

Case Officer	Kelly _Pritchard
Site	Land North East Of Tor View Top Road Westbury Sub Mendip Wells Somerset
Application Number	2022/1945/REM
Date Validated	27 September 2022
Applicant/ Organisation	Mr & Mrs P Schroeder
Application Type	Reserved Matters Application
Proposal	Application for approval of reserved matters following outline approval 2020/0364/OTA for the erection of a single dwelling. Matters of access/appearance/landscaping/layout/scale to be determined.
Division	Mendip West Division
Parish	Westbury Sub Mendip Parish Council
Recommendation	Approval
Divisional Cllrs.	Cllr Ros Wyke

3. **Referral to Chair and Vice-Chair:**

In accordance with the scheme of delegation, this application for approval of reserved matters was referred to the Chair and Vice-Chair of the Planning Committee following no response from the Divisional Member, the case officer recommendation is to approve with conditions, and the Parish Council recommended refusal. Following the referral process, the Chair has requested that this application is referred to the Planning Committee for decision on the reserved matters that are proposed.

Description of Site, Proposal and Constraints:

This site lies to the north east side of Top Road, Westbury Sub Mendip.

The site is lined by rough vertical rock walls, the upper slopes are wall lined by a stone wall. It is set within a slope in the land which is surrounded by agricultural land and vineyard. The slope generally slopes down from the north and north east to the south. The proposed development is set within the cut out in the slope. It is accessed via an existing farm gate enclosed on either side by hedgerow.

The site is located within the Mendip Hills Area of Outstanding Natural Beauty (AONB) on its southern edge. It is located outside the settlement limits as defined by Mendip District

Local Plan Part I: Strategy and Policies (December 2014) (MDLP). The edge of the development limit boundary and the conservation area boundary are approximately 35m from the application site to the north west. It is also within the phosphate catchment area affecting the Ramsar site on the Somerset Levels and Moors.

The location of the site within the slope gives views out over the Somerset Levels to the south.

There is an extant permission, reference 2020/0364/OTA, for a dwelling on this site although there are outstanding pre-commencement conditions. When planning permission was granted all matters were reserved for future consideration. Since outline permission was granted the application site has been included within the phosphate catchment area which affects the Somerset Levels and Moors Ramsar which has an impact on the delivery of the foul water management/drainage arrangements as proposed

Following the outline approval, a reserved matters application, reference 2020/1678/REM, was submitted and refused for one reason, which was due to phosphates and foul drainage issues, see history section below.

The current application seeks approval of all the reserved matters for the erection of a dwelling and it seeks to overcome the previous single reason for refusal.

Matters for consideration are access, appearance, landscaping, layout and scale. The submitted drawings for this current application are the same as the drawings submitted for the previously refused application (2020/1678/REM) albeit for the alternative drainage arrangements and phosphate mitigation.

Approval is sought for a dwelling designed with a mono pitched roof with rendered walls to most of its sides with the front being mainly glazed. The house is split level with the parking and home office sunk into the site and the main accommodation over.

It also proposes woodland tree planting to the north of the site, as mitigation for phosphorous impacts. This area of land is within the applicant's ownership.

Relevant History:

- 2020/0364/OTA – Outline Approval – Erection of a dwelling. 08.07.20
- 2020/1678/REM – Refusal - Application for approval of reserved matters following outline approval 2020/0364/OTA for the erection of a single storey two bedroom dwelling with subterranean garage and ancillary accommodation, reserved matters

of site layout/access, appearance, landscaping, scale submitted for approval.
27.05.22

Reason for refusal:

Insufficient information has been submitted to assess whether the proposal would result in an unacceptable increase in phosphate levels within the foul water discharged from the development affecting the current unfavourable status of the Somerset Levels and Moors Ramsar site. Furthermore, the proposed use of a chemical dosing package treatment plant to treat foul water is considered harmful to invertebrates. Finally, a means of securing the long term maintenance and management of the package treatment plant for 80/120 years has not been submitted. As such the proposal fails Regulation 63 of the Habitat Regulations 2017, including information on any necessary control mechanisms for delivery, monitoring and maintenance. The development therefore conflicts with Policies DP5 and DP8 of the adopted Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014) and Part 15 of the National Planning Policy Framework.

Summary of Divisional Councillor comments, Town/Parish Council comments, representations and consultee comments:

Divisional Member: No comments received.

Westbury Sub Mendip Parish Council: Refusal.

- Dwelling is too tall.
- Window design is inappropriate in terms of light pollution in the AONB.
- Dwelling is not sympathetic to the needs / existing character of the village.

Environmental Protection: No comment.

