

Date of Meeting	27 th November 2013
Application Number	13/03824/FUL
Site Address	Land Rear Of 12 And 12a Westbury Road Warminster Wiltshire
Proposal	Erection of two detached dwellings
Applicant	Mr R Denton
Town/Parish Council	WARMINSTER
Grid Ref	387443 145767
Type of application	Full Planning
Case Officer	Matthew Perks

Reason for the application being considered by Committee

Councillor Ridout has requested that this item be determined by Committee due to:

- The previous application having been dismissed on appeal; and
- Clarity required on one of the applicants wanting to revert to the original design.

1. Purpose of Report

To consider the above application and to recommend that planning permission is granted subject to the completion of a varied S106 Agreement in relation to Affordable Housing.

Publicity – 4 Neighbours responded with objections.

Warminster Town Council objects.

2. Report Summary

The main issues to consider are:

- the principle of development in this locality;
- planning history, especially the findings of the Inspector in his recent appeal decision on this site;
- design and neighbouring amenity; and
- affordable housing.

3. Site Description

The application site is a backland site to the rear of No 12a and 12 Westbury Road, rectangular in form and served by a newly constructed access named Tangier Close which will serve these two plots and the three other residential properties on adjacent land to the rear of 11 and 12 Westbury Road . Tangier Close is protected by a security gate, so it is not possible without permission to access the site. These properties are at various stages of development, in accordance with separate planning permissions. At the time of writing two dwellings exist on the adjacent land to the east. The plot on which a single dwelling was permitted to the rear of, No. 11 (accessed via the same shared driveway) remains vacant. Development is also occurring to the west, to the rear of No 12B, with a dwelling recently completed. This dwelling is served by a separate access and stands as an isolated backland plot.

The rectangular portion of the site is some 1300m² in extent. The site falls within Warminster Town Policy limits, and forms part of a brownfield allocation site in the West Wiltshire District Plan that encompasses land to the rear of the linear development comprising No's 3 to 12B of Westbury Road, to the north east of the railway line. It is not visible from Westbury Road due to the slope of the land, intervening houses and tree cover.

4. Planning History

This site: W/11/01243/FUL: Two detached houses with detached garages: Permission: 29.11.2011.

W/12/01649/FUL : 2 detached houses (revised design to W/11/01243/FUL) : Refused (Committee Decision - 14.11.2012): Appeal Dismissed - 07.08.2013.

Recent approvals in the vicinity:

W/10/02406/FUL: Construction of access drive and two detached houses with detached double garages : Permission : 21.03.2011 (adjacent site to east to rear of 12 Westbury Road, served by separate access)

W/11/00755/FUL : Detached house and garage : Permission : 19.10.2011 (Site to rear of 11 Westbury Road, served by same private access)

W/12/00257/FUL: New dwelling : Permission : 21.03.2012 (adjacent site to west to rear of 12B Westbury Road served by separate access).

5. The Proposal

The application is a revision to the proposals refused and dismissed on appeal under Planning reference W/12/01649/FUL. The proposals seek to address the two issues considered unacceptable by the Inspector, namely the impact on the amenity of the new dwelling at 12C Westbury Road and the lack of any provision in a planning obligation to address the affordable housing issue.

As before two detached 4 bedroom dwellings are proposed. One with an integral garage, the other with a carport. The dwellings would be located to either side of a courtyard with parking spaces and a turning area. The site area (excluding the "panhandle" access drive) is some 1300m² in extent.

6. Planning Policy

West Wiltshire District Plan 1st alteration 2004

H1Town Policy Limit; H3 Urban Brownfield Allocation; H24 New Housing Design; C31aDesign; C38 Nuisance.

National Planning Policy Framework

Emerging Wiltshire Core Strategy – policy CP57

7. Consultations

Town Council

The Warminster Town Council objects to the plans as they are out of keeping with the area and intrusive on neighbouring properties.

Wiltshire Council Highways

No objection subject conditions in relation to parking space and turning area provision.

Network Rail

Objects due to lack of drainage information. (However in the previous cases there were no objections, albeit that observations were made in respect of activities on site that need to be addressed with due consideration for Network Rail property).

Wiltshire Council Housing Officer

Notes Brownfield status of land, and that varied S106 agreement will need to be entered into.

