

## **Development Control Committee 2 September 2020**

### **Planning Application DC/20/0623/FUL - Milton House, Thurlow Road, Withersfield**

<b>Date Registered:</b>	07.04.2020	<b>Expiry Date:</b>	02.06.2020 (EOT until 04.09.20)
<b>Case Officer:</b>	Gary Hancox	<b>Recommendation:</b>	Approve Application
<b>Parish:</b>	Withersfield	<b>Ward:</b>	Withersfield
<b>Proposal:</b>	Planning Application - 6no. dwellings (following demolition of existing dwelling)		
<b>Site:</b>	Milton House, Thurlow Road, Withersfield		
<b>Applicant:</b>	Mr S Lansdown		

**Synopsis:**

Application under the Town and Country Planning Act 1990 and the (Listed Building and Conservation Areas) Act 1990 and Associated matters.

**Recommendation:**

It is recommended that the Committee determine the attached application and associated matters.

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## Background:

1. This application was deferred from consideration at the Development Control Committee meeting on 8 July 2020. Members were minded to refuse the application, contrary to the officer recommendation, for the following reasons:
  - contrary to Policy CS4
  - harmful impact on drainage and flood risk
  - harm to the conservation area
  - impact on the setting of a listed building
  - impact on biodiversity
  - impact on neighbouring amenity.
2. This resolution was contrary to the officer recommendation of approval. At this point, the Decision-Making Protocol was invoked requiring the further reporting of this matter to members of the Development Control Committee in the form of a risk assessment report before a decision can be made.
3. The Decision Making Protocol states that "where Development Control Committee wishes to overturn a recommendation and the decision is considered to be significant in terms of overall impact/harm to the planning policy framework, having sought advice from the Assistant Director Planning and Regulatory Services and the Assistant Director for Legal and Democratic Services (or Officers attending Committee on their behalf)
  - *A final decision on the application will be deferred to allow associated risks to be clarified and conditions/refusal reasons to be properly drafted.*
  - *An additional officer report will be prepared and presented to the next Development Control Committee detailing the likely policy, financial and reputational etc. risks resultant from overturning a recommendation and setting out the likely conditions (with reasons) or refusal reasons. This report should follow the Council's standard risk assessment practice and content.*
  - *In making a decision to overturn a recommendation, Members will clearly state the material planning reason(s) why an alternative decision is being made, and which will be minuted for clarity."*
4. The purpose of this report is to provide a risk assessment for Members in accordance with the Decision Making Protocol, should planning permission be refused for the development contrary to the officer recommendation having regard to its accordance with relevant policies.
5. The previous officer report for the 8 July 2020 meeting of the Development Control Committee is included as Working Paper 1 to this report. Members are directed to this paper for details of the site and development (as it was considered on 8 July 2020), summaries of consultation responses and neighbour representations, and for the Officer assessment of the original proposal.
6. Since the resolution of Committee on the 8 July 2020, the application has now been amended, reducing the number of proposed dwellings from 6 to 5. This now results in the application being fully in accordance with Core Strategy

Policy CS4. The amendments to the scheme are considered below at paragraph 9.

7. The officer recommendation, which is set out at the end of this report, remains that planning permission should be approved.
8. For details of the application supporting material, site and Officer comment, please refer to Working Paper 1 paragraphs 2 - 43. The amended proposal and update on additional consultation responses and representations received is set out below at paragraphs 12 – 17.

### **Amended Proposal:**

9. Since Development Control Committee on the 8 July 2020, the applicants have amended the proposal and now only propose 5 dwellings. The change has necessitated amending all drawings and a full re-consultation with local residents and consultees has been undertaken. At the south corner of the site, where before there had been two dwellings, a single detached dwelling is now proposed. The scale and form are similar to the original scheme, and the overall character and concept for the new development remains unchanged. The development density reduces from 31dph to 25dph.
10. Parking provision is unchanged and therefore represents an overprovision when assessed against the SCC parking standards.
11. The site is within the settlement boundary and infill development of up to 5 dwellings is permitted by Core Strategy Policy CS4. The application now fully accords with this policy and the application is acceptable in principle.

