

SWT Planning Committee

Thursday, 8th December, 2022,
1.00 pm

The John Meikle Room - The Deane
House



Somerset West
and Taunton

[SWT MEETING WEBCAST LINK](#)

Members: Simon Coles (Chair), Marcia Hill (Vice-Chair), Ian Aldridge, Ed Firmin, Steve Griffiths, Roger Habgood, John Hassall, Mark Lithgow, Craig Palmer, Vivienne Stock-Williams, Ray Tully, Brenda Weston, Keith Wheatley, Loretta Whetlor and Gwil Wren

Agenda

1. Apologies

To receive any apologies for absence.

2. Minutes of the previous meeting of the Planning Committee

To approve the minutes of the previous meeting of the Committee.

3. Declarations of Interest or Lobbying

To receive and note any declarations of disclosable pecuniary or prejudicial or personal interests or lobbying in respect of any matters included on the agenda for consideration at this meeting.

(The personal interests of Councillors and Clerks of Somerset County Council, Town or Parish Councils and other Local Authorities will automatically be recorded in the minutes.)

4. Public Participation

The Chair to advise the Committee of any items on which members of the public have requested to speak and advise those members of the public present of the details of the Council's public participation scheme.

For those members of the public who have submitted any questions or statements, please note, a three minute time

(Pages 5 - 10)

limit applies to each speaker and you will be asked to speak before Councillors debate the issue.

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5. **42/22/0027 Application for Approval of Reserved Matters in respect of the appearance, landscape, layout and scale, following Outline Approval 42/14/0069 for the erection of 70 No. dwellings, hard and soft landscaping, car parking including garages, internal access roads, footpaths and circulation areas, public open space and drainage with associated infrastructure and engineering works at Phase H1e, together with additional details as required by Condition No's., 9, 12, 13, 14, 15, 16, 18, 19, 20, 21 and 23 on land west of Comeytrowe Lane, Taunton** (Pages 11 - 52)
6. **3/07/22/017 Raising of brick chimney by 250mm - Lawford Farm, Stickle Hill, Crowcombe, TA4 4AL** (Pages 53 - 58)
7. **3/39/22/007 Installation of a battery energy storage facility, substation, underground cabling, access, landscaping, biodiversity enhancements and ancillary infrastructure and equipment to include acoustic fence, security fence, CCTV and gates. Land adjacent to Gas Substation, Smithyard Lane, Williton** (Pages 59 - 88)
8. **49//22/0016 Erection of 1 No. dwelling, to be tied to farm, with demolition of outbuildings at Pitt Farm, Ford, Wiveliscombe (resubmission of 49/21/0032)** (Pages 89 - 110)
9. **38/21/0525 Formation of synthetic pitch with perimeter fencing, sports lighting and wildlife area bunds with additional 7v7 and 11v11 grass pitches with site compound and accommodation facilities at Richard Huish College, South Road, Taunton** (Pages 111 - 128)
10. **3/21/22/105 Erection of ground mounted solar panels. Avondale, Martlet Road, Minehead, TA24 5QD** (Pages 129 - 138)
11. **Latest appeals and decisions received** (Pages 139 - 156)



ANDREW PRITCHARD
CHIEF EXECUTIVE

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Members of the public are welcome to attend the meeting and listen to the discussions. There is time set aside at the beginning of most meetings to allow the public to ask questions. Speaking under "Public Question Time" is limited to 3 minutes per person in an overall period of 15 minutes and you can only speak to the Committee once. If there are a group of people attending to speak about a particular item then a representative should be chosen to speak on behalf of the group. These arrangements do not apply to exempt (confidential) items on the agenda where any members of the press or public present will be asked to leave the Committee Room.

If you would like to ask a question or speak at a meeting, you will need to submit your request to a member of the Governance Team in advance of the meeting. You can request to speak at a Council meeting by emailing your full name, the agenda item and your question to the Governance Team using governance@somersetwestandtaunton.gov.uk

Any requests need to be received by 4pm on the day that provides 1 clear working day before the meeting (excluding the day of the meeting itself). For example, if the meeting is due to take place on a Tuesday, requests need to be received by 4pm on the Friday prior to the meeting.

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SWT Planning Committee - 10 November 2022

Present: Councillor Simon Coles (Chair)
 Councillors Marcia Hill, Ian Aldridge, Steve Griffiths, Roger Habgood, John Hassall, Mark Lithgow, Craig Palmer, Vivienne Stock-Williams, Brenda Weston, Loretta Whetlor and Gwil Wren

Officers: Alison Blom-Cooper, Martin Evans (Shape Legal Partnership), Alison Blom-Cooper, Gareth Clifford, Simon Fox, Michael Hicks and Tracey Meadows

(The meeting commenced at 1.00 pm)

61. **Apologies**

Apologies were received from Councillors Firmin, Tully and Wheatley

62. **Minutes of the previous meeting of the Planning Committee**

(Minutes of the meeting of the Planning Committee held on 13 October 22 circulated with the agenda)

Resolved that the minutes of the Planning Committee held on 13 October be confirmed as a correct record.

Proposed by Councillor Hill, seconded by Councillor Hassell

The **Motion** was carried.

63. **Declarations of Interest or Lobbying**

Members present at the meeting declared the following personal interests in their capacity as a Councillor or Clerk of a County, Town or Parish Council or any other Local Authority:-

Name	Minute No.	Description of Interest	Reason	Action Taken
Cllr I Aldridge	All Items	Williton	Personal	Spoke and Voted
Cllr S Coles	All Items	SCC & Taunton Charter Trustee. Ward Member for 38/21/0463	Personal	Spoke and Voted
Cllr Mrs Hill	All Items	Taunton Charter Trustee	Personal	Spoke and Voted

Cllr M Lithgow	All Items	Wellington	Personal	Spoke and Voted
Cllr C Palmer	All Items	Minehead	Personal	Spoke and Voted
Cllr B Weston	All Items	Taunton Charter Trustee	Personal	Spoke and Voted
Cllr L Whetlor	All Items	Watchet	Personal	Spoke and Voted
Cllr G Wren	All Items	SCC & Clerk to Milverton PC	Personal	Spoke and Voted

All Councillors declared that they had received correspondence for application No. 10/22/0015

64. **Public Participation**

Application	Name	Position	Stance
34/22/0011	Mr D Lausen Mr R Grant	ROSAG Bloor Homes	Against In favour
10/22/0015	Mr I Jewson	Agent	In favour

65. **38/21/0463 - Demolition of public house and garages and erection of 8 No. zero carbon dwellings for council owned affordable accommodation with formation of landscaping and access at The Oxford Inn, Outer Circle, Taunton**

Comments from Members included;
(summarised)

- Good scheme with the area in need of social housing;
- Delighted that the development would incorporate Solar Panels;
- Electric charging points needed in the development;

Councillor Hill proposed and Councillor Weston seconded a motion for the Officers be given delegated authority to **GRANT** Conditional Approval of the application subject to no objections or new issues being raised by Natural England;

Amended Condition 9 to read;

No occupation of the new dwellings hereby approved shall take place until the demolition of the seven flats located in Wordsworth Drive, Taunton and identified in the updated Phosphate Mitigation Strategy dated 15 August 2022 has been completed.

REASON: To safeguard phosphate levels in the Somerset Levels and Moors Ramsar site and protect habitat as required under Policy CP8 of the Taunton Deane Core Strategy and in accordance with Regulation 63 of the Conservation of Habitats and Species Regulation 2017;

The motion was carried.

66. **38/22/0279 - Demolition of conservatory and garage and the erection of a single storey extension to the side and rear of 6 Orchid Close, Taunton**

Comments from Members included;
(summarised)

- On street parking concerns;
- Concerns with the scale of the development;

Councillor Lithgow proposed and Councillor Hill seconded a motion for permission to be **GRANTED** subject to Conditions;

The motion was carried.

67. **34/22/0011 - Application for Approval of Reserved Matters for the appearance, landscaping, layout and scale following outline approval 34/16/0007 for the northern ecological buffer, public open space, drainage and landscaping for Staplegrove West Phase 1, north of Staplegrove Road, Taunton**

Comments from members of the public included;
(summarised)

- Concerns with downstream drainage and flooding;
- Concerns with the proposed access road;
- Concerns with the green wedge;
- This development would be phase 1 for the Staplegrove development;
- The development would be creating a garden community;
- Native hedgerows would be incorporated into the development;
- Arrangements regarding looking after the attenuation basin after development would be in place to allay concerns from residents;

Comments from Members included;
(summarised)

- Access concerns, construction access to use Mill Lane only;
- Concerns with regards to the maintenance of the attenuation basin after development;
- Concerns with flooding;
- Concerns with the capacity of the basin;
- Residential disruption needs to be kept to a minimum;
- Power cables needed to be buried before the infrastructure commenced;
- A construction management plan was needed to ensure the safety of road users as lorries left the site.
- Pleased that the green infrastructure was installed before development;

Councillor Whetlor proposed and Councillor Hassell seconded a motion for permission to be **GRANTED** subject to Conditions;

With respect to the future discharge of Condition 09 of the Outline consent 34/16/0007 (CEMP) the Council is minded to allow construction access to the Mill Lane field only (for the purposes of constructing the approved attenuation basin and carrying out the associated landscaping) to be achieved via Mill Lane. The Council reiterates the need to install a passing place suitable for HGVs at the earliest part of the works as not to disrupt the day-to-day use of Mill Lane and to prevent queuing and conflict on the A358. The CEMP should set out the location and exact dimensions.

The Council encourages the applicant to carry out the tree planting and associated landscaping as a whole as soon as possible so as to provide the necessary bat mitigation and landscaping screening to the proposed development;

The motion was carried.

68. **38/22/0176 - Formation of public realm to include landscaping and associated infrastructure works (includes Environment Statement) referred to as The Southern Boulevard at Firepool, Canal Road/Priory Bridge Road, Taunton**

Comments from Members included;
(summarised)

- Concerns with the EA comments in the report;
- Concerns with the shared space with walkers and cyclists. Safer segregation was needed;
- Concerns with the size of the Amphitheatre;
- Concerns with the style of the buildings, they needed to match up with the surroundings;
- Good scheme;

Councillor Hill proposed and Councillor Lithgow seconded a motion for permission to be **GRANTED** subject to Conditions with additional Conditions and additional Note;

Additional Condition 20

Save for any works in the highway on Canal Road, no development shall commence on site until a scheme of protection works and a method statement for working within 6 metres of existing public sewers including all necessary consents from the sewerage undertaker, has been submitted to, and approved in writing by the Local Planning Authority. The agreed scheme shall thereafter be followed throughout the period of the works.

Reason: To ensure the risk of damage to the public sewer network during construction activities has been mitigated.

Additional Condition 21

Save for any works in the highway on Canal Road, no development shall commence on site until a scheme of appropriate access arrangements to current and proposed public sewer assets which have been agreed with the sewerage undertaker, has been submitted to and approved in writing by the Local Planning Authority. The agreed access arrangements shall thereafter be retained until such time as the LPA is content it is no longer required.

Reason: To enable future unfettered access for the maintenance and repair of the public sewer network.

Additional Note, No. 11

The applicant is reminded of the comments and advice of Wessex Water in the email to SWT Planning and copied to the applicant dated 04 November 2022;

The motion was carried.

69. **10/22/0015 - Replacement of bungalow with a two storey detached dwelling at The Beeches, Taunton Road, Churchinford (resubmission of 10/21/0016)**

Comments from members of the public included;
(summarised)

- The proposal was to replace an old bungalow with a new energy efficient home;
- The development now includes timber and chert stone making it visually acceptable in long and short distance views;
- The ANOB did not raise any objections to the application;
- The footprint of the proposed development was the same as the existing property;
- The proposals were strongly supported by the Parish Council, Ward Member and members of the community;

Comments made by Members included;
(summarised)

- Concerns with the appearance of the building;
- Concerns with the sustainability of the development;

At this point in the meeting a 30-minute extension of time was proposed and seconded.

- The existing bungalow needed a refit;
- Concerns with the colour and the waterproofing of the cladding to be used in the development;

At this point in the meeting a further 30-minute extension of time was proposed and seconded

- Concerns that the development was contrary to numerous policies;
- The AONB needed to be protected;

Councillor Lithgow proposed and Councillor Hill seconded a motion for the application to be **REFUSED** as per Officer Recommendation;

Reason; The proposed replacement dwelling is located within the Blackdown Hills AONB, a nationally designated protected landscape within a prominent corner plot. The proposal by reason of its scale, form, orientation, design and materials would be substantially larger than the existing dwelling and would not reinforce or preserve the distinctive landscape and build character of the area. Accordingly, the proposed dwelling would appear incongruous within its setting to the detriment of the street scene and the landscape character of the area. The proposal is therefore contrary to Policies DM1, DM2 and CP8 of the Taunton Deane Core Strategy, Policy D& (b) and (d) of the Taunton Site Allocations and Development Management Plan, Policy PD2 of the AONB Management Plan the advice within the Districtwide Design Guide SPD and Chapters 12 and 15 of the National Planning Policy Framework;

The motion was carried.

70. **Latest appeals decisions received**

Decisions noted.

(The Meeting ended at 4.45 pm)

Application Details	
	42/22/0027
Application Type:	Approval of Reserved Matters
Description	Application for Approval of Reserved Matters in respect of the appearance, landscape, layout and scale, following Outline Approval 42/14/0069 for the erection of 70 No. dwellings, hard and soft landscaping, car parking including garages, internal access roads, footpaths and circulation areas, public open space and drainage with associated infrastructure and engineering works at Phase H1e, on land west of Comeytrowe Lane, Taunton
Site Address:	Orchard Grove, Land at Comeytrowe/Trull, Taunton
Parish:	Trull
Conservation Area:	No
Somerset Levels and Moors RAMSAR Catchment area:	Yes
AONB:	No
Case Officer:	Simon Fox, Major Projects Officer (Planning) 07392 316159 s.fox@somersetwestandtaunton.gov.uk Should you wish to discuss the contents of this report item please use the contact details above by 12 noon on the day before the meeting, or if no direct contact can be made please email: planning@somersetwestandtaunton.gov.uk
Agent:	Boyer Planning
Applicant:	TAYLOR WIMPEY
Reason for reporting application to Members:	Each stage of the Comeytrowe Garden Community, known as Orchard Grove, has been subject to Planning Committee scrutiny given the significance of the scheme and the public interest.

1. Recommendation

That planning permission be **GRANTED** subject to conditions

2. Executive Summary of key reasons for recommendation

- 2.1 This revised application seeks the approval of reserved matters for a further parcel of residential development (referred to as H1e) at the Comeytrowe Garden Community known as Orchard Grove. The layout, design and approach to this application follows previously approved applications for residential parcels in Phase 1 and follows the masterplan set out in the approved Western Neighbourhood Design Guide.

2.2 After consideration of all representations and consultations, planning policy and material considerations including the planning history and the scope of the application as one for approval of reserved matters, the application is considered appropriate to be recommended for approval subject to the conditions listed at Appendix 1 to this report.

