



# Appeal Decision

Inquiry held on 29 and 30 July 2008

Site visit made on 30 July 2008

by **John R Mattocks** BSc DipTP MRTPI  
FRGS

an Inspector appointed by the Secretary of State  
for Communities and Local Government

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**Decision date:**  
**26 August 2008**

**Appeal Ref: APP/F3925/A/08/2066336**

**George Ward Secondary School, Shurnhold, Melksham, SN12 8DQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Wiltshire County Council against the decision of West Wiltshire District Council.
- The application, ref. 07/02806/OUT, dated 28 August 2007, was refused by notice dated 31 January 2008.
- The development proposed is "up to 270 dwellings including playing fields, car park and changing facilities".

## Decision

1. I allow the appeal and grant outline planning permission for the erection up to 270 dwellings including playing fields, car park and changing facilities, on land at George Ward Secondary School, Shurnhold, Melksham, SN12 8DQ in accordance with application, ref. 07/02806/OUT, dated 28 August 2007, and the plans submitted with it, subject to the conditions set out in the Schedule appended to the end of this determination.

## Explanatory Note

2. The outline application relates to the whole of the area currently occupied by the George Ward school. This forms two parcels of land. To the north of Dunch Lane is an area of playing fields which is proposed to remain in that use but "made available for public use by way of a community use" as stated in section 3 of the s106 agreement. An illustrative masterplan (ref. W.0196\_05-1A) submitted with the application shows a re-arrangement of the existing pitches and the provision of changing rooms and car parking. In this decision I refer to that area by the abbreviation NDL.
3. The housing is proposed to be located entirely to the south of Dunch Lane on the area currently occupied by the school buildings, a surfaced multi-use games area (a MUGA) and tennis courts with playing fields extending northwards to Dunch Lane. The main issues in this appeal apply primarily to the proposals for this southern area, to which I refer by the abbreviation SDL.
4. At the Inquiry I was provided with a copy of the s106 agreement between the principal parties to the appeal, dated, signed and sealed. Amongst other things this provides a link between the development and open space provision and secures affordable housing and highway improvements. I am satisfied that it meets the requirements of Circular 05/2005 and that it is a material consideration in this case.

## **Main issues**

5. There are two main issues in this appeal. They are:
  - a. whether, taking account of Policy R2 in the adopted local plan, the proposals for the replacement of the existing recreational space represent a suitable level of provision for the immediate locality and for the community of Melksham as a whole; and
  - b. the effect of the proposals on the character and appearance of the area particularly in terms of the effect on the visual gap between Melksham and Shaw.

## **Reasoning**

### Issue One

6. The first reason for refusal of the application conflates criteria (ii) and (iii) of saved Policy R2 in the adopted West Wiltshire Local Plan First Alteration. Policy R3 also applies but only requires that the criteria of Policy R2 be satisfied. The site is shown on the Proposals Map as subject to Policy R2.
7. Policy R2 does not permit the loss of playing fields or recreational land except where any one of the three criteria is met. The first is not relevant in this case. Criterion (ii) is that alternative provision of equivalent community benefit should be made in "the immediate vicinity" and criterion (iii) that there is an excess of sports pitch provision in "the area", defined in the plan text as the catchment area for any facility lost through the development.
8. I have put certain terms within inverted commas because the distinction between the two criteria is important. There is no disagreement that the NDL fields are those which are formally laid out as pitches, with goalposts, and are hired out to clubs from a wide area of the town and beyond. Similarly, the MUGA has a wide catchment. I consider it right to equate "the area" for the interpretation of criterion (iii) with Melksham as a whole. The Kit Campbell needs assessment shows a shortfall in the town of nearly 3.5 ha. of multifunctional green-spaces and 4 ha. of sports pitches and courts. Thus, it was not claimed that there is an excess in "the area" but, allowing for the additional 4 ha. at SDL, the 13.2 ha. to be provided at the new school site at Woolmore Farm, granted permission in May 2008, would more than suffice in compensation, at least in terms of recreational land area and quality. It seems to me that the issue of amenity is better considered more locally.
9. With regard to criterion (ii) it was agreed that is reasonable to regard the area lying west of the railway line as the "immediate vicinity" for the purpose of interpreting criterion (ii) of Policy R2. The issue then becomes whether the alternative provision would be of equivalent community benefit, taking the term "community" to mean those living in the "immediate vicinity".
10. It is clear to me from the many letters of representation and from what was said by residents at the Inquiry that both the north and south fields are valued as open space and used by the community for informal recreation, that is walking and informal play. In that sense they are a local amenity even though, apart from the public footpath crossing NDL, members of the public have no right of access to school land and there are signs to that effect at a

