

Planning Application for '*Change of Use of land and proposed buildings associated with Implemented Phase IV holiday accommodation to Class C3 Residential Use for Independent Older Persons, together with formalisation of footpath connection, car parking and associated works*' at Phase IV, Oaksey Park, Golf and Leisure, Oaksey, Nr Malmesbury, SN16 9SB.

Planning Statement

Submitted on Behalf of the Applicant: Cotswold Ecohomes Ltd

19th March 2025

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D	Discharge of Condition Ref: N/10/01773/S73 Decision Notice
E	Section 73 Application Ref: N/13/00958/VAR Decision Notice, Committee Report 12/03/2014 & 04/06/2014 and Minutes from Planning Committee Meeting 04/06/2014.
F	Deed of Variation Submission Ref: 19/01991/VAR Decision Notice, Committee Report and Minute from Meeting of 6 th November 2019.
G	Section 73 Application Ref: PL/2022/03356 Decision Notice & Officer's Report
H	Appeal Decision Ref: APP/Y3940/W/23/3317020 (dated 11/04/2024)
I	John Leslie Finney v Welsh Ministers, Carmarthenshire County Council, Energiekontor (UK) Limited [2019] EWCA Civ 1868
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L	Wiltshire Council NPPF Briefing Note (ref: 24-20) dated 17th December 2024
M	Appeal Decision Ref: APP/Y3940/W/24/3345598 (dated 21st January 2025)
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O	Schedule of Older Persons Housing Approvals in Wiltshire (IPS)

1.0 Introduction

- 1.1 This application has been submitted by Impact Planning Services Ltd., (IPS) on behalf of the Applicant: Cotswold Ecohomes Ltd. (CEH), in support of an application for the change of use of the implemented planning permission for 12 holiday units at Phase IV of the Oaksey Park Golf and Leisure site, to permanent residential use (Class C3), intended to be restricted by condition to occupancy by independent, older persons.
- 1.2 The current application follows the previous Section 73 application (ref: PL/2023/00296) for the removal of conditions associated with previously approved application ref: N/10/01773/S73. This application was however, unsuccessful following an appeal (ref: APP/Y3940/W/23/3317020) against the refusal of Wiltshire Council (WC), as a result of the Inspector concluding that the use of S.73 was inappropriate for a variation of the occupancy condition associated with the extant holiday accommodation permission.
- 1.3 This was despite the fact that the appellant and Wiltshire Council had previously accepted the use of s.73 applications as a valid mechanism for the relaxation of the tourism / holiday use occupancy restrictions, as well as the Planning Inspectorate (PINS) during the appeal through validation and registration processes. Notwithstanding applications being validated and determined post the judgement in *Finney* ('John Leslie Finney v Welsh Ministers, Carmarthenshire County Council, Energiekontor (UK) Limited [2019] EWCA Civ 1868' aka *Finney*) the case law was relied upon by the appeal Inspector in dismissing the appeal.
- 1.4 This full planning application however seeks to change the use of the implemented scheme from use as holiday units, to permanent residential occupation, with restriction by condition to primary occupation by persons aged 55 years or older. A draft occupancy restriction condition to regulate the residential use of the dwellings the subject of Phase IV is set out below at paragraph 5.31 below.
- 1.5 There are significant advantages in providing such accommodation in the rural areas not least of which are tackling under-occupancy, enabling those seeking to downsize to remain in their local rural area (as opposed to having to move to say a flatted development in a town) and established social networks, together with mental health and welfare benefits from increased social interaction.
- 1.6 The structure of this Statement is as follows:

- Section 2 describes the site and its surroundings and reviews the planning history for the site;
- Section 3 describes the proposals;
- Section 4 identifies the relevant policy and other material considerations;
- Section 5 considers the proposals in light of the relevant identified policies and other material considerations;
- Section 6 forms the planning balance and conclusions to the Statement.

2.0 Site Description & Planning History

Site Context

- 2.1 The accommodation at Oaksey Park was originally intended as a development of holiday homes adjacent to an established parkland 9-hole golf course (developed in 1989) and a small clubhouse comprising restaurant, bar and changing facilities (added 2004), on the north-eastern edge of Oaksey in North Wiltshire.
- 2.2 The site is not within the village settlement boundary as currently defined; however, it is within the broader physical framework of the village when the other existing residential development at the site and the influence of the infrastructure associated with the village, topography, land use pattern, golf course, club house and other nearby development is taken into account. It is not therefore genuinely isolated, in a remote rural location but lies immediately adjacent to Oaksey which is regarded by the Wiltshire Core Strategy as a large village. The west of the site, in which the Phase IV development area lies, is approximately 350 metres from the village centre.
- 2.3 The site also lies in the vicinity of the Cotswold Water Park and, as a consequence, was originally considered potentially well placed to complement, together with a golf course, the water-based recreational, tourism and leisure activities nearby.
- 2.4 Earlier phases of residential development (Phases I to III) lie to the east of the application site comprising some 25 dwellings. The buildings are of modern attractive domestic architectural design, being of two storeys, of traditional construction, utilising render and timber with substantive glazing elements. They were built to a very high

BREAM specification and were awarded the top BRE, EcoHomes award of “*Excellent*”.

- 2.5 The buildings are surrounded by shared amenity spaces with planting separating these from the golf course. The buildings are all residential in character and some of these to the east of the application site are permanently residentially occupied. The scheme is set within established mature planting to the northern boundary separating the site and its access road from adjoining open countryside. The existing properties have ancillary group parking areas and a secondary emergency access road to the site runs from Wick Road, adjacent to the golf course itself, through the golf course car park and past the clubhouse facility.
- 2.6 The site is well contained by mature trees and hedgerows and consequently visually discreet, located immediately to the west of the existing residential development. It appears as a vacant residual part of the units awaiting completion. The site had been originally cleared and levelled in anticipation of construction, and consequently includes spoil and arisings.
- 2.7 The Phase IV development area is acknowledged by Wiltshire Council to have commenced development as part of an extant approval for tourism use units. The site boundary is delineated by the mature vegetation and is accessed via the existing residential development and service vehicle tracks leading from the golf course.
- 2.8 The site is not within a Conservation Area, nor its immediate setting or similarly within close proximity to any Listed Building. The appeal site is not within any other protected designation where restrictive policies as identified within footnote 7 to paragraph 11 d) ii., of the NPPF are applied.

Planning History

- 2.9 There are a number of planning applications registered to the Oaksey Park Golf and Leisure Club and an exhaustive list is not considered as part of this application (such as those relating to minor development to support the Golf Club operations or storage buildings). Only those most relevant to the current proposals are considered below.

05/00643/FUL (The Original Application)

- 2.10 An application for the ‘*Erection of 12 two and three bed holiday lodges and Covered Parking / Bin Storage (1 Carspace/ Lodge) and Associated Access*’ was submitted to

North Wiltshire District Council on the 11th March 2005 and validated under reference 05/00643/FUL. This was subsequently refused by the District Council on 11th May 2005. A copy of this decision notice is included at **Appendix A**. The single reason for refusal noted that the proposed development would: *'...fail to respect the rural character and appearance of its surroundings and have an unacceptable impact on the open landscape of the area'*.

APP/J3910/A/05/1183858 (The 'Original Appeal')

- 2.11 An appeal against this decision to refuse planning permission (05/00643/FUL) was allowed by the Planning Inspectorate by decision dated 24th October 2005 (**Appendix B**). The Inspector considered that the site was well contained by substantial tall hedgerows on the west and south boundaries and that the proposed development would not be predominant in the landscape thus, the application would not fail to respect the rural character and appearance of its surroundings or have an unacceptable impact on the open landscape of the area.

N/10/01773/S73 (Renewal of Permission)

- 2.12 A subsequent s.73 application was submitted in May 2010, which sought to renew the original appeal consent for the: *'Erection of 12no. Two and Three Bed Holiday Lodges and Covered Parking/Bin storage and Associated Access (Renewal of 05/00643FUL)'*. This permission was granted on 3rd July 2010 and is included at **Appendix C**. The decision notice notes that:

'The proposed development for holiday lodges by reason of its scale, design and siting is considered to be in accordance with Policy C3 and NE15 of the North Wiltshire Local Plan 2011, Policy RLT9 of the adopted Wiltshire and Swindon Structure Plan as well as guidance contained in PPS4 and 7. The development is acceptable tourism development in this location and as was established at appeal in 2005, would not fail to respect the character and appearance of the surroundings or have an unacceptable impact on the landscape.'

- 2.13 It is conditions 9, 11 and 12 of this permission, that the previous appeal (see below) sought to remove and replace, together with a variation to condition 14 which relates to the approved plans.

N/10/01773/S73 (Discharge of Conditions)

- 2.14 An application to discharge the necessary pre commencement conditions was submitted to Wiltshire Council in May 2013. This included details to discharge condition 2 (hard and soft landscaping) and condition 4 (samples of materials). These conditions were discharged by decision notice dated 7th July 2014 (**Appendix D**).

Extant Permission and Deed of Variation

- 2.15 It has been established that Wiltshire Council (WC) regards the Phase IV development at Oaksey Park to have been implemented and accordingly remains extant. This was confirmed during the consideration of the application to remove conditions associated with the proposals under reference N/13/00958/VAR. That sought the removal of conditions to allow the permanent residential occupation of 8 units on the site. The report to the Planning Committee (**Appendix E**¹) associated with permission, dated 23rd April 2014 at page 11 of the report, addresses the Phase IV development:

'...It should be noted that a final phase of development of holiday let units at the site remains unimplemented and is not covered by the current application proposals to remove restrictive occupancy conditions. The consent remains extant given the implementation of earlier phases and related works. An application to discharge conditions relevant conditions has been submitted.' [IPS emphasis]

- 2.16 At that time, it was clarified that this s.73 application would not address the viability of the remaining 12 Phase IV units as part of the application. WC's officers sought clarity as part of this application, that the extant permission at Phase IV could not later undermine any accepted evidence relating to commercial viability and absence of demand for the existing holiday units, in allowing permission for the variation.
- 2.17 The officers accordingly sought to prevent the undeveloped balance of the holiday accommodation from being built out without robust evidence demonstrating that the holiday accommodation was commercially viable and would not become the subject of another application (problem for WC), for permanent residential use. The Committee report continued on page 12 to advise:

¹ **Appendix E** also includes the Decision Notice ref: N/13/00958/VAR, Committee Report and Minutes of the 23rd April 2014 Planning Committee.

'Should the phase 4 consent be implemented and then an application to vary or remove conditions be submitted on the grounds of viability the site history and in particular the position with regard to the current application and any future second phase application relating to the 12 units not covered herewith would be material considerations. It is officers' opinion that it would be impossible to justify the erection of the phase 4 units and then apply shortly thereafter for removal of conditions on the grounds of viability. It would be apparent to all parties that the investment should not have taken place because the units were known to be unviable.'

- 2.18 As there is no longer a viable market for holiday accommodation of this sort, the Appellant sought to vary the occupancy restriction in order to provide older persons' homes in an area of the housing market where there is an acknowledged need and in this part of Wiltshire where under occupancy is a problem facing rural communities.
- 2.19 The lack of commercial viability for holiday accommodation was revisited as part of the consideration of the application to remove occupancy restrictions at Oaksey Park under reference 19/01991/VAR. These units are located to the east of the Phase IV site area. The Case Officers' Report to the Planning Committee dated 6th November 2019 (**Appendix F**) reconsidered the extant permission at Phase IV and the implication for the extant permission for holiday accommodation.
- 2.20 In this regard, WC considered it necessary and reasonable to address the matter formally through a s.106 planning obligation, preventing the building out of Phase IV, without the Applicant first demonstrating that there was genuine demand for the units proposed. A Deed of Variation dated 21st April 2021 (**Appendix F**), thus accompanied the approval, noting at paragraph G:

'There remain [in] place extant historic permissions for an additional 12 holiday lets (as yet unbuilt) to be constructed on the Land but the parties have agreed that no more holiday lets will be built pursuant to these permissions until certain conditions have been satisfied. There is also a need for an additional amount of play space and play equipment as a result of the Further Unrestricted Units. The parties have therefore agreed to enter into this Deed of Variation upon the terms hereinafter appearing without which the 2019 Planning Application would not be granted.'

PL/2022/03356 (Section 73)

- 2.21 As a consequence of the considerable investment made in developing the site and in

order to bring about a beneficial completion of the development, a review has been undertaken to establish whether an alternative form of residential use could now be regarded as acceptable. That review reached the conclusion that there is a need for older persons' housing and, in particular, for those seeking to downsize from larger family housing in the rural area.

- 2.22 This is a form of housing provision regarded by many agencies, professional bodies, an All-Party Parliamentary Group and other authorities as inadequately provided for in the delivery of conventional housing developments. This evidence has been fully explored within previous submissions to WC and within the current Statement. Furthermore, the wealth of public support² for the previous application proposals, that also sought to change the use (via conditional amendment instead of a full planning application) clearly demonstrated that there was a demand for this form of development within Oaksey.
- 2.23 An application to remove of conditions 9, 11 & 12 on N/10/01773/S73 and replace with a condition restricting permanent occupancy to over 55's only was submitted to WC on 27th April 2022 and validated on 30th May 2022. Despite attempts to discuss the proposals with the Case Officer prior to determination, the application was refused under delegated powers on 5th November 2022 (**Appendix G**).
- 2.24 Prior to determination, the Applicant considered it prudent to supply further detail in response to the comments of technical consultees, including evidence that an appropriate standard of parking could be achieved. The Applicant also sought to demonstrate that the proposed permitted residential accommodation would be suitable for those over 55 years, and accordingly Part M4(2) Building Regulations could be complied with.
- 2.25 It should be noted that the Ward Councillor called in the application for Planning Committee determination (whether for approval or refusal) on the 15th July 2022. This request was rescinded on 3rd November 2022, thus enabling the decision to be made by the Case Officer some 2 days later.
- 2.26 It is important to note from the Case Officer's delegated decision report (**Appendix G**)

² Over 100 individual supporting representations were submitted to WC during its consideration of the application.

that the application did not attract any technical objections, of which would be incapable of consideration through the discharging of conditions. The single reason for refusal related to the locational policy circumstances of the site and alleged insufficient (needs) evidenced justification for older person's independent living.

- 2.27 That decision therefore confirmed that there were no highways, landscape, urban design, heritage, ecological, educational, affordable housing or public open spaces-based objections to the change of occupancy of Phase IV from holiday makers to permanent occupation by those over 55 years of age.
- 2.28 Within the concluding comments from within the Case Officer's Delegated Report, concerns included that the site is not allocated for development, beyond the defined settlement boundary, as well as the construction of the properties allegedly being restricted to holiday units under the terms of a planning obligation.
- 2.29 Conflict with the aims of Policy CP46 of the WCS are also cited due to the lack of evidenced need, with accessible services and facilities locally.
- 2.30 It is noted that the tilted balance in favour of development was considered engaged at the time of the decision (as also is currently engaged at the time of this application), however, concluding the harm in respect of site location constraints being significant. Boosting the supply of housing land was afforded limited weight in the planning balance.

APP/Y3940/W/23/3317020 ('Second Appeal')

- 2.31 The appeal against WC's refusal of the application PL/2022/033356 was lodged in tandem to the Section 73 application submission. The refused s.73 application was notably validated and registered following which some three successive appeal Inspectors were allocated to consider the appeal over an extensive period of some 14 months before the dismissal decision letter was eventually issued.
- 2.32 The appeal was dismissed by the Inspector in a decision dated 11th April 2024. The Appeal Decision and associated Costs Decision is attached to this Statement at **Appendix H**.
- 2.33 The Inspector found that:

"...the original description of development does not restrict the dwellings to Class C3 only, it specifically restricts them to holiday lodges. Consequently, the fact that holiday

lodges and over 55s housing would fall within the same Use Class is not material to the consideration of whether the conditions can be removed and replaced..."

- 2.34 The Inspector therefore, dismissed the appeal in light of a referenced *Finney*³ judgement in which the Courts established: "...that an application under s.73 of the Act may not be used to obtain a permission that would require a variation to the terms of the "operative" part of the planning permission..." (paragraph 8).
- 2.35 This decision identified the relevant Court judgement that contradicted the procedure in which the Authority and Applicant had continually agreed appropriate to considering the proposals at the site. This decision concluded that a full planning application be required for the change of use of the units to Class C3 residential use, to allow appropriate consideration and determination (paragraphs 13 & 14).

PL/2023/00296 S.73 Resubmission

- 2.36 A resubmission of the s.73 application sought to address the reasons for refusal as noted on the decision notice and within the Case Officer's delegated decision report (associated with the previous application PL/2022/03356), and formally submit additional information which the Case Officer only partially consulted upon. This further application was submitted on 13th January 2023 and validated under reference **PL/2023/00296**. It is however materially the same at the previous application that was the subject of the tandem appeal (ref: APP/Y3940/W/23/3317020). The application received in excess of 110 letters of support from members of the public. The application received no objection from technical consultees. The only objection received was from Oaksey Parish Council.
- 2.37 The application was '*declined to be determined*' by WC following the appeal decision associated with the previous S.73 application that revealed the *Finney* case, that WC then concurred with the Inspector's conclusions that the S.73 was an inappropriate procedure to consider the re-use of the holiday units and for permanent residential occupancy for older persons.

³ John Leslie Finney v Welsh Ministers, Carmarthenshire County Council, Energiekontor (UK) Limited [2019] EWCA Civ 1868 (see **Appendix I**)

Previous Phases of Development

02/01841/FUL

- 2.38 This application sought the erection of 18no holiday lodges, bunkhouse, covered parking area and associated storage, workshop and reception areas. This was approved in October 2002. An associated appeal ref: APP/J3910/A/04/1145607 is relevant for the purposes of subsequent variations of conditions, but the details of such appeal are not publicly available. The full combined file of relevant documents associated with this application is attached to this Statement at **Appendix J**.

N/10/03612/S73A

- 2.39 This variation of conditions submission associated with previous approval ref: 02/01841/FUL (for the erection of holiday lodges) and subsequent appeal ref: APP/J3910/A/04/1145607 sought the update of conditions to align with Government guidance for the registered addresses of occupants. This amendment related to plots 3, 5, 6, 8 and 10-19.

11/02036/S73A

- 2.40 This variation of condition sought a continuation of the tourism occupancy of dwellings and amendment in line with government requirements for occupant's residence occupation details. This related to plot 2.

N/12/00034/S73A

- 2.41 This variation of condition was also consistent with the terms of the amendments outlined above, associated with the 2002 approval and appeal. This approval related to unit 4.

19/01991/VAR

- 2.42 This variation of condition sought the removal of conditions 8-10 of approved S73 application ref: N/10/03612/S73A to allow permanent residential occupation of plots 3, 5, 6, 8, 10, 11 and 20-25.
- 2.43 This is a notable approval at the site, that has established the principle for permanent residential occupancy of former tourism units at the site. The associated Officer's Report to the Planning Committee of 6th November 2019 and Decision Notice are

attached to this Statement at **Appendix F**.

- 2.44 This proposal was accompanied by a Marketing Report demonstrating that the tourism units had become unviable and owing to the fact these are not new build properties, alternative use found to be appropriate. These units at the site lie to the east of the current Phase IV application site.

PL/2022/03549

- 2.45 Pursuant to application ref: N/11/02036/S73A, a variation of condition application was submitted concerning the removal of condition 7 (tourism occupancy restriction) and replacement with 2 further conditions to restrict residency to persons as a primary, permanent residence. This application was refused for a single reason that considered that inadequate information had been supplied to demonstrate there was no demand for the holiday let accommodation. The decision notice and case officer's delegated report is attached to this Statement at **Appendix K**.

3.0 Proposed Development

- 3.1 As a result of the above planning history, the current application seeks to retain the approved units and change the use from holiday units, to permanent residential dwellings, occupancy restricted to older persons (aged 55 years +) dependent relatives and carers.
- 3.2 The proposals are materially consistent in respect of site location, scale and appearance of the units, highways and drainage arrangements to the extant approvals. The parking arrangements have been amended as per previous Section 73 submissions (ref: PL/2023/00296) that were considered acceptable by the responding Highways Development Control consultee (dated 06/02/2023). The further information submitted in support of this change of use application comprises updated Ecological information to ensure that the proposals are capable of demonstrating a deliverable net gain in the biodiversity of the site post development, as well as site plans depicting the footpath and cycleway connection to the centre of the village westwards.

Ref: Change of Use of Implemented Phase IV Development at Oaksey Park Golf and Leisure to C3 Residential Occupation by Independent Older Persons – JC/006/RG-(PS)

3.3 The planning application is accompanied by the following documents and drawings:

Document	Reference	Produced By
Application Form		Impact Planning Services Ltd
CIL Form		Impact Planning Services Ltd
Planning Statement	JC/006/RG-(PS)	Impact Planning Services Ltd
Location Plan	1630-120	NC Architects
Phase 4 Site Layout Plan	1630-106 B	NC Architects
Plots 1-4 Floor Plans & Elevations	1630-010 A	NC Architects
Plots 5-7 Floor Plans & Elevations	1630-011 A	NC Architects
Plots 8-10 Floor Plans & Elevations	1630-012 A	NC Architects
Plots 11-12 Floor Plans & Elevations	1630-013 A	NC Architects
Preliminary Ecological Appraisal	3192 01 (20/12/24)	Focus Environmental Consultants
Biodiversity Net Gain Assessment	3192 01 (12/02/2025)	Focus Environmental Consultants
Biodiversity Net Gain Metric		Focus Environmental Consultants

3.4 The planning history for the site at Oaksey Park has included application material including marketing evidence that holiday accommodation is not viable for the units, as well as the appropriateness for the existing units to be re-used for permanent residential occupation. The previous decision relating to previous application ref: 19/01991/VAR demonstrates that the Authority accepts that the market for holiday homes at the application site has not changed and that as such the originally intended use remains unviable.

3.5 However, the greatest contention in respect of previous applications to remove occupancy restriction conditions at the Phase IV site has arisen from the Authority's consideration that insufficient evidence had been provided to justify that the form of accommodation proposed (for older persons) is appropriate in this location.

3.6 Since the dismissed appeal however there have been significant changes to national planning policy and the circumstances of the site which warrant a reconsideration of the benefits which will accrue from the redesignation of the implemented holiday unit scheme to one which serves the needs of independent older persons.

3.7 Importantly however the form of older person's accommodation being proposed is

entirely justified on the basis of demographic need applicable to the communities across a predominantly rural area and is locationally anticipated under the auspices of Core Policy SP2 as explained at paragraph 4.25. The Core Strategy's "exception policies" include Core Policy 46 – *Meeting the needs of Wiltshire's vulnerable and older people*. This policy specifically allows for this form of accommodation to be developed beyond settlement limits enabling older persons to remain independent within their community.

- 3.8 The publication of the National Planning Policy Framework (NPPF) in December 2024 has reintroduced the requirement for all local planning authorities to maintain a minimum of 5 years' worth of housing land supply. Wiltshire Council has confirmed that the effect of the revised NPPF means that the Council can now only demonstrate a 2.03 years' worth of supply of housing land.
- 3.9 As such the housing policies Core Strategy (2015) are regarded as out of date and of limited weight. As a consequence, the presumption in favour of sustainable development (or the tilted balance) is engaged under the auspices of national policy as expressed at paragraph 11 d) ii., there being no protected areas or assets of particular importance applicable in this case.
- 3.10 In the recently allowed appeal (ref APP/Y3940/W/24/3345598 dated 21st January 2025) into proposals for 145 dwellings and community facilities near Westbury, the Inspector found that, as a consequence of the significant shortfall in housing and, as there is no immediate remedy, the current development plan is failing to meet its strategic challenges. Thus, the Inspector found: *"41. ...its settlement limits of development are not working effectively. These policies are therefore of limited weight, as is the conflict with them."*
- 3.11 It is also important to acknowledge that the Oaksey Neighbourhood Plan Review (2024) specifically acknowledged that the Oaksey Phase IV development could be linked via a footpath and cycleway to the village centre thus improving its accessibility rendering it capable of reconsideration for unrestricted housing occupancy. In view of the severity of the housing land supply shortfall and the limited weight accorded to the strategic policies of the Core Strategy and settlement limits by the appeal Inspector in the recent (above) appeal decision, national policy requires that the *tilted balance* in favour of development applies unless there would be adverse impacts arising from the development which would significantly and demonstrably outweigh the benefits as

assessed against national policy.

- 3.12 It is considered that as there is no such extent of adverse impact but considerable benefits, permission ought to be granted.

4.0 Development Plan Policies & Other Material Considerations

Development Plan

- 4.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 (The Act) requires that planning applications are determined in accordance with the statutory development plan unless material considerations indicate otherwise. Section 70 (2) of the Town and Country Planning Act 1990, requires that the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.
- 4.2 The relevant Development Plan Documents comprise the Wiltshire Core Strategy – adopted in 2015⁴ (WCS), the Saved Policies of the North Wiltshire Local Plan 2011 and the Oaksey Neighbourhood Plan 2019 (ONP), plus Oaksey Neighbourhood Review 2023 (ONPR).

Wiltshire Core Strategy (2015)

- 4.3 **Core Policy 2: Delivery Strategy** sets out the delivery strategy for development across Wiltshire. Outside the defined limits, development is restricted unless in circumstances as permitted by other policies of the plan, or as exceptions identified at paragraph 4.25. This provides for a number of 'exception policies' which seek to respond to local circumstances and national policy, including; additional employment land (CP34) military establishments (CP37), tourism development (CP39 & CP40), exception sites (CP44), specialist accommodation (CP46 & CP47) and supporting rural life (CP48).

⁴ It should be noted that the Core Strategy (2015) is long-overdue review. It was supposed to have been the subject of a "partial review at an early date" as recorded by the Examination Inspector in 2014

- 4.4 It must be noted that the policies relevant for the distribution of housing; WCS CP2 and Malmesbury Community Area Policy 13 (see below) are considered out-of-date as a result of Wiltshire Council's inability to demonstrate a minimum of 5 years supply of deliverable housing land under the terms of the revised standard method calculation, adopted under the latest published NPPF (December 2024).
- 4.5 Oaksey is a settlement which lies within the Malmesbury Community Area, and **Core Policy 13** sets out the spatial policy for this area. The village of Oaksey defined as a large village with a defined settlement boundary, within which limited residential development to meet local needs is considered appropriate. As a matter of principle therefore the village is regarded as capable of accommodating some growth.
- 4.6 **Core Policy 43 Providing affordable homes:** During the Authority's consideration of the previous applications for a variation of the occupancy restriction applicable to Phase IV, it was established (through the Authority's internal consultation process) that there would be no requirement for affordable housing to be provided in association with the independent older person's scheme at the site.
- 4.7 **Core Policy 46: Meeting the needs of Wiltshire's Vulnerable and Older People** seeks to address the issue of an ageing population, which is particularly important in Wiltshire, by ensuring that there is adequate provision of specialist accommodation within an area which has a predominantly rural character with no cities and fewer large towns given its sheer geographical scale and population distribution. Paragraph 6.52 notes the importance and need to ensure that there are alternative facilities where people can continue to enjoy living in their local area with the level of care they require. The Policy makes a clear distinction between the types of accommodation provided, including Class C3 properties for downsizing older persons, which are not the subject of the same restrictive criterion as those considered Class C2 residential care institutions and properties.
- 4.8 The Policy states that:

"The provision, in suitable locations, of new housing to meet the specific needs of vulnerable and older people will be required. Wherever practicable, accommodation should seek to deliver and promote independent living."

Older people

Housing schemes should assist older people to live securely and independently within

their communities. Residential development must ensure that layout, form and orientation consider adaptability to change as an integral part of design at the outset, in a way that integrates all households into the community.

Developers will be required to demonstrate how their proposals respond to the needs of an ageing population

Specialist accommodation

The provision of sufficient new accommodation for Wiltshire's older people will be supported, including

- i. Nursing accommodation*
- ii. Residential homes*
- iii. Extra-care facilities*

Proposals for extra-care accommodation to be sold or let on the open market are not considered exempt from the need to provide affordable housing. Therefore, proposals for extra care accommodation will be expected to provide an affordable housing contribution in line with Core Policy 43 (Providing Affordable Homes).

Provision of homes and accommodation for vulnerable people will be supported, including but not limited to:

- iv. People with learning disabilities*
- v. People with mental health issues*
- vi. Homeless people and rough sleepers*
- vii. Young at risk and care leavers.*

Such accommodation should be provided in sustainable locations, where there is an identified need, within settlements identified in Core Policy 1 (normally in the Principal Settlements and Market Towns) where there is good access to services and facilities.

In exception circumstances, the provision of specialist accommodation outside but adjacent to the Principal Settlements and Market Towns will be considered, provided that:

- viii. A genuine, and evidenced, need is justified*
- ix. Environmental and landscape considerations will not be compromised*
- x. Facilities and services are accessible from the site*
- xi. Its scale and type is appropriate to the nature of the settlement and will respect the character and setting of that settlement." [IPS emphasis]*

Oaksey Neighbourhood Plan Review (2018-2038)

- 4.9 The First Review of the Oaksey Neighbourhood Plan has been formed to extend the plan period from 2026 through to 2036. In May 2024, Wiltshire Council resolved to adopt (made) the Oaksey Neighbourhood Plan (First Review) with the modifications as specified in the Examiner's report. The Independent Neighbourhood Planning Examiner concluded, subject to the modifications proposed in his report, that the plan met the basic condition and should be made.
- 4.10 Paragraphs 2.9 and 2.10 within this adopted development plan document state:
- "Residential development in the countryside results in proposals which fail to meet the principles of sustainable development. The removal of occupancy restrictions on holiday accommodation to allow their use as a permanent residential dwelling has taken place at Oaksey Park. At present Oaksey Park has no effective pedestrian or cycle linkages into the main village; the driveway to Oaksey Park is at the far eastern end of the village and is some 600m in length. Consequently, occupiers at Oaksey Park are unduly reliant upon use of the private car even to access the local services and facilities in the village. It could be feasible for Oaksey Park to create a suitable pedestrian and cycle link to Wick Road which would connect into the heart of the village; albeit that Wick Road itself is a narrow shared surface country lane.*
- The removal of conditions limiting occupancy to holiday accommodation will be resisted in the countryside as it would result in residential development that is isolated and/or has poor accessibility by sustainable transport modes including walking, cycling and public transport." [IPS Emphasis]*
- 4.11 **Policy 1 – Settlement Boundary** states that the identified settlement boundary serves the purpose of containing growth of the settlement and protecting the countryside from encroachment.
- 4.12 **Policy 2 – Development in the Open Countryside** states that:
- "Residential development will only be permitted in the countryside where it meets one of the exceptions policies referred to in paragraph 4.25 of the Wiltshire Core Strategy and National Planning Policy."*
- 4.13 This importantly acknowledges the Core Strategy's favourable treatment of proposals

coming forward under the auspices of Core Policy 46, as in this case.

4.14 **Policy 3** states:

“...Proposal to remove occupancy restrictions on holiday accommodation in the countryside to allow their use as a permanent residential dwelling will not be supported as it would result in residential development that is isolated and/or has poor accessibility by sustainable transport modes.

The Parish Council will work with Wiltshire Council and the operators of Oaksey Park to improve pedestrian and cycle linkages between the village and Oaksey Park to enhance accessibility and active travel opportunities for the existing residents of Oaksey Park...”

4.15 In discussing the NP’s extent of housing provision, paragraph 7.19 states that:

“...It is considered that supply from Oaksey Park that arose from properties changing from holiday accommodation to permanent dwellings should be considered an abnormal as this cannot necessarily be repeated; so is proposed to be discounted...”

4.16 This section concluded that the updated requirement calculation based upon WC’s housing targets until 2038 still reveal Oaksey as being capable of delivering commitments and windfall allowance that meets requirements across the Plan period. This conclusion was however, prior to the publication of the National Planning Policy Framework in December 2024, that has now significantly increased the housing requirements for Wiltshire, as discussed further below.

Oaksey Neighbourhood Plan

4.17 The originally made Oaksey Neighbourhood Plan 2019 has been superseded in full by the latest Neighbourhood Plan Review.

North Wiltshire Local Plan 2011 (Saved Policies)

4.18 Following the adoption of the Core Strategy, a number of the Local Plan policies were ‘saved’ and will be replaced as part of the local plan review. **Policy H4 Residential Development in the Open Countryside** was saved within the WCS, and seeks to restrict development in the countryside unless it is in connection with the essential

needs of agriculture, forestry or other rural enterprise, or is a replacement for an existing dwelling (subject to compliance with three further criteria).

Other Material Considerations

National Planning Policy Framework

4.19 The latest edition of the National Planning Framework (NPPF) was published in December 2024 and forms the primary national planning policy document. Within the document, the Government's overarching policy for the operation of the planning system are set out. These seek to achieve sustainable development. The policies of the NPPF must be taken into account as a material consideration in the determination of applications.

4.20 **Paragraph 11** establishes both plans and decisions should apply a presumption in favour of sustainable development. This states for decision-taking:

" ... c) approving development proposals that accord with an up-to-date development plan without delay; or

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 strong 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, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination."

4.21 **Paragraph 14** requires that where development proposals conflict with the policies of a neighbourhood plan, the adverse impact of allowing the development is likely to significantly and demonstrably outweigh the benefits, provided all of the following

apply:

- a) the neighbourhood plan became part of the development plan five years or less before the date on which the decision is made; and
- b) the neighbourhood plan contains policies and allocations to meet its identified housing requirement (see paragraphs 69-70).

4.22 The Oaksey Neighbourhood Plan has been reviewed in 2023. While now a made plan forming part of the development plan for the purposes of s38(6) of the 2004 Act and 70(2) of the 1990 Act, the limited weight accorded to the related Core Strategy's strategic policy and settlement limits derived from the Strategy ordinarily renders the reviewed Neighbourhood Plan out-of-date.

4.23 While paragraph 14 states that where a neighbourhood plan became part of the development plan five years or less before the date on which a decision is made, proposals regarded as in conflict *are likely* to significantly and demonstrably outweigh the benefits. It is clear from this wording however, that national policy does not predetermine an unfavourable consideration.

4.24 In this case however, the proposals are regarded as compliant with both the Core Strategy and Neighbourhood Plan Review as identified above. While the housing land supply shortfall has rendered the strategic and other related housing policies of the Core Strategy (including settlement limits) out of date and of limited weight, nevertheless proposals which are in accordance with the Neighbourhood Plan Review (as in this case) must attract the presumption of approval under national policy as expressed at paragraph 11 c) of the NPPF.

4.25 **Paragraph 39** requires local planning authorities to approach decisions on proposed development in a positive and creative way using the full range of tools available. Decision-makers should seek to approve applications for sustainable development.

4.26 **Paragraph 61** of the NPPF states: “...*To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay. The overall aim should be to meet an area's identified housing need, including with an appropriate mix of housing types for the local community.*’ [IPS emphasis].

- 4.27 Furthermore, policy as expressed at **paragraph 63** requires that: “...*establishing need, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies. These groups should include (but are not limited to) those who require affordable housing; families with children; older people (including those who require retirement housing...*”⁵
- 4.28 **Paragraph 73** notes the relatively quick build out of small and medium housing sites and the importance of the contribution such homes can provide to meeting the housing requirement of an area.
- 4.29 **Paragraph 96** requires policies and decisions to achieve healthy, inclusive and safe places which promote social interaction including opportunities for meetings between people who might not otherwise come into contact with each other.
- 4.30 **Paragraph 116** states that: “...*development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network, following mitigation, would be severe, taking into account all reasonable future scenarios.*”
- 4.31 **Paragraph 124** requires that 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. The site is the subject of an extant permission for holiday homes but remains vacant and immediately available for development.
- 4.32 **Paragraph 125** seeks for planning decisions to secure multiple benefits from urban and rural land, including maximising opportunities to achieve environmental net gains (criterion ‘a’), as well as promote the development of underutilised land and buildings, particularly when capable of meeting identified needs (criterion ‘d’).
- 4.33 Annex 2 provides a definition of ‘older people’, described as:

“People over or approaching retirement age, including the active, newly retired through

⁵ Annex 2 of the NPPF includes the definitions of Older People: “*People over or approaching retirement age, including the active, newly retired through to the very frail elderly; and whose housing needs can encompass accessible, adaptable general needs housing through to the full range of retirement and specialised housing for those with support or care needs.*”

to the very frail elderly; and whose housing needs can encompass accessible, adaptable general needs housing through to the full range of retirement and specialised housing for those with support or care needs.” [IPS Emphasis]

Wiltshire Design Guide (2023)

- 4.34 Paragraph 11.2.2 notes that there is evidence supporting the fact that Wiltshire is experiencing and ageing of the population at a rate faster than the national average and homes need to be constructed to be adaptable (Buildings Regulations M4[2]) standards. The adaptability of properties to accommodate the changing needs of residents and improve the options within housing stock to accommodate downsizing is a key aim for the design of properties and strategies across communities.

Older Person's Housing

- 4.35 The following reports and studies support the rationale for the development proposals in more rural locations, to meet the needs of the ageing rural population to remain within their communities, but providing an attractive downsizing property to encourage vacation of under-occupied properties and support the vitality of rural settlements.
- HAPPI 4 *“Rural Housing for an Ageing Population: Preserving Independence”*
The Rural HAPPI Inquiry written by Jeremy Porteus, April 2018
 - HAPPI 3 *“Housing our ageing population: Positive Ideas. Making Retirement Living a Positive Choice”* APPG Inquiry – Richard Best & Jeremy Porteus, June 2016
 - Torrington, J. (2015) Foresight evidence review: What developments in the built environment will support the adaptation and ‘*future proofing*’ of homes and local neighbourhoods so that people can age well in place over the life course, stay safe and maintain independent lives
 - NHBC (2017) *Moving insights from the over-55s What homes do they buy?*
 - RIBA (2019) *A Home for the Ages: Planning for the Future with Age-Friendly Design*
 - Lichfields (2019) *INSIGHTS Solutions to an age-old problem in the South West*

Ref: Change of Use of Implemented Phase IV Development at Oaksey Park Golf and Leisure to C3 Residential Occupation by Independent Older Persons – JC/006/RG-(PS)

- Government Office for Science (2016) *Future of An Ageing Population*
- House of Lords Built Environment Committee (2022) *Meeting Housing Demand*
- The Mayhew Review: *Future-proofing retirement living. Easing the care and housing crises* (December 2022).
- Age UK: Policy Position Paper – Retirement Housing (July 2019)
- Royal Town Planning Institute – Practice Advice: Housing for Older People (November 2022)
- Dr Mayhew, UoL, ARCO & CSFI - Too Little, Too Late? Housing for an Ageing Population (June 2020)
- Chief Medical Officer's Annual Report 2023: Health in an Ageing Society
- MHCLG: What Older People Want: A rapid evidence assessment on what older people want and can afford, when it comes to their housing choices when looking to move (November 2024)
- Older Persons House Taskforce: Our Future Homes: Housing that Promotes Wellbeing and Community for an Ageing Population (November 2024).

APP/Y3940/W/24/3345598 (dated 21st January 2025)

- 4.36 An appeal decision associated with an outline application for up to 145 homes at Glenmore Farm, The Ham/Hawkridge Road, Westbury is of relevance to the current application. The subject site lies beyond the defined settlement boundary of Westbury and did not accord with the exceptions policies associated with Core Policy 2 of the WCS. The decision is attached to this Statement at **Appendix L**.
- 4.37 Paragraphs 14 and 15 found that owing to the edge of settlement location, plus footpaths, the site can be considered sufficiently connected to the settlement and allow for sustainable modes of travel from the site to public transport links and local services.
- 4.38 Paragraph 40 found that:

“The location of the proposal outside the ‘limits of development’ would conflict with the development plan as a whole. However, the Council does not have a 5 year supply of

housing land and there is a significant shortfall of affordable housing. Thus, Footnote 8 of Framework Paragraph 11 details that policies for applications involving the provision of housing are considered out of date. There are no policies that would indicate a strong reason for refusal and thus the 'tilted balance' of 11 d) ii would apply."

- 4.39 Paragraph 41 continues to state that the Local Plan having recently been submitted for examination means in the medium term, there is no obvious remedy to the significant housing land supply shortfall and that: "...*this overall position indicates that the development plan is failing to meet its strategic challenges. Thus, its settlement strategy and limits of development are not working effectively. These policies are therefore of limited weight, as is the conflict with them.*"

- 4.40 Paragraph 42 concludes that:

"The delivery of market and affordable housing is of substantial weight in favour. Additionally, there would be biodiversity net gain, public open space, a community orchard, creation of jobs during construction, increased local spending, provision of night time bus service and off site highway improvements. These all weigh in favour and many would benefit the wider community..."

APP/Y3940/W/24/3351527 & APP/Y3940/W/24/3351528 (dated 17th February 2025)

- 4.41 A conjoined appeal decision related to the delivery of up to 90 dwellings, plus creation of a new local centre, comprising Class E(f) day nursery, Class E(a) convenience store and associated landscaping and parking was allowed on 17th February 2025.
- 4.42 At paragraph 25, the Inspector found that Core Policy 2 of the WCS establishes a minimum housing requirement of 42,000 dwellings for the plan period 2006 – 2026. "...*However, that figure fell short of the objectively assessed need for 44,000 homes over the plan period as required by national policy (2012). Although the plan was found to be sound, its anticipated early review has not occurred...*"
- 4.43 Paragraph 27 of this decision continues to stated that: "...*parties agree that the Framework does not include a presumption against housing in the countryside beyond defined settlement boundaries...*"
- 4.44 Paragraph 31 found that:

“The Local Planning Authority cannot currently demonstrate a five-year supply of deliverable housing sites (2.03 years); there have been chronic problems with housing delivery at the first tier settlements; and the Council has been unsuccessful in resisting a number of recent appeals at lower tier settlements including Large and Small Villages. The inevitable conclusion is that, although some representations claim that development is not necessary, new house building will be required on unallocated sites. Priority should be given to the more sustainable locations.”

4.45 Paragraph 36 found that:

“It is clear that the settlement boundary policies, by placing general restraint on development outside defined limits, are inconsistent with the Framework. Moreover, it is obvious that greenfield sites will be required...”

5.0 Planning Considerations

Principle of Development

- 5.1 The proposals are considered to accord entirely with the aims of WCS Core Policy 2: Delivery Strategy which states development beyond defined settlement limits are supported provided that they demonstrate entire compliance with other relevant, exception site policies identified within paragraph 4.25 (also consistent with ONP Policy 2 and ONPR Policy 3). Within these exception sites, Core Policy CP46 is relevant to the proposals at the site, for which it is considered the proposals are in full compliance.
- 5.2 In accordance with the aims of Core Policy CP46, the proposals are considered to facilitate the delivery of appropriate, secure and independent accommodation for older persons. The homes at Oaksey will provide for more rural dwellers and allow for older people to downsize to an attractive property within their existing rural communities. The proposed dwellings have been designed to ensure accessibility and adaptability to comply with Buildings Regulations M4(2) accessibility standards.

- 5.3 Owing to Wiltshire Council's severe housing land supply shortfall⁶, the presumption in favour of development is engaged under the terms of paragraph 11 of the NPPF and residential development should be approved unless there are significant and demonstrable adverse impacts that would outweigh the public benefits. It is considered in this instance, the contribution of 12 dwellings towards a significant shortfall in residential land supply can deliver a publicly supported, WCS identified need for older persons downsizing housing, that may also be built out relatively quickly.
- 5.4 It must be noted from recent appeal decision ref: APP/Y3940/W/24/3345598 (**Appendix M**) the Inspector found that owing to the severity of the land supply shortfall in Wiltshire, the settlement strategy policies and settlement boundaries cannot be afforded greater than limited weight, nor the weight afforded to any conflict with these policies. However, in the instance of the current proposal, any potential harm is lessened further, owing to the units having commenced development associated with the extant permission, but also accordance with an identified exception policy for older persons housing under the terms of Core Policy 46, associated with paragraph 4.25 from Core Policy 2.
- 5.5 Whilst the ONPR considers that the housing requirement for housing has been met and exceeded across the plan period when considering windfall additions, the recently published NPPF, updating housing methodology and Wiltshire's significant housing land supply shortfall should be considered to render the calculations out of date. As a larger village, Oaksey should be expected to contribute further modest and sustainable growth.
- 5.6 The severity of the Authority's housing land supply shortfall has led to an appeal Inspector's finding that the strategic policies, including the derived distribution of housing, settlement hierarchy and settlement limits are of limited weight. As a more recently made neighbourhood plan, such a finding challenges the efficacy of a plan based upon a failing strategy notwithstanding national policy as expressed at paragraph 14 of the NPPF.
- 5.7 In this case however the proposals are considered to accord with the ONPR as a

⁶ Stated to be 2.03 years within WC's latest Briefing Note (24-20) dated 17th December 2024 (see **Appendix L**).

result of that Plan's acceptance that exception sites (under the auspices of Core Policies SP2, at paragraph 4.25) includes proposals coming forward under the terms of Policy CP46 – housing for vulnerable and older persons, can be favourably considered under the terms of ONPR Policy 2.

- 5.8 Further to this, recent conjoined appeal decision ref: APP/Y3940/W/24/3351527 & APP/Y3940/W/24/3351528 (dated 17th February 2025)⁷ made it clear that the Framework does not include a presumption against housing in the countryside beyond defined settlement boundaries (paragraph 27). Owing to the severity of the housing land supply shortfall within Wiltshire the Inspector also found that new house building will be required on unallocated sites (paragraph 31), but also greenfield sites will be required to deliver homes (paragraph 36). In this instance, the site is considered a vacant development site within an enclave of existing residential development.
- 5.9 Given the serious housing land supply predicament facing WC it would be advantageous to utilise a vacant development site which lies on the edge of a larger village and has improved accessibility to the village centre. The pedestrian and cycleway link to Wick Road and into the village centre, as sought by the ONPR, forms part of these proposals and renders the site far more accessible to the facilities within Oaksey than had been the case with previous applications.
- 5.10 The units proposed for change of use at the site have not been constructed but form part of an extant permission, as previously confirmed by WC. The dwellings previously intended for holiday use would not, once constructed represent an unanticipated element of new building at the site; their number, scale, layout, and external appearance remain as already approved. The physical and visual impact arising from the proposal would be materially the same. The buildings would simply be permanently occupied through the change of use by older people, their dependent relatives and / or carers.
- 5.11 The principle of permanent occupancy of other properties at Oaksey Park has previously been found acceptable under the terms of a variation of condition application for properties to the east of the current application site. The proposal for the reuse of these existing properties to meet identified needs for homes, as well as

⁷ As attached to this Statement at **Appendix N**.

identified needs for older persons accommodation should be accorded significant weight in the planning balance.

- 5.12 The proposals will contribute 12 dwellings comprising a mix of 2 and 3 bedrooms in accordance with the extant consent, in a form, scale, layout and appearance consistent with those considered technically acceptable previously. There is no provision of affordable units proposed, as found acceptable within the Housing Enabling Team consultation response to the previous application (PL/2023/00296) dated 16th February 2023⁸.
- 5.13 Whilst it is acknowledged that each application must be considered on its own merits, the current proposals cannot reasonably be considered in a less favourable or sustainable location than the residential occupation of dwellings by older persons at the Wiltshire Golf and Country Club to the south west of Royal Wootton Bassett (established through relevant variation of conditions (1) approvals associated with references: 14/11318/VAR & 16/01448/VAR following the original approval 09/01057/S73A).
- 5.14 The contribution is considered to make a valuable addition to not only WC's significant housing land supply shortfall, but also homes for downsizing, older persons in an attractive landscape. The homes are also capable of achieving M4(2) Building Regulations standards, that will provide some flexibility to adaptation for residents as their accessibility needs may change over the time of occupying the property. The properties, as per the existing units at the site will be constructed to achieve the top BRE standards and the requirements of EcoHomes award of rated: "*Excellent*".
- 5.15 It should be considered the proposals represent an effective use of land, with an extant permission for the erection of units, and the potential to sustainably contribute to completing an approved complex of buildings with limited constraints and established

⁸ It should be noted that the previous S.73 proposals under the terms of reference PL/2022/03356 and PL/2023/00296 had been determined in accordance with the current development plan: Wiltshire Core Strategy as per the requirements of Section 38(6) of the Planning and Compulsory Purchase Act and Section 70(2) Town and Country Planning Act 1990. This maintained the stance from the original (2005) approval that affordable housing was not required on this site, despite the updated policy consideration since the previous Policy RH20 within the North Wiltshire Local Plan 2001. Through the current application therefore, and as the site forms an exception to typical development requirements (WCS CP1 & CP2) under the terms of CP46, affordable housing is not proposed as a matter of consistency in advice from WC and relevant officers.

links to the heart of the village (in accordance with the aims of Section 11 of the NPPF). The site is akin to a previously developed site, as the implemented permission has left the land as commenced but incomplete. The proposals can effectively and promptly achieve completion to contribute towards WC's severe extent of housing land supply shortfall.

- 5.16 It should be noted that a wealth of information has been provided to the Authority previously concerning the constraints associated with the operation of holiday units at the earlier phases of development at the site. The evidence included market assessments and viability evidence that the holiday accommodation was not appropriate at this site, resulting in WC approval for permanent residential occupation units sited to the east from the current application site (ref: 19/01991/VAR).
- 5.17 With reference to the ONP and ONPR, the principle of residential units at the site has been accepted in part, but with concerns for the potential future (now) changes of use of holiday units to permanent residential and the distance from the village centre and pedestrian accessibility. It must be noted that a safe pedestrian route has been secured to the west of the site, which is proposed to be formalised as part of the proposals. This provides access via the north-south Wick Road that passes to the west of the site and travels to the village centre just 350 metres from the properties via Wheatsheaf Lane. This route is intended to secure safe pedestrian and cycle access to the site at the western edge, as depicted upon plan ref: 1630-106 B. These works to establish the footpath were stated within the ONPR to be supported (paragraph 2.9) in order to make the site more accessible and sustainable. This footpath has been in operation for residents at the site and the Oaksey Park Golf and Leisure patrons.
- 5.18 The ONPR at Policy 3 identifies that permanent residential development beyond the identified boundary will not ordinarily be supported, unless being delivered in compliance with the exceptions policies identified at paragraph 4.25 of the WCS. In this instance, the proposals are considered to directly accord with the requirements of Core Policy 46: Meeting the Needs of Wiltshire's Vulnerable and Older People, as further explored below.

Rationale for Active Older Persons' Independent Accommodation

- 5.19 There is a wealth of information relevant to the identified needs for older persons, downsizing homes across the south west, as well as Wiltshire, that has been

considered as part of previous submissions to WC. This is contained within both of the previously submitted Planning Statements associated with PL/2022/03356, subsequent appeal and the most recent S.73 application ref: PL/2023/00296.

- 5.20 The UK population is ageing as the “baby boomers” move beyond their retirement years. Currently the over 65’s are growing at three times the rate of the overall UK population and by 2050 the ONS projects that one in four people in the UK will be aged 65 years and over, an increase from approximately one in five in 2019. The demand for new age-related housing is rising, as accepted and evidenced by central government policy makers. While one third of proposed new schemes are in rural areas, these are all relatively high-density apartment-based schemes. There is consumer resistance to such schemes. The rural population is ageing faster, and by 2039 half of rural households will be aged over 65.
- 5.21 The changing demographic of the population is focusing attention on addressing the concerns regarding the ageing population, longevity, public health and social welfare costs and critically, loneliness. These issues are driving to find accommodation solutions which will inevitably lead to the need to find accommodation options for ageing members of the population who want to downsize and remain independent, but importantly, close-by their existing social network.
- 5.22 Underoccupancy of housing is relatively high in the rural areas of Wiltshire (50% of properties had an occupancy rate of two or more spare bedrooms and 83% of properties one or more). Comparatively, in Devon and Cornwall the underoccupancy rates are between 41% and 48% with two or more bedrooms and between 35% and 32% for one or more spare bedroom⁹.
- 5.23 The initial data release for the 2021 ONS Census also states that the southwest of the UK has experienced the second highest rate of population growth from any of the subregions at 7.8%. Within Wiltshire approximately 35.8% of the 510,400 population are aged 55 years or older (45.94% of the adult population). Within these some 129,800 persons are aged between 55 years and 75 years of age, equating to approximately 25.43% of Wiltshire’s population.

⁹ Source: 2011 Census table QS412EW.

- 5.24 The HAPPI 4 report pulls together research from a number of sources and follows on from HAPPI 3, a report on retirement living. Importantly the report estimates that by 2039 half of rural households will be over 65 years of age.
- 5.25 Currently only 7% of older people live in specialised housing and only 5% of rural housing has the key features required for access for disabled users.
- 5.26 The WCS has no Policy basis or supporting justification requiring a demonstrable need for downsizing accommodation solely based upon the host community needs, as has been asserted through previous correspondence relating to the removal of conditions applications. As an identified larger village within the expansive, predominantly rural (Malmesbury) community area, it is considered that homes for older persons should be considered appropriate to serving the wider rural communities to enable an attractive alternative to town centre locations which would not be appropriate or attractive for existing, more rural dwellers. The site is located approximately 350 metres from the village centre via the provided pedestrian and cycleway, providing access to the village public house, bus stops, church, school, village hall and post office and other facilities to the west. The location is entirely sustainable and an appropriate alternative use of the existing properties in contributing to meeting Wiltshire's shortfall of all forms of residential accommodation.
- 5.27 Whilst WC has previously contested the relevance of such information to demonstrating that the homes for older persons at Oaksey being appropriate, ONS Census Data 2021 includes clear evidence that in rural areas, and predominantly rural authority areas such as Wiltshire, the population is ageing at a greater rate than the average nationally (as also acknowledged within the WCS at paragraph 6.53), as well as being subject to a greater level of underoccupancy of larger properties. The reintroduction of these larger properties to the market also serves to enable families to reuse these homes (as recognised at paragraph 6.55 of the WCS), with the further benefits of supporting local services, schools, public houses etc to contribute to the vitality of rural villages.
- 5.28 Census 2021 data reveals that some 43% of homes within Oaksey and 57.9% of properties in the immediate surrounding area are underoccupied by 2 or more rooms, with a further 32.7% and 25.8% respectively, underoccupied by 1 bedroom.
- 5.29 The site proposes the delivery of Class C3 residential homes for older persons in proximity to a larger village, as identified within the WCS. The assertion of Wiltshire

Council in refusing the initial S.73 application ref: PL/2022/03356 that CP46 requires proposals to be well related to principal settlements and market towns is strongly contested. Whilst the provision of specialist accommodation for C2 institutions states the need for these to be well related to settlements, the same is not true within the wording of CP46 in supporting homes for downsizing older persons. Market homes for older people includes for those approaching retirement and the newly retired, are stated to be required to assist older people to live securely and independently within their communities. The proposals are considered to entirely accord with the requirements of CP46.

