CASE OFFICER'S REPORT

Application Reference	PL/2023/08271
Site address	Land East of 6 Ludwell Courtyard, Ludwell Hill, Ludwell, Shaftesbury, SP7 9ND Erection of detached dwelling
Date of Inspection	
Date site notice posted	N/A Neighbour letter only
Publicity Expiry	30/10/23

POLICIES

National Planning Policy Framework 2023 and PPG

Donhead St Mary Neighbourhood Plan - undesignated

Wiltshire Core Strategy:

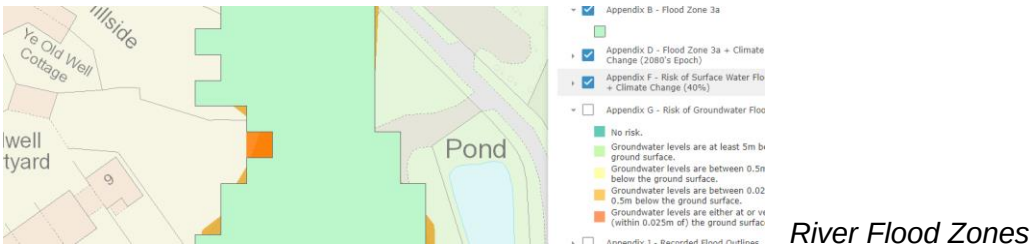
Core Policy 1 Settlement Strategy
Core Policy 2 Delivery Strategy
Core Policy 27 Spatial Strategy for the Tisbury Community Area
Core Policy 50 Biodiversity
Core Policy 51 Landscape
Core Policy 57 Ensuring high quality design and place shaping
Core Policy 67 Flood Risk
Core Policy 69 River Avon catchment

Other:

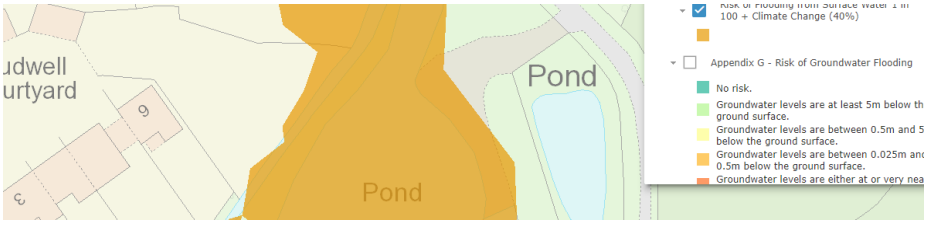
- Level 1 Strategic Flood Risk Assessment
- Wiltshire Housing Site Allocations Plan adopted Feb 2020:
  Chapter 6 and Appendix A - South Wiltshire HMA (amended settlement boundaries)
- Wiltshire Local Transport Plan – Car Parking Strategy: Chapter 7: Parking Standards
- Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019
- The Community Infrastructure Levy Regulations 2010

SITE and CONSTRAINTS

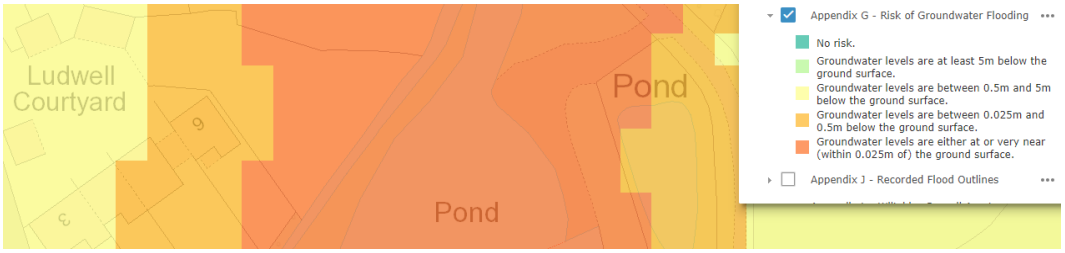
- Within the adopted settlement boundary for Ludwell
- Cranborne Chase & West Wiltshire Downs AONB
- River Avon catchment SAC and SPA
- Ludwell Hill is a Class A adopted highway
- Agricultural Land Classification 2
- Flood Zone 3a & high risk of surface water flood risk at site south east edge
- High risk of groundwater flood risk across entire site.



