

CASE OFFICER'S REPORT

Application Reference: 16/07288/OUT
Date of Inspection: 17/08/2016
Date site notice posted: 17/08/2016
Date of press notice: N/A

Description of Site and Surroundings

The application relates to an approximate 3.6 hectare site located to the north of the conurbation of Malmesbury. The site is bordered to the north by the B4014 with a number of residential dwellings lining the opposite side of the highway. The site is mostly open agricultural fields, with a drainage ditch running within the eastern extent. It is enclosed by hedgerows along the northern and western boundaries, and post and wire fencing to the southern boundary. To the west of the application site, is a detached two storey dwelling, with a development of 180 residential dwellings underway on the land further to the west, known as Filands View. The land directly to the south of the application site was identified and permitted for the creation of a primary school, as part of the approval for the 180 dwellings at Filands View.

A public right of way (MALM 8) runs alongside the ditch in the eastern extent of the site, running from the B4014 footway to Reeds Farm estate to the south. A significant Oak tree is located within the rear garden of the detached dwelling to the west and adjoining the connection point within the site between the current proposal and Filands View.

The site is located outside of the framework boundary for Malmesbury and is not allocated within the Malmesbury Neighbourhood Plan (MNP) for residential development. The land has an agricultural land classification of 3.

The application

The application seeks outline planning permission (all matters reserved except means of access) for residential development, including the construction of up to 71 dwellings, the creation of new vehicular access with footways and cycleways and ancillary road infrastructure, public open spaces, children's play area, landscape planting, surface water attenuation and associated infrastructure.

The proposed development would include the creation of a new vehicular access from the B4014, which would be sited approximately 150 metres from the B4014 / A420 roundabout to the east. The proposal would also include the creation of a pedestrian and cycle link between the current development and Filands Phase 1.

Planning History

15/05017/FUL - Proposed Temporary Top Soil Storage Area In Connection With Application 15/5015/REM - Approved

Policy

Wiltshire Core Strategy
Core Policy 1 – Delivery Strategy
Core Policy 2 – Settlement Strategy
Core Policy 3 – Infrastructure Strategy
Core Policy 13 – Malmesbury Community Area
Core Policy 41 – Sustainable Construction and Low Carbon Energy
Core Policy 43 – Providing Affordable Houses
Core Policy 45 – Meeting Wiltshire Housing Needs
Core Policy 46 – Meeting the Needs of Wiltshire's Vulnerable and Older People
Core Policy 50 – Biodiversity & Geodiversity
Core Policy 51 – Landscape

Core Policy 55 – Air Quality
Core Policy 57 – Ensuring High Quality Design and Place Shaping
Core Policy 58 – Ensuring the Conservation of the Historic Environment
Core Policy 60 – Sustainable Transport
Core Policy 61 – Transport and Development
Core Policy 64 – Demand Management
Core Policy 67 – Flood Risk

Malmesbury Neighbourhood Plan

1.1.6 & 1.1.7 – Objectives and Policies

Policy 1 – Backbridge Farm Allocation
Policy 2 – Burton Hill Allocation
Policy 4 – Local Need Assessment
Policy 5 – Assessment Against Approved Consents
Policy 6 – Burnham House Allocation
Policy 12 – Primary School Expansion and Timing of Development
Policy 13 – Development in Accordance with MNP Volume II

National Planning Policy Framework

Paragraph 7 – Dimensions of Sustainable Development
Paragraph 14 – Presumption in Favour of Sustainable Development
Paragraph 17 – Core Planning Principles
Paragraphs 47 – 49 – Delivery of Housing
Paragraph 55 – Dwellings in Isolated Locations
Paragraph 198 – Conflict with a Neighbourhood Plan

Planning Practice Guidance

Representations

During the public consultation period 46 consultation responses were received from members of the public. 44 of these responses were in objection to the proposed development and 2 were in support.

The consultation responses in objection to the development can be summarised as follows:

- i) Contrary to the Neighbourhood Plan (41 responses);
- ii) No need for additional housing to meet targets in Malmesbury (28);
- iii) Impact to infrastructure schools, doctors, leisure facilities etc (33);
- iv) Impact to highway safety (14);
- v) Not sustainable development (8);
- vi) Impact to Flood Risk (4);
- vii) Harm to visual amenities of the surrounding area (2);
- viii) Poor living environment provided (1);
- ix) Overdevelopment of the site (1);
- x) Impact to Historic Abbey (1);
- xi) Lack of shops, pubs, facilities etc within the development (1)

The consultation responses in support of the development can be summarised as follows:

- i) Provision of additional affordable housing units within Malmesbury;
- ii) Prefer the application site to the Backbridge Farm site (Core Policy 1 & Strategic Allocation in the MNP)

Malmesbury Town Council: Very strongly object to the development. The grounds for objection are as follows:

1. The application is in clear conflict with the democratically-validated MNP;
2. The proposal has been widely rejected by the public during pre-application consultation;
3. Granting the application would encourage democratic deficit;
4. The 71 dwellings proposed are incremental towards a tipping point where Malmesbury's infrastructure, schools and character will be overwhelmed through over-development.
5. Claimed benefits are either not needed or delivered;
6. The proposed development would cause harm to Malmesbury and is not sustainable development

St Paul Malmesbury Without Parish Council: Very strongly object to the development. The grounds for objection are as follows:

1. Conflict with the MNP;
2. The proposal has been widely rejected by the public during pre-application consultation;
3. Overdevelopment and no need for additional dwellings in Malmesbury above MNP allocations;
4. The harms of the development would significantly and demonstrably outweigh the benefits, which are considered to be limited and overstated by the applicant. Harm are identified as:
 - i) Impact to services and infrastructure;
 - ii) Additional pressure on school places;
 - iii) Harm to character of the town through future development within Malmesbury, above that allocated within the Neighbourhood Plan.