- 5.30 It is notable that the previous application (ref: PL/2023/00296) received a significant number of public comments in support of the proposal (110+) to use the holiday accommodation properties as dwellings. Some 14 comments specifically lodged an interest in the potential to reside within the properties as the site. This support comprises the most up to date evidence that these forms of properties at this location would be appropriate. The current application scheme are directly comparable to these previous application proposals.
- 5.31 IPS research has indicated that WC have delivered no Class C3 residential dwellings within villages across the previous 10 years¹⁰, despite the settlement hierarchy supporting modest development that meets needs in larger villages as supporting settlements for the wider rural areas. Within the Malmesbury Community Area, 27no Class C3 dwellings for older persons have been approved in 2021 within Burton Hill. Wiltshire as a predominantly rural authority must consider Oaksey as a local centre, considering the level of services available, a considerable distance from the primary centre of the community area that lies north and west from the Swindon urban area.
- 5.32 It is suggested that the occupancy of the accommodation at Phase IV is restricted to the over 55s by the use of an appropriately worded condition such as:

“The dwellings the subject of this approval shall be only permanently occupied by:

- *Persons over 55 years of age where the property is their principal place of residence;*

¹⁰ As established through IPS research attached to this Statement at **Appendix O**.

Ref: Change of Use of Implemented Phase IV Development at Oaksey Park Golf and Leisure to C3 Residential Occupation by Independent Older Persons – JC/006/RG-(PS)

- *Persons living as part of a single household with such a person or persons including dependant relatives and carers; or*
- *Persons who were living as part of a single household with such a person or persons but who have since died.*

Reason: The condition is regarded as necessary as it restricts occupation in order to respond to a particular housing need in circumstances where normally permanent residential development would not be permitted.”

- 5.33 In terms of any concerns regarding the potential for use as second homes, it is considered that a further conditional restriction be applied:

“The dwellings the subject of this approval shall be occupied as the primary place of residence.

Reason: As this form of residential occupancy has been justified under exception Core Policy 46 to development plan policy, it is necessary to prevent the use of the dwellings as second homes or other forms of non-permanent residential use.”

Design

- 5.34 The proposals will remain entirely consistent with the previous Section 73 proposals by means of scale, orientation, appearance and boundary treatments. These proposals were considered and found acceptable by the Wiltshire Council Urban Design Officer and Case Officer in determining the application ref: PL/2022/03356.
- 5.35 The proposals are considered to be entirely appropriate for older persons, owing to the ground floor wet rooms, sufficient accessibility and adaptability for older person’s needs as they may change during the lifetime of occupying the property. Furthermore, the proposals include space for the retrofitting of internal lift between floors for disabled users. The proposals have been designed to ensure compliance with accessibility and adaptability standard M4(2) of the Building Regulations.
- 5.36 An existing footpath is being formalised at the west of the site, facilitating access from the Golf and Leisure site to the ‘heart of the village’, as has been stated to be supported within the ONPR. The footpath will include a connection to the application at the south western corner. This footpath through the site and adjacent woodland has been established over the previous few years as has a local Councillor been made aware, maintained for access to the existing properties at the site and some patrons of

the golf course.

- 5.37 This footpath and cycle route provides a sustainable and convenient short journey time from the Oaksey Park site to the centre of the village, associated services and public bus stops a short distance from the site. The footpath is proposed to be finished with crushed gravel and timber boarding, with low level lighting as existing adjacent to the vehicular access at the Golf Club site.

Ecology

- 5.38 The submission is accompanied by a Preliminary Ecological Appraisal (PEA) and Biodiversity Net Gain (BNG) Calculation Metric, following the completion of baseline value assessments on site in November 2024. The PEA notes that the current site conditions comprise a semi-natural plot dominated by grassland, mixed scrub and native species rich hedgerows to the boundaries. Owing to the implementation of previous approvals at the site, areas of stripped grassland, excavations and earth mounds feature within the site, near to the gravel access route and parking areas.
- 5.39 The PEA also concluded that no existing structures or mature trees were present within the site that hold the potential to support roosting bats. However, the trees and hedgerow, as well as the wider land ownership area beyond the defined development boundary, was concluded to hold a moderate potential for foraging and commuting bats.
- 5.40 In respect of other protected species, the site walkover assessment concluded that there was little, to no potential to support Great Crested Newts, reptiles, dormice, invertebrates, badgers or riparian mammals.
- 5.41 The proposal includes enhancement measures to secure a 13.13% net gain in value of habitat units on site, as well as 11.31% net gain in hedgerow units on site.
- 5.42 The submitted Biodiversity Net Gain Assessment document sets out the full measures proposed to secure the net gain in biodiversity within the applicant's land holding, in accordance with the trading rules of the metric.
- 5.43 Within the red line application area, the proposal seeks to retain as much of the value habitats as possible, including mixed scrub, trees and hedgerows. Within land controlled by the applicant the remaining balance of biodiversity net gain will be secured, including native wildflower and grassland, mixed scrub habitat, 50 native

trees and enhancement of existing poor performing areas of grassland.

- 5.44 As a result of the net gain in the biodiversity of the value exceeding the minimum requirements, the proposals are considered to entirely accord with the requirements of WCS CP50 and NPPF Paragraph 187.

Highways & Waste Collection

- 5.45 The proposals remain consistent with the layout, scale and access arrangements proposed as part of the previous proposals. The relevant site layout drawing depicting the parking and bin storage areas is 1630-106 Rev B.
- 5.46 The persons aged over 55, proposed to occupy the properties, are unlikely to generate traffic in the peak hour, in broad consistency with the hours of trips expected for holiday rented units. The proposal residential use by residents over 55 years of age would not lead to significant and demonstrable impacts that would outweigh the benefits of the proposal, therefore not lead to severe impacts on highway capacity or safety.
- 5.47 The layout allows for car parking on the site including visitor parking, cycle storage bin storage and communal open space, in accordance with standards and guidance. This will be delivered consistently with the previous S.73 proposals as found acceptable by the Highway Development Control Officer (in consultation response dated 06/02/2023).
- 5.48 The proposal is considered to comply entirely with the aims of WCS CP61 and paragraph 116 of the NPPF.

Drainage

- 5.49 The drainage proposals for the site are to be provided in association with a planning conditions attached to the original allowed appeal decision. The Case Officer's Report associated with the previous application PL/2022/03356 (dated 7th July 2022), confirmed that the site conditions and layout have altered slightly since the permission, however *"...it is considered that flood risk and surface water drainage assessment is required but this could be addressed via use of condition and as such should not form a basis for refusal or insistence that detail be provided prior to determination..."*

- 5.50 Condition 5 of the appeal decision ref: APP/J3910/A/05/1183858 (dated 24th October 2005) is considered capable of retention (in part) for the consideration of the current application proposal. The condition states:

“No development shall take place until details of the following matters have been submitted to and approved in writing by the local planning authority ... (5) the means of surface water disposal; (6) the means of foul sewage disposal. Development shall be carried out in accordance with the approved details prior to the use or occupation of the development hereby permitted.”

Heritage & Archaeology

- 5.51 The site does not lie within, nor within the setting of any Conservation Areas or Listed Buildings.
- 5.52 The site has been considered previously by the County Archaeologist, with no comments provided. As the proposals are directly comparable in footprint and layout to previously considered and subsequently, implemented proposals, no further work is required. A watching brief will apply to the construction phase of development at the site.

6.0 Planning Balance & Conclusions

- 6.1 In this case the development plan comprises an out-of-date Core Strategy adopted in 2015 but also a recently made neighbourhood plan review. The latter derived its policies and proposals from the former and consequently the limited weight which can be accorded the strategy including its settlement hierarchy, housing distribution and settlement limits which have been derived from it, must challenge the efficacy of the ONPR. This, all as a consequence of the severe housing land supply shortfall as now revealed against the requirements of recently published national policy.
- 6.2 Nevertheless, as a proposal for independent older persons falls within the exceptions to the restriction of development beyond settlement limits under the terms of ONPR Policy 2 (as derived from Core Strategy Policy SP2 and paragraph 4.25). That enables proposals coming forward in accordance with Core Strategy Policy CP46 (as in this

case) to be favourably considered. The proposal also includes the provision of a pedestrian and cycleway link which will materially improve accessibility between the Phase IV and Oaksey village centre. This, all as sought by the ONPR.

- 6.3 Policy CP 46 seeks the provision of two forms of housing to meet the needs of older and vulnerable people. The policy is quite deliberately divided into first, a form of housing which enables older people to remain living independently within their community. The second is in the form of specialist accommodation providing care.
- 6.4 It is only this latter form of accommodation providing care which is directed toward the market towns and larger settlements as clearly described within the policy wording. It would be entirely illogical to propose that all such older person's housing must be so located if at the same time those seeking such accommodation were required to relocate away from their existing communities – in this case a rural community.
- 6.5 The policy is clearly intended to enable older person's housing to come forward across the wider, predominantly rural County, in order to meet the needs of those within the increasingly ageing population who wish to remain independent and within the rural community.
- 6.6 The research referred to within the various publications cited above, includes the finding that rural dwellers are far less likely to downsize to a "*flat in town*" than urban dwellers. Hence the increasing tendency for under occupancy across rural communities than urban, as a lack of appropriate downsizing accommodation within the rural areas simply results in a reluctance to move out of larger family homes.
- 6.7 This has consequential socio-economic impacts across the rural community as well as placing increased strain on health and welfare services as a very dispersed aging population is more difficult to serve than if say grouped in rural clusters such as the scheme being proposed in Phase IV.
- 6.8 Oaksey is identified as a large village within the WCS, that is accepted to be appropriate to deliver limited growth, particularly in light of the significant shortfall in housing land supply within Wiltshire. Policy CP46 identifies that housing for independent older persons may be delivered within rural communities, not limited to primary settlements, where Class C2 accommodation is conventionally anticipated to be provided. The ONPR identifies CP46, via the WCS paragraph 4.25 as a key exception to approving permanent residential development for older people beyond

the identified settlement boundary.

- 6.9 If it is considered that limited weight can be accorded to the WCS Core Policies in light of the severe housing land supply shortfall, then under the terms of NPPF paragraph 11 d) ii.) is engaged and planning permission must be granted unless any adverse impacts of doing so would demonstrably and significantly outweigh the benefits when assessed against the policies of the NPPF as a whole.
- 6.10 As set out by a recent appeal Inspector (APP/Y3940/W/24/3345598), the severity of land supply shortfall (calculated at 2.03 years) within Wiltshire demonstrates that the development plan is clearly failing to meet its strategic challenges, therefore the settlement strategy and limits of development are not working effectively. The strategic policies are afforded limited weight in the planning balance, therefore any conflict with them, afforded limited weight.
- 6.11 The Phase IV development site lies within a pleasant enclave of existing residential development. The rural retirement accommodation offers its residents an appropriate downsizing property within the attractive landscape of Oaksey Park Golf & Leisure Park. This allows the occupants to benefit from the high visual amenity within land for recreation and exercise, room to socialise and relax within the facilities already available on the site, creating an attractive product. The future occupants will be living in a small enclave of similar residents – mutual self-support, monitoring, safer conditions and social interaction and will be better than dispersed or isolated in the rural area. The site lies within 350 metres from the village centre and public house, with bus stops and post office further to the west via a safe and convenient footpath and cycle link, a key benefit sought from within the ONPR.
- 6.12 The scale, layout, materials and landscaping of the proposals have all been the subject of extant approval through both applications under reference APP/J3910/A/05/1183858 and 10/01773/S73 and the subsequent discharge of condition submission under reference 10/01773/S73. This would not differ from the already consented and implemented approvals and other permanently occupied units at the site. The proposals have been submitted in response to the dismissed appeal. There is a need for this form of accommodation which, other than occupancy, remains entirely consistent with an approved scheme which did not attract any technical objections in terms of visual impact, architectural design, layout, highways and parking, drainage, disturb or threaten ecological or archaeological constraints and

heritage assets.

- 6.13 In terms of the made policies of the ONPR (2024) and despite the derivation of the Plan's policies from an out-of-date Core Strategy, these proposals are regarded as entirely compliant with Policy 2 as an *exception* scheme. The site will also be more accessible by pedestrians and cyclists to Oaksey village centre.
- 6.14 With regard to the Core Strategy only limited weight can be accorded the strategic policies which have been found to have failed in the delivery of housing. The consequence is that the Core Strategy's housing policies are out-of-date. As a consequence, national policy as expressed at paragraph 11 d) ii., applies the presumption in favour of sustainable development, as there is no evidence of adverse impacts which would significantly and demonstrably outweigh the benefits as assessed against the NPPF read as a whole.
- 6.15 The previous s.73 application for this form of accommodation did not attract any objection on highways grounds. The modest further vehicle movements may be accommodated within the local highway network and parking delivered in accordance with WC standards. The highways impact of the proposals is not considered to significantly and demonstrably outweigh the identified benefits of the proposal.
- 6.16 The area of land associated with Phase IV benefits from an extant permission but lies vacant and underutilised, owing to the previously accepted and uncontested grounds in which holiday accommodation is not viable at this site. Bringing it into effective use for housing for the over 55s represents a more efficient use of land than its current state, which can support the vitality of Oaksey.
- 6.17 The proposals will secure an enhancement in the biodiversity value of the site that exceeds the minimum requirement. This benefit should be afforded due weight in the planning balance.
- 6.18 The development also represents economic investment within the local economy and the social and community benefits of introducing permanent population to the Phase IV development compared to the highly transient population as with the market for holiday accommodation.
- 6.19 In conclusion, the application accords with the Development Plan and substantial weight must be accorded the benefit of the development of the extant permission under reference N/10/01773/S73 and the delivery of 12 dwellings for the over 55s. In the

Ref: Change of Use of Implemented Phase IV Development at Oaksey Park Golf and Leisure to C3 Residential Occupation by Independent Older Persons – JC/006/RG-(PS)

absence of there being any evidence of conflict with either the development plan and national planning policy, the tilted balance in favour of development is applied owing to Wiltshire Council's significant housing land supply shortfall. As a result, this application should be approved without delay.

Appendices

Ref: Change of Use of Implemented Phase IV Development at Oaksey Park Golf and Leisure to C3 Residential Occupation by Independent Older Persons – JC/006/RG-(PS)

A. Decision Notice Ref: 05/00643/FUL

THE SCHEDULE

Name of Local Planning Authority: NORTH WILTSHIRE DISTRICT COUNCIL
Monkton Park, Chippenham, Wiltshire, SN15 1ER

NAME & ADDRESS OF AGENT:

Nick Strickland
8 Youngs Court
Battersea
London
SW11 5JD

**BRIEF DETAILS OF APPLICATION IN THE
PARISH OF Oaksey:**

Erection of 12 Two and Three Bed Holiday
Lodges and Covered Parking / Bin Storage (1
Carspace/Lodge) and Associated Access

NAME & ADDRESS OF APPLICANT:

John Cooper
Oaksey Park
Lowfield Farm
Wick Road
Oaksey
Wilts
SN16 9SB

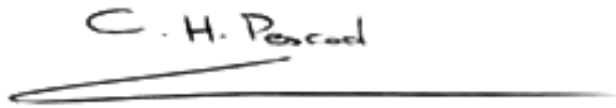
LOCATION:

Land At
Lowfield Farm
Oaksey
Malmesbury
Wiltshire
SN16 9SB

Application Dated: 11.03.2005 Application Registered: 11.03.2005
Permission Refused: 11.05.2005 Application as amended

REFUSED FOR THE FOLLOWING REASONS:

1. The proposed development will fail to respect the rural character and appearance of its surroundings and have an unacceptable impact on the open landscape of the area contrary to policy RTM2 of the North Wiltshire Local Plan 2001.

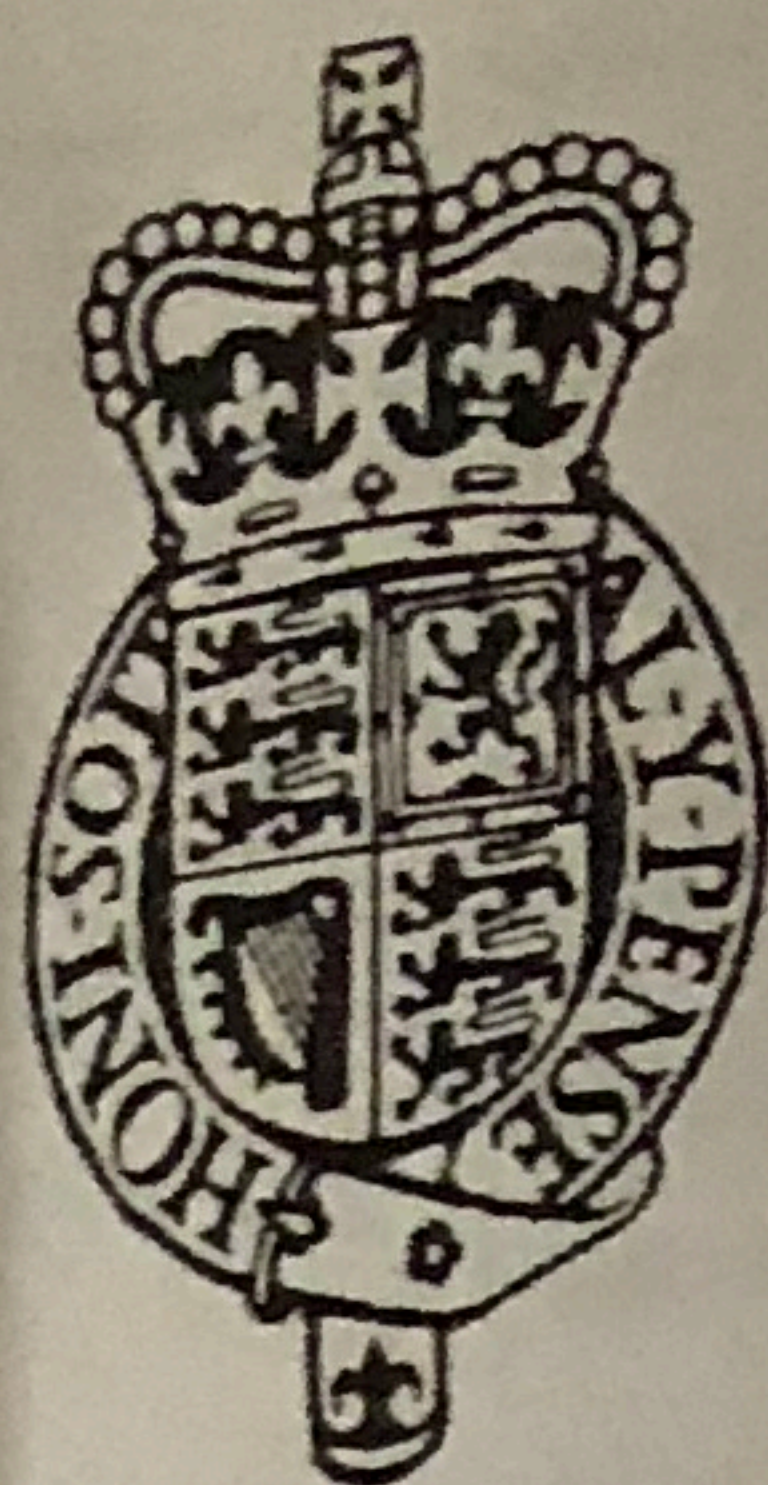


Implementation Team Leader
Development Control, Listed Buildings & Landscaping

Date: 11th May 2005

Ref: Change of Use of Implemented Phase IV Development at Oaksey Park Golf and Leisure to C3 Residential Occupation by Independent Older Persons – JC/006/RG-(PS)

B. Appeal Decision Ref: APP/J3910/A/05/1183858 (dated 24th October 2005)



Appeal Decision

Site visit made on 18 October 2005

by **Richard Merelie MSc DipTP MRTPI**

an Inspector appointed by the First Secretary of State

The Planning Inspectorate
4/09 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372
e-mail: enquiries@planning-inspectorate.gsi.gov.uk

Date

24 OCT 2005

Appeal Ref: APP/J3910/A/05/1183858

Land at Lowfield Farm, Oaksey, Malmesbury, Wiltshire, SN16 9SB

- 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 Mr J Cooper against the decision of North Wiltshire District Council.
- The application (Ref. 05/00643/FUL), dated 4 March 2005, was refused by notice dated 11 May 2005.
- The development proposed is the erection of 12 two and three bed holiday lodges and covered parking/bin storage (one car space/lodge) and associated access.

Decision

1. I allow the appeal and grant planning permission for the erection of 12 two and three bed holiday lodges and covered parking/bin storage (one car space/lodge) and associated access at land at Lowfield Farm, Oaksey, Malmesbury, Wiltshire, SN16 9SB in accordance with the terms of the application Ref. 05/00643/FUL dated 4 March 2005, and the plans submitted therewith, subject to the following conditions:

- 1) The development hereby permitted shall be begun before the expiration of five years from the date of this decision.
- 2) No development shall take place until details of the landscaping of the site, including the retention of existing trees where appropriate, have been submitted to and approved in writing by the local planning authority.
- 3) All landscape works shall be carried out in accordance with the approved details. The works shall be carried out in accordance with a programme to be submitted to and approved in writing by the local planning authority.
- 4) If within a period of 5 years from the date of planting any tree or shrub shown on the approved landscaping plan is removed, destroyed or dies, that tree or shrub, or any tree or shrub planted in replacement of it, shall be replaced by another tree or shrub of the same size and species.
- 5) No development shall take place until details of the following matters have been submitted to and approved in writing by the local planning authority (1) walls, fences, gates and other means of enclosure; (2) ground surfacing materials; (3) finished floor levels of all buildings; (4) finished levels across the site; (5) the means of surface water disposal; (6) the means of foul sewage disposal. Development shall be carried out in accordance with the approved details prior to the use or occupation of the development hereby permitted.

- 6) No development shall take place until details of the external materials to be used, in particular the external stonework, including type, coursing and bedding of the natural stone, type of pointing and mortar mix, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details prior to the use or occupation of the development hereby permitted.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification) no fences, walls or other means of enclosure (other than those permitted under condition 5) shall be erected anywhere on the site edged in red on the approved plans.
- 8) The development hereby permitted shall be served solely from the access shown on drawing No 019/PL(00)01. No access shall be gained from Wick Road for construction vehicles or for any other purpose, except in an emergency.
- 9) Before any of the development is first occupied, the access to Wick Road shall be permanently closed to motor vehicles in accordance with a scheme to be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 10) A visibility splay of 2.4m x 90m shall be retained at the junction of the site access road and The Street at all times.
- 11) Details of any external lighting shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 12) The buildings shall not be occupied other than for holiday accommodation, and shall not be occupied from 6th January to 5th February inclusive in any year, and shall at no time be used for permanent residential occupation.

Reasons for Decision

Background

2. The Council's officers recommended that the proposal be approved subject to conditions. However, the Council refused permission on the grounds that the proposed development would fail to respect the rural character and appearance of its surroundings and have an unacceptable impact on the open landscape of the area, contrary to policy RTM2 of the North Wiltshire Local Plan, adopted in January 2001. This policy specifically allows for tourist accommodation within the countryside, outside the defined framework boundaries of settlements, subject to several criteria, including landscape impact.
3. In response, the appellant submitted a number of documents, including a Planning Statement, a Landscape Statement, a Design Statement and also a Highways Report, albeit that the Highway Authority raised no objection in principle, but recommended conditional permission. The Highways Report concludes that the proposal would have an insignificant impact in highway and traffic terms. Based on my observations, I see no good reason to disagree with that assessment.
4. The Highways Report also concludes that the necessary visibility splay of 2.4m x 90m can be achieved at the existing junction, to the south, of The Street and the access road to the

proposed development with some trimming of the existing hedgerows along The Street. At the time of my visit, the necessary visibility splay appeared to be achieved, but it would need to be retained in future for highway safety reasons. This could be achieved by condition.

5. In response to concerns raised by a local resident, the appellant also submitted a Bat Habitat Assessment. This concludes that the presence of bat roosts at the appeal site is highly unlikely and that, therefore, light disturbance is unlikely to have a significant impact. It recommends that artificial lighting levels are kept to a minimum. This could be achieved by condition.

Landscape Impact

6. The appeal site lies just to the north east of the village of Oaksey and adjacent to the established Oaksey Golf and Leisure Club, which comprises a 9-hole golf course, a club house and existing holiday accommodation. The western boundary of Cotswolds Water Park, a major tourist destination, lies about 1km away.
7. The appeal site is a rectangular shaped field, which is contained by substantial tall hedgerows on the west and south boundaries. An access track, with hedging on both sides, runs along the northern boundary. This leads to Wick Road, a narrow quiet country lane, to the west. The eastern side is adjacent to land where additional holiday lodges are under construction.
8. The Council considers that the existing development is of design and scale that allows it to sit within the countryside without harming it, but that the resultant scale of development, if the appeal proposal were to be allowed, would be out of keeping with the rural character and appearance of the surroundings and have an unacceptable impact on the open countryside. I disagree with the latter assessment.
9. Views of the existing development from The Street and Wick Road are generally limited to the roofs of buildings due to the surrounding trees and hedges and the lie of the land. The existing development is not therefore overly intrusive in the landscape. In my judgement, there would be only glimpses of the proposed buildings from The Street. And views from Wick Road to the west and also to the north would mainly be limited to the roofs of the proposed buildings. Overall, therefore, I do not believe that the proposed development would be prominent in the landscape.
10. From the above, I am drawn to conclude that the proposal would not fail to respect the rural character and appearance of its surroundings or have an unacceptable impact on the open landscape of the area. Consequently, I find that the proposal would not conflict with Local Plan policy RTM2.

Conditions

11. I have considered the Council's suggested conditions in light of Circular 11/95. Some have been amended to bring them more into line with model conditions and to simplify them.
12. As already indicated a condition is necessary to ensure that an adequate visibility splay at the entrance to the site from The Street is retained. In this respect the Council's suggested condition that requires a higher visibility standard has not been supported by evidence. Also, for highway safety reasons, conditions are necessary relating to The Street access

being the sole means of access and to the use and closure of the existing access to Wick Road.

13. As previously mentioned a condition on external lighting is necessary in the interests of bats, but also in the interests of residents' living conditions. Conditions on landscaping and external materials are necessary in the interests of visual amenity. A condition requiring the submission of details on a range of additional matters is necessary in the interests of amenity and a satisfactory layout. And in order to ensure that the open areas within the layout remain in communal use, a condition prohibiting additional fences and the like is necessary.
14. An occupation condition is necessary in order to prevent use of the holiday lodges as permanent dwellings, because permanent dwellings in this location would not normally be allowed. For consistency, I have adopted the condition imposed on appeal on 24 October 2004 (Ref. APP/J3910/A/04/1145607) relating to other holiday accommodation at Lowfield Farm.
15. I consider that the Council's suggested condition number 2, requiring the implementation of the development permitted to be in accordance with approved details, to be superfluous. Similarly, suggested condition number 12, relating to foul drainage, would appear to duplicate part of suggested condition 4, now condition 5 above. Also, to avoid duplication, I have incorporated suggested condition number 13, relating generally to external materials, in condition 6 above.

Other matters

16. I have considered all the other matters raised, including the planning history of Oaksey Park Golf & Leisure and the wide range of policies referred to. I have also taken account of the additional concerns of Oaksey Parish Council and local residents, including potential noise nuisance. However, I have found nothing to outweigh the findings and main conclusion leading to my decision or that would justify refusal.

Richard Mearlie

INSPECTOR

Ref: Change of Use of Implemented Phase IV Development at Oaksey Park Golf and Leisure to C3 Residential Occupation by Independent Older Persons – JC/006/RG-(PS)

C. Section 73 Application Ref: N/10/01773/S73 Decision Notice

Town & Country Planning Act 1990 (as amended)

NOTIFICATION OF PLANNING DECISION

Application Reference Number: N/10/01773/S73

Applicant

Mr John Cooper
Oaksey Park Ltd
LOWFIELD FARM
WICKS ROAD
OAKSEY
MALMESBURY
SN16 9SB

Agent

Mr Robert Gillespie
Impact Planning Services Ltd
Stratton Park House
Wanborough Road
Swindon
Wiltshire
SN3 4HG

Parish: - Oaksey

Particulars of Development: - Erection of 12no. Two and Three Bed Holiday Lodges and Covered Parking/Binstorage and Associated Access (Renewal of 05/00643FUL)

At: - LOWFIELD FARM, WICKS ROAD, OAKSEY, MALMESBURY, SN16 9SB

In pursuance of its powers under the above Act, the Council hereby GRANT PLANNING PERMISSION for the above development to be carried out in accordance with the application and plans submitted (listed below), subject to compliance with the condition(s) specified below:-

Permission granted for the following reason:

The proposed development for holiday lodges by reason of its scale, design and siting is considered to be in accordance with Policy C3 and NE15 of the North Wiltshire Local Plan 2011, Policy RLT9 of the adopted Wiltshire and Swindon Structure Plan as well as guidance contained in PPS4 and 7. The development is acceptable tourism development in this location and as was established at appeal in 2005, would not fail to respect the character and appearance of the surroundings or have an unacceptable impact on the landscape.

Subject to the following condition(s):

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

- (a) indications of all existing trees and hedgerows on the land;
- (b) details of any to be retained, together with measures for their protection in the course of development;
- (c) all species, planting sizes and planting densities, spread of all trees and hedgerows within or overhanging the site, in relation to the proposed buildings, roads, and other works;
- (d) finished levels and contours;
- (e) means of enclosure;
- (f) car park layouts;
- (g) other vehicle and pedestrian access and circulation areas;
- (h) hard surfacing materials;

(i) minor artefacts and structures (e.g. furniture, play equipment, refuse and other storage units, signs, external lighting etc);

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

POLICY: C3, NE15

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

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

POLICY: C3, NE15

- 4 No development shall commence on site until details and samples of the materials to be used for the external walls and roofs have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

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

POLICY: C3, NE15

- 5 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting or amending that Order with or without modification), no gates, fences, walls or other means of enclosure, other than those shown on the approved plans, shall be erected or placed anywhere on the site edged red other than if approved in condition 3 above.

REASON: In the interest of visual amenity.

POLICY: C3, NE15

- 6 Before any of the units are first occupied the access to Wick Road shall be permanently closed to motor vehicles in accordance with a scheme which shall first be submitted to and approved in writing by the local planning authority.

REASON: In the interest of highway safety.

- 7 The development hereby permitted shall be served solely from the access shown in drawing 019/PL (00)01. No access shall be gained from Wick Road for construction vehicles or any other purpose, except in an emergency.

REASON: In the interests of highway safety.

- 8 A visibility splay of 2.4 metres x 90 metres at the junction of the site access road and The Street shall be maintained free of obstruction at all times.

REASON: In the interests of highway safety.

- 9 Notwithstanding the Town and Country Planning (Use Classes) Order 1987 and the Use Classes (Amendment) Order 2005 (or any Order revoking and re-enacting those Orders, with or without modification), the building(s) Hereby permitted shall be used for holiday accommodation only and for no other purpose.

REASON: This site is in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access, and planning policies pertaining to the area, would not permit permanent residential accommodation.

POLICY: C3, RLT9

- 11 The building(s) hereby permitted shall not be occupied as a persons' sole or main place or residence.

REASON: This site is in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access, and planning policies pertaining to the area, would not permit permanent residential accommodation.

POLICY: C3, RLT9

- 12 The owners/ operators of the site shall maintain an up -to -date register of the names of all owners/occupiers of individual units on the site, and of their main home addresses, and shall make this information available at all reasonable times to the Local Planning Authority.

REASON: This site is in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access, and planning policies pertaining to the area, would not permit permanent residential accommodation.

POLICY: C3, RLT9

- 13 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), there shall be no additions/extensions or external alterations to any building forming part of the development hereby permitted.

REASON: In the interests of the amenity of the area and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions/extensions or external alterations.

POLICY: C3, NE15

- 14 The development shall be implemented in accordance with the documents and plans submitted with the planning application listed below. No variation from the approved documents should be made without the prior approval of this Council.

Drawing: 019/PL(00) 01 location plan, 02 site layout, 03 typical plans and elevations, 04 sectional elevations, 05 roof layout, west perspective view received on 11 March 2005

REASON: For the avoidance of doubt

Signed



Director for Development Services

Dated: 30 July, 2010

PERMISSION FOR DEVELOPMENT

NOTES

1. **Other Necessary Consents.** This document only conveys permission for the proposed development under Part III of the Town and Country Planning Act 1990 and the applicant must also comply with all the byelaws, regulations and statutory provisions in force in the district and secure such other approvals and permissions as may be necessary under other parts of the Town and Country Planning Act 1990 or other legislation.

In particular the applicant is reminded of the following matters:-

- 1.1 the need in appropriate cases to obtain approval under Building Regulations. **(The Building Regulations may be applicable to this proposal. Please contact the Council's Building Control team before considering work on site);**
- 1.2 the need to obtain an appropriate Order if the proposal involves the stopping up or diversion of a public footpath;
- 1.3 The need to obtain a separate "Listed Building Consent" to the demolition, alteration or extension of any listed building of architectural or historic interest;
- 1.4 the need to make any appropriate arrangements under the Highways Act 1980, in respect of any works within the limits of a public highway. The address of the Highway Authority is County Hall, Trowbridge, BA14 8JD.

(It is the responsibility of the applicant to ascertain whether his development affects any public right of way or listed building.)

2. **Appeals.** If the applicant is aggrieved by the decision of the local planning authority to grant permission subject to conditions, he may appeal to the Secretary of State for the Environment in accordance with Section 78(1) of the Town and Country Planning Act 1990 within six months of the date of this decision. (Appeals must be made on a form which is obtainable from the Customer Support Unit, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN. The Secretary of State has the power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission of the proposed development could not have been so granted otherwise than subject to the conditions imposed by the local planning authority, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order. He does not in practice refuse to entertain appeals solely because the decision of the Local Planning Authority was based on a direction given by him. If the applicant wishes to have any further explanation of the reasons for the conditions imposed on this permission it will be given on request and a meeting arranged if necessary.
3. **Purchase Notices.** If permission to develop land is granted subject to conditions, whether by the local planning authority or by the Secretary of State for Communities and Local Government, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the District Council a purchase notice requiring the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.
4. **Compensation.** In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in Section 114 of the Town and Country Planning Act 1990.
5. **Discharge of Conditions.** The Government introduced new fees for the discharge of planning conditions from 6th April 2008. The fee is payable per request and not per condition. The fee chargeable is £25 per request for householder development and £85 per request for all other types of development. The fee must be paid when the request is made, and cannot be received retrospectively. It does not matter when the permission was granted as long as it remains extant. The request, identifying the permission (with reference number) and the conditions concerned, should be made by using the 1APP forms which are available on the Council's Website or the Planning Portal. You are advised that, as the local planning authority has up to 12 weeks to consider the request, you apply well in advance of when you intend to start work.

Ref: Change of Use of Implemented Phase IV Development at Oaksey Park Golf and Leisure to C3 Residential Occupation by Independent Older Persons – JC/006/RG-(PS)

D. Discharge of Condition Ref: N/10/01773/S73 Decision Notice

07 July 2014

Simon Chambers
LPC Trull Ltd
Trull
Tetbury
Gloucestershire
GL8 8SQ

Development Services – North
Monkton Park
Chippenham
Wiltshire
SN15 1ER

Tel: 012490706668

Email: developmentmanagement@wiltshire.gov.uk
www.wiltshire.gov.uk

Dear Sir,

Discharge of Condition

Application No: N/10/01773/S73

Proposal: Erection of 12no. Two and Three Bed Holiday Lodges and Covered Parking/Binstorage and Associated Access (Renewal of 05/00643FUL)

Site Address: LOWFIELD FARM, WICKS ROAD, OAKSEY, MALMESBURY, SN16 9SB

On Behalf of: Oaksey Park Ltd

I write following receipt of your recent application, regarding the discharging of condition(s).

I can confirm that the details submitted including Letter dated 07/05/2013; 019/PL(00) 03; 058(C) 003T2; 058(C) 004T2 and site visit undertaken 29/7/13 satisfy the following condition(s) of the above planning application and that these have been found to be acceptable in respect of Phase IV of the approved scheme.

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

- (a) indications of all existing trees and hedgerows on the land;
- (b) details of any to be retained, together with measures for their protection in the course of development;
- (c) all species, planting sizes and planting densities, spread of all trees and hedgerows within or overhanging the site, in relation to the proposed buildings, roads, and other works;
- (d) finished levels and contours;
- (e) means of enclosure;
- (f) car park layouts;
- (g) other vehicle and pedestrian access and circulation areas;
- (h) hard surfacing materials;

(i) minor artefacts and structures (e.g. furniture, play equipment, refuse and other storage units, signs, external lighting etc);

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

POLICY: C3, NE15

4 No development shall commence on site until details and samples of the materials to be used for the external walls and roofs have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

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

POLICY: C3, NE15

Yours faithfully

Brian Taylor
Area Development Manager

Officer's Name: Lee Burman
Officer's Title: Team Leader North
Direct Line: 01249 706668
Email: lee.burman@wiltshire.gov.uk

- E. Section 73 Application Ref: N/13/00958/VAR Decision Notice, Committee Report 12/03/2014 & 04/06/2014 and Minutes from Planning Committee Meeting 04/06/2014.**

Town & Country Planning Act 1990

**Notice of Planning Permission for Variation/Non-Compliance with a condition
imposed on an earlier permission**

Application Reference Number: N/13/00958/VAR

Agent LPC (Trull) Ltd Trull Tetbury Gloucestershire GL8 8SQ	Applicant Oaksey Park Ltd C/O Agent LPC (Trull) Ltd Trull Tetbury Gloucestershire GL8 8SQ
Parish: OAKSEY	
Particulars of Development: Removal of Conditions 8, 9 and 10 imposed on application reference 10/03612/S73A which varied condition No 7 of 02/01841/FUL and appeal APP/J3910/A/04/1145607, allowing the unrestricted residential occupancy of units 12 to 19 (8 in total)	
At: Oaksey Park, Lowfield farm, Oaksey, Wiltshire,	

In pursuance of their powers under the above Act, the Council hereby **GRANT PLANNING PERMISSION** for variation or non-compliance with a condition or conditions imposed on an earlier permission in accordance with the application and plans submitted by you.

In accordance with paragraph 187 of the National Planning Policy Framework, Wiltshire Council has worked proactively to secure this development to improve the economic, social and environmental conditions of the area.

Subject to compliance with any condition(s) specified hereunder:-

- 1 Notwithstanding the provision of the Town and Country Planning General Development Order no fences, walls or other means of enclosure other than those shown on the approved plans shall be erected anywhere on site.

REASON: To ensure that the open areas of the site remain in communal use.

- 2 The area between the nearside carriageway edge and lines drawn between a point 2.4 metres back from the carriageway edge along the centre line of the access and points on the carriageway edge 160m back from and on both sides of the centre line of the access shall be kept clear of obstruction to visibility at and above a height of 900mm above the nearside carriageway level and

maintained free of obstruction at all times.

REASON: In the interests of highway safety in accordance with policy C3 of the North Wiltshire Local Plan 2011.

- 3 The development hereby permitted shall be served solely from the access shown in drawing c310/1.

REASON: In the interests of highway safety in accordance with policy C3 of the North Wiltshire Local Plan 2011.

- 4 The workshop / estate yard shall be used only for purposes ancillary to the golf course.

REASON: To prevent an inappropriate independent use

- 5 The development hereby permitted relates solely to units 12 - 19 Inclusive as shown on site layout plan Ref 958/10 date stamped 01/08/2013.

REASON: In the interests of proper planning.

- 6 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), no buildings or structures, or gate, wall, fence or other means of enclosure, other than those shown on the approved plans, shall be erected or placed anywhere on the site on the approved plans.

REASON: To safeguard the character and appearance of the area.

- 7 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), no window, dormer window or rooflight, other than those shown on the approved plans, shall be inserted in the roofslope(s) of the development hereby permitted.

REASON: In the interests of residential amenity and privacy.

- 8 Within one month of the date of this permission proposals for the provision and on-going retention of space for the storage of Wheelie Bins at the collection point agreed with Wiltshire Council refuse and waste collection services. The proposals shall include details and arrangements for the management of the space to ensure adequate provision for wheelie bins to serve all properties at the site.

REASON: In the interest of residential amenity.

- 9 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England)

Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), there shall be no additions/extensions or external alterations to any building forming part of the development hereby permitted.

REASON: In the interests of the amenity of the area and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions/extensions or external alterations.

10 INFORMATIVE TO APPLICANT: Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

11 INFORMATIVE TO APPLICANT:

This permission shall be read in conjunction with an Agreement made under Section 106 of the Town and Country Planning Act, 1990 and dated the 20/08/2014.

12 INFORMATIVE TO APPLICANT:

The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence.

If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

Signed



Director for Economic Development & Planning

Dated: 23 August 2014

NOTES

1. **Other Necessary Consents.** This document only conveys permission for the proposed development under Part III of the Town and Country Planning Act 1990 and the applicant must also comply with all the byelaws, regulations and statutory provisions in force in the area and secure such other approvals and permissions as may be necessary under other parts of the Town and Country Planning Act 1990 or other legislation.

In particular the applicant is reminded of the following matters:-

- 1.1 the need in appropriate cases to obtain approval under Building Regulations. **(The Building Regulations may be applicable to this proposal. Please contact the Council's Building Control team before considering work on site);**
 - 1.2 the need to obtain an appropriate order if the proposal involves the stopping up or diversion of a public right of way or other highway (including highway verge)
 - 1.3 The need to obtain a separate "Listed Building Consent" to the demolition, alteration or extension of any listed building of architectural or historic interest;
 - 1.4 the need to make any appropriate arrangements under the Highways Act 1980, in respect of any works within the limits of a highway. The address of the Highway Authority is County Hall, Trowbridge, BA14 8JD (It is the responsibility of the applicant to ascertain whether the proposed development affects any listed building or public right of way / other highway, including highway verge).
2. **Appeals.** If the applicant is aggrieved by the decision of the local planning authority to grant permission subject to conditions, he may appeal to the Secretary of State for the Environment in accordance with Section 78(1) of the Town and Country Planning Act 1990 within six months of the date of this decision. (Information and forms relating to the appeals process can be found at the Planning Portal – www.planningportal.gov.uk/planning/appeals). The Secretary of State has the power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission of the proposed development could not have been so granted otherwise than subject to the conditions imposed by the local planning authority, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order. He does not in practice refuse to entertain appeals solely because the decision of the Local Planning Authority was based on a direction given by him.
- If the applicant wishes to have any further explanation of the reasons for the conditions imposed on this permission it will be given on request and a meeting arranged if necessary.
3. **Purchase Notices.** If permission to develop land is granted subject to conditions, whether by the local planning authority or by the Secretary of State for Communities and Local Government, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the District Council a purchase notice requiring the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.
4. **Compensation.** In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in Section 114 of the Town and Country Planning Act 1990.
5. **Discharge of Conditions.** The Government introduced new fees for the discharge of planning conditions from 6th April 2008. The fee is payable per request and not per condition. The fees chargeable are set out on the Wiltshire Council website – www.wiltshire.gov.uk. The fee must be paid when the request is made, and cannot be received retrospectively. It does not matter when the permission was granted as long as it remains extant. The request, identifying the permission (with reference number) and the conditions concerned, should be made by using the 1 APP forms which are available on the Councils Website or the Planning Portal.

You are advised that the as local planning authority has up to 12 weeks to consider the request that you apply well in advance of when you intend to start work

REPORT TO THE NORTH AREA HUB PLANNING COMMITTEE

Date of Meeting	23rd April 2014
Application Number	N/13/00958/S73A
Site Address	Oaksey Park Lowfield farm Oaksey Wiltshire
Proposal	Removal of Conditions 8, 9 and 10 imposed on application reference 10/03612/S73A which varied condition No 7 of 02/01841/FUL and appeal APP/J3910/A/04/1145607, allowing the unrestricted residential occupancy of units 12 to 19 (8 in total)
Applicant	Oaksey Park Ltd
Town/Parish Council	OAKSEY
Grid Ref	399464 194156
Type of application	Full Planning
Case Officer	Lee Burman/Brian Taylor

Reason for the application being considered by Committee

The application has been called in for Committee consideration by Councillor Chuck Berry to allow assessment of the principle and sustainability of the development and implication for other similar proposals and facilities.

The application was deferred at the meeting of 12th March to enable Officers to seek additional information and provide additional comment. The application was then withdrawn from the Agenda of 2nd April 2014 to enable publication of a redacted version of the "Chesterton Humberts" Report. The main body of the report remains as presented on 12th March, with an additional section headed 'Further comments to Meeting of 2nd and 23rd April' added immediately prior to the 'Recommendation'. The Officers conclusions and recommendations remain unchanged.

1. Purpose of Report

To recommend that authority be delegated to the Area Development Manager to grant planning permission subject to the signing of a Section 106 agreement.

2. Report Summary

The main issues in the consideration of this application are:-

the viability of the existing units of accommodation with the currently attached conditions restricting the scope and nature of the residential use and occupancy i.e. as Holiday let accommodation linked to the adjacent Golf Course;

And whether or not the properties have been marketed appropriately and at valuations

reflecting the restrictive occupancy conditions;

The principles of the development proposal.

3. Site Description

The site is located within the open countryside to the east of the village of Oaksey. The application relates to a development of 25 semi detached and detached structures located adjacent a 9 hole golf course and its supporting clubhouse facility. The structures are modern in design two storey buildings built utilising render and timber with substantive glazing elements. The structures are surrounded by shared amenity spaces with new planting separating the properties from the golf course. The structures are residential in character but occupancy is restricted to holiday lets. Similarly there is established mature planting to the northern boundary separating the site and its access road from adjoin open countryside. The properties have ancillary group parking areas and the access road to the site runs from Wick Road, adjacent the golf course itself though the golf course car park and past the clubhouse facility. The land rises to the west and in the direction of the villages and adjacent unmaintained scrub land is situated against the western boundary of the site, albeit this land benefits from an extant consent for a final phase of the development which is as yet unbuilt.

4. Planning History

89/03470/F	Change of Use to residential holiday and staff accommodation of agricultural buildings. Reconstruction of Guest Lounge. Alts To Access and Driveway. Approved
02/01841/FUL	Erection Of 18 No 2 & 3 Bed Holiday Lodges And 1 No Bunkhouse With Covered Parking (1 No Space/Lodge) And Implement Shed, Workshop, Office And Reception Area And Associated Access Approved
03/02072/S73A	Variation of conditions attached to 89/03470/F (Condition 5) and 02/01841/FUL (Condition 7) Appeal allowed conditions varied
10/03612/S73A	Variation of Condition 7 of 02/01841/FUL & 1 of APP/J3910/A/04/1145607 - Relating to Residential Occupancy Relates to units: 3, 5, 6, 8 and 10 - 19 inclusive. Approved
11/02036	Variation of Condition 1 of APP/J3910/A/04/1145607 - Relating to Residential Occupancy (Original Variation of Condition 7 of 02/01841/FUL) Relates to unit 2. Approved
12/00034	Variation of Condition 1 of APP/J3910/A/04/1145607 - Relating to Residential Occupancy (Original Variation of Condition 7 of 02/01841/FUL).Relates to unit 4. Approved.
12/00050	Variation of Condition 1 of APP/J3910/A/04/1145607 - Relating to Residential Occupancy (Original Variation of Condition 7 of 02/01841/FUL). Relates to unit 7. Approved.

The above is a summary list of the historic applications at the site that are relevant and pertinent to the current proposals. It is not intended to be a definitive list of every single application at this site as this site history is very extensive and a great many of the applications are of no direct relevance. The applications and decisions referred to above are discussed in further detail below.

5. The Proposal

The application proposes the removal of conditions 8, 9 & 10 of Planning permission 10/03612/S73A and variation of condition 7 of 02/01841/FUL and Condition 1 attached to appeal decision APP/J3910/A04/1145607 – Relating to residential occupancy. The conditions are as follows:-

10/03612/S73A

8 Notwithstanding the Town and Country Planning (Use Classes) Order 1987 and the Use Classes (Amendment) Order 2005 (or any Order revoking and re-enacting those Orders, with or without modification), the building(s) hereby permitted shall be used for holiday accommodation only and for no other purpose.

REASON :- This site is in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access, and planning policies pertaining to the area, would not permit permanent residential accommodation.

POLICY: C3 of the adopted North Wiltshire Local Plan 2011, RLT9 of the Wiltshire and Swindon Structure Plan 2016 and the Good Practice Guide on Planning for Tourism

9 The building(s) hereby permitted shall not be occupied as a persons' sole or main place or residence.

REASON:- This site is in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access, and planning policies pertaining to the area, would not permit permanent residential accommodation.

POLICY: C3 of the adopted North Wiltshire Local Plan 2011, RLT9 of the Wiltshire and Swindon Structure Plan 2016 and the Good Practice Guide on Planning for Tourism

10 The owners / operators of the site shall maintain an up-to-date register of the names of all owners / occupiers of individual units identified in red upon drawing No. JC/001/2 and of their main home addresses, and shall make this information available at all reasonable times to the local planning authority.

REASON:- This site is in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access, and planning policies pertaining to the area, would not permit permanent residential accommodation.

POLICY: C3 of the adopted North Wiltshire Local Plan 2011, RLT9 of the Wiltshire and Swindon Structure Plan 2016 and the Good Practice Guide on Planning for Tourism

02/01841/FUL

7. The development shall be used only as holiday accommodation and no person shall be in occupation for more than 42 days in any calendar year.

Reason: To ensure that the development is not used as permanent accommodation or as dwellings.

APP/J3910/A04/1145607

1. The buildings shall not be occupied other than for holiday accommodation, and shall not be occupied from 6 January to 5 February inclusive in any year, and shall at no time be used for permanent residential accommodation.

The proposal in the original application related to the 20 remaining units of the site that had not already been sold to private ownership with the relevant restrictive conditions attached. This application and the description of development was varied by the applicant as follows:-

Removal of Conditions 8, 9 and 10 imposed on application reference 10/03612/S73A which varied condition No 7 of 02/01841/FUL and appeal APP/J3910/A/04/1145607, allowing the unrestricted residential occupancy of units 12 to 19 (8 in total)

It is this revised proposal – removal of the restrictive conditions on 8 units that is now before the Council.

6. Planning Policy

National Planning Policy Framework

North Wiltshire Local Plan 2016
C2 Community Infrastructure
C3 Development Control
CF3 Provision of Open Space

Wiltshire Core Strategy Submission Draft

It should be noted that there are no specific policies in any adopted planning policy document that directly address the variation or removal of planning conditions restricting residential occupancy to holiday accommodation use to allow unfettered residential use.

7. Consultations

The Council instructed a firm of Chartered Surveyors to assess the Market Viability Report submitted with the application. This process and the response received is referred to in greater detail below.

The Council extended the consultation period to allow for representations to be submitted following the receipt by the Council of the independent assessment of the viability report. Whilst the report was not published the conclusions were referenced by the case officer in discussions with consultees such as the Parish Council.

Highways Officers raised no objections to the proposals.

Education Officers have identified a requirement for secondary school place provision arising from the development.

Environment Services (Open Spaces) has identified a requirement for children's playspace

provision arising from the development.

Waste Team has identified a requirement for provision of waste collection facilities.

Oaksey Parish Council has objected to the application in respect of:

- The site is an inappropriate location for residential use, poor access, in the open countryside outside the defined village
- The development is out of scale with the landscape
- There is no evidence of housing need in the village
- The proposal makes no provision for “development gain” to contribute to the local community
- Issues of business viability are the result of other factors than the local property market including the business operator and the financing of the development
- A different operator is likely to succeed and transform the business potential
- The property market at the time of the review has been distorted by the recession and the business being in receivership
- The implementation of the existing holiday let conditions has poor suggesting lack of compliance – Wiltshire council has started enforcement proceedings
- A Neighbourhood Plan for Oaksey is under preparation consent for residential would render proposals for housing in the village redundant

Subsequent to the revision of the description of development a further 21 day period of consultation was undertaken. All parties were notified of the revised application.

Education officers have confirmed that the revised proposals generate a requirement for Secondary School places and a financial contribution is sought in this regard.

Environmental Services (Open Spaces) identified that the 8 units alone did not generate an open space requirement that could be met through on site provision and that given the site location off site financial contributions to enhanced provisions for children’s play space elsewhere could not be justified. However should the remaining 12 units also be the subject of proposals to remove restrictive occupancy conditions the on-site playspace provision requirement would be justified.

8. Publicity

The application has been advertised by press advert, site notice and through neighbour notification.

29 letters of objection have been received from local residents raising concerns in respect of:

- The Holiday Let units are a viable business operation under the right management;
- The Holiday Let units were permitted designed and constructed in relation to standards inappropriate to permanent residential accommodation;
- The original property purchase was not conducted on a sound basis
- The Oaksey Park facility only has two competitors (Windrush Lakes and Spring Lake, these facilities are run successfully and are viable
- The locality has a greater range of offer for tourism than referenced in the submitted reports
- The current facility is poorly maintained and the lack of finance available for full maintenance should not be a sound reason for removing the holiday let restrictions
- The marketing of the properties and demand has been affected by the poor quality maintenance at the site
- Inadequate parking provision and traffic generation
- Inadequate design
- Inadequate services for the residential use of the site e.g. waste, schools
- Inadequate consultation with existing owners at the site

- All properties at the site should be included in the decision/application
- Inconsistencies within the submitted supporting financial information
- The site is an inappropriate location for residential use, poor access, in the open countryside outside the defined village
- The development is out of scale with the landscape
- There is no evidence of housing need in the village
- Housing need in the village is for affordable housing
- The independent report commissioned by the Council should be made publicly available
- Sets a precedent across Wiltshire

Following the revision to the description of development a further 21 day period of consultation was undertaken including press notices, neighbour notifications and notifications to all parties having made representations on the original application proposals. Since that time four representations have been received raising objections to the proposed removal of the conditions. Separate correspondence has also been forwarded to the case officer from a further interested party. The representations identify that:-

- The revised proposals are not supported additional supporting documentation to explain and justify the revised scheme proposals
- Consultations with interested parties including the owners of the 5 properties already sold at the site have been inadequate
- If the restrictive conditions are removed on these properties that should also apply to the 5 properties already sold to private ownership
- The Council has commissioned its own assessment of the submitted viability report and this assessment should be made available to interested parties for review and comment
- Parking demand at the site is increasing indicating increased occupancy periods
- The submitted viability assessment is inadequate and does not demonstrate that the properties are unviable as holiday let units
- The site is an unsustainable location contrary to adopted policies for unrestricted residential development and the properties should remain as holiday lets as originally permitted

9. Planning Considerations

Background

The following assessment of the application is on the basis of the removal of restrictive conditions relating to 8 properties at the site. This position has arisen as a consequence of confusion in the independent assessment of the marketing and viability of original scheme proposals commissioned by the Council. The original instruction issued related to the 20 units however following liaison with the applicant, site meetings and provision of marketing and financial information by the applicant the independent surveyors understood that the proposal related to 8 units only. Their report was provided on that basis. Officers identified this confusion when preparing a report to Committee on the original scheme proposals. Further consultation with the independent surveyors assessing the proposals was undertaken and a revised report relating to the whole 20 units was prepared and submitted. This report concluded that the business as a going concern i.e. sold as a single entity was unviable. The assessment however also concluded that insufficient marketing for the whole 20 units had been undertaken and further marketing was therefore required to demonstrate that there was no viable demand for all 20 units with the restrictive conditions as separate individual properties.

