

Application Number	2023/0338/FUL
Case Officer	Carlton Langford
Site	Land At 362158 143509 Paul Street Shepton Mallet Somerset
Application Number	2023/0338/FUL
Date Validated	23 February 2023
Applicant/	E Dukes (Manager)
Organisation	Willow Nursery and Pre-School Ltd
Application Type	Full Application
Proposal	Change of use of land from agriculture to use class E (f) and erection of Nursery and Pre-School building and associated access and parking.
Division	Shepton Mallet Division
Parish	Shepton Mallet Town Council
Recommendation	Refusal
Divisional Cllrs.	Cllr Bente Height Cllr Martin Lovell

#### 9. **Referral to Planning Committee:**

The application has been referred to Planning Committee for the reason of overwhelming support including from the Town Council and Ward Cllr.

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

This application relates to land to the north of the A361 (Paul Street) situated within the development limits of Shepton Mallet but within part of a larger area designated as Open Area of Local Significance under policy DP2 of the Local Plan.

The site has boundaries with a residential property to the west a school car park and further land designated as an Open Area of Local Significance to the east and north and predominantly residential properties to the south.

The application site is also situated within the Shepton Mallet Conservation Area, an Area of High Archaeological Potential and within the Somerset Levels and Moors Ramsar Catchment.

This application seeks full planning permission for change of use of land from agriculture to use class E (f) and erection of Nursery and Pre-School building and associated access and parking. The applicant suggests that the proposed development

will replace/relocate the existing nursery use operating further along Paul Street (Charlton Road) which is still in operation.

Planning history shows that Willow Nursery under Planning Permission Ref: 2019/1516/FUL gained permission for the use of a dwellinghouse at 1 Charlton Road as a new nursery building but for unexplained reasons, the plot was subdivided and the house sold on, with the subdivide land now forming the application site for a new nursery.

**Relevant History:**

2019/1516/FUL - Change of use of dwellinghouse (Class C3) to state registered nursery and pre-school (Class D1) and use of adjacent land for associated access and parking. Approved Sept 2020.

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

Ward Member: I have no personal interest in this application, I am not a member of the planning board. I would like to see this application being passed, if there were a doubt, I would prefer the application being deferred to full planning board.

Town Council: Support.

Planning Policy: Careful consideration should be given to the planning balance between the harm caused by loss of part of the Open Area of Local Significance and the benefits of the continued provision of childcare.

Conservation: Object – Less than substantial harm. The development would result in “less than substantial harm” to the significance of this heritage asset (Shepton Mallet Conservation Area) which must be outweighed by public benefits in the planning balance, bearing in mind the Section 72 duty to pay “special attention” to the desirability of preserving or enhancing the character or appearance of the conservation area.

Highways Development Officer: No objections subject to standard highway safety conditions.

Council Archaeologist: No objections.

Land Drainage: No objections.

Somerset Education: Support - Willow have offered early years provision since the 1960s, so are an established and well-regarded setting within the town. We have recently visited the current setting and know from a condition report completed in May 2023 that the building is at the end of its life and is no longer conducive to the delivery of an early years curriculum. If they are unable to build a new setting, there is a very real risk that they will be forced to close.

Environmental Protection: No objections to this proposal, however, due to the location. a Construction Environmental Management Plan will be necessary in the interests of safeguarding neighbouring amenities.

Contaminated Land: No objections but due to what appears to be a mound of waste on site, it would be advised to keep a watching brief for potential hotspots of contamination and assess for visual/olfactory evidence of contamination during any groundworks.

Ecology: No objections subject to the imposition of conditions in the interests of protecting wildlife and wildlife habitats.

Natural England: No comment to make on this application.

Local Representations: 8 letters of objection have been received raising the following summarised issues:

1. Development should be directed to a brownfield site and not on this greenfield site.
2. Highway safety issues – Impact on existing access points opposite.
3. Poor design (modular building)
4. Impact on wildlife – loss of a green wildlife corridor
5. Impact on the Conservation Area
6. The same green space is also included within the proposed protected green space in the Shepton Mallet Neighbourhood Plan, currently being assessed before adoption.

