

<b>Date of Meeting</b>	19 <sup>th</sup> April 2018
<b>Application Number</b>	18/01196/FUL
<b>Site Address</b>	Land to the rear of 11 White Street, White Street, Market Lavington, Wiltshire SN10 4DP
<b>Proposal</b>	Demolition of existing garages and erection of two houses with garages plus the provision of a passing space adjoining The Clays (amendment to 17/07414/FUL)
<b>Applicant</b>	Estate of T.E.J. Gye Deceased
<b>Town/Parish Council</b>	MARKET LAVINGTON
<b>Electoral Division</b>	THE LAVINGTONS AND ERLESTOKE – Cllr Gamble
<b>Grid Ref</b>	401579 154104
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	Ruaridh O'Donoghue

### Reason for the application being considered by Committee

The application is brought before committee at the request of Councillor Gamble, to enable consideration to be given to the highway safety implications of the proposal and the car parking arrangements.

#### 1. Purpose of Report

To consider the detail of the application against the policies of the development plan and other material considerations and the recommendation that the application be approved.

#### 2. Report Summary

The main issue to be considered is whether the proposal has now overcome the Committee's reason for refusal on highways grounds in respect of the previous application reference 17/07414/FUL i.e. is the application now capable of being served by a safe and suitable means of access with sufficient parking. The issues considered under the previous application are also relevant to the determination of this application (albeit, they were issues that did not form any part of the refusal reasons). These issues are as follows:

- Whether the proposed dwellings are acceptable in principle;
- Whether the proposal would preserve or enhance the character and appearance of the Market Lavington Conservation Area; and
- Whether the proposal would have a detrimental impact upon the reasonable living conditions of the adjoining residents.

### **3. Site Description**

The site is located within the Limits of Development of Market Lavington and it is accessed off the Clays via White Street. The Clays is a Public Right of Way (PRoW) with the reference MLAV24 that runs along the northern and eastern edge of the site.

The application site is adjoined by housing and gardens to the north, east, south and west. At the time of the officer site visit, the land was not in active use save for the 3 garages in the eastern corner of the site and was covered by ruderal vegetation. However, based on it having a former use it is considered to be brownfield land.

The site lies within the settlement's conservation area where a number of the surrounding properties are noted as being significant unlisted buildings (notably Nos. 11, 12 and 13 White Street and Nos. 2 and 3 The Clays). There are no other formal heritage or landscape designations covering the site.

There are no other planning constraints listed for the site that need to be considered as under this application.

### **4. Planning History**

17/03204/TCA – tree works application approved to remove Leylandii, a Norway Spruce and a Hawthorn hedge.

17/07414/FUL - Demolition of existing garages and erection of two houses with garages plus the provision of a passing space adjoining The Clays. This application was refused at the Eastern Area Planning Committee on the 2<sup>nd</sup> November 2017. The reason for refusal was as follows:

