

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

Date of Meeting	3rd February 2021
Application Number	20/04863/FUL
Site Address	Land adjacent to Waitrose Malmesbury By-Pass Malmesbury Wiltshire SN16 9FS
Proposal	Construction of Gabion Wall and Infilling
Applicant	Ms Orysya Lyvchanyn
Town/Parish Council	MALMESBURY
Electoral Division	Councillor Gavin Grant
Grid Ref	393674 186904
Type of application	Full Planning
Case Officer	Michael Akinola

Reason for the application being considered by Committee

The application is called in for committee determination by Councillor Gavin Grant for the consideration of the compatibility of the proposals with the Malmesbury Neighbourhood Plan; the status of this land as being within a Conservation Area and compatibility with Wiltshire Core Policy 57 subsections i, iii, iv and vii, among others.

1. Purpose of Report

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

2. Report Summary

The main issues in the consideration of this application are as follows:

- Principle of development
- Impact on the Heritage Asset (Conservation Area)
- Impact on the character, appearance, visual amenity and openness of the locality
- Loss of agricultural land
- Impact on the residential amenity
- Impact on archaeological interest and potential
- Impact on Ecology/County wildlife site
- Impact on drainage/flooding
- Impact on trees
- Impact on Highways safety

Malmesbury Town Council objects to the proposals. 12 representations from members of the public were received all of which were objections.

3. Site Description

The application relates to the Land adjacent the Waitrose superstore off the Malmesbury by-pass, located in the open countryside outside of the defined limits of development for Malmesbury. The site currently is an open field that faces on to residential properties to the north, with the Waitrose supermarket immediately adjacent to the south, directly to the east is the A429 Malmesbury by-pass and there is also mature vegetation and planting in that location, and it is considered that views to the town centre from this position are also obscured and fleeting as use of the bypass is vehicular with limited pedestrian accessibility. West of the site are other residential properties obscured by mature trees. The property is located within the Malmesbury Conservation area and further sited in the flood zone 2/3.

4. Planning History

19/04106/FUL – Upgrading the surface of an existing vehicular access with concrete (approved with condition)

19/10702/FUL – Construction of gabion wall, infilling, tree planting and COU from agricultural land to family leisure woodland (Refused)

5. The Proposal

The proposal is for a change of use of land from agriculture to a private amenity/recreational space by the applicant, their family and friends. Additionally, the proposal is to erect a 0.4m gabion wall that would be constructed of mesh, filled with stone and earth and external finish of green vegetation to match the site context and facilitate regrading and levelling of land within the site. This proposal is however a second submission following the previous refused application (19/10702/FUL). The difference between this proposal and the previous proposal is that this latest scheme excludes the tree planting that would have created a woodland and as such, the existing open site characteristics would largely be retained as the gabion wall and infill would constitute the only built elements of the proposals. The previous application in respect of the gabion wall simply proposed filling the wall the walls with stone and earth without any detail as to these materials or finishes.

In addition the current application seeks to respond to one of the previous reason for refusal in respect of inadequate information to assess the archaeological value of the site. A comprehensive archaeological assessment is now submitted.

The vehicular access is off the A429 bypass and this entrance to the site already exists as part of the approved application under app no. 19/04106/FUL.

The use of the site remains the same and the proposal is still for a facility for use by the applicant and their family and friends as a private amenity/recreational space.

6. Planning Policy

Wiltshire Core Strategy (WCS) (Adopted January 2015)

Core Policy 1: Settlement strategy

Core Policy 2: Delivery strategy

Core Policy 13: Spatial Strategy: Malmesbury Community Area

Core Policy 50: Biodiversity and geodiversity

Core Policy 51: Landscape
Core Policy 57: Ensuring high quality design and place shaping
Core Policy 58: Ensuring the conservation of the historic environment
Core Policy 61 - Transport and New Development
Core Policy 62 - Development impacts on the transport network
Core Policy 67: Flood Risk

North Wiltshire Local Plan 2011

NE14 - Trees and the control of new development

Malmesbury Neighbourhood Plan volumes i & ii Feb 2015:

Vol I Policy 13: requires high quality design and proposal respect character of Malmesbury Town and surrounding area

Task 6: Protecting Malmesbury's heritage and setting

Task 8.1, Task 8.2 & Task 8.3: Development complements and enhances the character, form and qualities of Malmesbury