10 letters of support have been received supporting the proposal to relocate and continue the nursery school use.

Full details of all consultation responses can be found on the Council's website [www.mendip.gov.uk](http://www.mendip.gov.uk)

### **Policies/Legislation:**

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)
- Mendip District Local Plan Part II: Sites and Policies (December 2021)
- Somerset Waste Core Strategy (2013)
- Somerset Mineral Plan (2015)

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

- CP1 – Mendip Spatial Strategy
- CP3 – Supporting Business Development
- DP1 – Local Identity and distinctiveness
- DP2 – Open Areas of local Significance
- DP3 – Heritage Conservation
- DP4 – Mendip Landscapes
- DP5 – Biodiversity
- DP6 - Bats
- DP7 – Design and Amenity
- DP9 – Transport
- DP10 – Parking

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

- National Planning Policy Framework
- National Planning Practice Guidance
- Historic Environment Good Practice Advice in Planning Notes issued by Historic England
- Conservation Area Character Appraisals

- Somerset County Council Highways Development Control Standing Advice (June 2017)
- Greenspace Supplementary Planning Document

### **Assessment of relevant issues:**

#### **Principle of the Use:**

Core Policy 1 of the Local Plan outlines the spatial strategy for Mendip, which seeks to direct the majority of development towards the five principal settlements which contribute positively towards delivering components of the vision for the district and the associated strategic objectives. The site is within development limits for Shepton Mallet, a principal settlement.

Core Policy 3 encourages a diverse, robust, thriving and resilient local economy.

Policy DP2 - Open Areas of Local Significance, says that permission will not be granted for development which would harm the contribution to distinctive local character made by Open Areas of Local Significance as identified on the Policies Map. The site is within an Open Area of Local Significance defined by Local Plan Part 1 and defines the site as part of an Open Area of Local Significance, designated for its significant contribution to the quality of the built environment. The designation is applied to spaces which contribute to the locally distinctive character of an area for a variety of reasons, including allowing views out of an otherwise built-up street scene, allowing views of significant local features, enhancing the setting of a settlement or creating a sense of space.

Part 1 of the plan makes a commitment to reviewing the OALS and considering whether they should be designated as Local Green Spaces as set out in NPPF para 101-103 as part of the preparation of LPP2.

Policy DP2 is part of the adopted Local Plan Part 1 and says that the areas defined as OALS have value because of their contribution to local distinctiveness and does not permit development which would harm that contribution.

A review of the approach to Local Green Space designation is required and, in addition to consideration in Neighbourhood Plans, this will be carried out in the future Local Plan Review.

Local Plan Part 2 confirms that LPP1 Policy DP2 will continue to provide guidance on the protection of open spaces (para 5.3).

Greenspace Supplementary Planning Document (SPD) does not designate Open Areas of Local Significance which were identified within Part of LPP1. However, it provides more detail of the value of each existing site. In Annex 2 the following description of the value of the site is provided:

OALSSHEP007; “Demonstrably special due to being an open area amongst quite dense housing which will be intensified as a result of the development of the prison site”.

The site is also identified in the Shepton Mallet Conservation Area Appraisal maps as a “Positive Open Space” which, although not a designation itself, does concur with the Open Area of Local Significance (OALS) and allows for views out across the valley to the north from the built-up area. It should be taken into account when considering any development within the Conservation Area where the development is expected to preserve or enhance its character or appearance, in accordance with both the definition of a conservation area and Policy DP3.

The Council’s Conservation officer has made a full assessment of the proposal on heritage assets to include the Shepton Mallet Conservation Area and nearby Listed Buildings. (See full assessment below). The outcome of which is that the only designated heritage asset to be impacted by the proposal is the Shepton Mallet Conservation Area, and the development would result in “less than substantial harm” to the significance of this heritage asset which must be outweighed by public benefits in the planning balance, bearing in mind the Section 72 duty to pay “special attention” to the desirability of preserving or enhancing the character or appearance of the conservation area.

