



# RCC TOWN PLANNING CONSULTANCY



Site: Agricultural Building at Dunkirk Hill Farm, Dunkirk Hill,  
Devizes, SN10 2BD

Proposal: Demolition of former agricultural building and  
erection of new dwelling (Class C3), detached bike and bin  
store and associated works

On behalf of: Mr Cesar Basanta

Date of Issue: August 2026



RCC TOWN PLANNING CONSULTANCY

# PLANNING STATEMENT

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## EXECUTIVE SUMMARY

This Planning Statement demonstrates why planning permission should be granted for the proposed replacement dwelling, having regard to the extant fallback position and current planning policy.

- The site benefits from an extant planning permission for the conversion of the former agricultural building to a dwelling under Section 73 permission 20/02269/VAR, which followed the original Class Q approval. The Section 73 permission required development to commence within three years.
- That permission was lawfully commenced within the required time period, with a Certificate of Lawful Use confirming that the Section 73 permission remains extant and capable of being completed at any time.
- The applicant has continued to implement the approved scheme, including removing the existing roof and wall cladding in accordance with the approved conversion strategy and supporting structural report. Having progressed the development, the applicant has concluded that a replacement dwelling would provide a significantly more sustainable, energy-efficient and higher-quality home than completing the approved conversion.
- Planning law recognises that an extant permission represents a legitimate "fallback" position. The Courts and numerous appeal decisions, including decisions within Wiltshire, confirm that significant weight should be given to what could lawfully be completed if the current application were refused.
- The key planning consideration is therefore whether the proposed replacement dwelling would result in any material harm over and above the approved fallback conversion scheme, rather than simply whether a new dwelling would ordinarily be acceptable in the countryside.
- This Statement demonstrates that there is no material planning harm arising over and above the extant fallback position. Whilst the proposed dwelling provides additional accommodation, the site is exceptionally well screened and the additional built form is largely positioned to the rear (behind the front gabled wing), such that the development would have no materially greater landscape or visual impact than the approved conversion. At the same time, it delivers a substantially higher quality of design together with improved sustainability and energy efficiency.
- The detailed planning assessment that follows expands upon these matters, explains the relevant planning policy and case law, and demonstrates why the proposal represents a sustainable form of development that should be granted planning permission.



## 1.0 BACKGROUND AND DEVELOPMENT PROPOSAL

### *Introduction*

- 1.1 This statement has been prepared on behalf of the applicants to support their planning application at Agricultural Building, Dunkirk Hill Farm, Dunkirk Hill, Devizes, Wiltshire, SN10 2BD. The proposal is to demolish the former agricultural building and to construct a new dwelling in the same position but creating a slightly larger footprint. The proposal also includes the demolition of the attached lean-to structure.
- 1.2 This scheme is proposed as an alternative to the partially implemented Section 73 permission that followed a Class Q prior notification scheme for the conversion of the former agricultural building to a single residential dwelling.
- 1.3 Access to the proposed dwelling would remain the same as previously approved and as previously used for agricultural traffic – the existing private drive which is accessed via Dunkirk Hill Road (A342). This private drive also serves two existing dwellings. Through an examination of the planning history, it is evident that the means of vehicular access has previously been deemed acceptable by both the Local Planning Authority and Planning Inspectorate.
- 1.4 The statement will examine how the proposed development relates to the site and its context, as well as provide an explanation and justification for the scheme having regard to the national and local planning policy context and explain the significance of case law and other appeal decisions in applying the valid fallback position to this scheme.

### *Planning History*

- 1.5 In September 2019, prior approval was granted at the site under Class Q of the General Permitted Development Order for the *“Change of Use of 1no. Existing Agricultural Building to Provide 1no. Dwellinghouse (Use Class C3) and for Associated Operational Development”* (19/08042/PNCOU). This followed the refusal of a previous *“Class Q Prior Notification”* application (17/10801/PNCOU).
- 1.6 In May 2020, the Council approved Section 73 (S73) application 20/02269/VAR for the removal of condition 2i and variation of condition 2ii of prior notification 19/08042/PNCOU. Specifically, condition 2(i) which required the prior approval of external materials before development began was removed and condition 2(ii) was varied to allow the development to be carried out in accordance with updated elevation drawings. This permission explicitly set out the degree of proposed works to enable the conversion, supported by a specialist building survey and structural report by Western Building Consultants Ltd. The Section 73 permission required the development approved under the Section 73 application to be begun on or before 18 September 2022.
- 1.7 Finally, In November 2022, a Certificate of Lawful Use (PL/2022/07176) was issued confirming the lawful implementation of planning permission



20/02269/VAR in compliance with Condition 1 (time limit condition). Evidence was provided to demonstrate that the applicant had undertaken works to partially implement this permission through digging of trenches for the foundations of the approved development. The Certificate verifies that material operations carried out at the site constituted a valid commencement of the approved development. As a result, the planning permission remains extant and may be lawfully implemented in full at any time.

- 1.8 Since this latest approval under S73, the applicants have given further consideration to converting the existing barn as per the agreed scheme. Whilst this remains a feasible option that they would pursue, there are advantages to the revised new build proposals. This is both in terms of usability and more importantly in terms of achieving far more sustainable credentials for the finished dwelling and an improved layout and design.

### *The Approved/Partially Implemented Development*

- 1.9 The scheme approved under S73 is for the conversion of the existing building to provide a two-storey, three-bedroom dwelling with large open plan ground kitchen/living area. The attached lean-to is utilised to create a garage and utility/boot room, see figure 1 below.

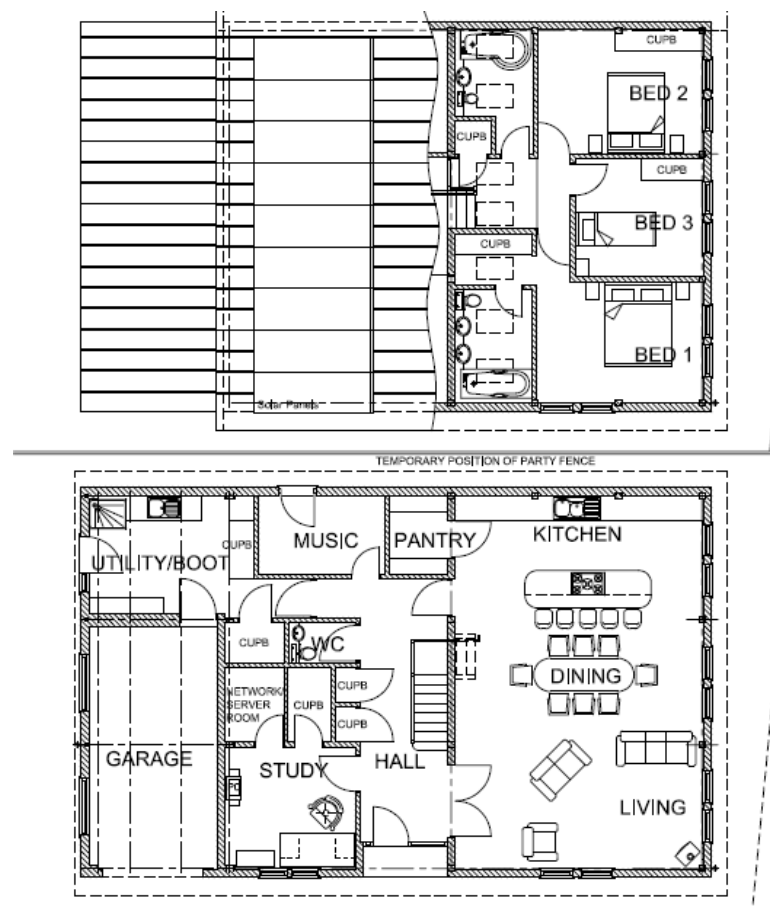


Figure 1: S73 approved layout

1.10 The approved scheme includes the introduction of new openings and fenestrations, the replacing of asbestos roof sheeting, creation of an internal lining system and the replacement of the external metal sheeting with a new cladding system. Internal lightweight wall portioning and a lightweight first floor also formed part of the approved scheme. Water and drainage services are to be introduced, whilst the existing electrical service was to be enhanced. Figure 2 below shows the approved elevations:

