

REPORT OUTLINE FOR AREA PLANNING COMMITTEES**Report No. 1**

Date of Meeting	25 th February 2016
Application Number	15/10963/FUL
Site Address	Land at Bourne Close and High Street corner Porton SP4 0LL
Proposal	Proposed bungalow (resubmission of 15/04079/FUL).
Applicant	Mr Adrian Jones
Town/Parish Council	IDMISTON
Electoral Division	BOURNE AND WOODFORD VALLEY – (Cllr Mike Hewitt)
Grid Ref	418720 136580
Type of application	Full Planning
Case Officer	Lucy Minting

Reason for the application being considered by Committee

Councillor Hewitt has called in the application for the following reasons:

- Relationship to adjoining properties
- A house has been built very close to this site on an approximately same size site
- There is insufficient evidence to show there was ever a footpath or need for one

1. Purpose of Report

To consider the above application and the recommendation of the Area Development Manager that planning permission should be REFUSED

2. Report Summary

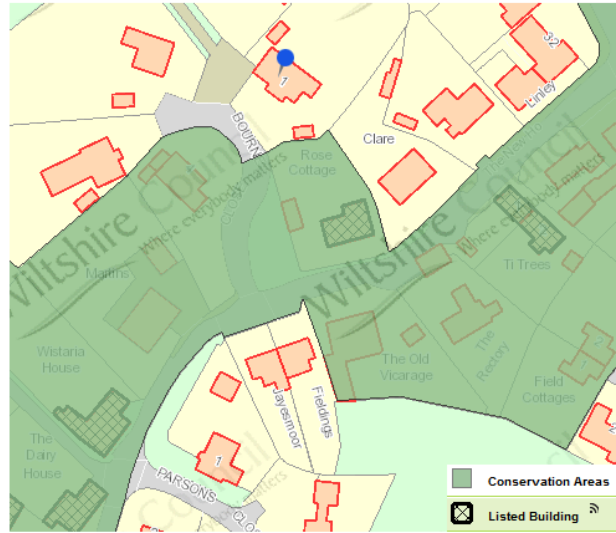
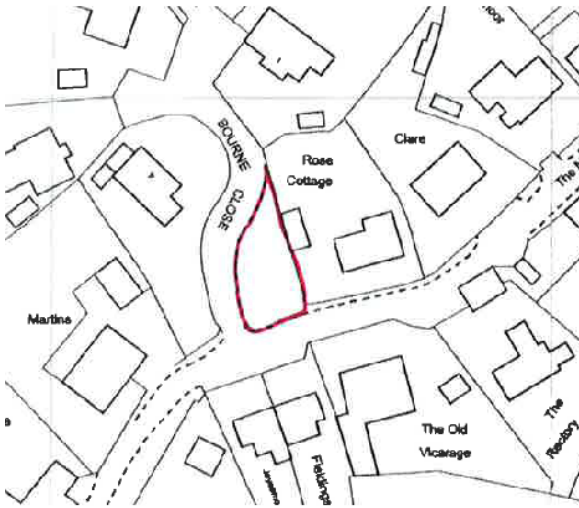
The main issues which are considered to be material in the determination of this application are listed below:

1. Principle of development
2. ROW
3. Scale, design and impact to the character and appearance of the conservation area/setting of listed buildings
4. Impact on Special Landscape Area
5. Impact on neighbour amenity
6. Impact on highway safety
7. Sustainable construction and low carbon energy
8. Archaeology

The application has generated No Objections from Idmiston Parish Council and 18 letters of representation of objection and 2 letters of representation of support

3. Site Description

The application site is a small plot of land within the built up area of Porton on the corner between the High Street and Bourne Close. The site is located within the Conservation Area, a Special Landscape Area and is immediately adjacent to the grade II listed property Rose Cottage to the east of the site:



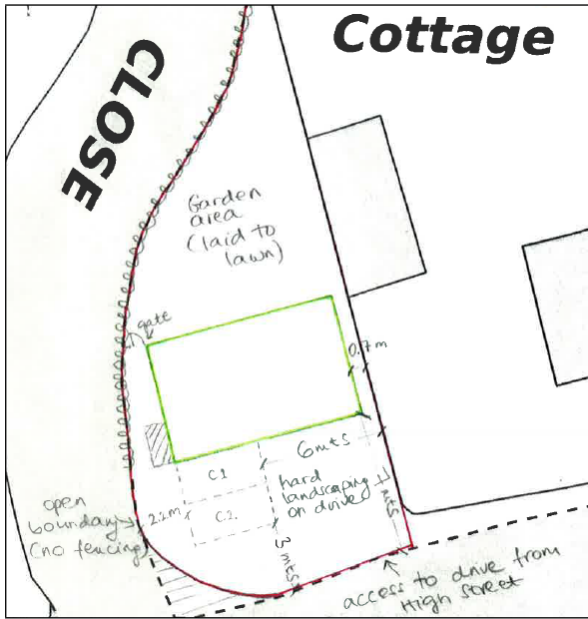
The plot is currently an open grassy plot of irregular shape, on which temporary metal fencing has recently been erected.

4. Planning History

Application ref	Proposal	Decision
14/10638/FUL	Erect new 3 bed detached dwelling	Withdrawn
15/04079/FUL	Proposed 2 bed bungalow	Withdrawn

5. The Proposal

The application is for a 2 bedroom single storey bungalow with access driveway and parking for two vehicles to the High Street frontage and a small garden area to the rear:



The proposed dwelling is 9.5m wide by 6m deep and a ridge height of 4.85m and is proposed to be constructed of handmade clay bricks and slate roof.



