

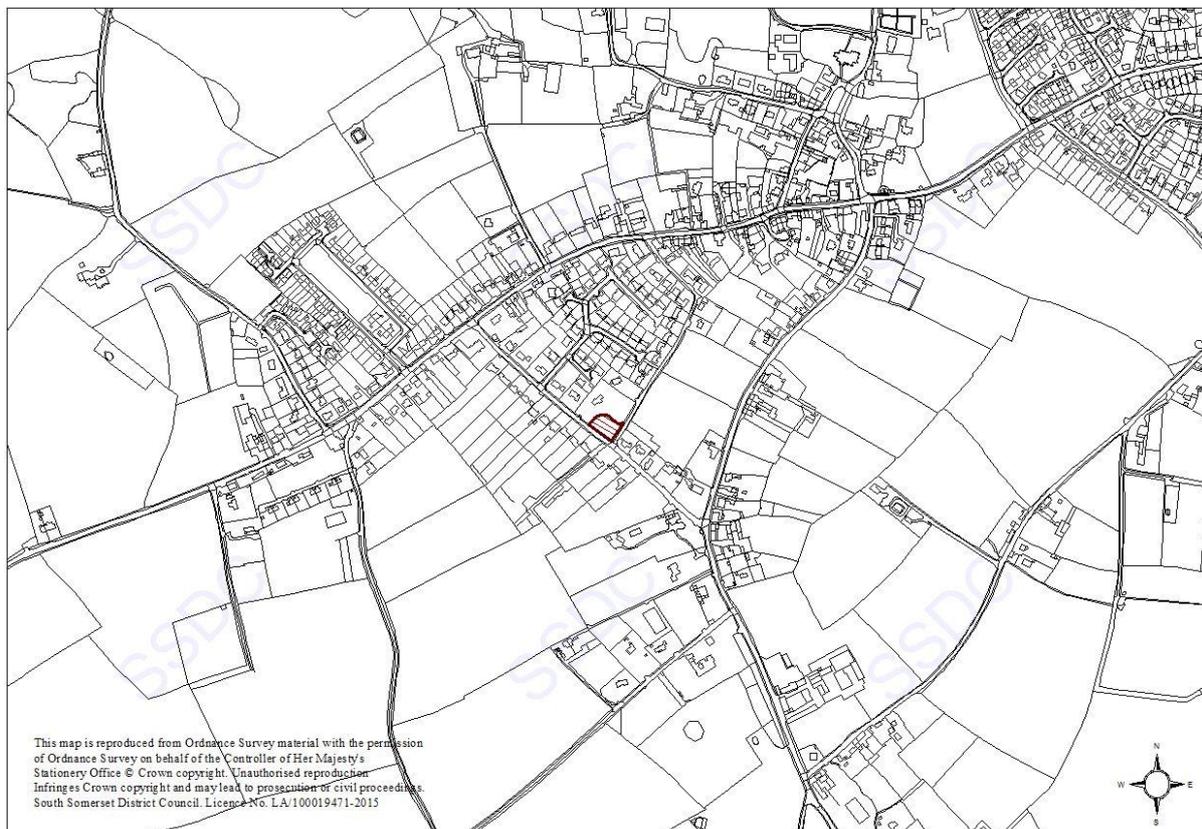
Officer Report On Planning Application: 15/03472/S73A