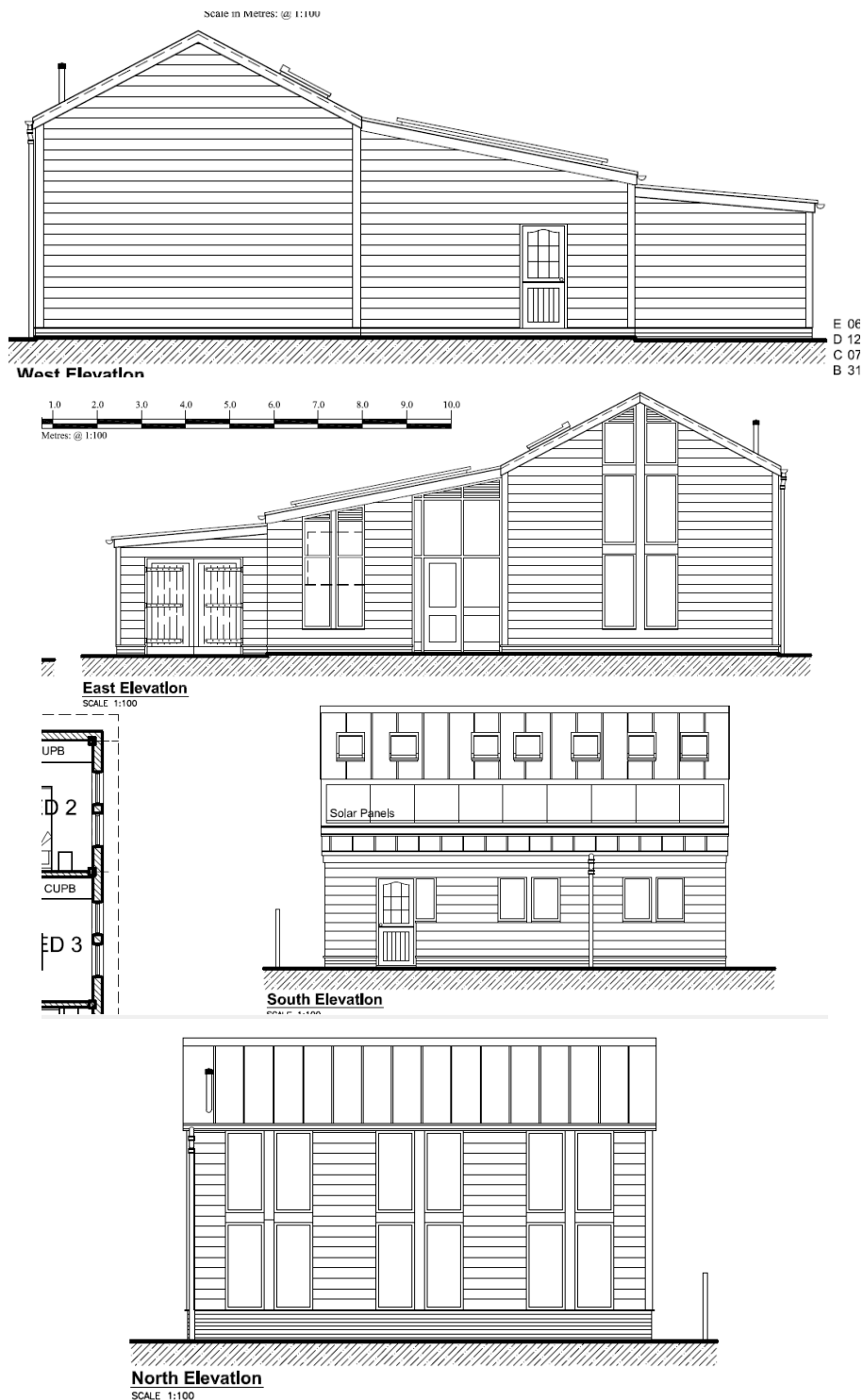


Figure 2: S73 approved external elevations

### *Proposed Development*

- 1.11 The proposed development comprises the demolition of the existing agricultural building and attached lean-to structure and the construction of a replacement dwelling positioned on largely the same footprint. Whilst the footprint is marginally increased by only 20% (approximately 28m<sup>2</sup>), the development remains closely aligned with the footprint and siting of the existing buildings and does not result in encroachment into the wider countryside.
- 1.12 The replacement dwelling has been designed to reflect the former agricultural use of the site and the wider rural and agricultural character of the area. The design adopts a simple barn-inspired form, comprising a dual pitched roof linked by a recessed glazed section. This approach breaks up the overall massing of the development, reduces its perceived scale and creates a building arrangement reflective of a collection of traditional rural structures rather than a single large dwelling, helping the dwelling sit comfortably within its rural setting.
- 1.13 The proposal provides a four-bedroom dwelling with a gross internal floor area of 290m<sup>2</sup>. The internal arrangement has been carefully considered to maximise the benefits of the site's elevated rural position. In contrast to the approved conversion scheme, the principal living accommodation is located at first-floor level, allowing the kitchen, dining and living spaces to take full advantage of the extensive views across the surrounding countryside whilst embracing open plan living.
- 1.14 The intention has also been to produce a dwelling that is much more energy efficient and of a significantly improved design. The replacement dwelling therefore provides the opportunity to achieve substantially improved sustainability and energy performance credentials compared with the approved conversion scheme. As a new-build construction, the dwelling can incorporate significantly higher levels of insulation, improved airtightness, modern heating technologies and enhanced building fabric performance. Consequently, the proposal will reduce operational energy demand, minimise long-term carbon emissions and provide a more sustainable dwelling with lower energy costs for future occupants.
- 1.15 The proposed elevational details retain an agricultural and rural aesthetic, utilising timber cladding with the pitched roofs clad in profiled sheet slate grey roofing. Upvc windows and doors are proposed throughout which were approved as part of the previous application and are used on the neighbour barn conversion and at the dwelling to the east (Samarie). The contemporary agricultural architecture design will ensure that the dwelling assimilates successfully within its rural surroundings.
- 1.16 Figures 3 and 4 overleaf shows the site plan, floor plans and elevations (3d images) of the proposed dwelling.



1.17 The applicant has already started the required works and proceeded to remove the asbestos in the roof and side panelling, and well as commencing the other approved works granted under 20/02269/VAR.

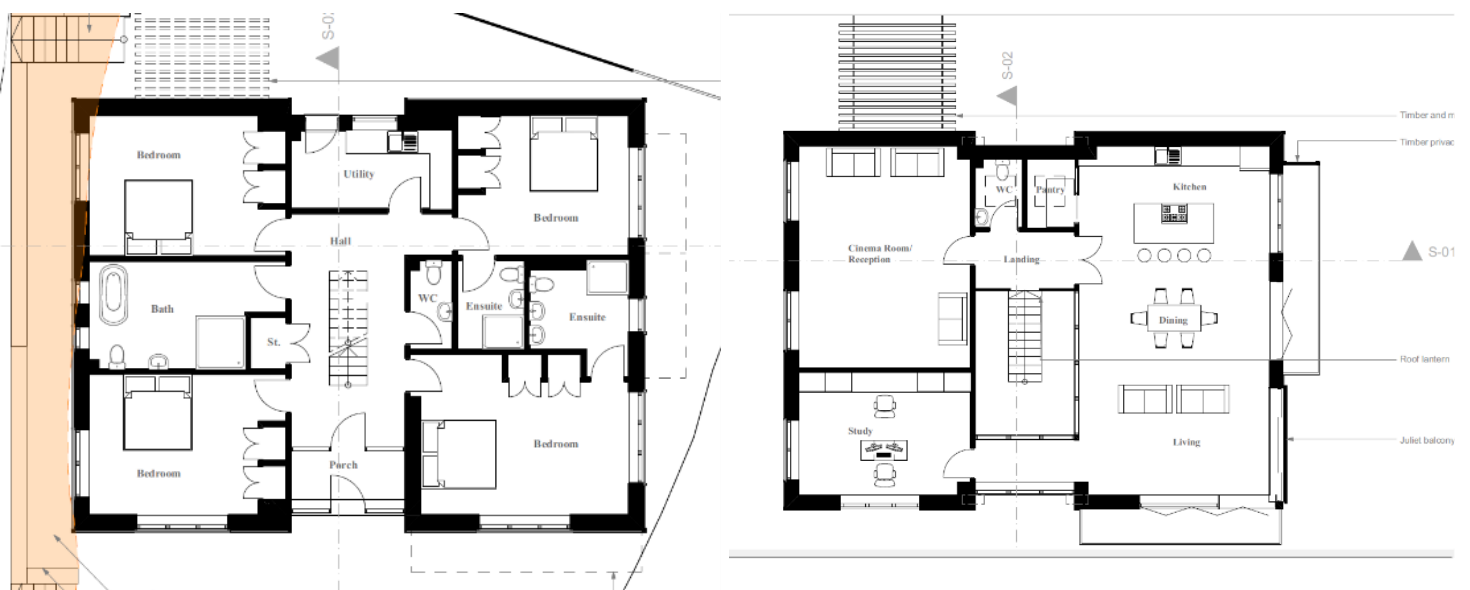
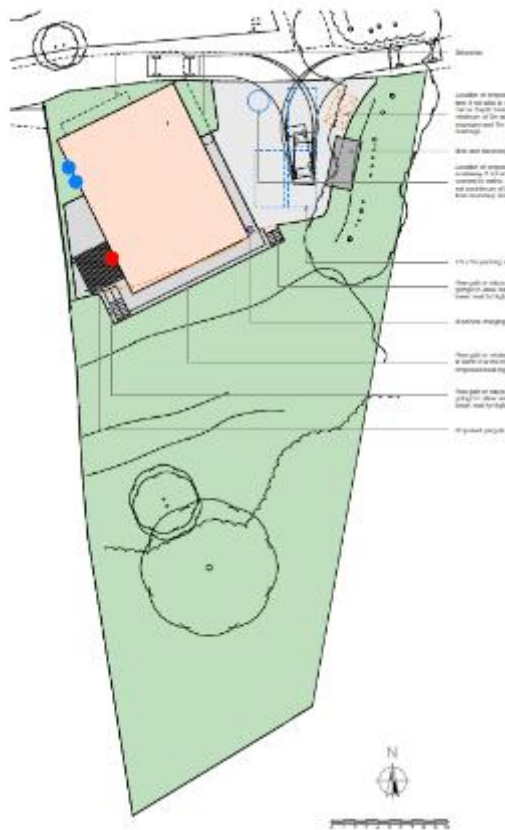


Figure 3 – Proposed new build layout





East and North Elevations



West and South Elevations

Figure 4 – Proposed new build external elevations

## 2.0 SITE CONTEXT

- 2.1 The application site is at Dunkirk Hill, situated to the north-west of Devizes town centre, close to, but outside of the settlement boundary as defined in the Wiltshire Core Strategy.

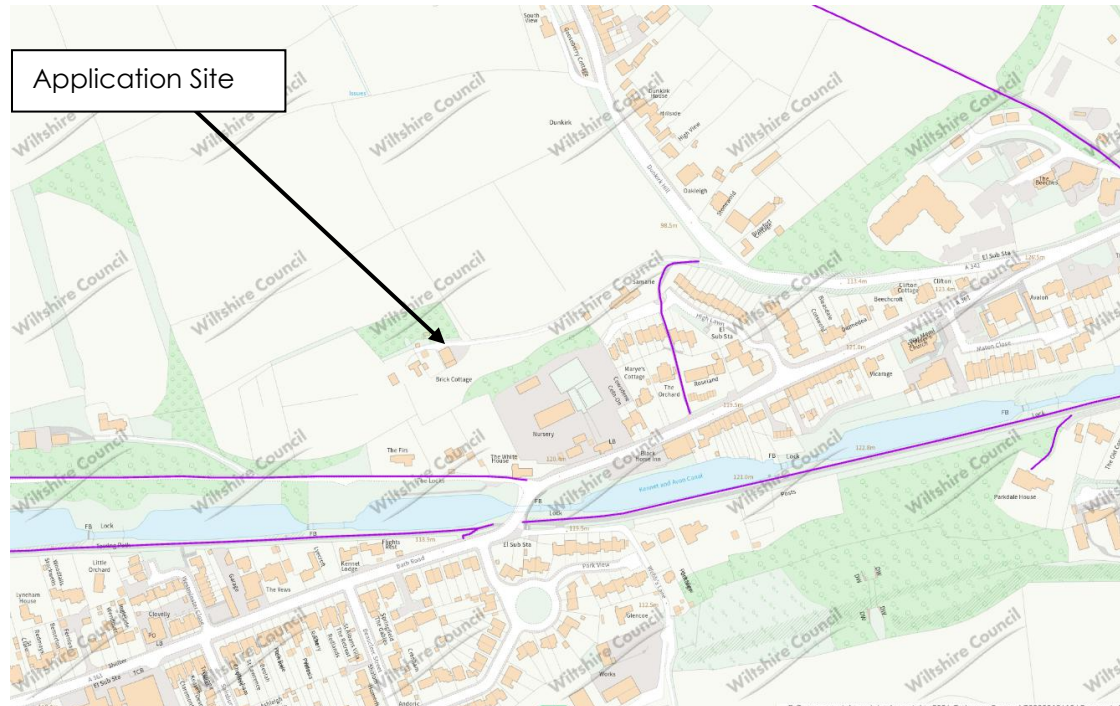


Figure 5: Location plan – rights of way identified by purple lines (source Wiltshire Council's mapping system)



