

<b>Date of Meeting</b>	16th March 2016
<b>Application Number</b>	15/12584/FUL
<b>Site Address</b>	Land Adjacent to 9 Clay Close Dilton Marsh Wiltshire BA13 4DU
<b>Proposal</b>	Proposed new dwelling and vehicle access.
<b>Applicant</b>	Mr Michael Duhig
<b>Town/Parish Council</b>	DILTON MARSH
<b>Electoral Division</b>	ETHANDUNE- Councillor Jerry Wickham
<b>Grid Ref</b>	385568 149982
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	Steven Vellance

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

Councillor Jerry Wickham has requested that this application be considered by the Planning Committee for the following reasons:

- Environmental or Highway Impact;
- Highways issues associated with access to and from the B3099 High Street Dilton Marsh.

**1. Purpose of Report**

To consider the above application and to recommend that planning permission be granted.

**2. Report Summary**

The main issues to consider are:

- Site history;
- Highway safety;
- Land ownership of an area of land forming a part of the red lined site.

**Dilton Marsh Parish Council** – Objects to this planning application on highway safety

grounds and supports the recent appeal decision which dismissed the previous application (reference W/12/01086/FUL) as detailed within section 07 below.

**Neighbourhood Responses** – One email of response received.

### **3. Site Description**

The application site is part of the established residential garden land to the north of 9 Clay Close, Dilton Marsh, near Westbury. The majority of the site belongs to the applicant with a small area of land adjacent to the B3099 belonging to the neighbour at number 7 Clay Close, which would serve to form the proposed access opening and turning circle.

Access to the site would be from the B3099 High Street and the Highways Officer has not raised any objections subject to a number of planning conditions being imposed.

### **4. Planning History**

W/12/01086/FUL Proposed erection of a two storey 3 bedroom dwelling house Refused 03 August 2012. Decision appealed reference: APP/Y3940/A/12/2184559 Appeal Dismissed on 28 February 2013

### **5. The Proposal**

The proposal is for the construction of a new dwelling with associated access off the B3099, High Street, Dilton Marsh. The land which would be used for this scheme would constitute in part, some of the garden land belonging to 9 Clay Close and some garden land within the ownership of the neighbouring property at number 7 Clay Close, this being to form a part of the proposed new access area.

The proposed dwelling would be a modest sized two storey building, with three bedrooms at first floor level and being of a contemporary design; the exterior walls would have wooden cedar cladding combined with a render finish and the roof would consist of a grey insulated membrane material.

### **6. Planning Policy**

Wiltshire Core Strategy (2015)

CP1: Settlement Strategy

CP2: Delivery Strategy

CP32: Westbury Community Area

CP57: Ensuring high quality design and place shaping.

CP61: Transport and new development

National Planning Policy Framework (NPPF)

## **7. Consultations**

### **Dilton Marsh Parish Council:**

Objects to the proposal on grounds of:-

-Highway safety issues.

-The proposed access on to the B3099 is very dangerous and close to the railway bridge and a bend.

-The Parish Council supports the previous reasons given for the Appeal Dismissal at this same site, planning reference W/12/01086/FUL and Appeal Reference: APP/Y3940/A/12/2184559.

### **Highway Officer:**

No objections raised for the application and comments that:

-Colleague dealt with preliminary enquiry for this site, whereby concerns in relation to vehicle access have now been overcome.

-Vehicle access now allows adequate visibility, adequate turning space to allow entry and exit from the site in forward gear and adequate parking provision.

-Application is recommended for approval subject to the attachment of three planning conditions relating to the implementation of the access, turning area, parking provisions and discharge of surface water. One informative relating to the provision of a dropped kerb should also be included.

### **Environmental Health Officer.**

No objections raised.

### **Ecology Officer.**

No objections raised and raises the following comments:

-Notes from the 2014 aerial photograph that some of the mature trees and existing hedgerow would need to be removed from the north eastern corner of the site.

-Potential for nesting birds and low risk of reptiles being present at this location. Officer requests that an informative relating to each of these aspects be attached.

-Officer notes that the hedgerow will be enhanced and the evergreen boundary pruned to allow natural light onto the site. A landscaping condition relating to these two aspects should be attached.