Task 8.4 & 8.5: Ensure positive relationship between town and countryside

National Planning Policy Framework July 2019 (NPPF)

Paragraphs; 2, 7, 8, 9, 12, 15, 83, 103, 108 127, 170, 174, 180, 187 (b), 189, 190, 192, 193, 194, 195, 196 and 200 Sections; 12,15 & 16

7. Summary of consultation responses

Malmesbury Town Council: OBJECT to the application due to a number of reasons which can be summarised as follows;-

- No justification for the proposal
- Height of the gabion wall and would harm the Conservation Area
- The gabion wall and infilling would be contrary to the Neighbourhood plan and Malmesbury Conservation Management plan
- Biodiversity and geological conservation
- Impact of development on existing tree and hedges
- Impact on the River Avon

The St Paul Malmesbury Without Parish Council: Object to the proposal as summarised below:

- No justification for the proposal
- Height of the gabion wall and would harm to the Conservation Area
- The gabion wall and infilling would be contrary to the Neighbourhood Plan and Malmesbury Conservation Management plan

Wiltshire Council Conservation officer: No objection subject to use of conditions to secure an appropriate finish to the Gabion wall through appropriate planting/green vegetation.

Wiltshire Council Archaeologist: No objection.

The Environmental Agency:

No objection subject to conditions

Wiltshire Council Drainage Engineers:

No objections

Wiltshire Council Arboricultural Officer:

No objection

Wiltshire Council Ecologist:

No objection subject to a condition

Wiltshire Council Highways officer:

No objection

8. Publicity

The application was advertised by neighbour letters, Parish council notification and site notice. This generated 12 letters of objection and no letters of support. A summary of the representations is set out below:

Objections

Flood – the proposal would increase the likelihood of flooding within the locality

Phased Developments – Majority of comments online suggest the proposal would result in further development on this site and they are concerned as to the future intentions of the applicant and future residential development proposals

Location – The gabion wall and infilling would be contrary to the Neighbourhood plan and the granting of this application would seriously jeopardise the future sustainable development of the town

Heritage asset (Conservation Area) – the proposal would harm the views to the historic town centre and the setting of the Conservation Area

Visual Impact – the existing agricultural land forms important vistas that are intrinsic to the village character and the gabion wall would harm the significance of this open space

Wildlife – comments received have stated that there are deers, newts, otters, etc on site and this would be disturbed by the development

Archaeological interest – the proposal would harm archaeological potential

Highways safety – the access point for this field is on to a busy main road to which any increased access would constitute a hazard.

9. Planning Considerations

Policy and principle of development

Under the provisions of section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004, and the provisions of the NPPF i.e. para 2, applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The statutory development plan in respect of this application consists of the Wiltshire Core Strategy (WCS)

(Adopted January 2015); the 'saved' policies of the North Wiltshire Local Plan (NWLP) 2011 (adopted June 2006); and the Malmesbury Neighbourhood Plan (Made February 2015).

9.2 Sections 66 (1) and 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 require Local Planning Authorities in determining planning applications affecting a Listed Building or Conservation Area to pay special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses; and to pay special attention to the desirability of preserving or enhancing the character or appearance of that conservation area.

This proposal is a second submission following the previously refused application (19/10702/FUL). The difference between this proposal and the previous submission is that this latest scheme excludes proposed tree planting, the materials to be used for the gabion wall are identified and a comprehensive archaeological assessment in accordance with a written programme of archaeological investigation has been provided.

As set out in the officer's delegated report for the previous application tree planting in and of itself is not development under the Acts and so does not require express consent. However, it was clear that the earthworks and engineering works are required to facilitate the proposed change of use from agriculture to private amenity space, all of which require consent.

Core policy 1 defines the settlement hierarchy in Wiltshire supporting the strategy for development and identifies Malmesbury as a Market Town with the potential for significant development. Core Policy 2 of the WCS states that within the limits of development, as defined on the policies map, there is a presumption in favour of sustainable development. It advises that outside the defined limits of development that development will not be permitted other than in circumstances as permitted by other policies in the plan.

CP13 of the WCS states that development in the Malmesbury Community Area should be in accordance with the Settlement Strategy set out in Core Policy 1.

The application site land projects from the West by approximately 117m (length), to the North approximately 160m (width), to the East approximately 89m (length) and to the South, it would be approximately 137 metres wide. The site is not within an area of special importance or interest such as an Area of Outstanding Natural Beauty (AONB) but remains an open area of agricultural land in the countryside, and within the Malmesbury Conservation Area.

