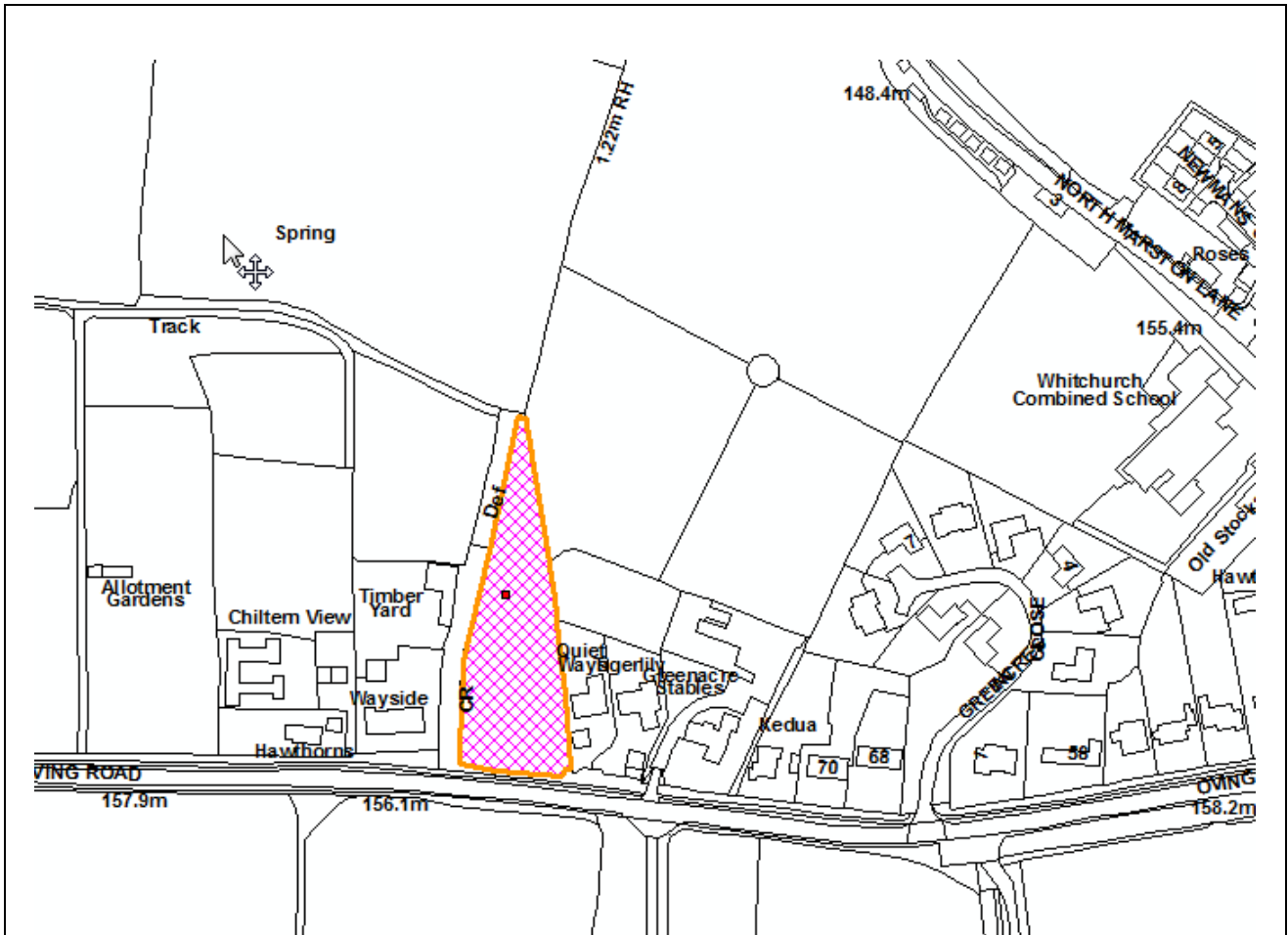


17/03292/APP



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REFERENCE NO	PARISH/WARD	DATE RECEIVED
17/03292/APP	WHITCHURCH	29/08/17
Construction of partially underground Passivhaus with ground source heat and detached storage building with associated external parking and access (amendment to planning approval 15/02903/APP)	The Local Member(s) for this area is/are: -  Councillor Mrs J Blake	
Land Adj Wayside Oving Road Mr Stephen Green		
STREET ATLAS PAGE NO. 86		

## 1.0 Introduction

1.1 The application was deferred from Committee at the 2 August 2018 to enable Officers to report back on:

- A greater understanding of the Inspectors findings on the most recent appeal decision and the difference between the schemes.
- More information on the changes to the NPPF and how they affect the application.
- More information on the potential for contamination on the site.