-It is noted that the site is in close proximity to the River Biss, it is unlikely that the site provides a suitable habitat for the Greater Horseshoe Bat, which does not roost in trees and would not utilise the hedgerow as a flight line. The applicant is advised to consider

incorporating enhancements for nesting birds and roosting bats within the proposed new dwelling.

#### **Wessex Water.**

No objections raised and comment that new water and waste connections would be required to serve this development. It appears that there is a public sewer running through the application site and the applicant is advised to contact this service provider.

#### **Wiltshire Fire & Rescue.**

Comment on the application and advise the use of a fire sprinkler system within the proposed new dwelling.

#### **8. Publicity**

The application was advertised by way of site notice and letters to neighbours.

One email of objection was received from the neighbour at number 7 Clay Close, Dilton Marsh, who commented that he did not wish to sell any of his garden land to the applicant.

#### **9. Planning Considerations**

The proposal is for the creation of a new dwelling and vehicular access on land adjacent to 9 Clay Close, Dilton Marsh, with the creation of a new vehicular access onto the B3099.

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

##### Principle of development

The proposed dwelling would be located within the defined settlement limits of Dilton Marsh which is classified as a large village under Core Policy 1 to the Wiltshire Core Strategy. The principle of new dwellings in these circumstances accords with the Core Strategy.

##### Planning History.

Within the previous planning application reference W/12/01086/FUL a similar scheme was proposed which relied on its access being derived from the B3099, High Street. The scheme was refused for the following four reasons:

- 1 Vehicles resulting from the proposed development by entering, leaving and standing within the B3099 (a Class II road) and the High Street, at a point where visibility from and of such vehicles would be severely restricted, would impede, endanger and inconvenience other road users to the detriment of highway safety.
- 2 The proposal does not incorporate adequate turning facilities to enable a vehicle to enter and leave the highway in forward gear, which is essential to highway safety.
- 3 The horizontal alignment of the access as proposed, is likely to result in excessive manoeuvring on the highway, with a consequent risk of additional hazard to all users of the road.
- 4 The proposed development, by reason of its location and balcony area would be visually intrusive and detrimental to existing residential amenity, contrary to policy C38 of the West Wiltshire District Plan 1st Alteration 2004.

### Highways.

The first three reasons for refusal are Highway safety related with the fourth relating to neighbour amenity and the possibility of being overlooked by the scheme. The applicant appealed this refused scheme which the Planning Inspector dismissed in the Council's favour on the 28 February 2013.

The Planning Inspector's observations within the appeal of planning refusal W/12/01086/FUL and its proposed access arrangements, was that it was not possible to achieve the required sight line of 43 metres in both directions of the B3099, at the point of access set 2 metres back from the edge of the carriageway, as stipulated within the guidance -The Manual for Streets.

The Inspector noted with regard to the access provisions of W/12/01086/FUL that it was not possible to safely enter the site from the highway by making a 90 degree turn when on the B3099 from either a Western or Eastern approach.

The Inspector also noted that because the B3099 was a High Street, there was a requirement of allowing vehicles to either enter or leave the highway in forward gear of the vehicle, the access provisions within W/12/01086/FUL did not allow for this to happen.

The applicant has resubmitted the current scheme after having sought advice from the Highways section of the Council, in an attempt to overcome the three highway reasons for refusal.

The submitted scheme is a result of these negotiations whereby the current application shows an enlarged access area onto the B3099 incorporating a large access opening and a 11.8 metre turning circle within the application site. Plan reference 1410-01 Rev C shows that from the newly created access there is 48 metres of visibility to the East, towards the railway bridge and 43 metre of visibility to the West towards the Junction at Clay Close. In such Highway terms the Highways Officer is satisfied with this proposal, considering it to have overcome the previous reasons for refusal and not raising any objections, subject to planning conditions being imposed.

With regard to the fourth reason for refusal, relating to neighbouring amenity, the Planning Inspector observed that within the proposed scheme for the dwelling within the W/12/01086/FUL planning application, the proposed windows and balcony at first floor level, would look onto and impact on the amenity of numbers 9 and 11 Clay Close.

The current scheme addresses these points of concern by omitting such high level windows and balcony, so as to not afford any direct overlooking of these neighbouring dwellings. No neighbour objections within this respect have been received by the Council.

It is therefore considered that the previous four reasons for refusal within the previous scheme within W/12/01086/FUL have been overcome.