River Flood Zones



Surface Water



Ground water

RELEVANT HISTORY

S/2003/2424 ERECTION OF FOUR COTTAGES AC
S/2003/1844 ERECTION OF SINGLE DETACHED DWELLING R **Appeal Withdrawn**
S/2002/0515 PART DEMOLITION AND CONVERSION OF REMAINDER OF HOTEL TO 2 HOUSES AND ERECT 4 FURTHER HOUSES TO THE REAR AC

S/2004/1843 ERECTION OF A SINGLE DETACHED DWELLING R

(1) The proposed development by virtue of its backland location, within the village and West Wiltshire and Cranborne Chase Area of Outstanding Natural Beauty, extending further away from the approved developments at the former Grove House Hotel detract from the generally linear streetscape and increase the degree to which development occurs behind the street frontage in a manner which represents a detrimental impact upon both the village character and the open character of the West Wiltshire and Cranborne Chase Area of Outstanding Natural Beauty, contrary to the requirements of policies G2 (iv &v), D2 & C5 of the Adopted District Local Plan.
(2) The proposal which makes no specific provision for off street parking for the proposed dwelling over that already approved under S/2003/2424 would constitute inadequate off street car parking and so would be likely to give rise to additional indiscriminate kerbside car parking at and within the vicinity of the site, which in turn would be detrimental to the safety of both vehicles and pedestrians, and would also be contrary to policy TR11 of the adopted Salisbury District Local Plan.
(3) The proposal by reason of its position, size and design would be an intrusive and un-neighbourly development which is likely to have an overbearing impact on the neighbouring property at Ye Olde Well Cottage contrary to policy G2 (ii) of the adopted local plan.
(4) The proposed development fails to address the requirement for new residential development proposals to contribute to the requirements for recreational public open space and is therefore contrary to policy R2 of the Adopted Salisbury District Local Plan.

Appeal Dismissed 11 May 2006 – see Appx 1

Conclusions

27. I have found that subject to the imposition of appropriate planning conditions the proposed development would not harm the character or appearance of the area or compromise highway safety interests. In addition, it may also be possible to impose a condition relating to a scheme for recreational open space provision. The development would accord with aspects of the Government's housing objectives and on balance, would not be at risk of flooding or increase the risk of flooding elsewhere. I consider however that these matters do not overcome or outweigh the serious harm that I have identified to the living conditions of the residents of 'Hillside'. For the reasons given above and having regard to all other matters raised, I therefore conclude that the appeal should not succeed.

REPRESENTATIONS

WC Highways - No objection subject to condition
Archaeology - No objection

The proposed detached dwelling at Ludwell Courtyard lies on the fringes of the presumed extent of the medieval settlement of Ludwell. The settlement is first recorded in AD 1195 as Luddewell and earthworks that may represent remnants of the shrunken village were recorded elsewhere within the village by the Royal Commission on the Historical Monuments of England (RCHME) in the 1990s.

As I understand it, this proposal is an iteration of two similar previous applications for a new dwelling in the same location in the early 2000s, neither of which received a response from the Archaeology Service. Given the modest scale of the proposed development and in the absence of any new archaeological information, I have no concerns with this proposal and no further action is therefore required as regards the buried archaeological heritage in relation to this application.

Parish Council: No objection

Neighbour/third parties 2 Objection and 2 Support on the following grounds:

The back of our house is south-east facing and faces straight towards the north-west elevation of the proposed development. On this elevation there are 2 windows upstairs and one window and front door downstairs that will look over our garden and face straight into the windows of the back of our house, our conservatory and the bedroom downstairs. The proposed development will not only be visually intrusive but will also mean that we will lose the privacy and light that we now enjoy in our back garden and in the rooms at the back of our house. It will be overbearing, visually intrusive and detract from the outlook and pleasant enjoyment of the garden, my bedroom and conservatory and impact on my living conditions. At present we enjoy a south-east aspect and have the sun in our garden all year round. The proximity of the proposed development will result in the loss of the sun and light in our garden and back rooms for many months of the year as they will be overshadowed by the proposed development.

