vehicles.

#### Ecology

*“I have reviewed the proposal alongside its supporting documentation, site photos and GIS ecological information, and determined that no ecological survey input is required to inform a planning decision.*

*The building proposed for works appears in good condition with little opportunity for bats to access potential roosting inside. It's in an urban setting in close proximity to adjacent buildings. The potential risk to roosting bats appears minimal.”*

Two informatives are suggested to be applied to any permission in relation to bats and birds.

### **8. Publicity**

The application was advertised by site notice and neighbour notification letter.

No representations have been received from local residents since the reconsultation. Please refer to Annexe A for a summary of previous objections.

### **9. Planning Considerations**

#### Principle of development

Under the provisions of section 38(6) of the Planning and Compulsory Purchase Act 2004, applications for planning permission must be determined in accordance with the

development plan unless material considerations indicate otherwise. At the current time the statutory development plan in respect of this application consists of the Wiltshire Core Strategy (WCS) (Adopted January 2015) and the 'saved' policies of the North Wiltshire Local Plan (NWLP) 2011 (adopted June 2006).

Core Policy 1 of the WCS sets out that Colerne is defined as a 'Large Village' within Wiltshire where development will be limited to that needed to help meet the housing needs of settlements. Core Policy 2 sets out that within the defined limits of development of Large Villages there is a presumption in favour of sustainable development. The location of dwellings in this area is therefore considered appropriate in principle as long as it constitutes sustainable development and complies with the other relevant policies of the WCS.

### Heritage Assets

The Planning (Listed Buildings and Conservation Areas) Act 1990 provides powers for the designation, protection and enhancement of conservation areas and the preservation of listed buildings. The Act requires that special regard should be given to the desirability of preserving a listed building or its setting (s. 66) as well as giving special attention to preserving or enhancing the character or appearance of the conservation area (s.72).

Paragraph 129 of the NPPF requires local planning authorities to identify and assess the particular significance of any heritage asset that may be affected by the proposal (including any development affecting the setting of a heritage asset). Paragraphs 133 and 134 require local authorities to assess whether there is substantial harm, less than substantial harm or no harm to the heritage asset. Core Policy 57 requires, amongst other things, that new development must be sympathetic to and conserve historic buildings. Core Policy 58 requires that development should protect, conserve and where possible enhance the historic environment.

The property is situated within the Colerne Conservation Area. There is no Conservation Area Appraisal currently published for this designation. However, the conservation area, by virtue of its designation, is significant in heritage terms. The only listed building with a view of the application site is the rear of Charter House (no 10 High Street), the Grade II listed building to the south (approximately 21m from the edge of the new rear elevation of the proposed building). This building has aesthetic value and architectural significance.

The Conservation Officer does not consider the proposal to cause harm to the character or appearance of the conservation area as it would not be highly visible from the main thoroughfares in the area and the form of the building is similar to the existing. Given the appearance of the existing building would not be vastly changed, it is considered that the proposals result in a neutral impact to the conservation area. Large scale drawings and samples of all new materials are requested to be conditioned should the application be approved, however given the lack of harm identified and that the development does not affect a listed building itself it is not considered necessary or reasonable to require additional drawings at large scale of the proposed development. Given the location within the Conservation Area it is considered necessary and appropriate to condition to

the use of materials and rainwater goods. Given the application building is situated a moderate distance away to the rear of the listed building, the revised proposals will not harm the setting or significance of this listed building.

Should the application be approved, Permitted Development rights for further extensions, external alterations and outbuildings would be removed to enable the LPA to consider individually whether planning permission should be granted for such development, in the interests of visual amenity, residential amenity and safeguarding heritage assets.

#### Design/Character and Appearance of the Area (AONB)

WCS Core Policy 57 requires new development to be of a high standard of design and requires development to create a strong sense of place through drawing on the local context and being complimentary to the locality. Amongst other matters, the policy requires development to respond positively to the existing townscape and landscape features in terms of building layouts, built form, height, mass, scale, building line, plot size, elevational design, materials streetscape and rooflines, to integrate the building into its setting effectively.

The design of the proposed dwelling is to reuse the existing building but modestly increase it in height, length and width to provide a first floor and sufficient parking. Matching materials will be used for the stone, and the terracotta roof tiles will be replaced with slate, which are used within the local area. External materials including rainwater goods would be conditioned to ensure good quality materials and matching stone would be used within the proposal. There are a mix of single storey and two storey dwellings within the area, so it is appropriate in scale. It is not considered that the proposal would be harmful in design terms, and it would be in keeping with the local character of the area.

The property is situated within the Cotswold AONB, which Policy CP51 of the Wiltshire Core Strategy applies great weight to conserving and enhancing landscapes and scenic beauty. Given this proposal is for a modest extensions and alterations to an existing building within the Large Village of Colerne, the proposals would not be harmful to the AONB.

#### Highways and Parking

The Council's Highway Officer has considered the proposals in respect of the adequacy of car parking and the safety of the access and egress of the private access onto the public highway. The revised scheme proposes parking to be contained within a 6 m by 6 m garage (plan A1.00 Rev 02) and thus complies with current parking standards. As the site can be accessed via private agreement to the public highway at Silver Street, no highway objection is made. Please refer to Annexe A for further commentary on the previous proposals.

#### Residential amenity

No objections have been received since the application was last reconsulted on. Please refer to Annexe A for a detailed assessment in considering residential amenity. In



summary, it is not considered that the neighbouring properties would suffer loss of daylight, sunlight or privacy as a result. There would be no adverse impacts.

### Conclusions

Overall, it is considered that the revised proposals for a new dwelling represents sustainable development in accordance with Core Policies 1, 2, 11, 45, 51, 57, 58, 61 and 64 of the WCS (Jan 2015; and Paragraphs 7, 11, 14, 17, 55, 58, 115, 129, 133, 134 and Sections 4, 6, 7, 11 and 12 of the NPPF, and is acceptable in planning terms.

RECOMMENDATION – Approve 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:

A 0.00

0.01 REV 05

A 0.10 REV 01

A 0.11 REV 01

A 0.20 REV 01

A 0.30

A 1.00 REV 02

A 1.01 REV 01

A 1.02 REV 01

A 2.00 REV 02

A 2.01 REV 01

A 3.00 REV 02

Received 14/08/2017

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

3 No part of the development hereby approved shall be first brought into use until the car parking shown on the approved plans (A 1.00 REV 02) has been consolidated, surfaced and laid out in accordance with the approved details. This area shall be maintained and remain available for this use at all times thereafter.

REASON: To ensure that adequate provision is made for parking within the site in the interests of highway safety.

4 The car port hereby approved must not be enclosed and shall remain open in perpetuity.

REASON: To ensure that adequate provision is made for parking within the site in the interests of highway safety.

5 Notwithstanding the approved drawings, no works shall commence until details of the following have been submitted to and approved in writing by the Local Planning Authority:

(i) Full details and samples of external materials, including rainwater goods.

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

REASON: The matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in the interests of preserving the character and appearance of the conservation area.

6 The natural stonework to be used externally on the proposed development shall match that of the existing building in terms of type, colour, size, dressing and bedding of stone, coursing, type of pointing and mortar mix.

REASON: In the interests of visual amenity and the character and appearance of the area.

7 No development shall commence on site (including any works of demolition), until a Construction Method Statement, which shall include the following:

- a) the parking of vehicles of site operatives and visitors;
- b) loading and unloading of plant and materials;
- c) storage of plant and materials used in constructing the development; and
- d) hours of construction, including deliveries.

has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be complied with in full throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction method statement.

REASON: The matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to minimise detrimental effects to the neighbouring amenities, the amenities of the area in general, and dangers to highway safety, during the construction phase.

8 No development shall commence on site until a scheme for the discharge of foul water from the site, including any third party permissions, has been submitted to and approved in writing by the Local Planning Authority.

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

9 The development shall not be first occupied until foul water drainage has been constructed in accordance with the approved scheme.

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

10 No development shall commence on site until a scheme for the discharge of surface water from the site, incorporating any required third party permissions, has been submitted to and approved in writing by the Local Planning Authority.

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

11 The development shall not be first occupied until surface water drainage has been constructed in accordance with the approved scheme.

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

12 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), there shall be no additions to, or extensions, enlargements or external alterations of any building forming part of the development hereby permitted.

REASON: 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.

13 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), no garages, sheds, greenhouses and other ancillary domestic outbuildings shall be erected anywhere on the site on the approved plans.

REASON: To safeguard the character and appearance of the area.

14 INFORMATIVE TO APPLICANT:

The applicant should note that the grant of planning permission does not include any separate permission which may be needed to erect a structure in the vicinity of a public sewer. Such permission should be sought direct from Thames Water Utilities Ltd / Wessex Water Services Ltd. Buildings are not normally allowed within 3.0 metres of a Public Sewer although this may vary depending on the size, depth, strategic importance, available access and the ground conditions appertaining to the sewer in question.

15 INFORMATIVE TO APPLICANT:

The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence.

If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

16 INFORMATIVE TO APPLICANT:

Please note that Council offices do not have the facility to receive material samples. Please deliver material samples to site and inform the Planning Officer where they are to be found.

17 INFORMATIVE TO APPLICANT:

Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

18 INFORMATIVE TO APPLICANT:

There is a low risk that bats may occur at the development site. Many species of bat depend on buildings for roosting, with each having its own preferred type of roost. Most

species roost in crevices such as under ridge tiles, behind roofing felt or in cavity walls and are therefore not often seen in the roof space. Bat roosts are protected all times by the Conservation of Habitats and Species Regulations 2010 (as amended) even when bats are temporarily absent because, being creatures of habit, they usually return to the same roost site every year. Planning permission for development does not provide a defence against prosecution under this legislation or substitute for the need to obtain a bat licence if an offence is likely. If bats or evidence of bats is found during the works, the applicant is advised to stop work and follow advice from an independent ecologist or to contact the Bat Advice Service on 0845 1300 228, email [enquiries@bats.org.uk](mailto:enquiries@bats.org.uk) or visit the Bat Conservation Trust website.

#### 19 INFORMATIVE TO APPLICANT:

The applicant is reminded that, under the Wildlife and Countryside Act 1981, as amended (Section 1), it is an offence to remove, damage and destroy a nest of any wild bird while that nest is in use or being built. Planning permission for a development does not provide a defence against prosecution under this Act. Trees, scrub and other vegetation, such as dense ivy, are likely to contain nesting birds between 1st March and 31st August. It should be assumed that onsite vegetation contains nesting birds between the above dates, unless a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity on site during this period and has shown it is absolutely certain that nesting birds are not present.

#### 20 INFORMATIVE TO APPLICANT:

The applicant is advised that the development hereby approved may represent chargeable development under the Community Infrastructure Levy Regulations 2010 (as amended) and Wiltshire Council's CIL Charging Schedule. If the development is determined to be liable for CIL, a Liability Notice will be issued notifying you of the amount of CIL payment due. If an Additional Information Form has not already been submitted, please submit it now so that we can determine the CIL liability. In addition, you may be able to claim exemption or relief, in which case, please submit the relevant form so that we can determine your eligibility. The CIL Commencement Notice and Assumption of Liability must be submitted to Wiltshire Council prior to commencement of development. Should development commence prior to the CIL Liability Notice being issued by the local planning authority, any CIL exemption or relief will not apply and full payment will be required in full and with immediate effect. Should you require further information or to download the CIL forms please refer to the Council's Website [www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastructurelevy](http://www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastructurelevy).

## ANNEXE A

### REPORT OUTLINE FOR AREA PLANNING COMMITTEES

<b>Date of Meeting</b>	9 <sup>th</sup> August 2017
<b>Application Number</b>	17/03112/FUL
<b>Site Address</b>	Land adjacent to Barton Piece, Silver Street, Colerne, SN14 8DY
<b>Proposal</b>	Conversion of an existing dilapidated garage into a 2 bedroom house
<b>Applicant</b>	Mr Aleem Hosein
<b>Town/Parish Council</b>	COLERNE
<b>Electoral Division</b>	BOX AND COLERNE – Cllr Brian Mathew
<b>Grid Ref</b>	381799 171129
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	Rose Fox

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

The application has been called to Committee by Cllr Mathew in order to consider the impact on highways, parking, residential amenity and scale of the development.

#### **1. Purpose of Report**

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

#### **2. Report Summary**

The critical issues in the consideration of the application are as follows:

- Principle of Development
- Impact on Heritage Assets
- Design/Character and Appearance of the Area (AONB)
- Highways and Parking
- Residential Amenity

The application has met with objection from Colerne Parish Council, 13 letters of objection from local residents and a petition of 27 signatures in objection.

#### **3. Site Description**

The site comprises a single storey garage and amenity space to the rear which is mainly grassed with some shrubs. The building is finished in stone, set beneath a terracotta

tiled roof. It has timber shutters and doors to the front, two timber doors to the side, two ground floor windows to the rear and a first floor circular window to the rear. It is enclosed by a stone boundary wall and the neighbouring building's flank wall along the western boundary.

The application site is located centrally within the settlement limits of Colerne, which is defined as a Large Village within the Core Strategy. It is situated to the east of Silver Street, accessed via a private drive to the north which serves a cluster of residential properties. The surrounding residential properties comprise a mix of 1 and 2 storey buildings, which are finished in stone, with some variance in roof materials. The site is situated within the Colerne Conservation Area and Cotswolds AONB.

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

16/11202/PREAPP – Conversion of garage to residential  
15/11988/FUL - Proposed Conversion of Existing Garage into 3 Bedroom Dwelling (Resubmission of 14/11032/FUL) – Withdrawn  
15/09384/PREAPP - Conversion of garage to residential  
14/11032/FUL - Conversion & Extension of Existing Double Garage with Loft Over to Create Residential Unit with Integral Garage & Parking - Withdrawn  
N/04/01225/FUL - ERECTION OF WORKSHOP – Approve with Conditions

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

The proposal comprises the conversion of the existing garage into a two bedroom dwelling. To facilitate the conversion there would be a modest increase in the height and length of the building through extensions with stone to match. The accommodation is to comprise an open plan kitchen/diner/living room, bathroom, storage and car port for two parking spaces on the ground floor and two bedrooms and a bathroom at first floor.

The two timber doors to the front would be removed and for use as a carport for two cars. The timber shutter above would be replaced with a single window. A single rooflight is proposed in the existing roof (eastern side) above the staircase, and the rear flat roofed extension would include bifold doors to the rear and a rooflight. It is proposed that the existing terracotta tiles are replaced with slate tiles to match neighbouring properties. There would be an area of timber decking to the rear of the property, paving along the side and a gate to the front.

#### **6. Local Planning Policy**

The following policies of the Wiltshire Core Strategy (Jan 2015) (WCS) are relevant:

Core Policy 1 (Settlement strategy)

Core Policy 2 (Delivery strategy)

Core Policy 11 (Community Area strategy: Corsham Community Area)

Core Policy 45 (Meeting Wiltshire's Housing Needs)

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 61 (Transport and development)

Core Policy 64 (Demand management)

National Planning Policy Framework (NPPF)  
Paragraphs 7, 11, 14, 17, 55, 58, 115, 129, 133, 134 and Sections 4 (Promoting sustainable transport), 6 (Delivering a wide choice of high quality homes), 7 (Requiring good design), 11 (Conserving and enhancing the natural environment) and 12 (Conserving and enhancing the historic environment) of the National Planning Policy Framework are also relevant.

## 7. Summary of consultation responses

### Colerne Parish Council

*“Colerne Parish Council request that this application be CALLED IN.*

- 1. Overdevelopment of site in an already congested area with little or no parking.*
- 2. Covenant exists on land regarding building development.*
- 3. No legal right of vehicular access”*

In considering the above comment, it is understood there is a legal right of access but any covenant is a legal/property issue between the relevant parties and not a material planning consideration.

### Conservation Officer

*“No objection – The flat roof rear extension (and rooflight) is not typical of the conservation area, however it would not be highly visible from the main thoroughfares in the area. The form of the building is similar to existing so the proposal would not result in any harm to character or appearance of the conservation area. If approved, large scale drawings should be requested of the roof surface, eaves treatment, verges, gable (no fascia/barge boards – tiles should overlap the masonry by an inch to two inch with a simple mortar joint ), and all new windows and doors. Full details should also be provided of rainwater goods and ventilation details. Materials should be conditioned to match and samples of all new materials to be submitted to the local planning authority.”*

### Highways

Initial objection to the proposal on grounds that the internal dimensions of the parking spaces within the garage were insufficient and the red line did not indicate access to the highway. The proposed integral garage has since been amended to a car port and the red line amended. Revised Highways Comments are as follows:

*“I note the amended plan A 1.00 REV 01 demonstrates two parking spaces of standard size 4.8 m x 2.4 m. As discussed with the agent these are adequate parking spaces for a car port and I would be satisfied that the parking requirements have been demonstrated, should the parking be car port and open rather than with a garage door. The standard for a double garage is 6m x 6m internally. I note that the parking is still labelled ‘garage’ but it should not be enclosed to avoid adverse highways comment due to lack of provision for parking.*

*I am satisfied that there is sufficient space to manoeuvre along the private lane in order to enter and egress the public highway perpendicular and in forward gear. Should additional manoeuvres occur they will be away from the highway.*

*I am satisfied that there is sufficient indication that the site is linked to the public highway at Silver Street along the private lane and that the property has right of access to the highway.*

*Therefore I can raise no highway objection to the proposal subject to the following condition being attached to any permission granted.*

*No part of the development hereby approved shall be first brought into use until the car port parking shown on the approved plans (A 1.00 REV 01) has been consolidated, surfaced and laid out in accordance with the approved details. This area shall be maintained and remain available for this use at all times thereafter.*

*REASON: To ensure that adequate provision is made for parking within the site in the interests of highway safety.”*

#### Drainage

*“Site is in FZ 1 and not in an area at risk of surface water flooding for 1 in 30/100 events according to EA mapping*

*Application form states foul and storm drainage disposal will be to main sewer – not aware of location of sewers or whether there are any storm sewers in the area (nothing on Wessex Water drawings) and Wessex Water would not want storm water flows into the foul system*

*No drainage disposal information within the submission*

*Recommendation could be support but with drainage conditions (although if no storm sewers exist it would mean a condition which may not be able to be met) or a holding objection pending submission of drainage disposal arrangements”*

After discussing further with the Drainage Officer, given the proposal is for a conversion within a built up area, and there is not a significant increase in hardstanding, a suitable drainage solution is considered achievable in principle. Drainage details will be conditioned.

#### Environmental Health

No objection but following condition suggested: *“No construction or demolition work shall take place on Sundays or Public Holidays or outside the hours of 07:30 to 18:00 Monday to Friday and 08:00 to 13:00 on Saturdays.”*

Given there has been some objection to the proposal, it is considered necessary to apply the condition to require a Construction Method Statement which will agree hours of construction amongst other construction details e.g. parking of construction vehicles.



## Ecology

*"I have reviewed the proposal alongside its supporting documentation, site photos and GIS ecological information, and determined that no ecological survey input is required to inform a planning decision.*

*The building proposed for works appears in good condition with little opportunity for bats to access potential roosting inside. It's in an urban setting in close proximity to adjacent buildings. The potential risk to roosting bats appears minimal."*

Two informatives are suggested to be applied to any permission in relation to bats and birds.

## **8. Publicity**

The application was advertised by site notice and neighbour notification letter.

Representations have been received from 13 local residents, raising a number of concerns which can be summarised as follows (comments are addressed by the Planning Officer in italics where the issue is not addressed in the below Planning Consideration section):

- Additional parking on Silver Street (existing parking issues)
- Parking spaces provided too small – *spaces are standard size 2.4 x 4.8 m since being revised*
- Concern for parking, loss of turning space and safety on private drive – *On the assessment that adequate parking can be provided on-site, the specific issue of parking/turning on private land is a civil matter and not a material planning consideration*
- Highway safety issues entering/exiting private drive onto highway (and over a pavement)
- Overlooking/loss of privacy/overbearing on:
  - 10 High Street, Colerne (property to rear/south) from rear windows.
  - The Barn House (bungalow to north on other side of private drive).  
Concern over first floor window overlooking into bedroom window.  
Requests obscure glazed windows.
- Overdevelopment
- Not in keeping with conservation area/visual harm
- Comments on land values – *Not a material planning consideration*
- Concern not in compliance with building regulations – *Not a material planning consideration (if this is the case, where relevant, planning would have to be revised at a future date)*
- Queries location of bin store – *Now added to plans*
- Queries whether ecology study is needed (bats) – *Ecology confirmed this is not required*
- Covenant on land to prevent development – *Not a material planning consideration. It is understood there is a right of access.*
- Does not comply with The Nationally Described Spaces Standards – *There are no local space standards and the national standards are optional.*

- Queries over why Certificate B had not been served and party wall – Certificate B now served. *Party wall is separate legislation to planning but an informative would be applied to any permission stating advice should be sought on this.*
- Queries accuracy of plans – *Plans are considered to be accurate.*
- Proposed South/West elevation missing – *Now provided*
- Concerns over drainage – *Drainage Officer has been consulted and this detail can be conditioned.*
- Potential contamination issues – *No concerns raised by Public Protection.*
- Harm to trees on neighbouring property to east – *It is not considered there would be an adverse impact on any trees as a result of the proposal.*
- Concern that carport could be turned into a garage in the future – *This can be addressed by way of condition.*

A petition of 27 signatures has also been submitted in objection to the proposal on grounds of the following (summarised):

- No need for housing in the village centre;
- Need for parking spaces in the village will be best met by retaining the garage;
- Overdevelopment of the area and overuse of the drive;
- Parking space size inadequate; and
- Visitors will be forced to park on Silver Street and Grocyn Close, which is over congested and hazardous.

## **9. Planning Considerations**

### Principle of development

Under the provisions of section 38(6) of the Planning and Compulsory Purchase Act 2004, applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. At the current time the statutory development plan in respect of this application consists of the Wiltshire Core Strategy (WCS) (Adopted January 2015) and the 'saved' policies of the North Wiltshire Local Plan (NWLP) 2011 (adopted June 2006).

Core Policy 1 of the WCS sets out that Colerne is defined as a 'Large Village' within Wiltshire where development will be limited to that needed to help meet the housing needs of settlements. Core Policy 2 sets out that within the defined limits of development of Large Villages there is a presumption in favour of sustainable development. The location of dwellings in this area is therefore considered appropriate in principle as long as it constitutes sustainable development and complies with the other relevant policies of the WCS.

### Heritage Assets

The Planning (Listed Buildings and Conservation Areas) Act 1990 provides powers for the designation, protection and enhancement of conservation areas and the preservation of listed buildings. The Act requires that special regard should be given to the desirability of preserving a listed building or its setting (s. 66) as well as giving special attention to preserving or enhancing the character or appearance of the conservation area (s.72).

Paragraph 129 of the NPPF requires local planning authorities to identify and assess the particular significance of any heritage asset that may be affected by the proposal (including any development affecting the setting of a heritage asset). Paragraphs 133 and 134 require local authorities to assess whether there is substantial harm, less than substantial harm or no harm to the heritage asset. Core Policy 57 requires, amongst other things, that new development must be sympathetic to and conserve historic buildings. Core Policy 58 requires that development should protect, conserve and where possible enhance the historic environment.

The property is situated within the Colerne Conservation Area. There is no Conservation Area Appraisal currently published for this designation. However, the conservation area, by virtue of its designation, is significant in heritage terms. The only listed building with a view of the application site is the rear of Charter House (no 10 High Street), the Grade II listed building to the south (approximately 21m from the edge of the new rear elevation of the proposed building). This building has aesthetic value and architectural significance.

