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HEAL
PLANNING & DEVELOPMENTS

APPEAL STATEMENT

SITE: Top Yard, Malmesbury Road, Leigh, Cricklade, SN6 6RH

APPEAL AGAINST REFUSAL OF: Flexible use of existing building for the storage of lorries and trailers and operations ancillary to that use (the permitted use) and/or the repair and restoration of cars.

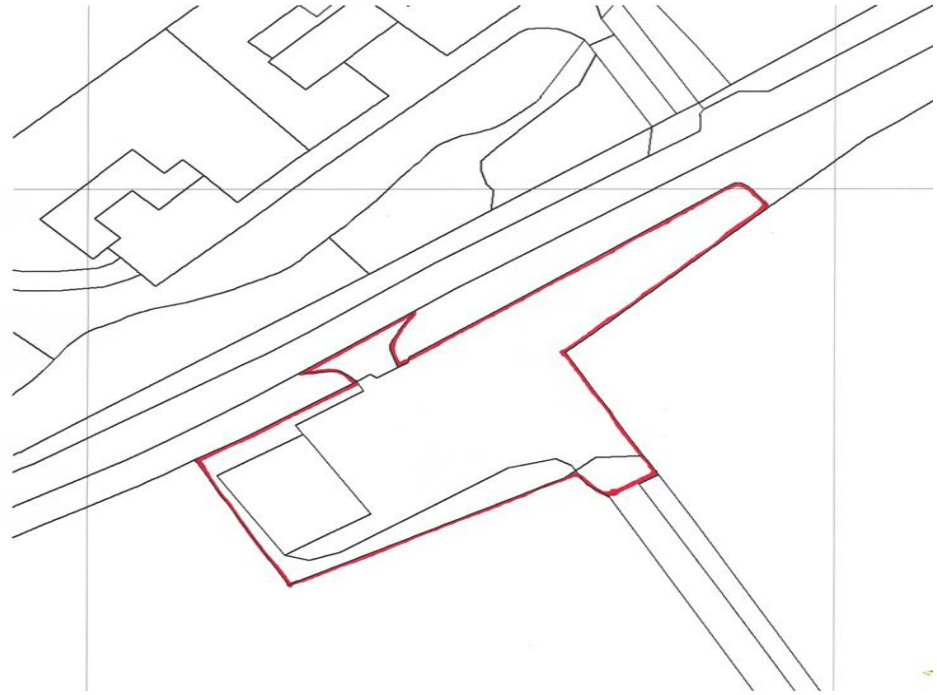
LOCAL AUTHORITY: Wiltshire Council

PLANNING APPLICATION NUMBER: PL/2023/04973

APPELLANT: Mr. Michael Lindsey

## 1. Introduction

This appeal is against the refusal of planning permission for Flexible use of existing building for the storage of lorries and trailers and operations ancillary to that use (the permitted use) and/or the repair and restoration of cars. The site where the proposed use will take place on which the building sits as illustrated on the left in the block plan is below:



Set out below is the planning statement/covering letter supporting the application when it was made dated 20th June 2023 from IPC town and country planning development consultants:

*Further to the meeting at the above site between my client and your Council's Enforcement Officer, Allan Brown, I am writing further to my email to him to apply for the above use of the building and land to its front, for a flexible use as the one permitted by decision reference 17/02116/FUL or for the use by Mr D Kerger, for repairing and restoring motor cars, primarily classic and specialist cars.*

*As the Enforcement Officer stated in an email to the occupier of the building, its use is conditioned to the storage of lorries and trailers and for operations ancillary to this use only (condition 4 applies). The reason for this is that the Local Planning Authority wish to consider any future proposal for a change of use having regard to the circumstances of the case. Before setting these out, it should be noted that the building was erected on part of a larger area of land that has a Certificate of Lawful Existing Use or Development for the parking of 5 lorries and 2 trailers (decision reference 16/11482/CLE). The use that was permitted is not subject to any restrictions upon the hours of working, the noise omitted or the illumination from the building and therefore, it could be used 24 hours a day, 7 days a week for working on the 5 lorries and 2 trailers kept within the yard, as such work would be ancillary to the parking of the lorries. Whilst such a condition was appropriate when the building was first erected and*

*used, circumstances have now changed and the owner, who lives nearby, lets the building to the current occupier, Mr Kerger, for him to carry out his one-man business. My client understands that a complaint has been lodged against the occupier for working at night and making noise – however, if large HGVs were worked on within and outside the building, there would be far more noise created and a greater potential for disturbance than is the case with the present occupants.*

*Planning Policy Context*

*The Development Plan that applications must be determined in accordance with unless there are overriding materials considerations to the contrary is the Wiltshire Core Strategy, adopted in 2015. Whilst there is a policy that supports rural life (CP48), there is no reference to the specific type of use now proposed. However, the policy does state that proposals to re-use rural buildings for employment use will be supported where the building is structurally sound and capable of conversion without major rebuilding, and with only necessary extension or modification which preserves the character of the original building. It adds that the use should not detract from the character or appearance of the landscape and not be detrimental to the amenities of residential areas, neither of which apply in this case. The policy also states that the building should be served by an adequate access and infrastructure, with cars being smaller and quieter that the lorries that could be worked on in this building.*

*The National Planning Policy Framework (NPPF) sets out the government's policies towards development proposals and says that the sustainable growth and expansion of all types of business in rural areas should be encouraged. It also acknowledges that sites for local business needs may have to be found outside settlements, as in this case, with previously developed land (such as this) encouraged.*

*In view of the above, there is policy support for the re-use of buildings at national and local levels and the proposal should, therefore, be considered favourably.*

*Discussions with the operator of the business using the premises confirms that more than 50% of his work is involved with restoration projects, his website showing that this is primarily on VW Beetles and other specialist cars. This type of work cannot be turned around in one day, like many car repairs and servicing operations but takes much longer. There is not, therefore, the constant arrival and departure of customer vehicles. However, he does get asked to repair*

*local residents vehicles and also agricultural machinery of local farmers, which he is able to do. He is committed to his work and the projects that he is engaged on, which means that he does work long hours, on occasions. However, he does this in a way that does not cause disturbance or a nuisance to any nearby residents. Certainly, his business does not use hydraulic rams and equipment that would be necessary for working on lorries and trailers.*

*The description of this application seeks a flexible permission between the permitted use for this building for the storage of lorries and trailers and operations ancillary to such use or to be used for the repair and restoration of cars. The flexible use that is sought will allow a change between the two specific uses without the need for making further applications. This course of action is in compliance with the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, which allows flexibility for a period of 10 years. Thus, if Mr Kerger's business was to cease, the use would then revert to the one that was permitted by decision notice 2 reference 17/02116/FUL without the need to make a further planning application.*

*In view of the above, I hope that this application will be considered favourably and assessed against the fall-back situation of using the building for working on HGVs with no restrictions upon noise or hours of working. There is the opportunity to impose conditions on working practices so long as they would be reasonable and related to the proposed use, which for a single person business is not a 9am - 5pm operation. It is respectfully suggested that discussions can take place to resolve mutually acceptable conditions of permission.*

It is clear from this explanation of what the proposed development is that the existing approved building and uses of it and the site will not materially change from that which is the approved development and lawful use of the site.

The appellant contacted the Council over the uses at the site and Mr. Brown who was the planning officer who had been involved in an attempt to seek clarity on the developments having regard to the certificate of lawful use that existed and any ancillary incidental activity that was being carried out. However, as the application form illustrates under pre-application advice Mr. Brown had left the authority, so an application was made to seek clarity and regularise the incidental uses.

This background has been provided as part of the introduction to the case here to seek to set the context in which the site needs to be considered. The planning history and lawful uses of the site equally are important. Set out below is the planning history of the site:

**Certificate of Lawful Use or Development - Existing Use or Development**

**Application Reference Number: 16/11482/CLE**

**Applicant**
M Lindsey
Glevum Farm
Malmesbury Road
Leigh
Swindon
Wiltshire
SN6 6RH

**Agent**
LPC(Trull) Ltd

**Particulars of Development: - Certificate of Lawfulness for the Use of Land for the Parking of Lorries**

**At: Land at Glevum Farm, Malmesbury Road, Leigh, Swindon, Wiltshire, SN6 6RH**

Wiltshire Council hereby certify that on 24/11/2016 the operations described in the First Schedule to this Certificate in respect of the land specified in the Second Schedule to this Certificate and edged red on the Site Location Plan received on 28th November 2016 would have been lawful within the meaning of section 191(a) of the Town and Country Planning Act 1990 (as amended) as it is considered, on the balance of probabilities, that the use of the site for the parking of lorries has occurred at the site for a period of more than ten continuous years and this change of use is now immune from enforcement action.

SCHEDULE 1: Certificate of Lawfulness for the Use of Land for the Parking of Lorries

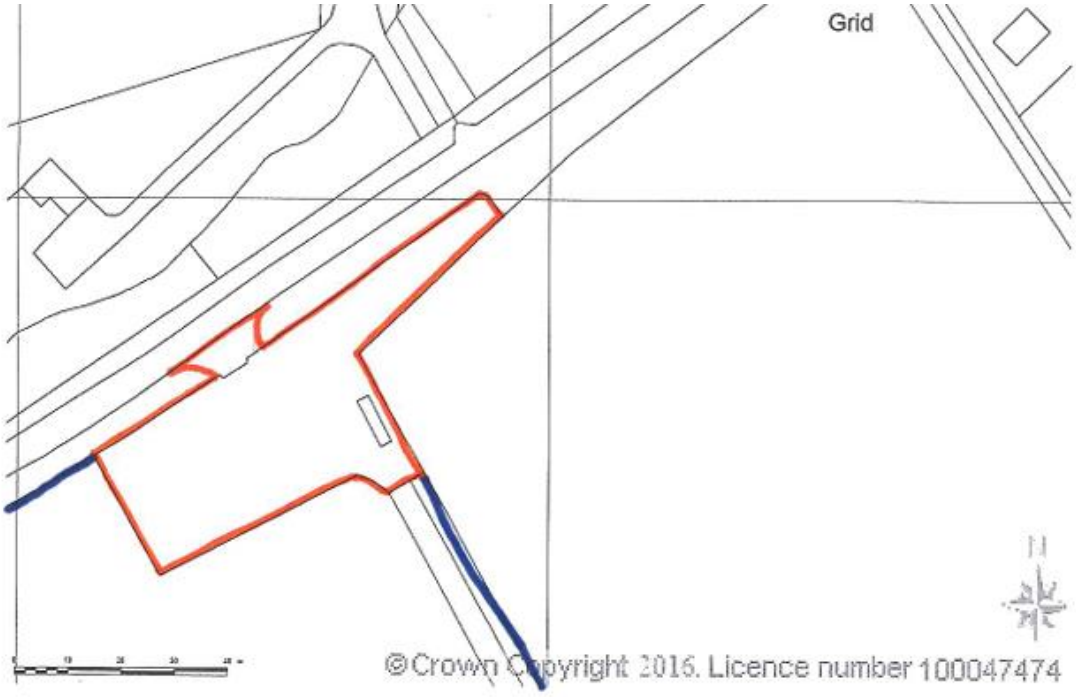
SCHEDULE 2: Land at Glevum Farm, Malmesbury Road, Leigh, Swindon, Wiltshire, SN6 6RH

INFORMATIVE TO APPLICANT:
The applicant is advised that this determination is made on the basis of a maximum of 5 HGVs and 2 trailers being kept at the site.

**Signed**

**Director for Economic Development & Planning** **Dated:** 24 January 2017

The application site for that above is illustrated below which reflects that which is the subject of this appeal:




On 27th April 2017 planning permission was granted for the erection of a machinery storage building on the site. The conditions on that permission were:

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:

Site Location Plan - Received 2nd March 2017;
Proposed Block Plan - Received 2nd March 2017;
Proposed South East and North East Elevations - Received 2nd March 2017;
Proposed North West and South West Elevations - Received 2nd March 2017;
Proposed Floor Plans - Received 2nd March 2017.

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

3 The materials to be used in the construction of the external surfaces of the development hereby permitted shall match in material, colour and texture as those stated in the Supporting Statement - Received 2nd March 2017.