6. Local Planning Policy

The Wiltshire Core Strategy (WCS) - adopted by Full Council on the 20th January 2015:

Core Policy 1: Settlement Strategy

Core Policy 2: Delivery Strategy

Core Policy 4: Spatial Strategy: Amesbury Community Area

Core Policy 41: Sustainable Construction

Core Policy 43: Providing Affordable Homes

Core Policy 50: Biodiversity & Geodiversity

Core Policy 57: Ensuring high quality design and place shaping

Core Policy 58: Ensuring the conservation of the historic environment

Core Policy 61: Transport and New Development

Core Policy 64: Demand Management

Saved policies of the Salisbury District Local Plan:

R2 (Open Space Provision)

C6 (Special Landscape Area)

Wiltshire Local Transport Plan 2011-2026:

Car Parking Strategy

Government Guidance:

National Planning Policy Framework (NPPF) March 2012

National Planning Policy Guidance (NPPG)

Supplementary Planning Guidance:

Adopted Supplementary Planning Document 'Creating Places Design Guide' April 2006
Idmiston, Porton and Gomeldon Village Design Statement
(Draft) Idmiston Parish Council Neighbourhood Plan

Planning (Listed Building and Conservation Areas) Act 1990

Section 130 of the Highways Act 1980

7. Summary of consultation responses

Rights of Way: Object

Recommend that the application for the development is either refused or a decision is deferred until such time as the outcome of the Definitive Map Modification Order application is known.

Highways Authority: No objection subject to conditions

I note that the access point has changed with the proposed dwelling now being served directly from High Street. The proposed access, parking and turning arrangement is considered acceptable. In view of the restricted width and manoeuvring space on High Street I suggest that a construction method statement is submitted.

I recommend that no highway objection is raised subject to the following conditions being applied to any permission granted (first five metres of the access to be consolidated and surfaced (not loose stone or gravel); access turning area and parking spaces to be provided prior to occupation; scheme for the discharge of surface water incorporating sustainable drainage details and a construction method statement to minimise detrimental effects to the neighbouring amenities, the amenities of the area in general, detriment to the natural environment through the risks of pollution and dangers to highway safety, during the construction phase) and an informative advising a licence will be required before any works are carried out on land forming part of the highway.

Conservation: This latest iteration of the scheme does address some of my earlier concerns. The scale would sit more comfortably with the neighbouring properties; however it does still remove an open space from the middle of the conservation area and affect the setting of the adjacent listed building. Although slate is proposed, it is considered that clay tile is a softer and more traditional material for such a design; and the front door is very narrow. Materials (including brick bond and mortar), window and eaves details would make all the difference to the chances of success of the proposal at sitting comfortably in its setting, so a sample panel and timber windows will be essential, all by condition, as well as a restriction of permitted development rights re windows, roof covering materials, other roof alterations, boundary treatments, outbuildings. If possible, I would like to see better quality drawings of the site and boundary treatments, in order to assess the impact more accurately.

Wessex Water: Comments relating to new water supply and waste connections which could be included as an informative were the application approved.

Wiltshire Fire & Rescue Service: Comments relating to fire safety measures which could be included as an informative were the application approved.

Archaeology: No objections

Parish Council: No objections

8. Publicity

The application was advertised by press / site notice and neighbour consultation letters.

17 third party representations have been received objecting to the application, summarised as follows:

- Loss of informal open space - Site is an open space and one of few green spaces remaining in the village, which should be preserved as it provides a pleasant centre for the surrounding buildings in a conservation area and enhances the rural character of Porton
- Insufficient justification for an additional dwelling on a small plot within the conservation area
- Should be substantial reasons for allowing buildings in the conservation area and in the setting of listed buildings (site immediately adjacent to Rose Cottage, within 100m of two further Grade II listed buildings and there are a further 5 along the High Street).
- Development of this site is not a necessity to meet housing requirements and contrary to the Government's localism agenda. 20 dwellings have already been approved in Porton in Sept 2014 and draft Neighbourhood Plan identifies ten selected sites for more than 70 additional dwellings
- Built development too close to curtilage of Grade II listed cottage – adverse impact to setting and potential for damage
- Will obscure view of the side of the listed building and brick and flint wall abutting the site
- Will not enhance the appearance of the area – detrimental impact to the conservation area
- Proposal is out of keeping with surrounding development and of insufficient design merit for the conservation area
- Non-traditional, modern design, cluttered and cramped development
- Slate roof is out of character for a bungalow in this area (where there is slate these are all substantial houses with high eaves, built when slates were usual alternative to stone, tiles or thatch)
- Small site is out of scale with surrounding dwellings which are set in substantial plots
- Site is extremely small and smaller than surrounding plots (contrary to Village Design Statement policy 17 – density of new development should not exceed that of surrounding housing and plot sizes should be appropriate to the size of the dwelling proposed)
- An overdevelopment of the small site which has an awkward shape and very small garden
- Cramped and inappropriate hard standing to High Street frontage

- Insufficient and inadequate on-site and on-street parking spaces for occupiers and visitors (Bourne Hill Close insufficient width and High Street is a narrow B road) in already congested area
- Unsuitable access and highway capacity - High Street insufficiently wide enough for cars to manoeuvre into site
- Turning area insufficient, will encourage reversing out into the roadway
- Proposed dwelling and car parking area (plus potential for future occupiers to erect boundary screening) will obscure visibility for cars and pedestrians at junction with High Street with many vehicles using this as a turning area
- Proposed vehicular access will remove on street parking in High Street
- Until recently this land had not been fenced off for more than 25 years. Metal fencing should be removed
- Has been used as a 'right of way'. Bungalow would obstruct this.
- No decision should be made until the Definitive Map Modification Order application which is claiming a public right of way along the east boundary of the site has been determined
- Impact to highway safety with Bourne Close which has no pavement being used as access to the village recreation ground
- Further hazard to pedestrians using High Street which has no pavement
- Loss of privacy to nearby dwelling from overlooking
- Loss of light
- Development of site is not supported by draft Neighbourhood Plan (contrary to policies requiring development proposals to maintaining the rural feel; maintaining historical legacy; protecting historic buildings; provision of diverse open space; use of open space; preventing overcrowding; and is not one of the proposed sites)
- UPVC windows and doors – contrary to design guide objectives 16 and 23 (UPVC in a conservation area will rarely be acceptable) and contrary to Village Design Statement design policy 16 – use of UPVC windows and door on elevations exposed to public view should be avoided
- Site is in a Special Landscape Area used to protect sensitive landscapes from development
- Contrary to NPPF guidance
- Concerns over accuracy of application drawings, including size of site and plans do not show detailed or accurate relationship to adjoining land, contrary to Creating Places Design Guide requirements
- Two trees have been removed since 2005
- Plans do not show surface water drain and soakaway in the middle of the plot, alternative provision may be required (drainage details are covered under separate legislation)
- Neglecting site is not justification for development
- Building works will have implications for highway safety and traffic
- Concerns relating to potential obstruction and damage/need for repairs to Bourne Close (a private road) and potential problems and inconvenience arising during construction (these are non-material planning considerations being private issues between neighbours or covered under Control of Pollution Acts)

