TOWN AND COUNTRY PLANNING DEVELOPMENT CONSULTANTS
EST.1996

4th April 2023

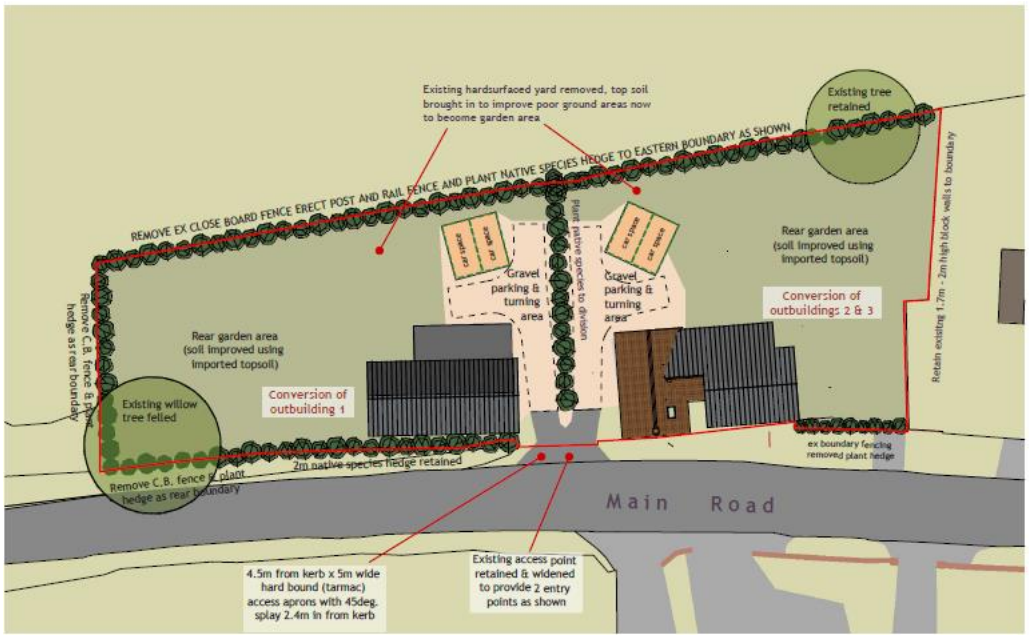
Our Ref: SWLC.LPC.5559

Development Services – North
Wiltshire Council
Monkton Park
Chippenham
Wiltshire
SN15 1ER

Dear Sir/Madam

Town and Country Planning Act 1990
The Old Builders Yard, Startley, Chippenham, Wiltshire, SN15 5HG

As your records will show planning permission has recently been granted (LPA Ref: PL/2022/04055) at Martin's Yard, Startley to convert 2No commercial buildings as separate dwellings. The site's approved layout in this regard is shown by the plan extract inserted below.



It is the purpose of this new application to substitute the two conversions for 2No new built dwellings, shown by the new site layout proposed inserted at the top of the next page.

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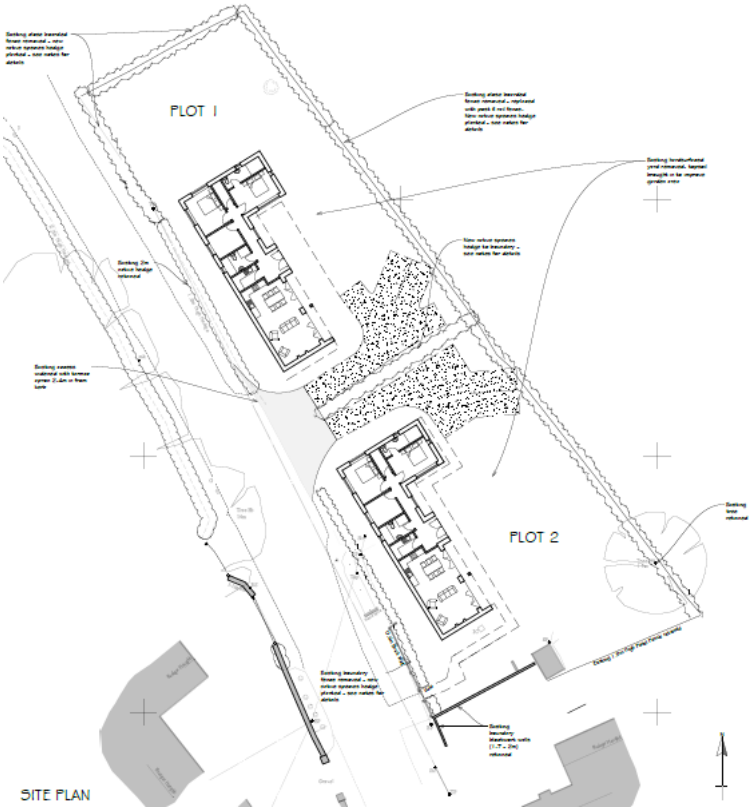