Brokenborough Parish Council: Completely oppose to the development. The grounds for the objection are as follows:

1. Conflict with the MNP;
2. No require for additional houses above those provided in the MNP;
3. Harm to local infrastructure, especially primary school places.

Cllr Simon Killane: Request the application to be determined at planning committee, should the application be recommended for approval. Cllr Killane has confirmed that the application can be determined under delegated powers in the event of a refusal.

James Gray MP: Objects to the development on the grounds that the proposal is contrary to the Wiltshire Core Strategy and Malmesbury Neighbourhood Plan. Granting consent would make the Malmesbury Neighbourhood Plan a virtually worthless document.

Highways: No objection raised with regards to the access being proposed. However, requested a planning obligation of £6,000 towards the right of way upgrade to a desirable width of 3m. Furthermore, they consider that the pedestrian footway between the site and the to the B4014/ A420 roundabout needs to be upgraded to 2m to support the development.

Drainage: No Objection. The submitted information demonstrates that the development will achieve a Greenfield run-off rate and would comply with Core Policy 67 of the Wiltshire Core Strategy.

Ecology: No objections, subject to standard conditions for CEMP, landscaping plans, landscape management and drainage.

Tree Officer: An amendment to the site layout on the above application would be welcomed to make provision for a pedestrian/cycle link adjacent to the protected Oak tree noted as T1 on the Arboricultural Impact Assessment Plan prepared by Symbiosis Consulting, revised on the 20th July 2016.

New Housing Team: We can confirm that there is demonstrable affordable housing need in the Malmesbury Community Area and that a 40% on-site affordable housing contribution at nil subsidy would be sought from these proposals.

Based on a scheme of 71 units, 40% Affordable Housing would equate to 28 affordable units required on site with a tenure split of 60% Affordable Rent (17 units) and 40% Intermediate Housing* (11 units) in order to reflect current demonstrable need and policy approaches.

An indicative tenure mix and unit size breakdown (based on current demonstrable need) would be as follows:

Affordable Rent (60%) = 17 units

38% x 1 bed 2 person flats (6)
10% x 2 bed 3 person bungalows (2)
34% x 2 bed 4 person houses (6)
12% x 3 bed 5 person houses (2)
6% x 4 bed 7 persons house (1)

Shared Ownership (Intermediate Housing)* (40%) = 11 units

60% x 2 bed 4 person houses (7)
40% x 3 bed 5 person houses (4)

Education Team: As a result of the current situation in the town, the Council intends to provide additional primary places at Malmesbury Primary School or alternatively at a new school in Malmesbury, and so is seeking contributions towards this from developments coming forward in this area.

We therefore require a developer contribution on this application towards the provision of 17 places in Malmesbury at £16,979 per place = £288,643 (to be index linked).

In view of the pressure on secondary places, the Council intends to progress a phased expansion of Malmesbury Secondary School, to which S106 contributions from relevant developments will contribute. We therefore require a developer contribution on this application development of 12 places at £21,747 per place = £260,964 (to be index linked).

A total sum of £61,327.00 is also sought towards childcare / early years education in Malmesbury.

Urban Design: Support, subject to conditions.

Public Open Space: Based on the outline submission, the development would be required to achieve 4,200 square metres of public open space and 345 square metres of equipped play.

Archaeology: Support, subject to conditions.

Arts Service: An indicative public art contribution figure (based on £300 per dwelling) for this site would be £21,300 for 71 dwellings

Public Protection: No objection, subject to conditions relating to air quality, hours of construction and contaminated land.

Natural England: No objection

Environment Agency – No comment to make on the application.

Wessex Water: Please note the following comments:

- Separate systems of drainage must be provided to serve development proposals
- A point of connection to public foul sewer to be agreed with Wessex Water
- Surface water discharge to existing land drainage system subject to Flood Risk measures approved by the Lead Local Flood Authority
- The existing 150mm dia foul sewer will be affected by the proposed highway entrance and measures to protect the sewer must be agreed with Wessex Water before any construction commences. Temporary loading from construction plant may damage this existing sewer – we may consider diverting if necessary.
- Sewers will be adopted by Wessex Water under a formal agreement and subject to satisfactory engineering proposals

Highways England: Offer no objection.

Assessment

Principle of Development

The application seeks outline planning permission (matters reserved except means of access) for residential development, including the construction of up to 71 dwellings, the creation of new vehicular access with footways and cycleways and ancillary road infrastructure, public open spaces, children's play area, landscape planting, surface water attenuation and associated infrastructure.

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise.

In this case, the Wiltshire Core Strategy, including those policies of the North Wiltshire Local Plan saved in the WCS, alongside the Policies of the Malmesbury Neighbourhood Plan form the relevant development plan for the Malmesbury Area.