8. Publicity

The application was advertised by site notice and neighbour notification. Expiry date: 23 October 2013. Representations have been received from four neighbouring properties.

Summary of representations received:

- Inspector's criteria not met, materials not matching;
- Owner of one of the plots believes he will be able to implement previous scheme, radically different designs will result;
- What will prevent someone else from submitting yet another design?
- Council should ensure that same design and materials are adhered to;
- Warminster Town Council previously objected;
- Not in keeping with the character of the area;
- There would still be harm to the outlook from the upper floors and sun-room at No 12C;
- There is still a substantial length of wall affecting the open view from No 12C, which was a reason for the Inspector's dismissal.

9. Planning Considerations

9.1 Principle of Development

The principle of the development is well established by virtue of previously granted permission for two dwellings on this site, which is within Warminster Town Policy Limits. The site also forms part of the Urban Brownfield Allocation under Policy H3 of the West Wiltshire District Plan 1st Alteration, 2004. This latter Policy is proposed to be "saved" under the emerging Core Strategy and residential development would also therefore be compliant with the emerging document. It would furthermore accord with the National Planning Policy Framework insofar as that document requires that housing applications should be considered in the context of the presumption in favour of sustainable development, and prioritises the use of brownfield land.

In this instance the locality is by definition sustainable, being within Town Policy Limits. It also forms part of the Urban Brownfield Allocation. There is therefore no objection to the principle of development of two dwellings on this site. This is confirmed in the Inspector's decision on W/12/01649/FUL.

9.2 Planning History

The site history has established the principle of development, but a key consideration in assessing the current proposals is the content of the Inspector's decision in dismissing the recent Appeal.

The Council's reasons for refusal of W/12/01649/FUL were:

- 1 *The proposed development, by reason of its design and external appearance, would be alien to its surroundings and out of keeping with the character of the surrounding area, which has an existing built and under construction context of more traditional building forms utilising pitched roofs and shorter eaves heights. The proposal therefore conflicts with policies H1A and C31a C of the West Wiltshire District Plan.*

2 *The proposed development on plot 1, by reason of its siting and the consequent scale and proximity to the adjacent house on plot 12C of the proposed external wall facing 12C, would have an overbearing and unacceptable impact on the amenity of the occupiers of the dwelling on plot 12C. This would conflict with policy C38 of the West Wiltshire District Plan.*

In considering these reasons in the Appeal the Inspector made the following observations:

Reason 1:

“From my visit to the area I saw that this part of Warminster, which I define as the linear development along the Westbury Road frontage together with the backland development, exhibits a variety of designs but for the most part using traditional designs and materials. Nos. 1 and 2 Tangier Close have used more modern external materials but there are no overtly contemporary dwellings such as those now proposed on the appeal site. However a common denominator of mostly large detached dwellings with mainly traditional designs and materials does not in my view amount to ‘local distinctiveness’, especially as in the case of the backland plots the development has taken place in an essentially ad hoc manner. Because of this approach, combined with the essentially private location, I see no reason why the appeal dwellings would in principle be inappropriate, provided they would not appear incongruous in their immediate setting next to Nos. 1 and 2 to the south east.

I recognise that such incongruity would arise in this case is precisely the view of the Council and local residents but even the previous permissions for the pairs of dwellings on land to the rear of Nos. 12 and 12a respectively were not designed as a noticeably homogenous group. The offset position of the appeal site in relation to Tangier Close and the hedges between the plots and Nos. 1 and 2 Tangier Close provides a degree of visual separation between the two developments whilst the substantial beech hedge for the most part sets the new dwelling to the rear of 12B apart from the site. Thus with a somewhat limited read across the two sites from south west to north east I consider that the proposed dwellings can sit comfortably with the more traditional form of Nos. 1 and 2. This is particularly the case because Nos. 1 and 2 already visually relate well to one other because of their similarity in design and materials, and for the same reason Plots 1 and 2 would have their own visual cohesion, albeit with a much more contemporary appearance.

Overall on this issue whilst I consider that Nos. 1 and 2 Tangier Close to be of good design and external materials I also take the same view of the appeal buildings, despite their radically different appearance. More to the point I consider that the two developments would comfortably co-exist, especially when with new landscaping complementing the existing they have had time to settle in to their setting. Accordingly I conclude that the appeal proposal would not harm the character and appearance of the area and would be in accordance with the approach to design set out in the Framework.” (Report writer’s emphasis).

