# CASE OFFICER'S REPORT

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| **Application Reference:** | PL/2023/05376 |
| **Application Type:** | Full planning permission |
| **Site Inspection:** | |
| **Consultation ends:** | 04 August 2023 |
| **Case officer:** | Meredith Baker |

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| **Site Address:** | Barn at Curnick Lane, Sells Green, Seend, Devizes, Wiltshire, SN12 6RL |
| **Proposal:** | Demolition of one building (which has an approved residential use) and replacement with one purpose built residential dwelling (resubmission of PL/2023/02712) |
| **Recommendation:** | Approve with Conditions |

**Planning Policy**

National Planning Policy Framework 2021 (NPPF)

Section 2 (Achieving sustainable development)
Section 4 (Decision-making)
Section 5 (Delivering a sufficient supply of homes)
Section 7 (Ensuring healthy and safe communities)
Section 9 (Promoting sustainable transport)
Section 11 (Making effective use of land)
Section 12 (Achieving well-designed places)
Section 14 (Meeting the challenge of climate change, flooding and coastal change)
Section 15 (Conserving and enhancing the historic environment)

Planning Practice Guidance (PPG)
National Design Guidance

Wiltshire Core Strategy (WCS):

Core Policy 1: Settlement Strategy
Core Policy 2: Delivery Strategy
Core Policy 15: Melksham Community Area
Core Policy 41: Sustainable Construction and Low Carbon Energy
Core Policy 45: Meeting Wiltshire's Housing Needs
Core Policy 48: Supporting Rural Life
Core Policy 51: Landscape
Core Policy 57: Ensuring High-Quality Design and Place-Shaping
Core Policy 60: Sustainable Transport
Core Policy 62: Development Impacts on the Transport Network
Core Policy 64: Demand Management

Other Documents

Waste Storage and Collection: Guidance for Developers
Revised Wiltshire Planning Obligations Supplementary Planning Document (October 2016)
Wiltshire Local Transport Plan 2011 – 2026 – Car Parking Strategy (March 2011)

**Relevant Planning History:**

20/04042/PNCOU - Notification for prior approval under Class Q for a proposed change of use of agricultural barn to a dwellinghouse (Use Class C3) and for associated operational development – Refused but allowed on Appeal

PL/2023/02712 – Demolition of one building (which has an approved residential use) and replacement with one purpose built residential dwelling. – Withdrawn 23.05.2023

**Consultation Responses**

Seend Parish Council: "Seend Parish Council supports the points raised by Wiltshire Council Rights of Way Team and requests the Planning officer reviews the Parish Council's previous comment provided under PL/2023/02712 objecting to the application."

Comment under PL/2023/02712:

"This application is for the demolition of a barn to be replaced with a residential dwelling with 4 bedrooms.
The Appeal in 2021 approved the conversion of the barn into a 2-bedroom house and permitted development was granted. At the time of that application in 2017, Seend Parish Council, and the Case Officer's Report (17/03312/PNCOU) dated 6 Apr 2017 stated that that proposed development would require a rebuild. The Appeal (Decision Date 8 Feb 2021) also states at para 7 that "I do not consider the proposal to be a 'fresh build' because the barn is capable of conversion to residential use without operations that would amount to substantial re-building of the structure." With the exception of one wall, no external structural changes are required, and the development would almost entirely rely upon the existing building." It goes on in para 8 to "I consider the new wall and windows necessary to convert the barn to a dwelling house." Under para 13, it states the introduction of a full-length window would show domestication of the area, including 2 parking spaces but "I conclude that the building would clearly read as an agricultural barn, albeit one that is now used for residential purposes". It is also noted that the Appeal did not consider concerns raised about whether the Applicant had the right to vehicular access along Curnick's Lane, a single-track lane being a public bridleway.
The application today is now asking for a demolition of the barn so this has now become a rebuild or 'fresh build' for a much larger house ie. a 4-bedroom house as opposed to the 2-bedroom house that was granted under a permitted development conversion and will obviously include the construction of new structural elements for a domestic dwelling rather than a conversion of an agricultural barn. This application now suggests that the works are so great that the extent of the works now forms a 'fresh build' ie. the development is starting afresh and the extent of the work required to make the building habitable is to such an extent that it is now not a conversion but a rebuild and the building is not capable of conversion to a 4-bedroom house.
There are further concerns in para 1.2 of the Planning Statement of March 2023 with regards to "retaining certain elements of its construction which will compromise the thermal efficiency of the building". This suggests that significant construction changes will be needed.
The right of access also needs to be considered. In 2017 the Senior Rights of Way Officer indicated during pre-application stage that the access to the site is not a byway open to all traffic. It is a bridleway (SEEN55) and the only public recorded rights long it are on foot, horseback or bicycle. For

