

**Application Number:** 18/01203/FUL**Description** Removal of Condition 7 (removal of Householder permitted development rights) in regards to permission 17/03096/FUL**AT** 12 St Marys Close, Wavendon, Milton Keynes, MK17 8LN**FOR** Mr Stephen Burn**Target:** 11th July 2018**Extension of Time:** No**Ward:** Danesborough And Walton**Parish:** Wavendon Parish  
Council**Report Author/Case Officer:** Samantha Taylor  
Senior Planning Officer**Contact Details:**  
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## **1.0 RECOMMENDATION**

*(The decision that officers recommend to the Committee)*

It is recommended that planning permission is granted to remove condition 7.

## **2.0 INTRODUCTION**

*(A brief explanation of what the application is about)*

### **2.1 The Site**

The application site immediately abuts the settlement boundary of Wavendon but is located outside of the settlement boundary in the open countryside. It is located to the west of St Marys Close and is currently vacant used as part of the rear garden space serving the existing property No. 12 St Marys Close. To the west of the site is an agricultural field. To the north is a grouping of agricultural buildings with open countryside further to the north. To the south is St Mary's Church and its surrounding grounds.

### **2.2 The Proposal**

The application seeks to remove condition 7 of full planning permission 17/03096/FUL which removes householder permitted development rights from the previously approved new dwelling.

At the Committee Meeting on 8th March 2018, full planning permission was granted for the erection of a one and a half storey detached home accessible via a proposed driveway that would sit between 12 and 14 St Mary's Close.

### 2.3 Reason for referral to committee

The application has been referred to the Development Control Panel as the Panel imposed condition 7 and the decision must therefore be made by the Panel on whether this condition can be removed.

## 3.0 RELEVANT POLICIES

*(The most important policy considerations relating to this application)*

### 3.1 National Policy

National Planning Policy Framework (2012) paragraphs:

Paragraphs 11-16: Presumption in favour of sustainable development

Paragraph 17: Core Planning Principles

Paragraph 49: Housing

Section 6: Housing

Section 7: Design

Section 8: Promoting Healthy Communities

Section 11: Conserving and Enhancing the Natural Environment

Paragraphs 187 & 188: Positive approach to decision taking

Paragraphs 196 & 197: Determining applications

Paragraphs 203-206: Conditions and Obligations

### 3.2 Local Policy

Core Strategy (2013)

CSA - Presumption in Favour of Sustainable Development

CS1 Milton Keynes Development Strategy

CS2 Housing Land Supply

CS9 Strategy for the Rural Area

CS10 Housing

CS11 A Well Connected Milton Keynes

CS12 Developing Successful Neighbourhoods

CS13 Ensure High Quality, Well Designed Places

CS18 Healthier and Safer Communities

CS19 The Historic and Natural Environment

Adopted Milton Keynes Local Plan 2001-2011 (Saved Policies)

S10 Open Countryside

D1 Impact of Development Proposals on Locality

D2 Design of Buildings

D2A Urban Design Aspects of New Developments

NE2 Protected Species

NE4 Conserving and Enhancing Landscape Character

T3 and T4 Pedestrians and cyclists

T5 Public transport  
T15 Parking Provision  
H7 Housing on Unidentified Sites

### 3.3 Neighbourhood Planning

Once a Neighbourhood Plan has been agreed at a referendum and is made (brought into legal force) by the local planning authority, it becomes part of the local planning authority's development plan as an official development plan document which carries statutory weight. Applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. If a policy contained in the development plan for an area conflicts with another policy in a development plan, the conflict must be resolved by the decision maker in favour of the policy which is contained in the latest document to become part of the development plan.

Neighbourhood Plans therefore form part of the development plan for the relevant area. They will necessarily be in general conformity with the strategic policies contained in the development plan for the area. If they are the most recent document to become part of the development plan, they will attract statutory priority. Neighbourhood plan policies will also take precedence over non-strategic development plan policies where there is conflict.