Contaminated Land: No objection, subject to an informative about a watching brief.

Land Drainage: No objection.

- The outline permission (2020/0364/OTA) has pre-commencement foul and surface water drainage conditions in place, these will need to be discharged separately. However, considering the information provided with this application in relation to the foul and surface water drainage requirements. Foul drainage is proposed to a PTP discharging via a Leca Filtrate P System to a drainage field. Percolation tests have been undertaken and show the foul drainage meets the requirements of building regulations part H.

- Surface water will be directed to a soakaway, testing results and calculations in accordance with BRE Digest 365 have been provided and demonstrate the suitability of the soakaway for use on the site.

Mendip Hills AONB: No comments received.

Ecology: No objection subject to a legal agreement to secure the phosphate mitigation and management strategy and a landscape and ecological management plan. The approval should also include CEMP, PTP, nutrient neutrality statement, and maintenance plan conditions.

Natural England: No objection subject to securing mitigation.

Natural England notes that your authority, as competent authority, has undertaken an appropriate assessment of the proposal in accordance with regulation 63 of the Conservation of Species and Habitats Regulations 2017 (as amended). Natural England is a statutory consultee on the appropriate assessment stage of the Habitats Regulations Assessment process.

Your appropriate assessment concludes that your authority is able to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites in question. Having considered the assessment, and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, Natural England advises that we concur with the assessment conclusions, providing that all mitigation measures are appropriately secured in any planning permission given.

Local Representations:

One letter of objection has been received and their comments are summarised as follows.

- The reserved matters application has not overcome our concerns which were raised at the outline stage and on the previously refused application.
- Objection in principle to the location of the site in the AONB outside the settlements.
- It is detrimental to the character of the area and will result in light pollution.
- It is too high, and the materials and design proposed make the building more dominant and prominent.
- The outline application indicated a green sedum roof, this application proposes something different.
- Submitted reports make no reference to water courses with the limestone of the Mendips, spring line and two working wells downhill with yards of the proposed septic discharge which makes it difficult to give credence to the professional reports.

Six letters of support have been received and their comments are summarised as follows.

- The development is in keeping with surroundings.
- The Ph of the land stands at 0.02 the development will be for 2 people and as such it will not change.

Full details of all consultation responses can be found on the Council's website

www.mendip.gov.uk

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 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) (MDLP)
- Mendip District Local Plan Part II: Sites and Policies (December 2021) (post JR version)
- Somerset Waste Core Strategy

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

- CP1 – Mendip Spatial Strategy
- CP2 – Supporting the Provision of New Housing
- CP4 - Sustaining Rural Communities
- DP1 - Local Identity and Distinctiveness
- DP4 - Mendip's Landscapes
- DP5 - Biodiversity and Ecological Networks
- DP6 – Bat Protection
- DP7 - Design and Amenity
- DP8 - Environmental Protection
- DP9 - Transport Impact of New Development
- DP10 - Parking Standards
- DP23 (Managing Flood Risk)

Other possible Relevant Considerations (without limitation):

- National Planning Policy Framework (NPPF)
- National Planning Practice Guidance (NPPG)
- Design and Amenity of New Development, Policy DP7 SPD (March 2022)
- The Countywide Parking Strategy (2013)
- Somerset County Council Highways Development Control Standing Advice (June 2017)

Assessment of relevant issues:

Principle of the Use:

The site is outside of the development limits as defined by the Local Plan Part 1 where development is strictly controlled. However the principle of a dwelling on this site is established through the approval of the extant outline permission 2020/0364/OTA.

This application is for approval of the matters that were reserved for subsequent approval and therefore the key considerations for this application relate to the access arrangements and matters in relation to the layout, appearance and scale of the dwelling and the overall landscaping arrangements for the site.

As set out above in this report, since outline application was permitted the site has been included within the phosphate catchment area which affects the Somerset Levels and Moors Ramsar. Legal advice has been taken which has confirmed that as reserved matters is an 'implementing decision', despite the granting of outline permission, the development still needs to demonstrate that it is phosphate neutral, and has no impact on the Ramsar site, before reserved matters can be approved. The effect the proposal would have on the Somerset Levels and Moors Ramsar natural habitat in terms of phosphate loading will be discussed later in this report.

As discussed earlier, following the outline approval a reserved matters application, reference 2020/1678/REM, was refused. There was one reason for refusal which was the foul discharge and the impact on the Somerset Levels and Moors Ramsar natural habitat. This current application seeks to overcome the previous reason for refusal and to determine the matters reserved by the outline approval.