The Conservation Officer does not consider the proposal to cause harm to the character or appearance of the conservation area as it would not be highly visible from the main thoroughfares in the area and the form of the building is similar to the existing. Given the appearance of the existing building would not be vastly changed, it is considered that the proposals result in a neutral impact to the conservation area. Large scale drawings and samples of all new materials are requested to be conditioned should the application be approved, however given the lack of harm identified and that the development does not affect a listed building itself it is not considered necessary or reasonable to require additional drawings at large scale of the proposed development. Given the location within the Conservation Area it is considered necessary and appropriate to condition to the use of materials and rainwater goods. Given the application building is situated a moderate distance away to the rear of the listed building, the revised proposals will not harm the setting or significance of this listed building.

Should the application be approved, Permitted Development rights for further extensions, external alterations and outbuildings would be removed to enable the LPA to consider individually whether planning permission should be granted for such development, in the interests of visual amenity, residential amenity and safeguarding heritage assets.

#### Design/Character and Appearance of the Area (AONB)

WCS Core Policy 57 requires new development to be of a high standard of design and requires development to create a strong sense of place through drawing on the local context and being complimentary to the locality. Amongst other matters, the policy requires development to respond positively to the existing townscape and landscape features in terms of building layouts, built form, height, mass, scale, building line, plot size, elevational design, materials streetscape and rooflines, to integrate the building into its setting effectively.

The design of the proposed dwelling is to reuse the existing building but modestly increase it in height and length to provide a first floor. Matching materials will be used for the stone, and the terracotta roof tiles will be replaced with slate, which are used within the local area. External materials including rainwater goods would be conditioned to ensure good quality materials and matching stone would be used within the proposal. There are a mix of single storey and two storey dwellings within the area, so it is appropriate in scale. It is not considered that the proposal would be harmful in design terms, and it would be in keeping with the local character of the area.

The property is situated within the Cotswold AONB, which Policy CP51 of the Wiltshire Core Strategy applies great weight to conserving and enhancing landscapes and scenic beauty. Given this proposal is for a modest extensions and alterations to an existing building within the Large Village of Colerne, the proposals would not be harmful to the AONB.

### Highways and Parking

The Council's Highway Officer has considered the proposals in respect of the adequacy of car parking and the safety of the access and egress of the private access onto the public highway. The initial proposals included a garage with insufficient space for car parking. However, the scheme has since been revised to propose a car port which can accommodate two parking spaces of the standard size 2.4 x 4.8 m. The Highways Officer is satisfied that these are adequate sizes for a car port but that the car port should remain open and a garage door should not be installed or there could result in insufficient parking. Given these comments, it is considered necessary to apply a planning condition to prevent the car port from being enclosed and becoming a garage in the future. Two parking spaces are appropriate for a two bedroom dwelling in accordance with the Wiltshire Council Parking Standards, and with the above condition to prevent the car port being later converted to a garage, the parking is considered sufficient.

The Highways Officer is satisfied that there is sufficient space to manoeuvre along the private lane in order to enter and egress the public highway perpendicular and in forward gear, and the proposal would not result in highway safety issues. There is sufficient indication that the site is linked to the public highway at Silver Street along the private lane and that the property has right of access to the highway.

Parking tended to be one of the main concerns made by local residents, the parish and the ward councillor, with particular reference to the proposal exacerbating the existing parking on Silver Street and surrounding roads which is already limited. In considering this proposal, it is for a small two bedroom property which would have two off-street parking spaces in line with Wiltshire Council parking standards. Given sufficient parking is being provided off-street, it cannot be considered that the development would result in an adverse impact to on-street parking within the local area.

As already noted the use of and access to land and possible restrictions over rights of access are civil property matters between the relevant parties. The Highways Officer has assessed that there is a reasonable access to the property; the applicant has

provided information demonstrating a right of access over this land, any dispute in that respect is therefore a civil matter between the parties and does not provide a defensible basis for refusal of the application not being a material planning consideration.

### Residential amenity

Concerns have been raised in relation to overlooking/loss of privacy to 10 High Street (property to the south), and The Barn House (bungalow to the north). 10 High Street is the listed building (Charter House) situated to the south. It is approximately 21 m from the rear elevation of the application building to the listed building, and approximately 10 m from the rear elevation of the application building to the boundary with this property. Given these separation distances it is not considered the rear windows within the proposal would result in an adverse impact on residential amenity of the listed building or its garden.

The Barn House is the bungalow situated to the north of the property, on the other side of the private drive. Concerns have been raised in relation to overlooking of the windows from the first floor bedroom of the application property. Given these windows are already overlooked from a driveway where residents and visitors of the properties on the private drive can come and go, it is not considered these windows relate to a private space. Consequently, a window on the front elevation on the other side of the private drive would not be detrimental to the residential amenities of the neighbour opposite. There are a mix of single storey and two storey dwellings within the area and it is not considered the proposal would be overbearing on any neighbouring properties.

There are no windows in the side elevations aside from a single roof light which given it's positioning and the roof slope is not considered to provide for or result in significant overlooking and consequent loss of privacy.

Consequently, the neighbouring properties would suffer no loss of daylight, sunlight or privacy as a result. There would be no adverse impacts.

### Conclusions

Overall, it is considered that the revised proposals for a new dwelling represents sustainable development in accordance with Core Policies 1, 2, 11, 45, 51, 57, 58, 61 and 64 of the WCS (Jan 2015; and Paragraphs 7, 11, 14, 17, 55, 58, 115, 129, 133, 134 and Sections 4, 6, 7, 11 and 12 of the NPPF, and is acceptable in planning terms.

RECOMMENDATION – Approve 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:

Existing Ground Floor Plan, Dwg No: A 0.10, Dated: 02/09/2015;

Existing Roof Plan, Dwg No: A 0.11, Dated: 02/09/2015;

Existing Elevations, Dwg No: A 0.20, Dated: 27/07/2015;

Existing Sections: Dwg No: A 0.30, Dated: 02/09/2015;

Proposed First Floor Plan, Dwg No: A 1.01, Dated: 02/09/2015;

Proposed Roof Plan, Dwg No: A 1.02, Dated: 02/09/2015;

plans as received by the LPA 27/03/2017;

Proposed Elevations, Dwg No: A 2.00, Rev: 01, Dated: 27/07/2015;

Proposed Sections, Dwg No: A 3.00, Rev: 01, Dated: 02/09/2015;

plans as received by the LPA 14/06/17; and

Location Plan and Site Plan, Dwg No: 0.01, Rev: 04, Dated: 02/09/2015;

plan as received by the LPA 25/07/17; and

Proposed Ground Floor Plan, Dwg No: A 1.00, Rev: 01, Dated: 02/09/2015; and

Proposed SW Elevation, Dwg No: A 2.01, Dated: 26/07/2017;

plans as received by the LPA 26/07/2017.

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

3 No part of the development hereby approved shall be first brought into use until the car port parking shown on the approved plans (A 1.00 REV 01) has been consolidated, surfaced and laid out in accordance with the approved details. This area shall be maintained and remain available for this use at all times thereafter.

REASON: To ensure that adequate provision is made for parking within the site in the interests of highway safety.

4 The car port hereby approved must not be enclosed and shall remain open in perpetuity.

REASON: To ensure that adequate provision is made for parking within the site in the interests of highway safety.

5 Notwithstanding the approved drawings, no works shall commence until details of the following have been submitted to and approved in writing by the Local Planning Authority:

(i) Full details and samples of external materials, including rainwater goods.

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

REASON: The matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in the interests of preserving the character and appearance of the conservation area.

- 6 The natural stonework to be used externally on the proposed development shall match that of the existing building in terms of type, colour, size, dressing and bedding of stone, coursing, type of pointing and mortar mix.

REASON: In the interests of visual amenity and the character and appearance of the area.

- 7 No development shall commence on site (including any works of demolition), until a Construction Method Statement, which shall include the following:

- a) the parking of vehicles of site operatives and visitors;
- b) loading and unloading of plant and materials;
- c) storage of plant and materials used in constructing the development; and
- d) hours of construction, including deliveries.

has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be complied with in full throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction method statement.

REASON: The matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to minimise detrimental effects to the neighbouring amenities, the amenities of the area in general, and dangers to highway safety, during the construction phase.

- 8 No development shall commence on site until a scheme for the discharge of foul water from the site, including any third party permissions, has been submitted to and approved in writing by the Local Planning Authority.

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

- 9 The development shall not be first occupied until foul water drainage has been constructed in accordance with the approved scheme.

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

- 10 No development shall commence on site until a scheme for the discharge of surface water from the site, incorporating any required third party permissions, has been submitted to and approved in writing by the Local Planning Authority.

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

- 11 The development shall not be first occupied until surface water drainage has been constructed in accordance with the approved scheme.
- REASON: To ensure that the development can be adequately drained.
- 12 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), there shall be no additions to, or extensions, enlargements or external alterations of any building forming part of the development hereby permitted.
- REASON: 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.
- 13 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), no garages, sheds, greenhouses and other ancillary domestic outbuildings shall be erected anywhere on the site on the approved plans.
- REASON: To safeguard the character and appearance of the area.
- 14 INFORMATIVE TO APPLICANT:
- The applicant should note that the grant of planning permission does not include any separate permission which may be needed to erect a structure in the vicinity of a public sewer. Such permission should be sought direct from Thames Water Utilities Ltd / Wessex Water Services Ltd. Buildings are not normally allowed within 3.0 metres of a Public Sewer although this may vary depending on the size, depth, strategic importance, available access and the ground conditions appertaining to the sewer in question.
- 15 INFORMATIVE TO APPLICANT:
- The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence.
- If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.
- 16 INFORMATIVE TO APPLICANT:
- Please note that Council offices do not have the facility to receive material samples. Please deliver material samples to site and inform the Planning Officer where they are to be found.
- 17 INFORMATIVE TO APPLICANT:



Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

18      INFORMATIVE TO APPLICANT:

There is a low risk that bats may occur at the development site. Many species of bat depend on buildings for roosting, with each having its own preferred type of roost. Most species roost in crevices such as under ridge tiles, behind roofing felt or in cavity walls and are therefore not often seen in the roof space. Bat roosts are protected all times by the Conservation of Habitats and Species Regulations 2010 (as amended) even when

bats are temporarily absent because, being creatures of habit, they usually return to the same roost site every year. Planning permission for development does not provide a defence against prosecution under this legislation or substitute for the need to obtain a bat licence if an offence is likely. If bats or evidence of bats is found during the works, the applicant is advised to stop work and follow advice from an independent ecologist or to contact the Bat Advice Service on 0845 1300 228, email [enquiries@bats.org.uk](mailto:enquiries@bats.org.uk) or visit the Bat Conservation Trust website.

19      INFORMATIVE TO APPLICANT:

The applicant is reminded that, under the Wildlife and Countryside Act 1981, as amended (Section 1), it is an offence to remove, damage and destroy a nest of any wild bird while that nest is in use or being built. Planning permission for a development does not provide a defence against prosecution under this Act. Trees, scrub and other vegetation, such as dense ivy, are likely to contain nesting birds between 1st March and

31st August. It should be assumed that onsite vegetation contains nesting birds between the above dates, unless a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity on site during this period and has shown it is absolutely certain that nesting birds are not present.

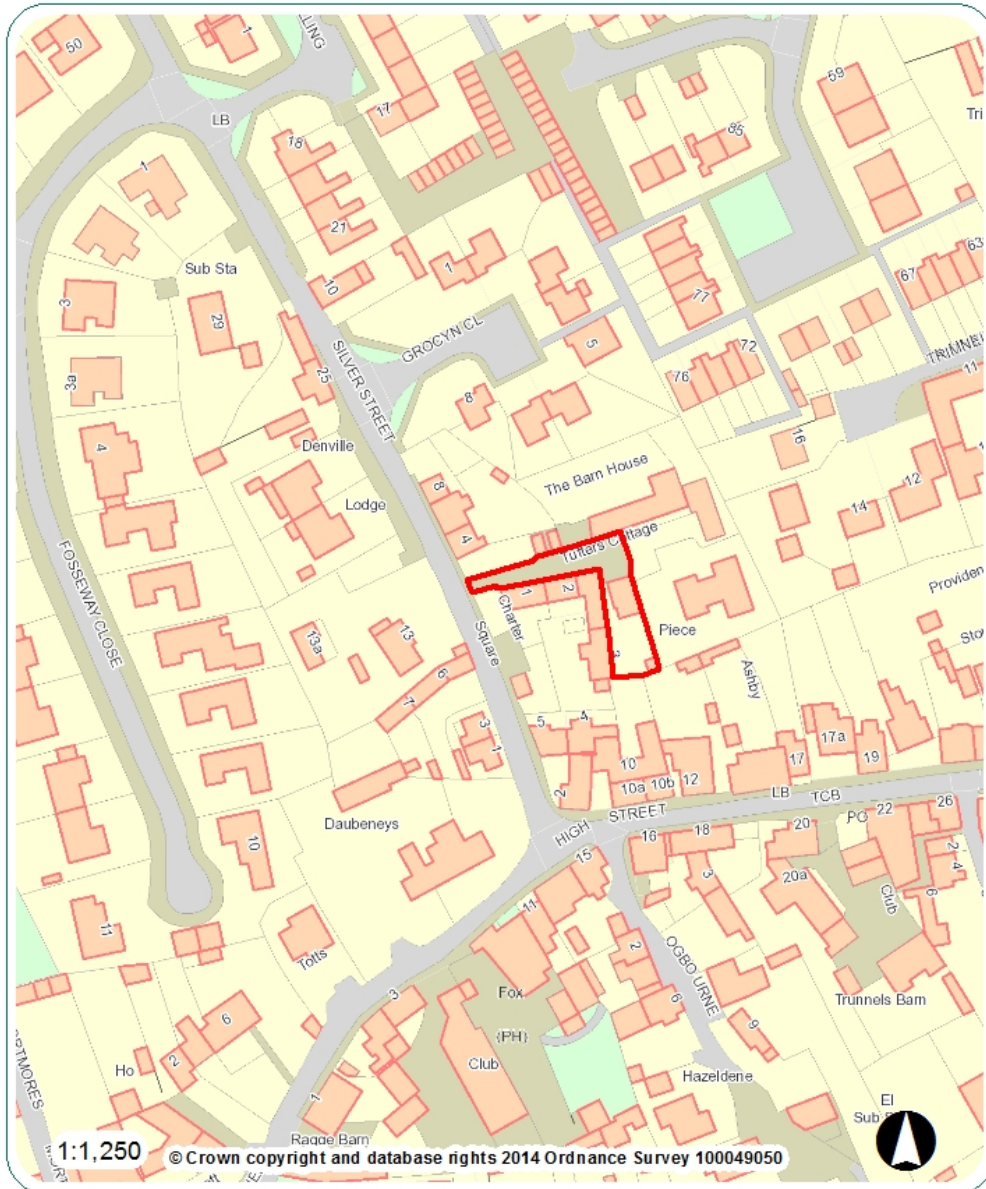
20      INFORMATIVE TO APPLICANT:

The applicant is advised that the development hereby approved may represent chargeable development under the Community Infrastructure Levy Regulations 2010 (as amended) and Wiltshire Council's CIL Charging Schedule. If the development is determined to be liable for CIL, a Liability Notice will be issued notifying you of the amount of CIL payment due. If an Additional Information Form has not already been submitted, please submit it now so that we can determine the CIL liability. In addition, you may be able to claim exemption or relief, in which case, please submit the relevant form so that we can determine your eligibility. The CIL Commencement Notice and Assumption of Liability must be submitted to Wiltshire Council prior to commencement of development. Should development commence prior to the CIL Liability Notice being issued by the local planning authority, any CIL exemption or relief will not apply and full payment will be required in full and with immediate effect. Should you require further information or to download the CIL forms please refer to the

Council's Website

[www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastructure](http://www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastructure)  
elevation.

17/03112/FUL  
Land adjacent to Barton Piece  
Silver Street  
Colerne  
Wiltshire



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## REPORT OUTLINE FOR AREA PLANNING COMMITTEES

<b>Date of Meeting</b>	4th October 2017
<b>Application Number</b>	17/06735/FUL
<b>Site Address</b>	Northwood Barn, Doncombe Lane, North Colerne
<b>Proposal</b>	Erection of a replacement dwelling
<b>Applicant</b>	Mr & Mrs Harraway
<b>Town/Parish Council</b>	COLERNE
<b>Electoral Division</b>	BOX AND COLERNE – Cllr Brian Mathew
<b>Grid Ref</b>	380908 172869
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	Rose Fox

### Reason for the application being considered by Committee

The application has been called in by Cllr Mathew on the basis of a recommendation for refusal by the Case Officer. Cllr Mathew has provided the following reason for call in: *“I am satisfied that this proposed eco home will be in keeping with the area, that it is far enough away from a foot path not to be noticed, and will help provide sustainability for a local family.”*

### 1. Purpose of Report

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

### 2. Report Summary

The critical issues in the consideration of the application are as follows:

- Principle of Development
- Design/Character and Appearance of the Area (AONB)
- Residential Amenity
- Ecology

The application has met with no objection from Colerne Parish Council and no public representations, but objections have been received from the Landscape Officer, Building Control Officer and Ecology Officer.

### 3. Site Description

The application site comprises a single storey dwelling “Northwood Barn” which was formerly a cattle byre. The building is finished in rubble stone, set beneath a slate tiled roof. The building has been sensitively converted with the majority of windows/openings within the front (southern) elevation and an arrow slit window in the western elevation. The property is enclosed by a stone wall, with trees to the south and east.

The site is located outside of any defined settlement boundary and is therefore classified as being within the open countryside. It is situated 1.5 miles to the north of the large village of Colerne, and 0.6 miles to the north east of the area known as North Colerne. The dwelling is accessed from Doncombe Lane via an approximately 590m long unmade track which passes between agricultural buildings situated south of the site. There are no nearby residential properties. The site is situated within the Cotswolds AONB.

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

- N.96.1048.F – Conversion of Two Buildings to Form Two Holiday Units & Use of Yard as Car Parking – Granted 24th July 1996
- 15/05132/CLE – Certificate of Lawfulness for Use of Building as Dwelling House – Granted 13th July 2015
- 16/11590/FUL - Erection of replacement dwelling – Withdrawn

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

The proposal comprises the complete demolition of the existing building and replacement with a pre-fabricated bungalow.

#### **6. Local Planning Policy**

The determination of a planning application is to be made pursuant to Section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires applications to be determined in accordance with the Development Plan unless Material Considerations indicate otherwise.

The Development Plan consists of the Wiltshire Core Strategy (adopted January 2015) and the ‘saved’ policies of the North Wilts Local Plan.

Material considerations include the National Planning Policy Framework (NPPF) and planning history.

The following policies would be relevant to the determination of the application:

**Wiltshire Core Strategy (WCS)** (Jan 2015):

Core Policy 1 (Settlement strategy)

Core Policy 2 (Delivery strategy)

Core Policy 11 (Community Area strategy: Corsham 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 61 (Transport and development)  
Core Policy 64 (Demand management)

### **North Wiltshire Local Plan**

Saved policy H4 'Residential Development in the Open Countryside'.

### **National Planning Policy Framework (NPPF)**

Paragraphs 14, 17, 109 and 115 and Sections 7 (Requiring good design), 11 (Conserving and enhancing the natural environment).

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

Colerne Parish Council - No objection

### Highways

*"The replacement of an existing dwelling remote from the public highway with existing access and adequate parking and turning would not usually warrant adverse highway comments and I raise no highway objection to the above."*

### Building Control

Observes the report to be limited in scope and contradictory. The surveyor is attributing the damp to poor construction and lack of insulation, whilst not being able to totally dismiss this, the original building regulation application for this property shows insulated floor, walls and roof and the new floor would have incorporated a damp proof membrane. The actual cause of the condensation has not been fully addressed in the report and should be investigated further by a suitably qualified expert to remove doubt.

Does not consider the property to be unviable as a dwelling. This application was submitted to building control as a holiday let and it maybe that the infrequent occupancy and heating patterns together with lack of ventilation is a more significant factor in causing the condensation.

Observes that the costs quoted within the submitted report for repair and refurbishment is excessive. Assumes that the report includes an improving of the fabric to comply with current standards, which is not a legal requirement under the building regulations. It is also difficult to provide a costing on remedial works without fully understanding what is needed to resolve the problem. Observes that the costs and problems identified in the report could have been avoided if the property had been adequately maintained over the last 20 years.

### Landscape Architect

Objection – *"the application proposes to demolish a building that supports appropriate local character within the AONB, i.e. agricultural form in countryside and constructed in natural stone, and it's proposed replacement with a non-descript domestic bungalow on a larger footprint is a principle that should not be supported by the LPA.*

*The requirements of the 'Countryside and Rights of Way Act' (2000) Section 85, requires Wiltshire Council as a responsible authority to consider the statutory purpose and function of the national 'AONB designation' whilst undertaking its statutory role as a Local Planning Authority. From the information submitted it is clear that the current proposal will not conserve or enhance natural beauty within the AONB. I am currently unable to check any further information that the applicant may have submitted to justify demolition of this characteristic building but I suggest any such justification would need to be compelling, otherwise the approach to development at this location should be to conserve the existing agricultural building form and design a sensitive and high quality extension, if the principle of the larger footprint requirement is acceptable under policy restrictions.*

*The applicant should be encouraged to read the Cotswolds AONB's Management Plan and the 'Landscape Strategy / guidelines' produced by the Cotswolds AONB Partnership. They should then consider whether their current proposal is in line with this information? My initial reaction is that the current proposal falls very short of this advice and the applicant should be reminded or informed that this AONB information forms part of this Council's evidence base, along with the 'North Wiltshire' and 'Wiltshire' Landscape Character Assessments that underpin the Wiltshire Core Strategy, Core Policy 51:Landscape.*

*At this time, I can confirm that CP51: Landscape could and should be included as a reason to refuse this current application."*

#### Ecology

*"The site is in the Bat SAC consultation zone, within a local area known to support roosts of lesser horseshoe bats. Without any evidence to say that the building is entirely unsuitable for roosting bats, a precautionary approach must be taken.*

*Prior to determination, a scoping bat roost survey of the building should be submitted in support of the application.*

*This should include survey for any actual or potential access points and/or roosting opportunities, and look for any evidence of current or recent roosting. The subsequent report should make further recommendations for further survey work if necessary, and/or recommendations for enhancement which should be incorporated into the proposal's design.*

*The report should be sent to the ecology team for appraisal prior to determination."*

Archaeology - No comment

Rights of Way - No objection

MOD Defence Estates Safeguarding - No safeguarding objections

## **8. Publicity**



The application was advertised by site notice and neighbour notification letter.

No representations have been received from local residents.

## 9. Planning Considerations

### Principle of development

New residential development in the open countryside outside of any defined settlement boundaries is strictly controlled so as to restrict homes being built in unsustainable locations remote from local services, facilities and transport routes. Policies CP1 “Settlement Strategy” and CP2 “Delivery Strategy” of the WCS direct new development to sustainable locations.

The proposal is for a replacement dwelling and as such, Saved Policy H4 “Residential Development in the Open Countryside” of the North Wiltshire Local Plan 2011 is of relevance. This policy permits replacement dwellings where:

- a) The residential use has not been abandoned; and
- b) the existing dwelling is incapable of retention in its current state, is unsightly or is out of character with its surroundings; and
- c) the replacement dwelling is of a similar size and scale to the existing dwelling within the same curtilage.

The proposal is considered against each of this policy’s criteria below:

#### *a) Abandonment*

With regard to criterion a), having visited the site and given the recent granting of a Lawful Development Certificate, the residential use has not been abandoned.