REASON: In the interests of visual amenity and the character and appearance of the area.

4 The building hereby permitted shall be used for the storage of lorries and trailers and operations ancillary to this use only and for no other purpose.

REASON: The Local Planning Authority wish to consider any future proposal for a change of use having regard to the circumstances of the case.

5 No more than 5 lorries and 2 trailers shall be parked within the building hereby permitted or application site at any time.

REASON: The Lawful Development Certificate determined that this level of parking at the site was Lawful and the Local Planning Authority wish to consider the impacts of any increase in this level of parking in the interests of visual amenity and the character and appearance of the area.

6 No materials, goods, plant, machinery, equipment, finished or unfinished products/parts of any description, skips, crates, containers, waste or any other item whatsoever shall be placed, stacked, deposited or stored outside any building on the site.

REASON: In the interests of the appearance of the site and the amenities of the area.

The essence of this permission was that outside activities should be avoided, yet permission from the lawful development certificate allowed the parking and storage of vehicles on the site which was not taken away as part of granting this permission. Therefore the continuation of that activity the subject of the lawful development certificate could continue. Secondly it is noted under condition 4 that ancillary operations to the storage of lorries and trailers in the building were permitted. Such ancillary activity would include the maintenance of such vehicles, restoration or conversion of them for example as there is no limitation on the wording of what was intended in the conditions. Therefore this permission granted permission for the maintenance of lorries and trailers and such other ancillary work to them which could include by the wording of the condition namely operations developing them for a use.

Condition 5 in referring to the number of vehicles and trailers in the building at any time then the actual vehicles could change it is just the number that is regulated. That is wholly appropriate in terms of enforceability of a planning condition under the legal tests, but, what

it does is allow therefore works to be undertaken on other vehicles in the building as long as they meet the description of lorries or trailers. As trailers is not defined it provides scope for interpretation.

Within the planning statement supporting that proposed development the planning consultant at the time under the heading *Layout* stated*: The building will be located at the south western edge of the site so that lorries can continue to enter and leave the site in a forward gear, with sufficient room available to its front to enable these articulated HGVs to manoeuvre without needing to reverse onto the B4040.* ***It will also mean that such lorries can be worked on under cover****, if necessary. The storage building will be sited so that its ridgeline will run at right angles to the main road, set behind the roadside hedge, in the same manner as a building further to the north west on the same side of the road.*

The highlighted part in bold is the author of this appeal statement highlighting to illustrate that it was known by the Council upon granting the permission that repair and other work to the lorries would take place within the building.

The essence of this appeal therefore centres on whether the site and the building on it already have lawful uses by virtue of a certificate of lawful use and planning permission such that the land is now brownfield site, it has existing uses associated with the storage and maintenance of vehicles on it and it is within this context the appeal should be considered. The only change from that which is permitted here in terms of use is the one relating to introduction of maintenance of cars from time to time to that which has permission namely the maintenance of lorries.

Planning conditions can be attached to allowing this appeal that such repairs to cars, when and if undertaken should be undertaken within the building rather than outside of it, and such conditions would be enforceable.

This appeal for the proposed development should be distinguished from the previous one against refusal of application 18/05240/FUL which was for: *Flexible change of use of existing building and land to use for storage purposes (Class B8 Use) and/or the parking of a maximum of 5 HGVs and 2 trailers. Car parking spaces and alterations to existing building.*

Under that refusal which was upheld on appeal and a copy of that appeal decision is enclosed in the appendix the reasons for refusal related to the conversion of the building in order to

facilitate that development which can be distinguished from this proposal as no proposals for conversion of the building are included in the application description. Secondly no outdoor storage is proposed by this appeal proposal yet in the previous appeal the second refusal reason explicitly applies to that. The two refusal reasons are set out below with brief commentary on them which will illustrate that this scheme is a lesser scheme and those refusal reasons have no applicability to it:

1. *The proposal site is located in a rural location outside of any defined settlement boundary being remote from a wide range of services, facilities and means of public transport and the proposed B8 use would result in a significant increase in vehicle movements to and from the site. In addition the existing building is not suitable for conversion without major rebuilding. The proposal is therefore not considered to be a sustainable form of development and is contrary to Core Policies 1, 2, 34, 48, 60 and 61 of the adopted Wiltshire Core Strategy 2015 and paragraphs 8, 11, 83, 84, 102, 103, 104 of the NPPF 2018*
2. *The proposed outdoor storage area and increase in vehicle parking would be detrimental to the visual amenity, landscape character and openness of this part of the countryside which is contrary to Core Policies 51 and 57 of the adopted Wiltshire Core Strategy 2015 and paragraphs 127, 130 and 170 of the NPPF 2018*

**As noted already the differences with the scheme the subject of these refusal reasons to the one now presented there is no outside storage proposed, there is no proposed works to the existing building which is already used to repair lorries so the ancillary activity of cars being worked on in the building is not a fundamental change. The site is already brownfield. The site has permission not only for outside storage of vehicles but the repair of them as well. The application which was refused previously is fundamentally different from that which is the subject of this appeal as this appeal relates soley to the small change to the internal use of the building which already has a use for storage of vehicles and repairs etc of them. The Inspector in the decision letter explicitly stated as can be seen from his summary of the main issues at para. 3 that the main issues were**

3. *The main issues are:*
   - *Whether the site is an appropriate location for the development proposed.*
   - *The effect on the character and appearance of the area.*

**In relation to this appeal the second bullet point does not apply as the use is internal to the building that is already there and the first bullet point equally has little if any weight in terms of causing harm in this instance as the site already is one used for the storage and maintenance of lorries and the building equally is used for that use so the incidental repairs of a few cars is deminimus to the existing permitted uses on site.**

**At para 8 of the decision the Inspector says that substantive details of any changes of a lesser nature such as to reach a view. This appeal presents such information to support the appeal being allowed.**

It should be noted that there are no garages or emergency services between Cricklade to Malmesbury on the B4040.

## 2. Refusal Reasons

The decision notice dated 4 April 2024 contained the following reasons for refusal (commentary provided underneath):

1 The use of the building and surrounding land for the repair and restoration of cars constitutes a B2 industrial use, which is an employment use. The local plan's spatial strategy aims to direct employment uses to locations that promote sustainable travel patterns, but the application site is located in a rural location outside of any defined settlement boundary and it is remote from a wide range of services, facilities and means of public transport. This is therefore an unsustainable location and the proposal is contrary to Core Policies 1, 2, 13, 34, 48, 60 and 61 of the Wiltshire Core Strategy; and paragraphs 8, 11, 89 and 109 of the NPPF.

**The refusal reason refers to the 'surrounding land' for the repair and restoration of cars yet the application does not seek that. The explicit reference in the application to use of the building to the exclusion of the surrounding land is fundamental. Permission already exists for the maintenance of lorries which may be parked on the wider site or in the building or indeed to the maintenance of those lorries on the wider site under the certificate of lawful use which was granted. Yet in this application the subject of the appeal the only proposal**

**is the use of the building for the maintenance of cars not the wider site. Therefore that element of the refusal reason has no merit. The use of the site and the building in particular are already there. Whilst the spatial strategy of the council may indeed seek to direct employment uses to other locations such strategy does not apply in assessment of a proposal where the site is already one that has extant permissions and lawful uses for employment related uses including the repair of lorries not only on the wider site but also in the building. Therefore this refusal reason has no merit or weight. The issue of the actual planning policies cited will be referred to later in this statement where reference is made to the local plan policies.**

2. The use of the building is impacting negatively on the surrounding land within and beyond the application site, for example through the storage of materials. This, along with the additional footfall and general activity arising from the B2 use, results in negative impacts to visual amenity, landscape character and the openness of this part of the countryside. The proposal is therefore in conflict with Core Policies 48 (ii), 51 (general aims) and 57 (general aims and parts i and vi) of the Wiltshire Core Strategy; and paragraph 135 (a-c) of the NPPF.

**In relation to this reason, it is noted that the lawful use of the site as a whole and the building which is just a small part of it are lawful. Allowing the appeal provides an opportunity should it be reasonable, necessary etc under the tests to do so, to apply conditions which may if the inspector considers it appropriate respond to any issues. An example could be that works on cars or vans shall only take place in the building and the doors should be closed. This condition is not present at the moment and therefore would be a planning gain to allow the development with that condition attached. The proposed use has no impact upon visual amenity as it is to be undertaken within the building so that is not relevant and there can as a consequence be no impact upon the countryside setting with the building already in place.**

**It should be noted that within 100 yards of all 3 main complainants is an operator using an aircraft regularly for pleasure activities which, by its very nature, is extremely noisy.**

**In addition to this:-**

- **There are also 3 commercially operated workshops with spray bays within 2 miles of the premises.**
- **There is a large caravan park within 200 yards.**
- **There are 5 local traveller camps within 2 miles of this area, which obviously bring their own problems.**
- **Also the building is in very close proximity to a disused airfield called Blake Hill Airfield which now has a large area of it dedicated to a commercial storage and vehicle maintenance operation from which it will be noted that employment activity on existing brown use sites in the local area have been permitted.**

**Two of the main complainants are responsible for causing further noise themselves by operating their own private businesses! One is operating a large building/construction business, whilst the other one is a large cattle haulier that by nature of his business, makes a lot of noise and uses heavy goods vehicles. Another local complainant, expects the appellant to tolerate her loud music from the weekend parties and occasional firework displays that she hosts. Indeed one of the issues that she cites is of the distress caused to her horses, yet she takes little caution herself when hosting these parties or cares about the noise she creates which has to be tolerated.**

**The appellant has operated from this yard for approximately 16 years without redress or complaint from the local neighbourhood. It is, therefore, annoying that the main complainants have not been in the area anywhere as long as the appellant and appear to be operating their own businesses from their own <u>personal</u> dwellings without any controls!**

**The appellant is willing to plant more trees to shield the building if that is considered necessary and could be the subject of a condition to have to submit a landscape scheme to the local planning authority within 6 months of the appeal decision date for approval and implementation. Indeed I am even prepared to adjust the operating hours of the workshops but only to assist the car side of the workshop (the lorry side must remain in operation 24 hours a day for 7 days a week as granted by the North Wiltshire Council in the appellant's Operators Licence).**

## 3. Planning Officer Report

To assist in the consideration of the appeal, some paragraphs from the planning officer's report are included below, with commentary provided in **bold** underneath:

**SITE AND PROPOSAL**

The site comprises a parcel of land located in the open countryside, situated roughly midway between Minety around 2 miles to the southwest and Cricklade around 2 miles to the northeast. It is bounded on three sides by agricultural fields, with the highway forming the boundary to the northwest. Beyond the highway, at a distance of circa 20m, sits the closest residential property at Knappside Stud.

The site gained a Lawful Development Certificate in 2017 ref. 16/11482/CLE for the '*use of land for the parking of lorries*', followed by a consent later that year for the '*erection of a machinery storage building*', to be used in conjunction with the lawful use. **Subsequent to this a planning permission as referred to above was granted for the erection of a building for it to be used for the storage of lorries and trailers and for works to be undertaken on them in it.**

This current application seeks planning permission for a more flexible use of the building, which the application form says would allow for the storage of lorries and trailers as per the existing use, as well as allow for the repair and restoration of cars. To that end, there are several important factors to note. Firstly, this application is the result of an enforcement case ref. ENF/2023/00019, so this is a retrospective application that has not been described as such by the applicant. The submitted application form says that hours of opening are unknown, but the business is advertised online[1] as being open between 0900 – 1700 Monday to Friday. The website also says that they '*cater for all makes and models, from every day servicing, to welding, to full restoration projects*'. The list of services on the website also mentions:

- Servicing and cambelts
- Engine diagnostics and repairs
- Welding and rust repair
- Brakes and suspension
- Engine and gearbox rebuilds
- Modifications
- Fabrication
- Fitting of air cooling and air ride suspension.

This takes place in '*a fully equipped engineering workshop and clean room*'.