Figure 6: Site context

- 2.2 In its wider context, the site occupies a position on the sloping hillside below the established residential development of Bath Road. Whilst elevated, the site does not experience an exposed or skyline position as the properties of High Lawn do. Instead, it sits within a levelled area set into the hillside having previously been used to house agricultural buildings. The surrounding area is characterised by a strong structure of hedgerows and trees which serve to break up views of the built form on the edge of Devizes from the southerly direction.
- 2.3 The site is not subject to any national or local landscape, heritage, or cultural designations. The closest listed building is The White House, positioned some 100m to the south, and set at a higher level on Bath Road, visually separated by dense tree cover.
- 2.4 From Devizes, Dunkirk Hill descends steeply through the densely tree lined road towards the more open and lower lying area of the countryside surrounding the village of Rowde. Views from Dunkirk Hill and the surrounding rights of way network are afforded to the surrounding network of fields as well as the loose-knit and sporadic development positioned along either side of Dunkirk Hill and on the ridge line of Devizes.
- 2.5 The site is located approximately 175 metres from the public highway and is accessed via a private drive. Due to this separation distance and the presence of mature evergreen trees along the eastern and southern boundaries, together with additional tree cover adjacent to the access drive, the existing building is not readily visible from the public highway or surrounding public viewpoints. The existing vegetation provides effective screening throughout the year and limits views of the site from the surrounding area. Consequently, the site has a limited visual presence within the wider landscape.
- 2.6 The closest right of way is DEVI11 which leads from Bath Road, through High Lawn, to the access road at Dunkirk Hill serving the site. Views from the right of way are afforded across the wider landscape, being outward-looking, affording panoramas across the surrounding countryside. There are no views in either direction of the application site. Likewise, boundary hedging and field trees serve to screen the site from the A342 when heading in either direction.
- 2.7 The existing building is therefore extremely well contained within its site and barely visible from publicly vantage points.



Figure 7: Aerial photograph showing the site and its well treed context



Figure 8: View of site from access road and DEV111 – existing bungalow (Samarie) in the forefront of photo and dense tree cover screening site in the background



Figure 9: View from public car park of Lowden Garden Centre on Bath Road towards site (north-west) – demonstrates dense tree cover as backdrop to site and screening from Bath Road

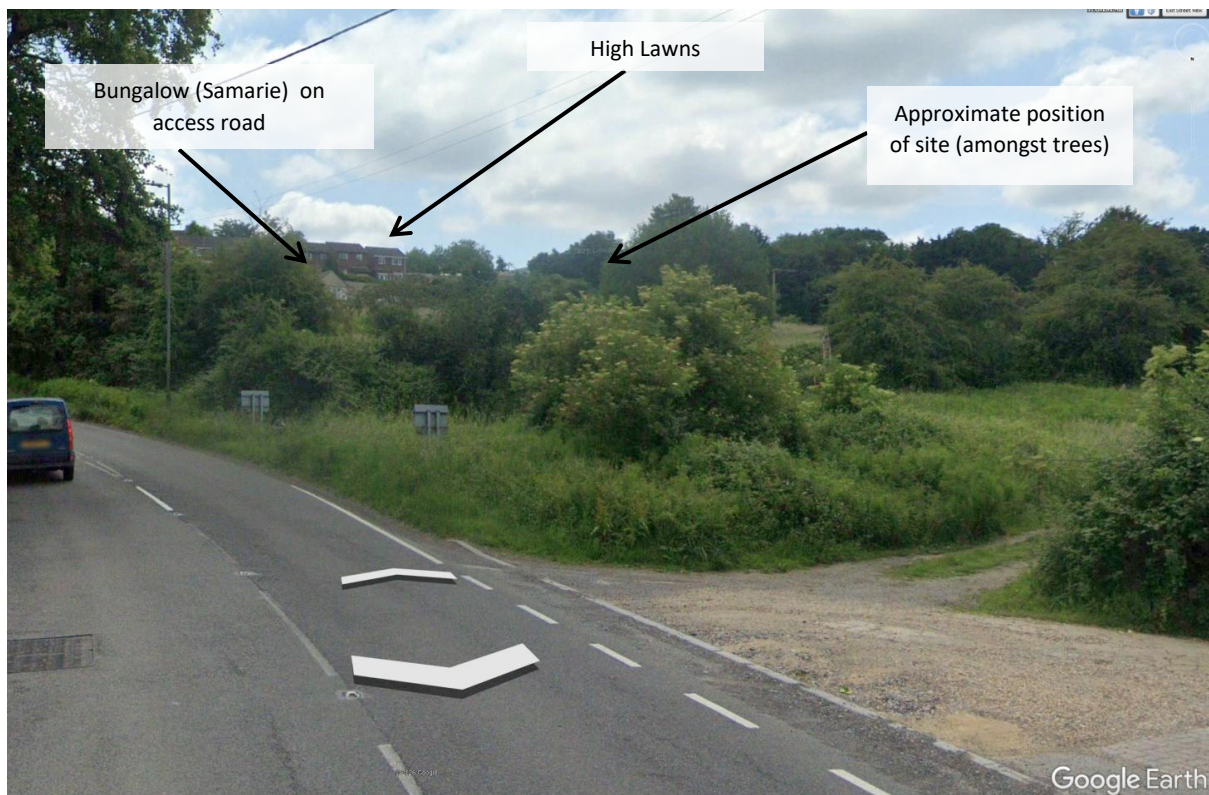


Figure 10: View looking south-west from Dunkirk Hill towards the site

- 2.8 Turning to the site itself, it comprises an existing agricultural building with a lean-to addition, together with an area of compacted stone and grass. The structure is of steel frame construction with a mix of timber and metal cladding, and asbestos corrugated roof sheeting (some of which has been removed).



Figures 11 & 12: Views of the existing building as it previously appeared before work has taken place to continue the implementation of the Section 73 planning approval (e.g. removal of the existing roof and wall cladding)

### 3.0 PLANNING POLICY

- 3.1 The main planning policy framework relevant to this proposal is the Wiltshire Core Strategy 2015 (WCS) and the Devizes Neighbourhood Plan (DNP).
- 3.2 Material considerations comprise the following:
- Wiltshire Local Transport Plan 2011-2026 Car Parking Strategy
  - The Wiltshire Design Guide (2024)
  - National Planning Policy Framework 2024 (NPPF)
  - National Planning Practice Guidance (NPPG)
- 3.3 The relevant policies and guidance are set out in the associated tables:

#### WILTSHIRE CORE STRATEGY

| Policy | Title                                          |
|--------|------------------------------------------------|
| CP 1   | Settlement Strategy                            |
| CP 2   | Delivery Strategy                              |
| CP12   | Spatial Strategy: Devizes Community Area       |
| CP41   | Sustainable construction and low carbon energy |
| CP45   | Meeting Wiltshire's housing needs              |
| CP50   | Biodiversity and Geodiversity                  |
| CP51   | Landscape                                      |
| CP57   | Design and Place Shaping                       |
| CP60   | Sustainable Transport                          |
| CP 61  | Transport and Development                      |
| CP64   | Demand Management                              |

#### DEVIZES NEIGHBOURHOOD PLAN

| Policy | Title                                                        |
|--------|--------------------------------------------------------------|
| H1     | Strategic Policy Intent - Settlement Framework Boundary      |
| H2     | Strategic Policy Intent – Built Environment & Sustainability |
| T1     | Strategic Policy Intent - Getting Around                     |
| ESD1   | Strategic Policy Intent - Environment & Sustainability       |

## NATIONAL PLANNING POLICY FRAMEWORK

| Chapter | Title                                             |
|---------|---------------------------------------------------|
| 2       | Achieving sustainable development                 |
| 5       | Delivering a sufficient supply of homes           |
| 11      | Making an effective use of land                   |
| 12      | Requiring Good Design                             |
| 15      | Conserving and enhancing the natural environment  |
| 16      | Conserving and enhancing the historic environment |

## 4.0 PLANNING ASSESSMENT

- 4.1 Section 38(6) of the Planning & Compulsory Purchase Act 2004 establishes that 'determination must be made in accordance with the development plan unless material considerations indicate otherwise'. The Development Plan in this instance comprises the WCS and the DNP.
- 4.2 However, in this instance, there are two material considerations that hold significant weight in the decision making process:
- I. the 'fallback' test - this is well enshrined in case law and in this instance, is a key material consideration. This requires that the proposed scheme is to be compared with the valid fallback to determine what, if any material harm would result, over and above the fallback (in this case, the approved Class Q scheme).
  - II. Housing Land Supply and Paragraph 11d of the NPPF - The NPPF requires LPAs to identify a five-year supply of specific deliverable sites to meet housing needs, with an appropriate buffer. Where Councils are unable to demonstrate this, planning policies concerning housing delivery are considered out of date and applications for housing development should instead be considered in line with paragraph 11d of the NPPF. Wiltshire Council is unable to demonstrate a 5-year supply and paragraph 11d is therefore 'engaged'. This means that the 'planning balance' is tilted from a neutral balancing exercise where if the harms outweigh the benefits planning permission is usually withheld, to a tilted balance where the harms should significantly and demonstrably outweigh the benefits for permission to be withheld.
- 4.3 Each of these material considerations will be considered in turn, alongside the other relevant development management issues of:
- Design and wider landscape impact
  - Highway safety and parking
  - Residential amenity,
  - Ecology
- 4.4 The Statement will then conclude with a 'Planning Balance' including a comparison between the Class Q scheme and the fallback new build, as well as an assessment of the scheme in line with Paragraph 11d.

### Principle of Development

- 4.5 Planning decisions are required to take into account the Development Plan, which includes in this instance, the WCS, along with any other material planning considerations in arriving at a balanced judgement.
- 4.6 Policies CP1 and CP2 of the WCS outline the settlement and delivery strategies for the County, identifying four tiers of settlements and directing new development to the more sustainable settlements at a scale commensurate with their position in the hierarchy. In the case of this proposal, Core Policy 12



'Spatial Strategy: Devizes Community Area' identifies Devizes as a Market Town. It is however noted that the application site falls just outside the limits of development of the settlement and therefore for the purpose of assessing this proposal falls within the countryside (see also policy H1 of the DNP). As such development is not generally supported in this location, other than in exceptional circumstances, permitted by other policies that seek to respond to both local circumstance and national policy. These include CP44 (rural exceptions sites), CP46 and CP47 (specialist accommodation provision) and CP48 (supporting rural life). It is accepted that the application proposal does not fall within any of these exceptions.

- 4.7 Accordingly, the application conflicts with the development plan.