3. Planning Obligations, conditions and informatives

3.1 Obligations

No agreement is needed in connection with this application because the outline is accompanied by a site-wide section 106 agreement.

3.2 Conditions (see Appendix 1 for full wording)

- 1) Drawing Schedule
- 2) Landscaping scheme compliance and protection
- 3) Finishing materials compliance
- 4) Energy Statement and EV Charging Plan compliance
- 5) Water efficiency requirements
- 6) Phosphate Mitigation Plan compliance
- 7) Arboricultural and Ecological Technical Note compliance
- 8) Pedestrian and cycle crossing points detail
- 9) Pedestrian and cycle crossing points detail
- 10) Management of construction stage drainage
- 11) Management responsibilities of SW infrastructure

3.3 Informatives (see Appendix 1 for full wording)

- 1) Reminder of Outline Planning Conditions
- 2) Reminder of Public Rights of Way responsibilities
- 3) Encouragement to achieve Secured by Design accreditation.
- 4) Statement of positive working
- 5) Works in the vicinity of the Veteran tree to be overseen by an arborist.

4. Proposed development, Site and Surroundings

Details of proposal

4.1 Reserved matters approval is sought, for the appearance, landscape, layout and scale of 70 dwellings, hard and soft landscaping, car parking including garages, internal access roads, footpaths and circulation areas, incidental public open space and drainage with associated infrastructure and engineering works (Phase 1 - Parcel H1e – Taylor Wimpey).

4.2 This is the sixth reserved matters approval sought in relation to housing at this strategic site. Councillors will recall more recently considering application

42/21/0035 totalling 55 dwellings for Parcel H1Cii (Vistry) with that resolution having been made in September 2022.

- 4.3 These residential schemes follow the approval, by committee, of reserved matters relating to strategic infrastructure (spine road, strategic drainage and public open spaces areas) for the western neighbourhood, ref 42/19/0053 and supporting utility infrastructure approved via application 42/20/0042.
- 4.4 The outline application, ref 42/14/0069, for this 2000 dwelling development was accompanied by a viability assessment, which made assumptions around the costs and timescales for delivery of this strategic site, with the delivery of affordable housing being agreed at 17.5%. Affordable Housing is being increased on these parcels through funding from Homes England.
- 4.5 The 70 dwellings proposed here in Parcel H1e comprise 2, 3, 4 and 5-bed houses and also 1 bed flats (58 market, 12 affordable (17.5%) split 58% rented and 42% shared ownership).
- 4.6 Parcel H1e sits away from any external boundary shared with existing residential properties, mid-way down-up the slope between Highfield Crescent and the un-named tributary to the Galmington Stream that flows along the bottom of the valley.
- 4.7 The parcel is in two distinctive parts, the first to the west is a group of 56 units that in effect rounds off Parcel H1d, already approved via application 42/21/0004, providing frontages to the Garden Park, already approved to the north, the secondary avenue that will link the Local Centre to Comeytrove Lane (the bus gate road) to the south east, an attenuation bason forming part of Manor Park to the south and a frontage to Highfield Park to the north east.
- 4.8 The smaller area of 14 units sits within Highfield Park approved by application 42/19/053, served by a road through Parcel H1c(ii). Bound by two existing hedgerows the parcel is also notably in proximity to the retained Veteran tree.
- 4.9 A right of way from Jeffreys Way to Comeytrove Lane runs east/west to the north and will be consumed with the public open space.
- 4.10 The proposed dwellings are all two-storey houses save for two 2-storey buildings which are each split into two flats. Key buildings receive a render finish rather than brick in line with the Design Guide.
- 4.11 The proposed dwellings consist of a mixture of detached, semi-detached and terraced properties. The majority of dwellings are of a simple rectangular floorplan with pitched roofs. All dwellings have allocated parking as well as cycle storage in sheds or garages.

- 4.12 Landscaping is proposed within the parcel including trees on all streets, hedges and shrubs to provide boundaries, landscaping within parking areas but not within rear gardens.
- 4.13 All properties, bar the two flats, is afforded an EV charging facility and an energy statement sets out better than Buildings Regulations carbon savings.
- 4.14 Since submission a number of amendments to the plans have been sought and submitted. In summary this includes additional detailing to the proposed dwellings, amendments to better respond to urban design principles and improvements to proposed landscaping.
- 4.15 The application does include the discharge of various planning conditions imposed on the 'mother' outline consent 42/14/0069, these are to be considered separately.

Site and surroundings

- 4.16 Outline consent with all matters reserved (except points of access) has been granted for a residential and mixed use garden community at Comeytrove/Trull to include up to 2,000 dwellings, up to 5.25ha of employment land, 2.2ha of land for a primary school, a mixed use local centre and a 300 space 'park and bus' facility (application ref. 42/14/0069). The site area for the outline application was approx. 118ha and was bounded by the A38 Wellington Road to the north-west, the suburb and parish of Comeytrove to the east and the farmland of Higher Comeytrove Farm to the south. The Blackdown Hills AONB is located approximately 2.5 miles to the south of the site. The area submitted for approval with this application comprises parcel H1c(ii) of the site and sits within the parish of Trull.
- 4.17 The site is generally characteristic by an undulating landscape. The area of the site south of Jeffreys Way slopes from the north to the south east to the un-named tributary of the Galmington Stream. That slope has now been cut into terraces in line with application 42/19/0053 to achieve road lines, development platforms and drainage basins.
- 4.18 The site is not near any Conservation Area and the nearest listed building is located approx. 200m to the south east, Comeytrove Manor.
- 4.19 The site is under construction, occupations commenced in April 2022 with currently circa 50 properties occupied at present. Approval of this application would take the number of dwellings consented with implementable Reserved Matters Approval to 501.

5. Relevant Planning History

Reference	Description	Decision	Date
42/14/0069	Outline planning permission with all matters reserved (except access) for a residential and mixed use urban extension at Comeytrove/Trull to include up to 2,000 dwellings, up to 5.25ha of employment land, 2.2ha of land for a primary school, a mixed use local centre and a 300 space 'park and bus' facility	Approved	8 August 2019
42/15/0042	Demolition of a section of wall on the western side of Honiton Road for creation of the access to the south west Taunton Urban Extension (Under Planning Application No. 42/14/0069) on Honiton Road, Trull	Approved	9 August 2019
42/19/0053	Application for approval of reserved matters following outline application 42/14/0069 for construction of the strategic infrastructure associated with the Western Neighbourhood, including the spine road and infrastructure roads; green infrastructure and ecological mitigation; strategic drainage, earth re-modelling works and associated retaining walls on land at Comeytrove/Trull	Approved	18 March 2020
42/20/0005/DM	Prior notification of proposed demolition of chicken coops on land south west of Taunton	No objection subject to conditions	21 February 2020
42/20/0006	Application for approval of reserved matters following Outline Application 42/14/0069 for the appearance, landscape, layout and scale for the erection of 70 No. dwellings, hard and soft landscaping, car parking including garages, internal access roads, footpaths and circulation areas, public open space and drainage with associated infrastructure and engineering works (Phase H1b) on land at Comeytrove/Trull	Approved	22 July 2020
42/20/0024	Application for approval of reserved matters following outline application 42/14/0069 for the	Withdrawn on procedural	10 August 2021

	erection of a foul pumping station, water booster station and gas pressure reducing station to serve the permitted 2000 dwellings on land at Comeytrove/Trull	grounds – not a Reserved Matters	
42/20/0031	Approval of reserved matters in respect of the appearance, landscape, layout and scale, pursuant to planning permission reference (42/14/0069) for the erection of 76 dwellings, hard and soft landscaping, car parking including garages, internal access roads, footpaths and circulation areas, public open space and drainage with associated infrastructure and engineering works at Phase H1a on land at Comeytrove/Trull	Approved	8 April 2021
42/20/0042	Erection of a foul pumping station, water booster station and gas pressure reducing station to serve the permitted 2000 dwellings under outline application 42/14/0069 on land at Comeytrove/Trull	Approved	08 April 2021
42/20/0043	Non-material amendment to application 42/19/0053 for the relocation of the approved sub-station on land at Comeytrove/Trull	Approved	19 October 2020
42/20/0056	Approval of reserved matters in respect of the appearance, landscape, layout and scale, pursuant to planning permission reference (42/14/0069) for the erection of 64 dwellings, hard and soft landscaping, car parking including garages, internal access roads, footpaths and circulation areas, public open space and drainage with associated infrastructure and engineering works at Phase H1c(i) on land at Comeytrove/Trull	Approved	8 April 2021
42/21/0004	Application for approval of reserved matters following outline application 42/14/0069 in respect of the appearance, landscape, layout and scale for the erection of 166 No. dwellings, hard and soft	Approved	3 February 2022

	landscaping, car parking including garages, internal access roads, footpaths and circulation areas, public open space and drainage with associated infrastructure and engineering works at Parcel H1d on land at Comeytrove/Trull		
42/21/0020	Non-material amendment to application 42/20/0006 to allow for adjustments to highway alignments (Phase 1a and Parcel H1b) on land at Comeytrove/Trull	Approved	10 January 2022
42/21/0032	Erection and installation of an electricity sub-station on land falling within Phase H1C/H1F at Comeytrove/Trull	Approved	31 August 2021
42/21/0035	Approval of reserved matters in respect of the appearance, landscape, layout and scale, pursuant to planning permission reference (42/14/0069) for the erection of 55 dwellings, hard and soft landscaping, car parking including garages, internal access roads, footpaths and circulation areas, public open space and drainage with associated infrastructure and engineering works at Parcel H1c(ii) on land at Comeytrove/Trull (resubmission of 42/20/0056)	Approved	20 September 2022
42/21/0046	Application for approval of reserved matters following outline application 42/14/0069 for a local equipped play area (LEAP), landscaping, drainage and associated engineering operations, referred to as Garden Park, on land at Comeytrove/Trull	Approved	4 April 2022
42/21/0058	Re pointing of former kitchen garden wall (Building A) with removal of loose stones, removal of attached modern industrial shed along stable blocks northern wall and making good of gable end (Building B), and removal of stub wall (Building G) at the stable block associated with Comeytrove Manor, Manor Industrial Estate, Taunton	Pending	

42/21/0077	Application for a non-material amendment to application 42/14/0069 for realignment of the approved A38 roundabout on land south of the A38, Comeytrowe	Approved	17 December 2021
42/21/0068	Conversion and change of use from commercial (Class E) to 1 No. residential dwelling at The Stable Block, Comeytrowe Manor West, Lipe Hill Lane, Comeytrowe	Pending	
42/21/0069	Conversion and change of use from commercial (Class E) to 1 No. residential dwelling at The Stable Block, Comeytrowe Manor West, Lipe Hill Lane, Comeytrowe	Pending	
42/22/0026	Application for a Non-Material Amendment to application 42/20/0042 to introduce a turning head at the entrance to the approved pumping station compound and associated delivery of designated cycle lane through the site on land at Comeytrowe Rise, Trull	Refused on procedural grounds – not an NMA	21 April 2022
42/22/0040	SCC Consultation – Erection of primary school and nursery, to include construction of sports pitches, parking area and access onto spine road incorporating landscaping and infrastructure on land at Comeytrowe, Taunton <i>For the full application file visit SCC's Planning register online, ref SCC/3938/2022</i>	Pending	Comments sent to SCC 26 May 2022
42/22/0043	Variation of Condition No. 02 (approved plans), for the inclusion of a turning head at the entrance of the approved pumping station compound, of application 42/20/0042 at Orchard Grove New Community, Comeytrowe Rise, Taunton	Pending	Deferred from October 2022 Planning Committee.
42/22/0056	Application for Approval of Reserved Matters following Outline Application 42/14/0069 for the appearance, landscaping, layout and scale for the strategic infrastructure works, including associated green infrastructure	Pending	

	and drainage, associated with the delivery of infrastructure roads WR02 and WR03 at Orchard Grove Community, Comeytrove		
42/22/0054	Erection of a care home (Use Class C2) comprising of 68 No. bedrooms with associated staff facilities, access, landscaping, parking and associated works on land at Comeytrove, Taunton	Pending	
42/22/0055	Application for approval of reserved matters following outline approval 42/14/0069 for the appearance, landscaping, layout and scale of the strategic infrastructure associated with the delivery of the employment zone including employment estate roads, green infrastructure, ecology mitigation, drainage, earth re-modelling works and hard landscaping associated with the local square at Orchard Grove Community Employment Zone, land adjacent A38, Taunton	Pending	
42/22/0056	Application for Approval of Reserved Matters following Outline Application 42/14/0069 for the appearance, landscaping, layout and scale for the strategic infrastructure works, including associated green infrastructure and drainage, associated with the delivery of infrastructure roads WR02 and WR03 at Orchard Grove Community, Comeytrove	Pending	
42/22/0062	Application for the approval of reserved matters following outline application 42/14/0069 for the appearance, landscaping, layout and scale for the erection of 20 No. dwellings, hard and soft landscaping, car parking including garages, internal access roads, footpaths and circulation areas, public open space and drainage with associated infrastructure and engineering works comprising Parcel H1f(i) on land west of Comeytrove Lane, Taunton	Pending	

42/22/0063	Application for the approval of reserved matters following outline application 42/14/0069 for the appearance, landscaping, layout and scale for the erection of 51 No. dwellings, hard and soft landscaping, car parking including garages, internal access roads, footpaths and circulation areas, public open space and drainage with associated infrastructure and engineering works comprising Parcel H1f(ii) together with additional details as required by Condition No's. 7, 9, 12, 13, 14, 15, 16, 18, 19, 20, 21 and 23 on land west of Comeytrove Lane, Taunton	Pending	
42/22/0064	Variation of Condition No's. 02, approved plans, (for alterations to common infrastructure, including drainage attenuation basins, retaining structures and earthworks, site remodelling, engineering works and landscape planting) and 04, landscaping details, of application 42/19/0053 on land at Comeytrove, Taunton	Pending	

6. Environmental Impact Assessment

- 6.1 Upon receipt of an application the Council has to consider if the development falls into Schedule 1 or 2 of the Environment Impact Assessment Regulations. The Council concludes it falls into neither.
- 6.2 Then the Council must consider if the application is:
- (i) a subsequent application in relation to Schedule 1 or Schedule 2 development
 - (ii) has not been subject to a screening opinion and
 - (iii) is not accompanied by an ES (under Reg 9 of the EIA regulations).
- 6.3 In this case the Garden Community development fell within Category 10b (Urban Development Projects) of Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and the outline application was accompanied by a full Environment Statement.
- 6.4 The Council therefore must assess whether the information it has within the outline ES is sufficient to determine the application now before it.

6.5 The conclusions hereon are such that the Council considers the application as an application for reserved matters will not have any further significant environmental effects over and above those assessed at the outline stage and a further environmental statement is not required.