Core Policy 1 of the Wiltshire Core Strategy (Settlement Strategy) identifies the settlements where sustainable development will take place to improve the lives of all those who live and work in Wiltshire. Within this Policy Malmesbury is identified as a Market Town, which are defined as settlements that have the ability to support sustainable patterns of living in Wiltshire through their current levels of facilities, services and employment opportunities. Market Towns have the potential for significant development that will increase the jobs and homes in each town in order to help sustain and where necessary enhance their services and facilities and promote better levels of self containment and viable sustainable communities.

Core Policy 2 of the Wiltshire Core Strategy states that in line with Core Policy 1, the delivery strategy seeks to deliver development in Wiltshire between 2006 and 2026 in the most sustainable manner by making provision for at least 178ha of new employment land and at least 42,000 homes, with a minimum housing requirement for the North and West Wiltshire HMA (which contains Malmesbury) of 24,740 dwellings for the plan period. Core Policy 2 also states that sites for development in line with the Area Strategies will be identified through subsequent Site Allocations DPDs and by supporting communities to identify sites through neighbourhood planning.

Core Policy 13 of the Wiltshire Core Strategy relates to the Malmesbury Community Area and states that over the plan period (2006 to 2026), approximately 1,395 new homes will be provided of which about 885 should occur at Malmesbury. Approximately 510 homes will be provided in the rest of the Community Area. The policy also requires that development proposals in the Malmesbury CA will need to demonstrate how issues and considerations in paragraph 5.73 of the WCS will be addressed. One issue raised at paragraph 5.73 is as follows:

“Providing appropriate levels of housing in the town. Malmesbury has a high quality historic environment with few opportunities to bring forward new affordable homes on previously developed land. It is possible that a greenfield site may need to be identified to provide for housing need in the Community Area and enable the local economic base to diversify. Such opportunities should be identified through a community-led neighbourhood plan or in accordance with Core Policy 2”

A referendum on the Malmesbury Neighbourhood Plan was held on held on 27 November 2014 and residents voted in favour of the Malmesbury Neighbourhood Plan (MNP). Out of the 1961 ballot papers issued, 1768 cast a vote of 'yes' which was a majority of 90%. The turnout of electors was 32.4%. Therefore, Wiltshire Council decided on the 25th February 2015 to formally 'make' the Malmesbury Neighbourhood Plan.

The table on page 10 of the MNP outlines the 885 dwelling requirement for Malmesbury Town for the WCS Plan Period 2006-2026. It then states that there have been 483 completions between 2006-14 with 219 further sites with planning approvals (including 180 dwellings at Filands Phase 1 adjoining the site to the west). Therefore, 183 dwellings were required to be identified to meet the minimum requirements of the Core Strategy.

In order to achieve delivery of the required 183 dwellings, three housing allocations are made within Policies 1, 2 & 6, which respectively allocate the following:

Policy 1 – Backbridge Farm – 170 dwellings

Policy 2 – Burton Hill – 50 dwellings

Policy 6 – Burnham House – 50 dwellings (extra care units).

The inspector of the MNP was keen to note that these numbers are approximate. However, the above allocations would deliver an approximate total of 270 units within Malmesbury Town, well in excess of the minimum requirement of 183 dwellings. Therefore, it is considered that the MNP follows a plan led approach to residential development in Malmesbury and would exceed the minimum requirements of the Wiltshire Core Strategy.

To date, application reference 16/06401/FUL has been submitted which seeks full planning permission for 231 dwellings at Backbridge Farm and is yet to be determined. A public consultation event took place in June 2016 for the development of Burton Hill and application reference 14/08832/FUL was approved on 24th July 2015, which granted planning permission for an extra-care facility with 49 self-contained flats. Therefore, there is no indication that the Neighbourhood Plan is failing to deliver the housing units proposed within the plan period to 2026.

The applicant has stated in paragraph 5.33 of their statement that there are no policies within the MNP that resist development outside of the settlement boundary, which includes the application site. However, the MNP forms part of the Development Plan, but should not be read in isolation from the Core Strategy. Core Policy 2 of the Wiltshire Core Strategy states that other than in circumstances as permitted by other policies within this plan, identified in paragraph 4.25, development will not be permitted outside the limits of development, as defined on the policies map.

The site falls outside of the limits of development for Malmesbury and does not comply with any of the below policies listed under paragraph 4.25 of the WCS:

- Additional employment land (Core Policy 34)
- Military establishments (Core Policy 37)
- Development related to tourism (Core Policies 39 and 40)
- Rural exception sites (Core Policy 44)
- Specialist accommodation provision (Core Policies 46 and 47)
- Supporting rural life (Core Policy 48)

Similarly, as it lies beyond the limits of development, it does not comply with saved policy H4 of the North Wiltshire Local Plan as it does not meet the exceptions, set out in that policy also.

Therefore, the development does not comply with Core Policy 2 and Saved Policy H4, with regards to development outside of the limits of development.

It is also noted that the application site was considered for residential development as part of the Sustainability Appraisal for the housing site selection for the Malmesbury Neighbourhood Plan and was not carried forward for development as part of the plan. Therefore, the plan ruled out a housing allocation for this land in favour of the sites at Backbridge Farm, Burton Hill and Burnham House, so there is a clear mandate that residential development in this location was not supported by the Malmesbury Neighbourhood Plan.

