

Application Number	2022/1028/FUL
Case Officer	Anna Clark
Site	Land Adjacent To Sunlea Fosse Way Kilmersdon Frome Somerset
Date Validated	27 June 2022
Applicant/	P Tranter
Organisation	
Application Type	Full Application
Proposal	Erection of dwelling and associated access
Division	Mendip Hills Division
Parish	Kilmersdon Parish Council
Recommendation	Approval
Divisional Cllrs.	Cllr Edric Hobbs Cllr Tony Robbins

**What three words: ///important.onto.stepping**

**Referral to Planning Board**

This application is referred to Planning Board as the application is located outside of defined settlement limits and therefore is a departure from the Local Plan.

**Description of Site, Proposal and Constraints:**

The application relates to a plot of land located to the east of Sunlea, currently utilised as residential garden space associated with Sunlea. The site is surrounded by other residential properties and some sports facilities. The site is located off the A367 (Fosseway) close to the boundary of Midsomer Norton. The site is located outside of the development limits.

This application seeks planning permission for the erection of one dwelling with associated parking.

An application on the neighbouring land to the east of the application site has been granted planning permission for the erection of two houses but this permission is yet to be implemented (Local Planning Authority reference: 2021/1509/FUL).

**Relevant History:**

No relevant planning history has been found in relation to this site.

## **Summary of Ward Councillor comments, Town/Parish Council comments, representations and consultee comments:**

Ward Member: No comments received

Parish Council: Recommend approval – there were no objections because the plot size is sufficient for one dwelling, access if acceptable and it is well screened.

Highways Development Officer: No objection, subject to conditions

- Conditions sought to require a passing bay; the clearance of vegetation to restore the full width of the driveway and its consolidation for the first 5m back from the main road; and electric vehicle charging.

Local Representations: Two letters objecting to the proposed development and one letter of neither support nor objection has been received raising the following summarised points –

- Concerns in regard to the impact of the development on the neighbouring properties during the construction through dust and noise disturbance
- The cumulative impact of this development with the neighbouring approval 2021/1509/FUL
- Out of character within the surrounding area
- Concerns the development will block natural light to the neighbouring properties
- Highway safety concerns with the increase in vehicle movements (combined with the neighbouring approval and existing properties that use the track) and the associated increase in noise and pollution
- Single track access lane is not wide enough to comply with relevant policies
- Concerns vehicles will be reversing out onto the main road if meeting another vehicle
- Need for increase in pedestrian movements along the track to be recognised as the proposal will result in an increase in pedestrian movements alongside vehicles
- Concerns in regard to delivery vehicles accessing the site and the potential to block the access track as well as how these vehicles will manoeuvre to enter and exit the site in forward gear
- Concerns the access point into the application site is inadequate and plans do not accurately demonstrate the width of the access track
- Potential for overlooking of the neighbouring properties due to the orientation and location of the windows
- Concerns that the development may result in harm or the loss of existing hedgerow

## **Summary of all planning policies and legislation relevant to the proposal:**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 places a duty on local planning authorities to determine proposals in accordance with the development plan unless material considerations strongly indicate otherwise. The following development plan policies and material considerations are relevant to this application:

The Council's Development Plan comprises:

- Mendip District Local Plan Part I: Strategy and Policies (December 2014)
- Mendip District Local Plan Part II: Sites and Policies (December 2021) (Post JR version)

The following policies of the Local Plan Part 1 are relevant to the determination of this application:

- CP1 – Mendip Spatial Strategy
- CP2 – Supporting the Provision of New Housing
- DP1 – Local Identity and Distinctiveness
- DP7 – Design and Amenity of New Development
- DP9 – Transport Impact of New Development
- DP10 – Parking Standards
- DP23 - Flood risk and Drainage