- Concerns relating to building regulations (boundary separation, access to firefighters, surface water drainage)
- Floor area below Nationally described Space Standard (NdSS) – Planning Practice Guidance confirms that local planning authorities can only require internal space standards in new homes if these are in the Local Plan – there are none in the Wiltshire Core Strategy
- Reference to a new build dwelling which has been approved is in the garden/curtilage of a listed building is outside the conservation area – not comparable to this site
- If approved should be restricted to single storey property limited to original height
- Reference to being contrary to policies which have been superseded by the Wiltshire Core Strategy

2 third party representations have been received supporting the application, summarised as follows:

- Small property will provide essential accommodation for local workers and support local businesses
- Strong demand for small, affordable housing in area
- Meets the criteria in the neighbourhood plan
- The proposed bungalow fits the site nicely and is in keeping with the area subject to careful selection of bricks for house and garden walls will only enhance the village
- Will keep down obstruction of street by providing 2 off street car parking spaces

The following objection from the Neighbourhood Plan Steering Group has also been received:

The Idmiston Parish Council Draft Neighbourhood Plan, passed unanimously by the Parish Council at the meeting in May 2015, is available in full on the IPC website. It was submitted to Wiltshire Council on 20 May 2015 and, having addressed the issue of the SEA reports is now approaching Consultation with Wiltshire Council. It contains policies that seek to conserve and enhance the historic environment as well as protect the landscape/townscape. Policies 1 to 4 in the Draft NP relate to the protection of the landscape and require all new development proposals to incorporate a landscaping scheme. They also seek any future development on, or close to, the periphery of the villages to minimise the visual impact of the development on the village edges. Policies 5 to 8 in the Draft NP seek to conserve and enhance the historic environment. They also seek any future development to reflect and enhance the character of historic properties and the villages and, following full consultation with the residents, have selected ten sites for future development to address impending housing need.

With relation to the proposed development on this very small plot, in the centre of the Porton Conservation Area, jammed up against the flint wall of the Grade 11 listed Rose Cottage – we feel the following Policies and Proposals are particularly applicable:

Policy 7 Maintaining Historical Legacy

To ensure developments within the historic parts of Idmiston, the Porton Conservation Area and the areas immediately adjoining, reflect the appearance and character of our legacy of historic properties.

The modern style and the functional design of the proposed single storey dwelling does nothing to contribute either to the Conservation Area or to the environs of Rose Cottage.

Policy 8 Maintaining and Enhancing Character

To ensure new housing both reflects and enhances the character of the villages and that extensions blend in visually with existing buildings and do not detract from the street scene.

Core Policy 57 in the Wiltshire Core Strategy (adopted 2015) requires a high standard of design for all new developments and expects them to create a strong sense of place through drawing on the local context and being complementary to the locality. The policy ensures that any application for development is accompanied by appropriate information to demonstrate how the proposal will make a positive contribution to the character of Wiltshire through enhancing local distinctiveness, which includes responding to the value of the natural and historic environment. Development must also relate positively to its landscape setting and the existing pattern of development and respond to local topography by ensuring that important views into, within and out of the site are to be retained and enhanced. Core Policy 58 relates to the conservation of the historic environment and seeks to ensure that development protects, conserves and where possible enhances the historic environment. The policy seeks to conserve designated heritage assets and their setting as well as non-designated heritage assets that contribute to a sense of local character and identity.

The development in this application does not draw on local context within the Conservation Area and is not complementary to the surrounding buildings – it will not enhance local distinctiveness. On a very cramped site, it bears no relation to the existing pattern of development and, if built, will neither enhance nor retain the views into the area.

Proposal 4 Protect Historic Buildings

Review buildings within the villages that should be maintained/protected as part of our cultural/historic heritage.

In this case, to protect the integrity and the open view of the Grade 11 listed Rose Cottage.

Proposal 9 Use of Open Space

Seek to secure public use of 'non-public space wherever appropriate and however possible.

This small triangular space is one of the very few remaining open spaces in the village of Porton. It is the only one left within the Conservation Area and has been used for many years by custom and practice as a right of way. It has provided safe access from the High Street to the Recreation Ground for children and recreational walkers – there is no designated right of way. A claim is currently being made for its continuing use.

Policy 13 Short Term Infrastructure Requirements

There is a requirement to manage current infrastructure shortfalls for the management of traffic congestion, parking and safety.

The site of the proposed new dwelling is on the busy High Street approaching the Winterslow Road. Traffic constantly moves up and down on the way to the Surgery, Shop,

Chinese Takeaway, Gomeldon School and on the way to and from work. There is no dedicated parking space apart from that provided by the shop and the takeaway. Overspill parking extends from the junction and back up into the High Street. The street has no footpath and pedestrians are obliged to walk along the open roadway. The site is on a bend in the road and there is no appreciably clear visibility, in either direction, from the site. The road alongside the site is the privately owned Bourne Close. There is no space for construction traffic to park without disrupting the traffic flow on the High Street. There is no provision for the activity around the construction and occupation of this site now and no space to make provision in the future.

Proposal 18 New Development Sites

The only sites available for new development should be those identified in the Neighbourhood Plan.

