

Regulatory Committee

9th June 2005

Planning Services

List of Applications for Consideration

1 K/51116/F (page 5)

Full Planning Permission for : Change of use to A4 use (public house), including demolition of rear section of building and new part two/part single storey extension, plus minor alterations
37-38 St Johns Street, DEVIZES

RECOMMENDATION: Grant Full Planning Permission

2 K/51772/F (page 13)

Full Planning Permission for : Installation of telecommunications base-station
Wansdyke Crossing, LITTLE BEDWYN

RECOMMENDATION: Grant Full Planning Permission

3 K/51295/VAR (page 21)

Variation of Condition application for : Variation of condition no. 13 of planning permission K/034918 to remove requirement to construct private drives between the estate road and the edge of the site with Orchard Close and adjacent land
Kelham Gardens, MARLBOROUGH

RECOMMENDATION: Grant Permission for Variation of Condition

4 K/51916/F (page 30)

Full Planning Permission for : Extensions and alterations
The Old Chapel, COLLINGBOURNE KINGSTON

RECOMMENDATION: Grant Full Planning Permission

5 K/51791/F (page 34)

Full Planning Permission for : Formation of access and parking area for one vehicle on north side of lane

Field adjoining Riverside Cottage, RAMSBURY

RECOMMENDATION: Grant Full Planning Permission

6 K/51977/F (page 38)

Full Planning Permission for : Two-storey extension to side and loft conversion with rooflights
62 London Road, MARLBOROUGH

RECOMMENDATION: Grant Full Planning Permission

7 K/52014/F (page 41)

Full Planning Permission for : Proposed detached bedroom annexe
Orchard View Cottage, Close Lane, MARSTON

RECOMMENDATION: Grant Full Planning Permission

8 K/52147/F (page 45)

Full Planning Permission for : Conversion of single house to three self contained units
14 Kingsley Gardens DEVIZES

RECOMMENDATION: Grant Full Planning Permission

Item 1:

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|-------------------|--|
| APPLICATION: | K/51116/F |
| PARISH: | DEVIZES |
| APPLICATION TYPE: | Full Planning Permission |
| PROPOSAL: | Change of use to A4 use (public house), including demolition of rear section of building and new part two/part single storey extension, plus minor alterations |
| SITE: | 37-38 St Johns Street, Devizes SN10 1BL |
| GRID REF: | 00399 61404 |
| APPLICANT: | J D Wetherspoon Plc |
| AGENT: | Hepher Dixon |
| DATE REGISTERED: | 26th October 2004 |
| CASE OFFICER: | Mr R Parker |

SITE & LOCATION

This application relates to a property formerly occupied by Beales of Bath in St. John's Street in the town centre of Devizes. The property, which is currently vacant and boarded up, lies immediately to the west of the zebra crossing and directly adjacent to The Crown Centre.

SITE HISTORY

K/18219 & K/18241/L – Alterations to provide 2 no. additional flats, refused planning permission and listed building consent in 1992.

K/044738 – Change of use of upper parts to ancillary retail use, construction of single storey extension to rear, granted planning permission in March 2003.

K/044740/L – Alterations including partial demolition and erection of single storey extension to rear, granted listed building consent in March 2003.

K/51119/LBC – Demolition of rear section of building and new part two/part single storey extension, plus minor alterations to facilitate conversion to A4 (public house). This is the counterpart listed building consent application to the current planning application. The application remains undetermined, although officers propose to approve it under delegated powers in the event that the Regulatory Committee grants planning permission.

DESCRIPTION OF DEVELOPMENT

The proposal is for a change of use to A4 use (public house), including demolition of the rear section of the building and a new part two/part single storey extension, plus minor alterations.

PRINCIPAL AMENDMENTS SINCE SUBMISSION

The application has been amended since its original submission to address officer concerns regarding the impact of the proposals upon the fabric of the Grade II listed building and the appearance of the rear extensions.

ADDITIONAL STATEMENT BY THE APPLICANT

The applicant has submitted a comprehensive statement in support of this application which is available to view on file.

TOWN COUNCIL COMMENTS

No objections.

CONSULTATIONS

County Highways (Mr Wiltshire) – no objections.

KDC Environmental Health Officer – no objections subject to the imposition of conditions to (i) prevent the broadcast of music inside the premises and (ii) control noise levels. The beer garden wall should be a minimum of 2 metres in height.

County Archaeologist – no objections subject to an archaeological watching brief to be secured by planning condition.

English Heritage has been consulted upon the application but does not wish to make any representations on this occasion.

Trust for Devizes – The Trust is sensitive to the fact that the building is a significant historical asset of the town, and that there may be few or no occupiers willing to invest the necessary sums in its restoration. However, whilst the Trust would not want Wetherspoons to be deterred from taking responsibility for the premises, it urges that a process of negotiation be undertaken in order to minimise the negative conservation impacts of their proposals.

REPRESENTATIONS

Six letters of objection have been received raising the following points:

- a) Noise through walls and from the beer garden, raised voices/shouting, music and air conditioning units.
- b) Smell from food/smoke.
- c) Potential anti-social behaviour. Vandalism, litter, bottles/glasses, urinating in the street.
- d) Impact upon the Conservation Area. St. John's Street is characterised by small shops and offices at present. Such a large national pub chain would appear out of place. There are already numerous pubs in the wider surrounding area.
- e) Loss of a retail unit, there are not enough shops in Devizes.
- f) Noise, dust and disruption caused during demolition/building works to the rear.
- g) There are already enough pubs in Devizes, particularly in relation to the population (objectors quote figures in the order of 20 existing pubs and registered clubs in the town centre).
- h) Vehicular access to the site is substandard and no parking can be provided to cater for staff or customers. There is very limited car parking in the town centre already and the demand for this will be exacerbated by future housing developments in the town.
- i) The number of deliveries quoted by the applicant's traffic consultants (6 per week) could easily be exceeded and vehicles would be reversing past the objector's property in Castle Lane. The lack of pavements will make these vehicle movements both hazardous and a nuisance to residential occupiers in Castle Lane.
- j) The proposed change of use would have an adverse impact upon the residents of Barford House and other residential properties in the area by virtue of noise, traffic generation, vandalism and burglary.
- k) The rear access to the property is totally inadequate to cater for construction vehicles and those servicing the development. Use of the access would be a

nuisance to the day-to-day running of The Crown Centre which uses its rear access for elderly and infirm members, ambulances and deliveries.

- l) The proposed refuse store is too small for the size of establishment and collection of refuse would cause a nuisance.
- m) The proposal should not be allowed simply on the basis that the applicant will spend money improving the appearance of the property. The Council has powers to force the owner to maintain the building.

Representations have also been received from the local brewery Wadworth, the Kennet & District Licensed Victuallers Association & the proprietors of The Bear Hotel, The Black Swan and The Pelican. They raise the following concerns:

1. There are enough pubs in Devizes for the trade that exists, and therefore the proposals will spread the profits more thinly and take jobs away from other pubs and cafés in the town. The proposals will result in the closure of smaller public houses which cannot compete on prices with a much larger company. Wadworth is the jewel in Devizes' crown, bringing many visitors to the town with its traditional dray horses, and it is not in a position to compete with a much larger company.
2. A Wetherspoons pub will bring nothing new to Devizes.
3. A pub the size of the Wetherspoons proposal, which is over 325m² of trading area and therefore over double the size of the Old Crown, six times the size of the Black Swan and White Bear, will need to be a volume-led venue with a capacity of over 200 people. This can only bring more problems to the centre of Devizes.
4. Wadworth is currently investing over £1 million on the Bear Hotel. It believes that a venue within 100 metres of this lovely old building which turns out over 200 people at 10:30–11pm on a weekday evening and 11–11:30 on a Friday and Saturday night, will be detrimental to The Bear and its facilities and to tourism and to any chance of getting some form of order in the town centre.
5. Devizes does not have the capacity to cope with Wetherspoons' volume alcohol sales and customers. The town has no CCTV, limited policing, a ban on serving under 21s in the off licence on Fridays, window breaking sprees and large gangs of youths making the Market Place a no-go zone on weekend evenings.
6. Wadworth is led to understand that a volume-led Wetherspoons majors on selling cheap alcohol, in particular alcopops and premium packaged spirits, so that the young will be well "tanked up" before they go into the Corn Exchange or other late night venue. It does not believe this will be good for Devizes.

POLICY CONSIDERATIONS

The site lies within the Town Centre for Devizes, as defined in the adopted Kennet Local Plan 2011, but outside of the Prime Shopping Area. The site lies within the designated Conservation Area and the building is Grade II listed. Policies PD1, HH5, HH8, AT9 & ED19 of the adopted local plan are relevant to the consideration of this application. Government guidance contained in PPG15 Planning and the Historic Environment, PPS6 Planning for Town Centres and PPG24 Planning and Noise is also relevant.

PLANNING OFFICER COMMENTS

Policy Background

Policy ED19 of the Kennet Local Plan 2011 states that, outside the Prime Shopping Area and within the Town Centre defined for Devizes, planning permission will be granted for the change of use of premises to uses other than A1 (retail) provided that the proposal:

- a) does not create major breaks in the existing commercial frontage;
- b) introduces activities likely to enhance the vitality and viability of the centre; and
- c) integrates with the existing historic fabric of the town.

Impact on Commercial Frontage

It is not considered that a public house would create a major break in the existing commercial frontage, particularly given the mixture of ground floor uses in that row of buildings – i.e. offices belonging to a company of financial advisers, a private members club, estate agent and bank.

Impact on Vitality and Viability

It would be difficult to argue that a public house does not contribute to vitality and viability. Wetherspoons has a reputation for all-day opening with a popular daytime food menu. Pedestrian footfall figures are likely to be increased by this type of use, particularly when compared against the former retail use (Beales of Bath, a traditional women's outfitter). Indeed, it could easily be argued that the property is off-pitch for retail purposes, falling outside of the Prime Shopping Area, separated from other shops by St. John's Street and consequently not enjoying anywhere near the same levels of passing pedestrian traffic as, for example, The Brittox or the opposite side of the Market Place. The sizeable floorspace of the building (250 sq.m.) is such that it would only attract national multiple retailers who are likely to be put off by the property's less than prime location and the quirky character of the listed building with its nooks and crannies and uneven floor/ceiling heights. Uses such as that proposed add to the vitality and viability of town centres and are complementary to the retail core.

