

<b>Date of Meeting</b>	1 <sup>st</sup> August 2013
<b>Application Number</b>	E/2012/1216/FUL
<b>Site Address</b>	Land to Rear Of Wilcot Road, Pewsey SN9 5EL
<b>Proposal</b>	Erection of 10 houses and 4 flats with access from Wilcot Road
<b>Applicant</b>	Pewsey Ltd.
<b>Town/Parish Council</b>	PEWSEY
<b>Grid Ref</b>	415956 160225
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	April Waterman

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

This application has been called to the committee at the request of the division member, Cllr Jerry Kunkler.

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

To consider the recommendation to refuse the application for full planning permission.

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

This report is an update on that prepared for the 4<sup>th</sup> April 2013 Eastern Area Planning Committee, which concluded with a recommendation to refuse permission. The principal reason for rejection was as set out below:

*1. The proposed development would be located within close proximity to established sources of noise that would be likely to cause unacceptable levels of disturbance to the occupiers of the units. Insufficient information has been provided to demonstrate that there would be no statutory noise nuisance experienced by the new residents. The impact of the existing neighbouring land uses, particularly in terms of noise and disturbance on the residential use of the site would be likely to represent an incompatible mix of land uses, resulting in poor levels of residential amenity, contrary to the terms and objectives of Policy PD1 of the Kennet Local Plan 2011. Furthermore, the introduction of a noise sensitive development on the site would be likely to place unreasonable restrictions on the continuance of the established businesses nearby, in conflict with the advice contained in the National Planning Policy Framework 2012. The proposal is therefore considered not to accord with national and local planning policy and guidance.*

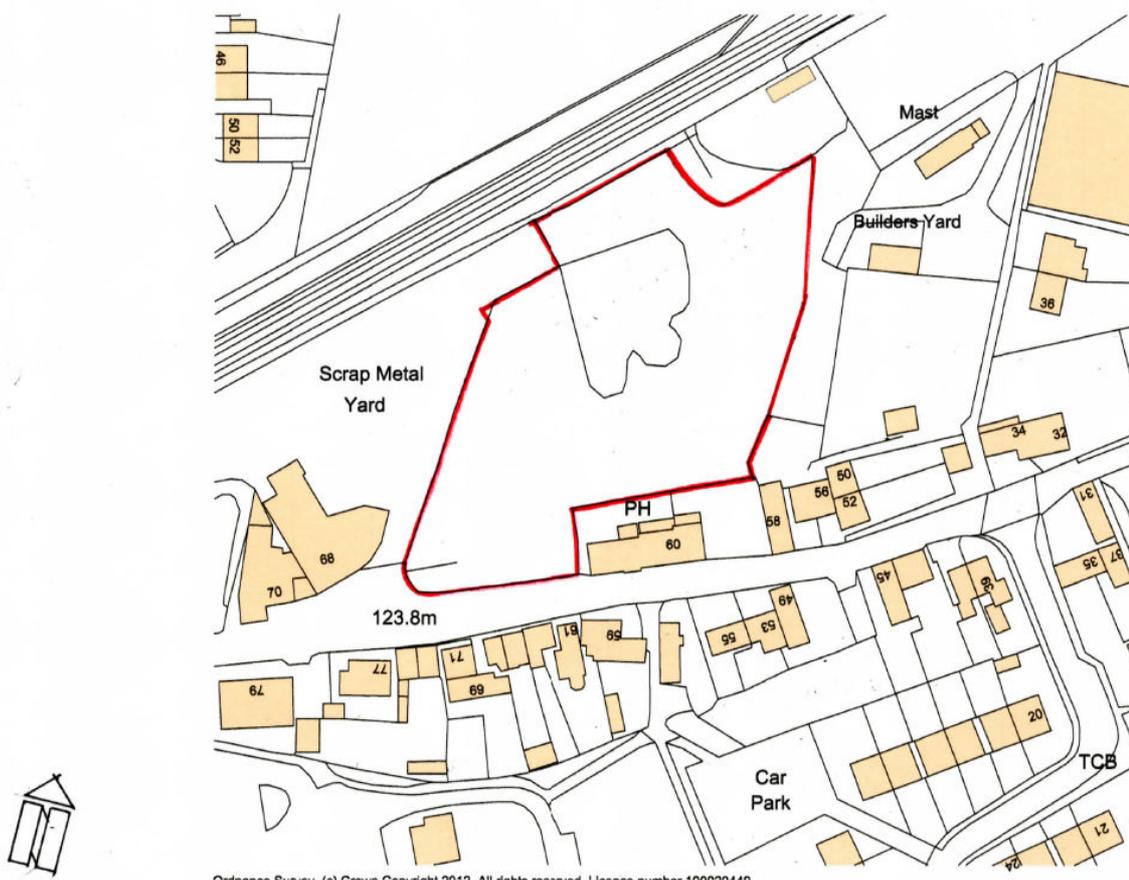
Two further recommended refusal reasons related to the lack of mechanism for providing adequate recreational facilities and highway works that the scheme would require (although these matters could be addressed in a legal agreement prepared after the committee, in the event of the members resolving to approve the scheme).

Following the publication of the report on this case for the 4<sup>th</sup> April 2013 EAPC, the application was withdrawn from the agenda, to allow the applicant to undertake further survey and analysis work on the noise issue, on which the Council could then base a judgement.

### 3. Site Description

This 0.49 hectare parcel of land lies towards the north western end of the settlement of Pewsey, with a road frontage on to part of the one-way section of Wilcot Road between the Crown Inn PH and Pewsey Metal (a.k.a. Black's scrap yard and recycling facility). The site wraps around the back of the pub and its small garden. To the east of the site lie the rear gardens of residential property fronting Wilcot Road, a builder's yard and car parking for the railway station. The main West Country – London railway line forms the northern edge of the site, and to the west is the scrap yard. Housing runs along the south side of Wilcot Road, opposite the frontage. There are a number of street-edge parking spaces on the north side of Wilcot Road, which are time-limited. The site is bounded by a mixture of constructed fences (metal, timber, post and wire, chain link and block wall) and by hedging, some of which has grown on to tree size on the Wilcot Road frontage.

The site falls within the Limits of Development for Pewsey. A strip along the site frontage of Wilcot Road lies within the Conservation Area, but the majority of the land falls outside this designation.



LOCATION PLAN 1 1250

The land is predominantly level, both within the site and with its neighbouring plots, although there is a significant slope down to the railway cutting at the northern edge of the site. The land within the site has been cleared of brambles and trees, except for a field maple in the south western corner.

The submitted site outline plan has been amended to show the correct alignment of its eastern boundary, where it meets the rear garden of no. 58 Wilcot Road. The applicant has not amended the position of the application site boundary adjoining the western edge of the curtilage of the Crown Inn PH, notwithstanding a claim from the owner of that property that its alignment is incorrectly shown. Copies of the applicants' title plan (Land Registry) have been submitted indicating the extent of land ownership.

#### 4. Planning History

Planning permission has been sought for a variety of residential developments on this site.

K/55760/FUL	Erection of 6 houses and 18 flats	Withdrawn 30/03/2007
K/46067	Erection of 19 houses and construction of access	Refused 26/11/2003 Appeal withdrawn 17/12/2004
K/44383	Erection of dwelling	Refused 10/12/2002
K/16916	Erection of 21 low cost starter homes	Refused 01/08/1991 Appeal dismissed 29/04/1992
K/15255	Erection of 25 starter houses	Application withdrawn May 1990

In all but the most recent case (withdrawn in advance of determination) the potential disturbance to the prospective residents of the development from the scrap yard to the west of the site has featured in the reasons for refusal of planning permission, and in the Inspector's appeal decision. Although not binding on the Council, the last correspondence from the planning officer with the agent on the most recent case (K/55760) did not cite the issue of noise disturbance as a likely reason for planning permission being refused. Instead, acoustic treatment of fenestration and vents was noted as likely to reduce the noise exposure to residents from both the adjoining scrap yard and the railway line.

The planning history of the adjoining scrap yard is also of importance to this case.

Appeal	Against the imposition of the time period condition on K/79/279.	Appeal allowed 05/12/1980 in effect permitting the use permanently.
K/79/279	Renewal of permissions to use land for storage and conversion of scrap metal and including office accommodation building	Approved subject to time-period condition (until 31/12/1984) 24/01/1980
	Two previous temporary (5 year) permissions	

Other conditions imposed on the K/79/279 permission restricted scrap metal conversion operations to the hours between 08.00 and 17.00 Mondays-Fridays, and 08.00 and 12.00 on Saturdays (no such operations to be carried out on Sundays or Bank Holidays), and for storage and conversion activities to be limited to a specific area of the site (excluding a strip 5 metres wide adjoining the current planning application site). The appeal did not contest these conditions, and the Inspector did not alter them or remove them from the permission.

