

AGENDA

Meeting: Northern Area Planning Committee
Place: Council Chamber - Monkton Park, Chippenham
Date: Wednesday 13 October 2010
Time: 6.00 pm

Please direct any enquiries on this Agenda to Roger Bishton, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line (01225) 713035 or email roger.bishton@wiltshire.gov.uk

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

This Agenda and all the documents referred to within it are available on the Council's website at www.wiltshire.gov.uk

Membership:

| | |
|----------------------|----------------------|
| Cllr Peter Colmer | Cllr Alan Hill |
| Cllr Christine Crisp | Cllr Peter Hutton |
| Cllr Peter Davis | Cllr Howard Marshall |
| Cllr Bill Douglas | Cllr Toby Sturgis |
| Cllr Peter Doyle | Cllr Anthony Trotman |

Substitutes:

| | |
|-------------------|--------------------|
| Cllr Chuck Berry | Cllr Simon Killane |
| Cllr Paul Darby | Cllr Mark Packard |
| Cllr Mollie Groom | Cllr Bill Roberts |

Part I

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

1. **Apologies for Absence**

2. **Minutes** (*Pages 1 - 6*)

To approve and sign as a correct record the minutes of the meeting held on 22 September 2010. (copy herewith).

3. **Declarations of Interest**

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

4. **Chairman's Announcements**

5. **Public Participation**

Members of the public who wish to speak either in favour or against an application on this agenda are asked to register in person no later than 5:50pm on the day of the meeting.

The Chairman will allow up to 3 speakers in favour and up to 3 speakers against an application. Each speaker will be given up to 3 minutes and invited to speak immediately prior to the item being considered. The rules on public participation in respect of planning applications are detailed in the Council's Planning Code of Good Practice for Members of Wiltshire Council available on request.

6. **Wildlife & Countryside Act 1981 S.53 - Rights of Way Modification Order No. 8 2004 (Sheet ST 96 NE) Heddington No. 8** (*Pages 7 - 32*)

A report by the Corporate Director, Neighbourhood & Planning is attached.

7. **Planning Appeals** (*Pages 33 - 34*)

An appeals update report is attached for information.

8. **Planning Applications** (*Pages 35 - 36*)

To consider and determine planning applications in the attached schedule.

- 8.a 10/02146/FUL - Land at Stoke Common Lane, Purton Stoke, Swindon - Stables and Arena & Create New Access (*Pages 37 - 42*)
- 8.b 10/03218/FUL - Land at Stoke Common Lane, Purton Stoke, SN5 4LJ - Stables and Menage (*Pages 43 - 46*)
- 8.c 10/02291/FUL & 10/02292/LBC - Grove Farm House, Ashton Road, Leigh, Swindon, SN6 6RF - Rear Extension & Internal Alterations (*Pages 47 - 52*)
- 8.d 10/02385/S73A - Castle Combe Circuit, Castle Combe, SN14 7EY - Variation of Condition to Allow One Day of Motor Racing on a Sunday rather than a Saturday (Renewal of 08/02453/S73) (*Pages 53 - 60*)
- 8.e 10/02409/FUL - The Knowle (Coped Hall Garage), Coped Hall, Wootton Bassett, SN4 8ES - Proposed Detached Dwellinghouse following the Demolition of a Pair of Semi-Detached Houses (*Pages 61 - 66*)
- 8.f 10/02959/FUL - 55 Bradenstoke, Chippenham, SN15 4ES - New Two Storey, Four Bedroom Residential Dwelling (Amendment to Planning Permission 08/00680/FUL) (*Pages 67 - 74*)
- 8.g 10/02960/S106 - Land at Great Middle Green Farm, The Green, Dauntsey, Chippenham, SN15 4JE - Modification of Clause 3 of Fifth Schedule to Legal Agreement associated with Planning Permission 03/02654/OUT to allow: (i) Occupation of all 19 Dwellings before Work starts on more than 2 of the Employment Units; (ii) to require Work to Commence on remaining Employment Units within 3 years of date of Variation of Agreement (*Pages 75 - 82*)

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

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

None

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NORTHERN AREA PLANNING COMMITTEE

DRAFT MINUTES OF THE NORTHERN AREA PLANNING COMMITTEE MEETING HELD ON 22 SEPTEMBER 2010 AT COUNCIL CHAMBER - MONKTON PARK, CHIPPENHAM.

Present:

Cllr Chuck Berry, Cllr Peter Colmer, Cllr Christine Crisp, Cllr Peter Davis, Cllr Peter Doyle, Cllr Alan Hill (Vice Chairman), Cllr Peter Hutton, Cllr Simon Killane and Cllr Anthony Trotman (Chairman)

Also Present:

Cllr Alan Macrae, Cllr Carole Soden and Cllr John Thomson

98. Apologies for Absence

Apologies were received from Councillors Bill Douglas (substituted by Cllr Simon Killane), Toby Sturgis (substituted by Cllr Chuck Berry) and Howard Marshall.

99. Minutes

Resolved:

To confirm and sign the minutes of the meeting held on 1 September 2010 as a correct record.

100. Declarations of Interest

There were no declarations of interest.

101. Chairman's Announcements

There were no Chairman's announcements.

102. Public Participation

Members of the public addressed the committee as set out in Minute No. 104 below.

103. **Planning Appeals**

The Committee received a report setting out:-

- (i) details of forthcoming hearings and public inquiries between 01/09/2010 and 31/01/2011.
- (ii) planning appeals received between 08/07/2010 and 09/09/2010.
- (iii) planning appeals decided between 08/07/2010 and 09/09/2010.

104. **Planning Applications**

1a **10/00426/FUL - Glen Avon, Hornbury Hill, Minety, Malmsbury, SN16 9QH - Demolition of Existing dwelling and Erection of 8 No. Dwellings, Vehicular & Pedestrian Access, Parking & Landscaping**

The Committee received a presentation by the Case Officer setting out the main issues in respect of the application, which was recommended for approval, and drew members' attention to the late items.

Members of the Committee then asked technical questions after which they received statements from members of the public expressing their views regarding this application as follows:

Mr Rhys Dunning, the owner of the neighbouring property, spoke in opposition to the application.

Mr David Neame, the agent, spoke in support of the application.

On hearing the views of Cllr Carole Soden, the local member, who spoke in support of the application and after discussion by the Committee,

Resolved:

That the application be refused for the following reason:

The proposed development does not include or bring forward adequate provision for affordable housing as is required by Policies C2 and H6 of the adopted North Wiltshire Local Plan 2011 and supporting guidance contained within the Revised Affordable Housing Supplementary Planning Guidance 2008.

1b **10/01149/FUL - The Ostlers House, 42 Pickwick, Corsham, SN13 0HY - Erection of Detached Garden Room**

The Committee received a presentation by the Case Officer setting out the

main issues in respect of the application, which was recommended for refusal, and drew members' attention to the late items.

Members of the Committee then asked technical questions after which they received statements from members of the public expressing their views regarding the application as follows:

Mrs Stella Collett, the applicant, spoke in support of the application.

On hearing the views of Cllr Alan Macrae, the local member, who spoke in support of the application and after discussion by the Committee,

Resolved:

To approve the application for the following reason:

The proposed development is appropriate in scale and detail for the proposed location and would not be detrimental to the character, appearance and setting of the listed building, neighbouring listed buildings and visual amenity of the area. The proposal preserves the character and appearance of the conservation area and accords with advice contained in the Planning (Listed Buildings and Conservation Areas) Act 1990 and Planning Policy Statement (PPS) 5 and to policies C3, HE1 and HE4 of the North Wiltshire Local Plan 2011.

And 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 building hereby permitted shall be used for purposes ancillary to residential and not for any commercial purpose.**

REASON: The additional accommodation is sited in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access, and planning policies pertaining to the area, would not permit a commercial storage operation.

POLICY – C3/H8

INFORMATIVES:

1. I033 Part site plan as existing (date stamped 24.06.10)
Part site plan as proposed (date stamped 24.06.10)
Photo of proposed summerhouse (date stamped 24.06.10)
2. The applicant is advised that the siting of the building closer to the corner of this part of the site away from the host dwelling would be welcomed.

1c **10/02546/LBC - Brook Farm, Frog Lane, Great Somerford, Chippenham, SN15 5JA - Removal of 2.0m Length of Wall**

The Committee received a presentation on behalf of the Case Officer setting out the main issues in respect of the application, which was recommended for refusal, and drew attention to the late items.

Members of the Committee then asked technical questions, after which they received a statement from Cllr John Thomson, the local member for the adjoining constituency of Sherston, who spoke in support of the application. After discussion,

Resolved:

To approve the application for the following reason:

The proposed development would not detrimentally affect the fabric of the Listed Building in accordance with Planning (Listed Buildings and Conservation Areas) Act 1990 and Planning Policy Statement (PPS) 5 and to policies C3, HE1 and HE4 of the North Wiltshire Local Plan 2011.

And subject to the following conditions:

1. The works for which Listed Building Consent is hereby granted shall be begun before the expiration of three years from the date of this consent.

REASON: To comply with the provisions of Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. No works shall commence until such time as details (scale 1:10) in respect of the new opening hereby permitted have been submitted to and approved in writing by the Local Planning Authority.

REASON: in the interests of maintaining the internal character and appearance of the Listed Building.

INFORMATIVES:

**I033 A4 site Plan and Ground floor plan received 21.7.2010;
1.20, 4.02, 5.01, 5.03, 6.02**

105. **Urgent Items**

There were no urgent items.

(Duration of meeting: 6.00 - 7.15 pm)

The Officer who has produced these minutes is Roger Bishton, of Democratic Services, direct line (01225) 713035, e-mail roger.bishton@wiltshire.gov.uk

Press enquiries to Communications, direct line (01225) 713114/713115

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WILTSHIRE COUNCIL

NORTHERN AREA PLANNING COMMITTEE
13 OCTOBER 2010

WILDLIFE AND COUNTRYSIDE ACT 1981 S.53
RIGHTS OF WAY MODIFICATION ORDER NO.8 2004
(SHEET ST 96 NE) HEDDINGTON NO.8

Purpose of Report

1. To:
 - (i) Seek approval to forward The Wiltshire County Council (Sheet ST 96 NE)(Heddington No.8) Rights of Way Modification Order No.8 2004, upgrading footpath No.8 Heddington to a byway open to all traffic, to the Secretary of State for The Environment, Food and Rural Affairs, with a recommendation to modify and confirm the Order to show path Heddington 8 as a restricted byway.

Background

2. The plan at **Appendix A** shows the location of path Heddington 8. Heddington 8 leads from Church Farm, Heddington, approximately west, north-west and south to its junction with bridleway Bromham 53 and byways open to all traffic Bromham 17 and 49.
3. In February 2002 the Wiltshire Bridleways Association applied to Wiltshire County Council for an Order to modify the definitive map to show the route of Heddington 8 as a bridleway. The application was based upon evidence of use of the path by the public on horseback for a period of 20 years or more without interruption and 'as of right'. 13 user evidence forms and plans showing the claimed route were submitted.
4. During the course of investigating all available evidence (which includes historical documents) officers discovered that higher rights than bridleway subsisted on path Heddington 8 and that the route had been an old road. It is the Council's duty to make a modification Order as soon as reasonably practicable after this discovery and an Order recognising these rights was made and sealed on the 8 January 2004.
5. A copy of the Order is included at **Appendix B**.
6. The officer's decision report is included at **Appendix C**.
7. Following the making of the Order, a formal objection period of six weeks (from 15 January 2004 to 1 March 2004) was given, during which time objections and representations to the Order could be made. The Order received one representation supporting the Order and one objection opposing the Order. The objection has subsequently been withdrawn.
8. Correspondence was also received from the parish council, neighbouring landowners and residents of Heddington expressing concern regarding the making of an Order to record a byway open to all traffic.

9. Officers met the parish council and concerned residents on the 3 February 2004 and explained the legal tests set out under Section 53 of the Wildlife and Countryside Act 1981. It was explained that the Wildlife and Countryside Act 1981 does not allow for factors like desirability, safety or need to be taken into account but that it was open to anyone to challenge the Council's interpretation of the evidence or to adduce new evidence.
10. It was also explained that the application submitted by the Wiltshire Bridleways Association had acted as a trigger to investigate Heddington 8 and once evidence had been discovered that the definitive map was in error, the Council had no option open to them other than to make an Order under Section 53 of the Wildlife and Countryside Act 1981 as it is the Council's statutory duty and a matter in which the Council has no flexibility.
11. Residents pointed out that the nature of the path was such that it could not be used by vehicles, i.e. it was in a very bad condition and it had badger sets underneath the way and was overgrown in places. In the light of the representations made at this meeting, and in general correspondence, officers agreed to conduct a public consultation into the possibility of placing a Traffic Regulation Order (made under Section 1 of the Road Traffic Regulation Act 1984) on the route which would have excluded motorised vehicles driven by the public.
12. A public consultation of the proposed Traffic Regulation Order was carried out between 27 January 2005 and 28 February 2005. A number of responses, both in support of and opposed to, the proposed Traffic Regulation Order were received. During this time the Definitive Map Modification Order to record the route as a byway open to all traffic, even though it was capable of being confirmed by the Council, was left unconfirmed.
13. The case officer did not progress to submitting a report to the then member with delegated authority (Cabinet Member for Environment, Transport and Economic Development) for making these decisions and on 2 May 2006 new legislation came into effect which affected the Definitive Map Modification Order to record Heddington 8 as a byway open to all traffic.
14. The new legislation that was enacted on 2 May 2006 is the Natural Environment and Rural Communities Act 2006 (NERCA 2006). Although detailed later in this report, Section 67(1) extinguished the public's right to take a mechanically propelled vehicle over any way which was not, as of 2 May 2006, recorded in the definitive map and statement as a byway open to all traffic. This extinguishment was subject to a number of exemptions.
15. Since, as the Order had not been confirmed, and as Heddington 8 was not recorded as a byway open to all traffic in the definitive map and statement on 2 May 2006, officers had to consider whether any of the exemptions to the extinguishment of vehicular rights applied before the Order could be confirmed.
16. In addition to the case officer's investigations as to whether any exemptions applied, a public consultation was carried out between 17 March 2009 and 20 April 2009 to see if any other information relating to the saving of mechanically propelled vehicular (MPV) rights would be adduced.
17. Respondents gave evidence of use of the route by horses, walkers and farm vehicles but no evidence of use by the public in mechanically propelled vehicles or suggestion that historic vehicular rights had been saved was brought to the Council's attention.

18. A public right of way which had public vehicular rights before 2 May 2006 but which had them extinguished for MPVs by NERCA 2006 should be recorded in the definitive map and statement as a restricted byway. On a restricted byway the public has a right of way on foot and on horseback or leading a horse. Additionally, the public have a right of way in vehicles that are not mechanically propelled. This preserves a right of way for pedal cyclists and drivers of horse drawn vehicles.

Main Considerations for the Council

19. The Application was made under Section 53 of the Wildlife and Countryside Act 1981 which places the Surveying Authority under a duty to keep the definitive map and statement under continuous review. Section 53 (2) states:

“As regards every definitive map and statement, the Surveying Authority shall-

- (a) as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and*
- (b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.”*

20. The event in sub-section 3 referred to above is:

- “(3) (c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows-*
- (ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description...”*

21. To recap - the application was originally to upgrade the path to a bridleway only, based on evidence of use of the route on horseback for a period of 20 years or more without interruption. However, upon examining historical documents the Surveying Authority found evidence of vehicular rights on the way and therefore made a modification Order to record the route as a byway open to all traffic, under Section 53 (3) (c) (ii) of the Wildlife and Countryside Act 1981.