Members are asked to refer to the previous report corrigenda and updated overview report.

## 2.0 Appeal History

2.1 Since 2010 there have been 6 planning applications for either 1 or 2 dwellings on the site which have been refused and appeals lodged and dismissed. The basic measurements of the current application and the two most recently refused applications are set out below:

	Application 14/00455/APP	Application 16/03245/APP	Current application
<b>Height</b>	6.4m	6.7m	2.35m
<b>width</b>	11m	17m	20m
<b>Depth</b>	7m	7.1m	17.5m
<b>Setback from road</b>	22m	6.8m	30m

2.2 Application 16/03245/APP - Barn style single storey house with bedrooms in the roof space above and double garage attached.

- 2.3 The above is the most recent appeal decision which relates to a one single storey house with accommodation in the roof with a height of 6.4m sited at the front of the plot. It is useful as it makes reference to both the appeal and also the approved application for a partially underground Passivhaus .
- 2.4 The Inspector in reaching his decision noted that opposite the site and a short distance to the west there are fields, giving the site a predominantly rural character. He also noted that the site had been the subject of a number of planning appeals and that in the most recent appeal (application ref 14/00455/APP) the Inspector had concluded that the appeal site formed an important visual gap that separated the edge of the built up area of Whitchurch to the east from the isolated group of dwellings to the west. The site had therefore played an important part in preserving the openness of the countryside.
- 2.5 The Inspector compared the height of the proposed dwelling with the previously refused scheme. Noting that at 6.4m in height the dwelling, despite the landscaped banks along the front and west boundaries, would be visible in the street scene and from the footpath at the rear. Also that the landscaping would have grown in the 2.5 years since the previous appeal and views of the dwelling from outside the site would be limited. However, the Inspector stated it is not prudent or good practice to rely on landscaping to permanently screen a building.
- 2.6 With regard to the approved partly subterranean house, the Inspector did not consider that building, as approved, would be visible from Oving Road and therefore even if constructed the site would still appear to be bounded to the north by undeveloped land.

### **3.0 Appeal summary**

- 3.1 The Inspector stated that the development would harm the character and appearance of the area and would therefore be contrary to Policies GP.35, RA.2 and RA.8 of the Local Plan.
- 3.2 There are 2 important points that can be concluded from the Appeal history and Inspectors decisions. Firstly, the importance of consistency in considering the appeals for two storey houses on the site, the Inspectors refer to the previous appeal decisions throughout their findings and it is clear that this consistency is key to their decision making. However, the current application is not for another two storey house but a revision to the approved subterranean passivhaus. As detailed in the original report the increase in height of the dwelling is 2.35m and it will be set back from the road by 30m. Officers have concluded that the height and location of the proposed building ensure that it will not be visible from the front and will therefore not affect the openness of the countryside. This is a different situation from the previous applications determined at appeal.
- 3.3 Secondly, the importance of the site in preserving the openness of the site, as stated above the Inspectors noted the rural character of the area and the fact that the site forms an important visual gap that separated the edge of the built up area of Whitchurch to the east from the isolated group of dwellings to the west. However, it is concluded that the current application will retain this gap as the proposed dwelling will only protrude from ground level by 2.35m and would be set back by 30m from the frontage. As mentioned above and in the original report the site is screened by landscaping and grass banks which means that the

proposed dwelling will not be visible in the street scene thereby retaining the visual gap and the open character of the countryside.

#### 4.0 Changes to the NPPF

4.1 There has been a subtle yet important change of the wording of the NPPF which affects this development. The site is located within an Area of Attractive Landscape (AAL) which was treated as a 'valued landscape' for the purposes of footnote 9 of paragraph 14 in the 2012 NPPF where development should be restricted, thus a non tilted balance could have been argued.