number of places. Despite the formal handing over of the NDL fields to the community as provided for in the s106 agreement there will not be the equivalent provision, in the immediate vicinity, of land for informal recreational use on the scale which, albeit on a grace and favour basis, has been enjoyed on the SDL field. Accordingly, I conclude that the proposal does not comply with criterion (ii) of Policy R2.

11. Nevertheless, I consider that there are several material considerations to be weighed against this policy conflict. First is the fact that, access could be denied to the whole of the SDL site once the school has closed. Indeed, it would be necessary to secure the site against trespass by travellers. This casts doubt on the continued value of the SDL land as amenity open space. Should the current application for registration of the land as a village green be successful it would prevent the implementation of the appeal scheme.
12. Secondly, the whole approach of the County Council has been to look at an exchange of land between this site and the new and enhanced provision at Woolmore Farm, as approved or secured through a s106 agreement for that development. I am satisfied that this will be at least as accessible to the majority of Melksham residents, including those living in the proposed east Melksham urban extension, as the current school site and will represent both a qualitative and quantitative improvement. The enhancement of the NDL fields will also be a qualitative improvement. Thus, I consider that this approach accords with the advice in paragraph 13 of PPG17.
13. Thirdly, I attach considerable weight to the assessment carried out by the appellants as to the sufficiency of the open space provision within the immediate locality when measured against local standards. It demonstrates that after the proposed development had taken place local standards of provision would be met or exceeded for all types of space except a bowling green; but there is no bowling green in the area now and it is a Melksham-wide requirement. As for the use of the NDL fields, I accept the appellants' submission that the terms of the s106 agreement would preclude exclusive use by a rugby club. Thus, I consider that, in terms of PPG17 guidance, there would be a suitable level of recreational and open space provision in the immediate locality.
14. I consider that these factors together are sufficient to outweigh the conflict with the second criterion of Policy R2 and, taken together with the wider benefits to Melksham of enhanced facilities at the new school, the identified shortfall in provision for the town would be made good. That is a persuasive argument in favour of permission.

### Issue Two

15. The SDL land lies within the town development boundary as shown on the adopted Local Plan Proposals Map. That means that there is no objection in principle to residential development subject to Policy H1 of the plan under which criterion D is applicable. The proposal will result in the loss of an open area and recreational land *within* (my emphasis) the town but the importance of the area in those terms is diminished for the reasons I give above. As for a "visual gap" I agree with the appellants that the policy does not apply outside the built-up area of Melksham and cannot apply to the gap between Melksham

and Shaw. Similarly, as the SDL land lies entirely within the defined urban limit, policy C1, which applies to development in the open countryside, does not apply to that area.