As is discussed in more detail below the earlier version of the report relating to 8 units also concluded that the business as a going concern/single entity was not viable; also that the 8 individual units had been adequately marketed at reduced market valuations reflective of the restrictive conditions and that there was no proceedable interest in these properties.

The applicant was made aware of the findings of the independent assessor of both reports and subsequently revised the scheme proposals to relate to the relevant 8 properties only. The

independent assessor has subsequently resubmitted this original report in respect of the revised scheme proposals.

Principle

The principle of residential development in this location is not available for consideration as part of this application. The proposal is merely a variation and removal of conditions restricting occupancy of 8 holiday let accommodation units that are already built. The proposal is not for the erection of new residential development and as such the principle of a residential development in this location and the sustainability of such a development proposal is not available for consideration. The issue for assessment is specific to this site and this development in that the application asserts that the development is not a viable concern, that it has been marketed at reasonable valuation and there is no interest in it as a going concern. Further that the individual properties have been marketed at reduced valuations to reflect the restrictive occupancy conditions attached and that no proceedable interest has been identified. These matters are discussed in detail below but the relevant issue here is that these are material circumstances that are specific to this site only. These types of financial considerations are solely material to each individual site and the form and type of development that has been constructed and the circumstances relevant to the locality will inform such matters and will vary from site to site. As such they do not define any standard or establish any form of precedent that must be adhered to and which would restrict the determination of other such proposals on other sites. Other such holiday let facilities in other locations would need to be assessed on their own individual merits and site circumstances. It is also important to note in this context that the current financial climate is a relevant material factor. This is referenced further below but it should be noted that the economy has worsened considerably since the initial permissions were granted and development took place. These are changed material circumstances in this instance which may not always be prevalent during the future. This is specifically relevant here in respect of the availability of financing from banks for purchase of such restrictive occupancy properties and the viability of fairly small scale holiday let accommodation facilities.

Furthermore the Council in determining any application is duty bound to act reasonably and determine the applications that are submitted on the basis of relevant material considerations and circumstances. As such it is not appropriate or acceptable for any Local Planning Authority to determine an application on the basis of what may possibly happen in the future or what their position may have been with respect to a theoretical situation i.e. a wholly new proposal for residential development. The Council's decision must be defensible and justifiable in the event of an appeal. Refusal on the grounds that a new residential development would be unsustainable in this location would not meet this test.

In terms of the residential conditions that would result from an unrestricted residential occupancy arrangement it is considered that the site layout affords a reasonable level of residential amenity. It is certainly not considered to be the case that the arrangement is so sub-standard in terms of the amenities of future occupants that all other material considerations are overridden and consent should be refused. It will however be necessary to remove certain permitted development rights by condition to ensure control over this situation.

The Parish Council has previously objected that work taking place on the Neighbourhood Plan for Oaksey in respect of housing will be rendered redundant by approval of this application. This application is not a proposal for new residential development and cannot be assessed in those terms. The Wiltshire Core Strategy and the strategy for housing policies in Neighbourhood Plans (Policy CP2 is relevant) are framed as approximate requirements and clearly envisage that Neighbourhood Plans have the scope to propose additional housing over the minimum requirements identified. The Core Strategy Examination Inspector has also published an initial letter to the Council dated 2/12/13 which sets out his assessment that the housing requirement should be increased. As such the position is subject to amendment and work is ongoing. The preparation and evolution of Neighbourhood Plans is a part of that process. The Parish Council also refers to Wiltshire Council Enforcement Action in respect of

breaches of the Holiday Let conditions. There are two investigations underway and no formal action taken. One relates to the use of units 1 and 9 both of which have been sold separately and are not the subject of this application. The second investigation relates to the failure to maintain a guest register. It is not considered that this matter is so significant as to affect the consideration of this application in and of itself. Indeed it has yet to be demonstrated that this is in fact the case.

History & Conditions

In this instance the site history demonstrates that the Council has sought to ensure as far as it was able that the development would not lead to an unfettered residential development in this location, whilst also being supportive of a business venture that also provided leisure facilities within the local community. To this end permissions were issued but with restrictive conditions in place e.g.

N.89.3470.F

5 Each holiday unit (numbered 1-6 on the plans hereby approved) shall only be occupied by any single party for a period not exceeding 3 calendar months in any one period of 12 calendar months.

Reason: To restrict the use of the units to holiday accommodation. The site lies in an area where new dwellings are not normally permitted.

N/02/01841/FUL

7 The development shall only be used as holiday accommodation and no person shall be in occupation for more than 42 days in any calendar year.

Reason: To ensure that the development is not used as permanent accommodation or as dwellings.

These conditions were the subject of a subsequent application for variation to reduce the level of restriction and extend the period of use which was also refused by the Council. This decision was appealed and that appeal was allowed resulting in the following condition be applied:-

The buildings shall not be occupied other than for holiday accommodation, and shall not be occupied from 6 January to 5 February inclusive in any year, and shall at no time be used for permanent residential accommodation.

This condition was then also subject of four separate applications for variation of the terms as it related to separate units at the site all of which were approved. The applications also sought to vary condition 7 attached to 02/01841/FUL.

These resulted in conditions 8, 9 and 10 as referenced in section 5 above. Condition 8 is of specific relevance in this regard as restricts the use to holiday accommodation but places no time limit in this regard.

Whilst this approach to the site could be viewed as an attempt to progressively remove restrictions it could also be argued that both parties have sought to achieve a balanced approach to the occupation of the site and to apply conditions that maximise the possibility for the facility to be used as originally intended – holiday accommodation. The ongoing change to the terms of the restriction being evidence of the need to have greater flexibility in the terms of the holiday use to maximise the desirability of the location and broaden the market sector. Effectively representing an effort by the applicants and owner of the site to maintain a viable business. The fact is that the original conditions applied were deemed to be unreasonably restrictive by an Inspector considering the matter and the appeal against that restrictive approach was allowed. The Council has subsequently sought to maintain its support for the holiday accommodation business. That earlier appeal decision remains a material planning

consideration and is of increasing relevance given the changed economic circumstances and the submitted market viability appraisal.

It is also important to note that the applicant has discharged several of the other conditions relevant to the site and that should consent be granted these could not be reimposed.

Market Viability Appraisal

The applicant has submitted a Market Viability Report prepared by Strutt and Parker Chartered Surveyors. The report was prepared in behalf of administrators Price Waterhouse Cooper after Oaksey Park Limited was forced into administration. The purpose of the report as per the Instruction to Strutt and Parker was to assess the viability of and market for the Holiday Accommodation and the market for and viability of an alternative unfettered residential use for the site. In respect of the Holiday Accommodation the report concludes that:-

- Trading at a loss for the last three years
- Hobbies have pulled out as commercially unviable.
- Price Waterhouse Cooper state that holiday use is also unviable with no foreseeable prospect of future growth.
- Strong competition, particularly from Cotswold Water Park

On this basis it concludes that the use is commercially unviable.

With respect to a use as unfettered residential accommodation the report identifies that this is a good long term investment with steady demand and that it would be commercially viable.

The Council sought independent assessment of this submitted Market Viability report. This report has not been published as it contains commercially sensitive and personal financial information. This approach has been disputed by several interested parties and local residents. A great deal of such information and assessments submitted with a wide range of planning applications throughout the country are treated in this manner. This is not unusual and is indeed a quite common occurrence, examples include the change of use of public houses to residential and their related viability reports and assessments. The submitted market viability report of the applicant has been made publicly available for review and comment however and a number of objectors have made their submissions in that regard as summarised above and in further detail below.

Initially the Case Officer sought the input of the Council's Estates Department but it was identified that the issues at hand, including valuations of and the market for Holiday let accommodation, were areas of specialist knowledge and expertise which was not available within the Council. As the case officer sought independent specialist assessment on behalf of the Council and instructed a private firm of Chartered Surveyors – Chesterton Humberts. The instruction was specifically to assess the applicant's submitted market viability report and to consider whether or not this was reasonable and sound in respect of the removal of conditions for the 20 units. As noted above subsequent discussions between the applicants surveyors' and Chesterton Humberts resulted in some confusion and a partial assessment relating the marketing of individual units (8 in total was completed). In so doing Chesterton Humberts considered both the viability of disposal of the 20 units as a going concern; also the viability of the sale of 8 individual units with the relevant restrictive conditions in place. This assessment also considered the marketing that took place and the valuations placed on the 8 units.

In undertaking the initial assessment Chesterton Humberts sought and received additional detailed information as to the marketing process and results that had taken place from the applicant.

The resubmitted independent assessment undertaken on behalf of the Council concludes that:-

- the marketing was reasonable and appropriate in relation to the 8 properties that are the subject of the current application;
- the valuations placed on the units individually was reasonable and appropriate (subject to caveat discussed below);
- the development as a whole going concern is unviable given the offer available and competition in the locality;
- the 8 units cannot be sold individually with the restrictive conditions in place as finance is not available from the banks.

With respect to the operation as whole no offers were identified in the recent marketing process. With respect to the sale of individual units offers were initially received however when these were investigated for progression it became apparent that the individuals making the offers could not obtain financing from their banks and as such were not “proceedable”.

Chesterton Humberts in their report do identify that with respect to the marketing and viability appraisal of the facility as a whole going concern the associated costs were significant. Indeed these incorporated the management and running costs associated with financing the purchase of the facility. The assessment was therefore undertaken on the basis of a reduction in these administrative costs with a significant discounting of the initial purchase prices. The report identifies that even with this discounting in place and with a reasonable level of overheads attached to the business acceptable levels of profitability were not available and as such the business as a whole going concern could not be considered as viable. Chesterton Humberts have stated that should the properties be offered to third parties at nil or close to nil value i.e. very heavily discounted/subsidised then a viable operation may be achievable. This has been a suggestion of some of the Third party objectors. However it is considered wholly unreasonable to require any landowner or business to dispose of assets at nil value merely to seek to maintain an established land use, which then may or may not prove to be viable in the longer term for a different operator/owner. It is not considered that such an approach, refusal of the application on this basis, would be defensible and justifiable in an appeal situation.

It should also be noted that a third party (a local resident who has previously investigated purchase of the facility) made representations to the Council regarding viability and available financial information. They have made submissions of their own in this regard and these were forwarded to Chesterton Humberts for review and consideration. Specifically Chesterton Humberts were asked to consider whether the further information affected their assessment in any way and altered their submitted assessment. Chesterton Humberts clearly stated that the information did not change or alter their assessment.

It must be made absolutely clear that Chesterton Humberts are a firm of Chartered Surveyors and as such they were instructed to examine the marketing information and viability matters only. Chesterton Humberts were not instructed to consider wider issues such as the principles of residential development in this location or indeed comment on the determination of the application in any way. This is the responsibility of the case officer and as noted the merits or otherwise of residential development in this location are not available for consideration as part of this application in any event.

S106

The application proposal would result in unrestricted residential use of the site and in all likelihood the sale of properties individually and thereby creating a new permanent residential community in this location. The current ly revised application relates to 8 units only but there is a potential for 12 further units to be similarly considered should the applicant choose to market those properties and propose the removal of conditions afterward. Certainly the evidence before the Council (the terms of the original application) indicates that this is the intention of the applicant. As such consideration of the impact of the new residential community on existing services and infrastructure in the context of the Council’s adopted policies C2 and CF3 of the NWLP in a two phase approach has been undertaken. As identified in the Consultations section

above Open Space, Education and Waste Collection requirements have been identified as necessary requirement arising from this development. In making the assessment of need consideration has been given to the Council's adopted policies supporting assessment information and the location of the site outside a defined settlement. On this basis the following requirements are considered to be necessary and justifiable:-

Education

In relation to the 8 units that are the subject of the current application 2 secondary school places are generated that cannot be accommodated within existing facilities. 2 primary school places are generated but can be accommodated within existing infrastructure. Existing secondary school capacity can be enhanced and so a financial contribution of £38,310 for secondary infrastructure is required based on current school place cost multipliers.

Open Spaces

The site lies adjacent a golf course and is within the open countryside but is not well related to major centres of population and existing public open space provision. Given the site circumstances and scale of residential accommodation that would result it is considered that on site provision of a children's Local Equipped Area for Play (LAP) is necessary and justifiable in relation to the 20 units originally proposed but no provision either on site or in terms of financial contributions could be justified in relation solely to the 8 units. This position can be addressed by the inclusion of a trigger for on site provision of play space (in a specific location and form to be agreed with the Council) should the second phase of 12 units ever be subject of a planning permission for removal of the restrictive occupancy conditions. Officers recommend that this would be most effectively maintained through a private management company arrangement and again this can be achieved by covenants for agreement of terms in a S106 agreement.

Waste Facilities

Officers identified a requirement for waste collection facilities (wheelie bins) and seek a financial contribution for provision for each of the twenty dwellings equating to £2,420. The applicant has however identified that there is already existing provision of such facilities at the site. As such it is agreed that further financial contributions are not justifiable in this respect.

These requirements have been identified and discussed with the applicant who has agreed to address matters through the preparation of a Section 106 agreement, in this instance a Unilateral Undertaking is proposed. A draft has been submitted for agreement but this has only just been received at the time of writing the report and legal review of the terms and conditions is required. As such the recommendation is to delegate authority to the Area Development Manager to grant consent subject to the finalisation of this agreement.

Phase 4 of the Development/Extant Permission

It should be noted that a final phase of development of holiday let units at the site remains unimplemented and is not covered by the current application proposals to remove restrictive occupancy conditions. The consent remains extant given the implementation of earlier phases and related works. An application to discharge conditions relevant conditions has been submitted. Officers were concerned that this indicated some level of intent on the part of the applicant which would therefore undermine the assertions as to viability and demand for the existing units that are the subject of this application. Officer sought Legal advice as to what if any action could be taken with respect to the consideration of the discharge of conditions and possibility of voiding the permission of the final phase of development. The advice received is that if the details are acceptable it would be unreasonable to withhold formal discharge of conditions and such an approach would not be justifiable or defensible..

With regard to the invalidation of the original permission with respect to the phase 4 development legal advice is that once a planning permission is granted it will continue in force. Where partially implemented it remains extant. In certain circumstances the grant of subsequent applications may make it impossible to complete implementation of the original consent, for example where the uses permitted are incompatible or there are physical constraints to the implementation of the two different permissions. Given the facts of this case in terms of the form and layout of the site and the remaining consented phase of development and given the compatible nature of the uses that would be permitted (holiday lets and residential units) the Legal team do not consider that there is an issue of incompatibility that would invalidate the phase 4 consent.

Should the phase 4 consent be implemented and then an application to vary or remove conditions be submitted on the grounds of viability the site history and in particular the position with regard to the current application and any future second phase application relating to the 12 units not covered herewith would be material considerations. It is officers' opinion that it would be impossible to justify the erection of the phase 4 units and then apply shortly thereafter for removal of conditions on the grounds of viability. It would be apparent to all parties that the investment should not have taken place because the units were known to be unviable.

The applicant has verbally commented that there is no intent to proceed with implementation of this phase 4 and that the purpose of discharging conditions relates to the valuation of the property as whole in relation to current financing arrangements.

10. Conclusion

It is considered that it has been satisfactorily demonstrated that the existing development of 20 holiday let units is not viable as a going concern and that adequate marketing of the facility at a reasonable valuation has been undertaken. Similarly it is considered that following appropriate and acceptable marketing there is no evidence of proceedable interest in 8 of the individual units with the restrictive conditions applied. There is verifiable evidence that the current business is operating at a loss and even taking into account significant level of discounting that a reasonable and appropriate level of profit cannot be achieved. The Council has sought and received independent assessment of this position. Consequently it is considered that the case has been made to justify removal of the restrictive occupancy conditions subject to the necessary consequent service and infrastructure requirements being addressed through a S106 agreement.

11. Further comments to Meetings of 2nd and 23rd April

The following paragraphs were included in the report to the meeting of 2nd April, however that report was withdrawn from the Agenda:

Further Comments to Meeting of 2nd April

At the Northern Area Planning Committee on 12th March 2014 Members resolved to defer making a decision to allow officers to seek further information and address a number of concerns that members raised. The main areas of concern that were identified were:

- Residential amenity, the provision for private amenity space for the units and impact this may have on the appearance of the development
- Details of the proposed legal agreement and contributions sought.
- Impact on Wiltshire Council provided services, in particular Waste collection
- Details of access to the highway

- Interpretation of paragraph 55 of the National Planning Policy Framework.

Residential amenity

This matter was addressed in the report to the 12th March NAPC. Under the 'Principle of development' heading the report noted:

"In terms of the residential conditions that would result from an unrestricted residential occupancy arrangement it is considered that the site layout affords a reasonable level of residential amenity. It is certainly not considered to be the case that the arrangement is so sub-standard in terms of the amenities of future occupants that all other material considerations are overridden and consent should be refused. It will however be necessary to remove certain permitted development rights by condition to ensure control over this situation."

Officers have reviewed the existing site layout. Whilst probably not the type of layout that would have been favoured for unrestricted residential occupation, it does afford acceptable levels of privacy and avoids overlooking. Clearly the layout does not provide private areas of garden or sitting out space, but these issues could be addressed with the introduction of fences or other boundary treatments. Any additional fencing will require permission if the proposed conditions are approved and this would give the Council the opportunity to consider what impact these would have on the appearance of the development or the wider landscape.

Details of proposed legal agreement

The details of the proposed contributions and restrictions to be sought are set out in the Officers report under the 'S106' heading. This detailed that a contribution of £38,310 was being sought for education. In terms of public open space there is no contribution being sought at this stage, however should the remaining units be subject to a similar application (to remove the restrictive conditions) this could trigger a contribution:

"the inclusion of a trigger for on site provision of play space (in a specific location and form to be agreed with the Council) should the second phase of 12 units ever be subject of a planning permission for removal of the restrictive occupancy conditions."

Impact on waste collection

This matter was also addressed in the report to the NAPC on 12th March under "S106":

"Officers identified a requirement for waste collection facilities (wheelie bins) and seek a financial contribution for provision for each of the twenty dwellings equating to £2,420. The applicant has however identified that there is already existing provision of such facilities at the site. As such it is agreed that further financial contributions are not justifiable in this respect."

The units are existing and could be occupied year round, albeit by 'holiday makers' rather than permanent residents. Both types of occupiers will create waste and this will need to be collected. The impact on waste collection at the site will be little different should the restrictive conditions be lifted.

Details on Highways access

Officers indicated at the NAPC Meeting on 12th March that access was afforded to the site via two points of access. However, whilst an access does exist from Wick Road to the east of the site this is not generally used. The principle point of access is via the main 'golf course' access to the south of the site.

The highways team has confirmed that they have no objection to the proposals. As with the comments on waste collection above the difference between traffic generated by the units with the restrictive conditions applied and an unrestricted residential unit is very minor. The access to the site is considered acceptable to serve the golf course plus the existing units and the, as yet to be implemented, phase iv units. Officers consider that it would be difficult to argue that the removal of the restrictive conditions would result in significantly more traffic using the access or that use of the existing access would become a danger to highway safety.

NPPF

Paragraph 55 of the NPPF seeks to restrict isolated homes in the countryside. This reflects long established policies at both national and local level that only allows for new homes where there is an agricultural justification, reuse/conversion of existing buildings or where a 'truly outstanding' design is proposed. However, this application is not for new build units or conversions and the application is not for the change of use of the buildings. In this case the Council is considering removing conditions that restrict the use of an existing group of residential properties. It is not considered that paragraph 55 is particularly pertinent to this proposal. A refusal based on the requirements of paragraph 55 would be difficult to justify.

For clarity Paragraph 55 states:

"To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:

- the essential need for a rural worker to live permanently at or near their place of work in the countryside; or
- where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or
- where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or
- the exceptional quality or innovative nature of the design of the dwelling. Such a design should:
 - be truly outstanding or innovative, helping to raise standards of design
 - more generally in rural areas;
 - reflect the highest standards in architecture;
 - significantly enhance its immediate setting; and
 - be sensitive to the defining characteristics of the local area."

Further comments to the meeting of 23rd April

Following the receipt of a letter from Thrings solicitors the application was withdrawn from the Agenda for the following reason:

"A letter has been received from solicitors acting on behalf a third party which argues that should the Council make a decision to approve planning application reference 13/00958/s73a (Oaksey Park, Lowfield Farm, Oaksey) without first making publicly available all documents referred to in the officers report (specifically the Chesterton Humberts assessment of the schemes viability) then the decision may be vulnerable to challenge through the High Court. The report

was not made public because it was considered to contain personal and financially sensitive information, however a redacted form of the report was made available through the freedom of information act. However, Officers believe that in the interests of transparency the requested information should, as far as possible, be made available to the public alongside other planning documents. For that reason the application has been withdrawn from the agenda, to be considered at the next available Northern Area Planning Committee.”

A copy of the letter is attached as Appendix 1.

The argument set out in the Thrings letter of 31st March is that the Council should make available the Chesterton Humberts Report upon which the Officers report draws for some of its conclusions. Secondly, it argues that the highways matters have not been fully assessed.

In response a copy of the redacted Chesterton Humberts Report has been placed on the Council's website (it had already been made available under a Freedom of Information request). It is considered to be appropriate that some of the financial and personal information in the report remains confidential.

Secondly, whilst the Council is happy to make available any correspondence from the Highways team on this matter, there is no justification for the implied claim that the highways issues have not been assessed in the consideration of this application.

Prior to the Committee considering the application on 12th March Officers made some further observations about the content of the report, which sought to clarify some relatively minor points. For completeness these were:

- Under the heading 'Report Summary' it is said that the conditions regarding the holiday accommodation link it to the adjacent golf course. However, these operations (golf course and accommodation) are independent and are not formally linked (especially by condition) despite the obvious synergy that has operated over the years.
- In the above report Officers have summarised the Chesterton Humberts viability report findings and refers to the "reduced market valuations". The viability report is perhaps more direct, describing the marketing as having involved 'heavily discounted prices' and links the lack of interest 'purely on account of the restrictions in the planning consent'.

Conclusion

Having considered the matters that members raised in relation to this application on 12th March and the content of the Thrings letter of 31st March Officers consider that the recommendation originally presented to the NAPC meeting on 12th March remains appropriate.

RECOMMENDATION

That authority be delegated to the Area Development Manager to grant Planning Permission subject to the conditions listed below and the completion of a section 106 agreement to address education and open space service infrastructure requirements.

Conditions

1 The development hereby permitted shall be carried out in accordance with the documents (including plans) incorporated into this decision, previously and subsequently approved pursuant to

this decision (including details contained within letters dated 16th January 2004, 13th February 2004 and 22nd February 2004 from Nick Stickland Architect and their enclosures and a letter dated 16th February 2004 from Rational Windows and Doors and its enclosure relating to hard and soft landscaping, external stonework and materials, external lighting and foul drainage), unless otherwise approved in writing by the local planning authority. Site Location Plan, Site Access Plan, Site Plan 09/04/2013. site layout plan Ref 958/10 date stamped 01/08/2013

REASON: To ensure that the development is implemented in accordance with this decision in the interests of public amenity.

2 The approved landscaping scheme (details set out in a letter dated 13th February 2004 from Nick Stickland Architect plus enclosures) shall be implemented within one year of either the first occupation or use of the development, whether in whole or in part, or its substantial completion, whichever is the sooner, and shall be maintained thereafter for a period of not less than five years. The maintenance shall include the replacement of any tree or shrub which is removed, destroyed or dies by a tree or shrub of the same size and species as that which it replaces, unless otherwise agreed in writing by the local planning authority.

REASON: In the interests of visual amenity in accordance with policy C3 of the North Wiltshire Local Plan 2011.

3 Notwithstanding the provision of the Town and Country Planning General Development Order no fences, walls or other means of enclosure other than those shown on the approved plans shall be erected anywhere on site.

REASON: To ensure that the open areas of the site remain in communal use.

4 The area between the nearside carriageway edge and lines drawn between a point 2.4 metres back from the carriageway edge along the centre line of the access and points on the carriageway edge 160m back from and on both sides of the centre line of the access shall be kept clear of obstruction to visibility at and above a height of 900mm above the nearside carriageway level and maintained free of obstruction at all times.

REASON: In the interests of highway safety in accordance with policy C3 of the North Wiltshire Local Plan 2011.

5 The development hereby permitted shall be served solely from the access shown in drawing c310/1.

REASON: In the interests of highway safety in accordance with policy C3 of the North Wiltshire Local Plan 2011.

6 The workshop / estate yard shall be used only for purposes ancillary to the golf course.

REASON: To prevent an inappropriate independent use.

7. The development hereby permitted relates solely to units 12 – 19 Inclusive as shown on site layout plan Ref 958/10 date stamped 01/08/2013.

REASON: To clarify the extent of the permission.

8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), no buildings or structures, or gate, wall, fence or other means of enclosure, other than those shown on the approved plans, shall be erected or placed anywhere on the site on the approved plans.

REASON: To safeguard the character and appearance of the area.

9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), no window, dormer window or rooflight, other than those shown on the approved plans, shall be inserted in the roofslope(s) of the development hereby permitted.

REASON: In the interests of residential amenity and privacy.

11. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), there shall be no additions/extensions or external alterations to any building forming part of the development hereby permitted.

REASON: In the interests of the amenity of the area and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions/extensions or external alterations.

INFORMATIVES:

Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

This permission shall be read in conjunction with an Agreement made under Section 106 of the Town and Country Planning Act, 1990.

The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence.

If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

Background Documents Used in the preparation of this Report:

- Application Documentation including Strutt and Parker Market Viability Report and Additional Supporting Information
- Chesterton Humberts Assessment of the Market Viability Report

THRINGS

For the attention of Lee Burman/Brian Taylor
Wiltshire Council
Monkton Park
Chippenham
Wiltshire
SN15 1ER

Also via email

31 March 2014

Your Reference: Our Reference:

AM/lcl/03864-1

Direct Line: 0117 9309575
Direct Fax: 0117 9293369
Email: amadden@thrings.com

Dear Sirs

Our Client: Martin Davies on behalf of Oaksey Parish Council

Application Number: N/13/00958/S73A ("the Application")

Application Site: Oaksey Park, Lowfield Farm, Oaksey, Wiltshire ("the Application Site")

Proposal: Removal of Conditions 8, 9 and 10 imposed on application reference 10/03612/S73A which varied condition number 7 of 02101841/FUL and appeal APP/J3910/A/04/1145607, allowing unrestricted residential occupancy of units 12 to 19 (8 in total)

We confirm we represent the above named who has previously lodged an objection to the above application.

It is our understanding that this Application will now be determined at Committee on 2 April 2014. The purpose of this letter is to request that the determination of this Application at Committee on the above date be deferred until the next available Committee date to allow the documents referred to below to be disclosed to our client and/or uploaded onto the Council's website so that they can be properly considered by our client (and other third parties). We have numbered the following paragraphs for ease of future reference.

1. Viability Report prepared by Chesterton Humberts

1.1 We understand from the Officer's report to Committee that Chesterton Humberts were instructed to specifically assess the Applicant's submitted market viability report and to consider whether or not this was reasonable and sound in respect of the removal of conditions for the 20 units; and also the viability of the sale of 8 individual units with the relevant restrictive conditions in place and the marketing that had taken place and the valuations placed on the 8 units which are the subject of the Application. The confusion between the surveyors for both parties and the partial assessment relating to the marketing of individual units is also material and duly noted.

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1.2 Although the contents of the report prepared by Chesterton Humberts are summarised in the Officer's report, a copy of the document is not available on the Council's website and therefore, those objecting to the Application have had neither the opportunity to fully consider the contents of the same nor to make appropriate representations.

1.3 Plainly, a failure to disclose the Chesterton Humberts report seriously prejudices the ability of third party objectors to consider first hand its contents and to make appropriate representations in relation to the same. In addition, such an omission, it is submitted, contravenes the requirements of section 1000 of the Local Government Act 1972 (as amended) which provides, amongst other things, that background papers for a report are to be open to inspection by members of the public. Moreover it follows, therefore, that such an omission contravenes a statutory requirement and constitutes procedural impropriety which may result in the Council failing to take into account relevant material (in the form of third party representations) in the determination of the Application.

2. Highways Officer's Comments

2.1 Although it is noted that the Council's Highways team has confirmed that they have no objection to the proposals as set out in the Officer's report to Committee as it "would be difficult to argue that the removal of the restrictive conditions would result in significantly more traffic using the access or that use of the existing access would become a danger to highway safety" such reasoning appears, on the face of it, erroneously derived.

2.2 It is submitted that should the Application be approved and that the units become available for residential use (as opposed to use as a holiday let, which is, by its very nature, seasonal) then the use of the access to and from the Application Site will be intensified such that it could cause a real risk to highway safety. It follows, therefore, that this issue requires an appropriate assessment. For this reason, we require sight of aU internal communications between the Highways Officer and the Case Officer in order that we can be satisfied that this issue was properly considered and, if necessary, make representations in relation to the same.

2.3 Again, it is submitted, that without sight of the said communications which, in turn, will enable appropriate comment from third party objectors and their experts, there is a real risk that the Council will fail to have regard to relevant material if the Application is determined at Committee next week.

2.4 It is settled law that highway safety and capacity is a material consideration and, in particular, we refer you to the case of *R v Newbury District Council (ex parte Blackwell)* [1999] JPL 680 where a Council's decision was overturned for failure to take into account the material consideration of highway safety.

3. To conclude, we submit that, for all of the above reasons, it will breach the rules of natural justice if the Application is not properly determined at Committee next week, since all of the information in support of the same has (a) not been publicly made available for consideration

by third parties and (b) those third parties have not had, therefore, the opportunity to submit any representations in respect of the same.

In the circumstances, we request that this Application be deferred to the next available Committee date once the requested documents have been disclosed (and/or uploaded onto the Council's website) so that third parties can have an opportunity to properly consider and comment on (if necessary) the same.

In the event that the Application is determined at Committee next week then the consequences of breaching statutory requirements amounting to procedural impropriety and failing to take into account relevant material will render any decision amenable to challenge in the High Court by way of judicial review.

We look forward to receiving your written confirmation that the determination of this Application will be deferred as above mentioned.

Please do not hesitate to contact the writer, Alex Madden, on the above number should you have any queries.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Thrings LLP'.

Thrings LLP



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Client

Oaksey Park Ltd

Project

Application to Vary
Occupancy Restrictions

Drawing Title

Location Plan

Figure No

JC/001/RG

Date September 2010
Drawn By MM
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File Ref 1042/Oakse/Figures/Fig2.ai

REPORT TO THE AREA PLANNING COMMITTEE**Report No.**

Date of Meeting	4 th June 2014
Application Number	N/13/00958/VAR (previously 13/00958/S73A)
Site Address	Oaksey Park Lowfield farm Oaksey Wiltshire
Proposal	Removal of Conditions 8, 9 and 10 imposed on application reference 10/03612/S73A which varied condition No 7 of 02/01841/FUL and appeal APP/J3910/A/04/1145607, allowing the unrestricted residential occupancy of units 12 to 19 (8 in total)
Applicant	Oaksey Park Ltd
Town/Parish Council	Oaksey Parish Council
Ward	Minety
Grid Ref	399464 194156
Type of application	Full Planning
Case Officer	Lee Burman

Reason for the application being considered by Committee

The application was deferred at the meeting of 12th March to enable Officers to seek additional information and provide additional comment. The application was then withdrawn from the Agenda of 2nd April 2014 to enable publication of a redacted version of the "Chesterton Humberts" Report. The Application was withdrawn from the 23 April 2014 Committee to allow consideration and assessment of further information submitted by objectors by Officers as advised by Chesterton Humberts. A further opportunity for a range of interested parties was then allowed for further final submissions to be made and for these also to be assessed by Officers and Chesterton Humberts.

The report for the Committee of 23/4/14 is attached at Appendix A. The main body of the report remains as presented on 12th March, with an additional section headed 'Further comments to Meeting of 2nd and 23rd April' added immediately prior to the 'Recommendation'. The Officers conclusions and recommendations remained unchanged.

The following report addresses the additional submissions received and the consideration and assessment of this information by the Council's advisors Chesterton Humberts and their conclusions.

1. Purpose of Report

To recommend that authority be delegated to the Area Development Manager to grant planning permission subject to the signing of a Section 106 agreement.

2. Report Summary

The main issues are:-

The viability of the existing units of accommodation with the currently attached conditions restricting the scope and nature of the residential use and occupancy i.e. as Holiday let accommodation;

Whether or not the properties have been marketed appropriately and at valuations reflecting the restrictive occupancy conditions;

The evidence available to support arguments for or against viability and for marketing and valuation.

The principles of the development proposal.

Oaksey Parish Council maintain their objection to the proposal and summarise these objections as follows:-

- Non-viability has not been proven
- The application is entirely for the profit of the applicant
- WCC planning has not followed proper planning procedures
- WCC planning makes generalisations in the report which are not fact
- WCC make a fundamental error in the assessment of access
- There are glaring inconsistencies in the report
- The application does not conform to the Local plan or NPPF 55 despite WCC's claim that it does.
- Amenity (Waste, parking etc) has not been duly considered
- Highways have not given due consideration to the application
- Education needs have not been considered adequately
- The application for only 8 units is one of convenience and any application should be for the entire development

Since the previous deferral of the Committee report submissions supporting objections to the scheme have been received from 2 Local Residents. The submissions support their objection that the Holiday Let scheme is viable and that the properties have not been marketed effectively or at realistic prices. Objections are also raised in respect of the adequacy of the access to the site for vehicular traffic generated as result of the unrestricted residential use of the properties.

The representations received previously are summaries in the report attached at Appendix A

3. Site Description

As per the report attached at Appendix A.

4. Planning History

As per the report attached at Appendix A.

5. The Proposal

As per the report attached at Appendix A.

6. Planning Policy

As per the report attached at Appendix A. In addition it should be noted that objectors have asserted that paragraph 55 of the National Planning Policy Framework provides a basis for the assessment of the proposals and sound justification for the refusal of the application. This is addressed in the report contained at Appendix A but to summarise paragraph 55 NPPF specifically relates to new residential development within rural areas, including the change of use of existing buildings. This is not an application for new residential development or a change of use and Paragraph 55 does not apply directly given the material circumstances pertinent to this application. Paragraph 55 is reproduced in the report to Committee contained at Appendix A.

7. Consultations

As per the report in Appendix A. In addition the applicant team and objectors, including the Parish Council, who raised major concerns in respect of the proposals and sought to submit additional information for assessment and consideration. The report to Committee was deferred by two further cycles until this meeting to allow submission, assessment of submissions and reporting. Full re-consultation with all parties was not undertaken.

8. Publicity

As per the report attached at Appendix A.

9. Planning Considerations

Principle

As noted in the planning policy section above and the previous reports to Committee this application is not a proposal for new residential development on greenfield land. It is not an application to change the use of existing buildings. It is worth repeating this fact because many interested parties are in disagreement in this respect. The buildings are in place, they are currently in use for a form of residential occupancy (Dwellings and Holiday Lets are within the same Use Class – C3) albeit of a restricted nature and the original grant of permission and subsequent permissions granted at the site all allow for this form of residential usage of the site. This application seeks to further vary and remove conditions applied to previous permissions in respect of 8 of the constructed properties to allow for wholly unrestricted residential occupancy on the basis that there is no interest in purchasing the Holiday lets and that the business as whole is financially unviable. Therefore as a matter of fact this is not an application for new residential development on Greenfield, previously undeveloped land and the application cannot be assessed in those terms or under national and local planning policies relevant to applications for such new residential development. This is not a change of use application for example agricultural buildings to residential. This application has specific material circumstances pertinent to its determination not addressed by para 55 i.e. financial viability and market interest in the business or individual properties at the site. It is considered that para 55 does not provide a policy basis for determination of this application and no sound and defensible basis for the refusal of the application.

Market Viability Appraisal and Additional Information Submissions

The Council has received the following additional information submissions:-

- Equimedia Report 5/9/14 for Oaksey Parish Council
- Oaksey Parish Council comments on Officer report to Committee
- Price Waterhouse Cooper Oaksey Park Ltd Administration Reports
- Correspondence From Objectors received by 9/5/14
- Rycal Investment Group marketing documents and related objector correspondence

- Oaksey Park Limited Company Accounts period to 31/12/10
- Strutt and Parker Marketing Documentation received from Objectors 17/4/14
- Applicant Correspondence received by 9/5/14
- Strutt and Parker Marketing Viability Assessment Update 9/5/14

All of the documentation, except the 2010 company accounts, was published to the Council's website upon receipt. The Council requested and received Company accounts for the period to the end of 2010. This contained sensitive financial information. The Council queried with the applicant's representatives whether or not this was available in any other forum/public domain and it was confirmed that it was not. The information has therefore not been published to the Council's website following advice received from the Freedom of Information and Legal Teams. The information was submitted to Chesterton Humberts for review and assessment. In summary the information shows a net loss for the period to 31/12/2010, however Chesterton Humberts consider that the accounts relate not solely to the Holiday Let units, including the Golf Facilities, and have therefore not relied on or given substantial weight to this information. Similarly Chesterton Humberts assess that the Price Waterhouse Cooper Administration reports also include accounts for the Golf Facilities and have again not relied on this information or given this substantial weight.

The Council forwarded all of these documents to Chesterton Humberts and issued instruction that these be assessed in full and consideration given as to whether or not the conclusions in the previous Chesterton Humberts report were affected in any way at all; if so to then provide revised conclusions. A revised report from Chesterton Humberts was published in full and un-redacted in any way to the Council's website on 27/5/14. This report is reproduced at Appendix B and the conclusions in that report are reproduced in full as follows:-

8. Conclusion

It is my opinion that under current market conditions the lettings business, consisting of 20 cottages, of which 8 are the subject of the planning application, does not represent a viable business as it has not shown an adequate return for an investor.

With regard to the viability of selling the individual properties, while the marketing of the 8 units by Rycal was unconventional and not employing the usual marketing tools, they did apparently identify purchasers for the property who agreed prices acceptable to the applicant and would have been prepared to proceed with the purchase had reasonable funding been available.

The difficulty of both arriving at a suitable value and achieving a sale of one of a restricted property has been highlighted by the double failure of the offering of Unit 1 at auction in February and April of this year.

Accordingly I am of the opinion that the proposition of disposing of the 8 units to individuals genuinely seeking holiday homes is unviable in this location.

Furthermore Council officers met with the author of the report to discuss the assessment and conclusions and to ensure that all the submitted information had been assessed and to raise some concerns identified by objectors and seek a response.

The Author confirmed that all information submitted had been reviewed in full. It was confirmed that the submitted information of objectors including the marketing information of Strutt & Parker (copied to Council 17/4/15) and the report for Oaksey Parish Council of Equimedia did not provide convincing and fully justified evidence that the holiday let business was indeed viable as is asserted by objectors. The Strutt and Parker marketing information identifies that it is marketing information that excludes certain substantive costs. The inclusion of such costs renders the business loss making. Even reduced costs burdens comparative to other similar business operations result in loss making, unviable operations or returns so low that they do not represent an attractive or reasonable business investment. The Equimedia report is based on income assumptions and cost reductions that are considered by Chesterton Humberts to be both unrealistic and unreasonable. As noted above both the 2010 Company Accounts and the Price Waterhouse Cooper administration accounts include data relating to the Golf Facilities at the site and are not exclusively accounts relating to the Holiday lets as such Chesterton Humberts have given these limited weight in their assessment. The Rycal Investment Group marketing information has been reviewed and is referenced in the revised Chesterton Humberts reports as unconventional. It is noted that expressions of interest and offers were received. Contrary to objectors assertions it is concluded that the offers were not supported by firm financing and did not materialise. The Author also concludes, contrary to objector's submissions, that the recent unsuccessful efforts (two separate public auctions) to auction property 1 at the site (in private ownership) at significantly reduced costs are relevant and are indicative of a lack of demand and proceedable interest for these properties with the conditions attached. Indeed weight is given to this actual sales process in the absence of further marketing post 2012 (it should be borne in mind that the application was submitted in 09/04/2013). The Author was specifically asked to comment further on the submissions that the Rycal marketing effort which produced offers for properties at the site. This is addressed in the attached report but to be clear the author considers that the available evidence, including the Strutt and Parker Market Viability Assessment Update, demonstrates that these offers were not supported and followed through with provision of finance and funding i.e. no banks or building societies would lend to the individuals to proceed with the purchases/offers.

The Price Waterhouse Cooper Administration reports have been assessed and as noted have been given limited weight as they include data for the Golf Facilities. However, these accounts appear to show net losses for every period covered except one – the period to 6/12/2011 where a small net profit of £741 is shown. The information was submitted by Oaksey Parish Council alongside the Equimedia report on the basis that this showed a significant profit in the depths of recession thereby highlighting the viability of the business. Officers met with Oaksey Parish Council following this submission on 15/5/14 at which it was requested that Oaksey Parish Council specify where in the submitted PWC reports the references to profits were shown. No response has been received at the time of writing. Officers and Chesterton Humberts cannot find any statement or section in the PWC Administration reports that specifically states or demonstrates a profit other than the single period to 6/12/2011. This level of profit (£741) during one single period is not considered to represent an attractive business investment and does not demonstrate that the business is viable.

It has been submitted by individual objectors and Oaksey Parish Council that Chesterton Humberts is not independent in this assessment as the company has previously marketed properties at the site. The Author of the Chesterton Humberts report confirmed that he and

his specialist leisure colleague with whom he consulted in the preparation of the report had no prior involvement in and / or any knowledge of a previous period of marketing by the Chesterton Humberts. It should be noted that the marketing referred to by objectors took place was in 2008 and was undertaken by Humberts Leisure – predecessor company to the current Chesterton Humberts organisation, which was sold by Humberts prior to the formation of the current company. A London based office of Humberts Leisure undertook that work. The report informing determination of this application was prepared by staff from the Chippenham and Taunton Offices of Chesterton Humberts. The companies and staff members involved are wholly different and separate. On this basis it is considered that the report authors have been and remain wholly independent.

In conclusion it is considered that full opportunity has now been given to all interested parties to make their submissions and for these to be fully assessed. It is considered that the advice received by the Council from Chesterton Humberts is comprehensive, independent and sound. The conclusions of Chesterton Humberts clearly remain that the current whole business (20 holiday let units) is unviable as a going concern. In order to generate any business interest in the site and for it to operate as a viable and attractive business a combination of substantial cost reductions alongside significant investment would be required. These cost reductions require significant debt write offs by investors/creditors which is considered unreasonable and unrealistic. Similarly it is concluded that the individual 8 properties the subject of this application have been effectively marketed and at reasonable prices. Further that it has been demonstrated that there is no proceedable interest in the purchase of the properties individually with the restrictive occupancy conditions attached. Furthermore in order to generate any interest in the individual properties the valuations would need to be reduced to a level substantively below construction costs resulting in significant losses to the owner/applicant. It is not considered reasonable for a Local Planning Authority to determine applications on this basis i.e. to apply unrealistically low valuations in order to test the market as to whether or not other parties would be prepared to try and make the development a going concern or to generate individual sales as Holiday lets. There is no guarantee that this would result in a successful business operation or the long term retention of the individual properties as holiday lets. It should be noted that Chesterton Humberts consider that there are constraints to the success of a holiday let business of this scale in this location. This has been the Council's position since the development was first proposed and subsequently allowed on appeal. Whilst the Council's position has effectively been proven to be correct the reality is that the development has been constructed. It is Officers' opinion that operating the planning system in a manner that imposes such restrictions on an on-going basis regardless of material circumstances is inappropriate and unreasonable. Such an approach is disproportionate to the impacts of the application proposal. In this respect is worthwhile reiterating once again that this is not a new residential development.

Additional Matters – Waste Collection, Education Requirements, Open Space Requirements, Access & Parking

These matters are addressed in the report contained at Appendix A. In addition, and following the further submissions of interested parties received since the 23/4/14, officers comment as follows:-

As regards waste collection the Council's waste collection services operate at the site. Bins are provided. A condition is now proposed to ensure that sufficient space at the agreed collection point is made available in perpetuity for all occupants of the 8 dwellings the subject of this application and the remaining properties at the site regardless of their occupancy.

As regards Education the Council's Education Department has an adopted methodology for calculating requirements that is applicable to the site and future proposals should they emerge. This policy approach and related calculation methodology is kept under review and

has recently been updated as approved at the Council's cabinet as of 18th March 2014. Officers are confident that the calculation methodology ensures that there is no disadvantage considering the proposals in phases as opposed to one whole application.

The Council's Open Spaces team identified a requirement for a Locally Equipped Area for Plan (LAP) arising from the unrestricted use of all 20 units. The unrestricted use of 8 units alone does not create a justifiable need under adopted national and local policies for such provision. Council officers have devised and agreed a methodology for on-site provision of the LAP should the whole 20 units come forward for removal of restrictive occupancy conditions. Details as to the form, layout and position of the LAP will be agreed at that time.

The position regarding access and Highways Officers input is addressed in full in the additional comments added at the end of the report contained at Appendix A.

As regards the remaining 12 existing properties at the site these will need to be the subject of marketing to demonstrate any lack of demand for these properties with the restrictive conditions attached. A grant of permission in respect of the 8 properties that are the subject of this application does not establish a precedent at the site that must be followed regardless of any other material considerations.

10. Conclusion

Whilst it is recognised that there is substantial local opposition to the unrestricted residential occupancy of the use of the holiday lets at this site the Council has sought to assess the application proposals on the basis of relevant material considerations and all material circumstances. It must be noted that this is not an application for new residential development at this site. The proposal cannot be considered in these terms. The Council has sought independent advice in respect of the viability of the site as whole holiday let business and in terms of the marketing and disposal of the properties. The conclusions have been reviewed several times by the author and in the light of a range of information submissions and representations by a range of interested parties. The conclusions remain that the holiday let business as a whole is unviable in this location. Also that both the business as whole and the 8 units that are the subject of this application have been effectively marketed and at reasonable valuations. It is further concluded that there is no proceedable interest in the business as whole or in respect of the 8 units as individual properties with the restrictive conditions attached. It is not considered that any other material considerations either cumulatively or individually indicate that the proposal should be refused.

RECOMMENDATION

Approval Subject to Conditions

1 Notwithstanding the provision of the Town and Country Planning General Development Order no fences, walls or other means of enclosure other than those shown on the approved plans shall be erected anywhere on site.

REASON: To ensure that the open areas of the site remain in communal use.

2 The area between the nearside carriageway edge and lines drawn between a point 2.4 metres back from the carriageway edge along the centre line of the access and points on the carriageway edge 160m back from and on both sides of the centre line of the access shall be kept clear of obstruction to visibility at and above a height of 900mm above the nearside carriageway level and maintained free of obstruction at all times.

REASON: In the interests of highway safety in accordance with policy C3 of the North Wiltshire Local Plan 2011.

3 The development hereby permitted shall be served solely from the access shown in drawing c310/1.

REASON: In the interests of highway safety in accordance with policy C3 of the North Wiltshire Local Plan 2011.

4 The workshop / estate yard shall be used only for purposes ancillary to the golf course.

REASON: To prevent an inappropriate independent use.

5 The development hereby permitted relates solely to units 12 – 19 Inclusive as shown on site layout plan Ref 958/10 date stamped 01/08/2013.

REASON: To clarify the extent of the permission.

6 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), no buildings or structures, or gate, wall, fence or other means of enclosure, other than those shown on the approved plans, shall be erected or placed anywhere on the site on the approved plans.

REASON: To safeguard the character and appearance of the area.

7 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), no window, dormer window or rooflight, other than those shown on the approved plans, shall be inserted in the roofslope(s) of the development hereby permitted.

REASON: In the interests of residential amenity and privacy.

8 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), there shall be no additions/extensions or external alterations to any building forming part of the development hereby permitted.

REASON: In the interests of the amenity of the area and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions/extensions or external alterations.

9 Within one month of the date of this permission proposals for the provision and on-going retention of space for the storage of Wheelie Bins at the collection point agreed with Wiltshire Council refuse and waste collection services. The proposals shall include details

and arrangements for the management of the space to ensure adequate provision for wheelie bins to serve all properties at the site.

INFORMATIVES:

Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

This permission shall be read in conjunction with an Agreement made under Section 106 of the Town and Country Planning Act, 1990.

The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence.

If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

Appendices:

- 1. Deferred Report to Committee 23 April 23-4-14**
- 2. Chesterton Humberts Report 23/5/14**

Background Documents Used in the Preparation of this Report:

Chesterton Humberts Report 23/5/14
Equimedia Report 5/9/14 for Oaksey Parish Council
Oaksey Parish Council comments on Officer report to Committee
Price Waterhouse Copper Oaksey Park Ltd Administration Reports
Correspondence From Objectors received by 9/5/14
Rycal Investment Group marketing documents and related objector correspondence
Oaksey Park Limited Company Accounts period to 31/12/10
Strutt and Parker Marketing Documentation received from Objectors 17/4/14
Applicant Correspondence received by 9/5/14
Strutt & Parker Market Viability Assessment Update 9/5/14
Deferred Report to Committee 23 April14



NORTHERN AREA PLANNING COMMITTEE

MINUTES OF THE NORTHERN AREA PLANNING COMMITTEE MEETING HELD ON 4 JUNE 2014 AT COUNCIL CHAMBER - COUNCIL OFFICES, MONKTON PARK, CHIPPENHAM, SN15 1ER.

Present:

Cllr Christine Crisp, Cllr Mollie Groom, Cllr Chris Hurst, Cllr Peter Hutton (Vice-Chair), Cllr Simon Killane, Cllr Howard Marshall, Cllr Mark Packard, Cllr Sheila Parker, Cllr Toby Sturgis, Cllr Anthony Trotman (Chairman) and Cllr Philip Whalley

Also Present:

Cllr Chuck Berry and Cllr Jane Scott OBE

57 **Apologies**

All members were present.

58 **Minutes of the previous Meeting**

The minutes of the meeting held on 14 May 2014 were presented.

Resolved:

To approve as a true and correct record and sign the minutes.

59 **Declarations of Interest**

Cllrs Hurst and Killane declared an interest in agenda item 6c both having previously worked for Dyson. They declared that they would participate and vote with an open mind.

60 **Chairman's Announcements**

There were no Chairman's announcements.

61 **Public Participation and Councillors' Questions**

The Committee noted the rules on public participation.

62 **Planning Applications**

Attention was drawn to the late list of observations provided at the meeting in respect of applications **6b** and **6c** as listed in the agenda pack, and available in Agenda Supplement 1.

63 **14/03701/FUL - Beckett House, Nettleton Green, Nettleton, Chippenham, SN14 7NU**

Public Participation

David Pearce, Claire Holt and Cllr David Kerr, Nettleton Parish Council all spoke in support of the application.

The officer introduced the report which recommended that planning permission be refused. He explained that the site was in an Area of Outstanding Natural Beauty (ANOB), and the impact of the change of use would be significant on the surrounding natural environment which was harmful in visual terms to the character and appearance of the landscape and the ANOB.

There were no technical questions asked.

Members of the public then addressed the committee as detailed above.

The local member, Cllr Jane Scott OBE then addressed the committee and urged members to support the application with conditions to ensure it was used for parking only, that no buildings could be placed on the site and that a sympathetic surface / materials were used.

In the debate that followed the Committee noted that legal parking requirements already exist at the site. The importance of highways safety was acknowledged. Concern was raised over the size and shape of the site of the site, and the lack of linkage to the curtilage.

Resolved:

To REFUSE the application for the following reason:-

The proposed development results in a significant change to the open rural nature of the area and does not preserve the character or appearance of the landscape and defined Area of Outstanding Natural Beauty which is harmful and not justified by any overriding material considerations. The proposal is in conflict with policies C3(ii), NE4 and NE15 of the North Wiltshire Local Plan 2011 and Section 11 of the National Planning Policy Framework.

Public Participation

Mark Crocker, Johnathan Hall and Cllr Richard Moody, Chairman – Oaksey Parish Council spoke in objection to the application.

Dr Cooper, Paul Groves and Simon Chambers spoke in support of the application.

The officer introduced the report which recommended that authority be delegated to the Area Development Manager to grant planning permission subject to the signing of a Section 106 agreement and conditions

He explained that the application had been previously deferred at the meeting held on 12 March 2014 to enable officers to seek additional information and provide additional comment. The holiday let scheme had been unviable as a business and there had been no proceedable interest in purchasing with restrictive occupancy attached. An independent report had also concluded that business was unviable.

The Committee then had the opportunity to ask technical questions of officers and it was confirmed that although difficult to speculate if grounds aren't substantive there was a risk of costs.

Members of the public then had the opportunity to address the committee as detailed above.

The local member, Cllr Chuck Berry then addressed the committee, noting the two sides being a family in significant financial stress and the objection of the parish council with support from the village on the issue of non-viability and the impact on amenities and services within the village. He drew attention to the availability of business rates relief of 50%.

In the ensuing debate the Committee raised concern over lowering the numbers of holiday lets available and debated the relevance of the tourism development policy 39 given the lack of viability of the business. The re-use of existing units was welcomed.

Resolved:

To DELEGATE to the Area Development Manager to grant planning permission subject to the signing of a Section 106 agreement and subject to the following conditions:

- 1. Notwithstanding the provision of the Town and Country Planning General Development Order no fences, walls or other means of enclosure other than those shown on the approved plans shall be erected anywhere on site.**

REASON: To ensure that the open areas of the site remain in communal use.

2. The area between the nearside carriageway edge and lines drawn between a point 2.4 metres back from the carriageway edge along the centre line of the access and points on the carriageway edge 160m back from and on both sides of the centre line of the access shall be kept clear of obstruction to visibility at and above a height of 900mm above the nearside carriageway level and maintained free of obstruction at all times.

REASON: In the interests of highway safety in accordance with policy C3 of the North Wiltshire Local Plan 2011.

3. The development hereby permitted shall be served solely from the access shown in drawing c310/1.

REASON: In the interests of highway safety in accordance with policy C3 of the North Wiltshire Local Plan 2011.

4. The workshop / estate yard shall be used only for purposes ancillary to the golf course.

REASON: To prevent an inappropriate independent use.

5. The development hereby permitted relates solely to units 12 – 19 Inclusive as shown on site layout plan Ref 958/10 date stamped 01/08/2013.