### Material Considerations

#### *i. The 'fallback' test*

- 4.8 As set out in section 1 of this Statement, the application proposal comprises a new build dwelling and as such the proposal would not comply with policies of the WCS or the DNP. However, Section 38(6) of the Act sets out that applications should be determined in accordance with the development plan unless material considerations indicate otherwise.
- 4.9 In this instance, a key material consideration is the lawful ability of the applicant to undertake the conversion of the existing agricultural building to a dwelling. This is because the extant Section 73 approval (20/02269/VAR) could be implemented in full. This was confirmed by Certificate of Lawful Use PL/2022/07176. This certificate confirmed that the lawful implementation of planning permission has been undertaken and, as a result, planning permission 20/02269/VAR remains extant and may be lawfully implemented at any time and has created the precedent and fallback position
- 4.10 The applicant has however considered the options for converting the building and for sustainable construction and design reasons, the applicant wishes to implement an alternative scheme for a new build dwelling on the site. There is no material harm arising as a result of the proposed scheme when compared to the S73 plans, as set out in the design section below.
- 4.11 The validity of the fallback position (i.e., what could be achieved even if consent were to be refused) is a well-enshrined principle in planning law, clarified in the Court of Appeal judgement *Mansell v Tonbridge & Malling Borough Council* [2017]. In this case, the Council's decision was challenged partially on the basis that the Council had erred by giving weight to what could likely be achieved on the site as 'permitted development' without any further grant of planning permission.
- 4.12 In that instance, the site contained buildings which could legitimately have been converted into four dwellings. The planning officer sought to make a comparison between the scheme as proposed and the valid fallback situation in leading Members of the Planning Committee to make a balanced judgement on the planning application and recommending that application

be granted approval. Mr Justice Garnham concluded that the planning officer had in fact directed the committee appropriately by setting out the fallback situation and did not accept the claimant's allegation.

- 4.13 Mr Justice Graham agreed firstly that there was a legitimate fallback use of the site resulting from the existence of permitted development rights which allowed the existing buildings to be utilised as four dwellings. Secondly, he concluded that the site would not reasonably be left undeveloped, given the existence of those permitted development rights, so there was indeed, a real prospect of such development occurring. He finally concluded therefore that the planning officer had not erred in discussing the differences between the proposed scheme and the fallback use for 4 dwellings and recommending permission be granted as the differences did not result in material harm warranting a refusal.
- 4.14 Significantly, this judgement confirmed the basic principle that *“for a prospect to be a real prospect, it does not have to be probably or likely; a possibility will suffice”*. The judgement goes on to state that a:

*“...‘real prospect’ will depend for example on the site having been allocated for the alternative development in the development plan or planning permission having been granted for that development, or on there being a firm design for the alternative scheme, or on the landowner or developer having said precisely how he would make use of any permitted development rights available to him under the GPDO.”*

- 4.15 As set out above, the Court of Appeal is clear that fallback positions need not be highly likely but there should be a ‘*real possibility*’ of the development being undertaken. With regard to this application, it is clear that the applicant intends to develop the site for a single dwelling. They have already implemented planning permission 20/02269/VAR and there is no reason to doubt that the building will be converted as previously approved in the event that this current application were to be resisted. As such there is a real prospect that there will be a new dwelling on the site.
- 4.16 Two appeal decisions in Wiltshire highlighted the importance of the fallback position with regard to new build dwellings replacing dwellings that have been approved either under Class Q or by way of a planning permission under policy CP48 for the conversion of an agricultural building.
- 4.17 The first is at Land at 6 Halfway Firs, Corsham in Wiltshire (planning reference no 18/00691/FUL and APP/Y3940/W/18/3200095) and the second is an appeal decision at Upper Farm in Wexcombe in Wiltshire (planning reference no PL/2023/07710 and APP/Y3940/W/24/3348926). There are distinct parallels between both of these appeal decisions and the current application proposal which inform how the fallback ought to be applied. Both appeals concerned the demolition of a farm building and its replacement with a completely new structure to form a family dwelling. The Inspectors in both cases established that the extant permissions constituted a valid fallback position.

- 4.18 The Halfway Firs appeal, like the current proposal, related to a situation where prior approval had been granted for the conversion of a barn to a residential dwelling (with a later renewal). In the case of the appeal the new proposal was for the replacement of the barn with a new dwelling. In respect of this case, in considering the fallback issue, the Inspector stated that:

*"This provides a 'fallback position' at the appeal site which is a material consideration. Any harm, therefore, in terms of a policy conflict with core policies 1 and 2 of the CS would be reduced by the fact that permission for a dwelling on the site of the barn already exists."*

- 4.19 In allowing the appeal, the Inspector noted that in that particular case, the appearance of the barn would differ from the proposed dwelling but noted at paragraph 8 that

*"...it would follow the same footprint and dimensions of the existing barn, with the exception of an additional rear wing which would be discreetly sited and largely screened from public view. Therefore, it would, for the most part, appear as a dwelling of similar dimensions to the 'fallback position'. Furthermore, its overall proportions would be 'barn-like' and its use of large areas of glazing and ad hoc window placement would further add to this impression which would loosely reference the agricultural origins of the site."*

- 4.20 Clearly, although there were a number of differences between the proposal and the fallback position, the Inspector felt that these were not sufficient to refuse the scheme, concluding:

*"I have found that the effect of the development would be similar to that of the 'fallback position'."*

- 4.21 The Upper Farm, Wexcombe appeal, related to a situation where planning permission had been granted for the conversion of an existing agricultural building to a residential dwelling. The appeal proposal was for the replacement of the barn with a new build dwelling. The Council and the Inspector agreed that the extant permission constituted a fallback position which is a material consideration. The Council however argued that it did not justify the approval of the appeal scheme because they considered that the approved scheme would not provide greater benefits than the appeal proposal.

- 4.22 The Inspector came to a different conclusion, noting that whilst both schemes would result in similar social and economic benefits through the provision of one dwelling and have similar heritage benefits, he disagreed with the Council's view on the visual impact, stating that both schemes would amount to no material harm upon landscape character.

- 4.23 Consequently, the key consideration for this current application is whether there is no 'material harm' resulting from this application for a new build

scheme, over and above the conversion scheme already accepted. It therefore falls for a comparison to be made between the proposed development and the fallback scheme. This is set out in the following sections and concluded in the Planning Balance section. By inference, unless there is material harm resulting from the proposed scheme over and above the fallback, planning permission ought to be granted.

### *(ii) Lack of Housing Land Supply*

- 4.24 As noted above, the NPPF requires LPAs to identify a five-year supply of specific deliverable sites to meet housing needs, with an appropriate buffer. Where Council's are unable to demonstrate this, planning policies concerning housing delivery are considered out of date and applications for housing development should instead be considered in line with paragraph 11d of the NPPF. The relevant extract is set out below:

For **decision-taking** this means:

- 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<sup>8</sup>, granting permission unless:
  - i. the application of policies in this Framework that protect areas or assets of particular importance<sup>7</sup> 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<sup>9</sup>.

- 4.25 Wiltshire Council has confirmed that it can only demonstrate 2.8 years of housing land supply (HLS) in its latest Housing Land Supply Statement issued in June 2026. This is reflective of the persistent undersupply of housing within Wiltshire with the Housing Land Supply Statement issued in June 2025 citing 2.42 years of HLS.
- 4.26 The position is further exacerbated by the recent withdrawal of the revised Wiltshire Local Plan by Wiltshire Council. As a result, there is no clear or immediate prospect of an up-to-date development plan being in place, and the Council will continue to rely on increasingly dated policies. In these circumstances, and when read alongside the Council's acknowledged shortfall in housing land supply, policies CP1, CP2 and CP12 of the WCS regarding housing land supply are considered out of date.
- 4.27 These matters were discussed in the recent appeal decision at Land off Woodrow Road, Melksham (April 2026) (attached at **Appendix A**). This appeal

decision is an important material consideration in that it provides up-to-date, clear and highly relevant guidance in respect of decision-making in Wiltshire in the current policy context. In that case, the Inspector confirmed that settlement boundaries defined through the Wiltshire Core Strategy were intended to meet needs only up to 2026 and should not be relied upon beyond that period, whilst also emphasising that housing land supply is assessed on a county-wide basis, such that even modest schemes can make a meaningful contribution to addressing shortfall. The Council's housing land supply position was found to be chronic, with a shortfall of over 9,500 dwellings and a separate affordable housing need of over 1,200 leading to the Inspector to note:

*"It is inevitable and accepted by the Council, that permission for housing will need to be granted on unallocated greenfield sites even though that will conflict with CS Policies CP2 and CP15".*

- 4.28 The Devizes Neighbourhood Plan was 'made' in May 2015 and is more than 5 years old. In accordance with NPPF, the DNP is also considered to be out of date and, as such, it does not benefit from the protections afforded by paragraph 14. The application therefore remains to be assessed under the presumption in favour of sustainable development set out in paragraph 11(d) of the Framework – this assessment is set out in the 'Planning Balance' at the end of Section 4.0.
- 4.29 An evaluation of the scheme against the other relevant development plan policies is set out below:

#### Design and wider landscape impact

- 4.30 In considering the acceptability of the proposals, regard must be had to Core Policies CP51 and CP57 of the Wiltshire Core Strategy ("WCS"), together with Policy ESD1 of the Devizes Neighbourhood Plan ("DNP").
- 4.31 Core Policy CP51 requires development to protect, conserve and where possible enhance landscape character, ensuring that any adverse effects are appropriately mitigated through sensitive siting, design and landscaping. Similarly, Policy ESD1 of the DNP requires development to avoid significant harm to the identity of the Neighbourhood Plan area or its environment, whilst maintaining an appropriate visual relationship with the countryside and minimising impacts on wider views. Section 12 of the NPPF also emphasises the importance of achieving high quality and contextually responsive design, with paragraph 135 requiring developments to be sympathetic to local character, including the surrounding built environment and landscape setting.
- 4.32 As set out within Section 2.0 of this statement, the application site lies adjacent to the north-western edge of Devizes within a transitional landscape between the urban edge and the open countryside beyond the town. Here, surrounding development sits on the skyline on the edge of the settlement, with

the landscape gradually giving way to a looser grain of sporadic residential and agricultural development extending towards Rowde. A number of dwellings and outbuildings occupy the higher land of the scarp, below the skyline, in particular the two dwellings to the immediate east and west.