Integration with Historic Fabric

This is perhaps the main issue with this proposal, given the fact that the building is Grade II listed. The proposals have been carefully designed to ensure that demolition is limited to that part of the building which is of least historic importance. An extension would incorporate those elements of a public house which could be most destructive to the historic building through the need for pipe runs, excessive floor loadings, etc. – e.g. toilets, kitchen and barrel store.

Officers have secured amendments to the design of the extensions to ensure the use of nature slate for the roofs, cast metal rainwater goods and a satisfactory appearance to the south elevation (facing Castle Road). The applicant has also agreed to retain much of the existing shop front, meaning that the appearance of the building will change little when viewed from St. John's Street.

The building needs considerable sums of money spent on repair and refurbishment, even if it is to be used in its current form. J D Wetherspoon is a company which has significant experience in converting historic buildings and it is perhaps one of the only companies prepared to spend the monetary sums required to restore the property and convert it to a viable long term use. It is extremely unlikely that a major retailer would be prepared to acquire the property, and smaller businesses (such as the former occupier Beales of Bath) are unlikely to be able to afford the cost of the works.

Highways and Servicing

Several of the objectors make reference to the lack of car parking and the difficulties in gaining access to the rear for deliveries. In response to the objections concerning parking, it is relevant to consider that the site is located in the town centre where public car parking is available. It should be remembered that the lack of on-site parking is a characteristic of a historic town centre property such as this and the same problem would be experienced by other users, including the previous retail use. In any event, sites that are in accessible locations (and this site is perhaps as accessible as any other in the district, being located in the centre of the main town near bus stops, taxi ranks and car parks) should not be required to provide car parking. This is in line with the local plan's system of maximum parking standards, adopted in line with government guidance contained in PPG13.

With regard to servicing, it is relevant to note that the building has a lawful use as a retail shop which has the potential to generate a similar, if not greater, number of deliveries to Wetherspoons. These deliveries could have occurred throughout the week with no restrictions on their location or frequency. The applicant has supplied a vehicle track analysis which demonstrates that the site can be serviced from the rear by an 8 metre rigid vehicle and a 10.7 metre articulated vehicle if necessary. Disturbance to neighbouring uses is unfortunate but it would not be increased by converting the building from a shop to a public house.

The final, and perhaps most important, point to note on this subject is that the local highway authority has not objected to the proposals. It would be difficult therefore, to substantiate a refusal on highway grounds.

Neighbour Amenity

Various objections have been received regarding the potential for noise, smell and anti-social behaviour. Whilst these are material planning considerations, the Council's Environmental Health Officer has raised no objections to the proposals on noise grounds, although it does recommend conditions to (i) prevent the broadcast of music inside the premises and (ii) control noise levels. It is considered that these conditions would ensure that no nuisance is caused by way of noise. The Council's Environmental Health Officer has advised that any odour nuisance resulting from the extraction of cooking smells and fumes can be addressed under Environmental Protection Act legislation. With regard to the smell of cigarette smoke, this is not likely to present a problem to neighbouring occupiers and in any event J D Wetherspoon has announced that all new openings of its pubs will non-smoking environments.

Turning to anti-social behaviour, it should be remembered that the site is located in a town centre in close proximity to other licensed premises. There is no reason to suggest that Wetherspoons would be responsible for any greater incidence of crime or anti-social behaviour, in comparison to existing licensed premises. Whilst there may be residential properties in the vicinity, it should be recognised that town centres are mixed commercial/residential areas where there are different expectations of residential amenity from, for example, a more rural area. It is not considered necessary to impose a planning condition to restrict hours of business due to the fact that this would duplicate the controls available under licensing legislation.

Concerns have also been expressed regarding noise, dust and disruption caused during demolition/building works to the rear of the premises. Any disturbance will be temporary and therefore this is not considered to be a material planning consideration.

Competition

Members will note that several objections have been received from the licensed trade, including Wadworth which owns the town's brewery and many of its public houses. The Government has always been clear in its advice to local planning authorities that it is not the purpose of the planning system to prevent competition. It would be extremely difficult to objectively justify the claims that there are enough public houses in Devizes and no reliable evidence has been brought forward to justify any claim that a Wetherspoons operation would encourage crime and anti-social behaviour by specialising in selling cheap alcohol in large volumes, any more than any of the existing public houses in Devizes. Officers consider that a Wetherspoons establishment would contribute positively to the vitality and viability of Devizes town centre in the same way as any other licensed premises.

Conclusion

Overall it is considered that, although the extension proposals are quite extensive, the Wetherspoons proposal represents the best way of bringing the building back into productive use and injecting vitality into the town centre whilst at the same time protecting the most important parts of the listed building.

RECOMMENDATION

Approve with Conditions

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

REASON:

To comply with the provisions of Section 91 of the Town and Country Planning Act 1990.

2 - This permission relates to the scheme of development as submitted except insofar as amended by the following:

- Letter from Lawrence Beckingham Field Architects dated the 17th January 2005.
- Artist's impression of the shopfront received by email on the 31st January 2005.
- Letter from Lawrence Beckingham Field Architects dated the 11th April 2005 (received 23rd April 2005) which withdrew the Surveyor's Report & Engineer's Report from the application.
- Drawing nos. 2003/135/PL-EX01B & 2003/135/PL06B received on the 23rd April 2005.
- Drawing nos. 2003/135/PL03K, 2003/135/PL04G, 2003/135/PL05F & 2003/135/PL07B received on the 26th May 2005.

REASON:

For the avoidance of doubt as to the development authorised since the proposal originally submitted has been amended during the course of its consideration.

3 - The premises to which this permission relate shall be used solely for purposes within Class A4 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

REASON:

The proposed use is acceptable but the local planning authority wish to consider any future proposal for a change of use, other than a use within the same Class, having regard to the circumstances of the case.

4 - No development shall take place until details of the materials to be used for the external walls and roofs of the new extensions (including samples if requested) have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

REASON:

To secure harmonious architectural treatment, in the interests of preserving the character and appearance of the conservation area and the special architectural and historic interest of the Grade II listed building.

5 - All new doors and windows to be installed in the development hereby permitted (including the 'dummy' windows on the south elevation of the extensions) shall be constructed of timber and painted. No development shall commence until full joinery details have been submitted to and approved in writing by the local planning authority. The doors and windows shall be installed in accordance with the approved details.

REASON:

To secure harmonious architectural treatment, in the interests of preserving the character and appearance of the conservation area and the special architectural and historic interest of the Grade II listed building.

6 - No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the local planning authority.

REASON:

To safeguard the site of archaeological interest.

7 - The premises shall not be used for the playing of any live or recorded music.

REASON:

To protect the amenities of nearby residential properties.

8 - The building must be acoustically treated and/or machinery silenced to ensure that the equivalent continuous A-weighted sound pressure level (LAeq) from any plant or machinery should not exceed the background noise level (LA90) by more than +5dB at the boundary of any domestic premises. The method of assessment to be carried out in accordance with British Standard 4142:1997:"Method for rating industrial noise affecting mixed residential and industrial areas".

REASON:

To protect the amenities of nearby residential properties.

9 - INFORMATIVE TO APPLICANT:

The Council is required to give a summary of the reasons for this decision and a summary of the development plan policies and proposals relevant to the decision. These are set out below:

The decision to grant planning permission has been taken on the grounds that the proposed development would not cause any significant harm to interests of acknowledged importance and having regard to the following policies and proposals in the adopted Kennet Local Plan 2011 namely: Policies PD1, HH5, HH8, AT9 & ED19.

10 - INFORMATIVE TO APPLICANT

The attention of the applicant is drawn to the contents of the attached letter from the Wiltshire County Archaeologist and dated the 17th November 2004.

11 - INFORMATIVE:

The Council's Environmental Health Service has advised that any ventilation plant designed to extract cooking fumes and odours from the building shall be designed with suitable filtration such that the emissions do not cause nuisance to the occupants of neighbouring residential properties. Any complaints will be investigated and pursued under Environmental Protection Act legislation.

Item 2:

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| APPLICATION: | K/51772/F |
| PARISH: | LITTLE BEDWYN |
| APPLICATION TYPE: | Full Planning Permission |
| PROPOSAL: | Installation of telecommunications base-station |
| SITE: | Wansdyke Crossing, Little Bedwyn, SN8 3TR |
| GRID REF: | 28338 65083 |
| APPLICANT: | Vodafone Ltd |
| AGENT: | AAP Consulting Ltd |
| DATE REGISTERED: | 9th March 2005 |
| CASE OFFICER: | Mrs C Coombs |

SITE & LOCATION

The site is located to the north east of Great Bedwyn, almost opposite the pumping station and the road that leads up to Chisbury. The site lies immediately adjacent to the railway line close to a crossing. There is an existing track leading up to the site and a copse of trees immediately to the rear of the site. The trees in the vicinity are up to 25 metres in height.

Great Bedwyn Primary School and its associated grounds are located approximately 170 metres to the south west.

DESCRIPTION OF DEVELOPMENT

The application proposes the installation of a telecommunications base station consisting of a 15 metre replica telegraph pole and two equipment cabinets within a timber fenced compound. The telegraph pole incorporates two antennas within the telegraph pole shroud.

The proposed compound is sited in a ditch hard up against an existing tree screen and is enclosed by a 1.2 metre high stock proof fence.

ADDITIONAL STATEMENT BY THE APPLICANT

The application has submitted a detailed supporting statement addressing the benefits of the development, the operator's requirements, compliance with planning policies, consideration of alternative sites, consideration of suitable design solutions and an assessment of health and safety concerns.

PARISH COUNCIL COMMENTS

The site lies within Little Bedwyn Parish. No response has been received to date from the Parish Council in respect of the installation proposed.

Because the site is located close to Great Bedwyn, the views of that Parish have also been sought.

Great Bedwyn Parish Council object to the proposal for the following reasons:

- Close proximity of the installation to the school. This is a view held by Sir William Stewart.
- The siting of the installation on the historic Wansdyke, an ancient fortification;
- The position of the installation in the AONB and its impact upon the watermeadows and Dun Valley;

- Local Vodafone users that travel on the train have reported no problems with coverage.

CONSULTATIONS

County Highways (M Wiltshire) - no objections

County Archaeologist - the site is immediately adjacent to the Wansdyke, a substantial linear bank and ditch feature which dates to the late Roman or early Saxon period. The County Archaeologist has no objections to the proposed installation provided that a condition is attached to any permission requiring a watching brief during the development of the site.