22. The Natural Environment and Rural Communities Act came into effect on 2 May 2006 and Section 67 had the effect of extinguishing unrecorded vehicular rights except in certain circumstances, as follows:

- “(1) An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement-*
- (a) was not shown in a definitive map and statement, or*
- (b) was shown in the definitive map and statement only as a footpath, bridleway or restricted byway.*

But this is subject to subsection (2) to (8).”

23. Therefore, as path no.8 Heddington is recorded only as a footpath in the definitive map and statement, unrecorded vehicular rights were extinguished, unless an exemption listed at sub-sections 2-8 applies.

Subsection (3) states:

“Subsection (1) does not apply to an existing public right of way over a way if-

- (a) before the relevant date, an application was made under Section 53(5) of the Wildlife and Countryside Act 1981 (c.69) for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic,*
- (b) before commencement, the surveying authority has made a determination under paragraph 3 of Schedule 14 to the act in respect of such an application, or*
- (c) before commencement, a person with an interest in the land has made such an application and, immediately before commencement, use of the way for mechanically propelled vehicles –*
 - (i) was reasonably necessary to enable that person to obtain access to the land, or*
 - (ii) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had had an interest in that part only.*

(4) “The relevant date” means-

- (a) in relation to England, 20 January 2005...”*

24. Although the application was made before the relevant date of 20 January 2005, it is not an application of the nature specified as sub-section (3)(a) which states that for there to be a valid NERC exemption, the application must be made under Section 53(5) of the Wildlife and Countryside Act as an application to show the way as a byway open to all traffic. Vehicular rights on path no.8 Heddington are not protected under NERC as the application was made originally for a bridleway only, therefore there is no protection of MPV rights under (3)(a). Additionally, the Surveying Authority used its own powers to make the Order upgrading the path to a full byway open to all traffic, not acting on the application.

25. At sub-section (3)(b), again, the saving only applies to ‘such an application’ that is an application for byway open to all traffic and not bridleway, as in this case.

26. Therefore Officers consider that the route cannot be shown as a byway open to all traffic based on NERCA 2006 saving (67)(3)(a) or (b).

27. It has also been necessary for the Council to consider other NERCA exemptions which may be relevant in this case:

Sub-section (2) of Section 67 states:

“Subsection (1) does not apply to an existing public right of way if-

- (a) it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use with mechanically propelled vehicles,*

- (b) *immediately before commencement it was not shown in the definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c.66) (list of highways maintainable at public expense),*
- (c) *it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles,*
- (d) *it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles, or*
- (e) *it was created by virtue of use by such vehicles during a period ending before 1 December 1930.”*

Also under sub-section (3)(c):

“before commencement, a person with an interest in land has made such an application and, immediately before commencement, use of the way for mechanically propelled vehicles-

- (i) *was reasonably necessary to enable that person to obtain access to the land, or*
- (ii) *would have been reasonably necessary to enable that person to obtain access to a part of that land if he had had an interest in that part only.”*

28. Heddington 8 does not meet any of the exemptions listed (a) to (e) inclusive, nor was it the subject of an application received by someone with an interest in the land.

Environmental Impact of the Recommendation

29. Section 53 of the Wildlife and Countryside Act 1981 does not provide for consideration of issues relating to the environment. However, officers note that the application was based on use going back for over 20 years by horse riders and it is considered likely that use will be continuing as before.

Risk Assessment

30. Section 53 of the Wildlife and Countryside Act 1981 does not provide for consideration of issues relating to health and safety.
31. This Order has attracted no objections and although it must now be sent to the Secretary of State for determination (as the Council has no power to modify an Order) the change to restricted byway is unlikely to attract objection as a significant amount of public consultation has already been undertaken.

Financial Implications

32. The determination of Definitive Map Modification Orders and the continual review of the definitive map are statutory processes for which financial provision has been made.
33. If the route is upgraded to restricted byway the highway authority is not placed under a specific duty to produce a suitable surface for use on horseback or for non-mechanically propelled vehicles. However, the authority is placed under a duty to ensure that the route is safe for use by the general traffic of the area and has a duty to maintain the surface of the highway to that extent.

Options Considered

34. Officers have considered the exemptions under NERCA 2006 which could preserve unrecorded vehicular rights and have concluded that none apply. The officers consider that the Order to record a byway open to all traffic can therefore no longer be confirmed and should be amended to record the route as a restricted byway only.
35. If members consider that public vehicular rights have been saved then the Order may be confirmed as a byway open to all traffic by Wiltshire Council as there are no extant objections.

Reasons for Recommendation

36. Officers consider that the public right to drive a mechanically propelled vehicle along Heddington 8 was been extinguished by Section 67(1) of NERCA 2006 on 2 May 2006.
37. However, higher rights still exist that are different to those shown in the definitive map and statement and the Council has a duty to record these, i.e. that the way should be recorded not as a footpath or bridleway but as a restricted byway.

Recommendation

38. That the Wiltshire County Council, Rights of Way Modification Order no.8 2004 (Sheet ST 96 NE)(Heddington no. 8), is forwarded to the Secretary of State for the Environment Food and Rural Affairs with the recommendation that the Order be modified to record the route as a restricted byway.

MARK BODEN

Corporate Director

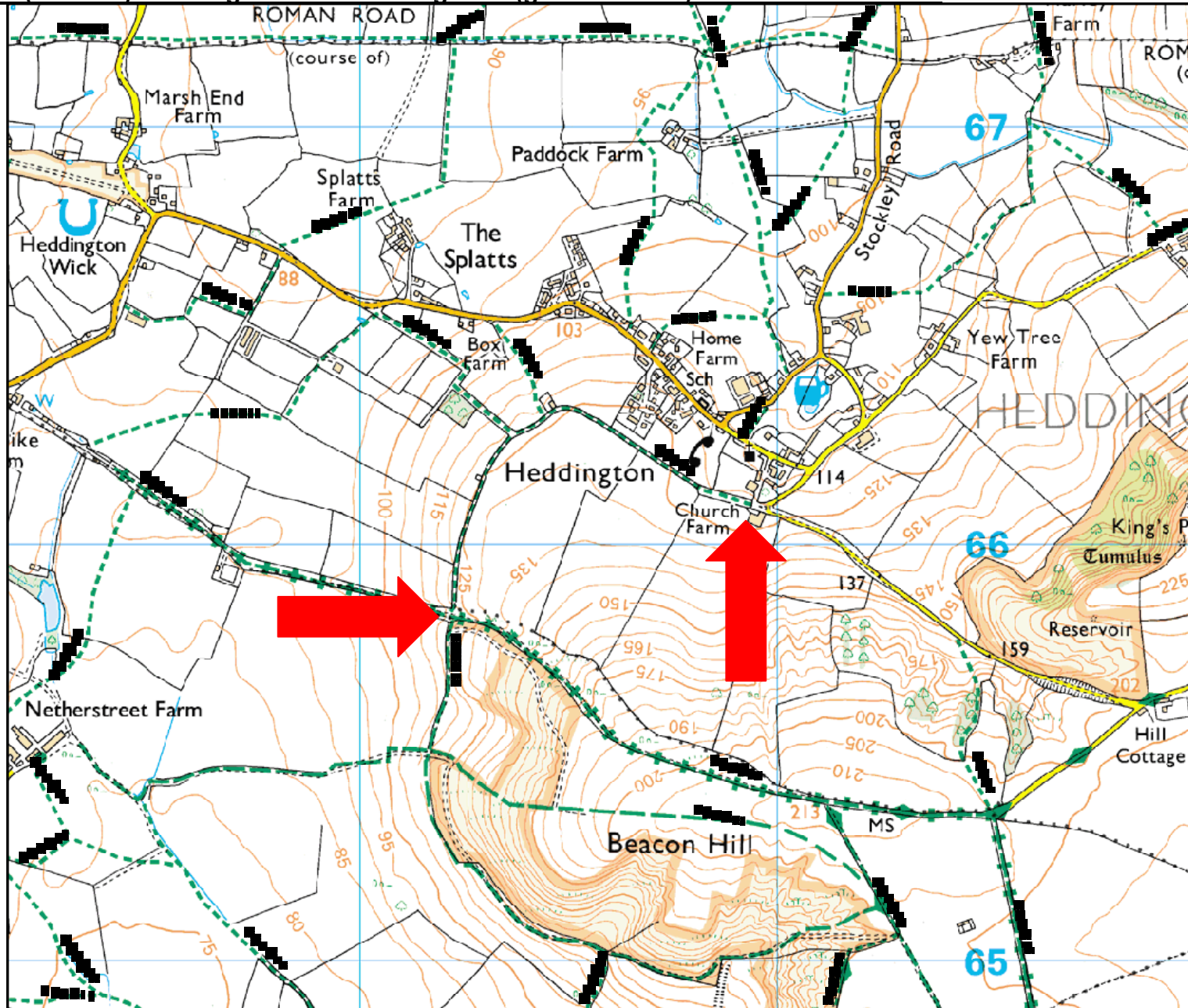
Report Author

Sally Madgwick

Rights of Way Officer

The following unpublished documents have been relied on in the preparation of this Report:

None



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WILDLIFE AND COUNTRYSIDE ACT 1981

THE CALNE AND CHIPPENHAM RURAL DISTRICT COUNCIL
DEFINITIVE MAP AND STATEMENT 1953
AS MODIFIED UNDER THE PROVISIONS OF
THE WILDLIFE AND COUNTRYSIDE ACT 1981

THE WILTSHIRE COUNTY COUNCIL
(SHEET ST 96 NE), (HEDDINGTON NO.8)
RIGHTS OF WAY MODIFICATION ORDER NO.8, 2004

This Order is made by Wiltshire County Council under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the Act") because it appears to that authority that the Definitive Map and Statement for the Calne and Chippenham Rural District Council area dated 1953, as modified under the provisions of the Wildlife and Countryside Act 1981, requires modification in consequence of the occurrence of an event specified in Section 53(3)(c)(ii), namely, the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.

The authority have consulted with every local authority whose area includes the land to which the Order relates.

The Wiltshire County Council hereby order that:

1. For the purposes of this Order the relevant date is 8th January 2004.
2. The Definitive Map and Statement for the Calne and Chippenham Rural District Council area dated 1953, as modified under the provisions of the Wildlife and Countryside Act 1981, shall be modified as described in Part I and Part II of the Schedule and shown on the map attached to the Order.
3. This Order shall take effect on the date it is confirmed and may be cited as the Wiltshire County Council (Sheet ST 96 NE) (Heddington No.8) Rights of Way Modification Order no.8, 2004.

THE COMMON SEAL of)
THE WILTSHIRE COUNTY COUNCIL)
was hereunto affixed this)
8th day of January 2004.)
In the presence of:

JR Gibbon
Assistant Solicitor to the County Council



SCHEDULE

PART I

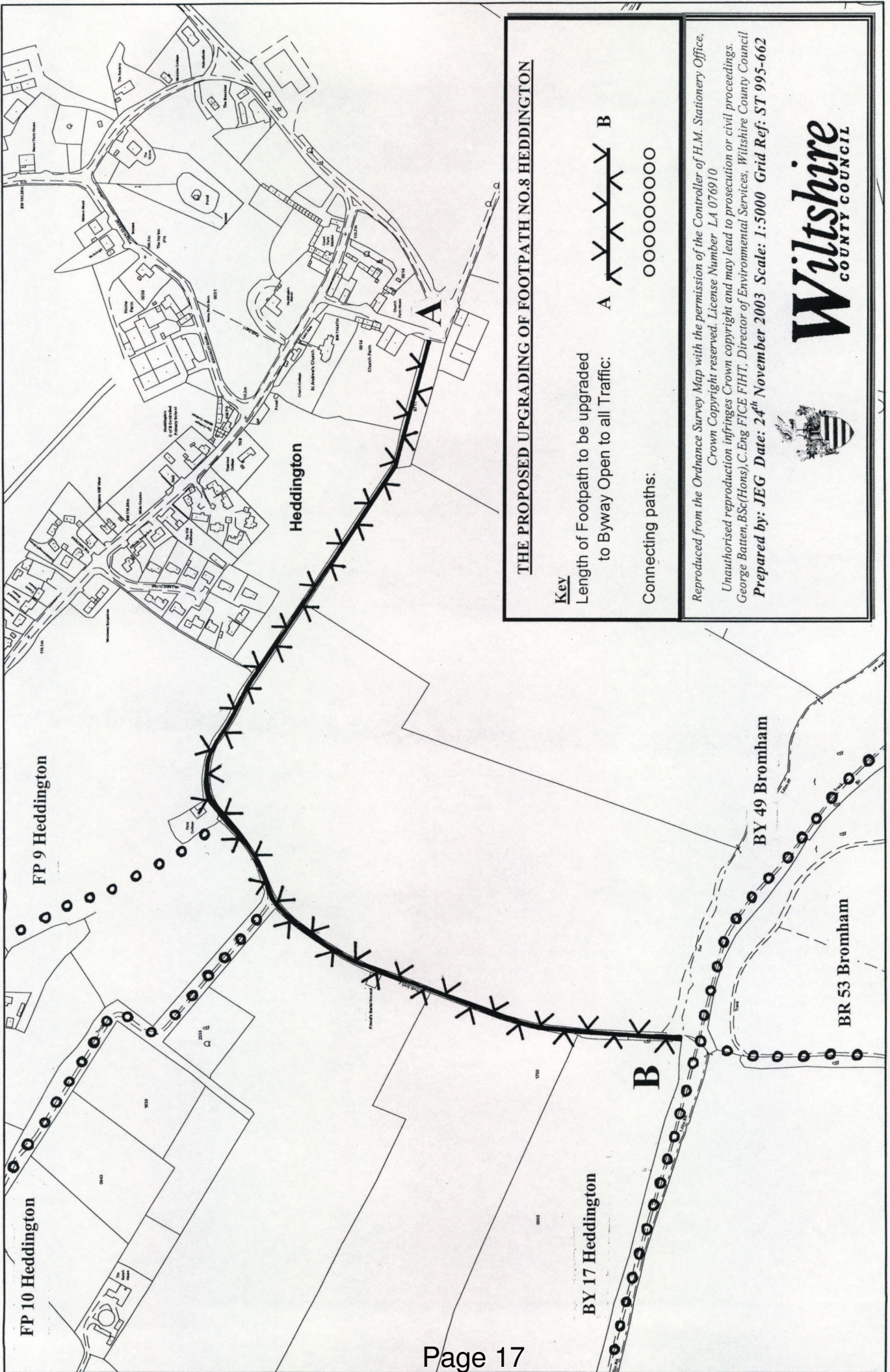
Modification of Definitive Map

| <u>Parish</u> | <u>Path No.</u> | <u>Description of way to be upgraded</u> | Modified under Section 53 (3) as specified |
|---------------|-----------------|--|--|
| Heddington | FP 8 | That length of footpath, as shown on the attached plan by a bold continuous line with arrowheads alternately above and below the line, leading from point A at OS Grid Reference ST 9993-6610, south of Church Farm, leading generally north-west for approximately 500 metres, before continuing south-west for approximately 180 metres and then leading generally south for approximately 420 metres to point B at OS Grid Reference ST 9922-6582, at the Bromham Parish Boundary, to be upgraded to byway open to all traffic. | 53 (3) (c) (ii) |

PART II

Modification of Definitive Statement

| <u>Parish</u> | <u>Path No.</u> | <u>Variation of particulars of path or way</u> (modified statement to read) | Modified under Section 53 (3) as specified |
|---------------|-----------------|---|--|
| Heddington | BY 8 | <u>BYWAY</u> . From its junction with road U/C 006602, south of Church Farm, leading generally north-west for approximately 500 metres, before continuing south-west for approximately 180 metres and then leading generally south for approximately 420 metres to the Bromham Parish Boundary, at its junction with path no.17 Heddington and path no's 49 and 53 Bromham. Approximate length: 1.1 km | 53 (3) (c) (ii) |



THE PROPOSED UPGRADING OF FOOTPATH NO.8 HEDDINGTON

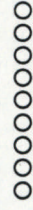
Key

Length of Footpath to be upgraded
to Byway Open to all Traffic:



A

Connecting paths:



B

Reproduced from the Ordnance Survey Map with the permission of the Controller of H.M. Stationary Office,
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George Batten, BSc(Hons), C.Eng FICE FIHT, Director of Environmental Services, Wiltshire County Council
Prepared by: JEG Date: 24th November 2003 Scale: 1:5000 Grid Ref: ST 995-662



Wiltshire
COUNTY COUNCIL

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WILTSHIRE COUNTY COUNCIL

MODIFICATION ORDER DECISION REPORT

(DRAFT FOR FILE ONLY, COMMITTEE APPROVAL NOT REQUIRED –
DELEGATED POWERS TO MAKE ORDER)

December 2003

HEDDINGTON: FOOTPATH NO.8

Purpose of Report

1. To inform members of the historical and documentary evidence relating to the status of Heddington Footpath no.8 and seek approval to make a Modification Order under Section 53 of the Wildlife and Countryside Act 1981, to upgrade the path to Byway Open to all Traffic, as shown on the attached plan.