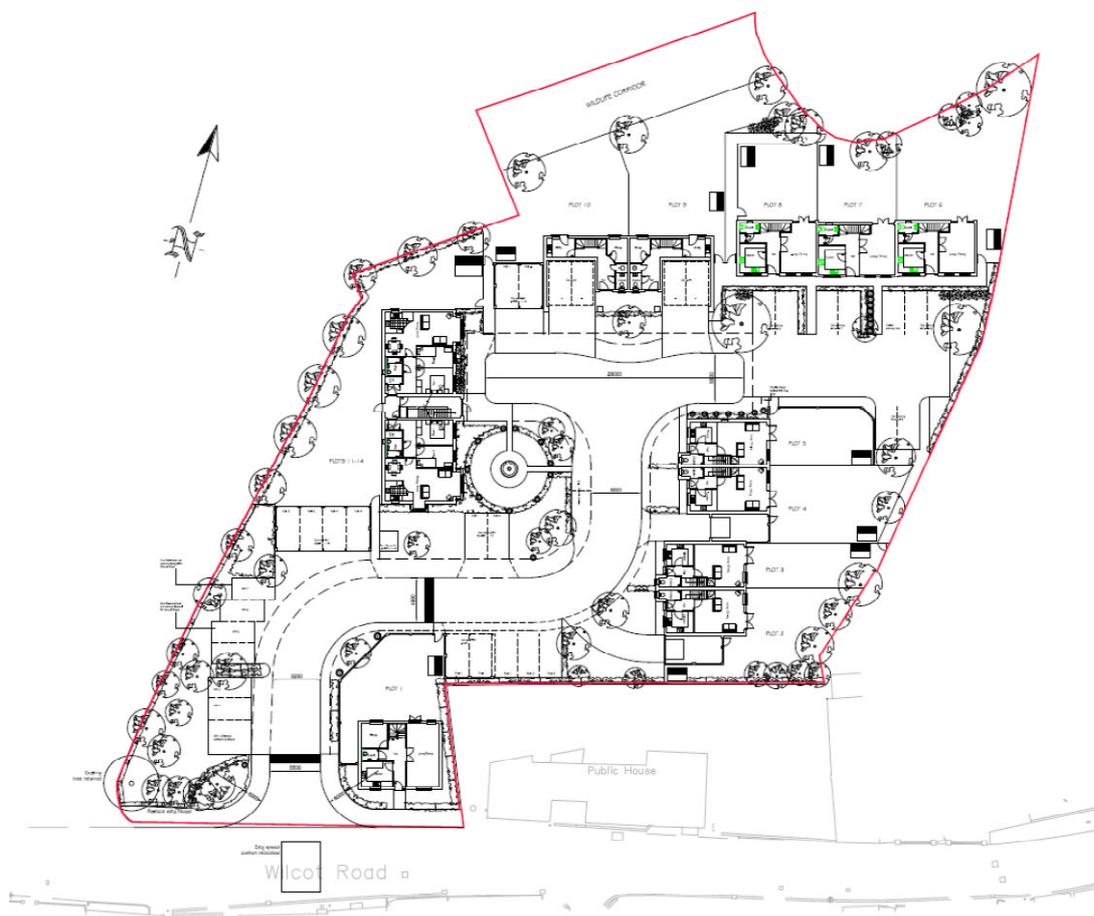
#### 5. The Proposal

Full planning permission is sought for the erection of 14 dwelling units, comprising two-storey detached, paired or terraced houses, a block of two-storey flats, and a pair of two-and-a-half-storey houses. A new access road is proposed to serve the development from Wilcot Road. The scheme layout and its landscaping have been amended in line with recommendations made on highways, parking and planting schedule issues. The layout includes 7 car parking spaces (one of which has disabled parking space dimensions) to replace (and exceed) those lost from the Wilcot Road frontage. The strip of land closest to the railway cutting is excluded from the plot 9 and 10 gardens, and is reserved as a wildlife corridor.

Should planning permission be granted for the development, the applicant has agreed to enter into a Section 106 agreement with the Council to secure financial contributions to cover various works to the highway and traffic orders, and to contribute towards the provision of public recreational facilities off-site. In-detail work to prepare the agreement has not yet commenced.

In addition to the plans, the application included reports into the assessment of the ecological, arboricultural and archaeological resource of the site, a report of investigations into the potential for the site to include soil contamination and an assessment of the impact of noise emissions from existing surrounding land uses on the proposed residential development. The application was also accompanied by a Code for Sustainable Homes Pre-Assessment, which gave a predicted Code Level 3 rating for all units on the site.

In response to the initial and later comments of the Environmental Health Officer, and the recommendation to committee to refuse the application (see report on the agenda for the 04 April EAPC), the agent has made further submissions on noise matters. For ease of reference, the details of these submissions are set out in the consultation section of this report.



## 6. Planning Policy

National Planning Policy Framework 2012

Kennet Local Plan 2011

PD1 Development and design

HC35 Recreation provision on small housing sites

NR4 Nature conservation outside designated sites

HH1 Protection of archaeological remains

## 7. Consultations

### Pewsey Parish Council

THE PARISH COUNCIL SUPPORTS THIS APPLICATION AND OFFER THE ATTACHED TYPED LIST OF COMMENTS FOR YOUR CONSIDERATION:

1. *Site Access*
  - *There should be a rumble strip sited at the entrance to the development to encourage traffic exiting the site to slow down.*
  - *There should be a stop sign at the junction with Wilcot Road.*
  - *A one-way sign should be sited opposite the exit so that traffic leaves the site turning right only.*
  - *There should be no protrusion of the development onto the main highway of Wilcot Road, the development should be flush with the current highway boundary.*
2. *Additional Parking*
  - *There should be an increase of parking provision just inside the entrance from 4 spaces to 10, including 1 disabled bay, that can be used by members of the public.*
3. *The location of the gas tank to fuel the site is not shown.*
4. *Confirmation is required of the future site maintenance and management.*
5. *The Parish Council expect the letter from Mr Hughes to be fully investigated by the Environmental Health department as the PC are not acoustic experts.*
6. *A bund should be built towards the north as added protection from the rail track noise which will not affect the wild life corridor.*

### Pewsey Parish Council (amended plans)

THE PARISH COUNCIL SUPPORTS THIS APPLICATION AND OFFER THE ATTACHED TYPED LIST OF COMMENTS FOR YOUR CONSIDERATION:

1. *Site Access*
  - *There should be a stop sign at the junction with Wilcot Road.*
  - *A one-way sign should be sited opposite the exit so that traffic leaves the site turning right only.*
2. *The location of the gas tank to fuel the site is not shown which is of significant importance.*
3. *Confirmation is required of the future site maintenance and management.*
4. *The Parish Council expect the letter from Mr Hughes to be fully investigated by the Environmental Health department as the PC are not acoustic experts.*
5. *A bund should be built towards the north as added protection from the rail track noise which will not affect the wild life corridor.*
6. *The relocated speed hump directly in front of the exit from the development interferes with the pavement on the south side of the road.*
7. *The pub landlord's boundary problem has been addressed, and although this is not a planning matter it is of importance to a very close neighbour.*

## Parish Council (additional noise survey report)

Pewsey Parish Planning Committee meeting is scheduled to discuss the case on 24/07/13, so comments were not available at the time of the preparation of this report. Comments received before EAPC will be reported verbally.

## Highways

*I refer to the above planning application. I recommend that this application be refused on highway grounds for the reasons given below:-*

- 1. The proposed development requiring the loss of 6 on-street limited waiting spaces from Wilcot Road (in an area where there is considerable parking pressure) makes inadequate provision to replace those spaces, and also does not provide sufficient curtilage and visitor parking for the residential development proposed. For these reasons the proposed development, would lead to indiscriminate parking and to additional parking on nearby roads to the detriment of the safety and convenience of road users.*

*NB The Council's current minimum parking standards require 3 spaces for 4 bedroom dwellings and 1 visitor parking space per 5 dwellings. A 5.5 metre carriageway estate road could accommodate some parking but a 4.8 metre road as proposed is considered inadequate to provide regular parking within the carriageway in a safe and convenient manner.*

- 2. The submitted details are inadequate to enable the highway aspects of the proposed development to be properly considered and assessed. The Site Layout plan does not detail the correct Wilcot Road highway situation, in that the footway on the opposite side of the road and the nearby limited parking areas have not been detailed. No track has been provided of the correct sized refuse vehicle to prove that the proposed junction and estate road will safely accommodate refuse vehicle, and removal lorry movements.*

*Any revised plan should detail low-key traffic calming such as a 1metre wide rumble strip located about 5 metres into the site and a further strip about 32 metres further in (beyond the first bend).*

*It may be appropriate to relocate the Wilcot Road no-entry signs to just east of the site access (enabling the residents of the development to access the site directly from the west), but I am discussing this with traffic officers. If so the developers would be required to fund this and the required traffic order amendments.*

## Highways (amended plans)

*I refer to the above planning application, and to the amended plan 2089/18/A. The plan is satisfactory from the highway point of view. Any grant of permission should be conditioned to cover the following points:-*

- 1. Prior to first occupation the footway over the site frontage shall have been constructed in accordance with details to be first submitted to and approved by the Local Planning Authority.*
- 2. A negative condition that the development shall not be occupied until the relocation of the speed control cushion near the entrance to the site has been advertised, any objections received been reported to the lead cabinet member of the council, and the relocation of the cushion been implemented in accordance with details to be first submitted to and approved by the Local Planning Authority, - in the event that the lead cabinet member decides to approve the relocation.*
- 3. A negative condition that the development shall not be occupied until a Traffic Regulation Order for the relocation of the existing no-entry signs west of the site entrance to a position to*

*the east of the site entrance has been advertised, any objections received been reported to the lead cabinet member of the council, and Traffic Order been implemented in accordance with details to be first submitted to and approved by the Local Planning Authority, - in the event that the lead cabinet member decides to approve the Order.*

- 4. A negative condition that the development shall not be occupied until a Traffic Regulation Order for the alteration of the on street parking on Wilcot Road near to the site entrance, including the imposition of any required waiting restrictions within the site, has been advertised, and the approved changes implemented.*

*The applicants should be advised that they will be required to bear the costs of the above 4 points including all traffic order and traffic calming advertisement costs, and that it will be essential for a Section 38 Agreement to be entered to secure the adoption of the road within the site as public highway, in order that replacement highway parking for the on-street Wilcot Road parking can be achieved.*