7. Habitats Regulations Assessment

- 7.1 Since the granting of outline planning permission in August 2019 there has been a material change in circumstances which has required the Council, as the competent authority, to reassess a matter in relation to the Conservation of Habitats and Species Regulations 2017 (as amended) ('the Habitats Regulations') and the lawful approach to the determination of planning applications in light of recent advice from Natural England ('NE').
- 7.2 In a letter, dated 17 August 2020, NE advised the Council that whilst the Somerset Levels and Moors Special Protection Area ('SPA') could accommodate increased nutrient loading arising from new development within its hydrological catchment that the Somerset Levels and Moors Ramsar Site ('the Ramsar Site') could not. The difference, NE state, is that whilst such increased nutrient deposition is *"...unlikely, either alone or in combination, to have a likely significant effect on the internationally important bird communities for which the site is designated"* as regards the SPA such a conclusion cannot be drawn in relation to the Ramsar Site.
- 7.3 The typical consequence of such excessive phosphate levels in lowland ditch systems is *"the excessive growth of filamentous algae forming large mats on the water surface and massive proliferation of certain species of Lemna"* NB: (Lemna refers to aquatic plants such as duckweed).
- 7.4 This excessive growth *"adversely affects the ditch invertebrate and plant communities through... shading, smothering and anoxia (absence of oxygen)"* which in turn allows those species better able to cope with such conditions to dominate. The result is a decline in habitat quality and structure. NE state that *"The vast majority of the ditches within the Ramsar Site and the underpinning SSSIs are classified as being in an unfavourable condition due to excessive phosphate (P) and the resultant ecological response, or at risk from this process"*.
- 7.5 NE identify the sources of the excessive phosphates as diffuse water pollution (agricultural leaching) and point discharges (including from Waste Water Treatment Works ('WWTWs')) within the catchment noting that P levels are often 2-3 times higher than the total P target set out in the conservation objectives underpinning the Ramsar Site. In addition NE note that many of the water bodies within the Ramsar Site have a phosphate level classed as significantly less than 'Good' by reference to the Environment Agency's Water Framework Directive and that the river catchments within the wider Somerset Levels are classed as having a *"Poor Ecological Status"*.
- 7.6 At the time of the letter the issue in terms of the Ramsar Site was that the conservation status of the designated site was 'unfavourable' but in a recent

SSSI Condition Change Briefing Note for the Somerset Levels and Moors dated May 2021 (uploaded to this applications' online case file) the overall condition across all Somerset level and Moors SSSI's is 'Unfavourable Declining' due to evidence of failing water quality, most notably high Phosphate levels.

- 7.7 NE have advised the Council that in determining planning applications which may give rise to additional phosphates within the catchment they must, as competent authorities, undertake a Habitats Regulations assessment and undertake an appropriate assessment where a likely significant effect cannot be ruled out. NE identify certain forms of development affected including residential development, commercial development, infrastructure supporting the intensification of agricultural use and anaerobic digesters.
- 7.8 The project being assessed here will result in a positive phosphate output and therefore the wastewater from the development will add to the phosphate levels within the Somerset Levels and Moors Ramsar Site ('the Ramsar Site'). The pathway is via the wastewater treatment works. Therefore, the surplus in the phosphate output would need to be mitigated in order to demonstrate phosphate neutrality and ensure no significant adverse impact on the affected designated area.
- 7.9 In response to this situation the Development Consortium acted quickly to ascertain the phosphate load to mitigate and the necessary solution, with help and assistance from the Council and Natural England. Natural England's advice is that achieving nutrient neutrality is one way to address the existing uncertainty surrounding the impact of new development on designated sites.
- 7.10 This has resulted in the submission of additional key supporting documents; a Phosphate Mitigation Strategy, a Fallow Land Management Plan, a Shadow HRA Assessment Report and Phosphate Strategy Composite Plan. These detailed documents are available on the planning case file (42/22/0027) on the Council's website.
- 7.11 When calculating the phosphate load from development and subtracting this from the phosphates produced from current land usage neutrality can be achieved whilst also applying all suitable buffers. The Shadow Habitats Regulations Assessment (sHRA) report concludes that in order to achieve phosphate neutrality for Parcel H1e part of the site in the Eastern Neighbourhood will be fallowed. Given Parcel H1e itself was to be fallowed to provide mitigation for previously approved parcels more land has been allocated for fallowing in the Eastern Neighbourhood to compensate.
- 7.12 The key design principle for fallowing is the cessation of arable farming and the application of fertilizer, beyond that the creation and maintenance of permanent vegetative cover (as opposed to bare ground) will provide soil stability and minimise the runoff of silt and/or phosphate from the land.
- 7.13 Management of the Fallow Land will be undertaken in accordance with the submitted Fallow Land Management Plan.

- 7.14 The proposed Phosphate Mitigation Strategy is an interim measure for the Parcel H1e Reserved Matters application, a separate but similar approach has been taken with Parcels H1a, H1b, H1c(i), H1c(ii) and H1d. As explained land is to be taken out of agricultural production prior to the first occupation.
- 7.15 In summary a Likely Significant Effect on Somerset Levels and Moors Ramsar has been identified as a result of water quality (phosphate) impacts, in isolation and in combination with other plans and projects. Mitigation in the form of land-use change and fallowing of agricultural land, secured through delivery of a Management Plan, would ensure that phosphates generated by this Reserved Matters Site would be mitigated. It is considered that the Council can conclude that there would be no adverse effect on the integrity of the Conservation Objectives of the Somerset Levels and Moors Ramsar Site, either in in-isolation or in combination.
- 7.16 Extensive discussion between the Consortium and Natural England has occurred over the course of the development so far resulting in the approach taken and the submitted documents.
- 7.17 Natural England has confirmed that the submitted sHRA provides a firm basis for the LPA to assess the implications of the reserved matters application in view of the conservation objectives for the Somerset Levels & Moors Ramsar Site, and they would anticipate the LPA being able to reach a conclusion of no adverse effect on the integrity of the site. Somerset Ecology Services as the Council's/LPA's retained Ecologists have agreed that the sHRA can be adopted by the Council. The sHRA highlights the site is very close to exhausting its onsite fallowing credits.
- 7.18 The method of securing the specific mitigation measures in this situation has been discussed and in this instance a suitably worded condition is proposed as has been the case for all previous parcels.
- 7.19 The judgment whether a proposal will adversely affect the integrity of the designated site for the purposes of Regulation 63(5) of the Habitats Regulations is one for the LPA to make. In conclusion the LPA view 70 additional dwellings are deliverable whilst maintaining phosphate neutrality and therefore ensuring no adverse effect on the integrity of the Somerset Levels and Moors Ramsar site.
- 7.20 In the wider context recent Government announcements in the form of the recent Written Ministerial Statement and the Letter to Chief Planning Officers, are to be treated with cautious optimism. This is important in considering the continued development of this site.
- 7.21 The Written Ministerial Statement (WMS) issued on 20 July 2022, set out details of a national nutrient mitigation scheme to be funded by Defra/DHULC and implemented by Natural England. The DLUHC letter to Chief Planning Officers dated 21 July 2022 gives further details and states that the national nutrient mitigation scheme will enable LPA's to grant permission subject to

conditions or obligations securing mitigation and phasing development if needed.

- 7.22 The WMS also states that there will be a new legal duty imposed upon water companies in England to upgrade wastewater treatment works in ‘nutrient neutrality’ areas to the highest technically achievable limits by 2030 - the Government will be tabling an amendment to the Levelling Up and Regeneration Bill. The DLUHC letter states that, as a result of the new legal duty on water companies, the pollution levels after 2030 via water treatment works will be much reduced and so a lower level of mitigation will be required, thus reducing the overall mitigation burden on housing developments.
- 7.23 DLUHC state they will make clear in future planning guidance that judgements on deliverability of sites should take account of strategic mitigation schemes and the accelerated timescale for the Natural England’s mitigation schemes and immediate benefits on mitigation burdens once legislation requiring water treatment upgrades comes into force.
- 7.24 The Government will also be bringing forward proposals to ‘reform’ the Habitats Regulations.
- 7.25 However, none of the above has yet been translated into legislation or even planning guidance as yet. As such this scheme seeks to consume its own smoke, but as referenced above there may be the need, in the absence of the legislation and/or planning guidance coming into force swiftly, that this scheme will need to explore other longer-term solutions.

8. Consultation and Representations

Statutory consultees (the submitted comments are available in full on the Council's website.

Date of Consultation: 04 April 2022

Date of revised consultation: September 2022 (neighbours and selected consults only) and October 2022 (selected consults only).

8.1 Statutory Consultees

- 8.1.1 It should be noted not all statutory consultees are consulted on all planning applications. The circumstances for statutory consultation are set out in the Development Management Procedure Order.

Statutory consultee	Comments	Officer comments
Trull Parish Council	On original plans - <i>“Trull Parish Council objects to application 42/22/0027 on the following grounds: 1. The affordable housing is not spread throughout this application in a way to</i>	1. The location spread of Affordable Housing is supported by the Housing Enabler.

	<p><i>make it indistinguishable from open market housing which is a requirement.</i></p> <p><i>2. Unoriginal, bland housing that does not satisfy the high level of design required by Somerset West and Taunton's Garden Town status.</i></p> <p><i>3. The phosphate issue is not resolved and the smaller part of area H1E appears on the map provided by Brookbanks as being fallow land. There is no updated phosphate mitigation plan available".</i></p>	<p>2. The Dwelling Design follows that of previously approved applications.</p> <p>3. A phosphate mitigation plan has been submitted.</p>
<p>Comeytrove Parish Council (Neighbouring Parish)</p>	<p>On original plans - <i>"Resolved: To OBJECT to this application with the following comments: To support the findings in the Green Infrastructure report on this application, and to raise concerns that the application does not fit with the "Garden Town principle"</i></p>	<p>The scope of the application and the reserved matters are discussed from Para 12.6 onwards. It has not been expressly stated why the PC feel the application does not 'fit' with the GT principles.</p>
<p>Bishops Hull Parish Council (Neighbouring Parish)</p>	<p>On original plans - <i>"Resolved: To support the objections raised by Trull Parish Council and to object on the basis of a) the grouping of the affordable housing, which should be distributed b) insufficient levels of green infrastructure, including street trees and c) insufficient design quality required by Taunton's Garden Town status".</i></p>	<p>1. The location spread of Affordable Housing is supported by the Housing Enabler.</p> <p>2. The scope of the application and the reserved matters are discussed from Para 12.6 onwards.</p> <p>3. It has not been expressly stated why the PC feel the application is not of sufficient quality.</p>
<p>Highway Authority - SCC</p>	<p><i>"Summary: Highways Development Management is in receipt of the above planning application submission, for which we have reviewed the highways and transportation aspects of the proposal and have the following observations to make. A summary of the latest highway comments is as follows:</i></p> <ul style="list-style-type: none"> <i>• There are no significant concerns relating to the proposed highway arrangements (significant sections have been approved as part of earlier applications), and the proposed</i> 	<p>The comments about the cycling infrastructure relate to the roll out of routes agreed via Condition 26 which the applicant is aware of.</p> <p>The specific cycle crossing point will be conditioned.</p>

	<p><i>residential parking levels are considered to be acceptable.</i></p> <ul style="list-style-type: none"> • <i>Comments relating to the standard of the proposed cycle route require attention.</i> • <i>There is a query relating to EV charging provision that needs to be addressed.</i> • <i>The Construction & Environmental Management Plan needs to be updated before that document can be approved.</i> <p><i>It is recommended that further information is requested from the applicant at this time”.</i></p> <p>Upon receipt of further information:</p> <ul style="list-style-type: none"> • <i>“Firstly, with regards to EV Charging this related to the lack of charging points for properties T273, T274, T276 and T277. In response the applicant has provided a table of responses in regards this matter. From the details provided the applicant has provided further details in relation to these properties. The applicant has stated that they are not able to provide EV charging for these properties. The Highway Authority notes the reasons provided by the applicant and although it is unfortunate that suitable charging points cannot be provided the applicant’s position is understood. The Highway Authority would recommend that the occupiers should be sign posted to communal charging points if possible.</i> • <i>Turning to the next point and the provision of cycle infrastructure provision, as the Highway Authority set out previously this submission didn’t appear to respond to comments relating to highways infrastructure to reflect the requirements of LTN 1/20. In response the applicant has stated that a compliant LTN 1/20 crossing at the junction has now been designed as part of this proposal. Although this is welcomed it is not clear from the submitted drawings which plan these works have been located on. Consequently, the applicant will need to provide further clarification on this</i> 	<p>A revised EV charging plan has been received.</p> <p>The revised CEMP agreed by the HA will be considered as part of Condition 14 of the Outline consent.</p>
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	<p>matter so that the Highway Authority can suitably assess what has been proposed.</p> <ul style="list-style-type: none"> Finally in terms of the CEMP our previous comments required this document to be updated to take account of the fact that part of the wider site is now occupied. Having reviewed the submitted document the applicant has now taken account of the onsite occupations. It is noted that the applicant has now amended the document so that it includes public consultation with the residents in relation to any changes that might be required throughout the construction phase. These amendments are acceptable as such the Highway Authority would have no objection to this condition being discharged". 	
Natural England	<p>After a meeting with the applicants Natural England confirmed they are happy with the approach and the current crop of applications, including this one, can be delivered through following of land within the overall red line of Comeytrove. This agreement was reliant, as per previous phases, that the backstop measure that the fallowed land will be left to natural regeneration should alternative permanent measures not be found, was included.</p>	<p>The backstop referred to is contained within the Fallow Land Management Plan subject to proposed Condition 06.</p>
Public Rights of Way - SCC	<p>On original plans - No objection. <i>"The applicant will need to demonstrate to ourselves and Highways colleagues that the crossing point of public footpath T 29/11 over the proposed access road is safe for the public to use and constructed appropriately through the technical approval process as part of a relevant legal agreement"</i>. An Informative Note is suggested.</p>	<p>Informative note imposed, this will be dealt with during the section 38 estate road adoption process overseen by SCC.</p>
Environment Agency	<p>On original plans - No objection in principle. <i>"Phase H1E is located within Flood Zone 1 at the lowest risk of flooding, the ideal flood zone to develop"</i>.</p>	<p>No further action.</p>
ICOSA - NAV	<p>No comments received.</p>	
Lead Local Flood Authority (LLFA) - SCC	<p>On submission of clarifying information - <i>"The LLFA has reviewed this in the context of recent discussions regarding parcel H1c ii. In brief, we have the same comments on</i></p>	<p>Conditions imposed.</p>

	<i>this application and are satisfied that the proposals are in line with the approved site wide strategy. Therefore the LLFA would be satisfied if additional conditions were also set for this application to cover the construction stage drainage and a pre occupation condition relating to the maintenance plan”.</i>	
Historic England	On original plans - No comments to make, refer to Conservation Officer and Archaeologist.	No further action.
National Highways	On original plans - Offer no objection.	No further action.