Background

2. Wiltshire County Council received an application to upgrade Footpath no.8 Heddington, to a bridleway, dated 4th February 2003, from the Wiltshire Bridleways Association. The application was supported by 13 witness evidence forms to support the fact that the path had been used on horseback for a period of 20 years or more. None of the users had ever been challenged and had only ever asked permission at the time of Foot and Mouth crisis. Users believed that the land owner was aware of the use of the way by horse riders.
3. A site visit to the path was made by Wiltshire County Council on 12th February 2003. Evidence of use by horses was found, as well as evidence of farm vehicles using the first, wider section, of the path to gain access to the fields. Farm vehicles were also found to be using part of Footpath no.10, to gain access to a field further along path no.8, Heddington. At Field Cottage cars were parked on the footpath, alongside the cottage. The path is approximately 2-2.5m wide in places, narrowing to approximately 1.5m at the most overgrown parts. It is a clear track, enclosed within hedges. There are three existing gates: one at the Church Farm entrance (with stile alongside), one halfway along first, widest part, and one near Field Cottage.
4. An initial consultation regarding the application to upgrade the footpath to a bridleway was undertaken on 11th June 2003, to which no objections were received. The Trail Riders Fellowship advised that the historical

evidence pointed to byway status and one of the land owners, who had completed a land owner witness evidence form, also believed the correct status of the path to be byway open to all traffic.

5. Wiltshire County Council have now investigated the historical evidence submitted with the application and further evidence. It has been discovered that the evidence supports the existence of vehicular rights upon the way, on the balance of probabilities.
6. Wiltshire County Council are therefore proposing to make a Definitive Map Modification Order under Section 53 of the Wildlife and Countryside Act 1981, to upgrade the path to a byway open to all traffic, based on the available historical evidence. The documentary evidence overwhelmingly points towards byway status, even though the user evidence claims that the path is a bridleway. Once vehicular rights can be alleged to exist, on the balance of probabilities, Wiltshire County Council, as the Surveying Authority, has a statutory duty to record these rights.

Evidence Relating to the Status

7. Officers have examined historical evidence relevant to the assessment of the status of the right of way.
8. Section 32 of the Highways Act 1980, states that:

“...A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced...”

9. The Surveying Authority must apply three tests to the available documents:
 - i) Why were the documents compiled?
 - Did the recording of the highway have a legal significance?
 - ii) How were the documents compiled?
 - The compilation process
 - Public participation
 - Accuracy (i.e. was the map surveyed accurately?)
 - iii) Who compiled it?

- What were the consequences for the compiler's rights/duties of including or not including a public right of way?
 - What were the consequences for the rights/duties of others?
 - Were there any declarations against the compiler's interest?
 - Were there any sanctions for falsifying evidence?
10. Heddington Inclosure Award of 1767 – the map shows the eastern section of the route, set out within the award itself and mentioned within the individual allotment descriptions. The rest of the route is believed to be pre-inclosure and survives this process.
 11. Andrews' & Dury's Map of 1773 - shows the whole route from the Parish Boundary to the Church. The route is shown by solid and broken lines to suggest bounded and unbounded parts.
 12. Patersons Itinerary of 1785 is a small scale map - the route is shown, in full, by double solid lines. It is unlikely that this map will show routes lower than byway status, due to the constraints of the small scale.
 13. Robertsons Topographical Survey of 1792 – the route is shown in full from the Church to the Parish Boundary, by a broken line to the south and a solid line to north, denoting bounded and unbounded parts. Again, small scale maps can only show major routes.
 14. Map of Estate belonging to Nicholas Pearse Esq. 1801 - whole route is shown, shaded brown. Solid and broken lines denote bounded and unbounded parts and the awarded section is shown to be wider than the section to the west and bounded by hedges on both sides.
 15. OS Drawing, 1808 - route shown in full, bounded and unbounded parts denoted by solid and broken lines.
 16. OS Old Series, 1817 - whole route shown, bounded and unbounded parts denoted.
 17. Greenwoods Map, 1820 - whole route shown by double broken lines as unbounded. Small scale maps can only show major routes, due to the constraints of scale.
 18. Colt Hoare's Map of 1821 - whole route shown by double solid lines. Small scale maps can only show major routes.

19. Cary's Map of 1832 – whole route shown by double broken lines, suggesting an unbounded route. Again, due to the constraints of the small scale of the map, bridleways and footpaths are unlikely to be shown.
20. Map of the parish of Heddington belonging to Brice Pearse Esq. 1835 - whole route shown, hedged on either side. The awarded section is shown wider than the route to the west.
21. Heddington Tithe Award Map, 1841, certified copy of the map referred to in the apportionment – whole route shown uncoloured apart from awarded section which is very slightly tinted brown. The awarded section is shown wider than the route to the west. The edges of the route are coloured brown or green as the boundaries of the numbered allotments. The road itself is not numbered and is not referred to in apportionment itself.
Roads = a10 r1 p20
Roads and Waste = a39 r2 p31
22. Bromham Tithe Award, 1847, certified to be the map referred to in the apportionment - shows the southern section of route, coloured brown and labelled "*to Heddington*".
23. OS Map, 6 inch, Sheet no XXXIV, 1889 - the western section of the route is shown by double solid lines, as a fenced, main road according to the key. The awarded section is shown in rough pasture and as an unfenced, minor road. This could denote the area of highway waste and the area of carriageway itself.
24. OS Second Edition Map, 25 inch, Sheet no XXXIV – I, 1900 - the western section of the route is shown by double solid lines, bounded on either side. The awarded section is shown wider than the western part of the route, again differentiating between the area of highway waste and the carriageway itself.
25. Finance Act and Map, 1910 - Map is based on 1900 OS Second Edition Map, 25 inch (as above) – route shown uncoloured and not numbered, as are other known roads. Footpaths (from base map) are included within the colouring of the appropriate plot, suggesting that Heddington no.8 is higher in status than a footpath. Within the "Valuation Book for the Parish or Place of Heddington" deductions are made for "Public Rights of Way or User". Heddington 8 is surrounded by plot no's 8,14,15,19,21,25,28,39,46,56,115,120 and 128. Only plot no's 8,19,25,28,56 and 128 have deductions for rights of way, but if this related to Heddington path no.8, all plots would all have deductions. The fact that the route is not coloured suggests that it is a public carriageway, already excluded from the individual plots, as having no value for tax purposes.

26. Church Farm Sale Particulars, 1911 - Lot 6 – “Lane” with friends burial ground.
27. OS Edition of 1924, 25 inch, Sheet no XXXIV – I, 1924 – the western section of the route is shown by double solid lines, suggesting that it is bounded on both sides. The awarded section is shown wider than the rest of the route, again differentiating between the highway waste and the carriageway itself.
28. OS Edition of 1926, 6 inch, 1926 – the western section of path no.8 is shown by double solid lines, suggesting that this part of the route is bounded on both sides. The awarded section is shown wider than the rest of the route and the area of highway waste is shown separately from the carriageway itself. Bridleways and footpaths are labelled separately. Path no.8 is not labelled as either, suggesting that it is a public carriageway, like the Turnpike Road.
29. Devizes Rural District Council Minutes, January 1934, “List of Unmetalled Lanes or Tracks which are Public Highways” – at Bromham 3, “Bridletrack” refers to the track from Beacons Hill to Heddington “via Hitching Lane” which is Bridleway no.53. Path no.8 Heddington, is separately referred to as “Hitching Lane”.
30. Parish Claim, 1950 Survey - no objections recorded, referred to as a “Green Road”. In the final statement “BR” is crossed out and replaced by “FP”.
31. Victoria County History – route shown on map, as at 1841, by double solid lines, suggesting a route bounded on both sides. In the eighteenth century the Devizes Road led north/south across the village in the west. Part of the north/south course was replaced by Hitching Lane, c.1713, apparently to force the Calne/Devizes traffic to pass through a turnpike gate on the London to Bath Road.

Legal Points to Consider

32. Section 53 of the Wildlife and Countryside Act 1981, places on the County Council, as the Surveying Authority a duty, not a discretionary power, to keep the Definitive Map and Statement under continuous review as follows (Section 53(2)(b)):

“As regards every Definitive Map and Statement, the surveying authority shall:-

(b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence on or after that date of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.”

33. The events referred to in Section 53(2)(b) above which are relevant to this case are as follows:

“(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows:-

(ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.”

34. “Ought to be there shown” places the burden of proof on the balance of probabilities. If the evidence is sufficient to enable it to be reasonably alleged that Footpath no.8 Heddington enjoys vehicular rights, a Modification Order should be made under Section 53 of the Wildlife and Countryside Act 1981.

35. Section 56 of the 1981 Act states that the definitive map is conclusive evidence of the public rights of way shown, but this is without prejudice to higher rights, as follows:

“(1) A definitive map and statement shall be conclusive evidence as to the particulars contained therein to the following extent, namely-

(b) where the map shows a footpath, the map shall be conclusive evidence that there was at the relevant date a highway as shown on the map, and that the public had thereover a right of way on foot, so however that this paragraph shall be without prejudice to any question whether the public had at that date any right of way other than that right.”

Options Considered

36. Officers have carefully examined the historical evidence which, on the balance of probabilities, supports the existence of vehicular rights on Footpath no.8 Heddington. We therefore have no option open to us, as the Surveying Authority, other than to make an order under Section 53 of the Wildlife and Countryside Act 1981, as this is our statutory duty, a matter in which we have no flexibility.

Recommendation

37. That a Modification Order be made under Section 53 of the Wildlife and Countryside Act 1981, to upgrade Footpath no.8 Heddington to a Byway Open to all Traffic.

Reason for Recommendation

38. To comply with the County Council's statutory duties to record vehicular rights on a path, where historical evidence has been discovered to suggest that vehicular rights can be alleged to exist, on the balance of probabilities.

George Batten
Director of Environmental Services

Report Author
Janice Green

The following unpublished documents have been relied upon in the preparation of this report:

None.

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Wiltshire Council – Area North

Planning Committee

13th October 2010

Forthcoming Hearings and Public Inquiries between 13/10/2010 and 31/01/2011

| Application No | Location | Parish | Proposal | Appeal Type | Date |
|----------------|---|---------------|---|------------------|------------|
| 09/01315/CLE | OS 7400, Hicks Leaze, Chelworth, Lower Green, Cricklade | Cricklade | Use of Land for Storage and Dismantling of Cars, Vans, Lorries, Plant and Machinery for Export and Recycling; Siting of One Caravan for Residential Use | Public Inquiry | 11/01/2011 |
| 09/01791/FUL | LONG BARROW ROAD, CALNE, WILTSHIRE SN11 OHE | Calne | Residential Development comprising 29 Units including 2 Storey Houses and Flats and Single Storey Bungalows. Provision of Pedestrian & Vehicular Access & Parking & Public Open Space, Tree Protection Measures and Oil Pipeline Easement | Informal Hearing | 30/11/2010 |
| 09/01926/FUL | Common Farm House, Quemerford, Calne, Wilts. SN11 8UB | Calne Without | Conversion of Barn 3 to Single Dwelling (Including Partial Reconstruction) - Retrospective | Informal Hearing | 27/10/2010 |
| 09/01992/FUL | 3 ACRES, CASTLE COMBE ROAD, GRITTLETON, WILTSHIRE, SN14 7LB | Grittleton | Change of Use of Land from Stables, associated Grazing Land and Hardstanding to Greyhound Kennels and Temporary Siting of Touring Caravan to be used in conjunction with Kennels. | Informal Hearing | 26/10/2010 |
| 09/02062/S73A | NABLES FARM, UPPER SEAGRY, CHIPPENHAM, SN15 5HB | Seagry | Retention of Existing B2 & B8 Uses, Alterations to Access and Proposed Landscaping | Informal Hearing | 06/01/2011 |

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Planning Appeals Received between 09/09/2010 and 01/10/2010

| Application No | Location | Parish | Proposal | DEL or COM | Appeal Procedure | Officer Recommendation |
|----------------|--|----------------|--|------------|-------------------------|------------------------|
| 10/01232/FUL | Land off B4696, Flaxlands, Wootton Bassett, Wiltshire | Lydiard Tregoz | Erection of Agricultural Building Including Hardstanding and Repositioning Field Gate | DEL | Written Representations | Refusal |
| 10/01657/FUL | Land at Chelwoth Lodge, Cricklade, Swindon, Wiltshire, SN6 6HP | Cricklade | Change of Use of Land to Accommodate 16no. Gypsy and Traveller Pitches and Associated Works. | DEL | Public Inquiry | Refusal |

| | | | | | | |
|--------------|---|-------------------|---------------------------------------|-----|-------------------------|---------|
| 10/01769/FUL | Yew Tree Cottage, East End, Brinkworth, Wiltshire, SN15 5EE | Brinkworth | Garage Accomodation | | Written Representations | Refusal |
| 10/01785/FUL | The Saladin, The Hill, Little Somerford, Wiltshire, SN15 5JP | Little Somerford | Change of Use of Pub to Two Dwellings | DEL | Informal Hearing | Refusal |
| 10/02137/FUL | ESSBEE, STATION ROAD, CHRISTIAN MALFORD, CHIPPENHAM, SN15 4BG | Christian Malford | Rear Single Storey Extension | DEL | Written Representations | Refusal |

Planning Appeals Decided between 09/09/2010 and 01/10/2010

| Application No | Location | Parish | Proposal | Appeal Decision | DEL or COM | Officer Recommendation | Appeal Type |
|----------------|---|--------------------|---|------------------|------------|--|-------------------------|
| 09/00358/LBC | 6 Gloucester Street, Malmesbury, Wiltshire, SN16 0AA | Malmesbury | Internal Alterations to Ground and First Floor Plus Alteration to External Decoration (Retrospective) | Appeal Allowed | DEL | Refusal | Written Representations |
| 09/01509/FUL | Robinswood House, Upper Minety, Malmesbury, Wiltshire, SN16 9PT | Minety | Erection of Bungalow and Creation of New Access | Appeal Dismissed | DEL | Refusal | Written Representations |
| 09/00521/FUL | Garden Plot Opposite 4 Tanners Hill, Sherston, Malmesbury, Wiltshire | Sherston | Erection of Garden Shed | Appeal Dismissed | DEL | Refusal | Written Representations |
| 09/00593/FUL | Land Adjacent The Golf Academy, Yatton Keynell, Chippenham, Wiltshire, SN14 7BY | Chippenham Without | Change of Use of Land to 18 Hole Par 3 Golf Course and Associated Works | Appeal Dismissed | COM | Delegated to Development Control Manager | Public Inquiry |