#### Wavendon Neighbourhood Plan

The application site is located within the designated area of Wavendon Neighbourhood Plan. No draft document or policies have been publically consulted on at this stage and the plan itself has not been submitted to Milton Keynes Council. With this in mind, no weight can currently be afforded to the Neighbourhood Plan in respect of the determination of this application.

#### Supplementary Planning Documents

Parking Standards for Milton Keynes (2016)  
New Residential Development Design Guide (2012)  
Strategic Land Allocation Development Framework (2013)

### 3.3 Human Rights Act 1998

There may be implications under Article 8 and Article 1 of the First Protocol regarding the right of respect for a person's private and family life and home, and to the peaceful enjoyment of possessions. However, these potential issues are in this case amply covered by consideration of the environmental impact of the application under the policies of the development plan and other relevant policy guidance.

### 3.4 Equalities Act 2010

Due regard, where relevant, has been had to the Milton Keynes Council's equality duty as contained within the Equalities Act 2010.

#### **4.0 MAIN ISSUES**

*(The issues which have the greatest bearing on the decision)*

Principle of Residential Development on the Site

Assessment of Condition 7 against the 6 tests for Imposing Conditions

#### **5.0 CONSIDERATIONS**

*(An explanation of the main issues that have led to the officer recommendation)*

##### Principle of Residential Development on the Site

The Development Control Committee resolved to grant planning permission for the application 17/03096/FUL for the provision of a new dwelling at the rear of 12 St Marys Close. As such, the principle of residential development has been established and is considered acceptable.

As part of the decision taken by Committee, a condition removing householder permitted development rights was imposed. This condition means that works including any alteration to the dwelling, provision of any external outbuildings, alterations to the roof and extensions to the dwelling would require full planning permission even if they were to comply with the requirements of the General Permitted Development Order 2015.

The condition was imposed to protect the character and appearance of the open countryside, as the application site sits behind the settlement boundary and is technically classed as open countryside.

##### Assessment of Condition 7 against the 6 tests for Imposing Conditions

Paragraph 206 of the National Planning Policy Framework states "Planning conditions should only be imposed where they are:

- necessary;
- relevant to planning and;
- to the development to be permitted;
- enforceable;
- precise and;
- reasonable in all other respects."

The Planning Practice Guidance outlines how each of the tests should be applied, when considering whether to impose conditions. The below provides an assessment of the imposition of condition 7 against each of these tests. Each test must be satisfied in order for the condition to be imposed. Should the condition fail to satisfy any of the tests, the condition should not be imposed.

Necessary - would it be appropriate to refuse planning permission without the requirements imposed by the condition?

In this instance, given the proximity of the application site to existing residential development, the size of the site, and that associated residential development that could be constructed under permitted development rights would be restricted, by reason of the legislative requirements, such that it would not detract from the host dwelling or the

character of the local area to such a degree to require the condition be retained in this case.

Should this condition not have been imposed, the Officer recommendation for approval would have remained and it is therefore considered it would not be appropriate to refuse planning permission without condition 7.

Relevant to planning - Does the condition relate to planning objectives and is it within the scope of the permission to which it is to be attached?

Yes in this instance, the condition is relevant to planning and would control matters that are subject to specific planning legislation.

Relevant to the Development - Does the condition fairly and reasonably relate to the development to be permitted?

Whilst the condition is relevant to the development proposed, it is considered that the condition would fail this test as it considered that condition 7 is not justifiable by reason of the nature or impact of the development permitted.

Enforceable - Would it be practicably possible to enforce the condition?

Yes, in this instance condition 7 could be enforced.

Precise - Is the condition written in a way that makes it clear to the applicant and others what must be done to comply with it?

Yes, the condition is clear in which rights have been removed, relating this back to the General Permitted Development Order.

Reasonable in all other respects - Is the condition reasonable?

It is considered that as condition 7 does not reasonably relate to the impact of the development on the open countryside and as such, places an unjustified burden on the site owner/applicant to seek full planning permission for minor householder works that are considered acceptable by the General Permitted Development Order 2015.