None of the photographs provided by the proposer are towards the north-west and fail to show the impact of the proposed development on our property. It's also worth mentioning that the previous plan on this side was rejected on the grounds of being overbearing, visually intrusive and detracting of the enjoyment of our garden. This new plan sits even higher in the plot of land, therefore having an even worse impact on our property than the refused proposal.

The current property will face into my house (currently obscured by trees but this will not be the case after the autumn. Additionally I object because the plot has been divided into two, the current plot is being developed and will make any objection to a second less valid, as consent for one implies consent for both.

I have no objections to the development of this property as it will only improve an area of land that is left to grow wild. However, I would like assurance that any damage done to the courtyard by heavy machinery is made good. And also, to note that there is a significant hedgehog population in the area, so when they are out of hibernation, for consideration to make the area safe for them and any fences built to include hedgehog highways. There are also palmate newts which whilst not protected, do burrow into the ground to hibernate, so care for them would be advantageous. It is lovely to see that the bat population will be considered as well as the bees and swallows.

We are fully supportive of this proposal, as it will make good use of an otherwise useless piece of scrubland. Also it should see the removal of an unsafe fir tree on the plot, the top of which has already broken off and hanging.

PLANNING ISSUES

1. Principle of development and 2004 scheme appeal decision
2. Scale, siting, design and impact on the character of the area and the AONB
3. Impact on neighbouring amenity
4. Highway safety
5. Drainage, Ecology, River Avon SAC and SPA

ASSESSMENT

Planning permission is required for the development. The application must be determined in accordance with the development plan unless material considerations indicate otherwise. (Section 70(2) of the Town and Country planning Act and Section 38(6) of the Planning and Compensation Act 2004). The NPPF is also a significant material consideration and due weight should be given to the relevant policies in existing plans according to their degree of consistency of the framework. The NPPF confirms in para 11 that plans and decisions should apply a presumption in favour of sustainable. For decision making, that means approving development proposals that accord with an up-to-date development plan without delay.

The LPA currently has a 4.6 year housing land supply. In the absence of a 5 year housing land supply, a presumption in favour of sustainable development would normally apply under para 11 unless harm is identified to protected sites listed in footnote 7. This includes the River Avon SAC, the AONB and areas at risk of flooding. Where harm is identified to these protected sites, the tilted balance would not be applicable under para 11 (d) of the NPPF.

1. Principle of development

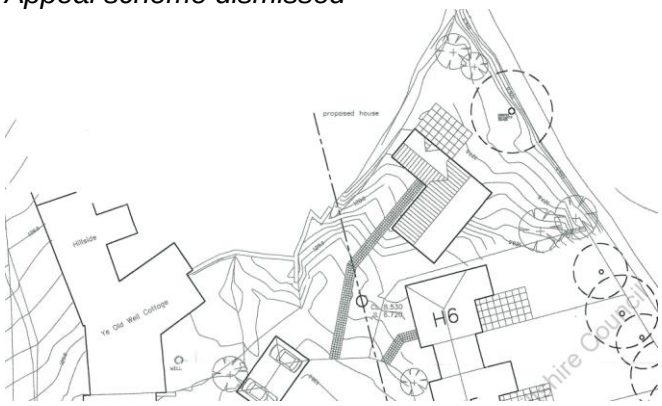
The application represents a scheme to re-design and re-site the dwelling which was refused and dismissed at appeal in 2004 on neighbouring amenity grounds – refer to Appx 1. The appeal inspector raised no concerns on this matter. The site is within the settlement boundary for the large village of Ludwell and the principle for residential development is acceptable and sustainable in principle under Core Policy 1 and 2.

2. Scale, design and impact on the character of the area and AONB

CP51 sets out the landscape conservation principles for new development. Core Policy 57 states 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. Particular emphasis is placed on the importance of the landscape character and setting of the AONB in CP51. Para 176 of the NPPF attaches *great weight* to this consideration.