Agenda Item 8

INDEX OF APPLICATIONS ON 13/10/2010

| | APPLICATION NO. | SITE LOCATION | DEVELOPMENT | RECOMMENDATION |
|----|-----------------|--|---|---------------------------------------|
| 01 | 10/02146/FUL | Land at Stoke Common Lane, Purton Stoke, Swindon, Wiltshire | Stables and Arena & Create New Access | Permission |
| 02 | 10/03218/FUL | Land At Stoke Common Lane, Purton Stoke, SN5 4LJ | Stables and Menage | Refusal |
| 03 | 10/02291/FUL | Grove Farm House, Ashton Road, Leigh, Swindon, Wiltshire SN6 6RF | Rear Extension | Refusal |
| 04 | 10/02292/LBC | Grove Farm House, Ashton Road, Leigh, Swindon, Wiltshire SN6 6RF | Rear Extension & Internal Alterations | Refusal |
| 05 | 10/02385/S73A | Castle Combe Circuit, Castle Combe, Wiltshire SN14 7EY | Variation of Condition to Allow One Day of Motor Racing on a Sunday Rather Than a Saturday (Renewal of 08/02453/S73) | Permission |
| 06 | 10/02409/FUL | The Knowle (Coped Hall Garage), Coped Hall, Wootton Bassett, SN4 8ES | Proposed Detached Dwellinghouse Following the Demolition of a Pair of Semi-Detached Houses. | Refusal |
| 07 | 10/02959/FUL | 55 Bradenstoke, Chippenham, Wiltshire, SN15 4ES | New Two Storey, Four Bedroom Residential Dwelling (Amendment to Planning Permission 08/00680/FUL) | Delegated to Area Development Manager |
| 08 | 10/02960/S106 | Land At Great Middle Green Farm , The Green, Dauntsey, Chippenham, Wiltshire, SN15 4JE | Modification of Clause 5 of Fifth Schedule to Legal Agreement associated with Planning Permission 03/02654/OUT to allow :- (i) Occupation of all 19 Dwellings before work starts on more than 2 of the employment units; (ii) to require work to commence on remaining employment units within 3 years of date of variation of agreement. | Delegated to Area Development Manager |

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REPORT TO THE NORTHERN AREA PLANNING COMMITTEE

| | | | |
|----------------------------|---|-----------------------|---|
| Date of Meeting | 13th October 2010 | | |
| Application Number | 10/02146/FUL | | |
| Site Address | Land at Stoke Common Lane, Purton Stoke, Swindon | | |
| Proposal | Stables and Arena and Create New Access | | |
| Applicant | Mrs L. Beynon | | |
| Town/Parish Council | Purton | | |
| Electoral Division | Purton | Unitary Member | Mrs J. Lay |
| Grid Ref | 407960 190256 | | |
| Type of application | Full | | |
| Case Officer | Mrs Charmian Burkey | 01249 706667 | Charmian.burkey@wiltshire.gov.uk |

Reason for the application being considered by Committee

Councillor Lay has requested this application be considered by Committee for the following reasons:

- To assess the change to the rural scene and the impact of more stables in the area.
- Loss of the hedgerow.
- Additional traffic onto private road and bridleway.

1. Purpose of Report

To consider the above application and to recommend that planning permission be GRANTED subject to conditions.

Purton Parish Council do not object but are not happy with the proposal.

7 letters of objection have been received.

2. Main Issues

The application is for the erection of 4 stables and a hay barn in an L-shape together with a riding arena. The key points to consider are as follows:

- Implications on DC Core Policy C3 and Countryside Policy NE15
- Visual impact of additional stables
- Impact on use and appearance of access road, which is a bridleway.
- Loss of hedgerow to form access.

3. Site Description

The site is relatively flat pasture land opposite a turning for one of the farms along this bridleway. The boundary between the field and the bridleway (which is tarmacked and maintained as a private road) is a mature native hedge. There are a considerable number of stables in the area.

| 4. Relevant Planning History | | |
|-------------------------------------|-----------------|-----------------|
| Application number | Proposal | Decision |
| | NONE | |

5. Proposal

The proposal is to construct a 40m x 20m riding arena to the east of a new access which is also proposed by removing a section of the mature hedgerow. The 4 stables and haystore would be sited to the west of the access against a hedgerow which separates this parcel of land from the next.

The land would continue to be grazed and is for private use only.

6. Consultations

Purton Parish Council is not happy about the number of stables along Stoke Common Lane because of the traffic it generates and the visual impact, although they find no reason to object to this application. They ask that conditions are imposed to restrict portable lighting and generators and no caravans or ad-hoc structures. Waste should be removed from the site and disposed of appropriately.

Highways originally recommended refusal on the grounds that the proposed development would increase traffic along a designated public bridleway with consequent loss of amenity and risk of additional hazard and inconvenience to all users of the designated right of way.

However, following the applicant's letter dated 31st August 2010, he has stated that he considers that subject to the use being for private and personal use only, the objection is withdrawn.

7. Publicity

The application was advertised by site notice, press advert and neighbour consultation.

7 letters of letters of objection have been received

Summary of key relevant points raised:

- The new access will require removal of a large section of hedgerow, including some existing mature trees.
- There is an existing access track to the side which could be used.
- Possible presence of protected species/ecology.
- Disturbance by having new access opposite an existing domestic residence.
- Design and access statement is insufficient.
- Deterioration of road surface.

In support of the application the applicant writes that the land has been used for keeping horses for the last 13 years and if it remains private, then there will be no increase in traffic. Previous advice has led her to the decision not to take access up the adjacent bridleway track as it is unmade and has little surveillance. The hedge would be cut at this time of year anyway and the entrance will avoid mature trees. The land is too muddy and wet to keep the horses out all winter and the arena will allow suitable exercise. Some of the objectors are from the same family.

8. Planning Considerations

- Implications on DC Core Policy C3 and Countryside Policy NE15.

In the surrounding area there is a proliferation of stables and arenas, although the surrounding countryside remains open and rural. The stables and arena will be hidden behind the existing mature hedge and the removal of a section of it to create the access, will only allow limited views of the development and certainly no more than in other locations close by.

The section of hedge to be removed is approximately 4m. All along Stoke Common Lane there are entrances of similar proportions and the introduction of another is not considered to be unacceptable in this location, where no highway danger can be demonstrated.

The impact of the proposal on the character of its countryside location is considered to be acceptable and in compliance with policies C3 and NE15 of NWLP 2011.

- Visual impact of additional stables.

The area is characterised by small scale stable developments and given the screening provided by the existing hedge, the proposed development is considered to be acceptable.

- Impact on use and appearance of access road, which is a bridleway.

Whilst Stoke Common Lane is a bridleway, it is of metalled appearance and its maintenance is not a material planning consideration in terms of who pays for it.

- Loss of hedgerow to form access.

The character of the area is hedges with holes punched through to form accesses. Whilst the hedge is of mature appearance, it is not considered that the loss of 4m of it is so detrimental to the amenity of the area as to warrant a refusal.

9. Recommendation:

Planning Permission be GRANTED for the following reason:

The proposed stables, riding arena and access are considered to be acceptable in this location where the built development will be largely screened by existing hedging and the new access, although removing a section of hedge, will not cause sufficient harm to justify a refusal. The application is considered to be in accordance with policies C3, NE15 (NE14) of the North Wiltshire Local Plan 2011.

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 only be used for the private stabling of horses and the storage of associated equipment and feed and shall at no time be used for any commercial purpose whatsoever, including for livery, or in connection with equestrian tuition or leisure rides.

REASON: In the interests of highway safety and/or to protect the living conditions of nearby residents.

POLICY—C3

3. No development shall commence on site until details for the storage of manure and soiled bedding (including the location of such storage) and its disposal from site (including frequency) have been submitted to and approved in writing by the Local Planning Authority. Before the development is first brought into use, the works for such storage and disposal shall be completed in accordance with the approved details and shall subsequently be maintained in accordance with the approved details. No storage of manure and soiled bedding shall take place outside of the storage area approved under this condition.

REASON: In the interests of public health and safety, in order to protect the natural environment and prevent pollution.

POLICY—C3

4. There shall be no parking of horse boxes, caravans, trailers or other vehicles during the hours between dusk and dawn on the site.

REASON: In order to protect the living conditions of nearby residents and/or the rural character of the area.

POLICY—C3

5. No portable buildings, van bodies, trailers, vehicles or other structures used for storage, shelter, rest or refreshment, shall be stationed on the site without the prior approval in writing of the Local Planning Authority.

REASON: In order to protect the living conditions of nearby residents and/or the rural character of the area.

POLICY-C3

6. Prior to the commencement of the development hereby permitted, details of any method of lighting or illumination shall be submitted to and approved in writing by the local planning authority.

Reason: In the interests of visual amenity of the countryside.

7. The arena hereby permitted shall be used for the private schooling of horses and for no commercial purpose whatsoever, including tuition or leisure rides.

Reason: In the interests of the amenity of the countryside.

8. The development hereby permitted shall only be used by the occupiers of Lower Farm, Purton Stoke, Wiltshire.

Reason: In the interests of highway safety.

Informative:

1. This decision relates to documents/plans submitted with the application, listed below. No variation from the approved documents should be made without the prior approval of this Council. Amendments may require the submission of a further application. Failure to comply with this advice may lead to enforcement action which may require alterations and/or demolition of any unauthorised buildings or structures and may also lead to prosecution.

Location plan/block plan dated 1st September 2010, elevation plan dated 18th June 2010, access plan dated 19th April 2010, arena plan dated 18th June 2010

| | |
|---|--|
| Appendices: | None |
| Background Documents Used in the Preparation of this Report: | 1.20 2.02 4.02 4.03 |

REPORT TO THE NORTHERN AREA PLANNING COMMITTEE

| | | | |
|----------------------------|--|-----------------------|----------------------------------|
| Date of Meeting | 13 th October 2010 | | |
| Application Number | 10/03218/FUL | | |
| Site Address | Land at Stoke Common Lane, Purton Stoke, Swindon | | |
| Proposal | Stables and Manege | | |
| Applicant | Mr E Franklin | | |
| Town/Parish Council | Purton | | |
| Electoral Division | Purton | Unitary Member | Mrs J. Lay |
| Grid Ref | 407960 190256 | | |
| Type of application | Full | | |
| Case Officer | Mrs Charmian Burkey | 01249 706667 | Charmian.burkey@wiltshire.gov.uk |

Reason for the application being considered by Committee

Councillor Lay has requested this application be considered by Committee for the following reasons:

- To assess the change to the rural scene and the impact of more stables in the area.
- Loss of the hedgerow.
- Additional traffic onto private road and bridleway.

1. Purpose of Report

To consider the above application and to recommend that planning permission be REFUSED.

2. Main Issues

The application is for the erection of 4 stables and an arena. The key points to consider are as follows:

- Implications on DC Core Policy C3 and Countryside Policy NE15
- Visual impact of additional stables
- Impact on use and appearance of access road, which is a bridleway.

3. Site Description

The site is relatively flat pasture land opposite a turning for one of the farms along this bridleway. The boundary between the field and the bridleway (which is tarmacked and maintained as a private road) is a mature native hedge. There are a considerable number of stables in the area. Please see application 10/02146/FUL elsewhere on this agenda.

4. Relevant Planning History

| Application number | Proposal | Decision |
|---------------------------|-----------------|-----------------|
| | NONE | |

5. Proposal

The proposal is to construct a block of 4 stables and a 40m x 30m riding arena to the east of this parcel of land so that the development lies in the corner of 2 hedges.

The land would continue to be grazed and is for private use only.

6. Consultations

Purton Parish Council states that there is an over proliferation of stables in the area and each new one generates additional traffic, where there is no speed limit. There are highway concerns and concerns about the changing visual aspect of Stoke Common Lane.

Highways recommend refusal because of an increase in vehicular traffic along a designated footpath / public bridleway.

7. Publicity

The application was advertised by site notice, press advert and neighbour consultation.

1 letter of objection have been received

Summary of key relevant points raised:

- There are only 3 acres of land.
- Worsen load on infrastructure of Stoke Common Lane.
- There are no facilities for parking.
- Effect on rural outlook.
- Potential light pollution.
- Together with 10/02146/FUL there will be 8 stables and owners in close proximity.

8. Planning Considerations

- Implications on DC Core Policy C3 and Countryside Policy NE15.

In the surrounding area there is a proliferation of stables and arenas, although the surrounding countryside remains open and rural. The stables and arena will be hidden behind the existing mature hedge and there will be only limited views of the development and certainly no more than in other locations close by. There is an existing access and the agent has been asked to confirm that the stables are for private use.

The impact of the proposal on the character of its countryside location is considered to be acceptable and in compliance with policies C3 and NE15 of the North Wiltshire Local Plan 2011.

- Visual impact of additional stables.

The area is characterised by small scale stable developments and given the screening provided by the existing hedges, the proposed development is considered to be acceptable.

- Impact on use and appearance of access road, which is a bridleway.

Whilst Stoke Common Lane is a bridleway, it is of metalled appearance. Maintenance is not a material planning consideration in terms of who pays for it. As the owner of the site does not live locally and all trips to the site will be by car, refusal is recommended. This site is unlike 10/02146/FUL where a personal permission is possible due to the proximity of the site owner.

9. Recommendation:

Planning Permission be REFUSED for the following reason:

1. The proposed development would result in an increase in vehicular traffic along a designated footpath / public bridleway with consequent loss of amenity and risk of additional hazard and inconvenience to all users of the designated right of way.

Informative

1. This decision relates to documents/plans submitted with the application, listed below.

- Location plan, Drawings 01, 02 and 03 dated 18th August 2010.

| | |
|---|---|
| Appendices: | None |
| Background Documents Used in the Preparation of this Report: | 1.20 2.02 4.02 4.03 4.07 |



REPORT TO THE NORTHERN AREA PLANNING COMMITTEE

| | | | |
|----------------------------|---|-----------------------|---|
| Date of Meeting | 13 October 2010 | | |
| Application Number | 10/02291/FUL and 10/02292/LBC | | |
| Site Address | Grove Farmhouse, Ashton Road, Leigh | | |
| Proposal | First Floor Extension to farmhouse and internal alterations. | | |
| Applicant | Mr Paul Harris | | |
| Town/Parish Council | Leigh | | |
| Electoral Division | Minety | Unitary Member | Carole Soden |
| Grid Ref | 404700 192250 | | |
| Type of application | Full | | |
| Case Officer | Caroline Ridgwell | 01249 706639 | caroline.ridgwell@wiltshire.gov.uk |

Reason for the application being considered by Committee

These applications have been submitted to the Committee for decision under the scheme of delegation because Councillor Soden has requested that the application be considered by committee with particular regard to the impact of the proposals on the listed building and surrounding area.

1. Purpose of Report

To consider the above applications and to recommend that planning permission and listed building consent be REFUSED.

Leigh Parish Council have not commented on the proposal

No letters of objection have been received.

No letters of support have been received.

2. Main Issues

The building is Listed Grade II and it is situated in a small collection of dwellings and farm buildings on the main road between Leigh and Ashton Keynes. The proposal is to add a first floor extension over the rear catslide roof by forming a third gable projecting back from the rear of the original building. This will then result in alterations to some of the first floor rooms and partitions, as well as removal of an older window opening. The key points to consider are as follows:

- Impact on the listed building
- Implications on DC Core Policy C3 and HE4

3. Site Description

Grove Farmhouse is a Grade II listed house with associated outbuildings, grouped at the side of the main road just south of Ashton Keynes. There are a number of trees on the site but the rear elevation of the house can be seen when travelling southbound on Ashton Road, towards the site from Ashton Keynes.