**Other possible Relevant Considerations (without limitation):**

- National Planning Policy Framework
- National Planning Practice Guidance
- Design and Amenity of New Development, Policy DP7 SPD (March 2022)
- The Countywide Parking Strategy (2013)
- Somerset County Council Highways Development Control Standing Advice

**Assessment of relevant issues:**

**Principle of the Use:**

The site is located in the countryside and as such the proposal does not accord with the strategy for the delivery of new housing, as set out in the Local Plan. Policies CP1 and CP2 seek to direct new residential development towards the principal settlements and within defined development limits, which is consistent with the aims of creating sustainable development and protecting the countryside as described in the NPPF. Policy CP4, amongst other things, seeks to strictly control residential development in the open

countryside save for the specific exceptions (Development Policies DP12, 13 and 22), which do not apply in this case.

The Council cannot currently demonstrate a five-year housing land supply in accordance with the requirements of the NPPF. As a result, the policies within the Local Plan, which seek to prevent new housing outside the development limits of settlements (CP1 and CP2) currently have reduced weight. Therefore, whilst regard should be given to the policies in the Local Plan, the 'presumption in favour of sustainable development' as set out in paragraph 11(d) of the NPPF applies. However, permission should not be granted where any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the NPPF taken as a whole or specific policies indicate that the development should be restricted.

Although the site is within a countryside location in policy terms, it is not considered to be an isolated site as it is located alongside a substantial number of residential properties within the immediate surroundings and on the outskirts of Midsomer Norton. Therefore, the site is not considered to be in a wholly unsustainable location, remote from services or facilities of which Midsomer Norton boasts numerous, including access to public transport.

Therefore, with the site not being isolated nor wholly unsustainable, the 'tilted balance' is applied, and planning permission should only be refused where there is a clear, relevant development plan policy which would significantly and demonstrably outweigh the benefits of the scheme when assessed against the NPPF. This will be addressed in the Planning Balance section of this report.

### **Design of the Development and Impact on the Street Scene and Surrounding Area:**

The site is not visible from the public highway due to its location and the positioning of the other residential properties surrounding the site. Whilst the development is outside of the defined development boundary, it is not considered that the development represents an encroachment into the open countryside. The site is seen in the context of the surrounding built development.

There is a mix of residential properties within the surrounding area in terms of size, scale, design, orientation and materials. The proposed development is one two-storey, 3-bedroom detached property with associated parking and residential garden space. The garden size is commensurate with the size of the dwelling. The development would not represent overdevelopment of the site.

The dwelling is proposed to be constructed of red brick, with a concrete tile roof and uPVC window and doors. The proposed materials are considered to reflect the character and appearance of the surrounding area.

The proposal by reason of its design, siting, scale, massing, layout and materials is acceptable and contributes and responds to the local context and maintains the character and appearance of the surrounding area. The proposal accords with Policy DP1 and DP7 of the adopted Local Plan Part 1 (2014), plus the Design and Amenity of New Development, Policy DP7 SPD (March 2022) along with Part 12 of the National Planning Policy Framework.

### **Impact on Residential Amenity:**

The proposed dwelling has been positioned and orientated within the application site in a manner to reduce the impact the development has on the residential amenity of the future occupiers and the neighbouring properties.

The property is not proposed to have any windows at first floor level of the side elevations which face towards Sunlea and Magdapur (and the two approved dwellings on the land to the east that are yet to be constructed). The rear elevation of the property is situated approximately 18m from the boundary shared with the properties at the rear of the site. Number 15 Fossefield Road has a garden which measure approximately 24m from the rear of the dwelling to the boundary of the application site. This creates an overall distance of around 42m between the rear elevations of the existing dwellings and the proposed. Other properties along Fossefield Road are positioned further away from the proposed dwelling.

