

Swindon Borough Council
PLANNING
Memorandum

From:	Neil Holly	To:	Sarah Smith
		Your Ref:	S/16/1832
Extn:	6426	Our Ref:	
		Date:	30/08/2017

Re: Erection of 4no. dwellings and associated works.

At: Land At Brook Cottage , Hay Lane Grange Park Swindon SN5 3PA

Summary:	Subject to the comments of the Conservation and Design The proposed development is not in accordance with the Local Plan. Paragraph 14 of the NPPF applies. Much will depend on the assessment of Historic England and the Conservation Officer. In the event that harm to designated heritage assets is identified, my view is that this is unlikely to be outweighed by the public benefits of the proposed development.
National Policy:	National Planning Policy Framework (NPPF)
Swindon Local Plan Policies:	SD1, SD2, SD3, DE1, HA1, HA2, HA3, TR2, IN1, EN5, EN6, EN10.
SPD	Swindon Residential Design Guide Supplementary Planning Document

The Swindon Borough Local Plan is part of the development plan for the Borough. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

Background

The north of the site is bounded by the tree-lined main driveway of Lydiard Park. The driveway is part of the wider Grade II Registered Park and Garden. The driveway leads to the Grade I listed Church of St Mary and Lydiard mansion, together with numerous other listed structures.

To the south and west of the site is Lydiard Park. A small group of buildings, centred on Brook Cottage, is to the south west of the site. To the north, beyond the driveway, is agricultural land lying within Wiltshire unitary authority area. To the east of the site is public open space along Hay Lane. Public footpaths run along the driveway to the north of the site and through the public open space to the east.

The proposed development is for the construction of 4 detached dwellings accessed from the existing track leading from the Lydiard Park driveway to Brook Cottage. The dwellings would comprise three five-bedroom properties and one six-bedroom property.

Under reference T/95/0720 planning permission was granted for the change of use of part of the land associated with Brook Cottage from agricultural to domestic and the erection of stable block store and greenhouse. It is not clear from the case file which

area the planning permission relates to. In the drawings for that application, the current application site is shown as a paddock area. It seems on balance, therefore, that the lawful use of this part of the site is a residential use, ancillary/incidental to the use of the Brook Cottage dwelling. However, it is not clear whether or not this land lies within the curtilage of Brook Cottage. Curtilage is defined by reference to physical and functional connection it is not the same as the concept of planning unit (which is used for the purposes of determining lawful use). Curtilage is generally taken to be an area of land surrounding a building that forms one enclosure with it. As the site comprises formerly agricultural land, it may be that it does not form part of the curtilage of Brook Cottage. The case officer should consider and take a view on this point as it is relevant to determining whether or not the site should be regarded as previously developed land for the purposes of the NPPF definition.

Local Plan policy

Principle of Development

Local Plan Policy SD2 states that, in rural and countryside locations outside the Swindon urban area boundary, development will be permitted where it is in accordance with other policies of the Local Plan permitting specific development in the countryside. The 4 new residential units proposed are not supported by any such policy. The principle of the proposed development is therefore not in accordance with the Local Plan.

Green Infrastructure Corridor

The application site lies within a Strategic Green Infrastructure Corridor, as defined on the Local Plan Policies Map for the purposes of Local Plan Policy EN1. Local Plan Policy EN1 states that “development shall protect and enhance green Infrastructure” including visually or ecologically important existing trees, hedges and woodlands. In my view, the proposed development within the Green Infrastructure Corridor does not protect or enhance it. I defer to colleague officers in relation to the impact on trees.

Design

Design is an important consideration. Local Plan Policy DE1 and the Swindon Residential Design Guide SPD should be applied. I defer to the comments of the Urban Design Officer on these matters.

Landscape

Local Plan Policy EN5 (Landscape Character and Historic Landscape) is applicable.

Historic environment

Local Plan Policy EN10 (Historic Environment and Heritage Assets) applies. Policies applicable to heritage assets are considered in more detail below.

Other material considerations

The principle of the proposed development is not in accordance with the Swindon Borough Local Plan 2026. The comments of colleague officers may identify other areas of conflict with Local Plan policy in respect of the issues identified above.

As noted, planning law requires that applications for planning permission should be determined in accordance with the development plan unless other material considerations indicate otherwise. The National Planning Policy Framework (NPPF), which sets out national government planning policy, is an important other material consideration. This is confirmed in paragraph 2 of the NPPF.

The NPPF requires local planning authorities to seek to maintain and update annually a five year supply of deliverable housing land.

Paragraph 49 states that where it is not possible to demonstrate a deliverable five year housing land supply, policies for the supply of housing should not be regarded as up to date. Paragraph 14 states that where relevant policies are out of date, planning permission should be granted unless any adverse impacts of doing so would significantly or demonstrably outweigh the benefits, or specific policies in the framework indicate that development should be restricted.