The house dates from the C18 and is a rubblestone building of two and a half storeys with an attic. At the front, the house has five window bays with twelve pane sashes, three hipped dormers and

gable stacks. There is a C20 two storey extension to the right hand side of the house when looking at the front elevation.

At the rear of the building there is a pair of two and a half storey wings projecting back, perpendicular to the original house. The right hand wing (when facing the rear elevation) was originally two storey but was raised in the late C20. The left hand one was added in the late C20, extending from a small 'nib'. A conservatory has been added to the gable end of the right hand wing, so that the footprint extends almost as far as the middle wing. On the left hand side of the rear elevation is a mono-pitch deep extension which begins at quite a high level on the rear elevation, allowing a small bathroom at first floor level.

| 4. Relevant Planning History | | |
|-------------------------------------|---|-----------------|
| Application number | Proposal | Decision |
| 88.01622.FUL | Alterations and extensions to dwelling | Permitted |
| 88.01623.LBC | Alterations and extensions to listed building | Permitted |
| 00.00942.FUL | New Conservatory | Permitted |
| 00.00943.LBC | New Conservatory | Permitted |
| 09.02092.FUL | New porch and boiler room (part retrospective) | Permitted |
| 09.02093.LBC | Internal & external alterations & New porch (part retrospective) | Permitted |
| 09.02220.LBC | Internal & external alterations associated with two storey rear extension | Refused |
| 09.02221.FUL | Two storey rear extension | Refused |

5. Proposal

The proposal is to add a first floor extension with pitched roof above the C19th rear mono-pitch extension in order to enlarge one of the six bedrooms and increase the size of its ensuite bathroom. Partitions around bedroom 3 and 4 are also proposed to be altered so that the first floor family bathroom becomes an ensuite bathroom to bedroom 4.

This farmhouse has already undergone a great deal of extension and alteration in the late C20th and there are currently four bathrooms, three of which are ensuite, on the first floor, with consent for one of the three second floor bedrooms to become a bathroom. The partitions for bedroom 3 and 4 are not historic but the large section of external wall that is proposed to be removed to enlarge bedroom 3 is historic, as is the window opening to be blocked in order to create the large cupboards for bedroom 4.

6. Consultations

Leigh Parish Council - No comment received to date.

7. Publicity

The application was advertised by site notice, press advert and neighbour consultation.

No letters of objection or support received.

8. Planning Considerations

Impact on the listed building

The farmhouse has already undergone a great deal of alteration and extension since it was listed in 1986. What was originally a modest farmhouse with a rear extension and outshut has now more than doubled in footprint and volume over the past 30 years.

Factors considered in relation to the alterations to the listed building are the architectural and historic significance of the roof and walls to be removed, the window to be blocked in, alterations to the internal floor plan, the historic footprint of the building and quantity of new extensions, the scale, detail and design of the new extension, justification for the historic fabric that will be lost due to the new first floor breakthrough and the effect of this development on the character, setting and appearance of the listed building and amenity of the area.

The further increase in volume of this building will dwarf the original structure, as well as lose more historic fabric. This would be harmful to the architectural and historic integrity of the listed building as well as having a detrimental impact on the character and appearance of the listed building. Under PPS5 (Policy HE6) the applicant needs to demonstrate why it is necessary and desirable to enlarge a building that is already a substantial house with generous living accommodation. The development proposed will ruin a C19 roof and this has not been justified.

Implications on DC Core Policy C3 and H4

The detrimental impact of the over-extended building and loss of historic fabric on the character and appearance of the listed building and its setting means that the proposals are contrary to policies C3 and HE4 of the North Wiltshire Local Plan 2011.

9. Recommendation:

Planning Permission 10/02291/FUL be REFUSED for the following reason:

1. Due to the scale, proportions and cumulative impact of the first floor rear extension, plus the impact on the fabric, layout and detail of the rooms, the proposals would compromise the character, appearance and setting of the listed building and would result in an unjustified loss of historic fabric. These proposals would be contrary to advice contained within The Planning (Listed Buildings and Conservation Areas) Act 1990 and Planning Policy Statement (PPS) 5 and contrary to policies C3 and HE4 of the North Wiltshire Local Plan 2011.

Listed Building Consent 10/02292/LBC be REFUSED for the following reason:

2. Due to the scale, proportions and cumulative impact of the first floor rear extension, plus the impact on the fabric, layout and detail of the rooms, the proposals would compromise the character, appearance and setting of the listed building and would result in an unjustified loss of historic fabric. These proposals would be contrary to advice contained within The Planning (Listed Buildings and Conservation Areas) Act 1990 and Planning Policy Statement (PPS) 5.

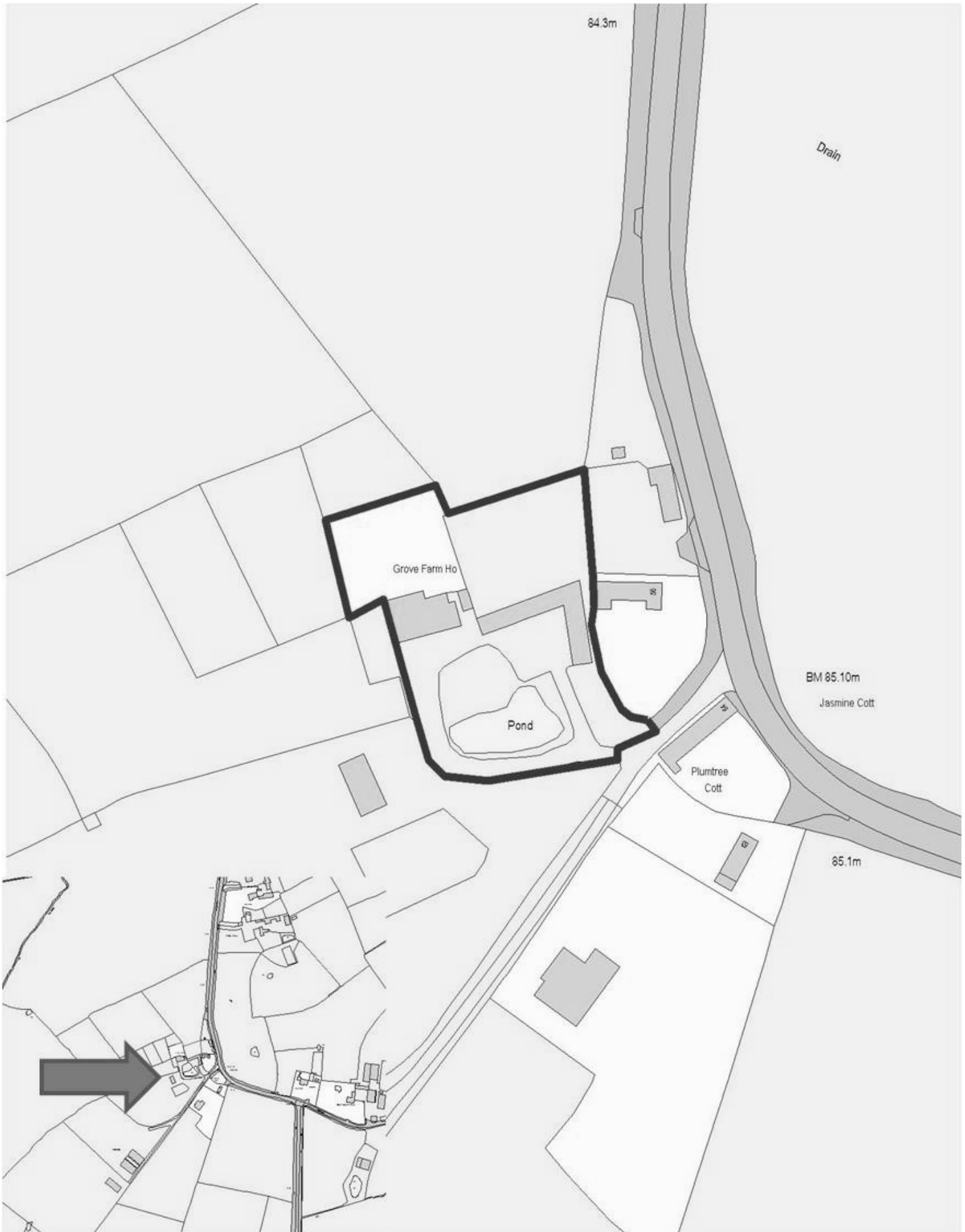
Informative

1. This decision relates to documents/plans submitted with the application, listed below.

Drawing No. 09/60/01 rev /
Drawing No. 09/60/02 rev /
Drawing No. 09/60/03 rev /
Drawing No. 09/60/04 rev /
Drawing No. 09/60/27 rev /
Drawing No. 09/60/28 rev A
Drawing No. 09/60/29 rev /
Drawing No. 09/60/30 rev A

All date stamped 1.7.10

| | |
|---|--|
| Appendices: | None |
| Background Documents Used in the Preparation of this Report: | North Wiltshire Local Plan 2011 PPS 5 |



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REPORT TO THE NORTHERN AREA PLANNING COMMITTEE

| | | | |
|----------------------------|--|-----------------------|---|
| Date of Meeting | 13th October 2010 | | |
| Application Number | 10/02385/S106 | | |
| Site Address | Castle Combe Circuit, Castle Combe, Wiltshire. | | |
| Proposal | Variation of condition to allow one day of motor racing on a Sunday rather than a Saturday (renewal of 08/2453/S73) | | |
| Applicant | Castle Combe Circuit | | |
| Town/Parish Council | Castle Combe/Yatton Keynell | | |
| Electoral Division | By Brook | Unitary Member | Mrs J. Scott |
| Grid Ref | 385118 176906 | | |
| Type of application | Full | | |
| Case Officer | Mrs Charmian Burkey | 01249 706667 | Charmian.burkey@wiltshire.gov.uk |

Reason for the application being considered by Committee

Councillor Scott has requested the application come to Committee for the following reason:
The affect on the amenity to the local residents on Sundays due to noise and traffic.

1. Purpose of Report

To consider the above application and to recommend that planning permission be GRANTED subject to conditions.

Castle Combe Parish Council approves the application subject to strict conditions. Yatton Keynell Parish Council object but no grounds are provided.

Two letters of objection have been received.

2. Main Issues

This application proposes to allow a further 2 day weekend event to take place permanently (following on from temporary permissions 04/02558/S73A and 08/02453/S73A) at Castle Combe Circuit by the substitution of a Saturday for a Sunday. The current temporary permission (08/02453/S73A expires 31st December 2010).

Castle Combe Circuit, amongst its many permissions, is currently allowed to operate car race days on 2 full (ie Saturday and Sunday) weekends each year on a permanent basis. Separate Saturdays and Sundays are also permitted. This application seeks to make permanent an arrangement to have another full weekend, but giving up a Saturday elsewhere in the calendar and combining another Saturday and Sunday. This has been in operation on a temporary basis for 4 years.

The main issues to be considered are whether the temporary permission has lead to an increase in noise complaints and/or an unacceptable nuisance and whether there are any additional highways implications.

3. Site Description

The site is a well established racing venue which hosts car racing, driver days, car boots and other related activities throughout the year.

| 4. Relevant Planning History | | |
|--|--|------------------|
| Application number | Proposal | Decision |
| The site has an extensive planning history, which is attached as appendix 1. But the most relevant history is: | | |
| 04/02558/S73A | Variation of condition to allow motor racing on a Sunday. | Temp permission. |
| 06/01814/S73A | 2 additional sprint meetings per year – variation of 92.01654.FUL | Permission. |
| 08/02453/S73A | Variation of condition to allow one day of motor racing on a Sunday rather than a Saturday (temp permission) | Temp permission |

5. Proposal

The proposal is to create an additional 2 day weekend event by giving up a Saturday of racing and substituting it for a Sunday. This will create a total of 3 of the 2 day weekend events per calendar year. Castle Combe Circuit, amongst its many permissions, is currently allowed to operate car race days on 2 full (ie Saturday and Sunday) weekends each year on a permanent basis. This application seeks to make permanent an arrangement to have another full weekend, but giving up a Saturday elsewhere in the calendar and combining another Saturday and Sunday. This has been in operation on a temporary basis for 4 years.

6. Consultations

Castle Combe Parish Council approves the application subject to strict control of noise; strict rules about early morning engine operation; implementation of adequate traffic control systems (the current ones are not as efficient as the application implies); two consecutive weekends of Saturday and Sunday racing should not be allowed and a condition that non-compliance would result in withdrawal of the permission.

Yatton Keynell Parish Council object, but no grounds were given.

Highways do not object as in the 4 years there has been a permission, there have been no undue highways issues.

Environmental Health have provided the following information to support their recommendation for no objection.

1. "It is my understanding that Planning-wise, there are 248 days allowed in the year when cars/motorcycles may use the circuit, each being controlled by a Planning consent and also most by a noise nuisance abatement notice served either in 1992 (to control most of the

'car' days) or more recently early 2005 to control the 12 race days. Weekday motorcycle days have never given rise to a statutory noise nuisance.

2. In terms of noise levels, the 12 race days have a static test which is 108dBA at 0.5m from the exhaust, plus there are another 10 practice days(Thursdays) permitted which are also limited to 108dBA.
3. The reason we served an abatement notice in 2005 was because the circuit had reintroduced in 2001, the two day F3/GT Championship after a gap of approximately 25 years which tested at 118dBA at the exhaust. This led to an increase in complaints and we also found evidence of bad practice during noise testing at this Championship between 2001 and 2004. They appealed the notice and the court upheld all of our requirements, one of which required race days to emit no more than 108dBA. For your information, whenever a race day involves motorcycles, the static level is 107dBA at the exhaust.
4. There are also 20 'silenced testing' days (usually Thursdays) which emit 105dBA at source. The 12 race, 10 practice and 20 testing days are what are referred to as the 'noisier' days . So that is 42 days and the remaining 206 days consist of road-going highway levels of 100dBA for cars or 105dBA for motorcycles(although not > 30 days per year) . Indeed, motorcycle track days(Wednesdays) are actually included by the Circuit in the 20 permitted days at 105dBA despite being a highway level.
5. So to summarise, there are:

20 days at 105dBA referred to as an 'A' day (testing days)

22 days at 108dBA referred to as a 'B' day (race/practice days)

206 days at 100dBA/105dBA referred to as a 'C' or 'm/c' day ie highway level
(track/dealer/company days)

These 248 permitted days are never fully utilised. The circuit send monthly usage lists to Environmental Health, Planning, Parish Council's and others and so are being transparent in that respect.

6. Unlike industrial noise, where it is possible to make measurements close to the noise source and then predict noise levels at another distance(ie a noise sensitive receptor), with motor sport this is not feasible. This is because vehicle noise tests are static and then the vehicles become mobile around the circuit. Furthermore, the surrounding villages are also obviously affected by topography and wind speed and direction and so it is impossible to say ,for example, that 108dBA @ 0.5m = XdB @ 1000m. Often the noise can be audible, but immeasurable. Sometimes it can be inaudible somewhere, but exaggerated elsewhere because of the wind. What we can say, is that the noise emissions imposed on the locality when the circuit was operating for two days at 118dBA between 2001 and 2005, caused a nuisance and that was accepted by the Court of Appeal, due to the evidence provided by ourselves.
7. With regard to monitoring race days, which is the subject of this application, I tend to select 3 or 4 of the 12 days per year and visit the site (unannounced)to check that the noise testing is being done correctly. I have specifically included Sundays in the last few years because of the nature of this application. I can confirm that the noise testing has been carried out in an exemplary manner since 2005 on all race days. I also assess in the community depending on wind direction and have found no evidence of statutory noise nuisance.
8. With regard to complaints against 'Sunday' race days, I can confirm that I have received 4 complaints in the last two years, two of which were from residents who did not actually realise that racing was allowed on a Sunday.