8.2 Non-Statutory Consultees

Non-Statutory consultee	Comments	Officer comments
Affordable Housing	Several detailed points were referred back to the applicant, generally relating to internal matters, and the size of parking spaces, which were all resolved bar one regarding an internal door.	This matter will be resolved via separate conversations between the SWT Affordable Housing Team, the OT, LiveWest and the developer.
Crime Prevention Officer	On original plans - No objections, commentary given on layout, orientation, boundaries, POS and car parking. The applicant is referred to Secured by Design 2019 guidance. A specific comment is given regarding Plots 293-306 which would benefit from a higher boundary treatment due to backing onto POS.	The boundary treatment to plots 293-306 is discussed at Para 12.17. Informative note imposed referring to SBD.
SWT Conservation Officer	On original plans - <i>“The site is located in predominantly undeveloped agricultural land, which historically functioned with the original farmstead that included a working mill. Although the identified land is no longer a functioning stead, it does provide a setting that makes a valuable contribution to the historic and architectural interest of Comeytrowe Manor a Grade II heritage asset with associated farmstead.</i>	No further action.

	<p><i>The removal of the modern utilitarian structures within the immediate setting of the listed building to accommodate the wider development is welcomed. The following comments are therefore primarily focused on the proposed design and interpretation of the local vernacular and traditional building forms to the immediate north of the farmstead in context of the agricultural setting of Comeytrove farmstead.</i></p> <p><i>The intervisibility between the proposed development and the historic stead will be prominent in views from the proposed access route to the site and towards the east of the site through new residential development sited north and in close proximity of the existing historic farmyard.</i></p> <p><i>In summary, the introduction of residential development within the setting would inevitably result in harm to the open landscape which provides the historic context in which the listed farmstead is experience. However, the setting has mostly been compromised by the modern structures that are to be removed as part of this proposal”.</i></p> <p>Additional commentary is given regarding The Mill building which sits within the historical boundary of Comeytrove Manor, and is considered curtilage listed. The view of the Conservation Officer is that the future of this heritage asset, which could be for a community use, would need to be addressed and resolved prior to the progression of Parcel H1F and the intended s73 for revisions to the Public Open Space infrastructure.</p>	<p>The Mill is now within the ownership of the Consortium and there have been no plans progressed to repair, conserve and use the building to date.</p>
<p>South West Heritage Trust - Archaeology</p>	<p>On original plans - “As far as we are aware there are limited or no archaeological implications to this proposal and we therefore have no objections on archaeological grounds”.</p>	<p>No further action.</p>
<p>SWT Placemaking Officer</p>	<p>On original plans - Concern raised over compliance with the approved Masterplan and Neighbourhood Design</p>	<p>The design, layout and approach to landscape follows</p>

	<p>Guide. No Appearance Palette has been submitted. House types do not follow the precedents should in the Neighbourhood Design Guide. The density does not follow the Neighbourhood Design Guide. The layout is over-engineered and lacks street continuity and coherence. The Pocket Park needs holistic consideration.</p> <p><i>“The grouping that comprises of units 393 – 306 is shown in the Masterplan and Design Guide as a free standing outward looking island. This proposed is an inward looking scheme with back gardens facing outwards. This is unacceptable. Plot 293 could be better positioned to terminate the long views down the access road”.</i></p> <p>More street trees should be included. A different approach to attenuation basins would be far better. The house types do not reflect local vernacular building forms. There is little differentiation between the design quality of key and secondary key buildings. There is virtually no roofscape interest. <i>“This RM gives very little consideration to sustainable placemaking and working towards carbon neutrality – none of the houses have PV’s, no recycling storage, bicycle storage is not integrated into house designs (in particular to the front of houses to encourage the use of cycling as the preferred mode of travel), sedum roof or slate PV’s could be considered etc. These are shown as requirements for Garden Town developments both in the approved Garden Town Vision and the SW&T Design Guide SPD. Sustainability and climate change concerns were raised by the Design Review Panel for this development and yet have not been addressed. Scant regard has been paid to climate change and sustainability matters”.</i></p>	<p>that established by previous approvals, and before those the requirements and obligations set out in the outline consent, tested for financial viability.</p>
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<p>SWT Green Infrastructure Officer</p>	<p>On original plans – More trees could be included. Street Design differs from the Neighbourhood Design Guide. Comments relating to boundary treatment backing on to Highfield Park. The drainage scheme could better integrate with the street layout including swales and rain gardens. <i>“Rather than allocate a large attenuation area that is unused most days of the year. I would prefer open spaces to be designed as multifunctional spaces allowing to capture water during heavy rain events but still used as a place to play, meet, and interact during most days of the year”.</i></p>	<p>Trees are always encouraged and many have been included; it is accepted more could be planted. The drainage principles were agreed via the outline consent and then via the Infrastructure application in 2019.</p>
<p>SCC Ecologist</p>	<p>Condition 18 (Updated LEMP and ECMS) - Needs updated surveys to inform Condition 19 (Ecological Management Plan) Can be discharged Condition 20 (Updated Surveys) – Updated surveys required. Condition 21 (Lighting for Bats) A lighting plan for this parcel is required.</p> <p>sHRA – <i>“SES are satisfied that the current applications can be realistically delivered and fulfilled through the fallowing of land which is within the overall redline boundary of Comeytrove (specifically concerning the wider Outline consent). Similarly, to the arrangements agreed with previous approved phases will be subject to including the current ‘interim’ measure as a permanent measure concerning the the fallowed land (i.e. leaving the land to naturally regenerate) if a permanent measure(s) cannot be found in the medium to long term”.</i></p>	<p>The outline consent contains 4 conditions (18-21) that provide a framework to assess ecological impacts and provide mitigation and enhancement. The approval of these conditions is a separate matter and will not affect the layout and so this application can be approved.</p>
<p>SWT Tree Officer</p>	<p>On original plans – The Arb Technical Note is agreed. Comments about the details of levels near to the Veteran tree not being available. <i>“Space should be made for large species within the housing layouts.</i></p>	<p>The Tree Officer notes the number of Extra Heavy Standard trees, these are large</p>

	<p><i>Highlights the need for a watering regime due to the number of Extra Heavy Standards. Wary of the use of columnar and fastigiate trees”.</i></p> <p>Updated comments on review of additional information – <i>“I've found the cross-sections and they look reasonable in terms of gradients and excavations required. With the extra clearance afforded this tree because of its veteran status I'm confident that no damage will come to it, so long as the submitted tree protection plans and arb method statements are strictly adhered to, and the works are overseen by their project arborists. I note that the footpath cutting across the corner to the north of the road that was shown on the original plans seems to have been omitted”.</i></p>	
Somerset Waste Partnership	<p><i>I can see some of the properties have more than three steps to their waste collection area. The current building regulations (2010 section H6) 1.10 state that for waste containers up to 250 Litres, steps should be avoided between the container store and the collection point wherever possible and should not exceed three in number.</i></p>	<p>Whilst not ideal the provision of steps is allowed for by Building Regulations. Any deviance will be picked up at that stage.</p>
Devon and Somerset Fire and Rescue	<p>On original plans - Comments relating of means of escape, and the availability of fire hydrants.</p>	<p>These matters are covered by Building Regulations; no further action.</p>
Blackdown Hills ANOB	<p>On original plans – No comments to make.</p>	<p>No further action.</p>

8.3 Local representation

8.3.1 In accordance with the Council’s Adopted Statement of Community Involvement this application was publicised by letters of notification to neighbouring properties and several site notices were displayed in streets surrounding the site on 10 April 2022.

8.3.2 2 letters from the same objector were received. A summary of comments is provided in the table below.

Comment	Officer comment
Policy	

The proposal fails to mention the Neighbourhood Plan.	See Section 9.4.
Design and Layout	
The design does not accord with SWT's Design Guide.	The scope of the application and the reserved matters are discussed from Para 12.6 onwards.
The houses are only distinguishable by minor variations in materials.	The scope of the application and the reserved matters are discussed from Para 12.6 onwards.
Cycle and bin storage facilities should be near to the front door.	The approach to this follows the previous 5 RM approvals.
Many of the properties have steps to the front door.	The development is being built on a gradient. Where there may be steps to the front door there is often level access provided to the back door.
There are no LEAPs or NEAPs in this parcel.	Correct. The location of play areas is set out in the Design Guide. A LEAP adjoins this parcel.
Affordable Housing is not evenly distributed.	The distribution is considered acceptable.
None of the GI officer's comments have been actioned.	Trees are always encouraged and many have been included; it is accepted more could be planted and the Committee could well seek this. The drainage principles were agreed via the outline consent and then via the Infrastructure application in 2019.
The Tree Officer has concerns about the Veteran Tree.	These concerns have been resolved.
Highways	
Will private drives be adopted?	No they are private as the name suggests and will not be adopted.
Commentary is given on the submitted CEMP. The enforcement of current CEMPs is questioned.	The CEMP will be agreed via the relevant Outline condition should this application be approved.
Drainage	
There is no mention of the SUDs hierarchy. The developers have prioritised the number of houses on site, rather than civil engineering or aesthetic considerations.	The drainage principles were agreed via the outline consent and then via the Infrastructure application in 2019. The number of dwellings allowed is set by the Outline and the approach to engineering was agreed via the Infrastructure application in 2019.
Other	
Issues raised about the answers to questions on the application form.	Some of the answers may be questionable but do not materially

	affect the determination of the application.
The energy plan builds in obsolescence.	The plan is in accordance with current Building Regulations.
Parish Councils should be given chance to respond again once all consultees have commented.	This is not common practice.

8.3.3 There were no specific letters of support received.

9. Relevant planning policies and Guidance

9.1 Section 70(2) of the Town and Country Planning Act 1990, as amended ("the 1990 Act"), requires that in determining any planning application regard is to be had to the provisions of the Development Plan, so far as is material to the application and to any other material planning considerations. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) ("the 2004 Act") requires that planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise. The site lies in the former Taunton Deane area. The Development Plan comprises the Taunton Deane Core Strategy (2012), the Taunton Site Allocations and Development Management Plan (SADMP) (2016), the Taunton Town Centre Area Action Plan (2008), Somerset Minerals Local Plan (2015), and Somerset Waste Core Strategy (2013).

9.2 Listed Buildings and Conservation Areas Act 1990 section 66 and 72 is relevant in order to assess the impact on heritage assets.

9.3 Both the Taunton Deane Core Strategy and the West Somerset Local Plan to 2032 were subject to review and the Council undertook public consultation in January 2020 on the Council's issues and options for a new Local Plan covering the whole District. Since then the Government has agreed proposals for local government reorganisation and a Structural Change Order agreed with a new unitary authority for Somerset to be created from 1 April 2023. The Structural Change Order requires the new Somerset authority to prepare a local plan within 5 years of vesting day

9.4 Relevant policies of the development plan in the assessment of this application are listed below.

Core Strategy 2012

SD1 - Presumption in favour of sustainable development

CP1 - Climate change

CP4 - Housing

CP5 - Inclusive communities

CP6 - Transport and accessibility,

CP7 - Infrastructure

CP8 - Environment

SP2 - Realising the vision for Taunton
SS7 - Comeytrowe / Trull - Broad Location for Growth
DM1 - General requirements
DM4 - Design
DM5 - Use of resources and sustainable design

Site Allocations and Development Management Plan 2016

A1 - Parking Requirements
A2 - Travel Planning
A3 - Cycle network
A5 - Accessibility of development
ENV1 - Protection of trees, woodland, orchards and hedgerows
ENV2 - Tree planting within new developments
ENV3 - Special Landscape Features
I3&4 - Water infrastructure
D7 - Design quality
D8 - Safety,
D9 - A Co-Ordinated Approach to Dev and Highway Plan,
D10 - Dwelling Sizes
D12 - Amenity space
Site allocation policy TAU1 - Comeytrowe / Trull

Other relevant policy documents

Somerset West and Taunton Design Guide
Taunton: The Vision for our Garden Town and the Taunton Design Charter and Checklist
Somerset West and Taunton Council's Climate Positive Planning: Interim Guidance Statement on Planning for the Climate Emergency 2022
The Somerset County Council Parking Strategy (2013) supports the provision of EV charging points in new residential developments.

Neighbourhood Plans

The Trull Neighbourhood Plan is part of the development plan and a material consideration. The Trull Neighbourhood Plan includes policies that are aligned with the adopted policies in the Taunton Core Strategy and Site Allocations and Development Management Plan (SADMP), and provide for sustainable development in the parish.

- Policy F1 Reducing Flood Risk requires proposals to include an acceptable SuDS system and manage surface water in a way that adds value, these principles have been established at outline stage with details being provided in this application to satisfy the Local Lead Flood Authority.
- E2 Woodland, Trees and Hedgerows, supporting broadleaved tree planting and hedgerow enhancement. New trees and retained hedges feature in this development.
- H2 Housing 'in keeping' requires housing to demonstrate appropriate compliance with urban design principles. Housing should be 'in keeping' with neighbours however this it is acknowledged that this is most relevant for housing within existing settlements. Housing in the proposed parcel is most closely associated with properties that are

- either rendered or in red brick.
- H3 Affordable Housing requires affordable housing to be indistinguishable from market housing, it is considered this has been achieved.
- H5 External Space requires developments to provide storage space for waste and recycling bins, this has been provided in the form of areas of hard standing for each plot.

The National Planning Policy Framework

The revised National Planning Policy Framework (NPPF), last update July 2021 sets the Government's planning policies for England and how these are expected to be applied.

Relevant Chapters of the NPPF include:

2. Achieving sustainable development
5. Delivering a sufficient supply of homes
6. Building a strong, competitive economy
8. Promoting healthy and safe communities
9. Promoting sustainable transport
11. Making efficient use of land
12. Achieving well-designed places
14. Meeting the challenge of climate change, flooding and coastal change
15. Conserving and enhancing the natural environment
16. Conserving and enhancing the historic environment

All policies and material considerations can only be considered as far as they relate to the details for which reserved matters approval is sought, as defined in the Development Management Procedure Order (DMPO) 2015.

10. Conclusion on Development Plan

- 10.1 To properly perform the S38(6) duty the LPA has to establish whether or not the proposed development accords with the development plan as a whole. This needs to be done even if development plan policies "pull in different directions", i.e. some may support a proposal, others may not. The LPA is required to assess the proposal against the potentially competing policies and then decide whether in the light of the whole plan the proposal does or does not accord with it. In these circumstances, the Officer Report should determine the relative importance of the policy, the extent of any breach and how firmly the policy favours or set its face against such a proposal.
- 10.2 The relevance of and weight given to material considerations is vitally important in assessing the 'planning balance'. This project relates to a historic allocation, a 2014 application and 2019 outline approval informed by a viability assessment. Importantly also pre-Garden Town allocation. The Urban Extensions of Comeytrove and Staplegrove were therefore brought forward, allocated, financially assessed and master planned in a different policy context to that which exists today. The challenge is to ensure sustainable development is secured, within the established legal framework to maintain momentum in housing delivery.