16. Even so, I accept that the replacement of an open land use with housing would result in an extension in visual terms of the built-up area of Melksham towards what might be termed the "island" of development around Shaw Farm and Poplar Farm. It means that on approach from the Shaw direction the new housing would be directly in view, subject to landscaping, after rounding the bend by the hotel entrance drive. Housing would also be seen behind the hedgerow east of Bath Road in views northwards towards Dunch Lane from the vicinity of the existing school accesses and would be seen much closer to Bath Road from the field footpath to the west than the existing houses on Dunch Lane appear in that view.
17. Despite this I consider that, narrow though it may be, the visual gap with the Shaw Farm group of houses would not be seriously compromised. It would remain as open countryside and protected by relevant policies. I do not regard the position of the Melksham Without Parish boundary to be a relevant factor in this regard. I consider that the proposed development would be well contained by Bath Road and Dunch Lane and represent a logical extension to the existing developed area. Its effect on the character and appearance of the area would not be such as to outweigh the policy presumption in favour of development within the town boundary.

#### Other considerations

18. I accept that the definition of "previously developed land" as now set out in Annex B of the (2006) revised PPS3 applies to the curtilage of the school buildings, including the SDL playing fields. This post-dates the reference in paragraph 14 of PPG17 with its cross-reference to Annex C of the then extant PPG3. Paragraph 25 of PPS3 identifies the development of such land for housing as a priority and paragraph 40 of PPS3 sets a key objective to make effective use of previously developed land.
19. Furthermore, the draft RSS revision provides for the delivery of 6300 dwellings in West Wiltshire outside Trowbridge in the period 2006-26, which equates with 1575 dwellings in 5 years. The District Council rely on April 2007 based land availability information to suggest that there is an identified supply of 2149 but this includes an assumption that 790 dwellings will be completed in the East Melksham development by April 2012. I heard that a s106 agreement for this site is to be concluded shortly but, even if the Council is right on every other assumption, 216 dwellings would need to be completed at East Melksham to ensure a five-year supply. On the basis of the evidence before me that seems unduly optimistic. I conclude that a five-year supply has not been adequately demonstrated and the advice in paragraph 71 of PPS3.
20. It has been suggested in representations that the site is not a sustainable one for new housing, as it is relatively cut off by the railway line from the rest of the town and referring to the comment to this effect in paragraph 3.2.17 of the Local Plan. However, this development is not of the scale of the allocated area east of Melksham. I do not consider that the site is so poorly related to

the town as to make it unsustainable particularly as Melksham station is located on that side of town and there is at least an hourly bus service along Bath Road. Nor do I consider the scale of development to be inappropriate for a "category B" settlement. The s106 agreement provides for a residential travel plan and enhancement to cycle and pedestrian links.

21. The consultation responses from the various statutory bodies and agencies do not suggest that there would be intractable difficulties with regard to the provision of support services or infrastructure such as to warrant refusal of permission. A detailed transport assessment has been carried out with a package of measures put forward to be secured either by condition or under the s106 agreement. These should overcome concerns as to traffic and highway safety. A flood risk assessment has been carried out in accordance with PPS25 and conditions suggested by the Environment Agency to reduce risk. The assessment shows that part of the NDL land nearest to South Brook is within Flood Zone 3 but only playing fields are proposed within the zone. The club house and car park would be in Flood Zone 1. The development area within SDL is a little above Flood Zone 1 even allowing 20% for climate change and so there is no justification for precautionary measures there.
22. Many of the other concerns raised by local residents have been shown to be capable of resolution through conditions. As the proposals are illustrative there is scope for variation and control of detailed design and layout matters when reserved matters are approved. Furthermore, the density of the proposed development is somewhat on the lower side of the range advocated in PPS3 and I find no reason why the scheme should not include elements of two and a half or three storey buildings in appropriate locations. As I find the scheme to be acceptable as submitted there would be no justification for limiting development to the area occupied by the existing school buildings.

