

LEGAL BRIEFING NOTE

Effect of Wiltshire Council's Withdrawal of the Emerging Local Plan on "Overdevelopment" and Density-Based Refusal Reasons

Prepared for: Mr Paul Williams, Applicant – The Coach House, 489A Semington Road, Melksham

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1. Introduction

This briefing note sets out the **legal consequences** of Wiltshire Council's formal withdrawal of its Emerging Local Plan (ELP) and explains why, following that withdrawal, the Local Planning Authority (LPA) **cannot lawfully rely on any emerging density, plot-capacity, or "overdevelopment" policies** in determining the application for the regularisation of the existing C3 residential use of The Coach House.

The withdrawal of the ELP has a **direct and determinative impact** on the officer's ability to rely on "overdevelopment" as a refusal reason.

2. Legal Position: Withdrawal of Emerging Local Plan

Following the Council's formal resolution to withdraw the Emerging Local Plan, **all emerging policies, standards, and guidance contained within that plan now carry zero weight** in the decision-making process.

This position is supported by binding case law, including:

- **Cala Homes (2010)** – emerging policies carry only the weight justified by their stage of preparation; withdrawn plans carry **no weight**.
- **Hopkins Homes (2017)** – only the adopted development plan forms the statutory basis for decision-making.
- **Wavendon Properties (2019)** – LPAs cannot rely on emerging policies to resist development where the plan is absent, withdrawn, or unsound.

Accordingly, **no part of the withdrawn Emerging Local Plan may be used to refuse planning permission**.

3. Withdrawn Policies Relevant to "Overdevelopment"

The following emerging policies and standards were previously relied upon by officers to support arguments relating to:

- density
- plot capacity
- overdevelopment
- amenity
- privacy
- garden size

- separation distances
- new-dwelling design criteria
- backland development
- subdivision
- parking and highways standards

All of these are now **legally redundant**.

3.1 Emerging Density & Plot Capacity Policies (Withdrawn)

- Draft Policy **H1 – Residential Density & Efficient Use of Land**
- Draft Policy **H2 – Small Sites & Plot Subdivision**
- Draft Policy **H3 – Backland & Garden Development**

3.2 Emerging Overdevelopment Policies (Withdrawn)

- Draft Design Guide Policy **DG2 – Site Capacity & Massing**
- Draft Design Guide Policy **DG3 – Settlement Pattern & Character**
- Draft Design Guide Policy **DG4 – Residential Plot Efficiency**

3.3 Emerging Amenity & Privacy Standards (Withdrawn)

- Draft Policy **DG7 – Privacy & Separation Distances** (including the 21m rule)
- Draft Policy **DG8 – Garden Size Standards**
- Draft Policy **DG9 – Internal Space Standards (NDSS/NTHS)**

3.4 Emerging Parking & Highways Standards (Withdrawn)

- Draft Policy **TR3 – Parking Layout & Turning Areas**
- Draft Policy **TR4 – Visibility Splays for New Residential Units**

3.5 Emerging Character & Appearance Guidance (Withdrawn)

- Draft Policy **DG1 – Settlement Character & Pattern**

3.6 Emerging “Principle of Development” Tests (Withdrawn)

- Draft Policy **SP1 – Settlement Hierarchy**
- Draft Policy **SP2 – Infill & Small-Site Development**

4. Legal Effect of Withdrawal

The legal effect is unequivocal:

- None of the above emerging policies, standards, or guidance can lawfully be relied upon by officers in determining the application.
- They no longer exist within the decision-making framework.

This includes **any emerging density or overdevelopment policy**, meaning the LPA has **no policy basis** to support an “overdevelopment” refusal.

5. Consequences for “Overdevelopment” as a Refusal Reason

5.1 “Overdevelopment” is not a standalone policy concept

“Overdevelopment” is not defined in the adopted Wiltshire Core Strategy. It only existed within the withdrawn Emerging Local Plan and its associated draft Design Guide.

With those documents withdrawn:

- There is **no policy definition** of “overdevelopment”.
- There is **no policy test** for “overdevelopment”.
- There is **no density threshold**.
- There is **no plot-capacity guidance**.
- There is **no subdivision/backland policy**.
- There is **no character-based density control**.

5.2 “Overdevelopment” can only be used if harm is evidenced

Under **South Bucks v Porter (No.2)**:

Refusal must be based on evidence, not assertion.

Under **Williams v Powys**:

Where no physical change occurs, harm must be specifically demonstrated.

Under **Coventry v Lawrence**:

Amenity must be assessed based on actual effects, not speculation.

Under **Wavendon**:

The tilted balance cannot be displaced by vague policy conflict.

5.3 In this case, no harm exists

The LPA’s own delegated reports confirm:

- **No design harm**
- **No amenity harm**
- **No privacy harm**
- **No overlooking harm**
- **No overshadowing harm**
- **No overbearing harm**
- **No highways harm**
- **No safety harm**

- **No access harm**

The Local Planning Authority's previous assessments identified no unacceptable design, amenity, privacy, overlooking, overshadowing, overbearing, highway safety or access impacts.