As you will be aware a fallback development, as approved in this case, is a material consideration in a planning decision if there is a 'real prospect' of its being implemented. In *Samuel Smith Old Brewery (Tadcaster) v SSCLG [2009] EWCA Civ 333 Sullivan LJ* stated the principle as follows:

> '*It is important to note that in this context a real prospect is used as the antithesis of "a merely theoretical" prospect (see page 65 of the judgment and the cases therein cited). In order for a prospect to be a real prospect, it does not have to be probable or likely: a possibility will suffice.' [20-21]*

This principle was approved in *Mansell v Tonbridge And Malling Borough Council [2017] EWCA Civ 1314.* Case law therefore clearly supports the approval of such alternative development, placing great weight on the established fallback position. It is the purpose of this overarching planning and design commentary to explain how the two new dwellings will not be any more impactful than those approved, and in fact offer the opportunity to build to an improved sustainability standard and also create an improved residential amenity for the two properties in terms of floor layout, orientation and outlook.

Martin's Yard is located within the built up area of Startley, which comprises a predominantly linear built pattern. The buildings currently on site benefit from a Certificate of Lawfulness for industrial usage (LPA Ref: 17/04336/CLE). That of course accrues rights to extend and alter, as well as repair the existing. This a

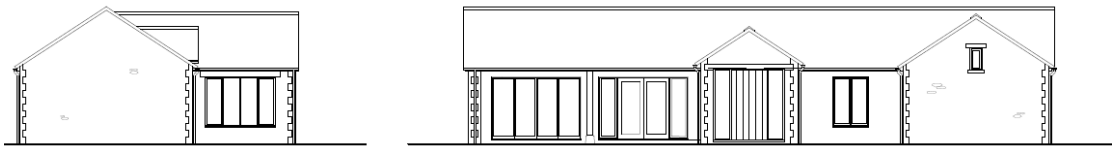
brownfield development opportunity and there is no reason to suggest that the fallback position could not be pursued in the alternative and is therefore a material planning consideration supporting the principle of redevelopment as proposed.

In recognition of the site's overall setting the new dwellings have adopted a pseudo cow-byre appearance, echoing many rural barn conversion schemes approved across Wiltshire, and elsewhere, and thus provide sensitive additions to the housing stock, in contrast to the perhaps more contrived conversion solutions, constrained by the existing built form.

It is true that the approved conversions include traditional built elements, but as with many such buildings, which have been adapted overtime for different uses, not all of the industrial additions have created a distinctive or attractive ensemble.



The new dwellings will be constructed from brick with natural stone quoins below a clay tiled double roman tiled roof and incorporate painted timber joinery.



The site layout plan inserted previously shows that the central access point is unchanged from that approved, and the new dwellings will be largely sited over the existing buildings. The site's approved landscaping is similarly unchanged, removing the willow tree from the north western corner of the site and planting new hedging around the site.

The new dwellings are single storey units, and do not exceed the established built envelop in terms of height and mass. The approved properties have a combined floor area of approximately 191m², which is effectively mirrored by the new dwellings whose floor area is 97m² each.

Section 70 (2) to the Town and Country Planning Act 1990 and Section 38 (6) to the Planning and Compulsory Purchase Act 2004 require that all planning decisions are made in accordance with the Development Plan unless material considerations indicate otherwise.

The relevant Development Plan in this instance comprises the Wiltshire Core Strategy (2015), and the Great Somerford (Incorporating Startley) Neighbourhood Plan (2017). The following planning policies thereat are believed to be applicable to assess the acceptability of the application proposal.

Wiltshire Core Strategy adopted Jan 2015:

Core Policy 1: Settlement strategy
Core Policy 2: Delivery strategy
Core Policy 13: Spatial Strategy: Malmesbury Community Area
Core Policy 48: Supporting Rural Life
Core Policy 50: Biodiversity and geodiversity
Core Policy 51: Landscape
Core Policy 57: Ensuring high quality design and place shaping
Core Policy 60: Sustainable transport
Core Policy 61: Transport and new development
Core Policy 62: Development impacts on the transport network
Core Policy 63: Transport strategies
Core Policy 67: Flood Risk

Great Somerford (Incorporating Startley) Neighbourhood Plan made November 2017:

Section 7

The National Planning Policy Framework (NPPF) provides the Government's planning policies for England and explains how they should be applied. It is a material planning consideration.

In light of the above policy considerations, and planning background, the following issues are believed to be relevant to the revised development approach proposed.