REASON: To clarify the extent of the permission.

6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), no buildings or structures, or gate, wall, fence or other means of enclosure, other than those shown on the approved plans, shall be erected or placed anywhere on the site on the approved plans.

REASON: To safeguard the character and appearance of the area.

7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification),

no window, dormer window or rooflight, other than those shown on the approved plans, shall be inserted in the roofslope(s) of the development hereby permitted.

REASON: In the interests of residential amenity and privacy.

- 8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), there shall be no additions/extensions or external alterations to any building forming part of the development hereby permitted.**

REASON: In the interests of the amenity of the area and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions/extensions or external alterations.

- 9. Within one month of the date of this permission proposals for the provision and on-going retention of space for the storage of Wheelie Bins at the collection point agreed with Wiltshire Council refuse and waste collection services. The proposals shall include details and arrangements for the management of the space to ensure adequate provision for wheelie bins to serve all properties at the site.**

INFORMATIVES:

- 1. Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.**
- 2. This permission shall be read in conjunction with an Agreement made under Section 106 of the Town and Country Planning Act, 1990.**
- 3. The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence.**
- 4. If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.**

Public Participation

Iris Thompson, David Longridge and Gavin Grant spoke in objection to the application.

Kim Power, Nigel Whitehead, Chris Miles, Cllr John Gundry – Malmesbury Town Council and Cllr Robert Tallon – Brokenborough Parish Council spoke in support of the application.

The officer introduced the report which recommended that planning permission be granted subject to conditions. He noted the scheme included amended plans which showed an adequate landscaping buffer. Highways improvements had been conditioned to be completed prior to first occupation, and there would be no development over the gas pipeline which ran through the site.

He drew attention to an error in the report which was missing condition 13 relating to archaeological works which would be required if the Committee was minded to approve, and this could be delegated to the Area Development Manager.

The Committee then had the opportunity to ask technical questions of officers and it was confirmed that at present the sports facility was not open to the community but the intention was to allow some sort of use. Traffic assessments had been completed with forecasting to allow for additional commitments. Beuttell Way works were not part of the application however officers understood that Dyson were in negotiations with owners to alter the access, and if granted works would happen. An additional grampion condition could be added for details to be agreed prior to the commencement of development. Light pollution was covered under condition 5. The helipad had been sited to cause minimal disturbance and had conditions limiting it for the use of Dyson employees only and limiting the time of day it can be used in. The pelican crossing was not part of the original planning application, but addressed residents concerns. It was estimated that circa 3000 jobs would be created with the new development, not including the knock-on effect.

Members of the public then had the opportunity to address the committee as detailed above.

The local member, Cllr Simon Killane then addressed the committee and spoke in support of the application, highlighting it as a model of positive engagement and working together.

In the debate that followed the committee highlighted the need to add an additional condition relating to archaeological works and informatives on the highways works, in particular those around Beuttell Way and the Nurning roundabout. The benefit to the whole county was noted.

Resolved:

To APPROVE the planning application subject to the following conditions:

- 1. Details of the appearance, layout, and scale of the development hereby permitted (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.**

REASON: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 2. Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.**

REASON: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004

- 3. The development hereby permitted shall begin no later than two years from the date of approval of the last of the reserved matters to be approved.**

REASON: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 4. The development shall comply with the following requirements:**

- i. the gross internal floor space of the indoor sports facility shall not exceed 1850 sq m.**
- ii. the gross internal floor space of the building to be used for an energy centre shall not exceed 600 sq m.**
- iii. the gross internal floor space of the buildings to be used for Research and development (B1(b)) shall not exceed 25800 sq ms.**
- iv. the gross internal floor space of the buildings to be used for non Research and development (B1(a)) shall not exceed 10000 sq ms.**
- iv. the gross internal floor space of the buildings to be used for an ancillary cafe and reception shall not exceed 1700 sq ms.**
- v. The total number of parking spaces shall not exceed 1414**

REASON: For the avoidance and in the interest of proper planning.

5. An Urban Design and Landscape Framework Plan for the development of the site hereby permitted shall be submitted to and agreed in writing by the local planning authority no later than the first submission for approval of any of the reserved matters.

- a. The location, orientation and heights of buildings;**
- b. The format of pedestrian routes and vehicular routes within the site;**
- c. Tree and hedgerow protection plan**
- d. Landscaping details including planting plans, species and density of planting**
- e. Hard and soft landscaping details**
- f. Landscape phasing plan which shall include cut & fill ground modelling and advanced structure planting.**
- g. Landscape Management Plan setting out the long-term ecological management of all semi-natural habitat types and the maintenance of the protected species populations.**
- h. Materials to be used in the construction of the external surfaces of the structures of the buildings**
- i. External lighting details including, type of light appliance, the height and position of fitting, illumination levels and light spillage**

Development shall be carried out in accordance with the approved Urban Design and Landscape Framework Plan.

REASON: To ensure the satisfactory appearance of the development.

- 6. Before any application for approval of reserved matters is submitted a Phase 2 botanical survey and a reptile survey shall be submitted to and approved in writing by the local planning authority. The plan shall include recommendations for appropriate and proportionate mitigation compensation measures for losses of priority / BAP habitat and the protection of reptile populations. Development shall be carried out in accordance with these details.**

REASON: To ensure that the development does not have an adverse impact on the ecology of the area.

- 7. The development authorised by this permission shall not begin until the local planning authority has approved in writing a full scheme of works for improvement to the Tetbury Hill/Tetbury road, Tetbury Road A429 and Whychurch junctions. The occupation of the development shall not begin until those works have been completed in accordance with the local planning authority's approval and have been certified in writing as complete by or on behalf of the local planning authority.**

REASON: To ensure that adequate highway capacity is available to accommodate the additional traffic generation by the proposed development.

- 8. No development shall commence on site until details of the improvements to pedestrian crossing facilities on Tetbury Hill have been submitted to and approved in writing by the Local Planning Authority. Those improvements shall be completed in accordance with the approved details prior to the first occupation or use of any part of the development hereby permitted.**

REASON: In the interests of highway safety.

- 9. No building on the development hereby approved shall be occupied until the appropriate parking spaces together with a vehicular access thereto has been provided in accordance with details submitted to and approved in writing by the Local Planning Authority. The said space shall not be used other than for the parking of vehicles associated with the use of the site or for the purpose of access.**

REASON: To ensure that adequate provision is made for parking within the site in the interests of highway safety

- 10. Aircraft movements within the site shall take place only between 07:00 and 20:00, except in an emergency.**

REASON: In the interest of the residential amenities of adjoining properties

- 11. The Helicopter pad hereby approved shall be only be used for purposes ancillary to the use of the site.**

REASON: in the interest In the interest of the residential amenities of adjoining properties.

- 12. No development shall take place within the application site until the applicant, or their agents or successors in title, has secured a written programme of archaeological investigation, which should include on-site work and off-site work such as the analysis, publishing and archiving of the results, has been submitted to and approved by the Local Planning Authority. The approved programme of archaeological work shall be carried out in accordance with the approved details.**

REASON: To enable the recording of any matters of archaeological interest.

13. No development shall commence within the application site until:

- a) A written programme of archaeological investigation, which should include on-site work and off-site work such as the analysis, publishing and archiving of the results, has been submitted to and approved by the Local Planning Authority; and**
- b) The approved programme of archaeological work has been carried out in accordance with the approved details.**

REASON: To enable the recording of any matters of archaeological interest.

INFORMATIVES:-

- 1. The applicant is advised that the Local Planning Authority consider that the detailed designs for the development hereby permitted including traffic junctions and related highways works should be the subject of comprehensive public engagement and consultation.**
- 2. The applicant is advised that the Local Planning Authority consider that the detailed design for traffic junction works at the proposed Nurdington roundabout/junction scheme should be the subject of comprehensive engagement and consultation including a site meeting with the residents of the neighbouring residential property known as Inglenook, Crudwell Rd, Malmesbury SN16 9JL. Also that the design of the proposed secondary egress from the site at Beuttel Way should be the subject of comprehensive engagement and consultation with neighbouring properties including any residents and businesses.**

66 Urgent Items

There were no urgent items.

(Duration of meeting: 6.00 - 8.25 pm)

The Officer who has produced these minutes is Kirsty Butcher, of Democratic Services, direct line 01225 713948, e-mail kirsty.butcher@wiltshire.gov.uk

Press enquiries to Communications, direct line (01225) 713114/713115

F. Deed of Variation Submission Ref: 19/01991/VAR Decision Notice, Committee Report and Minute from Meeting of 6th November 2019.

REPORT TO THE AREA PLANNING COMMITTEE

Date of Meeting	6th November 2019
Application Number	19/01991/VAR
Site Address	Oaksey Park Cottages, Wick Road, Oaksey SN16 9SB
Proposal	Removal of conditions 8, 9 & 10 of application reference N/10/03612/S73A to allow unrestricted residential occupancy of units 3, 5, 6, 8, 10 & 11 and 20-25
Applicant	Oaksey Park Ltd
Town/Parish Council	Oaksey
Division	Minety
Grid Ref	399519 194174
Type of application	Variation/Removal of Condition(s)
Case Officer	Lee Burman

Reason for the application being considered by Committee

The Application was called in for Committee determination by Councillor Berry to consider the proposals and conflicts with the Made Oaksey Neighbourhood Plan.

1. Purpose of Report

1.1 To consider the proposals in the context of the development plan and all other material considerations and recommend that consent be granted subject to conditions and completion of a S106 agreement within 6 months of the date of the Committee Resolution. In the event that the applicant declines to enter into the s106 Agreement to refuse permission for the reasons set out below.

2. Report Summary

2.1 The application has resulted in 93 representations of support; 3 representations of objection; and 18 representations making general comments. Oaksey Parish Council object to the application.

2.2 The main issues raised by the proposals are: -

- The principles of the development proposal and compliance or conflict with the development plan
- The viability of the existing units of accommodation with the currently attached conditions restricting the scope and nature of the residential use and occupancy i.e. as Holiday let accommodation
- And whether or not the properties have been marketed appropriately reflecting the restrictive occupancy conditions;

- Residential amenity

3. Site Description

3.1 The site is located within the open countryside to the east of the village of Oaksey. The application relates to a development of 25 semi detached and detached structures located adjacent a 9 hole golf course and its supporting clubhouse facility. The structures are modern in design two storey buildings utilising render and timber with substantive glazing elements. The structures are surrounded by shared amenity spaces with planting separating the properties from the golf course. The structures are residential in character but occupancy is restricted to holiday lets. Similarly there is established mature planting to the northern boundary separating the site and its access road from adjoining open countryside. The properties have ancillary group parking areas and the access road to the site runs from Wick Road, adjacent the golf course itself though the golf course car park and passed the clubhouse facility. The land rises to the west and in the direction of the villages and adjacent unmaintained scrub land is situated against the western boundary of the site, albeit this land benefits from an extant consent for a final phase of the development which is as yet unbuilt.

4. Planning History

89/03470/F	Change of Use to residential holiday and staff accommodation of agricultural buildings. Reconstruction of Guest Lounge. Alts To Access and Driveway. Approved
02/01841/FUL	Erection Of 18 No 2 & 3 Bed Holiday Lodges And 1 No Bunkhouse With Covered Parking (1 No Space/Lodge) And Implement Shed, Workshop, Office And Reception Area And Associated Access Approved
03/02072/S73A	Variation of conditions attached to 89/03470/F (Condition 5) and 02/01841/FUL (Condition 7) Appeal allowed conditions varied
10/03612/S73A	Variation of Condition 7 of 02/01841/FUL & 1 of APP/J3910/A/04/1145607 - Relating to Residential Occupancy Relates to units: 3, 5, 6, 8 and 10 - 19 inclusive. Approved
11/02036/S73A	Variation of Condition 1 of APP/J3910/A/04/1145607 - Relating to Residential Occupancy (Original Variation of Condition 7 of 02/01841/FUL) Relates to unit 2. Approved
12/00034/S73A	Variation of Condition 1 of APP/J3910/A/04/1145607 - Relating to Residential Occupancy (Original Variation of Condition 7 of 02/01841/FUL).Relates to unit 4. Approved.
12/00050/S73A	Variation of Condition 1 of APP/J3910/A/04/1145607 - Relating to Residential Occupancy (Original Variation of Condition 7 of 02/01841/FUL). Relates to unit 7. Approved.
13/00958/S73A	Removal of Conditions 8, 9 and 10 imposed on application reference 10/03612/S73A which varied condition No 7 of 02/01841/FUL and appeal APP/J3910/A/04/1145607,

allowing the unrestricted residential occupancy of units 12 to 19 (8 in total). Approved

18/02717/CLE Certificate of lawfulness for use of holiday accommodation as independent residential accommodation. Withdrawn

18/05105/CLE Certificate of lawfulness for use of holiday accommodation as independent residential unit. Withdrawn

5. The Proposal

The application proposes the removal of conditions 8, 9 & 10 of planning permission 10/03612/S73A – Relating to residential occupancy in order to permit unrestricted residential use of units 3, 5, 6, 8, 10 & 11 and 20-25. The conditions are as follows:-

10/03612/S73A

8 Notwithstanding the Town and Country Planning (Use Classes) Order 1987 and the Use Classes (Amendment) Order 2005 (or any Order revoking and re-enacting those Orders, with or without modification), the building(s) hereby permitted shall be used for holiday accommodation only and for no other purpose.

REASON :- This site is in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access, and planning policies pertaining to the area, would not permit permanent residential accommodation.

POLICY: C3 of the adopted North Wiltshire Local Plan 2011, RLT9 of the Wiltshire and Swindon Structure Plan 2016 and the Good Practice Guide on Planning for Tourism

9 The building(s) hereby permitted shall not be occupied as a persons' sole or main place or residence.

REASON:- This site is in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access, and planning policies pertaining to the area, would not permit permanent residential accommodation.

POLICY: C3 of the adopted North Wiltshire Local Plan 2011, RLT9 of the Wiltshire and Swindon Structure Plan 2016 and the Good Practice Guide on Planning for Tourism

10 The owners / operators of the site shall maintain an up-to-date register of the names of all owners / occupiers of individual units identified in red upon drawing No. JC/001/2 and of their main home addresses, and shall make this information available at all reasonable times to the local planning authority.

REASON:- This site is in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access, and planning policies pertaining to the area, would not permit permanent residential accommodation.

POLICY: C3 of the adopted North Wiltshire Local Plan 2011, RLT9 of the Wiltshire and Swindon Structure Plan 2016 and the Good Practice Guide on Planning for Tourism

6. Planning Policy

Wiltshire Core Strategy (Adopted Jan 2015) (WCS)
CP1, CP2, CP3, CP13, CP57, CP60, CP61 & CP62

Saved Policies of the North Wiltshire Local Plan (Adopted 2006) (NWLP)
H4 & NE18

Oaksey Neighbourhood Plan Made (March 2019) (ONP)
P1, P2, P3, P6, P10, P14 & P17

National Planning Policy Framework (June 2019) (NPPF/The Framework)
- in particular but not exclusively Paras 2, 7, 8, 11, 12, 38, 47, 55, 77, 79

National Planning Practice Guidance
– in particular but not exclusively - Use of Conditions

7. Consultations

Highways Officers – No objection subject to conditions

Education Officers – No objection and no requirements identified

Open Spaces Team – No objections additional playspace requirement identified

Butler Sherbourne (Independent Surveyors) – Advice addressed in detail the main body of the report but in summary concludes that the marketing undertaken was reasonable and appropriate and the conclusions reached as to lack of demand for the units with the conditions attached are agreed.

Oaksey Parish Council – Strongly object. The proposals are considered to conflict directly with Policy 3 Holiday Accommodation, Leisure & Recreation of the made neighbourhood plan.

8. Publicity

8.1 The application was advertised by Site Notice, press Notice, Neighbour notification, Notification to the Parish Council, Notification to the Local Ward member, Publication of documentation on the Council's website and identification in the Council's weekly list of applications.

8.2 The vast majority of public representations received identify support for the proposals identifying a shortage of housing in the locality and significant benefits to local families and persons wishing to stay or become resident in the village. In addition a lack of demand for holiday lets, no site specific harmful impacts including to the character and appearance of the area. 93 representations of support were received in total.

8.3 3 representations of objection were received. Issues raised centred on the importance of the golf course and holiday lets to the local economy; the location outside the defined settlement and the view that limited weight should be given to previous decisions at the site removing conditions and the lack of demand for holiday lets at the site/locality.

8.4 18 representations making general comments or no objection were received, a limited number of persons made multiple submissions. Issues raised centred on:-

- Some of the supporting information submissions are not fully accurate e.g. property numbering on plans
- Parking and bin collection provision on site is inadequate
- Unauthorised development of the erection of boundary treatments has taken place
- Previous applications to remove restrictive conditions on properties at the site have been granted consent

- More homes are required and challenge to the previous decisions has been lost
- Prior approval for change of use sets a precedent that is material
- Will help the local economy
- Will support local services and create a better living environment at the site
- Better to use existing properties than build new housing
- Concerned about impact on businesses servicing the existing properties
- No detrimental impacts.

9. Planning Considerations

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, and the provisions of the NPPF i.e. para 2, applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. At the current time the statutory development plan in respect of this application consists of the Wiltshire Core Strategy (WCS) (Adopted January 2015); the 'saved' policies of the North Wiltshire Local Plan (NWLP) 2011 (adopted June 2006); and the Oaksey Neighbourhood Plan (ONP) (Made March 2019).

WCS Core Policies CP1 and CP2 define requirements for housing and employment development in the plan period and the development strategy for addressing those requirements. That strategy is based on a defined settlement hierarchy with significant development being directed to the most sustainable settlements in the hierarchy based on the infrastructure, facilities and employment opportunities and scope for self-containment within each of the settlements identified. Allocations to meet identified requirements are to be brought forward through neighbourhood plans and / or specific development plan documents. In this housing market area Chippenham is the most sustainable strategic location for significant development. A series of community area based policies then distribute the identified quantum of growth to locations throughout the market area with further definition of the settlement hierarchy in each community area. In this instance the relevant policy is CP13 and Oaksey is identified as a large village with a defined settlement framework boundary within which limited residential development to meet local needs is considered appropriate.

Oaksey has prepared and adopted a Neighbourhood Plan and this includes housing allocation to meet identified requirements and so can be given full weight. The Wiltshire wide housing site allocations development plan document is well advanced and can be given considerable weight.

Outside of the identified settlements and allocated sites new housing development is strictly controlled and, in accordance with the guidance in the framework, limited to a series of exceptions. Principally these exceptions focus on limited residential development required to allow persons to live close to their places of work in rural based employment activities, re-use of existing buildings, exceptionally innovatively designed dwellings or replacement dwellings.

The application site is not allocated for residential development and sits outside of the defined settlement framework boundary for Oaksey. The residential properties that would result from the removal of restrictive occupancy conditions as proposed would not fall within the exceptions categories of new residential development in the open countryside. The development would not be directly in accord with the development plan in respect of the development strategy and core policies of the WCS informing the location and distribution of new residential development.

At this point it is important to note that the WCS does not include a specific policy that deals with this particular situation – removal of restrictive occupancy conditions allowing unfettered residential use. However, the ONP does – Policy P3. The second part of this policy specifically states the following:-

The removal of occupancy restrictions on holiday accommodation to allow their use as a permanent residential dwelling will not be supported unless the property is located within the settlement boundary.

The ONP as noted above is a made plan and therefore carries full weight. However as with the WCS and all adopted and made plans it is subject to the statutory provision repeated throughout the Framework starting at para 2 that planning applications must be determined in accordance with the development unless material considerations indicate otherwise.

It is therefore necessary to consider what if any material considerations arise that would support and justify a decision other than in accordance with the development plan.

In this latter respect it is considered that such circumstances do exist. Firstly the properties already exist having been constructed some years ago. As such this is not a proposal for new build residential development. The development that was permitted and which has taken place was also a form of residential development, that being for holiday let/ accommodation purposes. This falls within the same residential use classification of the town and Country Planning (Use Classes) Order England 1987 as amended being defined as an ordinary dwelling (C3). Whilst occupancy is restricted by condition the characteristics of the use of these structures is residential in nature as opposed to other land uses i.e. employment or retail. Finally the site has been the subject of a marketing exercise and the application is supported by a report in this respect which concludes that there is no demand for the properties with the restrictive conditions attached.

The considerations identified and especially the marketing of the properties with the relevant conditions attached are considered to be material to the weight to be given to the development plan including policy 3 of the ONP in determining this application.

In this context the submitted marketing report has been the subject of independent review and assessment by local surveyors with experience and knowledge in the tourism sector – Butler Sherborn. Their report concludes that the approach undertaken in the marketing report is appropriate and its findings reasonable and therefore the proposition of disposing of the properties to individuals as second/holiday homes is unviable. Both the marketing report and its assessment have been published to the public record and made available to interested parties. Queries arising from the Butler Sherborn assessment, including whether or not the use of auctions or marketing of the site as a whole going concern as opposed to individual units would have altered the conclusions have been put to the author who has confirmed that additional marketing by these means would not in their professional opinion and experience have materially altered their conclusions/the outcome of the marketing exercise. Butler Sherborn consider that the market is well provisioned for holiday homes and the available and planned facilities in the locality are of a comparable nature but in most instances are of a higher price but with a greater range of supporting facilities and of a higher specification in design. The assessment identifies that funding is not considered to be freely available to support investment/purchase from mortgage providers.

Oaksey Parish Council has reviewed and considered both the submitted marketing report and the Butler Sherborn assessment and does not agree the findings. The Parish Council considers that the application site is not comparable to other holiday let sites in the locality and referenced in the report having not been well maintained in a number of respects and requiring improvements. In addition the Parish Council considers that the site has not been

fully operated in accordance with the identified restrictive conditions. The Parish Council identifies that there is no requirement for additional housing in the locality following adoption of and provisions made within the ONP alongside other identified residential development having taken place/having been permitted. Whilst the Parish Council's concerns are noted it is not considered that these matters in and of themselves result in a different conclusion than that reached by the Butler Sherborn review which considers the identified sites at the Cotswolds Water Park and Wiltshire Leisure village to be reasonable as comparable sites for assessment purposes and that the properties have been marketed at an appropriate valuation reflecting site circumstances and the restrictions applied.

Retention of the restrictive conditions and their enforcement is ultimately likely to lead to a series of vacant structures and / or persons having to relocate to other dwellings with properties that they can not sell and not use except for restricted periods each year. Such a position / decision is not considered to be reasonable and defensible given the identified material considerations and could lead to deterioration of the site to the detriment of the character and appearance of the locality.

It is also material to note that a previous consent for similar proposals has been approved based on evidence demonstrating no demand for other units at the site with the restrictive conditions attached. Furthermore, the large representation of support from members of the local community with respect to the current application proposals is also notable.

On the basis of the above and in particular the findings of the independent assessment of the marketing of the application properties it is considered that it has been demonstrated that there are material considerations that support a decision otherwise than in accord with the development plan, including policy P3 of the ONP.

Residential Amenity

Concerns have been raised by interested parties as to the future occupancy of the properties as permanent and principal residences without restrictive conditions limiting occupancy in terms of the adequacy of residential amenities.

As noted previously the existing units are in a form of residential occupancy and this requires an appropriate level of residential amenity in terms of privacy, overlooking, outlook and interrelationship between properties, daylighting and overshadowing, ancillary amenity spaces, access and parking arrangements. The scheme as approved and implemented to date secures adequate arrangements in these respects and it is not considered that this is significantly less than would be required had the units/properties been proposed and approved as unrestricted market dwellings.

Specific reference has been made to amenity spaces and boundary treatments with the existing units being approved largely as a more open plan arrangement with shared spaces than is often seen on market/unrestricted residential developments. Whilst this is true shared spaces with open arrangements are not completely unheard of or totally unique and it is not considered that this arrangement results in an inadequate level of amenity including in respect of privacy. The concerns raised at least in part stem from the use of conditions attached to previous consents requiring approval of boundary treatments by removing permitted development (PD) rights. Removal of PD rights by condition does not in any way indicate that such development is unacceptable in perpetuity, merely that it raises matters, such as impacts to the approved design character of a development, over which the LPA wishes to give further consideration and retain control. This reflects recent revisions to the NPPF at para 130 which exhorts LPAs to ensure that design quality is not undermined or diminished by multiple minor amendments to an approved scheme. Such minor amendments can be achieved through the exercise of permitted development rights.

It is also material to note that a similar previous consent has been granted and in that context the proposed arrangements were considered acceptable in residential amenity terms. The consultation response in respect of this application is also noteworthy in identifying significant levels of support for the proposal with the facility being considered desirable for the unrestricted residential use and meeting local residential need.

In summary it is considered that the units subject of the application will provide for an adequate level of amenity for future occupants with the restrictive occupancy conditions removed and that there is no conflict with the provisions of the development plan or the framework in this respect and no sound and defensible reason for refusal on this basis.

Highways and Parking

On the basis of the initial submissions the Council's Highways officers raised no objection but did seek additional information in respect of car and cycle parking provision. Information has been submitted by the application as to available provision and on that basis Highways officers raise no objection subject to conditions.

The site access has been found acceptable in relation to the consented use. Similarly the previous determination of applications seeking variation of occupancy conditions attached to the properties at the site have given consideration to the adequacy of the arrangements. It is not considered that the material circumstances at the site and in relation to the access have changed significantly in this respect. The removal of the current restrictive occupancy conditions attached to the properties the subject of the application is not considered to result in revised vehicular movements to an extent that revisions to the site access or alternative site access arrangements are necessary.

Other Matters

Phase 4 of the development/Extant permission

It should be noted that a final phase of development of holiday let units at the site remains unimplemented and is not covered by the current application proposals to remove restrictive occupancy conditions. The consent remains extant given the implementation of earlier phases and related works. In the determination of the previous application reference number 13/00958/S73A legal advice was sought as to voiding that element of the consent. The report to committee for the application addresses the matter in full and confirms that advice received identified that it was not appropriate or lawful in relation to material circumstances and considerations relevant to the site and the application. That is considered to remain the position.

However, correspondence indicating a possible intention to consider implementation of the remaining element of the scheme in 2017/2018 was submitted to the Council. Given this position it is considered necessary and reasonable to address the matter formally and on this basis it is agreed with the applicant that the S106 agreement / planning obligation will include covenants preventing the building out of phase 4 of planning permission ref N/10/03612/S73A without the applicant demonstrating to the Council's reasonable satisfaction that there is demand for the units contained within phase 4.

Waste Collection

Concerns have been raised during the consultation period that waste collection facilities and arrangements are inadequate for the proposed alternate living arrangements arising from the removal of restrictive occupancy conditions. The applicant has confirmed that the bin storage

area has been completed as per agreed details previously required by condition. Again it is also material to note that the existing properties the subject of the application are in a form of residential use. No significant concerns were raised at the time of determination as to future waste collection and the proposals were approved. A compound for bin storage has been approved through the discharge of condition attached to the previous consent and provision made in accord with the approved details. Waste collection frequency is not a matter that can be controlled through the determination of planning applications, this is a matter that is addressed by the Council on an area wide basis in accord with its business plan and a range of other considerations and objectives. It could be open to residents to make private arrangements if considered necessary. The storage provision facilities are considered adequate for the development and the removal of restrictive occupancy conditions in respect of the properties which are the subject of this application is not considered to generate a requirement for additional or revised provision such that there is conflict with the policies and provisions of the development plan or framework and consent ought to be refused on this basis.

Planning Obligation / S106 Agreement

The Council's Education Department has assessed the proposals and identifies that based on the current school place planning and projections the development does not generate a requirement for education provision at primary or secondary level but that the previously identified requirement remains.

The Council's Open Spaces Team has assessed the scheme proposals and has identified that additional playspace provision is required. Officers identify that the requirement can be addressed either by on site facilities in addition to the previously identified requirement or through off site financial contributions. The preferred option of Officers being on site provision. The applicant has agreed to meet the requirement through on site provision and this will be addressed through the S106 agreement. The previous covenants / requirement as to open space provision has yet to be fully discharged as triggers in the relevant S106 agreement in that respect have not yet been met but the current application if approved will do so once implemented. The applicant has confirmed that on site provision can be made and willingness to enter into the S106 agreement on this basis.

The Council's Housing Officers have considered the scheme proposal and the site history. In light of the previous determination and the current policy position Officers do not consider that a contribution toward affordable housing provision arises from the scheme proposals.

Commitments and requirements with respect to the Phase 4/extant elements of the consent re: further holiday lets at the site are addressed above.

Given the nature the triggers contained in the existing section 106 in part tied to the units that are the subject of the current application and the matters addressed therein that remain extant it is considered that agreement must be varied to apply to the consent that is recommended for approval. In so doing it is possible to include the additional provisions relating to the extant unimplemented element of the development and additional open space requirements. The Council's legal department has confirmed that this is appropriate and necessary.

Drainage/Landscape/Ecology/Heritage

It is not considered that the proposals result in any impacts in respect of these matters and no conflict with relevant policies of the plan or national guidance arise.

10. Conclusion

The application proposals are not directly in accord with the provisions of the development plan with particular regard to the development strategy of the Wiltshire Core Strategy set out in policies CP1 CP2 CP13; and the requirements and provisions of the Oaksey Neighbourhood Plan in particular policy P3. The Wiltshire Core Strategy does not however contain specific policies that directly address the proposed variation of conditions as a matter of principle.

On the basis of the assessment of the submitted Marketing Report undertaken by independent surveyors instructed by the Council it is considered that it has been demonstrated that there is no demand for the holiday let units that are the subject of this application with the restrictive conditions attached. Similarly it is considered on the basis of the advice received that appropriate marketing of the properties has been undertaken at an reasonable valuation reflecting site circumstances. The Council has no detailed marketing evidence or submissions before it that demonstrates a demand for the units with the conditions attached. The applicant has confirmed their willingness to enter into a planning obligation to restrict further development of holiday lets at the site in accordance with the extant permission unless evidence is available to demonstrate demand for provision.

It is material to consider that the units subject of the application already exist and are in a form of residential use. It is therefore not considered that proposed removal of restrictive occupancy conditions will result in site specific impacts to interests of acknowledged importance such that harm arises and the application could and ought to be refused on this basis. Again the applicant has agreed to enter into a planning obligation to meet the identified infrastructure needs arising from the proposals and to vary the existing agreement to apply to the latest permission.

On this basis it is considered that there are material considerations of significant weight that do justify and support a decision otherwise than in accordance with the development plan in this instance. As such and in accordance with paragraph 12 of the Framework permission is recommended.

RECOMMENDATION

Grant Planning Permission subject to the conditions below and the completion of a S106 agreement within 6 months of the date of the Committee resolution to vary the existing agreement to apply to this permission; address open space requirements; and prevent the Applicant from building out phase 4 of planning permission ref N/10/03612/S73A without demonstrating to the Council's reasonable satisfaction (to be confirmed in writing and such approval not to be unreasonably withheld or delayed) that there is demand for the units contained within phase 4. In the event that the applicant declines to enter into the s106 agreement to refuse permission for the following reasons:-

The application fails to make provision for the requisite services, facilities and infrastructure needs arising from the proposals and is therefore contrary to Wiltshire Core Strategy Policy CP3 and paras 54 and 56 of the National Planning Policy Framework June 2019.

The material circumstances supporting and justifying a decision otherwise than in accordance with the development strategy of the plan as set out in Wiltshire Core Strategy policies CP1, CP2 & CP13; and Oaksey Neighbourhood Plan Policy P3 have not been demonstrably established as evidence is available to indicate an intent to erect further holiday lets at the site.

Conditions

- 1 The area between the nearside carriageway edge and lines drawn between a point 2.4 metres back from the carriageway edge along the centre line of the access and points on the carriageway edge 160m back from and on both sides of the centre line of the access shall be kept clear of obstruction to visibility at and above a height of 900mm above the nearside carriageway level and maintained free of obstruction at all times.

REASON: In the interests of highway safety.

- 2 The development hereby permitted shall be served solely from the access shown in drawing c310/1.

REASON: In the interests of highway.

- 3 The workshop / estate yard shall be used only for purposes ancillary to the golf course.

REASON: To prevent an inappropriate independent use

- 4 The development hereby permitted relates solely to units 3, 5, 6, 8, 10 & 11 and 20-25 Inclusive as shown on site layout plan received 19/09/2019.

REASON: In the interests of proper planning.

- 5 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), no buildings or structures, or gate, wall, fence or other means of enclosure, other than those shown on the approved plans, shall be erected or placed anywhere on the site on the approved plans.

REASON: To safeguard the character and appearance of the area.

- 6 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), no window, dormer window or rooflight, other than those shown on the approved plans, shall be inserted in the roofslope(s) of the development hereby permitted.

REASON: In the interests of residential amenity and privacy.

- 7 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), there shall be no additions/extensions or external alterations to any building forming part of the development hereby permitted.

REASON: In the interests of the amenity of the area and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions/extensions or external alterations.

- 8 INFORMATIVE TO APPLICANT: Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.
- 9 INFORMATIVE TO APPLICANT:
This permission shall be read in conjunction with an Agreement made under Section 106 of the Town and Country Planning Act, 1990 and dated the XX/XX/XXXX.
- 10 INFORMATIVE TO APPLICANT:
The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence.

If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

Background Documents Used in the Preparation of this Report:

Wiltshire Core Strategy

Oaksey Neighbourhood Plan

NPPF

NPPG

Application File N/13/00958/VAR

Application submissions 19/01991/VAR

Butler Sherborn Assessment

Northern Area Planning Committee

MINUTES OF THE NORTHERN AREA PLANNING COMMITTEE MEETING HELD ON 6 NOVEMBER 2019 AT COUNCIL CHAMBER - COUNCIL OFFICES, MONKTON PARK, CHIPPENHAM, SN15 1ER.

Present:

Cllr Tony Trotman (Chairman), Cllr Peter Hutton (Vice-Chairman), Cllr Chuck Berry, Cllr Christine Crisp, Cllr Gavin Grant, Cllr Howard Greenman, Cllr Mollie Groom, Cllr Chris Hurst, Cllr Toby Sturgis, Cllr Brian Mathew and Cllr Ashley O'Neill

Also Present:

Cllr Alan Hill

80 **Apologies**

There were no apologies.

81 **Minutes of the Previous Meeting**

The minutes of the meeting held on 09 October 2019 were presented.

The Chairman drew the Committee's attention to a letter received from Cllr John Boaler, Calne Town Council, regarding the accuracy of the minutes.

Resolved:

To approve as a true and correct record and sign the minutes.

82 **Declarations of Interest**

Cllr Toby Sturgis declared an interest in agenda item no. 8b (family member uses the services of the applicant's equestrian business). He declared he would participate in the debate and vote for each item with an open mind.

83 **Chairman's Announcements**

There were no Chairman's announcements.

84 **Public Participation**

The Committee noted the rules on public participation.

85 **Planning Appeals and Updates**

The Committee noted the contents of the appeals update.

86 **APPLICATION TO DIVERT PUBLIC BRIDLEWAYS CALNE WITHOUT 89 (PART), 89A AND 89B AT THE MILL HOUSE, CALSTONE WELLINGTON**

Public participation

Norman Beasley, Wiltshire Bridleways Association, spoke in objection to the application.

Graham Bennett, British Horse Society, spoke in support of the application.

Derek Walsh, solicitor to the applicant, spoke in support of the application.

Cllr Rob Hislop, Calne Without Parish Council, spoke in support of the application.

The Highways Officer, Sally Madgwick, introduced a report which recommended refusing the application for an Order to divert lengths of public bridleways at the Mill House, Calstone Wellington, Calne.

Key issues highlighted included: the landowner's interest; the location and convenience of termination points; the convenience of the new path; the effect on public enjoyment of the new path or way as a whole; the effect on the existing right of way; the effect on land served by the existing right of way; the effect on land served by the new right of way; consideration of the Rights of Way Improvement Plan and the needs of agriculture, forestry and conservation of biodiversity.

Members of the Committee then had the opportunity to ask technical questions of the officer which focused on: the cost of making an Order; the cost of bringing the new route to the required standard; the cost of maintaining the existing right of way and highway safety concerns.

Members of the public then had the opportunity to address the Committee, as detailed above.

Cllr Alan Hill, Division Member, spoke regarding the application with the main points focusing on: safety and security concerns; the impact on heritage assets; the convenience of the new path; the accessibility of the existing right of way; the use of gates on the new route; local support for the application and the local authority's obligation to maintain the existing right of way.

The Rights of Way Officer addressed some of the issues raised by the public and local members with the main points focusing on the use of gates on the new route.

At the start of the debate a proposal was moved by Cllr Howard Greenman, seconded by Cllr Gavin Grant to approve the application to divert parts CALW89, 89A and 89B, contrary to the officer recommendation.

During the debate the main points raised were: safety and security concerns; accessibility issues; accessibility to the countryside; the convenience of the new route; the need to consider the existing right of way as if it were in a usable state; the views of the Wiltshire Bridleways Association and the current state of the existing right of way.

Resolved

That, contrary to the officer report, an order (under s.119 Highways Act 1980 and s.53 Wildlife and Countryside Act 1981) is made and duly advertised.

87 Planning Applications

Attention was drawn to application 19/03152/OUT, as considered on 04 September 2019. It was noted that officers are not yet able to refer the application back to Committee because the Ecologist's consultation advice which was requested at the meeting was dependent upon additional information which has not yet been made available.

The Committee considered the following applications:

88 19/01991/VAR - Oaksey Park Cottages, Wick Road, Oaksey

Public participation

Paul Kavanagh, long leaseholder, spoke in objection to the application.

Simon Chambers, the agent, spoke in support of the application.

The Planning Officer, Lee Burman, introduced a report which recommended granting planning permission, subject to conditions, for the removal of conditions 8, 9 & 10 of application reference N/10/03612/S73A to allow unrestricted residential occupancy of units 3, 5, 6, 8, 10 & 11 and 20-25.

Attention was drawn to the late list of observations provided at the meeting and attached to these minutes.

Key issues highlighted included: the principles of the development proposal and compliance or conflict with the development plan; the viability of the existing units of accommodation with the currently attached conditions restricting the scope and nature of the residential use and occupancy; whether the properties have been marketed appropriately reflecting the restrictive occupancy conditions and residential amenity.

Members of the Committee then had the opportunity to ask technical questions

of the officer which focused on: the valuations of the properties; whether the properties have been marketed appropriately reflecting the restrictive occupancy conditions and residential amenity; the viability of the existing units of accommodation with the currently attached conditions restricting the scope and nature of the residential use and occupancy.

Members of the public then had the opportunity to address the Committee, as detailed above.

Cllr Chuck Berry, Division Member, spoke regarding the application with the main points focusing on: the use of the development as both residential and holiday let/accommodation; the Oaksey Neighbourhood Plan and whether or not the material considerations as detailed in the report outweigh Policy 3 Holiday Accommodation, Leisure & Recreation of the made neighbourhood plan.

At the start of the debate a proposal was moved by Cllr Toby Sturgis, seconded by Cllr Peter Hutton to grant planning permission as detailed in the report.

During the debate the main points raised were: the Oaksey Neighbourhood Plan; the need to give weight to the overwhelming material considerations as detailed in the report; the National Planning Framework; the suitability of the current waste collection; the effect of residential usage on local businesses within the park infrastructure; the character and appearance of the area and residential amenity.

Resolved

That planning permission is approved, subject to the conditions below and the completion of a S106 agreement within 6 months of the date of the Committee resolution to vary the existing agreement to apply to this permission; address open space requirements; and prevent the Applicant from building out phase 4 of planning permission ref N/10/03612/S73A without demonstrating to the Council's reasonable satisfaction (to be confirmed in writing and such approval not to be unreasonably withheld or delayed) that there is demand for the units contained within phase 4. In the event that the applicant declines to enter into the s106 agreement to refuse permission for the following reasons:

- 1. The application fails to make provision for the requisite services, facilities and infrastructure needs arising from the proposals and is therefore contrary to Wiltshire Core Strategy Policy CP3 and paras 54 and 56 of the National Planning Policy Framework June 2019.**
- 2. The material circumstances supporting and justifying a decision otherwise than in accordance with the development strategy of the plan as set out in Wiltshire Core Strategy policies CP1, CP2 & CP13; and Oaksey Neighbourhood Plan Policy P3 have not been demonstrably established as evidence is available to indicate an intent to erect further holiday lets at the site.**

CONDITIONS

1. The area between the nearside carriageway edge and lines drawn between a point 2.4 metres back from the carriageway edge along the centre line of the access and points on the carriageway edge 160m back from and on both sides of the centre line of the access shall be kept clear of obstruction to visibility at and above a height of 900mm above the nearside carriageway level and maintained free of obstruction at all times.

REASON: In the interests of highway safety.

2. The development hereby permitted shall be served solely from the access shown in drawing c310/1.

REASON: In the interests of highway.

3. The workshop / estate yard shall be used only for purposes ancillary to the golf course.

REASON: To prevent an inappropriate independent use.

4. The development hereby permitted relates solely to units 3, 5, 6, 8, 10 & 11 and 20-25 Inclusive as shown on site layout plan received 19/09/2019.

REASON: In the interests of proper planning.

5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), no buildings or structures, or gate, wall, fence or other means of enclosure, other than those shown on the approved plans, shall be erected or placed anywhere on the site on the approved plans.

REASON: To safeguard the character and appearance of the area.

6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), no window, dormer window or rooflight, other than those shown on the approved plans, shall be inserted in the roofslope(s) of the development hereby permitted.

REASON: In the interests of residential amenity and privacy.

7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), there shall be no additions/extensions or external alterations to any building forming part of the development hereby permitted.

REASON: In the interests of the amenity of the area and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions/extensions or external alterations.

INFORMATIVE TO APPLICANT:

Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

INFORMATIVE TO APPLICANT:

This permission shall be read in conjunction with an Agreement made under Section 106 of the Town and Country Planning Act, 1990 and dated the XX/XX/XXXX.

INFORMATIVE TO APPLICANT:

The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence.

If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

89 **19/07306/FUL - Land to the North West of Broad Town, Swindon**

Public participation

Peter Gallagher, The Ramblers, spoke in objection to the application.

Tony Kernon, the agent, spoke in support of the application.

Colin Rendell, Broad Town Council, spoke in objection to the application.

The Planning Officer, Nicole Gillett, introduced a report which recommended granting planning permission, subject to conditions, for the change of use of agricultural land to equestrian and construction of all-weather gallop.

Attention was drawn to the late list of observations provided at the meeting and attached to these minutes.

Key issues highlighted included: the principle of development; the impact on the character and appearance of the area and AONB; the impact on highway safety; the impact on neighbour amenity; the impact on public rights of way and the impact on heritage assets.

There were no technical questions.

Members of the public then had the opportunity to address the Committee, as detailed above.

Cllr Mollie Groom, Division Member, assured the Committee that she would participate in the debate and vote for each item with an open mind. She then spoke regarding the application with the main points focusing on the impact on public rights of way, highways concerns and the impact on the character and appearance of the area and AONB.

The Planning Officer addressed some of the issues raised by the public and local members with the main point focusing on the applicant needing to agree the type, position and wording of signage to be erected at the Broad Town Road crossing with the Local Planning Authority in the interest of public safety.

At the start of the debate a proposal was moved by Cllr Toby Sturgis, seconded by Cllr Peter Hutton, to grant planning permission as detailed in the report and subject to the amendment of condition 8 to alter hours of operation/use to 9:00am – 4:00pm Monday – Friday and 9:00am – 12:00pm Saturdays.

During the debate the main points raised were: the viability and use of the gallops; the concerns of The Ramblers; operation/usage times; the impact on the public rights of way; the impact on neighbour amenity and road safety issues.

Resolved

That planning permission is approved as detailed in the officer report and subject to the amendment of condition 8 to alter hours of operation/use as detailed below:

1. Time Limit

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. Approved Plans

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

Site Location Plan KCC2759/01A received 21st October 2019

Site Plan KCC2759/02A received 18th October 2019

Further revised details of gallop and location of footpath crossings KCC2759/03B received 11th October 2019

Revised details of stopping circle KCC2759/04A received 7th October 2019

Details of start circle and entrance track KCC2759/05 received 29th July 2019

Revised cross section of gallops and details of footpath crossing including signage

KCC2759/06B received 7th October 2019

Details of footpath crossing 3 and 4 KCC2759/07 received 7th October 2019

Details of track and fencing KCC2759/08 received 15th October 2019

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

3. Public Right of Way Signage

Prior to the commencement of the development hereby permitted, as to the type, position and wording of signage to be erected at the footpath crossing is to be submitted to and agreed in writing by the Local Planning Authority. The approved signage must be erected at the approved locations where each public footpath crosses the gallops before the gallops are first brought into use.

Reason: In the interest of public safety.

4. Public Right of Way

The Public Right of Way BROA10 must not be obstructed 1.5 meters either side of the Public Right of Way line.

Reason: to safeguard the Public Right of Way.

5. Warning Signs

The development hereby permitted shall not be first brought into use until the requirements for warning signs have been discussed and

determined in relation to both approaches on Broad Town Road. Any requirements for warning signs would be implemented at the expense of the applicant.

Reason: In the interests of highway safety.

6. Materials

No development shall commence on site until details of the materials to be used on the development have been submitted to and approved in writing by the Local Planning Authority.

Development shall be carried out in accordance with the approved details.

Reason: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in the interests of visual amenity and the character and appearance of the area.

7. Soil Disposal

No development shall commence on site until details of the disposal of top and sub soil have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Reason: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in the interests of visual amenity and the character and appearance of the area.

8. Timing of gallops

The use hereby permitted shall only take place between the hours of;

9:00am – 4:00pm Monday – Friday

9:00am – 12:00pm Saturdays

Reason: To ensure the creation/retention of an environment free from intrusive levels of noise and activity in the interests of the amenity of the area.

9. Lighting

No external lighting shall be installed on site without prior written consent from the Local Planning Authority.

Reason: In the interests of the amenities of the area and to minimise unnecessary light spillage above and outside the development site.

10. Parking

There shall be no parking of horse boxes, caravans, trailers or other vehicles on the site.

Reason: In order to protect the living conditions of nearby residents and the rural character of the area.

11. Fences and Jumps

No fences or jumps shall be erected on the site without the prior approval in writing of the Local Planning Authority.

Reason: In order to protect the living conditions of nearby residents and/or the rural character of the area.

12. Structures

No portable buildings, van bodies, trailers, vehicles or other structures used for storage, shelter, rest or refreshment, shall be stationed on the site. Further, no permanent structures will be erected on site without the prior written consent of the Local Planning Authority.

Reason: In order to protect rural character of the area.

INFORMATIVE TO APPLICANT:

Please be advised that nothing in this permission shall authorise the diversion, obstruction, or stopping up of any right of way that crosses the site.

INFORMATIVE TO APPLICANT:

Any alterations to the approved plans must first be agreed in writing with the Local Planning Authority before commencement of work.

INFORMATIVE TO APPLICANT:

The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence. If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

INFORMATIVE TO APPLICANT:

Please note that Council offices do not have the facility to receive material samples. Please deliver material samples to site and inform the Planning Officer where they are to be found.

INFORMATIVE TO APPLICANT:

The applicant is advised that the development hereby approved may represent chargeable development under the Community Infrastructure Levy Regulations 2010 (as amended) and Wiltshire Council's CIL Charging Schedule. If the development is determined to be liable for CIL, a Liability Notice will be issued notifying you of the amount of CIL payment due. If an Additional Information Form has not already been submitted, please submit it now so that we can determine the CIL liability. In addition, you may be able to claim exemption or relief, in which case, please submit the relevant form so that we can determine your eligibility. The CIL Commencement Notice and Assumption of Liability must be submitted to Wiltshire Council prior to commencement of development. Should development commence prior to the CIL Liability Notice being issued by the local planning authority, any CIL exemption or relief will not apply and full payment will be required in full and with immediate effect. Should you require further information or to download the CIL forms please refer to the Council's Website.

www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastructurelevy.

90 **19.0497.FUL & 19/5290/LBC - 4 Oxford Street, Malmesbury**

Public participation

Richard Cosker, the agent, spoke in support of the application.

Cllr Philip Exton, Malmesbury Town Council, spoke in objection to the application.

The Planning Officer, Catherine Blow, introduced a report which recommended granting planning permission, subject to conditions, for the change of use from an A3 cafe to single dwelling house. The proposed refurbishment & internal alterations are to facilitate the change of use.

Attention was drawn to the late list of observations provided at the meeting and attached to these minutes.

Key issues highlighted included: the principle of development; the impact on the listed building and conservation area; the design and site layout; the impact on the locality and amenity and highways concerns.

Members of the Committee then had the opportunity to ask technical questions of the officer which focused on the viability of the property as a café and the provision of adequate residential parking.

Members of the public then had the opportunity to address the Committee, as detailed above.

Cllr Gavin Grant, Division Member, spoke regarding the application with the main points focusing on the impact on the locality and amenity; impact on the vitality and viability of the town centre; the importance of protecting existing services and facilities; parking concerns and the impact on the listed building and conservation area.

At the start of the debate a proposal was moved by Cllr Peter Hutton, seconded by Cllr Tony Trotman to grant planning permission as detailed in the report.

During the debate the main points raised were: the Malmesbury Neighbourhood Plan; the importance of protecting existing services and facilities; the impact on the locality and amenity; the impact on the town centre's retail offering, vitality and viability and parking concerns.

Following the debate, the motion was defeated.

A proposal was then moved by Cllr Gavin Grant, seconded by Cllr Brian Mathew to refuse planning permission, contrary to the officer recommendation.

The Development Management Team Leader, Lee Burman, advised the Committee that without sound reasoning which addressed the material considerations relevant to the determination of the application and the basis for the officer recommendation, refusing planning permission would leave the Local Planning Authority open to appeal.

This motion was also defeated.

The original proposal, to grant planning permission as detailed in the report, was then put back to the Committee by Cllr Ashley O'Neill, seconded by Cllr Peter Hutton.

This motion was carried.

A proposal was moved by Cllr Tony Trotman, seconded by Cllr Peter Hutton, to grant listed building consent as detailed in the report.

This motion was defeated.

A proposal was then moved by Cllr Gavin Grant, seconded by Cllr Brian Mathew, to refuse listed building consent, contrary to the officer's report.

The Development Management Team Leader again advised the Committee that without sound reasoning which addressed the material considerations relevant to the determination of the application and the basis for the officer recommendation, refusing planning permission would leave the Local Planning Authority open to appeal.

The original proposal, to grant listed building consent as detailed in the report, was then moved by Cllr Ashley O'Neill, seconded by Cllr Peter Hutton.

This motion was carried.

Resolved

That planning permission is approved subject to the following conditions:

- 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: 33772-3 received on 21st May 2019 and 1925/1 Rev F received on 8th October 2019.**

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

- 3. No part of the development shall be occupied, until details of secure covered cycle parking and any enclosure for refused storage together with a timetable for their provision, have been submitted to and approved in writing by the Local Planning Authority. These facilities shall be provided in accordance with the approved details and timetable and shall be retained for use at all times thereafter.**

REASON: To ensure that satisfactory facilities for the parking of cycles are provided and to encourage travel by means other than the private car and to protect the character, appearance and setting of the listed building and Conservation Area.

INFORMATIVE TO APPLICANT:

The applicant should note that the grant of planning permission does not include any separate permission which may be needed to erect a structure in the vicinity of a public sewer. Such permission should be sought direct from Thames Water Utilities Ltd / Wessex Water Services Ltd. Buildings are not normally allowed within 3.0 metres of a Public Sewer although this may vary depending on the size, depth, strategic importance, available access and the ground conditions appertaining to the sewer in question.

INFORMATIVE TO APPLICANT:

The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will

be necessary for the applicant to obtain the landowners consent before such works commence.

If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

INFORMATIVE TO APPLICANT:

Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

INFORMATIVE TO APPLICANT:

The applicant is reminded of the need to obtain separate listed building consent for certain works in addition to this. This decision should be read in conjunction with listed building consent 19/05290/LBC.

INFORMATIVE TO APPLICANT:

The applicant is advised that the development hereby approved may represent chargeable development under the Community Infrastructure Levy Regulations

2010 (as amended) and Wiltshire Council's CIL Charging Schedule. If the development is determined to be liable for CIL, a Liability Notice will be issued

notifying you of the amount of CIL payment due. If an Additional Information Form has not already been submitted, please submit it now so that we can determine the CIL liability. In addition, you may be able to claim exemption or relief, in which case, please submit the relevant form so that we can determine your eligibility.

The CIL Commencement Notice and Assumption of Liability must be submitted to Wiltshire Council prior to commencement of development. Should development commence prior to the CIL Liability Notice being issued by the local planning authority, any CIL exemption or relief will not apply and full payment will be required in full and with immediate effect. Should you require further information or to download the CIL forms please refer to the Council's Website.

www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastructurelevy.

That listed building consent approved subject to the following conditions:

1. The works for which Listed Building Consent is hereby granted shall be begun before the expiration of three years from the date of this consent.

REASON: To comply with the provisions of Section 18 of the Planning (Listed Buildings and Conservation Areas) 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: 33772-3 received on 21st May 2019 and 1925/1 Rev F received on 8th October 2019.

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

3. Notwithstanding the approved drawings, no works shall commence until details of the following have been submitted to and approved in writing by the Local Planning Authority:

- Large scale details for all new or replacement external doors, gates, shutters and windows shown on elevations at a scale of no less than 1:10 (doors, gates and shutters), 1:5 (windows) and horizontal and vertical sections including setbacks and reveals at a scale of no less than 1:5 (doors, gates & shutters), 1:2 (windows);
- Large scale details for all new or replacement internal doors, stairs, skirtings and partitions shown on elevations at a scale of no less than 1:10 (doors), 1:5 (stairs), 1:2 (skirtings) and horizontal and vertical sections including setbacks and reveals at a scale of no less than 1:5 (doors & stairs), 1:2 (partitions and skirtings);
- Full details of any new flues, vents, meter boxes or mechanical extracts, including service routes and exit points;

The works shall be carried out in accordance with the approved details.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in the interests of preserving the character and appearance of the listed building and its setting.

4. Within 3 month(s) of the completion of the approved works being carried out, all adjoining surfaces which have been disturbed by the works (including brickwork, plaster and floor tiles) shall be made good with materials and finishes to match those of existing undisturbed areas surrounding the new opening.

REASON: In the interests of preserving the character and appearance of the listed building and its setting.

INFORMATIVE TO APPLICANT:

The applicant is reminded of the need to obtain separate planning permission for certain works in addition to this listed building consent. This decision should be read alongside planning consent 19/04927/FUL.

INFORMATIVE TO APPLICANT:

Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

INFORMATIVE TO APPLICANT:

The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence.

If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

91 **Urgent Items**

There were no urgent items.