The application site lies within the settlement boundary for the large village of Ludwell. It is situated to the south of the A30 and to the rear of two houses known as Ye Old Well Cottage and Hillside. The site is accessed from a driveway that served the former Grove House Hotel, now converted to two dwellings. A terrace of four houses has been built within the car park and the terrace adjoins the west boundary for the site.

Appeal scheme dismissed



As proposed







Ludwell is a dispersed settlement with housing either side of the A30 and including some backland development, including the terrace of 4 dwellings. The proposal would add to the row of existing houses to the rear of the former hotel. It would not extend development into the countryside beyond the settlement boundary and is unlikely to appear at odds with the surrounding countryside. This assessment is consistent with the appeal Inspector's findings.

This small scale development, as with the appeal case, would not appear to be at odds with the mixed character of the settlement and would appear as an integral part of the village from wider views and the surrounding footpath network. The small scale nature of the proposal would neither detract from the special landscape qualities of the AONB, nor result in the loss of an important open area, and the siting of the dwelling would respect the existing building line created by the existing terrace of four. In landscape and settlement character terms, the proposal is considered to comply with CP57 and CP51.

The appeal scheme Inspector recommended the use of natural slate and stone walls, and this could be conditioned in preference to the plain clay tiles proposed. Therefore, subject to a materials condition, no objection is raised on this ground and the siting, scale and design of the proposal are considered to be appropriate within the setting and no material harm would result to the overall character and setting of the AONB.

3. Impact on neighbouring amenity

Core Policy 57 requires that development should ensure the impact on the amenities of existing occupants is acceptable, and ensure that appropriate levels of amenity are achievable within the development itself. The NPPF states that planning decisions should 'create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.'

The appeal inspector dismissed the 2004 scheme on the grounds of harm to neighbouring amenity at **Hillside**, given the close proximity of the "overbearing, dominant, visually intrusive and overpowering" two storey dwelling sited close to the boundary:

Living Conditions

13. During my site inspection I saw the relationship of the appeal site to 'Ye Old Well Cottage' and 'Hillside'. I noted from some of the south (rear) facing windows in 'Hillside' there are attractive and interesting views across the appeal site towards the surrounding countryside and the distinctive water cress beds. I consider that similar views would be likely from 'Ye Old Well Cottage'. The proposal would considerably change the outlook from these neighbouring windows. The owners of neighbouring properties are not however entitled to a view across neighbouring land. Nevertheless, the proposal would erode the pleasant enjoyment that these neighbouring residents derive from this outlook. Whilst my decision does not turn on this matter this change of outlook would be a harmful.

14. I also saw the relationship of the appeal site to the gardens of these neighbouring properties and the lower ground levels within 'Hillside'. I agree with the appellant's agent that it would be the residents of 'Hillside' that would be most affected by the proposal. The proposed dwelling would be built in very close proximity to the western boundary of the garden to 'Hillside'. I consider that when seen from the garden of this neighbouring property the height and large mass of proposed new building would appear overbearing and visually intrusive. The tall, solid flank wall of the proposed dining room and bedroom 'wing' would be especially dominant and overpowering. It would seriously detract from the outlook and pleasant enjoyment of this adjoining garden and would unacceptably erode the living conditions of the residents of 'Hillside'. To a much lesser extent the proposal would also detract from the outlook of the garden of 'Ye Old Well Cottage'.

15. I consider that the degree of separation between windows in these neighbouring houses and those intended for the proposed dwelling, together with appropriate boundary fencing, would avoid any harmful overlooking or significant loss of privacy.

16. I conclude however on the second main issue that the proposal would unacceptably harm the living conditions of the residents of 'Hillside' by reason of visual intrusion and loss of outlook. The proposal would conflict with the aims and objectives of LP policy G2.