#### *b) Ability to retain and surroundings*

In respect of b), the applicant has submitted a ‘Structural Condition Report’ to support the notion that the existing dwelling is incapable of retention in its current state. The report sets out that the property is in need of a considerable amount of repair and improvement work, although there are elements of the property that are well constructed. Key issues raised relate to repointing and repair of stonework, damp proofing, rebuilding the chimney, additional insulation, and window and doors relatively poor quality for replacement.

The Council’s Building Control surveyor has reviewed the report and considers it to be contradictory and leave significant room over the true condition of the property. There are doubts that the damp are a result of poor construction and lack of insulation as the original building regulation application showed insulated floor, walls and roof and the new floor would have incorporated a damp proof membrane. It is not considered the actual cause of the condensation has been addressed and should be investigated further by a suitably qualified expert. From the information provided, there is no evidence to suggest the property to be unviable as a dwelling. There may be other reasons for the condensation such as its use as a holiday let with infrequent occupancy (and heating patterns) and a lack of ventilation. The

costs quoted for repair and refurbishment are excessive, and cannot be accurately estimated until the issues are fully understood.

The applicant has responded, with their retained Surveyor suggesting that the conclusions reached by the Council's Building Control Surveyor are incorrect – in particular stating that the ingress of moisture to a property of this type is highly likely and due to a lack of foundation and damp-proof coursing (rubble walls being particularly difficult to proof). The applicant's Surveyor also suggests that the cost of refurbishment has risen significantly in recent years and that they do not believe the figures quoted to be anything other than fair.

Notwithstanding the applicant's response, it is considered that there remains doubt over the incapability to retain the property in its current state.

The second part of criterion (b) permits a replacement dwelling where a building is unsightly or is out of character with its surrounds. In this particular instance, the existing building is a cattle byre type conversion of some charm. As set out in the site description section above, the conversion retains its original vernacular as a rural building; being finished in rubble stone, beneath a slate tiled roof – materials that speak to its environs using an entirely appropriate architectural vocabulary. The proposal demonstrably fails criterion b) to this policy.

c) *Size and scale*

With reference to c), the proposed bungalow is significantly larger in scale than the existing single storey dwelling. Whilst the proposal remains single storey, its footprint is much larger and is considered to be excessive in size and therefore in conflict with this criterion.

It should be noted that the three criteria to Saved Policy H4 compel a *compound* consideration, which each separate element needing to be complied with. Even a positive conclusion on the issue of the ability to retain the property would not render the proposal compliant to Policy H4, since it demonstrably fails its other elements. The inescapable conclusion must therefore be that the proposal does not comply with Saved Policy H4 and that the principle of development is, in this instance, unacceptable.

Design/Character and impact on landscape

WCS Core Policy 57 requires new development to be of a high standard of design and requires development to create a strong sense of place through drawing on the local context and being complimentary to the locality. Amongst other matters, the policy requires development to respond positively to the existing landscape features in terms of building layouts, built form, height, mass, scale, building line, plot size, elevational design, materials streetscape and rooflines, to integrate the building into its setting effectively. The property is situated within the Cotswold AONB, which Policy CP51 of the Wiltshire Core Strategy applies great weight to conserving and enhancing landscapes and scenic beauty.

The Landscape Officer has been consulted on the proposal and has raised a significant objection to the proposal on the basis that the application would demolish a characteristic Cotswold landscape building (a converted agricultural building finished in natural materials), to be replaced with a bungalow utilising timber cladding walls, slate roof and wooden/wooden effect windows (it is assumed that this notation on the elevations suggests the possibility of uPVC fenestration).

The proposed bungalow is of a suburban design and character entirely at odds with its context – which is, after all, one of the most protected landscapes within Wiltshire. In contrast to the *titular* Cotswold stone of the existing property, the use of timber cladding is both discordant to local character and a stark reminder of the differential in quality when compared with the existing property.

No evidence has been supplied that the new dwelling would somehow be more “sustainable” or more energy efficient that would be required under the Building Regulations regime, but what is clear is that the “Dan-Wood House” demonstrated on the submitted plans would be a form of modular build. Such a property would add to the concerns that the character and appearance of the proposal would not be appropriate to its sensitive location.

No LVIA type study has been undertaken by the applicant to support their application, but it is very clear that the proposal could not be described as protecting, conserving or enhancing the natural beauty of the AONB. In contrast, it would result in the incremental dilution of a characteristic and valued landscape element within the AONB. The Landscape Institute’s guidance on LVIA establishes that where a proposal would constitute an incremental dilution of a characteristic and valued landscape element within an AONB (for example - proposals which remove characteristic stone agricultural buildings and their replacement with suburban dwellings), the landscape effects need not be publically visible. The Cotswolds AONB Board Management Plan confirms such a principle.

It is indisputable that the loss of the existing building characteristic of the locality and its replacement with a modular bungalow of suburban appearance would neither protect, conserve or enhance the AONB. The proposal would fail the provisions of Policy CP51 of the Wiltshire Core Strategy.

### Ecology

The Ecology Officer has indicated that the site is in the Bat SAC consultation zone, within a local area known to support roosts of lesser horseshoe bats. Given the circumstances of the property, without evidence to confirm that the building is entirely unsuitable for roosting bats, a precautionary approach must be taken whereby a scoping bat roost survey of the building being a prerequisite before any positive determination on that issue. Whilst the applicant has indicated that they have instructed an Ecological consultant to inspect the property, at the time of preparation of this report, no bat roost survey has been submitted in support of the application. In the light of conclusions on other matters, it must be concluded that the proposal would fail the provisions of CP50 and CP57 of the Wiltshire Core Strategy.

### Residential amenity

The property is remote from any neighbouring properties and as such there would be no adverse impacts on residential amenity.

### Other considerations

One of the reasons for call in applies some merit to the replacement building being an eco-home. Whilst this may have been suggested by the applicant in person, no evidence has been submitted to suggest that the proposed replacement dwelling is an eco-home. Furthermore, even if the building had some eco-credentials it is not considered that the sustainability benefit of this would outweigh the landscaping harm or establish the principle of the development.

In respect of highways, the replacement dwelling would utilise the existing access and there is adequate parking and turning at the site. Consequently no highway objection is raised.

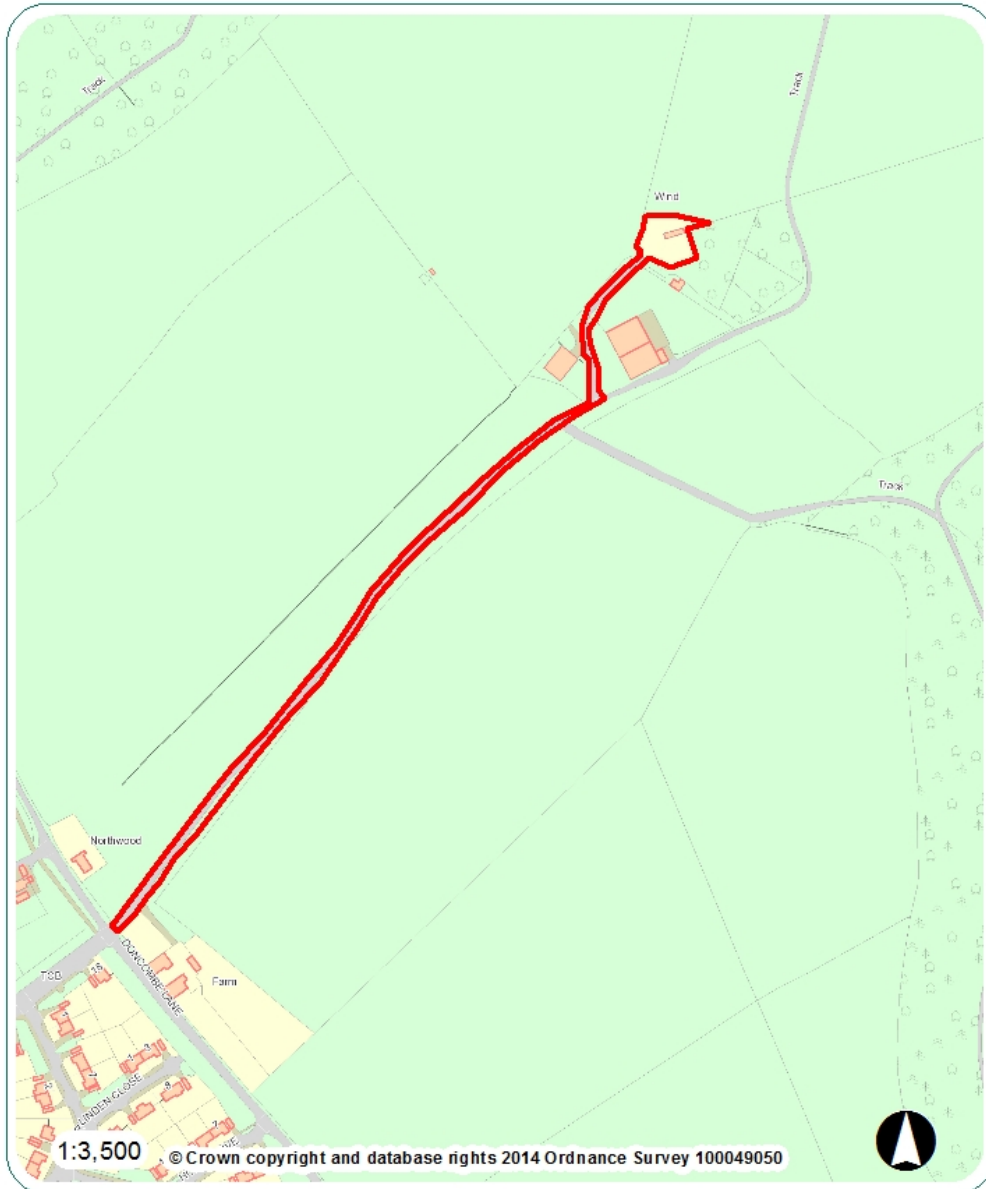
### Conclusions

The proposal does not comply with Policies CP1, CP2, CP11, CP50, CP51 and CP57 of the Wiltshire Core Strategy as well as Saved Policy H4 of the North Wiltshire Local Plan 2011 and supporting paragraphs of the NPPF.

### Recommendation

That planning permission be **refused** for the following reasons:

1. The proposed development, by reason of its location would be contrary to the settlement, delivery and community area strategies and residential development in the open countryside policy and is unacceptable in principle. The proposal fails to accord with Core Policy 1, 2 and 11 of the adopted Wiltshire Core Strategy (Jan 2015), as well as Saved Policy H4 of the North Wiltshire Local Plan 2011 and Paragraphs 14 and 17 of the NPPF.
2. The proposed development, by reason of loss of the existing building, which entirely appropriate to the distinctive character of the Cotswold AONB, and its replacement with a pre-fabricated bungalow would adversely impact the character and appearance of the Cotswold AONB. The proposal fails to accord with Core Policy 51 (ii and ix) and 57 (i, iii and vi) of the Wiltshire Core Strategy (Jan 2015), and Paragraphs 14, 17 and 115 of the NPPF.
3. Insufficient information has been submitted for the Council to assess whether the existing building could support roosts of lesser horseshoe bats. A scoping bat roost survey would be required prior to the determination of the application in order to assess this application against Core Policy 50 and 57 (ii) of the Wiltshire Core Strategy (Jan 2015), and Paragraphs 14, 17 and 109 of the NPPF.



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## REPORT OUTLINE FOR AREA PLANNING COMMITTEES

Report No.

<b>Date of Meeting</b>	04 <sup>th</sup> October 2017
<b>Application Number</b>	17/07011/FUL
<b>Site Address</b>	Land South of Shoe Cottage, The Shoe, North Wraxall, Wiltshire, SN14 8SG
<b>Proposal</b>	Change of use of dog kennelling business, erection of dog kennels and conversion of existing building to a small retail unit.
<b>Applicant</b>	Mr Neil Edwards
<b>Town/Parish Council</b>	North Wraxall Parish
<b>Ward</b>	By Brook – Cllr Baroness Jane Scott OBE
<b>Grid Ref</b>	380775 174237
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	Charmian Eyre-Walker

### Reason for the application being considered by Committee

The application has been called into committee by the Cllr Baroness Jane Scott OBE, on behalf of North Wraxall Parish Council for the following reasons : There are kennels at The Shoe and an additional business will impact unfavourably on all residents. There are no public footpaths within at least a mile of the proposed premises and walking numerous dogs would cause problems on the busy main roads – A420 and Fosseyway and should walks be made across local farmland it could cause transmittable diseases to both animals and humans and ground contamination.

#### 1. Purpose of Report

To consider the above application and to recommend that planning permission is GRANTED.

#### 2. Report Summary

The key issues are the impact of the proposal on the amenities of local residents, particularly in terms of noise, and impact on highway safety.

12 letters of objection and 2 letters of support have been received.

North Wraxall Parish Council has not submitted comments on the application at the time of writing.

#### 3. Site Description

The proposal lies within the open countryside outside of any defined settlement and within Cotswolds AONB. The site is a domestic property with land to the south which is currently a mixture of gardens and paddocks. There a few animals (horses etc) kept on that land and it is understood that the applicants have 5 of their own dogs.

The land is open and gently slopes down to the residential dwelling. There is a gravel parking and turning area near to the existing buildings which are stables and the converted stable building to a shop of pet food and associate items.

The nearest dwelling is approximately 90m from the proposed kennels.

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

N/08/02200/FUL – Change of use of land for the keeping of horses; erection of stables, storage barn and access track for private leisure PERMISSION

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

The proposal seeks planning permission the construction of a U-shaped building which will house a total of 12 kennels and associated feed and an indoor circulation space. The building will be timber clad with corrugated sheeting roof to very much appear as a stable block It would measure approx. 10m in length by 4.5m in depth including the overhang and the long rear section of the U –shape is approx 18m. The height of the building would be approximately 3.5m.

The application also seeks retrospective permission for an existing outbuilding to be used as a pet supplies business and reception area. The building measures approx 5.5m x 4.5m and approx 3.8m in height,

#### **6.Planning Policy**

##### Wiltshire Core Strategy:

CP38 Retail and Leisure

CP 48 Supporting Rural Life CP51 Landscape

CP57 Ensuring High Quality Design and Place Shaping

CP60 Sustainable Transport

CP61 Transport and new development.

##### National Planning Policy Framework (NPPF):

Achieving sustainable development – Core Planning Principles (paras 7, 14 and 17)

Chapter 7 Requiring Good Design (paras 63 and 66)

Chapter 11 Conserving and enhancing the natural environment (paras 109, 115 and 123)

#### **6. Consultations**

North Wraxall Parish Council has not submitted comments at the time of writing.

Highways state that it is understood that the application is a partial retrospective proposal that seeks to normalise the use through a proposed change of use to allow a small scale dog kennelling business to operate as ancillary to the existing activities. They are satisfied that the location close to the junction of the A420 will mean that there is not a significant highway impact due to the above proposal and Highways would recommend the number of dogs served to be kept under 15 as the design and access statement does indicate a number of 12 dogs to be housed.

No highways objection is raised.



Environmental Health raises no objection subject to conditions including submission of noise insulation for the kennels.

Licensing have visited the premises and consider it appropriate for receiving a licence for the premises.

Drainage do not object subject to conditions.

## **7. Publicity**

The application was advertised by way of site notice and neighbour notification.

12 letters of objection, including the NFU on behalf of local farmers, have been received and 5 letters of support. Objections can be summarised as follows:

- Noise generated...already is some noise.
- Toxic dog waste
- Suitability of roads for walking and traffic generation. Access to foot paths and potential to contaminate land.
- Insufficient space to exercise dogs..the run area will get muddy very quickly
- The shop will increase traffic.
- The proposal contradicts the conditions put on the stables application at the site – N/08/02200/FUL.
- Proximity of another kennels nearby will “set off” all the dogs.
- Not commercially viable leading to pressure for alternative uses of building, where there are no amenities.
- Unsuitable building materials for cleanliness and warmth.
- Inappropriately sited signage.

## **8. 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. In this case, the Wiltshire Core Strategy forms the relevant development plan for the application area along with guidance in the NPPF (as set out above).

The proposal seeks planning permission the construction of a U-shaped building which will house a total of 12 kennels and associated feed and an indoor circulation space. The building will be timber clad with corrugated sheeting roof to very much appear as a stable block. It would measure approx. 10m in length by 4.5m in depth including the overhang and the long rear section of the U – shape is approx 18m. The height of the building would be approximately 3.5m. It is proposed that the number of dogs kept at the site (including the applicants own) will not exceed 12.

The application also seeks retrospective permission for an existing outbuilding to be used as a pet supplies business and reception area. The building measures approx 5.5m x 4.5m and approx 3.8m in height. The size of the shop falls well short of the threshold for requiring an Impact Assessment (200sqm) and is more akin to a farm shop concept (as contained in policy CP48), with passing trade and those visiting in association with kennels, together with an on line shopping element.

The site lies in the Cotswolds AONB, where the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes (para 109 NPPF and policy CP51 of the Wiltshire Core Strategy) with great weight being given to conserving landscape and scenic beauty in (inter alia) AONBs (para 114 NPPF). The building proposed is not of large scale and is of a design appropriate to such a location. The existing hedges will screen the development from most public vantage points and the impact on the AONB is not considered

to be sufficiently detrimental to warrant a refusal.

There is a fenced exercise area for the dogs to run in (as they don't have individual runs) which measures approx 25m x 25m. Other exercise is to be taken off site. The remainder of the land shown on the plans is to be retained for private equestrian and agricultural use. The existing stables and haybarn will continue to be used to support those uses.

Parking is in a gravelled area which is more than large enough for a significant number of vehicles. Only the applicants will be employed at the site.

The business model of the proposal involves more of a dog hotel than boarding kennels with the majority of dogs being collected by the proprietors and any visitors to the kennels being made by appointment only. The shop is open during normal hours 9am-6pm, but the size of the unit limits the amount of stock that can be held and sold, so that it is unlikely to be more than of local interest or limited passing trade and not a destination retail unit diverting trade from other centres. There is some intention to establish a web based business, which can be dropped off locally. Highways do not object to the facility. The size can be controlled by way of planning condition.

There is a nearby kennel and cattery business within about 400m of the proposed facility and there is concern about combined noise emanating from the facilities. However, Public Protection do not object and the soundproofing of the kennels will mean that inside, at least, little sound will be heard outside the site. The number of dogs is relatively small at 12 (including the owners own) and it is not considered that "anticipated" noise can be used to refuse an application where sound proofing is proposed.

The exercise of dogs is part of the business model and will involve some local walks and some off site ones. The level of exercise and facilities for the exercise of dogs is not a planning consideration, but covered in the licensing of the premises. The future use of the building, should the business fail, will be dealt with on their planning merits.

Dog waste is to be disposed of via a cesspit in the dog exercise area (to be emptied when necessary) and the water run-off from wash down areas disposed of to a septic tank. Drainage's comments on this are awaited but it is considered that this matter can be appropriately addressed by condition.

## **Conclusion**

The proposal is considered to be compliant with policies CP51, CP57, CP60 and CP61 of the Wiltshire Core Strategy and guidance in the NPPF.

## **9. Recommendation**

The recommendation is for 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 proposal and site (including the house) shall be used for the kennelling of no more than a total of 12 dogs at any one time.

REASON: In the interests of residential amenity

- 3 The retail facility at the site shall be limited to the building shown on approved plan Drwg AH2017/56 1 of 2 and limited to a maximum of 30sqm of retail and storage space. The products sold shall be limited to dog food and associated dog care products.

REASON: In the interests of highway safety and sustainability.

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

REASON: In the interests of residential amenity.

- 5 No development shall commence on site until a scheme of acoustic insulation and noise control has been submitted to and approved in writing by the Local Planning Authority. The scheme should specify the acoustic insulation and other measures to be put in place to prevent and control the emission of noise from the development including noise from dogs. The approved scheme shall be implemented in full before the development is occupied/use commences and maintained at all times thereafter. In discharging this condition the applicant should engage an Acoustic Consultant. The consultant should carry out a thorough background noise survey and noise assessment in accordance with:

BS8233: 2014 and demonstrate that the noise generated by the development will not cause an exceedance of the guideline noise levels contained in Section 7.7 BS8233:2014 at any residential or other noise sensitive property near to the development. The report should also demonstrate that internal maximum noise levels in bedrooms will not normally exceed 45dB LAmax between the hours of 23:00 and 07:00.

REASON: To protect residential amenity.

- 6 No development shall commence on site until a scheme of works for the control and dispersal of atmospheric emissions, and in particular: dust has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full before the development is first brought into use and shall be maintained in effective working condition at all times thereafter.
- 7 No external lighting shall be installed on site until a scheme of external lighting, including the measures to be taken to minimise sky glow, glare and light trespass, has been submitted to and approved in writing by the Local Planning Authority. The external lighting scheme shall be designed so as to meet the criteria for Environmental Zone E2 as defined by the Institute of Lighting Professionals 'Guidance Notes for the Reduction of Obtrusive Light' 2012. The approved scheme shall be implemented in full before the development is first brought into use and shall be maintained in effective working order at all times thereafter.

REASON: In the interests of residential amenity.

- 8 Former agricultural use of the site/buildings may have given rise to potential sources of land contamination e.g. oil storage, pesticides or herbicides, asbestos etc. As it is now intended to use the site for residential purposes a statement/letter report must be provided which confirms the historical uses of the site/buildings and how development works will address any potential for land contamination which may exist.

REASON: In the interests of residential amenity.

- 9 The development hereby permitted shall be carried out in accordance with the following approved plans: Drwg AH2017/56 sheet 1 of 2 and sheet 2 of 2 received 1<sup>st</sup> August 2018.

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

- 10 No development shall commence on site until a scheme for the discharge of surface water from the site (including surface water from the access/driveway), incorporating sustainable drainage details, has been submitted to and approved in writing by the Local Planning Authority. The development shall not be first brought into use until surface water drainage has been constructed in accordance with the approved scheme.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to ensure that the development can be adequately drained.

#### INFORMATIVES:

Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence.

If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.



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**REPORT OUTLINE FOR AREA PLANNING COMMITTEES**

**Report No.**

<b>Date of Meeting</b>	04 October 2017
<b>Application Number</b>	17/06617/FUL
<b>Site Address</b>	Blarney Cottage Biddestone Lane Yatton Keynell Nr Chippenham SN14 7BD
<b>Proposal</b>	Regularise amendments to the original permission granted by 16/11131/FUL including amendments to the windows, fascia boards and dimensions of the approved extension
<b>Applicant</b>	Mr Hugh Rogers
<b>Town/Parish Council</b>	YATTON KEYNELL
<b>Electoral Division</b>	BY BROOK – Baroness Cllr Jane Scott OBE
<b>Grid Ref</b>	386639 176327
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	Victoria Davis

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

The application has been called into committee by the Local Member, Baroness Cllr Jane Scott OBE in order to consider the objections of Yatton Keynell Parish Council relating to the scale, design and material finish. Issues relating to parking were also raised.

**1. Purpose of Report**

To consider the above application and to recommend that Planning Permission is GRANTED subject to planning conditions.

**2. Report Summary**

The main issues are:

- Principle of development

- Impact on the character and appearance of the surrounding area including conservation area and setting of St Margaret's Church
- Parking

The Parish Council have objected to the proposal. Nine further letters of objection were received from six interested parties. One letter expressing support for the development has been received.

### **3. Site Description**

Blarney Cottage is a modest cottage situated off Biddestone Lane in the village of Yatton Keynell which is defined as a Large Village within the Chippenham Spatial Strategy. The application site falls within the framework boundary of this settlement. It is also within a conservation area and an area of outstanding natural beauty. The cottage has been unoccupied for some time and has fallen into a dilapidated state. The applicant intends to refurbish the cottage throughout and obtained planning permission in January 2017 to construct a two storey side extension and to convert the rear garage into additional accommodation. Development at the site has since commenced but not been completed. It has however come to light that several aspects of the work undertaken to date are not in accordance with the previously approved plans. This application seeks permission for a revised proposal taking into account the deviations from the original permission.