### Summary Conclusion

23. Although the proposals are not fully in accordance with Local Plan policy R2 in that they would not provide recreational facilities of equivalent community benefit in the immediate vicinity of the site this is outweighed by the wider benefit to the community of Melksham town as a whole through the enhanced facilities to be provided at the relocated school on Woolmore Farm which will be at least as accessible to the majority of the existing and future residents of the town. Furthermore, the alternative provision within the proposed development, including the NDL land, would more than satisfy local standards for the provision of most categories of recreational space.
24. The SDL site lies within the town development boundary of Melksham where policy provided that residential development is to be permitted. The effect on the open gap between Melksham and Shaw, or on local amenity, is not such as to outweigh the policy presumption in favour of the development on previously developed land especially as a five-year supply of land for housing has not been adequately demonstrated.
25. None of the other matters raised in the representations carries such weight as to alter my conclusion that outline planning permission should be granted subject to the conditions discussed below.

## Conditions

26. The principal parties had agreed no fewer than 31 conditions to be attached to any grant of permission. I have considered these in the light of the advice in Circular 11/95 and the amendments discussed at the Inquiry. It was agreed that not all are justified. This applies, in part to suggested landscaping condition 5 which may be controlled on any detailed submission of the reserved matter of landscaping. It may be difficult to achieve a satisfactory travel management plan for the sports pitches but it is necessary to minimise the impact of traffic flows on Dunch Lane. The submitted geophysical survey does not support the need for further archaeological investigation of the site. Suggested condition 26 on floor levels is only applicable to the proposed club house within Flood Zone 1 and can be combined with condition 25. The requirement for an oil interception (condition 28) can be controlled within the generality of suggested condition 27. Finally, I agree that it would be reasonable to require the submission of a plan, in conjunction with the submission of reserved matters, to show the proposed phasing of the development.

*John R Mattocks*

Inspector

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### **SCHEDULE OF CONDITIONS**

1. Approval of the details of the siting, design and external appearance of the buildings, the means of access thereto and the landscaping of the site ("the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced.
  2. Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.
  3. The development hereby permitted shall begin either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters, whichever is the later.
  4. No later than the submission of the last of the reserved matters a plan shall be submitted to the Local Planning Authority showing the phasing of the development of the site; development shall take place in accordance with the approved phasing plan.
  5. No development shall take place until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
  6. The details of the landscaping of the site submitted in accordance with condition 1 shall include indications of all existing trees and hedgerows on the land, and details of any to be retained.
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7. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
8. No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the buildings are occupied or in accordance with a timetable agreed in writing with the Local Planning Authority. Development shall be carried out in accordance with the approved details.
9. The reserved matters shall include provision for public open space, amenity areas and play areas. The plans submitted shall define the boundaries of such areas, their proposed uses, the age groups for which they are intended, and the items of equipment, means of enclosure and all other structures which it is proposed to install.
10. No hedge shall be felled, uprooted or otherwise removed before, during or after the construction period, except where removal is indicated on the approved plans or on an approved landscaping scheme, or where removal is required to construct a road, footpath or cycleway in accordance with the approved plans.
11. Before any development is commenced on site, including site works or storage of any description, all trees to be retained on site must be protected. The protective fencing should be at minimum, weld mesh panels (Heras or similar) erected on a scaffold framework driven in to the ground by a minimum of 600mm. Alternatively a three-bar post and rail fence should be erected with galvanised livestock mesh attached to it.

The protective fence should be erected at a minimum of 2 metres outside the canopy of each tree or hedgerow. If a group of trees are to be protected the fence should be erected a minimum of 5 metres outside the group canopy.

Within the areas so fenced off the existing ground level shall neither be raised or lowered and no materials, temporary buildings or surplus soil of any kind shall be placed or stored thereon.

If trenches for services are required within the fenced off area, they shall be excavated and back-filled by hand avoiding any damage to the bark and any principal tree roots encountered shall be left unsevered. Where excavations do expose roots, these should be surrounded with sharp/grit sand before replacing soil or other material in the vicinity.

The fences shall not be removed without the consent of the local Planning Authority until the whole of the development is complete. unless the Local Planning Authority gives written consent to any variation.