In light of this information and photographs below in this report (see figures 3 and 4), I consider that a material change of use to a B2 industrial use has occurred. **It should be noted that what may or may not be contained in the enforcement report is not relevant where it goes beyond that which is within the application or indeed that which is now part of this appeal.**

[1] https://www.dkautomotive.co.uk/

**RELEVANT PLANNING HISTORY**

In January 2017, a Lawful Development Certificate ref. 16/11482/CLE regularised the '*use of land for the parking of lorries*'. An excerpt of the approved location plan is provided in figure 1 below.

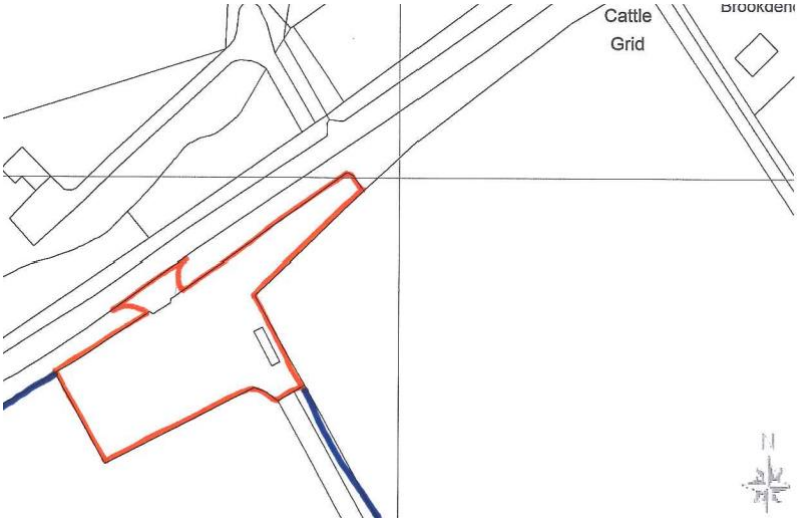
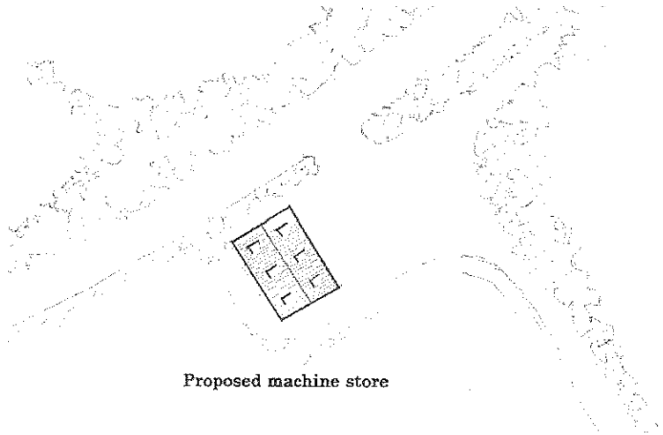



Figure 1: 16/11482/CLE approved location plan

In April 2017, planning permission was granted under ref. 17/02116/FUL for the '*erection of a machinery storage building*'. The approved plans show a barn-style building, open-sided on the northern (front) elevation. The same location plan as that referenced in figure 1 above was used. Excerpts of the approved block plan and open front elevation are provided in figure 2 below.



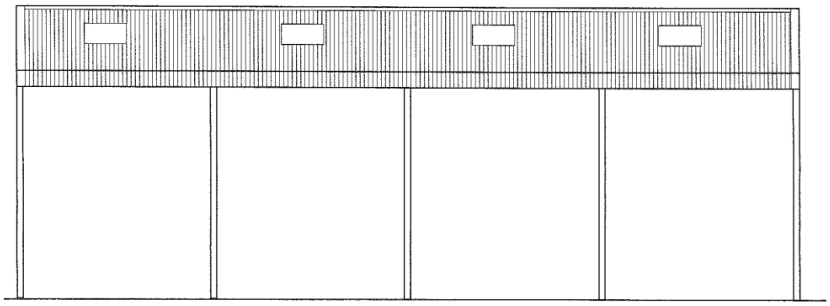


Figure 2: approved block plan and front elevation excerpts

The submitted planning statement explained that '*there are vehicles currently stored on the site and the proposed building seeks to provide storage facilities in connection with that use… This application seeks planning permission for the erection of a storage building ancillary to the existing lawful use, in which machinery parts and equipment for the lorries can be stored*'.

The case officer commented that a condition limiting the use of the building to that of the deemed lawful use would be necessary, to prevent the site being subdivided and used for alternative business purposes. It is noteworthy that no concerns were raised on neighbour amenity grounds, including from noise. Although Knappside Stud to the northwest did not benefit from planning permission for a permanent rural worker's dwelling at the time (this later came in 2020 under ref. 20/03289/FUL), there was nevertheless a history of a temporary dwelling here, starting in 2012. Therefore, the amenity of occupants would have been a material consideration at the time the machinery storage building application was determined.

The permission came with a number of conditions pertaining to the use of the building and external storage.

In 2018, application ref. 18/05240/FUL was refused for the '*flexible change of use of existing building and land to use for storage purposes (Class B8 Use) and/or the parking of a maximum of 5 HGVs and 2 trailers. Car parking spaces and alterations to existing building*'. The proposals included enclosing the front elevation with roller shutter doors.

The first reason for refusal related to the remoteness of the location, which placed the proposal in conflict with the local plan's spatial strategy and other local and national policies that seek to promote sustainable travel. The second reason was that the outdoor storage area and increase in vehicle parking would be detrimental to visual amenity, landscape character and the openness of this part of the countryside.

The decision was appealed and dismissed, with a number of materially relevant observations from the inspector. **In respect of this comments are elsewhere about the relevance of that application and the inspector's comments thereon and whilst it therefore is part of the planning history this proposal the subject of the appeal is for a much lesser scheme.** They said that although the NPPF says planning decisions should help create conditions in which businesses can invest, expand and adapt, this is also subject to development being sensitive to its surroundings and the planning system should actively manage patterns of growth. In this case, Core Policies 1 and 2 of the Core Strategy set the settlement strategy and delivery strategy, which restrict development in the countryside, while

Core Policy 34 directs new employment development towards Principal Settlements, Market Towns and Local Service Centres.

This is a very important observation, insomuch that the inspector agreed with the Council that CP34 was a relevant policy. This policy relates to the provision of additional employment land, which makes it implicit that the appeal proposal was for a material change of use to an employment generating use. Put simply, if the fallback position of the existing lawful use for the storage of lorries had been considered an employment generating B8 use, there would have been no need for a planning application to change the use of the building or site to B8 in the first place. The reason why this is so pertinent is because this current application for the repair and restoration of cars constitute an employment generating B2 use. There is thus not an employment generating fallback use already occurring at the site, so the starting position for any assessment should be that development would introduce an employment use at the site. **This view is not agreed with. The facts of the case are not as presented, namely the actual facts are the building does have a lawful storage use namely for lorries and trailers. IT also by virtue of that which was approved and the conditions thereon assessed in the introduction provide for the activities to the lorries and trailers to be of an industrial nature. As a result there is a lawful employment use on the site and that is a fact that cannot be challenged. The second consideration here is the fact that there was a lawful use of the whole site where such activities had been carried on for such period as to be beyond control of the planning system. The building is not a rural building for agriculture as implied below but rather a storage building with industrial uses within it.**

The inspector went on to consider whether the proposal would be supported by Core Policy 48, which allows for the conversion of rural buildings that meet defined criteria. The inspector concluded that '*there is little before me to demonstrate that this criteria* [sic] *has been met*'.

The inspector noted the appellant's argument that there is a lack of accommodation or sites in the built-up area, but this was unsubstantiated.

They thus concluded that the proposal was contrary to Core Policies 1, 2, 34, 48, 60 and 61 of the Core Strategy.

Having regard to impacts on the locality, the inspector commented that the area has an open, rural character and the proposal would lead to an intensification in the use of the site. They said that the roller shutter doors would have '*an enclosing effect and would lead to a loss of its agricultural appearance*'.

They went on to say how:

'*Increased car parking on the site would have an urbanising effect… The cars parked at the site may be smaller than trailers but the scheme would nonetheless detract from the rural character of the area. The number of car parking spaces combined with the proposed outdoor storage would lead to a more cluttered appearance and loss of open character which would not be addressed by a condition to erect a boundary fence or limit the height of storage, as proposed by the appellant. The existing boundary treatment is insufficient to screen the proposed development and improvements to it would do little to overcome the harm. The suggested speed at which traffic would pass the site would not mitigate the impact*'.

This led the inspector to conclude that the proposal was in conflict with Core Policies 51 and 57 of the Core Strategy. **In relation to the nature of the application on which the inspector made the judgements where it related to the whole site and not just the building which this appeal relates to they are fundamentally different as evidenced by this appeal statement.**

**POLICIES**

**Development Plan**

Under the provisions of section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004, applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise. At the current time, the relevant statutory Development Plan Documents in respect of this application consist of the Wiltshire Core Strategy (WCS) (adopted January 2015); and 'saved' policies of the North Wiltshire Local Plan 2011.

Though the Development Plan is considered as a whole, those parts deemed to be particularly relevant to this application are listed below:

Wiltshire Core Strategy (2015):

- Core Policy 1: Settlement Strategy
- Core Policy 2: Delivery Strategy
- Core Policy 13: Spatial Strategy: Malmesbury Community Area
- Core Policy 34: Additional Employment Land
- 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 61: Transport and Development

Saved policies of the North Wiltshire Local Plan:

- NE18: Noise and Pollution.

**Material considerations**

National Planning Policy Framework (2023):

- Paragraphs 8, 85, 87-89, 108, 109, 114, 115, 123, 124, 135, 180 and 191.

**ISSUES**

The main issues in the consideration of this application are:

- Principle of development;
- Impacts on local character;
- Impacts on residential amenity; and

- Highways.

**CONSULTATION**

Leigh Parish Council: objection. Grounds include:

- There appears to be at least three businesses operating from the land, none of which have permission.
- Concerns as to whether the correct amount of business rates are being paid.
- The barn is being sub-let as a garage to D K Automotive. '*Engines are being revved day and night, there are videos of the cars racing on a public road. There are a number of abandoned cars on the west side of the barn in agricultural land*'.
- The noise and traffic created by this extra traffic is unacceptable in this quiet rural village.
- There is a horse stud opposite the land and numerous farm animals close by.
- Questions over who will collect the waste from deliveries, waste oil, brake fluid, trade effluent, hazardous materials and recyclables.
- The application details the five HGVs and two trailers permitted, plus the four cars for those drivers, and asks for an additional four cars. There is currently in excess of 16 cars on a regular basis, and an average of eight HGVs. The original barn planning permission was for the total of the site, so this includes what is also in the barn, so one could suspect another 2-4 cars being worked on.
- There is no reference to the running of HGVs as part of the existing use [on the application form].
- Questions as to whether a washdown area should be provided for health and safety of workers.
- Questions whether the 240sqm floorspace includes a mezzanine.
- There is no mention of the new roller doors already added or plans of the barn, nor the enlarged site area.
- The number of employees is stated as one, yet many more appear to be there, plus a welder rents space there.
- Hours of opening are not stated.
- Questions over what the 0.11ha site area represents.
- The application form says the site cannot be seen from the public road, footpath, bridleways or public land, but it can be seen from the road and footpath.
- The application form says there are no trees or hedges on the development site, but the site is hedged and there are trees, although some have already died by the main road. There are also hedges and trees on the land opposite.
- The application form says that a soakaway will dispose of surface water, but the land locally is clay.
- There are milk lorries coming and going at all times of the day and night. A milk spillage could be extremely damaging especially if the milk gets into the waterway system, first the river Swillbrook then into the Thames.
- The barn to the south of the application site is used for a shopping trolley maintenance service, with trolleys inside and outside of the barn. Other barns and land nearby are being used for non-agricultural businesses, some of which are accessed via the application site access.

  **The planning policy issues so far as they are relevant, and the content of the comments from those who are referred to above are not relevant are set out later in this statement.**

Cricklade Town Council: objection on grounds of the intensification of the site.

