

Application No. 20/00622/OUT

**Implications Report
4 November 2020**

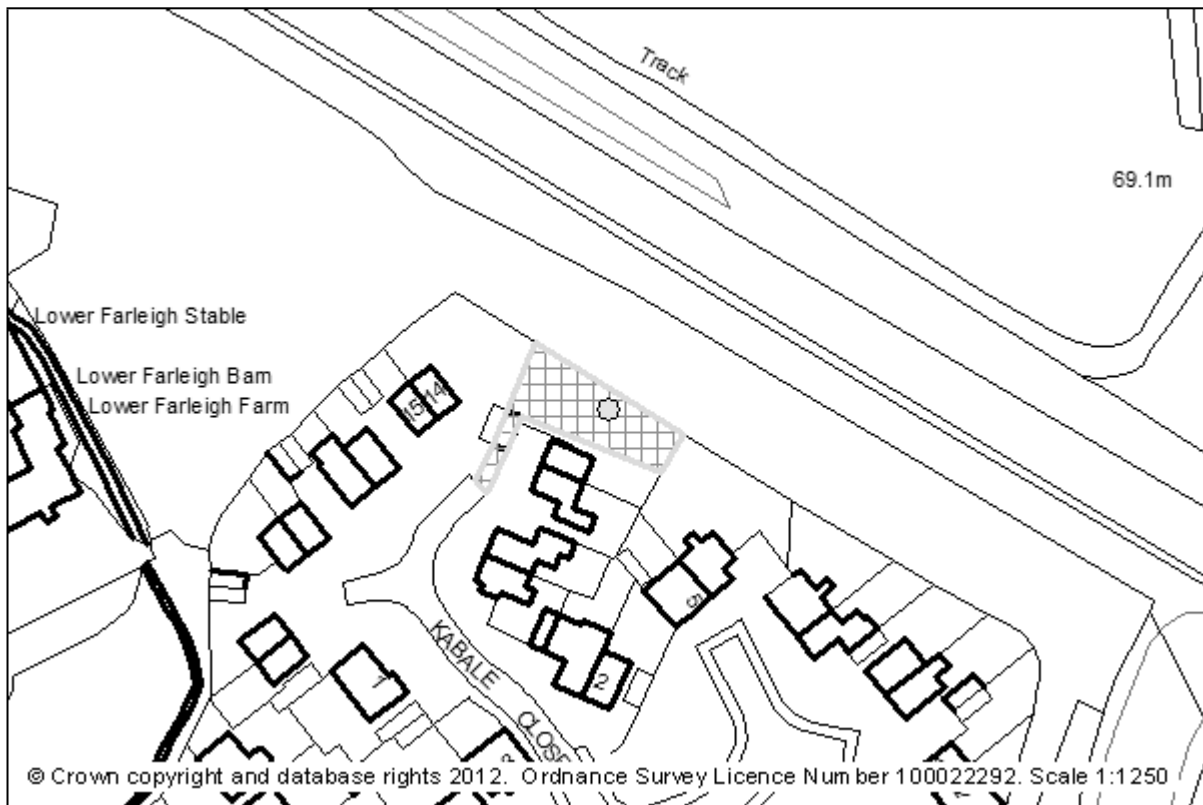
Grid Ref: 294424 : 113848

Applicant: Mr & Mrs G Wright

Location: 12 Kabale Close
Tiverton Devon

Proposal: Outline for the erection
of 1 dwelling

Date Valid: 24th April 2020



REPORT OF THE HEAD OF PLANNING AND REGENERATION

Application No. 20/00622/OUT

Description of Development:

The applicant seeks outline consent for the erection of 1 dwelling at 12 Kabale Close, Tiverton.

REASON FOR REPORT:

At the meeting on the 23rd September 2020, Members resolved to refuse the application contrary to officer recommendations and therefore wished to defer the application for a further report setting out suggested reasons for refusal and the associated implications.

RECOMMENDATION(S)

Grant permission subject to conditions

Relationship to Corporate Plan:

- Planning and enhancing the built environment

Financial Implications:

An appeal may require the appointment of planning consultants to assist in the defence of the reasons for refusal. The applicant may make an application for costs on any appeal against the Council and such costs claims are made by demonstrating that there has been unreasonable behaviour. That being the case, Members must be able to clearly justify each and every reason for refusal-in line with the development plan and all other material considerations.

Legal Implications:

The report identifies the risks in proceeding with an appeal based on the reasons given by the Committee on 23rd September 2020 – both in terms of outcome of an appeal and the risk of a costs decision. The Council will still need to prepare draft planning conditions for the appeal.

Risk Assessment:

If Committee decide to refuse the application for reasons that cannot be sustained at appeal there is a risk of a successful appeal costs claim against the Council for reasons of unreasonable behaviour.

REASONS FOR REFUSAL AND IMPLICATIONS:

At the Planning Committee held on 23rd September 2020 Members of Planning Committee resolved that they were minded to refuse the above application contrary to officer recommendation and requested a further report to consider –

1. The Committee's draft reasons for refusal and
2. The implications of refusing the application

The Committee was minded to refuse the application on the following grounds:

- Use of the access to the site
- Impact on the neighbouring properties

The suggested wording for reasons for refusal

1. The Committee's reasons for refusal

Set out below are the reasons for refusal which could appear on the planning decision notice:

- A) The use of the access driveway to serve the proposed dwelling would, by reason of its inadequate width and awkward alignment with the public highway, be unsuitable to accommodate the increase in traffic likely to be associated with the proposed use, contrary to policies DM1 of the Mid Devon District Council Local Plan 2013-2033 and advice contained in the National Planning Policy Framework, in particular paragraphs 108(b) and 127(f).
- B) The proposed access to the site would result in an unacceptable level of disturbance for the occupiers of the nearby residential properties, contrary to Policy DM1 of the Mid Devon District Council Local Plan 2013-2033 and advice contained in the National Planning Policy Framework, in particular paragraph 127(f).