9. Out of the 22 days permitted at 108dBA, the 12 race days are always used, but because there are only 9 race meetings/events, only 9 out of the 10 practice days are actually used. Therefore, if the situation reverted back to another individual Saturday, instead of a 3rd 'double- header', there would be a 10th practice day on a Thursday operating at 108dBA.
10. In summary, I am not able to state that the 3rd Sunday, replacing a previously consented Saturday, has caused or will cause sufficient adverse noise impact on the locality so as to warrant me raising an objection, although I accept that public perception is subjective. I would recommend , however, that if permission is granted, then the 3 Sundays should never become 4 .”

In support of the application the agent has written that the circuit was previously an airfield but for the last 60 years has been a race circuit. The permitted use of the circuit is 248 days, but these are not all used. The figure is nearer 200.

The proposal does not lead to an additional day of racing. The previous temporary permissions made it clear, through conditions, that there would be no more than 9 race meetings on a Saturday and no more than 3 race meetings on a Sunday in any calendar year, and in the event that all 3 Sundays are used, one of them should be held following and event on the immediately preceding Saturday.

The actual number of racing days would decrease from 10 to 9 in any one year with one weekend less overall. 4 years is sufficient to allow the Council to assess the impact of the development and there is no basis for refusing a permanent permission.

7. Publicity

The application was advertised by site notice, press advert and neighbour consultation.

2 letters of objection have been received

Summary of key relevant points raised:

- There are in the region of 250 days when noisy racing or motorised vehicles can use the track.
- Lack of knowledge at Committee about the number of days of noisy events.
- Increase in noise from the circuit.
- The events are taking place in an AONB, where there should be quiet enjoyment.

8. Planning Considerations

Previous Permissions

As with 04/02558/S73A and 08/02453/S73A, the arguments are finely balanced and weigh up the harm to the local community by way of noise, disturbance and traffic issues against the benefit of removing a Saturday from the calendar. This application seeks to make the arrangement permanent. The temporary permission in 2004 was only used once in 2008, so a further temporary consent was granted under 08/02453/S73A to allow further assessment. This 2nd lot of 2 years is now up and has given sufficient time for the Council to assess any impact.

In dealing with an appeal in 1993 (N.93.0513/FUL) for motor racing on 2 Sundays per annum, the Inspector clearly stated that his decision to grant planning permission should in no way be construed as a precedent for favourable decisions of future similar applications. He stated that it was necessary to strike a balance between the undoubted impact of the proposals on the residential and rural amenity, but also paying regard to this long established facility.

Whilst it may be considered that this incremental drip approach to the usage of the circuit is undesirable, there is some real benefit in losing a Saturday to create a further race free weekend (3 race weekends in total). The list of planning applications related to the circuit is attached as **appendix 1** and this shows that there are a number of permissions which relate to car driving on the circuit on Sundays, the most significant of which are:

Company Car Days – **40 allowed** – can be Sundays – Permission 89/01556/F.
RAC Classic Day – **1 day** allowed – can be a Sunday – Permission 86/01816/F.
Under Age Driving – **14 Days** allowed 4 specified as Sundays and all can be Sundays – 83/01216/F and 02/02116/F.
Existing Motor Sport – **2 Sundays** specified – 93/00513/F.
Classic Car Rally – **1 Sunday** – 97/-2501/F.

Noise Nuisance

There will be no increase in noise, just a different distribution of it. Environmental Health's conditions will remain.

It is considered that the Local Planning Authority has had sufficient time and knowledge of the additional Sunday to assess its impact.

No complaints specifically relating to Sunday racing have been received in this time period. Therefore, it would be unreasonable to refuse on noise nuisance grounds.

Impact on AONB

Castle Combe Circuit does lie within the Cotswold AONB, but it is not considered that the proposal would affect the designation over and above the current activities at the circuit.

Impact on Highways

Highways are happy with the proposal and a reason for refusal on highway danger or inconvenience is not considered to be sustainable.

9. Recommendation:

Planning Permission be GRANTED for the following reason:

The proposed permission for an additional Sunday instead of a Saturday is considered to be acceptable in terms of noise and traffic generation and therefore in accordance with policies C3 and NE18 of the North Wiltshire Local Plan 2011.

And 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. One months notice of the implementation of this permission shall be given in writing to the local planning authority. Following implementation, race meetings shall be held on no more than 9 Saturdays in a calendar year and on no more than 3 Sundays in a calendar year and if there are 3 Sundays on which events are held at least one shall be held following an event on the immediately preceding Saturday.

Reason: In the interests of clarity.

3. The public address system shall not be used on the permitted days before 0900 hours (or in the case of the paddock tannoy 0830 hours) or after 1830 hours and such use shall be limited to the purpose of commentary or announcement on racing and any race practising.

Reason: In the interests of amenity.

4. Before the use hereby permitted is commenced, details of a scheme for the management of the traffic entering, leaving and circulating within the site shall be agreed with the local planning authority.

Reason: In the interests of highway safety.

5. The means of access to the site from the C164 Long Dean - Castle Combe Road opposite Westway House shall not be utilised in connection with the use hereby permitted without the prior written agreement of the local planning authority.

Reason: In the interests of highway safety.

6. The use hereby permitted shall not take place on consecutive Sundays.

Reason: In the interests of residential amenity.

7. The local planning authority shall be notified of all race meetings involving a Sunday, no later than 28 days prior to the meeting.

Reason: In the interests of clarity.

8. The use hereby permitted shall not be carried out so as to result in more than two consecutive days of racing.

Reason: In the interests of residential amenity.

9. All vehicles or motorcycles should be tested in accordance with the appropriate section of the MSA British Motorsports Yearbook or ACU handbook and any subsequent revisions. No racing car shall exceed a noise level of 108dB(A) at 0.5 metres from the exhaust. No motorcycle shall exceed a noise level of 107dB(A) as measured in accordance with the ACU handbook.

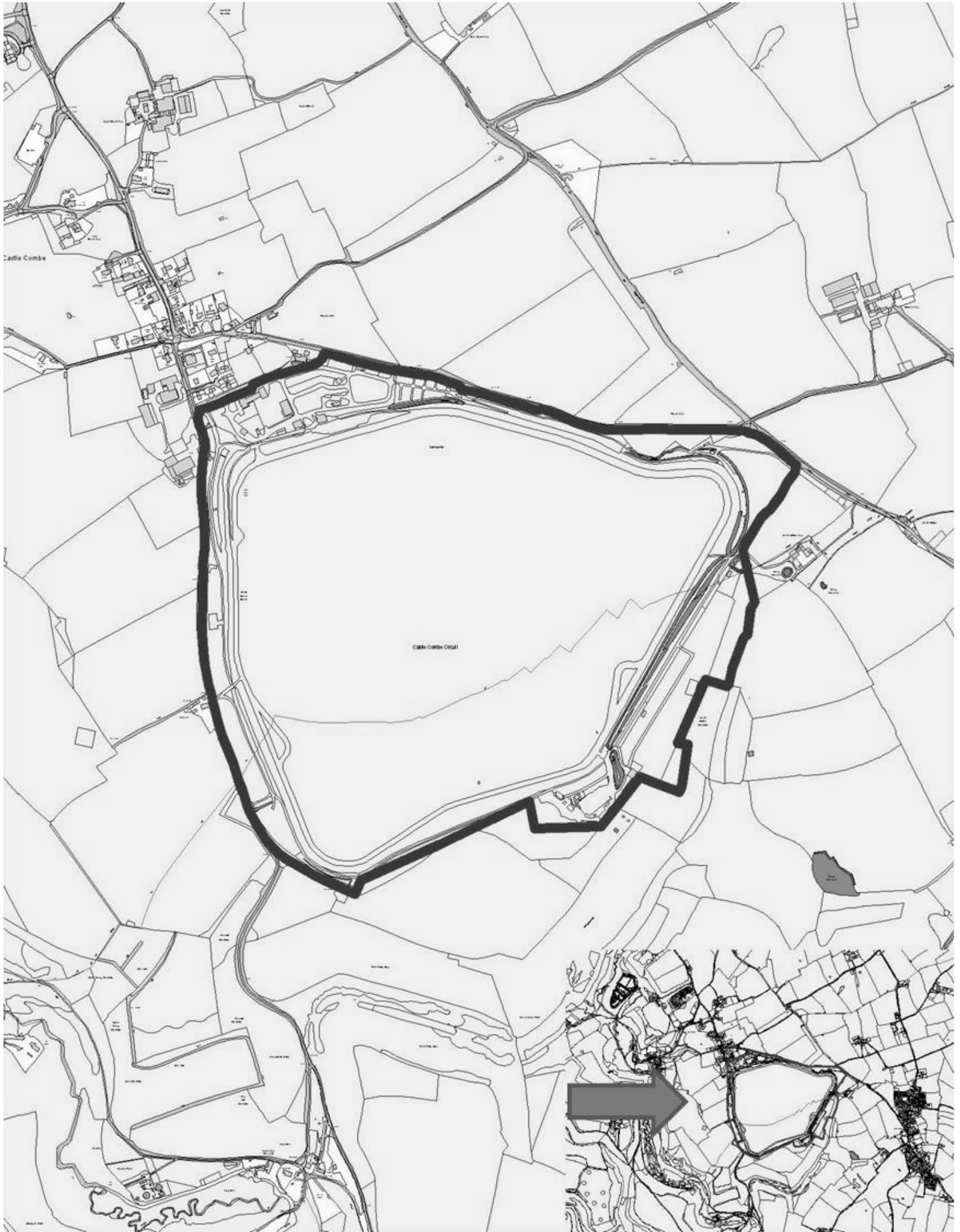
Reason: To safeguard the amenity of local residents by reason of noise.

Informatives:

1. This decision relates to documents/plans submitted with the application, listed below. No variation from the approved documents should be made without the prior approval of this Council. Amendments may require the submission of a further application. Failure to comply with this advice may lead to enforcement action which may require alterations and/or demolition of any unauthorised buildings or structures and may also lead to prosecution.

location plan dated 12th July 2010.

| | |
|---|---|
| Appendices: | Appendix 1 – Planning History |
| Background Documents Used in the Preparation of this Report: | 2.02, 3.06, 4.02, 4.03, 4.04, 4.07, 5.01 |



REPORT TO THE NORTHERN AREA PLANNING COMMITTEE

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|----------------------------|---|----------------|------------------------------|
| Date of Meeting | 13 th October 2010 | | |
| Application Number | 10/02409/FUL | | |
| Site Address | The Knowle (Coped Hall Garage), Coped Hall, Wootton Bassett SN4 8ES | | |
| Proposal | Proposed detached dwelling house following demolition of pair of semi-detached houses | | |
| Applicant | Mr Fisher | | |
| Town/Parish Council | Lydiard Tregoz | | |
| Electoral Division | Wootton Bassett East | Unitary Member | Councillor Mollie Groom |
| Grid Ref | 407624 183535 | | |
| Type of application | FULL | | |
| Case Officer | Tracy Smith | 01249 706 642 | tracy.smith@wiltshire.gov.uk |

Reason for the application being considered by Committee

This application has been referred to the Development Control Committee at the request of Councillor Groom to consider all aspects of the development and to consider the background to the development.

1. Purpose of Report

To consider the application and the key issue of abandonment.

Lydiard Tregoz Parish Council expressed concern regarding incorrect consultation which has delayed the application, parking provision being solely provided in front of the workshop, commencement of work before planning and building regulations approval, the abandoned cottages were demolished prior to approval being sought.

1 letter of support has been received.

2. Main Issues

The application seeks permission for the replacement of a pair of cottages with a single detached dwelling. The cottages had, prior to its unlawful demolition, fallen into a significant state of decline and had been consumed by vegetation to the extent that only the two side gables and part of the front elevation remained of the building. The associated garden is also unrecognisable.

The site lies outside the framework boundary.

Therefore the key points to consider are as follows:

- Implications on DC Core Policy C3 and Housing Policies H4
- Principle of development
- Design and layout
- Residential amenity
- Access, highway safety and parking

3. Site Description

The application site lies to the north of the A3102 Swindon Road at Coped Hall. The site contains a number of buildings, most notably the single storey building which operates as a garage run by the applicant.

The cottages, which have been demolished, were as mentioned above in such a poor condition that only two outer gables remained with a partial front elevation. No internal structures remained and the site was consumed by vegetation.

The site lies wholly outside the framework boundary.

4. Relevant Planning History

There is no recent history of relevance to this application.

5. Proposal

This proposal is for the erection of a dwelling following the demolition of a pair of existing semi-detached cottages.

The detached dwelling will match the style of the previous cottages on site being two storeys in form and occupying a similar footprint.

No parking is provided other than in association with the adjacent garage.

6. Consultations

Lydiard Tregoz Parish Council - expressed concern regarding incorrect consultation which has delayed the application, parking provision being solely provided in front of the workshop, commencement of work before planning and building regulations approval, the abandoned cottages were demolished prior to approval being sought.

Wootton Bassett Town Council – no objections.

Highways Officer – objects on sustainability grounds (as the use has been abandoned) and requires confirmation of on site parking arrangements.

Wessex Water – comments waited.

Thames Water – comments waited.

7. Publicity

The application was advertised by site notice and neighbour consultation.

1 letter of support was received.

8. Planning Considerations

Principle of development

The site lies outside the framework boundary for Wootton Bassett and fronts the main road adjacent to an existing garage operation run by the applicant.

Replacement dwellings are permitted by Policy H4, however in this instance, it is considered that there is no longer a dwelling or dwellings to be replaced on grounds that the former dwellings had been abandoned.

The issue of abandonment rests on four factors namely the physical condition of the building, period of non-use, any other uses and evidence of intentions of owners.

In terms of the physical condition, it was clear that the existing dwelling on the site had fallen into a significant state of disrepair and dereliction and prior to its recent demolition comprised only two outer gable walls and partial front elevation. All other elements had been eroded and consumed by vegetation. Essentially the cottages could only be described as a ruin.

This decline is considered to have occurred over a period of some 20 years. The Council's own evidence indicates that the cottages ceased being occupied in the early 1980's with the use being abandoned in 2003. The recent building regulations approval sought consent for partial demolition and rebuild of derelict house which supports this indication of abandonment on physical and non-use grounds.

No other intervening use occurred.

No evidence has been provided in this respect but based on the call-in forms, it would appear that a relative prevented anything being done to the building which also was severely damaged by fire in the 1990's. This indicates abandonment of the use by a family member.

A Dangerous Structure notice was served in January 2007.

It is the view of the officer that having regard to the four factors of abandonment established in case law, that the residential use on the site had been abandoned.

Accordingly, there is no dwelling which can be permitted to be replaced and the proposal amounts to the erection of a dwelling in the open countryside which is not required for any agricultural/forestry or rural enterprise based needs.

The proposal thus fails to accord with Policy H4.

Design and Layout

The new dwelling is not objectionable in terms of design and layout as based on the submitted plans it would appear to match the design and footprint of the previous semi-detached cottages on the site.

Residential Amenity

It is noted that the property is intended to be occupied by the applicant and his family who run the adjacent garage.

The adjacent garage is subject to conditions regarding hours of operation.

It is considered that in light of the close proximity of the proposed dwelling to the business and lack of parking on the residential plot itself (see below), any permission would have to be tied via a planning condition.

If the property were occupied independently of the adjacent workshop, harm would be caused to residential amenity and highway safety, the latter is addressed in more detail below.

Access, highway safety and parking

The proposal attracts a sustainability objection as a matter of principle as it is new residential development outside the framework boundary.

In terms of parking, the agent is to provide details of on-site parking in advance of the Committee meeting. Parking for the dwelling is proposed within the forecourt of the workshop in the control of the applicant. No other off-street parking is available.

It is for this reason that in the event of any permission the property must be tied to the workshop since the absence of any parking on the site of the dwelling would be detrimental to highway safety at this location.