REPRESENTATIONS

Great Bedwyn Primary School objects to the proposed development for the following reasons:

- Concerned that the mast is located too close to the school and despite the information put forward by Vodafone regarding the radiation emissions, the long term effect on children's health is unknown. Sir William Stewart has advised that on a precautionary basis, it would be better if masts were not placed by schools;
- The mast is sited in the AONB with inadequate screening and will be located on top of the Wansdyke, an archaeological landmark. The mast will be visible from the village;
- There is no problem with coverage for Vodafone users travelling by train. Reception is clear and constant from Great Bedwyn to Newbury and beyond;
- The applicant should consider opportunities for site share. A mast is currently under construction at Brail Farm which is about 200 metres from the railway and 1500 metres to the west of the proposed site. If Vodafone antennas were sited on this mast, it would solve the problem;
- Vodafone state that they have consulted with the school. They do not report that as a result of this consultation, over 70% of parents and staff objected to the proposal with concerns over health and safety.

Nine further letters of objection have been received from local residents. Their reasons for concern can be summarised as:

- Proximity of the mast to Great Bedwyn Primary School;
- Availability of other sites;
- There is no problem with Vodafone coverage in the area;
- Impact of the mast upon health;
- Investment in the railway infrastructure would have more of an impact upon safety than improving phone lines to train drivers;
- Visual impact of the proposed installation.

POLICY CONSIDERATIONS

The site is located within the AONB. Relevant policies in the Kennet Local Plan are NR8 (AONB) and HC44 (Telecommunications).

In addition Government guidance contained within planning policy guidance note PPG8 - Telecommunications (2001) is a relevant material consideration.

PLANNING OFFICERS COMMENTS

The main issues associated with this proposal are the concerns about the perceived risk to health associated with telecommunications base stations and the visual impact of the development on the site and the surrounding area. The operational need for the development and the assessment of alternative sites are also relevant issues.

The Government's approach to telecommunications development is set out in PPG8 which aims to facilitate the growth of new and existing telecommunications systems whilst minimising their environmental impact. Local planning authorities are encouraged through PPG8 to respond positively to telecommunications developments.

Operational Need

The applicant has set out the background for the proposal and provided a justification for the development in terms of operational need.

The installation would be located alongside the railway line in order to improve signal coverage for railway passengers. The installation would consist of two antennas, one facing up the track and the other down. Coverage plots have been submitted which show the existing coverage and proposed coverage with the installation. The coverage plots indicate that there are deficiencies and gaps in coverage along the line within Great Bedwyn and also in Little Bedwyn towards Froxfield.

The Council has sought the advice of an independent telecommunications consultant who has examined the application. The consultant confirms that the proposed installation would provide good coverage to Great Bedwyn although some areas towards Little Bedwyn remain below Vodafone's target. To achieve better coverage in both Little Bedwyn and Great Bedwyn it would be necessary to either raise the height of the installation in its currently proposed position or move it further to the north-east. Both of these options would have serious implications for visual amenity.

Alternative Sites

The applicants have considered a number of alternative sites within the area. The following table summarises the sites that have been assessed by the applicants prior to the submission of the current planning application. None of the sites has been found to be a suitable alternative to the application site:

| SITE | LOCATION | REASON FOR DISCOUNTING SITE |
|---------------------------------|-------------------------|---|
| CCI mast | Chisbury Wood | Vodafone already have an installation on this mast which does not provide the required level of coverage to the railway. The Council's consultant has confirmed that this installation would not meet the operational need identified without a very significant increase in height. The existing mast would have to be increased from 35 metres to 50 metres to obtain coverage in the identified area. |
| Great Bedwyn Telephone Exchange | Back Lane, Great Bedwyn | The telephone exchange is a small pitched roof building, located within the village and Great Bedwyn Conservation Area. |

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| | | <p>To provide the coverage to the railway, a 25 metre installation would be required at this location. This would have to be freestanding in the grounds of the telephone exchange.</p> <p>This option has been discounted due to the visual impact of the proposal and proximity to residential properties.</p> |
| Thames Water, Bedwyn Pumping Station | | <p>A minimum of a 20 metre installation would be required in this location to provide the coverage required. The site has been discounted because of the visual impact of an installation in this area.</p> |
| Burntmill Lock | Frog Lane, Great Bedwyn | <p>A 20 metre monopole is required in this location to provide the required coverage. The site has been discounted because it would cause harm to the landscape and setting of the canal and conservation area.</p> |
| Aspen site | Jockey Lane – land between the railway and canal | <p>The power supply to this site is constrained. It would require a new power supply across the railway or across the canal and river. It is not possible to provide either. The site is within the conservation area and flood plain of the River Dun and Kennet & Avon Canal.</p> |
| Thames Water, Great Bedwyn Sewage Treatment Works | Close to the Burntmill Lock site. | <p>An antenna of 20 metres would be required in this location due to a row of trees between the site and the railway.</p> <p>The site has been discounted by planning officers due to the visual impact of the installation in this location and the lack of screening.</p> |
| Land at Manor Farm Field | Chisbury Lane, Chisbury | <p>BT Cellnet has previously sought planning permission for a 10 metre telegraph pole installation at this site. The application was withdrawn prior to determination due to internal reorganisation taking place at that time.</p> <p>The applicant has considered whether an installation in this location could meet operational requirements. The site is too close to the existing installation at Chisbury Wood and is too far from the railway. To provide coverage, a minimum height of 18 metres would be required.</p> <p>This has been discounted due to the visual impact of the installation in this location.</p> |
| Land opposite Windmill Cottage | Little Bedwyn | <p>This site has been suggested by the Council's consultant. He commented that it may provide</p> |

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| | | better coverage than the site proposed. However this area is far more exposed in landscape terms and an installation in this location would be significantly more damaging in landscape terms than the site proposed, as well as being closer to residential property. |
| Brail Farm, | Great Bedwyn | The response of the applicant has been sought in respect of this site. However it is unlikely that the mast currently being erected here, which is of the lightweight form would be able to accommodate an additional user without a substantial height upgrade. |

In light of this assessment of possible alternative sites it is not considered that any viable alternative sites are available, and that in terms of coverage alone, the application site is the most appropriate.

Health Concerns

In 1998 the International Commission on Non-Ionising Radiation Protection (ICNIRP) published guidelines covering exposure to radio frequency (RF) radiation. ICNIRP comprises an international body of independent scientists whose knowledge covers a range of specialisms. Their guidelines, which were produced following a thorough review of all published scientific literature, have been incorporated into the European Council recommendation (1999) which has been agreed in principle by all Countries in the European Union at that time. The ICNIRP guidelines are science based, designed to protect the general population and have been formulated to protect people of all ages, in all states of health and for continuous exposure.

In 1999 the Government asked its statutory advisors on matters of radiological protection, the National Radiological Protection Board (NRPB) to set an independent Expert Group on Mobile Phones (IEGMP) which was chaired by Sir William Stewart. The IEGMP considered the possible health effects of the use of mobile phones, base stations and transmitters and they conducted a comprehensive assessment of all existing research at that time.

The 'Stewart Report' concluded that the balance of evidence suggests that exposure to RF radiation below the NRPB or ICNIRP guidelines does not cause adverse health effects to the general population as exposures are expected to be a small fraction of the actual guidelines. It acknowledged that gaps in our knowledge exist and that it is not possible to say that exposure to RF radiation below national NRPB guidelines is totally without potential adverse health effects. The report recommended a precautionary approach to the use of mobile phone technologies.

The Stewart Report acknowledged that there was particular public concern about the siting of base stations on or near to schools. Stewart suggested that the network operator should look to ensure that the beam of greatest intensity falls outside the school grounds and buildings. Sufficient information should also be provided about the level of RF radiation.

In response to IEGMP the Government indicated that it accepted the precautionary approach, but that this is limited to specific recommendations in the report as opposed to a blanket ban on all new installations. These include that emissions from

base stations should meet with the ICNIRP guidelines, which are 5 times more restrictive than the NRPB's own guidelines. However, in the Government's view the Stewart Report does not provide a basis for local authorities to implement their own precautionary policies in addition to those specially identified by Stewart.

Stewart's recommendations have been incorporated into the Government's policy on telecommunications, PPG8. This states that it is the Government's firm view that the planning system is not the place for determining health safeguards. It remains the Government's responsibility to decide what measures are necessary to protect public health. If a telecommunications base station meets the guidelines for public exposure set out by ICNIRP, it should not be necessary for the local planning authority to consider further the health aspects and concerns about them.

This application has been accompanied by the required ICNIRP certification, which confirms that the RF emissions from the equipment would meet the ICNIRP guidelines. The RF report supplied with the application shows that the maximum levels of exposure are less than 1% of the recommended guideline levels. The applicant has provided a specific RF assessment for the school. At this point at the 'worst case' calculation, the RF will be 0.0088% of the ICNIRP guidelines which amounts to over 11,300 times within the ICNIRP guideline.

The Council's consultant has provided additional information on the latest review of literature published by the NRPB (January, 2004). This report indicates that exposure to radio waves at the levels encountered close to base stations are unlikely to be a risk to health as they are significantly less than the international guidelines on public exposure. The guidelines are applicable to both adults and children and are for continuous exposure. Much greater instantaneous levels of exposure come from the use of mobile phones.

PPG8 does advise that the perceived harm to health can in principle be a material consideration in determining planning applications. However, the weight attached to such considerations should be carefully balanced against the evidence submitted. In the case of this application the submitted evidence clearly shows that the emissions resulting from this development would be many times below ICNIRP guidelines and therefore in accordance with Government policy on this matter.

It is worth noting that a number of appeal cases have addressed this issue following refusal of planning applications for telecommunications installations. While acknowledging that appeal decisions are not definitive, a common theme has emerged. Whilst the perception of risk is a material consideration, provided that an application is proved to be ICNIRP compliant, little weight can be afforded to the perception of risk as an issue. This view has been tested and upheld in the courts.

Visual/Environmental Impact

The telecommunications industry is encouraged by PPG8 to develop innovative design solutions to find the best solution for any one particular site and to use sympathetic design and camouflage to minimise the impact of development on the environment surrounding the site.

The applicant has chosen a telegraph pole style installation which is dark in colour and slim in profile. Although the pole will be visible, the impact of it will be greatly limited by the design of the mast and the backdrop of trees. There are other poles and railway paraphernalia located close by and an intrusive water installation to the

north and it is considered that these existing installations will be more intrusive than the mast proposed.