- 4.33 As one heads out of Devizes, development starts to become more dispersed but is interspersed with agricultural land, mature tree belts and hedgerows. The A342 lies close to the site and is a busy road leading into Devizes. The application site is experienced within this broader visual context and not as an isolated or prominent site.
- 4.34 Although the site occupies an elevated position, it is not visually prominent within the landscape. Site observations confirm that there are no clear or direct public views of the site from:
- Dunkirk Hill in either direction;
  - Public Footpath DEV111;
  - The A342 corridor; or
  - Elevated land along Bath Road (A361).
- 4.35 This is a consequence of the site's discreet positioning, combined with the substantial enclosure created by mature hedgerows and trees surrounding the site and access track. It is heavily screened from public vantage points by existing evergreen planting to the north, together with the wider dense tree belts acting as a backdrop and screening. As a result, the site is physically and visually contained and is barely perceivable within the wider landscape. Importantly, this remains the case when tree cover is less in winter month. Whilst it is acknowledged that deciduous vegetation provides reduced screening during winter months, the surrounding network of trees is such that mature trunks, branching structure alongside the evergreen planting continues to filter and screen any limited views that do exist. Any views afforded would likely be glimpses of the roofscape and these would be read against the backdrop of the established settlement edge of Devizes, rather than as isolated features within the open countryside. These would not demonstrably differ from the views afforded of the approved S73 scheme.
- 4.36 The proposed replacement building is sensitively designed and positioned on the footprint of the existing structure. The replacement building adopts a twin-gabled form connected by a glazed link and has been carefully designed to reflect the simple functional appearance of a traditional rural building whilst remaining honest in that it is a residential dwelling. It also utilises the same material palette as previously approved at the site. It is acknowledged that in comparison to the existing buildings and partially implemented scheme, the proposal increases the floorspace and modestly increases the ridge height. However, the new first-floor wing and connecting flat-roof element would be discreetly sited behind the north wing and therefore even further screened from public view. Therefore, it would, for the most part, appear as a dwelling of similar dimensions to the 'fallback position'. As previously described, the site is so well hidden that this increase in size will not be perceivable from public

vantage points and will not therefore cause any material harm to the landscape. Moreover, the design, as described below, is of a high standard in its own right.

- 4.37 The design process particularly focussed on the applicant's desire to create a bespoke home of a high-quality and contemporary interpretation of a typical rural agricultural form. Internally, there are exposed vaulted roofs and open plan areas with extensive views across the slope. The elevations have been kept deliberately simple with timber cladding being the dominant feature, with glazing carefully arranged to provide improved levels of natural daylight, passive ventilation and extensive outlook. The restrained palette of timber cladding and profiled slate-grey roof sheeting is appropriate for the rural and context and can be found commonly within the locality. Given the highly contained nature of the site and absence of meaningful public visibility, these elements would not appear visually intrusive or incongruous within the wider landscape.
- 4.38 In assessing landscape and visual effects, substantial weight must be afforded to the extant fallback position established through the implemented S73 permission for residential use of the building and site. The approved scheme already authorises extensive operational development, including replacement external cladding, replacement roof coverings, insertion of numerous new openings and fenestration, installation of a first-floor structure and substantial internal rebuilding works. Consequently, the approved development would already result in a significant alteration to the appearance and character of the existing agricultural building.
- 4.39 Within this context, the proposed replacement dwelling represents an evolution of the approved residential scheme rather than the introduction of a wholly new form of development. The proposal retains the established residential use, occupies substantially the same position on the site and maintains a strong agricultural design character whilst delivering a significantly enhanced standard of accommodation, improved architectural quality and substantially improved sustainability credentials. For these reasons, it is considered that the proposal fully accords with the objectives of core policies CP51 and CP57 of the Wiltshire Core Strategy, together with policy ESD1 of the Devizes Neighbourhood Plan and the design objectives of the NPPF.

#### Highway safety and Parking

- 4.40 Policies CP60 and CP64 of the WCS deal with the traffic impacts of development and parking standards. These policies aim to ensure developments adequately address matters of access arrangements and road safety alongside adequate parking provision.
- 4.41 Paragraph 116 of the NPPF 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."*

- 4.42 The proposal is to utilise the existing access point from Dunkirk Hill on to the private access road and then utilise the existing driveway serving the building and the neighbouring dwellings. This replicates the arrangement approved under the previous S73 application to which no highway objections were made. The associated Delegated Report stated the following:

*"The use would utilise an existing access. The access was improved in connection with an adjoining development for conversion of a building to a holiday let and the Highway Officer raises no objection. No prior approval in respect of this is required".*

- 4.43 In considering highway safety, the traffic movements associated with the current permitted use of the buildings for agricultural purposes and also the Section 73 approval for the conversion of the existing building to a 3-bed dwelling are relevant considerations that must be taken into account.
- 4.44 The provision of an off-road parking and turning area is indicated on the submitted plans, thus demonstrating that there is sufficient space for adequate highway arrangements and that it meets the requirements of the Council's parking standards.
- 4.45 Comparing both schemes, it can be concluded that the impacts on highway safety are the same for both the current scheme and the approved S73 scheme.
- 4.46 For the reasons outlined above, it is considered that the scheme is in compliance with the requirements of CP60 and CP64 of the WCS.

#### Residential Amenity

- 4.47 Policy CP57 (vii) requires development to have regard to the compatibility of adjoining buildings, the impact on amenities of existing occupants and ensuring appropriate levels of amenity are achievable.
- 4.48 The closest dwelling is 'The Brick Store', located to the west, divided by a timber boundary wall. As shown on the submitted plans, no windows are proposed at first-floor to the west elevation that would face towards The Brick Store site. Instead all of the windows are limited to the north (principle), south and east elevations and therefore face away from the Brick Store. The balcony serving the kitchen and dining room incorporates a timber privacy screen to its eastern end to ensure no direct overlooking occurs.
- 4.49 Similarly, the Brick Store only has one first floor window that faces towards the front forecourt of the adjoining building and more obliquely towards its blank façade.
- 4.50 In terms of amenity space, there is a reasonable sized private rear garden commensurate with the scale of the dwelling. This will provide ample space for

sitting out, the drying of washing and the storage of domestic waste and recyclables.

- 4.51 Comparing both schemes, it can be concluded that the impacts on residential amenity are the same for both the current scheme and the approved S73 scheme.
- 4.52 For these reasons, it can be concluded that the proposal will not cause any demonstrable harm in terms of a loss of residential amenity to the proposed neighbouring property. As a result, the proposal satisfies the terms of criteria (vii) of policy CP57 of the WCS that requires regard to be given to the compatibility of adjoining buildings and uses.

### Ecology

- 4.53 Policy CP50 of the WCS recognises that Wiltshire's natural environment is one of its greatest assets and requires that development proposals must demonstrate how they protect features of nature conservation. The policy also advises that development should seek opportunities to enhance biodiversity.
- 4.54 A Preliminary Ecological Appraisal (PEA) was undertaken by BN Ecology in April 2026 to assess the ecological value of the site, identify the potential presence of protected and notable species, and inform the proposed demolition of the existing barn and erection of a single self-build dwelling. The appraisal considered the potential for nesting birds, bats, badgers, amphibians, reptiles, hazel dormouse, hedgehog, brown hare, otter and water vole, together with the protection of retained trees and habitats. The assessment confirmed that the application site does not comprise or directly adjoin Priority Habitat, with the nearest Priority Habitat (traditional orchard) located approximately 5 metres north of the site beyond the existing access track.
- 4.55 The PEA concludes that the proposed development can proceed without adverse ecological impacts, subject to the implementation of appropriate mitigation and enhancement measures. These include measures for bats and badgers, protection of retained habitats during construction, ecological enhancements, and the implementation of a sensitive lighting scheme to avoid impacts on bat foraging and commuting routes. The report confirms that no further ecological surveys are required, provided the recommended mitigation measures are secured through appropriately worded planning conditions.
- 4.56 The submitted plans therefore incorporate mitigation measures for roosting bats, foraging bats and nesting birds. Integrated bat and bird bricks/boxes are shown the submitted drawings.
- 4.57 With effect from 6 August 2026, the Biodiversity Net Gain ("BNG") regulations include an exemption for very small sites below 0.2 hectares, provided they do not impact Priority Habitat. The application site is below 0.2 hectares and the submitted Preliminary Ecological Appraisal confirms that the site does not comprise any Priority Habitat. Accordingly, the proposal falls within the applicable very small sites exemption and is not subject to the mandatory requirement to deliver 10% BNG.

- 4.58 We therefore conclude that there would be no conflict with the ecological policy of the development plan (CP50) or the guidance contained in section 15 of the NPPF.

#### Planning Balance

- 4.59 As set out above, Section 38(6) of the Planning & Compulsory Purchase Act 2004 establishes that 'determination must be made in accordance with the development plan unless material considerations indicate otherwise'.
- 4.60 One important consideration is Paragraph 11d of the NPPF which states that where LPAs are unable to demonstrate a five-year supply of specific deliverable sites to meet housing needs (with an appropriate buffer), planning policies concerning housing delivery are considered out of date. Therefore, paragraph 11d) ii says 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 the Framework taken as a whole.
- 4.61 There are no policies applicable here which protect areas or assets of particular importance, and thus the presumption in favour of sustainable development applies.
- 4.62 In this case, the proposal does not accord with spatial policies CP1, CP2 and CP12 of the WCS and H1 of the DNP because it lies outside of the designated Limits of Development. However, this level of conflict is limited given the fallback position of the S73 scheme and the sustainable credentials of the application site.
- 4.63 Having regard to the benefits associated with the scheme, the proposal would contribute towards the persistent lack of housing land supply within Wiltshire. It is acknowledged this is only an increase in one dwelling but other decisions (both by the Council and at appeal) (references can be provided on request) have given this weight, particularly in light of the NPPF's requirement to support the Government's objective of significantly boosting the supply of homes. This was the conclusion made by the Inspector relating to the conversion of the adjacent property 'The Brick Store' to residential (APP/Y3940/W/20/3260904):

### **Housing land supply**

15. The Council accepts that it cannot demonstrate a 5 year housing land supply. Whilst the shortfall is not great, it has worsened in the time that the appeals have been under consideration. Although there is no shortfall in this particular part of the county, this does not prevent paragraph 11(d) of the National Planning Policy Framework from being applied here, and the relevant policies most important for determining the appeal are out-of-date. There are no policies applicable here which protect areas or assets of particular importance, and thus the presumption in favour of sustainable development applies.
16. I have identified small harm arising from the need to travel, along with a conflict with the development plan. Although the addition of the dwelling to the housing stock would make the smallest possible increase, in view of the importance which the Government attaches to increasing the supply of housing, I give this benefit modest weight. Weighing these factors, I find the adverse effects of allowing the appeals would not significantly and demonstrably outweigh the benefits.

### **Planning balance and conclusions**

17. Although I have found a conflict with the development plan, the provisions of the Framework and the presumption in favour of sustainable development are material considerations of some weight, which, in this case, justifies my not determining the appeals in accordance with the plan. Thus, for the reasons given above, I conclude that both appeals should be allowed, that planning permission should be granted and that the enforcement notice should be quashed.