At present, the proposal represents another individual application submitted on the site, the first proposal (19/04106/FUL) involved upgrading the existing vehicular access. The second proposal (19/10702/FUL) was refused, and this is a resubmission of that application which involves the construction of a gabion wall, infill landscaping, and use of the resultant space for private amenity purposes but amended as referenced above. Whilst the Town/Parish Council and representations received have identified concerns regarding the true intention of the proposal, the applicant asserts the proposal is to enhance the immediate setting to a beautiful area within the town landscape for their personal use and enjoyment and for that of their friends and family. The intention is stated as simply creating a beautiful amenity space close to the river and the centre of Malmesbury.

The applicant's agent has confirmed applicant has a relationship with the town of Malmesbury and with family and friends resident within the town. The land in question would not be in constant use not being directly related to a residential dwelling but is close to the town where family and friends are resident as such it is not considered that large scale vehicular movement or lengthy journeys will be necessary.

As set out above and the proposals includes the change of use of land from agriculture to private amenity and recreational space and not for commercial purposes (this can and will be condition restricting its use for private only). The land in question will remain predominantly open in character and as the use would be for private purposes including friend and family it is considered that the recreational activity would be low intensity. The site is located on the periphery of the town but relatively accessible from it and not remote from the urban built areas of the settlement, indeed the Waitrose superstore lies directly adjacent. Given the stated nature of the use, earthworks and engineering works alongside the relatively sustainable location for this type of activity it is not considered that the proposal would be unacceptable in principle and that any ancillary development that may occur could be controlled by condition. Private recreation/amenity especially low intensity private recreational and amenity use of land is not in and of itself considered to be harmful and there are no policies in the adopted development plan that specifically resist such uses in this type of location on the fringes of this higher order settlement. On this basis, the proposal can be considered a sustainable development in accordance with other guidance in the framework (paras 7 and 8) and the development strategy of the plan to focus development in accord with the defined settlement hierarchy.

The COU and the engineering works that support it are therefore acceptable in principle subject to considerations of site-specific impacts and other material considerations.

Impact on the Heritage Asset (Conservation Area)

Paragraph 190 of the NPPF requires local planning authorities to identify and assess the particular significance of any heritage asset that may be affected by the proposal (including any development affecting the setting of a heritage asset). Paragraphs 195 and 196 require local authorities to assess whether there is substantial harm, less than substantial harm or no harm to the heritage asset and where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

Core Policies 57 & 58 require that development should protect, preserve and where possible enhance heritage assets.

Policy 13 of the MNP vi states the Neighbourhood Plan Design Guide as set out in Volume II of this Plan should be taken into consideration in all developments to ensure a high quality of design that respects the specific character of Malmesbury Town and the surrounding area.

The proposed site is within the Malmesbury Conservation Area and all applications within Conservation Areas will be assessed with full regard to their impact on their character and appearance, significance and heritage values. The Malmesbury Conservation Area appraisal is relevant in this context.

The Conservation Officer describes the proposed site as land that graduates down towards the River Avon. This valley is predominantly open grassland which gives a rural, pastoral setting to this historic town, which includes large numbers of listed buildings that can be seen in conjunction with views across the site towards Malmesbury. By virtue of its designation, the area is significant in heritage terms and this significance is arises from its (communal) value, aesthetic (fortuitous) value, evidential and historical (illustrative) value.

In considering all design proposals, the Malmesbury Conservation Area Management plan states the following will be taken into account:

- The relationship of the proposal to its site
- The relationship of the proposal to its wider setting

- How is the density of the proposal related to that of existing and neighbouring uses?
- The impact in close view, what materials are used?
- How do they relate to those of surrounding buildings?

Representations received from interested parties have noted that the application site is a green vista with views reaching out across to the town and that the field also forms part of the Conservation Area. Firstly, it should be noted that this field is not within a designated landscape, it is not within an area of special landscape importance or interest such as an Area of Outstanding Natural Beauty (AONB). It is important to stress that this site cannot be read in conjunction with views of the historic core of Malmesbury and the vast majority of its designated heritage assets. The site is situated on / forms part of a downward slope towards the existing properties and River Avon lies to north and west of the site. The site is adjacent the Waitrose supermarket and it is considered that this largely obscures and dominates views towards the Town Centre and adjacent areas of the town. Similarly, West of the site features mature planting with existing trees and a varied landform that limit and restrict views towards the town centre/historic core of the town and the application site within such views. Furthermore, East of the site is a by-pass and there is also mature vegetation and planting in that location. Consequently it is also considered that views to the town centre from this position are also obscured; and indeed fleeting as use of the bypass is vehicular with limited pedestrian accessibility. Similarly views from the town toward the site are dominated by the Waitrose Store and by pass and traffic using the road as well as existing mature planting.