#### Public Protection (contaminated land)

*The comprehensive Site Investigation document concludes a low risk of contamination at the site with the only aspect that they cannot be 100% about being if the site has any 'made ground'. They recommend either a watching brief during the development phase or establishing if any material has been imported by using some boreholes and I would like to see confirmation of which method is to be used. This can either be agreed as part of the application phase (I suspect they will use bore holes as they will want to check the soil chemistry – sulphates etc) or by a condition. If it is to be the latter I would look for the basic contaminated land condition below to apply please – this covers either option – Part 'A' if they do further investigation (submit the report and conclusions) or B & C if they chose the watching brief approach:*

*Should the boreholes establish a problem then obviously we would need to discuss the matter with the applicant and their consultants at that time.*

#### **CONDITION WORDING**

*No development shall commence on site until an investigation of the history and current condition of the site to determine the likelihood of the existence of contamination arising from previous uses has been undertaken and until:*

- a) The Local Planning Authority has been provided with written confirmation that, in the opinion of the developer, the site is likely to be free from contamination which may pose a risk to people, controlled waters or the environment. Details of how this conclusion was reached shall be included.*
- b) If, during development, any evidence of historic contamination or likely contamination is found, the developer shall cease work immediately and contact the Local Planning Authority to identify what additional site investigation may be necessary.*
- c) In the event of unexpected contamination being identified, all development on the site shall cease until such time as an investigation has been carried out and a written report submitted to and approved by the Local Planning Authority, any remedial works recommended in that report have been undertaken and written confirmation has been provided to the Local Planning Authority that such works have been carried out. Construction shall not recommence until the written agreement of the Local Planning Authority has been given following its receipt of verification that the approved remediation measures have been carried out*

*REASON: To ensure that land contamination can be dealt with adequately prior to the use of the site hereby approved by the Local Planning Authority.*

*POLICY- PD1 of the Kennet Local Plan 2011*

## Environment Agency

We have **no objection** to the proposed development **subject to the following conditions and informatives** being included in any planning permission granted.

### **Potentially Contaminated Land**

We note that the planning application makes reference to the redevelopment of a Brownfield site. However, it is unclear from the detail submitted what previous commercial use the land has been used for. However, we are mindful of the fact that the land could have historically been used for potentially contaminating uses, and such uses have been developed on land adjoining the site. Therefore there is potential for the site to be contaminated.

#### CONDITION

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

#### REASONS

To protect controlled waters from pollution.

### **Surface Water Drainage**

The applicant proposes to direct all surface water to soakaways. This is the preferred option, providing ground conditions permit and percolation tests demonstrate that they are appropriate.

#### INFORMATIVE

The surface water soakaways may require the approval of the Local Authority's Building Control Department and should be constructed in accordance with the BRE Digest No 365 dated September 1991 or CIRIA Report 156 "Infiltration Drainage, Manual of Good Practice". Only clean, uncontaminated surface water should be discharged to soakaway.

### **Water Efficiency**

#### CONDITION

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

#### REASON

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

#### INFORMATIVE

The development should include water efficient systems and fittings. These should include dual-flush toilets, water butts, water-saving taps, showers and baths, and appliances with the highest water efficiency rating (as a minimum). Greywater recycling and rainwater harvesting should be considered.

An appropriate submitted scheme to discharge the condition will include a water usage calculator showing how the development will not exceed a usage level of 105 litres per person per day.

### **Pollution Prevention During Construction**

#### INFORMATIVE

Safeguards should be implemented during the construction phase to minimise the risks of pollution from the development. 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
- the control and removal of spoil and wastes.

The applicant should refer to the Environment Agency's Pollution Prevention Guidelines at: <http://www.environment-agency.gov.uk/business/topics/pollution/39083.aspx>.

## NOTES TO APPLICANT

### **Sustainable Construction**

Sustainable design and construction should be implemented across the proposed development. This is important in limiting the effects of and adapting to climate change. Running costs for occupants can also be significantly reduced.

### **Waste Management**

Should this proposal be granted planning permission, then in accordance with the waste hierarchy, we wish the applicant to consider reduction, reuse and recovery of waste in preference to off site incineration and disposal to landfill during site construction.

If any controlled waste is to be removed off site, then site operator must ensure a registered waste carrier is used to convey the waste material off site to a suitably authorised facility.

If the applicant require more specific guidance it is available on our website [www.environment-agency.gov.uk/subjects/waste/](http://www.environment-agency.gov.uk/subjects/waste/).

## INFORMATIVE

In England, it is a legal requirement to have a site waste management plan (SWMP) for all new construction projects worth more than £300,000. The level of detail that your SWMP should contain depends on the estimated build cost, excluding VAT. You must still comply with the duty of care for waste. Because you will need to record all waste movements in one document, having a SWMP will help you to ensure you comply with the duty of care. Further information can be found at <http://www.netregs.co.uk>

## Ecologist

I have now reviewed the submitted 'Extended Phase 1 Habitat Survey' report (January 2012). I understand that the site was cleared of vegetation several months before the survey took place and it now comprises large areas of bare ground and ruderal vegetation, with low ecological value. Prior to clearance the site appears to have been a disused patch of land, likely providing refuge for local wildlife, particularly given its location adjacent to the railway corridor with connectivity to adjacent habitats.

The ecology survey found no evidence of protected species, although it is possible that low numbers of reptiles are present along the site margins, and breeding birds are likely to use the site. Appropriate management measures are given to dissuade reptiles from re-colonising the site prior to construction; an Informative should be issued to provide advice for both reptiles and breeding birds (see below).

The proposed plans show that the undevelopable area of land adjacent to the railway will be retained as a 'wildlife corridor'. There is no access to this area (it is located to the north of residential gardens) and no proposed management. This area of scrub will however be beneficial in retaining connectivity along the railway corridor.

I have no objection to the proposed plans and recommend that the following Informative is issued:

'The adults, young, eggs and nests of all species of birds are protected by the Wildlife and Countryside Act 1981 (as amended) while they are breeding. Vegetation should be cleared outside

*the breeding bird season unless checked by a competent ecologist beforehand. The season is usually taken to be the period between 1<sup>st</sup> March and 31<sup>st</sup> August but some species are known to breed outside these limits. Reptiles are also protected under the Wildlife & Countryside Act 1981; the site should be continually managed prior to construction work in order to dissuade reptiles from colonising the site, further details are provided in section 4.4 of the 'Extended Phase 1 Habitat Survey' report (January 2012).'*

Additional comment, in relation to identification of Fine-leaved Water Droplet in the Phase 1 Habitat Survey report:

*I am of the firm opinion that the consultant ecologists probably mis-identified the plant. The plant is found in or very close to water and there is no running or standing water on the site and it is not even within the floodplain. It is always possible that the plant has been moved into the site from somewhere else perhaps on tractor or digger wheels (I understand the site was cleared by machine prior to survey) although it is unlikely to survive here on a permanent basis if this is the case, since the site will not be wet enough.*

*However, the consultant ecologists have recorded its presence on the site and it would be a notable plant for the Wiltshire flora if it is correct, however unlikely we feel this might be.*

*I therefore request that a condition be added that requires a further survey specifically for this plant, prior to commencement of ANY works on the site, and if it is found then a mitigation strategy will be required to show that the plant can be accommodated in an ecologically appropriate area of the site or translocated to a suitable alternative location.*

#### Arboricultural Officer

*There is not much to say about the proposed scheme, which now has very limited tree cover across the site. The row of Hawthorn in the vicinity of the proposed entrance has some wildlife value, but is out of keeping with the rest of the street. The landscaping scheme seems appropriate for the main, but I would recommend the following:*

- All Ash to be removed from the scheme and replaced with Wild service tree, or similar.*
- The larger tree species on the western boundary to be spaced further apart giving the trees a little more room to develop unhindered by its neighbour as it matures.*
- The removal of all Blackthorn from the hedging mix replacing it with Hawthorn bulked up to 70%, with Hazel/Privet/Holly and Field maple making up the remaining percentage. Blackthorn has a tendency to spread through root suckers and is likely to be problematic in the long-term.*

#### Land Adoptions Officer (Open space)

*Having corresponded with Pewsey Parish Council the contribution to be sought is towards provision of Recreation Facilities to be located at the Pewsey Campus. The Pewsey Campus is located off Wilcot Road at the leisure centre, which is almost directly opposite the proposed development.*

*The figure has been arrived at in accordance with Policy HC35, and the East Wiltshire Community Benefits SPG. The calculation was £3,048 per dwelling x 14 Dwellings, thus £42,672 total.*

## Archaeology

The proposed development is of some archaeological interest. The archaeological assessment report acknowledges the general potential for the Pewsey Vale for remains from the prehistoric period and there have been a number of finds relating to this period in the vicinity of the site. It is considered that there is low potential for archaeological remains for all other periods. Therefore, in line with the National Planning Policy Framework 2012 I recommend that a programme of archaeological works is undertaken, likely in the form of an archaeological watching brief during construction on site.

## North Wessex Downs Area of Outstanding Natural Beauty

The North Wessex Downs AONB Unit raise no comments in respect of the principle of this development. In terms of the overall design it is bland and does not respect the local style in terms of detailing, fenestration, chimneys, etc. so improvements could be made.

## Wiltshire Fire and Rescue Service

Requests a contribution of £1065.82 towards the provision of hydrants and water supplied for fire fighting, and additional or enhanced fire and rescue service infrastructure

## Wessex Water

Standard information supplied relating to the need for water supply and waste water connections to be made to serve the development. No objections raised to the proposals.