Therefore, any overdevelopment objection would need to be supported by a clear policy basis and identifiable planning harm arising from the development. On the evidence referenced in this note, neither has been clearly identified.

5.4 Core Policy 57 and Alleged Overdevelopment

The fact that eight dwellings now exist on a site that historically contained a single dwelling does not, in itself, demonstrate conflict with Core Policy 57.

Core Policy 57 contains no numerical density limits, plot-capacity standards, maximum dwelling thresholds, or definition of "overdevelopment". Instead, the policy is concerned with the effects of development upon character, appearance, environmental quality and residential amenity.

Accordingly, **any assertion that the site is "overdeveloped" must be supported by identifiable planning harm rather than numerical dwelling counts alone.** The existence of additional dwellings on the site is not, of itself, evidence of policy conflict.

The Local Planning Authority has previously accepted that there is no unacceptable overlooking, overshadowing, overbearing impact, identified parking concern, highway safety concern, or other material amenity impact associated with the development. However, an increase in dwelling numbers does not automatically demonstrate unacceptable harm to character, appearance, environmental quality or residential amenity. These matters remain questions of planning judgment and require an assessment of actual planning effects.

In the present case:

- the building already exists;
- no new built form is proposed;
- no extension or physical expansion is proposed;
- the established development pattern already exists;
- the visual relationship between buildings remains unchanged; and
- the application concerns the planning status of an established dwelling rather than the construction of new development.

Furthermore, the dwelling has now been occupied under the temporary permission and its operation has been tested in real-world conditions over an extended period. **The available evidence demonstrates that the concerns previously anticipated by the Local Planning Authority have not materialised in practice.** This includes matters relating to residential amenity, privacy, parking provision and the practical use of the dwelling and its associated amenity space. Occupation has occurred without any identified unacceptable impact on residential amenity, privacy, highway safety, parking provision or the wider operation of the site.

Whilst Core Policy 57 requires careful consideration of character, design and amenity impacts, **it does**

not establish a standalone prohibition on "overdevelopment", nor does it contain a quantitative threshold beyond which development automatically becomes unacceptable. Any conclusion that the site is overdeveloped must therefore be derived from demonstrable planning impacts rather than dwelling numbers alone.

In this regard, it is notable that **no specific and identifiable planning harm has been demonstrated arising from the continued occupation of The Coach House as an independent dwelling.** The allegation of overdevelopment therefore appears to arise primarily from the number of dwellings present on the wider site rather than from any evidenced adverse planning consequence.

The temporary permission represented a prediction of how the development might operate. The subsequent occupation of The Coach House has provided tangible evidence of how the development has actually functioned in practice. That evidence demonstrates that the adverse impacts previously anticipated have not materialised. In the absence of demonstrable harm to character, appearance, residential amenity, highway safety or environmental quality, the existence of additional dwellings on the wider site does not, in itself, establish conflict with Core Policy 57.

5.5 Separation Distances and the Former 21-Metre Guideline

Reference has previously been made to the traditional 21-metre back-to-back separation distance. However, this represents guidance rather than a mandatory requirement of the adopted Wiltshire Core Strategy.

Core Policy 57 does not require compliance with any prescribed separation distance. The relevant assessment is whether unacceptable overlooking, loss of privacy or loss of residential amenity would arise as a result of the development.

The physical relationship between the buildings has remained unchanged throughout the temporary permission period. The subsequent occupation of The Coach House has therefore provided a practical test of those relationships in real-world conditions.

The available evidence indicates that no unacceptable overlooking, loss of privacy, loss of residential amenity or other adverse impacts have arisen as a consequence of the dwelling's occupation. Accordingly, the assessment should be informed not only by separation-distance guidance, but also by the demonstrated planning reality of the development.

6. Conclusion

Following the withdrawal of the Emerging Local Plan:

- 1. All emerging density, plot-capacity, overdevelopment, amenity, privacy, garden size, NDSS, separation distance, parking, highways, character and subdivision policies now carry no weight in the determination of this application.**
- 2. The Local Planning Authority cannot rely upon withdrawn emerging policies or guidance as a basis for refusing planning permission.**
- 3. "Overdevelopment" is not defined within the adopted Wiltshire Core Strategy, and any allegation of overdevelopment must therefore be supported by identifiable planning harm rather than dwelling numbers alone.**

- 4. No specific and identifiable planning harm has been demonstrated in respect of residential amenity, privacy, overlooking, overshadowing, overbearing impact, highway safety, access arrangements or the practical occupation of the dwelling.**
- 5. The continued occupation of The Coach House during the temporary permission period has provided tangible evidence of how the development operates in practice. That evidence demonstrates that the impacts previously anticipated by the Local Planning Authority have not materialised.**
- 6. Any refusal based primarily upon allegations of overdevelopment would therefore require clear policy justification, supporting evidence of identifiable planning harm, and a reasoned explanation demonstrating how the continued occupation of this established dwelling conflicts with Core Policy 57.**