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

16/11131/FUL Two storey extension, conversion of existing garage and refurbishment.  
*Approved*

### **5. The Proposal**

The application seeks planning permission for the same two storey side extension to create an entrance hall, WC, upstairs bathroom and new staircase. Also proposed is a single storey rear extension of a revised design. The rear extension is slightly wider than the development previously approved (was 5.3m now 5.5m approx.). The plans also indicate recycled plastic 'eco slate' shingles to the roof of the single storey element. Timber boxed eaves to the front and rear of the two storey extension roof and dormer. An enlarged window is also proposed to the gable of the original cottage with a new recon stone lintel above. UPVC windows were proposed throughout.

Following an initial assessment of the proposal several concerns were raised in relation to the proposed roofing material, the UPVC windows and the boxed eaves. Alterations to the scheme were suggested and revised plans were later submitted. The revised proposal now includes the two storey extension as before with timber windows throughout, an enlarged window in the gable of the original cottage with natural stone lintel above. The rear lean-to extension has a slightly steeper roof with clay pantiles to match the existing cottage and two storey extension. Cast iron effect rainwater goods are proposed.



## 6. Planning Policy

### Wiltshire Core Strategy:

CP 1 Settlement Strategy  
CP 2 Delivery Strategy  
CP10 The Spatial Strategy: Chippenham Community Area  
CP51 Landscape  
CP57 Ensuring High Quality Design and Place Shaping  
CP 58 Ensuring the Conservation of the Historic Environment

### National Planning Policy Framework (NPPF):

Achieving sustainable development – Core Planning Principles (paragraph 17)

Chapter 7 Requiring Good Design, para 64  
Chapter 11 Conserving and Enhancing the Natural Environment, para 115  
Chapter 12 Conserving and Enhancing the Historic Environment, para 128, 129, 131, 132, 134 & 135

## 7. Consultations

Yatton Keynell Parish Council: Objection to initial and revised proposal - comments on the revised proposal are summarised below –

- Ridge-line of new extension is not subservient
- Scale of extensions swamp original cottage
- Dormer style is out of keeping with conservation area
- Boxed-out fascias and soffits out of contexts on any rubble stone cottage anywhere
- Historic ashlar stone surrounded door blocked up
- Stone garage to rear has been demolished not converted- new construction does not match old
- Too many unnecessary openings in extensions
- Rear fenestration affects setting of Grade I listed St Margaret's Church – openings should be small and 'cottage or Georgian glazed'
- Unique character of small offset window destroyed – concrete lintel
- Inappropriate capped ridge tiles to two storey extension at same height as main roof
- Oak lintels should be more appropriate
- New door opening lacks character and stone surround
- Lintels should be stone not concrete
- Roof covering to rear extension inappropriate, roof pitch too shallow and large area
- Cement pointing out of place
- Parking is affected

Wiltshire Council Archeologist: No Comment

Conservation Officer: Not supportive of initial proposal and suggested revisions to obtain an acceptable scheme – comments are summarised below -

- None of the windows should be UPVC. Sash windows should be replaced like for like.
- Facias should be removed as per previous application but could be painted to allow them to appear less intrusive.
- Cast Iron gutters or CI effect in plastic – existing were poor quality plastic
- First floor window opening is too large and should be made smaller to reflect the proportions of the gable.
- Lintel over should be natural stone
- Roofing material to the rear is inappropriate and is not a good likeness to natural slate. Excessively ridged on edges. This should be slate as approved.
- Eaves of extension could be dropped to achieve steeper roof slope as was previously approved.

Historic England: No Objection to original or revised proposal. The inspector commented as follows -

*On the basis of the information available to date, we do not wish to offer any comments. We suggest that you seek the views of your specialist conservation and archaeological advisers, as relevant*

Further correspondence was received on 6 September 2017 from Historic England which explained that their inspector remained of the opinion that the proposal would not impact the church to any great extent.

Tree Officer: No Comment

## **8. Publicity**

The application was advertised by site notice and neighbour consultation. A second neighbour consultation was carried out (on receipt of revised plans) allowing 14 days for further comments.

Nine letters of objection were received from six interested parties. One letter expressing support was received. The issues raised are summarised below-

- UPVC windows not appropriate
- Imitation slate roof is not in keeping
- Scale of extension is inappropriate
- First floor windows overlooking the churchyard
- Box eaves are not in keeping
- Cast iron gutters and brackets should be used
- Oak lintels should be used
- Window should be re-instated to original size

## 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.

### Principle of Development

The application site is within the built up part of Yatton Keynell which is defined within the Chippenham Spatial Strategy as a Large Village. The extension falls fully within the curtilage of an existing dwelling where the principle of reasonable residential extensions is acceptable.

### Scale and Design

The extensions and alterations do not create a hugely dissimilar development to what has already been permitted. It is considered that the simple gabled design of the side extension is appropriate and the use of render in combination with the existing stone is an acceptable approach in this case. It is noted that whilst the existing cottage does not feature render it does feature on other properties in the vicinity and this combination of materials is often an effective approach when extending period properties, differentiating the new and older elements. The extension to the rear is also considered to be acceptable in both scale and design. It follows a simple lean to style to replicate the original garage element. Whilst being 200mm wider than previously approved it is still not considered to be unacceptable in relation to the proportions of the original cottage. The revised proposal includes a steeper pitched roof and the use of clay pantiles to match the existing roof rather than the plastic eco slate. Slate was previously approved however clay pantiles are considered to be an acceptable traditional alternative. Cast iron effect gutters and down pipes are proposed – fixed using rise and fall brackets on the original part of the cottage. This is an improvement over the existing gutters which were poor quality plastic. The existing timber sash windows to the front elevation are to be replaced – like for like and all other windows are to be timber. A tilting timber sash window is proposed to the front elevation of the extension which will appear similar to the sash style of the original windows, and flush fit timber casement windows are proposed to the rear elevation. Flush fit timber casement style windows are commonplace in conservation areas and cottage refurbishments and it is acceptable for the rear facing elevation of both extensions to include this simple window style. It would not be necessary to expect Georgian style windows to be installed to the rear elevation.

Other issues raised by the Parish Council included reference to the ridgeline of the extension, removal of the original door, lack of stone surround to new door, preference for oak lintels and excessive number of openings to the extensions. The ridge height of the side extension, removal of door, lack of stone surround to the new door, stone lintels and opening positions are details which were already accepted by the previous permission. In terms of the enlarged gable window, whilst it would have been more desirable to retain the original smaller window, as the building itself is not listed, this modest alteration is considered to be acceptable and would not warrant refusal of the application given as the limited scale of the

alteration and its positioning not being especially prominent would not result in significant harm. It is also noted that the lintel above this window was previously stone (not oak) and so stone is still acceptable and is in itself accepted as a high quality approach. The agent and applicant have agreed to use a natural stone lintel in the original gable rather than recon stone as was originally proposed.

The Parish Council, several residents and the council's conservation officer raised concern relating to the boxed eaves detail to the extension and dormer roofs at the rear. It is acknowledged that there are alternative details that may be less prominent, however given that this detail forms part of the modern additions to the cottage, they are not considered to appear unduly out of place. This issue would not warrant refusal of the application. As a compromise, the conservation officer advised that the timber soffits and fascias could be painted in a muted colour to further reduce visual prominence. The agent and applicant agreed to make this change.

Several concerns were also raised in relation to the privacy of visitors to the churchyard. The Core Strategy policies do not specifically refer to churchyards however Core Policy 57 does expect development to have regard to the compatibility of the adjoining buildings and uses in general. In this case whilst it is accepted that the new first floor windows would have oblique views across the churchyard, they do not introduce any additional views of the area which is, in any case, fully accessible to the public and already overlooked by adjacent properties and gardens.

#### Conservation Area and Setting of Listed Building

Sections 66 (1) and 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 require Local Planning Authorities in determining planning applications affecting a Listed Building or Conservation Area to pay special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses; and to pay special attention to the desirability of preserving or enhancing the character or appearance of that conservation area.

The site is located within the Yatton Keynell Conservation area where Core Policy 58 is relevant as it states that development should protect, conserve and where possible, enhance the historic environment. The site is located to the west of Biddestone Lane at the edge of the conservation area. Although clearly located within the built up part of Yatton Keynell, the site is close to the edge of the village where development is generally more loose knit creating a sense of openness and transition with the surrounding countryside. Blarney cottage is one of three properties on the west side of the lane backing onto to farmland. The eastern side of Biddestone Lane falls outside of the conservation area and predominantly features relatively modern dwellings of varying styles. Immediately opposite the site are two bungalows featuring recon stone and render. The general make up of the village comprises more traditional dwellings in stone and ashlar however render also appears on a number of prominent buildings at the centre of the village including The Bell Inn and the post office.

In this case, the extensions are visible from within the conservation area and the revisions to the initial proposal have sought to respond to the sensitive location of the site. Timber windows throughout, a muted colour scheme for the timber windows, fascias and soffits, cast iron effect gutters and pantiles to the rear extension are elements designed to assist the

development to integrate effectively. Whilst there may be alternative design approaches that could be considered more desirable, the council must judge the impact of the development as it is now proposed. The proposal must be considered on its own merits and in relation to the existing character and appearance of this part of the conservation area. When considering the existing character, issues such as the dilapidated state of the original building and the surrounding mixture of development are relevant. It is considered that scale and layout of the extensions adequately relate to the proportions of the original cottage and the combination of matching and new materials creates a development which, once completed, would integrate sufficiently within its surroundings. The revised proposal is not considered to be detrimental to the character and appearance of the conservation area.

Potential impact on the setting of St Margarets Church has also been considered. The Church is Grade I listed and located approximately 25m to the north of Blarney Cottage. In this case as both extensions are built largely over the footprint of the existing building and are considered in keeping with the original cottage in terms of scale and design. The predominant use of natural stone to the rear with clay pantiles and timber windows as is now proposed, relates well to the existing and neighbouring properties and as such it is not considered that the development would appear incongruous or unduly prominent. For that reason it is not considered that the development would intrude in or obscure any significant views of the Church. Historic England were consulted and raised no objection. The inspector was satisfied that the development would not affect the Church to any great extent.

#### Area of Outstanding Natural Beauty

The site is also located within the Cotswold Area of Outstanding Natural Beauty where Core Policy 51 is relevant as it seeks to protect, conserve and enhance Wiltshire's distinctive landscape character. In this case, the property is located in a built up part of the village and is not in an isolated rural location. The scale of the development proposed is limited and read in the context of the existing built structures. On that basis, it is considered that the development would have a negligible visual impact on the wider landscape and the AONB designation.

#### Impact on residential amenity

The two storey extension will project towards the neighbouring property, Roselea, however it is some distance from the main house or outdoor amenity areas. It is not considered that the extension would result in any significant adverse impacts on the amenities of any near neighbours.

#### Highways

The highways officer noted that the alterations since the previous application proposal would not materially affect the highways aspects of the proposal and reiterated the comments provided during the previous application -

*I note the proposed garage conversion and extension of the existing property in to a larger 2 bedroom dwelling, with proposed car parking space at the front. The proposed parking area requires some space from the driveway of Roselea to be able to accommodate a parking space, which would make it more difficult for Roselea to*

*access their driveway when approaching from the south. However, I do note that Roselea is also owned by the applicant and that no boundary treatment is proposed. Additionally, the new access for Blarney Cottage will be sub-standard in terms of visibility and will not be able to accommodate on-site vehicle turning on to a classified road.*

*Despite these concerns, I am aware that currently, parking for Blarney Cottage is cited at the rear of the property and the access that serves the rear of the property is even more sub-standard in terms of visibility than the proposed access.*

The highways officer concluded that on balance a refusal on highways grounds could not be sustained and no objection was raised subject to a condition relating to the surface of the new parking area being consolidated.

## **10. Conclusion**

The proposal is considered to be acceptable in principle and design. The location is considered appropriate for residential extensions. There would be no harm to the setting of the Listed Church or other heritage assets in the locality. The existing character and appearance of the surrounding conservation area would be preserved. It would not cause harm to the amenities currently enjoyed by the occupants of the residential properties to either side or cause undue conflict with visitors to the nearby church. The proposal is therefore considered to comply with Core Policies 51, 57 & 58 of the Wiltshire Core Strategy as well as Sections 7, 11 & 12 of the National Planning Policy Framework and the provision of the Planning Acts.

## **11. Recommendation**

Planning Permission be GRANTED subject to conditions;

- 1 The development hereby permitted shall be carried out in accordance with the following approved plans:

Site Location Plan YK01 L 001, Proposed Block Plan YK01- L 002 B, YK-01 EX01 A, Proposed Ground Floor and First Floor Plans YK-01 RS-010 A, Existing Elevations YK01 EX02 A (all received 10 July 2017), Proposed Elevation Revisions YK-01 RS-04 H and Proposed Flush Casement Windows YK-01 W-01 A (both received 30 August 2017)

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

- 2 No development shall commence on site until details of the windows and doors to be used on the development have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

REASON: The matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an

acceptable manner, in the interests of visual amenity and the character and appearance of the area

- 3 No paint or stain finish shall be applied to external timber (including fascias, soffits, box ends, bargeboards and window joinery, until details of the paint or stain to be applied have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details prior to the development being first occupied.

REASON: In the interests of visual amenity and the character and appearance of the area.

- 4 The roof tiles to be used in the development hereby permitted shall match those of the existing building in terms of their material, colour, texture, profile and pattern of laying.

REASON: In the interests of visual amenity and the character and appearance of the area.

- 5 No render shall be applied to any building or walls on site until a sample panel of the render to be used on the external walls not less than 1 metre square, has been made available on site, inspected and approved in writing by the Local Planning Authority. The panel shall then be left in position for comparison whilst the development is carried out. Development shall be carried out in accordance with the approved sample.

REASON: In the interests of visual amenity and the character and appearance of the area.

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

REASON: In the interests of highway safety.

- 7 INFORMATIVE TO APPLICANT:

Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

- 8 INFORMATIVE TO APPLICANT:

The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence.

If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

9           INFORMATIVE TO APPLICANT:

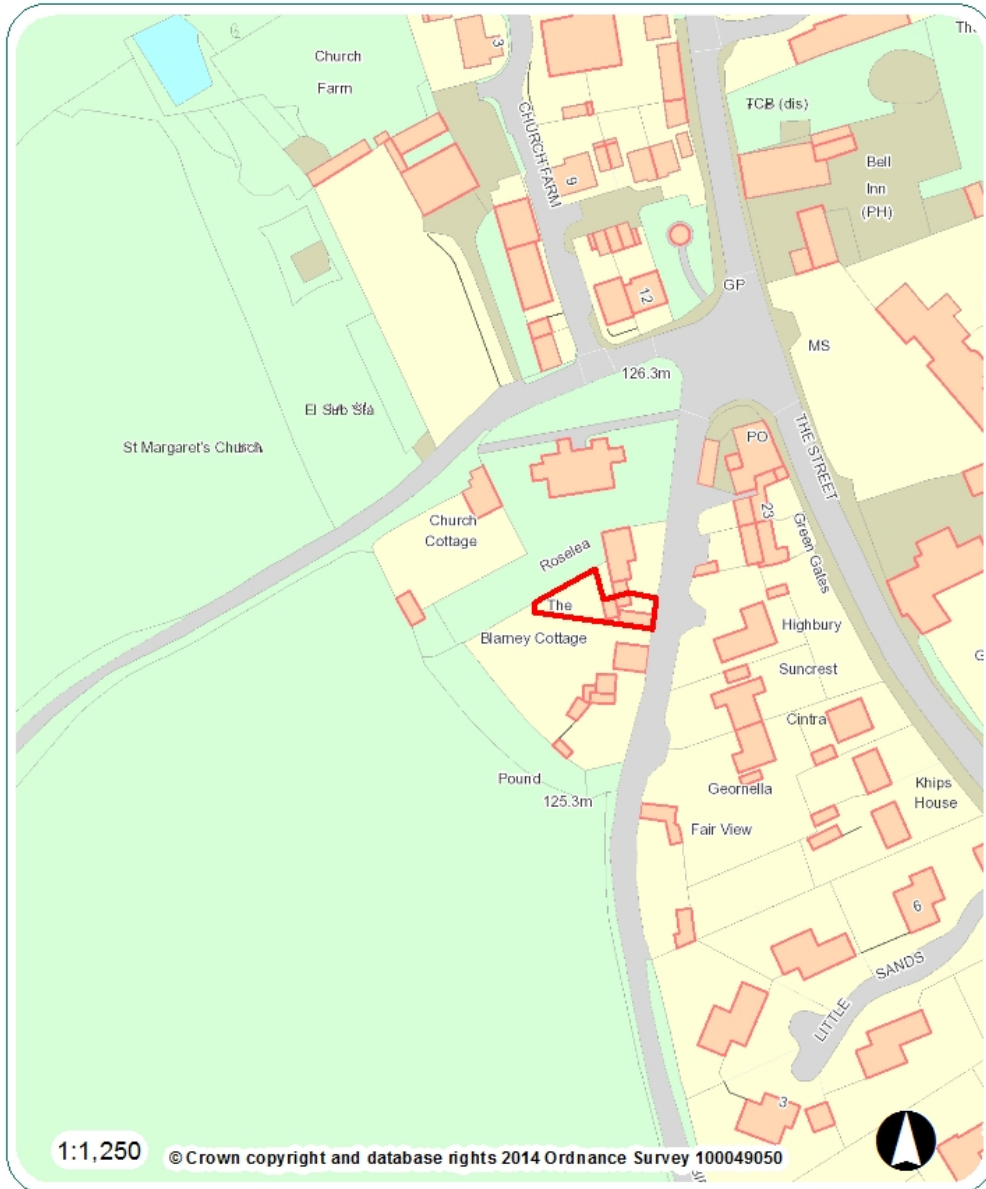
Please note that Council offices do not have the facility to receive material samples. Please deliver material samples to site and inform the Planning Officer where they are to be found.

10          INFORMATIVE TO APPLICANT:

The applicant should note that the grant of planning permission does not include any separate permission which may be needed to erect a structure in the vicinity of a public sewer. Such permission should be sought direct from Thames Water Utilities Ltd / Wessex Water Services Ltd. Buildings are not normally allowed within 3.0 metres of a Public Sewer although this may vary depending on the size, depth, strategic importance, available access and the ground conditions appertaining to the sewer in question.



17/06617/FUL  
Blarney Cottage  
Biddestone Lane  
Yatton Keynell  
Nr Chippenham  
SN14 7BD



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## REPORT OUTLINE FOR AREA PLANNING COMMITTEES

Report No.

<b>Date of Meeting</b>	04 October 2017
<b>Application Number</b>	17/06718/FUL
<b>Site Address</b>	The Old Dairy 2 Court Farm Oaksey Malmesbury Wiltshire SN16 9TF
<b>Proposal</b>	Oak framed mansard (garden room) at rear, removal of timber cladding and making good with matching stone
<b>Applicant</b>	Mr Hathaway
<b>Town/Parish Council</b>	OAKSEY
<b>Electoral Division</b>	MINETY – Councillor Chuck Berry
<b>Grid Ref</b>	399260 193668
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	Alla Hassan

### Reason for the application being considered by Committee

This application was called in to committee by Councillor Berry due to the site's previous history of restrictive conditions attached.

#### 1. Purpose of Report

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

#### 2. Report Summary

The key issues in considering the application are as follows:

- The principle of Development
- Impact on the scale and character of the existing dwelling
- Impact on the context and character of the surrounding area & the Conservation Area.
- Impact on residential amenities

As a result of the consultation exercise, the Parish Council objected to the proposals. In addition, an objection was also received from a local resident.

### **3. Site Description**

The application relates to The Old Dairy, 2 Court Farm, Oaksey. Within the Wiltshire Core Strategy, Oaksey is designated as a large village within the community area of Malmesbury (CP13). The detached dwelling is located within the defined settlement boundary, and is part of a modern housing development which consists of eight individually designed properties. The property is constructed of stone and partially timber clad under a tiled roof and is also located within the Oaksey Conservation Area.

### **4. Planning History**

N/91/01160/CAC PROPOSED DEMOLITION OF VACANT AND REDUNDANT AGRICULTURAL BUILDINGS- Approved with conditions 26/07/91  
N/91/01159/FUL BARN CONVERSIONS & DEVELOPMENT TO FORM EIGHT RESIDENTIAL UNITS- Approved with conditions 22/08/91  
N/05/02045/FUL Roof Light Window- Approved with conditions 12/10/05

### **5. The Proposal**

The proposal seeks permission for the erection of an oak framed mansard (garden room) at the rear, the removal of timber cladding and making good with matching stone.

### **6. Local Planning Policy**

#### NPPF:

Core Planning Principles, paragraphs 7 & 14 and Section 7 paragraphs 56, 57, 58, 59 & 64 and Section 12 paragraphs 131, 132, 133 and 134.

#### Wiltshire Core Strategy:

CP57 Ensuring High Quality Design and Place Shaping

CP58 Ensuring the Conservation of the Historic Environment

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

Oaksey Parish Council made the following objection: *“the application to extend the footprint of the barn conversion would change the character and layout of the Court Farm environment. The extension is in front of the building line and would overlook other properties with the consequent loss of privacy. The Parish Council wishes to retain the heritage value within our conservation zone and this or any other extension in this vicinity would be a negative influence on this environment.”*

In addition, a local resident who lives at 3 Court Farm submitted an objection on the grounds of adverse impacts on daylight and privacy. The objection submitted also indicated that there has been a precedence of refusals for householder extensions within the locality, and was therefore of the view that no extensions were acceptable within the conservation area.

In addition to the above, no objections or comments were received from internal consultees.

## 8. Publicity

The publicity for this application was by way of site notice and neighbour notification letters.

## 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.

### Principle of Development

The principle of householder extensions and alterations is considered acceptable under the provisions of Core Policies 57 and 58 of the Wiltshire Core Strategy. Core Policy 57 requires, amongst other things, that new development must be of high quality design. Core Policy 58 requires that development should protect, conserve and where possible enhance the historic environment. As mentioned in the reasons for the call in and objection received from the local resident the original planning consent granted under planning application N/91/01159/FUL had various restrictive conditions attached, of which the most relevant being Condition 5 states:

*Notwithstanding the provisions of the Town & Country Planning General Development Order, 1988, there shall be no extension or external alteration to any building forming part of the development hereby permitted (including the erection of a detached garage) without the prior grant of planning permission in the behalf.*

*Reason: In order to safeguard the amenities of the area by enabling the local planning authority to consider individually whether planning permission should be granted for extensions or alterations.*

The removal of permitted development rights in this instance does not mean that any proposals for extensions should be automatically refused. Instead, the above condition allows the Local Planning Authority the opportunity to fully assess any proposal and its impacts on the property, neighbouring properties, residential amenities, character and appearance of the locality including the conservation area.

### Impact on the scale and character of the existing dwelling

The proposed garden room measures 4.2m in length, 3 metres in depth and 3.3 metres in height. It will therefore have a subservient appearance in relation to the host building, and sits comfortably within the site. In addition, the materials proposed are appropriate to the host dwelling and will not appear visually intrusive.

### Impact on the context and character of the surrounding area & the Conservation Area

Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires Local Planning Authorities in determining planning applications affecting a Conservation Area to pay special attention to the desirability of preserving or enhancing the character or appearance of that conservation area.