## Environmental Health Officer (Environmental Control and Protection)

*There are 3 main noise sources to consider, the public house, the railway and the scrap yard. I will discuss each in turn:*

### Public House

*It is accepted that the proposals for design and layout of the site will mean that the proposed properties will be better protected from potential noise from this source than current properties. This department has received complaints regarding noise from this public house in the past, in 2007 and 2009. These complaints appear to have been one offs and no further action was taken. This department would not recommend refusal of this application based on noise from the public house.*

### Railway

*The assessment has been made in line with the method of (withdrawn) PPG24 as recommended. The assessment is based on train movements over one night and section 3.6 states that a review of the rail timetable suggests a maximum of 5 passenger trains passing the site and an estimate of 3-4 freight trains. It is vital that the applicant confirm that these assumptions in writing with Network Rail. On the basis that these assumptions about the number and type of rail movements overnight can be confirmed it will be necessary that alternative means of rapid ventilation are provided. Please see my further comments below regarding ventilation.*

### Scrap yard

*This source remains our greatest concern. I have been advised that the scrap yard is limited to hours of operation by planning conditions. Scrap metal conversion should only take place 08:00-17:00 Monday – Friday and 08:00 – 12:00 Saturday. This restriction prevents noisy work being carried out on the site at more sensitive times.*

*There is also the possible 5m access road between the scrap yard and site in question. If this area was cleared it would increase the distance between the noisy work and residential properties. However, the significance of this increased distance is not assessed in the report and is likely to be slight. We note that the reported legal requirement for a 5m gap has not been enforced at this time*

*and without any independent guarantees that such a requirement can and would be enforced at a future date it would be wrong to assume anything other than the status quo.*

*The layout of the proposed dwellings and the figures that the noise calculations are based on have not changed since the pre planning enquiry. As such, my comments are similar: The proposed layout is shown to be effective at reducing the sound levels in 'habitable rooms' to a level that could be considered acceptable. The calculation of the sound levels are based on measurements taken on two separate days and on a number of assumptions.*

*With respect to Sections 3.7 and 3.8 of the report; no information is presented which demonstrates why the applicant believes the full range of noise making activities carried out at the scrap yard were assessed by the two noise surveys referred to in the acoustic report. If such information does exist we would be pleased to receive it.*

*Secondly, as above, the noise assessment and its conclusions are based on measurements taken on two separate days. Without any information, such as confirmation from the operator, that the level of activity on these days was "typical" we are not convinced that the noise surveys on the two days mentioned can be confidently said to be representative of activities on site by the current operator. If evidence to the contrary is available then we would be pleased to receive it.*

*My response earlier this year requested historical noise assessments that had been mentioned to us during conversations with the applicant. It had been suggested to us that the historical noise assessments showed similar results to the submitted noise assessment and would back up this assessment.*

*During a site visit in March this year [2012] it was pointed out by the applicant on a number of occasions that the scrap metal yard had reduced its operations considerably, therefore the sound levels that potential residents would be exposed to could be mitigated by the layout of the site. Unfortunately the fact that the scrap yard operations are currently reduced means that the noise data that has been submitted may not be representative of the sound levels that residents could be exposed to should operations on the site increase in the future. The calculations are based on the assumption that noisy activities will take place for 15 minutes in each hour. The noisy activities on the site would only need to double for the predicted sound levels to increase by 3dB and therefore become unacceptable.*

*Letters of representation have been submitted to the planning team by some local residents. Comments made in these letters back up our opinion that the noise assessment for the scrap yard does not satisfactorily illustrate the sound levels produced by work at the scrap yard.*

*This department has to consider not only the current activity but also the class of use on neighbouring sites. The scrap yard is a large site which under planning can be used as a scrap metal site. Waste management companies sometimes actively search for sites with this class of use. If they find they are able to buy the site they would not have to apply for planning permission to move in and could significantly intensify activities. Notwithstanding this, the current owner of the site could significantly intensify his level of activity on the site. In either event such intensification would be perfectly legal and would invalidate the assumptions used within the noise assessment. Given the application and noise report highlights that the scrap yard site is currently under used we would suggest that future intensification of use, with obvious implications for noise levels on site, is foreseeable.*

*With respect to the BS4142 assessment; paragraph 5.2.2 suggests the use of BS4142 to assess noise of an industrial nature affecting new housing is debatable. We do not agree. I would highlight a paragraph from the foreword from BS4142 which I attach here for completeness, contradicts that assertion. "The standard is intended to be used for assessing the measured or calculated noise levels from both existing premises and new or modified premises. The standard may be helpful in certain aspects of environmental planning..." The BS4142 assessment has indicated that noise from the scrap yard will be just above "marginal significance" at various points on the development*

site.

*Despite a 5dB correction being added for impulsive noises the method cannot account for the sudden, maximum sound levels that are shown in figures 4,5 and 6. In Figure 6 a peak marked as 'metal loading/unloading' reaches nearly 90dB. These are significant individual noise events which will be very apparent to the people living adjacent. The BS4142 methodology effectively "smooths" out the impact of this type of noise event during the day because it is based on equivalent continuous noise levels and this is a recognised flaw in the BS4142 methodology.*

*Section 5.2.2 (3) makes reference to a court case involving Mildenhall Stadium. This is an interesting example but should be distinguished from the current situation. That case concerned the use of BS4142 in the consideration of noise nuisance and not the use of the standard in a land use planning capacity. The standard itself makes no reference to "who was there first" and nor does PPG24. The case is however an excellent example of where the character of an area and existing planning approvals for businesses can seriously limit the availability of remedies for people affected by noise nuisance who moved to an area containing an existing noise source. These same considerations can and do also limit the powers of Councils in using their statutory powers to address nuisance.*

*I note that the noise assessment recommends in 5.1.6 that alternative ventilation is installed for all habitable rooms and the preferred method should be determined by the architect. Unfortunately I cannot see a preferred method in the design and access statement or plans. Has this matter been overlooked?*

*The applicant has highlighted the newly adopted National Planning Policy Framework. We would also like to highlight that document and in particular how it makes clear that existing businesses should be protected from the impact of changes in land use nearby after they are established. We are concerned that this is exactly the situation that might occur if planning approval is granted for this development. Both the assessment of internal noise levels (and corresponding specification of the necessary glazing and ventilation) and the BS4142 assessment are based on the questionable assumption that the intensity of use the scrap yard will not significantly increase in the future. Perfectly legal intensification of the scrap yard would increase noise levels and invalidate the noise assessment and its conclusions. It may also lead to statutory nuisance. Where a Council is satisfied that a nuisance exists it is legally obliged to take enforcement action against those responsible. This can lead to expensive and protracted legal proceedings and could lead to extensive legal costs for and restrictions on the operation of the businesses involved. Notwithstanding that it is not guaranteed that action by the Council can always resolve nuisance caused by businesses. Unfortunately we have recent experience with a large business who accepted they were causing a nuisance but nevertheless successfully pursued an appeal against the Council. The company has been permitted by the Court to continue operating under their existing arrangements and continue to cause a nuisance.*

*Based in the information supplied with this application this department has to recommend that the application is refused because of serious concerns that future residents may be unacceptably disturbed by noise from the surrounding land uses.*

#### Agent's response to initial EHO comments

It would appear that Vicky Brown's comments on our application fall into two categories. The first being the number of surveys undertaken on the site and the second being the possible intensification of use of the site. There is however an agreement that the working hours of the scrapyards are restricted by planning condition. There is also an agreement that the proposals are acceptable in absolute terms given the sound recordings provided with the current application. There are several matters like the exact type of attenuated sound ventilation that can be correctly dealt with by planning condition.

1. It is well established through Case Law that every application must be considered on its own merits. This legal precedent is clearly not being applied by the Environmental Health Officer to the extent that the consideration of our application seems to be related to a recent case of "nuisance" on another site with different circumstances to our own. This is clearly an unrelated case, whatever its financial outcome for the Council, and consideration of our application must not be linked to this other case.

2. The Appeal decision in 1980, in granting planning permission for the continued use of the adjoining yard also imposed conditions. The Inspector, representing the Secretary of State, imposed conditions relating to time of operation and specific areas of the site where work could be lawfully carried out (shown hatched on the plan) and the maximum height of stored materials

3. If the Environmental Health Department are concerned about possible intensification and how the yard is operating then the above mentioned appeal clearly sets out what the scrapyard operator has valid permission for. These conditions are enforceable. It is therefore somewhat surprising that on investigation of all complaints concerning noise levels received by the Council in the past ten years, no enforcement action was taken. Four complaints were received. A complaint was received from a resident of Wilcot Road on 17/9/2008, the complainant was advised that there were no restrictions on the operating hours of the business. This was clearly incorrect advice as the Appeal decision in 1980 clearly restricted hours. No action was however taken. A complaint was received from a resident of Cossor Road on 1/9/2009, the complainant was again misinformed by the Council and told that there were no restrictions on the hours of operation of the scrapyard. When seeking confirmation from the operator of the scrapyard as to the hours of working he stated that "he never started work before 7.30 am". This is in effect an admission of a breach of the lawful working hours granted in the Appeal, dated 1980, which restricted starting hours to 8.00 am. No action was however taken. A complaint was received from a resident in Cossor Road on 4/6/2010, again he was incorrectly informed that there were no restrictions on the hours of work activity on site. The owner of the scrapyard did not reply to an EHO letter, this was not followed up and the case was closed on 8/7/2010. The same resident in Cossor Road complained again on 4/7/2011 and clearly stated that the crane was being used at 7.00am an hour before the consented start of operations. No action was taken and the case was closed on 4/8/2011. These are the only four complaints made during the last ten years and have been obtained from your Office of Information Ref RFI 4839. Four complaints from three local residents over a period of ten years does not on the face of it represent a major noise nuisance, but even so the Council could have enforced a reduction in activity of the scrapyard, if they had chosen to do so, by applying the terms of the 1980 Appeal planning Conditions. The Council still has these powers today to enforce a reduction in activity.

