

## REPORT TO THE EASTERN AREA PLANNING COMMITTEE

<b>Date of Meeting</b>	15 <sup>th</sup> December 2011
<b>Application Number</b>	E/2011/0990/FUL
<b>Site Address</b>	Samarie, Dunkirk Hill, Devizes, Wilts SN10 2BD
<b>Proposal</b>	Construction of drive.
<b>Applicant</b>	Mr A Jurkiewicz
<b>Town/Parish Council</b>	DEVIZES
<b>Grid Ref</b>	399440 161690
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	Christie Binmore

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

This application is brought to committee at the request of the Division Member, Cllr Nigel Carter.

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

To consider the recommendation that planning permission be granted.

### **2. Report Summary**

The main issues in this case are:

- a) Impact on the character and appearance of the area;
- b) Impact on residential amenity; and
- c) Impact on highway safety.

### **3. Site Description**

The bungalow known as "Samarie" lies on the west side of Dunkirk Hill and is currently accessed via a private unmade track leading from the A342 Devizes to Chippenham road. The track serves Samarie and then continues to Dunkirk Hill Farm. The curve of the track means that the property is not visible from the main road at the junction, although there are views of the bungalow from the A342 on the approach towards Devizes from Rowde. Above the site and to the south, there is a small residential estate (High Lawn) which is served by a cul-de-sac leading onto the A361 Bath Road. There is currently a low brick wall separating High Lawn from Samarie. A public footpath runs parallel to the eastern boundary of the site and links High Lawn to the unmade track to the north. Samarie faces north towards Rowde, with its rear garden sloping upwards to the walled boundary with High Lawn.



**Site Location**

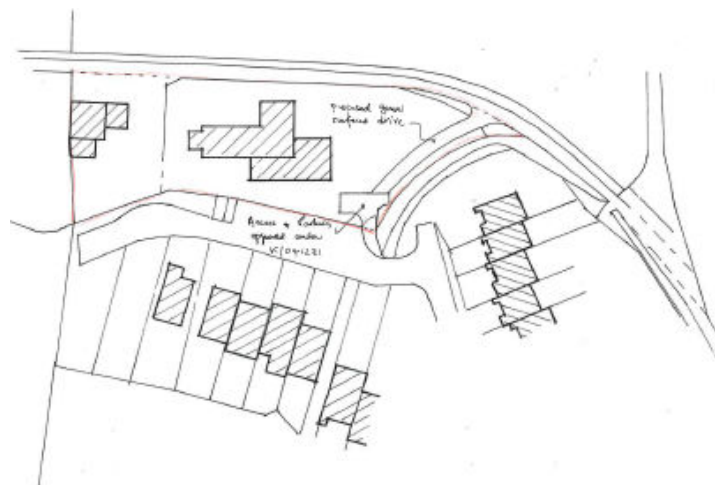
#### 4. Relevant Planning History

K/041321 Certificate of Lawfulness for Proposed Development – granted 5 July 2001. This Certificate confirmed that at the time of the application, planning permission was not required from the local planning authority for the construction of a vehicular access to High Lawn from Samarie, in connection with the construction of a hardstanding within the curtilage of Samarie. This was because the work was granted planning permission under 'permitted development rights' contained in Schedule 2 of the Town & Country Planning (General Permitted Development) Order 1995.

#### 5. The Proposal

The current proposal is for the construction of a gravel driveway within the existing residential curtilage, leading from the unmade access track to a flattened area at the top of the slope in the south-eastern corner of the site. It is largely retrospective as work has already been undertaken. The driveway requires planning permission as it is an engineering operation.

The plan submitted with the application shows the driveway connecting to the access and parking area for which the Certificate of Lawfulness was issued in 2001.



*Plan showing proposed drive*

## 6. Planning Policy

Kennet Local Plan 2011 – policy PD1 is relevant to the consideration of this application.

## 7. Consultations

**Devizes Town Council** - Asked that local Wiltshire Councillor, Cllr Carter, call in the application in order that it could be considered by the Planning Committee as Devizes Town Council could not make any comment on this application as it was felt that there was insufficient information on the driveway's construction; in addition, following representations from local residents, there were anomalies; the town council also expressed concerns about access through High Lawn.

**Wiltshire Council Highways Officer** – No highway objections to this application, provided that a through-route is not created for general use.

**Wiltshire Council Rights of Way Officer** – no objections.

## 8. Publicity

The application has been publicised by a site notice and 13 consultation letters sent to the properties in High Lawn.