vehicles to drive along this bridleway, a right of access would be required. It is an offence to drive along a bridleway without lawful authority. Access must be lawful so this should be a concern and needs to be considered. No details of a right of access have been included in this application and it can be assumed that there would be further increase in the volume of traffic using this bridleway if a 4-bedroom house is allowed.
For these reasons, the demolish and rebuild of a domestic house is of such a large scale i.e. 4 bedroom with 3 parking spaces that Seend Parish Council objects to this application."

Public Protection: Comment under PL/2023/02712: No objection subject to conditions.

Rights of Way: Comment under PL/2023/02712: "The property would be accessed by a bridleway (SEEN55). This is not recorded as a public vehicular highway, the only recorded public rights along it are on foot, horseback, bicycle and in a non-motorised vehicle . In order to drive a motorised vehicle along here, the applicant would require a demonstrable private right of vehicular access. Without this private right the householder would be committing an offence under Section 34 of the Road Traffic Act 1988. The granting of planning permission does not give the applicant or householder a vehicular right of access over the footpath. The applicant is advised to take private legal advice.

Assuming the applicant has a private vehicular right of access I would have no objections subject to the following informatives:
The applicant should note that in order to access the site with a mechanically propelled vehicle (MPV), they will require a private right of vehicular access. Without this private right they would be committing an offence under Section 34 of the Road Traffic Act 1988. The granting of planning permission does not give the applicant or householder a vehicular right of access over the bridleway. The applicant is advised to take legal advice to ensure they have a right of access.
The applicant should note that no construction / demolition vehicle access may be taken along SEEN55 without prior consultation with the Rights of way Countryside Access Officer (CAO). Where appropriate any safety/mitigation/reinstatement measures must be approved by the CAO. It is an offence under section 131A of the Highways Act 1980 to disturb the surface of a public right of way without lawful authority to do so. The Highway Authority have the power to take enforcement action as necessary"

Highway Officer: Comment under PL/2023/02712: "I note that the principle of a dwelling at this site and location has been approved via a PN application., therefore I will set aside the concerns raised under the umbrella of sustainable development.
I note that the access to the main road is via a PROW Bridleway and my PROW colleagues have confirmed that there is nothing on file to confirm that the applicant has vehicular rights over the route.
The layout proposes an adequate level of parking and turning and the access is appropriate for the use of a single dwelling.
Therefore based on the information provided I am happy to offer no highway objection subject to the following condition:
No development shall commence on site (including any works of demolition), until a Construction MANAGEMENT Statement, together with a site plan, which shall include the following:
1. the parking of vehicles of site operatives and visitors;
2. Number and size of delivery vehicles/ construction vehicles
3. loading and unloading of plant and materials;
4. storage of plant and materials used in constructing the development;
5. wheel washing facilities;
6. measures to control the emission of dust and dirt during construction;
7. a scheme for recycling/disposing of waste resulting from demolition and construction works; and

8. measures for the protection of the natural environment.
9. hours of construction, including deliveries;
10. pre-condition photo survey – any damage related to the development will be put right (to the satisfaction of the LHA) within 6 months of the development completion.
has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction method statement without the prior written permission of the Local Planning Authority.
REASON: To minimise detrimental effects to the neighbouring amenities, the amenities of the area in general, detriment to the natural environment through the risks of pollution and dangers to highway safety, during the construction phase."

**Representations**

None received.

**Application Site and Proposal**

The application site is an existing agricultural building located in a rural location to the north of Sells Green. The site is isolated in siting and is accessed through the Public Right of Way Bridleway (SEEN55). Planning permission is sought for the removal of the existing agricultural barn and its replacement with a two storey dwelling with associated parking and soft landscaping.