2. The implications of refusing the application

A presumption of sustainable development is at the heart of the National Planning Policy Framework (NPPF). Paragraph 11 of the NPPF requires local planning authorities to approve development proposals that accord with an up-to-date development plan without delay.

In respect of the determination of planning applications, the Planning Acts (section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004) state that they should be determined in accordance with the development plan unless material considerations indicate otherwise.

3. Consideration of the proposed reasons for refusal

3.1 Reason for Refusal (A)

- A) The use of the access driveway to serve the proposed dwelling would, by reason of its inadequate width and awkward alignment with the public highway, be unsuitable to accommodate the increase in traffic likely to be associated with the proposed use, contrary to policies DM1 of the Mid Devon District Council Local Plan 2013-2033 and advice contained in the National Planning Policy Framework, in particular paragraphs 108(b) and 127(f).**

The following section will assess the evidence to support the aforementioned suggested reason for refusal.

Paragraph 68 of the NPPF states that small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly. It states that local planning authorities should support the development of windfall sites

through their policies and decisions – giving great weight to the benefits of using suitable sites within existing settlements for homes.

Policy DM1 of the Local Plan Review 2013-2033 states that designs of new development must be of high quality through creation of safe and accessible places that also encourage and enable sustainable modes of travel such as walking and cycling;

Paragraph 108(b) of the NPPF states in assessing specific applications for development it should be ensured that safe and suitable access to the site can be achieved for all users. Paragraph 127(f) of the NPPF states that planning decisions should ensure that developments create places that are safe, inclusive and accessible.

The application proposes the use of the existing domestic driveway for No12 to serve the proposed dwelling. The driveway and its access onto the public highway are long established. The width of the access driveway is narrower than the minimum width set out Devon County Council's Highways Standing Advice for a driveway serving up to three dwellings however on this occasion and at the request of officers the County Highways Authority has visited the site and carried out a site assessment and has raised no objections to the proposal. On the basis of this advice officers consider there is no highways grounds to refuse planning permission and therefore do not consider that reason for refusal (A) could be substantiated at appeal. If Members decide to refuse planning permission on highways grounds they would be doing so against the advice of the County Highways Authority.

One implication of a reason for refusal on the above ground is that in the event of an appeal being made, the Planning Inspector even if minded to dismiss the appeal could award a partial award of costs where they believe a party has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense. There are appeal decisions whereby the Inspector has concluded that sufficient evidence has not been provided in light of adopted development plan policies other than beyond very generalised assertions and therefore did not substantiate the reason for refusal and thus put the applicant to the unnecessary expense of preparing grounds of appeal and then final comments to rebut the reason.

3.2 Reason for refusal (B)

- A) The proposed access to the site would result in an unacceptable level of disturbance for the occupiers of the nearby residential properties, contrary to Policy DM1 of the Mid Devon District Council Local Plan 2013-2033 and advice contained in the National Planning Policy Framework, in particular paragraph 127(f).**

The following section will assess the evidence to support the aforementioned suggested reason for refusal.

Paragraph 127 (f) of the NPPF requires developments to have a high standard of amenity for existing and future users.

Policy DM1 of the Local Plan Review 2013-2033 states that development should not have an unacceptable adverse effect on the amenity of neighbouring properties.

Kabale Close currently consists of 15 properties. The proposal is to provide a single additional dwelling on a site located at the end of the cul-de-sac. As this is an outline application with all matters reserved the size/number of bedrooms contained within the proposed dwelling is not yet

known however the number of daily trips likely to be generated by the proposed use would be approximately 6 – the figure taken from the Trics database.

The access driveway proposed to be used to serve the proposed dwelling passes along the front garden of No10 Kabale Close. The distance separating the access driveway from the front wall of No10 is comparable to the distance separating the front wall of some other properties on Kabale Close from the public highway.

The Council's Public Health department has raised no objections to the proposed development in terms of noise or other disturbance potentially arising from the use of the access to serve the proposed dwelling.

It is feasible that Members might consider the disturbance from vehicles using the driveway to access and depart the site to present a situation which would be unacceptable on the residential amenities of the occupiers existing nearby dwellings however should refusal of planning permission be given for this reason it would need to be identified through any subsequent appeal precisely what the harm would be, generated through this development and why it would be unacceptable in this case. Having regard for the consultation responses received and all other material planning considerations referred to above, officers do not consider this reason for refusal (B) could be successfully defended at appeal.

Conclusion:

Your officers have concerns that both of the reasons for refusal as set out above are unlikely to be upheld at appeal, in particular reason (A) for the use of the existing access given the views received from statutory consultees and therefore Members should consider these matters carefully. If Members are minded to refuse the application, it is suggested that Ground (B) relating to impact on amenity could be stronger than Ground (A) however approval remains the recommendation of officers for the reasons set out in the earlier Officer report to Planning Committee attached.

Contact for any more information

Mr Oliver Dorrell, Planning Officer
01884 234394

Background Papers

Committee report

File Reference

20/00622/OUT

Circulation of the Report

Cllr Richard Chesterton
Members of Planning Committee

[Attach previous Committee report](#)