- 10.3 Indeed, SWT published the Strategic Housing and Employment Land Availability Assessment (SHELAA) in May 2022. The former TDBC LPA area had a 4.04 Year Housing Land Supply (YHLS).
- 10.4 As a result of the Phosphates Planning Committee decision on 21 July 2022 to bring forward interim measures to unlock development in the former TDBC area and taking into account the Written Minister Statement 20 July 2022 the Council considers that it could demonstrate a 5YHLS.
- 10.5 The interim measures, the phosphates credits, could unlock between 150 and 780 dwellings and this would result in a HLS of between 4.25 and 5.13 years. At the upper end this would mean that *Presumption* would not apply.
- 10.6 Clearly the sites in the supply need to come forward and this scheme of 55 units with a phosphate solution is part of a site which underpins and contributes significantly to the Council's five-year housing land supply.
- 10.7 This report assesses the material planning considerations and representations before reaching a conclusion on adherence with the development plan as a whole.

11. Local Finance Considerations

Community Infrastructure Levy
Creation of dwellings is CIL liable.

Amended scheme development measures approx. 8180 sqm.

The application is for residential development in Taunton where the Community Infrastructure Levy (CIL) is £70 per square metre. Based on current rates, the CIL receipt for this development is approximately £572,750.00. With index linking, this increases to approximately £767,250.00.

This calculation does not take account of any exemptions that may be claimed and granted. Exemptions will apply for example for each affordable house constructed.

12. Material Planning Considerations

- 12.1 The main planning issues relevant in the assessment of this application are as follows:
- The principle of development
 - The scope of this application
 - Issues raised through the consultation process

Principle of Development

- 12.1. The principle of developing this site to provide a new sustainable neighbourhood has been established by the outline approval. This reserved matters application seeks approval for detailed matters in relation to layout, scale, appearance and landscaping and as explained above consideration is limited to these issues.
- 12.2. A full and detailed Environmental Statement was submitted with the Outline application. It was not required to be updated to support this application.
- 12.3. However, as Members will be aware the issue arising from the intervention of Natural England pertaining the phosphorus levels on the Somerset Levels and Moor has required the submission of a Shadow Habitats Regulations Assessment. This matter is described and discussed following this section of the report.

Negotiated Amendments

- 12.4. In accordance with the NPPF, officers have worked proactively with the applicants to secure improvements to the proposal. A number of design changes have been secured over several sets of amended plans.
- 12.5. These can be summarised as improvements to dwelling design and streetscape, revised boundary treatments, landscaping changes and improvements and increased justification for certain design approaches.

The Scope of this application

- 12.6. The outline application accompanied by an Environmental Statement was approved on the basis that reserved matters would subsequently be sought for layout, scale, appearance and landscaping. Access was approved as part of the outline application and three Highways related plans for 2 roundabouts on the A38 and Honiton Rd and the secondary 'bus only' access off Comeytrove Lane were approved and listed in Condition 02 accordingly.
- 12.7. Article 6 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 sets out that the reserved matters should encompass some or all of the outstanding details of the outline application proposal, including:
 - landscaping - the improvement or protection of the amenities of the site and the area and the surrounding area, this could include planting trees or hedges as a screen
 - layout - includes buildings, routes and open spaces within the development and the way they are laid out in relations to buildings and spaces outside the development
 - scale - includes information on the size of the development, including the height, width and length of each proposed building
 - appearance - aspects of a building or place which affect the way it looks, including the exterior of the development

- 12.8. Condition 02 of the outline consent stated the development was to be carried out in accordance with 5 parameter plans. These plans had been formulated through consultation and through the conclusions of the Environmental Statement. For example the Environment Statement concluded that there would be policy compliance and no environmental harm caused if the development was developed in line with the guidelines set out on the parameter plans, i.e.: development of a certain height, distribution and density, accessed in the manner set out and with the quantum, distribution and general characteristics of green infrastructure. In many ways the parameter plans established at outline stage form the bones of the skeleton to which the Reserved Matters now represent the flesh.
- 12.9. Applications for Reserved Matters are not full planning applications in the normal sense where all matters are on the table but are instead a matter of assessing compliance with all the matters agreed at the outline stage and via outline conditions. Only the matters of layout, scale, appearance and landscaping are those reserved (or deferred) to this latter stage and they must be guided by the parameter plans set at the outline stage and any conditions attached to the permission.
- 12.10. It should be noted that the Reserved Matters do overlap to an extent and are inextricably linked insofar as changes to one aspect will invariably impact on another.
- 12.11. Access -The Access and Movement Parameter Plan stated in Condition 02 is Plan No. 9603 Rev H. It shows the access points around the periphery of the development for vehicles (incl. bus), cycle and pedestrian. This Reserved Matters application accords with this approved plan. An assessment of the internal movement and access is to be found at Para 12.43.
- 12.12. Landscaping - The Green Infrastructure Parameter Plan stated in Condition 02 is Plan No. 9604 Rev L. It shows the strategic public open spaces to serve the development, the approx. locations of LEAPs and the NEAP, allotments and playing fields, plus proposed structural landscaping and retained/removed hedgerows/trees. This Reserved Matters application accords with this high-level parameter plan.
- 12.13. There is however a conflict with the already approved detailed application for Highfield Park (app ref 42/19/0053) which surrounds the annexed cluster of properties, Plots 293-306. Plot 293 overlaps an area approved as POS. Additional justification for this change was requested and submitted during the course of the application to demonstrate that where in fact two areas overlap, two other areas have been given back to the park neutralising any impact. The Highfield Park plan is itself now subject to proposed revision via a recently submitted s73 application revising elements of the 2019 Infrastructure application. Without wishing to pre-empt the determination of that application before it has been reported to the Planning Committee it is felt the matter results in an equally good arrangement and so whilst there will be regularisation it is not felt that should hold this application from progressing.

- 12.14. Additional landscaping to that retained is provided for in the form of street trees, front gardens, parking areas and within incidental public open space areas. The quantum, distribution and species choice is considered acceptable and follows that approved on previous parcels. A condition relating to protective fencing for existing trees and hedges will be imposed as required by the Council's Tree Officer. In particular, the Veteran Tree will be protected and has been considered though the layout put forward. The Tree Officer has been given reassurances via the submission of cross sections submitted during the application process.
- 12.15. Layout - The Land Use Parameter Plan stated in Condition 02 is Plan No. 9600 Rev L. It shows the area covered by this reserved matters application as being 'residential development' which can include play areas, allotments, drainage basins and incidental landscaping. This parcel does not contain drainage basins, play areas or allotments as they are located elsewhere in line with the approved masterplan. This Reserved Matters application therefore accords with this approved plan.
- 12.16. Condition 04 of the outline consent required the submission of a Neighbourhood Design Guide. This was submitted and approved by the LPA. Within this document an indicative layout was set out. This Reserved Matters does not accord insofar as the annexed cluster of properties, Plots 293-306 were shown to be facing out onto the adjacent open space rather than inward looking to the access road.
- 12.17. This change is felt to be unacceptable by the Placemaking Manager. However, a review of the levels indicate that it is not possible to have north facing units without them looking onto a face of cut land or with other awkward levels changes to the rear. The change to the layout does however present a row of back garden fences to Highfield Park and so additional landscaping has been included. The applicant has chosen not to raise the boundary height to address Secured By Design concerns but has proposed solid walling rather than timber fencing. The other advantage of the approach taken is that wider views towards the Blackdown Hills are retained from Highfield Park.
- 12.18. The infrastructure Reserved Matters application, ref 42/19/0053, also showed some internal estate roads and the location of the more strategic public open space areas which this application also accords with.
- 12.19. The layout provides a suitable quantum of parking spaces, largely on plot, to accord with policy.
- 12.20. A later section of this report assesses the '*Standard of amenity for proposed dwellings*'.
- 12.21. Scale - The Scale Parameter Plan stated in Condition 02 is Plan No.9602 Rev K. It shows the area covered by this reserved matters application as being 'Up to 12.5m' 3-3.5 storey high development. This Reserved Matters application therefore accords with this approved plan.

- 12.22. Density - An integral part of scale and layout is density. The approved Density Parameter Plan stated in Condition 02 is Plan No.9601 Rev I. It shows the area covered by this reserved matters application as being 'Medium to Higher Density' inclusive of predominantly semi-detached units, some detached and some terraced units at a density of 30-50 dwellings per hectare (dph).
- 12.23. This Reserved Matters application shows an averaged density across the whole parcel at 33.2dph.
- 12.24. The plan continues the pattern established by Parcels H1a and H1c(i) whereby semi-detached units dominate, with larger detached units facing open spaces.
- 12.25. Appearance - Appearance is probably the Reserved Matter most concentrated on as the most visible and relatable aspect as it's what you see. Indeed, in assessing the 'appearance' reserved matter it is inevitable that matters of scale and density are referenced as it is not always possible to keep them separate.
- 12.26. Core Strategy Policy DM4 Design, Site Allocations & Development Management Plan (SADMP) Policy D7 Design Quality and Section 12 (Achieving well designed places), together with Chapter 12 of the NPPF are material considerations. The Garden Town Vision Charter and Checklist and the Somerset West and Taunton Design Guide are also material considerations albeit with limited weight given the existence of the outline approval.
- 12.27. Given the strategic nature of this site, this design process has taken place over a number of years, with broader considerations around the site context and structure being considered in principle as part of the Outline application, with the approval of the parameter plans previous discussed.
- 12.28. A condition (4) on the Outline application required the submission of a Site-specific Neighbourhood Masterplan and Design Guide. This document is intended to build on the approved parameter plans and provide a more detailed framework against which mid-level matters of design such as the proposed arrangement of development blocks, streets and spaces can be assessed. A Neighbourhood Design Guide for the Western Neighbourhood (Neighbourhood Design Guide) was agreed in March 2020 after several months of negotiations.
- 12.29. An Appearance Palette is also required by Outline condition (5) for each parcel. This in turn builds on the Neighbourhood Design Guide and provides a framework to assess narrower design considerations such as building design, building materials, surface materials, street furniture and tree species.
- 12.30. These plans and documents further inform how the reserved matters should be considered. This application is accompanied by a Compliance Statement setting out how the applicant believes the proposal accords with the parameter plans, Neighbourhood Design Guide and Appearance Palette.

- 12.31. The Comeytrove Garden Community will deliver a comprehensive landscape and green infrastructure scheme, with substantial areas of open space and tree planting in line with the Garden Town Vision. Much of this green infrastructure has already been designed and approved under application 42/19/0053. This application also approved the strategic Sustainable Urban Drainage Systems (SuDS) and earthworks to create level building plots. This is the work presently occurring across the site.
- 12.32. The SWT Design Guide states that the creation of a design concept, to identify key groupings, focal points/features, character areas, and street and space hierarchy is a very important stage in the design process. The Neighbourhood Design Guide sets out a framework regarding the creation of character areas and nodes, key frontages and groupings development of principles on development blocks, density and height ranges, development block structure, and street and space hierarchy for the Western Neighbourhood.
- 12.33. Within Phase 1, Parcels H1a, H1b, H1c(i) and H1c(ii), H1d, H1e and H1f all form part of Northern Slopes character area. A term used to set out different design characteristics across the site. Phase 2 is known as Hilltop Gardens and the Local Centre is similarly in a separate character area. What this means is that the parcels within each character area should more-or-less appear/look the same. The contrast is provided between character areas and should be subtle, akin to the use of a different palette of materials, different planting types, height, density, modern design over traditional design or urban design changes. The key is subtlety to make one area distinct from another to aid wayfinding and legibility.
- 12.34. As such the approach to parcel H1e has been both informed by reference to the suite of design documents but also importantly the Planning Committee's interpretation of them in already resolving to approve the Reserved Matters applications for H1b, H1a, H1c(ii), H1d and most recently H1c(ii) despite several design facets remaining problematic to officers and councillors alike. It was apparent the committee, as the decision-maker, attributed weight to a wide range of issues in making a decision based on the planning balance which it was perfectly entitled to do. The appearance of the Northern Slopes character area which impacts the whole of phase 1 has therefore in part been influenced by the committee decisions on these previous parcels.
- 12.35. Numerous amendments have been made to the Reserved Matters submission to both align with those parcels already approved but to also respond to new settings such as the public open space/countryside edge and to improve and clarify movement within the parcel and how it connects to other parts of the site.
- 12.36. The comments of the GI Officer and Tree Officer are noted; green infrastructure has been considered, species choices made, street trees and on-plot trees included and there is a comprehensive approved landscaping scheme within the public open spaces areas.

- 12.37. The comments of the Placemaking Specialist are acknowledged but it is felt that with the changes already made and improvements sought, plus the pattern set by the approval of previous parcels then the application can go forward with a positive recommendation.
- 12.38. Overall it is considered the proposal accords with the relevant policies of the Core Strategy and SADMP.

Residential Amenity - Impacts on Neighbours

- 12.39. The application area does not share a boundary with any existing adjacent property and hence the level of public interest and comment has been significantly less than with other previously approved parcels. As such the assessment has focused on the internal relationship of the new houses with each other, and there are no concerns evident.
- 12.40. Overall it is considered the proposal accords with the relevant policies of the NPPF, Core Strategy and SADMP.

Other Considerations

- 12.41. Beyond the strict interpretation of the Reserved Matters it is necessary to reflect on other material considerations; these are detailed hereon.

Ecology

- 12.42. The outline application is subject to numerous ecologically related conditions that require consideration at each Reserved Matters stage. The Council's Ecologist confirms there is some clarification required relating to street lighting in areas where bats may be present, informed by updated surveys. This is currently being actioned by the applicant and isn't a reason, given the safeguards of the Outline conditions, to decline to approve this application.

Internal Access and Movement

- 12.43. The Western Neighbourhood Design Guide and Masterplan set out a hierarchy of roads and streets which this application accords with. Condition 26 of the outline also required an internal network of cycle paths to be created and plans for this in the Western Neighbourhood have also been agreed, which this application respects.

Drainage and Flood Risk

- 12.44. The site is not within a Flood Risk area. The approach to surface water drainage follows that established via the Infrastructure application in 2019 when the majority of attenuation basins and the way they were to drain the Western Neighbourhood was approved. It is therefore not possible to completely change the approach at this stage as advocated by the GI Officer and Placemaking Specialist. The LLFA have sought extra conditions which will be imposed. The matter will be examined via the submission for condition 13 of the outline consent. The strategy works on the basis of surface water being captured and held in attenuation basins and then released slowly, at a rate the same or better than would have been the case had the rain fallen on

a green field. Other parts of the strategy include the use of water butts, permeable paving and depressions. Surface water is also importantly kept separate from foul discharges.

Impact of Heritage Assets

- 12.45. The outline application contained an assessment on the likely impacts to heritage assets. Now we have the precise detail within a Reserved Matters application we can compare the judgments and assumptions made then to the proposal as is now.
- 12.46. The primary areas of interest within the Environment Statement accompanying the outline application was Rumwell Park and the Trull Conservation Area.
- 12.47. Parcel H1e is not within the perceived setting of Rumwell Park which is located further to the north west and is distant from the Trull Conservation Area.
- 12.48. Comeytrove Manor (Grade 2) is located approx. 200m downhill to the south east, but there is little intervisibility between its setting and the parcel in question and in time Parcel H1f will be developed in between.
- 12.49. The Listed Buildings and Conservation Areas Act 1990 is relevant in order to assess the impact on heritage assets. Given the Reserved Matters is broadly in compliance with the parameter plans and given the inherent measures within the application (design and landscape) and the setting, it is considered there are no additional mitigation measures needed. The situation has been assessed by the SWT Conservation Officer and there is no reason to withhold reserved matters approval on the basis of any impact on heritage assets.