As such, it is considered that the application site is not prominent within short and medium range views in and out of the conservation area and does not form a prominent and perceptible part of key vistas to and from the town. The works proposed and use of the land are also relatively limited and low impact. The gabion wall and land infill will be low lying and situated in close proximity to and obscured by the Waitrose store, with exiting tree planting and mature vegetation providing further screening. The proposals effectively maintain the existing open characteristics of the land in question given the nature of the proposed use and limited built form. The existing situation and the impact of the development propose can be further mitigated by a sensitive landscaping scheme which can be controlled via use of condition. In this regard it is considered that the proposals will have a negligible / neutral impact on the character and appearance of the Conservation Area and setting of other designated heritage assets.

Whilst an objection was raised previously by the Council's Senior Conservation Officer whom considered that the design, scale, density, mass, height and appearance of the wall and related earthworks would result in less than substantial harm to the Conservation Area, albeit on the lower end of the scale, it was considered that the previous application contained insufficient information to allow the matters to be fully assessed in this respect. The previous proposal did not contain any information as to use of materials, particularly finishing materials that would be used to surface the external face of the gabion wall and the regraded land. The current scheme proposals now include the details required identifying that the gabion wall is of mesh filled with stone and earth and the external finish of the gabion wall would be covered in green vegetation to allow the walls to be fully submissive in its setting. The Council's Senior Conservation Officer was consulted again on this matter and given the information now submitted with the application identified that they no longer wished to raise objection. This conclusion on the basis that no harm could be readily identified to heritage assets that could be robustly justified and defend in an appeal situation. However, the SCO did consider that in the event of an approval being recommended the materials proposed to be used for the gabion wall should be subject of approval via use of condition as this would further mitigate visual impact of the wall and ensure neutral impact. Such a condition is considered reasonable and necessary.

In these circumstances, the proposed gabion wall, land infilling and change of use would not result in harm to the designated heritage assets in the locality and there is no conflict with the development plan as a consequence. The proposals will also result in economic benefits through construction and although limited this is a benefit of the scheme that weighs in favour. It is therefore considered that the proposal accords with CP57 (i) (ii) (iv) and CP58 of the WCS Jan 2015, paras 195 & 196 of the NPPF, Policy 13, Task 6.1 & 8.1 of the VII of the MNP; Section 72(1) of the Planning (Listed Building and Conservation Area) Act 1990; Malmesbury Conservation Area Management Plan; and BS7913 Guide to the conservation of historic buildings.

Impact on the character, appearance, visual amenity and openness of the countryside

Core Policy 57, amongst other things, requires that applications for development should respect the local character and distinctiveness of the area with regard to the design, size, scale, density, massing, materials, siting and layout of the proposal. Core Policy 51 is also relevant as it requires that development should not cause harm to the locally distinctive character of settlements and their landscape setting.

Policy 13 of the MNP vi states the Neighbourhood Plan Design Guide as set out in Volume II of this Plan should be taken into consideration in all developments to ensure a high quality of design that respects the specific character of Malmesbury Town and the surrounding area.

Task 8.1 of MNP aims to ensure that development makes a positive contribution towards the distinctive character and form of the town as a whole and relate well to its site and its surroundings. Task 8.4 seeks to ensure that development proposals, particularly but not only, where sited on the edge of Malmesbury, maintains visual connections with the countryside & Task 8.5 sets out the visual impact of new development on the countryside, and on views from the countryside, should be positive.

Although there would be a change of use and alterations to the character of the landscape in this locality, the site is not within an area designated for its landscape value and it is not considered that the impact of the proposals on the character, appearance and visual amenity of the locality would be so significantly harmful such that consent ought to be refused on this basis. The reason being is that views of the development (the Gabion wall and use of the land) would be restricted only to Saint John Street and when seen from that location, it is considered that the external finish of the green vegetation around the gabion wall would allow for the proposal to be subservient to the current green nature of the site. In addition, these views are already affected by the existing Waitrose store and the bypass and it is considered that the proposal is not especially harmful to the visual amenity of the locality in this instance given that context. As noted above conditions requiring details as to site landscaping are proposed and this is further considered to mitigate visual impact.