This site was never one of the 26 possible sites considered during the Neighbourhood Planning process. It is too small, is in the Conservation area and will impact adversely on the adjoining Grade 11 listed cottage. It was not therefore considered suitable for development and, consequently, is not one of the ten preferred sites selected by the inhabitants of the Parish. There is a full account of the process and selection process in the Housing section of the Neighbourhood Plan.

Policy 18 Preventing Overcrowding

To ensure sufficient private amenity space remains available, proposals that involve increasing the footprint of a dwelling should have regard to the adequacy of the size of the plot and the general character of the area.

This very small plot has barely sufficient room to accommodate the proposed bungalow and the two parking spaces – there will be little room to provide any garden space. The surrounding houses in the Conservation Area generally sit in much larger plots with sufficient green space and room for hedges and trees. This modern building would be jammed against the wall of the adjoining listed, thatched cottage.

Proposal 20 Liaison with County Planners

To establish a consistent and regular relationship and liaison with County Planners, to ensure that the Neighbourhood Plan, with other planning policies, form the basis for future decisions.

Having taken the Neighbourhood Planning process to this stage, it would be of value to understand if any of these Proposals and Policies contravene any of the Wiltshire Council Core Policy and Planning guidelines, the principles of the Conservation Area, Listed buildings or the minimum requirements of the National described Space Standard. The NdSS describes the minimum recommended requirement of the internal space for a new dwelling for a two bedroom/3 person occupancy as being 61 square metres with 2 square metres provided for storage space. Measurements to scale on the Plan in this Application for the building give only an external measurement of 57 square metres and the estimated Gross Internal Area is only 48 square metres – well below the required minimum.

If the Planning Department is minded to grant Approval for this Application it would be a contradiction of the rules and guidelines upon which the Plan is based.

Given the nature and circumstances of the application and all the factors listed above, we very strongly oppose this Planning Application.

Comments also received from South Wiltshire CPRE:

It would be a shame to lose this small area of open space in the conservation area; also, although the proposed bungalow is demure and neutral in design perhaps its effect on the setting of the adjacent Grade II listed house should be considered more.

9. Planning Considerations

9.1 Principle of development

The National Planning Policy Framework (NPPF) came into force on 27th March 2012 and makes it clear that planning law (Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004) requires applications for planning permission to be determined in accordance with the development plan unless material considerations indicate otherwise. Paragraph 12 of the NPPF confirms that the 'NPPF does not change the statutory status of the development plan as the starting point for decision making' and proposed development that is in accordance with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused unless other material considerations indicate otherwise.

The proposals are therefore to be considered in the context of the National Planning Policy Framework (NPPF) which sets out Central Government's planning policies, and the adopted Wiltshire Core Strategy (WCS) which also includes some saved policies of the Salisbury District Local Plan (SDLP).

At the heart of the NPPF is a presumption in favour of sustainable development and the Adopted Wiltshire Core Strategy seeks to build resilient communities and support rural communities but this must not be at the expense of sustainable development principles and the Settlement and Delivery Strategies of the Core Strategy are designed to ensure new development fulfils the fundamental principles of sustainability.

This means focusing growth around settlements with a range of facilities, where local housing, service and employment needs can be met in a sustainable manner. A hierarchy has been identified based on the size and function of settlements, which is the basis for setting out how the Spatial Strategy will deliver the levels of growth.

Core Policy 1 of the Wiltshire Core Strategy sets out the 'Settlement Strategy' for the county, and identifies four tiers of settlement - Principal Settlements, Market Towns, Local Service Centres, and Large and Small Villages. Within the Settlement Strategy, Porton is identified as being a Large Village. Only the Principal Settlements, Market Towns, Local Service Centres and Large Villages have defined limits of development/settlement boundaries.

Core Policy 2 of the Wiltshire Core Strategy sets out the 'Delivery Strategy'. It identifies the scale of growth appropriate within each settlement tier, stating that within the limits of development, as defined on the policies map, there is a presumption in favour of sustainable development at the Principal Settlements, Market Towns, Local Service Centres and Large Villages. The site is within the Limits of Development for Porton and therefore the principle of the residential development is acceptable.

However, the NPPF requires each Local Planning Authority to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements with an additional buffer of 5% to ensure choice and competition in the market for land (paragraph 47). The implications being, if this cannot be demonstrated, then the policies in the development plan relevant to the supply of housing cannot be considered to be up to date. In these circumstances, unless any adverse impacts would significantly and demonstrably outweigh the benefits, proposals should be considered favourably for permission (NPPF paragraph 14).

A Housing Land Supply Statement has been prepared using a base date of April 2015 and covers each Housing Market Area (HMA) in Wiltshire. It is essentially a snapshot in time, taken annually, as required by the NPPF. It updates the previous Housing Land Supply Statement (July 2014) and addendum in the Wiltshire Core Strategy Inspector's Note (October 2014).

The table below taken from the Housing Land Supply Statement (September 2015) provides an overview of the five year land supply against the housing requirements contained in the Wiltshire Core Strategy.

Area	Housing requirement 2006-2026	Housing completions 2006-2015	Five year housing requirement 2015-2020	Deliverable supply 2015-2020	Number of years of deliverable supply
East Wiltshire HMA	5,940	2,976	1,347	2,213	8.21
North and West Wiltshire HMA	24,740	10,821	6,327	7,092	5.60
South Wiltshire HMA	10,420	4,071	2,886	3,274	5.67
Wiltshire HMAs	41,100	17,868	N/A	12,579	N/A
Swindon (within Wiltshire)	900	335	N/A	402	N/A
Wiltshire Total	42,000	18,203	N/A	12,981	N/A

Table 2: Housing Land Supply relative to the housing requirement of the adopted Wiltshire Core Strategy

Each of the HMAs currently has five years' supply of deliverable land for housing development, with South Wiltshire having 5.67 years deliverable supply.

Consequently, there is no immediate need for the development of non-allocated sites such as this proposal.

It is also necessary to consider the other relevant planning policies and the normal range of material considerations that have to be taken into account when determining a planning

application and a judgement is necessary in terms of all the development impacts considered below.