Highways: objection on grounds of the unsustainable location for the proposal, which is similar to the previously dismissed appeal for an employment use: **An existing lawful use and planning permission already exist on this site and under the NPPF there is no justification for dismissing this appeal on highway grounds.**

'*The proposal, located remote from a range of services, and being unlikely to be well served by public transport, is contrary to the key aims of local and national sustainable transport policy guidance which seeks to reduce growth in the length and number of motorised journeys. New development should be located and designed to reduce the need to travel by private car and should encourage the use of sustainable transport alternatives. The proposal is contrary to Core Policy 34 and 60 of the adopted Wiltshire Core Strategy and Paragraph 109 of the National Planning Policy Framework 2023*'.

Whilst they note the safety of the access, the also comment how no detailed information has been supplied to provide a clear comparison between the existing and proposed uses of the site in terms of the the number and type of vehicle movements.

Although the officer notes the representations made from the parish and town councils and members of the public regarding neighbouring land, their response is limited only to the red line area of the application site.

Public Protection: no objection, subject to conditions requiring details to be submitted within three months of any planning permission in respect of a noise assessment/mitigation report and details of ultra-low emission vehicle charging points.

Cllr Berry: committee call-in request, should the officer recommendation be for approval. This is on grounds of:

- Relationship to adjoining properties.
- Environmental/highway impact.
- Car parking.

Additional comments were:

'*Calling in to at least establish meaningful conditions this site has a troubled relationship with near neighbours due to noise anti social working hours and the fact it was developed without planning permission*'.

**REPRESENTATIONS**

27 objections on grounds of:

- Other activities at the site, including increased lorry parking, employees' cars and trolley maintenance.
- There is no record of any consent for the shutter doors.
- Questions over business rates.
- There is more than one employee.
- Operating hours go late into the night.
- Cars are parked and abandoned at the site. These could be causing pollution, along with stacked tyres. Environmental regulations need to be adhered to.

- Questions over the efficacy of the public consultation process for the planning application.
- Noise from revving engines and cars being tested at speed on local roads.
- Vibrations.
- Concerns for animal welfare.
- Impacts to rural character.
- Highway safety, including for horse riders.
- This type of business is best suited to a purpose-built business park or industrial estate.
- Outside storage is contrary to condition 6 of 17/02116/FUL that says no external storage shall take place.
- Fear of a precedent that others may buy barns and change the use to something similar.

A petition signed by 47 people objecting to the proposal was also submitted.

74 representations were received in support of the proposal (albeit some from the same individual and from the mechanic currently working at the site) on grounds of:

- This is a well-established business with local expertise. It is a much-needed community service.
- The business does not operate late into the night and noise is kept to a minimum.
- Cars are driven in a normal manner.
- By refusing planning permission, the Council would be ruining someone's livelihood.
- Other drivers not associated with the garage drive at speed.
- Some neighbouring objectors have used the services of lorries that park at the site, such as for delivering hardcore and haybales.
- Support for small and local businesses growing. It is good for the economy.
- The owner always explains the need to arrive and leave in a slow and safe manner.
- Noise is minimal and it causes no harm to animals.
- Footfall is much less than a conventional garage because restorations can take months.
- Several comments from customers saying they have experienced good and professional customer service from the garage.
- Inconvenience to locals needing a reliable mechanic if the business is not allowed to operate.
- This application would stop people working on HGVs and they would work on smaller cars instead and cause far less noise and weight on the roads.
- Some respondents in support are horse riders, who have no issue with using local roads.
- This is a great location for the business because it is out of the way of huge industrial estates and is easily accessible.
- Suggestion that operating hours could be restricted to 0900 to 1800, which would help alleviate noise and most people would be at work.

**Case officer notes**:

Payment of business rates is not a material planning consideration.

Paragraph 194 of the NPPF confirms that it is not the role of the planning system to control of processes or emissions, where these are subject to separate pollution control regimes. Therefore, matters such as waste oil are not material to this application.

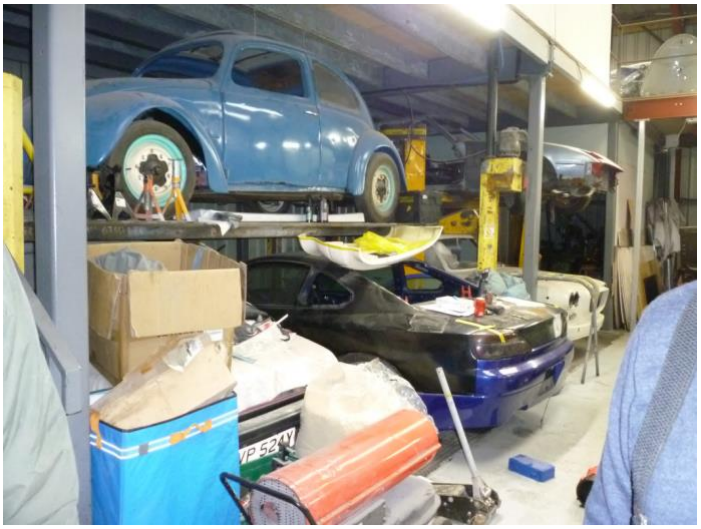
I have checked the national and local publicity requirements for applications of this nature, and I am satisfied that the relevant requirements were met.

**ASSESSMENT**

Scope of assessment and potential unlawful activities

Although Leigh Parish Council and some representors have commented on activities that may be taking place on surrounding land, the remit for my assessment is confined to the application site only.

Photographs of the interior of the building in figure 3 below show that the entire space is in use, and it is kitted out with all manner of equipment and apparatus for undertaking the work mentioned on the business's website.





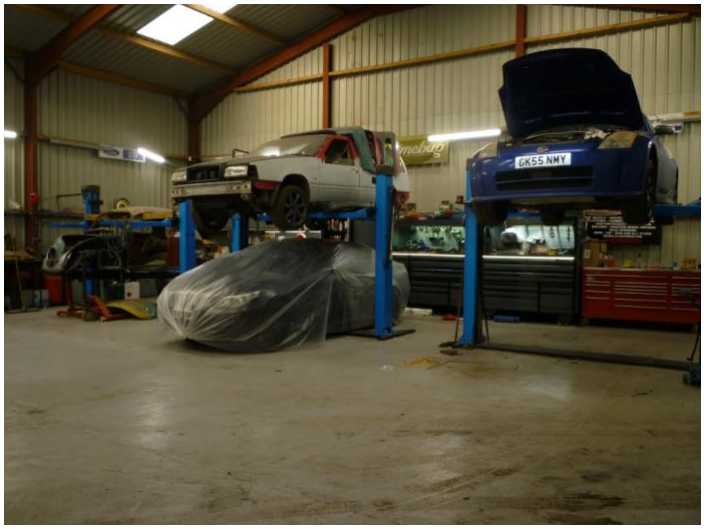



Figure 3: internal photographs of the building. It appears that approximately 13 different cars were present at the time the photos were taken

There is also a difference in terms of how the application is described on the submitted application form in terms of relating to the use of the building only, as opposed to the commentary in the submitted planning statement that mentions land to the front of the building being under consideration as well. The application red line covers both the building and the surrounding land, which it would not need to if it were solely the building under consideration. Therefore, for the avoidance of doubt, I consider that as there is such an intrinsic link between the building and the surrounding land in terms of providing access, parking, etc., it is necessary to assess not just the use of the building, but also the surrounding land within the red line.

I also note from the site's planning history that the building was originally consented to be enclosed on three sides and open on the fourth. Despite the appeal inspector commenting specifically on the appropriateness of an open frontage to this building, it is evident that it has been developed with roller shutter doors to enclose it. As I do not consider that the site or building benefit from any Permitted Development rights for alterations, this change appears unlawful. This application does not seek to regularise this potential breach, such that I do not assess it below. Furthermore, it is evident from photographs held on the enforcement file and reproduced in figure 4 below that the land around the building is being used for parking and storing other vehicles beside the lawful storage of lorries. Shipping containers have also been stationed on the site. The internal photographs in figure 3 above indicate that a mezzanine floor has been added unlawfully. **In relation to the doors then the benefits of having doors on building is to restrict any noise of repairs to the lorries and trailers and clearly a planning benefit to have them in place.**



Figure 4: photographs of the outside of the building, which appear to be in use for parking of non-lorry vehicles, the stationing of shipping containers and materials

I am aware from neighbour responses and the Google aerial photograph excerpt in figure 5 below that cars and other materials are being stored behind the building to the southwest. It also appears that hard surfacing and storage are occurring to the southeast. This is all outside the lawful area established through the 16/11482/CLE certificate and constitutes a material change of use of agricultural land that is not reflected on the planning record. **A condition can be placed on the approval of this application stating there should be no outside storage of vehicles not otherwise allowed by the certificate of lawful use on the site.**




Figure 5: Google aerial photograph showing external storage to the southwest of the building and additional hard surfacing and parking to the southeast

The Council's enforcement team will be notified that these potential breaches remain outstanding, and an informative note can be added to any decision notice to that effect.

To recap the above context gleaned from the site's planning history, the existing lawful use of the site and the building is for stationing lorries. This has no specific use in the Use Classes Order, such that it will be a sui generis use. Ancillary works to lorries and trailers are permitted under the terms of the 17/02116/FUL permission for the building, but this should not be conflated with a form of fallback position of a B2-type of industrial use. To that end, the agent's supporting planning statement says that '*if large HGVs were worked on within and outside the building, there would be far more noise created and a greater potential for disturbance than is the case with the present occupants*', but I respectfully disagree. This is because any disturbance would have to be part of any ancillary activities associated with the storage of lorries and not of a nature that would tip the balance towards a material change of use to an industrial activity. As detailed above, the services offered on the business's website, along with internal photographs at the building, make it clear that a material change of use to B2 industrial has occurred. **Clearly there is a difference of view of whether the building now has a wider set of lawful uses than the officer considers, however, as a matter of interpretation the only regulation on the activities is that included in the conditions on the permission and they are not constrained as to what they may be so without doubt there is an ancillary use of repairing and maintaining the lorries and trailers. As a consequence having doors on the building would be a planning gain and an encouragement for such works to be in the building.**

I also need to make clear that although the supporting statement claims the present occupants do not create much disturbance and this is verified by multiple members of the public who have responded to support the application, this is a planning application for a specific use. I therefore have to consider the impacts of that use becoming a permanent change, noting that the building could change hands at a later date. As such, whilst I have no reason to doubt the professionalism or integrity of the current users of the building, I have to bear in mind that any planning permission goes with the land and not an individual. I am therefore unable to take a person's character into account. **The reality is that no noise abatement notices have been issued, no legal action on nuisance has been taken therefore it is just an individual**

**comment which carries little or no weight in assessing any harm. To evidence any harm then formal notices should have been issued and supported by the courts which they have not.**

Principle of development

Core Policies 1 and 2 of the Core Strategy set the local plan's spatial strategy and limit development and uses that are permissible in the countryside. Core Policy 13 requires conformity to the spatial strategy, while Core Policies 60 and 61 aim to achieve sustainable patterns of growth.

At the national level, chapter 6 of the NPPF requires planning decisions to support the expansion of businesses, including in rural areas, recognising how some sectors have specific locational requirements. However, paragraph 89 confirms that such development needs to be sensitive to its surroundings, while paragraph 109 requires the planning system to actively manage patterns of growth. **Para. 88 supports such development and this is dealt with in the NPPF section.**

Where sites are in the countryside, the Core Strategy sets out that there are some circumstances where development is permissible under paragraph 4.25 of the Core Strategy. This paragraph allows for '*additional employment land (Core Policy 34)*' and '*supporting rural life (Core Policy 48)*'.

Having regard to CP34, this sets out that proposals for employment development will be acceptable where they accord with one of four criteria. I do not consider that this proposal meets the first, which requires a site to be adjacent to a Principal Settlement, Market Town or Local Service Centre, which this is not. The second relates to sustainable farming and food production, which is not relevant to this proposal. The third requires a location within or adjacent to a Large or Small Village, which this site is not. The fourth requires the development to be '*essential to the wider strategic interest of the economic development of Wiltshire, as determined by the council*' and there is no evidence of this being the case. This policy therefore does not support the proposal.

Turning to Core Policy 48, it requires compliance with the following criteria:

'*i. The building(s) is/are structurally sound and capable of conversion without major rebuilding, and with only necessary extension or modification which preserves the character of the original building*'.