The application site is located within the Oaksey Conservation Area. There is currently no conservation area appraisal published for this designation. However, the conservation area, by virtue of its designation is significant in heritage terms and this significance is likely to arise primarily from its historical (illustrative), aesthetic (fortuitous) and evidential value. The proposals are not considered to cause harm to the setting of the conservation area due to their modest nature and positioning. It should also be noted that the setting of the conservation area in this locality is characterised by the existing modern residential development that has already taken place, therefore the erection of an oak framed garden room will not appear as an alien addition within its context. It is therefore concluded that due to the limited scale of the proposal, positioning and lack of visual prominence within its locality, there will be no detrimental effect on the rural character of Oaksey.

#### Impact on residential amenities

As seen from the objections submitted, concerns were raised that the proposals will result in loss of privacy to neighbouring properties. The resident of No.3 Court Farm, who is situated approximately 10m to the east of the application site was also concerned that the proposed garden room will have adverse impacts on the level of daylight and privacy. Upon the site visit, it was clear that there is already an intimate relationship between No.2 and No.3 with a degree of mutual overlooking, due to the low boundary treatment between the two properties. Given the modest scale of the proposals, it is considered that the increased level of overlooking would not be significantly over and above what already exists thus having no significant adverse impacts on residential amenities such that consent ought to be refused on this basis.

#### Other matters

In the objection letter submitted from a local resident, it was mentioned that the previous owners of No.4 and No.8 were turned down over proposed extensions. The case officer is not aware of the circumstances that lead to those decisions made, but it is important to note that under national planning legislation each application must be assessed and determined on its own merits, and therefore the mentioned decisions do not provide a sound and defensible basis for refusal of this application in and of themselves.

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

The principle of householder extensions is considered acceptable under the provisions of Core Policies 57 and 58 of the Wiltshire Core Strategy. The proposal is considered to be acceptable on its planning merits and would not be significantly detrimental to the character and appearance of the Conservation Area, the locality, the property itself or to any residential amenities due to its modest scale and positioning. The proposal is therefore considered to comply with Core Policies 57 and 58 and guidance contained within the NPPF.

### **RECOMMENDATION**

Grant 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 materials to be used in the construction of the external surfaces of the development hereby permitted shall be carried out in accordance with the materials listed on the applications form.

REASON: In the interests of visual amenity and the character and appearance of the area.

- 3 The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan (Drawing No 10650/04), Block Plan (Drawing No 10650/03), Proposed Plans and Elevations (Drawing No 10650/02) received by the LPA 12/07/2017.

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

- 4 INFORMATIVE TO APPLICANT:

The applicant should note that the grant of planning permission does not include any separate permission which may be needed to erect a structure in the vicinity of a public sewer. Such permission should be sought direct from Thames Water Utilities Ltd / Wessex Water Services Ltd. Buildings are not normally allowed within 3.0 metres of a Public Sewer although this may vary depending on the size, depth, strategic importance, available access and the ground conditions appertaining to the sewer in question.

- 5 INFORMATIVE TO APPLICANT:

The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence.

If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

- 6 INFORMATIVE TO APPLICANT:

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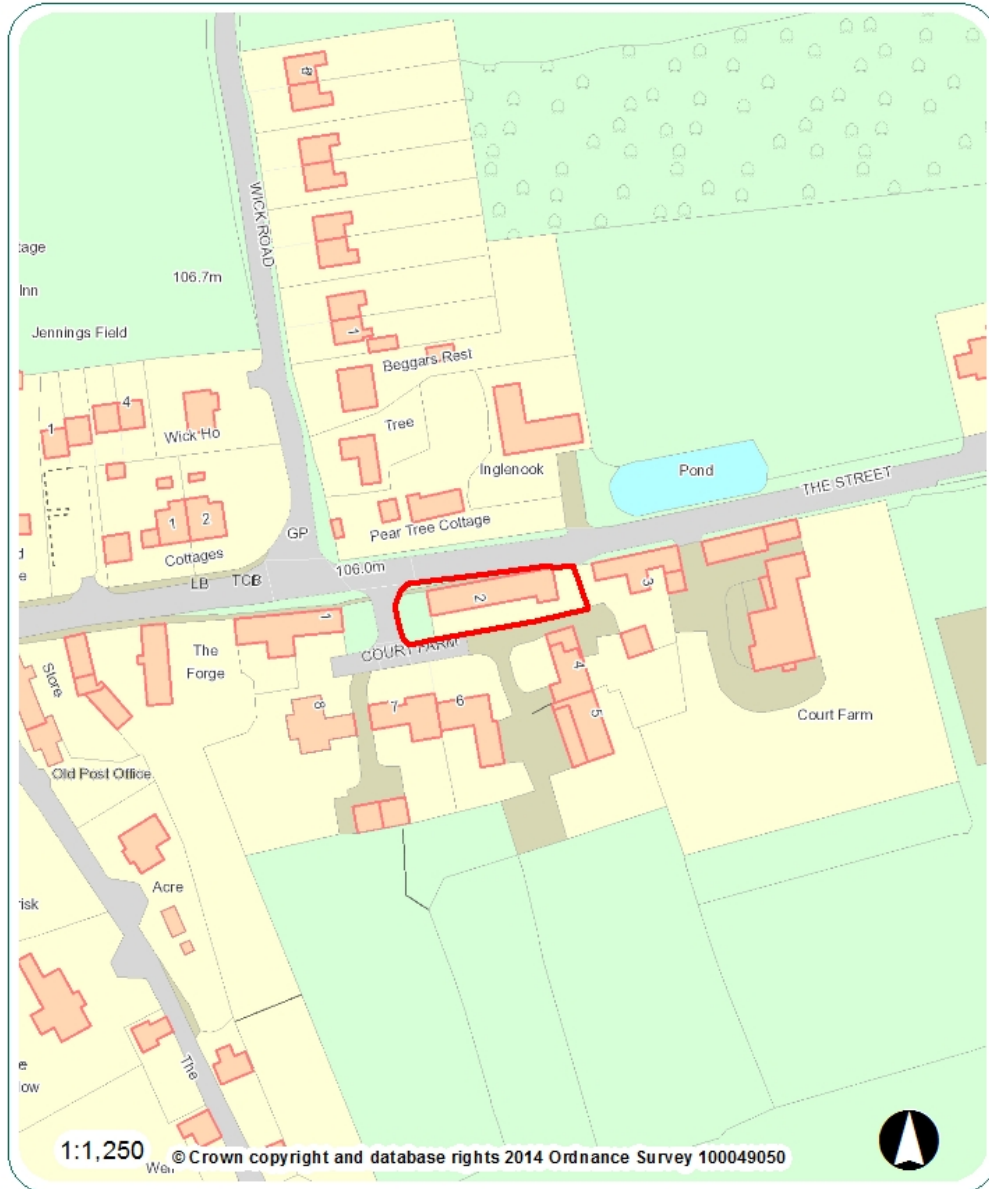
- 7 INFORMATIVE TO APPLICANT:

Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.





17/06718/FUL  
The Old Dairy  
2 Court Farm  
Oaksey  
Malmesbury  
SN16 9TF



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## REPORT OUTLINE FOR AREA PLANNING COMMITTEES

Report No.

<b>Date of Meeting</b>	04 October 2017
<b>Application Number</b>	17/05460/FUL
<b>Site Address</b>	Land at Cedar Lodge 3 Cove House Gardens Ashton Keynes Wiltshire SN6 6NS
<b>Proposal</b>	Proposed single storey dwelling
<b>Applicant</b>	Mr & Mrs Sean & Sharon Rastelli
<b>Town/Parish Council</b>	ASHTON KEYNES
<b>Electoral Division</b>	MINETY – Councillor Chuck Berry
<b>Grid Ref</b>	404716 194083
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	Alla Hassan

### Reason for the application being considered by Committee

The application was called in to committee by Councillor Berry due to the site's previous history of a refusal for similar proposals.

#### 1. Purpose of Report

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

#### 2. Report Summary

The key issues in considering the application are as follows:

- Principle of the development
- Impact on the character, setting and historic fabric of the listed building and the conservation area
- Design and layout
- Flood Risk and proposed drainage
- Tree preservation
- Highway safety
- Other matters

As a result of the consultation exercise, 13 objections, 9 letters of support and 1 comment were received from local residents. In addition, the Parish Council also objected to the application.

### **3. Site Description**

The application site is located within the settlement boundary of Ashton Keynes. The site is situated in a central location in close proximity to local facilities and services available in the village. Ashton Keynes is designated as a large village within the Wiltshire Core Strategy.

The application concerns land at Cedar Lodge, 3 Cove House Gardens, Ashton Keynes. The host dwelling is a semi-detached property which benefits from a long front garden, in which the application site lies. The highway, Park Place, runs to the south and is bounded by a high stone boundary wall. Park Place is central to the village and is an important pathway/route through the village. The site is also located within the Ashton Keynes Conservation Area, and approximately 30m to the north-west of the site is situated a Grade II Listed building known as Cove House. However, it is noted that the application site is well-screened from Cove House via a combination of hedging, trees and fencing.

#### **Planning History**

N/03/00661/FUL	PROPOSED NEW DWELLING, DETACHED GARAGE AND STONE BOUNDARY PARTY WALL- Withdrawn 28/05/03.
N/03/01615/FUL	INSERTION OF DORMER WINDOWS, PORCH AND ALTERATIONS TO EXISTING DOORS AND WINDOWS- Approved with conditions 08/08/03.
N/07/00544/TCA	Fell Six Leyland Cypress Trees- Approved 02/05/07.
N/11/02491/TCA	Fell One Lawson Cypress, One Foxglove Tree and Works to One Sycamore- Approved 31/08/11.
14/11217/FUL	Erection of 3 Bedroom Detached Dwelling With Car Port & Cycle Shed/Bin Store- Refused 13/02/15.
16/02832/PREAPP	Proposed Erection of Dwelling
17/00546/PREAPP	Proposed Single Storey Dwelling

### **4. The Proposal**

The application is a revised proposal for the construction of a single-storey 3-bedroom property and a bin/bicycle store. The walls would be constructed of Natural local stone and K-rend render system, whilst the roof would be a sedum living roof. The fenestration details consist of powder coated aluminium in grey. The proposed dwelling would be accessed via the existing driveway which serves No.3 Cedar Lodge, and a provision for three car parking spaces has been made. The proposals would be separated from No.3 Cedar Lodge by a 1200mm high grassed mound.

### **5. Planning Policy**

National Planning Policy Framework (NPPF)

Paragraphs 7 and 14.

Core Planning Principles, Section 4 paragraphs 29, 30 & 37, Section 6 paragraph 55, 7 paragraphs 56, 57, 58, 59 & 64 and Section 12 paragraphs 131, 132, 133 and 134.

North Wiltshire Local Plan (Saved Policies)

NE14 – Trees, Site Features and Control of New Development

Wiltshire Core Strategy (Adopted January 2015)

Core Policy 1: Settlement Strategy

Core Policy 2: Delivery Strategy

Core Policy 13: Spatial Strategy for Malmesbury Community Area

Core Policy 41: Sustainable Construction and Low Carbon Energy

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 67: Flood Risk

Wiltshire Local Transport Plan

Ashton Keynes Neighbourhood Plan 2026 (Made May 2017)

Policy HSP3: Additional Housing Development

Policy INP1: Flood Risk Mitigation in new developments

Policy HCP1: Local Character

## **6. Summary of consultation responses**

Ashton Keynes Parish Council objected to the proposals on the following grounds:

- The application neither preserves nor enhances the conservation area
- The proposed materials are inappropriate and not used within the vicinity
- The development creates further loss of open space within the conservation area and is set in front of the de facto building line
- Three substantial trees would need to be felled and the remaining trees may also need to be felled
- The reasons for the previous refusal of application no 14/11217/FUL are still applicable in this location

Thirteen objections were also received as a result of the public consultation period. The main points raised were as follows:

Design of the Proposal & Impact on the character and appearance of the local context and heritage assets:

- Building would be visible from the road and seen over the boundary wall where the protruding part will ruin the view of the historic boundary wall
- Materials not in-keeping with local materials which mainly consist of Cotswold Stone
- Modern style of building not in-keeping with surrounding houses
- Spoils the general spaciousness of the village
- In front of the building line
- Within the curtilage of a listed building and would therefore change the character of the historical enclave of local context
- Elevation pictures unclear as to how residential amenities are maintained and which trees will be removed exactly
- Lack of natural light to proposed dwelling

Impact on neighbour amenity:

- Gable Cottage, property directly opposite will be overlooked by the higher portion of the proposed dwelling
- Will overlook neighbouring property No.4 Cove House Gardens

Drainage:

- It is on a flood plane and will therefore cause adverse drainage impacts

Trees:

- Groundwork and construction will adversely affect both the flora and fauna within the conservation area

Highways:

- Inconvenience for pedestrians and motorists, and an increased risk of mishap during the construction period
- Vehicle movement would pose a danger to pedestrians, especially school children

Other matters:

- The proposal would be a contravention of various provisions of the Ashton Keynes Neighbourhood Plan
- Similar to previously refused application and should therefore be refused again  
Nine letters of support were also received mainly due to the following reasons;
- New affordable housing in Ashton Keynes is essential to maintain the vitality of the village and will help the regeneration of the local community
- Will add diversity to the character of the village, which in any event is characterised by different styles and aesthetics of dwellings
- Will not be visible within the streetscene due to its positioning behind the boundary wall
- Welcome the contemporary design
- Will have no demonstrable negative effects on other properties
- Has been modified enough to gain planning consent
- Well thought-out and designed plan
- No significant impact on trees

One comment was also received indicating that that the planning notice was invisible as it was initially placed on a telegraph pole across from the application site where it was very difficult to notice due to regularly parked cars/vans. This was brought to the case officer's attention, and was consequently repositioned and placed at the entrance gates of the application site.

The following consultee responses were also received:

Conservation officer: *The current scheme follows a series of pre-application discussions regarding the site. Cedar Lodge has been separated for many years from Cove House and the sense of separation strengthened via plot divisions and dense planting on these boundaries.*

*The current proposal is not considered to cause significant harm to the setting of the adjacent listed building. This is due to;*

- *The low profile of the proposed dwelling*
- *The height of the adjacent boundary wall*
- *The existing dense planting between the application site and the adjacent listed building.*

*The low profile of the proposed building and the high perimeter wall will mean that little of the proposed new dwelling will be visible from outside the application site thus causing little impact on the either the appearance or character of the application site. The simple materials and pallet of the proposed build is consider to be appropriate in this context as the building responds to the context of the garden in which it would be located.*

*The applicant and his design team have listen and responded positively to advice from the LPA and addressed the previous conservation reasons for refusal.*

Tree Officer: Support subject to the following condition: *The development shall be carried out as specified in the approved Arboricultural Report prepared by Certhia Consulting Limited dated August 2017 and shall be supervised by an Arboricultural Consultant.*

*Reason: To prevent trees on site from being damaged during construction works.*

Drainage Engineer: Support

Highways Engineer: *I understand the above to be a proposal for a new build dwelling at the above location. I am satisfied that reasonable visibility splays are available and contained within the highway verge. I also consider it likely that any conflicting vehicular movements occurring within the access will not lead to a significant impact on the highway due to the nature of the highway conditions and expected low speeds on this un-classified road. Therefore I raise no highway objection subject to the following condition being attached to any permission granted.*

*No part of the development hereby approved shall be occupied until the parking area shown on the approved plans has been consolidated, surfaced and laid out in accordance with the approved details. This area shall be maintained and remain available for this use at all times thereafter.*

*REASON: To ensure that adequate provision is made for parking within the site in the interests of highway safety*

## **7. Publicity**

The publicity for the application was by way of a site notice, neighbour notification letters and an advert in the Wiltshire Gazette and Herald.

## **8. 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.

Principle of development

Core Policy 1 of the Wiltshire Core Strategy outlines the settlement strategy where sustainable development will take place. Ashton Keynes is designated as large village where *“Development at Large and Small villages will be limited to that needed to help meet the housing needs and settlements and to improve employment opportunities, services and facilities.”* Core Policy 2 states that within the limits of development, there is a presumption in favour of sustainable development. As the site is situated in a central location within the settlement boundary of the village, the principle of development is acceptable in principle, provided that it complies with other policies.

Core Policy 13 of the Wiltshire Core Strategy identifies the Malmesbury community Area Strategy. Paragraph 5.71 requires that Development within the Malmesbury Community Area to reflect and respect its high quality built and natural environment, whilst paragraph 5.72 supports the provision of some new homes to help to alleviate affordability issues in the area.

Design of the Proposal & Impact on the character and appearance of the local context and heritage assets:

The site is located within the heart of the conservation area, off Park Place which is characterised by its significant foliage and high stone boundary walls. It is also nearby a Listed building and therefore proposals must protect, conserve and where possible enhance the historic environment in accordance with Core Policy 58. In addition, the Planning (Listed Buildings and Conservation Areas) Act 1990 provides powers for the designation, protection and enhancement of conservation areas and the preservation of listed buildings. The Act requires that special regard should be given to the desirability of preserving a listed building or its setting (s. 66) as well as giving special attention to preserving or enhancing the character or appearance of the conservation area (s.72).

Paragraph 129 of the NPPF requires local planning authorities to identify and assess the particular significance of any heritage asset that may be affected by the proposal (including any development affecting the setting of a heritage asset). Paragraphs 133 and 134 require local authorities to assess whether there is substantial harm, less than substantial harm or no harm to the heritage asset.

It is considered that the proposals would result in less than substantial harm to the setting of the nearby listed building and the character and appearance of the conservation area. In this case the main public benefits resulting from the scheme would be the provision of a dwelling in a sustainable location which is of close proximity to local services and facilities to meet local needs. As such, the scheme would add to the local housing stock. The development as proposed would also result in some support for local services and facilities, both during construction and after occupation. In addition, the proposal will create some additional short term economic benefits during the construction phase.

Concerns were raised during the public consultation (by both local residents and the Parish Council) that the proposed dwelling's style and materials were out of keeping with the surrounding area and will therefore have an adverse impact on it. Although the proposed dwelling is of a clearly modern design where the materials or design do not match those of the local context, it is considered to be of a high quality design which differentiates itself from



other properties. This avoids a pastiche approach to design, allowing the proposal to complement and illustrate the evolution of the Conservation Area.

In addition, it would be largely hidden from public vantage points. From Park place, there would be modest views of the sedum roof and eaves therefore it would not appear as a dominating or over-bulky feature within the street scene. Furthermore, the conservation officer is satisfied that the proposed scheme will have little impact on the locality due to the low profile of the proposed dwelling and height of adjacent boundary wall. It is therefore considered that the proposed design whilst unique in this setting is not considered to be harmful to the character and appearance of the area.

Concerns were also raised in regards to the perceived harm caused to the nearby Grade II Listed building, Cove House. The Ashton Keynes Conservation Area Statement 1998 highlights the importance of Cove House and its grounds, recommending that development in the Cove house demense should be resisted. Some of the objectors to the proposals indicated that the application site was part of the former grounds of Cove House where development is inappropriate. As confirmed in the Conservation Officers' comments above, the application site is not considered to be part of grounds of Cove House as there is a strong sense of separation due to the defined plot divisions, dense planting on these boundaries and lack on inter-visibility. It is also noted that at the point of listing, the properties were in separate ownership thus further establishing the clear separation between the application site and Cove House. The application site is therefore not considered to have been or to currently be part of the grounds of Cove House and will not be harmful to its setting.

Impact on neighbour amenity:

Concerns were raised in regards to impacts on neighbouring amenities, and in particular gable Cottage and No.4 Cove House Gardens. The former is situated across the adjacent road, approximately 16m to the southeast of the application site. The latter is the neighbouring property to No.3 Cove House Gardens, where the nearest point of the proposed dwelling would be located approximately 25m away. Bearing in mind that the proposals are for a single-storey dwelling where the majority of the windows would be of a low level, and the considerable distances to nearby neighbours with a road separating the site from one of the properties alongside the considerable boundary/property planting, there are considered to be no significant adverse impacts on residential amenities that would warrant the refusal of the application.

Trees:

The application site is well planted with trees and shrubs, particularly along the southern boundary at Park Place. As identified in the Ashton Keynes Conservation Area Statement, those trees are considered to be significant foliage which has a positive impact on the Conservation Area.

As outlined in the arboriculture statement submitted, the design allows the proposed dwelling to co-exist with the trees. In addition, the proposed construction method statement establishes that there will be no damage to the roots of surrounding trees. The trees officer was therefore satisfied with the proposals subject to a condition requiring the works to be carried out in accordance with the Arboriculture Report submitted.

### Highways:

The proposal involves the use of the same existing access driveway for Cedar Lodge, and a provision for three car parking spaces has been made. The highways officer raised no objections to the application subject to an appropriate condition. They were satisfied that the proposal complied with the current Wiltshire Parking Standards for a three bedroom dwelling, and that reasonable visibility splays are available from the highway verge. Some of the objections received during the public consultation indicated that the proposals would be of an inconvenience for pedestrians and motorists, which will have an increased risk of mishap during the construction period. There was also a concern that vehicle movement would pose a danger to pedestrians, especially school children.

Given the limited scale of development proposed and the form and layout of development in this locality; it is considered that the construction of the dwelling would not give rise to significant disruption in terms of access, however a condition will be attached to the planning consent requesting a Construction Method Statement to minimise detrimental effects to neighbouring amenities. In addition, the highways officer has confirmed that the increase in vehicle movement would not be significant enough to compromise the safety of pedestrians, bearing in mind the nature of the road, vehicular speeds in this location are likely to be low. It is therefore considered that the scheme will not have any significant adverse impacts on parking or highways safety.

### Drainage:

The Drainage engineer had the following initial comments to the application:

- *Site is in FRZ 1 according to EA mapping*
- *The site itself is not at risk from surface water flooding however the roads in the area are affected by surface water flooding so any planning application will need to cover access/egress arrangements*
- *It is known that ground water levels are high in the area thus detailed information will be required on storm water disposal – note that the council's emerging strategy on ground water calls for at least 1m from underside of any infiltration arrangement to the top of agreed ground water level – may be difficult to achieve*
- *Assumed foul drainage will go to main sewer – will need approval from the sewerage undertaker*

Therefore, a holding objection was raised in regards to the drainage, and further information was requested from the agents. Following the provision of this information, the drainage engineer was satisfied with the revised foul drainage disposal arrangements with connection to the main sewer, and the raised floor level of the building which allows storm water drainage disposal to be achieved without issues with ground water. The drainage team consequently changed the recommendation to support.

### Other matters:

Although it was highlighted during the public consultation that previous proposals had been refused in this area, each application must be assessed on its own merits and it does not follow that this application should be refused. It is also noted that the proposals have been significantly amended in response to the previous determination and subsequent officer advice to a more discreet design that is not considered to cause significant adverse harm to the local context, conservation area or the nearby Grade II Listed dwelling. Some of the objectors also commented that the proposals conflict with the Ashton Keynes

Neighbourhood Plan (Made 31/05/2017). It is acknowledged that the Neighbourhood Plan allocates housing needed for the plan period 2026. However, Policy HSP3 (Additional Housing Developments) states:

*“In addition to housing allocations in this plan, applications for residential developments on windfall and infill sites within the Settlement Boundary will be supported where such development:*

- a. in its scale and form is in keeping with surrounding properties and respects residential amenity;*
- b. provides safe and suitable access.”*
- c.*

The plan therefore provides some support for additional housing within sustainable locations provided that they meet the above criteria. The proposals are therefore not considered to conflict with the Ashton Keynes Neighbourhood Plan.

#### Low Carbon Economy:

Policy CP41 requires all new dwellings to be built to Code Level 4 for sustainable homes. Therefore this shall be added as a condition. It is acknowledged that the Code for Sustainable Homes is no longer a government requirement, however it is still a policy of the Core Strategy and its application is therefore considered to be appropriate.

#### CIL:

The Council's CIL charging scheme was adopted on 18 May 2015 and it is understood that the proposal may be CIL liable. An informative is added in this respect.