In summary the principle of a dwelling has been established by the outline permission. The submitted drawings for this current reserved matters application are the same as the drawings submitted for the previously refused application (2020/1678/REM) but the application details now include alternative drainage arrangements and phosphate mitigation.

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

Policy DP4 says within the AONB the conservation and enhancement of the natural beauty, wildlife and cultural heritage will be the primary consideration in the determination of development proposals.

The dwelling proposes a garage and home office with parking at approximately the same level as the existing access to the site with the main accommodation proposed above.

The site is a piece of land cut into the landscape so is surrounded on three sides by higher land, therefore the dwelling would be set within the bowl of the landscape.

It is clear from the drawings submitted that there will be some soil removal from the site to accommodate the dwelling and its height will be below the existing rear face wall to the north. Whilst part of it may be visible from some vantage points when viewed from the west this is not considered so harmful to warrant refusal of the application. There is no doubt that a dwelling in this location will be visible, however the principle of a dwelling in this location was accepted at outline stage and the scale and design of the dwelling set within the bowl of this site is considered acceptable.

The rendered walls are in the main set to face the walls of the bowl so will barely be visible from public vantage points. The applicant has chosen a grey coloured roof so that it blends with the stone face of the existing bowl wall.

There have been some objections raised to the amount of light spill from the development. There are no roof lights proposed and the roof overhangs which reduces light spill upwards.

It is considered that the appearance, scale and layout of the proposed development is sympathetic to its rural location in will not harm the character and appearance of the area or the setting of the nearby conservation area or AONB.

Impact on Residential Amenity:

The site has no immediate neighbours and therefore, the siting of a dwelling raises no adverse amenity issues to warrant refusal of the application.

Impact on Ecology:

The ecological benefits of the site were discussed at the outline planning stage and appropriate

conditions, including biodiversity enhancement, were imposed on that permission. These would need to be discharged via a separate application.

In response to the ecologist's concern about bird strike on the previous reserved matters application the glass balustrades proposed at the edge of the terraces was amended to stainless-steel frame and vertical cables. This design feature has been carried through to the current proposal. Equally, window alert decals have again been submitted in the interests of reducing bird strike. The window alert decals contain a component which brilliantly reflects ultraviolet sunlight which is invisible to humans, but glows like a stoplight for birds and therefore they avoid striking the glass. The use of stickers is not considered to meet the test for planning conditions, but an informative note will be imposed on the decision, should the application be approved, to encourage the applicant to utilise this method to reduce the risk of bird strike. A compliance condition for the balustrade is considered reasonable.

In terms of ecological matters on the site, a further informative note would be necessary reminding developers of the legal protection afforded to badgers and their resting places.

The application site is located within the phosphate catchment area which affects the Somerset Levels and Moors Ramsar. The Somerset Levels and Moors Ramsar is designated for its rare aquatic invertebrates. There is a major issue with nutrients entering watercourses which adversely changes environmental conditions for these species. The application therefore needs to demonstrate that it is phosphate neutral, and therefore would not have a harmful impact on the Ramsar site, before reserved matters can be approved.

The previous reserved matters application, 2020/1678/REM, was refused (see above history section of the report), due to insufficient information with regards to the phosphate impacts of the proposal.

The documents now submitted include a phosphate budget calculator, a package treatment plant (PTP) just outside the application site but within land that the applicant owns, and the provision of a minimum of 0.290 hectares of phosphate mitigation habitat comprising of woodland planting to the north of the application site.

The proposals have been subject to assessment under the Habitat Regulations and both the Ecologist and Natural England have confirmed their acceptance of its recommendations. The ecologist as requested further conditions which include securing a construction environmental management plan (CEMP), the provision of the appropriate PTP and a maintenance plan for it and that the development is carried out in accordance

with the Nutrient Neutrality Assessment and Mitigation Strategy (NNAMS). All of these additional conditions are necessary and reasonable.

Subject to the suggested conditions and signing of the legal agreement it is considered that the proposal has overcome the previous reason for refusal.

The proposed development will not have an adverse impact on bats or other ecology. The proposal accords with Policies DP5, DP6 and DP8 of the adopted Local Plan Part 1 (2014) and Part 15 of the National Planning Policy Framework.

Assessment of Highway Issues:

Top Road is an unclassified road with a 30mph speed limit although traffic speeds are likely to be lower due to the narrowness of the road. There have been no recorded road traffic accidents on this road in the last 5 years.

With regard to highway safety there is an existing vehicular access serving the site. The visibility shown on the plans in a westward direction is 33m and to the east is 43m. Whilst this distance falls short of the visibility required by standing advice, the nature of the highway and level of use by both vehicle and pedestrian traffic it is not considered significant. As such it is considered that the development is acceptable in highway safety terms.