Sustainability

- 12.50. This application for reserved matters is supported by an Energy and Sustainability Statement. The outline application did not secure additionality in terms of the sustainable construction specification over Building Regulations.
- 12.51. The Design Guides focused on other important but often forgotten measures of sustainability such as walkable neighbourhoods, cycling infrastructure, public transport and travel planning, open space inclusive of allotments, surface water management and biodiversity enhancement.
- 12.52. The submitted Energy and Sustainability Statement, which mirrors that already approved for parcels H1b, H1a, H1c(ii), H1d and H1c(ii) sets out a fabric first approach to demand reduction which will in turn delivers a level of energy performance beyond the current Building Regulation standards whilst addressing a range of additional sustainable design considerations. It also states how water saving measures have been incorporated into the design in order to deliver a calculated water use per person which far exceeds Building

Regulations requirements. The Council's now standard Condition on water efficiency is also proposed.

- 12.53. Councillors will also be keen to learn that in order to support the transition to electric vehicles all units, bar four flats due to be affordable accessible units, are to be provided with infrastructure to allow the future installation of electric vehicle charging points.

Standard of amenity for proposed dwellings

- 12.54. Internal floorspace and layouts meet the space standards of SADMP Policy D10. The Housing Enabler has also confirmed acceptance of the sizes and layouts of the affordable units.
- 12.55. There is sufficient space between the windows of dwellings to prevent unacceptable overlooking, and gable ends are positioned so as to avoid over-shadowing of neighbours.
- 12.56. Overall it is considered the proposed dwellings will provide an acceptable standard of amenity for future residents.

Refuse and Recycling

- 12.57. Hardstanding for bin storage is provided to the rear of all units. Where collection cannot be made from the immediate frontage of properties designated collection points are provided a short distance from properties. Some steps are required but accordance with Building Regulations is maintained.

Parking and cycle storage

- 12.58. Parking is provided largely in the form of on-plot parking (to the side or front of the dwelling). Visitor parking is also provided. The level of car parking, and size of garages, is adequate to meet the requirements for Parcel H1e and is in line with the parking standards in Appendix E of the Site Allocations and Development Management Plan.
- 12.59. External storage of cycles is in garages and sheds, again this is in line with parking standards. Where cycles are stored in sheds these are located adjacent to access gates.

13. Planning Balance and Conclusion

- 13.1. The continued delivery of the Garden Community will make a significant contribution towards meeting 'transformational housing growth' in Taunton and the wider council area whilst contributing to the Council's 5-year land supply of housing land and the provision of much needed affordable housing.
- 13.2. The principle of development of a neighbourhood on this site, together with access connection to the existing road network and principle drainage issues, was agreed with the outline planning permission. The reserved matters application accurately reflects and builds upon the outline approval and the

approach taken in the approval of Reserved Matters on the first five approved housing parcels.

- 13.3. There has been engagement by the applicant's agent and officers have added value by seeking amendments to plans during the application stage.
- 13.4. The parcel contributes, in a small way, to the comprehensive landscape and green infrastructure scheme for the Comeytrowe site. The wider site is delivering substantial areas of open space, including new parks and gardens, allotments, playing fields and tree planting in line with the garden town vision approved by Reserved Matters 42/19/0053.
- 13.5. It is considered the application accords with the Development Plan when taken as a whole and any impacts are either already mitigated by legal agreement or conditions under the outline or via additional conditions proposed here.
- 13.6. It is considered that with regard to the planning balance the benefits of the scheme significantly outweigh the impacts. Overall, within the parameters set by the outline consent, the proposal represents sustainable development.
- 13.7. In preparing this report the planning officer has considered fully the implications and requirements of the Human Rights Act 1998 and the Equality Act 2010.

Appendix 1 – Planning conditions and informatives

1. The development hereby permitted shall be carried out in accordance with the following approved plans:

(A1) DrNo PL-TW-31 Rev D	Site Location Plan
(A0) DrNo PL-TW-32 Rev C	Site Context Plan
(A1) DrNo PL-TW-23.2 Rev AB	Planning Layout Parcel H1e
(A1) DrNo PL-TW-34 Rev F	Parcel H1e Materials Plan
(A1) DrNo PL-TW-35 Rev C	Boundary Treatments Plan
(A1) DrNo PL-TW-35.1 Rev A	Boundary Treatments H1e
(A1) DrNo PL-TW-36 Rev B	Presentation Layout Parcel H1e
(A1) DrNo PL-TW-77 Rev B	Parcel H1e EV Charging Plan
(A1) DrNo SS-TW-31 Rev E	Street Scenes Parcel H1e
(A1) DrNo SE-TW-31 Rev A	Parcel H1e Site Sections
(A1) DrNo SRS-TW-32 Rev C	Parcel H1e Steps & Railings Study
DrNo AC-TW-33 Rev Y	Accommodation Schedule
(A3) DrNo HT-H1e-S-H13-01 Rev B	Housetype Planning Drawing - H13 - Secondary Frontage
(A3) DrNo HT-H1e-S-NA20-01 Rev E	Housetype Planning Drawing - NA20 - Secondary Frontage
(A3) DrNo HT-H1e-S-NA20-02	Housetype Planning Drawing - NA20 - Secondary Frontage
(A3) DrNo HT-H1e-S-NA21-01 Rev C	Housetype Planning Drawing - NA21 - Secondary Frontage

(A3) DrNo HT-H1e-S-NA21-02 Rev B	Housetype Planning Drawing - NA21 - Secondary Frontage
(A3) DrNo HT-H1e-S-NT31-01 Rev C	Housetype Planning Drawing - NT31 - Secondary Frontage
(A3) DrNo HT-H1e-S-NT31-02 Rev E	Housetype Planning Drawing - NT31 - Secondary Frontage
(A3) DrNo HT-H1e-S-NA32-01 Rev C	Housetype Planning Drawing - NA32 - Secondary Frontage
(A3) DrNo HT-H1e-S-NA32-02 Rev D	Housetype Planning Drawing - NA32 - Secondary Frontage
(A3) DrNo HT-H1e-S-NA32-03	Housetype Planning Drawing - NA32 - Secondary Frontage
(A3) DrNo HT-H1e-S-NA34-01 Rev C	Housetype Planning Drawing - NA34 - Secondary Frontage
(A3) DrNo HT-H1e-S-NT40-01 Rev C	Housetype Planning Drawing - NT40 - Secondary Frontage
(A3) DrNo HT-H1e-S-NT41-01 Rev E	Housetype Planning Drawing - NT41 - Secondary Frontage
(A3) DrNo HT-H1e-S-NA42-01 Rev C	Housetype Planning Drawing - NA42 - Secondary Frontage
(A3) DrNo HT-H1e-S-NA42-02 Rev B	Housetype Planning Drawing - NA42 - Secondary Frontage
(A3) DrNo HT-H1e-S-NA44-01 Rev D	Housetype Planning Drawing - NA44 - Secondary Frontage
(A3) DrNo HT-H1e-S-NA45-01 Rev A	Housetype Planning Drawing - NA45 - Secondary Frontage
(A3) DrNo HT-H1e-S-NA49-01 Rev C	Housetype Planning Drawing - NA49 - Secondary Frontage
(A3) DrNo HT-H1e-S-NA51-02 Rev D	Housetype Planning Drawing - NA51 - Secondary Frontage
(A3) DrNo HT-H1e-S-NA51-03	Housetype Planning Drawing - NA51 - Secondary Frontage
(A3) DrNo HT-H1e-K-NA44-01 Rev B	Housetype Planning Drawing - NA44 - Key Local Space Frontage
(A3) DrNo HT-H1e-GE-NT40-01 Rev C	Housetype Planning Drawing - NT40 - Green Edge Frontage
(A3) DrNo HT-H1e-GENT41-01 Rev C	Housetype Planning Drawing - NT41 - Green Edge Frontage
(A3) DrNo HT-H1e-GE-NA42-01 Rev B	Housetype Planning Drawing - NA42 - Green Edge Frontage
(A3) DrNo HT-H1e-GE-NA44-01 Rev C	Housetype Planning Drawing - NA44 - Green Edge Frontage
(A3) DrNo HT-H1e-GE-NA45-01 Rev B	Housetype Planning Drawing - NA45 - Green Edge Frontage
(A3) DrNo HT-H1e-GE-NA51-03 Rev C	Housetype Planning Drawing - NA51 - Green Edge Frontage
(A3) DrNo HT-H1de-TW-GAR-01	Housetype Planning Drawing Single Garage Single Owner
(A3) DrNo HT-H1de-TW-GAR-02	Housetype Planning Drawing Double Garage Double Owner

(A3) DrNo HT-H1de-TW-GAR-03	Housetype Planning Drawing Double Garage Single Owner
(A0) DrNo BRL-L-PL 119 Rev B	Section A-A Parcel H1E (TW) Landscape Sections
(A0) DrNo BRL-L-PL 120 Rev B	Section B-B Parcel H1E (TW) Landscape Sections
(A0) DrNo BRL-L-PL 121 Rev B	Section C-C Parcel H1E (TW) Landscape Sections
(A0) DrNo BRL-L-PL 122 Rev A	Section D-D Parcel H1E (TW) Landscape Sections
(A2) DrNo BRL-N1- P161	Parcel H1E, Plot T285 Study, Landscape Section & Elevation
(A0) DrNo BR-L-N1-PL225 Rev D	Landscape Proposals, Planting Plan, Layout Sheet
(A0) DrNo BR-L-N1-PL223 Rev D	Landscape Proposals Planting Plan, Sheet 1
(A0) DrNo BR-L-N1-PL224 Rev D	Landscape Proposals Planting Plan, Sheet 2
(A2) DrNo BR-L-N1-PL330	Landscape Details Soft Landscape Tree Pit
(A2) DrNo BR-L-N1-PL331	Landscape Details, Soft Landscape Multistem Tree Pit
(A1) DrNo 0980-02-ATR-5001 Rev G	Fire Tender Tracking Plan
(A1) DrNo 0980-02-ATR-5101 Rev G	Refuse Vehicle Tracking Plan
(A1) DrNo 0980-02-DR-5001 Rev G	Preliminary Drainage Layout
(A1) DrNo 0980-02-GA-5001 Rev G	Preliminary Highway Levels Plan
(A1) DrNo 0980-02-GA-5002 Rev G	Preliminary Highway Levels Plan
(A1) DrNo 0980-02-GA-5003 Rev G	Preliminary Highway Levels Plan
(A1) DrNo 0980-02-GA-5101 Rev G	Preliminary Proposed Adoption Plan
(A1) DrNo 0980-02-GA-5201 Rev G	Preliminary Junction Visibility Plan
(A1) DrNo 0980-02-RP-5001 Rev D	Preliminary Road Profile Plan
(A1) DrNo 0980-02-RP-5002 Rev C	Preliminary Road Profile Plan
COM-TW-03 Rev 09, November 2022	H1e Design Compliance Statement
Energy and Sustainability Statement H1e, AES Sustainability Consultants Ltd, December 2020 (Rev2 August 2022)	
Drainage Statement 0980 RevB awp, 16 December 2021	
Arboricultural and Ecological Technical Note – Parcel H1e Prepared by: The Environmental Dimension Partnership Ltd, August 2022, Report Reference edp0782_r057b	
Shadow Habitats Regulations Assessment Report, 220816_P1136_sHRA_H1E, 16 August 2022, ead ecology	

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

2. The landscaping/planting scheme shown on the approved plans shall have been completely carried out by the end of the first available planting season after the final occupation within Phase H1e.
For a period of ten years after the completion of Phase H1e the trees and shrubs shall be protected and maintained and any trees or shrubs that cease to grow, shall be replaced by trees or shrubs of similar size and species or other

appropriate trees or shrubs as may be approved in writing by the Local Planning Authority.

Reason: To ensure that the proposed 'landscape led' development benefits from the approved landscaping scheme in the interests of visual amenity, ecological enhancement and landscape character in accordance with Policy CP8 of the Taunton Deane Core Strategy and Policy ENV2 of the SADMP.

3. Notwithstanding Condition 02 the development hereby approved shall be carried out and maintained in accordance with drawing DrNo PL-TW-34 RevF (Materials Plan), DrNo PL-TW-35 RevC (Boundary Treatments Plan) and DrNo PL-TW-35.1 RevA (Boundary Treatments Details) unless any variation in writing is first agreed with the Local Planning Authority.

Reason: To accord with Policy DM4 of the Taunton Deane Core Strategy and Policy D7 of the SADMP.

4. Each individual dwelling hereby approved shall only be occupied following it's individual compliance with the Energy and Sustainability Statement H1e, AES Sustainability Consultants Ltd, December 2020 (Rev2 August 2022) and the agreed scheme of electric vehicle charging infrastructure as outlined on drawing no. PL-TW-77 RevB and letter dated from Boyer Planning dated 04/08/2022.

Reason: To support the Council in its declaration of a Climate Emergency and to accord with para 110 of the National Planning Policy Framework and Policies PM2 and PP2 of the adopted SCC Parking Standards (2013).

5. No individual dwelling hereby approved shall be occupied until:
 - (i) the optional requirement for potential consumption of wholesome water by persons occupying that dwelling in Part G of Schedule 1 and Regulation 36 of the Building Regulations 2010 of 110 litres per person per day has been complied with; and
 - (ii) a notice specifying the calculated consumption of wholesome water per person per day relating to the dwelling as constructed has been given to the appropriate Building Control Body and a copy of the said notice provided to the Local Planning Authority.

Reason: To improve the sustainability of the dwellings in accordance with the Taunton Deane: Core Strategy Policies DM5 and CP8, the Supplemental Planning Document - Districtwide Deign Guide and Paragraphs 134, 154 and 180 of the National Planning Policy Framework.

6. Prior to occupation of development to implement the Phosphates Mitigation Strategy and Fallow Land Management Plan as contained within the Shadow Habitats Regulations Assessment Report, 220816_P1136_sHRA_H1e, 16 August 2022, ead ecology in so far as they relate to the development the subject of this reserved matters application. The fallow land identified within the Fallow Land Management Plan shall be retained and maintained in accordance with that plan unless otherwise agreed in writing with the local planning authority. The Applicant may from time to time submit to the local planning authority a revised Phosphates Mitigation Strategy and Fallow Land Management Plan for its approval particularly in the event that Natural England guidance in relation to measures relevant to phosphates mitigation changes in

future or in the event that alternative mitigation strategies becomes available and in anticipation that the fallow land will in time come forward for development. Should the fallowed land not come forward for development within a period of 25 years following this approval the provisions of the Shadow Habitats Regulations Assessment Report, 220816_P1136_sHRA_H1e, 16 August 2022, ead ecology shall be implemented and maintained in perpetuity. Reason: To allow the development to proceed as phosphate neutral so as to ensure no adverse effect on the integrity of the Somerset Levels and Moors Ramsar site to accord with the provisions of the Conservation of Habitats and Species Regulations 2017 (as amended).

