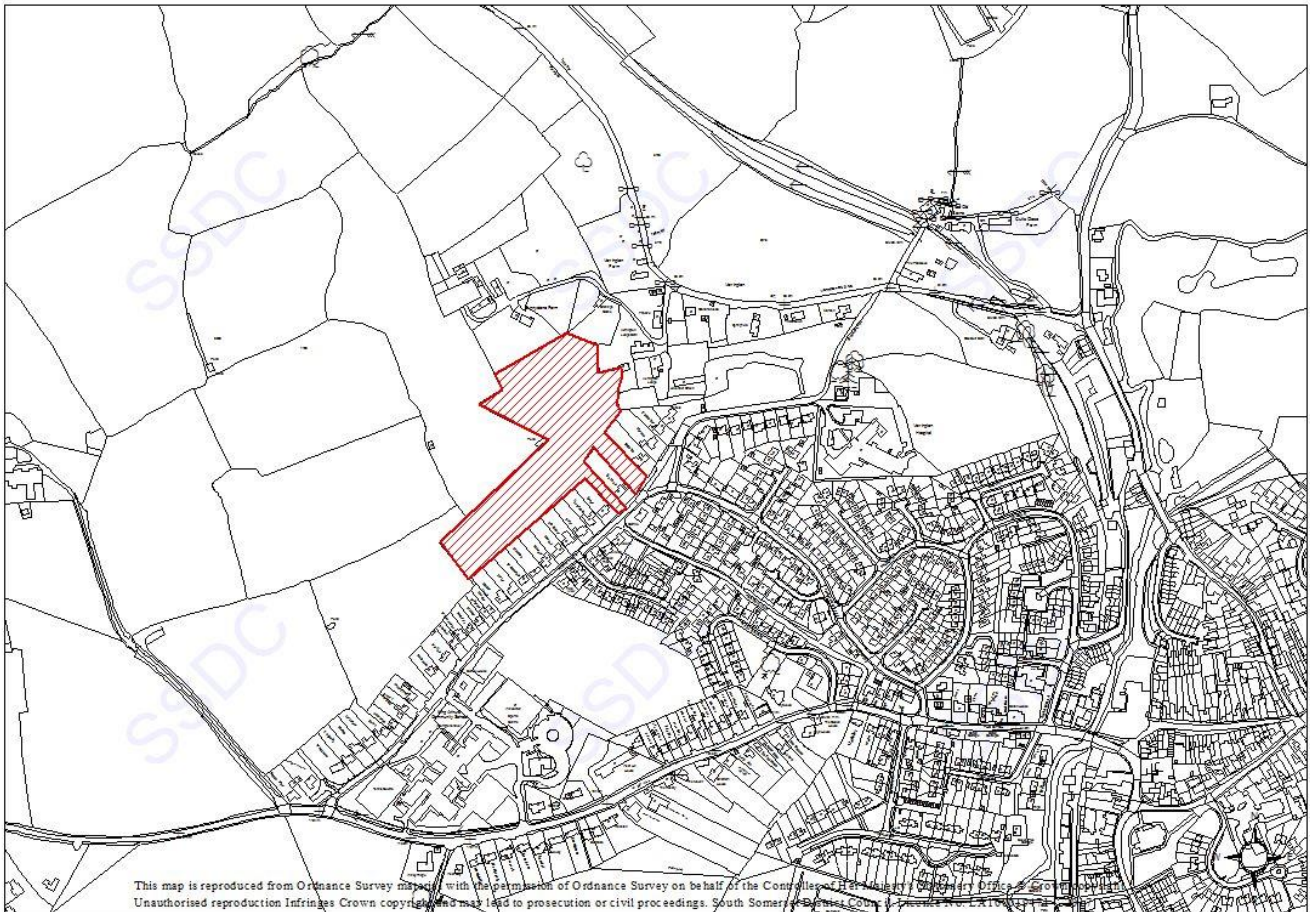
