

## AGENDA

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**Meeting:** Eastern Area Planning Committee

**Place:** Council Chamber - Council Offices, Browfort, Bath Road, Devizes  
SN10 2AT

**Date:** Thursday 19 July 2012

**Time:** 6.00 pm

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Please direct any enquiries on this Agenda to Kieran Elliott, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718504 or email [kieran.elliott@wiltshire.gov.uk](mailto:kieran.elliott@wiltshire.gov.uk)

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

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### Membership:

Cllr Jane Burton	Cllr Chris Humphries
Cllr Peggy Dow	Cllr Laura Mayes
Cllr Nick Fogg	Cllr Jemima Milton
Cllr Richard Gamble (Vice Chairman)	Cllr Christopher Williams
Cllr Charles Howard (Chairman)	

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### Substitutes:

Cllr Liz Bryant	Cllr Jerry Kunkler
Cllr Trevor Carbin	Cllr Francis Morland
Cllr Nigel Carter	Cllr Christopher Newbury
Cllr Bill Douglas	Cllr Jeffrey Ody
Cllr George Jeans	Cllr Jonathon Seed
Cllr Simon Killane	

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## **Part I**

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

1 **Apologies for Absence**

2 **Minutes of the Previous Meeting** (*Pages 1 - 12*)

To approve and sign as a correct record the minutes of the meeting held on 7 June 2012. (copy herewith).

3 **Declarations of Interest**

To receive any declarations of non-percuniary or percuniary interests or dispensations granted by the Standards Committee.

4 **Chairman's Announcements**

5 **Public Participation and Councillors' Questions**

The Council welcomes contributions from members of the public.

### Statements

Members of the public who wish to speak either in favour or against an application or any other item on this agenda are asked to register 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 and up to 3 speakers on any other item on this agenda. Each speaker will be given up to 3 minutes and invited to speak immediately prior to the item being considered. The rules on public participation in respect of planning applications are detailed in the Council's Planning Code of Good Practice.

### Questions

To receive any questions from members of the public or members of the Council received in accordance with the constitution which excludes, in particular, questions on non-determined planning applications. Those wishing to ask questions are required to give notice of any such questions in writing to the officer named on the front of this agenda no later than 5pm on **Thursday 12**

**July 2012.** Please contact the officer named on the front of this agenda for further advice. Questions may be asked without notice if the Chairman decides that the matter is urgent.

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

## 6 **Planning Applications**

To consider and determine the following planning applications:-

- 6a **E/2012/0359/FUL - 21-22 High Street, Marlborough, SN8 1LW - Change of Use of Ground and First Floors to A1/A3 Use (Pages 13 - 28)**

A report by the Case Officer is attached.

- 6b **E/2012/0613/FUL - Lower Upham Airfield, Ogbourne St George, Marlborough, SN8 1SZ - Erection of Dual Purpose Hangar/Agricultural Store to replace the Polytunnel Hangar currently in use (granted permission under Application No. E/11/0135/FUL) (Pages 29 - 34)**

A report by the Case Officer is attached.

- 6c **E/2012/0152/FUL - Manor Farm, West Overton - Erection of a Steel Portal Framed Grain Storage Building with Concrete Apron Area (Pages 35 - 48)**

A report by the Case Officer is attached.

## 7 **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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## **EASTERN AREA PLANNING COMMITTEE**

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### **DRAFT MINUTES OF THE EASTERN AREA PLANNING COMMITTEE MEETING HELD ON 7 JUNE 2012 IN THE COUNCIL CHAMBER - COUNCIL OFFICES, BROWFORT, DEVIZES.**

#### **Present:**

Cllr Peggy Dow, Cllr Richard Gamble (Vice Chairman), Cllr Charles Howard (Chairman), Cllr Chris Humphries, Cllr Laura Mayes, Cllr Jemima Milton, Cllr Christopher Newbury (Substitute), Cllr Jeffrey Ody (Substitute) and Cllr Christopher Williams

#### **Also Present:**

Cllr Stuart Wheeler

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#### **33. Membership**

Following full Council on **15 May 2012** it was noted the membership of the Committee had been amended to that as shown on the agenda packs.

The changes were as follows:

Cllr Howard Marshall was removed as a substitute member.  
Cllr Bill Douglas was added as a substitute member.

#### **34. Apologies for Absence**

Apologies were received from Cllrs Jane Burton and Nick Fogg.

Cllr Burton was substituted by Cllr Jeff Ody.  
Cllr Fogg was substituted by Cllr Christopher Newbury.

#### **35. Minutes of the Previous Meeting**

The minutes of the previous meeting held on **26 April 2012** were presented.

It was,

#### **Resolved:**

**That subject to the following changes:**

**Minute 29, Paragraph 8: Substitute “Statements in support of” with “Statements in objection to” and,**

**Minute 29, Resolution, line 3: Substitute “but” with “put”,**

**To APPROVE the minutes as a true and correct record.**

**36. Declarations of Interest**

Cllr Jeff Ody declared a personal interest in Minute 39(a): *E/2012/0443/FUL – Former Gasholder Site, Land Adjacent to the Wharf, Devizes* – as a member of the Trust for Devizes, who object to the proposal. He stated he was not an officer of the Trust, and had not been instrumental in forming their objection, and would consider the matter with an open mind.

**37. Chairman's Announcements**

There were no announcements.

**38. Public Participation and Councillors' Questions**

The Committee noted the rules on public participation.

**39. Planning Applications**

**39.a E/2012/0443/FUL - Former Gasholder Site, Land adjacent to The Wharf, Devizes, Wiltshire - Redevelopment to form 37 Retirement Apartments for Older People including Communal Facilities, Car Parking and Associated Landscaping**

Public Participation

Mr Tony Duck, Trust for Devizes, spoke in objection to the application.

Mr Matthew Shellum, agent, spoke in support of the application.

The Planning Officer introduced his report which recommended approval. It was highlighted that a similar application (E/11/0057/FUL) had come before the Committee in 2011, been refused, and had then gone to appeal. The scheme had been revised following the Inspector’s decision to dismiss the appeal on the grounds that the eastern block of the development was too tall. The Inspector had considered the potential for noise from the adjacent public house and brewery yard to adversely affect future occupiers of the development but concluded that the mitigation measures being proposed by the applicant were adequate. Officers considered that the revised scheme had addressed the Inspector’s sole concern regarding the height of the eastern block and this should be the focus for the committee’s consideration of the current application.

The Committee then had the opportunity to ask technical questions of the officers. A comparison of the scale with nearby structures was sought, and it was clarified that the overall height of the Eastern block had been reduced by 1.77m, which included a lowering of the ground height for the whole development of 0.5m.

Further questions included the impact on biodiversity for which a financial contribution from the developers was to be arranged, and the status of the land north of the site that was to be set aside in accordance with local policies for future construction of a public footpath. In response to queries, it was established that there was no stipulation of maximum density of dwellings for town centre locations, and that reference to sealed windows in the report would not include habitable room windows with single apertures, but corridors.

Members of the public then had the opportunity to address the Committee with their views, as detailed above. The views of the Local Member, Cllr Nigel Carter, were included within the report papers.

A discussion followed, wherein the attractiveness and suitability of the design was raised, including concerns regarding overdevelopment, a lack of open space and impact on local services. The views of the Planning Inspector that parking provision was appropriate and the design complimentary to the area was discussed, as was the overall impact of the development on the conservation area.

After debate, it was,

**Resolved:**

**To defer and delegate to officers to GRANT planning permission, subject to the applicant entering into a S106 legal agreement to safeguard land for the canalside public footpath and to secure a contribution of £152,000 towards affordable housing (£144,000) and ecology mitigation (£8,000).**

**For the following reason:**

**The decision to grant planning permission has been taken on the grounds that the proposed development would not cause any significant harm to interests of acknowledged importance and would also give rise to significant benefits including provision of needed housing for the elderly, an affordable housing contribution, utilisation of a long unused contaminated Brownfield site, economic and environmental benefits as well as potential public paths. In reaching its decision the local planning authority has had regard to the following:**

- a) Policies PD1, HC2, HC5, HC10, HC30, HC34, ED21, AT1, NR3 & NR4 of the Kennet Local Plan 2011;**
- b) Devizes Strategic Brief;**
- c) Devizes Conservation Area Statement;**

- d) Devizes Town Centre Design Code;**
- e) Government policy contained in the National Planning Policy Framework (NPPF);**
- f) Emerging Wiltshire Core Strategy; and**
- g) Draft Devizes Wharf Planning Brief.**

**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 shall be constructed in accordance with the finished floor levels (129.66m AOD) shown on Drawing no. A01-1712-103 received on 5<sup>th</sup> April 2012.**

**REASON:**

**In the interests of visual amenity and the character and appearance of the conservation area.**

- 3. Notwithstanding the submitted details, no development shall commence on site until samples of the materials to be used for the external walls and roofs have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.**

**REASON:**

**In the interests of visual amenity and the character and appearance of the conservation area.**

- 4. No development shall commence on site until details and large scale working drawings of the following have been submitted to and approved in writing by the Local Planning Authority:**

- Eaves and verges**
- Doors and windows (including details of heads, sills, reveals and finishes)**
- Rainwater goods**
- Dormers and balconies (including details of materials and samples if requested)**
- Glazing for the links (including elevations showing clear / tinted / opaque / blanking sections of glass)**
- Wrought iron feature gable ornaments**

**Development shall be carried out in accordance with the approved details.**

**REASON:**

In the interests of visual amenity and the character and appearance of the conservation area.

5. No development shall commence on site until details of all boundary treatments (including elevational drawings, samples of materials, details of copings and brick bond for walls and details of decorative finishes for fencing / railings) have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details prior to the development being first occupied.

**REASON:**

In the interests of visual amenity and the character and appearance of the conservation area.

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

**REASON:**

To ensure a satisfactory landscaped setting for the development and to enhance foraging opportunities for wildlife.

7. No development shall commence on site until a landscape management plan for the area adjacent to the boundary of the canal (including the land identified for the canalside footpath) has been submitted to and approved in writing by the Local Planning Authority. The plan shall thereafter be implemented in accordance with the approved details.

**REASON:**

To ensure a satisfactory landscaped setting for the development and to preserve foraging opportunities for wildlife.

8. None of the dwelling units hereby permitted shall be occupied by any person who is less than 60 years of age, except in the case of two persons sharing an apartment, one occupant shall not be less than 60 years of age and the other not less than 55 years of age.

**REASON:**

The application has been considered on the basis of occupation by elderly persons and the Local Planning Authority wishes to consider any future changes to occupation of the building.

9. Development shall be carried out with an archaeological watching brief during construction works, in accordance with the Written Scheme of Investigation for Archaeological Works (CgMs Ref: WB/11443 Dated: April 2012) received on 20<sup>th</sup> April 2012.

**REASON:**

To enable the recording of any matters of archaeological interest.

10. Prior to the commencement of development approved by this planning permission (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the Local Planning Authority:

1. A preliminary risk assessment which has identified;

- all previous uses;
- potential contaminants associated with those uses;
- a conceptual model of the site indicating sources, pathways and receptors;
- potentially unacceptable risks arising from contamination at the site.

2. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

3. The site investigation results and the detailed risk assessment (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.

4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the express consent of the Local Planning Authority. The scheme shall be implemented as approved.

**REASON**

To ensure protection of groundwater.

11. No occupation of any part of the permitted development shall take place until a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation has been submitted to and approved, in writing, by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as

identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved.

**REASON**

The site is known to be contaminated and without adequate investigation, risk assessment and remediation it may present an unacceptable risk to controlled waters.

12. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, an amendment to the remediation strategy detailing how this unsuspected contamination shall be dealt with. The remediation strategy shall be implemented as approved.

**REASON**

No site investigation can identify all contamination and any unexpected contamination that is identified will need to properly addressed in order to avoid unacceptable risks to controlled waters.

13. No piling or any other foundation designs using penetrative methods shall be used without the express written consent of the Local Planning Authority. Consent will only be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater.

**REASON**

The site is known to be contaminated and piling may present an unacceptable risk to controlled waters.

14. There shall be no infiltration of surface water drainage into the ground other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters.

**REASON**

Infiltration of surface water may mobilise contaminants resulting in an unacceptable risk to controlled waters.

15. No part of the development hereby permitted shall be occupied until the surface water drainage system has been constructed in accordance with the details shown on drawing no. 50442-01 Rev E and contained within the submitted Foul and Surface Water Drainage Strategy (April 2012). All surface water arising from the car parking and vehicle turning areas shall pass through an oil interceptor before being discharged into the canal.

**REASON:**

To ensure satisfactory surface water drainage and to prevent pollution of the canal and controlled waters.