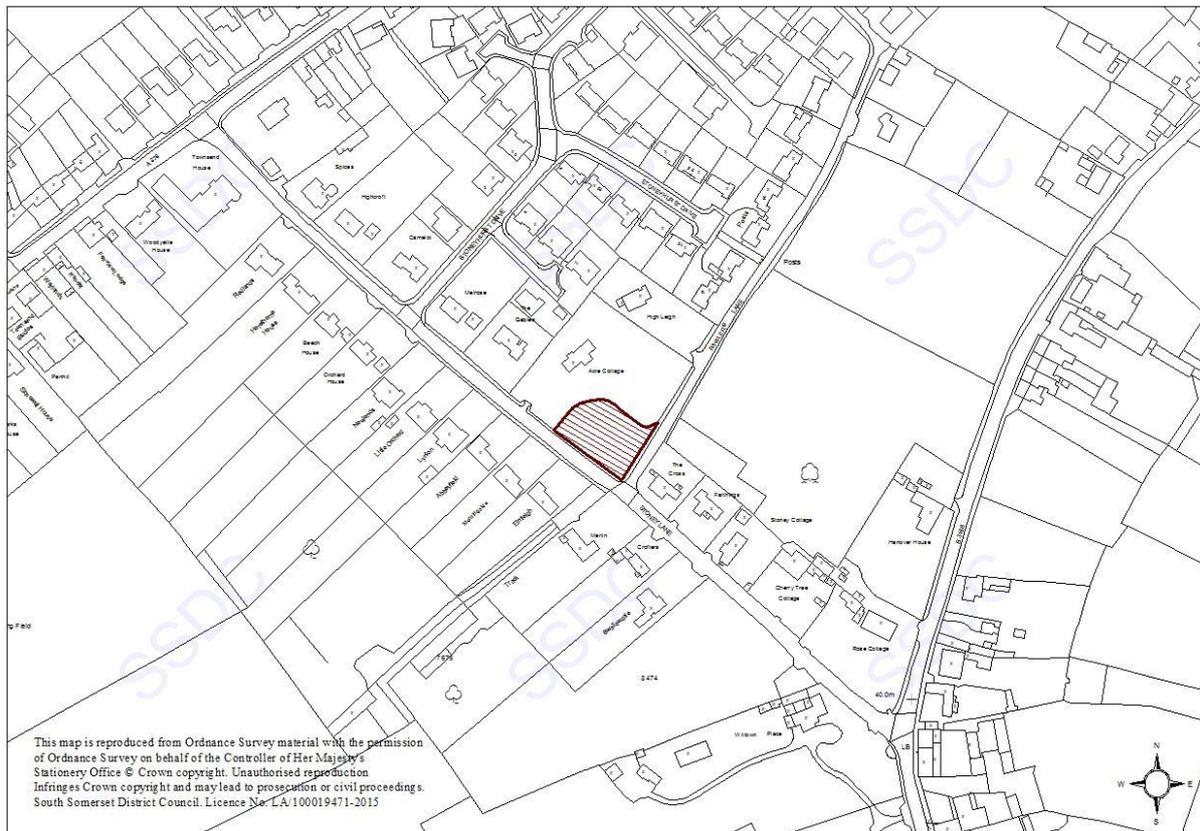
Proposal :	Section 73A application to vary condition 8 of 11/00059/OUT allowed at appeal 07.10.11, to allow the hatched red on attached plan to be removed from the condition; parking and turning (GR: 338851/124883).
Site Address:	Land Adjacent Acre Cottage, Stoney Lane, Curry Rivel.
Parish:	Curry Rivel
CURRY RIVEL Ward (SSDC Member)	Cllr T Osborne
Recommending Case Officer:	John Millar Tel: (01935) 462465 Email: john.millar@southsomerset.gov.uk
Target date :	15th September 2015
Applicant :	Mr And Mrs M Fouracres
Agent: (no agent if blank)	Battens Solicitors Ltd (Ceri Stephens). Mansion House, Princes Street. Yeovil BA20 1EP
Application Type :	Minor Dwellings 1-9 site less than 1ha

REASON FOR REFERRAL TO COMMITTEE

This application is referred to Committee at the request of the Ward Member to enable the issues raised by the Parish Council and local residents to be debated.

SITE DESCRIPTION AND PROPOSAL





The site is located on the southern side of Curry Rivel, adjacent to the junction of Stoney Lane and Bawlers Lane. Planning permission was granted under 11/00059/OUT and 12/00608/REM for the erection of four dwellings and a new access into the site to serve the four dwellings. The access details were approved under the outline consent with appearance, landscaping, layout and scale dealt with under the reserved matters.