4. The same Appeal decision on 1980 also restricted the area of operation and specifically excluded a 5m wide strip of land running parallel with the common boundary of our client's site and for its entire length. This strip of land has to be kept clear at all times as the owner of the application site has a right of way over this 5m strip of land. This strip of land's exclusion from the permitted operating area is clearly an enforceable planning Condition. However it appears that this strip of land is being actively used by the operator of the scrap yard in clear breach of the conditions imposed by the Secretary of State. The Council has never taken enforcement action over this land. Every time we have been on site the strip of land was in active use and a scan of Google Earth will also confirm this.

5. The Planning Inspector (representing the Secretary of State), clearly did not consider intensification to be a credible risk or likelihood and neither should the Council. Paragraph 10 of the Inspectors decision letter clearly stated:

“Much of the concern has arisen as a result of the changed management leading to more intense activity at the scrapyards, added to which are fears of future growth. In my opinion both the physical limitations of the site and the restrictions imposed by other planning Conditions make a further significant increase in activity unlikely.”

The Council have chosen not to enforce any of the planning Conditions applicable to this site and the site continues, it would seem, to operate outside of its permitted hours and also to encroach on land that has no planning permission for scrapyards use. The same Appeal decision also restricted the height of storage to 3m. If these conditions were actively enforced by the Council this would ensure that rather than an increase in activity from its current levels, a decrease would occur. The site is constrained from physical growth due to its triangular shape formed by Wilcot Road, the railway and our application site. In addition all activity on site is further restricted to the cross hatched areas referred to in the Inspector's 1980 decision. Any future new owner wishing to carry on a use as a scrapyards would be bound by the same limiting planning Conditions, any change of operation would also be subject to a new planning application.

6. The original planning application in 2006 included two noise surveys by W S Atkins; the current application contains the results of two separate noise surveys. In addition the Hospital site also contained noise surveys taken in 2002. These noise surveys are all in the possession of the Council. The various noise levels taken over a period of ten years and individually spread over days/weeks are consistent with the current results recorded and clearly demonstrate that the average noise levels are indeed consistent. The adjacent Depot site realised higher train noise than our site and no further surveys or information was requested in that recent application restricting hours of work, areas of work and height of storage in the Appeal case. The Council has the benefit of the 1980 Appeal decision which clearly empowers it to enforce less activity on site should it choose to do so. Indeed any intensification of use can be a “material change of use” in Use Class Order terms, if any intensified use significantly changes the nature of the use to a different use. The surveyed noise levels on the site and the computer generated site layout are acceptable to EHO as they stand. The existence of consistent noise surveys on this site and adjacent sites over a period of ten years provides a good average figure without the need for further surveys. The adjacent consented depot site realised higher train noises than the application site and yet no further surveys or information were requested. We have addressed the two main areas of concern raised by the EHO, intensification and spread of noise surveys, and trust that our response deals satisfactorily with these issues.

Environmental Health Officer (Environmental Control and Protection) comments on applicant's response

*Having given due consideration to the letter from The Edwards Irish Partnership LLP dated 24<sup>th</sup> January I write in response from the Environmental Protection Department*

*To order my response I will respond to each relevant paragraph in turn.*

Paragraph 2

*The calculations and modelling in the noise survey indicate that the proposed layout, with methods of amelioration detailed in section 5.2 sound levels can meet the 'marginal significance' level of BS4142. This indicates that the likelihood of the potential residents complaining because of the sound levels is marginal, not unlikely. The usefulness of the data used in the calculations for this result will be discussed below.*

Paragraph 3

*Our concerns about the potential for noise from the scrap yard having a significant effect on potential*

residents are based on the inadequacies of the information and noise survey that has been provided.

I will address each concern in turn:

- Sound measurements were taken over 2 days. There was no contact with the scrap metal yard operator to ensure that these two days were typical working days or that all of the noisy equipment on site was being used. We therefore have no reason to believe that the sound levels measured show worst case scenario or indeed typical days.
- The assumption based on 'site observations' that external noisy working will take place for 15 minutes in the hour. Section 3.20 of the noise report states: 'From site observations, it would seem likely that such activity levels may occur for perhaps 15 minutes in any hour'. The consultant themselves have placed a number of caveats on the 15 minute assumption and again we have no evidence that this assumption has been confirmed by the operator of the site.

Our concerns, the main relate to noisy work occurring for more than 15 minutes in the hour. Of course the operator may increase the amount of equipment on the site or bring in noisier equipment, which could also increase the sound levels significantly. An increase in noise levels caused by the use of other noisier equipment and/or more prolonged use of the existing equipment on site would, notwithstanding the other comments made here, invalidate the noise assessment and mitigation measured proposed.

The sound levels from the site can vary significantly from day to day. The noise calculations have been based on the large grab handler being approximately 22m from the monitoring point and development. I have discovered that this machine is not stationary and moves all over the site. It may therefore, at times be operating much closer to and along the length of the boundary with the proposed development site.

It has also come to light that the scrap yard has a smaller grab handler has not been accounted for in the noise survey. Lorries delivering metal to the site may sometimes tip out a large skip of 10-15tonnes of metal creating noise and vibrations.

Needless to say these circumstances have not been included in or assessed by the acoustic report. A moving noise source is likely to significantly reduce the screening effect of block to the western edge of the site.

- Figures 4, 5 and 6 of the noise report show the sound levels recorded during the survey. BS4142 uses average sound levels which has the effect of smoothing out the noisier events. The green line on the graphs show the maximum noise level recorded.
  - Figure 4 shows night time noise and is included to illustrate sound levels attributed to night time trains. However there is a peak between 08:30 and 09:00 in the morning which showed the maximum noise level went up to 90dB. There is no annotation to show what caused this peak. It may have been caused by operations at the scrap metal yard.
  - Figure 5 shows daytime noise levels on 20<sup>th</sup> December. There is a peak between 10:40 and 10:45, marked as 'use of grab handler,' which goes over 80dB, the sound levels is close to 80dB for around 5 minutes. There is a peak between 11:20 and 11:25 which reaches approximately 78dB which is not labelled. Train movements are marked and appear to peak at or below 70dB, but this peak has not been labelled. It is assumed in absence of evidence to the contrary this noise was from the scrap metal yard. Sudden noises like this could have a significant effect on residents of the proposed properties.

This graph shows results from approximately 10:40-11:35, less than 1 hour. There is

no record of the noise for the start of the day or afternoon. This graph was not representative of a full operational day at the scrap yard.

- Figure 6 shows results from just before 10:00 to approximately 18:00 on 6<sup>th</sup> January 2012. There is no record for the sound levels at the start of the day. If we look at the maximum sound levels we can see two of the peaks have been marked. The 'use of the grab handler' for 5 minutes showing sound levels over 80dB. Within the same hour metal loading/unloading for 9 minutes peaking at nearly 90dB. These 2 activities, within the same hour amount to 14 minutes in this hour of sound levels of approximately 80dB. It would seem reasonable to assume that this sort of activity, and these levels of noise, could be a frequent occurrence.

Through the remaining 6 hours of the noise survey there are a further 6 peaks over 80dB which have not been labelled. Two peaks which reach approximately 70dB are labelled as 'High Speed Train.' Due to the difference in sound levels it is reasonable to assume that the 6 unlabelled peaks are not train movements but are likely to be noisy activities from the scrap metal yard. Sudden very loud noises like this are likely to have a significant effect on potential residents.

The scale of the submitted graphs makes it difficult to interpret the data accurately. We would like the data presented in hourly graphs.

A number of letters of representation submitted by nearby residents support our concerns that the noise measurements do not adequately represent the noise from the scrap metal yard.

#### Paragraph 4

##### *Historic noise reports*

The applicant continues to refer to historical noise surveys to back up the findings of this current noise survey. If the applicant wishes to rely on these reports to support his application, they must be provided in evidence in order that they may be considered in the context of the application

I note the survey conducted in connection with the site to the East of the proposed development which was submitted with application E/09/1206/REM for houses behind the station car park. If this survey is one that the applicant refers to I can confirm that it does not support the findings of the current noise assessment for a number of reasons:

- The survey location was 125m to the east of the survey location for this report, and approximately 115m further away from the scrap yard than the nearest properties will be in this proposal.
- The scrap yard was not mentioned as a noise source in this noise survey, the focus was on the trains.
- In a similar trend to the current noise survey it appears that no contact was made with the scrap metal yard to check that they operating as normal on those days, they may not have been operating at all.

#### Paragraph 5

We are yet to see evidence that scrap yard activities have been broadly consistent over time. In regards to historical complaints we have received complaints from 3 separate households since 2008. One of the households complained on 2 separate occasions. The complaints who contacted us about noise from the site are at least twice as far away from the operational area of the scrap metal yard that the nearest residents proposed here.

#### Paragraph 6

This department does not consider the report based on surveys carried out on 2 days as representative. Particularly as we have no evidence that the operator of the site has confirmed their operations at the time were typical. The survey on one of these days was carried out for less than an hour. The surveys did not start until approximately 10am whereas the scrap yard is permitted to commence scrap metal conversion at 8am 6 days a week.