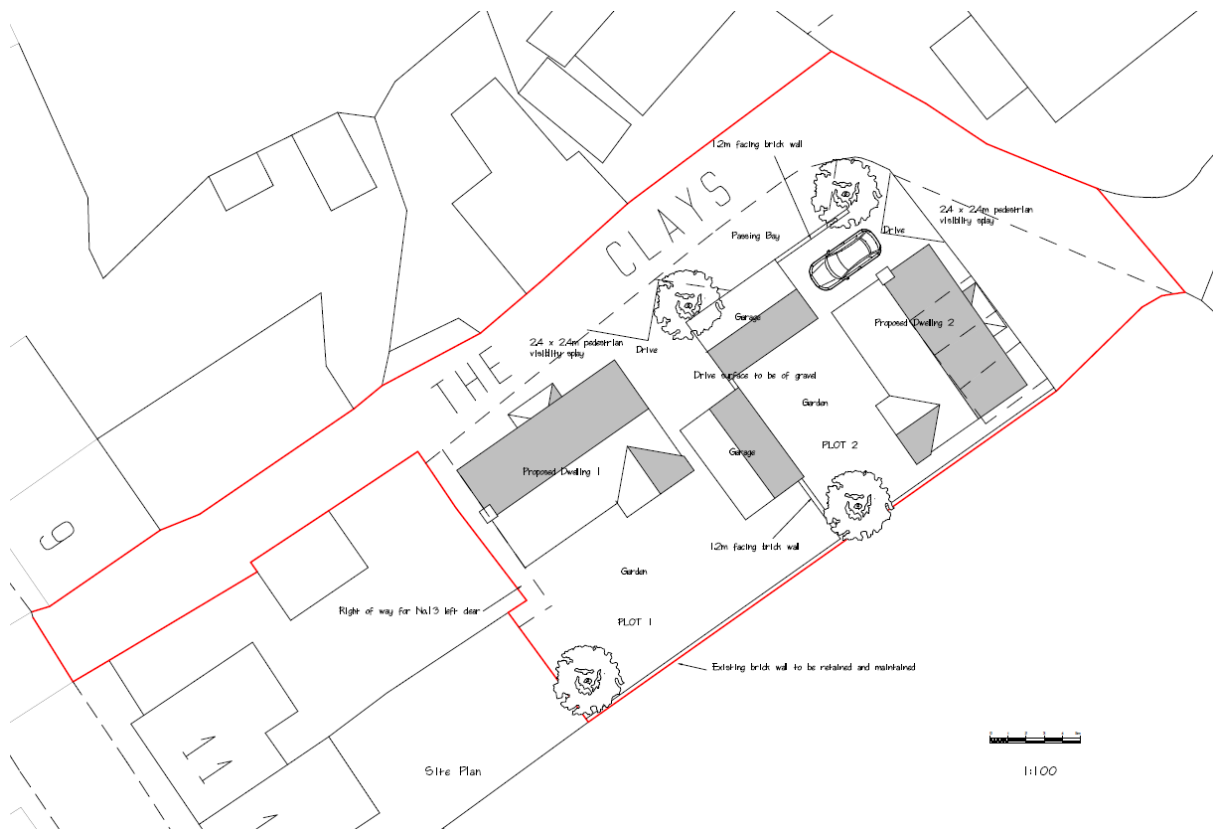
*The Clays is a bridleway (MLAV24) with a definitive width of just 3 metres across its entire length. It is unsuitable, by reason of its narrow width and poor quality surfacing, to provide safe and suitable access to the development or to accommodate the additional vehicular movements associated with it. This would cause conflict with users of the bridleway, including cyclists and pedestrians. Furthermore, the proposed layout is such that the development cannot be readily serviced by vehicles, in particular Plot 1. The proposal would therefore be contrary to Core Policy 61 of the Wiltshire Core Strategy, which requires that proposals are capable of being served by safe access to the highway network, Core Policy 57 (vi) of the Wiltshire Core Strategy, which requires that development should take account of a site's characteristics and relate effectively to the immediate setting and the wider character of the area, and paragraph 32 of the National Planning Policy Framework, which requires that safe and suitable access to the site can be achieved for all people.*

### **5. The Proposal**

The application proposes the demolition of the existing garages and the erection of two 3-bed dwellings with garages and individual accesses onto The Clays. They are to be constructed out of facing brickwork with plain clay tiles to the roofs. One of the two dwellings would have dentil detailing in the brickwork and the other would have tile hanging to the first floor elevations. Save for this variation, the remainder of the design of the dwellings is identical to that previously proposed.

The dwellings would have a footprint of approximately 77m<sup>2</sup> (dwelling 1) and 67 m<sup>2</sup> (dwelling 2), with a ridge height of 8.2m. Each dwelling would have a private amenity space in excess of the generally accepted standards of 50m<sup>2</sup>. They would be served by 2 parking spaces each. It is noted that this includes one space in the garage.

In addition to this and differing from the original submission (17/07414/FUL), the dwellings would be served by 1 no. passing bay. For reference purposes, the site plan is included below.



It is noted that as per 17/07414/FUL, the site plan includes part of The Clays within the red line area. The ownership of The Clays is unknown and the applicant has signed the correct certificate forming part of the planning application (i.e. Certificate D) and duly advertised in the press, as per the legislative requirement. The granting of planning permission does not in any way influence ownership of this land as land ownership is a separate matter from planning. In any event, no development is proposed on The Clays itself. The reason for including the Clays within the red line remains unchanged from the previous submission i.e. it was drawn in such a manner as there is a requirement for applicants to demonstrate how a site would be accessed from the nearest public highway (in this case White Street - an adopted highway), It does not seek to claim ownership.

## 6. Local Planning Policy

### Wiltshire Core Strategy 2015 (WCS):

- CP 1 – Settlement Strategy
- CP 2 – Delivery Strategy
- CP 12 – Devizes Community Area
- CP 41 – Sustainable Construction and low-carbon energy
- CP 51 – Landscape
- CP 57 – Ensuring high quality design and place shaping
- CP 58 – Ensuring the conservation of the historic environment

- CP 61 – Transport and new development
- CP 64 – Demand Management

### National Planning Policy Framework 2012 (NPPF)

#### Supplementary Planning Guidance:

- Local Transport Plan 2011-2026 Car Parking Strategy (March 2011) – Minimum residential parking standards.
- Local Transport Plan 2011-2026 Cycling Strategy (March 2015) – Appendix 4
- Market Lavington Neighbourhood Plan (Regulation 14 stage)

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

### Market Lavington Parish Council

Objects to the application on the following grounds:

- The application overlooks the original reason for refusal that The Clays is not safe or suitable
- The passing bay would be ineffective and not used for its intended purpose but rather as a parking space
- The application still incorrectly includes The Clays within the red line
- The Clays is not an unadopted road; it is a bridleway – no vehicular use is allowed

### Highways Officer

Notes that the applicant has provided a revised scheme which introduces a lay-by. Advises that the lay-by will provide some mitigation for passing traffic which offers a small amount of highway benefit.

