30th August 2023

Our Ref: SWLC.LPC5690

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

Dear Sir/Madam

Town and Country Planning Act 1990
Permission in Principle - erection of 1No dwelling on land at
The Haven, Webbs Hill, Minety, Wiltshire, SN16 9QG

Please find enclosed a duly completed application, seeking 'Permission in Principle' for the erection of 1No dwelling on land above. The extent of the application site is shown illustrated by the plan extract inserted below.



The application approach is defined in the National Planning Guidance, as below;

The permission in principle consent route is an alternative way of obtaining planning permission for housing-led development which separates the consideration of matters of principle for proposed development from the technical detail of the development. The permission in principle consent route has 2 stages: the first stage (or permission in principle stage) establishes whether a site is suitable in-principle and the second ('technical details consent') stage is when the detailed development proposals are assessed.

This establishes that the application is a two-stage process, with the first stage solely intended to establish whether the site is suitable in principle and the second stage then considering the detailed development proposals and potential impacts. The Government's guidance sets out that the scope of the first stage of permission in principle is limited to location, land use and the amount of development. The Planning Practice Guidance (PPG) confirms that the scope of permission in principle is limited to location, land use and amount of development. However, issues

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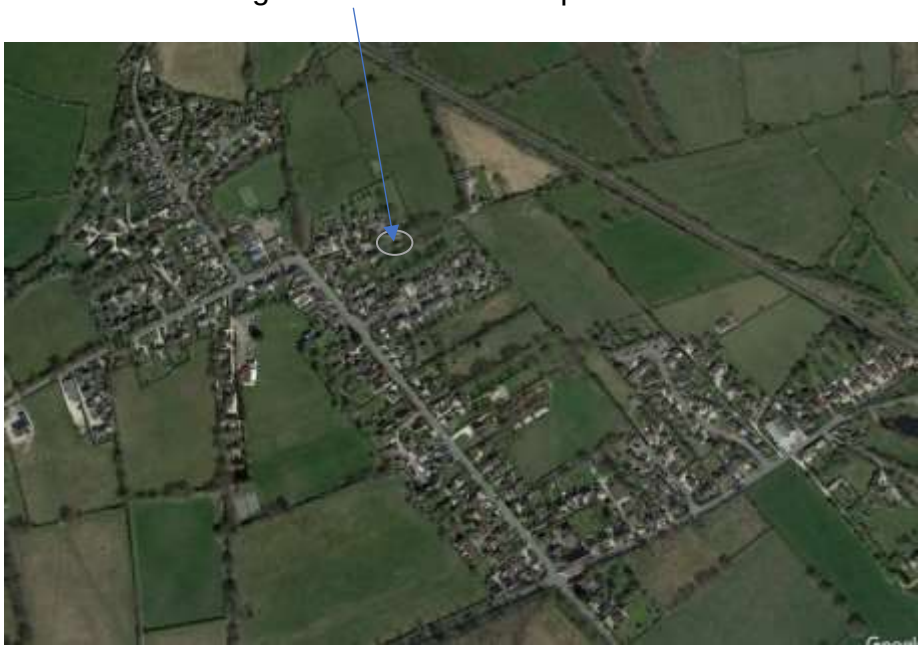
relevant to these ‘in principle’ matters should be considered at the permission in principle stage. Other matters should be considered at the technical details consent stage (Paragraph: 012 Reference ID: 58-012-20180615).

Accordingly, the purpose of this statement is focused on the principle of development at this location only. Any further details in respect of the intended new house development and its acceptable assimilation will be submitted at the technical details stage.

The access to the site is off Silver Street which runs to the centre of Minety. The existing access road serves 9 dwellings, as well as an annex at Cherry Trees. The access road to the site and existing property is by a public footpath (MINE44). This is not recorded as a public vehicular highway. In light of the well established nature of the properties present, and on-site parking/garaging and turning facilities etc (approved over many years), it is believed they have a demonstrable private right of vehicular access. It is though acknowledged that the granting of planning permission does not give the applicant or householder a vehicular right of access over the footpath. Neither must it be assumed though that the separate legislation involved undermines the acceptability of the location for development as proposed in principle. It is an established planning principle that separate legislation falls outside the planning balance.