Land Drainage:

There were pre-commencement conditions to secure the details of the foul and surface water details imposed on the outline permission. However, as part of the current application, these details have been provided and are considered acceptable.

Surface water will be directed to a soakaway, testing results and calculations in accordance with BRE Digest 365 have been provided and demonstrate the suitability of the soakaway for use on the site. The foul drainage design meets the requirements of Building Regulations part H.

The proposed development will not have an adverse impact on flood risk or represent a danger to water quality. The proposal accords with Policies DP8 and DP23 of the adopted Local Plan Part 1 (2014) and Part 15 of the National Planning Policy Framework.

Refuse Collection:

The site is considered capable of providing adequate storage space for refuse and recycling.

Environmental Impact Assessment:

This development is not considered to require an Environmental Assessment 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, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

Conclusion:

There has not been a significant shift in policy since the determination of the outline permission which establishes the principle of a dwelling on this site or the reserved matters application which was refused for a single reason based on phosphates. It is considered that it would be unreasonable for the Local Planning Authority (LPA) to reach a different conclusion in relation to issues of access, appearance, landscaping, layout and scale. As set out above and subject to a legal agreement to secure the provision of phosphate mitigation habitat comprising of woodland planting and a landscape and ecological management plan (LEMP), which will ensure retained habitats and the phosphates mitigation are managed appropriately for the lifetime of the development, the application is recommended for approval.

Recommendation:

Approval subject to conditions following completion of a legal agreement under Section 106 of the Act to secure phosphate mitigation habitat comprising of woodland planting and a landscape and ecological management plan (LEMP).

Conditions

1. Plans List (Compliance)

This decision relates to the following drawings: drawing 1435/LOC, 1435/04, 1435/03, 1435/01 received 26.09.22, 1435/05 Rev A received 25.10.22, 1435/02 Rev L received 24.01.23 and Nutrient Neutrality Assessment and Mitigation Strategy Revision 2 (dated January 2023) received 24.01.23.

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

2. **Parking (Compliance)**

The areas allocated for parking and turning on the submitted plan shall be kept clear of obstruction and shall not be used other than for the parking of vehicles in connection with the development hereby permitted.

Reason: To ensure that sufficient parking is provided to serve the approved development in the interests of highway safety in accordance with Policies DP9 and DP10 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014).

3. **Visibility Splay (Pre-occupation)**

No occupation of the development shall commence until the visibility splay shown on drawing number 1435/02 Rev L has been provided. There shall be no on-site obstruction exceeding 900mm above ground level within the visibility splay. The visibility splay shall be retained permanently thereafter.

Reason: To ensure sufficient visibility is provided in the interests of highways safety in accordance with Development Policy 9 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014).

4. **Materials (Compliance)**

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

Reason: In the interests of the appearance of the development and the surrounding area in accordance with Policy DP7 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014).

5. **Hard and Soft Landscaping (Compliance)**

All hard and/or soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme (phasing) agreed in writing with the Local Planning Authority. Any trees or plants indicated on the approved scheme which, within a period of five years from the date of the development being completed, die, are removed or become seriously damaged or diseased shall be replaced during the next planting season with other trees or plants of a species and size to be first approved in writing by the Local Planning Authority. All hard landscape works shall be permanently retained in accordance

with the approved details.

Reason: To ensure the provision of an appropriate landscape setting to the development in accordance with Policy DP4 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014).

6. **Balustrades (Compliance)**

The balustrades shown to be erected on the terraces shall be implemented as specified on drawing number 1435/05 Rev A and shall thereafter be retained in that form.

Reason: In the interests of reducing bird strike, preventing ecological harm in accordance with Policy DP5 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014).

7. **Removal of Permitted Development Rights - No extensions or alterations to roof (Compliance)**

Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no external alteration, extension or enlargement to the roofs of the dwelling hereby approved unless a further planning permission has been granted by the Local Planning Authority.

Reason: In the interests of the appearance of the development and the surrounding area and to prevent light spill in accordance with Development Policies 1, 4, 7 and 8 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014).

8. **Construction Environmental Management Plan (Pre-Commencement)**

No development shall take place (including ground works or vegetation clearance) until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the Local Planning Authority. The CEMP (Biodiversity) shall include the following:

- a) Risk assessment of potentially damaging construction activities.
- b) Identification of "biodiversity protection zones".
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements) for highlighted species either confirmed onsite or potentially utilising the site on occasion.
- d) The location and timing of sensitive works to avoid harm to biodiversity features.
- e) The times during construction when specialist ecologists need to be present on site to oversee works.
- f) Responsible persons, lines of communication and written notifications of

operations to the Local Planning Authority.