Reason 2:

“The new house to the rear of 12B has a gable facing the boundary with the appeal site, with the roof sloping down from its apex to the eaves and then a single storey sun room projecting from the rear elevation. There is therefore a substantial degree of openness in terms of an absence of built form when viewed from the rear patio and the back garden. However the design of the Plot 1 dwelling would result in a substantial length of wall alongside and just beyond the sun room with the three storey element at about the same height as the apex of the aforementioned gable. Notwithstanding that there is a substantial beech hedge on the boundary with the appeal site and that the proposed dwelling on Plot 1 would be set back a reasonable distance from the boundary, I consider that in the outlook from the rear patio and the back garden of No. 12B, the upper part of the Plot 1 dwelling’s north west elevation would be perceived as overbearing and oppressive. This would be in conflict with Local Plan Policy C38, which seeks to protect the ‘amenities enjoyed by neighbouring properties’. On this issue I therefore conclude that the proposal would have an unacceptable effect on the living conditions for the occupiers of the new dwelling to the rear of 12B Westbury Road in terms of outlook.”

It is considered that the Inspector's findings can be summarised as follows:

- The contemporary design approach, and the materials proposed in Application were wholly acceptable in this particular context; but
- The proposals for Plot 1 were considered by the Inspector to be potentially harmful to the amenity of the occupants of 12C Westbury Road, specifically in relation to the impact of the combined length and 3 storey height of the proposed wall facing No. 12C, notwithstanding the presence of the substantial hedge and the setback from the boundary.

9.3 Design and Neighbouring Amenity

In the light of the Inspector's observations it is considered that the key issue with the revised proposal is whether or not the potential harm to 12C arising from the massing of the proposed building on Plot 1 has been overcome. The issue of a contemporary design approach and materials is a consideration only insofar as to whether or not the current proposals have departed significantly from the Appeal application details.

The proposals include the following changes to the dwelling on Plot 1 (the building identified as presenting potential harm to 12C in the Appeal Application):

- The dwelling would now be reduced to two storeys in height; and
- The position has been revised so that it is minimally set forward of the rear of 12C, at a separation distance between the buildings of 6m, with a single storey element of 2.5m in depth to the front of the building in closest proximity to the sun room/patio area to that neighbour.

The result of the changes is that a significant reduction in massing of the side of the building facing No 12A would occur, and that the structure (including the single storey element) would not fall within the 45° field of view from the rear of the sun room on that property or from any rear-facing window to the main body of the dwelling. The substantial hedge would remain in place. The new height to the proposed unit on No. 1 would be below eaves level to No 12C, with the majority of the side of the building aligned with the side elevation to that property that contains only a first floor level bathroom window with obscure glazing, and at ground floor level a garage, utility room and kitchen window all facing directly onto the hedge. Given the revisions it is considered that the issues identified in the Inspector's decision have been addressed and that there is now no reason for refusal on grounds of harm to amenity at No 12A.

With regard to issues of design, whilst the dwelling to Plot 1 would now be two storeys in height, the same design concept as before is retained for both units, i.e. a contemporary form of linked rectangular blocks with aluminium framed fenestration and materials of render and corten steel finishes. Following an objector's comments, the agent was approached and submitted revised plans making the materials to both units conform. It is considered that the two units would complement each other in terms of contemporary features and appearance forming their own grouping in accordance with the Inspector's comments. It is important however that the development occurs in accordance with this common design approach and any permission should be conditioned so as to ensure that this occurs.

9.4 Affordable Housing

Where the site falls within Policy H3 allocation area housing, officers have confirmed that a commuted sum is acceptable. Any permission will therefore require the completion of a varied S106 agreement to reflect the new permission, a point identified by the Inspector.

9.5 Other Matters

It is considered that conditions and informatives as previously included in the decision notice in relation to landscaping and ecology are reasonable, except that where a TPO tree has been

removed (legally) there is no longer a consideration of protective measures to that tree and the arboricultural method statement and implementation will be adequate without the need for a pre-commencement site meeting. Network Rail has objected, but it is not reasonable to now introduce factors not previously raised as grounds for refusal. A condition requiring drainage details would address the issues raised by that body, and the informatives requested as part of the previous response can be added to the decision notice.