9. Conclusion

At the crux of this application is whether or not the previous residential use has been abandoned. The design of the dwelling is not objectionable and a condition requiring occupation in association with the adjacent workshop is required in the interests of residential amenity and highway safety.

It is considered that the residential use has been abandoned having regard to the significant decline of the cottages for the past 20 years, no occupation, no intervening use and no evidence of attempts to resurrect the use.

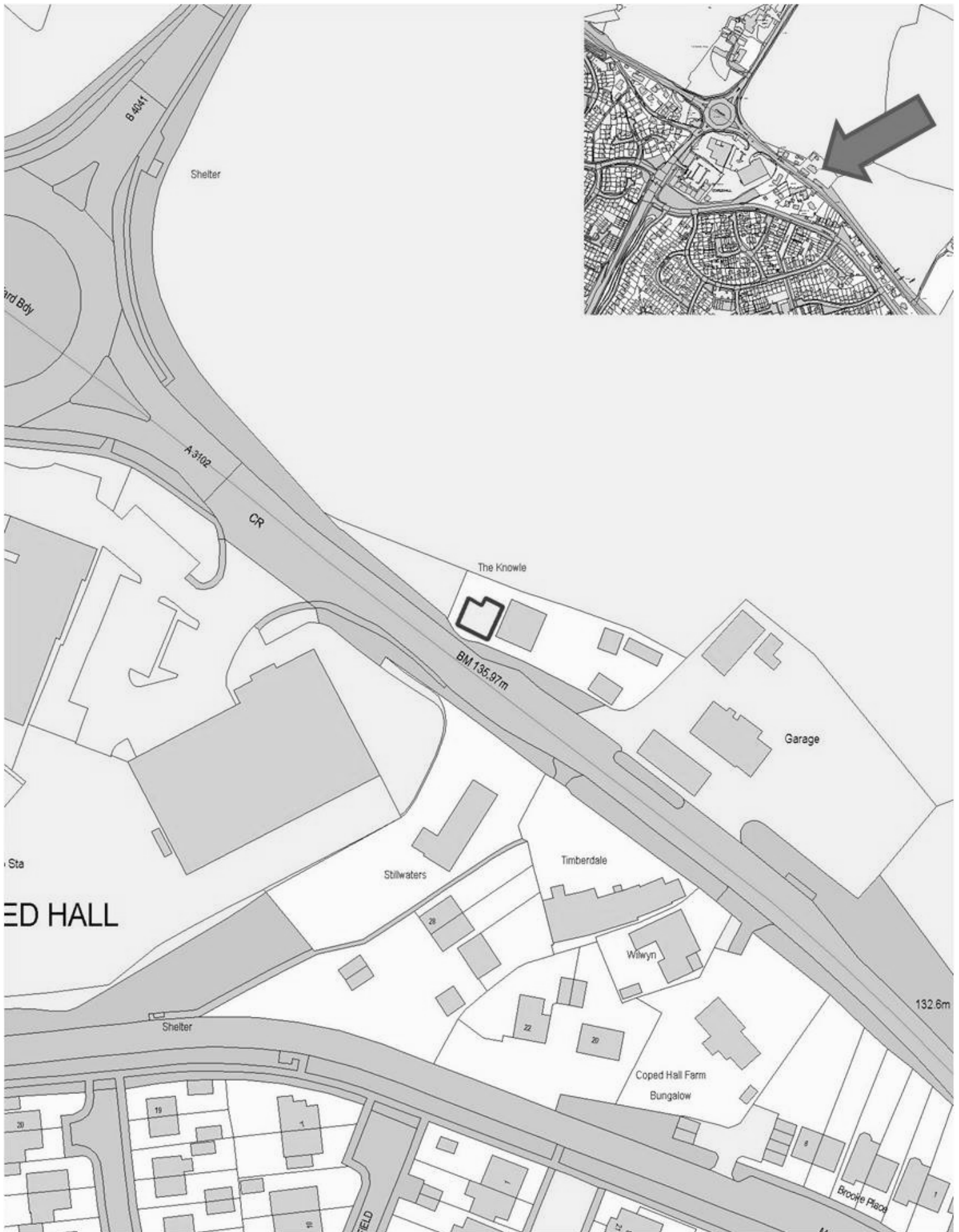
Accordingly, the proposal is for the erection of dwellings in the open countryside contrary to Policy H4 of the Local Plan 2011.

10. Recommendation

Planning Permission be REFUSED for the following reason:

The proposed development is for a new dwelling in the open countryside and is not required in connection with agriculture, forestry and rural based enterprise. The proposal is thus contrary to Policy H4 of the adopted North Wiltshire Local Plan 2011.

| | |
|---|---|
| Appendices: | none |
| Background Documents Used in the Preparation of this Report: | 1.20, 2.02, 2.24, 4.02, 4.03, 4.04, 5.01, 5.02, 5.04 |



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REPORT TO THE NORTHERN AREA PLANNING COMMITTEE

| | | | |
|----------------------------|--|-----------------------|-------------------------------------|
| Date of Meeting | 13th October 2010 | | |
| Application Number | N.10.02959.FUL | | |
| Site Address | 55 Bradenstoke | | |
| Proposal | New two storey, four bedroom residential dwelling (amendment to planning permission 08/00680/FUL) | | |
| Applicant | Ministry Developments Ltd. | | |
| Town/Parish Council | Lyneham and Bradenstoke | | |
| Electoral Division | Lyneham | Unitary Member | Allison Bucknell |
| Grid Ref | 400117 179424 | | |
| Type of application | FULL | | |
| Case Officer | S T Smith | 01249 706 633 | Simon.smith@wiltshire.gov.uk |

Reason for the application being considered by Committee

Under the Council's Scheme of Delegation specific to planning, it has been requested that this application be considered by the Development Control Committee by Councillor Bucknell so as to consider the visual impact of the development upon the surrounding area, its likely relationship with adjoining properties and the proposed design of the new dwelling.

1. Purpose of Report

To consider the above application and Delegate to the Area Development Manager for APPROVAL subject to all parties entering into a legal agreement under s106 of The Act in respect of affordable housing and public open space and subject to conditions.

Lyneham and Bradenstoke Parish Council object on grounds of scale, impact on neighbours, Conservation Area, drainage and highways.

7 letters of objection have been received and 1 of support.

2. Main Issues

- Implications on DC Core Policy C3 and Housing Policy H3 of the adopted North Wiltshire Local Plan 2011
- Affect of the residential amenity of existing properties
- Design and scale of the development
- Impact on traffic and parking in the local area
- Impact on the Conservation Area
- Open space and affordable housing contributions

3. Site Description

The site is an existing front garden belonging to No. 55 Bradenstoke. Uncharacteristic to the locality, this property is both a non-traditional white rendered dwelling and is positioned back from the edge of the adjoining highway.

To the north of the site is a row of terraced dwellings, to the west is a traditional 18th Century cottage known as The Malt House (No. 56) Bradenstoke and to the east is a bungalow.

The site is entirely within the conservation area. The character of this part of the conservation area is considered to be varied and comprising of a mixture of house types of different ages. The historic pattern of which comprises of frontage development predominantly abutting highway.

| 4. Relevant Planning History | | |
|------------------------------|---|----------|
| Application Number | Proposal | Decision |
| N.06.0542.F | Erection of detached dwelling | Refused |
| N.06.02680.F | Erection of detached dwelling (revision to N.06.0542.F) | Refused |
| N.07.2184.F | Erection of one detached dwelling, associated garage & access | Refused |
| 08/00680/FUL | Erection of dwelling with associated garage, landscaping and vehicular access | Granted |

5. Proposal

The proposal is for the erection of a detached dwelling and garage. The curtilage to the new dwelling will sub-divide the existing site into two, with the new dwelling built fronting onto the highway and in tandem with the existing property on site. The current vehicular access will serve both the new and existing dwelling.

6. Consultations

Lyneham & Bradenstoke Parish Council: Objections raised. Consider that the proposal is in total disregard to the Council's Policies C3 (iii), HE1 especially subsection 7.4 and raises serious concerns under Council Policy NE22 and the need for road safety. In particular the Parish Council note that the proposed building is at least 50% bigger than the approved one and is closer to properties on the opposite side of the road with sever detrimental effect. Also note that the proposal would have a detrimental effect upon the Conservation Area. The visibility splay of the previously approved plan is totally ignored by this new application.

Wiltshire Council Highways: No objection to amended subject to the imposition of appropriate planning conditions relating to parking and turning provision.

Wessex Water: In response to previous application, responded with a standard letter relating to foul sewage and surface water disposal. They state that the Council should be satisfied with any arrangement for satisfactory disposal of surface water from the proposal and the developer should contact Wessex Water prior to commencement of development to agree connection onto Wessex Water infrastructure.

Ministry of Defence: No comments received although raised no safeguarding objections to this proposal.

7. Publicity

The application was advertised by site notice, press advert and neighbour consultation.

7 letters received, 6 of which object with 1 of support.

Summary of key relevant points raised:

- Proposed dwelling is much larger than previously granted dwelling
- There have been recent problems in the village relating to overflowing and blocked sewers
- Loss of light and overlooking
- Capacity of existing sewage system
- Village is already congested with dwellings – loss of a green space
- Extra traffic congestion would be created – highway safety and visibility at driveway
- Not in-keeping with the conservation area
- Loss of views of the Church

8. Planning Considerations

Principle of development

The site is located entirely within the framework boundary of Bradenstoke where the principle of residential development is considered to be acceptable. The detail of the proposed development is assessed against criterion based policies C3 and HE1 of the North Wiltshire Local Plan 2011.

The existing planning permission is, of course, a highly significant material consideration. The principle of a new dwelling on this site has, to a very large extent, already been concluded upon.

Background

This application is the latest in a series of proposals for development on this site for a single dwelling. Following a succession of refusals in 2006 and 2007, the applications culminated in a grant of planning permission under 08/00680/FUL. That application was also considered by the Development Control Committee on 4th June 2008.

That 2008 planning permission related to a modest three-bed property of largely traditional cottage proportions. Materials of construction were to be natural and its future integration into the Conservation Area was considered likely to be successful.

Design and scale of development

This new proposal is considered likely to result in a dwelling of lesser quality than that previously approved. Although obviously a modern interpretation of a traditional village cottage, the previous approval did at least display modest proportions, fenestration and materials: which are attributes that are desirable for a new dwelling on this rather modest site in the Conservation area, where such characteristics generally prevail.

This new proposal diverges from the approval in several key respects. Its width to the road, overall eaves/ridge height and gable depth have all increased and the previous use of natural stone has been omitted in favour of render. This, which is predominantly in an attempt to create a 4 bedroom property (as opposed to the three-bed previously granted planning permission) has resulted in a proposal for a more substantial dwelling with its proportions no longer mimicking that

of a traditional village cottage, rather accepting of those (especially the gable span) associated with a modern dwelling.

However, to see this revised proposal solely as a watering down of the qualities likely to be displayed by the previous approval would be to miss some of its own strengths: timber sliding sash windows of a proportion more associated with the more substantial frontage width now being proposed; simple timber porch, low eaves height in relation to window headers, plinth detailing and continued use of natural slate for the roof.

The differences discussed above are considered to ultimately result in a dwelling that is less suitably proportioned for the site and street scene within which it is to sit. Nevertheless, the applicant has commendably acknowledged the revised dwellings' conscious move away from the village cottage aesthetic of the previous permission, rather than seeking to squeeze the additional bedroom out of a previous design. To this extent just because one design approach is considered to be better, does not mean that a different one is automatically unacceptable. As such, the acceptability of the proposal is discussed below in terms of its impact upon the wider locality.

Impact on Conservation Area

This part of the conservation area is characterised by a mixture of properties, varying in age, design and appearance. The site is currently part of a raised garden, in the backdrop of which stands a relatively unattractive dwellinghouse. At the time of the previous application it was concluded that the existing function and appearance of land in the Conservation Area did not preclude development from taking place.

As before, the proposed dwelling has been positioned to take into account the pattern of development which is traditional to the village. It is positioned to the front of the site, closer (but not hard up to) the highway frontage, approximating the position of the adjoining property, No.56. Again, as before, the existing frontage hedge is to be largely replaced by a stone wall/railings.

The difference in impact upon the Conservation Area between the existing and proposed scheme is therefore likely to be limited to the longer width of the property to the road, its height, its wider gable depth, and difference in fenestration. As the site is elevated above road level, it is undoubtable that the differences outlined will have an effect, but it is considered not to the extent that the proposal would unacceptably harm the Conservation Area.

Impact on amenity

The 4.5m gap between the proposed dwelling and the nearest adjoining neighbour No.56 "The Malthouse" is to be retained as per the previous planning permission. The land within the site is also raised and is at a higher level than the adjoining property and there is to be some ground levelling as per the 2008 permission. Again, in common with the previous permission, planning conditions can be imposed so as to ensure existing/proposed ground and finished floor levels do not result in a dwelling that is unacceptably elevated above its neighbour. However, it must be acknowledged that at 8.5m to ridge, the proposed dwelling is some 700mm higher in real terms than that already approved.

The proposed dwelling will be some 9.5 – 11.0m away from the dwellings on the opposite side of the road. Despite a small decrease in this distance compared with the existing planning permission, as was previously noted, a broadly similar distance exists between The Malthouse and the dwellings opposite that property. The position of the proposed dwelling is therefore still reflective of a traditional pattern of built development in Bradenstoke and any perceived loss of a view or light or indeed overlooking across the road must be seen in this context. The difference between the existing permission on this new proposal is not thought to generate a reasonable reason to refuse planning permission alone.

Highways and Access

The enlarged dwelling of this revised proposal effectively subsumes the previously proposed single garage, leaving only outside parking space for two cars on the site, with turning taking place upon the driveway which would be shared with the existing dwelling to the rear.

Revised plans have now been received which demonstrate how visibility at the point of access would be achieved. WC Highways raise no objections to the revised plan.

Community Infrastructure

In common with the previous planning permission, the applicant is aware of the need to make financial contributions towards affordable housing and public open space in accordance with Policy H6 of the North Wiltshire Local Plan. This sum can be secured by legal agreement and will need to take account of the increased number of bedrooms being proposed.

9. Conclusion

Although considered a lesser scheme than that previously approved, this revised proposed development will still not adversely affect the amenities of the surrounding area and, as a consequence, will preserve the character and appearance of the conservation area.

10. Recommendation

The application be Delegated to the Area Development Manager for APPROVAL subject to all parties entering into an agreement under section 106 of The Act in respect of contributions towards affordable housing and public open space, as is required by adopted Local Plan Policy

for the following reason:

The proposed dwelling will be in keeping with the surrounding area and will help to preserve the character and appearance of the conservation area. The development will not have an adverse impact on the adjoining occupiers in accordance with Policies C3, H3 and HE1 of the North Wiltshire Local Plan 2011.

and 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 Section 91 of the Town and Country Planning Act 1990.

2. The development hereby permitted shall be carried out strictly in accordance with the approved plans subject to such minor amendments to the development as may be approved in writing under this condition by the local planning authority.

Reason: To ensure that the development is implemented in accordance with this decision in the interests of public amenity, but also to allow for the approval of minor non-material amendments which do not materially affect the permission.

3. The development hereby permitted shall not be commenced until details of the landscaping of the site, including wherever appropriate the retention of existing trees, have been submitted to, and approved in writing by, the local planning authority.

The approved landscaping scheme shall be implemented within one year of either the first occupation or use of the development, whether in whole or in part, or its substantial completion, whichever is the sooner, and shall be maintained thereafter for a period of not less than five years. The maintenance shall include the replacement of any tree or shrub which is removed, destroyed or dies by a tree or shrub of the same size and species as that which it replaces, unless otherwise agreed in writing by the local planning authority.