The site is located at reasonable distance from the canal and conservation area and will have no detrimental impact upon these features. Subject to appropriate landscaping and colouration of the equipment and compound, this site is considered to be the best available option in terms of landscape impact.

RECOMMENDATION

Approve with Conditions

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

REASON:

To comply with the provisions of Section 91 of the Town and Country Planning Act 1990.

2 - The mast and the associated equipment and structures shall be removed and the land restored with topsoil within 6 months of the mast structure becoming redundant for the purposes of the operational need to supply mobile telecommunication services as part of the operators network coverage.

REASON:

To ensure that the mast and associated equipment is removed when there is no longer an operational justification for the mast, in the interests of protecting the landscape of this part of the AONB from unwarranted visual intrusion.

3 - No development shall take place until there has been submitted to and approved by the local planning authority a scheme of landscaping, which shall include the provision of a hedge around the compound area, indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development.

REASON:

To ensure a satisfactory landscaped setting for the development.

4 - All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the completion of the development whichever is the sooner; any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority.

REASON:

To ensure a satisfactory landscaped setting for the development.

5 - No development shall take place until details of the colouration of the pole and associated equipment cabins has been submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the details approved.

REASON:

In the interests of visual amenity.

6 - No development shall take place within the area of the application until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the local planning authority.

REASON:

To safeguard the site of archaeological interest.

7 - INFORMATIVE TO APPLICANT:

The Council is required to give a summary of the reasons for this decision and a summary of the development plan policies and proposals relevant to the decision. These are set out below:

The decision to grant planning permission has been taken on the grounds that the proposed development would not cause any significant harm to interests of acknowledged importance and having regard to the following policies and proposals in the Kennet Local Plan 2011 namely: policy NR8, HC44.

Item 3:

| | |
|-------------------|---|
| APPLICATION: | K/51295/VAR |
| PARISH: | MARLBOROUGH |
| APPLICATION TYPE: | Variation of Condition |
| PROPOSAL: | Variation of condition no. 13 of planning permission K/034918 to remove requirement to construct private drives between the estate road and the edge of the site with Orchard Close and adjacent land |
| SITE: | Kelham Gardens, Marlborough |
| GRID REF: | 19183 69179 |
| APPLICANT: | Village Green Homes Ltd |
| AGENT: | Mr R Greenwood |
| DATE REGISTERED: | 23rd November 2004 |
| CASE OFFICER: | Mr A Guest |

SITE & LOCATION

The application site comprises the recently completed Kelham Gardens housing estate positioned on 'backland' to the east of London Road. To the west of the site are existing residential properties not in the ownership of the applicant (Meadowlands, Orchard Close and the Wye House development), and along the edge of the site with these properties is a separate narrow strip of land in the ownership of other parties (namely Kennet District Council, Kennet Housing Society and two other private individuals (Mr Harley and My Hayden)).

SITE HISTORY

K/034918 – Erection of 11 dwellings, associated roads and sewers – approved 18/08/00.

K/035487 – Erection of 7 dwellings, associated roads and sewers – approved 10/06/98.

K/036693 – Erection of 7 dwellings (amendment to K/035487) – approved 06/09/99.

These three applications relate to the residential development at Kelham Gardens. Condition 13 of application K/034918 required three private driveways to be constructed between the estate road and the boundary of the application site. This was designed to facilitate rear access to adjacent properties (Orchard Close, nos. 12-20 London Road and Meadowlands). The work was required to be completed before the occupation of the 10th dwelling on the site or the adoption of the distributor road. One of these drives has been constructed (serving Meadowlands, although not currently in use). The one proposed to serve the house at Orchard Close has not been constructed. The third has not been constructed but is no longer required as an alternative residential development has taken place at the rear of Wye House, removing the need for access from Kelham Gardens. As the Kelham Gardens development is now fully occupied and the road adopted, the developer is in breach of the condition by the failure to provide the access to the boundary of the site at the rear of Orchard Close.

DESCRIPTION OF DEVELOPMENT

The application relates specifically to the two private drives previously proposed to be constructed between the estate road and Orchard Close and the Wye House

development (referred to as 'B' and 'C' in the application particulars, 'A' being the access to serve Meadowlands). The proposal is to vary condition no. 13 of planning permission K/034918 to remove the requirement to construct these two private drives. Condition no. 13 states the following:

"The three private drives shown on the approved plan to the north of the distributor road shall be constructed to a finished top surface between the road and the edge of the site, prior to the occupation of the 10th dwelling on the site, or the adoption of the distributor road, whichever is the sooner.

Reason: In order to secure access from these plots to the distributor road".

In support of the application the applicant's agent states the following:

"We are making this case, because it seems to us that there is no longer a planning purpose, in the public interest, or even Local Plan designation, in the recently adopted Plan. In other words, the planning policy framework when the planning permission was first negotiated has changed.

The thought of reducing the number of accesses on to London Road is no longer part of the Proposals Map or part of any adopted policy, as far as we are aware. Further the land to the north of Kelham Gardens is not allocated for residential development and any proposal there would have to accord with the adopted Local Plan and policies therein to protect the Conservation Area and Marlborough's special qualities, including adopted Policy HH11, this regulates infill and seeks to protect attractive green areas within the town/

It is important to note that as far we are aware, no planning application has been submitted or recently determined for housing development in this backland garden area, presumably because of these very real planning constraints.

Turning now to first principles, the reason for the condition states: "In order to secure access from these plots to the distributor road".

We wonder whether this condition is ultra vires and whether it was ever a reasonable condition to attach? Given the detailed architectural drawings that were submitted for approval and then in time approved, it was not the intention of my client to build accesses B and C, but simply indicates the possible location of such points to allow for the design of the road and traffic calming features.

Certainly, my client's planning consultants at the time, should surely have picked this matter up and challenged it before this matter was determined?

Alas, we have no paper work to say whether they did or did not.

What is clear is that the Council has not chosen to look at this matter because of any harm to the public interest. Indeed, there is no readily apparent public interest for condition 13.

We understand that there is a private land owner, with links to my client's former planning consultants (allegedly), who are exerting pressure on the Council for private interests. PPS1 deals with private interests as follows:

"The planning system does not exist to protect the private interests of one person against the activities of another, although private interests may coincide with the

public interest in some cases. In fact “the public interest ... may require that the interests of individual occupiers should be considered. The protection of individual interests is one aspect, and an important one, of the public interest as a whole” (Stringer v MHLG 1971). It can be difficult to distinguish between public and private interests, but this may be necessary on occasions. The basic question is not whether owners and occupiers of neighbouring properties would experience financial or other loss from development, but whether the proposal would unacceptably affect amenities and the existing use of land and buildings which ought to be protected in the public interest. Good neighbourliness and fairness are among the yardsticks against which development proposals can be measured; for example, it might be material to consider the question of overlooking or loss of privacy experience by a particular resident”.

If my client was to try and comply with condition no. 13 he could not.

Just to clarify the situation:

Access ‘A’ was built because the approved plan 97/147/1 shows the access touching the distributor road.

Accesses ‘B’ and ‘C’ were never intended to be built, as approved plans 97/147/1, 44 and 47 show no link between “the possible future access” and the distributor road.

Even if my client was able to comply with the condition, he does not have the approval of all of the land owners, nor are there any detailed plans, or any physical connection between the “private drives” and the distributor road with respects to B and C. Indeed, building access C would lead to the flank wall of a house and serves no purpose whatsoever”.

The application is also supported by a letter from a firm of solicitors, CLM Solicitors, who act on behalf of one of the individual joint owners of the strip of land at the edge of the application site, summarised as follows:

- Our client does not consent to any development or other works being carried out on the strip of land.

PRINCIPAL AMENDMENTS MADE FOLLOWING SUBMISSION

There have been no amendments since submission of the application.

ADDITIONAL STATEMENT BY THE APPLICANT

The applicant (Village Green Homes Ltd, now owned by Waterbridge Group Ltd) states the following:

“... at the time the development was underway we did make efforts to comply with the condition [dropped kerbs on site] ... But as none of the parties could agree terms, we had to let the matter rest. As time has gone by no particular harm has arisen. As for the planning purpose behind the condition, interestingly, we note Wiltshire County Council’s Highway Section are not objecting to our suggestion that this condition really should be relaxed, ie. the condition is no longer reasonable or necessary. ...”.

TOWN COUNCIL COMMENTS

Marlborough Town Council: Object as retention of condition no. 13 provides safer exit on to the highway at Kelham Gardens rather than on to the A4. Consider that nothing has changed since the original condition was imposed.

CONSULTATIONS

County highways (M Wiltshire) - no objection. This decision is reached for the following reasons –

- the condition does not create the right for Orchard Close to use the access – it only requires the access to be constructed;
- there is no provision in the condition for the existing use of the access to London Road from Orchard Close to be permanently prevented;
- the condition was not applied at the recommendation of the highway authority;
- do not consider that the condition is necessary to the development granted planning permission under ref. K/034918 having regard to the 'tests' for conditions;
- do not consider that the condition is relevant to the development granted planning permission under reference K/034918 having regard to the tests for conditions;
- access would be welcomed as it would provide a clear highway benefit by reducing traffic using the sub-standard access from Orchard Close to London Road, and S106 agreement with owner of Orchard Close would address point 2 above. But, given the other points listed, the offer of an agreement does not change the highway authority's opinion that no objection should be raised.

REPRESENTATIONS

The application has generated considerable correspondence.

Two objection letters have been received – firstly, from the owner of Orchard Close, London Road summarised as follows:

- the condition is entirely reasonable, necessary and enforceable, and there is no justification for its removal;
- the condition serves a planning purpose in that it relates to Policy HG8 of the Kennet Local Plan 1997 which specifically stated that development of land to the rear of Wye House should 'allow for improvements to the rear of other properties on London Road'; it is nonsensical to suggest that because no replacement policy is contained in the replacement plan there is now no justification for the condition. The absence of a planning policy does not make the reasoning for imposing the condition any less valid. The planning purpose was to improve the access arrangement for those properties which have substandard access on to London Road;
- whether or not there is an application for development in the grounds of Orchard Close has no bearing on the validity of the condition;
- no statement was made by the applicant at the time of the application that the access drives shown on the layout drawing would not be provided. Had such a claim been made then the Council may have had to refuse planning permission as contrary to Policy HG8. Non-compliance with the condition raises issues as to the validity of the entire planning permission;
- had hoped that the matter could have been resolved without lpa involvement;
- Of particular relevance in the quote from PPS1 is the sentence "... private interests may coincide with the public interest in some cases". It is in the public interest to provide Orchard Close and neighbouring properties with safer accesses, improving highway safety in general on London Road;
- It is unreasonable to suggest that access drives 'B' and 'C' were never intended to be constructed when they are shown on the drawing;

- Not aware of any intervening land ownership between Orchard Close and land owned by the applicant. Given that this land was previously owned by Kennet DC, it would appear that it could only be with the Council's knowledge that a 'ransom' situation was created. If this were the case, then would reasonably expect that any landowners agreement and land transfer contract would make provision for the access points required by a policy in the adopted local plan. Anything less would appear negligent on the part of the Council, and potentially a case for maladministration. As an access has been provided at access 'A' it can be assumed that there is no problem with land ownership.