Other than this, the Highways Officer's comments remain as before i.e. no objection with the following comments:

- The Clays is an adopted Bridleway. All properties located off The Clays should be able to demonstrate right of access.
- The garages and parking area belong to the applicant. The benefit of this off street parking could be removed at any time without the requirement of planning permission. As such the loss of parking is not a valid reason for refusal. Some of the properties utilising the spaces do have their own off street parking.
- The Clays is narrow with a restricted junction onto White Street. However, vehicle speeds are low (20mph limit) and the junction encourages vehicles to exit and enter with consideration, such designs are promoted within Manual for Streets Guidance. As stated previously the proposal will result in a reduction of potential vehicle movements. The garages and parking area to the front were able to accommodate approximately 6-7 vehicles between them. The new properties will have 4 vehicles associated with the site and in turn lower vehicle movements. Less vehicle movements will reduce the impact on the junction and also reduce the vehicle movements which may impact on the pedestrian and equestrian users of the Bridleway. It should be noted that some of the area that was available for parking (in front of plot 2) is still available.
- The ROW promotion of a construction management statement should also be adhered to.

In summary, the Highways Officer is of the opinion that the reduction in vehicle movements will mean that the cumulative impact on The Clays will not be sufficient to warrant a highway objection. To promote the use of the lay-by, a condition can be imposed requiring signage to be provided showing that the bay is for passing and not for parking.

#### Wiltshire Council Public Rights of Way Team

Does not raise any objection to the scheme. Comments remain as originally stated in respect of 17/07414/FUL. For reference purposes, these were as follows:

*The property would be accessed via a bridleway (MLAV24). This is not recorded as a public vehicular highway; the only recorded public rights along it are on foot, horseback and bicycle. In order to drive a vehicle along here, the householder would require a demonstrable private right of vehicular access. Without this private right, the householder would be committing an offence under Section 34 of the Road Traffic Act 1988. The granting of planning permission does not give the applicant or householder a vehicular right of access over the bridleway. The householder is advised to take private legal advice.*

*If planning permission is granted we would require the following:*

- *The bridleway would require surfacing and improvement works.*
- *Surface water from the site should not flow out onto the bridleway.*
- *Visibility around the bends in the bridleway should be checked to ensure that the public do not come into conflict with vehicles using the access.*

#### Wiltshire Council Conservation Officer

Comments remain as for 17/07414/FUL i.e. if the detailed design delivers a high quality scheme, the proposed new houses would not harm the character and appearance of the conservation area nor the setting of the listed buildings.

## **8. Publicity**

The application was advertised by site notice and neighbour notification letters. The application was also advertised in the Gazette and Herald newspaper. As a result of this publicity, the following comments have been received:

- Fire engines could not get down The Clays to tackle the two recent fires in the village
- Concerns over construction traffic accessing the site as White Street is narrow with parked cars and The Clays even more so.
- Wish to ensure no commercial / construction traffic uses Gye's Old Yard as a turning space.
- Double yellow lines being parked on in White Street blocking access to The Clays
- Loss of privacy to rear garden and rear windows of No. 2 Kings Court.
- Passing bay will be ineffective and just used as an additional parking space
- Loss of privacy
- Loss of light
- Garages currently allow parking for a total of 7 vehicles; loss of a higher number of spaces than stated in the application
- It will lead to a net increase in parking on already congested streets

- Additional traffic is likely to impinge on their safe transit and impact on the condition of the track.
- Parking provision is insufficient for 2 new dwellings and no visitor space has been provided
- The Clays cannot take any more traffic
- Applicants do not own any of The Clays so why is it included in their application
- Experience shows garages are rarely used for the parking of vehicles
- D&A states that No. 11 has driveway and garage whereas it only benefits from a driveway.
- The applicant states there will be no net increase in traffic but this assumes the current users of the garage would park elsewhere and not on the Clays.
- Will cause light pollution
- Loss garages will lead to increased parking congestion
- The safety of the users of the bridleway (dog walkers, horse riders, school children etc.) will be put further at risk with increased vehicular movements.
- There have been no new buildings in the Clays for over 20 years contrary to what the Conservation Officer states.
- Loss of trees prior to application and destruction of wildlife habitats (including nesting birds)
- The corner of Number 9 White Street is of further risk of being damaged due to being hit by cars turning in and out of the Clays.
- The proposed development would generate both displaced parking and additional traffic using this bridleway.

