

REPORT TO THE AREA PLANNING COMMITTEE

Date of Meeting	2 nd February 2022
Application Number	PL/2021/04439
Site Address	38 Stone Lane, Lydiard Millicent, Swindon, SN5 3LD
Proposal	Part retrospective change of use of section of agricultural land to residential
Applicant	Mr Michael Kerlake
Town/Parish Council	Lydiard Millicent Parish Council/Purton Parish Council
Division	Royal Wootton Bassett East/Purton
Grid Ref	410858 186652
Type of application	Full Planning
Case Officer	Perry Lowson

Reason for the application being considered by Committee

The application has been called to committee by Cllr Steve Bucknell to assess the visual impact upon the surrounding area and relationship to adjoining properties. A minor discrepancy with the plans was noted, relating to the neighbours site boundary.

1. Purpose of Report

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

2. Report Summary

There were eight objection comments received from neighbouring parties. Additionally, two objection comments were received from Lydiard Millicent Parish Council and one no objection comment was received from Purton Parish Council. These are summarised within the Sections 7 (Consultations) and 8 (Publicity) of this report.

Those issues deemed to be most pertinent to the determination of the application are as follow:

- Principle of Development
- Impact on the Landscape & Character and Appearance of the Area
- Impact on Residential Amenities
- Other Matters

3. Site Description

The site is located outside any defined settlement boundary. Accordingly, for planning purposes, the site is considered to be within the open countryside.

The site constitutes a single detached two storey dwelling with associated single storey outbuildings to the side and rear. To the north of the site is an agricultural field under the ownership of the applicant. The field is bounded by those dwellings fronting Stone Lane on its southern/western boundary and those dwellings fronting Washpool on its east boundary. To the north of this field are further agricultural fields. It is noted that the site boundary to the agricultural field under the applicant's ownership is largely open.

It is noted that the site has been subject to enforcement investigation following an unauthorised change of use of part of the agricultural field. The works completed to date include the partial marking out of the area to be extended, though this does omit the area to the north of the garage. The area which has been marked out has been incorporated into the existing garden but is only marked with temporary fencing, understood to be for the purpose of keeping the applicant's dog(s) within their garden. The proposal is therefore partially retrospective.

In terms of physical constraints, it is noted that the land to the north of the site which is being extended into is Grade 3 agricultural land (good to moderate quality agricultural land).

In terms of policy constraints, a review of constraints mapping indicates that the site is not within any designated area.

4. Planning History

Note that the below is not necessarily an exhaustive list and only includes those applications deemed to be of relevance to the current proposal.

N/11/02637/FUL

Demolition of Existing Building and Erection of a Replacement Dwelling. Approved with conditions 14th December 2011.

N/12/00126/FUL

Erection of Detached Garage with Ancillary Accommodation Above, Following Demolition of Existing Garage. Approved with conditions 15th March 2012.

N/12/00540/FUL

Demolition of Existing Building and Erection of a Replacement Dwelling (Revision of 11/02637/FUL). Approved with conditions 21st June 2012.

N/12/02015/FUL

Demolition of Existing Dwelling & Construction of a Replacement Dwelling (Amendment to N/12/00540/FUL). Approved with conditions 27th September 2012.

There is no history of pre-application advice having been sought for the proposed development.

It is noted that there is an active enforcement case at the site for the unauthorised extension of the garden.

5. The Proposal

Planning permission is sought to regularise the change of use of a portion of the adjoining agricultural field to residential use to be included within the curtilage of 38 Stone Lane.

It is noted that the agent made a minor alteration to the plans to omit an error whereby the neighbour's garden was mistakenly extended north by circa 2.6m.

Under the revised block plan, the garden would be extended at full width by circa 5.6m on the east boundary, and not on the western boundary, forming a wedge shape of extended garden. The total size of this extended area is circa 87sqm.

The agent has confirmed that post and rail stock proof fence would be used to enclose this extended area. The post and rail stock proof fence has not yet been erected.

6. Planning Policy

Though the development plan is considered as a whole, those parts deemed to be particularly relevant to this application are listed below:

Lydiard Millicent Neighbourhood Plan 2018-2036 (2021)

There are not considered to be any policies within the Neighbourhood Plan which are of direct relevance to the proposal in this instance. However, the overarching aims and objectives of the plan have been taken into consideration whilst determining this application.

Purton Neighbourhood Plan 2017-2026 (2018)

There are not considered to be any policies within the Neighbourhood Plan which are of direct relevance to the proposal in this instance. However, the overarching aims and objectives of the plan have been taken into consideration whilst determining this application.