4.2 However, the revised 2018 NPPF in para 11 footnote 6 does not refer to the restricted policies as 'examples' (as in the previous NPPF), but specifies criteria which a valued landscape does not fall under. Therefore, under the revised NPPF, the development should not be restricted and needs to be considered in accordance with the tilted balance contained in paragraph 11 of the NPPF. This means that permission should be granted unless any adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits. As the NPPF has changed with regard to the valued landscape, this means that the planning balance needs to be considered afresh in light of the revisions to the NPPF.

4.3 Paragraph 11 now reads:

*11. Plans and decisions should apply a presumption in favour of sustainable development. For **plan-making** this means that:*

- a) plans should positively seek opportunities to meet the development needs of their area, and be sufficiently flexible to adapt to rapid change;*
- b) strategic policies should, as a minimum, provide for objectively assessed needs for housing and other uses, as well as any needs that cannot be met within neighbouring areas<sup>5</sup>, unless: i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for restricting the overall scale, type or distribution of development in the plan area<sup>6</sup>; or ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*

*For **decision-making** this means:*

- c) approving development proposals that accord with an up-to-date development plan without delay;*

*or d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date<sup>7</sup>, granting permission unless: i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed<sup>6</sup>; or ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*

*5 As established through statements of common ground (see paragraph 27).*

*6 The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 176) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 63); and areas at risk of flooding or coastal change.*

*7 This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years. Transitional arrangements for the Housing Delivery Test are set out in Annex 1.*

The policy framework has not been changed by the new NPPF paragraph 79 contains similar guidance to that previously outlined at paragraph 55 and therefore this does not represent a change to the assessment and conclusion of the previous report.

Officers have now considered the question of whether the development should be permitted in accordance with the tilted balance contained in paragraph 11. The benefits and adverse impacts are carefully weighed in the planning balance and it is considered that the benefits demonstrably outweigh any adverse impacts and the proposal would constitute sustainable development. Officers consider the benefits of the proposal weigh in favour of the proposal and do not consider that any impacts of this development would significantly and demonstrably outweigh the benefits.

## **5.0 Potential for Contamination**

5.1 Discussions have taken place with the Environmental Health Officer who has reviewed the application, assessed the GIS database and historical maps and concludes that there was a former sandpit located near the site however it appears the sandpit was on the opposite side of the road to the proposed development. Based on this information it is considered that the risk of contamination to be present at the site is relatively low and therefore it is recommended that there is no requirement for any contaminated land conditions to be placed on any planning permission granted. However, an informative is proposed to advise the applicant if any contamination is encountered the Environmental Health department must be contacted immediately.

## **6.0 CONCLUSION**

6.1 The application has been evaluated against the extant Development Plan and the National Planning Policy Framework (NPPF) and the report has assessed the application against the core planning principles of the NPPF and whether the proposals deliver sustainable development.

6.2 The proposed development does comply with Policies GP8, GP24, GP35, GP38 - GP40, GP45, RA2 and RA8 of AVDLP however it does not accord with policy RA14, which is given limited weight. Given that one of the most important policies is out of date namely AVDLP

policy RA14 it is considered that the tilted balance set out in paragraph 11 d)ii of the NPPF applies

- 6.3 The presumption in favour of sustainable development in paragraph 11 of the NPPF is therefore now engaged following the revisions to the NPPF as discussed above. In considering the benefits of the development, the development would make a contribution to the housing land supply albeit of limited weight due to the scale of the proposed development and the fact that the Council can demonstrate a 11.7 year housing land supply. There would also be economic benefits in terms of the construction of the development itself and those associated with the resultant increase in population on the site and the support it could provide to local community facilities in Whitchurch. These represent modest further benefits associated with the development.
- 6.4 Overall, it is considered that due to the scale and design of the new dwelling and the mitigation proposed, the proposal would protect the landscape character of the Area of Attractive Landscape (AAL).
- 6.5 For the reasons set out above and in the evaluation section of the main report, there are material differences between the previous applications/appeals which have been refused/dismissed on the site and the current scheme, notably its modest projection above existing ground levels and the significant setback from the frontage. These factors were not in play at the time of the previous applications and appeals on the site which involved conventionally designed single and two storey properties which were to be built off existing ground levels towards the front of site.
- 6.6 Compliance with some of the other core planning principles of the NPPF have been demonstrated in terms of accessibility, its landscape impact including its effect on the AAL, biodiversity, heritage, flood risk, highway safety and convenience, parking and residential amenity. However, these matters do not represent benefits to the wider area but demonstrate an absence of harm to which weight should be attributed neutrally. No adverse impacts have been identified in this case.
- 6.7 Officers have considered the application in accordance with the tilted balance contained in paragraph 11. This means that permission may be granted unless any adverse impacts of doing so would “*significantly and demonstrably*” (our emphasis) outweigh the benefits. Officers do not consider that any impacts of this development would significantly and demonstrably outweigh the benefits.
- 6.8 Even if it is considered that the development is contrary to AVDLP Policy RA14 this policy is to be given very limited weight because it is out of date against the NPPF and inconsistent with the NPPF objectives for the reasons given in the overview report and officers consider that the material considerations set out in this report are considered to justify the development in spite of the contravention of this policy in the development plan.
- 6.9 The proposal complies with the development plan and there are no material considerations indicating that development should be refused. Weighing all the relevant factors into the planning balance, and having regard to the NPPF as a whole, all relevant policies of the AVDLP and third party representations, it is considered that the application should be approved. It is therefore recommended that the application be **APPROVED** subject to the following conditions:-