Paragraph 198 of the Framework states that, where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted.

The proposed development seeks to provide 71 residential units on land which is outside of the settlement boundary for Malmesbury and has not been allocated for residential development under the MNP. Therefore, the development is considered to be contrary to Core Policies 1, 2, & 13 of the WCS and the policies of the MNP and in accordance with paragraph 198 of the framework, planning permission should not normally be granted.

5 Year Land Supply

Housing land supply has to be regularly assessed. The Council cannot currently demonstrate a 5 year housing land supply. In the most recent appeal the decision for North & West HMA (Land to the west of A365 Shurnhold, Melksham, Wiltshire - APP/Y3940/W/15/3132915) the inspector determined that Wiltshire Council could demonstrate 4.25 years land supply in the North and West HMA. However, they also noted that “this finding should also be viewed in the light of more recent evidence about the Council’s performance and in particular the evidence of recent planning permissions of 700 units which have been granted in the Melksham area. Those permissions are likely to make a substantial contribution both to the current monitoring year’s annualised requirement and the overall supply.” This figure does not include the proposed site allocations in the Chippenham Site Allocations DPD.

In these circumstances, NPPF Paragraph 49 advises that policies relevant for the supply of housing should not be considered up-to-date. As a result the presumption in favour of sustainable development as set out at Paragraph 14 of the Framework is engaged so that permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

It can be seen therefore that Core Policies 1, 2 & 13, saved Policy H4 and the housing policies of the MNP are all relevant for the supply of housing and are to be considered out-of-date. This does not mean, however, that these policies carry no weight or even only limited weight. A recent court of appeal judgement that specifically examined how to apply and interpret paragraph 49 (C1/2015/0583 Suffolk Coastal District Council and Hopkins Homes Limited and C1/2015/0894 Richborough Estates Partnership LLP vs Cheshire East Borough Council First). There are a number of important statements and points of clarity provided in the above decisions that are important to framing any discussion on this application and the degree of conflict with the WCS. Particularly relevant are the statements in the court of appeal decision, paragraphs 42 to 48 (‘How is the policy in paragraph 49 of the NPPF to be applied?’), which highlight a number of key points.

First, it is up to the decision maker to judge whether a plan policy is or is not a relevant policy for the supply of housing, this can include restrictive policies not necessarily related to housing specifically; however that may have the effect of limiting housing. Furthermore, the appeal court decision confirms that in their view there will be many cases in which restrictive policies are still given sufficient weight to justify the refusal of planning permission, despite their not being up-to-date under the auspices of paragraph 49.

In conclusion, the appeal court decision confirms that ultimately it will be up to the decision maker to judge the particular circumstances of each application and how much weight should be given to conflict with policies for the supply of housing that are ‘out-of-date’, and, that the fundamental purpose of paragraph 49 is not to punish Councils (and by extension local communities), but to provide an incentive to boost housing land supply.

Therefore, consideration of the weight which can be provided to the above policies is considered in the balancing exercise at the end of this report.

Impact to Visual Amenity / Urban Design

Policy 13 of the Malmesbury Neighbourhood Plan states that The Neighbourhood Plan Design Guide as set out in Volume II of this Plan should be taken into consideration in all developments to ensure a high quality of design that respects the specific character of Malmesbury Town and the surrounding area.

The application is in outline with all matters reserved, therefore, the final appearance and impact on visual amenity cannot be fully determined until reserved matters stage. However, Volume II of the MNP provides a number of design principles which the illustrative layout needs to be considered against, to ensure the rhetoric of the proposed development would be brought forward in a manner which complies with Core Policy 57 of the WCS and Volume II of the MNP.

The Council’s Urban Design Officer has reviewed the illustrative masterplan and raised no objections to the development, subject to detailed design. The design concept for the site splits the site into three areas, the main street through the development, the Filands Edge facing onto the B4014 and the Park Edge, which would front onto the public open space. It is considered that this approach would ensure that the

development would provide an acceptable frontage onto the main visual receptors into the site. The final compliance with Volume II of the MNP will need to be considered as reserved matters stage.

The application has been submitted with an LVIA to consider the impacts to the wider visual receptors from outside the site. This report concludes that the greatest effects would be for the properties along the northern edge of the B4014, which is to be expected, given the siting of these dwellings opposite the site. The overall impacts from the other public vantage points are considered to be either minor or negligible once the associated landscaping and public open space has developed at the site.

The proposal would result in the loss of the open agricultural field to residential development, which is acknowledged by the LVIA to result in harm from the public highway immediately adjoining the site. Therefore, this harm, however small, also forms a material consideration in the planning balance. The LVIA also concludes that there would be some harm from the public right of way MALM8. However, this harm would be negated by the public open space which would separate the right of way from built form within the site. However, once again, it must be considered that limited harm would also occur to the views from the public right of way.

The report also concludes that the impacts to the Cotswold AONB to the east would be negligible, given the topography, vegetation and built form, between it and the site and this is considered to be an acceptable conclusion, given that the AONB is set 1.4kms to the west with the Filands View and Dyson Expansion between it and the application site.

The proposed development would be sufficiently distanced from the Grade I Listed Malmesbury Abbey to ensure no harm to its setting would occur. Any views of the abbey from site are limited and the development would not obscure any important views of the abbey.