- Principle of development
- Impact on the character, appearance and visual amenity of the locality
- Impact upon residential amenity

- Impact on Highways/parking requirement

Principle of development

Planning permission PL/2022/04055 granted the conversion of the retained buildings creating 2No new dwellings. It is a previously developed site in any event, and the NPPF at paragraph 120 gives substantial weight to reusing suitable brownfield land.

Startley is not a defined settlement in the Core Strategy (WCS), although the site does not obviously lie in the 'open' countryside, in an isolated location applying a common understanding of the term, as confirmed by relevant case law. The site is nevertheless located outside any settlement limit and therefore, it is in an area where planning policy does not support the erection of new dwellings unless one of the exception criteria listed under paragraph 4.25 of the WCS applies or there are any relevant exceptions in national planning policy.

Ordinarily, such a development would therefore be deemed to be unacceptable in principle. However, in this case, there is a fallback position to consider. It must be concluded that there is a realistic prospect of the fallback position being implemented. It has been accepted elsewhere in your authority that the existence of a planning approval, where it is considered, the building is capable of being converted is a valid fallback position when considering an application for demolition of the building and the erection of a new dwelling, as in the current case. This fallback position must be given significant weight in the planning balance.

In addition, it should be stressed that the officer's report regarding application PL/2022/04055 notes that the supporting statement submitted at that time provided letters from multiple neighbouring properties supporting a residential use on the application site as opposed to the established use and any other commercial uses. This continues to be a material consideration in support of the principle of redevelopment.

Core Policy 13 states development in the Malmesbury Community Area should be in accordance with the Settlement Strategy set out in Core Policy 1. It must be stressed that the Council cannot currently demonstrate a 5-year supply of deliverable housing land, and in the recent appeal decision regarding land off Park Road, Malmesbury (APP/Y3940/W/21/3286853 and 3289757) for the erection of 26 dwellings the Inspector states very clearly at paragraph 69 that, even if your Council's purported shortfall in housing supply is agreed (4.7 years), and other figures are suggested by different parties, this figure, 'cannot reasonably be considered a modest shortfall'.

The Inspector addressed the position further at paragraph 73 and noted the often cited argument that, 'each proposal would only address a modest part of

the shortfall in each case', and concluded that that actually emphasises the importance of delivering more houses to meet the need wherever possible.

Substantial weight should be given to the provision of housing, bearing in mind too that even the stated target is not a ceiling. The undersupply was said by the above Inspector to represent a shortfall of 1216 houses and in simple quantitative terms therefore requires a positive approach to support all sustainable new housing opportunities, such as in this case, to reduce the need on a rolling basis even if this is technically an alternative scheme.

With this recognition, the tilted balance flowing from paragraph 11d) ii of the NPPF is engaged. As such the development plan policies which would restrict new housing provision must be treated as being out of date, albeit this does not mean that they carry no weight, since the development plan remains the starting point for decision making. When the tilted balance is engaged, the NPPF indicates that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the NPPF taken as a whole

Given the housing supply deficit, paragraph 11 of the NPPF sets a presumption in favour of housing delivery unless protected areas or assets of particular importance would be demonstrably harmed by the development proposal and would provide a robust and clear reason for refusing the application. WCS strategic policies CP1 and CP2 cannot be given 'full weight' whilst NPPF paragraph 11 is engaged, although the weight to be attributed to such policies is a matter of judgment for the decision maker. Consideration of the weight which can be provided to the above policies is considered in the concluding section of this overarching supporting correspondence.

<u>Impact on the character, appearance and visual amenity of the locality/open countryside</u>

Core Policy 57 of the WCS sets out that a high standard of design is required in all new developments, including extensions, alterations, and changes of use of existing buildings. Development is expected to create a strong sense of place through drawing on the local context and being complimentary to the locality. Core Policy 57, amongst other things, requires that applications for development should respect the local character and distinctiveness of the area with regard to the design, size, scale, density, massing, materials, siting and layout of the proposal. Core Policy 57 also seeks to avoid creating developments with unacceptable low levels of privacy and amenity, avoiding the unacceptable loss of privacy and amenity to adjacent buildings.

Core Policy 51 is also relevant as it requires that development should not cause harm to the locally distinctive character of settlements and their landscape

setting. This is also reflective of the Great Somerford (Incorporating Startley) Neighbourhood Plan (2017).

The proposed new dwellings and associated works would visually improve the character and appearance of the locality given it replaces the ad hoc built grouping, part of which has previously been agreed to include dilapidated outbuildings with unfavourable extensions that currently do not positively contribute to the character and appearance of the landscape or locality. In addition, the proposal site is surrounded by properties with varied character and appearance and as such, the new single storey units will not appear out of character when viewed within the wider rural fringe character of the prevailing ribbon of houses.