Minety is defined in the Wiltshire Core Strategy as a small village and consequently does not have a settlement framework boundary. Nevertheless, I hope that the aerial photograph below helps demonstrate that, on the ground, the area of garden land in question is clearly part of the village’s physical built up limits. The land is bounded by other residential buildings and land, distinct from the open countryside beyond the village to the east. The additional photograph on the following page also shows the extent of buildings on the site to be replaced.





The site measures approximately 22m at its widest by 70m in length (approximately 0.09 hectares) and is bounded by the shared access which serves Little Pastures to the east and partially by the rear garden fence to land to the rear of 1 and 2 Manor Cottages which front onto Silver Street and the eastern along the Oaklease cul de sac to the south. It is clearly part of the built up limits of the village.

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

The associated PPG confirms that same applies to an application seeking permission in principle; “A decision on whether to grant permission in principle to a site following a valid application … must be made in accordance with relevant policies in the development plan unless there are material considerations, such as those in the National Planning Policy Framework and national guidance, which indicate otherwise” (Paragraph: 011 Reference ID: 58-011-20180615).

The current Development Plan consists of the Wiltshire Core Strategy (Adopted January 2015); and the Wiltshire Housing Sites Allocation Plan (Adopted February 2020).

The following Core Strategy Policies are believed to be most applicable to the application assessment in principle.

CP1 – Settlement Strategy
CP2 – Delivery Strategy
CP13 – Malmesbury Area Spatial Strategy

<u>Assessment</u>

Wiltshire Core Strategy Policies CP1 and CP2 alongside community area-based policies; CP13 in this instance, define a hierarchy of settlements based on a range of services infrastructure and facilities in those locations and seeks to direct most new development to the most sustainable locations in this hierarchy. In the Malmesbury Community Area, where the site is located, the most sustainable

location to which most growth is directed is Malmesbury, with the small villages, which includes Minety, being able to accommodate some growth limited growth.

In relation to small villages Core Policy CP2 states:

At Small Villages development will be limited to infill within the existing built area. Proposals for development at Small Villages will be supported where they seek to meet housing needs of settlements or provide employment, services and facilities provides that the development:

i. Respects the existing character and form of the settlement

ii. Does not elongate the village or impose development in sensitive landscape area, and

iii. Does not consolidate an existing sporadic loose knit areas of development related to the settlement.

The supporting text at Paragraph 4.34 clarifies that 'infill is defined as the filing of a small gap within the village that is only large enough for not more than a few dwellings, generally only one dwelling. Exceptions to this approach will only be considered through the neighbourhood process or DPDs.'

In this instance, the proposal is for a single dwelling within a small gap within the village, situated in a cluster formation between existing residential properties and is therefore considered to meet the requirements of CP2 sections i-iii and the principle of development is considered acceptable and in accordance with CP1, CP2. The site falls within the apparent built up limits of the village, and it would not be tenable to describe the site as elongating the village to fall within the open countryside.

Giving judgment in Braintree District Council v Secretary of State for Communities and Local Government & Ors [2018] EWCA Civ 610, Lindblom J said paragraph 55 of the NPPF (applicable at that time) stated that local planning authorities "should avoid new isolated homes in the countryside unless there are special circumstances". He continued to note: "Planning policies, whether in the development plan or in the NPPF, ought never to be over-interpreted. As this case shows, over-interpretation of a policy can distort its true meaning – which is misinterpretation."

He said paragraph 55 was "expressed in general and unprescriptive terms", did not dictate a particular outcome for an application, contained no presumption and simply advised local authorities on how to promote sustainable development in rural areas. The paragraph's advice was to avoid "new isolated homes in the countryside", which Lindblom J said: "Simply differentiates between the development of housing within a settlement - or village - and new dwellings that would be 'isolated' in the sense of being separate or remote from a settlement".

He explained further: "Whether a proposed new dwelling is, or is not, 'isolated' in this sense will be a matter of fact and planning judgment for the decision-maker in the particular circumstances of the case in hand." The issue should be given its common application therefore, and as said, it is not tenable to consider the

application site isolated and thus unsustainably located-It is clearly part of the built up limits of the village.

New residential development in the 'open countryside' is strictly controlled to prevent new homes being in locations which are remote from services and facilities. Core Policy 2 of the Wiltshire Core Strategy states that other than in circumstances permitted by the exception policies, identified at paragraph 4.25, development will not be permitted outside the limits of development. The application development does not fall within the listed exceptions, but neither, by comparison with its immediate neighbours, is it isolated or remote from services and facilities.