Wiltshire Core Strategy (2015)

Core Policy 1: Settlement Strategy

Core Policy 2: Delivery Strategy

Core Policy 19: Spatial Strategy for the Royal Wootton Bassett and Cricklade Community Area

Core Policy 51: Landscape

Core Policy 57: Ensuring High Quality Design and Place Shaping

Wiltshire Housing Site Allocations Plan (2020)

Settlement Boundaries were reviewed as part of the adoption of the plan.

North Wiltshire Local Plan (2006)

H4 Residential Development in the Open Countryside

National Planning Policy Framework (2021)

Section 2 Achieving Sustainable Development (Paragraphs 2, 8, 11 and 12)

Section 12 Achieving Well Designed Places (Paragraphs 130 and 134)

Section 15 Conserving and Enhancing the Natural Environment (Paragraph 174)

7. Consultations

Note that the site straddles the boundaries of Lydiard Millicent Parish Council and Purton Parish Council and as such both Parishes have been contacted for comment. Also note that there are two responses from Lydiard Millicent Parish Council since they were involved in two rounds of consultation.

Lydiard Millicent Parish Council

Objection. Questioned the accuracy of the plans and identified that there is also a large decking area and trees that are not shown on the plans.

The Parish note that the residential area is not as shown on the plans.

Noted that the garage appears to be being used as an annexe for which there is no planning permission as far as the Parish are aware. It is identified that permission 20/08074 states at condition 5 that "The garage on the ground floor hereby permitted shall not be converted to habitable accommodation".

The decking currently installed has removed the neighbour's privacy.

Identified that Purton Parish Council have not yet been consulted despite the garden area being within the Purton Parish boundary.

Lydiard Millicent Parish Council

Objection. Concerns are raised that the block plan does not accurately reflect the plot, trees and decking are not shown and the boundary shown on the plans may not be accurate. The decking impacts the neighbour's privacy.

It is noted that the land also lies outside Lydiard Millicent boundaries, and that Purton Parish Council should also be contacted.

Planning Officers are also requested to investigate the use of the garage.

Purton Parish Council

No objection to change of use of the land from agricultural to residential.

Councillor Steve Bucknell (Royal Wootton Bassett East)

Called in to planning committee due to visual impact upon the surrounding area and relationship to adjoining properties. A minor discrepancy with the plans was noted, relating to the neighbours site boundary.

8. Publicity

There were eight neighbour responses received for the application, all of which were objections. The material concerns raised are summarised below:

Change of Use

- Applicant has repeatedly mown the agricultural land, which is not in agricultural production;
- At the time of the application for the replacement dwelling at 38 Stone Lane, it was considered that the existing land/garden was sufficient to allow the build;
- Extending the curtilage would be in contravention with Policy H4, which permits replacement dwellings provided that the dwelling is within the same curtilage.

Character and Appearance of the Area

- The proposal is not in keeping with the existing character of the neighbourhood;

Amenity

- The proposal would cause privacy issues to surrounding properties;
- Decking has been installed recently allowing for visibility into habitable rooms, namely that of the annexe associated with 39 Stone Lane;
- Impact on views from other gardens over open countryside;
- Introduction of noise and light pollution.

Other

- The application details are inaccurate, with inaccuracy between the site plan and location plan specifically relating to the northern boundary of The Conifers;

- Inaccuracies on the application form indicating that work has not started;
- Owner will park vehicles on the agricultural land to the rear;
- Reference is made to a breach of a restrictive covenant for the use of the land;
- Applicant may seek further extensions; and
- Conflict is identified with Policies C3, NE15 and H8.

Note that all comments are available to view in full on Wiltshire Council's website.

9. Planning Considerations

Under the provisions of section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004, and the provisions of the NPPF i.e. para 2, applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. At the current time the statutory development plan in respect of this application consists of the Wiltshire Core Strategy (WCS) (Adopted January 2015); Wiltshire Housing Site Allocations Plan (Adopted February 2020); the 'saved' policies of the North Wiltshire Local Plan (NWLP) 2011 (adopted June 2006); the Lydiard Millicent Neighbourhood Plan 2018-2036 (Made 2021); and the Purton Neighbourhood Plan 2017-2026 (Made 2018).

Principle of Development

For the avoidance of doubt this application relates solely to the change of use of the land hatched in red on the supporting Proposed Block Plan as received 13th October 2021. The application does not seek to establish the principle of any decked area as referred to by consultees and third parties, which is a separate matter, and is not an application for the erection of a new dwelling. It is simply an extension of the area of an existing dwelling.