The new properties will reflect the established mixed construction palette and adopt a rural design character in keeping with the site's potential origins. The two new properties have been carefully orientated with a limited aspect to the road which will greatly lessen their visual impacts. On this basis, the proposal is therefore not considered to be harmful in relation to the street scene and visual amenity of the wider context including the open countryside beyond and there are no such grounds to resist the application.

Impact upon residential amenity

Paragraph 130 of the NPPF and CP57 of the WCS seek to secure high quality design and a good standard of amenity for current and future land occupants. In that regard the proposal is not considered to result in harm upon the neighbouring properties given the level of separation between the development and neighbouring properties are still maintained. In addition, the site boundary treatments of fencing and hedges obscures views in and out of the site and as such, harm is not likely to be experienced by the neighbouring properties.

The single storey new dwellings proposed will not cause adverse harm such as; being overbearing, impact on daylight or result in loss of privacy of the neighbouring properties In the context of the proposal and impact upon the residential amenity for future occupants of the proposed dwellings the same is true. Hedges are proposed to run through the middle of the site and this would help separate the new units from one another. In addition to this, there are no first-floors proposed and all views should be contained on the ground floor and obscured by the stated hedges and careful orientation and floor plan layout.

Additionally, the proposed garden space/level of private amenity space in relationship to the scale of the proposed dwellings are considered to be adequate and reflect that already sanctioned. Therefore, due to the position, location and orientation of the proposal is in accordance with CP57(vii) of the WCS, para 130 (f) of the NPPF.

Impact on Highways/parking requirement

The site layout and scale of development is effectively unchanged by comparison with the approved scheme and as such the access arrangement and parking provision remains acceptable.

Conclusion (Planning Balance)

Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The application seeks planning permission the erection of 2No dwelling on site. The proposal is located outside any settlement boundary and the development does not accord with the spatial strategy within the development plan. However, your Council cannot demonstrate a 5-year housing land supply which a recent appeal inspector said, 'cannot reasonably be considered a modest shortfall'. The deficit is therefore material and should be given significant weight.

Whilst there is a housing supply deficit, with NPPF paragraph 11 is engaged, adopted WCS core policies CP1, CP2 and CP13 in this case cannot be afforded full weight in the planning balance, although they do not have no weight, but should be afforded only modest weight. This is perhaps reduced still further given the fact the application effectively relies on the fallback position that indicates the site is capable of accommodating 2No dwellings as approved, generating similar externalities in the same brownfield location.

In this case it is argued that due to the fallback position and weight given to this fallback position as a material consideration in any decision, it is considered this fallback position amounts to a matter of significant weight. In this case the proposed development would provide 2No market dwelling, which in housing supply terms, would make a nominal contribution towards addressing the housing shortfall, but it would nevertheless make a contribution. In addition there would be some short-term benefits afforded to the construction phase of the development through direct and indirect job creation and the future householders of the properties would pay council tax, and spend in the local area. These benefits can cumulatively be given moderate weight in the planning balance.

In terms of neutral impacts, it has been explained that the proposed development would not harm neighbouring residential properties or the amenities of the occupiers, and the visual impacts of the proposed dwellings at this site can be mitigated. Sufficient off road parking can be provided on site and the development would be served by a safe access to the road network. The extant permission included a protected species assessment which raised no concerns about the substantial works proposed and remains relevant to the enclosed site redevelopment which will have no adverse impact on local

biodiversity, protected species or protected habitats and in fact achieves a clear biodiversity gain in light of the significant new boundary planting proposed.
In addition, the proposed development would have suitable drainage connections as previously agreed. The previous ecological assessment is relied on to support this recent revision and there have been no material change in circumstances to render it irrelevant.

Due to the council being unable to demonstrate a 5 year housing land supply the tilted balance flowing from paragraph 11d) ii of the Framework is engaged. When the tilted balance is engaged, the NPPF indicates that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the NPPF taken as a whole. In this case the development has been shown to not result in any adverse impacts that significantly and demonstrably outweigh the benefits in this case. As such I trust you will be able to support the application as submitted. However, if you have any questions to ensure your support, please do not hesitate to contact me.

Finally, in addition to the duly completed application forms and planning fee (paid separately) and together with this overarching supporting statement the application comprises the following listed plans.

List of Plans

- LPC5559 EX 01 – Location Plan
- LPC5559 EX 02 – Site Plan
- LPC5559 PR 01 – Proposed Site Plan
- LPC5559 PR 02 – Proposed Plan and Elevations
- Dwg No: 900/CAM/2020/12 – Existing South Building Survey
- Dwg No: 900/CAM/2020/14 – Existing North Building Survey
- Dwg No: 900/CAM/2020/4 – Existing Elevations

Yours faithfully

Simon Chambers
Director

Enc

Cc: Mrs C Martin