Impact to Residential Amenity

The main considerations would be the impact to the adjoining dwelling to the west, Braemore, and the dwellings on the eastern edge of the Filands View development. Whilst the impacts to residential amenity will require further consideration at reserved matters stage, the illustrative layout shows how 71 units could be provided within the site without resulting in significant harm to residential amenity through a loss of light, loss of outlook or sense of dominance. The final impacts to privacy would be determined once the location of habitable rooms windows are known

Likewise the level of residential amenity afforded to future occupiers would be considered at reserved matters stage. However, the illustrative layout raises no concerns that an acceptable living environment for future occupiers could not be achieved.

Highways Impacts

The proposed development seeks the creation of a new access into the site from the highway of the B4014. The proposed layout would provide a ghost priority right hand turn lane junction with associated footways. The highways officer has reviewed the proposed access arrangement and considers them to be a safe access into the site.

The original proposal also sought to connect the proposed development to the development at Filands View with a vehicular access. However, the Tree Officer raised a significant objection to the creation of this access road, given that the majority of this highway would be within a root protection zone of the protected Oak within the curtilage of Braemore. This tree has already come under significant pressure from development within its root protection zone from the development at Filands View and the Tree Officer expressed concern that further development might undermine the long term viability of this tree, which does provide significant amenity value to the surrounding area. Highways Officers have expressed that a secondary vehicular access from the proposed development into Filands View would be extremely desirable but not essential. Given that Filands View does not have a vehicular access from within the site to the Reeds Farm development to the south (the shown access is bollarded and required to be by a planning condition) the vehicular movements from the application site to the Town Centre of Malmesbury would occur through the main access onto the B4014. The only vehicular movements from the application site to Filands View would be when residents of the proposed development visit dwellings or the potential primary

school within Filands View. However, the distances between the sites would be walkable and the vehicular access along the B4014 would still be available if vehicular access between the two development was required. Therefore, the plans were revised to show a pedestrian and cycle access with a 3.5 m bollarded strip for emergency vehicles, as requested by Highways Officer, to ensure the preservation of the TPO Oak Tree within the adjoining land.

The Highways Officer has also requested that the development should secure an upgrading of the footway between the edge of the application site to the B4014/ A420 roundabout, to a width of 2m. This would entail an upgrading of the surface slight widening and improvements to wearing course. Whilst it is acknowledged that an improvement to the pedestrian footway would be desirable, the current footway is already quite wide for the length of the highway in question and can easily be walked along. The pedestrian movements from the site in this direction a likely to be limited to people walking to the garden centre as the majority of the pedestrian movements will be to the town to the south or toward Dyson to the west. Therefore, given that a footway currently exists, it is not considered that an upgrade to the footway is required to make the development acceptable.

Sustainability

Core Policy 60 of the WCS states that the council will use its planning and transport powers to help reduce the need to travel particularly by private car, and support and encourage the sustainable, safe and efficient movement of people and goods within and through Wiltshire. One of the stated ways of archiving this is by planning developments in suitable locations.

It is acknowledged that the site is located outside of framework boundary for Malmesbury. However, the site adjoins the Filands View site which is currently under construction and provides 170 residential dwellings in close proximity to the application site. In the determination of this appeal the Local Planning Authority concluded that the Filands View site was a suitable, accessible location for residential development. Whilst the application site is set further east along the B4104, the site is within close proximity to Filands View, alongside Dyson (as the major employer in the town) and Waitrose (as the major supermarket). Therefore, the Council would not consider the location of the site to be so remote from employment and services as to make it substantially worse than the adjoining Filands View site, where no objection was raised on sustainable transport grounds and found acceptable by the inspector.

Core Policy 41 of the Wiltshire Core Strategy states that new homes (excluding extensions and conversions) will be required to achieve at least Level 4 (in full) of the Code for Sustainable Homes. However, since the wording of this Policy the Code of Sustainable Homes has been abolished. Therefore, in light of the wording of the Planning Practice Guidance, the Council now seeks for dwellings to be built to achieve a level of energy performance at or equivalent to Level 4 of the Code for Sustainable Homes and this would be secured by way of a suitable pre-commencement condition.

Drainage / Flood Risk

Core Policy 67 of the Wiltshire Core Strategy states that all new development will include measures to reduce the rate of rainwater run-off and improve rainwater infiltration to soil and ground (sustainable urban drainage) unless site or environmental conditions make these measures unsuitable.

The Drainage Officer raised an initial concern as the surface water drainage ditches which serve the development drain to a culvert to the north of Powell Rise. The drainage system at this point is acknowledged to have capacity issues and has historically flood during times of adverse weather. As this is an existing capacity issue, it would not be for this development to improve capacity at this location, only to ensure the development would not make this issue worse.

The applicant has submitted additional drainage information to the Council's Drainage Officer and he is satisfied that the submitted details demonstrate that a Greenfield Run-Off rate would be achieved by the development. Therefore, the proposal would not make the capacity issue at Powell Rise any worse than the existing and the submitted details have demonstrated compliance with Core Policy 67 of the WCS, subject to final details secured by way of a pre-commencement condition.

Ecology

The Council's Ecologist was consulted on the proposal and raised no objection to the development.

