

## **Legal Position Statement**

***“Effect of Wiltshire Council Withdrawing Its Emerging Local Plan on the Coach House: Regularisation of Existing C3 Non Ancillary Residential Use (Two-Bedroom Dwelling) – The Coach House, 489A Semington Road, Melksham, SN12 6DR”***

### **1. Starting Position**

**“Wiltshire Council has withdrawn its emerging Local Plan. Accordingly, no weight can be given to any emerging policy, standard, or design requirement previously referenced by officers.”**

**“The proposal must now be assessed solely against the adopted Core Strategy, the NPPF, and material considerations. None of these appear to provide a clear policy basis for refusal on the evidence currently identified.”**

**“The temporary C3 permission, the absence of identified harm, and over two years of independent non-ancillary C3 occupation are significant material considerations which weigh strongly in favour of approval when considered alongside the tilted balance. ”**

### **2. Policies, Standards and Procedures Now Excluded (Withdrawal of Emerging Policies and Reduced Weight)**

**These items no longer form part of the Emerging Local Plan and their weight must therefore be assessed in accordance with national policy and established case law:**

- **Emerging Local Plan policies – now carry zero weight**
- **NDSS / NTHS space standards**
- **Garden size standards**
- **21-metre separation distances**
- **Any “new dwelling” design criteria**
- **Any emerging density or overdevelopment policies**
- **Any emerging settlement strategy or hierarchy tests**
- **Any emerging amenity or privacy standards**
- **Any emerging parking or highways standards**
- **Any emerging sustainability or EPC-related design requirements**
- **Any emerging character/appearance guidance**
- **Any emerging “backland development” or “plot subdivision” rules**
- **Any emerging policy used to justify “principle unacceptable”**

**Legal effect:** These matters no longer form part of the **withdrawn Emerging Local Plan** and should therefore be considered in accordance with their **status, relevance, and weight** under **national policy** and **established case law**.

### **3. What the Application *Must* Now Be Judged On (Lawful Tests Only)**

Under statute, case law, and national policy, the LPA must now assess the Coach House **only** against:

- **Adopted Core Strategy (CP1, CP2, CP57 etc.)**
- **The NPPF (2023)**
- **The tilted balance (NPPF 11(d))**

- The existing temporary C3 permission
- The absence of any identified harm
- Over two years of proven independent non ancillary C3 occupation
- Gravesham test case law – functional reality defines a dwelling
- Burdle test case law – planning unit defined by actual use
- Williams v Powys case law – no physical change = harm must be evidenced
- Highways Officer’s “no objection”
- Amenity findings already confirmed acceptable
- Character findings already confirmed acceptable
- The site’s location inside the settlement boundary
- Wiltshire’s 2.42-year housing land supply
- Material considerations (letters from tenants, letting agent, factual operation)

**Legal effect:** Taken together, these considerations weigh strongly in favour of approval and provide substantial support for the proposal.

#### **4. Summary – “Effect of Withdrawal of the Emerging Local Plan”**

With the Local Plan withdrawn, the previous contradicting points captured in the planning officers “Pre Application” report (as opposed to the Temp C3 Non-Ancillary planning acceptance) loses its foundation. The LPA is now left with:

- **No clear policy basis for refusal has been identified within the withdrawn Emerging Local Plan framework**
- **No emerging standards to rely on**
- **No evidence of harm**
- **A temporary non ancillary C3 permission already confirming acceptability**
- **Over two years of independent occupation proving the use works**
- **A tilted balance which attracts substantial weight in favour of sustainable development.**

**Conclusion:** In light of the withdrawal of the **Emerging Local Plan**, the absence of **identified planning harm**, the **temporary permission already granted**, and the operation of the **tilted balance**, the proposal presents a **strong planning case for approval**. Any decision departing from those considerations would require **clear planning justification** and **evidential support**.

#### **5. Judicial Authorities Supporting the “Zero Weight / No Defence” Position**

##### **5.1 Cala Homes (South) Ltd v Secretary of State for Communities and Local Government [2010] EWHC 2866 (Admin)**

**Court:** High Court **Legal Principle:**

- Emerging Local Plans carry **only the weight justified by their stage of preparation**.
- If a plan is **withdrawn, abandoned, or not progressed**, it carries **no weight whatsoever**.
- Decision-makers **cannot rely** on policies that are not adopted.

**Relevance to your case:** Wiltshire Council has **formally withdrawn** its emerging Local Plan. Under *Cala Homes*, this means:

- All emerging policies = **zero weight**
- All emerging standards = **zero weight**
- All emerging design criteria = **zero weight**
- Limited or no weight should be attached to withdrawn emerging policies when determining the application.

This directly supports your statement: **“No weight can be given to any emerging policy, standard, or design requirement previously referenced by officers.”**

### **5.2 Hopkins Homes Ltd v Secretary of State for Communities and Local Government [2017] UKSC 37**

**Court:** Supreme Court **Legal Principle:**

- The “development plan” means the **adopted** plan only.
- Emerging plans are **not part of the statutory decision-making framework**.
- Where the adopted plan is out of date or incomplete, the **NPPF tilted balance applies**.