**16. No development shall commence on site until a Construction Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. The plan shall subsequently be implemented in accordance with the approved details and agreed timetable. The Construction Environmental Management Plan shall include measures:**

- a) To prevent damage to the waterway infrastructure from parked and moving vehicles within close proximity to the canal;**
- b) To prevent pollution of the waterway during the construction phase (including the result of further investigations of the existing drainage on site to ensure that no direct pathways exist leading to the canal which could result in pollution and subsequent loss of water quality;**
- c) To prevent disruption to the use of the adjacent public car park during construction; and**
- d) To avoid negative impacts upon protected species.**

**REASON**

**To prevent pollution of the water environment, harm to protected species and disruption to the adjacent public car park and waterway.**

**17. No part of the development hereby approved shall be first occupied until the parking area (15 spaces) and turning space shown on the approved layout plan (A01-1712-02) has been consolidated, surfaced and laid out in accordance with the approved details. This area shall be maintained and remain available for this use at all times thereafter.**

**REASON:**

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

**18. Before any part of the development hereby permitted is first occupied the new pedestrian access / footway across the public car park (shown between the site entrance and The Wharf on drawing no. A01-1712-102) shall be constructed and the associated alterations to the car park carried out, in accordance with details to be first submitted to and approved in writing by the Local Planning Authority.**

**REASON:**

**In the interests of pedestrian safety.**

**19. The development hereby permitted shall not be occupied until three cycle stands have been provided in accordance with details to be first submitted to and approved in writing by the Local Planning Authority. The submitted details shall include a manufacturer's specification for the stands and a plan showing their location. The stands shall be retained for use by the residents of the development at all times thereafter.**

**REASON:**

To ensure that satisfactory facilities for the parking of cycles are provided and to encourage travel by means other than the private car.

20. The ground floor room shown on drawing no. A01-1712-03 as a 'Mobility Scooter Cycle Store' shall be retained for use by residents of the development as a secure store for bicycles and mobility scooters. Facility shall be provided within the room to lock bicycles to a secure part of the building's fabric or a secure bracket / stand provided for the purpose.

**REASON:**

To ensure that satisfactory facilities are provided for secure covered cycle parking and to encourage travel by means other than the private car.

21. Development shall be carried out strictly in accordance with the submitted Habitat Management and Biodiversity Strategy (ref. E0911101051 vs3) received on 5<sup>th</sup> April 2012.

**REASON:**

To compensate for the loss of wildlife habitat on the site.

22. No external lighting shall be erected on the site unless details of that lighting (including a plan showing the locations for individual lights, the type of light appliance, the height and position of fitting, illumination levels and light spillage and details of foundations for any lighting poles/bollards) have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

**REASON:**

To avoid disturbance / harm to bats and in the interests of the amenities of the area.

23. No development shall commence on site until a scheme for water efficiency has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details.

**REASON**

In the interests of sustainable development and prudent use of natural resources.

24. The buildings hereby permitted shall be designed and constructed to achieve a minimum 10% reduction in CO<sub>2</sub> emissions from energy use by users of the development, when compared against Part L of the Building Regulations (2010). No dwelling shall be occupied until a certificate of compliance has been issued to the Local Planning Authority from the relevant building control body (Local Authority Building Control, NHBC or other Approved Inspector).

**REASON:**

In the interests of reducing CO<sub>2</sub> emissions.

**25. No part of the development hereby permitted shall be occupied until a scheme of acoustic mitigation for occupants of the development (which shall achieve 35dB L<sub>AMAX</sub> internal noise levels) has been implemented in accordance with the submitted details. The scheme shall include:**

- a) Fixing shut of windows on the western elevation (as identified on drawing nos. A01-1712-103 & A01-1712-104).**
- b) The use of automatic vents for the corridors on the west elevation (as identified on drawing nos. A01-1712-103 & A01-1712-104), the vents to default into the shut position.**
- c) The installation of acoustic screens for the balconies closest to Wadworth's yard (as identified on drawing nos. A01-1712-103 & A01-1712-104), in accordance with details to be first agreed in writing by the Local Planning Authority.**
- d) Trickle ventilation and glazing to the specification detailed in the AAD letter of the 22<sup>nd</sup> March 2012 ref. 11296 / ADN002 / JS.**
- e) Acoustic wall / fencing along the western and southern site boundaries which shall be continuous and imperforate to a height shown on the approved plans, to a minimum of 10kg per m<sup>2</sup>, and in accordance with details to be first agreed in writing by the Local Planning Authority.**

**26. 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.**

- (a) Application Form, Design & Access Statement, Foul and Surface Water Drainage Strategy, Habitat Management and Biodiversity Strategy (Ref: E091110151 vs3), Acoustic Design Note (Ref: 11296 / ADN002 / JS Dated 22nd March 2012), Drainage Layout (Drawing nos. 50442-01 Rev E), Topographical Survey (Drawing no. 20/03 209197 Rev A), Tree Constraints Plan (Drawing no. 6871/01), Site Location Plan (Drawing no. A01-1712-101), Site Layout Plan (Drawing no. A01-1712-102) and Elevations/Floorplans (Drawing nos. A01-1712-103, A01-1712-104, A01-1712-105, A01-1712-106, A01-1712-107, A01-1712-108 & A01-1712-110) received on 5th April 2012.**
- (b) Written Scheme of Investigation for Archaeological Works (CgMs Ref: WB/11443 Dated April 2012) and Draft S106 Planning Obligation received on 20th April 2012.**

**39.b E/2012/0362/FUL - 1 Church Street, Little Bedwyn, Marlborough,  
SN8 3JQ - Erection of New Dwelling, Demolition of Existing Office  
(resubmission of E/2011/1569/FUL)**

Public Participation

Mr Nick Loweth, local resident, spoke in support of the application.

Mr Mike Fowler, agent, spoke in support of the application.

Mr Spencer Canning, applicant, spoke in support of the application.

The Area Development Manager presented their report which recommended refusal. The key issues were highlighted as being the scale and impact on the landscape and Area of Outstanding Natural Beauty, the site being designated as being outside the village boundary, and the application history consistently determining the location as being unsuitable for further development.

The Committee then had the opportunity to ask technical questions of the officers.

Members of the public then had the opportunity to address the Committee with their views, as detailed above.

The Local Member, Cllr Stuart Wheeler, then spoke in support of the application.

A discussion followed, wherein the screen of trees offered by the applicant was raised, along with the offer to improve 7 acres of land near to the site. The judgement of previous Planning Inspectors was addressed along with the relevant planning policies for small village development.

After debate, it was,

**Resolved:**

**That the application be REFUSED for the following reasons:**

- 1. The site lies beyond the built-up limits of the village and within the countryside, as acknowledged by two previous appeal decisions when permission was similarly refused for residential development on this site. The proposal does not meet any of the criteria set out in policy HC26 of the Kennet Local Plan 2011 that deals with development in this location and would lead to the creation of an unacceptable ribbon development along School Lane. The proposal is also contrary to national planning policy set out in the National Planning Policy Framework.**
- 2. The site is located within the Little Bedwyn Conservation Area and within the North Wessex Downs Area of Outstanding Natural Beauty. National and local planning policy seeks to preserve and**

enhance the character and appearance of the landscape in this location. This proposal would result in the replacement of the existing building with a much larger and bulkier development that because of the conspicuous nature of the site on the hillside, would have a significant adverse impact on the appearance of the landscape and the Conservation Area and would be unacceptably prominent in views from both close to the site and from public roads and rights of way in the vicinity. This would conflict with policies NR6 and PD1 of the Kennet Local Plan and with the Council's statutory duties to preserve the character and appearance of the Conservation Area and to conserve and enhance the natural beauty of the landscape within the AONB.

**39.c E/2012/0465/FUL - Barn at Dursden Lane, Pewsey, SN9 5JN - Conversion of Existing Agricultural Building to Dwelling**

The application was withdrawn prior to the commencement of the meeting.

**40. Urgent items**

There were no urgent items.

(Duration of meeting: 6.00 - 7.35 pm)

The Officer who has produced these minutes is Kieran Elliott of Democratic Services, direct line 01225 718504, e-mail [kieran.elliott@wiltshire.gov.uk](mailto:kieran.elliott@wiltshire.gov.uk)

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

## REPORT TO THE EASTERN AREA PLANNING COMMITTEE

<b>Date of Meeting</b>	19 July 2012
<b>Application Number</b>	E/2012/0359/FUL
<b>Site Address</b>	21-22 High Street, Marlborough SN8 1LW
<b>Proposal</b>	Change of use of ground and first floors to A1/A3 use
<b>Applicant</b>	Nero Holdings Ltd
<b>Town/Parish Council</b>	MARLBOROUGH
<b>Grid Ref</b>	418775 169045
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	Peter Horton

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

The application has been called to committee at the request of the Division Member, Cllr Nick Fogg.

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

To consider the recommendation that the application be approved subject to conditions.

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

The main issue to consider is whether or not the development makes a positive contribution to the vitality and viability of Marlborough town centre and therefore whether or not change of use from A1 to mixed use A1/A3 should be allowed at this site within the Marlborough High Street.

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

The application concerns a characterful but unlisted red bricked building on the southern side of Marlborough High Street, situated on the corner of the access to Hilliers Yard. The site was formerly occupied by Dash, a clothes shop, but at the time the current application was submitted, works were already underway to fit the unit out for use as a Caffe Nero outlet. Indeed, the cafe opened on 30 April 2012, six weeks into the life of the current application.

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

None

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

The proposal is to change the use of the ground and first floors of the building from A1 to mixed A1/A3 use. The internal layout consists of a large sales counter with an extended display of products with coffee machines and equipment, and a refrigerated unit enabling customers to select sandwiches and cold drinks which may be eaten on the premises or be taken away. Seating is provided on the ground floor and towards the front of the first floor. Storage and WC facilities are positioned towards the rear of the first floor.

The predominant use is as a cafe (A3). However there is an element of A1 use akin to a sandwich bar use e.g. takeaway sales of sandwiches, cakes and hot and cold drinks.

No cooking takes place on the premises, only the re-heating of a limited range of pre-prepared foods (all of which can be eaten cold anyway). Hence there is no need for an extraction flue.

The change of use was implemented without the benefit of planning permission whilst the application was still undetermined. Hence the application is retrospective.

## **6. Planning Policy**

Kennet Local Plan policies PD1 and ED18 are relevant. Under the provisions of ED18, the site is designated as lying within the Prime Shopping Area of Marlborough, within which planning permission will not be given for the change of use of ground floor premises for uses other than A1 (retail) uses unless “the development makes a positive contribution to the vitality and viability of the centre”.

The National Planning Policy Framework (NPPF) sets out central government planning policy. Its paragraph 23 is particularly relevant. This states that: “Planning policies should be positive, promote competitive town centre environments and set out policies for the management and growth of centres over the plan period”. It goes on: “In drawing up Local Plans, local planning authorities should (amongst other things): (a) recognise town centres as the heart of their communities and pursue policies to support their viability and vitality; (b) define the extent of town centres and primary shopping areas, based on a clear definition of primary and secondary frontages in designated centres, and set policies that make clear which uses will be permitted in such locations, and; (c) promote competitive town centres that provide customer choice and a diverse retail offer and which reflect the individuality of town centres”.

The NPPF glossary defines primary frontages as “likely to include a high proportion of retail uses which may include food, drinks, clothing and household goods”.

On June 29 2012 the applicant won an appeal for a similar retrospective planning proposal in Skipton, Yorkshire. This is highly relevant to the consideration of the current proposal both because it is a comparable case and because it post-dates the NPPF. The appeal will be referred to in section 9. A copy of the Inspector’s decision letter on this enforcement appeal is attached as an appendix to this agenda..

## **7. Consultations**

Town Council: Object for the following reasons:

- The town does not need more coffee shops. To allow another coffee shop would harm the viability of existing locally owned outlets, and harm the vitality and viability of the High Street. As a major tourist destination, Marlborough needs a healthy and varied mix of retail outlets;
- The A3 use would harm the amenity of the 3 flats above due to: (a) excessive noise from piped music, air conditioning units and extractor units; (b) smells from food preparation, and; (c) insufficient sound proofing between walls and floors;
- The retrospective nature of the application shows a total disregard for the feelings of the community, including local businesses and the very residents the applicant is hoping to serve and be part of.

Environmental Protection: No objection, but recommends a precautionary condition, namely that an acoustic and vibration impact assessment of the air conditioning system be submitted to the Environmental Protection Team. The assessment must determine the internal noise and vibration impact on the property above the cafe, and the external noise exiting the louvre. The report must make recommendations for a mitigation scheme based on the findings of the assessment. The condition will not be discharged until any such mitigation work has been completed to the satisfaction of the Environmental Protection Team.

Highway Authority: No objection.

## **8. Publicity**

One letter of support has been received from a member of the public.