(Duration of meeting: 3.00 - 6.30 pm)

The Officer who has produced these minutes is Craig Player of Democratic Services, direct line 01225 713191, e-mail craig.player@wiltshire.gov.uk

Press enquiries to Communications, direct line (01225) 713114/713115

NORTHERN AREA PLANNING COMMITTEE ADDITIONAL INFORMATION

06th November 2019

This is information that has been received since the committee report was written. This could include additional comments or representation, new information relating to the site, changes to plans etc.

8a 19/01991/VAR - Oaksey Park Cottages, Wick Road, Oaksey

Late representation

Further submissions from Oaksey Parish Council have been submitted directly to Members. Officers have reviewed the submission and consider that matters raised are addressed in full in the report to Committee and the recommendation is unaffected.

8b 19/07306/FUL - Land to the North West of Broad Town, Swindon

Late representations

Since writing the report the proposal has received a further 5 representations and these comment upon the revised submissions made to inform the application proposals. Further, Broad Town Parish Council stated their concerns still stand despite the revised plans. The additional objection letters from the parish and residents raised the below themes, which have been raised previously and are already noted and addressed in the report.

- Manor farm business scale
- Future intentions of applicant
- Requested conditions to prohibit further development/horse walking near boundaries
- Queried if trailers will be on the site
- Drainage
- The visual impact of the proposed
- Highway and pedestrian safety
- Noise
- Times of use
- Access to public rights of way

Mrs Clarke of East farm house, who has commented on the application, emailed development management requesting the issues raised by residents be given reconsideration.

Officer Response

The submissions do not raise new matters and the issues and concerns identified have been addressed in the report to Committee.

Late Representation

Cllr Groom forwarded a document produced by a resident regarding localised flooding at Manor Farm.

Officer response

The Drainage Team were consulted on this application and raised no comment. The Drainage Officer who offered no objections on the application is experienced and knowledgeable and would have had access to relevant information in providing advice. The Drainage Team has been re-consulted following receipt of the submission and maintains no objection.

Late representation

Further submissions from the Agent have been submitted directly to Members of the Committee. Officers have reviewed the submission and do not consider that this alters the content of the report or recommendation.

8c 19.0497.FUL & 19/5290/LBC - 4 Oxford Street, Malmesbury

Corrections

An earlier draft version of the report has been printed on the agenda and the following corrections are made to the report:

First paragraph on page 418 of the agenda – this states an objection was received from Cllr Grant. However, although representations were made, those representations reiterated the concerns raised by the Town Council and sought to call in the application. This is not considered to be an objection to the proposed development.

On page 420 of the agenda there is reference to policies 5 and 6 of the Malmesbury Neighbourhood Plan but this should refer to policies 4 and 5 as the correct policies.

The Town and Country Planning Act 1990

Application Reference Number: 19/01991/VAR

Decision Date: 21 April 2021

Applicant: Oaksey Park Ltd
c/o Agent

Particulars of Development: Removal of conditions 8,9 & 10 of application reference N/10/03612/S73A to allow unrestricted residential occupancy of units 3, 5, 6, 8, 10 & 11 and 20-25

At: Oaksey Park Cottages, Wick Road, Oaksey, SN16 9SB

Conditions: (10)

- 1 The area between the nearside carriageway edge and lines drawn between a point 2.4 metres back from the carriageway edge along the centre line of the access and points on the carriageway edge 160m back from and on both sides of the centre line of the access shall be kept clear of obstruction to visibility at and above a height of 900mm above the nearside carriageway level and maintained free of obstruction at all times.

REASON: In the interests of highway safety.

- 2 The development hereby permitted shall be served solely from the access shown in drawing c310/1.

REASON: In the interests of highway.

- 3 The workshop / estate yard shall be used only for purposes ancillary to the golf course.

REASON: To prevent an inappropriate independent use

- 4 The development hereby permitted relates solely to units 3, 5, 6, 8, 10 & 11 and 20-25 Inclusive as shown on site layout plan received 19/09/2019.

REASON: In the interests of proper planning

- 5 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), no buildings or structures, or gate, wall, fence or other means of enclosure, other than those shown on the approved plans, shall be erected or placed anywhere on the site on the approved

plans.

REASON: To safeguard the character and appearance of the area.

- 6 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), no window, dormer window or rooflight, other than those shown on the approved plans, shall be inserted in the roofslope(s) of the development hereby permitted.

REASON: In the interests of residential amenity and privacy.

- 7 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), there shall be no additions/extensions or external alterations to any building forming part of the development hereby permitted.

REASON: In the interests of the amenity of the area and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions/extensions or external alterations.

- 8 INFORMATIVE TO APPLICANT: Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

- 9 INFORMATIVE TO APPLICANT: This permission shall be read in conjunction with an Agreement made under Section 106 of the Town and Country Planning Act, 1990 and dated the 21/04/2021.

- 10 INFORMATIVE TO APPLICANT: The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence. If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

Sam Fox ~ Director Economic Development & Planning

G. Section 73 Application Ref: PL/2022/03356 Decision Notice & Officer's Report



The Town and Country Planning Act 1990
Refusal of Application for Removal/Variation of Conditions

Application Reference Number: PL/2022/03356

Decision Date: 05 November 2022

Applicant: Cotswold Ecohomes Ltd
c/o agent

Particulars of Development: Removal of conditions 9, 11 & 12 on N/10/01773/S73 and replace with a condition restricting permanent occupancy to over 55's only.

At: Oaksey Park Golf & Leisure, Wick Road, Oaksey,
Malmesbury, SN16 9SB

In pursuance of their powers under the above Act, the Council hereby REFUSE TO GRANT PERMISSION for the development referred to in the above application and plans submitted by you, for the following reason(s):

Refusal Reason(s): (1)

- 1 The proposed development for retirement dwellings on land outside the defined framework boundary of the large village of Oaksey and within the open countryside is in conflict with the provisions Wiltshire Core Strategy (Jan 2015) of CP1 CP2 CP13 CP46 (viii & x); saved policy H4 of the NWLP 2011 and Policy 3 of the Oaksey Neighbourhood Plan. Insufficient evidence has been submitted to demonstrate and evidence justified need for the proposed form of accommodation in this location. The proposed development is not in a sustainable location for this form of residential accommodation being poorly related to services and facilities required by future occupants of the dwellings. The proposals are thereby also in conflict with paras 2, 3, 7, 8, 10, 11, 12, 78, 92(c), 119, 124 (a & c) & 130 (f).

Parvis Khansari - Corporate Director, Place

NOTES

1. **Appeals.** If the applicant is aggrieved by the decision of the local planning authority to refuse permission, they may appeal to the Secretary of State for the Environment in accordance with Section 78(1) of the Town and Country Planning Act 1990 within six months of the date of this decision. (Information and forms relating to the appeals process can be found at the Planning Portal - [Appeal a planning decision: Overview - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/topics/planning-and-building-control/planning-appeals)).

CASE OFFICER'S REPORT

Application Reference: PL/2022/03356
Application Type: Removal/variation of conditions
Site Inspection:
Consultation ends: 07 July 2022
Case officer: Lee Burman

Site Address: Oaksey Park Golf & Leisure, Wick Road, Oaksey, Malmesbury, SN16 9SB
Proposal: Removal of conditions 9, 11 & 12 on N/10/01773/S73 and replace with a condition restricting permanent occupancy to over 55's only.
Recommendation: Refuse

PROPOSAL

The application seeks to remove conditions 9, 11 & 12 attached to planning permission N/10/01773/S73 and replace them with a condition restricting permanent occupancy of the consented units to over 55's only.

Conditions attached to previous consents at the site restrict occupancy for use as holiday lets. The conditions are as follows:-

Notwithstanding the Town and Country Planning (Use Classes) Order 1987 and the Use Classes Amendment) Order 2005 (or any Order revoking and re-enacting those Orders, with or without modification), the building(s) Hereby permitted shall be used for holiday accommodation only and for no other purpose.

REASON: This site is in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access, and planning policies pertaining to the area, would not permit permanent residential accommodation.

POLICY: C3, RLT9

The building(s) hereby permitted shall not be occupied as a persons' sole or main place or residence.

REASON: This site is in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access, and planning policies pertaining to the area, would not permit permanent residential accommodation.

POLICY: C3, RLT9

The owners/ operators of the site shall maintain an up -to -date register of the names of all owners/occupiers of individual units on the site, and of their main home addresses, and shall make this information available at all reasonable times to the Local Planning Authority.

REASON: This site is in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access, and planning policies pertaining to the area, would not permit permanent residential accommodation.

POLICY: C3, RLT9

The condition that is proposed by the applicant is as follows:-

On the site hereby approved, other than the manager's or warden's accommodation, all other dwellings shall be occupied only by;

- Persons over 55 years of age where the property is their principal place of residence;
- Persons living as part of a single household with such a person or persons including dependant relatives and carers; or
- Persons who were living as part of a single household with such a person or persons but who have since died.

Reason: The condition is regarded as necessary as it restricts occupation in order to respond to a particular housing need in circumstances where normally permanent residential development would not be permitted

Since initial submission and following initial consultation responses (not completed at the time) the applicant has made further submissions. These being plans / details of the proposed units and site layout. These vary the details previously approved under historic applications.

SITE DESCRIPTION/CONTEXT

The application site is located within the open countryside to the east of the village of Oaksey. Planning permission was previously granted for the development of semi detached and detached holiday accommodation, structures located adjacent a 9 hole golf course and its supporting clubhouse facility; further consents have been granted including an appeal for further holiday accommodation and varying conditions attached to previous consents that restrict occupancy.

Some of the permissions have been implemented and the resultant structures are modern in design two storey buildings built utilising render and timber with substantive glazing elements and were originally all subject of restricted occupancy as holiday lets.

Not all of the units have been constructed with a final phase of 12 units yet to be implemented and it is these units to which the current application applies. This unimplemented phase of the development is also tied by Planning obligation that required submission of evidence of demand for holiday lets prior to further construction taking place, this following removal of restrictive occupancy conditions applying to the as built holiday units on the basis of there being evidence of no demand for the holiday accommodation.

The structures are surrounded by shared amenity spaces with planting separating the properties from the golf course. The structures are residential in character but occupancy of some of them is restricted to holiday lets. Similarly, there is established mature planting to the northern boundary

separating the site and its access road from adjoin open countryside. The properties have ancillary group parking areas and the access road to the site runs from Wick Road, adjacent to the golf course itself through the golf course car park.

The are no heritage or special landscape character designations.

POLICIES

Wiltshire Core Strategy (Adopted Jan 2015) (WCS)

CP1, CP2, CP3, CP13, CP46, CP57, CP60, CP61, CP62, CP67

Saved Policies of the North Wiltshire Local Plan (Adopted 2006) (NWLP)

H4 & NE18

Wiltshire Housing Sites Allocation Plan (WHSAP) (Feb 2020)

Settlement Boundary Review and Housing Allocations

Oaksey Neighbourhood Plan Made (March 2019) (ONP)

P1, P2, P3,

National Planning Policy Framework (July 2021) (NPPF/The Framework)

- in particular but not exclusively Paras 2, 7, 8, 11, 12, 38, 47, 55, 78, 79, 80, 92, 93, 119, 124, 130, 131, 167.

RELEVANT PLANNING HISTORY

89/03470/F Change of Use to residential holiday and staff accommodation of agricultural buildings. Reconstruction of Guest Lounge. Alts To Access and Driveway. Approved

02/01841/FUL Erection Of 18 No 2 & 3 Bed Holiday Lodges And 1 No Bunkhouse With Covered Parking (1 No Space/Lodge) And Implement Shed, Workshop, Office And Reception Area And Associated Access. Approved

03/02072/S73A Variation of conditions attached to 89/03470/F (Condition 5) and 02/01841/FUL (Condition 7).

Appeal allowed conditions varied

05/00643/FUL Erection of 12 two and three be holiday lodges and covered paring/bin storage(one car space/lodge and associated access. Appeal Allowed

10/03612/S73A Variation of Condition 7 of 02/01841/FUL & 1 of APP/J3910/A/04/1145607 - Relating to Residential Occupancy Relates to units: 3, 5, 6, 8 and 10 - 19 inclusive. Approved

11/02036/S73A Variation of Condition 1 of APP/J3910/A/04/1145607 - Relating to Residential Occupancy (Original Variation of Condition 7 of 02/01841/FUL) Relates to unit 2. Approved

12/00034/S73A Variation of Condition 1 of APP/J3910/A/04/1145607 - Relating to Residential Occupancy (Original Variation of Condition 7 of 02/01841/FUL).Relates to unit 4. Approved.

12/00050/S73A Change of Use to residential holiday and staff accommodation of agricultural buildings. Reconstruction of Guest Lounge. Alts To Access and Driveway. Approved

Erection Of 18 No 2 & 3 Bed Holiday Lodges And 1 No Bunkhouse With Covered Parking (1 No Space/Lodge) And Implement Shed, Workshop, Office And Reception Area And Associated Access. Approved

Variation of conditions attached to 89/03470/F (Condition 5) and 02/01841/FUL (Condition 7).
Appeal allowed conditions varied

Erection of 12 two and three be holiday lodges and covered paring/bin storage(one car space/lodge and associated access. Appeal Allowed

Variation of Condition 7 of 02/01841/FUL & 1 of APP/J3910/A/04/1145607 - Relating to Residential Occupancy Relates to units: 3, 5, 6, 8 and 10 - 19 inclusive. Approved

Variation of Condition 1 of APP/J3910/A/04/1145607 - Relating to Residential Occupancy (Original Variation of Condition 7 of 02/01841/FUL) Relates to unit 2. Approved

Variation of Condition 1 of APP/J3910/A/04/1145607 - Relating to Residential Occupancy (Original Variation of Condition 7 of 02/01841/FUL).Relates to unit 4. Approved.

Variation of Condition 1 of APP/J3910/A/04/1145607 - Relating to Residential Occupancy (Original Variation of Condition 7 of 02/01841/FUL). Relates to unit 7. Approved.

13/00958/S73A Removal of Conditions 8, 9 and 10 imposed on application reference 10/03612/S73A which varied condition No 7 of 02/01841/FUL and appeal APP/J3910/A/04/1145607, allowing the unrestricted residential occupancy of units 12 to 19 (8 in total). Approved

15/07119/VAR Removal / Variation of Condition 7 of planning application N/02/01841/FUL (Erection of 18 Holiday Lodges and One Bunkhouse with Covered Parking, Shed/ Workshop/Reception Area and Associated Access.) in Respect of Unit 1. Withdrawn

18/02717/CLE Certificate of lawfulness for use of holiday accommodation as independent residential accommodation. Withdrawn

18/05105/CLE Certificate of lawfulness for use of holiday accommodation as independent residential unit. Withdrawn

19/01991/VAR Removal of conditions 8,9 & 10 of application reference N/10/03612/S73A to allow unrestricted residential occupancy of units 3, 5, 6, 8, 10 &.11 and 20-25. Approved

PL/2022/03549 Removal/variation of conditions. Refused

ISSUES

Principle

Impact to Residential Amenity

Impact to Highways

Other Matters – Landscape, Drainage, S106

CONSULTATION:

Oaksey Parish Council – Objection

Public Protection – No Objection

Highways – No objection but revision to site layout sought to demonstrate parking requirements can be met.

Officer Note: Revised / Additional plans submitted and address requirements. See Report content below

MOD – No safeguarding objections but requests reattachment of conditions addressing bird strike concerns previously raised in respect of the principal application

Archaeology - No objection raised

Drainage – Requested drainage assessment and strategy submissions

Officer Note: It is considered that this matter could be addressed by condition. See Report content below.

Ecology - No comment

Landscape – No comment

Urban Design – Concerns raised as to nature of the proposals as approved (holiday lets) and the proposed use; time elapsed since earlier consents and evolution of design based policy requirements in the intervening period.

Officer Note: Revised / Additional Plans submitted and considered to address requirements. See report content below

Education – No objection and No requirements

Affordable Housing – No objections and No requirements in this instance

Spatial Planning – Objection. No evidence of demand for elderly persons accommodation submitted. Site outside defined settlement. Settlement not of a type that would support elderly persons.

Public Open Spaces – No requirements identified or objections raised.

The Local Ward Member Cllr Chuck Berry called in the application for committee determination in the vent of a recommendation to approve to consider all aspects of the proposal and its impact.

REPRESENTATIONS:

One representation of support. Site has space for the proposal and there is a shortage of housing. Road/Resident Safety internal to the site should be considered – recommends speed controls.

ASSESSMENT:

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 statutory development plan in respect of this application consists of the Wiltshire Core Strategy (WCS) (Adopted January 2015), the 'saved' policies of the North Wiltshire Local Plan (NWLP) 2011 (adopted June 2006); the Wiltshire Housing Sites Allocation Plan (WHSAP) (Feb 2020); and the Oaksey Neighbourhood Plan (ONP) ('made' March 2019).

Principle of Development/Plan Compliance

The site is located outside the defined settlement framework boundary for Oaksey which is defined as a large village in the settlement hierarchy of the WCS. The site is not allocated for development.

The form of development proposed – retirement accommodation for elderly persons - is however arguably one of the forms of development permitted as an exception to the development strategy of the plan formed in this instance by WCS policies CP1 CP2 CP13 and saved policy H4 of the NWLP. Exceptions as set out at para 4.34 of the WCS include development permitted under WCS CP46 – Accommodation for elderly and vulnerable persons. Albeit no element of care is proposed with the properties.

CP46 however makes clear that proposals will only be supported where well related to Principal Settlements and Market Towns, Oaksey is a large village, the second lowest order settlement in the defined hierarchy reflecting its limited range of services and facilities. Directing development of this nature to higher order settlement is logical and sustainable as these are locations with a better range of services and facilities which will be required by elderly and vulnerable persons, many of who will have restricted travel and movement options. Criterion x requires that services and facilities be accessible for the application site/proposed development.

Furthermore, the policy requires at criterion viii that that genuine and evidenced need for the proposed development is justified.

Officers including the Council's Spatial Planning Team in their consultation advice consider that the proposals conflict with these submissions. Oaksey is a large village not a principle settlement or market town and it has a very limited range of services and facilities for older persons. The supporting evidence of need with the application is limited to generic assessment over wider areas rather than clear survey and marketing based evidence relating to Oaksey and its immediate environs. This is further reflected by the position set out in the ONP where policies 1 and 3 are of material relevance. Policy 1 defines the settlement framework boundary. Policy 3 specifically restricts the removal of restrictive conditions for holiday accommodation for use as a permanent residential dwelling. The ONP does not identify any specific quantified requirement for retirement homes. There is direct conflict with both policies. These matters are reflected by the objection raised by Oaksey Parish Council.

In this context it is important to note that officers encouraged the applicant team to make detailed evidence submissions as to need in Oaksey and this locality during the valuation and registration of the application. This partly on the basis that initial submissions were extremely limited and that no preapplication engagement or enquiry with the Council had been undertaken. Registration was delayed and the current submissions are those made in response to Officer recommendations. Registration was confirmed on the basis that recommendations had not been comprehensively and robustly addressed.

It is also material to note that historic consents exist for holiday let units on site. However, these units are not yet constructed and their implementation is restricted by Planning Obligation/Section 106 agreement following determination of previous applications to vary occupancy conditions of existing holiday let units at the site. Those proposals were justified on the basis of marketing evidence demonstrating no demand for holiday lets. The planning obligation requires the submission of robust marketing evidence demonstrating clear demand for the permitted holiday lets. As such the permission is considered to be of only marginal relevance and the proposal is effectively for new build retirement dwellings.

It is also material to note that the Council cannot currently demonstrate a framework compliant supply of land for housing. The shortfall is however modest and supply is improving with multiple grants of consent at Council Committee, under delegated powers and at appeal with more anticipated. The Council has multiple applications before it and pending determination in more sustainable locations also. The scale of shortfall and measures being taken to address it are also capable of being material considerations. It is also clearly the case that there is no demonstrable evidence of need for this specific form of housing proposed in this location submitted with the application and that it such development could be more sustainably located at higher order settlements with a better range of services and facilities in order to meet the future needs of occupants.

As such it is considered that the proposal is unacceptable in principle being in conflict with the strategy of the plan and directly relevant policy CP46. Site specific matters are considered further below under issue specific headings. The planning balance is addressed in the conclusion.

Residential Amenity

Given the extant consents and the revised details submitted alongside the relationship to existing properties now benefiting from unrestricted occupancy it is not considered that the proposal would result in significant harm to existing residential amenity such that development ought to be refused on this basis.

It is considered that the proposals as set out in the revised / additional submissions achieve a satisfactory level of residential amenity for future occupants.

On this basis the relevant policies of the plans and provisions of the framework are met.

Character appearance, visual amenity – design character

Given the extant consents and the revised / additional details submitted, alongside the relationship to existing properties and built structures at the site, existing site planting and relationship to the immediate and wider locality it is not considered that the proposals result in

significant harm to the character, appearance and visual amenity of the locality. Whilst the proposal will effectively involve new build development and therefore some change will arise this is in the context of neighbouring structures, existing site planting and the site being not especially visually prominent. As noted a consent exists for development on site and this is of some limited material relevance as to landscape impact also.

Conditions could be applied to secure additional landscaping details and provision that would further mitigate impact. The Council's Landscape officers have raised no objections to the scheme proposals.

The Council's Urban Design officers identified a range of revised design requirements relating to the proposed form of development that have arisen across various policy documents at national and local level since the original consents were granted some 12 years ago. Concern was raised therefore that the consented scheme would not achieve a high quality design and the related policy objectives and requirements of the plan and framework would not be met. The applicant has since submitted revised and additional details for the proposed dwellings and site layout. The Council's Urban Design Officer has since confirmed that the submitted details address the concerns raised and no objection arises.

Taken altogether it is not considered that harm and conflict with the policies of the plan and provisions of the framework arises such that consent ought to be refused on this basis.

Highways

Highways Officers raised initial concerns in respect of the provision of adequate vehicle and cycle parking in order to serve the revised form of residential development. It was identified that consented schemes for the holiday lets made inadequate provision to service the revised type of residential occupancy proposed. As such revised layout proposals were sought. These have been submitted and highways officers confirm that concerns are met and no objections raised. It is considered also that matters relating to waste servicing could be addressed by use of condition as has previously been the case in respect of previous variation of occupancy restriction proposals.

On this basis it is not considered that the proposals are in conflict with the relevant policies of the plan or the provision of the framework or significant harm arises to highways conditions such that consent ought to be refused on this basis.

Other Matters – Drainage, S106

The Council's Drainage Engineers have raised concerns regarding the absence of flood risk and surface water drainage assessment given records of surface and ground water flooding and risk/sensitivity in the locality. Also on the basis that no details could be found in the public record with respect to previous consents referenced.

This was raised with the applicant team who refused to provide any new additional or copy of previously approved details.

A review of the most relevant application file records indicates drainage conditions were attached to appeal decision relating to this part of the site but there is no record of submission having been made and details approved. Some details are available in respect of adjacent phases of development which have been implemented against the relevant consents. Clearly the Inspectors

considering the relevant appeals did not consider that drainage issues and constraints were so significant at that time such that consent could not be allowed and matters could be addressed via conditions.

It must be noted though that the policy considerations and requirements have changed significantly since that time, not least of all in relation to the framework and the development plan. Site conditions and circumstances have changed as has flood risk and climate conditions. Additionally, the site layout proposed now is different from that approved at appeal.

Taken together it is considered that flood risk and surface water drainage assessment is required but this could be addressed via use of condition and as such should not form a basis for refusal or insistence that detail be provided prior to determination, particularly so given the in principle objections to the scheme set out above.

Consultees have confirmed that in respect of the specific form of development and residential occupancy proposed no planning obligations arise; or have not raised comment or identified requirements. As such there is no conflict with the relevant provisions of the plan in this respect. The planning obligation relating to this part of the site would however require variation to remove restrictive covenants in the event of a decision to approve.

CONCLUSION

The application site is not allocated for development and lies outside the defined settlement boundary for the large village of Oaksey and so is on the open countryside for planning purposes. The proposal is for the variation of occupancy conditions tied to consented holiday let units, which have not been erected, to allow occupancy as retirement homes for the over 55s. The construction of the holiday lets is restricted by planning obligation.

Accommodation for elderly and vulnerable persons is addressed under WCS CP46 and is a form of development that is allowed for as an exception to the strategy and approach in such circumstances, but subject to a range of criteria and limiting development to principal settlements and market towns. As noted Oaksey is a large village so the proposal conflicts with CP46 and therefore the plan and its strategy in that locational aspect. Two of those policy criteria are of particular relevance to the proposal also – Criteria viii & x. These require that genuine and evidenced need be justified; and that facilities and services are accessible. Neither criterion is met. The applicant has been given ample opportunity to address matters with requests for the need evidence made by officers prior to registration. The ONP includes clear policies relating to this proposal, and with which it conflicts, in particular policy 3 which opposes the removal of restrictive occupancy conditions for holiday accommodation to allow permanent residential accommodation.

Site specific considerations such as highways, drainage, residential amenity, landscape impacts, archaeology, design character are addressed or are capable of being addressed through use of condition and no policy conflicts arise in these respects. However, compliance with such plan policy and framework requirements does not in itself warrant approval and the in principle and sustainable development plan policy and framework conflicts and harm remain and outweigh such considerations. In totality the proposals are in conflict with the development plan and would not achieve sustainable development that meets identified needs. It is considered that these are clear harms and which should be afforded significant weight.

Whilst the site benefits from consent for the erection of holiday lets these have not yet been constructed and their development is restricted by planning obligation. Without clear evidence of demand for holiday let use and occupancy the units cannot be erected. As such this consideration can only be afforded negligible weight and the proposal for retirement homes is effectively a new build proposal.

The tilted balance is engaged as the Council is not able to demonstrate a framework compliant supply of land for housing. As such the policies most relevant to determination of the application attract reduced weight.

As noted above the conflicts with the policies of the Plan CP1 CP2 CP13 CP46 and saved policy H4 of the NWLP; Policy 3 of the ONP, and harm that arises are still considered to merit significant weighting. Likewise the related conflict with provisions of the framework and harm that arises. The proposal is for a specific form of residential accommodation which generates specific needs. There is no robust evidence of need for this type of development in this location and future occupants will not have access to all the services and facilities they require. This is not sustainable development and the harm is significant.

As such the benefits of development are proportionately limited. The boost to the supply of land for housing can only attract limited weight here given its restricted occupancy nature and no robust evidence of need identified alongside poor access to necessary services and facilities for future occupants. The economic benefits of construction are limited due to the limited scale of development and as same would be achieved by development taking place in a more appropriate and sustainable location.

The harms identified clearly and demonstrably outweigh the benefits and as such development should be refused.

RECOMMENDATION:

That Planning Permission be REFUSED FOR following reasons:

Refusal Reason(s): (1)

- 1 The proposed development for retirement dwellings on land outside the defined framework boundary of the large village of Oaksey and within the open countryside is in conflict with the provisions Wiltshire Core Strategy (Jan 2015) of CP1 CP2 CP13 CP46 (viii & x); saved policy H4 of the NWLP 2011 and Policy 3 of the Oaksey Neighbourhood Plan. Insufficient evidence has been submitted to demonstrate and evidence justified need for the proposed form of accommodation in this location. The

proposed development is not in a sustainable location for this form of residential accommodation being poorly related to services and facilities required by future occupants of the dwellings. The proposals are thereby also in conflict with paras 2, 3, 7, 8, 10, 11, 12, 78, 92(c), 119, 124 (a & c) & 130 (f).

Ref: Change of Use of Implemented Phase IV Development at Oaksey Park Golf and Leisure to C3 Residential Occupation by Independent Older Persons – JC/006/RG-(PS)

H. Appeal Decision Ref: APP/Y3940/W/23/3317020 (dated 11/04/2024)



Appeal Decision

by Susan Heywood BSc(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 April 2024

Appeal Ref: APP/Y3940/W/23/3317020

**Oaksey Park Golf and Leisure, Oaksey Park, Oaksey, Malmesbury
SN16 9SB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr John Cooper against the decision of Wiltshire Council.
- The application Ref PL/2022/03356, dated 27 April 2022, was refused by notice dated 5 November 2022.
- The application sought planning permission for the erection of 12no. two and three bed holiday lodges and covered parking / bin storage and associated access without complying with conditions attached to planning permission Ref N/10/01773/S73, dated 30 July 2010.
- The conditions in dispute are Nos 9, 11 and 12 which state that:
- **Condition 9:** *Notwithstanding the Town and Country Planning (Use Classes) Order 1987 and the Use Classes (Amendment) Order 2005 (or any Order revoking and re-enacting those Orders, with or without modification), the building(s) Hereby (sic) permitted shall be used for holiday accommodation only and for no other purpose.*
- **Reason:** *This site is in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access and planning policies pertaining to the area, would not permit permanent residential accommodation.*
- **Condition 11:** *The building(s) hereby permitted shall not be occupied as a persons' (sic) sole or main place or residence.*
- **Reason:** *This site is in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access and planning policies pertaining to the area, would not permit permanent residential accommodation.*
- **Condition 12:** *The owners / operators of the site shall maintain an up-to-date register of the names of all owners/occupiers of individual units on the site, and of their main home addresses, and shall make this information available at all reasonable times to the Local planning Authority.*
- **Reason:** *This site is in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access and planning policies pertaining to the area, would not permit permanent residential accommodation.*

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant's appeal statement indicates that an amendment to the application was sought, during the Council's consideration of the proposal, to

include the removal of Condition 14. Condition 14 on the original permission (N/10/01773/S73) requires the development to be implemented in accordance with the then submitted documents and plans.

3. Whilst it appears that the Council took into account amended plans in reaching their decision, the Committee Report and the Council's decision notice only refer to Conditions 9, 11 and 12 as being under consideration. They do not therefore appear to have amended the application to include Condition 14. Accordingly, if I were to consider the removal of Condition 14 in this appeal, it would be prejudicial to the Council and others who may have wished to make comments on this change to the application description. I have therefore considered the appeal on the basis that it seeks to remove Conditions 9, 11 and 12 only.
4. The appellant seeks to remove the conditions outlined above and replace with a condition allowing permanent occupancy by persons over 55 years of age only. The original permission stated that the development was for holiday lodges and the conditions sought to restrict the development to this type of accommodation.
5. The main parties have been invited to submit comments in relation to the Court of Appeal *Finney* judgment¹ and I have had regard to these comments. Consequently, no party would be prejudiced if I was to take *Finney* into consideration in the determination of this appeal and I have dealt with the appeal on this basis.

Main Issue

6. The main issue is whether or not Conditions 9, 11 and 12 can be removed and replaced with the suggested condition restricting occupancy to over 55s, having regard to the Town and Country Planning Act 1990 (the Act) and other material considerations, including the *Finney* judgement.
7. If the conditions could be varied, it would be necessary to consider whether the development would provide a suitable site for housing for over 55s, having regard to its location and local and national policies relating to development within the countryside; the need for the development; the accessibility of the site to local services and facilities whilst also having regard to the Council's housing land supply situation.

Reasons

8. In *Finney*, the Courts established that an application under s.73 of the Act may not be used to obtain a permission that would require a variation to the terms of the "operative" part of the planning permission, that is, the description of the development for which the original permission was granted.
9. In this case, the conditions requested for removal, and the suggested replacement condition, would affect the "operative" part of the permission as it would require a change to the description of development for which the original permission was granted, which refers to holiday lodges.

¹ John Leslie Finney v Welsh Ministers, Carmarthenshire County Council, Energiekontor (UK) Limited [2019] EWCA Civ 1868

10. I note the appellant's view that as the existing and proposed occupancy of the dwellings would fall within Class C3 of the Use Classes Order², an application under S.73 would not alter this original Use Class. However, the original description of development does not restrict the dwellings to Class C3 only, it specifically restricts them to holiday lodges. Consequently, the fact that holiday lodges and over 55s housing would fall within the same Use Class is not material to the consideration of whether the conditions can be removed and replaced as proposed, having regard to s.73 of the Act and the *Finney* judgement.
11. The Council accepts that, notwithstanding its decision to refuse the application, the proposed removal and replacement of the conditions would create a *Finney* conflict. They consider that the appeal is invalid for this reason and that a new full planning application would be required for the erection of housing for over 55s.
12. Having regard to the principles in the *Finney* judgment, I consider that the proposal as set out in the application to the Council would result in a discrepancy with the original description of development. If I were to allow the appeal, it would result in a change to this description, from holiday lodges to housing for over 55s.
13. I therefore conclude that the creation of a new planning permission, removing Conditions 9, 11 and 12 imposed on the original permission and replacing it with the suggested new condition, would be beyond the powers under s.73 of the Act and, having regard to the *Finney* judgement, the changes cannot be made. The effect is, in this case, that no further action can be taken on the appeal.
14. I cannot therefore consider the merits of the proposal as to do so would prejudice a future decision maker on any full application which may be submitted.

Conclusion

15. For the reasons set out above, I conclude that the appeal must be dismissed.

S Heywood

INSPECTOR

² Town and Country Planning (Use Classes) Order 1987 (as amended)

- I. John Leslie Finney v Welsh Ministers, Carmarthenshire County Council, Energiekontor (UK) Limited [2019] EWCA Civ 1868**



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Neutral Citation Number: [2019] EWCA Civ 1868

Case No: C1/2018/2922

**IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE QUEEN'S BENCH DIVISION, PLANNING
COURT**

**Sir Wyn Williams
CO/1281/2018**

Royal Courts of Justice
Strand, London, WC2A 2LL
5th November 2019

B e f o r e :

**LORD JUSTICE LEWISON
LORD JUSTICE DAVID RICHARDS
and
LORD JUSTICE ARNOLD**

Between:

JOHN LESLIE FINNEY

Appellant

- and -

(1) WELSH MINISTERS

(2) CARMARTHENSHIRE COUNTY COUNCIL

1st Respondent

2nd Respondent

(3) ENERGIEKONTOR (UK) LIMITED

3rd Respondent

MR B FULLBROOK (instructed by Leigh Day) for the Appellant

MR R TURNEY (instructed by the Government Legal Department) for the 1st Respondent

2nd Respondent did not appear and was not represented

Mr D HARDY (Solicitor Advocate) (instructed by Energiekontor (UK) Limited) for the 3rd Respondent

Hearing date : 29 October 2019

HTML VERSION OF APPROVED JUDGMENT▲

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Lord Justice Lewison:

1. The issue on this appeal concerns the limits of the power under section 73 of the Town and Country Planning Act 1990 to grant planning permission for development without complying with conditions subject to which a previous planning permission was granted.
2. On 21 January 2016 Energiekontor (UK) Ltd applied to Carmarthenshire CC for planning permission for development described as:

"Installation and 25 year operation of two wind turbines, with a tip height of up to 100m, and associated infrastructure including turbine foundations, new and upgraded tracks, crane hardstandings, substation, upgraded site entrance and temporary construction compound upon a site situated to the north of the village of Rhydcwmerau, Carmarthenshire."

3. On 8 March 2016 Carmarthenshire granted full planning permission "for the development proposed by you as shown on the application form, plans and supporting documents". The permission granted was conditional; in total there were 22 conditions. Condition 2 provided that the development was to be carried out in accordance with a number of approved plans and documents which were specified. One such was a "figure" described as "3.1 Typical Wind Turbine Elevation 1:500 @A3". It is common ground that this showed a wind turbine with a tip height of 100 metres.
4. A few months later, on 5 August 2016, Energiekontor applied under section 73 of the 1990 Act to Carmarthenshire for the "removal or variation" of condition 2 of the planning permission. In answer to the question "Please state why you wish the condition(s) to be removed or changed", Energiekontor wrote:

"To enable a taller turbine type to be erected."

5. In answer to the question "If you wish the existing condition to be changed, please state how you wish the permission to be varied", Energiekontor replied:

"To supersede 3.1 with 3.1a".

6. The application was supported by figure 3.1A. It made it clear that Energiekontor was seeking the variation so as to permit tip heights for the turbines of up to 125 metres.
7. That was, of course, higher than the development described in the original planning permission which granted permission to install and operate a turbine "with a tip height of up to 100m". Carmarthenshire refused to grant the requested permission. Energiekontor appealed to the Welsh Ministers against that refusal. The inspector appointed to determine the appeal set out her approach to the appeal as follows:

"4. The appeal proposal seeks to increase the height of two consented ("the consented scheme"), but not yet built, turbines from 100m to 125m. As such, my remit is to consider the effect of the additional size of the proposed scheme against that of the consented scheme. Both consented and proposed schemes are submitted by reference to candidate turbines. As such, the application seeks to carry out the development without complying with a condition which effectively limits the turbine height to 100m by its reference to a plan. It is explicit in the appellant's evidence that permission is sought for an increase in height to 125m by reference to a revised plan and that a condition to secure this should be imposed. I have proceeded to consider this appeal on this basis."

8. She went on to consider a number of planning objections to the proposed increase in height. In a careful decision letter, she rejected them all. She concluded:

"The appeal is allowed and planning permission is granted for installation and 25 year operation of two wind turbines, and associated infrastructure including turbine foundations, new and upgraded tracks, crane hard standings, substation, upgraded site entrance and temporary construction compound (major development) at land to the north of Esgairliving Farm, Rhydcymrau in accordance with the application Ref W34341 dated 5 August 2016, without compliance with condition number 2 previously imposed on planning permission Ref W/31728 dated 8 March 2016 and subject to the conditions set out in the schedule attached to this decision."

9. Those conditions included condition 2 which required that the permitted development should be carried out in accordance with plans which included "Figure 3.1A Typical Wind Turbine Elevation 1:500 @A3 dated August 2016". The turbine shown on those plans was 125 metres high. It will be immediately apparent that in the description of the permitted development the words "with a tip height of up to 100m" contained in the original grant have been excised.
10. There can be no challenge to the inspector's planning judgment. The sole challenge is that she had no power to allow the appeal and to grant planning permission for development that was not covered by the description of the development in the body of the original planning permission. The only power was to vary the conditions attached to that development as described. Sir Wyn Williams rejected that challenge, noting that the point had not been raised before the inspector.

11. Section 73 of the 1990 Act provides:

"(1) This section applies, subject to subsection (4), to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.

(2) On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and

(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and

(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

(3) [Repealed]

(4) This section does not apply if the previous planning permission was granted subject to a condition as to the time within which the development to which it related was to be begun and that time has expired without the development having been begun."

12. It is common ground that the answer to the question raised by this appeal would be the same in England as it is in Wales.
13. In *Pye v Secretary of State for the Environment* [1998] 3 PLR 72 Sullivan J explained the origin and purpose of section 73. It first entered the planning system as section 31A of the Town and Country Planning Act 1971. Before its introduction, a developer dissatisfied with a condition imposed on the grant of planning permission had no choice but to appeal. That exposed him to the risk of losing the planning permission altogether. Guidance about the policy underlying section 73 was given in circular 19/86 from which the following points emerge:
 - i) Its purpose was to enable an applicant to apply "for relief from any or all of [the] conditions".
 - ii) The planning authority "may not go back on their original decision to grant permission."
 - iii) If the planning authority decide that "some variation of the conditions" is acceptable, a new alternative permission will be created. The applicant may then choose between the two permissions.
14. Sullivan J's description of the origins and purpose of section 73 was approved by this court in *R v Leicester City Council ex p Powergen UK Ltd* (2001) 81 P & CR 5; and by the Supreme Court in *Lambeth LBC v*

Secretary of State for Housing, Communities and Local Government [2019] UKSC 33, [2019] 1 WLR 4317. In the latter case Lord Carnwath said at [11]:

"A permission under section 73 can only take effect as an independent permission to carry out *the same development as previously permitted*, but subject to the new or amended conditions. This was explained in the contemporary Circular 19/86, para 13, to which Sullivan J referred. It described the new section as enabling an applicant, in respect of "an extant planning permission granted subject to conditions", to apply "for relief from all or any of those conditions". It added: "If the authority do decide that some variation of conditions is acceptable, a new alternative permission will be created. It is then open to the applicant to choose whether to implement the new permission or the one originally granted." (Emphasis added)

15. Some further points are, I think, uncontroversial:

- i) In deciding on its response to an application under section 73, the planning authority must have regard to the development plan and any other material consideration. The material considerations will include the practical consequences of discharging or amending conditions: *Pye* at 85B.
- ii) When granting permission under section 73 a planning authority may, in principle, accede to the discharge of one or more conditions in an existing planning permission; or may replace existing conditions with new conditions. But any new condition must be one which the planning authority could lawfully have imposed on the original grant of planning permission.
- iii) A condition on a planning permission will not be valid if it alters the extent or the nature of the development permitted: *Cadogan v Secretary of State for the Environment* (1992) 65 P & CR 410.

16. In *Pye* Sullivan J said at 85-86:

"The original planning permission comprises not merely the description of the development in the operative part of the planning permission, in this case the erection of a dwelling, but also the conditions subject to which the development was permitted to be carried out."

17. That sentence was part of the passage approved by the Supreme Court in *Lambeth*.

18. Mr Fullbrook, for Professor Finney, stresses the distinction between the "operative part" or grant of the planning permission on the one hand, and the conditions to which the operative part or grant is subject. The distinction between these two parts of a planning permission is reflected in other provisions of the 1990 Act. Thus, in principle "planning permission" is required for the carrying out of any development: section 57 (1). The local planning authority may "grant planning permission, either unconditionally or subject to ... conditions": section 70 (1). Section 96A gives a planning authority power to "make a change to any planning permission" if the change is not material. Section 171A (1) distinguishes between two types of breach of planning control;

"(a) carrying out development without the required planning permission; or (b) failing to comply with any condition or limitation subject to which planning permission has been granted..."

19. The distinction between the operative part or grant, on the one hand, and conditions on the other has been drawn in other cases decided under the Act. In *Cotswold Grange County Park LLP v Secretary of State for Communities and Local Government* [2014] EWHC 1138 (Admin), [2014] JPL 981 Hickinbottom J said at [15]:

"... the grant identifies what can be done—what is permitted—so far as use of land is concerned; whereas conditions identify what cannot be done—what is forbidden."

20. That passage was said by this court to be an accurate summary of the position in *Winchester City Council v Secretary of State for Communities and Local Government* [2015] EWCA Civ 563, [2015] JPL 1184.

21. The question in this appeal is whether, on an application under section 73, it is open to the local planning authority (or on appeal the Welsh Ministers) to alter the description of the development contained in the operative part of the planning permission.

22. There are three cases that bear on that question. All are decisions of the High Court; and it is naturally common ground that none of them binds this court. In *R v Coventry CC ex p Arrowcroft Group plc* [2001] PLCR 7 the City Council granted planning permission for development described as:

"40,000 seat multi purpose arena, 1 food superstore & 1 variety superstore with associated small retail, service and community units, petrol filling station, multi leisure complex including restaurants, new railway and bus stations including park & ride facilities, coach park and carparking with associated landscaping, highways, pedestrian and cycle routes and canalside walk. Closure of public highway."

23. Condition 5 provided that the permitted development "shall be in accordance with the following requirements". One of the requirements was that the buildings to be erected "shall comprise":

"a food superstore and a variety superstore"

24. An application was subsequently made under section 73 for the substitution of a different condition to read that the buildings to be erected should comprise:

"a food superstore and non-food variety store(s) (comprising a range of non-food A1 retail units)"

25. A further proposed condition stated that:

"The non-food variety store(s) shall at no time exceed six in number"

26. Thus, instead of a single non-food variety store, the revised conditions would have allowed up to six non-food stores, in place of the single one permitted under the original planning permission. The revised conditions were challenged on the ground that they introduced:

"... a fundamental inconsistency between the conditions and the description of the development contained in the notice of permission."

27. Sullivan J upheld the challenge. At [33] he said:

"... the council is able to impose different conditions upon a new planning permission, but only if they are conditions which the council could lawfully have imposed upon the original planning permission in the sense that they do not amount to a fundamental alteration of the proposal put forward in the original application."

28. He added at [35]:

"Whatever the planning merits of this new proposal, which can, of course, be incorporated into a new "full" application, I am satisfied that the council had no power under section 73 to vary the conditions in the manner set out above. The variation has the effect that the "operative" part of the new planning permission gives permission for one variety superstore on the one hand, but the new planning permission by the revised conditions takes away that consent with the other."

29. It is clear that what Sullivan J meant by the "operative" part of the planning permission was the description of the development, rather than the conditions. These two passages are, in my judgment, dealing with different things. The first deals with the imposition of conditions on the grant of planning permission. The second deals with a conflict between the operative part of the planning permission and conditions attached to it.

30. *Arrowcroft* was considered by Collins J in *R (Vue Entertainment Ltd) v City of York Council* [2017] EWHC 588 (Admin). The City Council had granted planning permission for development described as:

"The demolition of existing structures and the erection of an 8,000 seat community stadium, leisure centre, multi-screen cinema, retail units, outdoor football pitches, community facilities and other ancillary uses, together with associated vehicular access, car parking, public realm, and hard and soft landscaping."

31. Condition 2 required the development to be constructed in accordance with specified plans. The plans showed a 12 screen multi-screen cinema with a capacity of 2,000. The application under section 73 was an

application to amend that condition so as to increase the number of screens to 13, with a capacity of 2,400. The amendment was challenged on the ground that it represented a "fundamental change" to the effect of the planning permission. Collins J referred to *Arrowcroft* and said at [11] that the effect of the change in that case did amend "the permission itself". He said at [14]:

"Thus, *Arrowcroft* (supra) in my judgment does no more than make the clear point that it is not open to the council to vary conditions if the variation means that the grant (and one has therefore to look at the precise terms of grant) are themselves varied."

32. I understand him to have equated "the grant" with what Sullivan J had called the "operative part" of the planning permission; i.e. the description of the development itself. Collins J continued:

"[16] In this case, the amendments sought do not vary the permission. It is as I have already cited and there is nothing in the permission itself which limits the size of either the amount of floor space or the number of screens and thus the capacity of the multi-screen cinema. The only limitation on capacity is the stadium itself, which has to be 8,000 seats.

[17] It seems to me obvious that if the application had been to amend the condition to increase the capacity of the stadium that would [not] have been likely to have fallen foul of the *Arrowcroft* principle because it would have been a variation to the grant of permission itself but as I say, that is not the case here."

33. It is agreed that "not" in paragraph [17] line 3 is an error and should be ignored.

34. The third case is the decision of Singh J in *R (Wet Finishing Works Ltd) v Taunton Deane BC* [2017] EWHC 1837 (Admin), [2018] PTSR 26. On 22 August 2011 the planning authority granted planning permission for the erection of 84 dwellings on a site close to a Grade II listed building. Singh J did not set out the precise terms of the description of the permitted development. On 6 October 2015 an application was made to vary the planning permission by increasing the number of permitted dwellings from 84 to 90. Again Singh J did not set out the terms of the application. I cannot tell from the report whether the number of dwellings was part of the description of the development, or whether the permission granted general permission to erect dwellings but limited their number by way of condition. It seems that the limitation to 84 dwellings may well have been contained in the description of the development itself, rather than in a condition. The planning authority's decision was challenged on two grounds of which only the first is relevant. The argument was that:

"... the 2012 permission was for 84 dwellings, whereas the 2016 permission was for 90 dwellings. Therefore... there was a fundamental inconsistency between the operative part of the decision notice and the conditions in accordance with which the development must be constructed."

35. The argument was elaborated as follows:

".. although it may be possible for a condition to restrict what is permitted by a planning permission, for example perhaps to reduce the number of houses that can be built under it, what section 73 does not enable a planning authority to do is to increase what was applied for by way of a condition attached to a planning permission."

36. Singh J does not appear to have been referred to the decision of Collins J in *Vue*; but he did consider *Arrowcroft*. He took *Arrowcroft* as authority for the propositions that:

- i) A planning authority may impose different conditions on an application under section 73 provided that they do not amount to a fundamental alteration of the proposal put forward in the original application; and
- ii) An alteration will be fundamental if it gives with one hand and takes away with the other.

37. Singh J also decided that whether an alteration was or was not fundamental was question of fact and degree, which involved a planning judgment. That judgment was for the decision-maker to make and would only be questioned by the court if it was irrational. It should be noted that the argument put to Singh J had its foundation in the proposition that the inconsistency between the operative part and the condition was "fundamental"; and it was that proposition that Singh J addressed.

38. The judge in the present case followed the approach of Singh J in *Wet Finishing Works*.
39. Mr Turney for the Welsh Ministers, supported by Mr Hardy for the developer, submitted that the only limitation on the power of the planning authority on an application under section 73 was that it could not introduce a condition that made "a "fundamental alteration"" to the permitted development. Whether a change was or was not fundamental was a question of fact and degree for the planning authority to address. The operative part of a planning permission may be the subject of an amendment, which is consequential on a change in the conditions; provided that the change is not a fundamental one.
40. Mr Hardy emphasised the practical importance of section 73 for developers. It enabled them to refine schemes as more information came to light about what might be financially viable or physically deliverable. If section 73 were to be interpreted in the manner for which Mr Fullbrook contended, developers would be at the mercy of local planning authorities up and down the country who might have differing practices about the level of detail to be specified in the description of permitted development; and who might be encouraged to make such descriptions as detailed as possible to avoid the possibility of applications under section 73. Mr Hardy accepted, however, that if a developer had no objection to any of the conditions imposed on the grant of planning permission but wished to change the description of the development, then section 73 could not apply.
41. Both Mr Turney and Mr Hardy supported their submission by reference to *Bernard Wheatcroft Ltd v Secretary of State for the Environment* (1982) 43 P & CR 233. That case concerned an appeal against the refusal of planning permission on an application to develop 420 dwellings on 35 acres. During the course of the appeal, the developer submitted an alternative scheme for the development of 250 dwellings on a reduced area of 25 acres. The issue was whether the Secretary of State should consider the reduced scheme. The Secretary of State decided that he had no power to grant planning permission for development on a smaller site and at a lower density than that which had been originally applied for. Forbes J held that there was no principle of law which prevented the Secretary of State from imposing conditions that have the effect of reducing the permitted development below the development applied for. He added, however, that the power could not be exercised where the conditional planning permission would allow development that was not "in substance" that which was applied for. The main criterion was whether the development is so changed as to deprive those who should have been consulted the opportunity of being consulted. There are four points to be made about that decision. First, it was not concerned with a statutory provision such as section 73 which expressly restricts that which a planning authority may consider. Second, it was concerned with an ongoing application, rather than with a granted planning permission which gave rise to legal rights to carry out development. Third, it was concerned with a reduction in the permitted development; not an increase in the permitted development. He did not decide that the planning authority or the Secretary of State could grant planning permission for more than the developer had asked for. If the planning authority purported to do that, one can well imagine that potential consultees would have real cause for complaint. Fourth, to ask whether something is "in substance" the same as something else is a different test from whether something is a "fundamental alteration". I do not consider that the so-called *Wheatcroft* test is the right criterion to apply to section 73.
42. The question is one of statutory interpretation. Section 73 (1) is on its face limited to permission for the development of land "without complying with conditions" subject to which a previous planning permission has been granted. In other words the purpose of such an application is to avoid committing a breach of planning control of the second type referred to in section 171A. As circular 19/86 explained, its purpose is to give the developer "relief" against one or more conditions. On receipt of such an application section 73 (2) says that the planning authority must "consider only the question of conditions". It must not, therefore, consider the description of the development to which the conditions are attached. The natural inference from that imperative is that the planning authority cannot use section 73 to change the description of the development. That coincides with Lord Carnwath's description of the section as permitting "the same development" subject to different conditions. Mr Hardy suggested that developers could apply to change an innocuous condition in order to open the gate to section 73, and then use that application to change the description of the permitted development. It is notable, however, that if the planning authority considers that the conditions should not be altered, it may not grant permission with an altered description but subject to the same conditions. On the contrary it is required by section 73 (2) (b) to refuse the application. That requirement emphasises the underlying philosophy of section 73 (2) that it is only the conditions that matter. It also means, in my judgment, that Mr Hardy's suggestion is a misuse of section 73.
43. If the inspector had left the description of the permitted development intact, there would in my judgment have been a conflict between what was permitted (a 100 metre turbine) and what the new condition required

(a 125 metre turbine). A condition altering the nature of what was permitted would have been unlawful. That, no doubt, was why the inspector changed the description of the permitted development. But in my judgment that change was outside the power conferred by section 73.

44. Mr Turney quite rightly said that one of the purposes of section 73 is to safeguard the original grant of planning permission. But that purpose is achieved because a successful application under section 73 results in a new planning permission. Even an unsuccessful application does not result in the revocation of the original permission. I do not consider that Mr Fullbrook's argument undermines that purpose.
45. Nor do I consider that the predicament for developers is as dire as Mr Hardy suggested. If a proposed change to permitted development is not a material one, then section 96A provides an available route. If, on the other hand, the proposed change is a material one, I do not see the objection to a fresh application being required.
46. In short, I consider that in *Vue Collins J* was correct in his analysis of the scope of section 73. To the extent that Singh J held otherwise in *Wet Finishing Works*, I consider that he was wrong. It follows, in my judgment, that the judge was also wrong in following Singh J (although conformably with the rules of precedent it is quite understandable why he did so).
47. I would allow the appeal; and quash the inspector's decision because it was beyond her powers.

Lord Justice David Richards:

48. I agree.

Lord Justice Arnold:

49. I also agree.

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Ref: Change of Use of Implemented Phase IV Development at Oaksey Park Golf and Leisure to C3 Residential Occupation by Independent Older Persons – JC/006/RG-(PS)

J. Decision Notice ref: 02/01841/FUL

THE SCHEDULE

Name of Local Planning Authority: NORTH WILTSHIRE DISTRICT COUNCIL
Monkton Park, Chippenham, Wiltshire, SN15 1ER

NAME & ADDRESS OF AGENT:	BRIEF DETAILS OF APPLICATION IN THE PARISH OF OAKSEY:
Hadfield Associates The Old Brushworks 56 Pickwick Road Corsham Wiltshire SN13 9BX	ERECTION OF 18 NO 2 & 3 BED HOLIDAY LODGES AND 1 NO BUNKHOUSE WITH COVERED PARKING (1 NO SPACE/LODGE) AND IMPLEMENT SHED, WORKSHOP, OFFICE AND RECEPTION AREA AND ASSOCIATED ACCESS
NAME & ADDRESS OF APPLICANT:	LOCATION:
J.S. & Dr G.J. Cooper South Cotswold Leisure Ltd & Oaksey Park Ltd Lowfield Farm Wick Lane Oaksey Malmesbury SN16 9SB	Land At Lowfield Farm Oaksey Malmesbury Wiltshire SN16 9SB

Application Dated: 09.08.2002 Application Registered: 09.08.2002
Permission Granted: 09.10.2002 APPLICATION AS AMENDED

SUBJECT TO THE FOLLOWING CONDITIONS:

1. The development hereby permitted shall be begun before the expiration of five years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990.