In addition, concerns have been raised by the Town Council and representations received from third parties that the change of use of the land would potentially allow the erection of other development and structures to be undertaken. However, it must be noted that other development proposals would be subject to separate planning permission requirements which would be determined on their own merits. The proposed use if consented would not benefit from residential permitted development rights and so conditions removing such rights are not required. The levelling of the land may lend itself to a range of temporary uses allowed for under Permitted Development Rights which may not be appropriate in this location and so it is proposed to control these matters by use of condition. No other permitted development rights raising concerns in this regard are considered to apply. Conditions restricting the use to that proposed are considered appropriate and necessary and will effectively address the concerns being raised in this respect.

Therefore, the proposal on this basis is not considered to have a significantly adverse impact on the character appearance, visual amenity and openness of this part of the countryside and is in accordance to WCS Core Policies 51 and 57, section 15 of the NPPF (particularly para 170 (B)); and Policy13, Task 8.1, 8.4 & 8.5 of the VII of the MNP.

Loss of Agricultural Land

The NPPF expects local planning authorities to take into account the economic and other benefits of the 'best and most versatile agricultural land'. Paragraph 170(b) of the NPPF confirms that decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside including the economic and other benefits of the best and most versatile agricultural land. The Agricultural Land Classification (ALC) provides a method for assessing the quality of farmland to enable informed choices to be made about its future use within the planning system. The ALC system classifies land into five grades. The best and most versatile land is defined as Grades 1, 2 and 3a. The land related to this application is classified as Grades 4. As such, the land in question itself is considered to be of relative poor-quality with a limited site area (which does not exceed 20 hectares) in agricultural terms affected and as a result, it would not be considered reasonable to refuse the application on this basis.

Impact upon the residential amenity

Paragraph 127 of the Framework (June 2019) and CP57 of the WCS (Jan 2015) seek to secure high quality design and a good standard of amenity for current and future land occupants.

Concern was raised during the public consultation period regarding the impact of the proposal upon neighbour amenity. It was felt that the proposal would have a significant adverse impact upon the privacy enjoyed by neighbouring properties.

The proposed gabion wall and associated earthworks are not considered in and of themselves to adversely harm the residential amenities of surrounding properties. Whilst the proposed change of use (COU) of the land from agricultural to private amenity and recreational space could potentially allow views to the neighbouring properties from the site, the views that would be gained are not considered to be so significantly intrusive resulting in loss of privacy as to warrant the refusal of the application on this basis.

Whilst the rear boundaries of some neighbouring properties are relatively open, the redline boundary indicates there is a considerable distance between those properties and the application site. In addition, the extent and nature of the proposed use would be relatively low intensity and restricted and on balance it is not considered that the proposals would result in such loss of amenity as to warrant refusal on this basis or result in conflict with the provision of the plan or national guidance. As noted above it is proposed to control temporary use of land which may result in some disturbance by use of condition.

Impact on archaeology interest and potential

The Council's Archaeologist and representations have stated that the site is an archaeologically sensitive location and that a Roman farmstead was excavated just to the south west in advance of the construction of the adjacent Waitrose supermarket development. They observed the area which slopes down to the river has archaeological potential and given the high level of sensitivity this required assessment and evaluation prior to the determination of any application for development.

Whilst the lack of archaeological information provided in the previous application resulted in the refusal of the application, the applicant in support of this current application has now carried out a full and comprehensive archaeological assessment. This has included site investigations through trial trenching in accord with a written programme of archaeological

investigation agreed with the Council's Archaeologists. The result and findings of this investigation have been reported to the Council and assessed by Council Archaeologists. It concluded that no findings of archaeological interest were discovered. On this basis the Council's Archaeologist has withdrawn their previous objections and required no further detail or submissions to be made and as such the proposal is acceptable in this context. The previous reason for refusal is fully addressed and overcome.