Objections have been received from 66 members of the public and local traders. Their main points of concern can be summarised as follows:

- The charm of the town is largely due to the variety of interesting, attractive and “different” retail units provided by small independent businesses. The town is already well served by A3 outlets and the presence of another cafe (and from a national chain) will do little to preserve the vitality, viability and individuality of the High Street. Instead, Marlborough will lose its character, becoming a dull identikit clone town – a bland copy of other samey towns dominated by multiples rather than the unique and individual mix there is at present. There will then be less incentive for tourists to visit;
- Marlborough does not need another chain coffee shop – it already has Costa and Waitrose;
- Caffè Nero’s size and economic weight will enable it to compete unfairly with its independent competitors, which will not be able to match its economies of scale and which will go out of business. Profits will not remain in the local economy but will be returned to central office and shareholders. There is only so much coffee that can be drunk in a day: to allow this application will result in one or more existing operators from being forced to close;
- The site is in a prime location within the High Street – it should remain in A1 use;
- Caffè Nero is by definition a cafe and the application falls squarely into class A3: the claim of being part A1 use is a ruse to get around policy ED18;
- It would be inconsistent to allow the application as an appeal was dismissed in 2009 to change the use of the former Age of Elegance store (10 High Street) to an A3 restaurant;
- To allow the application would set a precedent for further similar applications;
- Object to the aggressive and disrespectful stance of Caffè Nero and the way in which planning procedures have been disregarded and the change of use has been implemented in advance of planning permission being granted. This brings the planning system into disrepute: the application should be resisted with a strong message that planning regulations are to be adhered to;
- Noise, vibration and smells from the air conditioning and extraction units, and noise from customers, will be detrimental to the amenities of the occupiers of the 3 flats above the proposed cafe, and will be detrimental to the trade of the adjoining shop to the rear;
- No allowance seems to have been made for the waste that will be generated - where will waste be stored?
- The take-away trade will generate additional litter on the High Street.

The Marlborough Chamber of Commerce objects for the following reasons:

- The site lies in a prime retail location: to preserve the vitality of the High Street, the premises should remain in A1 use;
- The town is already well served by A3 outlets. Yet another one will not enhance the vitality and viability of Marlborough as a local and regional retail destination;

The company’s decision to press ahead before the planning application has been determined displays a nonchalant attitude towards the town and the will of other businesses there. Fear that Caffè Nero will not be the “good neighbour” that they need at a time when all businesses have to work together to maintain and enhance the vitality of the town.

## **9. Planning Considerations**

This is a retrospective application because the proposed change of use was implemented 6 weeks after the application was submitted in what would appear to have been a calculated course of action. Whilst this breach of planning regulations is an extremely unfortunate action which the local planning authority can in no way condone, it is not a criminal offence, and the planning application stands to be determined on its individual planning merits. It is worth noting in the Skipton case that the Inspector commented: “I have noted the concerns raised at the Hearing that the use proceeded before planning permission was granted. I do not condone that course of action but it is not a good reason to withhold consent, especially when no harm has been shown to arise from the coffee shop use”.

The application concerns a former retail unit situated in the heart of Marlborough High Street, just a few doors down from Waitrose. The site lies within the Marlborough Prime Shopping Area as defined by the Kennet Local Plan. Policy ED18 seeks to resist changes of use of ground floor premises here unless it can be demonstrated that the proposed development makes a positive contribution to the vitality and viability of the shopping centre. This particular application seeks to 'get around' this policy by having applied for mixed A1/A3 use, claiming that the A1 sales are too great to be considered ancillary. It is clear that most customers of Caffè Nero stay on the premises to consume coffee. Indeed, 83% of them did so in a survey undertaken by officers over an 8 hour period on 21 May 2012 (although the applicant's own figures, taken over a longer period, show the figure to be 75%). Hence this is predominantly an A3 use. However a significant minority of clients do buy to consume off the premises and case law indicates this to be an A1 use. Indeed the Skipton Inspector stated: "I noted this mix of uses at the times of my site visits". Hence it is not invalid for the applicant to have applied for mixed A1/A3 use.

As has been pointed out by so many of the objectors, Marlborough benefits from a high number of outlets where it is possible to buy coffee. Hence it could be argued that Marlborough does not 'need' an additional A3 unit. Furthermore, many of the objectors comment that Marlborough benefits from a high percentage of independent traders, a factor which results in much of the charm, uniqueness and individuality of the shopping centre which draws in visitors. Hence there is strong local feeling that national multiples such as Caffè Nero should be kept out, particularly if a consequence of them 'infiltrating' Marlborough High Street would be the closure of existing independent traders who benefit from less prime locations. However planning case law has indicated that matters of commercial competition are not a valid planning consideration and that it is for the market to shape the complexion of the pattern of traders found in the town. Hence whilst appreciating the arguments that have been put forward, the fact that Caffè Nero is a national multiple is not a matter that can be allowed to influence this planning decision. Indeed, the Skipton Inspector noted: "It was also suggested that allowing this appeal would adversely impact on the lawful A3 uses in the Core Retail Area. Again there is no evidence to support this concern. In any event it is not the role of the planning system to control competition between the providers of various services and goods".

The key issue is whether the predominantly A3 use which is now operating from the application site can be said to make a positive contribution to the vitality and viability of the shopping centre. In essence, does the unit represent a comparatively dead frontage, or does it present a vibrant shop unit with a high footfall which adds to the retail offer of the shopping centre? On the number of occasions that the case officer has viewed the cafe in operation, it has always appeared to be busy with a high occupancy rate at the downstairs tables. During the 8 hour period surveyed on 21 May, 219 adult customers (an average of 27 customers per hour) passed through the cafe. This was a Monday, which by all accounts is the quietest day of the week and not wholly representative. On a survey undertaken by the applicant for 11 hours per day on the 3 days Thursday 14 June to Saturday 16 June the average daily figure (presumed to include children) was 624. These must have been unusually busy days, as the applicant claims that trading figures over the longer period 14 May to 4 June showed 2600 customers per week i.e. 371 per day). The results of the applicant's survey are set on in their 'Planning Statement June 2012' and can be viewed on the file or on line.

It has been noted that the applicant claims that 25% of customers visit for the purpose of take away sales, i.e. A1 uses. Based on the applicant's claim of 2600 customers per week, this makes for 650 customers per week visiting for take away sales. This is a higher number than indicated by the Council's more limited survey undertaken on a Monday. Nevertheless, the numbers of take away customers are not insignificant, and according to the applicants are notably higher than many retail units in the vicinity. Furthermore, according to the applicant's 3 day survey, overall numbers of customers visiting Caffè Nero were higher than any of the other nearby retail units in 15 to 25 High Street, with the exception of Waitrose. The unit would appear to generate footfall in its own right, and would most likely be attracting greater numbers of customers than the previous clothes shop use.

The three surveys are not directly comparable and the applicant's figures cannot be independently verified. However none of the surveys is indicative of a unit with limited public appeal. The surveys suggest that there is a market for the services offered by Caffe Nero, and whilst there may well be a preference amongst certain sectors of the community for the highest possible representation of independent traders in the town, the evidence suggests that the cafe provides a service which, for all its detractors, is highly popular. It cannot therefore reasonably be concluded that the proposed Caffe Nero unit is detrimental to the vitality and viability of the town centre. This was the finding of the Skipton inspector, who stated: "It is clear to me that the use of the unit as a coffee shop creates vitality in this part of the town centre and performs substantially better than the average number of customers visiting A1 uses in the street. I therefore conclude that the coffee shop use does not result in any harm to the vitality of Skipton Town Centre".

In 2009 an appeal was dismissed (ref. K/58864/F) for various alterations/extensions to the grade II listed former Age of Elegance store at 10 High Street, including a proposal to change its use from A1 to A3. It is understood from what an objector to the current application has claimed that the intended use was as a specialist fish restaurant, although this was not made explicit in the appeal application. As well as expressing concerns on various listed building issues, the Inspector found in favour of the Council that the proposal would harm the vitality and viability of the shopping centre. The Inspector noted "vacancy rates are not high and Marlborough clearly offers a wide range of facilities and attractions. The level of retail provision, however, is also not high and I consider the loss of the appeal premises as a retail unit in this important location could have a material detrimental effect on the attractiveness, vitality and viability of the centre. An approval on appeal in this instance could also increase pressure on the Council to approve further applications for change of use from retail".

The above appeal decision might therefore provide support for calls to refuse the current application. However the following considerations lead officers to form a different view: (a) Very little hard evidence was provided by either side in the appeal documentation in support of their respective cases. However the Inspector came to accept the Council's case that an erosion of the A1 retail offer would be detrimental to the health of the shopping centre; (b) In the current application we know as a matter of fact that the proposal is for a Caffe Nero outlet, and because (without wanting to condone its premature opening) that outlet is up and running and has been the subject of survey work by both officers and by the applicant, it is known that the outlet is attracting a level of clientele that is not indicative of a dead frontage. Policy ED18 does not prohibit changes of use away from A1 in the primary shopping frontage: alternative uses may be acceptable where they can be shown to make a positive contribution to the vitality and viability of the town centre, and; (c) Since 2009 there has been a material change in planning policy, namely the publishing of the NPPF. In the glossary definition of "primary frontages" at the back of the document, "food and drinks" uses are specifically listed amongst the retail uses which are characteristic of primary frontages. There has been an upsurge in "cafe culture" in recent years and an integration of leisure activity within the retail experience. This is reflected in this official recognition that food and drink uses feature highly in shopping centres and that the purchase of food and drink is an expected part of a town centre's offer. Whilst in planning terms cafes are still a distinct use from mainstream retail (i.e. A3 as opposed to A1), it is now more difficult to argue that cafes are harmful to the vitality and viability of shopping centres. (It may also be worth noting that the store at 10, High Street has remained vacant since the appeal decision, unfortunately not adding to the vitality of the town centre).

The heating and cooling to the premises is provided by ceiling mounted indoor cassette units supplied via a condenser unit located in the "back of house" area on the first floor (i.e. that part of the first floor not accessible to the public). The units installed replace the existing units that were installed previously on a like for like basis. The air from the condenser is discharged out through an existing louvre on the back wall of the premises.

The extract ventilation from the WC, store and back of house is by mechanical means via ductwork distribution systems. These extract systems discharge their air to the rear of the

condenser unit located in the back of house area on the first floor and out to atmosphere via the existing louvre as per the condenser air.

Objections were received from the owners of the flats above the premises prior to the cafe opening, on the grounds that noise, vibration and smells from the air conditioning and extraction units would be detrimental to the amenities of the occupiers of the flats. An objection was also received from the adjoining shop to the rear on the basis that the operation of the air conditioning and extraction units would be detrimental to their trade. However Environmental Protection have received no complaints since the cafe opened and having sought clarification over various points of detail from the applicant, raise no objection to the proposal. However they recommend the imposition of a precautionary condition requiring the submission of an acoustic and vibration impact assessment.

## **10. Conclusion**

Policy ED18 only prohibits changes of use away from A1 in prime shopping frontages where the development would fail to make a positive contribution to the vitality and viability of the town centre. In this particular instance, which concerns a retrospective change of use with an A1 element, the evidence base shows a thriving business which is attracting significant numbers of customers, more than most surrounding retail businesses. It cannot therefore reasonably be concluded that the proposal is harming the vitality and viability of the town centre. Furthermore a recent appeal decision at Skipton indicates there would be little prospect of any refusal being upheld at appeal.

## **RECOMMENDATION**

That planning permission be granted subject to the following conditions:

- 1 Within 6 weeks of the date of this permission an acoustic and vibration impact assessment of the air conditioning system shall be submitted for the approval of the local planning authority. The assessment shall determine the internal noise and vibration impact on the property above the café, and the external noise exiting the louvre. Any mitigation work identified as required and agreed to be so by the local planning authority shall be completed within three months of the submission of the report.

REASON: In the interests of residential amenity.

- 2 The ground and first floor of the premises shall only be used for A1 retail purposes or as a coffee shop serving coffee, other hot and cold drinks, sandwiches and other light refreshments for consumption on or off the premises.

REASON: The proposed use is acceptable but the Local Planning Authority wish to consider any future proposal for a change of use having regard to the circumstances of the case.

- 3 No primary cooking of unprepared food shall be carried on within the premises. Only reheated or cold food that has been prepared elsewhere shall be served within the premises.

REASON: In the interests of residential amenity.

- 4 The premises shall not be open for customers outside the following hours: (i) 07:00 - 18:00 Mondays to Fridays; (ii) 07:30 - 18:00 Saturdays, and; (iii) 08:30 - 18:00 Sundays.

REASON: In the interests of residential amenity.