**ASSESSMENT**

Principle of Development

- Wiltshire Core Strategy

Core Policy 1 'Settlement Strategy' of the WCS outlines a settlement strategy which identifies the settlements where sustainable development will take place to improve the lives of all those who live and work in Wiltshire. Core Policy 2 'Delivery Strategy' of the WCS outlines there is a presumption in favour of sustainable development at the Principal Settlements, Market Towns, Local Service Centres and Large Villages and development should be restricted to within the limits of development other than in exceptional circumstances (in circumstances as permitted by other policies within this plan, identified in paragraph 4.25). The application site is outside of any limits of development, and is situated within the open countryside.

Core Policy 2 states that development outside of the limits of development will only be permitted where it has been identified through community-led planning policy documents including neighbourhood plans, or a subsequent development plan document which identifies specific sites for development. Development proposals which do not accord to Core Policy 2 are deemed unsustainable and as such will only be permitted in exceptional circumstances under the exception policies of the WCS.

Due to the rebuild nature of the proposal (and thus cannot be considered as a conversion under Core Policy 48) the proposal is considered to be contrary to the housing policies contained within the Core Strategy. Attention must however be made to the planning history of the site.

- Planning History

Although the proposed development does not accord with the housing Policies of the Core Strategy (1,2,15 or 48) the application has been submitted on the basis that the principle of development has already been established by the prior approval granted under reference 20/04042/PNCOU (as this was allowed at appeal). Permission exists under Schedule 2, Part 2, Class Q of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) for the conversion of the existing building into one dwelling.

It is now proposed that rather than a conversion of the existing agricultural building, that the agricultural building would be removed and a new dwelling would be built instead. Although the difference is noted, there are no clear reasons why the conversion as previous approved could not take place if consent under this application was not forthcoming (although would be a converted barn). It can therefore be considered by the Local Planning Authority that there is a realistic prospect of the fall-back position being implemented.

It has been accepted elsewhere (case law/appeal decisions) that the existence of a PNCOU under Class Q is capable of being considered a valid fall-back position when consider an application for demolition of the building and erection of a new dwelling. However it would appear in these cases that where such a view has been taken, it is on the basis that the two schemes are materially similar in terms of their impacts – notably, upon the character and appearance of the area. For example, a significantly larger dwelling than that approved under the PNCOU route is unlikely to be acceptable as it is materially different to the fall-back position.

In light of the above, the LPA is willing to accept the principle of development subject to those caveats identified above. In particular the differences of appearance will be explored in the design and visual impact assessment below, whereby in essence it has been considered that the two storey dwelling is acceptable in this location as whilst not a 'converted barn' appearance, does provide a farmhouse type of appearance which is not abnormal for rural areas in particular circumstances. It is acknowledged that the Parish Council have raised strong concerns regarding the fact that this proposal is not a conversion now, however as above case law and appeal decisions have given weight to a material back up position, and therefore, whilst it is highly undesirable to have a dwelling in this isolated location, the principle is considered acceptable subject to the caveats above.

Design and Visual Impacts

Core Policy 57 requires a 'high standard of design' for all new developments and to draw on the local context and be complementary to the locality. Core Policy 51 requires that development should protect, conserve and where possible enhance the landscape character and must not have a harmful impact upon landscape character, while any negative impacts must be mitigated as far as possible through sensitive design and landscape measures.

The application site is located within an isolated rural location and comprises existing agricultural buildings. The principle of the change of use to residential has been established through the material fall-back position of the prior approval application.

Consideration has now been afforded to the proposed changes/works to the application site. The prior approval application has allowed a converted agricultural building on site, and the current proposal seeks removal of the agricultural building and the replacement with a two storey dwelling which is not reflective of the agricultural building it is replacing. In terms of siting, the dwelling would be sited within the footprint of the agricultural building and thus given the material fall-back position there is no

overriding objection in this regard. As outlined under the appeal decision for the PNCOU the Inspector outlines that rear elevation is largely screened by a hedgerow and trees, even during the winter, which also lessens the impact.

Regarding scale and design, the dwelling does have a ridge height which is higher than the existing agricultural building and is a completely different character. Although the ridge height is higher, given the ground area it covers is smaller (as demonstrated on the submitted plans) it is not considered that this building is of significant increase in scale as to justify an objection in this regard, and the scale of the building would not be more harmful to the character and appearance of the area than the material back-up position.