9.2 Right of Way

Wiltshire Council has a duty under Section 130 of the Highways Act 1980 to protect and assert the rights of the public to the use and enjoyment of any highway for which it is the highway authority. The council is also required to prevent, as far as possible, the stopping up or obstruction of (a) the highways for which they are the highway authority, and (b) any highway for which they are not the highway authority, if, in its opinion, the stopping up or obstruction of that highway would be prejudicial to the interests of its area.

Public footpaths are highways, and the duty is therefore clear where the Definitive Map and Statement (the conclusive legal record of public rights of way) shows a footpath, bridleway, restricted byway or byway open to all traffic. However, if a highway authority is aware of a public right of way that is not shown in the Definitive Map and Statement (DMS), the authority still has the duty to protect it in the ways described above.

The Rights of Way (ROW) team have advised that the council has received an application for a Definitive Map Modification Order (DMMO) to record a public footpath along the east boundary of the proposed site, the application being supported by evidence that a public footpath exists, and that evidence is still being considered by ROW.

ROW have advised that in making a decision on the DMMO; the council must in the first instance decide whether or not it is reasonably alleged that a public footpath exists and that there is no incontrovertible evidence that it cannot exist. If it decides that this test is met, it must make a Definitive Map Modification Order (DMMO) which, if it is ultimately shown on the balance of probabilities that a public footpath does exist, will be confirmed and will result in the footpath being added to the DMS.

In this way, the council can be said to have responsibilities both to the applicants for the DMMO and to the applicant for the proposed dwelling; the council needs to protect the line of the path from being obstructed whilst the DMMO application is being processed so that if it is ultimately determined to be a public right of way, the public have unobstructed use of it and the applicant does not have to remove sufficient of the obstruction to make it available to its full width.

The call in reasons include that 'there is insufficient evidence to show there was ever a footpath or need for one'.

Based on the evidence before ROW at the moment (21 user evidence forms) and taking an average width from the user evidence, a width of 1.54m is the used width of the claimed route along the east boundary of the site; although ROW have advised that additional width evidence may be brought to the attention of the Council as they process the claim and the width of the footpath may change/could increase.

The block plan proposes the dwelling to be sited 0.7m from the east boundary of the site. The proposed dwelling would therefore obstruct the claimed footpath route.

If the claimed route were a footpath already recorded on the definitive map, then ROW would object to the planning application on the grounds that the development would obstruct the footpath. Until their investigations are completed, they have to treat the claimed route as if it were already recorded and they have recommended that this planning application is either refused or a decision is deferred until such time as the outcome of the DMMO application is known.

It has been suggested to the agent that the application could be withdrawn; amended plans could be submitted reducing the width of the dwelling and increasing the gap between the east boundary and the side elevation of the proposed building to accommodate the claimed footpath route (with the caveat that the claimed width is still under consideration as part of the DMMO application), or the applicant could request a decision is deferred on the planning application until the outcome of the DMMO is known (the local planning authority are able to mutually agree an extension of time to the application).

However, the applicant wishes the application to be determined as submitted and the application is therefore recommended for refusal on the grounds that the development would obstruct the claimed footpath route.

9.3 Scale, design and impact to the character and appearance of the conservation area/setting of listed buildings

The NPPF sets out Central Government's planning policies. It states the purpose of the planning system is to contribute to the achievement of sustainable development. It defines core planning principles which include that planning should always seek to secure high quality design. Paragraph 58 of the NPPF in particular states that development should respond to local character and history, and reflect the identity of local surroundings and materials and paragraph 132 requires development to enhance heritage assets and make a positive contribution to their setting.

The Planning (Listed Building and Conservation Areas) Act 1990 (sections 16 & 66) places a duty on the local planning authority to have '*special regard*' to be given to the desirability of preserving the special interest of the listed buildings and their settings. The principal considerations are to ensure that new development protects the significance of listed buildings and their settings, and prevents harm to their significance.

Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 also places a duty to require that '*special attention*' shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

Core Policy 57 of the WCS requires a high standard of design in all new developments through, in particular, enhancing local distinctiveness, retaining and enhancing existing important features, being sympathetic to and conserving historic buildings and landscapes, making efficient use of land, and ensuring compatibility of uses (including in terms of ensuring residential amenity is safeguarded).

Core Policy 58 *'Ensuring the conservation of the historic environment'* requires that *'designated heritage assets and their settings will be conserved, and where appropriate enhanced, in a manner appropriate to their significance.'*

Objective 16 of the Councils Design Guide states (page 67) also refers to the need for new development proposals to exhibit *'How the new dwelling(s) will relate to the context and to each other to create a particular place'*.

It is noted that representations received including from the Neighbourhood Plan Steering Group, consider that the proposal is not in accordance with the draft Idmiston Parish Council Neighbourhood Plan. It should be noted that whilst this neighbourhood plan was submitted to Wiltshire Council in May 2015, this is a draft which has yet to be approved by the Council, nor been submitted to the external examiner for approval, nor been voted in a public referendum. Therefore whilst the neighbourhood plan can be given a small amount of weight in the decision making process, it cannot be given significant weight due to it not yet being adopted.

In paying *'special attention/regard'* to the Conservation Area and listed buildings and their settings, the NPPF requires an assessment as to whether the proposal causes *'substantial harm'* or *'less than substantial harm.'*

In defining the level of harm the NPPF and National Planning Practice Guidance (PPG) provides the following advice:

Paragraph 133 of the NPPF states that where proposals would lead to substantial harm to the significance of a designated heritage asset, the proposals should be refused unless it can be demonstrated that this would be outweighed by substantial public benefits.

Paragraph 134 of the NPPF states that where proposals would lead to less than substantial harm to the significance of a designated heritage asset, the harm should be weighed against the public benefits of the proposals.

The PPG confirms that what matters in assessing if a proposal causes substantial harm is the impact on the significance of the heritage asset and as the National Planning Policy Framework makes clear, significance derives not only from a heritage asset's physical presence, but also from its setting.