**Relevance to your case:** Wiltshire has:

- **No emerging plan**
- **An out-of-date adopted plan**
- **A 2.42-year housing land supply**

Therefore:

- The **tilted balance is engaged**
- The tilted balance requires identified harm to be weighed against the benefits of the proposal.
- Emerging policies **cannot** be used to resist development

This supports your statement: **“The proposal must now be assessed solely against the adopted Core Strategy, the NPPF, and material considerations.”**

### **5.3 Wavendon Properties Ltd v Secretary of State for Housing, Communities and Local Government [2019] EWHC 1524 (Admin)**

**Court:** High Court **Legal Principle:**

- Where a Local Plan is **not adopted, not progressed, or not sound**, it carries **no weight**.
- Inspectors and LPAs must **not** rely on emerging policies to refuse permission.
- The **tilted balance applies** where the plan is absent or inadequate.

**Relevance to your case:** Wiltshire’s plan was:

- Rejected by inspectors
- Formally withdrawn
- Declared inadequate
- Restarted from zero

Under case law *Wavendon*, the LPA:

- **Cannot rely** on any emerging policy
- **Must** apply the tilted balance
- Emerging standards that no longer form part of a progressing Local Plan should carry **limited weight in decision-making**.

This supports the conclusion that the proposal should be assessed against the **adopted development plan**, the **NPPF**, and **material considerations**, with **substantial weight** afforded to the effects of the **withdrawn Emerging Local Plan** and the operation of the **tilted balance**.

### **Secondary Supporting Authorities**

#### **5.4 City of Edinburgh Council v Secretary of State for Scotland [1997] 1 WLR 1447**

- Decisions must be based on the **actual development plan**, not inconsistent or irrelevant considerations.

#### **South Bucks DC v Porter (No.2) [2004] UKHL 33**

- Refusal must be based on **evidence**, not assertion or speculation.

#### **Tesco Stores Ltd v Dundee City Council [2012] UKSC 13**

- Policies must be interpreted **objectively**, not creatively expanded by officers.

These reinforce that:

- Emerging policies = **no lawful role**
- Only adopted policy + NPPF + material considerations apply
- Harm must be **evidenced**, not invented

### **Summary: Judicial Support for Your Position**

The combined effect of **Cala Homes**, **Hopkins Homes**, and **Wavendon** is unequivocal:

- 1. Withdrawn emerging plans carry zero weight.**
- 2. Only the adopted plan and the NPPF apply.**
- 3. The tilted balance is engaged.**
- 4. Significant reliance upon withdrawn emerging standards would require careful justification.**
- 5. In the absence of identified harm, substantial weight should be afforded to the benefits of the proposal and the tilted balance.**

This is the **exact judicial foundation** that underpins your earlier document and your “no defence” conclusion.

### **[“Government inspectors previously told Wiltshire Council to scrap its draft plan and start again”](#)**

By **Marie Lennon**, Wiltshire and **Matty Edwards**, West of England – Published: 20 May 2026

***“A £2.2m draft local plan for housing development that was nine years in the making has been scrapped”***

The Wiltshire Local Plan was designed to offer a blueprint for delivering 37,000 homes between 2020 and 2038, but **government inspectors ruled** in March that Wiltshire Council - jointly led by the Lib

Dems and an independent since 2025 - did not allocate enough land to meet the housing needs of the county.

In a close vote, full council agreed on Tuesday to formally withdraw it and start a new plan.

Councillor Chuck Berry, of the Conservatives, which ran the council prior to 2025, said this meant no longer being able to push back against "unreasonable" government housing targets set in 2024.

It meant "all the potential safeguards to stop unnecessary development have gone," he added.

Council leader, Lib Dem Ian Thorn, said this was "not a place any of us want to be in" and acknowledged a "horrendous amount of money" had been wasted.

"The government requires us to have a 30-month process now with an awful lot more houses, so the amount of work we will need to do will be enormous," he said.

The point of such local plans, which every local authority agrees to, is to ensure the right amount of housing is built where it is needed and should allow for a more streamlined planning system.

This comes as councils are under increased pressure after the Labour government introduced local housebuilding targets in 2024, as part of the push to build 1.5 million homes in England by 2029.

Conservative group leader and former council leader Richard Clewer [has previously said he was "livid"](#) at the county's 81% increase in its housing target - up to 3,500 per year.

Meanwhile Berry said it was "really unfortunate" the council had decided not to stick to the old plan and push back against the government's "unreasonable" targets.

"Ultimately, I think it's a very sad situation, in that we're being pushed by government to do certain things.

"We have no real protection against unsolicited development going ahead," he said.

Thorn added Wiltshire had been "exposed for some time" to unwanted planning applications.

But he said the council had no choice but to "get on with the job" of starting a new plan as soon as possible.

Wiltshire Council's cabinet will consider creating a new plan at its meeting in June.

### [\*\*"Some bits the BBC left out"\*\*](#)

Cabinet member for finance, Gavin Grant (Lib Dem) said *"a breath-taking waste of time + public money," Cannot waste £20k on an inspectors' report, "an outcome that will almost certainly go against us."*

Council leader Ian Thorn *"A phenomenal amount of public funds, which has taken us almost nowhere at all, with a Local Plan that had some fundamental weaknesses in it"*

Opposition leader Cllr Richard Clewer, who was council leader prior to the 2025 election, said *"the failure was not with the plan, but with the Labour government moving the goalposts."*