2. The development hereby permitted shall be carried out in accordance with the documents (including plans) incorporated into this decision, and subsequently approved pursuant to this decision (if applicable), unless otherwise approved in writing by the local planning authority.

Reason: To ensure that the development is implemented in accordance with this decision in the interests of public amenity.

3. The development hereby permitted, shall not be commenced until details of the landscaping of the site, including wherever appropriate the retention of existing trees, have been submitted to, and approved in writing by, the local planning authority.

The approved landscaping scheme shall be implemented within one year of either the first occupation or use of the development, whether in whole or in part, or its substantial completion, whichever is the sooner, and shall be maintained thereafter for a period of not less than five years. The maintenance shall include the replacement of any tree or shrub which is removed, destroyed or dies by a tree or shrub of the same size and species as that which it replaces, unless otherwise agreed in writing by the local planning authority.

Reason: In the interests of visual amenity.

Decision



4. Prior to the commencement of the development hereby permitted, details of the following matters (in respect of which approval is expressly reserved) shall be submitted to, and approved in writing by, the local planning authority:

- 1) walls, fences, gates and other means of enclosure;
- 2) ground surfacing materials;
- 3) finished floor levels of all buildings;
- 4) finished levels across the site;
- 5) the means of surface water disposal;
- 6) the means of foul sewage disposal.

✓

The development shall be carried out in accordance with the details so approved.

Items 1 - 6 shall be completed prior to the use or occupation of the development.

Reason: In the interests of amenity and satisfactory layout.

5. Prior to the commencement of the development hereby permitted, details of external stonework, including type, coursing and bedding of the natural stone, type of pointing and mortar mix, shall be submitted to, and approved in writing by, the local planning authority. The external stone work shall be built to conform with the approved details

✓

Reason: In the interests of visual amenity.

6. Notwithstanding the provision of the Town and County Planning General Development Order no fences, walls or other means of enclosure other than those permitted under condition no 4 shall be erected anywhere on the site.

Reason: To ensure that the open areas of the site remain in communal use.

7. The development shall be used only as holiday accommodation and no person shall be in occupation for more than 42 days in any calendar year.

Reason: To ensure that the development is not used as permanent accommodation or as dwellings.

8. Before any of the units are first occupied the access to Wick Road shall be permanently closed to motor vehicles in accordance with a scheme which shall first be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interest of highway safety.

9. Before the holiday lodges are first commenced the area between the nearside carriageway edge and lines drawn between a point 2.4m back from the carriageway edge along the centre line of the access and points on the carriageway edge 160m back from and on both sides of the centre line of the access shall be cleared of obstruction to visibility at and above a height of 900mm above the nearside carriageway level and thereafter maintained free of obstruction at all times.

The use hereby approved shall not commence until the existing access onto Wick Road has been stopped up and its use permanently abandoned in a manner to be agreed in writing by the Local Planning Authority.

Reason: In the interests of highway safety.

10. The development hereby permitted shall be served solely from the access shown in drawing c310/1.

Reason: In the interests of highway safety.

11. Details of any external lighting shall be submitted to and be approved in writing by the Local Planning Authority.

Reason: In the interests of the amenity of the area.

12. Details of any playground equipment shall be submitted to and approved in writing by the Local Planning Authority before any such equipment is installed.

Reason: In the interest of the amenity of the area.

13. The workshop/estate yard shall be used only for purposes ancillary to the golf course and/or holiday accommodation.

Reason: To prevent an inappropriate independent use.

14. No development approved by this permission shall be commenced until a scheme for the provision of foul drainage works has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be completed in accordance with the approved plans before occupation. ✓

Reason: To prevent pollution of the water environment.

15. Prior to the commencement of the development hereby permitted, details of materials to be used externally shall be submitted to, and approved in writing by, the local planning authority. The development shall be built in the materials approved. ✓

Reason: In the interests of visual amenity.

INFORMATIVES:

1. The following policies of the Development Plan are relevant to this decision:-

North Wiltshire Local Plan 2001:- RTM2.

C. H. P. [Signature]

Implementation Team Leader

Date: 9th October 2002

PL100

NORTH WILTSHIRE DISTRICT COUNCIL
Town and Country Planning Act 1990

PERMISSION FOR DEVELOPMENT

1. The Local Planning Authority HEREBY GRANT PLANNING PERMISSION subject to the scheduled conditions (if any) for the development proposed by the applicant in the application, which is expressly incorporated herewith and is briefly described in the Schedule forming part of this permission.
2. The scheduled conditions (if any) have been imposed for the reasons set out in the Schedule.
3. "The Local Planning Authority", "the scheduled conditions", and "the application" referred to above are those described in the Schedule.

NOTES

1. **Time Limits on Planning Permissions.** By virtue of Section 91 - 96 of the Town and Country Planning Act 1990, planning permissions are subject to time limits. If a condition imposing a time limit has been expressly included as part of the permission, then that condition must be observed. Otherwise, one or other of the following time limits (as appropriate) will apply:-
 - 1.1 **Where planning permission is given in outline** subject to a condition reserving certain matters for subsequent approval, application for approval of such matters reserved must be made not later than the expiration of 3 years beginning with the date of the outline planning permission and further the development to which the permission relates must be begun either within 5 years from the date of the grant of the outline permission or within 2 years from the final approval of all the matters reserved.
 - 1.2 **Where the planning permission is complete and is not in outline** then the development must be begun not later than the expiration of 5 years from the date on which permission was granted.
2. **Other Necessary Consents.** This document only conveys permission for the proposed development under Part III of the Town and Country Planning Act 1990 and the applicant must also comply with all the byelaws, regulations and statutory provisions in force in the district and secure such other approvals and permissions as may be necessary under other parts of the Town and Country Planning Act 1990 or other legislation.

In particular the applicant is reminded of the following matters:-

- 2.1 the need in appropriate cases to obtain approval under Building Regulations. **(The Building Regulations may be applicable to this proposal. You are advised to contact Building Control before considering work on site);**
- 2.2 the need to obtain an appropriate Order if the proposal involves the stopping up or diversion of a public footpath;
- 2.3 The need to obtain a separate "Listed Building Consent" to the demolition, alteration or extension of any listed building of architectural or historic interest;

- 2.4 the need to make any appropriate arrangements under the Highways Act 1971, in respect of any works within the limits of a public highway. The address of the Highway Authority is Wiltshire County Council, County Hall, Trowbridge.

(It is the responsibility of the applicant to ascertain whether his development affects any public right of way or listed building.)

3. **Appeals.** If the applicant is aggrieved by the decision of the local planning authority to grant permission subject to conditions, he may appeal to the Secretary of State for the Environment in accordance with Section 78(1) of the Town and Country Planning Act 1990 within six months of the date of this decision. (Appeals must be made on a form which is obtainable from the Department of the Environment, Tollgate House, Houlton Street, Bristol, BS2 9DJ.) The Secretary of State has the power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission of the proposed development could not have been so granted otherwise than subject to the conditions imposed by the local planning authority, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order. He does not in practice refuse to entertain appeals solely because the decision of the Local Planning Authority was based on a direction given by him.

If the applicant wishes to have any further explanation of the reasons for the conditions imposed on this permission it will be given on request and a meeting arranged if necessary.

4. **Purchase Notices.** If permission to develop land is granted subject to conditions, whether by the local planning authority or by the Secretary of State for the Environment, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the District Council a purchase notice requiring the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.
5. **Compensation.** In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in Section 114 of the Town and Country Planning Act 1990.

Ref: Change of Use of Implemented Phase IV Development at Oaksey Park Golf and Leisure to C3 Residential Occupation by Independent Older Persons – JC/006/RG-(PS)

K. Decision Notice & Case Officer Report ref: PL/2022/03549



The Town and Country Planning Act 1990
Refusal of Application for Removal/Variation of Conditions

Application Reference Number: PL/2022/03549

Decision Date: 18 August 2022

Applicant: Mr Anthony Moore
2 Berkeley Road, Cirencester, United Kingdom, GL71TY

Particulars of Development: Variation of condition 7 of N/11/02036/S73A to enable holiday home to be changed to residential use.

At: 2 Oaksey Park Cottages, Wick Road, Oaksey,
Malmesbury, Wilts SN16 9SB

In pursuance of their powers under the above Act, the Council hereby REFUSE TO GRANT PERMISSION for the development referred to in the above application and plans submitted by you, for the following reason(s):

Refusal Reason(s): (1)

- 1 Inadequate information has been supplied to demonstrate that there is no demand for the property as a holiday let with the restrictive occupancy conditions in place. The proposed removal of the occupancy conditions is in direct conflict with the provisions of Policy 3 of the Oaksey Neighbourhood Plan (March 2019). The proposed use of the Unit as a self contained dwelling with unrestricted occupancy would be tantamount to the formation of new open market dwelling in an unsustainable location. The proposed would therefore be contrary to Core Policies 1, 2 and 13 of the adopted WCS (Jan 2015), Saved Policy H4 of the North Wiltshire Local Plan 2011 and Paragraph 80 of the NPPF (2021).

Parvis Khansari ~ Corporate Director, Place

NOTES

1. **Appeals.** If the applicant is aggrieved by the decision of the local planning authority to refuse permission, they may appeal to the Secretary of State for the Environment in accordance with Section 78(1) of the Town and Country Planning Act 1990 within six months of the date of this decision. (Information and forms relating to the appeals process can be found at the Planning Portal - [Appeal a planning decision: Overview - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/appeal-a-planning-decision-overview)).

CASE OFFICER'S REPORT

Application Reference: PL/2022/03549
Application Type: Removal/variation of conditions
Site Inspection:
Consultation ends: 17 June 2022
Case officer: Germaine Asabere

Site Address: 2 Oaksey Park Cottages, Wick Road, Oaksey, Malmesbury, Wilts SN16 9SB
Proposal: Variation of condition 7 of N/11/02036/S73A to enable holiday home to be changed to residential use.
Recommendation: Refuse

SITE DESCRIPTION/CONTEXT

The application site is located within the open countryside to the east of the village of Oaksey. Planning permission was previously granted for the development of 25 semi detached and detached structures located adjacent a 9 hole golf course and its supporting clubhouse facility. The structures are modern in design two storey buildings built utilising render and timber with substantive glazing elements and were originally all subject of restricted occupancy as holiday lets. Not all of the units have been constructed with a final phase of 12 units yet to be implemented.

The structures are surrounded by shared amenity spaces with planting separating the properties from the golf course. The structures are residential in character but occupancy of some of them is restricted to holiday lets. Similarly, there is established mature planting to the northern boundary separating the site and its access road from adjoin open countryside. The properties have ancillary group parking areas and the access road to the site runs from Wick Road, adjacent to the golf course itself through the golf course car park.

The are no heritage or special landscape character designations.

PROPOSAL

The application seeks planning permission for the variation of Condition 7 of permission reference N/11/02036/S73A to enable the property to be changed to unrestricted residential use (market housing).

Stated Condition (7) to be removed and other associated restrictive conditions (8 & 9) of the appeal proposal state:

7. Notwithstanding the Town and Country Planning (Use Classes) Order 1987 and the Use Classes (Amendment) Order 2005 (or any Order revoking and re-enacting those Orders, with or without modification), the building(s) [hereby] permitted shall be used for holiday accommodation only and for no other purpose.

REASON: This site is in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access, and planning policies pertaining to the area, would not permit permanent residential accommodation.

POLICY: C3 of the adopted North Wiltshire Local Plan 2011, RLT9 of the Wiltshire and Swindon Structure Plan 2016 and the Good Practice Guide on Planning for Tourism.

8. The building(s) hereby permitted shall not be occupied as a person's sole or main place of residence.

REASON: This site is in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access, and planning policies pertaining to the area, would not permit permanent residential accommodation.

POLICY: C3 of the adopted North Wiltshire Local Plan 2011, RLT9 of the Wiltshire and Swindon Structure Plan 2016 and the Good Practice Guide on Planning for Tourism.

9. The owners / operators of the site shall maintain an up-to-date register of the names of all owners / occupiers of individual units identified in red upon drawing No. JC/001/2 and of their main home addresses and shall make this information available at all reasonable times to the local planning authority.

REASON: This site is in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access, and planning policies pertaining to the area, would not permit permanent residential accommodation.

POLICY: C3 of the adopted North Wiltshire Local Plan 2011, RLT9 of the Wiltshire and Swindon Structure Plan 2016 and the Good Practice Guide on Planning for Tourism.”

RELEVANT PLANNING HISTORY

02/01841/FUL - Erection of 18 No. 2 & 3 bed holiday lodges and 1 No. bunkhouse with covered parking (1 No. space/lodge) and implement shed, workshop, office and reception area and associated access - (Approved – 09 October 2002).

Condition 7 stated:

“The development shall only be used as holiday accommodation and no person shall be in occupation for more than 42 days in any calendar year.”

03/02072/S73A Variation of conditions attached to 89/03470/F (Condition 5) and 02/01841/FUL (Condition 7) - Appeal allowed – 20 October 2004

The conditions were varied to read:

“The buildings shall not be occupied other than for holiday accommodation and shall not be occupied from 6 January to 5 February inclusive in any year, and shall at no time be used for permanent residential accommodation.”

N/11/02036/S73A Variation of Condition 1 of APP/J3910/A/04/1145607 - Relating to residential occupancy (original variation of Condition 7 of 02/01841/FUL). Approved with conditions – 2 August 2011

Condition replaced with the following: “7 Notwithstanding the Town and Country Planning (Use Classes) Order 1987 and the Use Classes (Amendment) Order 2005 (or any Order revoking and

re-enacting those Orders, with or without modification), the building(s) [hereby] permitted shall be used for holiday accommodation only and for no other purpose.

REASON: This site is in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access, and planning policies pertaining to the area, would not permit permanent residential accommodation.

N/13/00958/S73A - Removal of Conditions 8, 9 and 10 imposed on application reference 10/03612/S73A which varied condition No 7 of 02/01841/FUL and appeal APP/J3910/A/04/1145607, allowing the unrestricted residential occupancy of units 12 to 19 (8 in total).

15/07119/VAR Removal / Variation of Condition 7 of planning application N/02/01841/FUL (Erection of 18 Holiday Lodges and One Bunkhouse with Covered Parking, Shed/ Workshop/Reception Area and Associated Access.) in Respect of Unit 1. Withdrawn

19/01991/VAR Removal of conditions 8,9 & 10 of application reference N/10/03612/S73A to allow unrestricted residential occupancy of units 3, 5, 6, 8, 10 & 11 and 20-25. Approved

PL/2022/03356 Removal of conditions 9, 11 & 12 on N/10/01773/S73 Undetermined

POLICIES

National Planning Policy Framework (2021):

Chapter 2 – Achieving sustainable development

Chapter 5 – Delivering a sufficient supply of homes

Chapter 9 – Promoting sustainable transport

Chapter 12 – Achieving well designed places

Chapter 15 – Conserving and enhancing the natural environment

Wiltshire Core Strategy (2015):

Core Policy 1 – Settlement Strategy

Core Policy 2 – Delivery Strategy

Core Policy 13 – Spatial Strategy: Malmesbury Community Area

Core Policy 39 – Tourist development

Core Policy 44 – Rural Exceptions Sites

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 New Development

Saved policies from the North Wiltshire Local Plan (2011)

H4 – RESIDENTIAL DEVELOPMENT IN THE OPEN COUNTRYSIDE

Oaksey Neighbourhood Plan (Made March 2019).

Policy 13 Holiday Accommodation, Leisure and Recreation

Wiltshire Housing Sites Allocation Plan - Settlement Boundary Review and Housing Allocations

Wiltshire Local Transport Plan 2011-2026, Car Parking Strategy.

Guidance: National Planning Practice Guidance - Use of planning conditions.

CONSULTATION:

Oaksey Parish Council – objects

Highways Authority – no objection

REPRESENTATIONS:

No representation was received.

ISSUES

Principle of development

Design and impact on character and visual amenity of the locality

Impact upon residential amenity

Impact on highway safety and parking standards

ASSESSMENT:

Principle of Development

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 statutory development plan in respect of this application consists of the Wiltshire Core Strategy (WCS) (Adopted January 2015) and the 'saved' policies of the North Wiltshire Local Plan (NWLP) 2011 (adopted June 2006); the Wiltshire Housing Sites Allocation Plan (WHSAP) (Feb 2020); and the Oaksey Neighbourhood Plan (ONP) (made March 2019).

In relation to this application, the building in question has a chequered background and the application site has a complicated planning history. The proposal currently under consideration seeks to vary the restrictive condition(s) attached to the original application N/11/02036/S73A for Unit 2 to allow the unrestricted use of the building as a market dwelling. The site is located within the countryside outside of a settlement boundary however, it is noted that the property already exists, having been constructed some years ago. As such, this is not a proposal for a new build residential development. Additionally, the development as permitted and carried out is a form of residential development – albeit for holiday let/accommodation purposes.

This type of development also falls within the same residential use classification of the Town and Country Planning (Use Classes) Order 1987 (as amended) being defined as a dwellinghouse (C3). So, whilst occupancy is restricted by conditions; the characteristics of the use of the unit is

residential in nature as opposed to other land uses. An examination of the planning history of the wider site also indicate that similar conditions have been removed from other units within the same development. Of critical importance therefore is provision of supporting information and evidence to demonstrate and confirm that the restrictive condition(s) imposed on Unit 2 make the building / property unviable for resale and that's ongoing use as a holiday let is unviable. Related to this is the factual position that the property was purchased with the restrictive occupancy conditions in place and therefore as a holiday let by the applicant.

In initial discussions with Officers before the submission of this proposal, the applicant was advised that in such cases marketing evidence to indicate that there is a lack of interest to purchase or to rent the unit as a holiday accommodation will have to be provided to support an application. With this information in hand, Officers will then have to consider whether the evidence supplied is robust and compelling to meet local policy requirements. It is noted within the current submission documents that there is an accompanying 'Estate Agent' letter and a 'Planning Statement'.

On careful inspection however, it is considered that the poor quality copies of supporting information supplied by the applicant claiming to be marketing evidence are not sufficiently robust and comprehensive. There is a distinct lack of detail relating to the marketing undertaken in terms of how, when, where, pricing / valuation and the outcomes / expressions of interest of the process undertaken. Indeed there is hardly any information in respect of this marketing exercise.

Having failed this fundamental step and conscious of the fact that the application site is located within the countryside, attention will now be shifted back to the settlement hierarchy of the Wiltshire Core Strategy and national policy requirements.

The site is located in the open countryside in an area remote from basic services and facilities. As such, residential development is strictly controlled by national and local plan policies. This is not an area where unrestricted residential properties would normally be allowed because of the inherent unsustainability of the location. For context, WCS Core Policies 1 and 2 define requirements for housing development in the plan period and the strategy for addressing those requirements.

The strategy is based on a defined settlement hierarchy with significant development being directed to the most sustainable settlements in the hierarchy based on the infrastructure, facilities, employment opportunities and scope for self-containment within each of the settlements identified. Allocations to meet identified requirements are then to be brought forward through neighbourhood plans and/or specific development plan documents. In this area, Chippenham is identified as the most sustainable strategic location for significant housing development.

A series of community-based policies then distribute the identified quantum of growth to locations throughout the market area with further definition of the settlement hierarchy in each community area. In this instance, the relevant policy is CP13 and Oaksey is identified as a larger village with a defined settlement framework boundary within which limited residential development to meet local needs is considered appropriate. Oaksey has prepared and adopted a Neighbourhood Plan (referenced above), which includes a housing allocation plan to meet identified requirements and so can be given full weight. Additionally, the Wiltshire Housing Site Allocations Plan was adopted in February 2020.

Referring back to the development under consideration; this proposal will effectively remove the unit from the pool of available tourist accommodation, for which the economic benefits generally outweigh the harm arising from the unsustainability of the location. It is therefore considered that the proposal without the benefit of the marketing evidence constitutes the formation of a new market dwelling in the open countryside.

In local policy terms, new residential development in the open countryside outside of any defined settlement boundaries is strictly controlled so as to restrict homes being built in unsustainable locations poorly related to local services, facilities and transport routes. Saved Local Plan Policy H4 and Core Policy 48 of WCS do however provide exceptions to this approach where the proposal is for a replacement dwelling, or the dwelling is required in connection with the essential needs of agriculture, forestry or other rural based enterprise. The application is currently not accompanied by any supporting information to demonstrate how the new development complies with any of the exception policies listed within the Wiltshire Core Strategy and therefore cannot be supported in the local policy context.

In terms of national policy, the National Planning Policy Framework at Paragraph 80 identifies that planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:

- a) there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside;
- b) the development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets;
- c) the development would re-use redundant or disused buildings and enhance its immediate setting;
- d) the development would involve the subdivision of an existing residential dwelling; or
- e) the design is of exceptional quality.

Based on information in hand, the proposal does not meet any of the criteria above. The proposal is therefore considered to conflict with Core Policies 1, 2, 13 and 48 of the Wiltshire Core Strategy, in addition to Saved Policy H4 of the North Wiltshire Local Plan and the provisions of the NPPF and cannot be supported in principle.

Furthermore Policy 3 of the ONP expressly states that the removal of occupancy conditions on holiday accommodation to allow their use as a permanent residential dwelling will not be supported unless the property is located within the settlement boundary.

The Council is not currently able to demonstrate a NPPF compliant supply of deliverable land for housing and so the tilted balance is engaged. The Housing Land Supply Statement published April 2021 established that Wiltshire has 4.72 years of housing land supply which is a notable improvement over the recent Filands and Pickwick, Corsham appeal decisions which established a 4.41 year housing land supply. The Council has accepted at three recent appeals that the supply is in fact 4.70 years albeit formal decisions are still awaited: 19/05898/OUT & 20/08341/OUT 3286853 & 3289757 Land off Park Road, Malmesbury: PL/2021/08453 APP/Y3940/W/22/3290305 Land to the north of Whychurch Farm, Malmesbury; and APP/Y3940/W/22/3299290: Land North of Webbs Court, Lyneham – PL/2021/11175.

The Council is endeavouring to redress its limited housing shortfall in several ways. The actions being taken include bringing forward the latest HLS statement to establish the up to date position; establishing a team of officers to review current applications and appeals to consider which could potentially be supported in a tilted balance situation and then taking any that could be forward to Committee with recommendations for approval; allocating extra resources to officers dealing with major strategic allocation sites and others that have experienced delays to resolve issues arising and accelerate permissions; where possible liaising with landowners/developers to bring forward sites allocated in the WHSAP; consents being issued with shorter delivery timeframes controlled by condition; additional effort, resources and focus being afforded to discharge of conditions work and planning obligation drafting and completions. This approach was given moderate weight in the Filands appeal decisions where the inspector sets out at paragraph 76 “All in all, due to the relatively modest shortfall, the clear steps being made to address the issue, the relatively high level of provision in Malmesbury, and the positive recent delivery results, I place moderate weight on the lack of a five year housing land supply. However, this conclusion is reliant on a key aspect of the action plan, which is to permit proposals outside of settlement boundaries where there are no other conflicts with the Development Plan.”

The most recent Housing Monitoring report identifies that the action plan is working and addressing the modest shortfall in 5 year housing land supply with over 600 new dwellings permitted since April 2021 in the North and West Housing market area alone. The Council is meeting and exceeding the Housing Delivery test at 141% and within this community area the identified requirement has already been met and substantially exceeded (33%).

Appeal and court decisions confirm that ultimately it will be up to the decision maker to judge the particular circumstances of each application and how much weight should be given to conflict with policies for the supply of housing that are ‘out-of-date’. Therefore, consideration of the weight which can be provided to the above policies is considered in the balancing exercise at the end of this report.

The applicant has cited personal circumstances for the request of the removal of the condition which in this case are ageing and ill health. Whilst there is sympathy with the situation and understanding of the reasons to request for the removal of the condition; the applicant purchased Unit 2 with full knowledge of their age and the occupancy restriction. Also, the fact that it has been solely occupied in the past and continues to be occupied as holiday accommodation does not suggest an absence of demand for holiday accommodation.

Moreover, although there are examples of the removal of similar conditions from other units in the same development as detailed in the history section; in those cases, the site had been the subject of marketing exercises and the applications were supported by reports which confirmed this activity and concluded that there was no demand for the properties with the restrictive conditions attached. That position therefore does not form a precedent for this current application.

In summary, it is considered the applicant has been made aware of the necessary information needed for a successful outcome of such an application and has failed to comply. A refusal of the application would therefore be proportionate and legitimate in ensuring that significant harm is not caused to the aims of ensuring that housing development in the County is located in areas which promote sustainable development.

Design and impact on the character of the area

The proposal concerns the removal of restrictive conditions on an existing property and would not lead to any external changes to the building or to the areas around it. No concern is raised on visual amenity impact grounds.

Impact on Residential Amenity

The existing units within the wider site have open plan arrangement with communal spaces. However as approved and implemented; this arrangement is adequate in relation to privacy of occupiers, overlooking, outlook and interrelationship between properties, daylighting, ancillary amenity spaces, access, and parking arrangements. It is not considered that this is significantly less than would be required had the units/properties been proposed and approved as unrestricted market dwellings.

An adequate level of amenity would also be provided for future occupiers of the unit if the restrictive occupancy conditions were removed and there would be no conflict with the provisions of the development plan or the development framework in this respect.

Impact on Highway safety and Parking standards

The Highway Authority was consulted on the development proposal and after considering the scheme in detail have raised no objections on the weight of the site history and circumstances. This is however subject to the imposition of a cycle parking conditions on any permission issued. As such, it is not considered that there would be any adverse impact on highway safety in accordance with the aims and objectives local plan policies CP60 and CP61 and the aims of the NPPF.

CONCLUSION

Whilst the impacts of the development are considered to be acceptable in relation to visual amenity, impacts on residential amenity and highway safety; the proposal without appropriate evidence would be tantamount to the formation of new open market dwelling in an unsustainable location. Inadequate information has been provided to demonstrate that the property is no longer required or viable as a unit of holiday accommodation that the restrictive occupancy conditions no longer perform a useful purpose. The proposal conflicts with the provisions of policy 3 of the Oaksey Neighbourhood Plan. The development fails the rural exceptions test of the local plan and is against the settlement strategy of the Wiltshire Core Strategy, the NPPF and the Oaksey Neighbourhood Plan. Whilst the Council cannot currently demonstrate a NPPF compliant supply of land for housing, the shortfall is relatively small and the identified requirement in the Community Area is being met and substantively exceeded. The contribution to housing supply that would be made by the development is limited. As such substantial weight can still be given to the development strategy of the plan. In addition, CP1, CP2 and CP13 of the WCS and the relevant provisions of the NPPF still carry substantial weight. Save policy H4 NWLP still carries moderate weight. The plan, including the sites allocation plan which recently reviewed boundaries and allocated new sites for development, is applicable defining the settlement boundaries outside of which development proposals are not supported except within limited circumstances specified by

other policies. The scheme proposals do not meet those provisions and so conflict with the development plan. The benefits of development are limited to a small increase in the supply of land for housing which is tempered in any event by the substantial oversupply against identified requirements in this locality; allotment provision and economic benefits arising from construction and additional spending in the locality.

It is considered that identified harms arising from these proposals significantly and demonstrably outweigh the limited benefits. As such, the scheme should be refused.

RECOMMENDATION:

That Planning Permission be REFUSED for the following reason(s):

Refusal Reason(s): (1)

- 1 Inadequate information has been supplied to demonstrate that there is no demand for the property as a holiday let with the restrictive occupancy conditions in place. The proposed removal of the occupancy conditions is in direct conflict with the provisions of Policy 3 of the Oaksey Neighbourhood Plan (March 2019). The proposed use of the Unit as a self contained dwelling with unrestricted occupancy would be tantamount to the formation of new open market dwelling in an unsustainable location. The proposed would therefore be contrary to Core Policies 1, 2 and 13 of the adopted WCS (Jan 2015), Saved Policy H4 of the North Wiltshire Local Plan 2011 and Paragraph 80 of the NPPF (2021).

Ref: Change of Use of Implemented Phase IV Development at Oaksey Park Golf and Leisure to C3 Residential Occupation by Independent Older Persons – JC/006/RG-(PS)

L. Wiltshire Council NPPF Briefing Note (ref: 24-20) dated 17th December 2024

Briefing Note

No. 24-20

Service: Planning
Further Enquiries to: Nic Thomas, Director - Planning
Email: nic.thomas@wiltshire.gov.uk
Date Prepared: 17 December 2024

IMPLICATIONS OF DECEMBER 2024 NATIONAL PLANNING POLICY FRAMEWORK AND REVISIONS TO THE STANDARD METHODOLOGY ON THE HOUSING LAND SUPPLY

Overview

1. On 12 December 2024 the Government issued an update to the [National Planning Policy Framework](#) (NPPF). This followed a consultation into the proposed changes in summer 2024. The changes to the NPPF included amendments to the deliverable housing land supply policies, the terms under which a buffer should be added to the housing requirement to be used in the housing land supply calculation, and the implications of not being able to meet a sufficient deliverable housing land supply.
2. On the same date the Government also issued revisions to the Planning Practice Guidance (PPG) including the standard methodology for assessing and setting Local Housing Need, and published the [2023 Housing Delivery Test results](#).
3. The revisions that are pertinent to the housing land supply calculation and its implications are summarised as follows:
 - a) Local Planning Authorities are now required to demonstrate a deliverable supply of housing sufficient to meet **five** years against their housing requirement set out in adopted strategic policies (or against their Local Housing Need where the strategic policies are more than five years old) in all circumstances. Under the previous NPPF, Wiltshire was only required to demonstrate a **four-year** housing land supply because its draft Local Plan had reached an advanced stage.

- b) Local Planning Authorities are now required to add a buffer to the housing requirement in the **five-year** housing land supply calculation in all circumstances. The buffer to apply is driven by the council's latest Housing Delivery Test results, which for Wiltshire indicates a 5% buffer to be added¹. Under the previous NPPF a buffer was only required if the council's Housing Delivery Test results indicate under-delivery of 85% or lower against the housing requirement, which was not the case for Wiltshire.
- c) The revisions to the PPG have set out a revised standard methodology for the Local Housing Need – this is the calculation that establishes the housing figure to be used in the housing land supply calculation. The revision has changed the method from being based on future household projections, to being based on the amount of existing housing stock in the local authority area. The revision has also changed the adjustment factor which is based on the affordability of housing in the local planning authority. The figure for Wiltshire has changed as follows:

Number of homes per annum under previous Local Housing Need calculation ² .	Number of homes per annum under revised Local Housing Need calculation.	Percentage change
1,917	3,525	+84%

The implications of the revised Local Housing Need calculation are set out in paragraphs 5-7 for determining planning applications and appeals, and in paragraphs 8-11 for the implications on the emerging Local Plan.

- d) The consequences of not being able to demonstrate a five-year housing land supply are that the presumption in favour of sustainable development (often referred to as the 'tilted balance') applies. This is set out in paragraph 11d of the NPPF. This paragraph has also been amended in two ways. Firstly, where there are exception policies³ that prevent the 'tilted balance' applying that these provide a 'strong' reason for refusal, rather than a 'clear' reason for refusal. Secondly, to ensure that when the planning balance is being

¹ The 2023 Housing Delivery Test results were published on 12 December 2024. These indicate that Wiltshire had delivered 135% against its housing requirement in the last three years which is the period over which housing delivery is assessed in the test. This results in a 5% buffer to be applied on the five-year requirement in the housing land supply calculation.

² Under a 2024-base dated assessment

³ Footnote 7 of the NPPF sets these out.

carried out, that particular regard is had to certain key policies in the Framework⁴ related to directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.

4. In summary, the changes to the NPPF now require Wiltshire to demonstrate a five-year housing land supply, including a 5% buffer, and must apply the revised Local Housing Need for decision-taking immediately. As the table in paragraph 3.c above shows, this results in a significant increase in the five-year housing requirement to be met from the previous calculation. When this is assessed against the housing land supply which can be delivered within five years, the recalculation shows a significant reduction in the number of years supply. The council cannot demonstrate the requisite five-year housing land supply and can demonstrate a **2.03 years supply**.

Implications for decision-taking

5. Annex 1 of the revised NPPF indicate that new provisions apply immediately for determining planning applications and appeals.
6. Prior to the publication of the revised NPPF the council was already in a position where it was unable to demonstrate the requisite housing land supply (see member Briefing note [24-18](#)) and the 'tilted balance' was applied. The same implications for determining planning applications therefore continue to apply, however with other particular factors to consider because of changes to the NPPF. Firstly, the magnitude of the shortfall in supply is now substantial and the weight to be given to improving housing supply greater compared to when the council had a more marginal supply. However, and following on from this, the presumption in favour of sustainable development now requires decision-takers to have particular regard to key policies as set out in footnote 9 of the NPPF (highlighted in paragraph 3.d above) to ensure that proposals that can help improve housing land supply are properly and thoroughly assessed against the key policies.
7. The Government's response to the NPPF consultation growth agenda reiterates its Plan for Change. This sets out a commitment to rebuilding Britain, delivering 1.5m new homes along with the critical infrastructure that underpins economic growth. It further sets out that this will

⁴ Specifically policies related to affordable housing, isolated dwellings in the countryside, town centre uses, locations which are sustainable in terms of transport, efficient use of land and density, and design. See footnote 9 of the NPPF.

be achieved in part by reforming the planning system, and radically boosting the supply of housing, while delivering homes and places that are high-quality and genuinely affordable. The approach to applying the presumption in favour of sustainable development should be seen with this national objective in mind.

Implications for the Local Plan

8. Annex 1 of the revised NPPF provides transitional arrangements for plan-making which dictate how emerging plans will be treated in regard to the revised NPPF.
9. The council submitted the Local Plan for independent examination on 28 November 2024. Under the NPPF's transitional arrangements, the Plan (and the housing requirement) will continue be assessed under the relevant previous version of the NPPF, which in this case will be the September 2023 NPPF. The Examining Inspector will need to be satisfied that the council can demonstrate a five-year housing land supply at the point of adoption. This will be assessed against the housing requirement in the emerging Local Plan which is lower than the revised Local Housing Need.
10. However, as the housing requirement in the emerging Local Plan will meet less than 80% of the revised Local Housing Need, the council will be expected to begin work on a new Local Plan promptly, under the revised plan-making system provided for under the Levelling Up and Regeneration Act 2023 (when the relevant provisions are brought into force in 2025), in order to address the shortfall in housing need.
11. Upon adoption of the Local Plan, the five-year housing land supply will be assessed against the housing requirement in the plan (which is based on the previous Local Housing Need calculation) for a period of up to five years from adoption. However, the revised NPPF includes a clause that for authorities whose adopted housing requirement is substantially less than the revised Local Housing Need figure (which is the case for Wiltshire), they will be required to add a **20% buffer** to their five-year housing requirement from **1 July 2026** (the equivalent of a six-year housing land supply). To meet this increased buffer, the council will need to continue to approve planning applications to ensure a sufficient housing land supply can continue to be met at, and beyond, this date.

Implications for new Neighbourhood Plans

12. Where the presumption in favour of sustainable development (NPPF paragraph 11d) applies, NPPF paragraph 14 includes provisions as to how this affects Neighbourhood Plans that meet criteria related to their age and how the Neighbourhood Plan meets its identified housing requirement. These provisions in paragraph 14 are unchanged in the revised NPPF.

Summary

13. The revisions to the Local Housing Need and housing land supply aspects of the planning system are significant changes. They provide for a substantial uplift (84% plus 5% buffer) in the levels of housing that the council will need to plan for. This forms part of the Government's economic growth agenda.
14. The changes introduced on 12 December 2024 mean that the council now has a substantial shortfall in its housing land supply position (2.03 years). This alters the weight to give to housing supply when giving consideration to planning applications for residential development. This means balancing the strengthened need to boost housing supply against any adverse impacts of the proposal, considered against the development plan as whole, and any material considerations on a case-by-case basis. This will need to include consideration of what weight to assign to the most important policies.
15. The changes to the NPPF are wider than those set out above. They can be viewed via the following link, which show a comparison with the December 2023 version:
[NPPF December 2023.pdf → NPPF-December-2024.pdf - Draftable](#); which indicates moved, replaced and inserted text.

Ref: Change of Use of Implemented Phase IV Development at Oaksey Park Golf and Leisure to C3 Residential Occupation by Independent Older Persons – JC/006/RG-(PS)

M. Appeal Decision Ref: APP/Y3940/W/24/3345598 (dated 21st January 2025)



Appeal Decision

Hearing held on 21 November 2024

Site visit made on 21 November 2024

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 January 2025

Appeal Ref: APP/Y3940/W/24/3345598

Land at Glenmore Farm, The Ham/Hawkeridge Road, Westbury BA13 4HQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Westbury LVA LLP against the decision of Wiltshire Council.
 - The application Ref is PL/2021/03749.
 - The development proposed is residential development (use class C3) for up to 145 homes, community orchard, children's play areas (LEAP), tree planting, habitat creation and ecology buffers and mitigation; site drainage and associated infrastructure. All matters reserved except for access.
-

Decision

1. The appeal is allowed and planning permission is granted for a residential development (use class C3) for up to 145 homes, community orchard, children's play areas (LEAP), tree planting, habitat creation and ecology buffers and mitigation; site drainage and associated infrastructure. All matters reserved except for access at Land at Glenmore Farm, The Ham/Hawkeridge Road, Westbury BA13 4HQ in accordance with the terms of the application, Ref PL/2021/03749, subject to the conditions in the attached Schedule.

Preliminary Matters

2. The appeal is for outline planning permission with access only. However, 3 parameters plans show the location for development, open space and building heights. These would be subject to a condition to adhere to in any future reserved matters. Additionally, an illustrative masterplan shows a potential layout, but this is for indicative purposes only.
3. A finalised Section 106 planning obligation agreement was discussed at the Hearing and 4 signed counterparts were submitted, dated 12 December 2024. Certified copies were received on 16 January 2025.
4. An agreed Statement of Common Ground was submitted before the Hearing, which set out that the Council no longer wished to defend the appeal due to a change in the housing land supply position.
5. An Ecology Briefing Note was submitted prior to the Hearing, which updated the ecology position given the surveys were over 2 years old. This included a site visit by a qualified ecologist, and I am satisfied that the ecological evidence is sufficient to determine the appeal.
6. The National Planning Policy Framework (the Framework) was updated on 12 December 2024. The appellant and Council were provided with the opportunity

to comment. The Council confirmed that the effect of the revised Framework means that the Council can now only demonstrate 2.03 years supply of housing instead of the previously agreed 3.46 years. However, it maintained concerns over deliverability in 5 years. The appellant provided a reply in relation to deliverability concerns, which I have had regard to.

7. The Council has submitted the Wiltshire Local Plan for Examination. However, given no hearings have taken place yet, it is of limited weight.

Main Issue

8. This is whether the site is suitable for the proposed development, having regard to the Council's settlement strategy.

Reasons

Site and surroundings

9. The site lies to the north west of The Ham and west of Hawkeridge Road, situated to the north west of Westbury. It comprises agricultural fields associated with Glenmore Farm. The site is adjacent to existing residential development to the west and south, which forms the settlement edge of Westbury, with a trading estate located north.
10. The proposal is for a residential development of up to 145 dwellings. The parameters plans indicate that these would be located on the southern part of the site, leaving the northern part for amenity and open space, acting as buffers for both ecological and noise reasons.

Whether the site is suitable for the proposed development

11. Core Policy 1 of the Wiltshire Core Strategy (January 2015) (CS) sets out the spatial strategy for development in the area, identifying the settlements in a hierarchy where sustainable development will take place. Westbury is identified as a Market Town, meaning it can support sustainable patterns of living in Wiltshire through its 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 to help sustain, and where necessary, enhance their services and facilities and promote better levels of self-containment and viable sustainable communities.
12. CS Core Policy 2 sets out the delivery strategy and requires that at least 42,000 additional homes are built in Wiltshire between 2006 and 2026. This is disaggregated into 3 Housing Market Areas (HMAs). Westbury is in the North and West HMA, with a requirement of 24,740 homes. The CS splits Wiltshire into several Community Areas, with Westbury Community Area, under Core Policy 32, being given its own minimum housing requirement.
13. CS Core Policy 2 sets out that development will not be permitted outside the development limits unless in circumstances permitted by other policies. The proposal does not meet any of the other circumstances and the proposal's location outside the development limits of Westbury is contrary to CS Core Policy 2 and interrelated to this, would conflict with Core Policies 1 and 32. Thus, there would be an in-principle policy harm owing to the conflict with the settlement strategy set out in CS Core Policies 1, 2 and 32.

Other Matters

Active and sustainable modes of travel

14. The site is located on the settlement edge of Westbury, and is sufficiently close to the services and facilities that this market town provides. The planning obligation would provide a commuted sum towards a night time bus service, and there are bus stops close to the site access. The bus stops would also be upgraded, with shelters and raised height pedestrian access kerbing [condition 18].
15. Additionally, there is an existing pedestrian footway along the front of the site, which, using best endeavours¹, would be widened. However, the existing footway would offer suitable walking links if the wider footpath could not be secured. A 3m wide cycle link would be provided through the site [condition 5], exiting at the northern corner and continuing up along the main road to provide access to the trading estate.
16. Cycling would be an option to commute to the town centre, railway station and other recommended cycle routes, given the terrain is mostly flat. Additionally, each dwelling would be fitted with an electrical vehicle charging point, along with a public charging point, which would be required via a condition [condition 15]. This means that future owners would be encouraged to own ultra low and zero emission vehicles, which represents a sustainable transport mode in the Framework. A Full Travel Plan would also be necessary to provide future residents with sustainable transport options [condition 17], which follows the principles of the Framework Travel Plan, which details measures to reduce car usage and increase sustainable transport modes.
17. Overall, the location of development is likely to result in future residents relying on a private car for some journeys. However, there are realistic means of accessing services and facilities using sustainable travel modes. Thus, the proposal would be in a suitable location.

Safe and suitable access

18. Despite the concerns raised by local residents, the evidence before me relating to the off site highway works would be an improvement to the existing situation. The speed limit would be decreased outside the site, which is provided for in the s106. Visibility splays would be appropriate, and suitable crossing facilities would be provided. Additionally, there is the cycle link proposed at the northern edge of the site and the closure of an existing unsafe access point. The works proposed have been subjected to stage 1 and 2 road safety audits and the Council confirmed that they would be acceptable. These off site works, visibility splays and access would be subjected to planning conditions [5, 12 and 19], or obligations in the s106.
19. An emergency access was not considered to be necessary by the Council's highways team, and the data presented is robust and accurate. I have no reason to doubt the evidence before me, and for these reasons, the proposal would provide safe and suitable access for future residents.

¹ In the planning obligation

Living conditions for future residents

20. Residents and the Parish Council raised concerns about the proposed footpath link to the small play area off Hawkeridge Park. Whilst layout is not proposed, pedestrian access from the site to this play area should be encouraged. This would enable suitable pedestrian links to existing and future development. It would also promote legibility and community cohesion.
21. Furthermore, despite claims that it is closed for winter months, I heard that it had not been closed for last winter or this winter, and I do not see this as a barrier to providing access through this play area and onto Hawkeridge Park. It would also provide access for existing residents through to the proposal, to access public open space, other play areas and the trading estate. Claims that the Parish Council would not grant access seems perverse when these future residents would be part of the community.
22. The indicative layout has been designed to ensure that living conditions for future residents would be suitable, in specific relation to noise from the nearby trading estate, nightclub and traffic. This is through embedded mitigation and a suitable layout. The Council's Public Protection team have not raised objections, subject to planning conditions, that would control internal and external noise levels. These would ensure that windows in habitable rooms could be opened and would not rely on mechanical ventilation. This would be necessary to ensure suitable future living conditions, and based on the evidence before me, this would be secured [conditions 13 and 14].
23. Claims of odour from a nearby resource recovery centre were raised. That site is subjected to a permit from the Environment Agency and odour is regulated through the agency. The site is further away from the source than existing dwellings, and although future residents may be subjected to unpleasant odours from time to time, this would not lead to unacceptable future living conditions.

Drainage

24. Foul water from the site would drain into the existing sewers. Surface water would be split into separate discharge points, prior to discharge into the water course, with an attenuation basin on site. The appellant detailed at the Hearing that this was subject to a riparian agreement, which involved no third party landowners. The Local Lead Flood Authority raised no objections, and I am satisfied that the site would not result in any increased flood risk, subject to conditions [conditions 10 and 11].

Biodiversity

25. The scheme has been designed with biodiversity and ecology as a driving priority. There are significant ecological buffers provided around the site, which would provide habitats and bat mitigation, along with enhancements and biodiversity net gain (BNG). Evidence of a district level licence for great crested newts was presented and the proposal, with its embedded mitigation, would have no adverse effect upon any other protected species, such that no other licenses would be necessary.
26. *Salisbury Plain Special Protection Area (SPA)* - The site lies within the 6.4km buffer zone of the SPA. The qualifying feature of the SPA is the stone curlew population, and likely significant effects (LSE) would arise from all residential

development within 6.4km of the SPA, due to increased recreational pressure from visitors. This would include the proposal.

27. The Council, as Competent Authority in the first instance, has a Habitats Regulations Assessment (HRA) for the CS and a HRA for the Wiltshire Housing Site Allocations Plan. Within this, the Appropriate Assessment (AA) looks to mitigate the LSE through annual stone curlew and visitor monitoring. The AA reached a conclusion that housing growth would not have an adverse effect on the integrity of the Salisbury Plain SPA, either alone or in-combination with other plans and projects, provided that the mitigation scheme continues to be implemented. This is secured by the Council through its Community Infrastructure Levy (CIL) and would include a receipt from this development.
28. Nonetheless, the proposal would be unplanned development, and could contribute to an effect not mitigated for by the Council's HRAs. However, given the scale of development in comparison to the size of the buffer zone, this effect would be minimal. Additionally, the scale of public open space on site would absorb a significant amount of everyday recreational activity by new residents. Therefore, I am satisfied that with the mitigation from the CIL payment, and the amount of onsite public open space, the scheme would not adversely affect the integrity of the Salisbury Plain SPA.
29. *Bath and Bradford on Avon Special Area of Conservation (SAC)* - The site lies within the zone of medium risk for the SAC. The qualifying features are 3 bats, Bechstein's bat (*Myotis bechsteinii*), Greater horseshoe bat (*Rhinolophus ferrumequinum*) and Lesser horseshoe bat (*Rhinolophus hipposideros*), with the conservation objectives being to ensure the integrity of the site is maintained or restored, to ensure favourable conservation status of the qualifying features. LSE effects would arise from increased recreational pressure at woodlands used by Bechstein's bat for breeding and loss or damage to bat habitats. Natural England also identified that in the Trowbridge area, there is a need to maintain the presence, structure and quality of any linear landscape features which function as flightlines. These should remain unlit, operating as dark corridors.
30. Additionally, the site is located between Round Wood (approx. 2km) and Pickett and Clanger Woods (approx. 1.5 km), both of which are easily accessible by public footpaths and road. These woods are publicly accessible and each support a colony of Bechstein's bats which together are believed to form a meta population of national importance.
31. The proposal would lead to LSE, both in terms of habitat loss on site and by recreational pressure placed upon nearby habitats and woodlands by new residents of the development. This would be an in-combination effect.
32. However, the open space parameters plan, illustrative masterplan and the ecology evidence details a significant buffer of more than 100m to the northern hedgerow, which would be maintained as high quality semi-natural greenspace, of value to the qualifying features. All core bat habitat would also be buffered from development by at least a 22.5m corridor of natural habitat. The central hedge would be retained, there would be significant native tree and scrub planting, an orchard, new hedgerows and other species specific mitigation. Additionally, an 'alternative space for recreation' would be proposed in the northern half of the site to encourage residents to walk and or exercise dogs on-site. Resident's packs are also to be provided.

33. Providing that these measures are subject to conditions, such as construction environmental management plan, a landscape and ecology management plan, and external lighting [conditions 7, 12 and 16], the proposed mitigation would ensure that the proposal would not adversely affect the integrity of the SAC through any habitat loss on site.
34. The Trowbridge Bat Mitigation Strategy (TBMS) outlines a strategy to mitigate increased recreational pressure on the bats. This applies to the site and seeks contributions to purchase, plant up and maintain an amount of habitat. This would mitigate the residual effects of increased recreational pressure from new residents upon nearby habitats and woodlands. The planning obligation commits to the payment of this sum per dwelling. Thus, with the mitigation proposed, the potential adverse effect would be avoided, and the integrity of the SAC would not be adversely affected.
35. *Picket and Clanger Woods Site of Special Scientific Interest (SSSI)* – Special interests of the SSSI are the floristically-rich ancient woodland, supporting an outstanding range of butterfly and moth species, and woodland birds such as nightingale. A range of small mammal species and common lizard have been recorded and as detailed above, it is known to support significant populations of Bechstein's bat.
36. The proposal would result in increased recreational impacts on the SSSI from new residents. The TBMS requirement would not mitigate the impacts on the wider SSSI, and the Council detail that parts of the SSSI are in an unfavourable and recovering status. Therefore, a bespoke recreational mitigation strategy would be necessary, that would contribute a monetary sum to assist with the management of increased recreational pressure. This is provided for in the planning obligation. With this mitigation, the special interests of the SSSI would not be adversely affected.

Planning obligation

37. In addition to those identified above, the planning obligation would also provide:
 - an early years contribution towards the funding of 17 pre-school places.
 - 40% affordable housing, split 60% affordable rent and 40% intermediate houses, with 10% adapted units.
 - Waste and recycling contribution towards the provision of containers.
 - Leisure contribution towards off site sports provision.
 - Monitoring fee
38. Based on the evidence before me, all the obligations would be necessary to make the development acceptable; directly related to the development; and fairly and reasonably related in scale and kind to the development. This would be compliant with the tests in the Framework and the CIL Regulations.
39. Additional infrastructure, such as contributions towards doctors' and dentists' surgeries was raised by interested parties. However, there is simply no evidence before me that seeking obligations would comply with the Framework and CIL tests, despite the various assertions about appointment wait times and overstretched services. Additionally, the Local Education Authority did not require any contributions towards secondary or primary education places, nor did the Highway's Authority necessitate any contribution towards strengthening the rail underbridge on Station Road.

Planning balance

40. The location of the proposal outside the 'limits of development' would conflict with the development plan as a whole. However, the Council does not have a 5 year supply of housing land and there is a significant shortfall of affordable housing. Thus, Footnote 8 of Framework Paragraph 11 details that policies for applications involving the provision of housing are considered out of date. There are no policies that would indicate a strong reason for refusal and thus the 'tilted balance' of 11 d) ii would apply.
41. Aside from the emerging Local Plan, which has only just been submitted for Examination, there is no other obvious remedy to the shortfall in the short or medium term. This overall position indicates that the development plan is failing to meet its strategic challenges. Thus, its settlement strategy and limits of development are not working effectively. These policies are therefore of limited weight, as is the conflict with them.
42. The delivery of market and affordable housing is of substantial weight in favour. Additionally, there would be biodiversity net gain, public open space, a community orchard, creation of jobs during construction, increased local spending, provision of night time bus service and off site highway improvements. These all weigh in favour and many would benefit the wider community. Aside from the marginal loss of best and most versatile agricultural land, which would be of little weight, there are also no technical reasons that would result in any harm. I have no reason to doubt that the dwellings would not start to be delivered in the next 5 years, especially considering the extensive indicative layout that has been provided to ensure suitable future living conditions.
43. Consequently, the adverse impact of granting planning permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. This is having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, all of which the proposal would provide. As such, the material considerations indicate a decision other than in accordance with the development plan.

Conditions

44. In addition to the conditions above, which would be necessary to make the development acceptable, the plans (including broad accordance with the parameter plans), dwelling numbers, phasing plan and provision of public open space are listed for certainty [condition 4].
45. The dwellings would be built sustainably, including reductions in energy use and emissions and efficient water use, as detailed in chapter 7 of the Design and Access Statement. This would be necessary to ensure the prudent use of natural resources, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy [conditions 6 and 9]. A condition for archaeological investigations would be necessary to ensure that any matters of archaeological interest are correctly recorded [condition 8].

46. Closure of the existing access to Glenmore Farm would be necessary in the interests of highway safety [condition 19]. The Council requested that this was within 3 months of the commencement of development. However, this would be an unreasonable time scale. The access is open now and can be used freely, and whilst it would be necessary to ensure it is closed as soon as practically possible, I see no specific reason to require it to be closed until the development is nearing completion, to ensure its closure can be properly phased into the development as it is built out.
47. The suggested Travel Plan condition [condition 17] has been amended to remove the requirement for the employment of a Travel Plan Co-Ordinator as this would go beyond the realms of a condition. However, I have required details of who has responsibility for monitoring compliance and the means of securing that future monitoring and management arrangements of the travel plan, along with the length of time and frequency.

Conclusion

48. For the reasons set out above, the appeal is allowed.

Katie McDonald

INSPECTOR

APPEARANCES

For the Local Planning Authority:	
Gen Collins LLB(Hons) MA MRTPI	Principal Planning Officer, Wiltshire Council
Mark Wiltshire MIHE	Transport and Highways Manager, Wiltshire Council
For the appellants:	
Alan Williams BSC MPLAN MRTPI	Director, Grass Roots Planning
Matthew McShan	Associate Partner, LVA
Mubassir Malik MEng (Hons) MIOA	Associate Acoustician, Stantec
Interested parties	
Suzanne Wycombe	Ethandune Ward Cllr
David Jenkins	Heywood Parish Cllr
John Masson	Heywood Parish Chairperson
Francis Morland	Heywood Parish Cllr

HEARING DOCUMENTS

HD1	Public Protection comments
HD2	Travel Plan condition
HD3	Finalised Unilateral Undertaking dated 12 December 2024

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) Details of the appearance, landscaping, layout, and scale, "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 4) The development hereby permitted shall make provision for the following:
 - a) Up to 145 dwellings;
 - b) Public open space to be sited, laid-out and equipped in accordance with the West Wiltshire Leisure and Recreation DPD (or any subsequent replacement DPD); and to include at least 4,106 square metre (sqm) of general public open space and at least 171 sqm of equipped play space.

The layout and scale shall be broadly in accordance with the following plans –

- Dwg Ref: 191119L 02 01 J (Illustrative Masterplan) dated 06/22
- Dwg Ref: 191119 PP 01 (Building Height Parameter Plan) dated 11/22
- Dwg Ref: 191119 PP 04 Rev A (Areas Parameter Plan) dated 11/22
- Dwg Ref: 191119 PP 02 (Open Space Parameter Plan) dated 11/22
- Doc Ref: 191119 R 02 01 D (Design & Access Statement) dated 07/22
- Doc Ref: 4712_01E_EcIA Ecological Impact Assessment

Prior to commencement of the development, a programme, or phasing plan, for the delivery and completion of the dwellings and the public open space(s) shall be first submitted to, and approved in writing by, the local planning authority. The dwellings and the public open space(s) shall then be delivered and completed in accordance with the approved programme.