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

The site is located within the framework boundary of Ashton Keynes where residential development is considered to be acceptable in principle in accordance with CP1 & CP2 of the Wiltshire Core Strategy. The proposal is considered to be acceptable on its planning merits and would not be significantly detrimental to the Conservation Area, nearby listed building or to any residential amenities in accordance with CP57 and CP58. Having regard to all other matters raised, it is recommended that planning permission is granted subject to the conditions below.

#### **RECOMMENDATION**

Grant 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: Proposed Elevations, Site and Block Plans (Drawing No 1652\_0411b) and Proposed Ground Floor Plan (Drawing No 1652\_0421b) received by the LPA 06/06/2017.

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

- 3 No development shall commence on site until the exact details and samples of the materials to be used for the external walls and roofs have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

REASON: The matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in the interests of visual amenity and the character and appearance of the area

- 4 The development shall be carried out as specified in the approved Arboricultural Report prepared by Certhia Consulting Limited dated August 2017 and shall be supervised by an Arboricultural Consultant.

Reason: To prevent trees on site from being damaged during construction works

- 5 No part of the development hereby approved shall be occupied until the parking area shown on the approved plans has been consolidated, surfaced and laid out in accordance with the approved details. This area shall be maintained and remain available for this use at all times thereafter.

REASON: To ensure that adequate provision is made for parking within the site in the interests of highway safety

- 6 No development shall commence on site (including any works of demolition), until a Construction Method Statement, which shall include the following:

- a) the parking of vehicles of site operatives and visitors;
- b) loading and unloading of plant and materials;
- c) storage of plant and materials used in constructing the development;
- d) wheel washing facilities;
- e) measures to control the emission of dust and dirt during construction;
- f) a scheme for recycling/disposing of waste resulting from demolition and construction works; and
- g) measures for the protection of the natural environment.
- h) hours of construction, including deliveries;

Has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be complied with in full throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction method statement.

REASON: The matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to minimise detrimental effects to the neighbouring amenities, the amenities of the area in general, detriment to the natural environment through the risks of pollution and dangers to highway safety, during the construction phase.

7 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, B and E shall take place on the dwellinghouse hereby permitted or within its curtilage.

REASON: 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.

8 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), no buildings or structures, or gate, wall, fence or other means of enclosure, other than those shown on the approved plans, shall be erected or placed anywhere on the site on the approved plans.

REASON: To safeguard the character and appearance of the area.

9 The dwellings hereby approved shall achieve Level 4 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate for it has been issued and submitted to, and approved in writing by, the local planning authority certifying that Code Level 4 has been achieved.

REASON: To ensure that the objectives of sustainable development set out Policy CP41 of the Wiltshire Core Strategy are achieved.

10 Prior to the first occupation of the buildings a plan showing details of the green roof including species, planting density, substrate and a section at scale of 1:20 showing that adequate depth is available in terms of the construction and long term viability of the green roof, and a programme for a scheme of maintenance shall be submitted to and approved in writing by the local planning authority. The green roof shall be fully provided in accordance with the approved details prior to first occupation and thereafter retained and maintained in accordance with the approved scheme of maintenance.

Reason: To ensure that the green roof is suitably designed and maintained.

11 INFORMATIVE TO APPLICANT:

The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence.

If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

12 INFORMATIVE TO APPLICANT:

Please note that Council offices do not have the facility to receive material samples.

Please deliver material samples to site and inform the Planning Officer where they are to be found.

13      INFORMATIVE TO APPLICANT:

Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

14      INFORMATIVE TO APPLICANT:

The applicant should note that the grant of planning permission does not include any separate permission which may be needed to erect a structure in the vicinity of a public sewer. Such permission should be sought direct from Thames Water Utilities Ltd / Wessex Water Services Ltd. Buildings are not normally allowed within 3.0 metres of a Public Sewer although this may vary depending on the size, depth, strategic importance, available access and the ground conditions appertaining to the sewer in question.

15      INFORMATIVE TO APPLICANT:

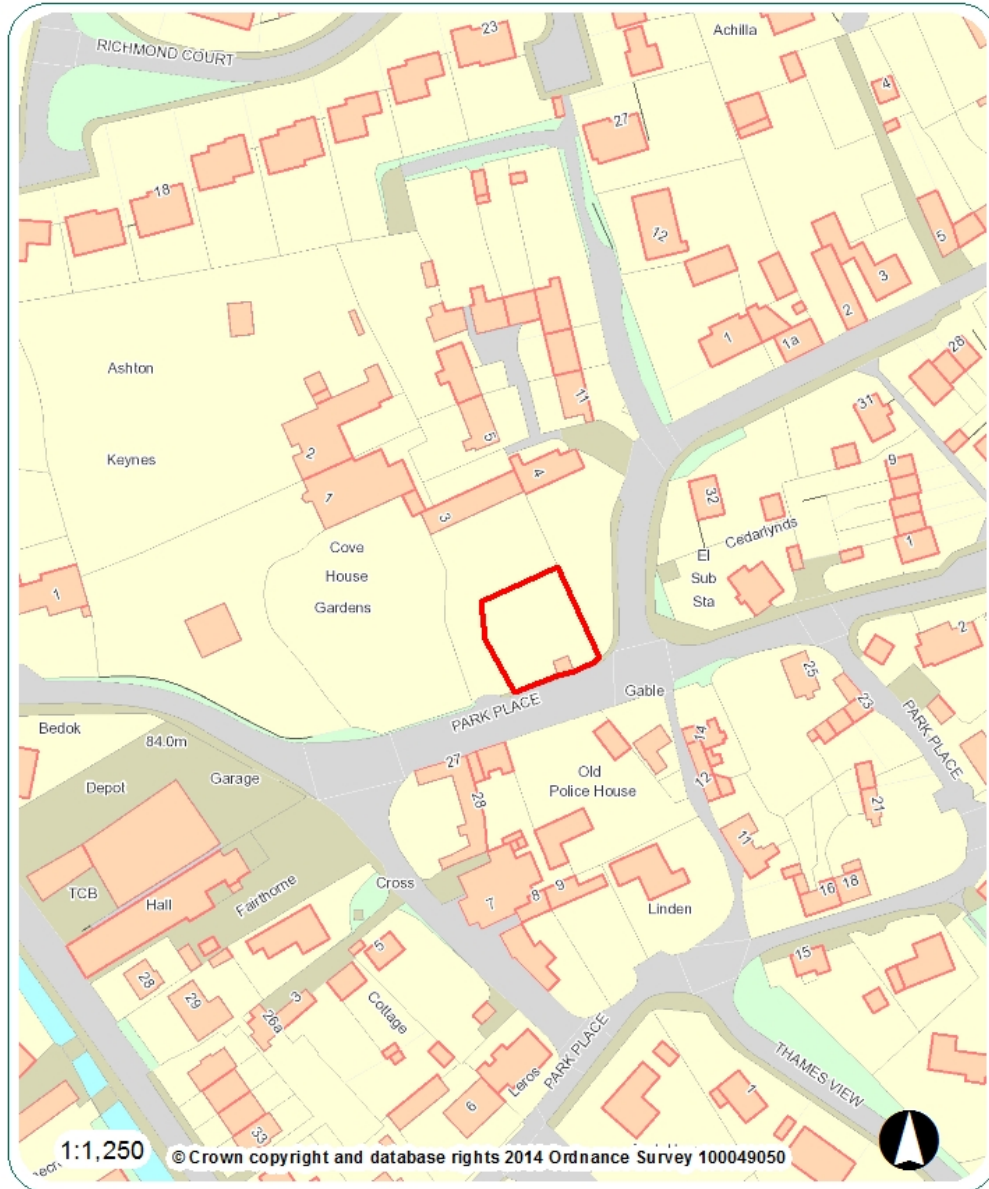
The applicant is advised that the development hereby approved may represent chargeable development under the Community Infrastructure Levy Regulations 2010 (as amended) and Wiltshire Council's CIL Charging Schedule. If the development is determined to be liable for CIL, a Liability Notice will be issued notifying you of the amount of CIL payment due. If an Additional Information Form has not already been submitted, please submit it now so that we can determine the CIL liability. In addition, you may be able to claim exemption or relief, in which case, please submit the relevant form so that we can determine your eligibility. The CIL Commencement

Notice and Assumption of Liability must be submitted to Wiltshire Council prior to commencement of development. Should development commence prior to the CIL Liability Notice being issued by the local planning authority, any CIL exemption or relief will not apply and full payment will be required in full and with immediate effect.

Should you require further information or to download the CIL forms please refer to the Council's Website

[www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastructurelevy](http://www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastructurelevy)

17/05460/FUL  
Land at Cedar Lodge  
3 Cove House Gardens  
Ashton Keynes  
Swindon  
SN6 6NS



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## REPORT OUTLINE FOR AREA PLANNING COMMITTEES

Report No.

<b>Date of Meeting</b>	04 October 2017
<b>Application Number</b>	17/05672/FUL
<b>Site Address</b>	Land to West of Forest Lane, Forest Lane, Chippenham, Wiltshire, SN15 3PX
<b>Proposal</b>	Erection of 6no. residential units including landscaping, highways layout and related works.
<b>Applicant</b>	MacNiven Quays Ltd
<b>Town/Parish Council</b>	Chippenham
<b>Electoral Division</b>	Chippenham Pewsham – Cllr Clare Cape
<b>Grid Ref</b>	392980 172141
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	Mark Staincliffe

### Reason for the application being considered by Committee

The application has been called into committee at the request of Cllr Clare Cape who would like the Committee to consider the concerns raised by Chippenham Town Council and local residents.

#### 1. Purpose of Report

The purpose of the report is to assess the merits of the proposal against the policies of the development plan and other material considerations and to delegate authority to the Head of Development Management to **GRANT** planning permission, subject to conditions and completion of a S106 legal agreement within three months of the date of the resolution of this Committee.

In the event of failure to complete, sign and seal the required section 106 agreement within the originally defined timeframe to then delegate authority to the Area Development Manager to **REFUSE** planning permission for the following reason:-

The application proposal fails to provide and secure the necessary stopping up of the highway to ensure a safe access and parking arrangement for the site and is therefore contrary to Policies CP3, CP61 & CP62, CP64 of the Wiltshire Core Strategy Adopted January 2015

#### 2. Report Summary

The key issues in considering the application are as follows:

- Principle of the development.
- Impact on character and appearance of the area.
- Impact on highway safety
- Impact on the residential amenity of local residents

Chippenham Town Council object to the proposed development. 35 letters have been received objecting to the proposed development and 0 letters of support were received

### **3. Site Description**

The site is located at the end of Forest Lane in Chippenham, which is a no-through-road to vehicular traffic. There is pedestrian access through the whole site via Forest Lane and Lodge Road.

The only existing building within the applicant's ownership but beyond the application boundary is a nursing home to the east, which benefits from consent to extend, ref 13/03489/FUL, which further to discharge of all conditions could be implemented.

The surrounding area is predominantly residential, with a number of commercial properties including shops and a pub with car parking to the south. There is a children's centre located to the south of the site, as well as a gym and a church to the north.

Residential gardens back onto the western boundary, with existing foliage acting as a visual barrier between the application site and neighbouring properties. Across the site there are isolated trees and hedgerows enhancing the sense of enclosure.

### **4. Planning History**

13/03489/FUL	Extension to Provide Additional Bedrooms and Communal Areas
N/09/01626/FUL	Partial Demolition of Existing Care Home. Ground and First Floor Extensions and Alterations.
N/10/01559/FUL	Partial Demolition of Existing Care Home, Ground and First Floor Extensions, Access and Car Parking Alterations
17/01110/VAR	Application to remove Conditions 7 & 9 relating to stopping up of public highway and tree preservation order requirements and to vary Condition 8 in respect of parking layout and hard and soft landscaping on previously approved 13/03489/FUL
17/05671/VAR	Variation of Condition 8 of 13/03489/FUL relating to approved plans concerning proposed Landscaping, Highways & Parking

None of the above applications relate directly to the application site

### **5. The Proposal**

The planning application seeks consent for the construction of 6 residential dwellings, including landscaping, parking and associated highway works.

### **6. Local Planning Policy**

Wiltshire Core Strategy Jan 2015:  
Core Policy 1- Settlement Strategy  
Core Policy 2- Delivery Strategy  
Core Policy 10- Spatial Strategy for the Chippenham Community Area  
Core Policy 41- Sustainable Construction and Low Carbon Construction  
Core Policy 50- Biodiversity and Geodiversity  
Core Policy 57- Ensuring high quality design and place shaping  
Core Policy 61-Transport and Development  
Core Policy 63-Transport Strategies  
Core Policy 64- Demand Management

Appendix D  
Appendix E  
Appendix G

National Planning Policy Framework 2012:  
Achieving sustainable development – Core Planning Principles (Paragraphs 7 14 & 17)  
Chapter 7- Requiring Good Design (Paragraphs 56, 57, 60, 61, & 64)  
Chapter 8- Promoting healthy communities (Paragraph 75)  
Chapter 4- Promoting sustainable transport (Paragraph 32)  
Saved Policies of the North Wiltshire Local Plan:  
NE18- Noise and Pollution  
T5- Safeguarding

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

Chippenham Town Council- Chippenham Town Council does not support this application and recommends refusal, raising the following points in accordance with core policy 57,iii:

- The design of the units is not in keeping with the character of the area
- There will be a loss of an open space
- The wildlife habitat will be seriously impacted
- The design of the units is overbearing in relation to the existing homes in the area
- The 2 x three storey properties are out of keeping with the other properties, not just in the adjacent development but across the whole Pewsham development
- The site will impact on a well-used pedestrian access way
- There are concerns about drainage issues in the area
- Former applications have not been fully adhered to in relation to replanting of trees

Drainage- The care home planning approved is for a discharge of 5 l/s – not the 6 l/s as this submission states

The area for this site is greenfield thus greenfield discharge rate to be used for post development thus indicated flow rate is not currently acceptable and would not obtain LDC.

Revised plans have been submitted resolving the initial comments and is acceptable subject to conditions.

Highways- No objection subject to conditions and s106 agreement for stopping up of the highway

Tree Officer- No objection subject to conditions

Archaeology- No objection

Rights of way team- The applicant applied to us for a legal order to extinguish the part of footpath CHIP17 that ran across this land. The extinguishment has now been confirmed, so no concerns.

## **8. Publicity**

The application was advertised by neighbour letter, site notices and press advert.

The application has generated over 35 letters of objection and 0 letters of support. A summary of the comments is set out below:

- Congestion from cars
- Noise disturbance and pollution during construction
- Density of development too high
- Loss of open space
- Loss of privacy
- Public right of way must be retained
- Limited access to shops and services
- Drainage issues
- Waste collection issues
- Insufficient parking
- Design of housing is out of keeping
- Harm to Local wildlife
- Some of the land is not in the applicants ownership

## **9. Planning Considerations**

### Principle of development

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.

In this case, the Wiltshire Core Strategy, including those policies of the North Wiltshire Plan saved in the WCS, forms the relevant development plan for the Calne Community Area.

The National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG) are material considerations which can be accorded substantial weight.

The site is located within the urban area of Chippenham therefore the principle of residential development in this location is acceptable subject to the suitability of the highways matters, layout, landscaping, appearance and scale of the development.

### Stopping up of the Highway

Many of the concerns raised by local residents relate to the use of this lane for pedestrians and many believe that the application will result in Forest Lane being blocked and pedestrians will be prohibited from using it. This is incorrect, access for pedestrians along this lane will not change and the access will not be blocked. Should planning permission be granted for the proposed development the use of it by local residents as a link between Wood Lane and Lodge Road will remain.

It is understood that the confusion has arisen due to the applicant's request to stop up some of the highway. The submitted drawings appear to show some of the land in the to be used in the development in classified as highway, though. Allocated parking and built development is not acceptable on the highway. It is understood that the applicant may own the land, but highway rights exist on the land and the land is maintainable by the highway

authority and that is why stopping up of the highway is required. The highway to stopped up is land adjacent to the hard standing know as Green Lane.

The development does therefore not conflict with CP61 or CP63 of the Core Strategy or the NPPF.

#### Drainage

The Council's drainage team originally objected to the proposed drainage solution. Revised plans have been received and these have overcome the council's concerns. Subject to conditions officers are satisfied that the development will not have an adverse impact on drainage within the locality and is therefore in accordance with the NPPF and CP67 of the Core Strategy.

#### Highway

Alterations to the approved plans and additional details have been provided to overcome the initial concerns relating to the parking arrangement on site and visibility from these spaces but this has now been resolved.

Some local residents have expressed concerns with regards to the level of parking provided and questioned whether the proposal meets the Council's parking requirements.

The Council's adopted Car Parking Strategy does allow for tandem parking. Taking into consideration the submitted information, officers are satisfied that the proposal does accord with the Council's parking standards. To ensure that communal parking is not allocated to private households these will be within the adopted highway.

#### Impact on Residential Amenity

The application has been submitted in full. The layout of the development is therefore fixed. The submitted layout clearly demonstrates that the proposal will not result in adverse residential amenities for existing or future occupants of the existing/proposed dwellings.

Taking into consideration the existing character of the area and other surrounding residential developments it is considered that the proposal will not have a significant adverse impact on the residential amenities of adjoining properties in terms of loss of sunlight daylight or privacy. It is acknowledged that there will be an impact on some properties' outlook but the separation between existing and proposed dwellings (rear wall to rear wall varies between 31.5m & 19m) would be sufficient to ensure that there will not be a conflict with CP57 and the NPPF. Furthermore there is already mutual overlooking of many of the properties and it is considered that the proposal will not result in any greater harm than the current situation.

Local residents have also expressed concerns relating to noise during the construction phase. This is an inevitable and an unfortunate consequence of any development. However, to minimise and reduce any possible harm residential amenities during the construction phase a construction management plan will be required by way of a planning condition.

#### Character and appearance of the area

Though the dwelling would be of a modern design and appearance, the proposed dwellings would be of traditional proportions both vertically and horizontally and their fenestration would have a strong vertical emphasis. At second floor level this would include windows, which would be consistent with the modest sized windows on other properties within the

locality. Similarly, the proposed pitched roofs would pick up on the design characteristics within varied designs of the surrounding locality.

Overall the proposed dwellings would respect the topography of the street, the character of the area, and would improve the visual character of the area. It is recognised that some of the buildings in the immediate area are uninspiring and in some instances have a negative impact on the character and appearance of the Area. However as with all buildings, whether traditional or contemporary, the success with which they blend in with and make a positive contribution to the street scene is dependent on the quality of the design and the precise nature and quality of the materials used.

In this instance the scheme is considered to be high quality, Though the dwellings are unashamedly modern, it is based on the form of a traditional two/three store dwelling, it is considered that the design and materials proposed responds to local character and reflects the identity of local surroundings. It is accepted that the materials are not characteristic of the area by CP57 of the CS and Para 63 of the NPPF states:

*In determining applications, great weight should be given to outstanding or innovative designs which help raise the standard of design more generally in the area.*

Provided the development is constructed in accordance with the approved plans it would make a positive contribution to the character and appearance of the Area including long distance views. This enhancement is a positive aspect of the development, this is a matter that weighs in favour of the development and it is considered that the development would comply with the National Planning Policy Framework and Core Strategy policy CP57.

It is acknowledged that the loss of this green area is not ideal. However, it is not public open space or a village green and could therefore be enclosed at any time without the need for planning permission. The loss of this green area would result in minor adverse visual effects, particularly for nearby residents and people using public footpaths. To this extent the proposal would have minor harm and this is a matter that weighs against the proposal. Taking into consideration the above this harm is not considered to be significant enough to warrant a reason for refusal.

The NPPF indicates that good design is fundamental to using land efficiently. For the reasons set out above the development is considered to be acceptable and to accord with Core Policy CP57 and CP51.

#### Amenity Space & Density

Concerns have been raised by local residents with regards to the level of private amenity space provided and that the density is too high and out of keeping with the character of the area. Though the use of densities is not always helpful it is considered that a density comparison and a plot analysis for the locality would be useful. In this instance the surrounding streets have densities ranging between 33 and 50 dwellings per ha whereas the application site has a density of 40 dwellings per ha.

It is acknowledged that the proposed rear gardens are modest but taking into consideration the fact that there is no national or local requirement for minimum garden sizes the rear garden areas and density of development is, on balance acceptable and in accordance with CP57 of the CS.

### Land Ownership

Some local residents have raised concerns regarding land ownership and that the application site contains land not in the applicant's ownership. The matter of land ownership is not a planning matter to be resolved within the planning application process, it is for the parties concerned to seek a resolution, ultimately through the courts if necessary.

### **10. Conclusion**

The application site is located within the urban area of Chippenham and sustainably located in relation to Chippenham's facilities, local services and employment opportunities. It is considered that the scheme will have an overall minor adverse landscape impact due to the loss of this green area of land which is a matter that weighs against the proposal.

Taken in the context of the presumption in favour of sustainable development and the fact that this is not a designated or important landscape as defined by the NPPF and CS and in terms of the planning balance, however, these considerations are outweighed by the benefits of development, which include improvements to surface water drainage, the delivery of housing. All other matters have been sufficiently addressed, with technical details capable of resolution by planning condition. On balance, therefore, it is considered that the proposal is acceptable in planning terms and in accordance with the Core Strategy and NPPF.

### **RECOMMENDATION**

**GRANT** planning permission, subject to conditions and completion of a S106 legal agreement within three months of the date of the resolution of this Committee.

In the event of failure to complete, sign and seal the required section 106 agreement within the originally defined timeframe to then delegate authority to the Area Development Manager to **REFUSE** planning permission for the following reason:-

The application proposal fails to provide and secure the necessary stopping up of the highway to ensure a safe access and parking arrangement for the site and is therefore contrary to Policies CP3, CP61 & CP62, CP64 of the Wiltshire Core Strategy Adopted January 2015

- 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 No development shall commence on site until details of the wall and roof materials to be used on the development have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in the interests of visual

amenity and the character and appearance of the area

- 3 All soft landscaping comprised in the approved details of landscaping as shown on plan number 6133/ ASP2.0 Revision E shall be carried out in the first planting and seeding season following the first occupation of the building(s) 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 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 No demolition, site clearance or development shall commence on site, and; no equipment, machinery or materials shall be brought on to site for the purpose of development, until the protective fencing has been erected in accordance with the approved details. The protective fencing shall remain in place for the entire development phase and until all equipment, machinery and surplus materials have been removed from the site. Such fencing shall not be removed or breached during construction operations. showing the exact position of each tree/s and their protective fencing in accordance with British Standard 5837: 2012: "Trees in Relation to Design, Demolition and Construction -Recommendations"; has been submitted to and approved in writing by the Local Planning Authority, and;

No retained tree/s shall be cut down, uprooted or destroyed, nor shall any retained tree/s be topped or lopped other than in accordance with the approved plans and particulars. Any topping or lopping approval shall be carried out in accordance British Standard 3998: 2010 "Tree Work - Recommendations" or arboricultural techniques where it can be demonstrated to be in the interest of good arboricultural practise.

If any retained tree is removed, uprooted, destroyed or dies, another tree shall be planted at the same place, at a size and species and planted at such time, that must



be agreed in writing with the Local Planning Authority.

No fires shall be lit within 15 metres of the furthest extent of the canopy of any retained trees or hedgerows or adjoining land and no concrete, oil, cement, bitumen or other chemicals shall be mixed or stored within 10 metres of the trunk of any tree or group of trees to be retained on the site or adjoining land.

REASON: To ensure that the trees are protected during the construction phase of development and to protect the character and appearance of the area.

- 5 No part of the development hereby permitted shall be occupied until the access, turning area and parking spaces for that dwelling have been completed in accordance with the details shown on the approved plans. The areas shall be maintained for those purposes at all times thereafter.