- 5 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. Plan Ref. 1:1250 location plan received 20/03/12

Appendix – Appeal decision dated 29/06/2012 at 40-42 Sheep Street, Skipton

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## Appeal Decision

Hearing held and site visit made on 30 May 2012

**by Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)**

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

**Decision date: 29 June 2012**

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**Appeal Ref: APP/C2708/C/12/2169700**  
**40-42 Sheep Street, Skipton, BD23 1HY**

- The appeal is made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the 1990 Act).
  - The appeal is made by Nero Holdings Limited against an Enforcement Notice issued by Craven District Council on 13 December 2011.
  - The Council's reference is 1133/11.
  - The breach of planning control as alleged in the Enforcement Notice is without planning permission, the change of use of the ground floor of the building on the land from a Class A1 (retail) use to a mixed Class A1/A3 (retail/café) use.
  - The requirement of the Enforcement Notice is to stop using the ground floor of the building on the land for a mixed Class A1/A3 (retail/café) use.
  - The period for compliance with the requirements is two months.
  - The appeal is proceeding on the ground set out in Section 174(2)(a) of the 1990 Act.
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### Procedural Matters

1. The appellants withdrew the Ground (f) & (g) appeals at the Hearing.

### Decision

2. The appeal is allowed, the Enforcement Notice is quashed and planning permission is granted on the application deemed to have been made under Section 177(5) of the 1990 Act for the development already carried out, namely the use of the ground floor of 40-42 Sheep Street, Skipton, BD23 1HY as shown on the plan attached to the Enforcement Notice as a mixed Class A1/A3 (retail/café) use subject to the following conditions:
  1. The ground floor of the premises shall only be used as a coffee shop serving coffee, other hot and cold drinks, sandwiches and other light refreshments for consumption on or off the premises.
  2. The premises shall not be open for customers outside the following hours:-
    - (i) 08:00 – 18:00 Mondays – Saturdays, and
    - (ii) 09:00 – 17:30 Sundays.
3. No primary cooking of unprepared food shall be carried on within the premises. Only reheated or cold food that has been prepared elsewhere shall be served within the premises.

### **Background Matters**

4. The appellants occupy Nos. 40-42. The ground floor is used for the sale of hot and cold drinks including cakes and light refreshments. The majority of customers consume their purchases on the premises at seats and tables provided on the ground and first floors. The second floor is used as ancillary accommodation to the coffee shop use. Currently about 14% of sales are for consumption of food and drink off the premises – the appellants anticipate that this percentage will increase to about 20%.
5. The appellants explained at the Hearing that even if the appeal was dismissed they would remain in occupation of Nos. 40-42 and operate it as an-:
  - (a) A1 use of the ground floor (with a few spaces for customers to eat and drink their purchases), and
  - (b) A3 use on the first floor with ancillary uses on the second floor.
6. The Council did not dispute that a use as outlined above would be acceptable in policy terms.

### **Skipton Town Centre & Core Retail Area**

7. There are about 383 units in Skipton Town Centre of which about 55% are in retail use. 13% of the ground floor space within these units is used for food and drink uses which is below the national average of 16%. The appellants carried out a survey of the Town Centre in February 2011. There were at that time 28 vacant units within the Town Centre – 7.35% of the total. The national average Town Centre vacancy rate as at December 2011 was 13.6%.
8. The Council have identified a Core Retail Area within the Town Centre. This comprises 187 units (48% of the total for the Town Centre) of which 80.2% are in retail use. If Nos. 40-42 were in an A1 use the percentage would be about 80.74%. 8.5% of the Core Retail Area units are used for food and drink uses. There are no hot food takeaways within the Core Retail Area.
9. I was advised that at the time the survey was carried out there were 18 vacant units (9.6%) within the Core Retail Area. The Council stated that they had checked the position as at 29 May 2012 and the number of vacant units had reduced to 15 (about 8%). However, according to the Council's Retail Study in 2004 the vacancy rate in the Core Retail Area was 4.71%. In my assessment, there has been a significant increase in vacancy rates in the Core Retail Area.

### **Main Issue**

10. I consider the main issue in this case is whether the use of Nos. 40-42 as a coffee shop results in material harm to the vitality of Skipton Town Centre or its Core Retail Area.

### **Ground (a) and the deemed planning application – that planning permission should be granted for what is alleged in the Enforcement Notice.**

#### *Policy*

11. The development plan for the area includes the Craven District (Outside the Yorkshire Dales National Park) Local Plan (the Local Plan). The Council identified the current use of Nos. 40-42 as being contrary to saved Policy R3.

This Policy explains that within the Core Retail Area the Council will resist any proposals for the change of use at ground floor level from retail to any other use. The Local Plan also explains that:

- a) It is essential to maintain the retailing function of Skipton because it is vital to the life of Skipton and the District.
- b) The Council does not wish to see the function of the core area as retailing centres undermined through an over diversification of uses.
- c) In Skipton 81% of the commercial outlets within the Core Retail Area are used as shops.

12. The Council agreed that the proposal would result in a very marginal breach of the 81% figure referred to in the Local Plan.

13. The appellants accepted that they did not comply with the Local Plan policy which is effectively a prohibition on any change of use of ground floor premises within the Core Retail Area from retail.

#### Other Material Considerations

14. The National Planning Policy Framework (the NPPF) was published in March 2012. It explains, in a case such as this, that due weight that should be given to relevant policies in a Local Plan according to their degree of consistency with the NPPF. The closer the Local Plan Policy is to the policies of the NPPF the greater the weight that should be given to the Local Plan Policy.

15. At the heart of the NPPF is a presumption in favour of sustainable development. For decision making this means that where relevant development plan policies are out of date planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF as a whole.

16. The appellants argue that the Local Plan Policy R3 is out of date with the NPPF because;

- a) The NPPF requires planning policies to be positive and promote competitive Town Centre environments. Policy R3 cannot achieve this because it is an embargo on all changes of use of ground floor properties in the Core Retail Area. This indicates to me that Policy R3 is out of date.
- b) The NPPF also requires Local Plans to define the extent of Town Centre and primary shopping areas based on a clear definition of primary and secondary frontages and to set out policies that make clear which uses are permitted in such areas. The Local Plan does not define primary and secondary frontages and therefore it cannot comply with the NPPF in this regard. This indicates to me that Policy R3 is out of date.
- c) Further, the NPPF explains that Councils should ensure that the Local Plan is based on adequate, up-to-date and relevant evidence (the evidence base). There is no evidence base for the 81% figure referred to in Policy R3 - it is simply an historic figure of what the A1 usage was within the Skipton Core Retail Area at some given point in its history prior to the adoption of the Local Plan in July 1999. There is no evidence base to indicate that if the percentage of A1 uses fell below the 81% figure it would harm the vitality of

the Core Retail Area. This again indicates to me that Policy R3 is out of date.

17. It is generally clear from the representations made at the hearing that the local community is proud and passionate about Skipton, its Castle and the Town Centre. They believe that Skipton's strength results in part from its uniqueness in remaining largely unspoilt. The Council are of the view that Policy R3 has secured a balanced retail offering which has enhanced and secured its long term viability. Skipton not only provides for the needs of its own community and that of residents living in surrounding villages but it is also a vibrant tourist destination. The Council and local residents want to ensure that Skipton remains a successful local market town.
18. I saw the Core Retail Area of Skipton on both market and non-market days. The town, which is known as the Gateway to the Dales, clearly benefits from the large numbers of visitors who come especially in the summer on market days. I was advised that on some summer days as many as 100 coaches arrive with visitors as well as those who come by car and public transport. There is a very wide range of shops and services in the Core Retail Area.
19. I was also advised that Skipton has previously been awarded by the Academy of Urbanism the High Street of the Year due in part to its quiet charm, community spirit and flourishing independent traders.

Does the Use harm the Vitality of the Core Retail Area or Town Centre?

20. The evidence conclusively shows that the number of customers using Nos. 40-42 was comparable with the best performing A1 uses carried out in nearby premises. I have no doubt that the number of people using Nos. 40-42 is significantly greater than its previous use as opticians.
21. Further, the appellants' evidence shows that the main reason why 160 of their customers come to Skipton each week is to use the coffee shop facility at Nos. 40-42. Further still, over 1,000 customers each week planned on visiting the coffee shop at Nos. 40-42 as part of their trip to the Town Centre. It is clear to me that the use of Nos. 40-42 as a coffee shop creates vitality in this part of the Town Centre and performs substantially better than the average number of customers visiting A1 uses in this part of Sheep Street.
22. The uncontested evidence from the appellants was that their use provided a mix of A1 and A3. Whilst the majority of customers ate and drank what they bought within the premises there was a significant proportion of A3 type customers. I noted this mix of uses at the times of my site visits.
23. I therefore conclude that the coffee shop use of Nos. 40-42 does not result in any harm to the vitality of Skipton Town Centre or its Core Retail Area.

**Other Matters**

Non compliance with Policy R3

24. The Council are concerned that if the appeal is allowed it will open the floodgates to others non-retail uses in the Core Retail Area. They referred to the Inspector's reasoning at paragraphs 20 to 22 of the appeal decision relating to 271 High Street, Epping<sup>1</sup> (the Epping Decision) following the service of an

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<sup>1</sup> APP/J1535/C/06/2021060

Enforcement Notice. There are important differences which distinguish the Epping Decision from the matter that is before me. They are:

- a) The Local Plan in the Epping Decision was very up to date e.g. it was adopted in 2006 (the same year that the Enforcement Notice was issued in that case).
- b) Epping Forest District Council had provided for "key frontages" and "non-key frontages" in their Town Centre.
- c) The non-retail limit within the "key frontages" was set at 30%.
- d) The Development Plan which included the Local Plan was in accordance with the then current Government advice as set out in PPS 6.

25. I understand the local concern that allowing this appeal may create a precedent for further non-retail uses at ground floor level in the Core Retail Area. I am aware that Enforcement Notices have recently been issued regarding café uses at two other premises within the Core Retail Area. However, there is insufficient evidence to know whether the uses at these premises are similar to that at Nos. 40-42.

26. It is clear that the appellants' use of Nos. 40-42 is not that of a traditional café in a tourist destination. It provides a service for both A1 and A3 users. No food is cooked at the premises. There is no waitress service. Importantly, it is also possible to control the future use of the premises so that it remains largely as that currently carried on by the appellants.

27. I do not consider that this decision creates a precedent that is binding on the Council. Each planning application has to be judged on its own individual merits.

*What adverse impacts (if any) arise from granting planning permission for the use which significantly and demonstrably outweigh the benefits.*

28. There is no evidence before me that the introduction of coffee shops into any Town Centre/primary shopping frontage has caused any harm to the retail function of that area.

29. I have had regard to the Inspector's concerns as expressed in the Epping Decision that the critical tipping point between retail and non-retail uses can only be identified retrospectively and possibly not for several years. The appellants do not agree with that assessment and their expert was unable to identify any harmful changes to the retail function of this part of Sheep Street, the Core Retail Area or the Town Centre as a result of the introduction of the coffee shop use at Nos. 40-42.

30. In any event the NPPF explains that where the policies of the Local Plan are out of date planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF as a whole. There is no evidence that persuades me that there are any adverse impacts arising from this coffee shop use.

31. The Council consider that the maintenance of the 81% of A1 uses has ensured that Skipton has retained its uniqueness and that is why Skipton has performed

better against national indicators than many other Town Centres. I do not have the evidence before me that supports that assertion.

32. It was also suggested that allowing this appeal would adversely impact on the lawful A3 uses in the Core Retail Area. Again there is no evidence to support this concern. In any event it is not the role of the planning system to control competition between the providers of various services and goods.

#### Blank Frontages

33. I know that having blank frontages within primary shopping frontages can reduce the vitality of the area. However, in this case the ground floor windows in the frontage allow passers by to see into the premises and note what is on sale. Further, customers can be seen within the premises enjoying their break from shopping or work etc and this creates interest for passers-by. I do not consider that the use creates any problems relating to blank frontages.

#### Loss of retail shop causes harm

34. The coffee shop use has not displaced the former optician use from the Town Centre – in fact that use has relocated to an area which probably has a greater number of people passing by than the premises at Nos. 40-42.
35. The Estates Gazette Database can be used to identify retailer requirements in Skipton. There are thirty nine retailers and businesses seeking representation in Skipton Town Centre. Thirty of these would fall within a Class A1 use. However, the majority require a larger floor space than that which can be provided at Nos. 40-42 and there is no evidence that the appellants' use has stopped an A1 user from occupying the premises.

#### Closure of Competitors

36. There is no evidence that the coffee shop use at Nos. 40-42 has resulted in the closure of any competitors in the Core Retail Area.

#### Commencement of Use without Planning Permission.

37. I have noted the concerns raised at the Hearing that the use proceeded before planning permission was granted. I do not condone that course of action but it is not a good reason to withhold consent especially when no harm has been shown to arise from the coffee shop use at Nos. 40-42.

#### **Conclusions**

38. For the reasons given above I conclude that the appeal should succeed on Ground (a) and planning permission will be granted.

#### **Conditions**

39. I have considered the conditions discussed at the Hearing in the light of the advice in Circular 11/95 "*The Use of Conditions in Planning Permissions*". The conditions were agreed by the appellants and the Council. In reaching my decision I have taken into account the particular circumstances of the way in which the use is currently carried on by the appellants. The conditions which are imposed relate to matters that are fundamental to this use and I consider that they are essential for the protection of the vitality of the Core Retail Area within the Town Centre. I consider it is reasonable and necessary to ensure that the use of the ground floor is limited to the use which is currently carried

on. This is because I consider that no harm is caused to the retail function of the Town Centre by this use. The Council should be able to consider any other use as this could harm the vitality of the Town Centre.