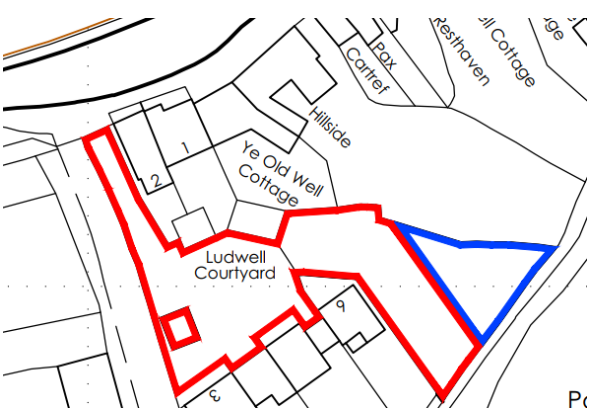
The occupiers of Ye Old Well Cottage have objected on the grounds of loss of light and privacy and Hillside have objected on the grounds of potential development of a second plot and the proposed house would face into the property at Hillside. The planning Inspector addressed the issue of a potential second plot at that time and concluded that the LPA should consider any future scheme on its merits.

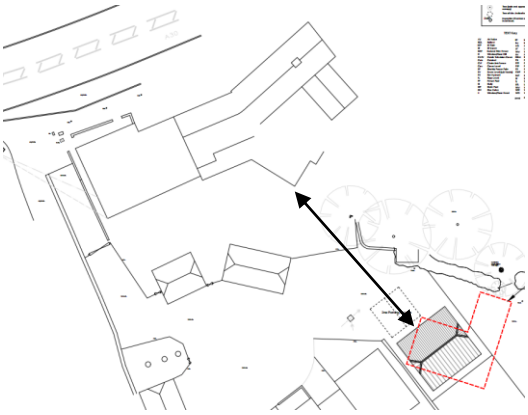
Looking south



Looking north







The proposed dwelling would form a fifth house on the end of the existing two storey terrace of four units. No 6 already presents first floor windows towards **Ye Old Well Cottage**. The first floor windows of the proposed dwelling would be sited approx. 13m from the boundary with Ye Old Well Cottage, which is a further 10m from the corner of the dwelling. This level of separation (approx. 23m) between the two elevations is an acceptable separation distance between the elevations in amenity terms.

The north east corner of the proposed dwelling would be sited some 5m from the boundary planting with **Hillside**, which is in turn, some 23m away from the south elevation of the cottage. There is a separation distance between the two building elevations of about 26m, which is also an acceptable distance in amenity terms. Given the separation distances and the planting retained within the garden for Hillside, it is not considered that the LPA could support an amenity reason for refusal on the basis of unacceptable overlooking or loss of privacy. As the Inspector noted, whilst there would be a change to the outlook from neighbouring windows, neighbours are not entitled to a view across neighbouring and the separation distances between the properties are within accepted development limits.

Other properties are considered to be sufficiently separate from the development not be adversely affected in terms of overlooking, loss of privacy or dominance and appropriate levels of amenity are achievable within the development in accordance with CP57.

4. **Highway safety**

CP57, 60 and 61 are applicable. Core policy 57 ix. states that proposals should ensure that the public realm, including new roads and other rights of way, are designed to create places of character which are legible, safe and accessible.

Two off street spaces would be provided for the new dwelling and the highways officer stated:

The proposal includes sufficient off street parking to meet Wiltshire's current parking standards and turning is available within the site. The existing vehicle access and driveway is proposed to be utilised for the new dwelling to which I have no particular concerns. Adequate visibility is available from the vehicle access. I therefore wish to raise no highway objection providing the following condition is imposed:

No part of the development hereby permitted shall be occupied until the turning area & parking spaces [2] have been completed in accordance with the details shown on the approved plans. The areas shall always be maintained for those purposes thereafter and maintained free from the storage of materials. REASON: In the interests of highway safety.

5. **Drainage, Ecology, River Avon SAC catchment and SPA and Flood Risk**

<u>Ecology</u>

CP50 is applicable to the proposals. Proposals for biodiversity enhancement have been provided in accordance with Core Policy 50. A PEA has been submitted which clarifies that the site has been cleared to bare ground, with a watercourse to the south. It concludes and provides:

- A construction method statement to protect the watercourse during construction
- No further bat surveys are required. The construction of a new dwelling will have a Negligible impact on the local bat population and the commuting and foraging resources on which they rely.
- Lighting limits
- Measures to -protect any nesting birds
- Provision of nest boxes for ecological enhancements to the new dwelling and existing trees.