With regard to the Councillor query on one of the applicants wanting to revert to the original design, the agent has confirmed that there is no confusion and that the scheme would be developed as per the submitted plans. This is addressed in condition 6 below.

10. Conclusion

It is considered that the issues raised in the Inspector's dismissal of the appeal have been addressed and that no unacceptable harm would arise from the proposed development affecting any neighbouring property.

RECOMMENDATION

Planning Permission be granted at a future date in the event of the Area Development Manager being satisfied as to the prior completion of a variation to the S106 legal agreement to secure a commuted sum towards affordable housing in accordance with policy.

Subject to the following condition(s):

- 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 details and samples of the materials to be used for the external walls, roofs and fenestration frames 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 part of the development hereby approved shall be first occupied until the parking area and turning spaces shown on the approved plans have been consolidated, surfaced and laid out in accordance with the approved details. This area shall be maintained and remain available for this use at all times thereafter.

REASON: To ensure that adequate provision is made for parking and turning within the site in the interests of highway safety.

- 4 No demolition, site clearance or development shall commence on site until an Arboricultural Method Statement (AMS) prepared by an arboricultural consultant providing comprehensive details of construction works in relation to trees shall be submitted to, and approved in writing by, the Local Planning Authority. All works shall subsequently be carried out in strict accordance with the approved details. In particular, the method statement must provide the following: -

- A specification for protective fencing to trees during both demolition and construction phases which complies with BS5837:2005 and a plan indicating the alignment of the protective fencing;
- A specification for scaffolding and ground protection within tree protection zones in accordance with BS5837:2005
- A schedule of tree works conforming to BS3998.
- Details of general arboricultural matters such as the area for storage of materials, concrete mixing and use of fires;
- Plans and particulars showing the siting of the service and piping infrastructure;
- A full specification for the construction of any arboriculturally sensitive structures and sections through them, including the installation of boundary treatment works, the method of construction of the access driveway including details of the no-dig specification and extent of the areas of the driveway to be constructed using a no-dig specification;

REASON: In order that the Local Planning Authority may be satisfied that the trees to be retained on and adjacent to the site will not be damaged during the construction works and to ensure that as far as possible the work is carried out in accordance with current best practice and section 197 of the Town & Country Planning Act 1990.

- 5 The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans:

Site Location Plan 885-D04 received on 05.09.2013
 885-D01 A received on 22.10.2013
 885-D02 received on 05.09.2013
 885-D03 A received on 22.10.2013

REASON: To ensure that the development is carried out in accordance with the approved plans that have been judged to be acceptable by the local planning authority.

- 6 This permission shall be alternative to planning permission W/11/01243/FUL given on 29.11.2011 and shall not be exercised in addition thereto or in combination therewith.

REASON: To ensure that two alternative permissions are not both implemented.

- 7 No development shall commence on site until a scheme for the discharge of surface water from the site, incorporating sustainable drainage details, 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.

Informative(s):

- 1 The applicant is advised that reptiles are protected from injury/ killing under the Wildlife & Countryside Act (1981, as amended). Therefore prior to the commencement of construction work, the site must be cleared with due care and attention for reptiles: any significant debris (logs, large stones, piles of garden waste) should be checked by hand for the presence of reptiles sheltering beneath; vegetation should be cut down to 10cm, and left as such for several days before cutting further and removing the topsoil. All cuttings should be removed from the site. Vegetation clearance should take place outside the breeding bird season (March - August inclusive) unless checked beforehand by a suitably qualified ecologist for the presence of nesting birds.
- 2 The applicant is advised to contact Wessex Water (01225 526000) with regard to connections to water infrastructure and to check for the possible existence of uncharted sewers or water mains on, or near to, the site.. Wessex Water furthermore advises that the site is within a

source protection zone and any discharge of surface water will need to be within Environment Agency guidelines.