No information has been supplied in this respect, but the building is a modern structure and it appears to be in good condition. Although unlawful physical changes have occurred to the building, this application does not seek to regularise them. If the physical changes were to form part of the application, they would not be supported because of the industrialising influence of the roller shutter doors, which attracted concerns from the 18/05240/FUL appeal inspector.

'*ii. The use would not detract from the character or appearance of the landscape or settlement and would not be detrimental to the amenities of residential areas*'.

I do not consider that activities within the building itself would be likely to detract from the character and appearance of the landscape, particularly when the (albeit unlawful) roller shutters are closed. But it is evident from the photographs in figures 3-5 above that activities associated with the use of the building are spilling into the surrounding area. For example, there are numerous parked cars in various states of dis/repair, as well as unlawful associated storage.

I accept that the lawful use of the site for sui generis lorry storage established under the Lawful Development Certificate is unfettered in terms of operating hours. However, the reality is that a B2 mechanics business trading from the site will attract footfall, so customers will come and go throughout the day, making it materially different from a lorry storage facility. I note the view expressed by supporters that the specialist nature of the business for restoring cars means that work to individual cars can take months, thus lessening footfall. However, the current business's website advertises how it offers car servicing of any make and model, not just restoration work.

It is reasonable to expect cars would need to be road tested after being worked on, so there would inevitably be regular activity within the site and on the surrounding road network to allow this to happen. Although these would be relatively minor activities in their own right, they would nevertheless cumulatively amount to a change in character to the site and locality.

Consequently, the proposal is contrary to these policy aims. **Whilst the office has come to these conclusions the office has not assessed whether conditions could be attached or planning enforcement control powers exist in which to control the spread of storage, which clearly on all the points such powers exist. As a result this development would be safe to be allowed with conditions.**

Having regard to neighbour amenity, Public Protection has commented that the use would generate noise, and that is confirmed by numerous objectors to the application. No noise assessment has been submitted in support of the development, but Public Protection is happy for the matter to be deferred to a planning condition.

'*iii. The building can be served by adequate access and infrastructure*'.

The building uses an established access to the highway and it already appears to be functioning with likely energy and water supplies.

'*iv. The site has reasonable access to local services*'.

The Council refused the 18/05240/FUL application on grounds of the unsustainable location. The appeal inspector went on to conclude how:

'*The nearest recognisable settlement to the site is Minety which is some distance away along unpaved, unlit roads which would not be conducive to accessing the site by sustainable means of travel…*

*I therefore conclude that the site would not be an appropriate location for the development proposed, and would be in conflict with the relevant parts of Core Policies 1, 2, 34, 48, 60 and 61 of the Core Strategy, as identified above*'.

In light of these conclusions, it would be inconsistent for me to reach an alternative view on the sustainability and accessibility of the application site. The proposal is therefore in conflict with this policy aim.

'*v. The conversion or re-use of a heritage asset would lead to its viable long term safeguarding*'.

This criterion is not applicable.

Drawing the above together, this application seeks to introduce an employment generating B2 use into a location that is not supported by the local plan's spatial strategy. A similar application for an employment generating B8 use was dismissed at appeal, and this carries significant weight as a material consideration. Whilst I acknowledge the substantial support from members of the public for this particular business, it is the specific use and not the business or its workforce that has to be assessed under this application. The use is in conflict with Core Policies 1, 2, 13, 34, 48, 60 and 61 of the Core Strategy, such that it is unacceptable in principle.

I have considered whether this conflict might be outweighed by any material considerations, such as the requirement under paragraph 87 of the NPPF to take into account the specific locational requirements of different business sectors. However, there is no evidence to suggest that existing industrial estates or other more sustainable locations are unavailable or unsuitable to accommodate this use. Furthermore, the appeal inspector commented that a key role of the planning system is to actively manage patterns of growth (paragraph 109 of the NPPF): allowing this use in this location would promote unsustainable travel and it would undermine the local plan's strategy for safeguarding/allocating employment land to deliver sustainable patterns of growth.

Paragraph 8 of the NPPF also allows me to balance any identified harm with social, environmental or economic benefits. In this case, local supporters have commented on the value of the business as a local service, and it will be generating small economic gains and the creation of one job. However, these are minor benefits that would arise anyway if the use were to be accommodated in a designated employment site or other more sustainable location. No environmental benefits are on offer for me to consider. Therefore, the identified harm is not outweighed by any material considerations. **The officer assessment here is fuelled by an inspector view on a scheme which is not the same, is materially different and smaller to that now proposed and when assessing that which is there rather than otherwise the scheme should be allowed.**

Impacts on local character

As identified above, activities associated with the B2 use of the building have spilt out onto the surrounding land, some within the area covered by the CLUED, and elsewhere to the southwest and southeast of the building on adjacent agricultural land. Increased activity at the site through footfall and the industrial use of the land also lead to negative impacts on the rural character of the locality. This leads to conflict with part ii of Core Policy 48.

In addition, Core Policy 51 requires development to protect, conserve and, where possible, enhance landscape character, while Core Policy 57 requires development to create a strong sense of place that is complementary to the locality, create a positive contribution to the

character of the area and relate positively to the landscape setting. These aims are shared at the national level by paragraph 135 (a-c) of the NPPF.

The proposal is therefore also in conflict with these policy aims, which reflects the same conclusion reached by the 2018 appeal inspector. **This proposal is not the same as the one dealt with at appeal. The building exists. Repairs take place there to lorries and trailers, there is no restriction on what they may be such that a B2 use in effect has been in place in the building so this seeks to set out and provide the opportunity to regularise the development and control it with appropriate conditions.**

Impacts on residential amenity

As detailed above, Public Protection raises no objections, subject to a planning condition requiring a noise assessment/mitigation report within three months of any planning permission being granted. This can be an effective way to obtain details for retrospective applications, and any submitted report could be enforced in the future. However, given the in-principle conflict with the local plan's spatial strategy, the proposed use is unacceptable anyway.

Public Protection's response focuses on noise, which makes it implicit that they are satisfied in respect of other forms of disturbance, such as vibrations and smells.

Aside from the unlawful roller shutters, there are no other openings in the building. Its distance from neighbours is such that no harm from overlooking would arise from the use. The scale of the building was considered when it first gained approval, and it is sufficiently distant from neighbours not to give rise to any material harm from overshadowing or an overbearing presence. **The fact that there is no nuisance and no harm arises from that then not only is the policies on this complied with it also means there is no issue on which any harm then can be judged to exist.**

Highways

The highways officer raises no objections in safety terms, given the established access to the site. However, they object on grounds of the sustainability of the location for this employment-generating use.

They go on the comment on how insufficient information has been supplied to allow for a comparison between the number and type of vehicles associated with the lawful use and the proposal. I concur that such information was lacking and should have been supplied, but given the fundamental objection to the principle of development, inviting further information from the applicant would have been superfluous under the circumstances. **Permission already exists for uses on the site and as stated elsewhere there is no substance in the highway objections here and it is noted the comment there are no objections in safety terms.**

## 5. National Planning Policy Framework

The inspector's attention is respectfully drawn to relevant sections of the NPPF that have either been overlooked, misinterpreted, or not given due weight and consideration within the decision-making process. The following sections in particular are highlighted as requiring attention, with commentary provided in **bold** underneath:

*Sec. 2: Achieving sustainable development*

*Para. 7: The purpose of the planning system is to contribute to the achievement of sustainable development, including the provision of homes, commercial development, and supporting infrastructure in a sustainable manner. At a very high level, the objective of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs.*

**The proposed development in using an existing building more effectively by taking up any spare capacity meets the principles of sustainability as a new building is not required to have to be provided to meet any needs that could otherwise be met by the use of the spare capacity in this building.**

**The proposal does not compromise the ability of future generations to meet their own needs by being able to have a building in appropriate use regulated by appropriate conditions as to hours and days of operation.**

**The proposed development therefore fully accords with the NPPF policy of achieving sustainable development..**

*Para. 8: Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):*

*a) an economic objective – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right*

*time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;*

**The development will extend the number of working hours available for the appellant thus being able to generate additional income to help not only maintain the other parts of his business by diversifying but also meeting the local needs of people to have their cars maintained within that spare capacity that exists.**

*b) a social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed, beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and*

**The proposed development provides a local service to meet local needs thereby reducing their requirement to have to travel much further to be able to access them.**

*c) an environmental objective – to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.*

**The proposal makes effective use of the land available by expanding the use of the building that exists rather than requiring new buildings elsewhere to meet the needs of those local people to be able to access the services. The building exists and travel to it by local people to access the services will be far less than having to travel to local towns or strategic employment sites elsewhere.**

*Presumption in favour of sustainable development*

*Para. 10: So that sustainable development is pursued in a positive way, at the heart of the Framework is a presumption in favour of sustainable development (paragraph 11).*

**The proposed development entirely accords with the NPPF's sustainable development objectives as detailed above and should therefore receive a presumption in favour.**

*11. Plans and decisions should apply a presumption in favour of sustainable development.*

*For plan-making this means that:*

*a) all plans should promote a sustainable pattern of development that seeks to: meet the development needs of their area; align growth and infrastructure; improve the environment; mitigate climate change (including by making effective use of land in urban areas) and adapt to its effects;*

*b) strategic policies should, as a minimum, provide for objectively assessed needs for housing and other uses, as well as any needs that cannot be met within neighbouring areas, unless:*

*i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for restricting the overall scale, type or distribution of development in the plan area; 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.*

*For decision-taking this means:*

*c) approving development proposals that accord with an up-to-date development plan without delay; or* ***The development plan is 10 years old so not up to date and it does not have regard to the most recent iterations of the NPPF.***

*d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission 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*

*Sec. 4: Decision-making*

*Para. 38: Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.*

**As previously noted, the proposal meets the economic, social, and environmental objectives set out in the NPPF. Moreover, in the spirit of decision-makers seeking to 'approve applications for sustainable development where possible', there are far more - and far stronger - arguments in favour of the development than may be posited against it.**

*Supporting a prosperous rural economy*

*88. Planning policies and decisions should enable:*

*a) the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed, beautiful new buildings;*

*b) the development and diversification of agricultural and other land-based rural businesses;*

*c) sustainable rural tourism and leisure developments which respect the character of the countryside; and*

*d) the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship.*

**This policy is fully complied with and whilst not included in the refusal reason whilst the para. Below was it should be noted that this is a small extension of an existing rural business to support employment within an existing building where no physical development is required to meet a local service need.**

*89. Planning policies and decisions should 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 (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.*

**The business already exists in an existing building so this proposal being a small extension of use of that existing building is wholly appropriate. The issue of public transport is irrelevant for an activity where people would drive their cars to the site locally and being able to not have to travel so far to have the work done.**

*Section 9 Promoting Sustainable Transport*

*109. The planning system should actively manage patterns of growth in support of these objectives. Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions, and improve air quality and public health. However, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making.*

**This is not a significant development it is a small extension of a use in an existing building with complimentary uses already approved and in operation on the site, so just using spare capacity and therefore wholly appropriate to be allowed.**

*Sec. 11: Making effective use of land*

*Para. 123: Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield' land.*

**This is not a significant development it is a small extension of a use in an existing building with complimentary uses already approved and in operation on the site, so just using spare capacity and therefore wholly appropriate to be allowed.**

*Para. 128(a): Planning policies and decisions should support development that makes efficient use of land, taking into account the identified need for different types of housing and other forms of development, and the availability of land suitable for accommodating it.*

**The proposal makes 'effective use of land in meeting the need for local people having their cars maintained in using an existing building with permission for storing lorries and maintaining them and using the spare capacity that exists in that building.**

**The refusal reason only cited Para 135 a to c however, as can be seen in the commentary under each of the parts of this paragraph there are relevant considerations that need to be taken into account to balance the planning assessment.**