These measures have not been shown on a plan and in the event that the application is recommended for approval, this should be secured prior to determination.

<u>River Avon SAC and SPA</u>

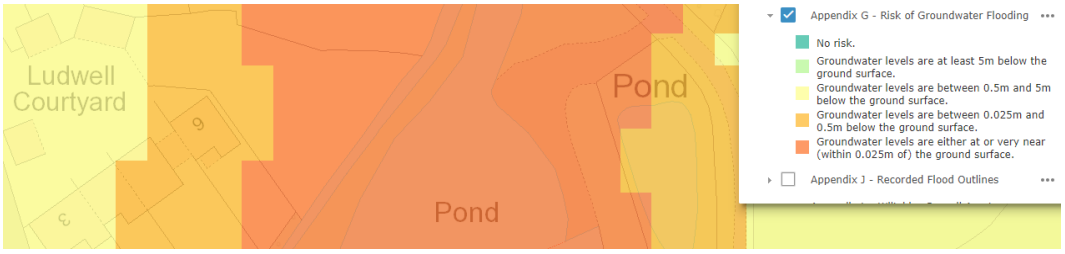
This new residential development falls within the catchment of the River Avon SAC and has potential to cause adverse effects alone or in combination with other developments through discharge of phosphorus in wastewater. The Council has agreed through a Memorandum of Understanding with Natural England and others that measures will be put in place to ensure all developments permitted between March 2018 and March 2026 are phosphorus neutral in perpetuity. To this end it is currently implementing a phosphorous mitigation strategy to offset all planned residential development, both sewered and non sewered, permitted during this period.

Following the Cabinet's resolution on 5th January 2021, which secured a funding mechanism and strategic approach to mitigation, the Council has favourably concluded a generic appropriate assessment under the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019. This was endorsed by Natural England on 7 January 2021. As this application falls within

the scope of the mitigation strategy and generic appropriate assessment as planned residential development within a settlement boundary, it is possible to conclude that it will not lead to adverse impacts alone and in-combination with other plans and projects on the River Avon SAC. No objection is raised under CP69 and CP50.

Flood Risk and Ground water

Although the application site is located within Flood Zone 1, part of the dwelling would lie within a 20-metre buffer of a watercourse to the rear of the site. The Council's Level 1 Strategic Flood Risk Assessment (SFRA) indicates that the site for the dwelling would be at high risk from ground water flooding:



Ground water

Paragraph 159 of the Framework says that "inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk". Paragraph 161 also says that "all plans should apply a sequential, risk-based approach to the location of development – taking into account **all sources** of flood risk […] They should do this, and manage any residual risk, by: (a) applying the sequential test and then, if necessary, the exception test". Paragraph 162 then goes on to say that "the sequential approach should be used in areas known to be at risk now or in the future from any form of flooding".

The NPPG para 023 (Flood Risk and Coastal Change) sets out the reasons for the sequential approach to development and states:

The approach is designed to ensure that areas at little or no risk of flooding from any source are developed in preference to areas at higher risk. This means avoiding, so far as possible, development in current and future medium and high flood risk areas considering ***all sources of flooding*** *including areas at risk of surface water flooding. Avoiding flood risk through the sequential test is the most effective way of addressing flood risk because it places the least reliance on measures like flood defences, flood warnings and property level resilience features.*

Whilst the site's location within Flood Zone 1 indicates a low risk of flooding from rivers and seas, this type of flood zone does not extend to "all sources" of flood risk. In this instance, the SFRA indicates that part of the site would be susceptible to flood risk from other sources, namely groundwater. The sequential test should therefore be applied to the development, in line with the requirements of the Framework.