## 9. Planning Considerations

### Principle of Development

- 9.1 The principle of development was considered acceptable under 17/07414/FUL and did not form the basis for a reason for refusal. For completeness, the following was stated in the previous application with regard to this matter:

*The starting point for the determination of any application as required under section 38(6) of the Planning and Compulsory Purchase Act 2004 is that the decision be made in accordance with the development plan, unless material considerations indicate otherwise. The primacy of the development plan is enshrined in the NPPF and reaffirmed at paragraphs 11, 12, 17, 150 and 196, where emphasis is placed upon the importance of a plan-led system. The development plan for Wiltshire is the adopted Wiltshire Core Strategy 2015 (WCS). This is a recently adopted document, approved by full Council on the 20<sup>th</sup> January 2015 and has been thoroughly scrutinised through the examination process and found to be legally compliant, sound and in conformity with the NPPF. It contains relevant up to date policies, a spatial strategy and spatial vision, all of which are designed to achieve sustainable development objectives within Wiltshire.*

*Core Policy 1 of the WCS identifies the most sustainable locations for growth within Wiltshire on the basis of a settlement hierarchy, with the focus on the principal settlements and market towns. Under Core Policy 12, Market Lavington is defined as a Local Service Centre. Core Policy 2, the delivery strategy, in line with Core Policy 1, seeks to deliver development in Wiltshire between 2006 and 2026 in the most sustainable manner by making provision for at*

least 42,000 homes, distributed across the three housing market areas. The aim of this policy is to ensure development occurs in the most sustainable locations in conformity with the distribution set out within Core Policy 2. Within the development limits of Principal Settlements, Market Towns, Local Service Centres and Large Villages, there is a presumption in favour of sustainable development – Local Service Centres, which market Lavington is identified as, are defined as settlements capable of taking modest levels of development. Accordingly, the principle of development for new housing in this location would be considered acceptable subject of course, to the proposal's conformity with other relevant policies of the development plan notably, Core Policies 57, 58, 61 and 64.

#### Design / Heritage Impact

- 9.2 The design of the scheme and its heritage impact was considered acceptable under 17/07414/FUL and did not form the basis for a reason for refusal. For completeness, the following was stated in the previous application with regard to this matter:

*Core Policy 57 of the WCS is the primary reference point for assessing the design of the scheme. This policy requires a high standard of design to be met across all new development proposals. It requires development to conform to the existing settlement pattern and be respectful in terms of building form, layout, plot size, elevation treatment and neighbour amenity. Additionally, section 7 of the NPPF would be relevant.*

*The local planning authority also has a statutory duty placed upon it by s.66 of the Listed Building and Conservation Areas Act 1990 to have special regard to the desirability of preserving or enhancing the character and setting of listed buildings. There is also a statutory duty placed upon it by s.72 of the Listed Building and Conservation Areas Act 1990 to have special regard to the desirability of preserving or enhancing the character and appearance of conservation area.*

*The NPPF outlines government policy towards the historic environment. Section 12 "Conserving and Enhancing the Historic Environment" sets out an overall aspiration for conserving heritage assets. In particular, paragraph 132 is relevant which states: when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting.*

*Wiltshire Core Strategy Core Policy 58 relates to Ensuring the Conservation of the Historic Environment and states that designated heritage assets and their settings will be conserved.*

*The site may have originally been the gardens to Nos. 11 and 13, however it appears to have been separated off for some time and a reasonable section of garden in relation to the scale of the houses has been maintained. The historic and more recent developments in The Clays have established this as an area for residential development. The layout of the new houses follows the layouts which have been established. In terms of size, scale and plot sizes, the houses follow the character of the immediate area. In terms of the overall form and layout, it is considered that the proposed houses would not have an adverse impact on the character and appearance of the area.*

*The success of a scheme in terms of quality of design will largely depend on the materials and detailing. The design and most of the materials relate to the local vernacular, however some elements were unclear and others required revision. The application form states the windows are timber but the drawing notes state uPVC. Revised drawings have been received which clearly state the windows and doors are to be timber framed. Such a matter can be controlled via a planning condition to ensure they are maintained as such in the interest of preserving the character and appearance of the conservation area. The Conservation Officer shares this view. In addition, the Conservation Officer states that any glazing bars should be traditional in form and not applied or sandwiched between the glazing. This is considered a reasonable request to ensure a high standard of design is achieved in the interests of preserving the character and appearance of the conservation area. It is likely that there will be flues associated with boilers and mechanical ventilation to bathrooms and kitchens and meter boxes. Consideration needs to be given to the siting and appearance of these to avoid impacting on the front facades of the new properties. Details of flues, mechanical ventilation etc. can also be controlled via planning condition to ensure they are sensitively placed on the building and are of an appropriate design.*