### **Consultations (amended plans):**

12. SCC Highways - No objection, subject to appropriate conditions including the submission of a suitable scheme to prevent the discharge of surface water from the development, either directly or from the surface water drainage attenuation or outfall, onto the highway. The approved scheme shall be carried out in its entirety before the access is first used and shall be retained thereafter in its approved form.
13. Environment Team – No further comments.
14. Public Health and Housing - No objection. Raised potential concerns with means of escape for 3 of the plots. (NOTE: The applicant's agent has confirmed that the dwellings will fully comply with Building Regulations in terms of fire safety and escape. The layouts are bespoke and there are areas that have been purposely left out, what might otherwise have been a partition or door to create more modern and free-flowing accommodation. In no instance do such design elements contravene the Building Regulations.) Also recommended the submission of a site management programme, restriction of the hours of demolition and construction, and the submission for approval of any external lighting.
15. Conservation Officer – No objections to amended plans.

## Representations (amended plans):

16. A summary of objections to the original plans is set out at paragraph 10 of the Officer's committee report (working paper 1). A further 28 individual letters of objection have been received from local residents, mainly re-affirming previous objection reasons. New comments raised include the following:
- Disregarding of comments and concerns submitted by residents, the Parish Council and Development Control Committee.
  - Policy CS4 does not imply that developments should have the maximum number of dwellings.
  - Noise from vehicles accelerating away from the site to clear the bend.
  - Refuse collection will take 4 times as long to collect on a blind corner.
  - Council has a 5 year housing land supply, and there is currently significant other development within a small radius which can accommodate the need for additional housing so the proposal cannot use the argument to say it is required to ensure sufficient housing nor is there any evidence that it would meet a local need.
  - The majority of the site is not developed so reliance on the argument that proposal is 'sustainable reuse of land' is questionable.
17. Parish Council - the Parish Council notes the amendments to the application to reduce the number of dwellings from 6 to 5 with the apparent intention of bringing the application in conformity with Core Strategy Policy CS4.

However, this amendment does not meet the fundamental grounds for objection – i.e. that this is an overdevelopment of the site. The overall footprint and massing of buildings on site is not reduced by this change, with two houses being changed into a single larger house. Occupancy of the site and the consequential numbers of parking spaces and associated vehicle movements in and out of the site remain as problematic. Nor does this change have any positive impact on the other objections and concerns – impact on the environment, negative impact on the conservation area, potential drainage issues and the proximity of buildings 1 and 6 (5) to neighbouring properties. With regard to the impact on the conservation area, we are perplexed by the comments of the Council's conservation officer in this case which sharply contrast with those made by the inspector in the appeal against refusal of application for a back garden development at Lilley Farm just a short way down the road from Milton House.

The Parish Council believes that this amended application still fails to meet the requirements of the adopted Core Strategy which states:

*"The adopted Core Strategy (December 2010) sets out in Policy CS4 the settlement hierarchy for the borough. Infill Villages are designated as villages which have only a limited range of services and facilities. In these villages only small-scale infill development of five homes or less within the designated housing settlement boundary would be permitted."*

This development is not a "small infill development" but a courtyard scheme designed to achieve the maximum number of bedspaces onto a hitherto modest domestic garden site.

The policy states that: "development(s) (should be) of five homes OR LESS"

We urge members to reaffirm their previous decision to reject the application and to encourage the applicants to think again and to come forward with a proposal which is more in keeping with Withersfield's rural environment and fully conforms with the spirit as well as the letter of the Core Strategy policy.

### **Risk Assessment:**

18. The purpose of this report is to advise Members of the risks associated with the 'minded to' resolution to refuse planning permission for the development proposal, having regard to the relevant planning policies and the Officer recommendation to approve planning permission. For the reasons set out in this report it remains Officers' recommendation that permission be approved. If Members remain minded to refuse the application, they must be satisfied that any risks associated with doing so have been properly considered.
19. If Members remain of the opinion that this application should be refused, they must be aware of any potential risks that may arise. The most significant potential risks in this case are reputational and financial. If development is refused that is otherwise plainly in accordance with adopted policy with no technical objections in respect of the impact on drainage and flood risk, harm to the conservation area, the impact on the setting of a listed building, impact on biodiversity and the impact on neighbouring amenity, the decision is unlikely to stand up to scrutiny if challenged on appeal.
20. Officers consider the development proposed (as amended) now fully accords with policy. Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require decisions to be made in accordance with the development plan unless there are material considerations that indicate otherwise.
21. In the absence of evidence to substantiate a reason for refusal it is likely that an appeal would be allowed. The applicants would have the right to recover their appeal costs (in full or in part, depending upon the circumstances) from the Council should the Inspector conclude the Local Planning Authority has acted unreasonably. Advice about what can constitute unreasonable behaviour by a Local Authority at appeal is set out in the National Planning Practice Guidance. Relevant examples of unreasonable behaviour include:
  - preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
  - failure to produce evidence to substantiate each reason for refusal on appeal, and;
  - vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
22. In the absence of evidence to substantiate its reasons for refusal Officers consider it would be extremely difficult to defend a potential claim for the partial or even full award of costs at appeal. An award of costs (including partial costs) against the Council would have financial and reputational implications for the Council.
23. In this case, and for the reasons set out in full in the Officer report attached as Working Paper 1, Officers consider that it would be difficult to defend

reasons for refusal on the grounds set out by members. Each 'minded-to' refusal ground is assessed below.

