

Mr Steven Sims
Development Services Central
Wiltshire Council
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

23 April 2018

Dear Mr Sims
Re Application 17/12348/OUT Damask Way, Warminster

I write to object to the above application.

Previous applications W/12/00687/OUT and 14/03655/REM, and 15/01661/OUT and W/15/12197/REM relate to this site and contained conditions relating to landscaping which have not been complied with.

Conditions 2, 12, 13, 15 and 16 of the 2012 consent deals with the landscaping requirements and make specific reference to landscaping both within the site and a strategic landscaping area outwith the site boundary. The developers Landscape and Visual Appraisal and Landscape Strategy document makes specific reference (at paragraph 5.12) to the area beyond the site boundary and it being within the ownership of one of the applicants. A Landscape Ecology and management plan was required by condition and in the officers report specific reference was made to the retention and management of existing trees to the north and south and also to provide buffer planting around the site and the external edge of the landscape area to create a long term well landscaped and appropriate edge to the town. This strategic landscaping is shown on drawing PER 19053 12a and has never been undertaken and the 2015 permission has allowed the construction of 5 houses over the key screening areas.

Planning Applications 15/01661/OUT and W/15/12197/REM dealt with the 5 additional houses. Once again there were planning conditions 2 and 4 on the outline and 1 and 3 of the reserved matters approval about landscaping including areas beyond the site boundary as shown on plan AH2015/120-Wider Landscaping, which again remained within the ownership of one of the applicants. The failure to undertake the landscaping has been referred to the Enforcement Team at Wiltshire Council

Just before the submission of application 17/12348/OUT the developer removed 6 mature oak trees adjacent to Upper Marsh Road and his intended access. These trees formed part of the strategic landscaping for both the previous 23 and 5 house developments. The above plan AH2015/120-Wider Landscaping clearly shows woodland on the approach to Upper Marsh Road as being retained and this condition can be enforced through the wording of the Condition 1 requiring compliance with this plan. "The development hereby permitted shall be carried out in accordance with the following approved plans".



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The reason given for the imposition of most of the general landscaping conditions is;
"To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features."

The condition 4 of 15/01661/OUT which requires a Landscape and Ecology Management Plan which prevents any commencement of development prior to its submission and agreement was specifically imposed to protect the long term management of the retained and newly planted trees. The standard conditions all allow for the replacement of any trees removed in the first 5 years of these conditions and could be enforced.

Section 70 of the Town and Country Planning Act 1990 gives local planning authorities the power to impose such conditions they think fit. Section 72 (1) (a) of the Act permits the imposition of conditions in respect of land under the control of the applicant though not necessarily within the application site.

Clearly therefore conditions can be imposed on land outside the application site but within the control of the applicants which in this case is confirmed at paragraph 5.12 of the Landscape and Visual Appraisal and Landscape Strategy document for application W /12/00687/OUT.

In the case of *Davenport v Hammersmith and Fulham London Borough Council* 1999 April 26 The Times, Divisional Court, conditions relating to land outside of an application site or outside the control of the applicants are valid so long as they could be complied with.

Consequently the strategic landscaping conditions imposed on the 2012 permission i.e. conditions 12, 13 and 16 can be enforced despite the fact they are outside the site boundary.

The land transfers from the owners to the developers allow specifically for access to carry out the strategic landscaping works and refer to a Landscape Strategy Plan and contain a right of access and therefore the land remains within the control of the applicant or at the very least can be complied with.

The right granted is to enter areas of land "as are required to carry out and maintain the strategic landscaping and to satisfy the conditions of the planning permission (and any reserved matters approval) in relation to the strategic landscaping".

The failure of the developer to carry out the relevant strategic landscaping in accordance with the conditions related to the 2012 permission and the 2015 permission have been reported to Wiltshire Council. The enforcement officer Mr Mark Williams responded "That as the trees that have been felled were outside the red line and not in a conservation area the council were unable to take any action".

He states that "the case officer that dealt with the planning application appears to have made an error regarding the conditions, as the landscaping mentioned is upon land that is outside the red line on the application, and therefore not under the control of the conditions, meaning that it is unenforceable."

"The officer that took over confirmed that condition 4 is unenforceable in the circumstances."
This is totally incorrect as set out above, in this case the land is within the control of the applicants and the conditions can be complied with therefore they are enforceable.