*The materials will be critical, especially the bricks, in terms of how they are constructed and what mortar is used. Again, details of this can be requested via a planning condition to ensure the character and appearance of the conservation area is preserved. For similar reasons, it would be prudent to remove permitted development rights for additions, extensions and external alterations to the dwellings.*

*Subject to the conditions outlined above being in place, it is considered that the scheme would have an acceptable impact in design and heritage terms.*

Other than a slight reduction in the footprint of dwelling 2 and the introduction of a passing bay, there are no changes to the design of the scheme. These changes outlined do not affect the conclusions reached above in respect of design and heritage impacts. As such, it is considered that the scheme can be delivered on the site in accordance with the requirements of Core Policies 57 and 58 of the WCS. Furthermore, no additional comments have been made in respect of heritage matters by the Council's Conservation Officer.

#### Visual Impact

- 9.3 The visual impact of the scheme was considered acceptable under 17/07414/FUL and did not form the basis for a reason for refusal. For completeness, the following was stated in the previous application with regard to this matter:

*Based on the considerations above that the scheme is of an acceptable design with no adverse impact on the character and appearance of the area, the proposed development would not have any further visual / landscape impacts. The aims of Core Policy 51 to protect landscape character are thus satisfied.*

*However, a condition requiring the submission of a hard and soft landscaping scheme should be imposed to ensure that a satisfactory landscape setting is achieved for the site. At the time of the officer site visit, there appeared to be no trees or hedging on the site, just ruderal vegetation and consequently, there is nothing to retain or protect. It is noted that an application was submitted earlier in 2017 which sought removal of the trees and hedging. As such, it is*



*not essential for the landscaping scheme to be submitted prior to the commencement of development.*

#### Neighbour Amenity

- 9.4 The neighbour amenity impacts were considered acceptable under 17/07414/FUL and did not form the basis for a reason for refusal. For completeness, the following was stated in the previous application with regard to this matter:

*In summary, it is considered that there would be no detrimental impact to the reasonable living conditions of the adjoining residents as a result of this development.*

#### *Plot 1*

*The proposed dwelling is situated a satisfactory distance away from neighbouring properties such that it would not have an overbearing impact.*

*The same can be said for the levels of light received to neighbouring properties. Whilst light levels will indeed be altered as a result of the proposal, the impact will not be so significant as to warrant a refusal of planning permission. The assessment was done using (<https://www.suncalc.org>) and on looking at separation distances and respecting building heights as outlined on the plans.*

*There are no windows in the side elevation thus no assessment is required.*

*There are three windows at first floor elevation in the front elevation. The central window serves a staircase and the outlook from this window will be fleeting glances as one navigates the stairs. The two remaining windows serving bedrooms, will overlook The Clays and beyond that, a garage, parking area and the roofs of some outbuildings. The outlook from these windows would not be to the detriment of anyone's privacy.*

*There are three windows at first floor elevations in the rear. These face out across the garden to Plot 1 and beyond this the rear garden of No. 14 White Street. Angles would be oblique to the garden of No. 13 White Street. Two of the windows serve bathrooms and can therefore be conditioned to be obscurely glazed. The window serving bedroom 3 is therefore the only window that needs to be assessed.*

*The distance from this window to the boundary with No. 14 is just over 9m. No. 14 has a large garden with a 2m high brick wall as the boundary feature that adjoins Plot 1. Its principle patio / sitting out area does not sit in line with this window rather, at some angle. In addition to this, the garden is of a large enough size to retain private areas. Furthermore, no objections have been received from this property. On this basis, it is considered that the outlook from this window would not have a detrimental impact upon the privacy levels of this property.*

#### *Plot 2*

*The proposed dwelling is situated a satisfactory distance away from neighbouring properties such that it would not have an overbearing impact.*

*The same can be said for the levels of light received to neighbouring properties. Whilst light levels will indeed be altered as a result of the proposal, notably to No. 1 The Clays and No. 2 Kings Court, the impact will not be so significant as to warrant a refusal of planning permission. These properties will still enjoy sufficient levels of day light as the sun moves throughout the day. This assessment was done using (<https://www.suncalc.org>) and on looking at separation distances and respecting building heights as outlined on the plans.*