- 5) The 'means of access' to the site and the off-site highways works shall be provided in accordance with the following drawing –

- Dwg Ref: 4403-532 D (Proposed Site Access Layout) dated 17/08/23

In addition, the final layout shall include a 3 metre wide shared-use cycleway within the application site, as indicated at note 7 on illustrative Masterplan 191119L/02/01/J.

Prior to commencement of the development, a programme for the delivery and completion of the means of access, the off-site highways works and the shared-use cycleway shall be first submitted to, and approved in writing by, the local planning authority. The means of access to the site, the off-site highways works and the shared-use cycle way shall then be delivered and completed in accordance with the approved programme.

All visibility splays shown on Dwg Ref: 4403-532 D (Proposed Site Access Layout) dated 17/08/23 shall be provided prior to first use of the new means of access to the site from The Ham by any vehicle other than any vehicle connected with the initial construction of this access. The visibility splays shall thereafter be retained clear of any obstructions to visibility in perpetuity.

- 6) Application/s for the approval of the reserved matters shall be in accordance with section 4.7 of the approved Design and Access Statement (Dwg Ref: 191119 R 02 01 D) regarding sustainability. A Sustainability Statement shall be submitted with each reserved matters application which demonstrates this, and the development shall be implemented in accordance with the Sustainability Statement.
- 7) Prior to the start of construction ground works/excavation, site clearance, vegetation clearance and boundary treatment works, a Landscape and Ecology Management Plan (LEMP) shall be submitted to and approved in writing by the local planning authority. The LEMP will detail long term objectives and targets, management responsibilities and maintenance schedules for each ecological feature within the development (other than small, privately owned, domestic gardens) including, but not exclusively: Wildlife ponds and wetland for SUDS, Floodplain Wetland Mosaic (wet

grassland, scrapes, reedbed), native tree and scrub planting, semi-natural neutral meadow grassland and retained hedge, scrub and trees.

The LEMP will include:

- i. A phasing plan demonstrating the timing of habitat creation works in relation to landscape buffers (Zone A and Zone B of the Trowbridge Bat Mitigation Strategy) and advanced planting proposals including predevelopment provision of 'space for recreation' will be completed in advance of or alongside vegetation stripping.
- ii. A plan specifying the location and type of integral bird nesting features (including for swift) and bat roosting features to be provided. Numbers to be provided in line with best practice guidelines.
- iii. Distinguishing between formal and informal open space and land required to meet mitigation and BNG objectives.
- iv. Details of how habitats created will be managed to achieve predicted BNG gains for the duration of the development.
- v. A mechanism for monitoring success of the management prescriptions, incorporating review and necessary adaptive management in order to attain targets.
- vi. Details of the legal and funding mechanism(s) by which long-term implementation of the plan will be secured.

The LEMP shall be implemented as approved in full and for the lifetime of the development in accordance with the approved details.

- 8) No development shall commence until a written programme of archaeological investigation, which should include on-site work (i.e. trial trenching) and off-site work such as the analysis, publishing and archiving of the results, has been submitted to and approved by the local planning authority. The programme of archaeological work shall be carried out in accordance with the approved details.
- 9) No development shall commence until a scheme for water efficiency has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details.
- 10) No development shall commence until a scheme for the discharge of surface water from the site has been submitted to and agreed in writing by the local planning authority. This should include detailed drainage calculations which demonstrate that discharge rates from the whole developed area (2.507ha) of the site do not exceed:
 - 1 in 1 year storm event - 1.65 l/s
 - 1 in 30 year storm event - 4.14 l/s
 - 1 in 100 year storm event - 5.15 l/s
- 11) No development shall commence until a detailed drainage ownership and management plan has been submitted to and approved in writing by the local planning authority. The plan shall:

- Detail the required maintenance activities for drainage (including SuDS) features, along with details on how frequently these activities will be completed, and the party responsible for maintenance. The development shall be carried out and maintained in accordance with the approved drainage ownership and maintenance plan.
 - Provide copies of legal agreements which confirm that the developer has the right to cross 3rd party land and discharge to the ordinary watercourse in perpetuity. The legal agreements must demonstrate that the developer has permission to cross third party land to enable the drainage system to be constructed, and for it to be maintained throughout its whole design life.
- 12) No development shall commence until a Construction and Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall include details of the following relevant measures:
- i. Construction phase environmental management plan, named person for residents to contact definitions and abbreviations and project description and location;
 - ii. A description of management responsibilities;
 - iii. A description of the construction programme;
 - iv. Detailed Site logistics arrangements;
 - v. Details regarding parking, deliveries, and storage;
 - vi. Details regarding dust mitigation;
 - vii. any other measures to mitigate the impact of construction on the amenity of the area and safety of the highway network;
 - viii. Communication procedures with the LPA and local community regarding key construction issues – newsletters, fliers etc;
 - ix. Details of how surface water quantity and quality will be managed throughout construction;
 - x. Details of the safeguarding measures to deal with the following pollution risks:
 - the use of plant and machinery
 - wheel washing and vehicle wash-down and disposal of resultant dirty water
 - oils/chemicals and materials
 - the use and routing of heavy plant and vehicles
 - the location and form of work and storage areas and compounds
 - the control and removal of spoil and wastes
 - xi. Details of safeguarding measures to highway safety to include:
 - A Traffic Management Plan (including signage drawing(s))
 - Routing Plan
 - Details of temporary/permanent Traffic Regulation Orders
 - pre-condition photo survey - Highway dilapidation survey
 - Number (daily/weekly) and size of delivery vehicles.
 - Number of staff vehicle movements.

- xii. Details of the ecological avoidance, mitigation and protective measures to be implemented before and during the construction phase, including but not necessarily limited to, the following:
- Pre-development species surveys, including but not exclusively, roosting bats, otter, water vole and birds.
 - Phasing plan for habitat creation and landscape works including advanced planting proposals including pre-development provision of 'alternative space for recreation'.
 - Identification of ecological protection areas/buffer zones and tree root protection areas and details of physical means of protection, e.g. protection fencing.
 - Working method statements for protected/priority species, such as nesting birds, reptiles, amphibians, roosting bats, badger and dormice.
 - Work schedules for activities with specific timing requirements in order to avoid/reduce potential harm to ecological receptors; including details of when a licensed ecologist and/or ecological clerk of works (ECoW) shall be present on site.
 - Key personnel, responsibilities and contact details (including Site Manager and ecologist/ECoW).
 - Timeframe for provision of compliance report to the local planning authority; to be completed by the ecologist/ECoW and to include photographic evidence.

There shall be no burning undertaken on site at any time.

Construction hours shall be limited to 0730 to 1800 Monday to Friday, 0730 to 1300 Saturday and no working on Sundays, Bank or Public Holidays.

The development shall be implemented in accordance with the approved details of the CEMP.

- 13) No development shall commence until an Acoustic Design Scheme (for external traffic noise) for the protection of the proposed residents from external traffic noise has been submitted to and approved in writing by the local planning authority. The Acoustic Design Scheme (for external traffic noise) shall use Good Acoustic Design (in accordance with the Professional Practice Guidance: Planning and Noise New Residential Development (May 2017 or later versions)) to achieve the following noise limits:
- bedrooms shall achieve an 8-hour LAeq (23:00 to 07:00) of 30dB(A) and an L_{max,F} of 45dB based on the 10th highest measured level.
 - living rooms and dining rooms shall achieve a 16-hour LAeq (07:00 to 23:00) of 35dB(A)
 - external noise levels within private external amenity spaces shall not exceed 55 dB LAeq,16hr (0700 – 2300)

The Acoustic Design Scheme (for external traffic noise) shall be implemented during construction of each dwelling, and thereafter be permanently retained. For the avoidance of doubt, using closed windows to achieve the internal noise level target shall only be considered once all other good acoustic design acoustic mitigation measures have been utilised.

In accordance with a timetable in the approved Acoustic Design Scheme (for external traffic noise), a post completion report, prepared by the acoustic consultancy who designed the Acoustic Design Scheme or other suitably qualified expert, shall be submitted to and approved in writing by the local planning authority. This shall provide evidence that the approved Acoustic Design Scheme (for external traffic noise) has been fully implemented, any additional measures required to achieve compliance.

- 14) No development shall commence until an Acoustic Design Scheme (entertainment and industrial noise) for the protection of the proposed residents from entertainment and industrial noise has been submitted to and approved in writing by the local planning authority. This shall relate to internal noise levels and private external amenity areas. The Acoustic Design Scheme (entertainment and industrial noise) shall use Good Acoustic Design (in accordance with the Professional Practice Guidance: Planning and Noise - New Residential Development (May 2017 or later versions)) and it shall include the site layout (showing barrier blocks), internal dwelling layouts, façade construction (including design and installation), manufacturers details of windows and ventilation, and boundary treatments.

Within 320 m of the West Wiltshire Trading Estate boundary, (ie closer than existing dwellings), the design shall achieve a rating level (LArTr) of equal to and no greater than typical background sound levels (LA90T) for facades with openable windows to habitable rooms (living rooms and bedrooms) and for private external amenity areas when assessed using BS4142:2014+A1:2019 or any subsequent version.

Internal noise levels from entertainment noise, shall be designed to not exceed the following:

- NR 20 dB Leq,15minutes
- NR 20 dB LfMax
- The LFN Reference Curve within Table 9 of NANR45 revision1 December 2011 - Procedure for the Assessment of Low Frequency Noise Complaints.

The Acoustic Design Scheme (entertainment and industrial noise) shall be implemented during construction of each dwelling, and thereafter be permanently retained. In accordance with a timetable in the approved Acoustic Design Scheme (entertainment and industrial noise), a post completion report, prepared by the acoustic consultancy who designed the Acoustic Design Scheme (entertainment and industrial noise) or other suitably qualified expert, shall be submitted to and approved in writing by the local planning authority. This shall provide evidence that the approved Acoustic Design Scheme (entertainment and industrial noise) has been fully implemented, any additional measures required to achieve compliance.

- 15) Prior to commencement of development above slab level, a scheme for the provision of at least one public electric vehicle 'rapid' charging point (EVRCP) in a publicly accessible parking area or bay shall be submitted to and improved in writing by the local planning authority. The EVRCP shall be installed and be ready for use prior to the first occupation of the 100th dwelling or in accordance with a programme to be first agreed by the

local planning authority, whichever is the sooner. The EVRCP shall thereafter be retained and shall remain operational at all times (other than when under-going reasonable maintenance).

- 16) No external lighting shall be installed in public areas until details of the type of light appliance, height and position of fitting, illumination levels and light spillage have been submitted to and approved in writing by the local planning authority. The details shall be in accordance with the appropriate Environmental Zone standards set out by the Institute of Lighting Engineers in their publication GN01:2011, 'Guidance for the Reduction of Obtrusive Light' (ILP, 2011), and Guidance note GN08-18 "Bats and artificial lighting in the UK", issued by the Bat Conservation Trust and Institution of Lighting Professionals. Where light spill has the potential to impact bat habitat, a lighting impact assessment shall be submitted with the reserved matter application(s) to demonstrate the requirements of section 8.3 of the Trowbridge Bat Mitigation Strategy February 2020 are met. The external lighting shall be installed and maintained in accordance with the approved details, and no additional external lighting in public areas shall be installed. Prior to final occupation of the development, a post-development lighting survey demonstrating compliance with the approved details, conducted in accordance with section 8.3.4 of the Trowbridge Bat Mitigation Strategy, shall be submitted and approved in writing by the local planning authority.
- 17) Prior to first occupation of any dwelling, a Full Travel Plan shall be submitted to and approved in writing by the local planning authority. The Full Travel Plan shall be based on the Framework Travel Plan and include details of who has responsibility for monitoring compliance and the means of securing that future monitoring and management arrangements. This shall include the length of time over which monitoring will occur and the frequency. The Full Travel Plan shall be implemented in accordance with the approved details.
- 18) Prior to occupation of the 30th dwelling, 2 bus stops including shelters and raised height bus passenger access kerbing (one for northbound passengers, and one for southbound passengers) outside the site shall have been provided in accordance with details to be first submitted to and approved by the local planning authority.
- 19) Prior to occupation of the final dwellinghouse, the existing northern vehicular access point to Glenmore Farm (for the avoidance of doubt the vehicular access to Hawkridge Road located 63 metres north-west of Shallow Wagon Lane) shall have been properly and permanently closed and the highway verge reinstated. Thereafter the access point shall remain closed in perpetuity.

END OF CONDITIONS

Ref: Change of Use of Implemented Phase IV Development at Oaksey Park Golf and Leisure to C3 Residential Occupation by Independent Older Persons – JC/006/RG-(PS)

**N. Appeal Decision Ref: APP/Y3940/W/24/3351527 &
APP/Y3940/W/24/3351528 (dated 17th February 2025)**



Appeal Decisions

Inquiry held on 21 January 2025

Site visit made on 20 January 2025

by **David M H Rose BA(Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17th February 2025

Appeal A Reference: APP/Y3940/W/24/3351527

Land south of Abberd Lane, and east of Spitfire Road, Calne, Wiltshire, SN11 8GF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Robert Hitchins Limited against the decision of Wiltshire Council.
- The application Reference is PL/2023/10421.
- The development proposed is 'Development of a new Local Centre comprising a Class E(f) day nursery and Class E(a) convenience store, with associated parking, access and landscaping'.

Appeal B Reference: APP/Y3940/W/24/3351528

Land off Spitfire Road, Calne, SN11 8TE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
- The appeal is made by Robert Hitchins Limited against the decision of Wiltshire Council.
- The application Reference is PL/2022/07893.
- The development proposed is 'Residential development for up to 90 dwellings, associated works including infrastructure, ancillary facilities, play area and open space and landscaping. Construction of a new vehicular access off Spitfire Road and demolition of existing structures'.

Decision Appeal A

1. The appeal is allowed and planning permission is granted for 'Development of a new Local Centre comprising a Class E(f) day nursery and Class E(a) convenience store, with associated parking, access and landscaping' at Land South of Abberd Lane, and East of Spitfire Road, Calne, SN11 8GF in accordance with the terms of the application, Reference PL/2023/10421, subject to the conditions in the Schedule at Annex A.

Decision Appeal B

2. The appeal is allowed and planning permission is granted for 'Residential development for up to 90 dwellings, associated works including infrastructure, ancillary facilities, play area and open space and landscaping. Construction of a new vehicular access off Spitfire Road and demolition of existing structures' at Land off Spitfire Road, Calne, SN11 8TE in accordance with the terms of the application, Reference PL/2022/07893, subject to the conditions in the Schedule at Annex B.

Preliminary Matters

3. The Inquiry sat for one day. At the close of the Inquiry, it was agreed that a formal accompanied site visit was not required on the basis of the Inspector's unaccompanied visit on the preceding afternoon.
4. A completed Deed of planning obligations under section 106 of the Town and Country Planning Act 1990, between the Council and the Appellant, was submitted by arrangement after the Inquiry. It is dated 28 January 2025.
5. The application for the local centre (Appeal A) was refused on two grounds namely: its failure to integrate into its setting; and its ad hoc incursion into the countryside.
6. Five reasons were cited for the refusal of the housing scheme (Appeal B) namely: the location of the site outside the defined limits for development; prejudice to the plan making process; insufficient information relating to protected habitats or species; insufficient information to demonstrate acceptable living conditions for future occupiers arising from adjacent land uses; and absence of any measures to secure the provision of essential infrastructure, services and amenities.
7. At the Case Management Conference, held on 18 November 2024, the Council confirmed that the main issue in relation to Appeal A was one of character and appearance if the proposal was considered in isolation of Appeal B. However, if the latter were to succeed, and if a mechanism could be devised to secure the implementation of the local centre in tandem with the housing development, the objection could fall away.
8. In relation to Appeal B, the Council confirmed that it was no longer pursuing reason for refusal 2 relating to the alleged prejudice to plan making; reason for refusal 3 relating to ecology in that it was anticipated that such matters could be resolved by planning conditions; in terms of reason for refusal 4, the issue was related to the alleged adverse effects of noise only (i.e. excluding dust and odour); and in relation to reason for refusal 5, it was anticipated that the provision of infrastructure could be secured by planning obligations with one matter, a public art contribution, said by the Appellant, to be in contention.
9. The subsequent Statement of Common Ground relating to the local centre, confirms that no matters remain in dispute, subject to the precise wording of a condition that would link the local centre and residential appeal schemes.
10. In terms of the residential scheme, the Statement of Common Ground¹ verifies that the only matter remaining in dispute is whether contributions towards public art are necessary to make the proposal acceptable in planning terms. This is not considered to be a determinative issue as an obligation is included within the section 106 agreement in the event that it is concluded that it passes the legal tests.
11. A second, noise specific Statement of Common Ground, following an additional noise assessment, confirms that the issues that were previously in dispute in relation to reason for refusal 4 have been resolved.

¹ Both Statements of Common Ground are headed as 'Draft' – It was confirmed that this word had remained in error in the signed versions

Main Issue Appeal A

12. The main issue is the effect of the proposal on the character and appearance of the area.

Main Issues Appeal B

13. The main issues are:
- 1) The relationship of the proposal with the established settlement pattern and the spatial strategy for Calne.
 - 2) Would future residents have acceptable living conditions, having regard to potential sources of noise from adjoining land uses and, in the event of necessary mitigation measures, whether these could be designed and secured in an acceptable manner.
 - 3) The adequacy or otherwise of mitigation measures to address the impacts of the development (section 106).
 - 4) Whether the adverse effects of granting planning permission would significantly and demonstrably outweigh the benefits of the proposal.

Reasons

Appeal A

The effect of the proposal on the character and appearance of the area

14. The appeal site is located within a larger parcel of greenfield land contained on three sides by the proposed housing development site (Appeal B) and, on its fourth side, frontage to Spitfire Road. New housing lies on the opposite side of Spitfire Road and to the north of Abberd Lane around Ceres Place. Land to the east and south is undeveloped.
15. As a stand-alone proposal, the local centre would exist in relative isolation and appear as an arbitrary intrusion into the landscape and out of context with its immediate surroundings. It would thus be in conflict with extant and emerging development plan policies, with particular reference to Wiltshire Core Strategy Core Policy 51 and Policy NE2 of the Calne Community Neighbourhood Plan.²
16. Nonetheless, the landscape hereabouts lacks special characteristics or designation and the site is not unduly prominent. Indeed, its wider setting is one of newly built homes on the settlement edge. In this regard, were it to be seen within the framework of new housing proposed in Appeal B, the principle of development would not result in material harm to the character and appearance of the area.
17. As to design, the Design and Access Statement confirms that the scheme is largely a result of end user requirements and the constraints of the site. That said, in my view, the proposed building would not look out of place in its predominant setting of modern dwellings, contemporary design and a varied palette of facing materials, including metal roofing and vertical cladding at Ceres Place.

² Reinforced by Policy NE5 of the Referendum version of The Calne Community Neighbourhood Plan 2: 2023-2038

18. Albeit heavily dominated by frontage parking, the proposed single storey building, with the implementation of an approved landscaping scheme, would sit comfortably in its wider context with form following function in a measured manner. In this regard, the facing of the convenience store with a combination of timber and metal cladding, and proportions of a small agricultural building, would reflect the edge of settlement location and be akin to a 'farm shop' type of building. In turn, the use of brickwork and render for the day nursery, under a metal roof, would be entirely consistent with local domestic character.
19. On this basis, I consider that the proposal would be in accordance with Core Policy 57 and also with the high quality design ethos explicit in Neighbourhood Plan Policy BE2³ and, with appropriate landscaping, it would meet the aims of Policy BE1.
20. Policy WS3 of the Neighbourhood Plan⁴ offers support for development proposals that add to and/or sustain the distribution of local neighbourhood convenience shops, designed to be accessible primarily on foot or by cycle, subject to compliance with all relevant development plan policies.
21. Whilst some local residents consider there is no need for an additional convenience shop, and noting the element of overlap with the existing Spar store, it is evident that the proposed retail outlet would usefully serve a local catchment and offer accessibility by non-car modes. There would be no conflict with either Core Strategy Policy 38 or the aim of the National Policy Framework ('the Framework') to protect the role of town centres.
22. Additionally, the purpose built day nursery would provide valuable childcare resources to serve the local community. It is recognised that such facilities support early years education and can also increase the employment rate amongst parents with related benefits to the economy.

Appeal B

The relationship of the proposal with the established settlement pattern and the spatial strategy for Calne

23. The appeal site is situated on the eastern edge of Calne. It comprises three agricultural fields and has frontage to both Abberd Lane and Spitfire Road. A rectangular parcel is excluded from the site forming the subject of Appeal A.
24. Core Policy CP1 of the Core Strategy identifies Calne as one of the Market Towns which have the potential for significant development. However, the appeal site is not identified for any form of development in either the existing or emerging development plan.⁵
25. The wider context is set out in Core Policy 2 which establishes a minimum housing requirement of 42,000 dwellings for the plan period 2006 – 2026. However, that figure fell short of the objectively assessed need for 44,000 homes over the plan period as required by national policy (2012). Although the plan was found to be sound, its anticipated early review has not occurred.

³ Reinforced by Policy BE1 of the Referendum version of The Calne Community Neighbourhood Plan 2: 2023-2038 and DC.01 of the related Design Guidelines and Codes

⁴ Policy CF1(5) of the Referendum version of Neighbourhood Plan 2 supports the provision of new community facilities to meet evidenced local needs where the development would not have an unacceptable adverse effect on the local environment or residential amenity

⁵ The emerging Wiltshire Local Plan (Regulation 19) was submitted for examination on 28 November 2024

26. The policy also provides a presumption in favour of sustainable development within the defined settlement boundaries and restricts development outside the defined limits. The latter, in common with Neighbourhood Plan Policy H4, fails to admit any overall balance or recognition of material considerations that might indicate that a proposal should be determined other than in accordance with the development plan.
27. The parties agree that the Framework does not include a presumption against housing in the countryside beyond defined settlement boundaries but that planning decisions should recognise the intrinsic character and beauty of the countryside. It is further agreed that the Local Planning Authority raises no landscape or visual impact objections to the appeal scheme.
28. In turn, Core Policy 8 sets a requirement of approximately 1,605 new homes to be provided in the Calne Community Area with some 1,440 homes to be built at Calne. Although the housing number for Calne has been surpassed, the figure is indicative and does not represent a ceiling to development.
29. Moreover, the emerging Local Plan continues to identify Calne as a sustainable location for further housing which undermines the claims, in a number of representations, about the lack of infrastructure and services within Calne. The proposed strategic allocation, through Policies 9 and 11, is for some 570 additional dwellings, employment land and a local centre to the north of the appeal site and employment uses to the east in accordance with Policy 10.
30. Policy 9 also identifies the neighbourhood area designation requirement to be 130 dwellings to be found in the next Neighbourhood Plan. Nonetheless, the plan-wide housing allocation in the emerging Local Plan falls below the standard method required by national policy.
31. The Local Planning Authority cannot currently demonstrate a five-year supply of deliverable housing sites (2.03 years); there have been chronic problems with housing delivery at the first tier settlements; and the Council has been unsuccessful in resisting a number of recent appeals at lower tier settlements including Large and Small Villages. The inevitable conclusion is that, although some representations claim that development is not necessary, new house building will be required on unallocated sites. Priority should be given to the more sustainable locations.
32. It is evident that the appeal site is well related to the existing built-up area of Calne where recent housing development has taken place, and it would form a logical adjunct to the draft allocations for housing and employment in the emerging Local Plan. The site was not included as part of the allocation despite there being nothing apparent in the evidence base to suggest that it performed poorly in planning terms compared to the adjacent lands. Seemingly, according to the Appellant, it was assumed that it would not be required numerically to meet the scale of development identified.
33. However, applications for the land to the north of Abberd Lane, subsequently withdrawn, provided for no more than 545 homes, indicating an immediate shortfall. In addition, the proposals failed to include any provision for a local centre as required by draft Policy 11.

34. In summary, the appeal site is unallocated land outside the defined development limits for Calne and is to be considered as countryside for planning purposes. The proposal would be consistent with Wiltshire Core Strategy Policy CP1 as Calne is a second tier Market Town and by definition has the potential for significant development.
35. However, the proposal would be in conflict with the settlement boundary policies in Core Strategy Policy CP2, Neighbourhood Plan Policy H4 and saved Policy H4 from the North Wiltshire Local Plan. There would also be conflict with Core Strategy Policy CP8 by its reference to Core Strategy Policies CP1 and CP2.
36. It is clear that the settlement boundary policies, by placing general restraint on development outside defined limits, are inconsistent with the Framework. Moreover, it is obvious that greenfield sites will be required, including an anticipated strategic location in the vicinity of the appeal site. In combination with the absence of a five-year housing land supply, the policies which are most important in the consideration of the appeal are out-of-date and the resultant harm merits limited negative weight, the more so in the context of the identified chronic housing shortfall and absent any immediate remedy.⁶

Would future residents have acceptable living conditions, having regard to potential sources of noise from adjoining land uses and, in the event of necessary mitigation measures, whether these could be designed and secured in an acceptable manner

37. Abberd Fields Farm, to the east of the appeal site, was identified by the Local Planning Authority as having activities that could potentially affect the living conditions of future residents. However, noise monitoring surveys have demonstrated that the existing car storage operation and/or reversion to agricultural use would result in a low potential for adverse effects and the relevant standards for internal and external noise levels at the proposed residential properties could be met. The noise specific Statement of Common Ground confirms that the issues which were previously in dispute, in relation to reason for refusal 4, have all been resolved.
38. In terms of the local centre, potential noise sources include the operation of external plant, the comings and goings of service vehicles and children at play. It is agreed that any permission could include conditions to restrict external noise levels and the timing of deliveries and dispatches. In addition, based on the illustrative residential site layout, a 2.0 metre high acoustic fence around the rear and side boundaries of the local centre site, increased to 2.5 metres high bordering the unloading/loading bay, would ensure that neighbouring residential properties would have an acceptable living environment. In any event, the layout of the residential scheme would be the subject of further assessment and approval.
39. Having regard to the above, the Local Planning Authority has not pursued its original objections and, in the absence of contrary evidence, I conclude that future residents would have acceptable living conditions, having regard to potential sources of noise from adjoining land uses. Additionally, the necessary mitigation measures could be designed and secured in an acceptable manner.

⁶ It is noted that the Neighbourhood Plan 2 does not address the need for housing allocations (paragraph 9.1.3 refers)

40. There are, however, outstanding representations from Calne Without Parish Council and Calne Town Council about the impact of noise and pollution arising from the use of Abberd Lane, notably by high numbers of heavy goods vehicles, gaining access to and from the waste management facility.
41. Whilst it was said that noise monitoring for a site on the opposite side of Abberd Lane indicated a need to set dwellings back from the highway by some 20 metres, the illustrative masterplan for the appeal site did not include such a constraint.⁷ Nonetheless, the Appellant's noise assessment acknowledges that a further noise assessment would be prepared to support an application for the approval of reserved matters based on the proposed layout at that time and any measures to secure mitigation. This can be provided for by a condition attached to the grant of planning permission.
42. In terms of air quality, the application was supported by an Air Quality Assessment that has considered the impacts of the proposed development on local air quality in terms of emissions from road traffic generated by the completed and occupied development. It reaches the following conclusions:
'Air quality conditions for future residents of the proposed development have been shown to be acceptable, with concentrations well below the air quality objectives throughout the site. The overall operational air quality effects of the proposed development are judged to be 'not significant'.
43. There is no contrary technical evidence before me to suggest a different outcome or identified conflict with Neighbourhood Plan Policy GA2⁸ and its reference to the Air Quality Management Area in the town centre.
44. Similarly, the Odour and Dust Assessment confirms that potential odours from a range of sources nearby would be likely to have negligible effects on future residents. Additionally, operational dust effects from Calne Quarry and the recycling plant have been assessed to be 'not significant'.
45. Overall, I identify no conflict with Core Policy 57(vii).

The adequacy or otherwise of mitigation measures to address the impacts of the development (section 106)

46. The parties to the section 106 Agreement are Wiltshire Council and Robert Hitchins Limited. Clause 4.2 provides for any of the stated obligations to be deemed null and void in the event that any obligation (or part thereof) is found not to be a material planning consideration; or no weight can be attached to the obligation in determining the appeal; or otherwise fails to comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).
47. Schedules 1 – 4 make provision for at least 30% affordable housing with related nomination rights, indicative housing mix and space standards. This is supported by Core Policy 43 of the Wiltshire Core Strategy, which seeks to secure at least 30% affordable housing in this location and Core Policy 45 aimed at meeting Wiltshire's housing needs. These obligations meet the relevant policy and statutory tests.

⁷ The results of the noise monitoring exercise used to inform the indicative layout (superseded) includes setting the properties back from Abberd Lane by at least 12 metres from the kerb

⁸ Policy GA1 (2) of the referendum version of Neighbourhood Plan 2

48. Schedule 5, the provision and management of public open space and/or play area, flows from Core Policies 3 and 52. The former identifies open space and green infrastructure as one of the place-shaping aspects of Infrastructure priority theme 2. Core Policy 52 cross-refers to the adopted Wiltshire Open Space Standards and expects appropriate long term management measures.
49. The level of open space remains to be determined at reserved matters stage based on the number, mix and type of housing to be provided. The methodology is grounded in the 'Revised Wiltshire Planning Obligations Supplementary Planning Document (SPD) (2016), with reference to Saved Policy CF3 of the North Wiltshire Local Plan 2011.
50. Schedules 6 and 7 establish that in the event of any on-site deficiency, payment is to be made towards providing or up-grading an area of off-site open space and/or an off-site play area.
51. Schedule 8 secures a financial contribution towards the upgrading of playing pitches and/or ancillary facilities and/or infrastructure services within the vicinity of the appeal site. This is to be based on the 'Wiltshire Council Playing Pitch Strategy: Strategy and Action Plan, November 2024' which provides a detailed analysis of provision and shortfalls and priority recommendations on discrete area bases.
52. Overall, Schedules 5 – 8 inclusive have robust policy support. They are necessary, directly related to the development and proportionate.
53. A waste and recycling contribution, in Schedule 9, towards the provision of waste and recycling containers for the development flows from Core Policy 3 as part of Infrastructure priority theme 1. The contribution figure is based on costs set out in the 'Waste storage and collection: guidance for developers SPD (2017)'. This contribution meets the relevant tests.
54. The highways contribution, through Schedule 10, relates to phase 2 of the Abberd Brook shared path scheme. This forms part of the strategic walking and cycling network in Calne and, once fully complete, will enable safe access to and from the development site towards the town centre and beyond. This aligns with Core Policies 60 and 61 and Neighbourhood Plan Policy GA1.⁹ The contribution of £90,000, based on £1,000 per dwelling, appears reasonable and proportionate and will contribute to the objectives of encouraging sustainable travel options.
55. In combination, the above obligations merit significant weight.
56. Schedule 11 seeks a financial contribution towards the delivery of integrating public art within the development or the vicinity of the development. This was not identified in reason for refusal 5 as one of the elements of essential infrastructure and is disputed by the Appellant.
57. However, the contribution is underpinned by Core Policies 3 and 57(xii) as part of the objective to secure high quality design, place-shaping and cultural well-being. Paragraph 4.37 of the plan identifies public art and streetscape features as one of the aspects of place-shaping infrastructure under Infrastructure priority

⁹ Policy GA3 of the Referendum version of Neighbourhood Plan 2.

theme 2. Core Policy 57(xii) seeks high quality design and place-shaping through *'the use of high standards of building materials, finishes and landscaping, including the provision of street furniture and the integration of art and design in the public realm'*.

58. The Revised Wiltshire Planning Obligations SPD supports policies in the Core Strategy, particularly CP3 'Infrastructure Requirements'. Paragraph 1.5 explains: *'This SPD will identify the planning obligations that will be sought by the Council for development that generates a need for new infrastructure.'*
59. The SPD sets out explicit thresholds for, and the application of, contributions required by the SPD for several types of obligations that may be necessary (e.g. affordable housing; open space/green infrastructure; and transport/highways). Chapter 10 relates to other obligations, including art and design, without the preceding level of detail, other than a footnote reference to a Guidance Note (2011).
60. The 'Wiltshire Design Guide' 2024 SPD supports the implementation of Core Policy 57. Section 7.3 makes particular reference to art and provides direction to 'Art and design in the public realm in Wiltshire – 2024 Guidance' which has replaced that published in 2011.
61. The 2024 Guidance sets out the potential benefits of public art and indicates that *'Art and design in the public realm can help to mitigate the impact of development by contributing to good design, place-shaping, infrastructure and engage communities with the development'*.¹⁰ The threshold for public art funding is for residential developments of 50 dwellings or more with contributions set at £300 per dwelling.
62. The Guidance does not have the status of development plan policy or that of an SPD as it has not been subject of consultation or formal process. The Planning Practice Guidance on planning obligations also indicates that *'it is not appropriate for plan-makers to set out new formulaic approaches to planning obligations in supplementary planning documents or supporting evidence base documents*'.¹¹ However, the 2024 Guidance is a material consideration albeit of markedly lesser weight than formal policy documents.
63. The 'Arts Contribution' is *'.....to be used towards the delivery of integrating public art within the Development or the vicinity of the Development, with no more than 10% of the Arts Contribution to be used to support the development of an Arts scheme'*.
64. In terms of assessing whether the obligation is necessary to make the development acceptable in planning terms, there is a hierarchy of policy support and guidance with the added recognition in the Framework that good design is a key aspect of sustainable development and fundamental to what the planning and development process should achieve.
65. In my opinion, looked at in the round, the provision of public art could be said to be one element that is required to make the appeal proposal acceptable in planning terms. It would serve a clear planning purpose, underpinned by the development plan. Secondly, provision within the appeal site, or the vicinity of the development, would satisfy the test of being directly related to the development.

¹⁰ At paragraph 3.1

¹¹ At paragraph: 004 Reference ID:23b-004-20190901

66. However, the contribution of £300 per dwelling is not evidence based, or calibrated against any benchmark. There has been no public consultation on the Guidance and there is no identified scheme. Whilst I empathise with the objective of this obligation, including the benefits to the community, placemaking and wellbeing, I cannot conclude on the evidence before me that this obligation would pass all of the statutory tests. In these circumstances I am unable to take it into account and this obligation is deemed to be null and void and of no effect.
67. Finally, Schedule 12, in Part 1, commits the Council to using the sums received for their stated purposes and to return unexpended funds; and Part 2 sets out the basis for delivering the Arts Scheme which falls away in light of the above.

Other considerations

68. The appeal site does not form part of a designated or valued landscape within the terms of the Framework. However, planning decisions should recognise *‘the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services’*.
69. In this regard, the proposal would inevitably result in some landscape harm through the loss of open fields. However, the site is strongly influenced by the existing settlement edge and is neither unduly prominent nor sensitive in overall terms. Indeed, I am satisfied that, in its existing context, absent any intervisibility, there would be no harm to the North Wessex Downs National Landscape which is some 1.3 kilometres from the site. The harm arising in local landscape terms therefore carries limited negative weight.
70. Considering additional traffic generation, there is no evidence of either highway capacity or safety issues based on a detailed Transport Assessment and endorsement by the Council’s Highways Officer. The views of the statutory consultee are a strong material consideration.
71. Although there is local call for a dedicated pedestrian/cycle crossing on Spitfire Road, the proposals provide for the widening of the junction of Abberd Lane and Spitfire Road with modified splitter refuge islands and tactile paving on the respective limbs of the mini roundabout. Similarly, the absence of shelters and raised paving for the proposed bus stops has been found to be acceptable to the Council’s Highways Officer and no enhanced provision has been sought.¹²
72. The application was supported by a site specific flood risk assessment and drainage strategy on which the Council’s Drainage Officer raises no objection subject to further detailed design. Although comments have been made about flooding in the locality, the appeal site is located entirely within an area with the lowest probability of flooding (Flood Zone 1). Again, whilst it is alleged that the current sewage system cannot cope with the existing number of houses on this side of Calne, there is no objection from the relevant consultee.
73. Core Policies 50 and 52 set out how new developments should make provision for biodiversity and green infrastructure. Allied policies are contained in the made Neighbourhood Plan and the Referendum version.¹³ The residential proposal is

¹² Policy GA3 of the Referendum version of the Neighbourhood Plan 2 seeks to promote sustainable transport and inclusive active travel ‘.....Proposals that retain and improve existing bus infrastructure, will be supported’

¹³ Policies NE2 and NE3 of the Neighbourhood Plan (2018); Policies NE2 and NE3 of the Referendum version of the Neighbourhood Plan 2

submitted in outline and as such the illustrative masterplan layout is not fixed. Further details, including the landscaping of the site, will be the subject of subsequent consideration on the submission of the reserved details. It is also relevant to note that the Local Planning Authority accepts that the proposals would secure net gains for biodiversity in the order of 19%.¹⁴ I am satisfied that the aims of the relevant policies could be met through the submission of reserved matters.

74. A number of representations point to the importance of the plan-led system and the need for proper master planning to guide future growth in the area. Indeed, the Ministerial Statement made on 12 December 2024 states: *'The plan-led approach is, and must remain, the cornerstone of our planning system. It is through local plans that communities shape decisions about how to deliver the housing and wider development their area needs'*
75. However, the Government's commitment to building 1.5 million homes will require unallocated greenfield sites where development plans are not up-to-date and where authorities cannot provide a five-year supply of deliverable sites. These are the circumstances of particular relevance to my consideration of this case.

The Planning Balance

76. In terms of Appeal B, it is common ground that the policies which are most important for determining the appeal are out-of-date. Therefore, paragraph 11d) ii of the Framework indicates that permission should be granted unless *'any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination'*.
77. It is also common ground that the residential proposal does not accord with the development plan when read as a whole. In this regard, as set out above, I attach limited weight to that harm. Further, there would be some landscape harm to which I also attach limited weight, given the characteristics and context of the site.
78. As to the benefits, social benefits would arise from the provision of much needed open market and affordable homes (very substantial weight). Economic benefits associated with construction and employment and support for the Market Town role of Calne (significant weight); and investment in community infrastructure through the section 106 agreement (limited weight). Environmental benefits, principally in green infrastructure and biodiversity net gain merit moderate weight.
79. My overall conclusion is that the adverse impacts of allowing the residential appeal would not significantly and demonstrably outweigh the benefits of the proposal when assessed against the policies in the Framework taken as a whole. The proposal therefore benefits from the presumption in favour of sustainable development which represents a material consideration of sufficient weight to indicate that planning permission should be granted other than in accordance with the development plan.

¹⁴ Based on Drawing Number 343.UD.03 Revision F (superseded)

80. For Appeal A, the proposal would fulfil a social need for a convenience store and day nursery (significant weight); economic benefits associated with construction and employment, both short term and long term (significant weight); and new planting and biodiversity enhancements (limited weight as less extensive than those in Appeal B). In my opinion, in light of my decision in respect of Appeal B, these factors in combination demonstrably outweigh the conflict with the spatial strategy and related policies in the development plan. I therefore find that there are material considerations to justify a determination other than in accordance with the development plan.

Conditions Appeal A

81. The development is to be begun within a period of five years as commencement is dependent on the implementation of the residential scheme. The approved drawings are to be listed for the avoidance of doubt and in the interests of proper planning. [Conditions 1 and 2]
82. Agreement and implementation of a Construction Management Statement and a Construction Environmental Management Plan are necessary for environmental, amenity and ecological reasons. As some of the elements of the required Statement differ from those offered for the residential scheme, and having regard to the potential overlap of site preparation and construction, I have reworded Condition 3 to mirror Condition 5 of the residential scheme for consistency. [Conditions 3 and 17]
83. Further details of the storage facilities for refuse and recycling; any plant store; boundary treatments; and ventilation and extraction equipment, including mitigation measures, are required for general amenity reasons. Similarly, there is to be no other outside storage other than in accordance with the permitted details. [Conditions 4 – 6]
84. Details of hard and soft landscaping, including protection of landscape features, are to be sought and implemented to ensure an appropriate landscape setting for the development. The implementation of specified external lighting and a Landscape Management Plan are required for the protection, mitigation and enhancement of biodiversity. [Conditions 7, 8, 16 and 18]
85. In light of my considerations earlier in this decision, conditions are necessary to preclude development of the scheme in isolation and this can be achieved by a combination of limiting initial works and precluding occupation before the substantial completion of a minimum of 30 dwellings on the adjacent land. [Conditions 9 and 10]
86. The implementation of the approved access arrangements and off-site highway improvements; travel plan; surfacing of access, parking and circulation areas; the provision of cycle and motorcycle storage; and surfacing of the pedestrian tracks are required for highway safety and to encourage travel by means other than the private car. [Conditions 11 - 15]
87. The ability to protect the proposed neighbouring dwellings from unacceptable noise from the operation of plant; movements of delivery vehicles; and hours of use are important amenity considerations. I have reworded condition 20 for clarity. I have also amended Conditions 21 and 22 to specify the permitted daytime hours of delivery, rather than the excluded hours which overlap from

one day to another, to avoid the different timings applicable to Saturday/Sunday and Sunday/Monday. [Conditions 19 – 24]

88. Updated calculations and arrangements for surface water drainage, including measures to control potential pollution to water courses during construction, are necessary to minimise flood risk and to protect the aquatic environment. [Conditions 25 - 27]
89. The implementation of the energy strategy, forming part of the application, would contribute towards the objectives of achieving sustainable development, consistent with the Wiltshire Climate Change Strategy and national guidance. [Condition 28]
90. The nature of the uses within Schedule 2, Part A, Class E of The Town and Country Planning (Use Classes) Order 1987 as amended are to be restricted to protect adjacent residential amenity. [Condition 29]
91. Finally, otherwise permitted extensions or external alterations to the premises are to be controlled to safeguard the character, appearance and amenities of the area. [Condition 30]

Conditions Appeal B

92. The development is to be begun, and application(s) for the approval of reserved matters, are to be submitted within the time periods in statutory provisions. The matters reserved for submission and the approved drawings are to be listed for the avoidance of doubt and in the interests of proper planning. [Conditions 1 – 4]
93. Agreement and implementation of a Construction Management Statement (mirroring amended Condition 3 of the local centre) and a Construction Environmental Management Plan are necessary for environmental, highway safety, amenity and ecological reasons. [Conditions 5 and 14]
94. Details of landscaping, site boundary treatments and a Landscape and Ecology Management Plan, related to the Ecological Assessment and Ecological Parameters Plan, are required to ensure an appropriate landscape setting and for the protection, mitigation and enhancement of biodiversity. The details are to include a scheme of boundary fencing related to the adjoining Abberd Fields Farm as a safeguard against potential sources of noise and to protect residential amenity. [Conditions 7, 13 and 15]
95. The approval and implementation of an external lighting scheme is required to protect bat habitats and additional features are to be provided for biodiversity enhancement. [Conditions 16 and 17]
96. Updated calculations and arrangements for surface water drainage, including measures to control potential pollution to water courses during construction, are necessary to minimise flood risk and to protect the aquatic environment. I have added the condition relating to overland exceedance routes to be consistent with the local centre approval. [Conditions 8 – 12]
97. The implementation of the submitted Residential Travel Plan is to ensure that opportunities for the take up of sustainable modes of transport are maximised. [Condition 6]

98. The addition of a condition requiring assessment of road traffic noise relative to those dwellings proposed alongside Abberd Lane and details of mitigation, as necessary, are to be secured to ensure acceptable living conditions for future residents. [Condition 18]
99. I have made some minor adjustments to both Schedules for consistency and clarity.

Conclusion

100. Having considered all other matters raised, for the above reasons both Appeal A and Appeal B are to be allowed.

David MH Rose

Inspector

ANNEX A: Schedule of Planning Conditions 1 – 30 (Appeal A)

1. **Time limit:** The development hereby permitted shall be begun before the expiration of five years from the date of this permission.

2. **Approved plans:** The development hereby permitted shall be carried out in accordance with the following approved plans:

Location Plan	9311-PL01 B
Block Plan	9311-PL02 C
Existing Site Plan	9311-PL03 C
Proposed Site Plan	9311-PL04 G
Proposed Ground Floor Plan	9311-PL10 B
Proposed Roof Plan	9311-PL11 B
Proposed Elevations	9311-PL15 A
Proposed Sections	9311-PL16 A
Proposed 3D Aerial Visualisations	9311-PL20 B
Proposed 3D Street View Visualisations	9311-PL21 B
Proposed 3D Visualisations	9311-PL22 B
Soft Landscape Proposals	21278.101 I
Levels Strategy	P20-109-SK010 P4
Drainage Strategy	P20-109-SK011 P5
External Lighting Plan	SPF-HYD-XX-XX-DR-E-9001 P05

3. **Construction Management Statement:** No development shall commence on site (including any works of demolition), until a Construction Management Statement, together with a site plan, has been submitted to and approved in writing by the Local Planning Authority. The Construction Management Statement shall include details of the measures that will be taken to reduce and manage the emission of noise, vibration and dust during the demolition and/or construction phase of the development. It shall include details of the following:

- a) the movement and routing of construction vehicles;
- b) parking of vehicles of site operatives and visitors;
- c) loading and unloading of plant, equipment and materials;
- d) the transportation and storage of waste and building materials;
- e) location and use of generators and temporary site accommodation;
- f) the location and form of work and storage areas and compounds;
- g) storage of plant and materials used in constructing the development;
- h) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- i) wheel washing and vehicle wash-down facilities;
- j) measures to control the emission of dust and dirt during construction;
- k) a scheme for recycling/disposing of waste resulting from demolition and construction works;
- l) measures for the protection of the natural environment; and
- m) hours of construction, including deliveries.

The development shall be implemented in accordance with the approved details.

4. **External storage and plant:** No development above ground floor slab level shall take place until details of the storage of refuse and recycling, any other outside storage and any plant store, including details of location, size, means of enclosure and materials, have been submitted to and approved in writing by the Local Planning Authority. There shall be no other outside storage whatsoever other than in accordance with the approved details. The development shall not be first brought into use until the approved refuse / recycling / plant storage has been completed and made available for use in accordance with the approved details and it shall be subsequently retained in accordance with the approved details thereafter.
5. **Boundary treatments:** No development above ground floor slab level shall take place until details of any boundary walls and / or fences and / or screens have been submitted to and approved in writing by the Local Planning Authority. Such walls / fences / screens shall be erected in accordance with the approved details prior to the occupation of the building hereby permitted and shall be retained and maintained as such at all times thereafter.
6. **Ventilation and extraction equipment:** The development hereby approved shall not be first occupied until details showing ventilation and extraction equipment within the site (including details of its position, appearance and details of measures to prevent noise emissions) have been submitted to and approved in writing by the Local Planning Authority. The ventilation/extraction equipment shall be installed prior to the building hereby approved being first occupied and shall thereafter be retained and maintained in accordance with the approved details.
7. **Hard and soft landscaping:** Notwithstanding the submitted details for the site, no development shall take place above ground floor slab level until a scheme of hard and soft landscaping, for the site and adjoining land, has been submitted to and approved in writing by the Local Planning Authority, the details of which shall include: -
 - a) location and current canopy spread of all existing trees and hedgerows on the land;
 - b) full details of any to be retained, together with measures for their protection in the course of development;
 - c) a detailed planting specification showing all plant species, supply and planting sizes and planting densities on the site and adjoining land;
 - d) finished levels and contours;
 - e) means of enclosure;
 - f) car park layouts;
 - g) other vehicle and pedestrian access and circulation areas; and
 - h) all hard and soft surfacing materials.

The development shall be carried out in accordance with the approved details.

8. **Implementation of hard and soft landscaping:** All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the building or the completion of the development whichever is the sooner. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are

removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the Local Planning Authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.

9. **Preparatory works:** No development shall take place until a scheme detailing the scope, extent, timing and phases of all preparatory works for the site, including their relationship and overlap with the necessary preparatory works for the commencement of the dwellings permitted on the land to the immediate east of the site pursuant to planning permission PL/2022/07893 (appeal ref. no. **APP/Y3940/W/24/3351528**) (or any subsequent permission for similar development), has been submitted to and approved in writing by the Local Planning Authority. All preparatory works shall be undertaken in accordance with the approved details and timings.
10. **Restriction on occupation:** No part of the development hereby approved shall be first occupied until at least 30 no. of the dwellings permitted on the land to the immediate east of the site pursuant to planning permission PL/2022/07893 (appeal ref. no. **APP/Y3940/W/24/3351528**) (or any subsequent permission for similar development) have been substantially completed.
11. **Access and highway works:** No part of the development hereby approved shall be first occupied until the access arrangements and off-site improvements detailed on drawing H690/1 Ref F (Transport Statement, P19-0931/TR01, Jan 2023) have been implemented in accordance with the approved details. The visibility splays shall be maintained free from obstruction thereafter.
12. **Framework Travel Plan:** Prior to first occupation, those parts of the Framework Travel Plan capable of being implemented prior to occupation shall be implemented in full. A Full Travel Plan shall be submitted to and approved in writing by the Local Planning Authority within 9 months of first occupation. Those parts identified for implementation after occupation shall be implemented in accordance with the timetable contained therein and shall continue to be implemented if any part of the development remains occupied. The Travel Plan Co-ordinator shall be appointed within one month of occupation and carry out the identified duties to implement the Full Travel Plan for a period from first occupation until at least five years following first occupation.
13. **Completion of access and parking areas:** No part of the development hereby approved shall be first brought into use until the access, circulation and parking area shown on the approved plans has been consolidated, surfaced and laid out in accordance with the approved details. This area shall be maintained and remain available for this use at all times thereafter.
14. **Completion of cycle and motorcycle parking:** No part of the development hereby approved shall be first brought into use until the cycle and motorcycle parking provision shown on the approved plans has been installed in accordance with the approved details. These shall be maintained and remain available for this use at all times thereafter.

15. **Surfacing of pedestrian tracks:** No part of the development hereby approved shall be first brought into use until details of the surfacing of the existing and proposed pedestrian tracks (as shown on drawing H690/1 Ref F, Transport Statement, P19-0931/TR01, Jan 2023) have been submitted to and approved in writing by the Local Planning Authority and implemented in accordance with the approved details. These shall be constructed, maintained and remain available for this use at all times thereafter.
16. **Tree Protection Plan:** No demolition, site clearance or development shall commence on site, and no equipment, machinery or materials shall be brought on to site for the purpose of development, until a Tree Protection Plan showing the exact position of hedgerows on the site and adjacent land and their protective fencing has been submitted to and approved in writing by the Local Planning Authority. The protective fencing shall be erected in accordance with the approved details. The protective fencing shall remain in place for the entire development phase and until all equipment, machinery and surplus materials have been removed from the site. Such fencing shall not be removed or breached during construction operations.

No retained hedgerow shall be cut down, uprooted or destroyed, other than in accordance with the approved plans. If any hedgerow is removed, uprooted, destroyed or dies, another shall be planted at the same place, at a size and species and planted at such time, that shall be agreed in writing with the Local Planning Authority.

17. **Construction Environmental Management Plan:** Prior to the commencement of works, including demolition, ground works/excavation, site clearance, vegetation clearance and boundary treatment works, a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The Plan shall provide details of the avoidance, mitigation and protective measures to be implemented before and during the construction phase, including but not necessarily limited to, the following:
- a) identification of ecological protection areas/buffer zones and tree root protection areas and details of physical means of protection (e.g. exclusion fencing);
 - b) working method statements for protected/priority species, such as nesting birds and reptiles;
 - c) mitigation strategies already agreed with the Local Planning Authority prior to determination, such as for reptiles, birds and bats; this should comprise the preconstruction/construction related elements of strategies only;
 - d) work schedules for activities with specific timing requirements in order to avoid/reduce potential harm to ecological receptors; including details of when a licensed ecologist and/or ecological clerk of works (ECoW) shall be present on site;
 - e) key personnel, responsibilities and contact details (including Site Manager and ecologist/ECoW); and
 - f) timeframe for provision of compliance report to the Local Planning Authority; to be completed by the ecologist/ECoW and to include photographic evidence.

Development shall be carried out in accordance with the approved CEMP.

18. **Lighting and landscape management:** The development shall be carried out in accordance with the following documents, and shall remain in accordance with these details unless otherwise agreed by the Local Planning Authority:
- a) External Lighting, Drawing No: SPF-HYD-XX-XX-DR-E-9001, Revision: P05, Date: 04/04/23 by Hydrock; and
 - b) 10 Year Landscape Management Plan, Commercial Centre at Spitfire Road, Calne, Issue No 7, Date: 05/05/2023 by MHP Design Ltd.
19. **Noise limitations:** The rating level (L_ATR) of the noise emitted from fixed plant at the proposed development shall not exceed the existing background noise level (L_A90T). The rating level shall be determined by measurement or calculation at the boundary of the nearest noise sensitive premises or at another location that is agreed with the Local Planning Authority. Measurements shall be made in accordance with BS4142:2014 +A1:2019. Where the background levels are to be taken as a L_A90 one hour during the daytime [07:00 - 23:00] and L_A90 15min during the night [23:00 – 07:00], and the specific sound levels expressed as an L_Aeq one hour during the daytime [07:00 - 23:00] and L_Aeq 15 minutes during the night [23:00 – 07:00] with all measurements taken at the boundary of the nearest residential noise-sensitive receptors.
20. **Post installation noise assessment:** A post installation noise assessment shall be submitted to the Local Planning Authority within 3 months of first occupation of the local centre confirming compliance with the noise criterion specified in condition 19 above. In the event that measurements show that the criterion is not met, a further mitigation report shall be submitted to the Local Planning Authority for approval within 6 months of first occupation of the local centre. The report shall provide details of an additional mitigation scheme to achieve compliance with condition 19, including a timetable for implementation. The additional mitigation scheme, as may be approved, shall be fully implemented and maintained for the lifetime of the residential development.
21. **Delivery hours:** No heavy goods vehicles for delivery or dispatch shall enter or leave the site (whether laden or unladen) before 07:00 hours and after 23:00 hours Monday to Saturday; and before 08:00 hours and after 20:00 hours on Sundays and Bank Holidays.
22. **Delivery Plan:** Prior to occupation of the development hereby permitted, a delivery plan, setting out how deliveries to and from the premises outside of the hours specified in Condition 21 above are managed to prevent noise and nuisance, shall be submitted to the Local Planning Authority and approved in writing. The scheme shall be based on the principles contained within Appendix A of the Department for Transport's Quiet Deliveries Good Practice Guidance – Key Principles and Processes for Retailers dated April 2014. Any deliveries and dispatches occurring outside of those hours shall be made in accordance with the approved delivery plan scheme details.
23. **Opening hours:** The opening hours of the retail store hereby permitted shall be restricted to 07:00 until 23:00 on any day and the opening hours for the creche shall be restricted to 06:00 until 20:00 on any day.