*Tim Belcher*

**Inspector**

**APPEARANCES**

**FOR THE APPELLANTS**

James Findlay QC

Chris Green BA(Hons), DipTP, MRTPI Planning Director with DPP Consulting LLP

Brian Madge BA, MA, MRTPI Brian Madge Limited

**FOR CRAVEN DISTRICT COUNCIL**

Roger France BA(Hons), MRTPI Principal Planning Officer

Cathy Dakin

Natasha Szuszkó

**INTERESTED PERSONS**

Councillor P. Whitaker Chairman of Skipton Town Council's Environment & Planning Committee

Councillor M Turner District Councillor

Councillor Polly English District Councillor

Dean Holdaway Skipton Civic Society

David Parker Skipton Town Council

Brett Butler Skipton Town Council

Christine Walton Local Resident

Brian Ormondroyd Local Resident

Hazel Bulcock Local resident

S D Sutcliffe Local resident

R M Thompson Local resident

**DOCUMENTS**

Document 1 – Comments from Skipton Town Council presented by Councillor Whitaker.

Document 2 – Response from the Skipton Civic Society presented by Dean Holdaway.

## REPORT TO THE EASTERN AREA PLANNING COMMITTEE

<b>Date of Meeting</b>	19 July 2012
<b>Application Number</b>	E/2012/0613/FUL
<b>Site Address</b>	Lower Upham Farm Airfield Ogbourne St George Marlborough Wilts SN8 1SZ
<b>Proposal</b>	Erection of dual purpose hangar / agricultural store to replace the polytunnel hangar currently in use (granted permission under application (E/11/0135/FUL)
<b>Applicant</b>	JHP Farming Ltd
<b>Town/Parish Council</b>	ALDBOURNE
<b>Grid Ref</b>	420648 177644
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	Peter Horton

### Reason for the application being considered by Committee

The application has been called to committee by the Division member, Cllr. Humphries.

### 1. Purpose of Report

To consider the recommendation that planning permission be granted for the proposed building.

### 2. Report Summary

Since no increase in overall aircraft numbers is proposed for the site, the application raises no noise implications. The key issue is therefore whether the proposed building would adversely affect the scenic quality of the AONB. The design and materials of the proposed building are considered acceptable. Indeed, the building represents a visual improvement compared to the existing polytunnel and hence there will be no harm to the scenic quality of the AONB.

### 3. Site Description

The application site comprises part of Lower Upham Farm, which lies in a remote part of the North Wessex Downs AONB approximately 1km to the east of the A346 Marlborough to Swindon Road. The farm is approached via a narrow lane situated 3.5 km north of Ogbourne St George.

Four buildings (one in two distinct sections) at Lower Upham Farm are used for the storage of aircraft, with the adjacent field being used as an airstrip. Three of the four buildings are permanent structures, with two of these three being used for part hangar and part agricultural purposes. The smallest of the four buildings is a temporary structure which can be described as a "polytunnel hangar" and it accommodates two of the 22 aircraft permitted to operate from the site. It measures 12.5m by 10.0m by 3.9m high. It is well screened from the access track by a line of mature trees.

No repair of aircraft takes place at the site. Maintenance does take place but not on a commercial basis. Any major work which needs specialist attention is done off-site at commercially owned and run airfields.

#### 4. Planning History

K/34326 - Part time use of grain store as hangarage for aircraft. Part time use of adjacent agricultural land for take off and landing strip – approved 1997

K/55086/F - Use of grain store and associated buildings as hangarage for aircraft – approved 2006

K/55353/F - Retention of polytunnel hangar for light aircraft – approved 2006 (5 year temporary permission)

K/58740/F - Demolition of derelict farm building and erection of dual purpose hangar/fertiliser store – approved 2008

K/59352/VAR - Removal of condition no. 1 of K/55353/F (temporary planning permission) to allow permanent retention of polytunnel hangar for light aircraft – refused 2008

K/59353/VAR - Removal of condition no. 2 of K/58740/F (temporary planning permission) to allow permanent use of approved fertiliser store as an aircraft hangar – approved 2008

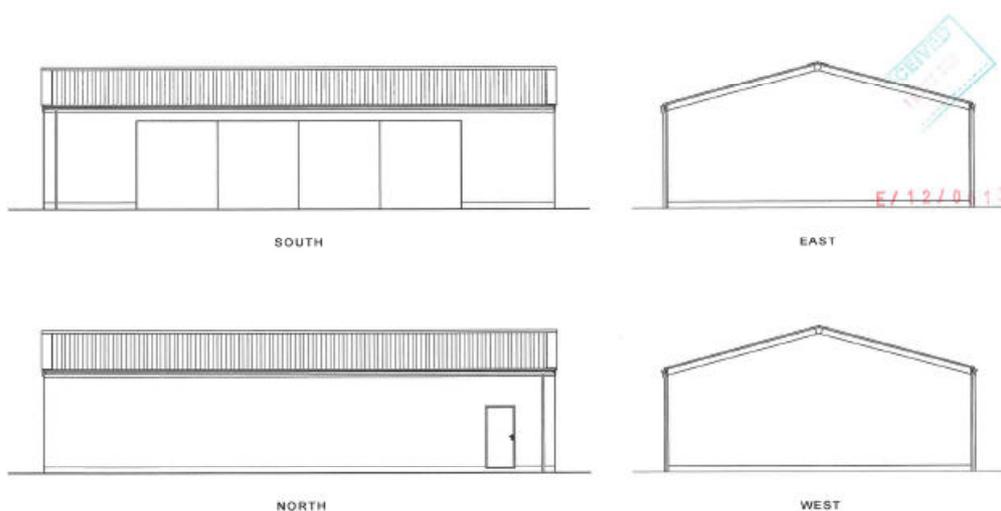
K/59355/VAR - Removal of condition no. 1 of K/55086/F (temporary planning permission) to allow permanent use of grain store and associated buildings as aircraft hangars – approved 2008

E/09/0111/S73 - Removal of conditions 2 and 3 of K/59355/VAR to allow operation of a training school for microlight pilots using three of the existing aircraft on site – refused in 2009 and appeal dismissed in 2010.

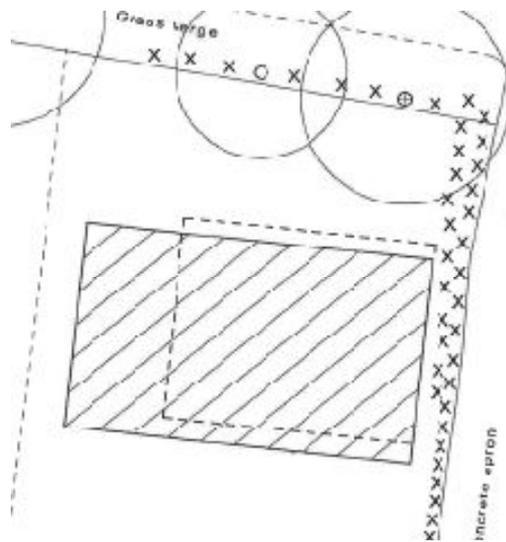
E/11/0135/FUL - Retention of polytunnel hangar for light aircraft – approved 2011 (3 year temporary permission)

#### 5. The Proposal

The proposal is to demolish the polytunnel hangar and to replace it with a permanent hangar measuring 17.3m by 10.25m by 4.9m high. It would be of steel framed construction clad in juniper green profiled steel sheeting with a grey fibre cement sheet roof. It would accommodate three aircraft, but would serve the dual purpose of being capable of providing agricultural storage, in case there is either a downturn in aviation or an upturn in farming activity.



*Elevations of proposed building*



*Existing building show dotted – new one hatched*

## 6. Planning Policy

Kennet Local Plan policies PD1 (Development and Design) and NR7 (Protection of the Landscape) are relevant. Wiltshire and Swindon Structure Plan policies C8 (AONB) and RLT7 (Airfields) are relevant. Central government planning policy is set out in the NPPF. Other material considerations are the Kennet Landscape Conservation Strategy 2005 and the North Wessex Downs Management Plan 2009.

## 7. Consultations

**Aldbourn Parish Council:** Objects as any permanent building replacing the existing polytunnel should not be any larger by area or volume. The proposed building is more than 40% larger than the polytunnel and this will lead to more aircraft being stored on site and a consequent expansion of flying, to the detriment of the AONB.

**Ogbourne St George Parish Council:** No objection provided that all existing planning conditions are strictly maintained relating to the ownership of the airfield and the use of land for flying purposes.

**North Wessex Downs AONB Unit:** Would not want to see any expansion of the use of this site for the reasons that led to the 2010 appeal being dismissed. The Council should be satisfied that the need for this larger building has been fully justified and will not in itself provide an opportunity to expand the use. However no objection when taking the application at face value: the size, location and design of the proposed building is acceptable and it will be seen in the context of the existing buildings. Conditions should be applied controlling the external colours of the building and to ensure the removal of the polytunnel.

**CPRE:** No objection to the principle of replacing the polytunnel with a more permanent structure. However the proposed building has a footprint 42% larger than the existing and would be 26% taller. Concerned that the proposed enlargement may lead to an increase in aircraft numbers and flying operations. A smaller building should be proposed.

## 8. Publicity

24 letters of support has been received. Many of them suggest that the noise nuisance referred to by the objectors does not emanate from Lower Upham airfield but from the parachute drop plane that operates out of Redlands Farm, Wanborough. This is a larger, more powerful commercial aircraft which climbs sharply with a heavy load and operates every 30 minutes at weekends from early spring to late autumn.

15 letters of objection have been received, one of which has been submitted on behalf of 21 persons. The main points raised can be summarised as follows:

- The proposed building would harm the landscape character and natural beauty of the AONB.
- The proposed building is larger than the existing (42% more floor area and 80% more volume), leading to more aircraft being stored at the site.
- This application for a permanent building implies an expansion in flying activities from the airfield. It is clear the owners want to develop the site commercially and the application is an attempt to surreptitiously expand the existing business. It is yet another slow development of the site away from agriculture in an AONB.
- Noise from the aircraft operating from the site is harmful to the amenity of local residents and is detrimental to the tranquillity of the AONB. Increased aircraft numbers would be unacceptable.
- The application is premature because the existing temporary consent for the polytunnel still has over 2 years to run. A carefully considered and proper assessment of the airfield's operation should be made after 31/10/14, now is too early.
- The agent suggests that planning officers have recommended that the application be made before the existing permission expires, giving the impression of collusion.
- The larger building could be used as a workshop, attracting more commercial business.
- In terms of the NPPF, the application does not constitute sustainable development.
- The existing hangars are adequate to hold all aircraft, whether there is a need to store grain or not. So the proposed enlarged building is not necessary.
- Contrary to what the agent says, the size is not dictated by the use of steel frames: smaller steel framed buildings can readily be supplied by manufacturers.

## **9. Planning Considerations**

Lower Upham airfield has an involved planning history. However in essence it has the benefit of planning permissions allowing the storage of up to 10 aircraft and 12 microlights on the site, to be stored inside three agricultural buildings on the site plus the polytunnel hangar the subject of this application. It is operated as a private (non-commercial) airfield.

The applicant has made it clear that the current proposal is not seeking to increase the number of aircraft stored at the site. It is purely seeking the provision of a permanent structure to replace the polytunnel hangar. Although the capacity of the new building would be 3 aircraft compared to the polytunnel hangar's 2, there are in fact 2 aircraft stored hanging from the beams of the roof of one of the other buildings, so the new building would merely help ease congestion.

The polytunnel hangar was granted a 5 year temporary permission in 2006 (ref. K/55353/F), with a further 3 year extension granted in 2011 (ref. E/11/0135/FUL). It is an established planning principle that structures of permanent construction are visually preferable to temporary structures such as polytunnels and portacabins. Hence the reason why a 2008 application was refused which sought the permanent retention of the polytunnel (ref. K/59352/VAR). Officers have consistently advised the applicant of their preference for a permanent building to replace the polytunnel. This is not evidence of collusion with the applicant, but merely the application of the established planning principle that permanent structures are visually preferable to temporary ones. The fact that the current temporary permission has over 2 years to run is beside the point: the current application is appropriate, and now has the chance to be assessed by committee on its planning merits.

Given that there is no intention to increase aircraft numbers at the site, noise is not a relevant issue: the sole planning issue relating to the current application is whether or not the proposed building has an acceptable visual impact within the AONB.

Many objectors have highlighted the increased dimensions of the proposed building compared to the polytunnel. However at just 17.3m long and just 4.9m high, the building is comparatively modest in size. It's design as a small scale steel framed agricultural building is entirely in keeping with the surrounding agricultural landscape, being read against a backdrop of bigger agricultural

buildings on the farm. It is well screened from the access track by a line of mature trees. Furthermore its dark green colouration will also mitigate its landscape impact. The building cannot therefore be held as having a materially adverse impact on the scenic quality of the AONB. Hence there are considered to be no sound planning grounds to refuse the application.