During the consultation period, concern was raised by a neighbouring property in regard to the development blocking natural light to the neighbouring properties. Given the distance, orientation and location of the proposed dwelling in relation to the neighbouring properties it is not considered that the development will result in harm to the amenity of the residential amenity of neighbouring properties through loss of light or overbearing impact. Concern was also raised that the development will block the view of the sunrise from neighbouring gardens however the right to a view is not a material planning consideration and as the development does not result in an overbearing impact it is not considered that the development will result in harm to the amenity of neighbouring properties.

Given the design, scale, massing and siting of the proposed development the proposal would not cause significant harm to the amenities of any occupiers or adjacent occupiers through loss of light, overshadowing, overbearing impact, loss of privacy, noise, smell, traffic or other disturbance. The proposal accords with Policy DP7 of the adopted Local Plan Part 1 (2014) and Part 12 of the National Planning Policy Framework

### **Assessment of Highway Issues:**

Notwithstanding the location of the application site, outside of the development boundary, in terms of proximity to local services and facilities, the development can be considered to be in a sustainable location. The local facilities within Midsomer Norton, including the schools, are accessible on the foot or cycle. Furthermore, the development is close to public transport connections. As such, future occupiers of the development would not be reliant on the private car. This is a material consideration in the overall planning balance.

The site is accessed off of Fosse Way (A367), an adopted A-road within a 30mph speed limit. The access track is fairly long and narrow and currently provides access to the residential properties of Sunlea and Magdapur, and potentially also Timbers (though this is unclear). The extant permission on the land adjacent to the application site (related to Magdapur) granted planning permission for the erection of two dwellings (ref: 2021/1509/FUL). Additionally, Magdapur is in the process of being converted into 2 separate 4 bed houses (planning permission 2020/0756/FUL and Certificate of Existing Lawful development 2023/1207/CLE refer).

Due to the increased pressure on this track, planning permission 2021/1509/FUL included improvements to the access track that, if implemented, will also benefit this application site. However, if the two dwellings approved under planning permission: 2021/1509/FUL are not constructed, the access improvement will not be secured.

The proposal results in one additional dwelling using the access track and so to ensure the existing track is capable of accommodating this increase in traffic movement in this event that planning permission 2021/2509/FUL is not implemented first, the local highway authority have request that a passing bay and works to the 5m of the access track closest to the main road are undertaken to restore it to its full width and to ensure it is consolidated are undertaken prior to occupation. However, as the applicant does not own this track (but has a right of access over it) these requirements are proposed as a grampian condition, thus requiring these works to be undertaken prior to commencement of the development.

Whilst it would be ideal if the wall to the north of the site access was reduced in height, as this proposal would just result in one additional dwelling this is not required to satisfy the highway authority that the proposal meets the required highway safety standards to comply with para 115 of the NPPF.

The proposed car parking provision (3 spaces) accords with the Somerset Parking Strategy requirements for a three-bedroom dwelling in this location and adequate cycle parking provision can be accommodated within the application site. A condition is imposed as request by highways for a electric vehicle charging point prior to occupation, which is considered reasonable.

Given the narrow single-track lane that is utilised to access the application site as well as other residential properties, it is recommended that a Construction Traffic Management Plan condition is attached should planning permission be granted. This will require the applicant to submit a report detailing how the parking of vehicles is managed, loading and unloading of plant and materials as well as its storage, what measures to control the emission of dust and dirt are to be implemented and the delivery and construction hours. This will ensure that the access track is accessible to all the relevant residential properties during all stages of the construction of the site as well as maintaining the residential amenity of the properties that may be impacted during the construction of the dwelling.

When taking into consideration the proposed development as a whole, it is deemed to not pose an unacceptable impact on highway safety, and that the residual cumulative impacts on the road network would not be severe in accordance with paragraphs 115 and 116 of the NPPF.

The means of access and parking arrangements are acceptable and maintain highway safety standards. The proposal accords with Policy DP9 and DP10 of the adopted Local Plan Part 1 (2014) and Part 9 of the National Planning Policy Framework.