The Childcare Act (2016) placed a duty on Local Authorities to secure places free of charge to parents and the Council’s Childcare Sufficiency Statement gives an overview of childcare and the Community Profiles notes that additional provision may be required in Shepton Mallet due to proposed housing development although, current demand is being met by the established Willow Nursery.

The adopted Local Plan identifies the site as part of an as OALS and within the Shepton Mallet Conservation Area. The Local Plan protects OALS sites from development which would harm the contribution to distinctive local character, and Conservation Areas from

development which fails to preserve or enhance the character or appearance of the Conservation Area.

Taking all of the above into consideration in the planning balance, whilst it is recognised that the proposed development will benefit the local economy at a modest level and could provide alternative facilities should the existing Willow Nursery close, but it must be recognised that the current nursery is still operating and is meeting existing demand.

To this end, it is considered that the harm as identified outweighs the modest economic benefits as identified and as there remains a facility (nursery) in place currently meeting existing public demands. As such, there are currently no public benefits which might outweigh the harms identified in both the loss of part of an OALS and the less than significant harm to the character of the Conservation Area and despite the development being within the development limits of Shepton Mallet, it fails to contribute positively towards the objectives of Policy CP1 of the Local Plan and considered unacceptable in principle.

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

The application site is on undeveloped greenfield land and sloping downhill away from Paul Street where access is proposed. The site is planted with grass with one key specimen mature tree.

The proposal will see a breach of an existing stone boundary wall to create an access similar to that already approved under planning permission ref: 2019/1516/FUL which gained permission for a change of use of 1 Charlton Road (dwellinghouse) to state registered nursery and pre-school.

Beyond the access to the front of the proposed building will be a large parking and turning area to serve the development.

Towards the centre of the site will be a modular type 'L' shaped building with a flat roof. Using the sloping topography of the site, the building will at the rear be 2 storey creating a store and plant room at a lower level.

To the rear of the building, will be a hard surfaced outside play area and a soft grassed area.

Whilst the applicant has sought to limit the impact the development through the flat roof design, the scale of the overall scheme is such that it will no doubt have a significant visual impact on the street scene considerably altering the existing open character of this land for which is it designated under Policy DP2 of the LP (OALS) and furthermore, the open character of this part of the Shepton Mallet Conservation Area.

Whilst it is appreciated that the Council has previously allowed a new access and access track on part of the application site, this was very much restricted to a small part of the site immediately adjacent to the highway and where the benefits of creating the new access in terms of highway safety outweighed the limited visual harm on the open character of the OALS.

To this end, the proposed development by reason of its excessive scale, form, layout and appearance would be inappropriate within context contrary to the provisions of Policies DP1, DP2, DP3 and DP7 of the LP.

### **Impact on the Conservation Area:**

There is a duty under Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the preservation or enhancement of the character of the surrounding conservation area.

It is one of the core principles of the NPPF that heritage assets should be conserved in a manner appropriate to their significance. Chapter 16 of the National Planning Policy Framework at paragraph 195 sets out that the local planning authority should identify and assess the particular significance of any heritage asset. They should take this assessment into account when considering the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal.

Paragraphs 194-204 sets out the framework for decision making in planning applications relating to heritage assets and this application takes account of the relevant considerations in these paragraphs.

The site is identified in the Shepton Mallet Conservation Area Appraisal maps as a "Positive Open Space" which, although not a designation itself, does concur with the Open Area of Local Significance (OALS) and allows for views out across the valley to the north from the built-up area. It should be taken into account when considering any development within the conservation area where the development is expected to

preserve or enhance its character or appearance, in accordance with both the definition of a conservation area and Policy DP3.

In assessing the overall impact of the proposal, the car parking area off Paul Street on the highest part of the site significantly dilutes the “positive open space” experienced from Paul Street, and despite attempts to keep the building low at its south end, it would be visible and contribute to the impact on the openness of this identified part of the conservation area.