In relation to the design, it is known that this is materially different, whereby the converted agricultural barn appearance has been lost and is now being proposed with a typical two-storey dwelling. Under the previous withdrawn application, the proposed dwelling did reflect some of the agricultural appearance however, was deemed to be unacceptable in its appearance and bulk, which drew unnecessary attention to the dwelling within the area and was a unacceptable mix of design, in particular due to its bulk. Under the current application, the new dwelling, whilst not reflective of the agricultural building it is replacing, is providing a 'farmhouse' appearance which is not abnormal in rural areas (although a farmhouse is normally only permitted in exceptional circumstances when the need allows). The design as outlined within the planning statement has actually reflective of other farmhouses in the local area. Although it is considered that a dwelling in this location is harmful, due to the isolated nature, the material fall-back position has to be acknowledged. As a dwelling has extant permission on site; the proposed dwelling now being proposed is not significantly larger than the extant building, and the design is reflective of a farmhouse in a rural area, the design although is still undesirable, is not of such demonstrable harm as to justify refusal of planning permission. In particular when acknowledging the material fall-back position.

The proposed materials for the dwelling have been outlined to be brick and slate, with timber/aluminium windows and doors. Stock fencing is proposed for the boundary treatment, and gravel for the hard-standing. In this respect, in principle of these materials are acceptable, however further details are considered necessary to ensure that they are appropriate and high-quality, including details such as the height of the boundary treatment. This will be secured by way of planning condition.

As such it is considered on balance that the proposed dwelling would not give rise to unacceptable impacts upon the character and appearance of the area, when consideration must be afforded towards the material fall-back position obtained through the PNCOU.

Residential Amenity

Firstly, consideration has been afforded towards the amenities of the occupants of the new residential unit. With regard to the layout the proposed dwellings would allow adequate light to the habitable rooms. Then in relation to the amenity space, the space allocated for the new dwelling is considered of acceptable size for the occupants.

Secondly, attention has been afforded towards the impact upon neighbouring amenities. In this regard there are no immediate neighbours that would be impacted from the proposed dwelling and thus the proposal is acceptable in terms of residential amenity.

Public Protection

The Council's Public Protection has reviewed the scheme (albeit it comments are that initially stated under the previous withdrawn application), which raised no objection subject to conditions. One condition relates to hours of construction, which is considered reasonable, and the second condition recommended is as follows:

"Former agricultural use of the site/building may have given rise to potential sources of land contamination e.g. fuel oil, vehicles, asbestos, pesticides or herbicides. As it is now intended to use the site for residential purposes a statement/letter report must be provided which confirms the historical uses of the site/building and how development works will address any potential for land contamination which may exist."

In this regard, it must again be reminded that there is a material fall-back position whereby under the allowed PNCOU a planning condition was imposed stating:

"Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued."

It is therefore considered reasonable that the wording from the PNCOU is replicated as would ensure that if any contamination is found that appropriate risk assessment and remediation etc. is submitted to and approved by the LPA. With this condition imposed the proposal is deemed acceptable.

Highways

The development is proposing a four bedroomed unit whereby under the Wiltshire Local Transport Plan 2011-2026 Car Parking Strategy it is expected that 3 parking spaces are allocated on site. As demonstrated on the submitted plan, three parking spaces would be provided and thus the proposal would provide adequate parking provision.

Regarding the access to the site, this would involve using a Public Right of Way Bridleway (SEEN55) and the Rights of Way Officers has confirmed that there the applicants have no vehicular rights over the route. The right to use this private right of way is not material to this application, whereby the applicant will need to obtain vehicular rights to use the rights of way. As outlined by the Right of Way Officer without this private right the householder would be committing an offence under Section 34 of the Road Traffic Act 1988. The granting of planning permission does not give the applicant or householder a vehicular right of access over the footpath. The applicant is advised to take private legal advice.

The Right of Way Officer recommended a couple of informatives reminding the applicant that a private right of vehicular access needs to be obtained and that no construction/demolition vehicle access may be taken along the right of way without prior consultation with the Rights of way Countryside Access Officer (CAO). These will be imposed.

The Local Highway Officer, has also raised no objection to the application for a single dwelling, although noting that the principle of the site has been approved by the PNCOU (as normally this

application would be considered isolated and unacceptable in terms of Core Policy 61) and the matter discussed above regarding no private right for vehicular access for the access. It was also considered that the access proposed is appropriate for the use of a single dwelling, which is agreed, noting that the site is used for agricultural vehicles through the existing use.

It was recommended by the Highway Officer that a Construction Management Statement is requested by way of condition. Due to the nature of the access and the public right of way, this is considered reasonable and thus is being recommended. Subject to the above conditions and informatives the proposal is considered acceptable in terms of highway safety and parking.