*There are no windows in the side elevation thus no assessment is required.*

*There are three windows at first floor in the front elevation. The central window serves a staircase and the outlook from this window will be fleeting glances as one navigates the stairs. As such, the impact on privacy levels from this window is negligible. The two bedroom windows will look out over The Clays and beyond that, the garden of No. 2 Kings Court. The distance to the boundary of this property from the window of bedroom one is over 10.5m and from bedroom two, 7.5m. In respect of bedroom one, this distance is more acceptable but bedroom two is quite close. That said, this property has a fairly low fence and views into the garden were possible at the time of officer site visit from the PRow / track. On the basis of no objection from the occupiers, the presence of an intervening PRow / lane and a low fence enabling current overlooking of the garden anyway, the outlook from these windows would not cause detrimental harm to the reasonable living conditions of this property.*

*There are three windows at first floor elevations in the rear. Two of the windows serve bathrooms and can therefore be conditioned to be obscurely glazed. The window serving bedroom three is therefore the only window that needs to be assessed. This window looks out towards the gable elevation of Plot 1 and at an angle, over the roof of the garage to Plot 1. As such, the outlook from this window will not have a significant impact upon the privacy levels of the future occupiers of Plot 1. Furthermore, there would be an element of 'buyer beware' when purchasing Plot 1 upon its completion.*

Whilst it is appreciated that new representations have been received from the occupier of No. 2 Kings Court that were not raised during the course of the original application (17/07414/FUL), a full assessment of the potential impact on any occupiers of this property was undertaken and it was considered on balance that their reasonable living conditions would not be compromised. This point was not challenged at the committee meeting and therefore did not form a reason for refusal. It would be inconsistent to introduce this now. Furthermore, it should be noted that the previous decision did not include a reason for refusal on neighbour amenity grounds and that it is possible for the applicant to lodge an appeal in respect of this as it is still within the 6 month challenge period.

#### Parking / Highways / Rights of Way

- 9.5 Minimum parking standards exist for residential dwellings and it is a requirement of Core Policy 64 of the WCS that these are adhered to in all new residential development proposals. The development proposes 2 three-bed properties, each with parking for 2 vehicles. Minimum parking standards require 2 spaces to be provided for 3-bed properties and this can include garages, provided that they are a minimum internal dimension of 3m x 6m. This has been demonstrated on the plans and as such, the required parking standards for the development can be achieved. A condition would need to be imposed to ensure the garages remain free at all times for the parking of vehicles to ensure no loss in parking provision at either of the

properties. The reason for refusal on 17/07414/FUL did not make any reference to non-compliance with the Council's minimum parking standards.

Visitor parking is required at a rate of 0.2 spaces per dwelling. A scheme for just 2 dwellings would not therefore generate the need to provide any visitor parking spaces ( $2 \times 0.2 = 0.4$  spaces). The provision of parking spaces for service and delivery vehicles is not a requirement of any policy within the WCS or the NPPF for a development of this scale i.e. two dwellings. As such, it cannot be insisted upon and for this reason, it should not form the basis of any reason for refusal. The applicants have, however, specified a passing bay on the plans, which would provide a temporary pull-in place for service and delivery vehicles and to avoid vehicle conflict. A condition can be imposed to secure a signage scheme for the passing bay to alert people to the fact that it is a passing / delivery bay and not a parking place.

The provision of a passing bay does alleviate some of the concerns raised by members in respect of the previous application. Furthermore, it must be noted that The Clays serves a number of residential properties to which no provision currently exists for service or delivery vehicles and so, in this respect, the proposal is no worse. Indeed, it could be argued that the provision of a passing place would ensure that the dwellings would be better placed to be serviced by such vehicles. In any event, should this become a nuisance to authorised users of the bridleway and where there no private rights are demonstrated, it can be suitably enforced by Wiltshire Police i.e. governed by other legislation. To date, no such complaints have been made with regard to the use of The Clays in relation to existing properties, so it would be unreasonable to speculate that two new dwellings would cause a significant nuisance.

The existing site has three garages on it which are all currently rented out. The garages were in active use at the time of the original application albeit, this was not overly apparent at the time of the officer site visit. Nonetheless, the locals have maintained that as many as 7 vehicles park within and in front of these garages; this has certainly been more ostensible at during the timeframe of the re-submitted application. The proposal would see the parking of 4 vehicles on the site and thus there would be a net reduction in vehicular movements from the site i.e. a highway betterment.

With regard to the displaced parking, the agent stated in the original application that the tenants of two of the garages live in The Clays and the other on Lavington Hill. This arrangement would appear to still be in place. As such, any direct impact on The Clays would only be from two dwellings. Any displaced parking onto The Clays itself would be unauthorised and very likely to be considered an obstruction of a bridleway. As such, it would be governed by Rights of Way Legislation to be enforced by Wiltshire Council and Wiltshire Police.

Any displaced parking elsewhere on the highway (e.g. White Street or the High Street) would be considered in respect of impact on highway safety i.e. would the displacement of 2 or 3 vehicles onto the highway be harmful to road safety? The Highway Officer is satisfied that this would not be the case. Accordingly, no objection is raised to the loss of the garages.