Representations have been received from the owner/occupiers of twenty-one properties in High Lawn. No objections are raised to the proposed driveway itself, but significant concerns are expressed about the possibility of the driveway being joined with the access into High Lawn. Objectors raise the following issues:

1. Questioning the validity of the Certificate of Lawfulness approval
  - a) Inaccuracies in the original plan (0103/J1) accompanying the Certificate of Lawfulness application – in relation to its dimensions, position of kerb-lines, Samarie boundary, position of public footpath & size of hammer-head and therefore the objectors request that the certificate be revoked. A plan showing the inaccuracies (HL/001PZ) has been supplied by residents.
  - b) Differing opinions about who owns the boundary wall, which is in the same brick & appears to have been built at same time as the nearby houses; some residents believe it is in the ownership of the seven houses built in 1973 and therefore the applicant would not be able to create this opening.
  - c) Approval was given ten years ago (2001) for “an access and hard-standing” with no mention of a driveway to connect the exit to the main driveway of Samarie from Dunkirk Hill; the creation of this new access means there has been a material change and the conditions of the Certificate have been contravened.
  - d) No information about the Certificate of Lawfulness application nor its subsequent approval was published, nor were residents in High Lawn notified to enable any objections to be raised.

2. Increased traffic volume with the creation of a through-road between A361 & A342

- a) Samarie is not an ordinary single residence but a care-home for three residents and has a considerable amount of associated traffic, with carers, numerous visitors & delivery vehicles (including meal van four times/day & daily pharmacy vans); this would provide an opportunity for further substantial usage by Samarie residents, creating progressively a substantial increase in High Lawn traffic far beyond its intended purpose; it is essentially a narrow steep estate road with many “twists and turns”.
- b) Mr Chatfield, who owns the Brick Store and keeps construction equipment (such as a small digger & roller, which he transports with the aid of a trailer towed by a small lorry) actually constructed this new driveway and would be able to use this exit should he wish. If this application was approved, the applicant could allow whoever he wishes to use his driveway and access High Lawn.
- c) There could be a further application for planning permission to convert the Brick Store into a holiday let, using the access into High Lawn (residents have been told verbally that this is the intention as Mr Chatfield’s previous application – E/09/1580/FUL – was refused and dismissed on appeal because of the dangerous exit onto Dunkirk Hill).
- d) Despite the gradients of the proposed drive being steep, it could be used as a by-pass (rat-run) for traffic seeking to avoid congestion on the near-by principal roads.

3. Unsuitability of High Lawn for any further traffic

- a) High Lawn is a narrow, steep, cul-de-sac with 29 houses currently accessing onto it. It has a varying and non-standard width and alignment (5.5m wide at Bath Road junction, narrowing to 4.4m) with a severe “S” bend to the top of a very steep slope, at the bottom of which there is a difficult 90° turn to the left (by the end of Samarie); there are already problems, particularly in wet, snowy or icy weather.
- b) Parked cars reduce this available width already and, at times when everyone is in residence, it becomes a single track road where quite modest delivery vehicles are obliged to mount the pavement to negotiate the difficult nature of the way.
- c) Larger delivery vehicles, including the Council’s refuse/recycling vehicles, are often obliged to reverse the whole length – already hazardous and this would jeopardise future collections.
- d) Additional hazards for residents, who have to reverse in or out of their drives onto this blind right-angled bend and where some have gardens on the other side of the road from their homes; also dangers to children who play outside.
- e) Vehicles using the new access onto High Lawn would cross the well-used footpath (Footpath No: 11) and could be a danger to pedestrians.
- f) Parking is already at a premium and the access would involve the loss of two parking bays, which are used by residents & non-residents (such as parents collecting children from St Peter’s school).

- g) There would be an increase in noise & air pollution in an area that already suffers from higher than acceptably safe levels of pollution from vehicle exhaust fumes.

#### 4. Accuracy of the Application

- a) The application is for the driveway to actually connect to an exit into High Lawn; neither application mentions the intention “to create a connecting driveway”.
- b) Question 5 on the application form states “Is a new or altered vehicle access proposed to or from the public highway?” Answered “No” – should be “Yes” on the basis that no vehicular access exists at the present time and the drawing specifically links the two proposals together.
- c) Question 8 states “Will the proposed works affect existing car parking arrangements?” Again, answered “No” – should be “Yes” because it will involve the loss of two parking spaces in High Lawn.

### 9. Planning Considerations

It is important to focus on the fact that the Council is dealing with an application for the creation of a driveway to Samarie.

The issues in relation to this are:

- a) **Impact on the character and appearance of the area** – the driveway is comparatively short and is not widely visible from public vantage points, other than from the footpath that runs alongside. It is not considered that there is any adverse impact on the character or appearance of the area.
- b) **Impact on residential amenity** – the driveway does not pass close to existing dwellings and its use would not have an adverse impact on the residential amenities of nearby properties.
- c) **Impact on highway safety** – the Highway Officer confirms that the design standards of High Lawn are more than adequate to serve the number of dwellings currently existing (29), and would in fact allow for up to 50 dwellings to be served. The additional traffic generated by creating a new access for Samarie could therefore be accommodated by the existing highway situation.