#### Contrary to Policy CS4

24. The application has been amended and now proposes 5 dwellings. The site is wholly within the settlement boundary and infill development of up to 5 dwellings is allowed by Core Strategy Policy CS4. The application now fully accords with this policy and the application is acceptable in principle.

#### Drainage and flood risk

25. As already set out in the Officer report (Working Paper 1), no technical objection has been received in respect of drainage matters and information regarding the condition of the culvert and chamber to satisfy the highway authority that there will be no risk of highway flooding from surface water from the development, can be secured by condition. This approach accords with the National Planning Practice Guidance (NPPG) which states that '*When used properly, conditions can enhance the quality of development and enable development to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects.*'
26. In this case it has been accepted that the technical details, based on the drainage strategy already submitted, can be dealt with through the submission of further details.
27. Paragraph 55 of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests: necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects. Officers are content that these 'tests' have been met and the proposed condition 13 set out in the Officer report (Working Paper 1) is satisfactory.

#### Harmful impact on the Conservation Area

28. This impact is covered in detail in paragraphs 16 to 23 of the Officer's report. Here the Conservation Officer considers the proposed development to be well thought out with plots arranged around an open courtyard in an organised manner avoiding awkward and contrived relationships between plots often associated with cramped proposals. This together with a consistent approach to materials, design and detailing between plots creates a strong sense of place which positively contributes towards the character and appearance of the conservation area. This conclusion was reached following a detailed assessment of the site and the proposal.
29. Furthermore, and as described and explained to members during the Officer's presentation to DCC, due to the irregular shape of the site and the narrow frontage (relative to the rest of the site) views from the highway (looking towards the site) of the open countryside beyond are almost completely obscured by existing development and mature planting along the rear of the site and its boundaries. The existing views are not considered to be significant views which contribute towards the character or appearance of the conservation area. The Senior Conservation Officer has no objection to the

amended plans and the comments set out in the original Officer report remain valid.

30. Of course, whilst members are perfectly entitled to reach a different view on this type of impact, a refusal reason that is contrary to the recommendation of the Senior Conservation Officer, would require clear and evidenced justification.

#### Impact on the setting of a Listed Building

31. This impact was introduced by members even though Officers explained that although there is a Listed building (The Guildhall) approximately 70 metres to the NW of the site on the other side of Thurlow Road, due to the separation distance and intervening features it was not considered that the setting of this building would be affected by the proposed development. In fact, the development will be barely visible from the curtilage of The Guildhall. The Conservation Officer supports this view.
32. Again, without the support of the Council's Senior Conservation Officer and without an evidenced argument as to how the setting of the listed building would be impacted, this refusal reason would be extremely difficult to defend.

#### Impact on biodiversity

33. As explained in the Officer's report, although the site is relatively small and of low ecological value, the boundary trees and vegetation do provide a habitat for bats, amphibians and hedgehogs. The loss of three trees is also acknowledged, however, by implementing the following biodiversity enhancements the development would create a net gain in terms of biodiversity, in accordance with the NPPF and the Joint Development Management Policies DM12:
  - Compensatory bat roosting habitat (Schwegler bat box)
  - Four new bat boxes
  - Low level bollard lighting to reduce impact
  - Tree replacement (broadleaf tree species)
  - Hedgehog friendly boundary fencing (with gaps at intervals)
  - Bird boxes (8 in total)
  - Native soft landscaping
34. Subject to the above being required by condition of any approval, the development would have an overall net gain in terms of biodiversity and accord with Joint Development Management Policy DM12 in this regard.
35. Furthermore and since the last consideration of this application, with respect to ecology and bats, additional survey work has now been undertaken on site. No roosts were found, but as expected, bats were found to be using some of the boundary trees. All relevant trees and hedging are now being retained, and the additional bat survey report concludes that the risk of harm or significant impact to bats, bat roosts or local bat conservation was very low. Further bat surveys or mitigation were considered unnecessary.
36. Notwithstanding the above, even if it were accepted that there was an overall net loss in respect of biodiversity, a refusal reason based on this impact

when balanced against the benefits of the development is unlikely to be justified.