*Sec. 12: Achieving well-designed and beautiful places*

*Para. 135: Planning policies and decisions should ensure that developments*

> *a) will function well and add to the overall quality of the area, not just for the short*
>
> *term but over the lifetime of the development;* **The proposal here to use spare capacity in a building to repair cars when the lorries do not need repairs is an effective sustainable use of the building. The Inspector can place conditions on the approval in relation to the hours of work for this ancillary activity. The reality is though that rather than being contrary to the NPPF on this point the proposed development accords with it.**
>
> *b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;* **The building is already there so when the refusal reason says between sub paras. A and C of this paragraph it cannot apply in this context as the building is already there so there is no harm in allowing this appeal as it relates to use.**

*c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);* **The building is already there so when the refusal reason says between sub paras. A and C of this paragraph it cannot apply in this context as the building is already there so there is no harm in allowing this appeal as it relates to use. It should also be noted that surely it is innovative to seek to use spare capacity in a building which is wholly a sustainable use for the space within the building when repairs to lorries are not taking place.**

*d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;* **Not applicable to this proposal**

*e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and* **The building is already there so when the refusal reason says between sub paras. A and C of this paragraph it cannot apply in this context as the building is already there so there is no harm in allowing this appeal as it relates to use. It should also be noted that surely it is innovative to seek to use spare capacity in a building which is wholly a sustainable use for the space within the building when repairs to lorries are not taking place.**

*f) 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 and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience are visually attractive as a result of good architecture, layout and appropriate and effective landscaping.* **The proposal here to undertake local car repairs for local people when they have a need and there is space capacity in the building is inclusive for local people in this local area is accessible rather than having to drive many miles to a garage which may be located many miles away so sustainable in transport terms so again the policy is complied with.**

*Para. 139: Development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes. Conversely, significant weight should be given to:*

> *a) development which reflects local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes; and/or*
>
> *b) outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings.*

**The building is already there and this scheme compared with the previous one dismissed at appeal is about using the existing building only and not having outdoor storage or activity that would require an explicit planning permission.**

## 6. Local Planning Policy Context

In line with paragraph 11 of the NPPF, the most important policies for determining the appeal need to be identified. It is clear from the judgement *Wavendon Properties Ltd v SoSoHCLG & Milton Keynes Council [2019] EWHC 1424 (Admin)*, that the collection of most important policies should be considered in the round.

The most important policies should only be those governing the development proposed in a particular area. More generic policies that can apply to multiple types of development should not logically be considered as most important policies. This approach is adopted in the below assessment of the refusal policies, with commentary provided underneath.

It should be noted that the Core Strategy is now nearly 10 years old since adoption. The planning system's integrity is based on having relevant and up to date planning policies. Whilst the essence of the planning policies may be similar to the NPPF most recent edition in December 2023 the little differences that have been introduced over the intervening 10 years

since the first one on which the Core Strategy has been based can and indeed are quite fundamental to how an application should be assessed. Sustainable development is a key issue, making best use of existing buildings, brown field sites and supporting employment all of which are factors in this appeal to support it were not taken into account when the Core Strategy was drafted and adopted yet are key issues of principle now under the NPPF.

**Wiltshire Core Strategy adopted January 2015:**

**Core policies:**

### Core Policy 1

#### Settlement Strategy

The Settlement Strategy identifies the settlements where sustainable development will take place to improve the lives of all those who live and work in Wiltshire.

The area strategies in Chapter 5 list the specific settlements which fall within each category.

#### Principal Settlements

Wiltshire's Principal Settlements are strategically important centres and the primary focus for development. This will safeguard and enhance their strategic roles as employment and service centres.

They will provide significant levels of jobs and homes, together with supporting community facilities and infrastructure, meeting their economic potential in the most sustainable way to support better self containment.

The Principal Settlements are: Chippenham, Trowbridge and Salisbury.

**Market Towns**

Outside the Principal Settlements, Market Towns are defined as settlements that have the ability to support sustainable patterns of living in Wiltshire through their current levels of facilities, services and employment opportunities.

Market Towns have the potential for significant development that will increase the jobs and homes in each town in order to help sustain and where necessary enhance their services and facilities and promote better levels of self containment and viable sustainable communities.

The Market Towns are: Amesbury, Bradford on Avon, Calne, Corsham, Devizes, Malmesbury, Marlborough, Melksham, Tidworth and Ludgershall, Warminster, Westbury, and Royal Wootton Bassett.

**Local Service Centres**

Local Service Centres are defined as smaller towns and larger villages which serve a surrounding rural hinterland and possess a level of facilities and services that, together with improved local employment, provide the best opportunities outside the Market Towns for greater self containment.

Local Service Centres will provide for modest levels of development in order to safeguard their role and to deliver affordable housing.

The Local Service Centres are: Pewsey, Market Lavington, Cricklade, Tisbury, Mere, Downton and Wilton.

**Large and Small Villages**

Large Villages are defined as settlements with a limited range of employment, services and facilities. Small Villages have a low level of services and facilities, and few employment opportunities.

Development at Large and Small Villages will be limited to that needed to help meet the housing needs of settlements and to improve employment opportunities, services and facilities.

The Large and Small Villages are: see area strategies, Chapter 5.

**The relevance of this policy is two fold to this application. First that the site is a small village. The proposed development is to improve employment opportunities in the sense that there is spare capacity in the building and using that space capacity will expand the employment opportunities in terms of number of hours to be able to work to make a living wage. Secondly the proposal helps to meet the needs by provision of a service and facility to have cars which belong to residents in the close vicinity looked after without the requirement to travel much further which would not be sustainable whereas the location of the**

**development here is sustainable to where they live. This policy is therefore fully complied with.**

## Core Policy 2

### Delivery Strategy

In line with Core Policy 1, the delivery strategy seeks to deliver development in Wiltshire between 2006 and 2026 in the most sustainable manner by making provision for at least 178ha of new employment land and at least 42,000 homes distributed as follows:

| | Minimum housing requirement (dwellings) |
|---|---|
| East Wiltshire HMA | 5,940 |
| North and West Wiltshire HMA | 24,740 |
| South Wiltshire HMA | 10,420 |
| West of Swindon[76] | 900 |
| Wiltshire | 42,000 |

This will be delivered in a sustainable pattern in a way that prioritises the release of employment land and the re-use of previously developed land to deliver regeneration opportunities, and to limit the need for development on Greenfield sites, with approximately 35% of development taking place on previously developed land.

The 42,000 homes will be developed in sustainable locations in conformity with the distribution set out above, against which the land supply situation will be assessed. A more detailed distribution is set out in the Community Area Strategies. Development proposals should also be in general conformity with these.

Sites for development in line with the Area Strategies will be identified through subsequent Site Allocations DPDs and by supporting communities to identify sites through neighbourhood planning.

**Within the defined limits of development**

Within the limits of development, as defined on the policies map, there is a presumption in favour of sustainable development at the Principal Settlements, Market Towns, Local Service Centres and Large Villages.

**Outside the defined limits of development**

Other than in circumstances as permitted by other policies within this plan, identified in paragraph 4.25, development will not be permitted outside the limits of development, as defined on the policies map. The limits of development may only be altered through the identification of sites for development through subsequent Site Allocations Development Plan Documents and neighbourhood plans.

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

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

**The remaining part of the policy relates to strategic sites which is wholly not relevant to this proposal or appeal. What is relevant is the fact that whilst it relates in the main to housing reference to employment is made in the early part of the policy and in that sense the policy states 're-use of previously developed land to deliver regeneration opportunities, and to limit the need for development on Greenfield sites'. This proposal to extend the use of the existing building (ie previously developed land) with a permission and lawful use on it for a similar purpose so it is just an extension clearly evidences that this policy is wholly complied with such that the scheme should be allowed.**

## Core Policy 13

**Spatial Strategy: Malmesbury Community Area**

Development in the Malmesbury Community Area should be in accordance with the Settlement Strategy set out in Core Policy 1.

**Market Towns:** Malmesbury

**Large Villages:** Ashton Keynes, Crudwell, Great Somerford, Oaksey and Sherston

**Small Villages:** Brinkworth, Charlton, Corston, Dauntsey, Lea, Luckington, Milbourne, Minety and Upper Minety

The following Principal Employment Areas will be supported in accordance with Core Policy 35: Malmesbury Business Park, Dyson Site, and Land North of Tetbury Hill.

Over the plan period (2006 to 2026), 5 ha of new employment land (in addition to that delivered or committed at April 2011) will be provided, including:

| | | |
|---|---|---|
| **Land North of Tetbury Hill** | Saved North Wiltshire District Plan allocation | 1 ha |
| **Land at Garden Centre, Malmesbury** | Saved North Wiltshire District Plan allocation | 4 ha |

Over the plan period (2006 to 2026), approximately 1,395 new homes will be provided of which about 885 should occur at Malmesbury. Approximately 510 homes will be provided in the rest of the Community Area. Growth in the Malmesbury Community Area over the plan period may consist of a range of sites in accordance with Core Policies 1 and 2.

**This policy has no relevance to this proposal. First it relates to strategic new provision and secondly this appeal proposal is for a minor extension of an existing use on a brownfield site namely the building which already has permission to be used for storage and repair of**

**lorries so using it to repair cars is wholly appropriate. The policy not being relevant should not have been included in the refusal reason.**

## Core Policy 34

### Additional employment land

Proposals for employment development (use classes B1, B2 or B8) will be supported within the Principal Settlements, Market Towns and Local Service Centres, in addition to the employment land allocated in the Core Strategy. These opportunities will need to be in the right location and support the strategy, role and function of the town, as identified in Core Policy 1 (Settlement Strategy) and in any future community-led plans, including neighbourhood plans, where applicable.

Proposals for office development outside town centres, in excess of 2,500sq metres, must be accompanied by an impact assessment which meets the requirement of national guidance and established best practice, and demonstrate that the proposal will not harm the vitality or viability of any nearby centres. All such proposals must also comply with the sequential approach, as set out in national guidance, to ensure that development is on the most central site available.

Outside the Principal Settlements, Market Towns and Local Service Centres, developments will be supported that:

i. are adjacent to these settlements and seek to retain or expand businesses currently located within or adjacent to the settlements; or

ii. support sustainable farming and food production through allowing development required to adapt to modern agricultural practices and diversification; or

iii. are for new and existing rural based businesses within or adjacent to Large and Small Villages; or

iv. are considered essential to the wider strategic interest of the economic development of Wiltshire, as determined by the council.

Where they:

a. meet sustainable development objectives as set out in the polices of this Core Strategy and

b. are consistent in scale with their location, do not adversely affect nearby buildings and the surrounding area or detract from residential amenity and

c. are supported by evidence that they are required to benefit the local economic and social needs and

d. would not undermine the delivery of strategic employment allocations and

e. are supported by adequate infrastructure.

**It should be noted that iii is applicable within this policy namely that it is an 'existing rural based business' which wants to expand to meet the excess capacity it may have from time**

**to time to be able to maintain cars as well as lorries in the existing building. The building already exists, it will create additional employment time to use up spare capacity so benefits local economic and hence social needs of not only the operator but also local people to be able to access the local service, does not undermine the delivery of strategic employment allocations as it is a minor extension of a use and adequate infrastructure is in place by virtue of the building already being in place. The policy is therefore fully complied with.**

**In the refusal reason only core policy 48 (ii) is referred to. Yet when reading the full extract of the policy below it will be noted that rather than not complying with the policy the proposal fully complies with it. The existing building is being used for employment now, it is structurally sound, does not require any conversion or rebuilding, the use is inside the building so does not detract from the landscaping or harm residential amenities as the use of maintaining lorries in the building already exists.**

**Conversion and re-use of rural buildings**

Proposals to convert and re-use rural buildings for employment, tourism, cultural and community uses will be supported where they satisfy the following criteria:

i. The building(s) is/are structurally sound and capable of conversion without major rebuilding, and with only necessary extension or modification which preserves the character of the original building.

ii. The use would not detract from the character or appearance of the landscape or settlement and would not be detrimental to the amenities of residential areas.

iii. The building can be served by adequate access and infrastructure.

iv. The site has reasonable access to local services.

v. The conversion or re-use of a heritage asset would lead to its viable long term safeguarding.

Where there is clear evidence that the above uses are not practical propositions, residential development may be appropriate where it meets the above criteria. In isolated locations, the re-use of redundant or disused buildings for residential purposes may be permitted where justified by special circumstances, in line with national policy.