This application is made to vary condition 8 of planning permission 11/00059/OUT (as determined by appeal decision APP/R3325/A/11/2156282, following initial refusal), which requires *"any area allocated for parking and turning on the submitted plan shall be kept clear of obstruction and shall not be used other than for the parking and turning of vehicles in connection with the development hereby permitted, but only as required in respect of those matters not reserved for later approval by other conditions of this permission"*. It is proposed to vary the condition to allow an area of the turning head, approved as part of the access arrangements submitted in relation to 11/00059/OUT, to be excluded from the requirements of the condition to be kept clear of obstruction and kept available for turning of vehicles in relation to the development as a whole.

HISTORY

13/00310/FUL: Erection of a bungalow - Refused by Area North Committee on the grounds that the proposal would constitute overdevelopment of the site and would have an adverse impact on the residential amenity of an adjoining property. The application was subsequently allowed at appeal (Ref: 2200991 - 17th December 2013).

12/04381/FUL: The erection of a bungalow - Application withdrawn 21/12/2012.

12/00608/REM: The erection of four dwellings and garage (reserved matters application

following grant of outline permission 11/00059/OUT) - Application permitted with conditions 17/04/2012.

11/00032/REF: Outline application for the erection of 4 no. dwellings and garages - Appeal allowed subject to conditions 07/10/2011.

11/00059/OUT: Outline application for the erection of 4 no. dwellings and garages - Application refused 25/03/2011.

POLICY

The South Somerset Local Plan (2006 - 2028) was adopted on the 5th March 2015. In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) and Section 70(2) of the Town and Country Planning Act 1990 (as amended), the adopted local plan now forms part of the development plan. As such, decisions on the award of planning permission should be made in accordance with this development plan, unless material considerations indicate otherwise. Legislation and national policy are clear that the starting point for decision-making is the development plan, where development that accords with an up-to-date local plan should be approved, and proposed development that conflicts should be refused, unless other material considerations indicate otherwise.

Policies of the South Somerset Local Plan (2006-2028)

SD1 - Sustainable Development

EQ2 - General Development

TA5 - Transport Impact of New Development

National Planning Policy Framework

Core Planning Principles - Paragraph 17

Chapter 4 - Promoting Sustainable Transport

Chapter 7 - Requiring Good Design

Policy-related Material Considerations

Somerset County Council Parking Strategy (September 2013)

Somerset County Council Highways Development Control - Standing Advice (June 2015)

CONSULTATIONS

Parish Council: The Parish Council has no objections to raise in respect of the above planning application, which it fully supports and recommends approval.

SCC Highway Authority: Recommend refusal. The following comments were made:

"Whilst there will be no overall traffic impact on the highway, from a Highways Authority perspective, this is an Estate Road as it serves 4 dwellings. As such SCC Standing Advice, states that there has to be a turning area if access is onto a classified road, which Stoney Lane is.

Standing advice also details that a turning area has to be provided independently of any parking provision. A turning area must be independent to the proposed parking spaces and will enable resident's vehicles and larger vehicles like ambulances or delivery vehicles to turn. If the area is being used for parking, regardless of by whom, the turning condition is being broken because it is not being kept clear as in the policy. The enforcement of keeping the turning area clear is the responsibility of the Local Planning Authority.

We recommend refusal as it is contrary to SCC Standing Advice and would not accord with NPPF ch4, providing safe access to the highway.

As stated by SP25 in the Standard Highway Conditions and Refusal Reasons this seems to be a case of personal circumstances. It would appear that the reasoning behind making this application is tied to the personal circumstances of the applicant. As you are aware, the Highway Authority has to assess this application simply in terms of its highway and transportation impacts whatever the personal circumstances may be."

SSDC Highway Consultant: Refer to SCC comments. Need to consider all service/delivery vehicles, not just large refuse vehicles. From a highway safety perspective, the turning head should remain as it performs an important role in ensuring that smaller delivery/service vehicles do not reverse from or onto the public highway. Whether or not the wording of the planning condition is enforceable must be a planning matter.