### **Refuse Collection:**

There is sufficient space on the site for the storage of both waste and recycling. The adjacent existing dwellings such as Sunlea are already subject to domestic collections and as such it is not considered that there will be any issues with an additional property requiring collection.

### **Environmental Impact Assessment**

This development is not considered to require an Environmental Statement under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

### **Equalities Act**

In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

### **Other Matters:**

Concerns have been raised in regard to the rights of access across the access track and its maintenance along with ownership of an existing wall. These concerns have been noted and considered where relevant to the access considerations in the highways section above. Beyond that, the matters raised are a civil matter and cannot be managed through the planning process.

Land ownership is a civil matter and cannot be managed through the planning process. The applicant is advised that any works that involve land not within their ownership or a party wall will require agreement from the relevant parties.

### **Conclusion and Planning Balance:**

As highlighted above, the development is situated outside of the development limits contrary to the adopted policies within the Development Plan. However, as the relevant policies to this currently have reduced weight, the 'presumption in favour of sustainable development' as set out in paragraph 11(d) of the NPPF applies. However, permission should not be granted where any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the NPPF taken as a whole.

It is noted that the site is located within close proximity to local facilities, services and public transport provision. Furthermore, no harm has been identified in terms of impact upon the rural character of the area or encroachment into the countryside. No other harms have been identified in terms of impact on the amenity of the neighbouring occupiers or highways safety concerns.

The benefits of the proposal, a single dwellinghouse, would make a very modest contribution to assisting the Council's shortage of housing land within the District as a whole. The proposal would have some economic benefits for the duration of the construction phase and thereafter for local services and facilities. For these reasons, the adverse impacts of granting planning permission do not significantly and demonstrably outweigh the benefits of the scheme. The development is therefore recommended for approval and has accordingly been advertised as a Departure from the Development Plan.

### **Recommendation**

Approval

### **Conditions**

#### **1. Standard Time Limit (Compliance)**



The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

**Reason:** As required by Section 91 of the Town and Country Planning Act 1990 (as amended) and to avoid the accumulation of unimplemented planning permissions.

2. **Plans List (Compliance)**

This decision relates to the following drawings:

First Floor Plan

Ground Floor Plan

Location and Block Plan

Proposed Elevations

Existing Site Plan

Roof Plan

Validated 27.06.2022

**Reason:** To define the terms and extent of the permission.

3. **Materials (Compliance)**

The development hereby approved shall be carried out using external facing and roofing materials as specified on the application form.

**Reason:** In the interests of the appearance of the development and the surrounding area in accordance with Policy DP3 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014).

4. **Site access improvements (Pre-commencement)**

The development hereby approved shall not commence until:

i) a passing bay has been provided along the access track in accordance with details that shall be first submitted to and approved in writing by the Local Planning Authority; and

ii) the first five metres of the access track has been cleared of vegetation for its full width and has been constructed with a bound and compacted surfacing material (not loose stone or gravel).

The access and passing bay shall thereafter be maintained in perpetuity.

**Reason:** To provide a safe access to the site in the in the interests of highway safety in accordance with Policy DP9 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014).

5. **Construction Traffic Management Plan (Pre-commencement)**

No development shall take place until a Construction Traffic Management Plan

Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall provide for:

- a) the parking of vehicles of site operatives and visitors;
- b) loading and unloading of plant and materials;
- c) storage of plant and materials used in constructing the development;
- d) measures to control the emission of dust and dirt during construction;
- e) delivery and construction working hours.

The development shall thereafter be constructed in accordance with the approved Construction Traffic Management Plan Method Statement.

**Reason:** To ensure that safe operation of the highway and in the interests of protecting residential amenity in accordance with Development Policies 7, 8 and 9 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014). This is a condition precedent because any initial construction or demolition works could have a detrimental impact upon highways safety and/or residential amenity.