The Secretary of State for Communities and Local Government in his 13 July 2017 recovered appeal decision in respect of a proposed residential development at land east of Marlborough Road, Wroughton (APP/U3935/W/16/3147902), found that the housing land supply in Swindon Borough as at an April 2016 base date was less than 2.5 years.

Accordingly, permission for this development should be granted unless:

- it is shown that specific policies of the NPPF (such as those applicable to designated heritage assets, considered below) indicate that development should be restricted, OR
- the adverse impacts of granting permission significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF read as a whole.

Do specific policies of the NPPF Indicate that development should be restricted?

Footnote 9 of the NPPF identifies those policies applicable to designated heritage assets as an example of a specific policy of the Framework which (under paragraph 14) may indicate that development should be restricted.

The application site lies immediately to the south of the Lydiard Park Grade II registered park, a designated heritage asset. It is also, as noted above, in close proximity to a number of other designated heritage assets within the park, including the Grade I listed Church of St Mary and Lydiard House.

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that, in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. This is a legal duty, not a material consideration. It is a matter to which considerable importance and weight should be given.

This message is reinforced by part 12 of the NPPF and by Local Plan Policy EN10.

NPPF paragraph 132 makes clear that the significance of heritage assets can be harmed or lost through development within their settings. The recent decision of the High Court in *Steer v SSCLG* [2017] EWHC 1456 (Admin) confirms that the setting of heritage assets is not defined in purely visual terms. The NPPF refers to the setting as the “surroundings in which a heritage asset is experienced” and the word “experienced” has a broad meaning, which is capable of extending beyond the purely visual. The Planning Practice Guidance makes that clear:

“Setting is the surroundings in which an asset is experienced, and may therefore be more extensive than its curtilage. All heritage assets have a setting, irrespective of the form in which they survive and whether they are designated or not.

The extent and importance of setting is often expressed by reference to visual considerations. Although views of or from an asset will play an important part, the way in which we experience an asset in its setting is also influenced by other environmental factors such as noise, dust and vibration from other land uses in the vicinity, and by our understanding of the historic relationship between places. For example, buildings that are in close proximity but are not visible from each other may have a historic or aesthetic connection that amplifies the experience of the significance of each.

The contribution that setting makes to the significance of the heritage asset does not depend on there being public rights or an ability to access or experience that setting. This will vary over time and according to circumstance.

When assessing any application for development which may affect the setting of a heritage asset, local planning authorities may need to consider the implications of cumulative change.”

As heritage assets are irreplaceable, any harm should require clear and convincing justification. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation. The more important the asset, the greater the weight should be. The Church of St Mary and Lydiard House are heritage assets of the highest significance and therefore the weight that should be given to their conservation is very high.

I defer to Historic England and the Conservation Officer’s assessment of whether the proposed development would result in harm to the significance of designated heritage assets.

Paragraph 134 of the NPPF states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. Local Plan Policy EN10 incorporates a similar public benefit test.

In the event that harm to the significance of heritage assets is identified, an assessment against paragraph 134 will need to be made by the decisions maker. I consider that the principal benefit of the proposed development would be the provision of 4 additional market houses. There is a public interest in houses being built, and the NPPF seeks to boost the supply of housing. However, I do not consider that these houses provide any benefits that could not be delivered by housing elsewhere in the Borough that would not harm designated heritage assets. Moreover, as the proposed

development would comprise of only four dwellings, its contribution to addressing the housing land supply position in the Borough is marginal.

Overall, I do not consider that the public benefits of the scheme show a public interest in the proposal that is likely to be sufficient to outweigh harm to designated heritage assets in the event that such harm is identified.

As the Garden Trust observe, the recent groundswell of local opposition among Swindon Borough residents to development that would harm the setting of Lydiard Park (see Wiltshire Council planning application reference 16/06978/FUL) makes clear the very high significance attached to the park by Borough residents. Lydiard Park is clearly a heritage asset that is very important to the people of Swindon. It would, in my view, be unlikely that a decision maker should conclude that the public interest in preserving the park would be outweighed by the public interest in four private market houses being built.

Do adverse impacts of granting permission significantly and demonstrably outweigh the benefits?

If harm to designated heritage assets is identified and this is not outweighed by the public benefits of the proposed development, permission should be refused. In such circumstances, specific policies of the framework would indicate that development should be restricted and the 'tilted balance' in paragraph 14 NPPF would not apply.

The tilted balance requires the decision maker to assess whether the adverse impacts of granting planning permission would significantly or demonstrably outweigh the benefits.

If the tilted balance is applied, the benefits of the development in providing new homes would need to be weighed against adverse impacts, including conflict with Local Plan policy and any issues identified by colleague officers.

Conclusion

The proposed development is not in accordance with the Local Plan. Paragraph 14 of the NPPF applies. Much will depend on the assessment of Historic England and the Conservation Officer. In the event that harm to designated heritage assets is identified, my view is that this is unlikely to be outweighed by the public benefits of the proposed development.

Neil Holly

Planning Policy