The development would result in “less than substantial harm” to the significance of this heritage asset which must be outweighed by public benefits in the planning balance, bearing in mind the Section 72 duty to pay “special attention” to the desirability of preserving or enhancing the character or appearance of the conservation area.

The development will bring forward modest economic benefits but there remains a nursery facility in place currently meeting existing public demands.

Having regard to the above, the proposal will have less than substantial harm to the significance of the designated heritage asset. In line with paragraph 196 of the NPPF it is necessary to weigh this against any public benefit. In this instance the harm to the significance of the designated heritage asset is not outweighed by the public benefit identified which are considered modest at best and therefore, having due regard to Section 72 of the Planning (Listed Building and Conservation Area) Act 1990 and Policy DP3 of the Mendip District Local Plan 2006-2029 (Part 1 Strategies and Policies - adopted 15th December 2014) permission should be refused.

### **Impact on the setting of Listed Building:**

There is a duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 In considering whether to grant planning permission for development which affects a listed building or its setting to 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.

It is one of the core principles of the NPPF that heritage assets should be conserved in a manner appropriate to their significance. Chapter 16 of the National Planning Policy

Framework at paragraph 195 sets out that the local planning authority should identify and assess the particular significance of any heritage asset. They should take this assessment into account when considering the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal.

Paragraphs 194-204 sets out the framework for decision making in planning applications relating to heritage assets and this application takes account of the relevant considerations in these paragraphs.

The Grade II\* listed prison (along with its Grade II listed Gatehouse and Perimeter Walls) lies to the west of Frithfield Lane and, due to its proximity, there is the potential that the development of the site could affect the setting of these heritage assets. However, the application site does not make a valuable contribution to the setting of the prison – its setting being primarily predicated upon its immediate surroundings within the prison walls and surrounding narrow lanes. The site is shielded from the prison on the east of Frithfield Lane by a high wall, albeit not as high as the prison wall opposite, so there is little intervisibility, other than what might be glimpsed from the upper floors of the prison through its small, high windows. It is, therefore considered that no harm would be caused to the significance of the prison or the walls by this development due to impact on their settings.

Therefore, no material harm to the designated heritage asset has been identified and the proposal would accord with Section 66(1) of the Planning (Listed Building and Conservation Area) Act 1990 and Policy DP3 of the Mendip District Local Plan 2006-2029 (Part 1 Strategies and Policies - adopted 15th December 2014).

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

The site has only one neighbour at 1 Charlton Road which might be impacted by the proposed use. However, the layout of the site ensures that the proposed building acts as an effective screen between the dwelling and the outside play areas and the limited use of the car park, is unlikely to have such a significant impact on the amenity of the occupiers of 1 Charlton Road as to warrant the applications refusal bearing in mind the existing noise levels from the busy A361.

The proposal accords with Policy DP7 of the LP.

## **Assessment of Highway Issues:**

A similar access for a very similar use was allowed under planning ref: 2019/1516/FUL within the same location and is considered to be acceptable in terms of highway safety.

There is sufficient off-street parking to serve the proposed use along with sufficient on-site turning to allow cars to arrive and leave the site in forward gear and to allow safe drop-off and pick-up from the Nursery.

Whilst third party concerns have been realised regarding highway safety and pedestrian safety, the width of the highway at the access with the site is sufficient to allow ease of turning both into and out of the site and there is a safe pedestrian footpath along both Paul Street and Charlton Road.

The proposal is acceptable in terms of highway safety and sufficient off-street parking will be provided in accords with Policies DP9 and DP10 of the LP and the Countywide Parking Strategy.

## **Ecology:**

The application was accompanied by an ecological report and a further badger assessment. The Council's Ecologist has supported the recommendations within the report and assessment subject to the imposition of standard wildlife conditions in the interests of protecting Badgers, Bats, Nesting birds, Amphibians and Reptiles and ensuring the provision of biological enhancements.

Whilst it is recognised that part of a larger greenfield site with ecological benefits will be lost to the development, the recommendations and enhancements proposed are considered sufficient to ensure no harm to protected wildlife or protected habitats in accordance with Policies DP5 and DP6 of the LP.