## 10. Conclusion

Since no increase in overall aircraft numbers is proposed for the site, the application raises no noise implications. The key issue is therefore whether the proposed building would adversely affect the scenic quality of the AONB. The design and materials of the proposed building are considered acceptable. Indeed, the building represents a visual improvement compared to the existing polytunnel and hence there will be no harm to the scenic quality of the AONB. It is therefore recommended that planning permission be granted.

## RECOMMENDATION

That planning permission be granted subject to the following conditions:

- 1 The development hereby permitted shall be begun before the expiration of three years of 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 This permission shall enure for the benefit of the applicant only, and only whilst the applicant is in ownership and occupation of Lower Upham Farm, and shall not enure for the benefit of the land. Use of the land or premises shall revert to agricultural use on cessation of the hangar use by the applicant.

REASON: To ensure that the scale and nature of the hangar use remains as described in the application and is not separated from the agricultural operations of the farm, to safeguard the character and appearance of this part of the North Wessex Downs Area of Outstanding Natural Beauty.

- 3 No more than 10 aircraft and 12 microlights shall be stored at the site at Lower Upham Farm Airfield any one time, and with all storage to be inside the approved buildings.

REASON: To ensure that the scale of the aviation use does not detract from the character of this sensitive area within the North Wessex Downs Area of Outstanding Natural Beauty, or create any unacceptable level of noise and disturbance.

4. Notwithstanding the submitted details, the roof of the building shall be anthracite in colour, or similar dark coloured material to be approved in writing by the local planning authority before development commences. Development shall be carried out in accordance with these approved details.

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

- 5 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.

Drawings nos. 383A, 383B and 383C received 10 May 2012.

**Appendices:** None

**Background Documents Used in the  
Preparation of this Report:** None

## REPORT TO THE EASTERN AREA PLANNING COMMITTEE

<b>Date of Meeting</b>	19 <sup>th</sup> July 2012
<b>Application Number</b>	E/2012/0152/FUL
<b>Site Address</b>	Manor Farm West Overton
<b>Proposal</b>	The erection of a steel portal framed grain storage building with concrete apron area
<b>Applicant</b>	Three Counties Farms Ltd
<b>Town/Parish Council</b>	FYFIELD & WEST OVERTON
<b>Grid Ref</b>	412861 168047
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	Rachel Yeomans

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

This application is presented to Committee at the request of Cllr Milton.

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

To consider the recommendation that the application be approved.

### **2. Report Summary**

The key issues in respect of this application are considered to be;

- The principle of the proposed grain dryer building
- Whether the proposal would result in significant harm to residential amenity (including that resulting from noise and disturbance)
- Highway safety
- Visual and landscape impact in this Area of Outstanding Natural Beauty.
- Impact on the nearby World Heritage Site, including its setting, Scheduled Ancient Monuments and archaeology
- Ecology
- Flooding

### **3. Site Description**

The application site lies in West Overton, accessed from Devizes by taking the A4 east towards Marlborough. After the Beckhampton Roundabout, continue east along the A4 until the turning right (south) adjacent The Bell Inn signed West Overton. Proceed along the road and turn right at the junction. Follow the road round the bend and take the turning on the left. The application site can be found approximately 200 metres along the road on the right, just beyond the existing grain store, which is not in the ownership of the applicant.

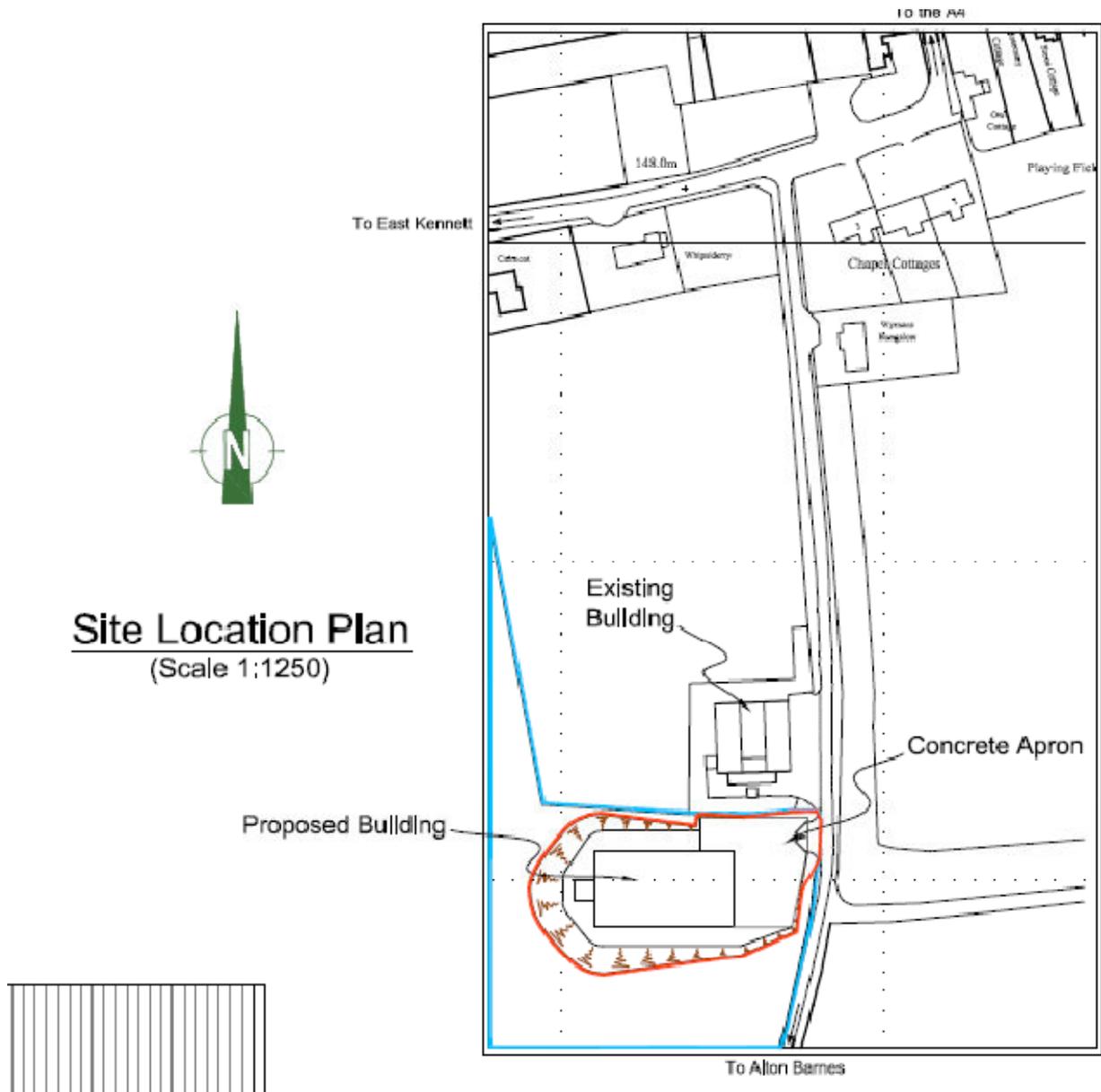
### **4. Planning History**

Whilst there is no relevant planning history for this particular site, it follows the withdrawal of previous application E/2011/1151/FUL for a large grain dryer on the north of the A4 to the east of the turning into West Overton, located within the World Heritage Site. This application was withdrawn following significant concerns about the suitability of this site to

accommodate any building in this location without resulting in harm to the Outstanding Universal Value of Avebury World Heritage Site (to which statutory protection is afforded to this site designated for its International Importance). This site was also considered unsuitable in terms of its impact on the character and appearance of the North Wessex Downs Area of Outstanding Natural Beauty.

**5. The Proposal**

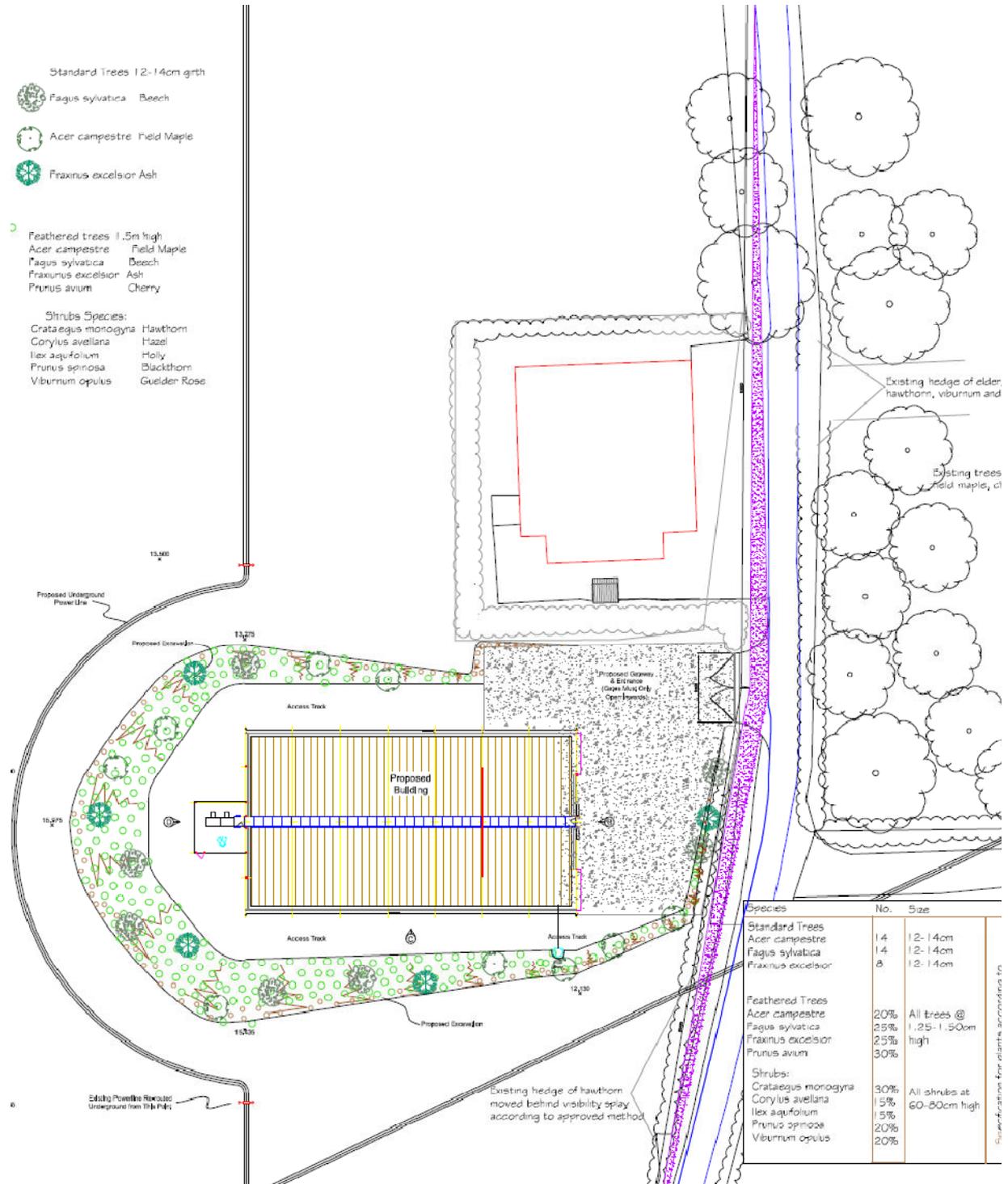
The application follows pre-application discussions and is for a grain storage building with grain drying plant measuring 5.5 metres to the eaves and 8.22 metres to the ridge. The building would measure some 42.6 metres in length and 24 metres wide, with plant housing at the rear (west measuring approximately 6.5 metres square). The proposals include excavating the site to 'sit' the building into the landscape, hardstanding to facilitate access and turning space and latterly, the inclusion of a passing layby and visibility splay to overcome concerns expressed by highways officers.



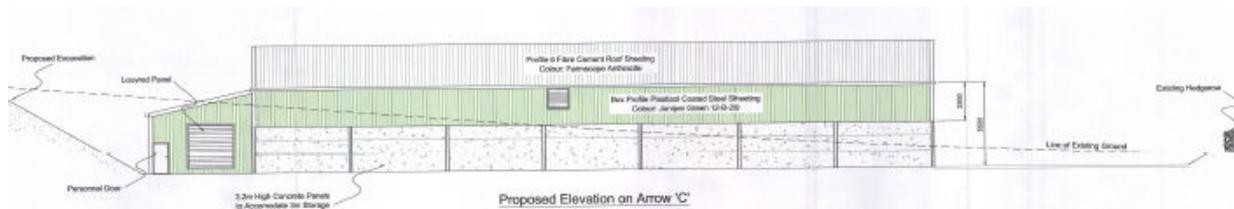
*Site Location Plan*

## 6. Planning Policy

Kennet Local Plan - policies PD1 (General Development and Design), HH1 (Protection of Archaeological Remains), HH3 (Setting of Avebury World Heritage Site) and NR6 (Sustainability and Protection of the Countryside) and NR7 (Protection of the Landscape) are applicable. Central Government policy contained in the National Planning Policy Framework (published March 2012) is also relevant, particularly with respect to chapters 3, 7, 10, 11 and 12.