Impact on County Wildlife Site

Representations received from interested third parties have raised concerns as to the ecological value and interest of the site and the harmful impact of development proposed in this respect. It was confirmed in the determination of the previous application when the Council's Ecologists were consulted that the proposed development is not considered to harm any protected species, habit or ecological interest. The red line boundary delineating the application site does not fall within or affect a County Wildlife Site (CWS). The only CWS in the locality is the River Avon and the Council's Ecologist did not raise concern or objection in respect of any likely impact or harm as a result of the development. However, the Council's Ecologist did recommend that a condition should be applied to protect existing features of the site during construction works, particularly adjacent river during construction in the event permission is granted. Such a condition is considered necessary and reasonable and is recommended below.

Impact on Flood Zones

Representations received have stated that the site is subject to flooding and noted that the proposal is located within a flood zone 2/3. As stated in the previous application, the Council's drainage officer did not object and did not seek any further information. In addition, the EA withdrew their objection following the supporting statement submitted in the previous application (confirmed with EA on the 5th of February) for the Flood Risk Assessment. However, the EA did suggest that conditions and Informatives be attached to a decision in the event permission is granted. The conditions are considered reasonable and necessary and are recommended below.

Impact on trees

Concerns have been raised by representation regarding the existing trees on-site. As noted in the determination of the previous application the Council's arboricultural officer did not object to the proposals.

Impact on Highways safety

Representations received have raised concerns regarding the suitability of the access. It should however be noted that a previous application for a revised and enhanced access to the site was made and approved under reference 19/04106/FUL. The application and the access proposals were fully assessed and considered acceptable by the Council's Highways Officers in the context of the site circumstances including connection to the A420 Malmesbury Bypass. It is not considered that there is a sound and defensible basis for refusal in this regard. In addition, no objection is raised to this proposal by Highways Officers.

10. Conclusion (The Planning Balance)

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise.

The proposal site is outside but directly adjoining the defined settlement boundary of the Market Town of Malmesbury. The site is also located within the town's conservation area and it is not allocated for any form of development in the adopted development plan. There are no

specific policies in the development plan dealing with the proposed change of use of land from agriculture to private amenity/recreational space, that would prevent such development per se.

The informal recreation use proposed is low intensity private recreational and amenity use of land and not in and of itself considered to be harmful. There are no policies in the adopted development plan that would resist such uses in this type of location on the fringes of this higher order settlement. As such, it is not considered that the principle of the scheme could defensibly be refused as unacceptable and in conflict with the development plan. The proposal also results in some level of local benefits in regard to economic benefits from the construction.

Additionally, it is inappropriate to refuse applications for development solely on the basis of an assertion that the development is not required or that the ultimate intentions for the site are being concealed.

Site specific impacts in terms of visual amenity, character and appearance of the area, landscape and harm to designated heritage assets (Conservation Area) are considered to be very limited given the nature of the proposals incorporating green vegetation as external finish to the gabion wall; and given the nature and existing characteristics of the site as an open green space. The limited impacts in these respects are readily capable of mitigation through the use of conditions and it is considered unreasonable and indefensible to refuse the proposals on these grounds given this context.

With respect to impact upon residential amenities, especially in terms any overlooking concerns, the proposed red line of the development is some distance from the nearest property. In addition, the intensity of the use of the site as a private amenity space is very low and this would not result in harm to existing residential amenities that the proposal ought to be refused on this basis.

In the context of any archaeological potential on site, it is considered that the comprehensive assessment undertaken and results provided to the LPA demonstrate that there are no archaeological findings and as such the proposal is acceptable on this basis.

Furthermore, it is considered that the proposal would not result in harm to any wildlife or increase the risk of flooding and respectively, both the ecologist and EA did not object to the scheme subject to conditions attached in the instance permission is granted.

The Council's Arboricultural officer has raised no objection to this proposal.

Regarding impact to the highway network, previous submissions for an access to the site have been made and assessed and considered acceptable by the Council's Highways officers in the context of the site circumstances. Consent has been issued.

As such it is considered that the proposal is acceptable in planning terms and in accordance with the provisions of CP57 (i), (ii) (iv) & CP58 of the WCS; Policy 13, tasks 6.1, 8.1, 8.5 & 8.6 of VII of the MNP and para 127, 189, 190, 192, 193, 194, 195, 196, 197, 200 and sections 12, 15 & 16 of the Framework and in addition section 72(1) of the Planning (Listed Building and Conservation Area) Act 1990; Malmesbury Conservation Area Management Plan; and BS7913 Guide to the conservation of historic buildings.

