



MALMESBURY TOWN COUNCIL

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29TH November 2022

Dear Mike and Tim,

Re: Planning Decisions in Malmesbury

We hope you are well.

As you probably know, we have now had six planning decisions in Malmesbury since April 2020 that will lead to over 45% more houses being built in Malmesbury by 2026 than anticipated by the Wiltshire Local Plan and the democratically approved Malmesbury Neighbourhood Plan.

We would like to meet with you, and Tim if possible, at the earliest opportunity to understand what this means for our current Neighbourhood Plan, the current review of our Neighbourhood Plan and what we might consider for a new Malmesbury Neighbourhood Plan for the period through to 2036.

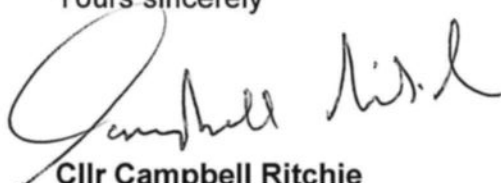
As part of this discussion we would also like to:

1. Review the implications of the most recent Inspectors comments in their decisions on the status and value of Neighbourhood Plans in planning decision making. The key points made by the Inspectors are in Attachment 1.
2. Be informed how the housing attached to these decisions will be taken into account in the emerging Wiltshire Local Plan proposals for the Malmesbury Community Area.

3. Be reassured that the decision by the Planning Officer in PL/2021/09852, which in part is based on the fact that 'recent planning approvals and commitments mean that the indicative housing requirements for the Malmesbury community area (up to 2026) have been met and exceeded by 33%, with multiple further Major development proposals subject of appeal with decisions currently awaited and which would increase the oversupply in this area substantially' is now a statement of Wiltshire Council planning policy and can be relied on to be applied consistently in the consideration of any future applications in the Malmesbury area.

Please do let us know when you can meet us. We would be very pleased if this could be a meeting in Malmesbury but we can, of course, meet on Teams.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Campbell Ritchie', written over a horizontal line.

Cllr Campbell Ritchie
Malmesbury Town Council

cc. Georgina Clampitt-Dix Wiltshire Council

cc. Nick Botterill Wiltshire Council

Attachment 1

Inspector Comments with Implications for Neighbourhood Planning:

1. Inspectors are taking Neighbourhood Plans literally. It appears that if a site is not explicitly excluded then its development is not regarded as being in conflict with the Neighbourhood Plan. This is a direct contradiction to the Purton Road decision in 2020 and the positive basis on which Neighbourhood Plans were set up to work in the Localism Act 2011 and subsequently. This is illustrated by the Inspectors comments on the Park Road appeals: Appeal Decisions APP/Y3940/W/21/3289757 & APP/Y3940/W/21/3286853

Para 38: The MNP allocates housing sites outside the WHSAP settlement boundary which it considers would meet the towns housing needs but is otherwise silent on the boundary. It does not explicitly restrict other housing development outside the boundary nor provide any policy under which the suitability of housing not on allocated sites might be considered. As such there is no conflict with the MNP in this regard. I note that the Inspector in the Filands Road appeals made a similar finding in this respect.

This is reinforced in later paragraphs:

Para 46. I can appreciate the Town Council's position having, along with the community, put considerable effort into a Neighbourhood Plan that pro-actively allocated housing sites to meet the requirements set out in the WCS. However, those allocations were in response to the situation at the time of its drafting and, read in a straightforward way, the MNP is silent by way of any approach to additional new housing outside settlement boundaries. Although I understand that these sites were considered, but not taken forward, as part of the plan-making process that has not equated to any restrictive policy in their regard in the MNP. So even if there were to be an "implicit conflict with the MNP's aspirations" as found by the Inspector in the Filands Road appeals⁵, this does not equate to a policy conflict nor a conflict with the MNP overall.

2. Inspectors do not agree with the position put forward by Malmesbury Town Council and Wiltshire Council officers that the decisions being taken in Malmesbury could undermine public confidence in the Neighbourhood Planning process:

Para 47. In any event I am not persuaded that the development of these sites would set aside the provisions of the MNP nor undermine its policies. I cannot conceive how the development of either of these sites would seriously undermine public confidence in the MNP as has been alleged, assuming that any such existing confidence in the plan is based on its actual content, provisions and policies.

3. To overcome 1. we were advised by Wiltshire Council to introduce a new policy into the draft review Neighbourhood Plan (with words supplied by Wiltshire Council) to achieve a policy objection to further speculative developments outside the settlement boundary. This was dismissed by the Inspector:

Para 48. A proposed policy 14 in the emerging Malmesbury Neighbourhood Plan Draft Revision, 2022 (MNPDR) seeks, amongst other criteria, a general presumption against housing proposals outside the settlement boundary that would not represent sustainable development. It is not clear from this wording whether this is a blanket restriction on new housing in such a location or just that which would not be considered as sustainable development. Based on my findings both proposals could be considered sustainable development particularly in terms of their location. However, even if the developments were considered contrary to this emerging policy, bearing in mind the stage of preparation of the MNPDR, and the scope of the review of the plan given its dependency in part on the Local Plan review, any conflict in this respect would only carry extremely limited weight.

4. No weighting was given to the made Neighbourhood Plan by the fact a review was well underway or that there was no indication in the emerging Local Plan that further housing was required until at least 2036:

Para 49. For similar reasons, and noting the Framework's specific approach to Neighbourhood Plans at paragraphs 49 and 50, this is not a circumstance where permission should be withheld on grounds of prematurity. In any event neither development would necessarily prejudice the outcome of the plan making process given the circumstances.

5. There is no protection to be gained from significant weight automatically being applied to affordable housing if local needs have already been met:

Para 77. Although the housing allocations within the MNP and other permissions would appear to be delivering the MNP's anticipated amount of housing, the MNP does not propose a maximum level of affordable homes. These developments would deliver additional affordable housing for which the Council and the appellants agree that there is a clear need considered against the minimum housing requirement of the WCS. Previous or committed delivery of affordable homes in the town would not reduce the weight that the affordable homes delivered by either scheme would carry.

6. In the latest Filands decision APP/Y3940/W/22/3290305 our argument that the Purton Road approach should apply, which was supported by Wiltshire Council, was also undermined by Wiltshire Council (3rd sentence):

Para 13. In terms of the Neighbourhood Plan, this allocates specific sites for housing outside the settlement boundary but does not explicitly restrict other housing development outside the boundary. It does not include any specific policy against which proposals for development on unallocated sites might be assessed. Malmesbury Town Council argues that the Plan does not need to identify how further applications are to be considered beyond the allocations because none are supported. Nonetheless, the Council states that the Neighbourhood Plan does not expressly prohibit residential development on the appeal site. This being so, and notwithstanding the submissions of Malmesbury Town Council, it cannot be concluded the scheme would be expressly contrary to the Neighbourhood Plan. This position has been supported in other recent appeals¹⁰.

7. Unless the Local Plan is up to date and there is a 5 YHLS no Neighbourhood Plan over 2 years old will have no practical influence in decision making (but Neighbourhood Plans cannot be reviewed without Local Plan numbers):

Para 33. There would be some conflict with Policies CP2 and CP13 of the CS, and Policy H4 of the LP. At the Hearing, it was argued that a conflict with the development plan and departure from the plan-led system is, of itself, intrinsically harmful. I agree that a plan-led approach to development is certainly desirable, but in this instance, the development plan is not currently delivering a sufficient supply of housing. As the Council cannot demonstrate a five year supply of housing, this diminishes the weight that can be attached to any conflict with these policies.