The Highway Officer is mainly concerned regarding the possibility of increased traffic using the sub-standard junction onto Dunkirk Hill. However, the creation of a through-route for the residents of Samarie would tend to reduce the level of traffic using this sub-standard junction as they could use High Lawn instead. Subject to controls being in place to ensure that a through-route is not created for general use, no highway objection is raised. A planning condition is therefore recommended to ensure that the driveway is used solely for purposes incidental to the enjoyment of Samarie, and for no other use.

The neighbours' concerns have been raised with the applicant and he has confirmed in writing that, although he intends to proceed with the access onto High Lawn as soon as possible and his intention would be to join up the two drives serving Samarie, this is for the clients, staff and relevant persons who are connected with Samarie, and he confirms that there is no arrangement for other people to make use of this drive and access.

## Other Matters

Objectors raise various other matters to which officers would respond as follows:

### 1. Certificate of Lawfulness

There have been some concerns about the status of the Certificate of Lawfulness. It should be noted that although this is a legal document it is not a planning application and is not processed in the same way, e.g. there is no requirement for a Certificate of Lawfulness application to be notified to adjoining owners/occupiers or for it to be advertised; also there is no time-limit for commencing development because the purpose of the application is only to formally establish whether what is proposed to be done would be “lawful” in that there are no planning restrictions on the property, no planning permission is required and no enforcement action may be taken.

The work proposed to be carried out in this case (i.e. the construction of a hardstanding within the site and the insertion of a gateway in existing wall) was permitted development and therefore did not require planning permission, hence the Council was obliged to issue a Certificate of Lawfulness. The planning merits of the work, including its effect on residential amenity and highway safety, were not for consideration and the Council was not entitled to attach any conditions to the Certificate when it was issued.

A couple of the residents have referred to the inaccuracies in the original plans submitted for the Certificate of Lawfulness; however, it is still clear from the application, what was intended and that this would be within permitted development rights no matter the exact position of the access along the wall. The site boundary line, position of the public footpath & kerb-line and width of the turning head were not relevant to that application. The fact remains that, although there was an amendment to “permitted development” in 2008, the hardstanding (being of a porous material and not forward of the principal elevation) and gate (being 1m in height) would still not require planning permission and therefore the validity of the Certificate of Lawfulness is irrelevant (except to provide an indication of what the applicant ultimately intends to do). There is no need to revoke the Certificate because the applicant can carry out similar work, without requiring planning permission under the property’s permitted development rights; in any event, there is no requirement in law for him to obtain a Certificate of Lawfulness prior to commencing the development. Put another way, revocation of the Certificate of Lawfulness would not prevent the works from proceeding.

A resident has raised the question about ownership of the brick wall; this is not a planning issue as permission can be given on land not owned by the applicant; the permission stands with the land and does not convey any right for the applicant to proceed if he does not have ownership – this is a private matter to be resolved between the applicant and the owner of the wall.

### 2. Use of Samarie as a Care Home

Several residents have mentioned that Samarie is now a care home with quite a few vehicular movements because of residents/staff/deliveries. However, the C3 Use Class was introduced for the primary purpose of providing a freedom from the need for planning permission for small scale multiple uses of dwelling-houses and it includes use of a dwelling-house by not more than six residents living together as a single household (including a household where care is provided for residents); therefore, although there is a business use at this property, it is still classed as a dwelling-house and has the same permitted development rights as an “ordinary” dwelling-house.

It is clear from the Highway Officer’s comments that High Lawn has been designed to a standard capable of serving up to 50 dwellings. Whilst the vehicle movements associated with the care home use may be slightly greater than a typical dwelling, they are still well within the design capacity of High Lawn which currently serves only 29 dwellings.

## 10. Conclusion

Officers consider that this application has to be considered as it stands – i.e. for the creation of a gravelled access driveway from the existing private unmade track to the hardstanding being constructed under permitted development rights. Assessed in these terms, it is considered that the proposal is acceptable. The driveway would cause no harm to highway safety, the residential amenities of nearby properties or the character and appearance of the area. Accordingly, a grant of planning permission is recommended. A condition should be imposed on any planning permission to ensure that the driveway is used solely for purposes incidental to the enjoyment of Samarie, and for no other purpose (including as a general through-route for third parties unrelated to Samarie).

## RECOMMENDATION

Approve with the following conditions:

1. The driveway hereby permitted shall be used solely for purposes incidental to the enjoyment of the property known as “Samarie”. It shall not be used for any other purpose, including use by persons unrelated to Samarie as a general through-route.

REASON: The application has been considered on the basis that the proposal is for a domestic driveway. The Council would wish to give further consideration to any proposal for use of the driveway as a general through-route, as it is likely to give rise to additional planning issues.

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

### Approved Plans

Application Form; 1:1250 Location Plan & Plan No: 1724.1 – date-stamped received 29 July 2011).

**Appendices:** None

**Background Documents Used in the Preparation of this Report:**

The Application File