Other Matters

As this application seeks to remove a condition, technically should planning permission be granted, this would result in the issuing of a new grant of planning permission. For this reason, the recommended conditions outlined within the report include details that have been approved, by way of discharging earlier conditions or related to the timescale of the original application. For this reason, the conditions are not identical to the original approval, but ensure that appropriate details have been secured.

## **6.0 CONCLUSIONS**

Overall, condition 7 removing householder permitted development rights, fails to meet the requirements of the 6 tests of imposing conditions which are required by paragraph 206 of

the NPPF. As such, it is recommended that condition 7 is removed and that planning permission is granted for the proposed development.

## **7.0 CONDITIONS**

*(The conditions that need to be imposed on any planning permission for this development to ensure that the development is satisfactory. To meet legal requirements all conditions must be Necessary, Relevant, Enforceable, Precise and Reasonable)*

1. The development hereby permitted shall begin before the expiration of three years from the date of the original permission (reference 17/03096/FUL) granted on 9th March 2018.

Reason: To prevent the accumulation of planning permissions; to enable the Local Planning Authority to review the suitability of the development in the light of altered circumstances; and to comply with section 91 of the Town and Country Planning Act 1990.

2. The external materials to be used in the development shall be carried out in accordance with the approved details under application 18/00975/DISCON.

Reason: To ensure that the development does not detract from the appearance of the locality.

3. No part of the development hereby permitted shall be occupied until the parking spaces have been laid out and surfaced in accordance with the proposed site layout. Thereafter the parking area shall only be used for the parking of vehicles in connection with the development the subject of this permission.

Reason: To ensure adequate on-plot parking provisions in accordance with the provisions of Policy T15 of the Milton Keynes Local Plan 2001-2011 and the Parking Standards, 2016, Supplementary Planning Document.

4. Prior to the initial occupation of the development the means of access shall be altered in accordance with the with Proposed Site Plan, Drawing Number 1708-P01 and constructed in accordance with Milton Keynes Council's guide note "Residential Vehicle Crossing Details" and shall be retained as altered thereafter .

Reason: To minimise danger and inconvenience to highway users and to accord with saved policy D1 (vi) of the Milton Keynes Local Plan 2001-2011.

5. The development hereby permitted shall be carried out in accordance with the approved biodiversity enhancement scheme, considered acceptable under reference 18/00975/DISCON. The approved details shall be carried on in accordance with the approved details prior to the occupation of the dwelling to which it relates.

Reason: To enhance the natural and local environment by minimising impacts on biodiversity and advice contained within paragraph 109 of the National Planning Policy Framework.

6. The boundaries of the site shall be enclosed in accordance with the details approved under application reference 18/00975/DISCON before the first occupation of the development. The approved fence, hedge or wall shall subsequently be retained to the satisfaction of the Local Planning Authority.

Reason: To protect the amenities of the locality and safeguard the privacy of neighbour.

7. All existing trees, woodlands and hedges to be retained are to be protected according to the provisions of BS 5837: 2012 'Trees in relation to design, demolition and construction - Recommendations' All protective measures especially the fencing and ground protection must be put in place first, prior to any other work commencing on site (this includes vegetation clearance, ground-works, vehicle movements, machinery / materials delivery etc.) The fencing shall be of the same specification as that depicted in figure 2, page 20 and ground protection as specified in 6.2.3.1 - 6.2.3.5 pages 21/22 in BS 5837: 2012.

Signs informing of the purpose of the fencing and warning of the penalties against destruction or damage to the trees and their root zones shall be installed at minimum intervals of 10 metres and a minimum of two signs per separate stretch of fencing.

Once erected the local authority tree officer shall be notified so the fencing can be inspected and approved.

The Root Protection Area (RPA) within the protective fencing must be kept free of all construction, construction plant, machinery, personnel, digging and scraping, service runs, water-logging, changes in level, building materials and all other operations, personnel, structures, tools, storage and materials, for the duration of the construction phase.