- g) The role and responsibilities on site of an Ecological Clerk of Works (ECoW) or similarly competent person.
- h) Use of protective fences, exclusion barriers and warning signs.
- i) Ongoing monitoring, including compliance checks by a competent person(s) during construction and immediately post-completion of construction works.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of the integrity of a European site, the 'Favourable Conservation Status' of populations of European Protected Species and UK protected species, UK priority and habitats listed on s41 of the Natural Environment and Rural Communities Act 2006, and in accordance with Development Policies 5 and 6 of the Mendip Local Plan Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014) and Chapter 15 of the National Planning Policy Framework. This is a condition precedent as harm to protected species needs to be prevented from the earliest stages of the development.

9. PTP Requirements in Phosphate Affected Area (Pre-Occupation)

The dwelling hereby approved shall not be occupied until:

- i. the optional requirement for potential consumption of wholesome water by persons occupying that dwelling in Part G of Schedule 1 and Regulation 36 of the Building Regulations 2010 of 110 litres per person per day has been complied with; and
- ii. a notice specifying the calculated consumption of wholesome water per person per day relating to the dwelling as constructed has been given to the appropriate Building Control Body and a copy of the said notice provided to the Local Planning Authority.

Reason: To improve the sustainability of the dwellings in accordance with Paragraphs 134, 154 and 180 of the National Planning Policy Framework (July 2021).

10. Nutrient Neutrality Statement (Compliance)

The development hereby approved shall be carried out in full accordance with the approved 'Nutrient Neutrality Assessment and Mitigation Strategy (NNAMS) Revision 2' reference 'NNAMS REPORT' (Southwest Environmental Limited's, January 2023). This will also have a set trigger level, where by if Phosphate concentration after treatment rises above 0.02mg/litre/annum (99% efficiency) the filter media will be replaced at the earliest opportunity.

Reason: In the interests of the integrity of a European site, the 'Favourable

Conservation Status' of populations of European Protected Species and UK protected species, UK priority and habitats listed on s41 of the Natural Environment and Rural Communities Act 2006, and in accordance with Policies DP5 and DP8 of the Mendip Local Plan and Chapter 15 of the National Planning Policy Framework 2021.

11. **Maintenance Plan PTP (Pre-Occupation)**

No occupation of the development shall commence until a detailed Maintenance Plan has been submitted to and approved in writing by the Local Planning Authority. The Maintenance Plan shall include:

- a. Details of management arrangements to ensure the package treatment plan adheres to the 'Nutrient Neutrality Assessment and Mitigation Strategy (NNAMS) Revision 2' reference 'NNAMS REPORT' (Southwest Environmental Limited's, January 2023).
- b. Formal confirmation of management arrangements of an OFWAT registered provider in perpetuity.
- c. Details of ongoing annual monitoring arrangements
- d. Confirmation of permit arrangements with the Environment Agency

The development shall accord with the Maintenance Plan in perpetuity.

Reason: In the interests of the integrity of a European site, the 'Favourable Conservation Status' of populations of European Protected Species and UK protected species, UK priority and habitats listed on s41 of the Natural Environment and Rural Communities Act 2006, and in accordance with Policy DP5 and DP8 of the Mendip Local Plan and Chapter 15 of the National Planning Policy Framework 2021.

Informatives

1. This permission is accompanied by an agreement under Section 106 of the Town and Country Planning Act 1990.
2. Due to the possible historic uses of this site a watching brief should be kept for potential hotspots of contamination and assess for visual/olfactory evidence of contamination during any groundworks.
If any unforeseen contamination is found during excavations Environmental Health must be notified immediately. This may include obvious visual or olfactory residues, asbestos including asbestos containing materials such as roofing, buried drums,

drains, interceptors, additional fuel storage tanks or any other unexpected hazards that may be discovered during site works.

3. The developers are reminded of the legal protection afforded to badgers and their resting places under the Protection of Badgers Act 1992 (as amended). It is advised that during construction, excavations or large pipes (>200mm diameter) must be covered at night. Any open excavations will need a means of escape, for example a plank or sloped end, to allow any animals to escape. In the event that badgers or signs of badgers are un-expectantly encountered during implementation of this permission it is recommended that works stop until advice is sought from a suitably qualified and experienced ecologist at the earliest possible opportunity.
4. The applicant is advised to utilise window alert decals that reflect ultraviolet sunlight in the interests of reduceing the risk of bird strike.