REPRESENTATIONS

28 letters of have been received, objecting to the proposed application. 2 of the letters are from occupiers of nearby properties from occupiers of neighbouring properties, 1 of which is within the development that the turning head was approved to serve and the other is opposite the site. A further 26 letters are in an identical proforma style and have been received from residents who live in Curry Rivel and further afield. The following main points are made:

- The purpose of the parking and turning area is to provide for off road parking, ensuring that Stoney Lane is kept clear for passing traffic, and enabling vehicles to turn within the development to ensure that traffic joins Stoney Lane in a forward direction. The condition is not just for domestic vehicles but also for commercial vehicle i.e. delivery vehicles and other service vehicles.
- Since the development was completed, neighbouring residents have noted additional cars parked in Stoney lane and vehicles reversing out of the development onto Stoney lane, which has become a busier road with more heavy vehicles as well as a rat run for commuters.
- The neighbouring resident who shares the access and expects to be able to use the approved turning head, which is now obstructed by the applicant's parked vehicles, has concerns that regular visitors, including young grandchildren, are being put at risk due to the need to reverse out onto Stoney Lane, thus increasing the risk of a collision. A change to the original planning consent or non-enforcement of the condition does not appropriately manage the risk associated with a vehicle having to reverse either to or from Stoney Lane.
- It is felt that this situation has gone on for a protracted period and that an enforcement notice should have been served by the Local Planning Authority.
- It has been stated that the applicant is also in breach of covenants requiring the property owners within the development "not to permit or suffer to be done on the Property anything which may be or become a nuisance or annoyance or may cause danger or detriment to the Transferor or to the owners or occupiers of any adjoining or neighbouring land".

1 letter of support has been received from the occupier of another property opposite, in which they advise that they originally objected to the development scheme, however now constructed they feel that each dwelling has its own driveway which should meet any present needs to allow vehicles to turn without requiring a separate turning area. The proposed removal of the need to turn within the approved turning head is therefore supported.

A further letter has been received from another occupier of a property within the development of 4 dwellings neither objecting nor supporting. It simply makes a general observation that the changes that have been made to the application site, works which include the provision of fence to enclose the garden, have changed the area nicely and made the neighbour's outlook very attractive.

Applicant's Case

The application follows an enforcement case where it has been reported that vehicles have been parked within the approved turning head, which is required to be kept clear of obstruction and available for the turning of vehicles associated with the development of four houses. The applicant is therefore requesting a variation of this condition to allow the area, which is in their ownership, to be omitted from the requirement to be kept clear of obstruction, thus allowing it to be used for parking.

The application is made on two fronts, with the following main points put forward:

- The turning space is not necessary. It is argued that each of the four properties has adequate parking and turning space to meet their needs, without having to use the turning head. A highways report has been submitted by the applicant, concluding that the turning area is unnecessary and as the incidence of need is low, probability of conflict is rare, it is reasonably possible for normal cars and some vans to turn within the confines of each private access and that reversing onto Stoney lane can be safely accomplished within the guidance of the Highway Code.

Even if deemed necessary, the original condition is defective and/or unenforceable. It is argued that:

- Following purchase of the property, the turning head is within the applicant's ownership, not within main access drive that is within the shared responsibility of all the residents. Therefore no other resident has a legal right to access the land on which the turning head sits or has any responsibility towards its maintenance. Due to the land being privately owned, it is felt both unreasonable and impractical to require its use as a turning head. It is argued that the situation means that the applicant is unable to park, however no other users are permitted to use the turning head and the applicant cannot insist on a contribution towards the turning heads upkeep.
- It is considered that the condition is unenforceable as it is vague and imprecise, not referring to a specific plan. Furthermore, the condition is attached to the outline permission, with the applicant of the view that the turning head should have been approved along with the layout in the reserved matters. It is further advised that the only plan specified as being approved by outline consent 11/00059/OUT is '1613-Rev A', which has a different to the scheme finally approved by reserved matters 12/00608/REM.
- The condition is not enforceable as it is suggested that monitoring and policing compliance would not be practical.
- It is not clear which areas of the site are required to be kept clear for parking and turning as these are not referred to on the plans.
- The wording of the condition requires the parking and turning areas to be kept clear of obstruction and not used other than for parking and turning. It is felt that the condition allows parking and turning within this area, in which case the applicant is complying with

the condition.

CONSIDERATIONS

The only issue to be considered in this application to vary condition 8 of outline planning permission 11/00059/OUT is whether the area hatched in red on the submitted plan should be removed from the said condition, thereby removing its need to be retained for parking provision.