The developer shall submit details of the proposed layout and general arrangements of the site in relation to the trees to be retained. In particular details of storage areas including what substances will be stored and where, locations of car parking, welfare facilities, cement plant, fuel storage and where discharge, filling and mixing of substances will take place. The details should include site levels to enable risks posed to trees to be quantified. The RPA will be amended as the arboriculture officer feels appropriate after taking account of the details submitted.

No fire shall be lit such that it is closer than 20 metres to any tree or that flames would come within 5 metres of any part of any tree.

Earthworks, level changes, service runs, foundations and all other works involving excavation should not be located within the root protection areas.

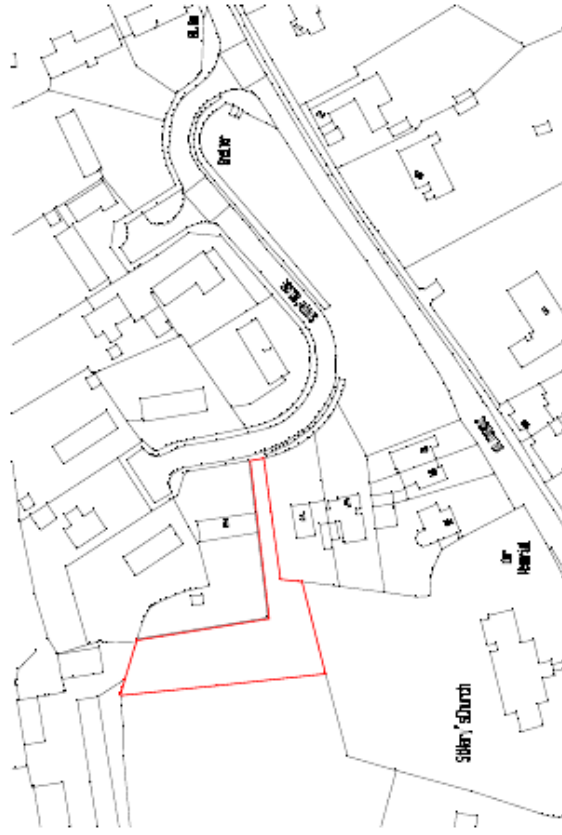
Reason: To ensure the proposed development would not cause harm to the existing trees or their root protection areas.

8. The development shall be implemented in accordance with the recommendations outlined in the submitted Jonathan Hazell 'Arboricultural Impact Assessment' dated 21 December 2017 (433 rev5).

Reason: To ensure the works are carried in accordance with details approved by the Local Planning Authority



**NOISE**  
All dimensions must be checked on site and not scaled from this drawing. Prior to implementation the proposals shown should be assessed by a Structural Engineer and checked for compliance with the Building Regulations, for use in precise named location only.  
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**PLANNING**

Client Name  
**MR & MRS BURN**

Project Title  
**PROPOSED NEW DWELLING  
LAND ADJ TO 12 ST MARY'S CLOSE WATERLOO**

Drawing Title  
**LOCATION PLAN**

Date Issued	Drawn By	Check Date	Scale
<b>NOV 17</b>	<b>AS</b>	<b>AS</b>	<b>1:250</b>

Drawing No.  
**1708-L01 /**



## **Appendix to 18/01203/FUL**

### **A1.0 RELEVANT PLANNING HISTORY**

*(A brief outline of previous planning decisions affecting the site – this may not include every planning application relating to this site, only those that have a bearing on this particular case)*

18/00975/DISCON - Details submitted pursuant to discharge conditions 3, (materials) 6 (biodiversity enhancement scheme) & 8 (boundary treatments) attached to planning permission 17/03096/FUL. Details approved.

17/03096/FUL - Erection of a one and a half storey dwelling house. Granted.

### **A2.0 ADDITIONAL MATTERS**

*(Matters which were also considered in producing the Recommendation)*

None

### **A3.0 CONSULTATIONS AND REPRESENTATIONS**

*(Who has been consulted on the application and the responses received. The following are a brief description of the comments made. The full comments can be read via the Council's web site)*

A3.1 No representations have been received.