7. In accordance with the submitted Arboricultural and Ecological Technical Note, August 2022 ref edp0782_r057b all protective hedge and tree fencing shall be erected prior to any works within the parcel. Notwithstanding the document, all fencing shall be the fixed type of fencing shown at Annex EDP 2. No trenches shall be dug within the RPAs of trees or hedges for underground services (or anything else) without the prior assessment and written agreement of the Local Planning Authority.
Reason: To safeguard existing trees and hedges to accord with Policy ENV1 of the SADMP.
8. Details of the cycle crossing point across the junction located adjacent to Plot T255 shall be submitted to and approved in writing by the Local Planning Authority. Prior to the first occupation such agreed details shall have been fully implemented unless otherwise agreed in writing with the Local Planning Authority.
Reason: To facilitate the safe passage of pedestrians and cyclists throughout the site to accord with Policy A3 of the SADMP and show compliance with LTN 1/20 and approved Condition 26 of the Outline Consent.
9. Details of the cycle/pedestrian crossing points from the Garden/Pocket Park to Highfield Park and over the estate road to Parcel H1e within Highfield Park shall be submitted to and approved in writing by the Local Planning Authority. Prior to the first occupation such agreed details shall have been fully implemented unless otherwise agreed in writing with the Local Planning Authority.
Reason: To facilitate the safe passage of pedestrians and cyclists throughout the site to accord with Policy A3 of the SADMP.
10. Prior to the commencement of works information relating to the management of construction stage drainage shall be submitted to and approved in writing by the Local Planning Authority. The information shall confirm specific measures for this part of the site particularly to confirm whether there is a risk of flooding off site and, if so, how that would specifically be managed and mitigated. The development shall thereafter be carried out in accordance with the approved details. Reason: To prevent the increased risk of flooding to accord with the aims and objectives of the National Planning Policy Framework.

11. Prior to first occupation information relating to the management responsibilities of the various components of the proposed surface water drainage network including private systems shall be submitted to and approved in writing by the Local Planning Authority. The information shall include typical maintenance schedules for all the proposed components and details of how each party will be advised of their responsibility and maintenance obligations (including private systems). The development shall thereafter be carried out in accordance with the approved details.

Reason: To prevent the increased risk of flooding to accord with the aims and objectives of the National Planning Policy Framework.

Notes to Applicant

1. Your attention is drawn to the original conditions on permission 42/14/0069 which still need to be complied with.
2. Development, insofar as it affects the rights of way should not be started, and the rights of way should be kept open for public use until the necessary Order (temporary closure/stopping up/diversion) or other authorisation has come into effect/ been granted. Failure to comply with this request may result in the developer being prosecuted if the path is built on or otherwise interfered with. Potential surface improvements to the path T 29/10 can be technically approved under a s38 adoption agreement. In the event that there is not an agreement, then a separate s278 agreement will be required. The applicant will need to demonstrate that the crossing point of T 29/11 over the proposed access road, is safe for the public to use and constructed appropriately through the technical approval process as part of a relevant legal agreement.
3. The applicant is advised to refer to the 'SBD Homes 2019' design guide available on the Secured by Design website – www.securedbydesign.com – which provides further comprehensive guidance regarding designing out crime and the physical security of dwellings.
4. All works in the vicinity of the Veteran tree should be overseen by the project arborist.
5. In accordance with the National Planning Policy Framework the Council has worked in a constructive and creative way with the applicant to find solutions to problems in order to reach a positive recommendation and to enable the grant of planning permission.

Application Details	
Application Reference Number:	3/07/22/017
Application Type:	Listed Building Consent
Earliest decision date:	10 November 2022
Expiry Date	22 September 2022
Extension of Time Date	
Decision Level	Planning Committee
Description:	Raising of brick chimney by 250mm
Site Address:	Lawford Farm, Stickle Hill, Crowcombe, TA4 4AL
Parish:	07
Conservation Area:	No
Somerset Levels and Moors RAMSAR Catchment Area:	No
AONB:	Quantock Hills
Case Officer:	Kerry Kerr-Peterson
Agent:	Mr Elston, Architectural Studio
Applicant:	Mr A Trollope-Bellew
Committee Date:	8 December 2022
Reason for reporting application to Committee	Applicant is a Ward Councillor for SWT.

Recommendation

That Listed Building Consent be GRANTED subject to conditions

Executive Summary of key reasons for recommendation

The proposal is to raise the height of a brick chimney by 250mm. The works to raise the chimney, as proposed, would result in no harm to the identified architectural and settings interest of the Grade II Listed Lawford Farmhouse. The proposal will be beneficial in ensuring the longevity of the building, by helping to reduce fire risk. Consequently, the proposal would comply with local and national policy.

Planning Obligations and conditions and informatives

Conditions (full text in appendix 1)

- 1 Time Limit – 3 years
- 2 Approved Plans
- 3 LB Matching Materials

Informatives (bullet point only)

1 Proactive Statement

Proposed development

1. The proposal seeks to raise the central, existing, brick chimney by 250mm, which equates to approximately three courses of bricks. This is to achieve a suitable clearance from the top of the thatch, for fire safety purposes. All the new materials will match the existing building.

Site and surroundings

2. The proposed development site comprises the Grade II Listed Lawford Farmhouse, located at Lawford Farm, Stickle Hill, Crowcombe, TA4 4AL (National Heritage List for England List Entry Ref: 1057450, November 1984). The late C16 - early C17 farmhouse possibly has earlier origins and was enlarged in the C18. The farmhouse originally had a 3 - cell and cross -passage plan which was later enlarged to an L-shaped plan. The construction is of cob, with a thatched hipped roof and three brick stacks, one on the left gable end and two right of the entrance, the SW of which has previously been raised by 250mm (SWT planning ref. 3/07/22/004).

3. The farmhouse is surrounded by sporadic agricultural buildings, with a further, late C19 courtyard farm complex to the west. An access drive leads south from Stickle Hill, towards the farm. The site is surrounded by agricultural fields.

4. The site does not lie within a Conservation Area.

5. The listing details for the property contained in the statutory list are as follows:

“ Category: Listed Building

Grade: II

List Entry Number: 1057450

Date first listed: 16-Nov-1984

Statutory Address: LAWFORD FARMHOUSE

Details

ST1336 CROWCOMBE CP LAWFORD

15/51 Lawford Farmhouse

- II

Farmhouse. Late C16 - early C17, enlarged C18. Roughcast over cob, thatched roof hipped to right, brick stacks left gable end and right of entrance, C20 aluminium flue protruding from ground floor end bay right. Probably 3 cell and cross passage plan enlarged to "L"-plan. One and a half storeys, 2 bays, dormer windows 3-light C20 wooden casement windows, ground floor altered 3-light leaded casement windows flanking partially glazed C20 door with thatched porch on wooden uprights; raking buttress end bay right. Long 4 bay right return. Interior: flag stone cross passage and rear passage, remains of square headed plank and muntin screen renewed with C17 panelling to right, hollow chamfered beads, empty stair bay to right of open fireplace, to left modern grate in fireplace set against cross passage wall, very shallow chamfered beads, It is quite possible this is an earlier building with a more complex and interesting building history but only the ground floor

2 rooms were accessible at tide of survey (July 1983).
Listing NGR: ST1343136378

The farm had an overshot water wheel with a small leat from the nearby stream. There is open countryside around and one dwelling forming part of the courtyard with Lawford farm. “

Site (and enforcement) history

Reference	Description	Decision	Date
3/07/22/004	Raising of rear chimney by 250mm	Grant	01 June 2022
3/07/21/012	Various repairs and recovering of the failed thatch	Grant	23 Sep 2021
3/07/18/015	Replacement windows to include heritage double glazing and the installation of secondary glazing on the single glazed windows to be retained.	Grant	29 Mar 2019

6. Environmental Impact Assessment

Not Applicable

7. Habitats Regulations Assessment

The site lies outside the catchment area for the Somerset Moors and Levels Ramsar site and the proposed works do not raise phosphate issues requiring an appropriate assessment.

Consultation and Representations

Statutory Consultees

8. The listed building consent application has been advertised in the press and by site notice.

9. Crowcombe Parish Council was consulted and raises no objection.

Local Consultees

10. Neighbourhood notifications letters were sent in accordance with the Councils Adopted Statement of Community Involvement.

11. No comments have been received.

Relevant planning policies and Guidance

12. The application seeks listed building consent and therefore the key issue is the impact on the historic significance and setting of the listed building.

13. Section 16(2) of The Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) states that: In considering whether to grant listed building consent for any works the local planning authority or the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

14. Listed Buildings are designated heritage assets, and Paragraph 195 of the National Planning Policy Framework (NPPF) states that: Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise.

15. The NPPF directs that: when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

16. The adopted West Somerset Plan to 2032 includes the following relevant policies:

NH1 Historic Environment
NH2 Management of Heritage Assets

Supplementary Planning Documents
District Wide Design Guide, December 2021

Determining Issues and Considerations

17. The main relevant issue in the assessment of this application for listed building consent is the impact on the character and setting of a listed building.

18. The proposal comprises increasing the height of one chimney by 250mm in order to reduce the risk of sparks catching light to the thatched roof and to satisfy current building regulations. The additional chimney element would be constructed in brickwork to match the existing chimney.

19. The proposed alteration to the height of the chimney is small scale and would result in a barely distinguishable change to the appearance and character of the listed building.

20. The increase in the height of the chimney is proposed for fire safety purposes, to raise the chimney further from the combustible thatch. Therefore, the proposal will be beneficial in ensuring the longevity of the building, by helping to reduce fire risk.

21. Therefore, the proposal is perceived to present no harm to the significance of the

listed building or its setting and would help to ensure its preservation for the future. The proposal is therefore considered to comply with the NPPF, Policies NH1 and NH2 of the West Somerset Plan to 2032 and the District Wide Design Guide SPD.

Recommendations

22. For the reasons set out above, having regard to all the matters raised, it is therefore recommended that listed building consent is granted subject to conditions.

In preparing this report the planning officer has considered fully the implications and requirements of the Human Rights Act 1998 and the Equality Act 2010.

Appendix 1 – Planning conditions and Informatives

Recommended Conditions

1. The works for which consent is hereby granted shall be begun not later than the expiration of three years from the date of this consent.

Reason: To comply with the requirements of Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended by S51(4) Planning and Compulsory Purchase Act 2004).

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

(A3) DrNo 1821.1/200 Proposed Site Plans

(A1) DrNo 1821.1/201 Proposed Plans & Elevations

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

3. The bricks, bonding & mortar to be used in the construction of the external surfaces of the building hereby permitted shall match those used in the existing building.

Reason: In the interests of preserving the listed building, its setting and any features of historic or architectural interest that it possesses.

Informative Notes

1. In accordance with Paragraph 38 of the National Planning Policy Framework 2021 the Council has worked in a positive and creative way and has imposed conditions to enable the grant of listed building consent.

Application Details	
Application Reference Number:	3/39/22/007
Application Type:	Full Planning Permission
Earliest decision date:	04 October 2022
Expiry Date	20 April 2022
Extension of Time Date	16 December 2022
Decision Level	Planning Committee
Description:	Installation of a battery energy storage facility, substation, underground cabling, access, landscaping, biodiversity enhancements and ancillary infrastructure and equipment to include acoustic fence, security fence, CCTV and gates
Site Address:	Land adjacent to Gas Substation, Smithyard Lane, Williton
Parish:	Williton
Conservation Area:	N/A
Somerset Levels and Moors RAMSAR Catchment Area:	N/A
AONB:	N/A
Case Officer:	Kieran Reeves
Agent:	Mr N Leaney
Applicant:	Mr G Hall
Committee Date:	08 December 2022
Reason for reporting application to Committee	The Parish Council and numerous members of the public have expressed a view that is contrary to the recommendation of Officers

1. Recommendation

1.1 That permission be GRANTED subject to conditions

2. Executive Summary of key reasons for recommendation

2.1 The proposal is for installation of a battery energy storage facility, substation, underground cabling, access, landscaping, biodiversity enhancements and ancillary infrastructure and equipment to include acoustic fence, security fence, CCTV and gates.

2.2 The principle of development is considered to be supported under local and national planning policies. The impact on the character and appearance of the landscape and the setting of the Scheduled Monument on the edge of Williton is not considered to be materially harmful when having regard to the proposed planting mitigation. The impact on neighbouring residential amenity and biodiversity would also not be materially harmful with the attachment of conditions securing mitigation measures. The Highway Authority are satisfied that the impact on highway safety would not be materially harmful and the impact on the local road network would not be severe, subject to the attachment of conditions they have recommended. The

safety of the adjacent gas substation is another factor that can be mitigated through planning condition.

3. Planning Obligations and conditions and informatives

3.1 Conditions

3.1.1 Standard time condition – 3 years

3.1.2 Standard plans condition

3.1.3 Nesting birds condition

3.1.4 Battery Safety Management Plan (BSMP) to be approved

3.1.5 Tree and Hedge Protection Plan (THPP) to be approved

3.1.6 Surface water drainage strategy to be approved

3.1.7 No obstruction on the visibility splays

3.1.8 Access to be constructed in accordance with agree details

3.1.9 Access to be consolidated and surface on first 10 metres

3.1.10 Surface water to be prevented from entering highway

3.1.11 Development to be carried out in accordance with ecological mitigation measures

3.1.12 Development to be carried out in accordance with Construction Traffic Management Plan

3.1.13 Entrance gates condition

3.1.14 Surface of the access track to be approved

3.1.15 External colour of structures to be approved

3.1.16 External lighting scheme to be approved

3.1.17 Ecological enhancement measures to be approved

3.1.18 Landscaping of site to be carried out in accordance with approved plans

3.1.19 Condition relating to construction of new hedgebank

3.1.20 Noise mitigation condition

3.1.21 Development to be removed after 40 years

3.1.22 PD rights removed for means of enclosure

3.2 Informatives

3.2.1 Proactive statement

3.3 Obligations

3.1.1 No legal obligations secured

4. Proposed development, site and surroundings

4.1 Details of proposal

4.1.1 Planning permission is sought for the change of use of part of an agricultural field to a site for a battery energy storage system. The compound would be formed on the eastern side of the site, and it would involve siting of containerised batteries and inverters with ancillary structures that would be used to manage and maintain the site. The containers for the batteries and inverters would measure 6.1 metres by 2.4 metres, with a height of 2.9 metres. The largest structure would be the amenity cabin, which would measure 12.2 metres by 2.4 metres, and the tallest structure would be CCTV column with a height of four metres. The compound would be surrounded by acoustic fencing and security fencing, the former would be three metres high and the latter would be 2.4 metres high. An access track would be formed to connect the compound to Smithyard Lane. Mitigation planting around the compound is also proposed as part of the application.