24. Acoustic fencing: Acoustic fencing shall be installed along the rear and side boundaries of the application site, as follows:

- a) on top of the retaining wall along the rear boundary of the food store and along the side of the loading area, extending to the front of the vehicle parking area; and
- b) on top of the retaining wall to the sides and rear of all local centre buildings, extending along the delivery bay and food store public parking.

Details of the proposed mitigation shall be submitted to and approved in writing by the Local Planning Authority prior to construction. The details shall include an assessment of the noise levels attributable to all deliveries to the site and operation of the nursery, in accordance with the requirements of BS 4142:2014+A1:2019, which demonstrates that the uses would not result in a potential for adverse impacts at neighbouring residential properties.

The acoustic fencing mitigation shall be fully implemented prior to the first occupation of the development hereby approved and shall be retained for the lifetime of the neighbouring residential development.

25. Surface water: Prior to commencement of development, updated calculations and plans shall be submitted to and approved in writing by the Local Planning Authority to demonstrate that the required 20% betterment against greenfield rates has been achieved for all storm events between the 1 in 1-year and the 1 in 100-year return period storm events. The development shall be implemented in accordance with the approved calculations and plans.

26. Surface water: Prior to commencement of development, a plan shall be submitted to and approved in writing by the Local Planning Authority showing overland exceedance routes for flows in excess of the 1 in 100-year plus climate change (40%) rainfall event, demonstrating that exceedance flows will be wholly and safely managed on site and will not flood people and/or property. The development shall be implemented in accordance with the approved plan.

27. Construction Management Plan: Prior to commencement of development, a Construction Management Plan that details how surface water will be managed on site during construction shall be submitted to the Local Planning Authority for approval in writing. The development shall be implemented in accordance with the approved details.

28. Energy Statement: The development shall be undertaken in accordance with the energy and sustainable measures detailed in the Hydrock Energy Statement (dated 31 January 2023). Those measures shall remain in place for the lifetime of the development.

29. Approved uses: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order) 2015 (or any Order revoking or re-enacting or amending this Orders with or without modification), the part of the development hereby approved for Use Class E(a) shall be used solely for purposes within that Use Class, and the part of the development hereby approved for Use Class E(f) shall be used solely for purposes within that Use Class, of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended by the

Town and Country Planning (Use Classes) (Amendment)(England) Order 2005 (or in any provisions equivalent to that class in any statutory instrument revoking or re-enacting that Order with or without modification).

30. **Withdrawal of permitted development rights:** Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (Part 7, Class A) (or any Order revoking or re-enacting or amending this Order with or without modification) there shall be no additions / extensions / external alterations to any building forming part of the development hereby permitted.

END OF SCHEDULE (APPEAL A)

ANNEX B: Schedule of Planning Conditions 1 – 18 (Appeal B)

1. **Time limits:** The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
2. **Reserved matters:** Application(s) for approval of the reserved matters specified in Condition 3 below, shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.
3. **Reserved matters:** No development hereby permitted shall commence until details of the following matters (in respect of which approval is expressly reserved) have been submitted to, and approved in writing by, the Local Planning Authority:
 - a) the access to and within the site;
 - b) the scale of the development;
 - c) the layout of the development;
 - d) the external appearance of the development; and
 - e) the landscaping of the site.

The development shall be carried out in accordance with the approved details. The reserved matters shall be submitted as a single phase unless otherwise agreed by the Local Planning Authority through the submission of a phasing plan and the development shall be implemented in accordance with that approved plan.

4. **Approved plans:** The development hereby permitted shall be carried out in accordance with drawing numbers:

- | | | | |
|----|----------------------------|-----------|---|
| a) | Location Plan | 343.P.1.2 | K |
| b) | Ecological Parameters Plan | 10185 | C |

5. **Construction Management Statement:** No development shall commence on site (including any works of demolition), until a Construction Management Statement, together with a site plan, has been submitted to and approved in writing by the Local Planning Authority. The Construction Management Statement shall include details of the measures that will be taken to reduce and manage the emission of noise, vibration and dust during the demolition and/or construction phase of the development. It shall include details of the following:
 - a) the movement and routing of construction vehicles;
 - b) parking of vehicles of site operatives and visitors;
 - c) loading and unloading of plant, equipment and materials;
 - d) the transportation and storage of waste and building materials;
 - e) location and use of generators and temporary site accommodation;
 - f) the location and form of work and storage areas and compounds;
 - g) storage of plant and materials used in constructing the development;
 - h) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - i) wheel washing and vehicle wash-down facilities;
 - j) measures to control the emission of dust and dirt during construction;

- k) a scheme for recycling/disposing of waste resulting from demolition and construction works;
- l) measures for the protection of the natural environment; and
- m) hours of construction, including deliveries.

The development shall be implemented in accordance with the approved details.

6. **Residential Travel Plan:** The development shall be carried out in accordance with the approved Residential Travel Plan (PFA Consulting, dated September 2022). The provisions and measures contained therein shall be implemented in full and those parts identified for implementation after occupation shall be implemented in accordance with the timetable contained therein and shall continue to be implemented if any part of the development remains occupied.
7. **Boundary with Abberd Fields Farm:** Prior to the occupation of any dwelling adjacent to Abberd Fields Farm, a scheme for the erection of a 2-metre high close boarded fence, including its location and specification, shall have been submitted to and approved in writing by the Local Planning Authority, and implemented in accordance with the approved details. It shall thereafter be retained for the lifetime of the residential development.
8. **Surface water:** Prior to commencement of development, calculations and associated plans which demonstrate that the required 20% betterment against greenfield rates has been achieved for all storm events between the 1 in 1-year and the 1 in 100-year return period storm events shall be submitted to the Local Planning Authority for approval in writing. The development shall be implemented in accordance with the approved calculations and associated plans.
9. **Surface water:** Prior to commencement of development, a plan shall be submitted to and approved in writing by the Local Planning Authority showing overland exceedance routes for flows in excess of the 1 in 100-year plus climate change (40%) rainfall event, demonstrating that exceedance flows will be wholly and safely managed on site and will not flood people and/or property. The development shall be implemented in accordance with the approved plan.
10. **Drainage layout:** Prior to commencement of development, a drainage layout drawing, which shows all inspection chamber references, and pipe numbers that correspond to the MicroDrainage outputs shall be submitted to the Local Planning Authority for approval in writing. The development shall be implemented in accordance with the approved layout drawing.
11. **Surface water drainage management:** Prior to the occupation of the first dwelling, an operation and maintenance plan that details the responsibilities of the management company and frequency of maintenance activities with regards to the constructed surface water drainage system shall be submitted to the Local Planning Authority for approval in writing. The plan shall be implemented in accordance with the approved details.
12. **Construction Management Plan:** Prior to commencement of development, a Construction Management Plan that details how surface water will be managed on site during construction shall be submitted to the Local Planning Authority for

approval in writing. The development shall be implemented in accordance with the approved details.

13. **Ecology:** The development shall be carried out in accordance with the following documents:

- a) Ecological Assessment. Ref: 10185.EcoAss.vf2. Ecology Solutions; and
- b) Ecological Parameters Plan. Rev C. December 2023.

14. **Construction Environmental Management Plan:** Prior to the commencement of works, including demolition, ground works/excavation, site clearance, vegetation clearance and boundary treatment works, a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The Plan shall provide details of the avoidance, mitigation and protective measures to be implemented before and during the construction phase, including but not necessarily limited to, the following:

- a) identification of ecological protection areas/buffer zones and tree root protection areas and details of physical means of protection (e.g. exclusion fencing);
- b) working method statements for protected/priority species, such as nesting birds and reptiles;
- c) mitigation strategies already agreed with the Local Planning Authority prior to determination, such as for reptiles, birds and bats; this should comprise the preconstruction/construction related elements of strategies only;
- d) sensitive lighting strategy to ensure dark corridors identified on the Ecological Parameters Plan (Rev C, December 2023) are maintained throughout construction;
- e) work schedules for activities with specific timing requirements in order to avoid/reduce potential harm to ecological receptors; including details of when a licensed ecologist and/or ecological clerk of works (ECoW) shall be present on site;
- f) key personnel, responsibilities and contact details (including Site Manager and ecologist/ECoW); and
- g) timeframe for provision of compliance report to the Local Planning Authority; to be completed by the ecologist/ECoW and to include photographic evidence.

Development shall be carried out in accordance with the approved CEMP.

15. **Landscape and Ecology Management Plan:** Prior to the commencement of works, a Landscape and Ecology Management Plan (LEMP) shall be submitted to and approved in writing by the Local Planning Authority. The LEMP will include:

- a) long term objectives and targets for retained, created and enhanced habitats;
- b) management responsibilities and maintenance schedules for each ecological feature within the development;
- c) the mechanism for monitoring success of the management prescriptions; and
- d) a procedure for review and necessary adaptive management in order to attain targets.

The LEMP shall be implemented in full and for the lifetime of the development in accordance with the approved details.

16. **Lighting scheme:** Prior to the installation of any external light fixture or fitting, a scheme showing the details of any such features shall be submitted to and approved in writing by the Local Planning Authority. The submitted details will demonstrate that dark corridors identified on the Ecological Parameters Plan (Rev C, December 2023) will be maintained as specified on the plan for the lifetime of the development. Any light fixtures or fittings installed within the application site shall be implemented in accordance with the approved details.

The details shall be in accordance with the appropriate Environmental Zone standards set out by the Institution of Lighting Professionals (ILP) Guidance Notes on the Avoidance of Obtrusive Light (GN 01/2021) and Guidance note GN08/23 “Bats and artificial lighting at night”, issued by the Bat Conservation Trust and Institution of Lighting Professionals.

17. **Wildlife features:** Prior to the commencement of any works, including vegetation removal and demolition, a scheme (based on a site plan/technical elevations drawing) showing details of the number, design and locations of features for bats, birds, reptiles and invertebrates, as well as a timetable for implementation, shall be submitted to and approved in writing by the Local Planning Authority.

The approved details shall be implemented before occupation of the final works. These features shall continue to be available for the target species for the lifetime of the development.

18. **Noise assessment:** Prior to works commencing for the construction of any dwelling alongside Abberd Lane and concurrent with Reserved Matters submissions relating to appearance, scale and layout for the residential development, a further assessment of the noise levels and a scheme for protecting the development from road traffic noise, which demonstrates good acoustic design and complies with the requirements of BS 8233:2014, shall be submitted to and approved in writing by the Local Planning Authority. All works, which form part of the scheme, shall be implemented before any development within that phase so affected is occupied and thereafter retained.

END OF SCHEDULE (APPEAL B)

ANNEX C: CORE DOCUMENTS

A – Planning Application Documents and Plans	
Original Application Documents Submitted 5th October 2022 (LPA Ref: PL/2022/07893)	
Residential Development – Appeal Reference: APP/Y3940/W/24/3351528	
A1	Cover Letter, submitting Planning application, dated 5 th October 2022
A2	Application Form, dated 05.10.22
A3	Planning Statement (including Draft Heads of Terms and Affordable Housing Statement, Pegasus Group, reference P21-207, 21 st July 2022)
A4	Design and Access Statement (Robert Hitchins Limited, 343.UD.03B, Revision B, September 2022)
A5	Site Location Plan (Drawing Reference: 343.P.1.2, Revision K)
A6	Illustrative Masterplan (prepared by Robert Hitchins Limited, Drawing Reference: 343.P.3.3, Revision E)
A7	Topographical Survey (prepared by Nigel Ruxton Land Surveys, Reference 21099/01, dated May 2021)
A8	Statement of Community Engagement (Pegasus Group, P21-2702, 20 th May 2022)
A9	Landscape and Visual Impact Assessment (MHP, Issue 3, July 2022)
A10	Arboricultural Survey, Impact Assessment and Protection Plan (MHP, reference V3, dated 9 th March 2022)
A11	Transport Assessment (PFA Consulting, Issue 2, dated September 2022)
A12	Residential Travel Plan (PFA Consulting, Issue 2, dated September 2022)
A13	Flood Risk Assessment and Drainage Strategy (Phoenix Design Partnership Limited, Revision A, August 2022)
A14	Ecological Assessment (Ecology Solutions, Reference 10185.EcoAss.vf2, September 2022)
A15	Archaeological Desk Based Assessment (RPS, reference JAC27581 V.3.O, dated 23 rd September 2021)
A16	Geophysical Survey Report (SUMO, dated 18 th July 2022)
A17	Air Quality Assessment (Air Quality Consultants, dated June 2022)
A18	Utilities Statement (Robert Hitchins Limited, reference 343.US.01, July 2022)
A19	Waste Minimisation and Management Plan (Robert Hitchins Limited, reference 342.WMP.01, dated July 2022)
A20	Dust and Odour Assessment (Air Quality Consultants, dated June 2022)
A21	Noise Assessment (LF Acoustics, revision 1.1, dated August 2022)
Additional Documents Submitted	
A22	Archaeological Evaluation (prepared by Wessex Archaeology, Ref: 268670.03, dated October 2022)
A23	Illustrative Masterplan (prepared by Robert Hitchins Limited, Ref: 343.UD.03 Revision F)
A24	Design and Access Statement Addendum (Revision A, dated January 2023)
A25	Proposed Site Access Arrangements (prepared by PFA, Ref: H690/1, Revision F)
A26	Landscape and Visual Impact Assessment (prepared by MHP, Issue 4, January 2023)
A27	Email on Noise/Air Quality from Applicant (email dated 07.03.23)
A28	Biodiversity Net Gain Note (prepared by Ecology Solutions, vf3, dated May 2023)
A29	Ecological Parameters Plan (prepared by Ecology Solutions, Revision B, dated July 2023)

A30	Habitat Condition Assessment Sheets
A31	Biodiversity Metric Calculation Tool
A32	Section – Eastern Boundary (prepared by Robert Hitchins, Ref: 342.UD.10)
A33	Sustainable Energy Statement (prepared by Robert Hitchins, dated October 2023)
A34	Illustrative Masterplan (prepared by Robert Hitchins, Ref: 343.UD.03, Revision L)
A35	Design and Access Statement Addendum (Prepared by Robert Hitchins, Revision D, dated November 2023)
A36	Briefing Note: Ecology response (prepared by Ecology Solutions, dated December 2023)
A37	Ecological Parameters Plan (prepared by Ecology Solutions, Revision C, dated December 2023)
A38	Briefing Note: Updated Biodiversity Net Gain Assessment (prepared by Ecology Solutions, 10185.BiodiversityNetGain.dv2, dated December 2023)
A39	Updated Habitat Condition Assessment Sheets
A40	Biodiversity Metric Calculation Tool
A41	Illustrative Masterplan – Dwelling Numbers (prepared by Robert Hitchins, Drawing Number: 343.UD.05, dated December 2023)
Committee Report and Decision Notice – Residential Development	
A42	Officer Report (LPA Ref: PL/2022/07893)
A43	Decision Notice (LPA Ref: PL/2022/07893)
Original Application Documents Submitted 30th November 2023 (LPA Ref: PL/2023/10421) Local Centre Development – Appeal Reference: APP/Y3940/W/24/3351527	
A44	Covering Letter, dated 30 th November 2023
A45	Application Form, dated 30 th November 2023
A46	Delivery and Service Management Plan, dated January 2023
A47	10 Year Landscape Management Plan, prepared by mhp, dated 5 th May 2023
A48	Extract and Ventilation Statement, prepared by Hydrock, dated 16 th November 2023
A49	Transport Statement, prepared by Pegasus Group, dated January 2023
A50	Planning & Retail Statement, prepared by RPS
A51	Energy Statement, prepared by Hydrock
A52	Design and Access Statement, dated November 2023
A53	Drainage Statement, dated 30 th January 2023
A54	Carney Sweeney Retail Rebuttal, dated 3 rd August 2023
A55	Ecological Assessment, prepared by Ecology Solutions, dated January 2023
A56	Archaeological Evaluation, prepared by Wessex Archaeology, dated October 2022
A57	Ecology Response Briefing Note, prepared by Ecology Solutions
A58	Noise Assessment, prepared by LFAcoustics, dated January 2023
A59	Framework Travel Plan, prepared by Pegasus Group, dated January 2023
A60	Written Scheme of Investigation for Archaeological Evaluation, prepared by Wessex Archaeology, dated August 2022
A61	Biodiversity Net Gain Assessment, prepared by Ecology Solutions
A62	Proposed Roof Plan, Drawing Number: PL11 Revision B, dated 24.10.22
A63	Location Plan, Drawing Number: PL01 Revision B, dated 24.10.22
A64	External Lighting Plan, Hydrock, Drawing Number, SPF-HYD-XX-XX-DR-E-9001 Revision PO5

A65		Proposed Site Plan, Drawing Number: PLO4 Revision F, dated 24.10.22
A66		Proposed 3D Street View Visualisations, Drawing Number PL21 Revision B
A67		Proposed GF Plan, Drawing Number: PL10 Revision B
A68		Proposed Elevations, Drawing Number: PL15 Revision A
A69		Proposed Sections, Drawing Number: PL16 Revision A
A70		Proposed 3D Visualisations, Drawing Number: PL22 Revision B
A71		Proposed 3D Aerial Visualisations, Drawing Number: PL20 Revision B
A72		Block Plan, Drawing Number: PLO2 Revision C
A73		Landscape Proposals, Drawing Number 21278.101 Revision F
A74		Levels Strategy, Drawing Number: SK010, Revision P4
A75		Drainage Strategy, Drawing Number: SK011, Revision P5
A76		Existing Site Plan, Drawing Number: PLO3, Revision C
A77		Landscape and Visual Assessment, prepared by MHP, dated January 2023
Additional Documents Submitted		
A78		Proposed Site Plan, Drawing Number: PLO4 Revision G
A79		Landscape Proposals, Drawing Number 21278.101, Revision I
Committee Report and Decision Notice – Local Centre		
A80		Officer Report (LPA Ref: PL/2023/10421)
A81		Decision Notice (LPA Ref: PL/2023/10421)
B – Application Consultation Responses (Consultee)		
Application Consultation Responses (LPA Ref: PL/2022/07893) Residential Development –Appeal Reference: APP/Y3940/W/24/3351528		
B1		Affordable Housing response, dated 31.10.22
B2		Arboricultural Officer, dated 06.03.23
B3	A	Archaeology response 1, dated 02.11.22
	B	Archaeology response 2, dated 15.12.23
B4	A	Calne Town Council response 1, dated 30.11.22
	B	Calne Town Council response 2, dated 21.01.24
B5	A	Calne Without Parish Council response 1, dated 21.11.22
	B	Calne Without Parish Council response 1, dated 09.01.24
B6	A	Climate Team response 1, dated 03.11.22
	B	Climate Team response 2, dated 08.12.23
B7	A	Conservation response 1, dated 17.05.23
	B	Conservation response 2, dated 14.12.23
B8	A	CPRE response 1, dated 10.11.22
	B	CPRE response 2, dated 22.12.23
B9	A	Drainage response 1, dated 03.01.24
	B	Drainage response 2, dated 23.11.22
B10	A	Ecology response 1, dated 15.12.22
	B	Ecology response 2, dated 13.06.23
	C	Ecology response 3, dated 24.10.23
	D	Ecology response 4, dated 28.02.24
B11		Environmental Control and Protection, dated 05.12.22
B12	A	Highways response 1, dated 29.11.22
	B	Highways response 2, dated 02.02.23
	C	Highways response 3, dated 31.03.23
	D	Highways response 4, dated 21.12.23

B13	A	Housing Enabling Team response 1, dated 27.12.23
	B	Housing Enabling Team response 2, dated 18.01.24
B14		Landscape response, dated 22.05.23
B15	A	Natural England response 1, dated 13.03.23
	B	Natural England response 2, dated 05.01.24
B16	A	North Wiltshire Swifts response 1, dated 27.10.22
	B	North Wiltshire Swifts response 2, dated 13.12.23
B17		Public Open Space response, dated 31.01.23
B18		Public Protection response, dated 25.01.24
B19		Rights of Way response, dated 08.03.23
B20		Spatial Planning response, dated 11.11.22
B21	A	Urban Design response 1, dated 14.11.22
	B	Urban Design response 2, dated 12.04.23
	C	Urban Design response 3, dated 10.01.24
B22	A	Waste (Refuse & Management), dated 22.11.22
	B	Waste (Refuse & Management), dated 04.03.24
B23		Wessex Water response, dated 02.02.23
Application Consultation Responses (LPA Ref: PL/2023/10421) Local Centre Development - Appeal Reference: APP/Y3940/W/24/3351527		
B24		Archaeology comment, dated 22.12.23
B25		CPRE Comment, dated 05.01.24
B26		Economic development comment dated 12.01.24
B27		Busy Bees Day Nurseries comment, dated 12.01.24
B28		Education comment, dated 17.01.24
B29		Highways Department's Comment, dated 19.01.24
B30		Calne Town Council's comment, dated 21.01.24
B31		Urban Design's Comment, dated 22.01.24
B32		Drainage's comment, dated 25.01.24
B33		Tesco's Comments, dated 01.02.24
B34		Environmental Health Officer - Public Protection's comment, dated 13.02.24
B35		Calne Without Parish Council's comment 1, dated 16.02.24
B36		Calne Without Parish Council's comment 2, dated 16.02.24
B37		Cllr Ashley O'Neill's Comments, dated 21.03.24 (call in form)
C – Appeal		
Appeal Administration		
C1		Notification of Intention to Submit an Appeal – Residential Scheme
C2		Notification of Intention to Submit an Appeal – Local Centre
C3		List of Plans and Docs Submitted as Part of the Original Submission – Residential Scheme
C4		List of Plans and Docs Submitted as Part of the Original Submission – Local Centre
C5		List of Plans and Docs Submitted During the Application – Residential Scheme
C6		List of Plans and Docs Submitted During the Application – Local Centre
C7		Appeal Form – Residential Scheme
C8		Appeal Form – Local Centre
C9		Start Letter
C10		LPA Appeal Questionnaire – Residential Scheme
C11		LPA Appeal Questionnaire – Local Centre

C12		Post CMC Note
Statements of Case and 3rd Party Comments		
C13	A	Appellant Statement of Case – Residential Scheme
	B	Appellant Statement of Case – Local Centre
C14	A	LPA Statement of Case
	B	Appendix 1
	C	Appendix 2
	D	Appendix 3
	E	Appendix 4
	F	Appendix 5
	G	Appendix 6
	H	Appendix 7
	I	Appendix 8
	J	Appendix 9
C15		Third Party Representations (Compiled) – Residential Scheme
C16		Third Party Representations (Compiled) – Local Centre
Statements of Common Ground		
C17		SoCG between the Appellant and Wiltshire Council – Residential Scheme
C18		SoCG between the Appellant and Wiltshire Council SoCG – Local Centre
C19		SoCG between the Appellant and Wiltshire Council – Noise
C20		Appendix to SoCG between the Appellant and Wiltshire Council – Noise
Appellant and LPA Proofs of Evidence		
C21		Appellant Proof of Evidence – Planning – David Hutchison
C22		Appellant Summary Proof of Evidence – Planning – David Hutchison
C23		Appendix A to Appellant Proof of Evidence – Planning
C24		Appendix B to Appellant Proof of Evidence – Planning
Section 106 Agreement		
C25	A	Final Draft S106 Agreement
	B	Annex A – S106 Plan
	C	Annex B – Standard Specification for Adoption of Public Open Space (1)
	D	Annex B – Standard Specification for Adoption of Public Open Space (2)
	E	Changes Since the Previous Draft S106 was Submitted to PINS in November 2024
CIL Compliance Statement		
C26	A	CIL Compliance Statement
	B	Appendix 1 to CIL Compliance Statement – Revised Planning Obligations SPD Oct 2016
	C	Appendix 2 to CIL Compliance Statement – Wilts CIL Charging Schedule May 2015
	D	Appendix 3 to CIL Compliance Statement – Regulation 123 List Sept 2016
	E	Appendix 4 to CIL Compliance Statement – Infrastructure Delivery Plan 3 Dec 2016
	F	Appendix 5 to CIL Compliance Statement – 2022–2023 Infrastructure Funding Statement
	G	Appendix 6 to CIL Compliance Statement – Education Developer Contributions S106 Standard Methodology 2017

H	Appendix 7 to CIL Compliance Statement – PPS Strategy and Action Plan Nov 2024
I	Appendix 8 to CIL Compliance Statement – Fixed Play Area Spec Jan 2021
J	Appendix 9 to CIL Compliance Statement – North Wiltshire Open Space Study 2024
K	Appendix 10 to CIL Compliance Statement – Standard Specification for Adoption of Public Open Spaces
L	Appendix 11 to CIL Compliance Statement – Waste Collection Guidance for New Developments Jan 2017
M	Appendix 12 to CIL Compliance Statement – Art and Design in the Public Realm
Conditions	
C27	Draft Conditions – Residential Scheme (14.01.25)
C28	Draft Conditions – Local Centre (14.01.25)
C29	Draft Conditions – Residential Scheme (with the Inspector's comments 16.01.25)
C30	Draft Conditions – Local Centre (with the Inspector's comments 16.01.25)
C31	Draft Conditions – Residential Scheme (with the Inspector's comments 17.01.25)
C32	Draft Conditions – Local Centre (with the Inspector's comments 17.01.25)
C33	Draft Conditions – Residential Scheme (with the Inspector's comments 20.01.25)
C34	Draft Conditions – Local Centre (with the Inspector's comments 20.01.25)
D – National Planning Policy, Guidance and Legislation	
D1	National Planning Policy Framework (December 2024)
D2	National Planning Practice Guide (<i>Electronic Version only</i>)
D3	Labour Manifesto 2024
D4	The draft NPPF
D5	The Written Ministerial Statement accompanying the draft NPPF
D6	Proposed Reforms to the National Planning Policy Framework and Other Changes to the Planning System
D7	GOV UK Climate Change Guidance (Published 12.07.14, Last updated 15.03.19)
D8	Written Ministerial Statement – Local Energy Efficiency Standards Update, 13.12.23
G – Local Planning Policy, Guidance and Documents	
G1	Wiltshire Core Strategy 2006 – 2026, adopted January 2015
G2	Saved Policies of the North Wiltshire Local Plan 2011 (Housing)
G3	Calne Neighbourhood Plan
G4	Wiltshire Local plan Pre Submission Draft September 2023
G5	Wiltshire Local Plan Planning for Calne September 2023
G6	Report on the Examination of the Wiltshire Core Strategy, by Inspector Andrew J Seaman, dated 1 st December 2014
G7	Briefing Note on Housing Land Supply of June 2020
G8	Briefing Note on 5 Yr Housing Land Supply and Housing Delivery Test April 2022
G9	Representations of Pegasus Group to the emerging Local Plan
G10	Report to Cabinet of 11th July 2023
H – Housing Need and Supply	
H1	Wiltshire Housing Land Supply Statement 2023
H2	Statement of Common Ground to the appeal at Westbury Road, Warminster
H3	Statement of Common Ground to the appeal at Purton Road, Swindon
H4	Local Housing Needs Assessment, February 2023

J – Appeal Decisions and Case Law	
J1	Land south of Westwells Road, Neston Appeal Decision, ref APP/Y3940/W/19/3243873, dated 15th March 2021.
J2	Land at Filands/Jenner Lane, Malmesbury Appeal Decision Refs: APP/Y3940/W/21/3278256 & APP/Y3940/W/21/3282365.
J3	Land to the South of Chilvester Hill, Calne Appeal Decision ref: APP/Y3940/W/21/3275477, dated 22nd November 2021.
J4	Land at Sandleaze Farm, Worton Appeal Decision ref APP/Y3940/W/21/3276094, dated 10th December 2021
J5	Land north of St George's Road, Semington Appeal Decision, ref APP/Y3940/W/19/3236860, dated 10th September 2021.
J6	Langley Burrell, Chippenham
J7	Coate Road, Devizes
J8	Widham Farm, Purton
J9	Land off Park Road, Malmesbury
J10	Land south of Broad Town Primary School, Wiltshire
J11	Land at Green Farm, Lyneham, Wiltshire
J12	Land south of Sandhole Lane, Westbury, Wiltshire
J13	Land west of Wilcot Road, Pewsey, Wiltshire
J14	Land west of Semington Road, Melksham, Wiltshire
J15	Land to the east of Church View, Sutton Benger, Wiltshire
J16	Land to the north of Bath Road, Corsham, Wiltshire
J17	Land to the North of Whychurch Farm and to the South of Filands, Malmesbury, Wiltshire
J18	Land North of Webbs Court, Lyneham, Wiltshire
J19	Land at Pavenhill, Purton, Wiltshire
J20	Land at Broadfield Farm, Great Somerford, Wiltshire
J21	Land at Brynards Hill, Royal Wootton Bassett, Wiltshire
J22	Land off Melksham Road, Holt, Wiltshire
J23	Land to the south of Western Way, Melksham, Wiltshire
J24	Land at Saltersford Lane, Chippenham, Wiltshire
J25	Land at Purton Road, Wiltshire
J26	Land south of Trowbridge, Wiltshire
J27	Land south of Pound Lane, Semington
J28	Land off Storridge Road, Westbury, Wiltshire
J29	Land at Kington Lane, Stanton St Quintin, Wiltshire
J30	Land to the west of Semington Road, Melksham, Wiltshire
J31	Land to the south of Alderholt, Dorset
J32	Land east of Rayleigh Road, Castle Point
J33	Land at Watermill Bridge, Wash Water, Basingstoke and Deane
J34	Land west of Langford Road, Langford, Central Bedfordshire
J35	Land at North Lodge, Hallow, Malvern Hills
J36	Land At (OS 8579 4905), South of Post Office Lane, Kempsey, Malvern Hills

ANNEX D: ADDITIONAL INQUIRY DOCUMENTS

ID1	Appellant's Opening Submissions
ID2	Council's Opening Statement
ID3	Councillor Doug Price Statement to the Inquiry – Calne Without Parish Council
ID4	Councillor Glenis Ansell Statement to the Inquiry – Calne Town Council
ID5	Councillor Celia Stevens Statement to the Inquiry – Calne Town Council
ID6	Mrs Anne Henshaw Statement to the Inquiry - CPRE
ID7	The Calne Community Neighbourhood Plan 2: 2023 – 2038 and related documents (electronic copies)
ID8	Extract from The Calne Community Neighbourhood Plan 2: 2023 – 2038 (page 115)
ID9	Written Representations from Leigh Randell
ID10	Written Representations from Councillor Ashley O'Neil – Wiltshire Councillor for the Calne Rural division
ID11	Additional Conditions submitted at the Inquiry by the Local Planning Authority
ID12	Final Schedules of Conditions (following discussion at the Inquiry)
ID13	Appellant's Closing Submissions
ID14	Completed Agreement under s106 of the Town and Country Planning Act 1990 dated 28 January 2025
ID15	Email correspondence relating to two additional conditions (residential scheme)

ANNEX E: APPEARANCES

For Robert Hitchins Limited

Killian Garvey, Barrister
Kings Chambers

Instructed by
David Hutchinson

He called

David Hutchinson
BSc (Hons) DipTP MRTPI

Executive Director and Planning Consultant
Pegasus Group

L Jephson¹⁵
BEng(Hons) MIOA

LF Acoustics Consulting Engineers

For Wiltshire Council

Freddie Humphreys, Barrister
Kings Chambers

Instructed by
Solicitor, Wiltshire Council

He called¹⁶

Peter Crozier
BA(Hons) DipUP MRTPI

Senior Planning Officer Wiltshire Council

Brett Warren

Environmental Health Officer Wiltshire Council

Interested Persons

Councillor Doug Price

Vice Chairman Calne Without Parish Council

Councillor Glenis Ansell

Chairman
Calne Planning Licencing & Highways Committee

Councillor Celia Stevens

Calne Town Council

Mrs Anne Henshaw

Chairman Wiltshire Branch
CPRE The Countryside Charity

¹⁵ Not formally called – contributor to Conditions Round Table

¹⁶ Not formally called – contributors to Conditions Round Table

**O. Schedule of Older Persons Housing Approvals in Wiltshire
(IPS)**

Report on the Delivery of Housing for Older Persons in Wiltshire

Research conducted on week beginning 3rd

December 2024

21st February 2025

Impact Planning Services Ltd:
Unit 1, The Courtyard
Cope Farm,
Lancaster Place
South Marston Park,
Swindon,
Wiltshire,
SN3 4UQ
Tel: 01793 820158

Report on Wiltshire's Delivery of Accommodation for Older Persons

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3.0 Conclusions	9
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1.0 Introduction

- 1.1 The following report completed by Impact Planning Services (IPS) sets out the interpretation and analysis of the data that was collected from the Wiltshire Council Planning Portal on week beginning 3rd December 2024 to demonstrate the undersupply of housing and accommodation for the older population.
- 1.2 The data was collected through the publicly accessible information within the Wiltshire planning portal. **Appendix A** shows the raw data of applications that were approved between 2015 and 2024.
- 1.3 The Wiltshire Core Strategy supports the delivery of housing for the older population through **Core Policy 46: Meeting the Needs of Wiltshire's Vulnerable and Older People**. Core Policy 46 states that provision of new housing should be delivered in suitable locations to meet the specific needs of vulnerable and older people and wherever practicable, accommodation should seek to deliver and promote independent living within existing communities.
- 1.4 This report reveals that Wiltshire Council has approved few applications for accommodation that supports independent living or forms of accommodation identified as being undersupplied in the Housing our Ageing Population Panel: Preserving Independence (HAPPI 4) by *All Party Parliamentary Group: Housing Case for Older People* (April 2018), as well as subsequent reports by other organisations. Such forms of properties undersupplied include independent living for older people and adaptable accommodation that is capable of adaptation to suit the changing needs of occupants over the lifetime of occupancy.
- 1.5 To adequately assess the delivery of this specific type of accommodation in line with Policy CP46, the data which has been collected and analysed is between the current Plan period of 2015 – 2024.
- 1.6 Older People in the context of this report are defined as those over the age of 55 years. The National Planning Policy Framework Annex 2: Glossary sets out the following definition:

"Older people: People over or approaching retirement age, including the active, newly-retired through to the very frail elderly; and whose housing needs can encompass accessible, adaptable general needs housing through to the full range of retirement and specialised housing for those with support or care needs."

Report on Wiltshire's Delivery of Accommodation for Older Persons

- 1.7 Whilst interpreting the following data, it is essential to also consider this in the context of the Wiltshire Local Housing Needs Assessment Update (Volume 2) 2023 (LHNA), which was submitted alongside Wiltshire's Local Plan Review in November 2024. The LHNA states at paragraph 6.9 that population projections underlying the local housing need figure for Wiltshire demonstrate a substantial increase in the older population during the period 2021 - 2038 by some 32,920 in the over 75 category alone. This however does not include those approaching retirement from say the age of 55 years which is conventionally the qualifying age used in the imposition of occupancy restrictions on older person's accommodation – typically retirement flats.
- 1.8 Paragraph 6.11 continues to state that the current 51,991 over 75 population within Wiltshire results in a requirement for 13,049 specialist homes. LHNA data found that there is an existing unmet need of over 7,300 homes (thus just 5,741 currently exist in the County). Over the period 2020 – 2038 calculations using the Housing LIN toolkit identified a need for some 15,572 homes for older people is identified (paragraph 6.13), not including the existing undersupply of homes.
- 1.9 The following data breaks down applications which include:
- Age Restricted Housing (Use Class C3)
 - Retirement Housing and Flats (With Onsite Support) (Use Class C3)
 - Retirement Housing / Sheltered Accommodation (Use Class C2)
 - Care Home Units (Use Class C2)
 - Mixed Proposals (Use Class C2 and C3)

2.0 Findings

- 2.1 To assist with the analysis of the data, approved applications over the period of 2015 - 2024 are set out in table format (**Appendix A**) and categorised by planning description and relevant conditional restrictions – summarised into Use Classes C2 and C3. This has facilitated further analysis of the site locations and break down of units per use class C2 and C3 and the types of retirement (Use Class C3) such as flats or dwellings. For clarity, 'units' is defined as a Use Class C2 bedroom and a Use Class C3 dwelling/flat.
- 2.2 For the purposes of this report, there will be greater analysis of the under delivery of Use Class C3, which includes homes suitable for downsizing and typically of restricted occupancy by planning condition attached to the original planning permission. To ensure a comprehensive analysis, the data for the remaining types of 'retirement living' and particularly, Use Class C2 care homes, will also be discussed.

Overall Summary of Data

- 2.3 The below table identifies the number approved applications over the last 10 years and categorises these by use class type.

Table 1: Number of Approved Older Persons Living Applications according to Use Class (Data Source: Wiltshire Planning Portal)

Type of Accommodation	Number of Applications	
Age Restricted Housing (Use Class C3)	2	
Retirement Housing / Flats (Use Class C3)	Less than 10 units	1
	More than 10 units	5
Retirement Housing / Sheltered Accommodation (Use Class C2)	7	
Care Homes (Use Class C2)	10	
Mixed (Use Class C3 and C2 proposals)	1	

- 2.4 Table 1 indicates that there is more focus on providing Care Homes and Retirement Living flats. These are typically located within principal settlements (as defined within

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Core Policy 1 of the Core Strategy) and are limited to apartment style dwellings and do not provide the further provision of guest accommodation or storage for instance.

- 2.5 Care Homes offer the most intensive support with on-site carers and live-in or direct emergency support. These tend to be the most suitable for more elderly and frail persons, where they are unable to be able to live independently and need full time care and support.
- 2.6 Retirement Housing or Sheltered Accommodation offer a lower level of support. They typically offer an extent of independent living but with the emergency support of wardens that also remain on site or within a larger complex of properties.
- 2.7 There have been few applications approved in the age restricted category, whereby properties are delivered with an occupancy restriction by planning condition to be resided by persons aged 55 years or older, or 60 years or older, for instance.
- 2.8 Proposals for developments of independent living and downsizing homes have been calculated¹ to result in the vacation of two properties further down the chain, allowing opportunities for first time buyers or families to occupy larger family homes. This release of larger family homes also contributes to addressing Wiltshire's significant under-occupancy of bedrooms within larger homes, which is symptomatic of failing to sufficient attractive downsizing opportunities for residents that no longer require a larger family home.

Table 2: ONS Census 2021 Data showing how the population has changed over 10 years

Area/District	Total 2011 Population	2011 Census *		Total 2021 Population	2021 Census *	
		60-74	75+ years		60-74	75+ years
England	53,012,456	7,724,560 (14.57%)	4,108,246 (7.75 %)	56,489,800	8,820,200 (15.61%)	4,837,100 (8.56%)
South West	5,288,936	894,409 (16.91%)	502,542 (9.5%)	5,701,200	1,028,300 (18.04%)	606,900 (10.65%)
Wiltshire	470,981	76,316 (16.2%)	40,418 (8.58%)	510,400	91,800 (17.99%)	47,900 (9.38%)

* Percentage within brackets represents share of the total population for the respective areas

¹ Chain Reaction Report for Homes for Later Living by WPI (August 2020)

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- 2.9 Care homes are the most common form of older persons accommodation that has been approved within Wiltshire over the last 12 years. There are very few planning permissions within the authority's area that have achieved approval for homes that meet the needs of the newly retired, or independent downsizing older person, that may be considered an intermediary form of accommodation, which could be up to 20 or more years depending on the period of good health, before the need for specialist or extra care accommodation is required. This would consequently have a relief on the NHS and Specialist Care Sector, keeping people independent for longer.

Most Common Locations of Approved Applications

- 2.10 It is important to analyse the location of these approved applications within Wiltshire, as a predominantly rural county, with some 217,365 people (42.6%) living in rural areas. The older population for the rural areas equates to some 52,150 (46.8%)² (those aged 65+). Analysis of the population shows that 46.8% of the older population in Wiltshire reside in rural areas.
- 2.11 Table 3 shows the proportions of older people compared to the overall population of the County.

Table 3 Population of Wiltshire by Rural and Urban location (ONS, 2021). Approximate, with removal of Main Settlements and Towns

	Total	Percentage of Total Population	Over 65+	Percentage of Over 65+
Total	510,336	100%	111,529	100%
Urban	292,971	57.4%	59,379	53.2%
Rural	217,365	42.6%	52,150	46.8%

² Population figures from Census ONS 2021 Data.

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- 2.12 The data below should reflect the need for county wide provision of older people's accommodation and appropriate living arrangements. However, the results clearly demonstrate that approvals have not extended beyond Principal Settlements. This would appear to confirm that those wishing to remain independent and within their rural communities are not being provided with the opportunity to downsize and consequently increased propensity for under-occupancy.
- 2.13 It is further important to note that Policy CP46 supports developments within their communities to support living securely and independently. To provide for the older population proportionately a larger number of this type of accommodation (ideally in the form of small clusters of say up to 25 dwellings) should be delivered in the rural area including at suitable locations assisting smaller communities. The evidence suggests that those rural dwellers seeking to downsize are reluctant to move to a flat-in-town as it is not regarded as an attractive enough alternative to their current (under-occupied rural home). They will continue to live in that home until forced to move out through say ill-health unless an attractive rural downsizing product becomes available.

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Table 4: Applications Approved by Town / Settlement (Data Source: Wiltshire Planning Portal)

Town / Settlement	Settlement Type	Number of Approved Applications
Salisbury	Principal Settlement	13
Chippenham	Principal Settlement	5
Melksham	Market Town	5
Warminster	Market Town	5
Calne	Market Town	2
Devizes	Market Town	2
Trowbridge	Principal Settlement	2
Malmesbury	Market Town	1
Royal Wootton Bassett	Market Town	1
Poulshot	Small Village	1

Table 5 Total Units Approved per type of Accommodation over Plan period (Data Source: Wiltshire Planning Portal)

Type of Accommodation	Total <u>UNITS</u> Approved
Sheltered - Use Class C2	986
Retirement (Flats) – Use Class C3	114
Age Restricted Dwelling – Use Class C3	38
OVERALL TOTAL	1,138

- 2.14 Table 5 reveals that the split of types of accommodation is skewed towards Sheltered Living and Use Class C2, suggesting that those who require all-round care are provided for at a greater extent, albeit still at an undersupply in the context of demographic profile projections.

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- 2.15 Regarding the defined need in the LHNA Wiltshire produced in 2023, there is a significant shortfall in any type of specialist housing in Wiltshire. Wiltshire will require some 15,572 units for older people over the period between 2020 - 2038.

Table 6 The Locational Split of Accommodation Type per Unit (Data source: Wiltshire Planning Portal)

Accommodation Type	Total <u>UNITS</u>			
	Towns		Village	
Sheltered – Use Class C2	925	81.2%	154	10.9%
Retirement – Use Class C3	100	8.7%	4	0.4%
Age Restricted Dwelling – Use Class C3	38	3.3%	0	0%
Totals	1,063	-	158	-

*Percentages above denote the percent of provision out of the overall delivery total within the County.

- 2.16 Table 6 further emphasises the different accommodation types within Wiltshire and the focus on Sheltered Living and Care Homes. There is a shortfall of homes for active independent older people who would like the opportunity to downsize, with the opportunity to be accessible and adaptable (built to M4(2) Building Regulations) across the lifetime of occupying their home and if their access needs change.

3.0 Conclusions

- 3.1 From the evidence above, it is clear that Wiltshire Council is failing to encourage or approve anything like an adequate number of applications to provide a sufficient supply housing for the older population in accordance with the aims of Policy CP46. The population is ageing at a rate greater than the national average and there is a significant undersupply of housing for the older population.
- 3.2 There are no specific allocations within the emerging Local Plan for independent older

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persons housing. This suggests a limited commitment to providing for this demographic. Therefore, there are no current commitments to delivering the identified and growing need within the emerging Plan period, across all scales, tenures or locations.

- 3.3 The data comparing locations of approvals suggests that larger settlements (Principal Settlements) are the primary focus for Care Homes, Retirement Homes and Age Restricted dwellings. However, the evidence from research identifies that a large proportion of the older population wish to remain within their existing social and support networks within their rural communities. If there is no attractive alternative being provided other than a flat-in-town, there is a real reluctance to move.
- 3.4 The overall delivery of older peoples housing shows that there has only been a notable delivery of Care Homes and Retirement Homes. This only serves the more frail and elderly population. Those more independent and the newly retired require a more attractive downsizing product however, with measures that facilitate retrofitting of equipment or adaptability to the needs of occupants as they may change. The preferable models for these are homes with the principal bedroom on the ground floor with bathroom facilities, the first floor can accommodate the guest rooms and storage for hobbies.
- 3.5 Therefore, there are limited opportunities of downsizing homes within Wiltshire and there should be a greater consideration into age restricted housing to accommodate the older population according to their needs, especially downsizing homes and homes within the rural area to contribute to the vitality of rural communities.

**Appendix A - Raw Data Tables of Applications from Wiltshire
Council Planning Portal**

Appendix A - Raw Data Tables

Care Homes (C2)

Ref	Address	Description	Date of decision	Decision	Summary and location
PL/2024/00596	Temple Farm, Upton Scudamore, Warminster, BA12 0AQ	Change of use from a C3 dwelling house to a C2 residential care home	10/10/2024	APPROVED	1 unit C2 Village
PL/2023/07518	Avonpark Village, Winsley Hill, Winsley, BA2 7FF	Demolition of existing buildings (comprising 85 Care bedrooms), and proposed partial redevelopment and erection of new buildings to provide 71 Extra Care units and associated communal facilities (Use Class C2), parking and landscaping	09/05/2024	APPROVED	71 extra care units C2 Village
PL/2023/06725	Land at Longleaze Lane, Melksham, Wilts, SN12 6QJ	Construction of elderly care home (Use Class C2) with associated access works, landscaping and drainage. Improvements to site access and Longleaze Lane/Snowberry Lane junction.	21/08/2024	Approve	82 C2 Units Town

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PL/2022/03760	Former Wiltshire College, Cocklebury Road, Chippenham, SN15 3QD	Erection of Retirement Apartments (Category II Type) with Communal Facilities and Car Parking & Erection of Assisted Living Accommodation (Class C2) with Communal Facilities And Car Parking	03/02/2023	Approve	44 retirement living 69 assisted living units – 28 one bed and 41 two bed C2 Town Apartment
PL/2022/05365	Stratford Court, Stratford Road, Salisbury, SP1 3JH	Erection of a replacement, self-contained, semi-detached Class C2 care facility with associated access, car parking and landscape works.	05/10/2022	Approve	30 Beds/units Town
PL/2021/03889	Land North of Grovelands Way, Warminster., BA14 8JN	Erection of a two storey 62 bed care home (Class C2) together with access and parking provisions	22/05/2023	Approve	62 units
PL/2021/11324	Land off the Buffer Ridgeway Farm Development Purton Road Swindon SN5 4JT	Care Home for Older People (Class C2) with Associated Access, Parking and Landscaping	10/03/2022	Approve	60 bed Town

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PL/2021/04839	Eastleigh Stables, Bishopstrow Road, Bishopstrow, Warminster, Wilts, BA12 9HW	Change of use from dwelling house (Class C3) to residential care home (Class C2) for six residents (No external works to building or curtilage).	13/08/2021	Approve	Six bed Village
20/11079/FUL	Land Adjacent Quarryfield Industrial Estate, Castle Street, Mere, BA12 6LA	70 bed care home with associated access, parking, sprinkler tank, bin store and landscaping.	11/07/2022	Approve	70 bed Town
20/06550/FUL	Woodmead Residential Home, 35 Portway, Warminster, BA12 8QR	ERECTION OF RETIREMENT APARTMENTS (CATEGORY II TYPE) WITH COMMUNAL FACILITIES AND CAR PARKING	22/12/2021	Approve	45 apartments Town
20/09285/FUL	Albany House The Square Tisbury SP3 6JP	Proposed single storey rear extension to care home, providing 3 additional resident bedrooms and one staff office room.	04/03/2021	Approve	3 beds Village (Salisbury)
19/11110/FUL	The Old Manor Hospital Building Known As Finch House Wilton Road Salisbury Wiltshire SP2 7EP	Revised application to 16/10839/FUL for 21 assisted living extra care apartments (C2 Use Class), including minor internal alterations to internal apartment layouts and removal and restoration to elements of the existing external facade.	21/12/2020	Approve	21 assisted units Town

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<u>19/10273/FUL</u>	Conock Cottage Conock SN10 3QQ	Conversion of existing stable block to assisted care accommodation. Construction of timber framed car port and shed.	05/03/2020	Approve	One unit Village
<u>19/08729/FUL</u>	The Paddocks 493 A Semington Road Melksham SN12 6DX	Conversion of existing garage into a self contained supported living ancillary to the existing care home	04/12/2019	Approve	Supported living One unit Village (Berryfield)
<u>19/08571/FUL</u>	Bramley House Castle Street Mere BA12 6JN	Proposed development at Bramley House Residential Care Home to provide a new build detached 13 bedroom specialist care unit (with en-suite and ancillary facilities).	31/10/2019	Approve	13 units Town
<u>19/08150/FUL</u>	Castle View Rest Home, 8 Old Castle Road, Salisbury, Wiltshire, SP1 3SF	Demolition of the Existing Care Home and Construction of a Replacement 28 Bedspace Care Home with Facilities Specifically Designed for People Living with Dementia, with Associated Landscaping and Car Parking.	15/04/2020	Approve	28 units Town

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19/05965/FUL	Braemar Lodge and Stratford Court Stratford Road Salisbury SP1 3JH	Phased comprehensive development to provide two Class C2 care facilities. Phase 1 - Demolition of the existing Stratford Court Class C2 care home and the erection of a new replacement C2 care facility with associated access and landscaping works. Phase 2	22/11/2019	Approve	54 self contained 49 self contained Town
19/01603/FUL	Longhedge Local Centre, Rhodes-Moorhouse Way, Old Sarum, Salisbury, SP4 6BW	Erection of a 66 no. bedroom care home (Class C2) for the elderly with associated landscaping and access	30/05/2019	Approve	66 units Town
19/00215/FUL	Land off Cornfields Chippenham SN14 6GT	Proposed development of a residential care home	10/04/2019	Approve	48 units Town
18/11661/FUL	68 London Road Salisbury Wilts SP1 3EX	Change the use of the building from a Bed and Breakfast (C1) to a Residential Care Home (C2) with proposed single storey rear extension and to adjoin and convert the existing outbuilding to form additional rooms and living space for the proposed care home	04/02/2019	Approve	11 units Town

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<u>18/07381/FUL</u>	Former Divisional Police Headquarters Wood Lane Chippenham Wiltshire SN15 3DH	Demolition of Former Police Station and Westmead School and the Erection of a 66 No. Bed Care Home for the Elderly.	20/09/2019	Approve	66 units
<u>18/06366/FUL</u>	Little Manor Nursing Home Manor Farm Road Milford Salisbury SP1 2RS	External and internal alterations / refurbishments of the historic, grade 2 listed part of a 24 bed residential care home. (Little Manor.) Together with the demolition of the recent (non-historically-significant) extensions to the rear, and construction o	19/11/2018	Approve	Additional 6 units Town
<u>18/02955/FUL</u>	Land at Marsh Farm Coped Hall Royal Wootton Bassett Swindon Wiltshire SN4 8ER	Class C2 66 Bed Care Home with Associated Car Park and Landscaping and Upgraded Access from Hook Road	20/06/2019	Approve	66 unit Town
<u>16/11230/FUL</u>	Anzac House, London Road, Devizes, Wiltshire, SN10 2DY	Demolition of existing Care Home and erection of 3 storey, 66 bed care home for older people with associated landscaping, parking and access.	15/03/2017	Approve	66 unit Town
<u>16/03974/FUL</u>	Charter House, Seymour Road, Trowbridge, Wiltshire, BA14 8LS	Erection of retirement living apartments (category 2 type) with communal facilities and car parking	09/12/2016	Approve	40 units

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Retirement Housing Schemes

Ref	Address	Description	Date of decision	Decision	Type
PL/2023/09367	Orchard Lodge, The Pippin, Calne, SN11 8RN	Change of Use of Commercial Unit 4 (Use Class E) to Residential Accommodation (Use Class C3)	30/10/2023	26/01/2024	Allowed at Appeal Additional Unit to the approved 39 apartments
19/03435/FUL	Land to rear of 8 - 13 High Street Calne Wiltshire	39 Apartments for older people (sixty years of age and/or partner over fifty-five years of age), Guest Apartment, Communal Facilities, Access, Car Parking, Landscaping and 4 Retail Units.	31/01/2020	Allowed at Appeal	39 Town
17/05347/FUL	Cottages north of Higher Green Farm Poulshot Road Poulshot Wiltshire SN10 1RW	Change of use of existing care accommodation units (C2) to 4 units of retirement accommodation for the over 60's (C3)	03/08/2017	Approved	4 Rural village
16/09536/FUL	Withleigh, Spa Road, Melksham, Wiltshire, SN12 7NP	Revisions to approved retirement scheme involving alterations to the building and enclosure of part of the approved under-croft to create an additional apartment (31 in total) and alterations to the car parking	05/01/2017	APPROVE	31 Town

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		layout			
15/03759/FUL	Part of Former Hygrade Site, Westmead Lane, Chippenham, Wiltshire, SN15 3HZ	Redevelopment to Provide a Two and Three Storey building comprising 39 retirement apartments, associated communal facilities, car parking access and landscaped grounds.	17/05/2016	Approve	39 Town

Older People / Age Restricted

Ref	Address	Description	Date of decision	Decision
19/07095/REM	Land at Burton Hill Malmesbury	Reserved matters application for 27 dwellings for over 55's on Site 1 only. Application for layout, scale, landscaping and appearance	23/04/2021	Approve 27 Town
16/03966/FUL	Milford Hill House, Milford Hill, Salisbury, SP1 2QW	Proposed demolition of single storey extensions and external fire escape on Milford Hill House, Manager's bungalow, Deputy Manager's bungalow and timber lodge building. Proposed construction of 11 two bedroom retirement houses and refurbishment of Milford	04/11/2016	Approve 11 Town
Before local plan adoption				

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13/02101/FUL	Former Shrewton School, High Street, Shrewton, Salisbury, Wiltshire, SP3 4DD	Conversion of former school building and new development to the rear to create 14 age restricted dwellings for older people including ancillary facilities, car parking and landscaping	05/02/2014	Approve 14 Rural
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Mixed Schemes of Retirement and care homes

Ref	Address	Description	Decision Date	Decision
17/05360/OUT (MIXED DEV OF C3, C2 UNITS)	Land north of Grovelands Way Warminster BA12 8TB	Continuing care retirement community (CCRC) comprising a 48 bed care home (Class C2), 46 extra care apartments and facilities (Class C2), 39 affordable extra care apartments and facilities (Class C2), 45 retirement bungalows/chalet bungalows (Class C3), medical centre and pharmacy, relocation of children's play area, recreational and flood compensation area and biodiversity protection/enhancement of County Wildlife Site, all with associated access roads, parking, infrastructure and raising of ground levels by 500mm (outline application relating to access and layout). Resubmission of 16/08425/OUT.	08/06/2018	APPROVE Town / outskirts