- 3 The applicant should note that under current circumstances "wheely bins" will need to be set out on collection days at least within 25m of the access to the private road serving this complex and that future occupants should be made aware of this.
- 4 Network Rail invites the applicant's attention to matters to be considered in relation to adjoining railway land, where relevant:

FENCING

If not already in place, the Developer/applicant must provide at their expense a suitable trespass proof fence (of at least 1.8m in height) adjacent to Network Rail's boundary and make provision for its future maintenance and renewal without encroachment upon Network Rail land. Network Rail's existing fencing / wall must not be removed or damaged and at no point either during construction or after works are completed on site should the foundations of the fencing or wall or any embankment therein be damaged, undermined or compromised in any way. Any vegetation on Network Rail land and within Network Rail's boundary must also not be disturbed.

DRAINAGE

Additional or increased flows of surface water should not be discharged onto Network Rail land or into Network Rail's culvert or drains. In the interest of the long-term stability of the railway, it is recommended that soakaways should not be constructed within 20 metres of Network Rail's boundary.

SAFETY

No work should be carried out on the development site that may endanger the safe operation of the railway or the stability of Network Rail's structures and adjoining land. In view of the close proximity of these proposed works to the railway boundary the developer should contact Richard Selwood at Network Rail on AssetProtectionWestern@networkrail.co.uk before works begin.

GROUND LEVELS

The developers should be made aware that Network Rail needs to be consulted on any alterations to ground levels. No excavations should be carried out near railway embankments, retaining walls or bridges.

SITE LAYOUT

It is recommended that all buildings be situated at least 2 metres from the boundary fence, to allow construction and any future maintenance work to be carried out without involving entry onto Network Rail's infrastructure. Where trees exist on Network Rail land the design of foundations close to the boundary must take into account the effects of root penetration in accordance with the Building Research Establishment's guidelines.

PILING

Where vibro-compaction/displacement piling plant is to be used in development, details of the use of such machinery and a method statement should be submitted for the approval of Network Rail's Asset Protection Engineer prior to the commencement of works and the works shall only be carried out in accordance with the approved method statement.

ENVIRONMENTAL ISSUES

The design and siting of buildings should take into account the possible effects of noise and vibration and the generation of airborne dust resulting from the operation of the railway.

LANDSCAPING

Where trees/shrubs are to be planted adjacent to the railway boundary these shrubs should be positioned at a minimum distance greater than their predicted mature height from the boundary. Certain broad leaf deciduous species should not be planted adjacent to the railway boundary. We would wish to be involved in the approval of any landscaping scheme adjacent to the railway. Where landscaping is proposed as part of an application adjacent to the railway it will be necessary for details of the landscaping to be known and approved to ensure it does not impact upon the railway infrastructure. Any hedge planted adjacent to Network Rail's boundary fencing for screening purposes should be so placed that when fully grown it does not damage the fencing or provide a means of scaling it. No hedge should prevent Network Rail from maintaining its boundary fence. Lists of trees that are permitted and those that are not are provided below and these should be added to any tree planting conditions:

Permitted:

Birch (*Betula*), Crab Apple (*Malus Sylvestris*), Field Maple (*Acer Campestre*), Bird Cherry (*Prunus Padus*), Wild Pear (*Pyrus Communis*), Fir Trees – Pines (*Pinus*), Hawthorne (*Cretaeagus*), Mountain Ash – Whitebeams (*Sorbus*), False Acacia (*Robinia*), Willow Shrubs (Shrubby *Salix*), Thuja Plicatata "Zebrina"

Not Permitted:

Alder (*Alnus Glutinosa*), Aspen – Poplar (*Populus*), Beech (*Fagus Sylvatica*), Wild Cherry (*Prunus Avium*), Hornbeam (*Carpinus Betulus*), Small-leaved Lime (*Tilia Cordata*), Oak (*Quercus*), Willows (*Salix Willow*), Sycamore – Norway Maple (*Acer*), Horse Chestnut (*Aesculus Hippocastanum*), Sweet Chestnut (*Castanea Sativa*), London Plane (*Platanus Hispanica*).

PLANT, SCAFFOLDING AND CRANES

Any scaffold which is to be constructed adjacent to the railway must be erected in such a manner that at no time will any poles or cranes over-sail or fall onto the railway. All plant and scaffolding must be positioned, that in the event of failure, it will not fall on to Network Rail land.

- 5 The applicant is advised to contact the Wiltshire Fire and Rescue Service (01225 756500) if any advice is required in respect of fire protection measures. Attention is invited to the information provided in the correspondence dated 07 September 2012 from that Authority.