The owner of Orchard Close

has also provided a copy of a pre-application letter addressed to him from the Transportation and Development Manager at Wiltshire County Council which states the following:

- "... The County Council as Highway Authority would be keen to reduce traffic movements through the unsatisfactory Orchard Close access to London Road by achieving rear access to Orchard Close via Kelham Gardens, and therefore, if consulted by the planning authority on a planning application to vary condition 13 (K.34918) would be likely to raise an objection. ...".

The second objection letter is from Beechcroft Developments (the original owner of the Wye House development), summarised as follows:

- The obligation to put in three private drives includes a rear access to the Wye House development;
- The applicant is flagrantly breaching a planning condition which is still relevant to an adjoining landowner (Orchard Close) on the basis that they will give up an access to London Road over land owned by Beechcroft Developments when the access from Kelham Gardens has been constructed;
- No breach of condition notice has been served.

One letter has been received from 8 Kelham Gardens objecting to the private drives being constructed from Kelham Gardens (and so effectively supporting the application to vary the condition), summarised as follows:

- Driveways will increase traffic in Kelham Gardens and pose risk to residents and children.

One specific letter of support has been received from one of the joint owners of the land over which the accesses would pass summarised as follows:

- Fully support the application as it will hopefully ensure that in the future all further discussions will be held with the landowners who hold the ransom strips.

A further letter has been received from Kennet Housing Society (also one of the joint owners of the strip of land running along the edge of the application site). This has attached to it a copy letter from the solicitor to the Society, summarised as follows:

- Kennet Housing Society has not given permission for anybody to gain access over their land, except in accordance with the conditions laid down in the contract between the landowners and Village Green Homes and that

objection would be raised to anybody using access points from Kelham Gardens without the express consent of the Society and the other landowners.

During the processing of the application specific requests were made to all of the owners of land affected by the condition to ascertain whether or not negotiations had taken place to secure implementation. Responses were received from the applicant and his solicitors, two of the owners of the land (namely Mr Hayden, and solicitors acting on behalf of Mr Harley), and Mr Loveday. The response from the applicant is as set out above in the 'Additional Statement by the Applicant' section and repeated here:

- "... at the time the development was underway we did make efforts to comply with the condition [dropped kerbs on site] ... But as none of the parties could agree terms, we had to let the matter rest.... "

The response from Mr Hayden is as follows:

- "... I am able to confirm that when condition 13 was originally made known to me and those joint landowning parties between the Village Green Homes site and London Road, attempts were made to provide a new access from the new estate road.
- However it is with regret that I confirm the third party landowners (including the Council) and the owners of Orchard Close were unable to agree terms and thus the potential access was undeliverable.
- You will appreciate that it is not in Village Green Homes gift to be able to grant the access originally designed unless the landowners collectively agree terms and it is my opinion that condition 13 associated with the Village Green Homes planning permission is unreasonable and cannot be delivered.
- I should add that it may be possible for the access to be provided at some stage in the future again on the basis that the landowners collectively agree terms. This could be done for example by way of a new planning application for the access being processed alongside a S106 agreement into which all landowners would become signatories. ... "

The solicitors acting on behalf of Mr Harley state the following:

- "Although there were initial discussions with one of the landowners having a garden abutting the land of which our client is joint owner, those discussions were never completed and no approach has been made by from any of the other adjoining owners. It is therefore impossible to say whether discussions or negotiations would be successful in the future or, indeed, if any of the other joint owners would be prepared to enter into such negotiations.
- "... we would also point out that none of the owners of the gardens adjoining the roadway have rights of access over the land retained by our client and the other joint owners".

The letter from Mr Loveday is summarised as follows:

- "The requirement to negotiate the right to create the access from what is now Kelham Gardens, and install this driveway, is the responsibility of Village Green Homes. As owner of the site on which the residential development has taken place, they are required by the contract of sale, and the planning

permission, to create this access, and have been aware of this from before they purchased the land.

- It now appears the case that Village Green Homes want to avoid putting the access to our property in place, although there appears to be no good planning reason to relieve them of this responsibility.
- it would appear that Village Green Homes are now claiming that there are difficulties in agreeing access with the owners of the ransom strip This reason to avoid creating the access is unacceptable.
- Village Green Homes have created a situation where compliance with the condition requiring the creation of the access is required to authorise a development that is currently in conflict with the planning permission granted for the housing at Kelham Gardens. Because the access to our house, and the neighbouring properties, has not been completed, then all of the new housing is effectively unauthorised.
- If there is a ransom strip in place, then Village Green Homes have – by building out the development without dealing with the condition – engineered themselves into a position where the ransom is to regularise the whole of the development, rather than simply create an access into a single residential house.
- As a diligent developer Village Green Homes should not have allowed themselves to get into this position: in purchasing the site, they should have made the necessary arrangements to create the accesses to properties off London Road, and out any necessary financial arrangements in place, prior to agreeing a purchase price and buying the land. If there is a ransom to be paid, then this should have been agreed and contracted into before work commenced on site, so that the new accesses could be built as development progressed, and in accordance with the planning condition requiring their installation.
- Because Village Green Homes have simply chosen to ignore the requirement to install these accesses, then they have created a problem for themselves which could easily have been avoided with reasonable care and attention. It should not be the case that Village Green Homes be allowed to avoid putting in the accesses because they have chosen to ignore the Council's reasonable conditions, and put profit before the planning gains that the consent for Kelham Gardens seeks to secure.
- If there is a ransom strip in place, then the onus is on Village Green Homes to agree with the owners of that strip to build the access to my boundary. As such they will comply with a part of the planning condition, (the other accesses needing to be installed for full compliance). No one else is liable to pay such a ransom, and Village Green Homes have to deal with this now, given that they have not seen fit to agree terms when they should have done – at the purchase of the site.
- The condition requires the access to be built, and that is the end of Village Green Homes obligation to the Council. If there are any further rights to be negotiated following the building of the access, then this would be a matter for us to deal with. This should not, however, obviate Village Green Homes from their requirement to comply with the planning permission that they have partly implemented”.

POLICY CONSIDERATIONS

Kennet Local Plan 2011 the relevant policy is PD1.

PLANNING OFFICERS COMMENTS

The main issue in this case relates to road safety. The condition was originally imposed to facilitate the provision for safer rear access to these areas than was then possible from London Road. The developer has complied with the condition in relation to the land at Meadowlands. The redevelopment of Wye House subsequent to the original approval has meant that it is no longer necessary to provide access to that land from Kelham Gardens. This means that the only relevant outstanding issue is the provision of access to the boundary of the site at the rear of the house at Orchard Close. This would help facilitate rear access to this single dwelling, avoiding the need to use the current access onto London Road if the owner of Orchard Close could negotiate a right with the landowners to use the access. However, the local highway authority do not object to the proposal to remove the condition and in these circumstances, the council is unlikely to be able to successfully defend an appeal.

A lot of discussion has concerned the issue of whether the condition was appropriately imposed in the first place. Circular 11/95 sets out the tests for conditions, in that they must be necessary, relevant to planning, relevant to the development permitted, enforceable, precise and reasonable in all other respects. In the view of your officers, these tests were met when the original decision was made. The condition was necessary to provide the opportunity for safer rear access for vehicles than could then be achieved from London Road. It was relevant to planning as it fulfilled a legitimate planning aim (road safety) and met the requirements of the planning policy for the site contained in the original Kennet Local Plan (1997). It was relevant to the development permitted as it met the requirements for the development of the site laid out in the Planning Brief approved as Supplementary Planning Guidance at the time. It was judged to be enforceable as the land was at that time included in the application site as under the control of the applicant. It is also considered that the condition was precise and reasonable.

However, the committee must give attention to the situation prevailing now. The condition is now only relevant to the achievement of access to the boundary of the site close to one domestic property. This means that it would only facilitate the removal of the domestic traffic travelling to one household using the existing access onto London Road, and this only if the owner of that property can reach agreement with the landowners of the strip that the access crosses. The local highway authority clearly does not consider that the potential for removal of traffic from this one property by itself justifies retention of the condition.

Furthermore, it is clear that the current position on landownership of the access means that there are three other owners, in addition to the applicant, who share ownership of part of the land. This means that the applicant cannot by himself now comply with the condition. Discussions have taken place with other landowners, as reported above, and it is clear that not all of them will agree voluntarily to the access crossing their land. This means that to enforce the condition, the council would need to serve an enforcement notice on not just the applicant, but also the other parties. Given the lack of objection from the local highway authority, any appeal against such a notice is likely to succeed. The council's ability to successfully enforce the condition in the current circumstances is therefore doubtful.

The allegation of maladministration on the part of the local planning authority raised by one of the third party objectors is not for consideration here, and has no bearing on the acceptability or otherwise of the current planning application. There are separate complaint procedures to deal with such matters. Needless to say, the imposition of a planning condition such as this based on an understanding of the facts available at the time of imposition but which are later found to be different would

not amount to maladministration. Indeed, Section 73 of the Town and Country Planning Act provides for applications for planning permission to develop land without complying with conditions previously imposed on a planning permission, and Section 73A provides for retrospective applications to authorise development which has been carried out without complying with some planning condition to which it was subject.

On a positive note, and notwithstanding the recommendation, under normal circumstances the formation of a vehicular access from a non-classified road to a residential property would not require planning permission from the local planning authority (being 'permitted development'). By private negotiation with the other landowners, the owner of Orchard Close could, therefore, proceed on this basis without the need for planning permission from the council.