The site is comprised predominately of species-poor grassland of limited ecological value, however boundary features including species-rich hedgerows, a ditch and mature trees are all of local value. Short sections would be lost and the general network would be fragmented by proposed access. Although the scheme is in outline, it is clear that the ecological value of these features would also be degraded by the proximity of roads, buildings, residential gardens and parking. These will all lead to some negative, permanent ecological effects of the development, however these are relatively minor in the context of existing approved developments to the south and the A429 to the north. The development has the potential to create some ecologically valuable habitats on the margins of the site, particularly associated with SUDS and landscaping in the east of the site.

The site supports an assemblage of foraging bats typical of agricultural land in this part of the county; the value of the site would be degraded for these populations through habitat degradation and artificial lighting, however there would also be some beneficial effects through the SUDS and landscaping in darker areas of the site.

A low population of grass snake is present on the site, however this is unlikely to be significantly affected by the proposals subject to some precautionary construction measures, due to the relatively limited area of suitable habitat within the site and mobile nature of this species.

Local populations of birds, hedgehogs, invertebrates and brown hare would be affected by the proposals; however these would all be relatively minor effects and there may be some benefits for some of these species through SUDS and landscaping proposals. Therefore, subject to conditions relating to a construction environment management plan, landscaping and drainage, the development is considered to comply with Core Policy 50 of the WCS.

Affordable Housing

Core Policy 43 of the WCS states that on sites of five or more dwellings, affordable housing provision of at least 30% (net) will be provided within the 30% affordable housing zone and at least 40% (net) will be provided on sites within the 40% affordable housing zone.

Policy 4 of the MNP states that planning applications for new housing, including conversions, must be tested against the current evidence of local demand and supply from sources including Wiltshire Council population forecasts, the Social Housing Register, the Strategic Housing Market Assessment and the most recent Neighbourhood Survey. Tables 2.1.1 and 2.1.2, above, are derived from this evidence.

Policy 5 of the MNP states that planning applications for new housing, including conversions, should be assessed against the demand net of cumulative consents given in the period, not the gross demand identified at the beginning of the period

Malmesbury is located within the 40% affordable housing zone and The Council's Housing Services Team have confirmed that there is a demonstrable affordable housing need in the Malmesbury Community Area. Based on a scheme of 71 units, 40% Affordable Housing would equate to 28 affordable units required on site with a tenure split of 60% Affordable Rent (17 units) and 40% Intermediate Housing (11 units) in order to reflect current demonstrable need and policy approaches. The indicative layout shows that 40% affordable housing would be delivered and the tenure split and mix required to meet Policy 5 of the MNP and Core Policy 45 of the WCS would be achieved through a suitably worded S106 agreement.

Education

The designated primary school for the application site would be Malmesbury CE primary school. The capacity of this school is 420 spaces and the school had 421 pupils on roll in January 2016. The additional places required in housing already registered / approved and not yet built is 145 places. The school is already full and projected to remain so with the amount of housing already registered/approved in its area. There are no other primary schools within 2 miles safe walking distance of the development site except St Joseph's Roman Catholic School. As an RC school, its admissions policy gives priority to children from

practising catholic families and it has a much wider than usual catchment area. There are only 5 spare places left here which will also be filled by applications already approved/registered. Due to the pressure on primary places, the Council intends to either expand Malmesbury CE Primary School or alternatively open a new primary school to meet additional demand. Therefore, education services have confirmed the need for a developer contribution from the development towards the provision of 17 primary school places in Malmesbury at £16,979 per place = £288,643 (to be index linked). Education Services have confirmed that the money would be one of five pooled contributions towards a phase of development at either the expansion of Malmesbury Primary School or the creation of a new primary school on the allocated land to the south of the site.

The designated secondary school for the application site would be Malmesbury Secondary. This school has a capacity of 1140 and had 1094 pupils on roll in May 2016. The forecasts show these numbers peaking at 1172 in 2022, with the school currently forecast to reach capacity in 2018. Additional places required in housing already registered/approved but not yet built out & so not yet in forecasts equates to 111 places. In view of the pressure on secondary places, the Council intends to progress a phased expansion of Malmesbury Secondary School, to which S106 contributions from relevant developments will contribute. Based on the housing numbers submitted there is a requirement from the development to provide 12 secondary school places at £21,747 per place = £260,964 (to be index linked). Education Services have confirmed that the money would be one of five pooled contributions toward a phase of development in the expansion of Malmesbury Secondary School. The primary and secondary school contributions would be required to be secured by way of a s106 agreement.

Furthermore, early years services have advised that currently, there are childcare spaces available in Nurseries and Pre-schools as well as childminders across the community area. As housing grows in the area sufficiency will begin to be an issue in the area. Also from September 2017 the 15 hours Free Entitlement funding for three and four year olds will be increasing to 30 hours, this will increase demand for Early Years provision in the area, there will be a shortage of Early Years places in this area. Therefore, a total of 7 spaces for early years places will need to be provided to accommodate the development at £17,522 per place = £61,327. However, there does not appear to be single project which this would be allocated to nor is it confirmed that this would be a pooled contribution towards this project. Therefore, it is considered that the seeking of such a sum would be contrary to the Community Infrastructure Regulations 2010 and is not sought as part of this application and would be taken through CIL.