Furthermore, it is valid to take account of the fact that the garages are rented, not owned. The right to park there is a privilege given to the tenants by the owner of the garages. At any moment in time, this right could be ceased irrespective of the outcome of a planning application. This is a valid fall-back position as there is a realistic prospect of this occurring

given the applicants' desires to dispose of the site. It is very important to bear this fact in mind this fact when considering the impact of the proposal on highway safety.

The proposed dwellings would be accessed off White Street via The Clays, which is a bridle path (MLAV24). This is not recorded as a public vehicular highway; the only recorded public rights along it are on foot, horseback and bicycle. In order to drive a vehicle along here, the householder would require a demonstrable private right of vehicular access. Without this private right, the householder would be committing an offence under Section 34 of the Road Traffic Act 1988. This situation is the same for all of the properties along The Clays. The granting of planning permission does not give the applicant or householder a vehicular right of access over the bridleway. However, it does not preclude the local planning authority from granting planning permission. Any obstructive use of the Bridleway would be dealt with by other legislation. However, with historic use of garages on the site and the information supplied by the applicants in the form of sworn affidavits, one can only assume such rights exist in respect of the application site.

The Rights of Way Team have stated that if planning permission is granted, the following would be required:

1. The bridleway would require surfacing and improvement works.
2. Surface water from the site should not flow out onto the bridleway.
3. Visibility around the bends in the bridleway should be checked to ensure that the public do not come into conflict with vehicles using the access.

With regard to point 1, it would be unreasonable to request this through a planning condition. The bridleway is used to access several other properties along The Clays, all of which contribute to its wear and tear. This would include the existing garages on the site. It would be unreasonable and unnecessary to place the burden of this repair upon the occupiers of 2 new dwellings when the bridleway is not formally surfaced and is used by other vehicles.

With regard to point 2, a surface water drainage condition can be imposed if planning permission is granted, to ensure that any run-off is into the property rather than onto the bridleway. In respect of point 3, this would also be an unreasonable to require by way of a condition. As stated previously, The Clays is used to access a number of properties, some of which are further down the bridleway where additional bends must be navigated. A condition requiring pedestrian visibility splays to be provided at the vehicular entrance to each of the dwellings is considered sufficient to address this issue and has already been recommended by the local highway authority.

## **10. Conclusion (The Planning Balance)**

The site constitutes brownfield land and sits within the Limits of Development for Market Lavington where under Core 1 and 2 of the WCS new residential development is permissible in principle.

The proposal involves the erection of two 3-bed dwellings which are considered to meet the high standards of design that are required by Core Policy 57 of the WCS, with the more detailed aspects capable of being controlled through appropriate planning conditions. The

Council's Conservation Officer is satisfied that the scheme would not have a harmful impact upon the Market Lavington Conservation Area or any other nearby heritage assets.

As the site is located within the built up area of the village, surrounded by other residential dwellings, there would be no detrimental visual / landscape impacts. Compliance with the aims of Core Policy 51 is thus secured.

The Council's Highways Officer is satisfied that two dwellings can be accommodated on the site without causing significant harm to highway safety. As detailed in the report, parking displacement would not be at a level that would merit a refusal of planning permission and minimum residential parking standards have been met for the two dwellings. The Rights of Way Team have suggested conditions in the event that the local planning authority (LPA) is minded to approve the application. The introduction of a passing place is seen as a positive of the scheme by the local highway authority and there is no objection to it from the Rights of Way Team.

There are no other technical issues that would warrant a refusal of planning permission or that cannot be mitigated through the use of appropriate planning conditions.

The LPA must also take account of local finance considerations so far as they are materially relevant to the proposal. In this case, the Council and indeed the Parish Council would receive CIL money. The Council would also receive money in the form of the New Homes Bonus. These merit some positive weight in the planning balance, albeit limited.

The scheme would also generate some employment in the construction industry and would increase economic expenditure in the locality. Whilst it is appreciated this is a relatively small proposal of just two dwellings, this factor would also accrue some positive weight in the overall balance.

In the absence of any material harm the balance lies in favour of approving the application. The proposal is considered to accord with the development plan as a whole and there are no material considerations that would indicate a decision should be made other than in accordance with the development plan (e.g. policies contained within the NPPF).