### Paragraph 7

*We are yet to see the historical noise reports or the reasoned conclusions based on their findings. However, as the applicant states that the surveys were for adjacent sites, not this site so their findings and recommendations were likely to have been different.*

*In addition to the comments above I have spent further time studying the noise assessment and documents that were submitted at the pre application stage. Table VIII shows estimated façade levels due to scrap yard activity. This table does not show the estimated levels for the western façade of block 11-14, the closest façade to the scrap yard. In the pre application information the estimated façade level at 1<sup>st</sup> floor level height was 62.6dB.*

*While referring to the floor plans it can be seen that the only window on this façade will be the bathroom window, however, there is no mention of this window being sealed. If this window is opened it will only provide around 10dB reduction in sound levels. The average sound level experienced inside the property through could be around 52dB. I say average; there would be peaks much higher than this. At the north gable end of this block there are windows leading on to an open plan kitchen/living room. On the south gable end there is a protruding bay style window on the ground and first floor leading in to a dining/living room.*

*The windows on the north and south gable ends would obliquely overlook the scrap yard and be much less protected than those windows facing away from the scrap yard. Their exposure to noise, and the potential route for noise break in they create, is not assessed in the acoustic report. These windows would not receive much if any screening protection from the building; particularly as we are now aware that the plant at the scrap yard can and does move around the site. Should the windows be opened they would only provide around 10 dB reduction in sound levels and we would therefore expect noise levels within those habitable spaces to be above the recommended internal noise levels when the scrap yard is in operation. BS8233 and the World Health Organisation recommend that sound levels from anonymous noise sources in habitable rooms should be below 40dB for a reasonable level, or 30dB for good. This is the recommendations for anonymous noise sources. The noise generated by the scrap yard operations is far from anonymous.*

*Should the potential residents wish to complain to this department about noise from the scrap yard we would have a duty to investigate. If we found that the noise was causing a statutory noise nuisance under the Environmental Protection Act 1990 we would be required to take legal enforcement action. This may obviously lead to significant restrictions or changes to the operation of the scrap yard. Alternatively, the business may successfully claim they have used "Best Practicable Means" which would effectively give the scrap yard licence to continue causing a nuisance. We would suggest that the possibility of either of these outcomes should be avoided.*

*We would also highlight that the NPPF goes to great lengths to highlight the need to promote and protect businesses. Including the following paragraphs which are particularly relevant:*

*Paragraph 109 states that the planning system should contribute to and enhance the natural and local environment by "... preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution...."*

*Paragraph 123 which states that Planning policies and decisions should aim to "... recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established...."*

*It should be noted that the applicant is yet to confirm their proposals for acoustic glazing and associated ventilation for all habitable rooms on the sensitive facades. The consultant sets out in 5.2.17 that suitable double glazing and mechanical ventilation should be installed to reduce noise from the scrap yard. This is also the case for the sensitive facades facing the railway line as set out*

in 5.1.5. The consultant recommends that all habitable rooms have acoustic ventilation. The applicant has yet to provide details of this aspect of the application.

Edwards Irish Partnership have submitted a further letter dated 8<sup>th</sup> February 2013. The following is in response to the points raised in that letter. The applicant has commented on our concern about intensification of use of the site beyond that discussed within the acoustic report. Before commenting further I would highlight that we do not accept that there is sufficient evidence to demonstrate that the acoustic report is representative of the operations on the scrap yard site for the reasons outlined elsewhere in these comments.

Firstly, The operator of the scrap yard would, under his existing planning approval, be perfectly entitled to operate the site and equipment continuously during their working day. There are no restrictions in the planning approval preventing them from doing so.

Secondly, it's generally accepted that the average normal business will operate as efficiently and consistently as possible. In our view the assumption that the existing scrap yard operator will only operate for 15 minutes in the hour highlights that the intensification of this the current use, in terms of its operating time, is reasonably foreseeable.

It is also reasonably foreseeable that the site might change hands and be operated by someone else with, for instance, different equipment, different workloads, more prolonged working hours etc. Any suggestion that we should ignore the reasonably foreseeable and perfectly legal intensification of use of the scrap yard is unreasonable and wrong.

The Environmental Protection team has received no evidence to cause a change in our recommendation that this application is refused.

#### Environmental Health Officer (Environmental Control and Protection) comments on amended plans

I understand that the applicant will not be submitting any further noise data regarding this proposed development and that it is hoped that the case will be heard at committee on 4<sup>th</sup> April.

I therefore attach details of my visit to the site on 12<sup>th</sup> February when an assessment was made of some of the noise from the scrap yard. The report backs up comments that have been made by this department in this and previous responses about this application.

The detailed comments made on my response dated 15<sup>th</sup> February still stand. In summary the main points were:

- The noise survey and submitted assessment do not reflect the noise levels produced by activities at the site.
  - We do not agree with the assumption that noisy work takes place for around 15 minutes in the hour. The report of my visit on 12 February 2013 attached here clearly demonstrates that assumption is incorrect.
  - The grab handler on site is on tracks and therefore moves around the site, making the calculations based on noise measurements from one point unrepresentative.
  - The fact that the grab handler can move means it is likely that the screening effect of block 11-14 will be significantly reduced.
  - The small grab handler and lorries delivering skips of metal do not appear to have been considered in the noise assessment.
  - The assessment does not accurately reflect the impact on potential residents of the peaks in maximum sound levels emanating from the scrap metal yard.
  - Noise survey was carried out over 2 days. On one of these days recordings were made for less than an hour. The owner of the scrap yard was not contacted to make sure that these were typical working days; they may have been very quiet days. They were both in the winter, when activities at the site are likely to be reduced due to wet weather and poor ground conditions.

- *Using figures supplied by the noise consultant it can be seen that it is likely sound levels inside the block 11-14 will not meet levels set out by British Standards and by the World Health Organisation.*
- *Notwithstanding the points above it is reasonably foreseeable that operations at the site may increase in terms of noisy equipment or the amount of time that noisy equipment at this site is used. For clarity we are referring to the perfectly legal increases in use under the scrap yards existing planning approval. Such increases would clearly invalidate the findings of the acoustic report. During a recent conversation with Mr Black of Pewsey Metal he confirmed that he was currently looking to bring in more business to maintain economic viability of the company.*

### **EHO Assessment of noise from Blacks Scrap Metal Yard 12<sup>th</sup> February 2013**

*On 12 February 2013 I visited the development site to make an assessment of noise from the site. I arrived at 8:30am and parked on the road. At 08:47 vehicle noise was heard coming from the scrap metal site. I left my car and discovered that the large "Grab handler" had been turned on. I walked on to the development site - to the location indicated by the red "X" in Figure 1 below, and set up a sound level meter to measure the levels of noise coming from the scrap yard. Between 08:48 and 09:03 the engine was left idling. At 09:03 the grab handler began operating. It was picking up metal, rotating, and depositing the metal in another location, it continued to do so until 09:27. I continued to take measurements of the general environmental noise in this location until 10:05. I have included a table of data, Figure 2; a time history of the average (LAeq dB) measured noise levels during my visit Figure 3; and a time history of the maximum (LAmx dB) sound levels while the grab handler was in operation, Figure 4.*

*My observations during the visit were that the operation of the grab handler was a very significant noise source. During its operation the noise from the grab handler was by far the most significant noise source in this area and the other sources of environmental noise were insignificant in comparison. In particular the picking up of the metal, rotation of the grab handler cab, and the dropping of the metal were all clear and identifiable noise features.*

*In my opinion locating any residential properties in such close proximity to the scrap yard, and in particular the grab handler, is likely to lead to the occupants of those properties being seriously and adversely affected.*

*The noise data in Figures 2 and 3 speak for themselves and illustrate that the operation of the grab handler leads to a very significant increase in noise. They show a dramatic and very significant increase in environmental noise on the development site when the grab handler is in operation. The noise level (LAeq) caused by the operation of the grab handler is significantly over and above the background noise levels in its absence.*

*The difference in equivalent continuous noise level (LAeq) between the operation of the grab handler and its absence is 17.3dBA. The difference between the equivalent continuous noise level (LAeq) and the background noise level (LA90) is 29.2dBA. To put this in perspective, the operation of the grab handler is, in terms of its subjective loudness, around three times as loud as the general background noise levels in this area.*

*The maximum noise levels (LAmx) are also very important in assessing the impact of a noise. As you can see from the time history below during the operation of the grab handler there are frequent, very high, sudden peaks in noise level. From my observations these increases in were caused by the grab handler dropping material. On one occasion this peak in noise level reached 91dBA and peaks were regularly in excess of 80dBA. My on site observations when these peaks occurred were that the noise level was so high they gave the impression that the ground was shaking. In my opinion these frequent, sudden very high sound level would startle some residents.*

*The measurement location was representative of plot 1 and is further away from the noise sources than the nearest proposed dwellings plots 11-14. I would highlight that the noise assessment assumed that the grab handler would not be in use for more than 15 minutes in the hour and that the grab handler is a static noise source. My observations on site illustrate that both these assumptions are incorrect and calls into question the conclusions of the acoustic report and in particular the BS4142 assessment.*

*As you will see from this report I measured a noise level of 66 dB Laeq on the development site, at the location indicated on Figure 1, when the grab handler was in operation. The noise report (see para 5.2.7) and noise model appears to have used a source noise level of between 60 and 65 dBA at the boundary at survey position SP1 (seen on Page 24 of the noise assessment). When taking into account that our measurement point was significantly further from the noise source and that a barrier along the boundary was providing some acoustic screening during our measurements it would appear the source noise levels used in the noise assessment are a significant underestimation.*

In late June 2013 a report of the survey and assessment of noise emissions experienced on the site was submitted to the Council, on which a further round of consultations and notifications was undertaken. Members are encouraged to view this report, which has been uploaded to the Council's planning website pages for this application, and is named "Noise Survey June 2013".