Plan of proposed building



*Elevation of proposed building*

## 7. Consultations

For full comments please refer to the file.

### **Wiltshire Council Agricultural Consultant –**

A response was sought in relation to previous application E/2011/1151/FUL for a slightly larger grain dryer at a previous site. In essence, this report considered the suitability of the existing buildings at Manor farm to provide the storage and drying facility required for the likely yields from the land. This concluded that

‘The proposed building is of an appropriate size and design for its intended function. The proposed building would represent a significant improvement in the ability to handle and store grain at the unit.’ For this reason it is considered that the functional requirement for the building can be justified in agricultural terms, notwithstanding that existing Manor Farm buildings have been sold on, as the land holding remains the same and the proposed building is slightly smaller in footprint than that previous assessed by the consultant.

### **Wiltshire Council Highways**

No objection to the amended plans that include an appropriate visibility splay and a passing place on the approach road.

(Highway officers initially objected to the proposal on two grounds;

1. The lack of sufficient visibility, and
2. The unsuitability of the single track lane between the nearest road junction and the application site to accommodate the likely vehicle movements.

Since these objections, further discussions between officers and the agent have taken place and amended plans have been received detailing a passing place to be provided (understood to be on highway land) and an appropriate visibility splay (also contained within the applicant’s land or land within highway control). This latter alteration would necessitate the removal of a section of roadside hedge to achieve the visibility splay, and as mitigation, the hedge is considered appropriate for transplanting behind the splay with new planting to gap up the hedge. Details of this have been provided on the submitted landscaping and visibility splay plan. Neighbours have been reconsulted on these additional/ amended plans.)

### **Wiltshire Council Landscape Consultant –**

The proposed grain store has a significantly lower ridge height than the previous proposal. Following discussions between the applicant and the LPA, the current site was chosen: a) because it moved the proposal away from the highly sensitive landscapes and historic features of the Avebury World Heritage Site and; b) because the site is well-related to an existing grain store, is seen in the context of the built environment of West Overton village, has a strong tree’d boundary to the east, and is well-contained by the local landform. The Landscape and visual impact assessment has been carefully considered however, in all cases, views of the building would not be significant (see full notes).

Therefore, despite the high sensitivity of the AONB landscape, I consider that the site is acceptable for the proposed grain store development subject to conditions to cover spoil disposal, materials and landscaping.

**North Wessex Downs Area of Outstanding Natural Beauty Officer –**

If it can be confirmed that there is no other alternative to this site then a balanced judgement does need to be met over the competing interests of the World Heritage Site, the AONB, local residents and of course the need for the farm to operate successfully. Having read the submitted Landscape Report and the opinion of the Council's Landscape Consultant, although the landscape is very sensitive in this location, the AONB unit support the measures that have been taken to reduce the roof height, site the building in the context of the adjacent building, and to offer mitigation through landscaping and significant site levelling. Although the site is still in the setting of the WHS this site is preferable to its previous position. It is also acknowledged that the location on the outer edges of the village may be preferable to local residents than a site within the village. This is a landscape where agricultural buildings are present. Once the proposed landscaping has taken hold the proposed building should assimilate itself into that landscape. In addition to the landscape consultant's recommended conditions, a condition regarding external lighting should be imposed, if any lighting is necessary.

**Wiltshire Council Environmental Health –**

The assessment is robust and comprehensive and makes a series of remedial recommendations which, if implemented, will ensure that a noise rating level of 30dB will not be exceeded due to the operation of the drier at any time at the façade of the nearest noise sensitive receptor. As such I can confirm that we are satisfied on the basis that the recommendations made in the Environmental Noise Survey and Plant Assessment reference 2650\_ENA\_1 are implemented and maintained.

There is one assumption in the report in that noise level data for fans and the burner were taken from similar equipment and the client has advised that these are the type to be used at Manor Farm. As such, we will need confirmation that the fans and burner to be used at Manor Farm are the same as the type referred to in the noise assessment (now confirmed by agent).

In light of the above we therefore recommend that a condition be attached to any approval requiring the applicant to install the equipment specified and implement and maintain the scheme of acoustic insulation and noise attenuation as described in the Environmental Noise Survey and Plant Assessment ref 2650\_ENA\_1.

**English Heritage –**

The proposed location of the grain storage building lies approximately half a kilometre outside the Avebury World Heritage Site (AWHS). Due to the topography of the land, the visual influence of the proposal on the AWHS and Scheduled Monuments is limited. From the perspective of impacts on the historic environment, this is a much improved location than the previous application within the AWHS. The main visual influence appears to be Overton Hill, north of the A4 where the Ridgeway provides public access to a number of Scheduled Monuments. Careful mitigation is required to ensure the new build does not create a negative visual impact from this location. Additional visual assessment was requested, which the applicant has provided and upon which EH have been reconsulted, but amended comments are still awaited.

**World Heritage Site Officer–**

The alteration to the site location is much appreciated. Most importantly, alternatives to large scale development in the setting of the WHS should be sought where possible. I would recommend that existing grain storage facilities should be used where they are already available in the area. Redundant buildings, such as the adjacent grain store, should be investigated for the possibility of reuse or redevelopment even if in different ownership before additional new development is approved.

Meaningful mitigation of development is required. Although a mitigation scheme is included

in the current application, it is unclear how this will diminish the impact on views from Overton Hill. The scale and height of the building are very significant. The ridge height appears to equal the very highest point of the existing grain store throughout the shed-like design. It is also almost double the size of the existing building and extends far beyond it to the west. A photomontage is needed to accurately reflect how the current scheme would appear when viewed from the Overton Hill Barrow Cemetery and the Sanctuary. This would make it possible to assess whether the current mitigation is adequate or further mitigation is required. [This has been submitted by the applicant but amended comments are awaited] Further mitigation would be likely to include a reduction in scale and height. The height should not exceed the eaves of the existing building i.e. 6.9 m. The size of the building should be substantially reduced. The orientation of the building should also be reassessed to ensure that the topography is best employed to minimise impact on views from the WHS and a careful choice of materials and colours will be required to minimise impacts.

**Wiltshire Council Ecologist** – No objections were raised at the time of initial submission. Following receipt of amended plans including the visibility splay requirements, additional comments were received as follows;

I have reviewed the application again in light of the amended plans, which would now require translocation of a section of hedgerow on the western side of the lane. Having reviewed photos of the lane and the description provided in the landscape assessment, I am satisfied that this hedgerow appears to be a species-poor hawthorn hedge and would not qualify as 'Important' under the Hedgerow Regulations (1997) and would not qualify as BAP habitat. It is unlikely to be important for protected species, with the exception of breeding birds, although some local wildlife may use it to move through the landscape. Given that the applicant has proposed to translocate the hedgerow back from the road, the proposals are unlikely to affect any protected species or other notable wildlife, provided this is carried out sensitively at an appropriate time of year and properly reinstated. I am satisfied that this could be secured through an appropriately worded condition.

I note that representations report the adjacent road verge is a Protected Road Verge – I have checked our databases and spoken to my colleague responsible for co-ordinating the monitoring of the Protected Road Verges, which has confirmed none of the verges along the adjacent lane have been notified as Protected Road Verges, the closest of which is near Lockeridge and unlikely to be affected by the proposals.

**Fyfield and West Overton Parish Council** - We note that this Parish Council previously considered this application on 6<sup>th</sup> February 2012 and unanimously rejected it for several reasons, including the volume of traffic in the vicinity of West Overton village, the grain dryer running for long periods throughout the year and often at night, intrusive light pollution in a naturally dark area of the village, considerable water run-off from the concrete apron towards the village, and generally the intrusive, detrimental effect of the project on the residential amenity.

**The Revised Application:  
Highways: Safety and Traffic**

The Parish Council is of the opinion that the information supplied is insufficiently clear, the maps/plans provided not being drawn to the same scales.

The revised application deals (only partially) with only one of the issues that concern the local community of West Overton, that being to enable vehicles to pass one another in the close vicinity of the grain dryer.

In view of the strong feelings expressed by the West Overton village community in relation to this application, and within the context of the Localism Act 2011, the Parish Council unanimously objects to this revised application and wishes to re-iterate the other issues that were included in its objections to the original application but remain unaddressed:

1. There is no information on the size of the vehicles to be used on the village's narrow roads, acute corner, series of bends and small bridges (only one of which has been reinforced) located between the village and the A4 main road.
2. It will be dangerous for large, slow-moving, fully laden lorries coming from the village to join the A4 at a junction (beside the Bell Inn) which has a steep upwards gradient (more problematic still in rainy and icy conditions in winter), limited visibility to the east and fast-flowing traffic. The chance of an accident occurring here is high.
3. One passing place is proposed in the revised application. Large vehicles are bound to meet pedestrians and oncoming traffic at other places along the small roads, where there are no footpaths and where other "passing places" are simply residents' private gateways.
4. The proposed route to the new building does not take into account other routes that may become necessary in the future, as a result of crop rotation.

#### 5. Effect on Privacy

The revised application still does not address local concerns in relation to the disturbance caused by noise from plant within the building (there are discrepancies in the acoustic report and little consideration of the effects of the prevailing south-west wind) and pollution from heavy lorries, nor the observance of "dark skies", if exterior floodlighting is still being proposed. There is a discrepancy here between the original application which stated that 24 hour access would be required and a subsequent letter from Mr. Clarke (Three Counties Farms Ltd.) claiming that no night-time loading will take place.

#### 6. Need to Safeguard the Countryside

The removal of verges and the relocation of hedges have detrimental effects on local wildlife.

No details of the "approved method" of moving the hedges to new locations are provided. Local residents do not feel that the need to safeguard the countryside in general is being observed and, in particular, that their local environment - which they describe as being the habitat of yellowhammers, skylarks and great crested newts - is being afforded the respect it deserves.

Finally, we note that local opinion - given particularly the fact that the plant is now to be considerably smaller than the one originally planned - is that the original and previously prepared site on the north side of the A4 road should be actively re-considered.

#### **Wiltshire Council Archaeologist -**

The application includes a large amount of groundwork excavation proposed, including reducing ground levels to effectively 'hide' the new structure; the concrete apron; the soak away; and the undergrounding of the existing powerline. Being so close to the WHS, recognized for its prehistoric archaeology, there is a likelihood of disturbing previously unknown heritage assets relating to this period. Furthermore, the location is close to the medieval core of *Uferan Tune* (AD939), some remains of which are a Scheduled Monument. Assets associated with this important settlement could equally survive below ground and thus be disturbed or damaged by the development.

Nevertheless, according to the Wiltshire Historic Environment Record (HER), the present proposals are not directly on a recorded asset or feature. I am minded therefore, in making a proportionate response as per Planning Policy Statement 5 (PPS 5), to recommend that only an archaeological watching brief should be maintained during all groundworks associated with this proposed development.

**Wiltshire Archaeological and Natural History Society and the Council for British Archaeology** – refers back to previous objections made in relation to the previous site and in particular, the importance of the historic landscape and that the proposal would undermine the previous removal of obtrusive visual features (such as power lines). Whilst the representation makes reference to alterations with the design, it appears not to take account of the altered location for the proposal which is now outside the WHS.

A total of 32 representations of objection have been made by 31 parties nearby residents. Their concerns can be briefly summarised as follows;

1. The proposed excavations, parking layby and visibility splay works appear would affect neighbouring land. Should the neighbouring wall or trees be affected, this would result in loss of amenity.
2. The applicant should have retained Manor Farm and utilised existing buildings there.
3. The scale of the building is too large for this location and is not based on the functional needs of the holding.
4. The proposals would result in a significant increase in (or would perpetuate / exacerbate) the numbers and sizes of vehicles accessing the application site and the access route is completely unsuitable. It would result in approximately 166 tractor movements and 80 large articulated lorries. The access onto the A4 is steep, narrow and dangerous, the road is single track and runs over two small bridges. The road is bendy and visibility is poor and there are insufficient passing places and no footpaths. In all, the proposal and resulting traffic, including large grain lorries, would be harmful to highway users, including horse riders, walkers, children etc and would be even more dangerous in winter. The mitigation measures offered do not adequately address these concerns as may only ease vehicular movements in the immediate vicinity. The applicant states that the position means less lorries will come through the village but this is considered insignificant.
5. The acoustic survey is largely unintelligible and flawed, with missing data, technical terms, no account taken of local factors nor any description as to the type of noise. Proposed mitigation measures are inadequate and will not guarantee it is imperceptible. Noise would also be exacerbated by cumulative impact of neighbouring grain dryer. The additional noise which could be 24 hours a day, 7 days a week would be harmful to this quiet village and its residents. This would be exacerbated on summer nights (when it may be utilised most intensively) when background noise levels are low and windows are open. Further mitigation measures have been dismissed on the basis of economics.
6. Floodlighting all night would have a serious detrimental impact on the dark and rural character of the village.
7. The site in the chalk pit on the north of the A4 is far more suitable in terms of impact on residential amenity and highway safety. This appears to be unanimously supported locally and should carry significant weight, particularly since The Localism Act came into effect.
8. The proposals would be visually intrusive within the AONB and adjacent WHS.
9. There are few amenities in the village save for the countryside. This proposal would compromise users enjoyment of this important asset, particularly as there are no footpaths.
10. The applicant has already ploughed up water meadows and headlands and the objector is unconvinced that the proposal would be beneficial to wildlife or that the hedge is capable of being transplanted.
11. The air brakes on large grain lorries would be frightening to horses / riders using the road.
12. This is a large building and this together with its hardstanding will increase flood risk.
13. Applicant sold off farmhouse and farm buildings and does not live in the village, there should be a better location for the proposal somewhere else on his 650 acres.
14. It is understood that storage is a farming requirement but a less intrusive and more accessible site should be found.
15. The prevailing wind will carry noise further into the residential area which is currently very quiet.
16. The appearance of the building is an uninteresting box more suited to an industrial estate. Concrete should not be white and perhaps the roof should be organic.