11. Recommendation

Approve subject to the following conditions

1 The development hereby permitted shall be begun before the expiration of three years from

the date of this permission.

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

2 The development hereby permitted shall be carried out in accordance with the following approved plans: 733/BLa (proposed location and block plan), BDS -09-19 REV C (Topographic survey), 733/01a (proposed gabion wall) and 733/02a (proposed section of gabion wall) [Received on the 15th of June 2020]

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

3 Prior to the development hereby permitted being first brought into use a scheme of soft landscaping has been submitted to and approved in writing by the Local Planning Authority, the details of which shall include:-

- a detailed planting specification showing all plant species, supply and planting sizes and planting densities;
- finished levels and contours;
- means of enclosure;
- car park layouts;
- other vehicle and pedestrian access and circulation areas;
- all hard and soft surfacing materials relating to the gabion wall hereby approved.

The development shall not be brought into use until such time as approved landscaping scheme has been carried out in accordance with the details approved under this condition.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

4 Prior to the development hereby permitted being first brought into use details of all earthworks have been submitted to and approved in writing by the Local Planning Authority. These details shall include the proposed grading and mounding of land areas including the levels and contours to be formed, and the nature and source of the material, showing the relationship of proposed mounding to existing vegetation and surrounding landform. The development shall not be brought into use until such time as the earthworks have been carried out in accordance with the details approved under this condition.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to ensure a satisfactory landscaped setting for the development.

5 The development hereby permitted shall only be used for the private recreational space/private amenity for family and friends and shall at no time be used for any commercial purpose whatsoever.

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

6 A Construction Environmental Management Plan detailing how the existing ecological features of the site, particularly adjacent river will be protected during works as well as a detailed prior before the development.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in order to protect existing features on and adjacent to the river Avon.

7 A Landscape Ecological Management Plan with details of how the site will be managed in the longer term should be provided prior before the development.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in order to protect existing features on and adjacent to the river Avon.

8 The development permitted by this planning permission shall be carried out in accordance with the Flood Risk Assessment statement by the applicant and drawings BDS-09-19C, T33/03, BDS-09-19b and along with the following mitigation measures detailed within the FRA: No raising of ground levels in the identified flood zones. No planting within 10m of the watercourse and maintaining a clear and unobstructed access to the river and flood alleviation scheme.

REASON: To prevent the development from impacting on flood risk in accordance with National Planning Policy.

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 those Orders with or without modification), no development within Part 4, Class B shall take place on the land hereby permitted or within their curtilage.

REASON: In the interests of the amenity of the area and to enable the Local Planning Authority to consider individually whether planning permission should be granted for any development or alterations.

INFORMATIVE TO APPLICANTS

This development may require an Environmental Permit from the Environment Agency under the terms of the Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2016 for any proposed works or structures, in, under, over or within 8 metres of the top of the bank of designated 'main rivers'. This was formerly called a Flood Defence Consent. Some activities are also now excluded or exempt. An environmental permit is in addition to and a separate process from obtaining planning permission. Further details and guidance are available on the GOV.UK website: <https://www.gov.uk/guidance/flood-risk-activities-environmental-permits>

Please contact Blandford.frap@environment-agency.gov.uk with details of permitted works with details of permitted works and state your planning application reference.

INFORMATIVE TO APPLICANTS

Safeguards should be implemented during the construction phase to minimise the risks of pollution and detrimental effects to the water interests in and around the site.

Such safeguards should cover the use of plant and machinery, oils/chemicals and materials; the use and routing of heavy plant and vehicles; the location and form of work and storage areas and compounds and the control and removal of spoil and wastes. We recommend the applicant refer to our Pollution Prevention Guidelines, which can be found at: <https://www.gov.uk/guidance/pollution-prevention-for-businesses>

INFORMATIVE TO APPLICANTS

Biosecurity measures may be required to minimise the spread of non-native invasive species. These may consist of drying and disinfection procedures, a comprehensive visual check of equipment, materials, machines and PPE arriving and leaving the site. Control measures may also be required including herbicide treatment. Bio-security precautions should be undertaken when working on sites with water bodies on them. The applicant can view some general advice through the following link: [Bio-security](#)

INFORMATIVE TO APPLICANT:

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

INFORMATIVE TO APPLICANT:

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

INFORMATIVE TO APPLICANT:

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

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

INFORMATIVE TO APPLICANT:

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

INFORMATIVE TO APPLICANT:

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