The appellants' Flood Risk Assessment indicates that mitigation measures would be incorporated into the scheme to reduce water consumption and reduce surface water run off. However, it is silent on the risk of flooding from other sources including the risk of ground water flooding.

Notwithstanding the proposed mitigation, there is no evidence submitted to suggest that alternative sites for the development have been considered. The Planning Practice Guidance (PPG) says that the sequential test area shall be defined by local circumstances relating to the catchment area for the type of development. This means the sequential test area should not be limited to the application site alone and would ordinarily include the Core Strategy area.

Without proper application of the sequential test, the application cannot be properly assessed to determine whether there would be any sequentially preferable sites for the single dwelling, where there would be a lower risk of flooding. Irrespective of the proposed mitigation, the sequential test has therefore not been addressed. The NPPG emphasises:

Even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied. Application of the sequential approach in the plan-making and decision-making process will help to ensure that development is steered to the lowest risk areas, where it is compatible with sustainable development objectives to do so, and developers do not waste resources promoting proposals which would fail to satisfy the test. Other forms of flooding need to be treated consistently with river and tidal flooding in mapping probability and assessing vulnerability, so that the sequential approach can be applied across all areas of flood risk.

On this basis, it is not possible to conclude that the development would meet the flood risk safeguards set out in the Core Strategy and the Framework. The development would conflict with national policies relating to the application of the sequential and exception tests, as set out in the Framework 2023 and the NPPG.

Drainage

The applicant has not specified the means of foul or surface water drainage for the new dwelling. As the site is within an area at high risk of groundwater flooding, this would be unacceptable under para 020 of the PPG as there are concerns about the adequacy of drainage for the proposal. This information is required to ensure that the development can be properly drained.

CONCLUSION

The proposed development lies within an area identified as being at high risk of groundwater flooding. In the absence of an appropriately detailed flood risk assessment, application of the sequential test would indicate that there are areas at lower risk of flooding within the County that would be more appropriate for the proposed residential development. Therefore, the Local Planning Authority considers that planning permission should be refused.

RECOMMENDATION: **REFUSE**

The site for the proposed dwelling encroaches a 20m buffer for the watercourse to the south of the site and lies within an area identified by the Council's Level 1 Strategic Flood Risk Assessment (SFRA) as being at medium to high risk from ground water flooding.

The NPPF 2023 (supported by NPPG para 023) requires inappropriate development in areas identified as being at risk of flooding to be avoided by directing development away from areas at highest risk. Plans should apply a sequential, risk-based approach to the location of development, taking into account all sources of flood risk. The sequential test should be used in areas known to be at risk now or in the future from any form of flooding. The Council's SFRA indicates that part of the site would be susceptible to medium to high risk of flooding from other sources, namely groundwater. The sequential test and then, if necessary, the exception test should be applied to the development, in line with the requirements of the Framework.

The submitted Flood Risk Assessment does not assess flood risk from groundwater and notwithstanding the proposed surface water run off mitigation, there is no evidence submitted to suggest that alternative sites for the development within Wiltshire have been considered. Without proper application of the sequential test, the application cannot be properly assessed to determine

whether there would be any sequentially preferable sites for the single dwelling, where there would be a lower risk of flooding. Irrespective of any proposed mitigation, the sequential test has not been addressed and it is not possible for the Local Planning Authority to conclude that the development would meet the flood risk safeguards set out in the Core Strategy and the Framework.

Furthermore, the applicant has not specified the means of foul or surface water drainage for the new dwelling. As the site is within an area identified as being at risk of groundwater flooding, this would be unacceptable under para 020 of the NPPG as there are concerns about the likely performance of any drainage or flood mitigation for the proposal within this area of medium to high groundwater.

The development would be contrary to paragraphs of the National Planning Policy Framework para 159-162 and 167, para 020 and 023 of the Planning Practice Guidance and Wiltshire Core Strategy Core Policy 67. In the absence of a 5 year housing land supply, the tilted balance envisaged under para 11 (d) of the NPPF would not apply, as the application of policies in the Framework that protect areas or assets of particular importance (areas at risk of flooding) provides a clear reason for refusing the development.