REASON: In the interests of highway safety.

- 6 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), there shall be no additions to, or extensions or enlargements of any building forming part of the development hereby permitted.

REASON: 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.

- 7 No part of the development hereby permitted shall be occupied until the access, turning area and parking spaces for that dwelling have been completed in accordance with the details shown on the approved plans. The areas shall be maintained for those purposes at all times thereafter.

REASON: In the interests of highway safety.

- 8 No dwelling shall be occupied until details of the storage of refuse, including details of location, size, means of enclosure and materials, have been submitted to and approved in writing by the Local Planning Authority, and; the approved refuse storage has been completed and made available for use in accordance with the approved details. The approved refuse storage shall thereafter be maintained in accordance with the approved details.

REASON: In the interests of public health and safety.

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

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to ensure that the development can be adequately drained.

- 10 No development shall commence on site until details of the works for the disposal of sewerage including the point of connection to the existing public sewer have been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be first occupied until the approved sewerage details have been fully implemented in accordance with the approved plans.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to ensure that the proposal is provided with a satisfactory means of drainage and does not increase the risk of flooding or pose a risk to public health or the environment.

- 11 The dwellings hereby approved shall achieve a level of energy performance at or equivalent to Level 4 of the Code for Sustainable Homes. No dwelling shall be occupied until evidence has been issued and submitted to, and approved in writing by, the local planning authority certifying that this level or equivalent has been achieved.

REASON: To ensure that the objectives of sustainable development equal or equivalent to those set out in Policy CP41 of the Wiltshire Core Strategy are achieved.

12 No development shall commence on site (including any works of demolition), until a Construction Method Statement, which shall include the following:

- a) the parking of vehicles of site operatives and visitors;
- b) loading and unloading of plant and materials;
- c) storage of plant and materials used in constructing the development;
- d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- e) wheel washing facilities;
- f) measures to control the emission of dust and dirt during construction;
- g) a scheme for recycling/disposing of waste resulting from demolition and construction works; and
- h) measures for the protection of the natural environment.
- i) hours of construction, including deliveries;

has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be complied with in full throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction method statement.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to minimise detrimental effects to the neighbouring amenities, the amenities of the area in general, detriment to the natural environment through the risks of pollution and dangers to highway safety, during the construction phase.

13 The development hereby permitted shall be carried out in accordance with the following approved plans:

P102 Revision A

P103

P104 Revision B

P105

P106 Revision C

P107

P110

P111

P112

P000 Revision A Received 01/09/2017

P001 Revision A Received 01/09/2017

P101 Revision H Received 01/09/2017

P113 Revision A Received 01/09/2017

M379/7 Revision B Received 01/09/2017

W01604-150 P04 Received 01/09/2017

6133/ ASP2.0 Revision E Received 01/09/2017

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

14      INFORMATIVE TO APPLICANT:

The applicant should note that the grant of planning permission does not include any separate permission which may be needed to erect a structure in the vicinity of a public sewer. Such permission should be sought direct from Thames Water Utilities Ltd / Wessex Water Services Ltd. Buildings are not normally allowed within 3.0 metres of a Public Sewer although this may vary depending on the size, depth, strategic importance, available access and the ground conditions appertaining to the sewer in question.

15      INFORMATIVE TO APPLICANT:

The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence.

If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

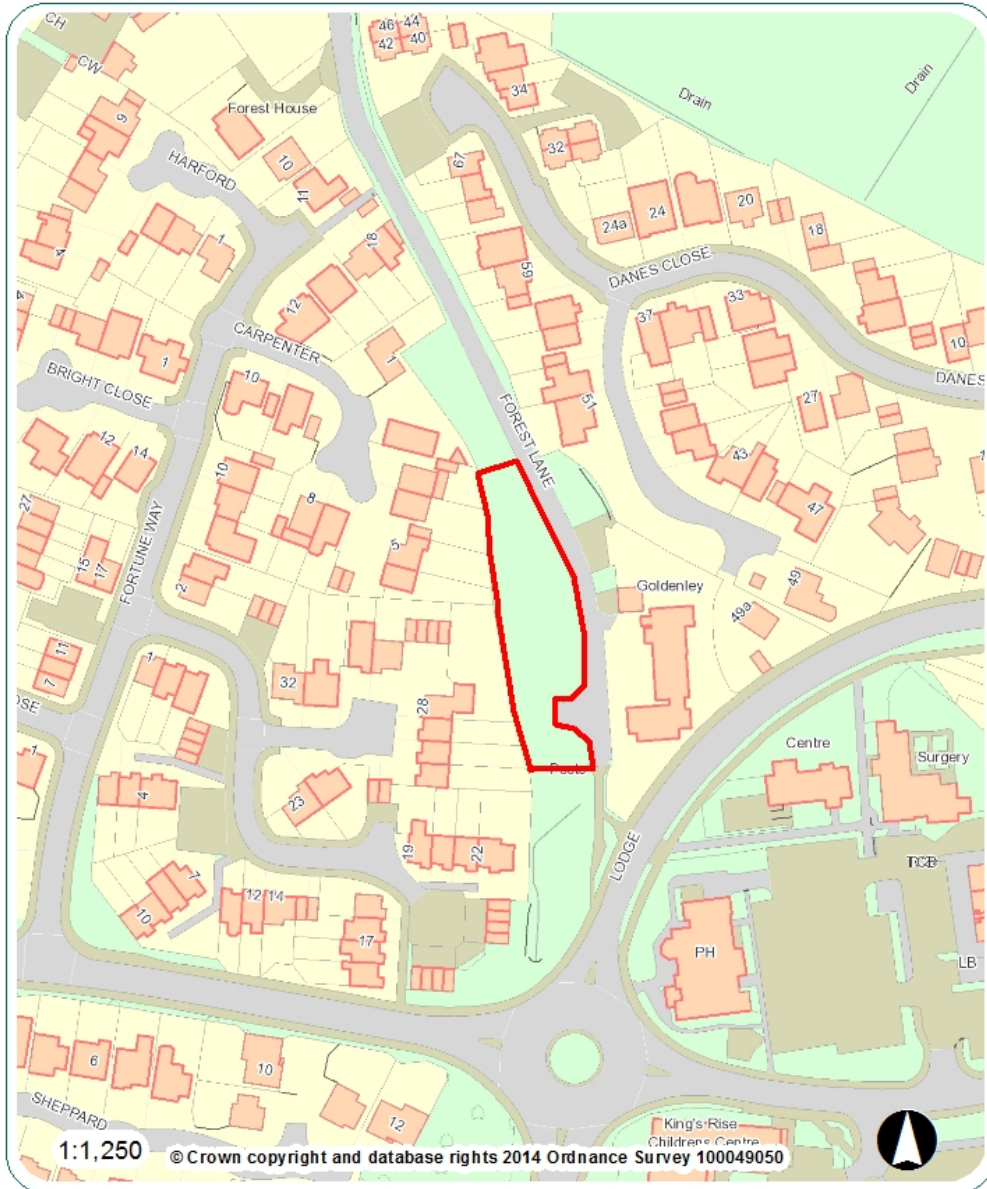
16      INFORMATIVE TO APPLICANT:

Please note that Council offices do not have the facility to receive material samples. Please deliver material samples to site and inform the Planning Officer where they are to be found.

17      INFORMATIVE TO APPLICANT:

Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

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## REPORT OUTLINE FOR AREA PLANNING COMMITTEES

Report No.

<b>Date of Meeting</b>	04 October 2017
<b>Application Number</b>	17/07192/FUL
<b>Site Address</b>	Land off Abberd Lane, Abberd Lane, Abberd, Nr Calne, Wiltshire, SN11 8TE
<b>Proposal</b>	Erection of 2 No 10 metre high chimneys in association with on-site biomass boilers within approved building
<b>Applicant</b>	Bromview Ltd
<b>Town/Parish Council</b>	Calne Without
<b>Electoral Division</b>	Calne South And Cherhill- Cllr Alan Hill
<b>Grid Ref</b>	401166 172194
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	Mark Staincliffe

### Reason for the application being considered by Committee

The application has been called into committee at the request of Cllr Alan Hill who would like the Committee to consider the impact of the proposal on the local area. In particular he would like consideration of the development's impact on the character and appearance of the area, scale of development, design of the proposal, impact on the environment and impact on the local highway network.

#### 1. Purpose of Report

The purpose of the report is to assess the merits of the proposal against the policies of the development plan and other material considerations and to **GRANT** planning permission subject to conditions.

#### 2. Report Summary

The key issues in considering the application are as follows:

- Principle of development.
- Impact on character and appearance of the area.
- Impact on the residential amenities of local residents
- Impact on the local highway network
- Environmental concerns

Calne Without Parish Council & Calne Town Council are concerned about the need/justification for the chimneys and possible increase in traffic from the site. 1 letter of objection was also received.

#### 3. Site Description

The site is an existing waste management facility located on the west side of bridleway 56 from which access is derived. Three passing places are located to the south of the site before the bridleway meets the public highway (Abberd Lane). The bridleway has a

consolidated surface that continues just beyond the site entrance towards the recently constructed solar farm.

The site currently comprises areas of covered sorting and storage, outdoor storage of recovered material and storage of skips. A weighbridge is located inside the access gates, with existing buildings and currently under construction being located to the western portion of the site, comprising offices, staff welfare facilities and covered sorting and storage areas.

Land surrounding the site is predominantly in agricultural use, with a farmyard and buildings bounding the site immediately to the north. There is also a recently constructed solar farm in close proximity to the site.

## 1. Planning History

N/08/07002/FCM	Change of Use of Agricultural Land to Use of Land for Storing Empty Skips and for Lorry Parking; Involving the Removal of Top Soil and Laying 450cm of Hardcore & Scalping- <b>Refused</b>
N/08/07027/FCM	Change of Use of Agricultural Land to Use of Land For Storing Empty Skips and for Lorry Turning Involving The Removal of Top Soil and Laying 450mm of Hardcore/Scalpings. Plus Area for Storing Reclaimed Materials at Land Adjacent Reclamation Yard- <b>Granted</b>
N/09/01253/WCM	Change of Use of Agricultural Land to use of Land for Storing Empty Skips & for Lorry Turning Involving the Removal of Top Soil & Laying 450mm of Hardcore/Scalpings. Plus Area for Storing Reclaimed Materials for Disposal to Appropriate Sites Without Compliance with Condition 3 of Permission N/08/07027 Dated 18th June 2009 (to Change Operation Hours)- <b>Granted</b>
13/07238/WCM	Extension to existing waste processing building and erection of covered store- <b>Granted</b>
14/02739/WCM	Section 73 Application - Erection of building for sorting, recovery and reclamation of waste, office, weighbridge and office and mess room for staff, without compliance with conditions 4 and 6 of planning permission N/98/2073 (change types of waste handled and remove time limit imposed on the use)- <b>Granted</b>
14/04903/WCM	Change of Use of Agricultural land to use of land for storing empty skips & for lorry turning involving the removal of top soil & laying 450mm of hardcore/scalpings together with an area for storing reclaimed materials for disposal to appropriate sites without compliance with Condition 5 of Permission N/09/01253/WCM (stockpile heights).'- <b>Refused but Granted at Appeal</b>
15/10250/WCM	Extension to existing waste processing building to replace existing workshop premises- <b>Granted</b>
17/01154/FUL	Erection of 2 No 10 metre high chimneys- <b>Refused at NAPC</b>

## 2. The Proposal

The application is in response to a recently refused application. The application was refused at an earlier Northern Area Planning Committee. The previous planning application was refused for the following reason:

*Insufficient information and detail has been submitted within the application as to the intended use to which the proposed chimneys are to be put and to assess any potential environmental impacts derived from their use. In the absence of such information and detail, the proposal must be considered to be contrary to the requirements of Policies CP55 and CP57(vii) of the Wiltshire Core Strategy.*

The resubmitted application is for the same development as previously proposed and seeks consent for the erection of 2 x 10m high chimneys and external ducting. The chimneys will be installed on the northern elevation of the building and will project approximately 2 meters above the existing ridgeline of the building.

In response to the committee's previous refusal the applicant has provided additional information relating to the operations within the site and the intended final use of the chimneys.

### **3. Local Planning Policy**

Wiltshire Core Strategy Jan 2015:  
Core Policy 1- Settlement Strategy  
Core Policy 2- Delivery Strategy  
Core Policy 08- Spatial Strategy: Calne Community Area  
Core Policy 51- Landscape  
Core Policy 55: Air Quality  
Core Policy 57- Ensuring high quality design and place shaping  
Appendix D  
Appendix E  
Appendix G

National Planning Policy Framework 2012:  
Achieving sustainable development – Core Planning Principles (Paragraphs 7 14 & 17)  
Chapter 7- Requiring Good Design (Paragraphs 56, 57, 60, 61, & 64)  
Chapter 8- Promoting healthy communities (Paragraph 75)  
Chapter 11-Conserving and enhancing the natural environment (Paragraphs 109, 112, 118 &123)

### **4. Summary of consultation responses**

Calne Without Parish Council- Object

Calne Town Council- Members objected to this application on the grounds of insufficient information to make a decision, concern about increased demand for materials and requested that an independent environmental assessment is carried out.

Highways- No objection

Public Protection (Noise)- No objection

Public Protection (Air Quality)- No objection in principle and from the information submitted officers are now satisfied and can confirm that that the development would not require an environmental permit. Some observations:

- a. The site is not within the Calne AQMA or AQ planning assessment zone.

- b. If the boilers are installed it is unclear if the height is sufficient for good dispersal of flue products.

Minerals and Waste Team- This application looks to be one example of what appears to be a current trend for waste management businesses to utilise materials handled at the site in a biomass boiler.

The building within which the biomass boilers are to be installed is the 'existing waste processing building'. Planning Permission for this building was granted in 1999 (ref: N/98/2073), with extensions to it approved in 2014 and 2015.

I am inclined to agree with the applicant that provision of the boilers would not represent a material change of use.

The application confirms the boilers are directly associated with the waste use and that the chimneys are connected to the boilers. In my view the chimneys therefore come under 'operations and uses ancillary to the purposes of recovering, treating, storing, processing, sorting, transferring, or depositing of waste' and the application should be registered as a 'county matter' application

Classification of the application as a 'waste application' would not however automatically make it one for the SPC to determine and I agree the change in classification of the application does not alter the planning considerations relating to the chimneys.

## **5. Publicity**

The application was advertised by neighbour letter, site notices and press advert.

The application has generated 1 letter of objection. A summary of the comments is set out below:

- Fire hazard - they have had a fire at the site previously causing extensive damage and pollution.
- Silage, hay and straw bales are stored adjacent to the site. This is a fire hazard.
- Smoke pollution will cause dangerous fumes for livestock and humans.
- We have had a constant battle with them over rubbish, dust and smoke blowing into feed stuffs and cattle sheds giving serious cattle welfare problems.

## **6. Planning Considerations**

### Principle of Development

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.

In this case, the Wiltshire Core Strategy, including those policies of the North Wiltshire Local Plan saved in the WCS, forms the relevant development plan for the Area. The National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG) are material considerations which can be accorded substantial weight.

### Application Form

The application has been submitted on a full planning application form. The Council's Minerals and Waste team have looked at the application and have provided some observations on the application. In their view the chimneys come under 'operations and uses

ancillary to the purposes of recovering, treating, storing, processing, sorting, transferring, or depositing of waste' and they believe that the application should be registered as a 'county matter' application (minerals and waste and associated developments). The applicant disagrees with this conclusion and has declined to submit a revised application form.

The application has been registered by the Council as a Full Planning Application and there is no mechanism to 'unregister' an application after the validation process has been concluded. The Council are therefore required to determine the application as submitted.

Classification of the application as a 'waste application' would not automatically make it one for the Strategic Planning Committee to determine. Under the constitution/scheme of delegation, the remit of the Strategic Planning committee is to make planning decisions on 'Planning applications for mineral extraction or waste disposal, other than small scale works which are ancillary to an existing mineral working or waste disposal facility'. As the chimneys are 'small scale works ancillary to an existing waste disposal facility', then the planning application would go to the Northern Area Planning Committee irrespective of the application form used.

Though there is disagreement over the type of application, this does not change the material planning considerations for determination due to Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004. There are no valid planning reasons for the application not to be determined.

#### Use of the Site

The applicant has now confirmed that the proposed chimneys will be linked to biomass boilers, which the applicant believes can be installed without the need for planning permission. The biomass boilers are to be installed in the 'existing waste processing building'. Planning Permission for this building was granted in 1999 (ref: N/98/2073), with extensions to it approved in 2014 and 2015.

Condition 4 of the original consent for the site (N/98/2073) restricts the use of the building to "the purpose of storing, sorting, recovery and reclamation of recyclable materials and for no other purpose".

The 'Planning Statement' explains that the biomass boilers will be incorporated into the 'picking line' which is employed to sort and separate the waste materials handled at the site, which includes wood. The boilers would be fuelled by some of this wood and "are specifically intended to produce direct heating on the site, and wood drying facilities".

Taking into consideration the views of the minerals and waste team and the submitted supporting statement, officers consider, based on the operation as described, that the applicant is correct and that the provision of the boilers does not require planning permission or represent a material change of use of the site.

#### Noise and Pollution

Taking into consideration the lawful use of the site it is considered that the proposal will not have an adverse impact on local residents and businesses in terms of noise disturbance. The development therefore accords with CP57 of the Core Strategy.

Concerns have been raised in relation to pollution and the discharge of toxins from the proposed chimneys. As set out in the consultation responses above- the public protection team have confirmed that an environmental permit would not be required if the site is operated in accordance with the details and information provided within the supporting statement.

Should a permit be required in the future this will be controlled under The Environmental Permitting (England and Wales) Regulations 2010 and falls outside of the remit of the Council's planning function. This legislation, depending on what type of license is required, will require continuous emissions monitoring, thus ensuring that acceptable quality air is maintained. As a minimum, the legislation will ensure that the boilers and chimneys are installed and operated correctly. If, during the permitting application process, it transpires that the chimney clearance above the ridge line is insufficient to meet the above regulations a new planning application may be required for any changes. If changes are required to the size and design of the chimneys any new planning application would be the subject of further public consultation.

The application is clear that it seeks consent for only the chimney and the applicant is of the opinion that the boilers, do not require consent. Officers have considered the additional information submitted with this application and are satisfied that the boilers and operation of them, as explained in the supporting information, will not require planning permission and do not constitute a material change in use of the site. However, should complaints or concerns be raised by local residents with regards to the operation of the site this will be a matter for the council to investigate at a later date and to determine if a breach of planning control has occurred. Taking into consideration the above it is considered that the proposal for the chimneys is in accordance with CP57 and CP55 of the Core Strategy.

#### Impact on amenity

To satisfy concerns raised by Councillors when refusing the previous planning application the agent has provided supporting information relating to the boilers and the operation of the site.

The submitted layout clearly demonstrates that the proposal will not result in adverse residential amenities for existing or future occupants due to the distance between the nearest residential property and the chimney. It is considered that the proposal will not have a significant adverse impact on the residential amenities of adjoining properties in terms of loss of sunlight daylight or privacy and will therefore accord with CP57 and the NPPF.

The points relating to the livestock sheds adjacent to the property and the concerns expressed by the land owner are noted. However, the installation of the boilers and use of them will be carried out in accordance with the manufacturer's instructions and it is considered that the proposal will not result in harm to the adjacent livestock business. Furthermore, the site already has an extant permission for an existing waste processing facility so an element of disturbance will already be experienced.

#### Impact on the Character and Appearance of the Area

The size and scale of the proposed chimneys is relatively minor in comparison to the existing building and only projects 2m above the existing ridge line of the building. Taking into consideration the existing site circumstances and the surrounding built development it is considered that the proposal will not have an adverse impact on the character and

appearance of the area. The proposal is considered to accord with both local and national planning policies and in particular CP57 of the Core Strategy.

### Highways

Concern has been expressed with regards to highway safety. The proposed development is for the construction of two chimneys. The two chimneys do not alter the planning status of the land or alter the permitted use of the site. The use of the site is still controlled by the planning conditions attached to the decisions referenced in section 4 above.

The number of vehicle movements to and from the site will remain the same as that permitted by the previous approvals. Should the nature of the site change in the future this will be a matter for the Council's enforcement team to investigate and take appropriate action if necessary.

The proposed development will not result in and adverse impact on highway safety and the development is therefore considered to accord with the NPPF and CP63 of the Core Strategy.

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

Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 states that "*determination must be made in accordance with the plan unless material considerations indicate otherwise*".

As set out above, the proposed development is an addition to an existing waste site and would be in accordance with both local and national planning policies and would accord with CP1, CP2, CP55 & CP57 of the Core Strategy.

Concerns have been raised in relation to the ultimate use of the site and the need for the chimneys. However, there is no requirement within the Core Strategy to demonstrate need for additions to the building. Should any internal works materially alter the use of the site this will be a matter for the Council to investigate and take action, if deemed necessary and expedient to do so.

Taking into consideration the above it is considered that planning permission for the proposed chimneys should be approved subject to conditions.

### **RECOMMENDATION**

To **GRANT** planning permission subject to 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 No development shall commence on site until details of the external finish and colour to be used on the development hereby approved has been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in the interests of visual amenity and the character and appearance of the area

- 3 The development hereby permitted shall be carried out in accordance with the following approved plans:

Site Location Plan

AB/017-02

AB/017-03

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

INFORMATIVE TO APPLICANT:

The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence.

If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

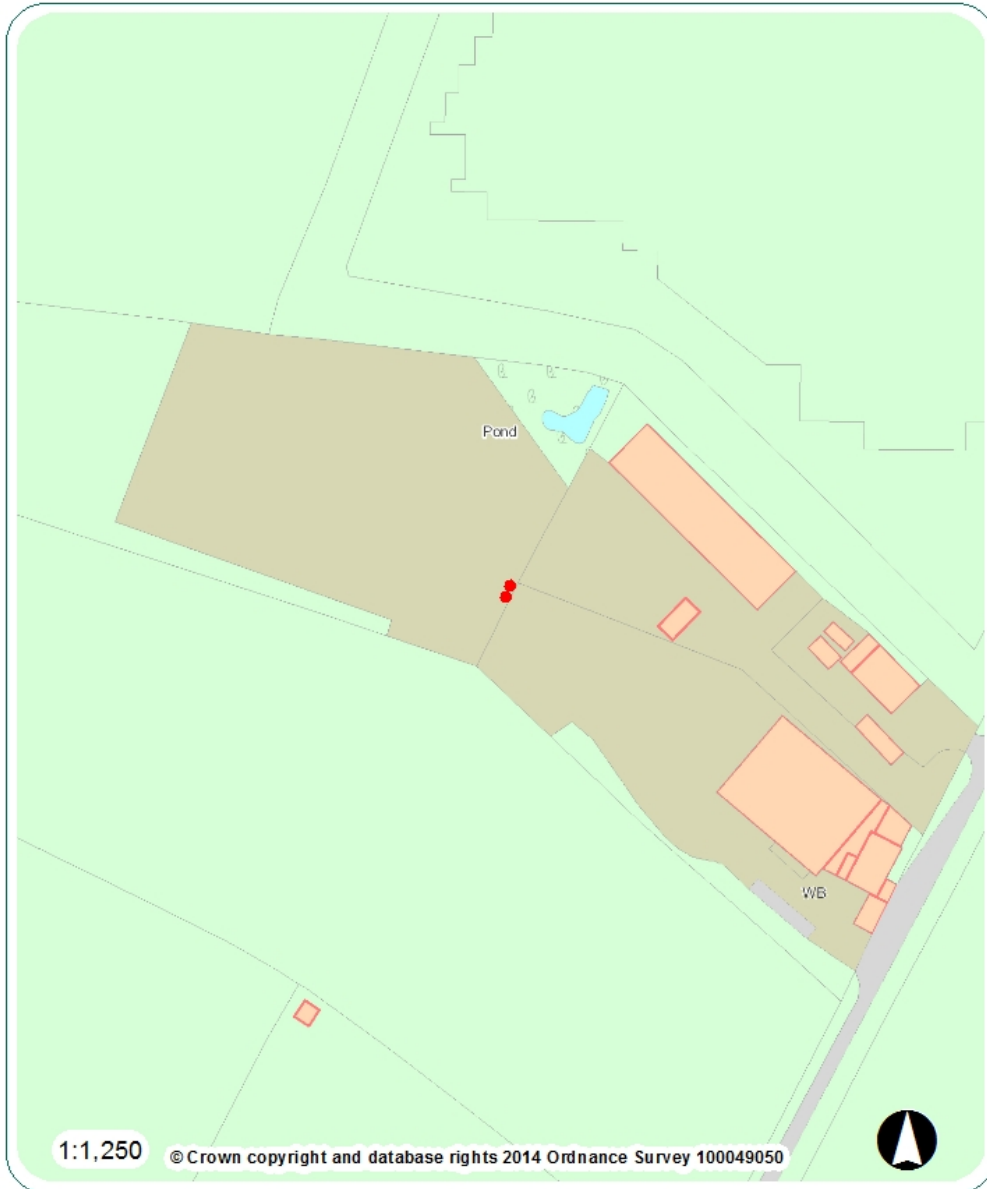
INFORMATIVE TO APPLICANT:

Please note that Council offices do not have the facility to receive material samples. Please deliver material samples to site and inform the Planning Officer where they are to be found.