Although the village has no Development Boundary, Minety is recognised as a Small Village, whereby under Core Policy 13 (Malmesbury Community Area) and Core Policy 2 (Delivery Strategy), support is given for limited infilling of one or two dwellings within existing areas, provided the proposal respects the character and form of the settlement; does not elongate the village or impose development in sensitive landscapes; and does not consolidate a sporadic loose knit area of the village. If the built up limits are not agreed though there is a broader policy framework to examine within the scope of the titled balance.

This is important as it is understood that your Council still cannot demonstrate the required 5-year housing supply. The presumption in favour of sustainable development therefore tilts the assessment balance. Indeed, your Council's Briefing Notes No 22-09 and 20-20 have highlighted that in order to restore the five-year housing land supply, you Council will, inter alia,

> 'Positively consider speculative applications where there are no major policy obstacles material to the decision other than a site being outside settlement boundaries or unallocated'.

Such advice is directly applicable to the application proposed.

Paragraph 11 of the NPPF notes that the relevant policies for the supply of housing should not be considered up-to-date if a local planning authority cannot demonstrate a five-year housing land supply and for decision taking this means that planning permission should be granted unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

ii. 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.

Paragraph 60 states that, 'To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay'.

Paragraph 69 states that small and medium sites can make an important contribution to meeting the housing requirement of an area and are often built out relatively quickly. Indeed, in this case the proposal is a self-build one also directly supported by Government advice. Furthermore, it should be stressed that the area does not fall in a sensitively designated area as referenced in the NPPF at paragraph 11d) i).

In terms of development in rural areas, paragraph 85 requires planning policies and decisions to recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable. The corollary is that housing, dependent on local services should be on land that is physically well-related to existing settlements too, as noted by your Council's own Briefing Notes.

The NPPF at paragraph 105 also notes that sustainable transport solutions will vary between urban and rural areas, although it is of course strongly maintained that the application site is as accessible as the neighbouring properties located in the recognized sustainable settlement. Public transport and cycling are comparably realistically usable alternatives to the private vehicle usage, and there is a school very nearby together with a community rugby club, village hall and two public houses.

The Core Strategy was adopted in January 2015 and is now more than 5 years old. Both the Courts and Planning Practice Guidance make it clear that the policies of a development plan do not become out-of-date automatically after the passage of 5 years. However, the NPPF also makes it clear that housing land supply must now be assessed against Local Housing Need for the whole of Wiltshire, rather than the previous Housing Market Areas. During the past 5 year your council has regularly under provided housing land required to meet the required supply.

The NPPF, within the context of a presumption in favour of sustainable development, aims to significantly boost the supply of housing. It requires local planning authorities to identify and regularly update a supply of specific deliverable sites sufficient to provide 5 years' worth of housing land supply. The NPPF makes it clear that where this cannot be demonstrated, relevant polices for the supply of housing (which in this case would include CP1, CP2 and CP13 in relation to limits of development) cannot be considered up to date, and planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. The above referenced Briefing Note action echo the same approach.

The NPPF Paragraph 11d advises that policies which are most important for determining the application should therefore not be considered up to date. As a result, the presumption in favour of sustainable development as set out at Paragraph 11d of the Framework is engaged so that permission should be granted unless 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.

No such harm was of course identified in respect of the full application last made to develop this site.

It can be seen therefore that Core Policies 1, 2 and 13 of the Wiltshire Core Strategy are all important for determining the application and under the provisions of the NPPF are all to be considered out of date.

Case law has examined the interpretation and operation of national policy with regards the ability to demonstrate a five-year housing land supply, and the presumption in favour of sustainable development. Court judgments have established that:

i. Policies that are considered to be out-of-date as a result of a shortage in the 5-year housing land supply are still capable of carrying weight in the planning balance. The weight to be attributed to those policies is a matter for the decision-maker (most recently in Suffolk Coastal District Council v Hopkins Homes Ltd. [2017] UKSC 37).

ii. The extent of any shortfall in the 5-year housing land supply is capable of being a material consideration (most recently in Hallam Land Management v SoS DCLG [2018] EWCA Civ 1808).