Starting with need, the applicant has argued that the turning head need serve no purpose, as the existing parking and turning provision for each dwelling. In considering this, it is accepted that each of the four properties has its own allocated on-site parking provision and in each case there is sufficient space for these parked vehicles to safely manoeuvre. The point however of the turning head is not just to provide turning facilities for these household vehicles but also to allow larger vehicles such as delivery vans, etc to be able to access the development as a whole and safely turn within the site before exiting onto Stoney Lane. Stoney Lane is a classified road, therefore there is a requirement for vehicles to be able to exit and access the public highway in a forward gear. The County highway Authority and the Council's Highway Consultant have considered the proposal and confirmed the need for the turning head to be retained and kept available its intended use. As such, it is considered that its loss would have a severe impact on highway safety at this point.

The other issue relates to the wording of the condition, specifically its preciseness and enforceability. In response to the applicant's case, the following points are considered:

The planning system largely deals with the use of land rather than land ownership. In determining applications such as this, it is not usual to require a particular part of a site to be kept within certain ownership, with conditions applying to the land, whoever owns it. It is clear that an error has occurred in not keeping this area of land within the shared access serving the development; however this is not an error in the determination and conditioning of the application but in the civil process of dividing the ownership of the land. It would seem rather perverse for a non-planning administrative error to extricate the applicant from their responsibilities in relation to compliance with planning conditions. This condition is clearly attached to the relevant planning permission associated with this development, so while the applicant may have be disadvantaged through an error not of their making, it is felt that this is civil matter that should be taken up with the original conveyancing solicitor, rather than relying on the removal of a turning head that is considered to be an importance part of the development in relation to ensuring safe access and egress between the site and Stoney Lane, a classified highway.

It is not agreed that the condition is vague or imprecise. While the general layout of the site was a reserved matter, 'access' was approved in the outline application. In the Development Management Procedure Order, 'access' is defined as *"the accessibility to and within the site, for vehicles, cycles and pedestrians in terms of positioning and treatment of the access and circulation routes and how these fit into the surrounding access network."* On this basis, it is considered that the turning head plays an important role in allowing circulation within the site. Furthermore, this turning head is directly linked to the safe access/egress to and from the site onto the adjoining public highway. Despite the variation in the layout from the outline permission to the reserved matters, the turning head is shown in the same location on both the sets of approved plans. It is acknowledged that no conditions have been repeated in relation to the parking and turning spaces within the approved layout, however the turning head is deemed to be controlled as a result of the outline condition 8. Furthermore, while again it is acknowledged that parking and turning areas are not widely referenced on the approved plans,

the exception is the turning head in question, which is clearly annotated as '*type B turning head*', thereby making clear that this part of the site was intended specifically for turning only.

On the point of being available for turning only, the condition used, which refers to both turning and parking, is a standard condition that is regularly applied by the Local Planning Authority and Planning Inspectors, hence the presence of such a condition on this occasion. It is not considered that this does allow for parking and turning within the area, specifically due to the reference as a turning head and not a parking area.

Finally in terms of enforcement, it is quite possible to monitor the site for detection of the breach and compliance with the condition. Again, this is a regularly used condition that would not be used if not enforceable. The site is easily visible from public view, in a location regularly visited by Planning Officers. It would not be onerous in any way to monitor the site on a regular basis, without even having to visit Curry Rivel specifically for this purpose.

Overall, it is considered that the need for the turning head remains and the applicant's arguments against the precision and enforceability of the condition are not supported. The variation of condition 8 of outline planning permission is therefore considered to be unacceptable as it lead to the loss of turning facilities essential to enable vehicles accessing the development to enter and leave the highway in forward gear, which is essential to highway safety.

RECOMMENDATION

Refuse

01. The proposed variation of condition 8 of outline planning permission 11/00879/OUT is deemed to be unacceptable as removing the requirement for retention of turning the approved turning head would lead to a loss of turning facilities that are essential for highway safety, to enable vehicles to enter and leave the adjoining classified highway in forward gear. As such, the proposal is contrary to policy TA5 of the South Somerset Local Plan (2006-2028) and the provisions of chapter 4 of the National Planning Policy Framework.
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