INFORMATIVE TO APPLICANT:

The development relates solely to the installation of two chimneys on site. The installation of biomass boilers on site and a change in the nature of the use of the site may require a further grant of planning permission.





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## REPORT FOR NORTH AREA PLANNING COMMITTEE

Report No.

<b>Date of Meeting</b>	04 October 2017
<b>Application Number</b>	17/02820/OUT
<b>Site Address</b>	Land south of Brook Farm, Great Somerford, Chippenham, Wiltshire, SN15 5JA
<b>Proposal</b>	Outline Application for the Erection of Eight Dwellings with Access to be Determined. All Other Matters Reserved.
<b>Applicant</b>	RHK Seelig & Wolfe Securities Limited
<b>Town/Parish Council</b>	Great Somerford
<b>Electoral Division</b>	Brinkworth – Cllr T Sturgis
<b>Grid Ref</b>	396589 183126
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	Mark Staincliffe

### Reason for the application being considered by Committee

At the time of submission, this application was made by an elected member or a senior officer of the Council or their close relations. In this particular case, representations objecting to the application have been received, raising material planning considerations, and it is therefore considered appropriate for the Northern Area Planning Committee to determine this application.

### Purpose of Report

The purpose of the report is to assess the merits of the proposal against the policies of the development plan and other material considerations and to delegate authority to the Head of Development Management to **GRANT** planning permission, subject to conditions and completion of a S106 legal agreement within three months of the date of the resolution of this Committee.

In the event of failure to complete, sign and seal the required section 106 agreement within the originally defined timeframe to then delegate authority to the Area Development Manager to **REFUSE** planning permission for the following reason:-

The application proposal fails to provide and secure the necessary and required Services and infrastructure supporting the proposed residential development including Affordable Housing; Ecology and is therefore contrary to Policies CP3 CP43 & CP50, CP57 of the Wiltshire Core Strategy Adopted January 2015 and Paras 7, 14 & 17 of the National Planning Policy Framework March 2012.

### 1. Report Summary

The key issues in considering the application are as follows:

- Principle of the development.
- Impact on character and appearance of the area.

- Impact on highway safety
- Conformity with the Draft Neighbourhood Plan

Great Somerford Parish Council object to the proposed development. 8 letters have been received, all objecting to the proposed development.

## 2. Site Description

Land to the south and east of Brook Farm is approximately 0.38 ha and located to the north east of the existing village of Great Somerford. The site is bounded to the west by existing residential development, to the north by land with extant planning permission for 30 residential units and to the south and east by further agricultural land. Existing trees and hedgerows define the boundaries of the site. The site, with land directly to the north and west was previously part of an agricultural complex known as Brook Farm. The eastern part of the site is the bed of a disused railway line.

## 3. Planning History

N/04/02024/OUT	Residential Development- <b>APPROVED</b>
N/07/00252/REM	Erection of Thirty Dwellings - Approval of Reserved Matters Pursuant to Outline Permission 04.02024.OUT- <b>REFUSED</b>
N/08/01103/REM	Reserved matters for 04/02024/OUT 30 dwellings- <b>APPROVED</b>
N/09/00096/REM	Approval of Reserved Matters on Outline Permission 04/02024/OUT - Redevelopment of Site for Housing (30 Units)- <b>APPROVED</b>
13/05915/VAR	Residential development (extension of time limit for implementation of planning permission 04/02024/OUT)- <b>APPROVED</b>

## 4. The Proposal

Residential development of up to 8 dwellings with all matters reserved apart from access.

## 5. Local Planning Policy

Wiltshire Core Strategy Jan 2015:  
 Core Policy 1- Settlement Strategy  
 Core Policy 2- Delivery Strategy  
 Core Policy 13- Spatial Strategy for Malmesbury Community Area  
 Core Policy 41- Sustainable Construction and Low Carbon Construction  
 Core Policy 43- Providing Affordable Housing  
 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 61-Transport and Development  
Core Policy 63-Transport Strategies  
Core Policy 64- Demand Management  
Appendix D  
Appendix E  
Appendix G

National Planning Policy Framework 2012:

Achieving sustainable development – Core Planning Principles (Paragraphs 7 14 & 17)

Chapter 7-Requiring Good Design (Paragraphs 56, 57, 60, 61, & 64)

Chapter 8-Promoting healthy communities (Paragraph 75)

Chapter 11-Conserving and enhancing the natural environment (Paragraphs 109, 112, 118 &123)

Saved Policies of the North Wiltshire Local Plan:

NE18- Noise and Pollution

H4- Residential development in the open countryside

T5- Safeguarding

Great Somerford Neighbourhood Plan – this plan has advanced to the stage where it has been independently examined and considered to be suitable to move forward to a referendum. The plan allocates this site for approximately 8 dwellings (policy GSNP6, as amended by the Examiner). The Neighbourhood Planning Act requires the Council as local planning authority to have regard to a post-examination neighbourhood plan as a material consideration in the determination of planning applications. Although the plan has not yet been made, and therefore has not yet been tested at referendum, the weight that can be attached to it at this stage is significant as the plan including this policy has been examined and found to meet all the statutory requirements.

## **6. Summary of consultation responses**

Great Somerford Parish Council- object on the following grounds -

The present Brook Farm development site was passed on the S106 agreement that there were to be no more than 30 dwellings built. The proposed development of 8 dwellings adjoining the existing development site with access through it will in fact increase this overall site to 38 dwellings which is contrary to the initial agreement.

A proposal to develop this site has already been rejected by the Parish Council at the time of the initial development of the Brook Farm site.

The proposed development is on a green field site when there are brown field sites in the village that are available for development.

Two of the dwellings are sited on the disused railway track. This is part of the villages historic environment and was excluded from the initial development site as shown on the plans. The village wishes to keep this feature as part of its heritage in accordance with the Wiltshire core strategy 3.8 protecting and enhancing natural, historic and built environment.

The proposed development does not take into account anticipated effects of climate change with potential increase of flood events Wiltshire core policy 3.10.

Concern was also raised regarding the infrastructure ie sewerage, storm water (Frog Lane has flooding problems) and roads will be able to cope with the increase of building proposed for the village.

Wiltshire Council Drainage - Revised FRA has been received and no objection is now raised subject to conditions

Wiltshire Council Highways - No objection

Wiltshire Council Archaeology - No objection

## **7. Publicity**

The application was advertised by neighbour letter, site notices and press advert.

The application has generated 8 representations, all objecting to the proposal. A summary of the representations is set out below:

- The application should be determined at committee not under delegated powers
- Premature to grant permission, should await the outcome of the referendum
- Site outside framework boundary
- Housing not needed
- Too many houses on this site
- Traffic concerns
- Flooding issues
- No more than 10 dwellings in total should be built- Site will be for a total of 38
- Over development of the site

## **8. Planning Considerations**

### 8.1 Principle of Development

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.

In this case, the Wiltshire Core Strategy, including those policies of the North Wiltshire Local Plan saved in the WCS, forms the relevant development plan for the Area. The National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG) are material considerations which can be accorded substantial weight.

The Neighbourhood Plan has not yet gone to referendum but has been subject to a public hearing and the examiner's report has now been received. Paragraph 216 of the NPPF states:

*decision-takers may also give weight to relevant policies in emerging plans according to:*

- *the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);*

Significant weight can therefore be afforded to the neighbourhood plan as it has been examined and found to be appropriate, subject to the amendments required by the

Examiner. The full weight appropriate to a development plan cannot be afforded to the plan at this time until it has been approved at referendum.

#### Wiltshire Core Strategy CP1, CP2 and CP13 and Saved Policy H4

CP1, CP2 and CP13 deal with the broad issues of settlement strategy and delivery. Other relevant policies of the Development Plan are otherwise discussed later in the report under topic heads.

Core Policy 1 and Core Policy 2 of the WCS set the foundations for how 'sustainable development' is defined and applied in Wiltshire. The strategy recognises the importance of delivering new jobs and infrastructure alongside future housing. The delivery strategy seeks to deliver future development in Wiltshire between 2006 and 2026 in the most sustainable manner by making provision for at least 178 ha of new employment land and at least 42,000 homes.

Chippenham is identified within the WCS as one of the three Principal Settlements which act as a strategically important employment and service centres for a number of villages in the immediate area and beyond. Chippenham is to be a focus for development (Core Policy 1). The principal settlements will provide significant levels of jobs and homes, together with supporting community facilities and infrastructure meeting their economic potential in the most sustainable way to support better self containment.

Within this Policy Great Somerford is identified as a Large Village, which are defined as settlements with a limited range of employment, services and facilities. Development at Large and Small Villages will be limited to that needed to help meet the housing needs of settlements and to improve employment opportunities, services and facilities.

Paragraph 4.15 says:

*'At the settlements identified as villages, a limited level of development will be supported in order to help retain the vitality of these communities. At Large Villages settlement boundaries are retained, and development will predominantly take the form of small housing and employment sites within the settlement boundaries. These settlement boundaries will also be reviewed as part of the Housing Site Allocations DPD as set out in the Council's Local Development Scheme, in order to ensure they remain up to date and properly reflect building that has happened since they were first established.'*

Some residents are concerned that the proposal equates to more than 10 units (due to the previous approval for 30 units adjacent to the site). The reference to 10 units in the supporting text of CP1 is to "small housing sites within the settlement boundary". This does not mean that a Large Village like Great Somerford is only earmarked for 10 units in the plan period – the full text reads:

*"At Large Villages settlement boundaries are retained and development will predominantly take the form of small housing and employment sites within the settlement boundaries."*

Not only is this a "guideline" figure, it is not a total or aggregate figure for a village. There is no cap on the number of small housing sites that can come forward. Therefore a large village might be expanded by a number of smaller developments. The figure of 38 units in total is not disproportionate as far as Great Somerford is concerned. It is a large village with a wide range of facilities.

Core Policy CP2 states that development outside of the limits of development of existing settlements will only be permitted in exceptional circumstances, or if the site is identified for development through a site allocation document or a Neighbourhood Plan. The exceptional circumstances are set out in paragraph 4.25 of the Core Strategy. In this case, the site lies outside of the limits of development and would be in conflict with CP2 of the Core Strategy.

The proposal does meet one of the exceptional circumstances identified in WCS paragraph 4.25 but as the Neighbourhood Plan is well advanced and contains a policy allocating this site for development of this 'approximately 8 dwellings', it can be given significant weight.

#### 5 Year Housing Land Supply

On 3<sup>rd</sup> March 2017, the Council published an update to its 2016 Housing Land Supply Statement. This confirms that the Council can currently demonstrate a five-year supply of deliverable housing sites as well as the requisite buffer. This has been tested at several appeals, including "Forest Farm, Chippenham" and "The Grange, Hilperton" appeals.

As the Council can demonstrate a 5 year housing land supply it is considered that policies CP1 and CP2 are up to date and can be afforded full weight in the determination of the application.

#### Neighbourhood Plan

The Neighbourhood examination took place on 22 March 2017 and the subsequent report was received on 21 August 2017. The Inspector concluded that the Plan, if amended in line with his recommendations, meets all the statutory requirements including the basic conditions test and it is appropriate that the Plan, as amended, if successful at referendum, be made.

As set out above, Paragraph 216 of the NPPF states:

*decision-takers may also give weight to relevant policies in emerging plans according to:*

- *the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);*

Significant weight can now be afforded to the neighbourhood plan as it has passed the examination stage.

Policy GSNP1 allocates land for approximately 35 new dwellings on four sites. One of these sites is identified as NP4 - Land adjacent to Brook Farm suitable for approximately 8 dwellings. The application site forms part of that site. The proposed development is broadly in accordance with the specific policy GSNP6 that applies to this site and seeks a contribution of 40% affordable housing.

It is considered that the proposal would be broadly in accordance with this policy and this is a material consideration that must be afforded significant weight in the planning balance.

#### Affordable Housing

Core Policy 43 states the Council will seek to negotiate an element of affordable housing to meet local needs on all housing developments of 5 or more dwellings. The applicant has agreed to provide 40% onsite affordable housing with a 60% affordable rent and 40% shared ownership tenure split. The provision secured by the planning obligation accords with the policy and meets the relevant tests set out in the CIL regulations. The proposed



development therefore accords with Core Policy 43 and this is a matter which weighs in favour of the proposal.

#### Urban Design & Layout

The illustrative layout suggests that the level of development proposed could be satisfactorily accommodated in terms of landscape, character and visual impact, residential amenity and place making. Even with slight changes to the residential layout to accommodate space for adequate maintenance for retained and proposed trees and hedgerows, the layout would be spacious and not look out of place in the context of the street.

It is considered that the proposal results in a good indicative layout, furthermore, the Council and Neighbourhood Plan Inspector did not raise concerns to the principle of the allocation. For this reason and the reasons given above it is considered that though it would change the rural character of the area it is not so harmful as to conflict with local and national planning policies.

#### Impact on residential amenities

The application has been submitted in outline form with all matters reserved, the layout of the development is therefore not fixed. However, the applicant has submitted an indicative layout to demonstrate how the level of development may be accommodated within the site.

Having analysed the submitted plans it is considered that the development will not have a significant adverse impact on the residential amenities of adjoining properties in terms of loss of sunlight daylight or privacy. Whilst it is acknowledged that there will be an impact on the outlook from some properties, the separation between existing and proposed dwellings would be sufficient to ensure that there will not be a conflict with CP57 and the NPPF.

#### Ecology

Concerns have been raised by local residents in terms of ecological impact. The Council's ecologist has raised no objection to the proposed development and a reason for refusal based on this would be difficult to justify at appeal.

#### Flood Risk & Drainage

The Council's drainage team raise no objection to the proposed scheme, subject to conditions. It is considered that the development is acceptable with regards to this matter. The development therefore accords with Core Strategy Policy CP67.

#### S106 Contributions

The following will be required:

- A contribution for householder bin/recycling facilities (£91 per unit = £1274)
- 40% affordable housing units

#### Prematurity

PPG advice on the issue of prematurity is as follows:

*“Arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account. Such circumstances are likely, but not exclusively, to be limited to situations where both:*

- a) *the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or*

*phasing of new development that are central to an emerging Local Plan or Neighbourhood Planning; and*

*b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.” (PPG 21b/14)*

If the Examiner had come down against the proposal to allocate and develop this site for approximately 8 dwellings, then there would be sound reasons for not taking this application forward. However, given that the Inspector has found the policy to be appropriate, and given the relatively small scale of this development (8 dwellings), it is not considered that there are grounds to refuse the application for prematurity reasons.

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

It can be seen from the analysis above that the proposal sits outside the current limits of development, but on an area proposed to be allocated for approximately 8 dwellings in the Great Somerford Neighbourhood Plan, which has been examined and found to be appropriate by an independent examiner. Significant weight can be given to the Neighbourhood Plan at this stage, although not full weight as it is not yet part of the development plan. Nevertheless, refusal at this time on the grounds of being outside of the limits of development would be difficult to defend in these circumstances.

There are benefits that will be derived by granting planning permission for this development. In particular, the development would bring forward much needed market and affordable housing. Some more limited weight should also be attached to the economic benefits immediately associated with the proposal in terms of job creation and/or maintenance and spend in the local economy and new homes bonus.

Set against these benefits there is some harm to landscape and visual impact, although the area has no special landscape designation. However, it has to be acknowledged that there is likely to be development on the edge of the settlement and in this location as outlined in the neighbourhood plan. Any development on a green field site will inevitably result in some harm to landscape and visual amenity if development needs are to be met. In this case the harm is not so great as to justify refusal.

The village is a relatively thriving place, with facilities and a strong community life. Like many places, it has a problem with affordability, and with general unavailability of units. This scheme would have a positive impact on the way the settlement looks and functions, indeed the neighbourhood plan is seeking to allocate this land for residential development. Those benefits would not come at the cost of unacceptable landscape harm, harm to heritage assets or ecology.

Ultimately, granting planning permission would not damage the objectives of the development plan or disrupt any settlement hierarchies; they would not make Great Somerford noticeably less sustainable. The scheme would represent sustainable development, which the NPPF confirms there should be a presumption in favour of.

## **RECOMMENDATION**

**Subject to all parties entering into an agreement under s106 of The Act in respect of bin/recycling facilities and affordable housing, then planning permission be GRANTED, subject to the conditions set out below.**

**In the event of failure to complete, sign and seal the required section 106 agreement within the originally defined timeframe to then delegate authority to the Area Development Manager to REFUSE planning permission for the following reason:-**

The application proposal fails to provide and secure the necessary and required Services and infrastructure supporting the proposed residential development including Affordable Housing; Ecology and is therefore contrary to Policies CP3 CP43 & CP50, CP57 of the Wiltshire Core Strategy Adopted January 2015 and Paras 7, 14 & 17 of the National Planning Policy Framework March 2012.

**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.

REASON: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 2 No development shall commence on site until details of the following matters (in respect of which approval is expressly reserved) have been submitted to, and approved in writing by, the Local Planning Authority: [DELETE as appropriate]

- (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;
- (e) The means of access to the site.

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

REASON: The application was made for outline planning permission and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990 and Article 5 (1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

- 3 An application for the approval of all of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990.

- 4 All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the building(s) 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 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.

- 5 The dwellings hereby approved shall achieve a level of energy performance at or equivalent to Level 4 of the Code for Sustainable Homes. No dwelling shall be occupied until evidence has been issued and submitted to, and approved in writing by, the local planning authority certifying that this level or equivalent has been achieved.

REASON: To ensure that the objectives of sustainable development equal or equivalent to those set out in Policy CP41 of the Wiltshire Core Strategy are achieved.

- 6 No development shall commence on site until details of the works for the disposal of sewerage including the point of connection to the existing public sewer have been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be first occupied until the approved sewerage details have been fully implemented in accordance with the approved plans.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to ensure that the proposal is provided with a satisfactory means of drainage and does not increase the risk of flooding or pose a risk to public health or the environment.

- 7 No development shall commence on site until a scheme for the discharge of surface water from the site (including surface water from the access/driveway), incorporating

sustainable drainage details, has been submitted to and approved in writing by the Local Planning Authority. The development shall not be first occupied until surface water drainage has been constructed in accordance with the approved scheme.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to ensure that the development can be adequately drained.

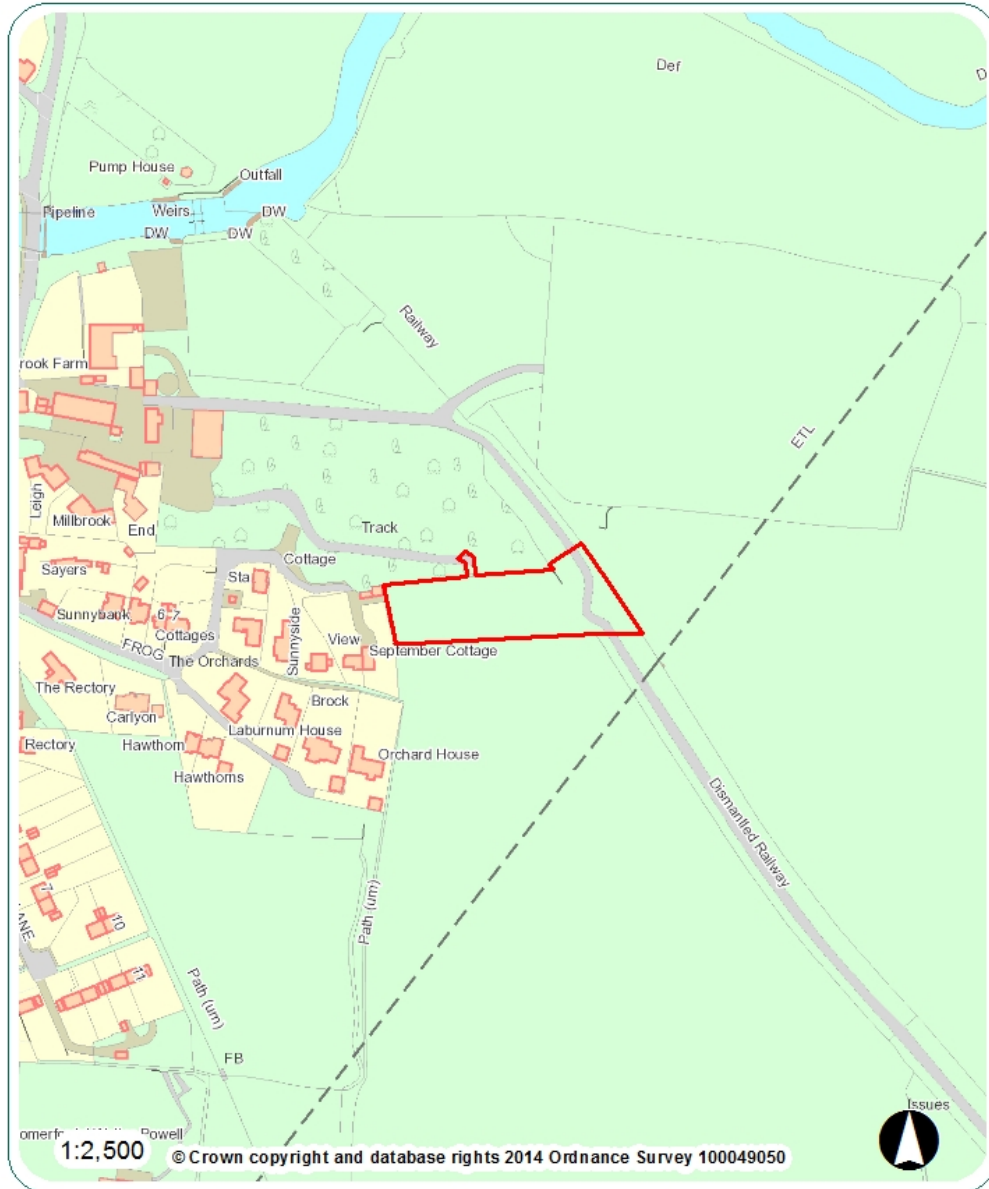
- 8 The development hereby permitted shall be carried out in accordance with the following approved plans:

UD01

Transport Statement

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

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