- 4.64 There would also be economic benefits associated with the proposal both through its construction and the spending associated with the future occupants of the site and the additional Council Tax payments which would be attracted.
- 4.65 Further positive attributes of the scheme are that the site lies just beyond the Limits of Development and is well-related to the built-up-area of Devizes. It lies within a small area below the ridge line of Bath Road where sporadic development is already present, with the site situated between two existing dwellings (The Old Brick Store and Samarie). The proposal would not therefore lead to the construction of an isolated dwelling in the countryside.
- 4.66 It is again important to highlight the very secluded nature of the site and the extremely limited views of the site from public vantage points.
- 4.67 A further significant benefit of the scheme is that consent has already been approved under S73 for the conversion of the existing building at the site to a residential dwelling. This consent has partially implemented and can therefore be completed at any time by the applicant. The key consideration is whether there is no 'material harm' resulting from this application for a new build scheme, over and above the conversion scheme already accepted under S73. The statement has provided a detailed comparison between the proposed development and the fallback scheme.
- 4.68 In terms of the visual impact, like the Halfway Firs appeal, the proposed new building at Dunkirk Hill is discreetly sited and largely screened from public view. The current proposals appear for the most part "as a dwelling of similar dimensions to the 'fallback position'". It is recognised that the proposed



replacement is larger, but the additional build is set behind the front wing and hidden from view and in real terms does not create any visual harm to the landscape or views towards the site or built edge of Devizes. As a result there would be no material harm upon landscape character.

- 4.69 This comparison demonstrates that there is no material harm resulting from the proposed scheme over and above the fallback. Instead the scheme results in benefits over the extant approval and this is a further benefit to be weighed in the planning balance.
- 4.70 In line with Paragraph 11 of the NPPF, a conclusion needs to be drawn as to whether the identified harms significantly and demonstrably outweigh the identified benefits as listed above. It is clearly evident that in this case they do not and the identified harms fall some way short of outweighing the benefits of this proposal.

## 5.0 CONCLUSION

- 5.1 The site contains a redundant agricultural building which has the benefit of an extant and partially implemented Section 73 approval. This statement has set out the importance of the extant approval in providing a valid fallback position. It has evidenced, with reference to case law and relevant appeal decisions, that aside from any planning policy assessment, what falls to be considered here is a comparison between the fallback position and the proposed scheme.
- 5.2 This statement together with the submitted plans have also shown that details of the proposed conversion have been carefully considered and planned so as to have no detrimental impact on the character and appearance of the locality and to provide a highly sustainable home. The site already benefits from an established and suitable access and can readily accommodate any necessary parking provisions.
- 5.3 Moreover, the statement has explained why support ought also to be forthcoming having regard to the current lack of 5-year Housing Land Supply.
- 5.4 It can therefore be concluded that any conflict with local planning policies in respect of the location of the site is outweighed by the significant benefits associated with the scheme.
- 5.5 It is therefore requested that the application be approved.



## APPENDIX A – WOODROW ROAD APPEAL DECISION





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## Appeal Decision

Inquiry held on 3 – 5 February and 12 February 2026

Site visit made on 5 February 2026

**by H Baugh-Jones BA(Hons) DipLA MA CMLI**

an Inspector appointed by the Secretary of State

Decision date: 9<sup>th</sup> April 2026

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### **Appeal Ref: APP/Y3940/W/25/3374421**

#### **Land off Woodrow Road, Melksham, Wiltshire, SN12 7AY**

- 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 Waddeton Park Ltd against the decision of Wiltshire Council.
  - The application Ref is PL/2024/10674.
  - The development proposed is Outline application with all matters reserved except for access for the development of up to 70 dwellings, open space, ecological enhancements, play space, associated infrastructure (including drainage structures and works to the public highway), access, parking, servicing and landscaping.
- 

### **Decision**

1. The appeal is allowed and planning permission is granted for Outline application with all matters reserved except for access for the development of up to 70 dwellings, open space, ecological enhancements, play space, associated infrastructure (including drainage structures and works to the public highway), access, parking, servicing and landscaping. at Land off Woodrow Road, Melksham, SN12 7AY in accordance with the terms of the application, Ref PL/2024/10674, subject to the conditions in the attached schedule.

### **Procedural and Preliminary Matters**

2. I held a Case Management Conference on 9 December 2025 at which the main parties were present. The purpose of this was to provide an opportunity for me to give a clear indication as to the ongoing management of the case and the presentation of evidence so that the Inquiry was conducted in an efficient and effective manner. There was no discussion of evidence or the merits of the appeal.
3. The Council refused the planning application for a number of reasons including in relation to flood risk and the absence at the time of agreed planning obligations. In advance of the Inquiry opening, and during its course, there was considerable narrowing of the disputed matters such that the Council's previous objections fell away in relation to flooding, planning obligations and landscape harm. However, insofar as they are relevant, I have addressed those matters in my decision.
4. I have been provided with a signed planning obligation under section 106 of the Town and Country Planning Act 1990. The Agreement sets out a number of provisions to come into effect if the appeal is allowed. I return to this later in my decision.
5. Following the close of the Inquiry, the Council received a letter from the Inspectors examining the new local plan; the contents of which are potentially material to my

determination of this appeal. The parties subsequently provided written evidence on this specific matter, which I have taken into account.

## **Main Issue**

6. Whether the proposal accords with development plan policies for the location of development including its effects on the character and appearance of the area.
7. Whilst my framing of the main issue broadly follows the remaining reason for refusal on the Council's decision notice, evidence was presented separately on matters of planning and the area's character and appearance. I therefore address them under separate headings.

## **Reasons**

### Planning policy

8. The development plan for Wiltshire includes the Core Strategy (2015) (the CS) and the Joint Melksham Neighbourhood Plan 2 (2020) (the JMNP2). CS Policy CP1 identifies Melksham as a second-tier settlement with the potential for significant development. It is set to take the most amount of housing of all the Market Towns. Beyond Policy CP1, locations for development are managed through Policies CP2 and CP15.
9. Policy CP2 sets out a presumption in favour of sustainable development within the development boundaries of settlements including the market towns such as Melksham. Unless permitted by other CS policies, development is not permitted outside those boundaries. Policy CP2 also sets out the spatial strategy for the Melksham Community Area (MCA). Policy CP15 says, amongst other things, that growth in the MCA will be in accordance with Policies CP1 and CP2.
10. The JMNP2 allocates a number of sites for housing development in Melksham. Those allocations exceed the need for new housing identified in the Melksham and Melksham Without Housing Need Assessment (July 2022) which assessed need in the neighbourhood area. Whilst the appeal site was included in the 'call for sites' as part of a larger site, it was not allocated in the JMNP2. JMNP2 Policy 6 sets out that housing outside settlement boundaries will be managed in accordance with the adopted development plan and should meet evidenced local housing need. It thereby defers to the CS and the evidence on housing need. This is set out in the supporting text to JMNP2 Policy 6 and which makes clear that the settlement boundaries it is referring to are those defined in the CS.
11. However, the CS sought to meet needs between 2006 and 2026, and the settlement boundaries were drawn up to accord with that plan period and not beyond it. Even if all of the JMNP2 allocations come forward, a housing land supply deficit would remain. Moreover, housing land supply is calculated across the whole of the Council's area and is not based on any particular settlement. This is recognised by the Council in its considerations on the Land at Snarlton Farm proposal (Application PL/2024/07097). Whilst that scheme was for substantially more dwellings than in this appeal, I see no reason to divert from that general principle. The appeal scheme would provide a meaningful contribution to Wiltshire's housing land supply.
12. Moreover, the minimum housing target expressed in the CS of 42,000 homes over the plan period was not met, with a shortfall of around 1000 homes. Exacerbating

this is the Council's five-year housing land supply shortfall of over 9,500 dwellings and a separate affordable housing need of over 1,200. It is inevitable and accepted by the Council, that permission for housing will need to be granted on unallocated greenfield sites even though that will conflict with CS Policies CP2 and CP15.

13. The Council submitted a new local plan for examination. In evidence, it was referred to as the 'emerging local plan'. However, the issues latterly highlighted by the examining Inspectors clearly indicate that there is a significant amount of further work needed on the plan to make it sound. In their letter to the Council of 27 February 2026, the Inspectors offer the Council the option of either withdrawing the plan or request that they proceed to prepare their report. The letter makes it very clear that the latter option would inevitably lead to a recommendation that the plan is not adopted because of it being found unsound. Whilst I therefore note the Council's argument that the plan has not been withdrawn at this stage and is thus still at examination, the examining Inspectors' letter provides me with sufficient reason to conclude that the plan as it stands will not be going forward. In this circumstance, it cannot therefore be considered as having any semblance as an emerging plan. Notwithstanding that, for ease of reference in my decision, I will continue to refer to it as the 'emerging Local Plan'.
14. The implication of this is that there will not be a strategic plan in place to lead development in Wiltshire for the foreseeable future. Importantly there will be no plan led mechanism to rectify the housing land supply shortfall, thus making it ever more pressing that housing continues to come forward in a timely manner in sustainable locations such as Melksham. The appeal site is well related to the existing built-up area and would form a logical extension to this part of the town.
15. I note that planning permission has been granted for around 500 dwellings on the 'emerging Local Plan's' allocation at Blackmore Farm and other applications are under consideration for a similar number of dwellings on other allocations. However, I have no evidenced certainty that they will receive planning permission. Furthermore, allocations in the JMNP2 are beginning to come forward. Nevertheless, whilst that all assists in addressing the chronic housing land supply shortfall in Wiltshire it does not place a bar on other sustainable development.
16. In summary, given that the appeal site lies outside the development boundary of Melksham, the proposal runs counter to Policies CP2 and CP15. This is not in dispute between the parties. The Council's decision notice includes reference to CS Policy CP1. However, it was confirmed by the Council that there is no conflict with that policy, and I have no reason to take an alternative view.

#### Character and appearance

17. The site is part of a larger parcel of agricultural land located immediately beyond the north-eastern edge of the town. The River Avon is located further to the west. An access would be formed in a gap between houses before they extend in a ribbon to the north-east along Woodrow Road. Because of the presence of this line of houses, the site is not readily visible from Woodrow Road. Nor is it widely seen from other surrounding roads.
18. There are Public Rights of Way (PRoWs) running along the site's southern boundary adjacent to the settlement edge and from north-south in the area where

the site's western boundary would be formed. There would be clear views of the proposed development from these public vantage points.