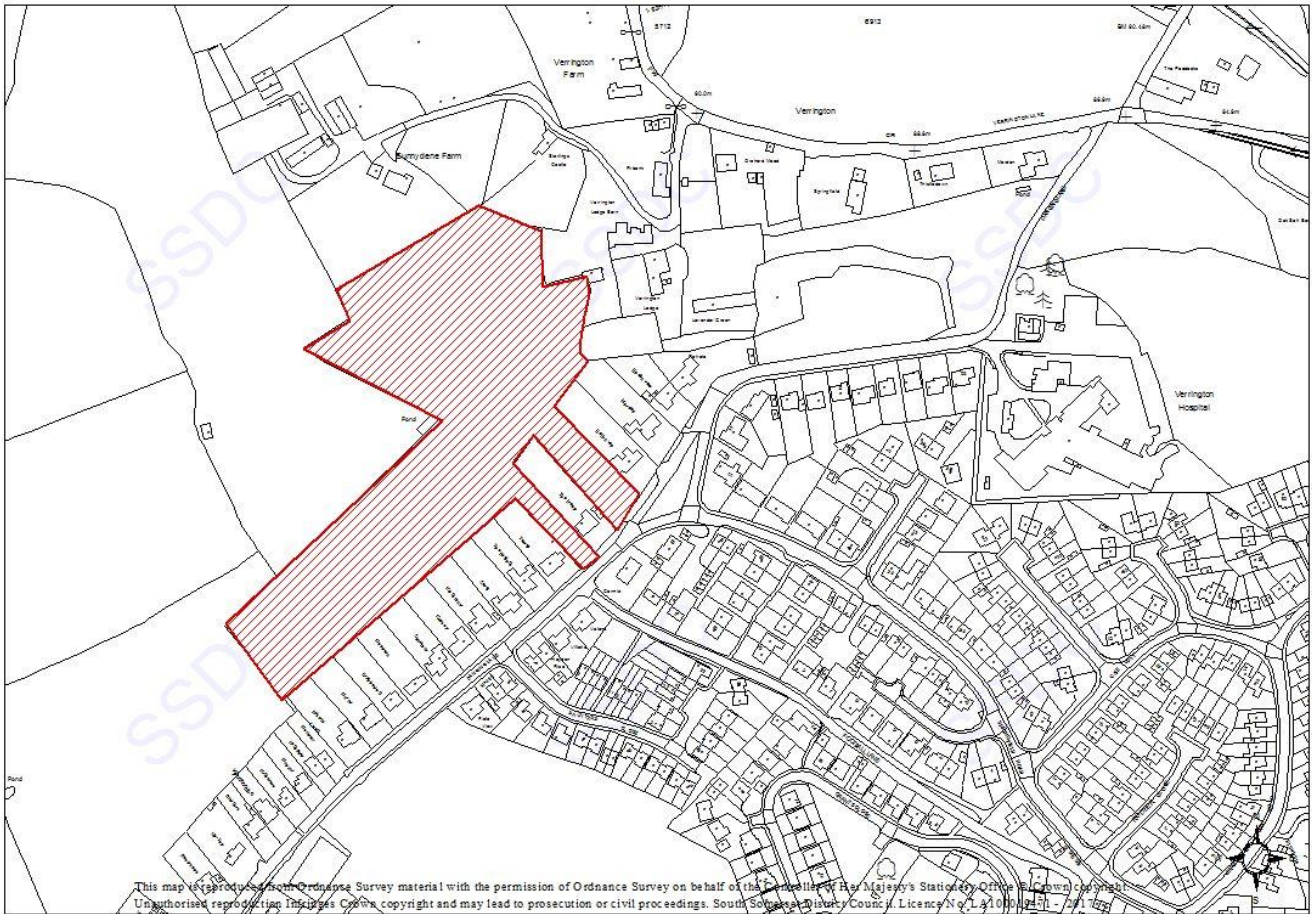