12. A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than small, privately owned, domestic gardens, shall be submitted to and approved by the local planning authority prior to the occupation of the development or any phase of the development, whichever is the sooner, for its permitted use. The landscape management plan shall be carried out as approved.
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13. Prior to the commencement of the development, detailed designs for the main access junction and the changes to the Dunch Lane/A365 junction shall be submitted to and approved in writing by the local planning authority; and the main access junction and additional works shall be constructed in accordance with the approved drawings prior to the commencement of the development on site.
  14. Detailed plans for vehicle parking, including coach parking, and on-site turning at the sports pitches, together with details of the access to this site and alterations to improve the sight lines at the corner of Dunch Lane together with a travel management plan shall be submitted to and agreed in writing with the Local Planning Authority prior to the commencement of development.
  15. A detailed management plan for the sports pitches should be submitted to, approved in writing by the Local Planning Authority and implemented prior to occupation of the development.
  16. Prior to commencement of the development, details of the design and layout of the proposed changing rooms shall be submitted to and approved in writing by the Local Planning Authority. The proposed changing rooms shall comply with Sport England's Technical Design Guidance Notes 'Pavilions and Clubhouses' and 'Access for Disabled People'. The changing rooms shall be constructed in accordance with the approved design and layout details and completed prior to the first occupation of the residential development hereby approved.
  17. The development hereby permitted shall not be commenced until a scheme has been submitted to and approved in writing by the Local Planning Authority, for the provision of facilities that are as accessible and equivalent in terms of size, usefulness, attractiveness and quality as the existing facilities, and shall include a timetable for the provision of the new facilities. The new facilities will be provided in accordance with the approved scheme.
  18. The development hereby permitted shall not begin until a noise impact assessment and scheme for protecting the proposed dwellings and their curtilages from road traffic noise has been submitted and approved by the Local Planning Authority. Any works which form part of the scheme approved by the Local Planning Authority shall be completed before any permitted dwelling is first occupied, unless an alternative period is agreed in writing by the Local Planning Authority.
  19. Details of lighting to the site North of Dunch Lane (including measures to minimise sky glow, glare and light trespass) shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. The scheme shall only be carried out in accordance with the approved details.
  20. Building and construction work on the development hereby permitted shall not take place outside 07.00 hours to 18.00 hours, Monday to Friday, and 08.00 hours to 13.00 hours on Saturday, and at no time on Sundays and Bank Holidays unless the Local Planning Authority gives written approval to any variation.
  21. No materials shall be burnt on site at any time on any phase of the development during the building and construction works.
  22. Any facilities for the storage of oils, fuels or chemicals during the construction phase shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compound should be at least equivalent to the capacity of the tank plus 10%. If there is multiple tankage, the compound should be at least equivalent to the capacity of the largest tank, or the combined capacity of



interconnected tanks, plus 10%; or 25% of the total volume which could be stored at any one time, whichever is the greater. All filling points, vents, gauges and sight glasses must be located within the bund. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework should be located above ground where possible, and protected from accidental damage. All filling points and tank overflow pipe outlets should be detailed to discharge downwards into the bund. Full details shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The scheme shall only be carried out in accordance with the approved details.