**The building is served by infrastructure at present so the proposal is fully compliant with the policies.**

**The refusal reason refers to core policy 57 general aims parts I and vi**

Core Policy 57

Ensuring high quality design and place shaping

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 complementary to the locality. Applications for new development must be accompanied by appropriate information to demonstrate how the proposal will make a positive contribution to the character of Wiltshire through:

**Design here is not an applicable consideration as the building already exists and lorries are stored and repaired within it. The extension of that use to include some car repairs would not impact upon any design considerations.**

i. enhancing local distinctiveness by responding to the value of the natural and historic environment, relating positively to its landscape setting and the existing pattern of development and responding to local topography by ensuring that important views into, within and out of the site are to be retained and enhanced

ii. the retention and enhancement of existing important landscaping and natural features, (e.g. trees, hedges, banks and watercourses), in order to take opportunities to enhance biodiversity, create wildlife and recreational corridors, effectively integrate the development into its setting and to justify and mitigate against any losses that may occur through the development

iii. responding positively to the existing townscape and landscape features in terms of building layouts, built form, height, mass, scale, building line, plot size, elevational design, materials, streetscape and rooflines to effectively integrate the building into its setting

iv. being sympathetic to and conserving historic buildings and historic landscapes

v. the maximisation of opportunities for sustainable construction techniques, use of renewable energy sources and ensuring buildings and spaces are orientated to gain maximum benefit from sunlight and passive solar energy, in accordance with Core Policy 41 (Sustainable Construction and Low Carbon Energy)

vi. making efficient use of land whilst taking account of the characteristics of the site and the local context to deliver an appropriate development which relates effectively to the immediate setting and to the wider character of the area

**In relation to point i the site is already fully in use for storage of trailers and lorries together with the building being used for that and also for maintenance of them. Para i does not apply therefore as no impact would result on the natural or historic environment.**

**In relation to point vi whilst that can apply in part it does so to support the proposal rather than to be negative towards it in respect of making efficient use of the land by using up**

**spare capacity within the building without causing any harm to interests of acknowledged importance.**

vii. having regard to the compatibility of adjoining buildings and uses, the impact on the amenities of existing occupants, and ensuring that appropriate levels of amenity are achievable within the development itself, including the consideration of privacy, overshadowing, vibration, and pollution (e.g. light intrusion, noise, smoke, fumes, effluent, waste or litter)

viii. incorporating measures to reduce any actual or perceived opportunities for crime or antisocial behaviour on the site and in the surrounding area through the creation of visually attractive frontages that have windows and doors located to assist in the informal surveillance of public and shared areas by occupants of the site

**Under para. Vii the uses of the adjoining land and the building itself are already relating to the similar work that would be undertaken on maintaining cars in the building so no harm or impact can result from that. The policy is fully complied with.**

## Core Policy 60

### Sustainable transport

The council will use its planning and transport powers to help reduce the need to travel particularly by private car, and support and encourage the sustainable, safe and efficient movement of people and goods within and through Wiltshire.

This will be achieved by:

i. planning developments in accessible locations

ii. promoting sustainable transport alternatives to the use of the private car

iii. maintaining and selectively improving the local transport network in accordance with its functional importance and in partnership with other transport planning bodies, service providers and the business community

iv. promoting appropriate demand management measures

v. influencing the routing of freight within and through the county

vi. assessing and, where necessary, mitigating the impact of developments on transport users, local communities and the environment.

## Core Policy 61

### Transport and new development

New development should be located and designed to reduce the need to travel particularly by private car, and to encourage the use of sustainable transport alternatives.

As part of a required transport assessment, the following must be demonstrated:

i. That consideration has been given to the needs of all transport users, where relevant, according to the following hierarchy:

   a. Visually impaired and other disabled people

   b. Pedestrians

   c. Cyclists

   d. Public transport

   e. Goods vehicles

   f. Powered two-wheelers

   g. Private cars.

**In relation to both policies 60 and 61 it is clear that local people will be able to access the site in a sustainable way rather than having to travel many more miles to find a location to have their cars maintained. So rather than being not in compliance with the policies the proposal fully complies with them.**

**In conclusion on the Core Strategy it is clear that the extension of use to repair cars within this existing building with existing lawful uses for storage and maintenance of lorries to use that spare capacity is wholly compliant with the policies of it so it is safe to allow the appeal.**

## 7. Conclusions

The proposed development is a minor change from that which already has planning permission and a certificate of lawful use on the site. Whilst the building has permission to be used for storing lorries etc and for the maintenance of them there is some spare capacity available such that it is wholly feasible and appropriate to use that spare capacity to undertake some limited car repairs for local people which is a wholly sustainable and appropriate use.

The previous application a few years ago which went to appeal on being refused was for a much larger scheme involving land outside of the building so that the reasons for refusal and inspector decision are not relevant here. What is interesting to note is that the refusal reasons at that time are not repeated on this proposal the subject of appeal, but, rather other refusal reasons have been applied. That is unreasonable behaviour to do that to introduce new refusal reasons to a lesser scheme especially where the only change in planning policy in the intervening period has been revised NPPFs which seek to support sustainable development which this is.

When reviewing the NPPF section of this appeal statement it will be clear that the proposal fully accords with the principles of it and do not as suggested by the planning refusal reasons conflict with it. As a consequence it is wholly safe to allow this appeal with such conditions as the inspector considers appropriate and necessary.

Finally in reviewing the development plan being the Wiltshire Core Strategy 2015 the policies cited when analysed actually support the development proposed being an extension of use of spare capacity for the maintenance of cars within it.

.

## 8. Recommendation

The Inspector is respectfully requested to allow the appeal for the reasons propounded in this appeal statement.

HEAL Planning
11 St. Mary's Place
Shrewsbury
SY1 1DZ

June 2024

## Appendices

**STATUTORY DECLARATION**

I, MICHAEL DOUGLAS LINDSEY of Glevum Farm, Malmesbury Road, Leigh, Swindon, SN6 6RH DO SOLEMNLY AND SINCERELY declare as follows:

1. I have owned and lived at Glevum Farm for over 27 years, which includes the land shown edged red on the attached Plan MDL1.

2. Prior to occupying this landholding I was the Managing Director of Glevum Transport, a business involved in transporting goods and materials by lorry. Upon moving to Glevum Farm, I reduced my involvement with Glevum Transport but I still undertook work for that company on a part-time basis and I am still involved with it, as I have been for over 50 years. I was also the Managing Director of Chelworth Properties (Swindon) Ltd, owners of various pieces of land including one adjoining Chelworth Lodge, on the Ashton Keynes to Malmesbury Road.

3. In November 1992, I sought and obtained, on behalf of Glevum Transport, an HGV operator's licence to operate 3 vehicles and 3 trailers from Glevum Farm on the area shown in red on the attached plan. That number was increased to 5 vehicles and 3 trailers after the grant of variation issued to Chelworth Properties in September 1999. These lorries would use the land edged red on the attached plan for parking overnight and weekends and sometimes for longer so that they were parked off the public highways. They were driven by HGV drivers who lived locally.

4. I recall a visit about 10 years ago from an officer of North Wiltshire District Council to the land that is the subject of this Declaration following a complaint. She saw 4 or 5 HGVs on the site and asked me to open the rear doors of the trailers, which I did, and showed her some partially loaded trailers. I also explained to her that the site had benefitted from an HGV operator's licence

since 1992. I heard nothing further from the officer and the use for the parking and storage of lorries continued.

5. I also recall another visit from an officer from North Wiltshire District Council to my farm premises, possibly the following year after she had received a complaint about a caravan being occupied by Duncan Skuse (a matter that was subsequently resolved as the occupant obtained alternative accommodation). She saw a lorry with trailer parked close to my farm buildings and enquired as to its purpose. I informed her that it was driven by me as I would move hay and straw between my other farmland and buildings at Blunsdon, Swindon and Clyffe Pypard airfield as this was a more efficient and safer mode of transport than using a tractor and trailer over such distances and types of roads, which included the A419 trunk road. Again, I heard nothing further from the officer following this explanation.

6. I have read the email from the planning officer to the effect that because an enforcement investigation concluded in April 2007 on another part of the farm that a change of use has not occurred on the land that is the subject of this Declaration. The records of the Traffic Commissioner confirm that the site was authorised originally in 1992 and that the number of vehicles licenced there increased in 1999.

7. I have also seen another email which discounts the view put forward in the planning application on the basis that aerial photographs do not show lorries at the site. I am not surprised that such photographs do not show vehicles there as, if photographs were taken during the day, the lorries would be away from the site moving goods by road. Aerial photographs are not, in this instance, a source of information that can be relied upon.

8. I am informed that to obtain a Certificate of Lawful Existing Use or Development it is necessary to show that a use has taken place continuously for a period of 10 years. I can confirm that the land shown red on the plan attached to this Declaration and numbered MDL1 has been used for the

parking and storage of lorries. This may not have been every day or night of the week, as lorries can often be away for several days at a time, but the land has been the subject of an operator's licence confirming that they have been operated from there.

AND I make this solemn declaration conscientiously believing the same to be true and virtue of the Statutory Declarations Act 1835.

Signed.....

Declared at 10/15. Regent Circus, Swindon SN1 1PP.

This 2nd day of ~~October~~ November NB, 2016

Before me

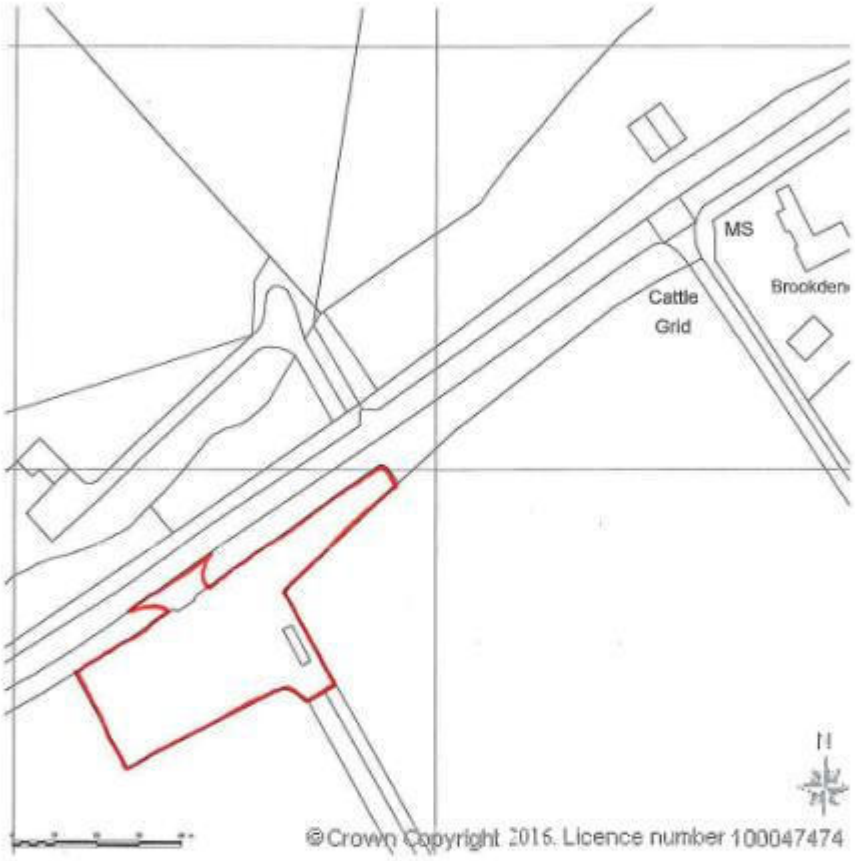
Commissioner of Oaths/Solicitor

NJJ BUCKLEY
SOLICITOR
POOLEYS SOLICITORS
10-15 REGENT CIRCUS
SWINDON
SN1 1PP

Street wise

Map data

SITE LOCATION PLAN
AREA 4 HA
SCALE 1:1250 on A4
CENTRE COORDINATES: 406298, 191609

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2nd November 2016

NIJ BUCKLEY
SOLICITOR
POOLEYS SOLICITORS
10-15 REGENT CIRCUS
SWINDON
SN1 1PP

PLAN MDL 1

20th July 2016

Wiltshire Council
Monkton Park
Chippenham
Wiltshire
SN15 1ER

To whom it may concern:

My name is Mrs J S Haines and I live at Hapgood Cottage, by the side of the B4040 in the village of Leigh, I have lived there since 1996 and am still living there and have no intention of moving.