17. Large vehicles will damage Wiltshire Protected Road Verges, an important habitat for wildlife.
18. Does the applicant not have the capacity for this storage elsewhere in the district?
19. A traffic survey should be undertaken by Wiltshire Council before any decision.
20. The large scale of the building and engineering earthworks would be a substantial visual intrusion which would take many years to screen.
21. Property boundaries are nearer than shown on the plans.
22. The proposed building will not facilitate crop rotation as stated as could only be utilised for 2 crops.
23. The fan noise will likely be for 6 months rather than the previous 6-8 weeks.
24. The plant would come on depending upon temperature/ humidity, even in the night when they would sound like jet engines, not like the low volume fans next door.
25. Any planting mitigation will likely be an eyesore in this location.
26. The need for the grain store is understandable but this site would be intrusive and unneighbourly. The site to the north of the A4 is ideally suited with better visibility, is level, electric and water and distant from neighbours.
27. The fact West Overton is a farming village not a dormitory village is significant and the development would support important links with agriculture but the proposed development would come at too high a price in terms of damage to other characteristics and amenities in the village.
28. The proposed development should be altered and conditions imposed to ensure a) the removal of the constant threat of noise, b) to ensure outside lights are only on when people are working on the site and c) to ensure a binding arrangement for vehicle movements to protect road users, verges and bridges.

## **8. Publicity**

This application has been publicised by means of a site notice erected at the site, advertisement in the local press and neighbour consultation letters.

## **9. Planning Considerations**

### ***9.1 The principle of the proposed grain dryer building***

As set out in the Agricultural Consultant's response above, the need for and scale of the proposed grain dryer building is considered to be justified in agricultural terms, notwithstanding existing buildings at Manor Farm which were previously owned by the applicant. Such farming proposals, are by their necessity, often in rural locations and the proposal would assist in supporting the farming of the land and the rural economy. This is backed by Chapter 3 of the NPPF which states that the development and diversification of agricultural businesses should be supported. This principle position must be considered in the context of other local factors which are considered below.

### ***9.2 Residential amenity***

The proposed structure is sufficiently distant so as not to cause any direct loss of amenity from the building itself in terms of overbearing impact or by being overshadowing.

The proposed fans have resulted in significant concerns being raised by neighbours as to the likely harm resulting from their operation. These are to be located at the rear of the building (west). A specification for the plant has been submitted together with a Noise Survey and Plant Assessment. This has been considered by the Environmental Protection Team who have advised they consider the report to be robust and that subject to the proposed mitigation measures outlined in the report which mainly relate to the construction details of the building and plant housing to attenuate the noise, the proposal will not result in any significant harm to the amenities of neighbouring occupiers. Criticisms of the report were received from neighbours, including that the report does not take account of the prevailing wind, the cumulative impact together with the existing dryer and that the background noise level has not been robustly calculated from nearest receptor nor has it been considered from more than one location. Environmental Protection Officers and the

applicant's noise consultant have provided responses to the points raised which can be viewed on the website, however this has not changed their advice on the matter.

The nature of farming means that it cannot be accurately predicted at what times of the day or for which periods of the day, the grain dryer will be in operation and so its acceptability must be considered for unrestricted usage, that is, that the proposal could be used for at any time, all year round even though in practice this is not likely to be the case.

### ***9.3 Highway Safety and Impact of Vehicular Movements on Residential Amenity.***

Some residents consider that the impact of additional traffic resulting from the proposal would adversely affect their amenities, causing noise and disturbance in this quiet area. Significant concerns have also been raised about the ability of the narrow road network to accommodate the additional traffic movements and in particular the large grain lorries. Verbally, these concerns have included that the dryer may be utilised to service other land outside the area which may cause additional movements. The applicant has subsequently provided a plan of his land at Manor Farm and has confirmed the dryer would not be used to service land outside this holding. Therefore, the land proposed to be serviced by the grain dryer is the same land that was previously serviced by buildings at Manor Farm.

This land can be used for agricultural purposes without any further planning controls and therefore the fact that this land may be farmed more intensively for arable purposes is not a material consideration in respect of this application. The 'additional traffic' could have been generated at Manor Farm without any further need for planning permission and it is not considered for this reason, that the proposal would be likely in itself to generate additional traffic movements; this is a function of the permitted agricultural use of the land. Instead, what falls to be considered is the displacement of such journeys from Manor Farm to the proposed site and any resulting implications. In considering the extent of the applicant's holding in the nearby vicinity, it is clear that land is split between the north and the south of the application site. Therefore, tractor movements generated from the south would arguably have a lesser impact on neighbours as movements will not be coming past residents. Movements from the land to the north of the application site would have to travel past Manor Farm (where they may have previously gone) and depending on which entrance was used, vehicles carrying grain may pass to and from here to the application site.

The additional movement of vehicles to and from Manor Farm have been considered in respect of their impact upon residential amenity and this is not considered significant so as to warrant refusal of planning permission.

The additional movement of vehicles and the proposed access has been considered by highway officers who have withdrawn their objection following receipt of amended plans detailing an appropriate visibility splay and passing layby.

### ***9.4 Visual and landscape impact in this Area of Outstanding Natural Beauty and nearby Avebury World Heritage Site, Scheduled Ancient Monuments and archaeology***

Given that the application is considered to be justified in principle in agricultural terms, it should be noted that the whole of the applicant's holding at West Overton lies within the North Wessex Downs Area of Outstanding Natural Beauty, is partially within the WHS and partially water meadows. The land is rolling, resulting in elevated parts which are remote from all other buildings and visually sensitive, some areas being very prominent from historically sensitive areas and important rights of way such as The Ridgeway. There are considered to be very limited options for locating the proposed building due to the significant number of constraints and indeed, the applicant withdrew the previous application following concerns raised that the previously proposed site was considered completely unsuitable with regard to the landscape and World Heritage Site constraints, even though it is recognised that many villagers within West Overton consider this original

site preferable due to its remoteness from neighbouring dwellings. As set out above, impact on residential amenity is an important consideration, however the proposal is not considered to warrant refusal on the basis of noise impact or any other impact on residential amenity. The Landscape Consultant and AONB officer accept that given the sensitivity of the landscape, the proposed location together with the suggested mitigation measures, including control over external lighting, spoil disposal, materials, levels and landscaping mean that the proposal will not result in significant harm to the visual amenities of the area nor will it compromise the objectives of the AONB and this view is shared by officers.

The WHS Officer and English Heritage both agree that this alternative location, outside the WHS but within its setting is significantly improved from an historic environment perspective. They continue to express concerns about the scale of the building and final details but further comments have not been received following the applicant's submission of the photomontage showing how the building will fit in the landscape.

The archaeologist has expressed concerns about the extent of excavation in this historic context and the potential for disturbing archaeology but given limited records, has advised an archaeological watching brief condition over all works.

### **9.5 Ecology**

The impact on ecology has been considered but the proposals are not considered likely to have any significant impact on ecology including protected species and habitats.

### **9.6 Flooding**

The site is outside Flood Risk Zones 2 and 3 and would be drained by means of a soakaway. It is not considered that the proposals would result in any significant increase in flood risk.

## **10. Conclusion**

This is a highly constrained location and the proposed site, on balance is considered acceptable in terms of preserving the setting of the WHS, the visual amenities of the area and the AONB given the level of supporting information and mitigation measures that the applicant has submitted and agreed. The proposal would not give rise to significant harm to residential amenity or highway safety, having regard to the fallback position, nor are there considered any other factors which warrant refusal of planning permission. Consequently, approval of planning permission with conditions is recommended.

## **RECOMMENDATION**

Approve with conditions

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

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

- 2 No works shall commence on site (including any groundworks) until:
  - a) A written programme of archaeological investigation, which should include on-site work and off-site work such as the analysis, publishing and archiving of the results, has been submitted to and approved by the Local Planning Authority; and
  - b) The approved programme of archaeological work has been carried out in accordance with the approved details.

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

- 3 The grain dryer hereby approved shall only be used to store and dry grain produced from the land holding identified on the submitted plan (parcels 1-6) or for other agricultural purposes ancillary to the agricultural use of that identified land only.

REASON: The use of the building to service land outside of this area may give rise to fresh planning considerations, including highway safety and residential amenity which may require further consideration by the local planning authority.

- 4 No development shall commence until details of the translocation of the hedge have been submitted to and agreed in writing by the local planning authority. Details shall include methodology and timing for transplanting. The hedge shall be transplanted in accordance with the approved details and shall be gapped up in accordance as per the specification on 'Screen Planting for Entrance and Grain Dryer'.

REASON: In the interests of visual amenity and highway safety.

- 5 All soft landscaping comprised in the approved details of landscaping detailed on Screen Planting for Entrance and Grain Dryer dated 28th January 2012 shall be carried out in the first planting and seeding season following the first use of the building or the completion of the development whichever is the sooner; All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority.

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

- 6 All spoil shall be disposed of in accordance with spoil disposal details which have first been submitted to and approved in writing by the local planning authority.

REASON: In the interests of visual amenity.

- 7 No part of the development shall be first brought into use until the passing bay shown on the plans hereby approved has been formed in accordance with the approved details.

REASON: To enable vehicles to pass/stand clear of the highway in the interests of highway safety.

- 8 No part of the development shall be first brought into use until the visibility splays shown on the approved plans have been provided with no obstruction to visibility at or above a height of 600 mm above the nearside carriageway level. The visibility splays shall be maintained free of obstruction at all times thereafter.

REASON: In the interests of highway safety.

- 9 The building hereby approved shall not be first brought into use until the access has been laid out and provided as detailed on plan number BK/1559/7 and the first 7 metres of the access has been surfaced in a well-bound consolidated material (not loose stone or gravel) and shall be retained as such thereafter.

REASON: In the interests of highway safety.

- 10 No gates shall be installed until details of the gates (including height, materials and design) have first been submitted to and approved in writing by the local planning authority. Works shall be carried out in accordance with the approved details.

REASON: In the interests of visual amenity.

- 11 The plant hereby approved shall not be first brought into use until the plant has been installed in accordance with the details and mitigation measures set out in the Environmental Noise Survey and Plant Assessment ( 2650\_ENA\_1 dated 31st Jan 2012). The plant and its housing shall thereafter be maintained in accordance with the approved details unless otherwise first approved in writing by the local planning authority.

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

- 12 No external lighting shall be installed on site until plans showing the type of light appliance, the height and position of fitting, illumination levels and light spillage have been submitted to and approved in writing by the Local Planning Authority. The lighting approved shall be installed and shall be maintained in accordance with the approved details.

REASON: In the interests of the amenities of the area and to minimise unnecessary light spillage above and outside the development site.

- 13 INFORMATIVE TO APPLICANT:

The Council is required to give a summary of the reasons for this decision and a summary of the development plan policies and proposals relevant to the decision. These are set out below:

The decision to grant planning permission has been taken on the grounds that the proposed development would not cause any significant harm to interests of acknowledged importance and having regard to the following policies and proposals in the Kennet Local Plan 2011 namely: policy PD1.

- 14 INFORMATIVE TO APPLICANT: In respect of condition number 2 it is recommended that the work, in the form of an archaeological watching brief, should be conducted by a professional recognised archaeological contractor in accordance with a brief issued by this office and there will be a financial implication for the applicant.

- 15 INFORMATIVE TO APPLICANT: The applicant should be advised that the passing bay will require the separate consent of the Highway Authority, and that a minor legal agreement will be required to secure the works, the costs of which would fall to the applicant.

- 16 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.

Plan Ref:

Screen Planting for Entrance and Grain Dryer received on the 20th April 2012, BK-1559-7, BK-1559-6-R2 and BK-1559-8 received on the 26th April, BK-1559-3-R1, BK-

1559-2-R1, WT/Fm/110.1, received on the 1st February 2012.

Additional information received in the letter from BK Grain Handling Engineers, letter from Three Counties Farms and plan showing Land Holding at Manor Farm all received on the 12th April 2012.