Officer Report On Planning Application: 17/02643/OUT

Proposal:	Outline application for up to 23 dwellings with approval for means of access sought and all other matters reserved for future consideration (Revised scheme) (GR:370409/128841)
Site Address:	Land At Dancing Lane Wincanton
Parish:	Wincanton
WINCANTON Ward (SSDC Member)	Cllr Nick Colbert Cllr Colin Winder
Recommending Case Officer:	Dominic Heath-Coleman Tel: 01935 462643 Email: dominic.heath-coleman@southsomerset.gov.uk
Target date:	21st September 2017
Applicant:	Mr Mervyn Dobson And Mr Tim Adams
Agent: (no agent if blank)	Mr Mervyn Dobson Mortimer House Mortimer Lane Mortimer READING RG7 3AJ
Application Type:	Major Dwlgs 10 or more or site 0.5ha+





APPLICATION HISTORY

The application was originally considered at Area East Committee on 13th December 2017 at the request of the ward members, and with the agreement of the area chair, in order to allow the contributions to be publicly debated. The committee resolved to defer the application to allow further discussions with the agent and ward members regarding planning obligations. The application was again considered at Area East Committee on 10th January 2018. The committee resolved to approve the application subject to:

- a) The prior completion of a section 106 agreement or unilateral undertaking (in a form acceptable to the Council's solicitor(s) in conjunction with the Ward Members) before the decision notice granting planning permission is issued to secure a planning obligation review mechanism, designed to recoup a proportion of any available surplus.
- b) For the following reason:

The principle of residential development in this sustainable location on the edge of a market town is considered acceptable. The proposed development of the site would respect the character of the area, with no demonstrable harm to the setting of the nearby listed building, highway safety, flood risk and drainage, protected species, or residential amenity. As such the proposal complies with local plan policies SD1, SS1, SS5, SS6, TA5, TA6, HG3, EQ2, EQ3, EQ4, and HW1, and the aims and objectives of the NPPF.
- c) A variety of conditions, as set out at the end of this report.

APPLICANT'S POSITION

The scheme is before the committee again as the developer and the Council's officers cannot agree on an acceptable wording for the section 106 agreement or unilateral undertaking to secure a planning obligation review mechanism (or overage clause). The applicant has made it clear they will not sign a review mechanism in the form the Council would expect. As an alternative the applicant has offered an agreement that, in summary, secures the following:

If:

- a) the development has not commenced within 18 months of the last reserved matter/ pre-commencement conditions approval, and
- b) the developer has not constructed 3 dwellings within 3 years of last reserved matters or pre-commencement conditions approval

then there shall be a penalty.

- The Penalty - on the 3rd and 5th anniversary of the approval of the last reserved matters/pre-cons they shall pay £10,000 for each dwelling which hasn't yet reached slab level
- Additionally if they pay £100,000 upfront (or at any time) they will no longer be liable for any obligation. The total amount payable is capped at £100,000

The applicant has made it clear that they will appeal against non-determination in the event that the committee's resolution to require a review mechanism, of the type typically used by the council, is not changed.

OUR ADVICE

We are clear that what is being offered is not a review mechanism as specified by the current committee resolution; the typical mechanism we would expect requires the developer to carry out a financial review shortly before completion of the development. If that review shows there is more profit than originally expected, the parties agree that some of the profit is paid to the local authority to be put toward policy-compliant planning obligations. It is considered that what is being proposed is a mechanism to bring development forward rather than recovery of obligations that would have been due if viability had not been proven to be an issue.

We also consider it is not in line with the original recommendation of the District Valuer. [The District Valuer's recommendation was that the application is not viable with policy compliant contributions, but that any approval should be subject to a review mechanism designed to recoup a fair proportion of any available surplus (up to a maximum represented by policy compliance).] It is our advice that the type of mechanism being offered by the applicant is not necessary to make the development acceptable, and would therefore fail the tests for planning obligations set out in the Community Infrastructure Levy Regulations 2010.

Since the developer has disputed the requirement for an overage clause, we have since conducted a review of the available appeal decisions on the same subject and have taken legal advice. Taking into account previous appeal decisions, the legal advice is that there would be a significant risk of the LPA losing an appeal against non-determination in these specific circumstances, given the support in the NPPF in respect of requiring a financial review on developments of this size is questionable and the lack of reference in local plan policy to overage clauses.