RECOMMENDATION

Approve

INFORMATIVE TO APPLICANT:

The Council is required to give a summary of the reasons for this decision and a summary of the development plan policies and proposals relevant to the decision. These are set out below:

The decision to grant planning permission has been taken on the grounds that the removal of the condition would not cause any significant harm to interests of acknowledged importance and that having regard to the changed circumstances that now exist compared to those existing in 2000, the condition is no longer necessary, having regard to the following policies and proposals in the Kennet Local Plan 2011 namely: policy PD1.

Item 4:

| | |
|-------------------|--|
| APPLICATION: | K/51916/F |
| PARISH: | COLLINGBOURNE KINGSTON |
| APPLICATION TYPE: | Full Planning Permission |
| PROPOSAL: | Extensions and alterations |
| SITE: | The Old Chapel, Collingbourne Kingston |
| GRID REF: | 23894 55640 |
| APPLICANT: | Ms S Rumbold |
| AGENT: | Humberts |
| DATE REGISTERED: | 24th March 2005 |
| CASE OFFICER: | Mr R Parker |

SITE & LOCATION

This application relates to a dwelling (a former chapel) at the head of Chapel Lane which lies on the eastern side of the A338 at the lower end of Collingbourne Kingston, approximately 100 metres south of the Barleycorn Inn.

SITE HISTORY

K/50816/F – Extensions and alterations, application withdrawn in November 2004.

K/11388/D – Rehabilitation and conversion to a dwelling, granted planning permission in December 1987.

DESCRIPTION OF DEVELOPMENT

The proposal is for extensions and alterations to create a garage with studio above attached to the north side (left hand side when looking from the front) of the chapel. The garage is 7 metres in width and 8 metres in depth, with a pitched roof of 6.5 metres (lower than the ridgeline of the existing building). Other minor alterations include a proposed porch at the rear and a small bathroom extension to the existing single storey extension.

ADDITIONAL STATEMENT BY THE APPLICANT

The applicant's agent has made the following statements in support of the application:

- a) The double garage/studio will continue the current use of The Chapel as a residence. At present occasional persons will drop off goods (e.g. antiques) to The Chapel, when the applicant's shop in Kingsbury Street, Marlborough is closed. It is not envisaged that this activity will increase in any way.
- b) The applicant, as part of her business, decorates furniture and makes bed linen/cushions. The applicant proposes to use the studio area above the garage in connection with this business while garaging the associated vehicles beneath.
- c) The ground floor primary use is to enable the vehicle containing sometimes a high value of antiques, to be kept under lock and key. The garage will also enable the applicant to safely load and offload in the dry such antiques and provide a safe environment when the applicant returns from her business elsewhere, particularly in the dark

- d) The extension will be constructed on the site of a former building ancillary to the Wesleyan Chapel. A photograph of that building (now demolished) has been supplied with the application.
- e) The right over the strip of land between Mayzell's Cottage and The Old Chapel will not be affected by the proposal. The loading/offloading will be within the new building or its immediate curtilage, clear of the right of way.

PARISH COUNCIL COMMENTS

Objects on the following grounds:

- 1. Not suitable for light industrial use.
- 2. At present the property is domestic therefore a 'change of use planning application' will be required for commercial use.
- 3. There are small light industrial units available [Collingbourne Ducis] one mile away.
- 4. Access to the adjacent properties will be obstructed because of increased traffic i.e. delivery vans and lorries.
- 5. Parking areas are non-existent and parking on the A338 must be discouraged at all costs.
- 6. Access to and from the A338 is very difficult and the Parish Council consider this a high risk situation.
- 7. The surrounding property owners have expressed extreme concern to the Parish Council concerning this application.

CONSULTATIONS

County Highways (Ms Flower) – No objection subject to a condition requiring the use of the garage to be limited to the domestic and private needs of the occupier (i.e. not for any business).

REPRESENTATIONS

Seven letters have been received raising the following objections:

- a) The applicant already uses the existing dwelling to operate her business, without planning permission.
- b) The applicant would use the proposed extension for business purposes, using the garage for storage of stock whilst leaving the van parked outside to block the right of vehicular access to two adjoining residential properties (Norrie Cottage & Mayzell's Cottage).
- c) The applicant will not use the proposed garage to park vehicles. In fact, the garage would not be large enough to accommodate her transit sized van.
- d) The intensification of the business use, caused by the applicant closing her shop in Marlborough and moving business activities to The Chapel, will therefore result in additional noise and traffic. The site has no parking for customers and delivery vehicles.
- e) Construction will cause disruption to neighbours and block their right of way.
- f) The proposed extension would overshadow the objector's vegetable garden to the north and diminish the vigour of the boundary hedge.
- g) The massing of the proposed roof would block the objectors' view of the Bourne Valley and morning sunshine to their property.
- h) The applicant has previously objected to a neighbour's application and therefore has double standards.

POLICY CONSIDERATIONS

Kennet Local Plan 2011 - the site lies within the designated conservation area. Policies HH5 & PD1 are relevant to the consideration of this application.

PLANNING OFFICERS COMMENTS

The proposed extension is considered to be an acceptable addition to the property in terms of its siting, design and impact upon the character and appearance of the conservation area. The extension would be visually subservient to the principal dwelling in scale and form and would feature similar stone detailing. The form of the extension is not dissimilar to a former building on the site, a photograph of which has been supplied by the applicant. It is not considered that the massing of the extension would be detrimental to the residential amenities of the occupants of neighbouring properties.

The owners of Mayzell's Cottage have expressed concern that the proposals would block their views of the Bourne Valley and overshadow their vegetable patch. However it is not considered that these are material planning considerations.

One of the main objections to this scheme is that the applicant will use the extension for her business. However, this is not a matter for consideration under the current planning application which must be assessed as a domestic extension (i.e. garage with studio above). Officers will investigate the complaint regarding the existing use of the property separately and will take the appropriate action if necessary.

The blocking of the vehicular access to neighbouring properties is a private matter to be resolved between the relevant parties involved. Nevertheless, it is not considered that the development itself would result in the access being blocked and the applicant has demonstrated that more than one vehicle could be parked outside of the new garage without impeding access to the neighbouring properties. The highway authority accepts that, although the site is restricted, vehicles would be able to turn and exit the site in forward gear.

RECOMMENDATION

Approve with Conditions

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

REASON:

To comply with the provisions of Section 91 of the Town and Country Planning Act 1990.

2 - This permission relates to the scheme of development as submitted except insofar as amended by the revised plans received on the 25th April 2005.

REASON:

For the avoidance of doubt as to the development authorised since the proposal originally submitted has been amended during the course of its consideration.

3 - No development shall take place until details of the materials to be used for the external walls, windows, doors and roofs (including samples of the bricks, natural roof slates and stonework) have been submitted to and approved in writing by the local planning authority, together with details of the depth of the reveals of the

proposed windows and doors. Development shall be carried out in accordance with the approved details.

REASON:

To secure harmonious architectural treatment, in the interests of preserving the character and appearance of the Conservation Area.

4 - The roof lights to be installed in the development hereby permitted shall be of the "conservation" type, mounted flush to the roof slope and with a single vertical glazing bar.

REASON:

To secure harmonious architectural treatment, in the interests of preserving the character and appearance of the Conservation Area.

5 - The garage door to be installed on the development hereby permitted shall be a vertically clad timber door and either painted or stained.

REASON:

To secure harmonious architectural treatment, in the interests of preserving the character and appearance of the Conservation Area.

6 - The development hereby permitted shall be used solely for purposes incidental to the enjoyment of the dwelling house as such and for no other purpose.

REASON:

To protect the amenities of this primarily residential area.

7 - INFORMATIVE TO APPLICANT:

The Council is required to give a summary of the reasons for this decision and a summary of the development plan policies and proposals relevant to the decision. These are set out below:

The decision to grant planning permission has been taken on the grounds that the proposed development would not cause any significant harm to interests of acknowledged importance and having regard to the following policies and proposals in the adopted Kennet Local Plan 2011 namely: Policies PD1 & HH5.

Item 5:

| | |
|-------------------|--|
| APPLICATION: | K/51791/F |
| PARISH: | RAMSBURY |
| APPLICATION TYPE: | Full Planning Permission |
| PROPOSAL: | Formation of access and parking area for one vehicle on north side of lane |
| SITE: | Field adjoining Riverside Cottage, Ramsbury. |
| GRID REF: | 27030 71225 |
| APPLICANT: | M D Abell |
| DATE REGISTERED: | 10th March 2005 |
| CASE OFFICER: | Miss G Salisbury |

SITE & LOCATION

Riverside Cottage is located south-west of the village and can be accessed by turning right off the High Street into Mill Lane as you enter the village from the direction of Marlborough. It is best to cross the shallow section of the River Kennet and its tributary by foot, taking the short walk south over the bridge and along the footpath. Full vehicular access to the site is possible from the Ramsbury to Froxfield Road. When driving out of the village turn right opposite Ambrose Farm. Riverside Cottage is approximately half a mile on the left.

The land to which this application relates lies outside the domestic curtilage of Riverside Cottage on the north side of the lane opposite the main house. There is currently an unauthorised parking area on this side of the road which in its current form is unacceptable and would be replaced by this proposal.

SITE HISTORY

K/33810 – Full planning permission was granted in February 1997 for alterations and extension to the main house, alterations to ancillary rooms and the erection of a garage block.

DESCRIPTION OF DEVELOPMENT

This application proposes the formation of an access and parking area for one vehicle on the edge of the track opposite Riverside Cottage. The parking area measures 2.1m deep and would be backed by a post and rail fence. Behind the fence it is proposed to plant a mixed native hedge grown to a height of 1.5m. This hedge would extend along the edge of the paddock. The proposed surface material is coarse gravel and fine grit to match the existing footpath/drive in colour.

This planning application has been made following an enforcement investigation of an existing unauthorised parking area to the side of the current application site. As originally submitted the application sought retention of the unauthorised area although this has been subsequently amended to the proposal now before the Committee.

PRINCIPAL AMENDMENTS MADE FOLLOWING SUBMISSION

Following negotiations the parking area has been repositioned to the edge of the track opposite Riverside Cottage. The shape of the parking area has also been amended to a softer parallel design 2.1 metres deep compared to the current harsh intrusion of 5-6 metres. It is also now proposed to extend the mixed native hedge along the edge of the parking area and part of the paddock.

PARISH COUNCIL COMMENTS

Ramsbury Parish Council objected to the original proposal on the grounds that it is inappropriate given the natural setting of the area. The Parish Council has divided views on the amended plans but continue to object.

CONSULTATIONS

Environment Agency (Ms K Burt) – No objection to the proposed development, subject to conditions. These are specified at the end of this report.