#### Other Matters - Land Ownership.

The current scheme relies on taking some garden land from the neighbouring dwelling at number 7 Clay Close to make provision for the revised access and the turning circle onto the B3099. The bulk of the land required to facilitate this is not within the applicant's ownership or control and the land owner at number 7 Clay Close has written in to the Council stating that he is not prepared to sell this area of land to the applicant.

Land ownership is not a planning matter and it is noted from the planning application form that the applicant has served notice on the owner of this land, with certificate B of the planning application form having been completed and confirming this to be the case.

Therefore, whilst it is realised that the land owner at number 7 Clay Close is not in support of this scheme and that the use of this land is key to making this scheme work, this in itself is not sufficient reason to refuse the application, because land ownership is not a planning consideration.

### **10. Conclusion**

The scheme has sought to effectively overcome the previous reasons for refusal and it is required that appropriate conditions are put in place to ensure the safe highway use of the site. The ecology of the site is a further important consideration with the Council's Ecologist requesting that a planning condition and a number of informatives are attached to the final decision.

#### **RECOMMENDATION:**

Permission be granted subject to the following conditions:

#### **RECOMMENDATION**

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

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

- 2 No development shall commence on site until the exact details and samples of the materials to be used for the external walls and roofs have been submitted to and

approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

REASON: In the interests of visual amenity and the character and appearance of the area

- 3 No works to the dwelling shall be commenced until the first five metres of the access, measured from the edge of the carriageway, has been consolidated and surfaced (not loose stone or gravel). The access shall be maintained as such thereafter.

REASON: In the interests of highway safety.

- 4 No works to the dwelling shall be commenced until the access, turning area and parking spaces have been completed in accordance with the details shown on the approved plans (1410 - 01 Revision C). The areas shall be maintained for those purposes at all times thereafter.

REASON: In the interests of highway safety.

- 5 No development shall commence on site until a scheme for the discharge of surface water from the site access to prevent discharge onto the highway has been submitted to and approved in writing by the Local Planning Authority. The development shall not be first occupied until surface water drainage has been constructed in accordance with the approved scheme.

REASON: To ensure that the development can be adequately drained.

- 6 No development shall commence on site until a scheme of hard and soft landscaping has been submitted to and approved in writing by the Local Planning Authority, the details of which shall include:-

-Finished land levels of the site, to include the proposed dwelling so as to minimise any impact of the scheme on the surrounding properties and area.

-Means of enclosure,

-All hard and soft surfacing materials, to include native species-rich hedgerow planting as an enhancement of the existing roadside hedgerow, along the northern boundary of the site

REASON: In order to ensure a satisfactory landscaped setting for the development.

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

the Local Planning Authority.

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

8 There shall be no raising of land levels.

REASON: In the interests of visual amenity and impact of the scheme on the surrounding area.

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

Plan reference 1410-01 Rev C registered on 21.01.2016

Plan reference 1410-02 Rev C registered on 21.01.2016

Plan reference 1410-03 Rev C registered on 21.01.2016

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

10 The dwelling hereby approved shall achieve a level of energy performance at or equivalent to Level 4 of the Code for Sustainable Homes. The dwelling shall not be occupied until evidence has been issued and submitted to, and approved in writing by, the local planning authority certifying that this level or equivalent has been achieved.

REASON: To ensure that the objectives of sustainable development equal or equivalent to those set out in Policy CP41 of the Wiltshire Core Strategy are achieved.

11 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), no windows, doors or other form of openings other than those shown on the approved plans, shall be inserted at first floor level on the rear south and west elevations of the development hereby permitted.

REASON: In the interests of residential amenity and privacy.

12 INFORMATIVE: The application involves the creation of a dropped kerb. The consent hereby granted shall not be construed as authority to carry out works on the highway. The applicant is advised that a licence will be required from Wiltshire's Highway Authority before any works are carried out on any footway, footpath, carriageway, verge or other land forming part of the highway. Please contact the Vehicle Crossing Team on [vehicleaccess@wiltshire.gov.uk](mailto:vehicleaccess@wiltshire.gov.uk) and/or 01225 713352.