The application would involve the regularisation of a change of use of agricultural land to residential curtilage, facilitating an extension to the garden associated with 38 Stone Lane. The land in question is approximately 87sqm. The agricultural land subject to the change of use is Grade 3 agricultural land and as such is not considered to be of particularly high value and is in any event limited in scale. Accordingly, the acceptability of the change of use lies in the impact upon the surrounding landscape (Core Policy 51) and the impact upon the character and appearance of the surrounding area (Core Policy 57) and whether the proposal would lead to an urbanisation of the existing open countryside. The proposal is considered to be acceptable in principle only where it accords with those aforementioned policies.

It is noted that concern has been raised by neighbouring third parties over the proposal's accordance with Policy H4. Whilst this is noted, Policy H4 is only relevant for the replacement of an existing dwelling application, unless related to the essential needs of an agricultural/forestry worker. Whilst the replacement dwelling must be within the same curtilage at such a time when the dwelling is being replaced, this does not restrict the boundaries of existing properties. Accordingly, if an applicant who secured a replacement dwelling under Policy H4 wished to extend their boundary, this would need to be completed under a separate application to allow the Council to consider the impact this boundary extension would have on a case-by-case basis. Accordingly, the current proposal is not considered to conflict with the provisions of Policy H4, since it does not include the replacement of a dwelling.

Impact on the Landscape & the Character and Appearance of the Area

Core Policy 51 states that development should protect, conserve and where possible enhance landscape character and must not have a harmful impact upon landscape character. Section ii states that regard should be had to the locally distinctive character of

settlements and their landscape setting. Further to this, NPPF paragraph 174 states decisions should contribute to and enhance the natural and local environment by recognising the intrinsic beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland.

Core Policy 57 Section i states that development should enhance local distinctiveness by relating positively to its landscape setting and the existing pattern of development and responding to local topography by ensuring that important views into, within and out of the site are to be retained and enhanced. Section iii states that proposals should respond positively to the existing townscape and landscape features in terms of, but not limited to, plot size.

In order to assess landscape impact, regard is had to any existing public views of the area of land subject to the change of use. It is noted that Footpath PURT76 is located to the north of the site. However, given the distance from the site (circa 440m), the topography of the land and location of hedgerows between the footpath and site, views of the site from this footpath are not possible, as confirmed by a site visit conducted on 20th January 2022. Due to the topography of the land surrounding the site and arrangement of surrounding dwellings, it is not considered that there are any key public viewpoints of the site and as such it is concluded that the proposal would be largely secluded from public view.

Further to this, the extension of the residential curtilage represents only a 5.6m extension into open countryside on the east boundary, which in this instance given the site's seclusion from public views and the nature of the land which is being extended into, is not a significant intrusion. Additionally, the agent has specified that the boundary treatment would constitute post and rail stock proof fencing, contributing towards the retention of the agricultural character of the field. Details of this fencing to confirm its acceptability will be secured via an appropriate condition.

Accordingly, with direct reference to Core Policies 51 and 57 and NPPF paragraph 174, the proposal would appropriately conserve landscape character, through its limited scale and seclusion from public view; would not harm the locally distinctive character of settlements or the settlement's landscape setting; would not result in the loss of the best and most versatile agricultural land; would not impact important views; and would not result in a plot size which is wholly out of scale with those surrounding residential plots. Accordingly, it is considered that the proposal is in accordance with relevant policies of the plan and provisions of the framework and that there is no reasonable reason to refuse the application on the basis of its landscape impact or the impact upon the character and appearance of the area.

On this basis, the proposal is considered to accord with the provisions of Core Policies 51 and 57 and NPPF Paragraph 174.

Impact on Residential Amenities

Section vii of Core Policy 57 of the WCS refers to the need to protect the amenities of existing occupants and to make sure that appropriate levels of amenity are achievable within the development itself.

Whilst the concern of neighbours has been noted around the extension of the residential curtilage, it is not considered that the current retrospective arrangement has any additional impact in terms of amenities on any of the neighbouring properties when compared to the previous, non-extended, arrangement. The proposal would not lead to significant additional overlooking and the extension of a residential curtilage does not lead to an intrinsic increase in levels of noise or light pollution (it is noted that no lights are included in the plans).