The PPG advises *'whether a proposal causes substantial harm will be a judgment for the decision taker, having regard to the circumstances of the case and the policy in the National Planning Policy Framework. In general terms, substantial harm is a high test, so it may not arise in many cases. For example, in determining whether works to a listed building constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest. It is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed. The harm may arise from works to the asset or from development within its setting'* and that in general terms, *substantial harm is a high test and may not arise in many cases and that works that are moderate or minor in scale are likely to cause less than*

substantial harm or no harm at all, although it notes that even minor works have the potential to cause substantial harm.

The site lies on the High Street in Porton, within the conservation area and immediately adjacent to a grade II listed building, the thatched two-storeyed Rose Cottage. The site has not (at least since the 19th century) had any structures fronting the High Street and was cleared completely in the mid - 20th century. The view of Rose Cottage from the southern approach has therefore been unobstructed by buildings.

The conservation officer has advised that the scale of the development would sit more comfortably with neighbouring properties (compared to the earlier withdrawn schemes) but the scheme stills remove an open space from the middle of the conservation area and will affect the setting of the adjacent listed building.

The character of the High St is primarily one of two-storeyed houses and one-and-a-half storeyed thatched cottages; the proposed bungalow bears no reflection of the character of the Conservation Area and would appear cramped against the boundary with Rose Cottage, intruding into all views of the latter.

It is considered that the proposal would have an adverse impact on the setting of the listed building and the character and appearance of the conservation area, and although it is considered that this will result in less than substantial harm; it is therefore necessary that this harm should be weighed against any public benefits of the proposals.

The PPG clarifies that public benefits might comprise anything that delivers economic, social or environmental progress as described in the NPPF (Paragraph 7). Public benefits should flow from the proposed development. They should be of a nature or scale to be of benefit to the public at large and should not just be a private benefit. However, benefits do not always have to be visible or accessible to the public in order to be genuine public benefits.

Public benefits may include heritage benefits, such as:

- sustaining or enhancing the significance of a heritage asset and the contribution of its setting
- reducing or removing risks to a heritage asset
- securing the optimum viable use of a heritage asset in support of its long term conservation

Although public benefit is a relevant consideration it must be considered in the context of the '*special regard*' requirements of the Act and current case law suggests that Section 16/66/72 requirements are being interpreted as effectively implying a presumption against approval in cases where harm would result. It follows that other material considerations will not automatically outweigh harm to heritage assets.

The planning agent has advised that a public benefit will be that they wish to offer a reasonable percentage based on the land value towards community needs which then can be used to improve facilities at the play park or any other purpose that is needed in the village.

The introduction of the Community Infrastructure Levy (CIL) has significant implications for the use of S106 Planning Obligations. The legal tests for when you can use a S106 are set out in regulation 122 and 123 of the Community Infrastructure Levy Regulations 2010 (as amended) and have three important repercussions for S106 obligations; making the tests for the use of S106 obligations statutory (the tests are that any obligations will need to be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development), ensuring that there is no overlap in the use of CIL and S106 obligations and restricting the use of 'pooled' S106 obligations.

As well as the legal tests, the policy tests are contained in the NPPF:

"203. Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

204. Planning obligations should only be sought where they meet all of the following tests: necessary to make the development acceptable in planning terms directly related to the development; and fairly and reasonably related in scale and kind to the development."

The Community Infrastructure Levy (CIL) came into effect on the 18th May 2015. CIL is a new levy charged that local authorities can choose to charge on development in their area, and which Wiltshire Council has taken the decision to implement on all liable development. CIL will contribute towards the "funding gap" between the total cost of infrastructure necessary to deliver new development and the amount of funding available from other sources.

The Wiltshire Community Infrastructure Levy Charging Schedule charge for residential development in this area (Charging Zone 1) is £85 per sq. m payable upon commencement of development and is non-negotiable, although there are exemptions including 'self-build' relief.

CIL is charged on commencement of development and is separate from the planning decision process, being administered by a separate department. A separate Community Infrastructure Levy Liability Notice would be issued only if planning permission is granted.

The proposal would have generated an off-site recreational open space contribution under saved policy R2 of the Salisbury District Local Plan. However, this is a tariff style 'pooled' contribution. Pooling restrictions that came into force on 6 April 2015 mean that Wiltshire Council cannot pool more than five planning obligations towards the same infrastructure type or project. This limit extends to all planning obligations entered into since 6 April 2010. As the Council has already pooled more than 5 planning obligations towards recreational open space, we cannot therefore require any further pooled recreational off site contributions.

Core Policy 43 of the Wiltshire Core Strategy also sets out a requirement for 40% on site affordable housing provision with a net gain of 5+ dwellings, as this is under that threshold no affordable housing provision would be sought.

Any other offers of financial contributions as suggested by the agent will not be CIL compliant and cannot be accepted by the council as part of the application process.

Reference has also been made to the grant of planning permission for a new dwelling in the curtilage of a listed building at Box Hedge Cottage on a similar size plot. Planning authorities must determine applications in line with the local development plan unless material considerations indicate otherwise. Granting planning permission does not set a precedent for other proposals being allowed as each planning application is considered on its own merits in line with planning legislation and relevant national policy.

It is considered that the proposed development would have an adverse impact on the setting of the listed building and the character and appearance of the conservation area, although this is considered to cause less than substantial harm; but there are no public benefits arising from the proposal which outweigh this less than substantial harm and as such the proposal is recommended for refusal in accordance with paragraph 134 of the NPPF.

9.4 Impact on Special Landscape Area

The application site is located within the Special Landscape Area, and objections have been received on the basis of the proposals negative impact on this designation. Given the position of the proposed bungalow within a built up area, surrounded by other dwellings, it is not considered on a landscape scale, that the addition of a dwelling on this plot of land would have a significantly detrimental impact on the Special Landscape Area.

9.5 Impact on neighbour amenity

Core Policy 57 requires that development should ensure the impact on the amenities of existing occupants is acceptable, and ensuring that appropriate levels of amenity are achievable within the development itself, and the NPPF's Core Planning Principles (paragraph 17) includes that planning should 'always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.'