19. Currently, this part of Melksham has a hard edge formed by residential development. The indicative masterplan for the proposed development shows a substantial area of public open space in the part of the site crossed by overhead power lines.
20. The parties are now in agreement that a suitably designed landscape scheme could come forward along the northern site boundary, within the open space. Whilst this could not take the form of a continuous planting belt because of the necessary power lines easement, it would provide sufficiently large blocks of appropriate planting to satisfactorily help assimilate the proposed development into its surroundings. Importantly, it would also provide for an improvement to the existing hard edge to this part of Melksham. There is also now agreement between the parties that the proposal overall would not result in unacceptable harm to the landscape or the experiences of those using the PRowS. I have no reason to disagree. These matters are capable of being secured by suitably worded planning conditions.
21. There would be no conflict, with CS Policy CP16 which seeks to safeguard the links to the Melksham Link Canal or the similar objectives of CS Policy CP53. The proposal would meet the objectives of CS Policy 51, which broadly seeks to protect, conserve and where possible, enhance landscape character. Further, it would accord with the landscape management strategy for the Melksham Open Clay Vale Landscape Character Area as described in the West Wiltshire Landscape Character Assessment (2006). It would not run counter to the countryside protection policies in the JMNP2.

### **Other Matters**

22. At the Inquiry, I heard from a significant number of interested parties who very eloquently detailed their objections to the proposed scheme. In addition to those matters covered elsewhere in my decision, these included transport/highways, drainage and flooding. However, I must make my decision based on clear evidence and note that neither the highway authority nor any of the statutory undertakers have raised any objections.
23. In terms of flooding, with the imposition of suitably worded planning conditions, I am satisfied that there would be no increase in flood risk arising from the proposed development. I have taken into account the highways evidence and took the opportunity to travel along the local roads including the A350 towards to Lacock. I saw nothing of concern which would lead me to conclude that there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. Consequently, whilst I do not doubt the sincerity of the interested parties' contributions to the appeal, I do not find anything to lead me away from my overall conclusion that the appeal should be allowed.

### **Planning Obligations**

24. The Agreement is an executed document dated 25 February 2026. I have considered the various obligations with regards to the statutory requirements in Regulation 122 of the Community Infrastructure Levy Regulations (the CIL Regulations) and the policy tests in paragraph 58 of the Framework.

## Agreement Provisions

### Affordable Housing

25. Provision is made for 21 affordable homes, representing a 30% of the total number of proposed dwellings, compliant with CS Policy CP45 and paragraph 66 of the Framework. The affordable housing element would comprise a tenure mix of 16 affordable rented homes and 8 for affordable home ownership. Given the pressing need for affordable homes, the obligations are necessary.

### Education

26. The Agreement provides contributions to early years (£157,698), primary (£356,402) and secondary (£68,820) education. Current early years provision within a two-mile safe walking route, is operating at full capacity. The development would generate a need for 9 additional early years places at a cost per place of £17,522. The money would be put towards one of the suitably located new schools. The development would generate a need for 19 new primary places at a cost of £18,758 per place. These are also to be secured at one of the new schools. In terms of secondary education, 3 new places would be generated by the development at a cost of £22,940 per place. This contribution would be spent on the expansion of Melksham Oak Community School. These obligations are therefore necessary to meet the additional education provision generated by the development in accordance with CS Policy CP3.

### Open Space, Play and Sport

27. The obligations provide for on-site public open space and a location within it for new play equipment. There is also provision in the Agreement for off-site contributions in the circumstance that the on-site provision, for some reason, falls short of the requirements. The contributions have been calculated to be £83,999.41 for the open space element and £17,841.60 for play equipment. A further, policy compliant obligation provides a contribution towards a 3G artificial turf pitch at Lancaster Road Playing Fields or elsewhere in the vicinity of the appeal site.
28. The obligations are necessary to provide a satisfactory recreational environment for future residents of the development and provide new facilities for the district's growing population in accordance with CS Policies CP3 and CP52.

### Waste and Recycling

29. The Agreement provides for a contribution of £8,050 towards the provision of waste and recycling facilities for each proposed dwelling. Such facilities are essential to support new development as identified in CS Policy CP3. The costs are identified in the Council's Guidance for Developers SPD. The contribution is necessary to ensure appropriate waste and recycling facilities are provided and to cover the associated costs.

### Highways and Public Rights of Way (PRoWs)

30. The obligations provide for necessary improvements to PRoWs next to the site and cycling facilities to encourage the use of sustainable transport modes by providing ease of access to and from the development. It accords with CS Policies CP52, CP57 and paragraph 105 of the Framework.

## Public Art

31. The Revised Wiltshire Planning Obligations SPD supports CS policies, including CP3 (Infrastructure Requirements). It identifies the planning obligations the Council will seek for development that generates new infrastructure needs. It sets out explicit thresholds for the contributions required for various types of obligations that may be necessary. Art and design requirements are set out in Chapter 10 of the SPD albeit without the level of detail applied to other obligations such as for affordable housing; open space/green infrastructure; and transport/highways. It includes a footnote reference to a Guidance Note published in 2011.
32. That 2011 guidance has been replaced by the 'Art and design in the public realm in Wiltshire – 2024 Guidance'. The threshold for public art in the Guidance is set at £300 per dwelling for developments of 50 dwellings or more. However, it has not been subject to consultation or any formal local planning process. The Framework says that good design is a key aspect of sustainable development. The provision of public art could be said to fall within that ambit. It would serve a clear planning purpose, with development plan support. Being located within the development or in its vicinity would satisfy the test of being directly related to the development.
33. However, I must agree with the findings of the Inspector in the Land off Spitfire Road appeal wherein he found there to be no evidence base, or calibration against any benchmark, for the £300 figure. In the absence of an identified scheme and in the context of there having been no public consultation on the Guidance, I cannot conclude that this obligation would pass all of the statutory tests and am thus unable to take it into account as a reason for granting planning permission.

## Conclusion on Planning Obligations

34. With the exception of public art, all of the other planning obligations are necessary, directly related to the development and are fairly and reasonably related in scale and kind to the development. Accordingly, they meet the relevant tests in Regulation 122(2) of the CIL Regulations and the Framework.

## **Planning Balance**

35. Given the Council's housing land supply of 2.42 years, it is common ground that the most important policies for determining this appeal are out of date. Therefore, Framework paragraph 11d) ii says 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 the 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'. Whilst the proposal does not accord with the development plan as a whole, in light of the above, I give limited weight to the spatial policy harm.
36. There would be social benefits arising from the proposal through the provision of market and affordable housing. Whilst housing delivery in Wiltshire may have been strong in the past, that does not justify reducing the weight to the provision of future housing in an area with a chronic housing land supply shortfall. Given the extent of that shortfall, the benefits of market and affordable housing each attract very substantial weight.

37. Economic benefits would arise from construction and employment and support for Melksham's role as a Market Town. These carry significant weight. In reaching that conclusion, I have had regard to what paragraph 85 of the Framework says about placing significant weight on the need to support economic growth, taking into account local business needs and wider opportunities for development.
38. There would be improvements to the current hard development edge through new planting as part of the creation of settlement edge open space. This would result in very positive improvements to the landscape around this part of Melksham and the open space would be available to existing local residents as well as the occupiers of the development. This attracts significant weight. A further environmental benefit would result from BNG going over and above the minimum requirements also attracting significant weight.
39. The weight of these benefits set against the limited weight to the harm would normally tilt the balance very firmly and straightforwardly in favour of the appeal scheme. However, given the JMNP2 has only relatively recently been made, it is necessary to go to Framework paragraph 14. This says that, in situations where the presumption (at paragraph 11d) ii applies to applications involving the provision of housing, the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided 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.
40. The parties agree that the JMNP2 satisfies the first of those tests. The Council asserts that it also meets the second on the basis that it meets (and exceeds) its identified housing requirement of 270 dwellings. It further argues that Policy 17 of the 'emerging Local Plan' falls to be considered under Framework paragraph 69. This means that for such a proposition to be sustained, an emerging policy must be capable of falling within the bounds of Framework paragraph 69 and thus generate an identified housing requirement for the purposes of Framework paragraph 14b).
41. The allocations in the JMNP2 have been tested through independent examination. However, in so doing, the examiner noted that the Council was seeking to address the matter of housing land supply both generally and through "the emerging Local Plan". He therefore recommended a review of the JMNP2 to address any need for a revision to the housing requirement for the neighbourhood area should this arise as an outcome of the examination of the Local Plan. Having regard to the examining Inspectors' letter of 27 February 2026, this outcome has clearly come about, given their serious questions over whether the Council has sufficient sites.
42. The source of the 270 figure in the JMNP2 is the 'emerging local plan' and thus, for the above reasons, the validity of that requirement cannot now be relied upon. Whilst the JMNP2 clearly contains policies and allocations to meet its identified housing requirement, that requirement is derived from a plan that is now extremely unlikely to go forward. This tempers the weight that I give to the identified housing requirement in the JMNP2.

43. Regardless of the parties' contrary positions on the application of Framework paragraph 69, in the parlance of Framework paragraph 14 'likely' does not and cannot mean 'absolute'. It does not place a firm bar against development going ahead even if counter to a Neighbourhood Plan that meets the tests in Framework paragraph 14. I acknowledge that the JMNP2 has relatively recently been made and reflects the wishes of those who supported it at referendum. I also note that development has been coming forward in Melksham, but the Council's housing land supply shortfall is acute and county-wide. Action to address that needs to be taken now through the provision of housing on suitable sites.
44. Given the status of the 'emerging local plan', there is uncertainty as to the level of housing that might need to be allocated at the settlement. I make no judgement on that as it is solely a matter for the examination of the plan, whenever that may be. However, the weight that I attach to that plan in terms of housing policies is negligible and has no material bearing in the planning balance.
45. In the context of Melksham as a Market Town, at which significant development is envisaged, the provision of 70 dwellings on the appeal site would not be of such magnitude to have a detrimental effect on its ability to grow in a sustainable manner or materially disrupt its future planning. Nor, in my view, would it seriously undermine confidence in the plan making process. It would, however, provide much needed housing now and result in a number of important benefits.
46. Taking all of the above into account, the balance tilts in favour of the appeal scheme. The circumstances of this appeal are such that I find it necessary to take a decision otherwise in accordance with the development plan.

### **Conditions**

47. Conditions are imposed to ensure the development is carried out in accordance with prescribed timescales. A condition specifying the approved plans is necessary to ensure certainty. Conditions related to visibility splays, surface water, parking and site access are necessary in the interests of vehicular and pedestrian safety. I have imposed a condition related to cycle parking and a Residential Travel Plan in the interests of promoting alternatives to the use of private motorised transport.
48. I have imposed a series of conditions related to ecology both during and after construction. These are all necessary to protect and promote habitats and species. In the interests of the historic environment, I have imposed a condition requiring archaeological investigation and recording of any archaeological finds.
49. In the interests of protecting against climate change and to ensure the development's sustainable credentials, I have imposed necessary conditions. These cover a Sustainable Energy Strategy and water efficiency measures.
50. I have imposed conditions related to drainage as these are necessary in the interests of safeguarding the water environment. A condition requiring the submission and approval of a Construction Management Plan is necessary to safeguard the amenities of local residents and to protect the natural environment. Similarly, I have imposed a condition related to the times when demolition and construction operations can take place. I have made this a standalone condition for clarity.