## **RECOMMENDATION**

That planning permission is GRANTED subject to the following conditions:

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

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

- 2 The development hereby permitted shall be carried out in accordance with the following approved plans:

Drg No. GTB-831-2A - Proposed Dwelling 1 Elevations  
Drg No. GTB-831-2B Rev B - Proposed Dwelling 2 Elevations  
Drg No. GTB-831-1A - Proposed Dwelling 1 Floor Plans  
Drg No. GTB-831-1B - Proposed Dwelling 2 Floor Plans  
Drg No. GTB-831-3 Rev A - Proposed Dwellings Garage Plan & Elevations  
Drg No. GTB-831-4 Rev B - Proposed Dwellings Site & Location Plans

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

- 3 No development shall commence on site (including demolition, ground works, vegetation clearance) until a Construction Management Plan (CMP) has been submitted to and approved in writing by the local planning authority. The CMP shall include, but not necessarily be limited to, the following:
- a) A pre-condition survey of the Public Right of Way (MLAV24)
  - b) Car parking strategies for construction vehicles
  - c) The storage location of any materials or plant
  - d) The location of temporary structures (e.g. site office)
  - e) Details of the means of protection for MLAV24 during the course of construction.
  - f) Details of the routes constructions vehicles will be taking to access the site

The approved CMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

REASON: To ensure adequate protection of the public right of way, that it remains available and convenient for public use and in the interests of neighbour amenity.

- 4 No development shall commence on site above ground floor slab level until the exact details and samples of the materials to be used for the external walls (including details of the brick bond and mortar) 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 preserving the character and appearance of the Market Lavington Conservation Area and ensuring high quality design as per Core Policy 57 of the Wiltshire Core Strategy.

- 5 No development shall occur above ground floor slab level until a scheme of hard and soft landscaping has been submitted to and approved in writing by the Local Planning Authority, the details of which shall include:-
- a) a detailed planting specification showing all plant species, supply and planting sizes and planting densities;
  - b) finished levels and contours;
  - c) means of enclosure;
  - d) all hard and soft surfacing materials;

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

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

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

- 7 No development shall commence on site above ground floor slab level until details of all new or replacement external chimneys, flues, extract ducts, vents, grilles and meter housings have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details.

REASON: In the interests of preserving the character and appearance of the Market Lavington Conservation Area and ensuring high quality design as per Core Policy 57 of the Wiltshire Core Strategy.

- 8 Within 3 months of the demolition of the garages, all of the demolition materials and debris shall be removed from the site.

REASON: In the interests of the character and appearance of the Market Lavington Conservation Area.

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

REASON: In the interests of preserving the character and appearance of the Market Lavington Conservation Area and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions/extensions or external alterations.

- 10 The windows at first floor in the south eastern elevation of Plot 1 serving the two bathrooms shall be glazed with obscure glass only to an obscurity level of no less than level 3 and fixed with a ventilation stay restricting the opening of the window prior to the first occupation of the development hereby permitted and shall be permanently maintained in perpetuity.

REASON: In the interests of residential amenity and privacy.

- 11 The windows at first floor in the south western elevation of Plot 2 serving the two bathrooms shall be glazed with obscure glass only to an obscurity level of no less than level 3 and fixed with a ventilation stay restricting the opening of the window prior to the first occupation of the development hereby permitted and shall be permanently maintained in perpetuity.

REASON: In the interests of residential amenity and privacy.

- 12 No part of the development hereby permitted shall be brought into use until the accesses and parking spaces have been completed in accordance with the details shown on the approved plans. The areas shall be maintained for those purposes at all times thereafter.

REASON: In the interests of highway safety.

- 13 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), the garages hereby permitted shall not be converted to habitable accommodation.

REASON: To secure the retention of adequate parking provision, in the interests of highway safety in accordance with Core Policy 64 of the Wiltshire Core Strategy.

- 14 No part of the development shall be brought into use, until the pedestrian visibility splays shown on the approved plans have been provided with no obstruction to visibility at or above a height of 900mm above the nearside bridleway level. The visibility splays shall be maintained free of obstruction at all times thereafter.

Reason: In the interests of the safety of the users of the bridleway.

- 15 All new windows and doors shall be of timber construction and maintained as such in perpetuity. Glazing bars on all new windows shall be traditional in form.

REASON: In the interests of preserving the character and appearance of the Market Lavington Conservation Area and ensuring high quality design as per Core Policy 57 of the Wiltshire Core Strategy.

- 16 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.

- 17 Before the development is first brought into use, details of a signage scheme to be placed by the passing bay shall be submitted to and approved in writing by the Local Planning Authority. The signage scheme shall indicate that it is a passing / delivery bay. The signage scheme shall be erected prior to first use of the dwellings.

REASON: To ensure the passing bay is retained for its intended purpose.

- 18 **INFORMATIVE TO APPLICANT:**  
The applicant is advised that no construction / demolition vehicle access may be taken along MLAV24 without prior consultation with the Wiltshire Council Rights of Way Warden. Where appropriate any safety/mitigation/reinstatement measures must be approved by the Wiltshire Council Rights of Way Warden.