Environmental Health Officer (Environmental Control and Protection) comments on additional noise survey submission

*The submitted assessment had been given all due consideration. However, the information supplied does not enable us to alter our recommendation that this application is refused.*

*The assessment has failed to allay our concerns that future residents of the proposed dwellings will be subjected to equivalent continuous and peak noise levels that will cause a loss of amenity and potentially a statutory noise nuisance. In particular we are concerned that sudden, very loud incidents of noise from the scrap yard are likely to be highly intrusive at residential properties that will be in such close proximity to this industrial site.*

*I will list our main concerns with the noise assessment as they appear through the document:*

*3.2.5 I believe there is a typing error here; it is important that this information is accurate. This section states that the sound level meter (SLM) was in position S2. I believe it should say S1.*

*3.2.6 Unfortunately the scale of the axis in Figures 7 and 8 mean that they are very difficult to analyse. It is impossible to compare the peaks with events described in Appendix C. In my comments dated 15/02/2013 we requested data in hourly graphs. Notwithstanding this these graphs show sustained periods where the maximum sound levels are over 90dB. These maximum sound levels are of great concern they will be detrimental to amenity and potential residents using outside space will find these sound levels highly intrusive.*

*3.2.7 and 3.2.10 There are no details in the report as to how the measured levels were corrected to remove the contribution of passing trains.*

*3.2.8 It is stated that the Client expressed concern that activity in the scrap yard may have been artificially high due to 'grandstanding.' While it is accepted that the operator would have been able to see that monitoring was being carried there is no evidence to show that the activity was not 'normal activity.' Because of the "grandstanding" concerns further noise measurements were then taken at S4 on the boundary of the Old Hospital site. We do not accept that noise measurements from position S4 are representative of the development site. The 'operational area' of the scrap yard has a breeze block wall of over 6ft in height on the boundary with the railway. There is no line of sight between this measurement location and activities taking place at or near ground level. These measurement results will therefore have been affected by the acoustic screening of the boundary*

wall.

*BS5228-1:2009 Code of practice for noise and vibration control on construction and open sites states: "In the absence of spectral data, as a working approximation, if there is a barrier or other topographic feature between the source and the receiving position, assume an approximate attenuation of 5 dB when the top of the plant is just visible to the receiver over the noise barrier, and of 10 dB when the noise screen completely hides the sources from the receiver."*

*If it's assumed that the boundary wall provided this level of reduction then the noise measurements taken at S1 and S4 would appear to be entirely consistent with one another- i.e. 68dBA.*

*Notwithstanding this we consider that the measurements from location S1 should be used for calculations through the rest of the report. They are representative of the noise levels at the development and even if they do illustrate a worst case scenario, residents will have to live there 365 days a year and are therefore likely to experience worst case scenario noise levels.*

*3.2.10 The graphs in Figures 9 and 10 are impossible to read accurately. However, they do show a considerable number of peaks in sound level over 90dB. Future residents are likely to find these peak impulsive noise levels highly intrusive and startling.*

*5.1.5 While this section sets out options for ventilation of rooms that will need to have windows closed to maintain acoustic integrity of the façade there is no commitment to one of these options. If the residents were to open these windows and then complain of noise nuisance we would have to investigate and take appropriate action as necessary. It is therefore likely that on sensitive facades windows will need to be sealed. There is no indication in this section that the options listed will be sufficient to provide sufficiently rapid means of ventilation to replace openable windows. This would be essential in warm weather conditions.*

*5.2.4 The model illustrated in Figure 11 is based on two noise sources in stationary positions. Both the grab handler and forklift are mobile and as such will operate in different parts of the site. In addition to this the observations listed in Appendix C show a number of different and significant noise sources on the site. For example the repeated and frequent use of a chain saw to cut metal. The location of these other activities on the site are not addressed in the noise report and are instead assumed to be taking place from one or both of the two stationary positions used in the model.*

*The model shows the expected sound levels at certain facades, if noise from the site is coming from the positions assumed in the model. These positions are directly behind block 11-14 that is designed to provide some attenuation of noise. Block 11-14 will be ineffective as a barrier to noise if the forklift or grab handler move or if noise is from one of the other activities on the site.*

*5.2.8 Table XII. This table does not give sound levels of the western, northern or southern facades of block 11-14. The northern and southern facades have windows that lead on to open plan living spaces and are very close to the boundary with the scrap yard. In addition to this; while there is an estimate of the internal sound levels block 11-14 at ground level there is no estimate of the internal sound levels at 1<sup>st</sup> floor level. The 1<sup>st</sup> floor will not be protected by the 2 ½ m fence along the boundary.*

*5.2.14 Based on a source sound level of 63dB and the calculations in this report average internal sound levels in the rooms listed in Table XII will be between 30-40dB. However we do not accept that the source sound level of 63dB measured from the old hospital site is representative. The statement in this section does not take into account the maximum sound levels that are shown in Figures 5-10. These very loud noises are effectively smoothed out by using the equivalent continuous sound level.*

*5.2.18 The results of the BS4142 assessment are shown in Table XIII. The report concludes that "...there is a small potential risk of complaint..." from parts of the site. We do not agree with this assessment. BS4142 states that a rating level of +5dB is of marginal significance and +10dB indicates complaints are likely. There are a number of rating noise levels in the upper region of the*

*+5dB to + 10dB range and we think these results have not been given the significance they deserve in the report.*

*We would add here that although complaints from future residents and action being taken against the scrap yard for “statutory nuisance”, is a risk we are concerned about our principal concern here is the loss of amenity for the future residents who will have to live with the noise from the scrap yard.*

*In our view the results of the BS4142 assessment present clear evidence that the future residents will suffer a loss of amenity and disruption caused by the operation of the scrap yard.*

*For clarity we would highlight here that source noise levels of 63dBA have been used as a basis for the BS4142 assessment. We dispute, for the reasons discussed in this response, that 63dBA is the appropriate source noise level to have used in the assessment. Its quiet clear that if the 68dBA noise level had been used for the source noise level then the rating levels for various parts of the site would have been +10dB for various parts of the site and that complaints would be likely.*

*5.2.21 The houses on the old hospital site have some protection from noise from the scrap yard. The facades of these properties approximately 35m from the boundary of the scrap yard, a number of proposed properties will be within this distance, the closest façade being 4m from the current boundary. There is also the breezeblock wall on the scrap yard site, a 3m high fence, vegetated zone of around 4m and then a 6ft garden fence. All of these factors will reduce the effect that noise from the scrap yard has on the residents using their properties on the old hospital site.*

*I have been asked to look at some comments submitted by a local resident, Mr Hughes on 10<sup>th</sup> July. I can confirm that there is nothing in the comments which cause us to change or amend our comments or recommendations.*

*To summarise; the noise assessment has failed to show that noise levels produced by the scrap yard can be satisfactorily mitigated. The report makes a number of unsupported assumptions which have the effect of under estimating the noise impact of the scrap yard on the development site. We therefore maintain our recommendation that this planning application is refused.*

## **8. Publicity**

The application was advertised by site notice and notification letter to nearby addresses. Notification of the receipt of amended plans was sent to neighbours and those who had commented on the initial plans. Further notification of the receipt of the additional noise report was sent to neighbours.

In summary, comments received from neighbours and other members of the public include the following points:

- Planning permission for development on this site has been refused many times
- The development would cause additional traffic problems along this narrow route
- Wilcot Road is supposed to be one way at this point but this restriction is being ignored
- On-street parking provision would be lost
- Large vehicles exiting the site would increase the risk of accidents, both with other vehicles and with pedestrians using the footway opposite the site (which is level with the road)
- The scrap yard is too noisy to live close to, and garden areas will be unusable
- New homes close to the established scrap yard would prompt complaints that could restrict the business
- The noise survey isn't accurate: the scrap yard is noisier than indicated, and there are numerous inaccuracies in the noise report.
- The boundary between the Crown Public House and the plot no. 1 house is wrongly shown (it means that house may be built on the Crown Inn's land)
- This development would be followed by a proposal for the builder's yard, then the railway car park adding more traffic to Wilcot Road

- New residents could complain about the noise from the railway line, threatening the service
- The ecological survey was carried out after the site had been cleared anyway – perhaps if carried out before all the trees were removed the outcome would be different
- Many residences close to the site had rat infestations as a result of the clearance of its vegetation
- The clearance of the land and its development does not accord with the idea of a conservation area
- Bats and common lizards are present on the site, and many birds nest in the hedge
- The mature hedgerow along Wilcot Road is a valuable part of the natural street scene
- Flash flooding has affected properties in Wilcot Road – the proposal will do nothing to help this
- Rear windows on plots 2 and 3 will overlook existing residences on Wilcot Road
- Permission given for a garage and office above will overlook plot 1
- Proposals for trees proposed to be planted on or near boundaries should be changed to stop branches overhanging/roots disrupting other property
- A modern estate would look out of place in the variety of old buildings along Wilcot Road
- No objection to the principle of the development, but issues of parking, landscaping etc. are important.
- Re-iteration of the points made on original and first amendment proposals.

## **9. Planning Considerations**

### **Sustainable location**

The site is considered to stand in a sustainable location, within the bounds of this reasonably well-serviced settlement, enjoying commercial, social and employment provision within walking distance. Links by public transport are also good. The proposal shows an efficient use of the plot in terms of numbers of homes, and the layout is considered to create a reasonable sense of place, with the scale, form and presentation of building units set out in an acceptable design.

### **a) Noise issues**

The principal constraint to residential development on this site is its capacity to deal with the noise emissions from adjoining land uses. The railway to the north of the site is a main line into London, with Pewsey Station performing an important role as a stop on this cross-country route. The Crown Public House, fronting Wilcot Road, has a small beer garden that would border the garden of plot 2. Of greater significance, however, is the scrap yard to the west, where operations can cause noise levels that would be unacceptable without mitigation. The question in this case is whether the data submitted, concerning the levels of noise emitted from uses neighbouring the site, is accurate, relevant and comprehensive, and whether the measures to reduce the levels of disturbance proffered (in the design and orientation of the buildings) would adequately mitigate the likely disturbance. The evidence and assessment of this issue of both the applicant and of the Environmental Health Officer is set out in section 7 above. It is considered that, notwithstanding the points made by the agent relating to levels of operation historically, the ability of the Council to control activities on the scrap yard site, and the design measures incorporated into the layout and construction of the buildings, there remains a likelihood of inadequate levels of residential amenity being provided for the new residents, and little guarantee of safeguarding even that level of amenity, without imposing a restriction on the business activities of these enterprises.