Reason: In the interests of amenity.

4. Prior to the commencement of the development hereby permitted, details of roofing materials to be used externally shall be submitted to, and approved in writing by, the local planning authority. The development shall be built in the roofing materials approved.

Reason: In the interests of visual amenity.

5. Prior to the commencement of the development hereby permitted, a sample panel of the external stonework shall be made available on site to be inspected and approved in writing by the local planning authority. The development shall not commence until such approval has been given in writing. The external stonework shall be in accordance with the approved plans and shall match the approved sample in respect of type, colour, size and bedding of the stone, type of pointing and mortar mix.

Reason: In the interests of visual amenity.

6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification) there shall be no extension or external alteration to any building forming part of the development hereby permitted.

Reason: In order to safeguard the amenity of the area by enabling the local planning authority to consider individually whether planning permission should be granted for extensions and external alterations.

7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification) no garages, sheds or other ancillary domestic outbuildings shall be erected anywhere on the site edged in red on the approved plans.

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

8. Prior to the commencement of the development hereby permitted, details of the following matters (in respect of which approval is expressly reserved) shall be submitted to, and approved in writing by, the local planning authority:

- (1) walls, fences, gates and other means of enclosure;
- (2) finished floor levels of all new buildings;
- (3) existing and proposed ground levels across the site;
- (4) disposal of surface water.

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

Reason: In the interests of amenity and satisfactory layout.

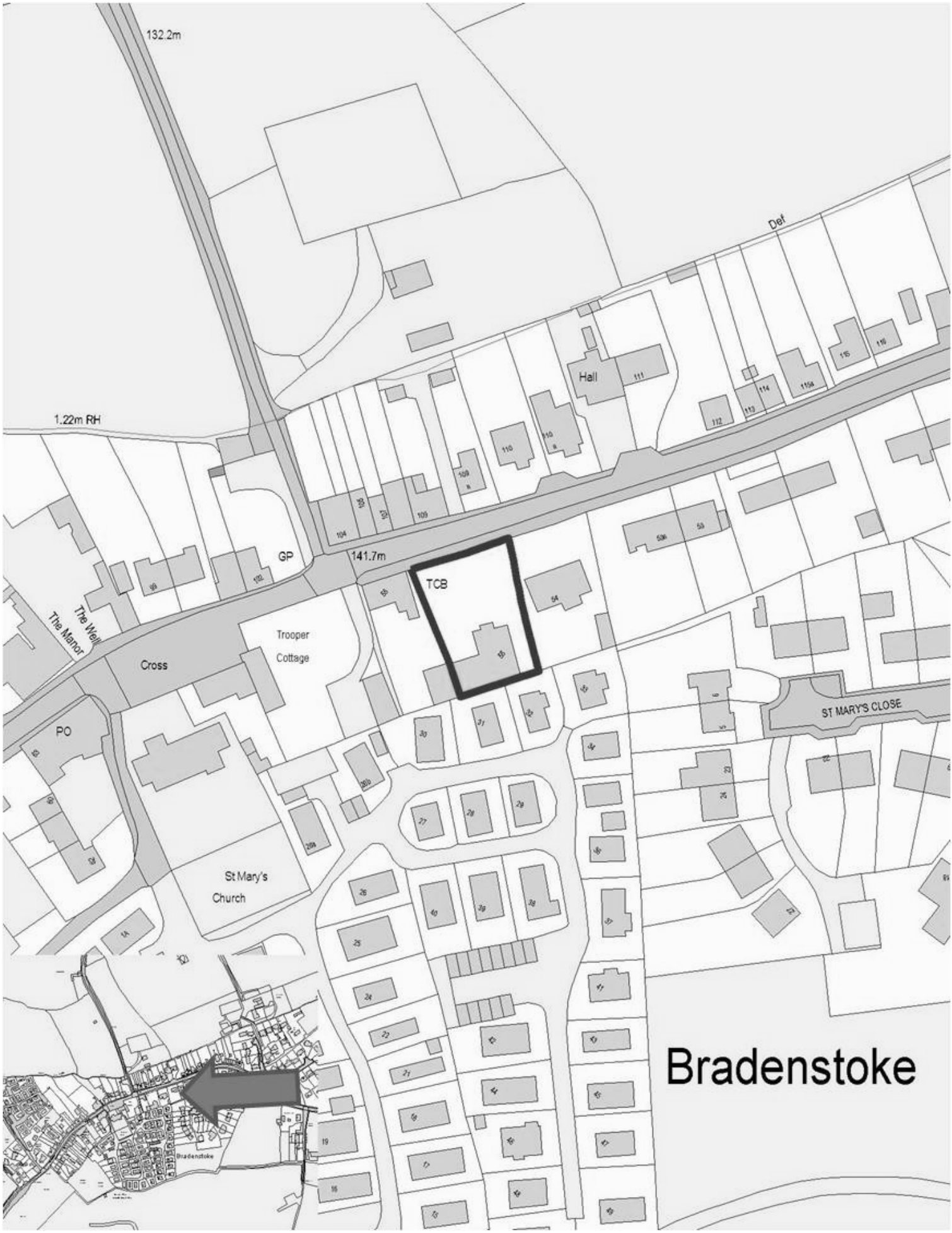
9. The development hereby permitted shall be carried out in complete accordance with the conclusions and recommendations contained within the submitted Great Crested Newt Assessment prepared by Chalkhill Environmental Consultants (dated 25th January 2010, unless otherwise agreed in writing with the Local Planning Authority in advance of development taking place.

Reason: To record and safeguard protected species, in the interests of nature conservation.

Informatives:

1. Attention is drawn to the Legal Agreement relating to this development or land which has been made pursuant to Section 106 of the Town and Country Planning Act 1990, Section 111 of the Local Government Act 1972, Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 or other enabling powers.

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|---|------------------------------------|
| Appendices: | None |
| Background Documents Used in the Preparation of this Report: | 1.20, 2.02, 2.37, 4.02, 4.04, 5.01 |



REPORT TO THE NORTHERN AREA PLANNING COMMITTEE

| | | | |
|----------------------------|--|-----------------------|-------------------------------------|
| Date of Meeting | 13th October 2010 | | |
| Application Number | 10/02960/S106 | | |
| Site Address | Land at Great Middle Green Farm, The Green, Dauntsey | | |
| Proposal | Modification of clause 3 of fifth schedule to legal agreement associated with planning permission 03/02654/OUT to allow: (i) occupation of all 19 dwellings before work starts on more than 2 of the employment units; (ii) to require work to commence on remaining employment units within 3 years of date of variation of agreement. | | |
| Applicant | Flower & Hayes Ltd | | |
| Town/Parish Council | Dauntsey | | |
| Electoral Division | Brinkworth | Unitary Member | Toby Sturgis |
| Grid Ref | 399773 182103 | | |
| Type of application | S106 | | |
| Case Officer | S T Smith | 01249 706 633 | Simon.smith@wiltshire.gov.uk |

Reason for the application being considered by Committee

This application seeks modification of a legal agreement under s106 of The Act associated with planning permission 03/02654/OUT. That planning permission was considered and granted by the Development Control Committee of the then North Wiltshire District Council. Since this application seeks to alter the terms of that planning permission, Officers consider it appropriate for the application to again be considered by the Development Control Committee.

1. Purpose of Report

To consider the above application to modify a legal agreement under s106 of The Act and to recommend that the existing legal agreement be modified to allow occupation of all 19 dwellings before any more of the permitted employment development is built and that to require that the remaining employment development be completed within 3 years of the date of the modified agreement.

The Dauntsey Parish Council have objected to the proposal. Their comments are reported below.

2. Main Issues

- Background to the application
- Relevance of the identified clause of the legal agreement
- Consequence of allowing modification

3. Site Description

The application relates to a development site accessed from the main road through Dauntsey. The development is split into two distinct sections: the housing site fronting The Green and the employment units site, positioned to its immediate rear. The former section is within the Settlement Framework Boundary and the latter outside.

Both sites are under construction. The housing site is substantially complete with almost total occupation. Conversely, the employment site to the rear remains uncompleted with only two of the permitted six units completed. Neither unit is occupied.

| 4. Relevant Planning History | | |
|-------------------------------------|--|--|
| Application Number | Proposal | Decision |
| 03/02654/OUT | Residential development and new industrial premises | Granted 08/06/04 |
| 05/00962/REM | Residential development – reserved matters | Granted 34/01/05 |
| 05/00612/REM | Employment development – reserved matters | Granted 24/01/05 |
| 08/00294/FUL | Employment development of 4 office units, access road, attenuation pond and use of land as open space (revision to reserved matters 05/00612/REM resulting in total of six employment units) | Refused 29/09/08 Appeal upheld 19/05/09 |
| 09/01420/S106 | Variation of s106 agreement associated with planning permission 03/02654/OUT to remove requirement for the provision of public open space | Undetermined |

5. Proposal

The proposal relates entirely to a legal agreement associated with a 2003 outline planning permission for residential and employment development. That legal agreement, inter alia, links the construction and occupation of the residential development to the creation of employment floorspace in a phased manner. Specifically, the agreement requires:

- Not to allow occupation of any 5 of the dwellings until construction of the employment units has commenced
- Not to allow any 12 of the dwellings until 50% of the employment floorspace has reached completion to shell finish
- Not to allow occupation of any of the dwellings until 80% of the employment floorspace has reached completion to shell finish

It is understood that all of the dwellings have been completed and all but one (if not all) are now occupied. Clearly, this situation breaches the requirements of the clauses set out within the legal agreement.

The application now under consideration seeks to resolve this breach by modifying the relevant clauses within the legal agreement so as to allow occupation of the dwellings without construction of the remaining (4 no.) employment units. The application also proposes to modify the agreement to require work to commence on the remaining employment units within 3 years of the date of the agreement being modified.

6. Consultations

Dauntsey Parish Council

My Council Object to this application for the following reasons - The applicant seeks to modify a Clause of the Section 106 Legal Agreement relating to the Great Middle Green Farm development to his advantage because of perceived difficult market conditions. In seeking to modify a requirement of the Legal Agreement, the developer has acknowledged that the requirements of the document are legitimate. Consequently the document should be seen as a whole and be complied with or modified through the planning process.

Since purchasing the site the developer has contravened the requirements of both the Section 106 Legal Agreement and the various Planning Permissions associated with the site, in a number of instances.

In particular, relating to surface water drainage, where no development was to be commenced until written approval of drainage works had been granted by the Local Planning Authority. There has been continuing contravention of the outline planning permission, the approval of reserved matters and the more recent appeal decision in

this respect. This has left the present surface water drainage run off from the site un-attenuated and at total variance with the requirements of the Environment Agency and Wiltshire Council resulting in an increased high risk to local flooding upstream of Old Sodom Lane Bridge.

In addition the whole matter of landscaping of the site and the provision of the Public Open Space on the land set aside for public use remains outstanding, a great disappointment to the local community. If the requirements had been met, the Open Space would now be a mature part of the street scene, beneficial to both the community and the developer, as an aid to the marketing of what he himself acknowledges is a difficult commercial environment. The local concern remains that, at the end of the day, to solve the site infrastructure problem attempts will be made to use a major portion of the Public Open Space. This, could and should not have arisen if there had been compliance with the Section 106 Agreement.

Other contraventions include the construction and occupation of the dwellings themselves. The whole on-site development process has been haphazard and amateurish.

This Parish Council strongly objects to the proposed modification of the Legal Agreement and requests the Wiltshire Council to take immediate enforcement action to seek compliance with the requirements of the Legal Agreement.

The Parish Council trusts that their observations will be taken into consideration when the application is determined.

7. Publicity

The application was advertised by site notice, press advert and neighbour consultation.

3 letters of letters of objection received

Summary of key relevant points raised:

- Developers blatant disregard to the requirements of lawful development and planning
- Inadequate drainage of the site – development exacerbates existing drainage problems
- Development creates traffic problems
- Applicant has yet to fulfil requirements of earlier permissions – this further application simply delays the applicant's agreement that enabled them to begin the development in first place.

8. Planning Considerations

Background and parameters of the application

The original redevelopment site bisected the Settlement Framework Boundary of Dauntsey, with the 0.828ha residential element positioned inside of the policy boundary and the office development outside (reference 03/02654/OUT refers given planning permission by the Development Control Committee on 07/06/04).

Under the terms of the outline planning permission, a section 106 agreement was entered into, which, *inter alia*, required the phased creation of employment development as the residential development took place.

Two reserved matters applications, respectively for the residential and commercial elements of the overall development, were subsequently submitted by the then new owners Flower & Hayes Developments. The residential proposal comprised a total of 19 dwellings including 4 affordable units, with the employment element consisting of six detached B1 units and car parking, approximating 1200m² of floorspace in total.

It is notable that several planning conditions and several of the clauses within the associated legal agreement have been ignored by the applicant. Development has continued on site with all of the dwellings now being constructed and occupied unlawfully. This application seeks to rectify a very specific element of that unlawful situation.

In particular, this application is not a planning application for new development. Neither is it an application that has any bearing upon the drainage of the site or provision of the adjoining public open space. It solely seeks to modify the terms of the 5th Schedule of the legal agreement relating to the employment development (as outlined above).

Any reference to the development site as a whole in respect of drainage matters or the provision of public open space (which are indeed other enforcement matters) is simply not possible in the context of this application.

The application cannot be considered in the context of any suspected precursor for alternative development on the employment site (since that is not being proposed). The applicant is at liberty to submit a separate planning application for whatever development they chose to propose. Whatever the outcome of this current application, the Council will not be prejudiced in considering that future application for development, should it ever be submitted.

Relevance of the identified clause of the legal agreement

The appropriate test to apply in considering the proposal to remove the relevant obligation is to assess the relevance of the clause to present circumstances.

In this particular instance it is evident that there is no potential for even the existing two employment units to be occupied/used. The applicant has submitted information from their marketing agents which suggests that very little interests has been generated in those units. The marketing agents suggest that is due to the undesirable appearance of the units, the location of Dauntsey and the generally depressed market conditions.

There is no reason to disagree with the suggestions made, particularly as other new employment development within the district also remains vacant. In this context it is considered to be unreasonable to insist that the remaining employment units are built (as would be required by the present terms of the legal agreement), only for the likelihood that they also would remain empty, at least in the medium term.

Consequence of allowing modification

The proposed modification would allow the <continued> occupation of the dwellings without breach of the Fifth Schedule of the legal agreement, only. The applicants propose to modify the agreement to allow for a 3 year period (from the date of the new modified agreement) at the end of which the remaining employment units should be provided. Agreement to the suggested modification would therefore not automatically lead to a situation whereby the remaining employment units were never provided.

Since the application remains specific in its scope (as described above), the development would remain in breach of several other aspects of the planning permissions. Any agreement to modify the legal agreement in specific respect of Schedule 5, would not prejudice the Council in taking any possible future action in other respects.

As noted above, the application cannot be considered in the context of any suspected precursor for alternative development on the employment site. For that to occur, a new and separate planning permission for new development must be sought. In the event of the Committee agreeing to the modification of the legal agreement, as applied for, the Council will not be prejudiced in its consideration of any new and separate planning application for new development (should it ever be submitted).

9. Conclusion

There is considered to be no advantage to the success of the development or the wider village for the Council to insist that buildings are built, and in all likelihood, to remain empty. The future position of the Council with regard to new applications on the site, or any possible enforcement action will in no way be prejudiced by an agreement to the proposed modification.

10. Recommendation

That the decision be delegated to the Area Development Manager (North) to arrange for the legal agreement under s106 of The Act to be modified in accordance with that applied for.

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| Appendices: | None |
| Background Documents Used in the Preparation of this Report: | 1.20 2.02 4.02 4.03 |

Dauntsey



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