The site fall within the Somerset Levels and Moors Ramsar Catchment where before determining a planning application that may give rise to additional phosphates within the catchment, competent authorities must undertake a Habitats Regulations Assessment (HRA).

However, with no overnight accommodation proposed the development falls outside of that requiring an assessment (HRA) and the authority is therefore confident that the

development will not give rise to unfavourable levels of additional phosphate within the catchment.

### **Waste and Refuse:**

Provided at the roadside.

### **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, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

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

Having regard for the above, the proposed development poses no adverse amenity, highway safety, pedestrian safety or ecological concerns and it is recognised that the proposed development will benefit the local economy at a modest level and could provide alternative facilities should the existing Willow Nursery close.

However, it must be recognised that the current nursery is still operating and is meeting existing demand and therefore at present the proposal would provide little public benefit.

Notwithstanding the above, the harms identified in both the loss of part of an OALS and the less than significant harm to the character of the Conservation Area carry significant weight and, in this case, outweigh the modest economic benefits brought by the proposed development.

The proposal is considered to be contrary to the provisions of policies DP1, DP2, DP3 and DP7 of the Local Plan and recommended for refusal.

## **Recommendation**

### Refusal

1. The application site forms a significant area of a designated Open Areas of Local Significance in this part of Shepton Mallet under Policy DP2 of the Mendip District Local Plan 2006-2029 (Part 1 Strategies and Policies - adopted 15th December 2014). The Policy, seeks to protect the importance of the site as a designated open space and clarifies that permission will not be granted for development which would harm the contribution to distinctive local character made by Open Areas of Local Significance as identified on the Policies Map. The application site is described as demonstrably special due to it being an open area amongst quite dense housing. In summary the cumulative impact of the proposed development will have a significantly harmful impact on the openness of this designation especially when viewed from the Paul Street and Charlton Road. Whilst it is recognised that the scheme might deliver modest economic benefits, any public benefits are minimal with the demand for nursery facilities already being met by existing facilities. The benefits of the proposal do not in this case, outweigh the harm as identified and the development is contrary to the provisions of Policies DP1, DP2 and DP7 of the Mendip District Local Plan 2006-2029 (Part 1 Strategies and Policies - adopted 15th December 2014).
2. The proposed development by reason of its cumulative visual impact on this positive open space which defines the character and appearance of this part of the Shepton Mallet Conservation Area will result in less than substantial harm to the significance of the heritage asset. In line with paragraph 196 of the NPPF it is necessary to weigh this against any public benefit. In this instance the harm to the significance of the designated heritage asset is not outweighed by the public benefit identified which are considered modest at best with the demand for nursery places already being met by existing facilities. The proposed development therefore, fails to accord with the provisions of Section 72 of the Planning (Listed Building and Conservation Area) Act 1990 and Policy DP3 of the Mendip District Local Plan 2006-2029 (Part 1 Strategies and Policies - adopted 15th December 2014).

## **Informatives**

1. In determining this application the Local Planning Authority considers it has complied with the aims of paragraph 38 of the National Planning Policy Framework by working in a positive, creative and pro-active way. Despite negotiation, the submitted application has been found to be unacceptable for the stated reasons. The applicant was advised of this, however despite this, the applicant chose not to withdraw the application and having regard to the need to avoid unnecessary delay the Local Planning Authority moved forward and issued its decision.
  
2. This decision relates to drawings:
  - 0275\_WN\_22-S.01
  - 0275\_WN\_22-PL.100
  - 0275\_WN\_22-PL.101
  - 0275\_WN\_22-PL.102
  - 0275\_WN\_22-PL.103
  - 0275\_WN\_22-PL.104
  - 0275\_WN\_22-PL.105
  - 0275\_WN\_22-PL.106
  - 0275\_WN\_22-PL.107
  - 02.00 B
  - 08.00 B
  - 09.00 B
  - 10.00 B
  - SK03.00(SM) C