I know of Mr Lindsey and that he has been operating commercial vehicles from his top yard at Glevum Farm at the above address. I live about 350 yards from this site and I have never had any cause for concern from this operation.

Yours faithfully

Mrs J S Haines

Bowood Farm,

Malmesbury road,

Leigh,

SWINDON,

Wiltshire.

SN6 6RH

07/07/2016

To Whom it May Concern.

I have owned property at the above address since 1993 and in all of that time I have never had any reason at all to reproach Mr.M.D. Lindsey of Glevum farm about any nuisance caused by any transport accessing or egressing his property and so far as I am aware neither have any other close neighbours.

I am also happy to swear to this statement in any Court of Law.

Anthony Miller. MIEE, IMechE.(Ret)

20th July 2016

Wiltshire Council
Monkton Park
Chippenham
Wiltshire
SN15 1ER

To whom it may concern:

I have lived at Braydon Croft since 1998 to 2008.

Mr Lindsey's yard is approximately 200 yards from my property, he operates commercial vehicles from this property and I have never yet had cause to register any complaints or problems to him regarding this operation.

Yours faithfully

Mr Barry Jones

**Office of the**
**Traffic Commissioner**

Mr David Hughes
Information Access Officer

Jubilee House
Croydon Street
Bristol
BS5 0GB

Direct Line: 0117 954 2605

Email: tcfoi@otc.gsi.gov.uk

Our Ref: 953/TC/WEST/FOI

28 July 2016

Iain Harry

By email

glevumtransportltd@o2.co.uk

Dear Mr Harry

**Freedom of Information Act 2000**

With reference to your emails dated 13 June 2016 and 29 June 2016 sent to self.service@otc.gsi.gov.uk in respect of licence number OH0151177, which were forwarded to the Information Access team for Traffic Commissioners on 1 July 2016. Your request has been dealt with under the terms of the Freedom of Information Act 2000.

Your email dated 13 June 2016 which includes the request for information reads:

> I am emailing reference my telecon today as I need to obtain the historic data on a surrendered operator licence number OH0151177. I only need data relating to the Glevum Farm address on Malmesbury Road, Cricklade, SN6 6RH. (When licence was issued/expired and how many vehicles were granted at the premises) If there is any more information you require from me then please don't hesitate to contact me by phone or email.

Section 16 of the Freedom of Information Act 2000 requires any public authority to whom a request is made, to offer advice and assistance to the applicant. Therefore, to satisfy this requirement the traffic commissioners offer the following advice and assistance.

There are seven traffic commissioners within Great Britain and they are appointed to geographic regions defined as East of England, London and South East of England, North East of England, North West of England, West of England, West Midlands, Wales and Scotland.

The traffic commissioners are independent appointees of the Secretary of State and are responsible for the application and issue of operator licences. They are the industry regulators for GB, in respect of the holders of goods and passengers vehicle operator licences.

I have checked the Traffic Commissioners' records and can confirm that Goods Vehicle Operator Licence number OH0151177 in the name Chelworth Properties (Swindon) Ltd was surrendered with effect from 24 April 2015.

Notification of the surrender appeared in the statutory Applications and Decisions (A&D) publication number 5424 on 12 May 2015 which can be viewed via the following link:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/426805/ad-5424-12-may-2015.pdf

I can also confirm that the operating centre at the Glevum Farm address became authorised in November 1992.

The statutory notice for the change of operating centre appeared in the A&D publication numbers 4832 at time of application, and 4837, following grant in November 1992.

The operating centre was authorised for 3 vehicles and 3 trailers at that time.

Additionally, the site became authorised for 5 vehicles and 3 trailers under this licence following a variation application which was published in A&D numbers 5012 at time of variation application, and 5016 after the grant of the variation in September 1999.

Please note that the publication of operator details in the A&D booklets has been undertaken since the 1930's. These publications were originally available either by inspection at the office of the Traffic Commissioner or by postal subscription only. However, since 2003 they have also been available via the website at no cost to view.

Therefore, as A&D publication numbers 4832, 4837, 5012, and 5016 were published before 2003, they will be held in paper form only by the Traffic Commissioner for the West of England. They are held within a central archive facility and can be made available for inspection, if necessary.

If you wish to view the paper publications, a 'Reading Room' facility can be arranged by prior appointment at the Office of the Traffic Commissioner for the West of England at Jubilee House, Croydon Street, Bristol BS5 0GB. An appointment should be sought for access to these records by contacting the Information Access Team either by telephone 0117 954 2605 or by email TCFOI@otc.gsi.gov.uk.

Alternatively, the Traffic Commissioner for the West of England is aware that historic copies of the A&D are held by the British Library. However, she is not able to comment on the completeness or otherwise of the records held by the British Library.

The records can be accessed using the following link:

http://explore.bl.uk/primo_library/libweb/action/display.do?tabs=moreTab&ct=display&fn=search&doc=BLL01007892673&indx=1&recIds=BLL01007892673&recIdxs=0&elementId=0&renderMode=poppedOut&displayMode=full&frbrVersion=&dscnt=0&vl%28488279563UI0%29=creator&vl%281423900464UI1%29=all_items&scp.scps=scope%3A%28BLCONTENT%29&tab=local_tab&dstmp=1469695220274&vl%28freeText0%29=Great%20Britain.%20Traffic%20Commissioner%20for%20the%20Western%20Traffic%20Area.&vid=BLVU1&mode=Basic

If you are not satisfied with the way in which we have handled your request, or with the reason given for refusing to provide the information, you have the right to request a review. Your request for a review must be made within two calendar months from the date of this letter. To request a review, please contact the Office of the Statutory Senior Traffic Commissioner at the following address, giving the reasons for your dissatisfaction:

Office of the Statutory Senior Traffic Commissioner
Suites 4-6
Stone Cross Place
Stone Cross Lane
North Golborne
Warrington
WA3 2SH
or by e-mail at: tcfoi@otc.gsi.gov.uk

If you are not content with the outcome of the review, you may lodge an appeal with the Information Commissioner (www.ico.gov.uk).

The Information Commissioner can consider complaints about any aspect of the way in which requests for information have been handled. Please note that the Information Commissioner is unlikely to consider your complaint if you have not requested a review first. You can write to the Information Commissioner at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
or via the Information Commissioner's website at www.ico.gov.uk

Please contact us, quoting reference **953/TC/WEST/FOI**, if you have any query regarding this letter.

Yours sincerely

David Hughes
Information Access Officer

The Planning Inspectorate

# Appeal Decision

Site visit made on 7 May 2019

**by K Ford MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 31 May 2019**

**Appeal Ref: APP/Y3940/W/18/3210915**
**Land at Glevum Farm, Top Yard, Malmesbury Road, Leigh SN6 6RH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Glevum Farm against the decision of Wiltshire Council.
- The application Ref 18/05240/FUL, dated 1 June 2018, was refused by notice dated 16 August 2018.
- The development proposed is flexible change of use of existing building and land to use for storage purposes (Class B8 Use) and/ or the parking of a maximum of 5 HGVs and 2 trailers. Car parking spaces and alterations to existing building.

## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The revised National Planning Policy Framework (NPPF) has been published since the planning application was determined. Both main parties have been given the opportunity to comment on any relevant implications for the appeal. I have had regard to any responses and the NPPF in reaching my decision.

## Main Issues

3. The main issues are:

   - Whether the site is an appropriate location for the development proposed.
   - The effect on the character and appearance of the area.

## Reasons

*Location of Development*

4. The appeal site is an irregular shaped parcel of land adjacent to Malmesbury Road, outside a settlement boundary and therefore in open countryside. The gated site is covered in hardstanding with a partially open sided fabricated building to one side which has an agricultural appearance. The site has a lawful development certificate[1] for the use of parking a maximum of 5 lorries and 2 trailers. The appellant has also said that some maintenance of the lorries also takes place on the site. At the time of my site visit the building was empty and there was a car, a van and a trailer parked on the site. Views into the site from

[1] Council reference 16/11482/CLE

the road are only partially screened by vegetation due to gaps in the hedgerow and the wide opening that provides access onto the site. The surrounding area has an open rural character. The boundary treatments of other properties along Malmesbury Road do not detract from this.

5. Whilst paragraph 80 of the NPPF says planning decisions should help create conditions in which businesses can invest, expand and adapt, that support is not unqualified. Paragraph 84 of the NPPF states that development should be sensitive to its surroundings and paragraph 103 of the NPPF requires the active management of patterns of growth.

6. Policy 1 and 2 of the Wiltshire Core Strategy 2015 (Core Strategy) identify a settlement strategy and delivery strategy which restricts development outside the defined limits of development of settlements. Policy 34 of the Core Strategy directs employment growth to identified locations in line with this strategy as does Policy 48 which supports the conversion of rural buildings which meet a defined criteria. There is little before me to demonstrate that this criteria has been met. Policy 60 of the Core Strategy, amongst other things, directs development to accessible locations.

7. The Council say the nearest recognisable settlement to the site is Minety which is some distance away along unpaved, unlit roads which would not be conducive to accessing the site by sustainable means of travel. There is no evidence before me to suggest that the site is well served by public transport. Whilst I acknowledge the existing lawful use of the site, the appellant has identified that vehicle movements to and from the site would probably be around 50% greater than the current situation. This would be a significant increase. The fact that vehicles would be able to access and egress the site in a safe manner would not address the harm generated by the increase in the volume of traffic.

8. The appellant says the site could be operated differently under the existing permission which would lead to similar or greater increase in traffic movements than that which is proposed. However, I do not have substantive details of this or information regarding the scale of any potential increased impact. I consequently give this consideration little weight.

9. On this matter I therefore conclude that the site would not be an appropriate location for the development proposed, and would be in conflict with the relevant parts of Core Policies 1, 2, 34, 48, 60 and 61 of the Core Strategy, as identified above.

*Character and Appearance*

10. The proposal would lead to an intensification in the use of the site. Based on my observations on site, whilst I disagree with the Council's view that the addition of shutters would constitute rebuilding of the structure, the doors would nevertheless have an enclosing effect and would lead to a loss of its agricultural appearance.

11. Increased car parking on the site would have an urbanising effect, exacerbated by the organised formal parking arrangement proposed. The cars parked at the site may be smaller than trailers but the scheme would nonetheless detract from the rural character of the area. The number of car parking spaces combined with the proposed outdoor storage would lead to a more cluttered

appearance and loss of open character which would not be addressed by a condition to erect a boundary fence or limit the height of storage, as proposed by the appellant. The existing boundary treatment is insufficient to screen the proposed development and improvements to it would do little to overcome the harm. The suggested speed at which traffic would pass the site would not mitigate the impact.

12. The proposal would harm the character and appearance of the area and as such would conflict with Core Policy 51 of the Core Strategy which includes a requirement for new development to protect, conserve and where possible enhance landscape character. It would also conflict with Core Policy 57 of the Core Strategy which amongst other things, requires new development to create a strong sense of place that is complementary to the locality, creates a positive contribution to the character of the area and relates positively to the landscape setting.

**Other Matters**

13. The appellant has identified that there are other sites with similar uses in the area which make a useful contribution to the economy. Be that as it may, I have not been provided with sufficient detail of those sites to enable me to make a meaningful comparison with the case before me. In any event, each case is determined on its own merits and my assessment has been based on the information before me.

14. Whilst the appellant has stated that there is a lack of accommodation or sites in the built up area, this is disputed by the Council. In the absence of evidence to substantiate such claims I give limited weight to this consideration.

15. The appellant has made reference to the absence of a proactive approach by the Council in determining the planning application. Nonetheless, this does not alter my assessment of the planning merits of the case.

**Conclusion**

16. For the reasons identified, I conclude that the appeal should be dismissed.

*K Ford*

INSPECTOR