13 INFORMATIVE: The applicant is reminded that, under the Wildlife and Countryside Act 1981, as amended (Section 1), it is an offence to remove, damage and destroy a nest of any wild bird while that nest is in use or being built. Planning permission for a development does not provide a defence against prosecution under this Act. Trees, scrub and other vegetation, such as dense ivy, are likely to contain nesting birds between 1st March and 31st August. Hedgerows and trees are present on the application site and should be assumed to contain nesting birds between the above

- dates, unless a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity on site during this period and has shown it is absolutely certain that nesting birds are not present.
- 14      INFORMATIVE: The applicant is informed that there is a low risk that reptiles could occur on the application site. All reptiles are legally protected under Schedule 5 of the Wildlife and Countryside Act 1981 (as amended) and planning permission does not provide a defence against prosecution. In order to minimise the risk of reptiles occurring on the site, the developer is advised to clear the site and vegetation in a sympathetic manner during the autumn (September/October) or spring months (April-May) and to maintain the vegetation at a short height to make it unsuitable for reptiles until the construction works commence. If these species are found during the works, the applicant is advised to stop work and follow the advice of a professional ecologist to inform necessary mitigation and/or compensation measures.
- 15      INFORMATIVE: The applicant is advised that the development hereby approved may represent chargeable development under the Community Infrastructure Levy Regulations 2010 (as amended) and Wiltshire Council's CIL Charging Schedule. If the development is determined to be liable for CIL, a Liability Notice will be issued notifying you of the amount of CIL payment due. If an Additional Information Form has not already been submitted, please submit it now so that we can determine the CIL liability. In addition, you may be able to claim exemption or relief, in which case, please submit the relevant form so that we can determine your eligibility. The CIL Commencement Notice and Assumption of Liability must be submitted to Wiltshire Council prior to commencement of development. Should development commence prior to the CIL Liability Notice being issued by the local planning authority, any CIL exemption or relief will not apply and full payment will be required in full and with immediate effect. Should you require further information or to download the CIL forms please refer to the Council's  
Website:[www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastructurelevy](http://www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastructurelevy).
- 16      INFORMATIVE: The applicant is encouraged to consider incorporating enhancements for biodiversity within their development. Paragraph 118 of the NPPF states "local planning authorities should aim to conserve and enhance biodiversity by applying the following principles: opportunities to incorporate biodiversity in and around developments should be encouraged". Creating new habitat, enhancing existing habitat or providing new features can all contribute towards biodiversity enhancement, and helping to rebuild habitat networks in the wider area improves ecological resilience and adaptation to climate change. Benefits can be maximised if undertaken to support biodiversity work being undertaken by other parties, such as local Wildlife Trusts or through agri-environment schemes, or if they are consistent with biodiversity strategies or priorities already in place in the local area, such as Nature Improvement Areas (NIA). At the smallest scale, enhancements could be bird nesting or bat roosting opportunities in new buildings, such as integral bat bricks (e.g. <http://www.ibstock.com/sustainability-ecozone.asp> ), bat tubes (e.g. [http://www.nhbs.com/2fr\\_schwegler\\_bat\\_tube\\_tefno\\_162812.html](http://www.nhbs.com/2fr_schwegler_bat_tube_tefno_162812.html) ) or Habibat (<http://www.habibat.co.uk/> ). These integral type boxes do not interfere with the human

inhabitants and require no maintenance. Woodcrete products are longer-lived than traditional timber-made boxes, and there are many different products available from a range of suppliers. These types of enhancements can be generic or aimed at specific species such as House sparrow, Starling or Swift. Enhancements can also be provided for other species such as amphibians and reptiles, hedgehogs and invertebrates. Further information can be found at:

[http://www.ciria.com/buildinggreener/complementary\\_features.htm](http://www.ciria.com/buildinggreener/complementary_features.htm)

<http://planningguidance.planningportal.gov.uk/blog/guidance/natural-environment/biodiversity-ecosystems-and-green-infrastructure/>

- 17      INFORMATIVE: The applicant is advised to contact Wessex Water by telephoning 01225 526222 for Water Supply Connections and 01225 526333 for Waste Water Connections.
  
- 18      INFORMATIVE: The applicant is advised that a public sewer is shown on record plans within the land identified for the proposed development and it appears that development proposals will affect existing public sewers. It is recommended that the applicant contacts Wessex Water Sewer Protection Team for further advice on this matter. Building over existing public sewers will not be permitted (without agreement) from Wessex Water under Building Regulations. It should be noted that no building will be permitted within the statutory easement width of 3 metres from the pipeline without agreement from Wessex Water and the applicant is advised to contact the Sewer Protection Team to discuss further 01225 526333.