### **b) Highways and parking**

The level of additional traffic that the scheme would generate is considered to be acceptable for the local highway network to absorb, provided the revisions to the highway and traffic management arrangements are secured. The scheme incorporates new parking which is considered to improve on the situation presently. Should further applications for permission be forthcoming, to develop other plots adjoining and to use the same access as now proposed, a

further assessment of the issues will need to be undertaken. In principle, there is no objection to the development, therefore, on highway grounds, although permission should be refused if there is no accompanying agreement to oblige the applicant to secure necessary highway works.

### **c) Grain and density of development**

The pattern of development on the south side of Wilcot Road itself is mainly in ribbon form along the street frontage, although there are some strands of development or individual houses set back from this core alignment on the north side of the route. Development to the south, in the C20 estate, has a regular spacing of pairs and terraces of housing, with front gardens, while development further to the west is of much larger modules (school buildings) or conversions of historic structures (Pewsey Workhouse). There is no strict pattern of development to follow among the surrounding built forms, therefore. The density of development within these various patterns is quite high, and the scheme is considered, for the reasons set out in the first part of this section, to be acceptable.

### **d) Impact on the character, appearance and integrity of heritage assets**

The character and appearance of the area has been recognised as of value culturally and aesthetically in the designation of part of Wilcot Road as a Conservation Area. The road frontage of the site falls within this designation. The scale, design and orientation of the proposed house on plot 1 at the entrance to the site is acceptable, given the spacing, size, form and variety of materials and architectural styles that are evident along the northern side of Wilcot Road. The loss of the hedge would not preserve the character or appearance of this heritage asset, but the proposal would replace this green edge with another of mixed native species, at least for part of the street frontage, and would retain the field maple in the south east corner of the site.

The potential archaeological importance of the site has been acknowledged, and the identification and recording of any below-ground heritage asset can be secured by condition, as suggested.

### **e) Trees, landscaping and wildlife habitat**

The clearance of the site is indeed regrettable, not because it resulted in the loss of any outstanding tree specimens, but because it altered the habitat on the land before a full investigation of its biodiversity resource could be properly recorded. The measures set out in the ecology report, to safeguard the strip of land along the railway to continue this wildlife corridor, are important. The tree planting shown on the boundary of the rear gardens of plots 9 and 10 with the wildlife corridor are not likely to cause any problem in terms of proximity to the railway line.

### **f) Contamination issues**

Both the Environment Agency and the Council's Public Protection Officer raise no objection to the scheme following the submission of information on the potential for pollutants to be already on the site, or for the development site to become a receptor.

### **g) Impact on neighbouring amenity**

The proposed development would cause no unacceptable overlooking or overshadowing of other residential property. The upper floor rear windows (serving bedrooms) of proposed units 2, 3 and 4 would be a minimum of 11 metres away from the boundaries of adjoining gardens, with no direct aspect into windows of other dwellings on Wilcot Road. The proximity of the proposed house on plot 1 to the boundary of the Crown PH, and to any permitted building on that property, does not warrant the refusal of the scheme.

### **h) Public recreation facilities**

Although there are areas of shared landscaping to the east of the proposed flats building, and

elsewhere around the site, the scheme does not show any reasonable amount of communal garden to satisfy the requirements of policy HC35, with regard to recreational space on new residential developments. Although confirmation has been received that the applicant is willing to enter into an agreement with the Council to make an appropriate financial contribution towards recreational facilities at the new Pewsey Campus (at the Pewsey Vale School, Wilcot Road), in the absence of a signed agreement to this effect the scheme must be considered to be in conflict with policy HC35 of the local plan.

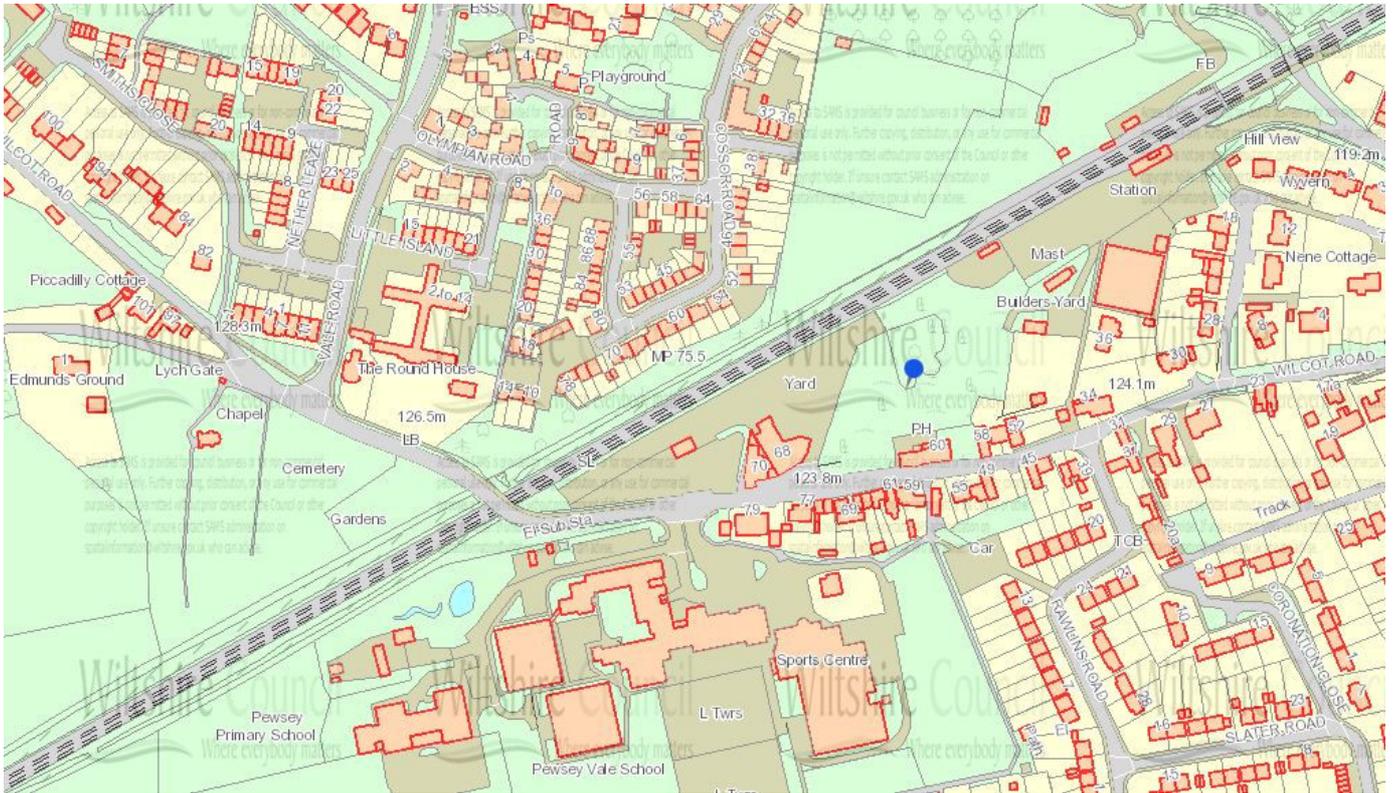
## 10. Conclusion

This scheme has been subject of pre-application planning advice, and during its assessment as a formal application for planning permission dialogue with the agent has sought to overcome problems identified (highways, parking, landscaping and open space) with the proposal. These discussions have resulted in the amended scheme now before committee. Although subject of much investigation and analysis, no resolution has been reached to the problem of placing noise sensitive development next to noise-emitting land-uses, and so for the reasons set out in this report, it is concluded that planning permission should not be granted for this proposal.

## RECOMMENDATION

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

1. The proposed development would be located within close proximity to established sources of noise that would be likely to cause unacceptable levels of disturbance to the occupiers of the units. The information provided has not demonstrated that there would be no statutory noise nuisance experienced by the new residents. The impact of the existing neighbouring land uses, particularly in terms of noise and disturbance on the residential use of the site would be likely to represent an incompatible mix of land uses, resulting in poor levels of residential amenity, contrary to the terms and objectives of Policy PD1 of the Kennet Local Plan 2011. Furthermore, the introduction of a noise sensitive development on the site would be likely to place unreasonable restrictions on the continuance of the established businesses nearby, in conflict with the advice contained in the National Planning Policy Framework 2012. The proposal is therefore considered not to accord with national and local planning policy and guidance.
2. The proposed development includes no mechanism for securing the provision of a suitable amount and type of public recreational facilities on or near the site to serve the increased population to be housed in the development. The proposal therefore conflicts with the requirements of policy HC35 of the Kennet Local Plan 2011 and advice contained in the National Planning Policy Framework 2012.
3. The proposed development includes no mechanism for securing the provision of works to the highway and traffic management arrangements that would be necessary to ensure the safe and convenient integration of the development into the local highway network. The proposal therefore conflicts with the requirements of policy PD1 of the Kennet Local Plan 2011 and advice contained in the National Planning Policy Framework 2012.



**Appendices:**

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

- History files
- National Planning Policy Framework 2012
- Kennet Local Plan 2011
- Conservation Area Statement for Wilcot Road