Public Open Space

The Public Open Space Officer has advised that based on the outline submission, the development would be required to achieve 4,200 square metres of public open space and 345 square metres of equipped play. The illustrative layout shows the provision of 0.55 ha of Public Open Space, including 0.1 ha of play space spread across two locations within the site. Therefore, an acceptable level of public open space would be provided. Wiltshire Council no longer adopts public open space, therefore, the public open space would be required to be secured by way of a s106 agreement and management company established for its long term management (unless the Town Council agree to adopt the public open space).

Rights of Way

The Rights of Way and Highways Officer have identified that the existing public Right of Way, MALM8, should be upgraded to provide a cycleway and suggested a Grampian condition to require details of the upgrade of the right of way with a width of 3m, where feasible.

The applicant has suggested that there are alternative direct and convenient cycle routes available via Filands View, which means that the upgrading of MALM8 to a cycleway is not essential. However, for those living at the eastern edge of the development, this would entail quite a lengthy alternative to using MALM8. Therefore, in accordance with the hierarchy of Core Policy 61, it is deemed necessary for MALM8 to be upgraded to a cycleway to make the development acceptable. This would be secured by way of the s106 agreement.

Waste

A financial contribution towards the provision of waste receptacles would be required to be provided to support the development. The level would be in accordance with the Council's Waste SPD, given that the application is in outline and the number of units and mix is not yet known.

Public Art

The Council's Public Art Lead has made a request for £21,300 towards public art in the surrounding area. However, the provision of monies towards Public Art is stated on the Council's Regulation 123 List and the monies do not appear to be pooled towards any specific project which is required to make the development acceptable. Therefore, it is considered that the seeking of such a sum would be contrary to the Community Infrastructure Regulations 2010 and is not sought as part of this application.

Planning Obligations

No s106 agreement has been secured for the identified planning obligations above, those being affordable housing, primary and secondary school provision, provision of public open space (including a management company to manage the open space), rights of way improvements and waste facilities. Therefore, the development is not considered to deliver the required infrastructure to make the development acceptable and is contrary to Core Policy 3 and Saved Policy CF3 of the WCS.

Other Issues

The Council's Public Protection Officer has noted that the site appears to be predominantly free from former uses of a potentially contaminative nature, however one polygon of unknown filled ground is identified which may be of significance to the proposed development. Therefore, they have requested that a condition be attached to any approval to ensure the submission of site investigation and any remedial work, prior to the commencement of development.

The Public Protection Officer has also requested a condition which requires the submission of an air quality assessment prior to the commencement of development. Core Policy 55 of the WCS states that development proposals, which by virtue of their scale, nature or location are likely to exacerbate existing areas of poor air quality, will need to demonstrate that measures can be taken to effectively mitigate emission levels in order to protect public health, environmental quality and amenity.

The Officer acknowledges that the site is not one identified as being of poor air quality and is not within an AQMA. Therefore, given the relatively low quantum of housing, it is considered that such a condition is not required to show compliance with Core Policy 55 as the scale of development would not exacerbate existing area of poor air quality.

The public protection officer has also raised concerns about the impacts from lighting within the site. The main lighting would be street lights and it has to be acknowledged that the street lights in the estates to the west and south west would already cause some degree of light pollution, which would not be made worse by the current proposal.

The issue raised about noise disturbance during building works and hours of operation is already controlled by separate legislation and would not require a further condition. However, given the quantum of development a construction method statement would be considered appropriate, in the event of an approval.

The Council's archaeologist has reviewed the proposal and noted that most of this proposed development site has already been subject to archaeological evaluation in relation to an earlier application. This work established that there are prehistoric features in the northern part of this area. This area will need have archaeological mitigation work undertaken in the form of strip, map and record excavation, secured by condition. This will need to also apply to the small area within the north east part of the red line that has not been subject to previous work. Therefore, a suitable condition would be required to be attached to any condition.

Conclusion

Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 states that “*determination must be made in accordance with the plan unless material considerations indicate otherwise*”. Paragraphs 2 & 11 of the NPPF reiterate and confirm this requirement. The Wiltshire Core Strategy Adopted January 2015 and the Malmesbury Neighbourhood Plan made in February 2015 form the local component of the current development plan.

Paragraph 14 of the National Planning Policy Framework states the presumption in favour of sustainable development, whilst paragraph 7 outlines that the three dimensions of sustainable development are environmental, social and economic factors.

Paragraph 198 of the Framework states that, where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted.

In this circumstance the development is contrary to the Malmesbury Neighbourhood Plan as the application site was discounted and not allocated as a strategic allocation for residential development and would deliver far in excess of the levels of housing identified in the Malmesbury Neighbourhood Plan for the plan period to 2026. Furthermore, the proposed development is outside of the defined limits of development for Malmesbury and would also be contrary to Core Policies 1, 2, 13 & Saved Policy H4 of the WCS.