The implications of the Council's 5-year housing land supply position, and the weight to be attributed to the development plan policies, must be taken into account in the determination of the application. The extent of the 5-year housing land supply shortfall, and the potential for the proposal to deliver housing in the current 5-year period to help remedy the current shortage in deliverable supply, need to be taken into account in the balancing exercise too. As highlighted above, it is noted that the Council is endeavouring to redress its limited housing shortfall in several ways, including the support of windfall opportunities, which are of course generally modest in scale to raise no other issues;

> 'Positively consider speculative applications where there are no major policy obstacles material to the decision other than a site being outside settlement boundaries or unallocated'.

When you breakdown the current under supply in terms of actual housing numbers, as the Inspector did in a recent appeal at Park Road, Malmesbury (APP/Y3940/W/21/3286853 and 3289757) he said the position, **'cannot** reasonably be considered a modest shortfall' (my emphasis). 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.

Appeal and court decisions confirm that ultimately it will be up to the decision maker to judge the particular circumstances of each application and how much weight should be given to conflict with policies for the supply of housing that are 'out-of-date'. Therefore, consideration of the weight which can be provided to the above policies is integral in the balancing exercise, which in this application is believed to identify no material harm. Moreover, in light of the availability of the land in my client's ownership and its intimate relationship with the rest of the defined village the balancing exercise is heavily tilted in support of such sustainable new development. The land is not sensitive in landscape or heritage terms and is in fact already residential garden land. New housing per se supports the construction industry and increases local spend, as well as adding to social support for services and facilities. Therefore, taking a common sense position there are no reasons on balance that weigh against the grant of permission in principle as sought. The location is logical and the use is similarly in keeping with the prevailing neighbouring land uses so that the one dwelling proposed can be satisfactorily accommodated.

Whilst it is agreed that all cases should be considered on their own merits, I would wish to draw your attention to an appeal against the decision of your Council to refuse permission in principle (application reference 20/04651/PIP) for the erection of one dwelling on previously developed land at Foxhill House, Clench Common, Marlborough, Wiltshire, SN8 4DR which was allowed on the 21st May 2021. The site is described as being part of a small cluster of properties with development beyond being more sporadic and loose knit. The site did however fall within the countryside and within the North Wessex Downs Area of Outstanding Natural Beauty, which is of course far more sensitive that the current application site.

The Inspector concluded that the proposed development would result in residential development outside of any settlement defined and "would not be in a suitable location for housing with regard to local housing strategy and accessibility to services and facilities" (paragraph 16). However, only moderate weight was given to the conflict and it was recognised that "The proposal would align with the Framework where it seeks to significantly boost the supply of housing and acknowledges that small-scale developments can make an important contribution to meeting the housing requirement and be built out quickly" (paragraph 32).

The Inspector went on to consider the titled balance and concluded that the adverse impacts of granting permission in principle would not significantly and demonstrably outweigh the benefits:-

32. *The proposal would align with the Framework where it seeks to significantly boost the supply of housing and acknowledges that small-scale developments can make an important contribution to meeting the housing requirement and be built out quickly. The Framework also seeks to make use of previously developed land. Even with the shortfall identified, given the scale of the proposal this attracts limited weight.*

33. *The economic and social benefits from the build and occupation of the dwelling as well as support for local services, facilities and the community, including those in other villages would be minimal given the size of the development, and their weight in favour of the scheme is small.*

34. *The proposal would conflict with the Framework where it seeks to promote sustainable transport, actively managed patterns of growth and that appropriate opportunities to promote sustainable transport modes can be taken up. Given the scale of the scheme and associated movements, I give this moderate weight.*

35. *Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission, and therefore appeals, must be determined in accordance with the development plan, unless material considerations indicate otherwise.*

36. *The proposal benefits from the presumption of sustainable development as outlined in Paragraph 11d)ii of the Framework. In this instance, the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.*

37. *On the basis of the individual merits of the scheme, the material considerations indicate that planning permission should be granted notwithstanding the conflict with the development plan.*

All matters relating to the design and appearance of the new dwelling and the parking and turning facilities as well as landscaping, arboricultural and biodiversity matters will be addressed at the technical detailed application stage and are thus outwith the simple planning balance required to agree the principle of new village housing as part of the built up part of the village.

I trust the above assessment addresses the relevant issues and you will be able to support my client's application, however if you have any questions, please do not hesitate to contact me.

Yours faithfully

[redacted]

Simon Chambers
Director

Enc

cc: CJ Room Developments Ltd