23. Prior to the commencement of the development hereby permitted, a scheme of conservation and enhancement of all wildlife habitats, including biodiversity enhancing features and provision for enhancement of the South Brook and control of Himalayan Balsam, together with a programme of implementation and an ecological management plan for the whole site, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out in accordance with the approved programme.
24. Prior to the commencement of the development hereby permitted, an ecological survey, investigating and recording details of all protected species, in particular bats and great crested newts, and their habitats, likely to be affected by the development, and measures to mitigate the effect of the development on them, shall be submitted to and approved by the Local Planning Authority. Development shall then only be carried out in accordance with the approved details.
25. There shall be no new buildings, or other structures (including gates, walls and fences) or raised ground levels within the floodplain area (Flood Zones 2 and/or 3), inside or along the boundary of the site, unless agreed otherwise in writing by the Local Planning Authority. Any building or structure to the north of Dunch Lane shall have a finished floor level no lower than 600mm above the 1 in 100 year flood level including 20% for climate change.
26. No development shall commence on site until a scheme for the provision of surface water drainage works has been submitted to and approved in writing by the Local Planning Authority. Such a scheme shall include oil interception for drainage from parking areas and hardstandings, shall utilise Sustainable Drainage Principles and shall not result in an increase in the rate &/or volume of surface water discharge to the local land drainage system. The drainage works shall be completed in accordance with the details and timetable agreed.
27. No development shall commence on site until a scheme for the provision and implementation of foul drainage works has been submitted to approved in writing by the local planning authority. The scheme shall be implemented strictly in accordance with the approved details prior to the first occupation of each agreed phase of the development.
28. No development shall commence on site until a Construction Environmental Management Plan, incorporating pollution prevention measures, has been submitted to and approved by the Local Planning Authority. The plan shall subsequently be implemented in accordance with the approved details and agreed timetable.
29. No development shall commence on site until a scheme for water efficiency has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the agreed details prior to the occupation of each agreed phase of the development.

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Richard Banwell Of Counsel, instructed by Nichola Mathiason,  
Head of Legal Services, West Wiltshire District  
Council

He called: Mr Michael J Muston, BA MPhil MRTPI  
Director, Muston Planning

### FOR THE APPELLANT:

Mr Rupert Warren Of Counsel, instructed by Pegasus Planning  
Group

He called: Mr Andrew Cook, BA MLD CEnv MLI MIEMA  
Partner, Pegasus Environmental

Mr Stephen H Bawtree, DipTP MRTPI  
Partner, Pegasus Planning Group

### INTERESTED PERSONS:

Mr J Roy Dobson 80, Dunch Lane, Melksham, SN12 8DX  
Chair, George Ward School Site Residents'  
Liaison Group (GWSSRLG)

Mr Charles Adams 36, Shurnhold, Melksham, SN12 8DX  
(GWRSSRLG)

Councillor Peter R Davies 14, Beeches Green, Shaw, Wilts., SN12 8JD

Councillor Richard Wiltshire Mayor, Melksham Town Council,  
Roundponds Farm, Shurnhold,  
Melksham, SN12 8DF

Mrs G Butler 102, Dunch Lane, SN12 8DX

Councillor Mike Mills Chair, Melksham Without Parish Council  
5, Tangmere Close, Bowerhill,  
Melksham, SN12 6XW

Councillor M R Pack-Davison 35, Ashley Close, Whitley, Wilts., SN12 8RJ

### DOCUMENTS SUBMITTED AT INQUIRY

1/1&2 Lists of persons attending each day of the Inquiry

2 Council's letter of notification of the appeal and list of persons notified

3/1&2 Written representations submitted at Inquiry

4 Bundle of letters from local residents submitted by Mrs Butler

5 Copy of s106 agreement relating to Woolmore Farm site

6 Signed and sealed s106 agreement dated 28 July 2008

7/1 Copy of draft RSS10 Policy HMA1 as in Secretary of State's Proposed Changes July 2008

7/2 HMA Strategic assessment table showing breakdown of West Wiltshire figure

- 8 District Housing Land Availability figures based on draft RSS revision, contrasting WCC and WWDC estimates
- 9 Amended Statement of Common Ground, signed. Includes suggested conditions
- 10 Extract from Inspector's report on West Wiltshire Local Plan First Alteration with recommendation to carry out PPG17 compliant needs assessment and open space audit
- 11 Copy of minutes of Melksham 1<sup>st</sup> Sports Facilities Group, 14 May 2008

#### APPEAL PLANS

- A Site Plan - Drawing No. W.0196\_10-1
- B Illustrative Masterplan - Drawing No. W.0196\_05-1A
- C Illustrative Masterplan - Drawing No. W.0196\_05-1B January 2008 (showing position of existing school buildings)