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

Reason: To comply with the requirements of Section 91(1) of the Town and Country Planning Act, 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2) The development hereby permitted shall be carried out in accordance with amended Drawing Nos SJG/001 Rev A and SLG/003 Rev A received on 11.10.2017.

Reason: To define the permission and in the avoidance of doubt.

3) The materials to be used on the external surfaces of the development shall be as indicated in the application unless otherwise approved in writing by the Local Planning Authority. Please also see note no. 5 on the back of this notice.

Reason: To ensure a satisfactory appearance to the development and to accord with Aylesbury Vale District Local Plan policies GP8, GP35, RA2 and RA8 and advice in the National Planning Policy Framework.

4) The hard surfaced parking area hereby permitted shall be made of porous materials, or provision shall be made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwellinghouse.

Reason: In order to reduce the risk of flooding and to accord with advice in the National Planning Policy Framework.

5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that Order with or without modification), no enlargement or extension, nor the erection of any outbuilding, shed, garage or other structure, shall be carried out within the curtilage of the dwelling hereby approved, other than as expressly authorised by this permission.

Reason: In order to safeguard the amenities of the area by enabling the Local Planning Authority to consider whether planning permission should be granted for further development within the site area having regard for the particular layout and design of the development and the character of the surrounding area, and to accord with Aylesbury Vale District Local Plan policies GP35, RA2 and RA8 and advice in the National Planning Policy Framework.

6) The dwelling hereby approved shall not be occupied until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority. For hard landscape works, these details shall include means of enclosure within and on the boundaries of the site and hard surfacing materials. For soft landscape works, these details shall include identification of all trees, shrubs and hedges to be retained showing their species, spread and maturity, planting plans, and schedules of plants, noting species, plant sizes and proposed numbers/densities. These works shall be carried out in accordance with the approved details within the first planting season following the first occupation of the dwelling.

Reason: In the interests of the visual amenities of the locality and to accord with Aylesbury Vale District Local Plan policies GP35, GP38, GP39, GP40, RA2 and RA8 and advice in the National Planning Policy Framework.

7) Any tree or shrub which forms part of the approved landscaping scheme which within a period of five years from planting fails to become established, becomes seriously damaged or diseased, dies or for any reason is removed shall be replaced in the next planting season by a tree or shrub of a species, size and maturity to be approved by the Local Planning Authority.

Reason: In the interests of visual amenities of the locality and to accord with Aylesbury Vale District Local Plan policies GP35, GP38, GP39, GP40, RA2 and RA8 and advice in the National Planning Policy Framework.

8) No development shall take place until details of the proposed floor level of the dwelling hereby approved in relation to the existing and proposed levels of the site and the surrounding land have been submitted to and approved in writing by the Local Planning Authority, with reference to fixed datum point. The building shall be constructed with the approved floor level. Please also see note no. 6 on the back of this notice.

Reason: For the avoidance of doubt and to ensure a satisfactory form of development and to accord with Aylesbury Vale District Local Plan policies GP8, GP35, RA2 and RA8 and advice in the National Planning Policy Framework. This submission and approval is required prior to the commencement of development in order to ensure that appropriate control can be exercised to ensure that the proposed development does not give rise to harm to the local environment.