However, the Local Planning Authority is not able to demonstrate a 5 year land supply in the North & West HMA, which contains the application site. In these circumstances, NPPF Paragraph 49 advises that policies relevant for the supply of housing should not be considered up-to-date. As a result the presumption in favour of sustainable development as set out at Paragraph 14 of the Framework is engaged so that permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

Therefore, of key consideration are the benefits and harms associated to the development and the level of weight which may be attributed to them in the planning balance. The applicant has highlighted the following economic, social and environmental benefits from the scheme:

- Delivery of additional housing for Malmesbury in a sustainable location to add to the housing land supply deficit.
- Delivery of affordable housing;
- Provision of public open space;
- Support for community facilities and local services through an increase in population
- Net biodiversity enhancements;
- Economic benefits through construction activities and increased local population;
- Reduction in surface water drainage issues for residents in Reeds Farm.

With regards to the above, the current submission has not demonstrated how there would be biodiversity enhancements, so very limited weight can be given to this. Likewise a number of residents have objected to the development due to the additional stress on community facilities, therefore, there does not appear to be much need for an increase in population to support these facilities and again very limited weight is given to this.

These benefits have to be weighed in the balance against the harms associated to the development. An identified harm of significant weight is that the development is contrary to the Development Plan including the made Malmesbury Neighbourhood Plan. The Secretary of State for the Department of Communities and Local Government has recently determined a number of recovered appeals where consideration has been given to the weight which should be afforded to a Neighbourhood Plan in decision taking. Of most relevance to this application is the appeal at Land South of Ford Lane, East of North End Road, Yapton (APP/C3810/A/14/2228260) (from herein referenced as the Yapton Decision). In this decision it was determined that the Local Planning Authority was not able to provide 3 years land supply, had an out-of-date development plan (with the emerging Local Plan being suspended due to an under-estimation of the OAN) and had a persistent record of under-delivery and required a 20% buffer.

In the Yapton decision the Secretary of State wrote:

“The Secretary of State considers that neighbourhood plans, once made part of the development plan, should be upheld as an effective means to shape and direct development in the neighbourhood planning area in question”.

At paragraph 36 of the Yapton Decision the Secretary of State wrote:

“The Secretary of State has noted the inspector’s conclusions at IR 11.51 and IR.11.55. However, he does not agree, given his findings on neighbourhood planning. As such, he weighs the harms caused by this conflict with the YNP and the provisions of paragraph 198 of the Framework against the benefits of the proposal, as set out in the Neighbourhood Planning Guidance he has issued. He gives very substantial weight to this conflict. As such he concludes that the proposal does not comply with the social element of sustainability, and he gives very substantial weight to this against the proposal”.

The Yapton appeal was dismissed with the only other harms being the limited weight to the adverse impact to the character and appearance of the field and further limited weight to the loss of the agricultural land.

In the most recent appeal the decision for North & West HMA (Land to the west of A365 Shurnhold, Melksham, Wiltshire - APP/Y3940/W/15/3132915) the inspector determined that Wiltshire Council could demonstrate 4.25 years land supply in the North and West HMA. However, they also noted that “this finding should also be viewed in the light of more recent evidence about the Council’s performance and in particular the evidence of recent planning permissions of 700 units which have been granted in the Melksham area. Those permissions are likely to make a substantial contribution both to the current monitoring year’s annualised requirement and the overall supply.” In the Shurnhold decision the inspector also determined that there was not a persistent under delivery of units and only a 5% buffer should be applied.

Therefore, given the better land supply position, the adopted Wiltshire Core Strategy and lack of persistent under delivery, it is considered that the Local Planning Authority is able to place greater weight on housing policies of the WCS and MNP than the Secretary of State placed on the Policies in the Yapton decision.

In light of the Yapton Decision and other decisions in East Sussex and Warwickshire where the Secretary of State gives weight to the Neighbourhood Plans in decision making, albeit in different circumstances relating to 5 year land supply and the stage of the Neighbourhood Plan (which was not yet made in both applications), it is considered that very substantial weight should be afforded to the harm associated to the conflict with the neighbourhood plan in the current application. Allied to this is the conflict with Core Policies 1, 2 & 13 and Saved Policy H4, which whilst out of date, should still be given weight in decision making by the Local Planning Authority as the decision maker. Furthermore, some weight is placed upon harm to the character and appearance of the locality and landscape by virtue of the loss of open land adjacent the settlement.

Given the very substantial weight placed upon the conflict with the neighbourhood plan, it is considered that the adverse impacts of the development would significantly and demonstrably outweigh the benefits.

RECOMMENDATION

The application is recommended for refusal for the following reasons:

1. The proposal is outside of the framework boundary for Malmesbury and has not been allocated for residential development within the Wiltshire Core Strategy (January 2015) or Malmesbury Neighbourhood Plan (February 2015). The development fails to meet any of the special circumstances for the creation of additional residential units in such circumstances listed under Paragraph 4.25 of the Wiltshire Core Strategy and would result in harm to the character and appearance of the locality. Therefore, the proposal is contrary to Core Policies 1, 2, 13, 51 & 57 of the Wiltshire Core Strategy, Saved Policy H4 of the North Wiltshire Local Plan, the Malmesbury Neighbourhood Plan and paragraphs 14, 17, 55 & 198 of the NPPF. As such, the proposal fails to promote a sustainable pattern of development and is contrary to the aforementioned local and national policies.

2. The proposed development does not make any provisions for securing affordable housing on the site; financial contributions towards primary and secondary school provision, public rights of way; the on-going provision and maintenance of open space and waste facilities. The application is therefore contrary to Core Policies 3, 43, 45 and Saved Policy CF3 of the Wiltshire Core Strategy.