Residential amenity is affected by significant changes to the environment including privacy, outlook, daylighting and sunlight inside the house, living areas and within private garden spaces (which should be regarded as extensions to the living space of a house). The extent to which potential problems may arise is usually dependent upon the separation distance, height, depth, mass (the physical volume), bulk (magnitude in three dimensions) and location of a development proposal in relation to neighbouring properties, gardens and window positions.

Whilst the dwelling is sited 0.7m from the east boundary with Rose Cottage, given that the proposed dwelling is single storey with no first floor or windows above ground floor level; it is not considered that the development would have an adverse overlooking or overshadowing impact upon neighbouring amenity.

9.6 Impact on highway safety

The supporting text to Wiltshire Core Strategy Policy 64 refers to a parking study, commissioned by the council in January 2010, which included a comprehensive review of parking standards, charges and policy within both the plan area and neighbouring areas.

The resulting LTP3 Car Parking Strategy (the third evolution of the Wiltshire Local Transport Plan) was adopted by the council in February 2011 and includes policy PS6 – Residential parking standards. The parking standards for new dwellings are set out in the Wiltshire Local Transport Plan 2011-2026 – car parking strategy:

Table 7.1 Minimum parking standards (allocated parking)

Bedrooms	Minimum spaces
1	1 space
2 to 3	2 spaces
4+	3 spaces
Visitor parking	0.2 spaces per dwelling (unallocated)

Objections raised include that the proposal provides insufficient parking spaces and inadequate access arrangements amounting to an adverse highway safety impact.

Two parking spaces have been provided to the front of the dwelling. The highways authority (distinct from ROW) has raised no objections to the proposal.

With no objection comments from the highway authority; it is considered that any refusal of this application on the grounds of insufficient parking is unreasonable.

9.7 Sustainable construction and low carbon energy

The Wiltshire Core Strategy's key strategic objective is to address climate change. It requires developers to meet this objective under Core Policy 41- Sustainable Construction.

For new build residential development this is achieved through Level 4 of the Code for Sustainable Homes (CSH4) which seeks a 19% reduction in Green House Gas (GHG) emissions over the benchmark set in Part L of the 2013 Building Regulations.

CP 41 - New homes (excluding extensions and conversions) will be required to achieve at least Level 4 (in full) of the Code for Sustainable Homes⁸⁶.

86. For residential development post-construction Code for Sustainable Homes assessments will be required which must be undertaken by an accredited assessor. For conversions and for non-residential development an appropriate post-construction BREEAM assessment will be required which must also be undertaken by an accredited assessor. Replacements for the BREEAM standards are being developed and this policy will apply the equivalent replacement standards. The policy will also apply to any future replacements to the Code for Sustainable Homes.

<http://www.wiltshire.gov.uk/wiltshire-core-strategy-web-version-new-june.pdf> (p238)

The Planning Inspector for the Wiltshire Core Strategy (WCS) endorsed and made specific reference to the above position in his final report of December 2014:

137. Secondly, the policy addresses the notion of sustainable construction. Once again the Council has proposed changes to the policy to reflect the passage of time and to clarify that the Code for Sustainable Homes Level 4 will need to be secured for new homes and BREEAM76 'Very Good' standards in other circumstances. I am satisfied that the evidence base, particularly Topic Paper 1, establishes a sound basis for local policy to supplement national aspirations with regard to sustainable construction.

<http://www.wiltshire.gov.uk/wiltshire-core-strategy-inspectors-report.pdf>

The local planning authority have been adding the following standard condition to planning consents for new build residential development in Wiltshire:

The dwellings hereby approved shall achieve Level 4 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate for it has been issued and submitted to, and approved in writing by, the local planning authority certifying that Code Level 4 has been achieved.

REASON: To ensure that the objectives of sustainable development set out Policy CP41 of the Wiltshire Core Strategy are achieved.

Wiltshire Council has received challenges from developers seeking not to apply CSH4 to new developments. These challenges have argued that Section 43 of the Deregulation Act 2015 and a Ministerial Statement dated March 2015 brought CSH4 into question.

Legal advice has confirmed that:

a) The Department for Communities and Local Government, through the then Secretary of State, The Right Honourable Eric Pickles, delivered on the 25/03/2015 in the House of Commons a policy statement specifically dealing with energy efficiency in buildings and Planning system:

'the specific issue of energy performance, local planning authorities will continue to be able to set and apply policies in their Local Plans which require compliance with energy performance standards that exceed the energy requirements of Building Regulations until commencement of amendments to the Planning and Energy Act 2008 in the Deregulation Bill 2015. This is expected to happen alongside the introduction of zero carbon homes policy in late 2016. The government has stated that, from then, the energy performance requirements in Building Regulations will be set at a level equivalent to the (outgoing) Code for Sustainable Homes Level 4. Until the amendment is commenced, we would expect local planning authorities to take this statement of the government's intention into account in applying existing policies and not set conditions with requirements above a Code level 4 equivalent. This statement does not modify the National Planning Policy Framework policy allowing the connection of new housing development to low carbon infrastructure such as district heating networks.'

<https://www.gov.uk/government/speeches/planning-update-march-2015>

b) Section 43 of the Deregulation Act is still not in force and has, accordingly, altered neither the Planning nor Energy Act 2008, nor the policy led approach under CP41 of the WCS that Wiltshire Council can and should apply to any new application for new build residential development.

c) The Government's intention (set out at 4(a) above) to retain higher energy standards in the move towards sustainable homes is consistent with WCS Core Policy 41 which requires CSH4. By only requiring up to the pre-existing level 4 of the Code for Sustainable Homes, Wiltshire Council has not set the bar above what was envisaged by the Minister or Government at paragraph 4(a) above.

In view of planned changes to national policy, and following a recent appeal decision in Salisbury (14/10442/FUL), Wiltshire Council's standard condition relating to Code for Sustainable Homes for new build residential development has been replaced by the following:

The dwellings hereby approved shall achieve a level of energy performance at or equivalent to Level 4 of the Code for Sustainable Homes. No dwelling shall be occupied until evidence has been issued and submitted to, and approved in writing by, the local planning authority certifying that this level or equivalent has been achieved.