9) Works on site shall not commence until details of the proposed means of disposal of foul and surface water have been submitted to and approved in writing by the Local Planning Authority. Disposal of surface water shall be in accordance with SuDS principles. The development shall be carried out using the approved scheme of drainage. Please also see note 6 on the back of this notice.

Reason: In order to ensure that the development is adequately drained and to accord with Aylesbury Vale District Local Plan policy GP8 and GP35 and with advice in the National Planning Policy Framework. This submission and approval is required prior to the commencement of development in order to ensure that appropriate control can be exercised to ensure that the proposed development does not give rise to harm to the local environment.

10) Prior to the occupation of the development minimum vehicular visibility splays of 79m measured 2.4m back from the edge of the carriageway from both sides of the new access onto Oving Road shall be provided in accordance with the approved plans and the visibility splays shall be kept clear from any obstruction between 0.6m and 2.0m above ground level.

Reason: In the interests of highway safety, and to accord with the National Planning Policy Framework.

11) No part of the development hereby permitted shall be occupied until the access has been upgraded in accordance with the approved drawing and constructed in accordance with Buckinghamshire County Council's guide note 'Private Vehicular Access Within Highway Limits' 2013.

Reason: In the interests of highway safety, and to accord with the National Planning Policy Framework.



12) Prior to the occupation of the development details of the proposed entrance gates which shall be set back a minimum distance of 6 metres from the edge of the carriageway shall be submitted to and approved in writing by the local planning authority.. The gates shall then be erected, in accordance with the approved details. No gates, fences, walls or other means of enclosure other than those shown on the approved plan shall be erected along the site frontage within 6 metres of the edge of the carriageway.

Reason: In the interests of highway safety, and to accord with the National Planning Policy Framework.

13) The scheme for parking, garaging and manoeuvring indicated on the approved drawings shall be laid out prior to the initial occupation of the dwelling hereby approved and those areas shall not thereafter be used for any other purpose.

Reason: To enable vehicles to draw off, park and turn clear of the highway to minimise danger, obstruction and inconvenience to users of the adjoining highway and to accord with Aylesbury Vale District Local Plan policy GP24, and advice in the National Planning Policy Framework.

### **INFORMATIVES**

1) 'Your attention is drawn to the requirements of conditions on the decision notice. Conditions nos. 8 and 9, impose requirements which must be met PRIOR TO COMMENCEMENT. Failure to observe these requirements could result in the Council taking enforcement action OR MAY INVALIDATE THE PLANNING PERMISSION.

2) In accordance with paragraphs 186 and 187 of the National Planning Policy Framework, the Council, in dealing with this application, has worked in a positive and proactive way with the Applicant / Agent and has focused on seeking solutions to the issues arising from the development proposal. AVDC works with applicants/agents in a positive and proactive manner by offering a pre-application advice service, and updating applicants/agents of any issues that may arise in the processing of their application as appropriate and, where possible and appropriate, suggesting solutions. In this case AVDC has considered the details as submitted and these are considered acceptable.

3) Your attention is drawn to the need to have regard to the requirements of UK and European legislation relating to the protection of certain wild plants and animals. Approval under that legislation will be required if protected habitats or species are affected by development. If protected species are discovered you must be aware that to proceed with the development without seeking advice from Natural England could result in prosecution. For further information or to obtain approval contact Natural England on 0118 958 1222.

4) If any unexpected contamination is encountered during any phase of the works the District Council's Environment Services Division must be informed immediately and works should cease on site until a remedial strategy has been written and agreed in writing by the District Council. For further information contact Miss Deborah Ferady, Contaminated Land Officer, Tel. 01296 585621.

5) It is an offence under Section 151 of the Highways Act 1980 for vehicles leaving the development site to carry mud onto the public highway. Facilities should therefore be provided and used on the development site for cleaning the wheels of vehicles before they leave the site.

6) No vehicles associated with the building operations on the development site shall be parked on the public highway so as to cause an obstruction. Any such wilful obstruction is an offence under Section 137 of the Highways Act 1980.

7) It is recommended in the interests of the amenities of the area and the occupiers of neighbouring houses that the hours of operation for any works that can be heard outside the site boundary are restricted for construction and site deliveries from 07.30 to 18.00 on weekdays, 08.00 to 13.00 on Saturdays, with no work on Sundays and Bank Holidays.

Case Officer: Nicola Wheatcroft

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