Whilst regard is had to concern raised by neighbouring parties over the impact of the raised platform to the rear of the existing outbuilding, this does not form part of the current proposals, nor does any outdoor lighting affixed to said existing structures. If these works do not fall under the provisions of the General Permitted Development Order (England) 2015, it may leave the applicant liable to enforcement action.

Accordingly, the impact upon the amenities of the occupiers of relevant neighbouring dwellings and upon the occupiers of the host dwelling have been assessed and found to be acceptable. The proposal would not cause any loss of light, overshadowing, nor significant loss of privacy through overlooking or other harm to amenities of occupiers of either adjacent dwellings or the application property itself. The proposal therefore accords with the provisions of WCS Core Policy 57 and the relevant provisions of the framework in this regard.

Other Matters

It is noted that there were a number of non-material concerns raised from the consultation process. Those most prominent/recurring concerns are addressed below for clarity:

The application details are inaccurate, with inaccuracy between the site plan and location plan specifically relating to the northern boundary of The Conifers;

The inaccuracy of the plans was picked up on early in the process and the agent was contacted to address this issue. Following discussion, the agent agreed to amend the block plan to alter the boundary with The Conifers by circa 2.6m. The current, revised, Proposed Block Plan is considered to be an accurate representation of the site, as confirmed by a site visit on 20th January 2022.

Inaccuracies on the application form indicating that work has not started;

The Council was aware that the works had commenced for the entirety of the application, as made evident by the active enforcement case, and it is clear that neighbouring parties were also aware of this issue whilst being consulted. This discrepancy on the application form has had no impact on the assessment of the application and the recommendation.

Owner will park vehicles on the agricultural land to the rear;

It is noted that concerns have been raised over the parking of a vehicle on the field. However, this does not form part of the application and is therefore not a material concern. In any event this is not considered to result in significant harm to residential amenities nor visual amenity.

Reference is made to a breach of a restrictive covenant for the use of the land;

The presence of a restrictive covenant is not a consideration material to the grant of planning permission. Accordingly, the Council may not take this into account when coming to a decision as to the acceptability of the development proposed.

Applicant may seek further extensions;

Each application must be considered upon its own merits and regard cannot be had to what the applicant may or may not decide to propose in the future in this instance. Should any future applications be received for additional garden extensions to 38 Stone Lane, an assessment will be had of the cumulative impact of the garden extensions.

Conflict is identified with Policies C3, NE15 and H8;

Policies C3, NE15 and H8 form part of the North Wiltshire Local Plan 2011 (NWLP) which was superseded by the Wiltshire Core Strategy (WCS) in January 2015. Whilst it is noted that there are Saved Policies of the NWLP, Policies C3, NE15 and H8 are not included within the schedule of saved policies and as such no longer carry weight in decision making. However, it is noted that their relevant replacement policies which form part of the WCS have been taken into consideration when forming a recommendation for this application.

10. Conclusion

It is concluded that the proposed development is acceptable in principle and would have an acceptable impact upon the character and appearance of the landscape and locality in accordance with the provisions of WCS Core Policies 51 and 57 and NPPF Paragraph 174. The impact upon the occupiers of neighbouring dwellings is considered to be acceptable in accordance with the provisions of Core Policy 57. The proposal accords with the adopted development plan and as such should be granted permission.

RECOMMENDATION

Approve with conditions

CONDITIONS

1. The development hereby permitted but not yet implemented shall be begun before the expiration of three years from the date of this permission.

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

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

5059/03 Rev C Location Plan – Rec: 29th April 2021
5059/04 Rev B Proposed Block Plan – Rec: 13th October 2021

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

3. Within 3 calendar months of the date of this permission details of the boundary treatment to be used in the development shall have been submitted in writing to the Local Planning Authority in accordance with the email received 14th January 2022. Development shall be carried out in accordance with the approved details within one calendar month of approval of those details.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission.

INFORMATIVES:

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

5. The applicant should note that the grant of planning permission does not include any separate permission which may be needed to erect a structure in the vicinity of a public sewer. Such permission should be sought direct from Thames Water Utilities Ltd / Wessex Water Services Ltd. Buildings are not normally allowed within 3.0 metres of a Public Sewer although this may vary depending on the size, depth, strategic importance, available access and the ground conditions appertaining to the sewer in question.
6. The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence.

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

7. Please note that Council offices do not have the facility to receive material samples. Please deliver material samples to site and inform the Planning Officer where they are to be found.
8. 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 <https://www.wiltshire.gov.uk/dmcommunityinfrastructurelevy>.

Background Documents Used in the Preparation of this Report:

Application Details and Submissions
Enforcement Site Investigation Photographs