S106 contributions/CIL

The property will be CIL liable charged at the standard council rate.

Conclusion/Planning Balance

In light of the accepted fallback position, the application is considered to be acceptable in principle. Notwithstanding this, the council cannot currently demonstrate a deliverable five-year supply of housing. The housing policies are therefore out of date as it relates to the supply of housing. The application must therefore be considered in accordance with paragraph 11(d) of the NPPF which states that where relevant policies are considered out of date permission will be granted unless the application of policies in the Framework that protected areas or assets of particular importance provides a clear reason for refusing the development proposed, or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

The proposed site is not located within the protected area. As considered above within the report there are also no adverse impacts generated that would significantly and demonstrably outweigh the benefits when assessing against the policies of the NPPF taken a whole. Therefore, the proposal accords with Paragraph 11 d) ii) of the NPPF and is being recommended as granted.

**RECOMMENDATION:**

Approve with conditions

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**Conditions:** (10)

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

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

Location Plan, Block Plan - Drawing No. CBR/3A
Proposed Elevations and Floor Plan - Drawing No. CBR/1A
Planning Statement
Application Form

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

3 No development shall commence on site (including any works of demolition), until a Construction Management Statement, together with a site plan, which shall include the following:
1. the parking of vehicles of site operatives and visitors;
2. number and size of delivery vehicles/ construction vehicles
3. loading and unloading of plant and materials;
4. storage of plant and materials used in constructing the development;
5. wheel washing facilities;
6. measures to control the emission of dust and dirt during construction;
7. a scheme for recycling/disposing of waste resulting from demolition and construction works; and
8. measures for the protection of the natural environment.
9. measures to warn construction and delivery drivers of the presence of users of the right of way network and the implementation of a low-speed limit,
10. hours of construction, including deliveries;
11. pre-condition photo survey – any damage related to the development will be put right (to the satisfaction of the LHA) within 6 months of the development completion.
has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction method statement without the prior written permission of the Local Planning Authority.

REASON: To minimise detrimental effects to the neighbouring amenities and the users of the right of way network, the amenities of the area in general, detriment to the natural environment through the risks of pollution and dangers to highway safety, during the construction phase.

4 No development above slab level shall commence on site until details/specifications and samples of the materials to be used on the development 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.

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

• a detailed planting specification showing all plant species, supply and planting sizes and planting

densities;
• all hard and soft surfacing materials;
• all boundary treatment including height, design and materials

REASON: Further details are required because insufficient information has been submitted with the application in this regard, to ensure a satisfactory landscaped setting for the development and in the interest of visual amenity of the rural area.

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

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

7 No part of the development hereby approved shall be first occupied until the parking area shown on the approved plans has been 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 within the site in the interests of highway safety.

8 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.3) (England) Order 2020 (or any Order revoking or re-enacting or amending those Orders with or without modification), no development within Part 1, Classes A, B and E and within Part 2, Class A shall take place on the dwellinghouse hereby permitted or within their curtilage without prior written permission of the Local Planning Authority on an application made for that purpose.

REASON: In the interests of the amenity of the area and the application site, and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions, extensions or enlargements.

9 No construction or demolition work shall take place on Sundays or Public Holidays or outside the hours of 0800 to 18:00 Monday to Friday and 08:00 to 13:00 on Saturdays. There shall be no burning undertaken on site at any time.

REASON: Ensuring high design and place shaping such that appropriate levels of amenity are achievable.

10 Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.

REASON: To ensure that land contamination is adequately dealt with.

**Informatives:** (2)

11 The applicant should note that in order to access the site with a mechanically propelled vehicle (MPV), they will require a private right of vehicular access. Without this private right they would be committing an offence under Section 34 of the Road Traffic Act 1988. The granting of planning permission does not give the applicant or householder a vehicular right of access over the bridleway. The applicant is advised to take legal advice to ensure they have a right of access.

12 The applicant should note that no construction / demolition vehicle access may be taken along SEEN55 without prior consultation with the Rights of way Countryside Access Officer (CAO). Where appropriate any safety/mitigation/reinstatement measures must be approved by the CAO. It is an offence under section 131A of the Highways Act 1980 to disturb the surface of a public right of way without lawful authority to do so. The Highway Authority have the power to take enforcement action as necessary.