RECOMMENDATION

As such, in the specific circumstances of this site, taking into account:

- 1) the legal advice being offered, and
- 2) the fact that the District Valuer does not consider that the site is viable for 100% open market housing (and the chance of actually gaining income from an overage clause is therefore slim)

our recommendation is to remove the previously imposed requirement for:

- a) The prior completion of a section 106 agreement or unilateral undertaking (in a form acceptable to the Council's solicitor(s) in conjunction with the Ward Members) before the decision notice granting planning permission is issued to secure a planning obligation review mechanism, designed to recoup a proportion of any available surplus.

In all other respects the resolution should remain unaltered. The alternative mechanism being offered by the applicant should not be taken up.

PLANNING CONDITIONS AND INFORMATIVES IMPOSED AS PART OF THE RESOLUTION TO APPROVE THE SCHEME:

01. Details of the appearance, landscaping, layout, and scale of the development hereby permitted (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.

Reason: As required by Section 92(2) of the Town and Country Planning Act 1990.

02. Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

Reason: As required by Section 92(2) of the Town and Country Planning Act 1990.

03. The development hereby permitted shall be carried out in accordance with the following approved plans: location plan at 1:5000 scale, received 20 June 2017.

Reason: For the avoidance of doubt and in the interests of proper planning.

04. The development shall be implemented in accordance with the ecological mitigation and enhancement measures detailed in section 4 of the Ecological Impact Assessment (EAD, Sep 2014) unless otherwise agreed in writing.

Reason: For the protection, conservation, and enhancement of biodiversity in accordance with NPPF chapter 11.

05. No works shall commence on the site until the works within the public highway shown on drawing 13780/T04, received 20 June 2017, have been fully implemented. A detailed design and specification for those works shall be submitted to and approved in writing by the local planning authority before any works take place and thereafter be adhered to in full.

Reason: In the interests of highway safety and in accordance with policies TA5 and TA6 of the South Somerset local plan.

06. Any proposed roads approved at the reserved matters stage, including footpaths and turning spaces where applicable, shall be constructed in such a manner as to ensure that each dwelling,

before it is occupied, shall be served by a properly consolidated and surfaced footpath and carriageway constructed to at least base course level between the dwelling and the existing public highway of Dancing Lane. The roads shall be subsequently completed in accordance with an approved timetable. The timetable shall be submitted to an agreed in writing by the local planning authority before any dwelling so served is first occupied.

Reason: In the interests of highway safety and in accordance with policies TA5 and TA6 of the South Somerset local plan.

07. Before each dwelling hereby permitted is first occupied, a properly consolidated and surfaced access linking it to the relevant access road shall be constructed in accordance with details which shall first be submitted to and approved in writing by the local planning authority. These access shall not be surfaced in loose stone or gravel.

Reason: In the interests of highway safety and in accordance with policies TA5 and TA6 of the South Somerset local plan.

08. As part of a reserved matters application, a plan showing parking spaces in accordance with the Somerset County Council Parking Strategy shall be submitted to an approved in writing by the local planning authority. Each parking space shall be properly consolidated in the approved manner before any dwelling it is intended to serve is first occupied and shall thereafter be made available at all times solely for the parking of vehicles in association with those dwellings.

Reason: In the interests of highway safety and in accordance with policies TA5 and TA6 of the South Somerset local plan.

09. The development hereby permitted shall not commence until a construction management plan has been submitted to an approved in writing by the local planning authority. The plan shall include details of construction vehicle movements, construction operation hours, construction vehicular routes to and from the site, construction delivery hours, expected number of construction vehicles per day, vehicle parking for contractors, specific measures to adopted to mitigate construction impacts in pursuance of compliance with the Environmental Code of Construction Practice and a scheme to encourage the use of public transport by contractors, The plan as approved shall be fully adhered to at all times through the construction period.

Reason: In the interests of highway safety and residential amenity and in accordance with policies EQ2, TA5 and TA6 of the South Somerset local plan.

10. As part of a reserved matters application, details of a 'no build zone' shall be submitted in plan form to and approved in writing by the local planning authority. The 'no build zone' shall correspond closely to the area shown as undeveloped on illustrative layout site layout plan ref no 1174/03 dated 30 July 2014 and submitted as part of application 14/01704/OUT. No development shall take place within the 'no build zone' other than any that may be required in association with any approved drainage scheme.

Reason: In the interests of visual amenity and in accordance with policies EQ2 and EQ3 of the South Somerset Local Plan.