County Highways (Mr P Galpin) – No objection

REPRESENTATIONS

Six letters of objection have been received to the original scheme, which raise the following concerns;

1. The hardstanding would create an eyesore in an attractive part of the village which is one of the few areas in Ramsbury where the public have access to water views
2. The field is a wild flower water meadow leading to the river. To create a hardstanding there would completely ruin the view of the cottage and its surroundings and would 'urbanise' the spot, spoiling a delightful setting for local and visiting walkers.
3. There is no need for additional parking. Riverside Cottage already has a triple garage.
4. The parking area would result in a reduction of habitat for wildlife.
5. The parking area should be sited westward so it will face directly onto Riverside Cottage rather than to the front of Rachel's Cottage.

Five letters of objection have been received to the amended proposal for the following reasons;

1. The owner of the property already has ample parking and this additional space is unnecessary.
2. The current plot is sited on a separate and self contained part of the floodplain and will destroy 5-8% of that area. Car parking here will be a blot on the landscape which is worth preserving.
3. The creation of a lay-by would be a complete eyesore at what is considered to be one of the most attractive parts of the village and will spoil the pleasure of many people.
4. The field should be left as a water meadow.
5. The development should be moved further westward.

POLICY CONSIDERATIONS

The site lies in the countryside and the North Wessex Downs Area of Outstanding Natural Beauty.

Kennet Local Plan 2011 - Policies PD1, NR7 and NR8 are relevant to the consideration of this application.

PLANNING OFFICERS COMMENTS

The main issues to be considered in this case are the impact of the proposed parking area on the character, appearance and landscape quality of the North Wessex Downs Area of Outstanding Natural Beauty, and residential amenity.

The parish council and local residents have objected to this proposal on the grounds that it would adversely affect the landscape quality of the area. While the development would be visible from public vantage points, the revised parking area itself is relatively small in size, measuring just 2.1 metres deep. The proposed surface material is in keeping with the existing track and the post and rail fence fitting in this rural location. To reduce the visual impact of the development the shape of the parking area has been amended to a softer, parallel pull-in design and it is now proposed to plant a mixed native hedge to a height of 1.5 metres along the rear of the parking area extending along the edge of the paddock. This would screen the development in views from the north-east and would limit long views of the parking area from other public vantage points.

Comments have been made that the creation of an additional area for parking at Riverside Cottage is unnecessary, however in its amended form the proposal is considered to be acceptable. The amended site also moves the parking area away from the neighbouring house to ensure no adverse impact on residential amenity.

RECOMMENDATION

Approve with Conditions

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

REASON:

To comply with the provisions of Section 91 of the Town and Country Planning Act 1990.

2 - This permission relates only to the scheme of development shown on the revised plan 2213 09 received on the 29th April 2005.

REASON:

For the avoidance of doubt as to the development authorised since the proposal originally submitted has been amended during the course of its consideration.

3 - Notwithstanding the details shown on the submitted plans no development shall take place until details of the height of the post and rail fence have been submitted to and approved by the local planning authority in writing.

REASON:

In the interests of the visual amenity of the area.

4 - The surface material to be used in the construction of the parking area hereby permitted shall match in colour and texture the existing track to the north of Riverside Cottage.

REASON:

In the interests of visual amenity.

5 - No development shall take place until there has been submitted to and approved by the local planning authority a scheme of hard and soft landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development.

REASON:

To ensure a satisfactory landscaped setting for the development.

6 - All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of the building(s) or the completion of the development whichever is the sooner; any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the local planning authority.

REASON:

To ensure a satisfactory landscaped setting for the development.

7 - There shall be no raising of existing ground levels on site.

REASON:

To prevent increased risk of flooding due to impedance of flood flows and reduction of flood storage capacity.

8 - INFORMATIVE TO APPLICANT:

The Council is required to give a summary of the reasons for this decision and a summary of the development plan policies and proposals relevant to the decision. These are set out below:

The decision to grant planning permission has been taken on the grounds that the proposed development would not cause any significant harm to interests of acknowledged importance and having regard to the following policies and proposals in the Kennet Local Plan 2011 namely: policies PD1, NR7 and NR8.

9 - INFORMATIVE TO APPLICANT:

This permission authorises the parking area shown on amended plan 2213 09 only. The applicant is advised that the parking area already constructed opposite Rachel's Cottage is not in accordance with planning permission K/51791/F and is therefore unauthorised and liable to enforcement action by the local planning authority. The applicant is recommended to remove the unauthorised development and restore the land to its former condition.

10 - INFORMATIVE TO APPLICANT:

The applicant should note that the site is located immediately adjacent to Flood Zone 3. Flood Zone 3 is a high risk zone and refers to land where the indicative annual probability of flooding is 1 in 100 years or less from river sources. The attention of the applicant is therefore drawn to watercourses on the site and advise that;

- They should not be culverted; and
- A buffer zone is left on either side of any watercourse; and
- Culverted watercourses should not be built over, but ideally should be made a feature of the site.

In any case you should note that culverting of a watercourse requires the prior written approval of the local authority under the terms of the Public Health Act 1936 and the prior written consent of the Environment Agency under the terms of the Land Drainage Act 1991/Water Resources Act 1991. The Environment Agency seeks to avoid culverting and its consent for such works will normally be withheld. Further advice can be obtained from Ms K Burt, Environment Agency on Tel: 01258 483374.

Item 6:

APPLICATION: K/51977/F
PARISH: MARLBOROUGH
APPLICATION TYPE: Full Planning Permission
PROPOSAL: Two-storey extension to side and loft conversion with rooflights
SITE: 62 London Road, Marlborough, Wilts, SN8 2AJ
GRID REF: 19935 69001
APPLICANT: Dr and Mrs J Williams
AGENT: Mr M Nokes
DATE REGISTERED: 5th April 2005
CASE OFFICER: Mr N Britton

SITE & LOCATION

The property is located on the north side of London Road, and is the most easterly of four semi-detached houses dating from the mid 20th Century. To the east, as London Road climbs the hill, the frontage properties become detached. The house, like all its neighbours, is set well back from the road and at a higher level, with a sloping entrance drive leading to a large front garden. At the side is a flat roofed single garage and at the rear a large flat roofed single storey extension.

SITE HISTORY

| | | |
|-----------|-----------------------|--------------------|
| K 81/0319 | Extension to dwelling | Permitted 09.07.81 |
|-----------|-----------------------|--------------------|

DESCRIPTION OF DEVELOPMENT

It is proposed to erect an upper floor extension over the existing flat-roofed side garage and coming forward to align with the main front wall of the house. The garage will be removed, and the new ground floor space changed to storage space with a new door at the front, and a utility room. On the upper floor, a new bathroom and bedroom will be formed, while the roof space will be converted to a further bedroom. The new roof will be fully hipped, as at present, and roof lights will be inserted.

TOWN COUNCIL COMMENTS

Marlborough Town Council objects to the application as it is an over-development of the site. They are concerned about the possible impact on the adjacent property.

CONSULTATIONS

County highways (K Flower) - the application proposes the loss of the garage, but the site is able to accommodate two vehicles without it. Therefore no objection subject to condition 4.

REPRESENTATIONS

The owners of 64 London Road (the detached property adjoining to the east) object for the following reasons :

- The proximity to their property means that it will virtually become a linked property;
- Light to ground floor windows will be severely reduced;
- Footings of the proposed extension would overlap the boundary and may cause subsidence;

- Detrimental to the amenities of the area;
- Scaffolding on their property would not be allowed.

POLICY CONSIDERATIONS

Kennet Local Plan 2011 - policy PD1 requires a high standard of design in all new development. The site is within the AONB.

PLANNING OFFICER'S COMMENTS

The proposed development would be on an enclosed, built up site, and would not affect the AONB. The main issues for consideration are the impact on the amenities of the next door property and on the street scene.

The application plans show that there is a gap of approximately 300mm between the side wall of the garage and the boundary. The first floor extension would be built on top of this, so there would be room for overlapping eaves, guttering and footings. This appears to be consistent with the remains of an old fence on the site; however, the neighbours consider that the wall of the garage itself forms the boundary and that the extension will encroach on their property. This is Party Wall issue, most appropriately dealt with by means of an informative to the applicant. The issue of scaffolding is entirely a private matter between adjoining landowners.

The bulk of the proposed extension is likely to have some effect on natural daylight and afternoon sunlight to the neighbour's downstairs side window, which at present lights a study area. Protection of natural lighting to side windows which face another property is not always possible or reasonable in planning terms. The main aspects of the objector's house are to front and rear, which are not affected. It is not considered that the application could be refused on this basis.

Two storey side extensions can sometimes create a terracing effect in a street of semi-detached houses, which can be detrimental to the appearance of the street scene. However this site is at the end of a row of only four semi-detached properties, and immediately to the west the detached properties are more widely spaced. This proposed infilling would not contribute to a terracing effect. A side extension of similar scale has been permitted at the west end of the group at 59 London Road, so there is a local precedent although this adjoins the Cadet Centre and not another house.

RECOMMENDATION

Approve with Conditions

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

REASON:

To comply with the provisions of Section 91 of the Town and Country Planning Act 1990.

2 - The materials to be used in the construction of the external surfaces of the development hereby permitted shall match in colour and texture those used in the existing structure.

REASON:

To secure harmonious architectural treatment.

3 - Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order, 1995 (or any Order revoking and re-enacting or amending that Order with or without modification), no windows, doors or other openings shall at any time be inserted in the east elevation of the building hereby permitted.

REASON:

In the interests of the privacy of the neighbouring properties.

4 - The area allocated for the parking of two vehicles shall be kept clear of obstruction at all times and shall not be used other than for the parking of vehicles in connection with the dwellinghouse the subject of the development hereby permitted.

REASON:

In the interests of highway safety.

5 - INFORMATIVE TO APPLICANT

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

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

6 - INFORMATIVE TO APPLICANT:

The Council is required to give a summary of the reasons for this decision and a summary of the development plan policies and proposals relevant to the decision. These are set out below:

The decision to grant planning permission has been taken on the grounds that the proposed development would not cause any significant harm to interests of acknowledged importance and having regard to the following policies and proposals in the Kennet Local Plan 2011 namely: policies NR8, PD1.