6. **Parking and Turning Areas (Pre-occupation)**

No occupation shall commence until the parking and turning areas have been constructed in accordance with details shown on the approved plans. The parking and turning shall thereafter be kept clear of obstruction and shall not be used other than for the access and parking of vehicles in connection with the development hereby permitted.

**Reason:** To ensure that suitable access, parking and turning areas are provided and thereafter retained in the interests of amenity and highway safety in accordance with Development Policies 9 and 10 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014).

7. **Electric Vehicle Charging (Pre-occupation)**

No dwelling shall be occupied until it is served by at least 1no. active electric vehicle charging point in line with the requirements set out in Somerset Council Electric Vehicle Charging Strategy 2020. Each active charging point must be at least 7kW, an untethered connection i.e., only a socket without a built-in cable, and capable of Mode 3 charging. Charging provision shall be retained permanently thereafter.

**Reason:** To encourage use of electric vehicles and reduce carbon dioxide emissions in accordance with the Somerset County Council Electric Vehicle Charging Strategy (2020), Development Policy 7 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (2014) and the Mendip District Council Supplementary Planning Document Design and Amenity of New Development: Guidance for interpretation of Local Plan Development Policy 7 (adopted March

2022).

## **Informatives**

### **1. Condition Categories**

Your attention is drawn to the condition/s in the above permission. The heading of each condition gives an indication of the type of condition and what is required by it. There are 4 broad categories:

**Compliance** - The condition specifies matters to which you must comply. These conditions do not require the submission of additional details and do not need to be discharged.

**Pre-commencement** - The condition requires the submission and approval of further information, drawings or details before any work begins on the approved development. The condition will list any specific works which are exempted from this restriction, e.g. ground investigations, remediation works, etc.

**Pre-occupation** - The condition requires the submission and approval of further information, drawings or details before occupation of all or part of the approved development.

**Bespoke Trigger** - The condition contains a bespoke trigger which requires the submission and approval of further information, drawings or details before a specific action occurs.

Please note all conditions should be read fully as these headings are intended as a guide only.

Failure to comply with these conditions may render the development unauthorised and liable to enforcement action.

Where approval of further information is required you will need to submit a conditions application and pay the relevant fee, which is 145GBP per request (or 43GBP where it relates to a householder application). The request must be made in writing or using the Standard Application form (available on the Planning Portal, see council's website). For clarification, the fee relates to each request for the discharge of condition/s and not to each condition itself. There is a no fee for the discharge of conditions on a Listed Building Consent, Conservation Area Consent or Advertisement Consent although if the request concerns condition/s relating to both a planning permission and Listed Building Consent then a fee will be required.

- 2.** In determining this application the Local Planning Authority considers it has complied with the aims of paragraph 38 of the National Planning Framework by working in a positive, creative and pro-active way.

3. The responsibility for ensuring compliance with the terms of this approval rests with the person(s) responsible for carrying out the development. The Local Planning Authority uses various means to monitor implementation to ensure that the scheme is built or carried out in strict accordance with the terms of the permission. Failure to adhere to the approved details will render the development unauthorised and vulnerable to enforcement action.
4. Please note that your proposed work may also require Building Regulations approval, which is a separate consent process to the consideration of a planning application. The Council's Building Control team are available to provide Building Regulations advice from pre-application stage to completion of a development and can be contacted on 0300 303 7790. Further details can also be found on their website <https://buildingcontrol.somerset.gov.uk/>
5. The Planning Authority is required to erect a Site Notice on or near the site to advertise development proposals which are submitted. Could you please ensure that any remaining Notice(s) in respect of this decision are immediately removed from the site and suitably disposed of. Your co operation in this matter is greatly appreciated.
6. The applicant is advised that this application was accompanied by a Certificate stating that the applicant was the owner of all the land shown within the application site and therefore, this decision notice is issued on the understanding that no part to the development extends beyond the curtilage of the application premises. It is the developers responsibility to ensure they comply with The Party Wall etc Act 1996.