REASON: To ensure that the objectives of sustainable development equal or equivalent to those set out in Policy CP41 of the Wiltshire Core Strategy are achieved.

The Inspector's appeal decision explains 'At the Hearing the parties indicated that there was not agreement about the Council's requirement for the dwellings to comply with Code 4 of the Code for Sustainable Homes. The relevant development plan policy, CS Policy CP41, creates a need to achieve at least level 4 of the Code for Sustainable Homes and, until

amendments are made to the Planning Energy Act 2008, it is accepted that this may continue to be applied by condition, but limited to achieving equivalent energy standards.'

The key difference is that the local planning authority is now seeking energy performance at "or equivalent to" Level 4 of the Code for Sustainable Homes. Evidence of achievement is still required prior to occupation.

9.9 Archaeology:

Paragraph 128 of the NPPF states that *'where a site on which development is proposed includes or has the potential to include heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation'*.

The council's archaeologist has advised that there are no historic environment records in or in the near vicinity of the site, although it is possible that the lack of archaeological finds might be due to a lack of previous archaeological work in this area. However, on the evidence available at present, the council's archaeologist has advised that it is unlikely that significant archaeological remains would be disturbed by the proposed development and has raised no objections to the proposal.

10. Conclusion

The council has received an application for a Definitive Map Modification Order (DMMO) to record a public footpath along the east boundary of the proposed site. The council needs to protect the line of the path from being obstructed whilst the DMMO application is being processed so that if it is ultimately determined to be a public right of way, the public have unobstructed use of it and the applicant does not have to remove sufficient of the obstruction to make it available to its full width.

The block plan proposes the dwelling to be sited 0.7m from the east boundary of the site, which would obstruct the claimed footpath route. Until their investigations are completed, ROW have to treat the claimed route as if it were already recorded and they have recommended that this planning application is either refused or a decision is deferred until such time as the outcome of the DMMO application is known. The applicant wishes the application to be determined as submitted and the application is therefore recommended for refusal on the grounds that the development would obstruct the claimed footpath route.

As a planning authority we have a statutory duty to have special regard to the desirability of preserving or enhancing the character or appearance of the conservation area and the desirability of preserving the setting of a listed building when we consider applications for development that affect it. We are obliged, by case law, to give significant weight to this desirability. The proposal will have an adverse setting on the listed building (Rose Cottage) and the character and appearance of the conservation area with no public benefits arising from the proposal which outweigh this harm.

RECOMMENDATION: That planning permission be REFUSED for the following reasons:

(1) Wiltshire Council has a duty under Section 130 of the Highways Act 1980 to protect and assert the rights of the public to the use and enjoyment of any highway for which it is the highway authority. The council is also required to prevent, as far as possible, the stopping up or obstruction of (a) the highways for which they are the highway authority, and (b) any highway for which they are not the highway authority, if, in its opinion, the stopping up or obstruction of that highway would be prejudicial to the interests of its area.

Public footpaths are highways, and the duty is therefore clear where the Definitive Map and Statement (the conclusive legal record of public rights of way) shows a footpath, bridleway, restricted byway or byway open to all traffic. However, if a highway authority is aware of a public right of way that is not shown in the Definitive Map and Statement (DMS), the authority still has the duty to protect it in the ways described above.

Core Policy 52 also seeks to protect and enhance the green infrastructure network (which includes pedestrian paths and rights of way) in Wiltshire. The policy requires development to make provision for the retention and enhancement of Wiltshire's Green Infrastructure network, and ensure that suitable links to the network are provided and maintained. The council has received an application for a Definitive Map Modification Order (DMMO) to record a public footpath along the east boundary of the proposed site, the application being supported by evidence that a public footpath exists, and that evidence is still being considered by Rights of Way (ROW).

The footpath width of 1.54m is the used width of the claimed route, although the ROW officer has advised that additional width evidence may be brought to the attention of the Council as the claim is processed and the width of the footpath may increase.

If the claimed route were a footpath already recorded on the definitive map, then ROW would object to the planning application on the grounds that the development would obstruct the footpath; although based on the evidence before them at the moment (21 user evidence forms) and until their investigations are completed they are treating the claimed route as if it were already recorded.

The block plan proposes the dwelling to be sited 0.7m from the east boundary of the site and the proposed dwelling would therefore obstruct the claimed right of way for the public on foot along the east boundary of the site, contrary to policy 52 of the Wiltshire Core Strategy and section 130 of the Highways Act 1980.

(2) The Planning (Listed Building and Conservation Areas) Act 1990 (sections 16 & 66) places a statutory duty on the local planning authority for '*special regard*' to be given to the desirability of preserving the special interest of listed buildings and their settings. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 also places a statutory duty on the local planning authority that '*special attention*' shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

The conservation officer has advised that the scale of the development would sit more comfortably with neighbouring properties (compared to the earlier withdrawn schemes) but the scheme stills remove an open space from the middle of the conservation area and will affect the setting of the adjacent listed building. The character of the High St is primarily one

of two-storeyed houses and one-and-a-half storeyed thatched cottages; the proposed bungalow bears no reflection of the character of the Conservation Area and would appear cramped against the boundary with Rose Cottage, intruding into all views of the latter.

The proposal will have an adverse setting on the listed building (Rose Cottage) and the character and appearance of the conservation area with no public benefits arising from the proposal which outweigh this harm (including that as the Council also has a supply of specific deliverable sites sufficient to provide five years' worth of housing against the housing requirements; the provision of housing is not a material consideration which outweighs the adverse impact to the setting of the listed building and character and appearance of the conservation area). It is considered that the proposal is contrary to sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, section 12 of the NPPF (paragraph 134 in particular), policies 57 and 58 of the Wiltshire Core Strategy and Objective 16 of the Council's Design Guide 'Creating Places'.