Item 7:

| | |
|-------------------|---|
| APPLICATION: | K/52014/F |
| PARISH: | MARSTON |
| APPLICATION TYPE: | Full Planning Permission |
| PROPOSAL: | Proposed detached bedroom annexe |
| SITE: | Orchard View Cottage, Close Lane, Marston |
| GRID REF: | 96714 57057 |
| APPLICANT: | Mr and Mrs Middleton-Jones |
| AGENT: | Tim Weeding Building Design Services |
| DATE REGISTERED: | 11th April 2005 |
| CASE OFFICER: | Miss V Longdon |

SITE & LOCATION

Orchard View Cottage lies on the right-hand side of Close Lane, Marston near the end of the lane by Close Farm. Close Lane can be accessed by taking a left-hand turning off of Norney Road when heading from the Worton direction into Marston.

The cottage is a listed, detached, white rendered building with exposed timbers and a thatched roof. Public footpath no.11 runs along the southern boundary of the site.

SITE HISTORY

Planning permission K/50206 and listed building consent K/50207 for alterations and extensions to the main house were both refused under delegated powers in July 2004. The refusal reasons being that the proposed demolition works would result in an unacceptable loss of historic fabric and the proposed extension, by reason of its design, size and general massing, was considered out of scale and keeping with the original listed building.

DESCRIPTION OF DEVELOPMENT

This application is a direct response to these previous refusals. It is now proposed to erect a detached annexe within the garden to provide additional sleeping accommodation. It is sited adjacent to the southern boundary of the site, parallel to the public right of way. It is proposed to construct the building of a red brick plinth with dark stained softwood boarding above. The roof tiles are to be clay double roman tiles and the windows softwood.

PRINCIPAL AMENDMENTS MADE FOLLOWING SUBMISSION

The annexe has been reduced in scale and size during the process of the application. It is now 8.5m in length, 4.2m wide and 3.35m to the ridge. It is now 0.4m away from the boundary with the public footpath.

ADDITIONAL STATEMENT BY THE APPLICANT

The purpose of the annexe is to provide more suitable bedroom accommodation for the applicant's two children as they grow older. The existing bedroom accommodation in the house is inadequate as there is a single small bedroom upstairs accessed via the main bedroom and a small bedroom downstairs next to the lounge.

PARISH COUNCIL COMMENTS

Do not object in principle to the proposed development but are concerned that the overall effect of the detached annexe is not in keeping with the listed building on the site.

The parish council would also prefer the materials used in the development to be reclaimed brick/stone/tiles rather than timber cladding as shown.

No comments on the amended plans have been received at the time of writing this report. Any which are subsequently received will be reported verbally at the meeting.

CONSULTATIONS

County highways (P Galpin) - no objection is raised to the development subject to conditions ensuring the annexe is not sold or let as a separate dwelling and that no part of the annexe shall overhang footpath 11.

REPRESENTATIONS

No representations have been received to the application at the time of writing the report. Any which are subsequently received will be reported verbally at the meeting.

POLICY CONSIDERATIONS

The annexe lies within the curtilage of a grade II listed building and adjacent to a public right of way.

Kennet local Plan 2011 - policies PD1 regarding general design principles, AT22 regarding rights of way and HH8 regarding development affecting a listed building are relevant to the determination of this application.

PLANNING OFFICERS COMMENTS

It is considered that the main issues in determining this application are the impact upon the setting of the listed building (including the proposed materials); the impact upon the use of the public right of way and the impact upon neighbour amenity.

Impact upon the listed building

In its amended form the relationship between the annexe and the main listed building is considered acceptable. The positioning of the annexe as well as its overall scale and size ensures that it will not dominate or detract from the setting of the listed building. Relatively speaking it is a modest building and will not be an intrusive feature within the curtilage.

The parish council have objected to the proposed materials in that they are out of keeping with the host dwelling. The materials are considered acceptable and appropriate for a building which will essentially take on an outbuilding appearance. The dark stained softwood will tie in with the exposed timbers of the main house and is considered appropriate for its location in a somewhat rural setting next to the public footpath.

The plans refer to the use of upvc rainwater goods on the annexe. This is considered unsympathetic to the setting of the historic building. A condition stating that the rainwater goods should be cast metal is recommended.

Impact upon the use of the right of way

Although the building will run parallel with the footpath, at 8.5m long and 3.35m high it is not considered to be overbearing upon the footpath to the detriment of its use. Furthermore, the highways authority has raised no objection to the application as

long as a condition ensuring that no part of the annexe overhangs the right of way is attached to any permission.

Impact upon neighbour amenity

Because of its size and location, it is not considered that the annexe will result in an adverse impact upon the amenity of the occupiers of the neighbouring property.

Given its location, a condition ensuring that the annexe is not sold or let as a separate dwelling is also recommended.

RECOMMENDATION

Approve with Conditions –

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

REASON:

To comply with the provisions of Section 91 of the Town and Country Planning Act 1990.

2 - This permission relates only to the scheme of development shown on the revised plans 05A and 06A received on the 16th May 2005.

REASON:

For the avoidance of doubt as to the development authorised since the proposal originally submitted has been amended during the course of its consideration.

3 - No development shall take place until details of the materials and stain to be used for the external walls and roofs (including samples if requested) have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

REASON:

To secure harmonious architectural treatment.

4 - Notwithstanding the submitted details, the rainwater goods on the annexe hereby approved shall be constructed of cast metal.

REASON:

To protect the setting of the listed building.

5 - The additional residential accommodation hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as Orchard View Cottage.

REASON:

The additional accommodation is sited in a position where the local planning authority, having regard to the reasonable standards of residential amenity, access, and planning policies pertaining to the area, would not permit a wholly separate dwelling.

6 - No part of the annexe hereby approved shall overhang any part of footpath 11.

REASON:

In the interests of the safe use of the public right of way.

7 - INFORMATIVE TO APPLICANT:

The Council is required to give a summary of the reasons for this decision and a summary of the development plan policies and proposals relevant to the decision. These are set out below:

The decision to grant planning permission has been taken on the grounds that the proposed development would not cause any significant harm to interests of acknowledged importance and having regard to the following policies and proposals in the Kennet Local Plan 2011 namely: policies PD1, HH8 and AT22.

Item 8:

| | |
|-------------------|--|
| APPLICATION: | K/52147/F |
| PARISH: | DEVIZES |
| APPLICATION TYPE: | Full Planning Permission |
| PROPOSAL: | Conversion of single house to three self contained units |
| SITE: | 14 Kingsley Gardens Devizes SN10 3DH |
| GRID REF: | 01496 61219 |
| APPLICANT: | Mr and Mrs C Greenwood |
| AGENT: | Mr L S Dobie |
| DATE REGISTERED: | 5th May 2005 |
| CASE OFFICER: | Miss K Whittington |

SITE & LOCATION

The application relates to one of a terrace of four dwellings in Kingsley Gardens, Devizes. Kingsley Gardens can be reached via Brickley Lane and is the third turning on the right after the roundabout, if approaching from the London Road direction. The area to the front of the property is presently laid to grass. The property has no off-road parking facilities at present.

SITE HISTORY

There is no relevant planning history.

DESCRIPTION OF DEVELOPMENT

The proposal is to change the use of the existing dwelling to three self-contained flats (one on the ground-floor and two on the first-floor). Three off-road parking spaces are proposed to the front of the property in lieu of the existing front garden. No external alterations are proposed, as the existing front door to the property would be utilised.

TOWN COUNCIL COMMENTS

Devizes Town Council considers that the proposal would be out of keeping with other properties in the area.

CONSULTATIONS

KDC Environmental Health Officer – the main concerns are with regard to fire safety, although Building Control will give specific advice on the level of works that will be required. The other concerns are noise transmission between the flat on the ground-floor and the two located on the first-floor. Is the applicant carrying out any noise insulation works to the floors of the first-floor flats, as one of the bedrooms on the ground-floor is located directly below the living room in one of the first-floor flats? Noise complaints are often received concerning noise transmission between flats through airborne sound transmission, such as through music/TV, or through impact sound, particularly where the flooring provided is of laminate materials. However, as the issue of noise insulation would be dealt with at the Building Regulations stage, no objection is raised.

WCC Highways – no comments have yet been received. Any that are subsequently received shall be reported verbally at the committee meeting.

REPRESENTATIONS

No letters of objection have been received.

POLICY CONSIDERATIONS

Kennet Local Plan - the site lies within the Limits of Development for Devises. Policy PD1 is relevant to the consideration of the application.

PLANNING OFFICERS COMMENTS

As the property is currently in residential use and lies within the Limits of Development for Devises, the principle of converting it to three flats is considered to be acceptable. It is therefore necessary to consider whether the proposal is acceptable in visual, residential amenity and highway safety terms.

No external alterations to the building are proposed, as the existing front door would be utilised. Consequently, there would be no adverse visual impact in this regard. A hardstanding area containing three parking spaces would replace the existing front garden. It is not considered that this would be detrimental in visual terms, as other properties in the area have also laid their front gardens with a hard surface to enable off-road parking. Furthermore, this work could be done as 'permitted development' without the need for planning permission from the council.

With regard to residential amenity, it is not considered that the proposal would give rise to any significant noise disturbance as a result of the increased comings and goings resulting from the change of use. Consequently, the neighbours' reasonable living conditions would not be compromised as a result of the proposal. The Council's Environmental Health Officer has commented that there may be noise transmission between the flats on the ground and first floors, but has raised no objection as the matter will be dealt with through the Building Regulations, Part E of which relates to the passage of sound through walls and floors.

With regard to highway matters, it is considered that the proposal provides for adequate off-road parking (amounting to 1 space per flat), in line with the system of maximum parking standards that is recommended in PPG 3 and PPG 13. It would be necessary for the parked cars to reverse out onto the highway, however, it is not considered that this would present a road safety hazard, given that the road is unclassified and that other properties in the road have a similar parking arrangement.

RECOMMENDATION

Approve with Conditions

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

REASON:

To comply with the provisions of Section 91 of the Town and Country Planning Act 1990.

2 - Prior to the first occupation of the residential units hereby permitted, the parking spaces shown on the approved plans shall be provided and shall thereafter be retained for the parking of vehicles.

REASON:

To ensure the adequate provision of parking for the development.

3 - INFORMATIVE TO APPLICANT:

The Council is required to give a summary of the reasons for this decision and a summary of the development plan policies and proposals relevant to the decision. These are set out below:

The decision to grant planning permission has been taken on the grounds that the proposed development would not cause any significant harm to interests of acknowledged importance and having regard to the following policies and proposals in the Kennet Local Plan 2011 namely: policy PD1.