51. Finally, conditions related to hard and soft landscaping are necessary to ensure the appearance of the development is satisfactory.

**Conclusion**

52. For the reasons set out, the appeal succeeds.

*H Baugh-Jones*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

|                                          |                                 |
|------------------------------------------|---------------------------------|
| Lord Banner KC                           | Instructed by Waddeton Park Ltd |
| He called:                               |                                 |
| Neil Furber BSc (Dual Hons) PGDipLA CMLI | Senior Director, Pegasus Group  |
| Mark Scoot MRTPI MRICS                   |                                 |

### FOR THE LOCAL PLANNING AUTHORITY:

|                                        |                                                     |
|----------------------------------------|-----------------------------------------------------|
| Edward Arash Abedian                   | Instructed by Hannah Bartlett,<br>Wiltshire Council |
| He called:                             |                                                     |
| Paul Robertson BA(Hons) DipLA MSc CMLI | Senior Landscape Officer, Wiltshire<br>Council      |
| Mark Reynolds BSc(Hons) MSc MRTPI      | Managing Director, Context Planning<br>Ltd          |

### INTERESTED PARTIES:

|                          |                                                                                         |
|--------------------------|-----------------------------------------------------------------------------------------|
| Councillor John Glover   | Chair of Melksham Without Parish<br>Council                                             |
| Councillor Saffi Rabey   | Mayor of Melksham Town Council                                                          |
| Councillor David Pafford | Chair of Melksham Neighbourhood Plan<br>Steering Group                                  |
| Chris Holden             | Chair of Melksham Community<br>Partnership and Member of Melksham<br>NHP Steering Group |
| Councillor Richard Wood  | Chair of MWPC Planning Committee<br>and Chair of NHP Steering Group                     |
| Anne Henshaw             | Chair of CPRE Wiltshire                                                                 |
| Graham Ellis             | Chair of Melksham Transport User<br>Group and NHP Steering Group<br>member              |
| Councillor Alan Baines   | Melksham Without Parish Council and<br>resident of Woodrow Road                         |
| Councillor Simon Wise    | Vice Chair of Lacock Parish Council                                                     |
| Andy Webster             | National Trust Lacock                                                                   |

|                        |                                                              |
|------------------------|--------------------------------------------------------------|
| Councillor Phil Alford | Wiltshire Councillor for Ward                                |
| Graham Hill            | Co-Chair of Wiltshire Area Localism<br>and Planning Alliance |
| Vaughan Thomson        | Place Studio                                                 |
| Teresa Strange         | Clerk, Melksham Without Parish<br>Council                    |
| Phil Rigg              | Local business owner and resident                            |
| Jill Tubbs             | Woodrow Community Speed Watch                                |
| Will Humphries         | Local resident                                               |

## **DOCUMENTS**

- ID01 List of interested party speakers and their evidence
- ID02 Northern Power – clearance to objects
- ID03 Emails between the Council and SSE
- ID04 Appellant's opening statement
- ID05 Council's opening statement
- ID06 Comparison of Effects Upon Visual Receptor Groups
- ID07 Illustrative landscape masterplan
- ID08 Illustrative cross sections
- ID09 Wiltshire Local Plan Inspectors' letter and programme of works
- ID10 Extract from Planning and Compulsory Purchase Act 2004
- ID11 Site visit route suggestions

## CONDITIONS

1. 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. No development shall commence on site 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 scale of the development;
  - (b) The layout of the development;
  - (c) The external appearance of the development;
  - (d) The landscaping of the site;The development shall be carried out in accordance with the approved details.
3. An application for the approval of all of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.
4. The development hereby permitted shall be carried out in accordance with the following approved plans and documents: Location Plan drawing no. 220313 L 01 01; Wider Location Plan drawing no. 220313 L 01 02, Proposed Site Access General Arrangement & Visibility drawing no. PD01; Proposed Habitats Plan drawing no. eg211147.02
5. No part of the development shall be occupied until the visibility splays shown on the approved plans have been provided with no obstruction to visibility at or above a height of 600mm above the nearside carriageway level. The visibility splays shall always be maintained free of obstruction thereafter.
6. Notwithstanding the submitted details, the proposed development shall not be occupied until means/works have been implemented to avoid private surface water from entering the highway in accordance with details that shall have first been submitted to and approved in writing by the local planning authority
7. The development hereby approved shall not be occupied until parking space for the parking of vehicles for each dwelling 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 parking spaces shall not be used other than for the parking of vehicles or for the purpose of access.
8. The development hereby approved shall not be occupied until details of secure covered cycle parking facilities have been submitted to and approved in writing by the Local Planning Authority. These facilities shall thereafter be provided in accordance with the approved details and made available for use prior to the first occupation of the development hereby permitted and shall always be retained for that use thereafter.
9. The development shall not be occupied until a Residential Travel Plan has been implemented in accordance with details that shall have first been submitted to and approved in writing by the local planning authority.
10. No development shall commence until details of the access works, as shown indicatively on SLR drawing 'Proposed Site Access, General Arrangement & Visibility' 422.065278.00001 - PD01, have been submitted to and approved in writing by the LPA. The approved access works shall thereafter be completed prior to the occupation of any dwelling on site.

11. The development shall be carried out in accordance with the recommendations in the following documents:
  - Proposed Habitats Plan (Engain, 07/05/2025).
  - Avoidance, Mitigation and Enhancement measures detailed in Section 6 of the Ecological Impact Assessment (Engain, 05/11/2024).
12. 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 the local planning authority and approved in writing. 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. Key personnel, responsibilities and contact details (including Site Manager and ecologist/ECOW).
  - b. Pollution prevention measures including the location of site and storage compounds, the use of plant and machinery, measures to control of dust and noise, the location and use of wheel washing and vehicle washdown plant/machinery, and the location and use of oils/chemicals.
  - c. Restrictions on artificial lighting and any measures to be implemented to reduce light spill on sensitive ecological features.
  - d. 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.
13. All lighting provided on site shall be in accordance with the appropriate Environmental Zone standards set out by the Institute of Lighting Engineers in their publication GN01:2021, 'Guidance for the Reduction of Obtrusive Light' (ILP, 2021), and Guidance note GN08/23 "Bats and artificial lighting at night", issued by the Bat Conservation Trust and Institution of Lighting Professionals and will demonstrate that bat habitat (trees, scrub and hedgerows) on the perimeter of the site will remain below 0.5 lux (or no higher than existing).
14. Prior to the commencement of any works, including vegetation removal and demolition, details of the number, design and locations of new features for wildlife shall be submitted to and approved in writing by the local planning authority. The provision will include new roosting features for bats and new nesting features for birds at a suitable ratio of feature to building. The approved details shall be implemented before final occupation of the development. These features shall continue to be available for the target species for the lifetime of the development.
15. Prior to the start of construction on site, a Landscape and Ecology Management Plan (LEMP) shall be submitted to and approved in writing by the Local Planning Authority. The LEMP shall include long term objectives and targets, management responsibilities and maintenance schedules for each ecological feature within the development, together with a mechanism for monitoring success of the management prescriptions, incorporating review and necessary adaptive management in order to attain targets.
16. No development shall commence until:
  - i. 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
  - ii. The approved programme of archaeological work has been carried out in accordance

with the approved details.

17. A final Sustainable Energy Strategy shall be submitted as part of the reserved matters application(s) for the development to provide details of operational energy, embodied carbon, climate change adaptation measures, low-carbon and renewable energy technologies, and sustainable transport for the written approval of the Local Planning Authority. The development shall be carried out in accordance with the approved details.
18. The development shall not be occupied until a scheme for water efficiency has been submitted to and approved in writing by the Local Planning Authority. The scheme will demonstrate a standard of a maximum of 110 litres per person per day is applied for all residential development. The scheme shall be implemented in accordance with the agreed details.
19. No development shall commence on site until a detailed drainage strategy for the site, incorporating sustainable drainage details, has been submitted to and approved in writing by the Local Planning Authority and detailing the following matters: A detailed topographical survey that clearly identifies the existing drainage features on the site as well as level contours to show overland flow routes.
  - i. calculations which demonstrate that the required 30% 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.
  - ii. overland exceedance routes are to be shown on the drainage plan for flows in excess of the 1 in 100 year plus climate change (40%) rainfall event.
  - iii. evidence that the finished floor levels above the maximum predicted 100-year flood level or if no flooding is predicted, at a sufficient height above the SW drainage cover levels. The minimum is 600mm above whichever of the following levels is the highest:
    - The average ground level of the site
    - Adjacent road levels to the building
    - Estimated river or sea level for the site

The development shall then be carried out in accordance with the approved details. No part of the development shall be occupied until surface water drainage has been constructed in accordance with the approved scheme.

20. No development shall commence on site until a scheme to dispose of foul drainage, including connection to the public foul sewer network, has been submitted to, and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details.
21. No development shall commence on site (including any works of demolition), until a Construction Management Plan (CMP), has been submitted to and approved in writing by the local planning authority. The plan 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:
  - i. the movement of construction vehicles;
  - ii. the parking of vehicles for site operatives;
  - iii. the cutting or other processing of building materials on site;
  - iv. wheel washing and vehicle wash down facilities;
  - v. the transportation and storage of waste and building materials;
  - vi. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing;
  - vii. a scheme for recycling/disposing of waste arising from construction works;
  - viii. measures for the protection of the natural environment;

- ix. pre-condition photo survey of local roads and infrastructure;
- x. vehicle routing plan;
- xi. traffic management plan (including signage drawing(s);
- xii. number (daily/weekly) and size of delivery vehicles;
- xiii. number of staff vehicle movements;
- xiv. details of temporary/permanent Traffic Regulation Orders;
- xv. construction phasing plan;
- xvi. the loading and unloading of equipment and materials;
- xvii. the location and use of generators;
- xviii. the method of any piling.

The approved Construction Management Plan shall be adhered to throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction method statement.

22. Demolition or construction works shall take place only between 0800-1800 on Mondays to Fridays; 0800-1300 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.
23. No development shall commence above ground floor slab level until full details of a hard and soft landscaping has been submitted to and approved in writing by the Local Planning Authority, the details of which shall include:
- i. location and current canopy spread of all existing trees and hedgerows on the land;
  - ii. details of all existing trees and hedging to be retained, together with measures for their protection during development;
  - iii. a detailed planting specification showing all plant species, supply and planting sizes and planting densities;
  - iv. all means of enclosure;
  - v. vehicle parking layouts;
  - vi. refuse and recycling collection points;
  - vii. bin storage areas;
  - viii. vehicle and pedestrian access and circulation areas;
  - ix. all hard and soft surfacing materials.
24. 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 5 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.