### Impact on neighbouring amenity

37. This impact is dealt with at paragraphs 35 – 37 of the Officer's report. The amenity impact of the proposal was explained to members during the Officer's presentation to DCC, which clearly showed that the side elevation of the proposed dwelling adjacent to Thistledown Cottage would have a separation distance of approximately 5 metres. Although Thistledown Cottage has ground floor side secondary windows, the proposed plot one is effectively single storey at the boundary with no overlooking windows. High-level rooflights provide light to the upper rooms on the south side of the dwelling. The residential amenity impact is not therefore considered harmful. For similar reasons the same conclusion was reached in respect of the impact on the Old Bakery.
38. Although members cited impact on amenity as a reason to refuse the application, no specific harmful amenity impacts were evidenced or given. The amenity impacts of the proposed development are not considered significantly harmful as to warrant refusal.

### **Conclusion:**

39. It remains the opinion of Officers that the proposal accords with the development plan, and that there are no material considerations to indicate that a decision should be made contrary to the development plan.
40. Notwithstanding the above, if Members are minded to refuse the application on grounds of drainage and flood risk, harm to the conservation area, impact on biodiversity and impact on neighbouring amenity, then without prejudice to the Officer recommendation of approval, the following refusal reasons are suggested:
- i. Without full details regarding the condition of the culvert and chamber to satisfy the highway authority that there will be no risk of highway flooding from surface water from the development, it is has not been demonstrated that a satisfactory drainage scheme is achievable on the site. The application is therefore contrary to the requirements of the St Edmundsbury Core Strategy Policy CS2, Joint Development Management Policy DM6 and paragraph 163 of the NPPF in this respect.
  - ii. Section 72 of the Town and Country Planning (Conservation Areas and Listed Buildings) Act 1990 requires the Local Planning Authority to have special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. Furthermore, Joint Development Management Policies DM17, DM1, DM2 and DM22, all of which, seek to protect heritage assets and ensure good design appropriate for the character and context of the site. The site is wholly within the Withersfield conservation area and in this case the courtyard style layout of a group of 5 dwellings, would depart from the mainly linear form of this part of the village harming its appearance. The loss of a significant tree on the frontage of the site is also considered to be harmful to the character of the conservation area as it forms part of a group of trees contributing to its amenity. The application does not therefore preserve or enhance the conservation area and does not accord with Joint Development

Management Policies DM17, DM1 and DM2. Having regard to paragraph 196 of the NPPF, the less than substantial harm to the significance of a designated heritage asset (Withersfield conservation area) is not outweighed by any public benefit.

- iii. Joint Development Management Policy DM12 states that for all development, measures should be included, as necessary and where appropriate, in the design for all developments for the protection of biodiversity and the mitigation of any adverse impacts. Additionally, enhancement for biodiversity should be included in all proposals, commensurate with the scale of the development. In this case scale of development proposed, 5 dwellings including hard-surfaced areas and parking, results in very space for new planting and biodiversity enhancements to replace the three trees and grassed areas being lost. The loss of trees also represents a loss of habitat for bats and birds. The proposed mitigation set out in the Design and Access Statement is not considered sufficient outweigh this harmful impact representing a net loss in biodiversity. The development does not therefore accord with Joint Development Management Policy DM12.
- iv. Thistledown Cottage adjoining the site to the south currently has a relatively open aspect to its northern boundary, with ground floor windows to the gable end of the dwelling. The proposed development introduces a new dwelling of significant scale and form within 5 metres of the gable end. This is considered to be overbearing and harmful to the existing amenity of this dwelling. Furthermore, the Old Bakery to the north west of the site currently enjoys a relatively verdant boundary to Milton House. Proposed plot 6 would be sited close to this existing boundary resulting in the loss of existing vegetation and trees. A two-storey dwelling would be positioned within 5 metres of the existing boundary. This would result in harm to the amenity of the Old Bakery by virtue of over-bearing and additional noise disturbance. This would be contrary to Joint Development Management Policy DM2, which amongst other things, requires new development to avoid harm to existing residential amenity.

### **Recommendation:**

It is **RECOMMENDED** that planning permission be **Approved** subject to the conditions set out at the end of the Officer's report (Working Paper 1).

### **Documents:**

All background documents including application forms, drawings and other supporting documentation relating to this application can be viewed online <DC/20/0623/FUL>

WORKING PAPER 1 – OFFICER REPORT TO DCC 8 JULY 2020

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