11. The development hereby permitted shall not commence until details of a scheme for the protection of trees and vegetation around the periphery of the site, and specifically in the vicinity of Verrington Lodge, has been submitted to and approved in writing by the local planning authority. The scheme as approved shall be adhered to in full throughout all phases of construction activity relevant thereto.

Reason: In the interests of visual amenity and in accordance with policies EQ2 and EQ3 of the South Somerset Local Plan.

12. As part of a reserved matters application, details of measures for the enhancement of biodiversity, to include a landscape and ecology enhancement and management plan relating specifically to the 'no build zone', shall be submitted to and approved in writing by the local planning authority. These measures shall be implemented in accordance with the approved details.

Reason: in the interests of conserving and enhancing biodiversity in accordance with policy EQ4 of the South Somerset Local Plan.

13. Prior to, and within 2 months of, the commencement of each significant stage of ground works, an update survey for badger setts shall be undertaken by a competent person, the identity of whom shall first be submitted to and approved in writing by the local planning authority. A schedule of the said significant stages shall be submitted to and approved in writing by the local planning authority before any development commences. If any badger setts are found to be present within 30 metres (including on adjoining land) of any area of activity, the works shall not proceed until a method statement for the protection of badgers has been submitted to and approved in writing by the local planning authority and any necessary Natural England licences have been obtained. Any method statement thus approved shall be implemented in full in the approved manner.

Reason: in the interests of conserving and enhancing biodiversity in accordance with policy EQ4 of the South Somerset Local Plan.

14. The development hereby permitted shall not commence until such time as a surface water drainage scheme (to include a full drainage masterplan, associated drainage calculations and a management plan governing future responsibility for and maintenance of the scheme) has been submitted to and approved in writing by the local planning authority. The scheme shall be fully implemented and subsequently maintained and managed in accordance with the timing/phasing arrangements and management plan embodied within it.

Reason: In the interests of local amenities and protecting against flood risk and in accordance with local plan policy EQ1 and the aims and objectives of the NPPF.

15. Prior to the commencement of the development, a Measures only Travel Plan Statement is to be submitted to and approved in writing by the Local Planning Authority. Such Travel Plan should include soft and hard measures to promote sustainable travel as well as targets and safeguards by which to measure the success of the plan. There should be a timetable for implementation of the measures and for the monitoring of travel habits. The development shall not be occupied unless the agreed measures are being implemented in accordance with the agreed timetable. The measures should continue to be implemented as long as any part of the development is occupied.

Reason: In the interests of highway safety and sustainable development and in accordance with policies SS1, SD1, TA5 and TA6 of the South Somerset local plan.

Informatives:

01. The applicant will be required to enter into a suitable legal agreement with the Highway Authority to secure the construction of the highway works necessary as part of this development. Please ensure that an advisory note is attached requesting that the developer contact the Highway Authority to progress this agreement well in advance of commencement of development.

02. Development, insofar as it affects a right of way should not be started, and the right of way should be kept open for public use until the necessary (diversion/stopping up) Order has come into effect. Failure to comply with this request may result in the developer being prosecuted if the path is built on or otherwise interfered with.
03. The developer should be aware of the concerns of the SSDC Conservation Officer in regard to the submitted indicative layout and the likely impact on the setting of the nearby listed building. Similarly the developer should be aware of local concerns in regard to the submitted indicative layout as to the potential impact on the residential amenity of adjoining residents. Before submitting any reserved matters application the developer is advised to contact the planning department to discuss how the indicative layout could be amended to address the above concerns.
04. Please be advised that subsequent full or reserved matters approval by South Somerset District Council will attract a liability payment under the Community Infrastructure Levy. CIL is a mandatory financial charge on development and you will be notified of the amount of CIL being charged on this development in a CIL Liability Notice.

You are required to complete and return Form 1 Assumption of Liability as soon as possible and to avoid additional financial penalties it is important that you notify us of the date you plan to commence development before any work takes place Please complete and return Form 6 Commencement Notice. You are advised to visit our website for further details <https://www.southsomerset.gov.uk/cil> or email cil@southsomerset.gov.uk