4.2 Sites and surroundings

4.2.1 The application site is located in open countryside to the west of Williton and to the south west of Watchet. It is located adjacent to an existing gas substation that is accessed off Smithyard Lane. The access into the application is also off Smithyard Lane, which connects the A39 to the south and the B3190 to the north. The site is currently undeveloped and flat land that is used for arable farming. It is bordered by woodland on its eastern boundary. The nearest residential property to the site is Smithyard Cottage, which is approximately 250 metres to the north west of the site. The site is outside an Area of Outstanding Natural Beauty. A Scheduled Monument, Battlegore Burial Chamber, is located approximately 1km to the east of the site.

5. Planning (and enforcement) history

5.1 No planning history relevant to this planning application.

6. Environmental Impact Assessment

6.1 No Environmental Impact Assessment submitted in relation to this application as the proposal does not fall within criteria that requires an EIA.

7. Habitats Regulations Assessment

7.1 The site is not within the catchment area for the Somerset Moors & Levels Ramsar site.

8. Consultation and Representations

Statutory consultees (the submitted comments are available in full on the Council's website).

8.1 Date of consultation: 20 September 2022

8.2 Date of revised consultation (if applicable): N/A

8.3 Press Date: N/A

8.4 Site Notice Date: 16 March 2022

8.5 Statutory Consultees

Consultee	Comment	Officer Comment
Williton Parish Council	Object to the application as the land should be left as agricultural land.	Discussed at Section 10.1 of the report
Highways Development Control	<p><u>Initial response:</u> The Highway Authority has no objection to the principle of the proposed development however further information is required before we can offer a recommendation.</p> <p>Access to the site is via Smithyard Lane, which is a very narrow, single track lane, which egresses on to the A39 to the south and the B3190 to the north.</p> <p>According to the supporting Construction Traffic Management Plan (CTMP), once operational the development will generate very little traffic, just the occasional maintenance van, which raises no concerns.</p> <p>The construction phase however, which is anticipated to last approximately 16 weeks, is likely to generate significant traffic including HGV vehicles. The number of full-time construction staff working on the site on a daily</p>	Discussed at Section 10.3 of the report

	<p>basis has been put at 10 and which given the limited construction period raises no particular concerns from a traffic management perspective. The number of HGV movements however has not been indicated.</p> <p>The CTMP states that the majority of the equipment will be brought on site in containers and that the longest HGV used will be 10m long. Swept path drawings have also been provided demonstrate how such vehicles will be able to enter, turn and leave the site in forward gear. No swept path analysis has been provided however for the junctions at either end of Smithyard Lane where it joins the A39 and the A3190, both of which are constrained. There is also no indication of the number of HGV movements and how this might break down into daily movements over the construction period.</p> <p>Further to the above comments, the HA requests that an updated CTMP be provided to include the following information:</p> <ul style="list-style-type: none">• Swept path analysis to demonstrate that HGV delivery vehicles will be able to safely negotiate the junctions at either end of Smithyard Lane.• Information on the number of HGV movements to include a breakdown of the daily movements over the construction period. <p><u>Reconsultation response:</u> The applicant has provided a revised Construction Traffic Management Plan (Rev B) to address these matters. The CTMP notes that the number of HGV movements will vary through the different</p>	
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	<p>construction phases and that during the busiest periods it is anticipated there could be up to 5 HGV movements (two-way) in a day. Such numbers will not have a severe impact on the local highway network. Swept path drawings have also been provided for the two junctions at either end of Smithyard Lane, which demonstrate that a 10 metre long rigid HGV is capable of negotiating these junctions.</p> <p>Based on this additional information, the Highway Authority has no objection to the proposed development. Should the LPA be minded to approve the application then the recommended conditions should be attached.</p>	
SCC - Ecologist	No response received	N/A
Rights of Way Protection Officer	No response received	N/A
Environment Agency	No response received	N/A
Health and Safety Executive	<p>Battery energy storage facilities are not usually a relevant development in relation to land use planning in the vicinity of major hazard sites and major accident hazard pipelines.</p> <p>This is because they do not, in themselves, involve the introduction of people into the area. HSE's land use planning advice is mainly concerned with the potential risks posed by major hazard sites and major accident hazard pipelines to the population at a new development.</p> <p>However, if the proposed development is located within a safeguarding zone for a HSE licensed explosives site then please contact HSE's Explosives Inspectorate. Their contact email is Explosives.planning@hse.gov.uk.</p>	Discussed at Section 10.6 of the report

	<p>The HSE Land Use Planning Web App can be used to find out if a site is within an explosives site zone (as well as in zones for major hazard sites and major accident hazard pipelines). If you require access to the HSE Web App, then please contact the Land Use Planning Team (lupenquiries@hse.gov.uk)</p> <p>If the development is over a major accident hazard pipeline or in the easement around a major accident hazard pipeline, please consult the pipeline operator.</p> <p>If the development involves a new substation or the storage of electrical energy such as in a large battery storage unit and the development is proposed adjacent to a COMAH (Control of Major Accident Hazards) establishment then please consult the operator of the COMAH establishment.</p> <p>If the development involves a substation or the storage of electrical energy such as in a large battery storage unit and is proposed in the vicinity of a nuclear site, the Office for Nuclear Regulation (ONR) does wish to be consulted over such proposals. They can be contacted on ONR-Land.Use-Planning@onr.gov.uk</p>	
<p>Crime Prevention Design Advisor</p>	<p><u>Perimeter Security</u></p> <p>o Perimeter fencing should comprise a proven security fence. I recommend the installation of fencing which has been tested and approved to LPS 1175 SR 1- 3 standard, this being the most appropriate. The DAS indicates palisade fencing, 2.4 metres in height with inner acoustic fencing 3 metres in height. Fencing which</p>	<p>Matters have been raised would potentially be dealt with at the Building Regulations stage of the project, and some of the matters raised are not planning considerations. In any event, the applicant has been</p>

	<p>is not of a specialist security type is likely to offer at best only token resistance to intruders. The inner acoustic fence will also restrict passing surveillance of the inner compound, however, this should be compensated for by the installation of cctv.</p> <ul style="list-style-type: none"> o The DAS also indicates the site entrance security gate to be of similar construction to the fencing so the above comment also applies to the site entrance gate, which should be of the same security standard as the fence. <p><u>Vehicular Access</u></p> <ul style="list-style-type: none"> o One vehicular access point to the site is proposed, which is recommended. However, any potential criminal would probably use a vehicle and, bearing in mind the 90 degree bend in the access track which further limits surveillance, a secondary gate or rising bollards at the track entrance in Smithyard Lane would further enhance security. o The wider issues of access around the site should also be considered. If for instance the land surrounding the site is under the same ownership can this be made more secure by improving other fencing, gates, hedges, using bunds, ditches etc. to provide layers of difficulty for the criminal to overcome in trying to access the site. <p><u>Landscaping/Planting</u></p> <ul style="list-style-type: none"> o Landscaping and planting is proposed for all boundaries outside the compound which will also affect external natural surveillance. The use of defensive planting i.e. thorny shrubs and trees at these locations is 	<p>made aware of these comments and it has been suggested to them that they may wish to incorporate the recommended measures into the scheme.</p>
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	<p>recommended to further deter unauthorised access onto the site.</p> <p><u>Security Lighting</u></p> <p>o No security floodlighting is proposed.</p> <p><u>Electronic Security Measures</u></p> <p>o The DAS indicates that, four cctv cameras will be installed in each corner of the compound. It does not indicate whether the cameras will be remotely monitored or whether they will have motion-activated Passive Infra-Red (PIR) capability. This is important bearing in mind the lack of any lighting. I recommend the installation of such a system but the DAS does not indicate who, in the event of an activation, will respond which I consider important.</p> <p>o The applicant should also consider the installation of a Perimeter Intruder Detection System (PIDS) which would alert the operator to any unauthorised intrusion.</p> <p>o The facility includes a number of Battery Storage Units, Inverters and a Control Building, all of which contain potential targets and should be secure and electronically protected by intruder alarms.</p> <p><u>Security Personnel/Staff</u></p> <p>o I assume that the site will be remotely monitored and not permanently staffed with periodic visits by employees only for maintenance. This obviously increases the potential vulnerability of the site and equipment contained within it, particularly during the hours of</p>	
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	<p>darkness.</p> <ul style="list-style-type: none"> o The presence of site security personnel or patrols in some capacity should be considered including in terms of response to site cctv and alarm activations. <p><u>Property Marking</u></p> <ul style="list-style-type: none"> o Consideration should also be given to overtly marking all tools and any other easily portable equipment on site with unique reference numbers to assist identification if stolen 	
<p>Devon & Somerset Fire & Rescue Service</p>	<p><u>Access and Facilities for the Fire & Rescue Service</u></p> <p>Access and facilities, which should include where necessary the provision of private fire hydrants for Fire & Rescue Service appliances, should comply with provisions contained within ADB, Part 5 of the Building Regulations 2000.</p> <p>Whilst Devon and Somerset Fire and Rescue Service (DSFRS) are not a statutory consultee in relation to this project we will work and engage with the developer as this project develops to ensure it complies with the statutory responsibilities that DSFRS enforce.</p> <p>The developer should produce a risk reduction strategy for the scheme. We would also expect that safety measures and risk mitigation is developed (where appropriate) in collaboration with the Service. The strategy should cover the construction, operational and decommissioning phases of the project.</p> <p>DSFRS recognises the use of batteries (including lithium-ion) as Energy Storage Systems (ESS) is</p>	<p>Discussed at Section 10.6 of the report</p>

	a new and emerging practice in the global renewable energy sector. As with all new and emerging practices within UK industry the Service would like to work with the developers to better understand any risks that may be posed and develop strategies and procedures to mitigate these risks.	
Wales & West Utilities	<p>Our Asset Department have reviewed the proposed development and have requested that, in the event the application is approved, the applicant will need to contact WWU to discuss and agree mitigation of additional risks their new installation may pose to ours.</p> <p>We do not wish to raise an objection but will require commitment from the applicant that they work with us over health and safety considerations.</p>	Discussed at Section 10.6 of the report

8.6 Internal Consultees

Consultee	Comment	Officer Comment
Landscape Officer	<p><u>Initial response:</u> The proposed mitigation will, in the long term, adequately screen the development from the immediate and wider landscape, however the form of the development does not work with the field pattern and results in: a nibbled at, left over field which has an irregular form; right angled and acutely angled field corners that are more difficult to farm; and in the case of the access road, a tightly curved boundary that is difficult to fence off with post and wire fencing which prefers straightish runs. The layout shows a lack of regard to the patterns of the context and so does not reflect good design and conflicts with local and national plan policies.</p>	Discussed at Section 10.2 of the report

	<p>To address these concerns, it is recommended that the layout of the batteries / other facilities is amended to have a more triangular form to suit the site, rather than the site modified to suit a standard rectangular layout, and for the boundary to be simpler, and the remaining field more regular simpler shape, in the manner shown below which shows optional boundary positions to suit the area of development required.</p> <p><u>Reconsultation response:</u> The revised layout has addressed the earlier landscape concerns. Consequently, no objection.</p>	
<p>Environmental Health Team</p>	<p>We have reviewed the Noise Report undertaken by Inacoustic in support of the application which states that the Inverter units require that the sound levels presented in Table 6 are reduced by at least 9 dB so as to be below the background noise level.</p> <p>Within Section 5.1.4 there are a suite of measures proposed and provided that the plant is constructed and operated in accordance with this section including low noise plant and an acoustic enclosure built to the specification and location identified and contained within this report, then we have no objection to these proposals.</p>	<p>Discussed at Section 10.4 of the report</p>

8.7 Local Representations

Neighbour notification letters were sent in accordance with the Councils Adopted Statement of Community Involvement.

Thirteen objectors (including the tenant farmer) have made representations on the application with the following comments (summarised):

- Material harm to the landscape would occur as a result of the proposed development;
- Material harm to the setting of a Scheduled Monument would occur as a result of

- the proposed development;
- The harm to the landscape would in turn have an adverse impact on tourism as people visit the area for its landscape beauty;
- The proposed development would result in loss of important and productive arable land;
- It will impact negatively on the local wildlife from Outmoor Wood;
- Siting the battery storage units on a site adjacent to an existing gas substation would be unsafe due to the risk of an outbreak of fire at the proposed site; and
- The proposed development would provide no local employment and would take land away from tenant farmers and their agricultural contractors.

There have been many comments suggesting that the proposed development is related to the proposed solar farm to the east of the site. However, the applicant has confirmed that this is an unrelated application and the solar farm is proposed with its own battery energy storage system.

9. Relevant planning policies and Guidance

Section 70(2) of the Town and Country Planning Act 1990, as amended ("the 1990 Act), requires that in determining any planning applications regard is to be had to the provisions of the Development Plan, so far as is material to the application and to any other material planning considerations Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) ("the 2004 Act") requires that planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise. The site lies in the former West Somerset area. The Development Plan comprises comprise the Adopted West Somerset Local Plan to 2032, Somerset Mineral Local Plan (2015), and Somerset Waste Core Strategy (2013).

Both the Taunton Deane Core Strategy and the West Somerset Local Plan to 2032 were subject to review and the Council undertook public consultation in January 2020 on the Council's issues and options for a new Local Plan covering the whole District. Since then the Government has agreed proposals for local government reorganisation and a Structural Change Order agreed with a new unitary authority for Somerset to be created from 1 April 2023. The Structural Change Order requires the new Somerset authority to prepare a local plan within 5 years of vesting day.

Relevant policies of the development plan in the assessment of this application are listed below:

West Somerset Local Plan to 2032

- SD1 - Presumption in favour of sustainable development
- OC1 - Open countryside development
- CC1 - Carbon reduction: non-wind energy generating schemes
- NH1 - Historic environment
- NH2 - Management of heritage assets
- NH5 - Landscape character protection
- NH6 - Nature conservation and the protection and enhancement of biodiversity

NH8 - Protection of best and most versatile agricultural land
NH9 - Pollution, contaminated land and land instability
NH13 - Securing high standards of design

Neighbourhood Plans:

No neighbourhood plans in force in this area

Supplementary Planning Documents:

District Wide Design Guide, December 2021

Other relevant policy documents:

Somerset West and Taunton Council's Climate Positive Planning: Interim Guidance Statement on Planning for the Climate Emergency (March 2022)

National Planning Policy Framework

10. Material Planning Considerations

The main planning issues relevant in the assessment of this application are as follows:

10.1 The principle of development

10.1.1 The proposal is for the erection of a Battery Energy Storage System (BESS) on land to the west of Williton and to the south west of Watchet. The site is outside any defined settlement and is therefore in the open countryside. Policy OC1 of the adopted Local Plan relates to open countryside development, but it does not specifically apply to energy development, which is typically located in the open countryside. Policy CC1, which relates to renewable energy generation, also does not appear to be applicable to the proposed development as it does not generate energy. The sustainability of energy use by the proposed facility is dependent on wider infrastructure.

10.1.2 The proposed BESS is proposed infrastructure to support the national grid. The Overarching National Policy Statement for Energy (EN-1) was published in 2011 and it highlights the UK's commitment to cut greenhouse gas emissions by at least 80% by 2050 (compared to 1990 levels) and outlines the challenge which the transition to a low carbon system holds. There is a national drive towards renewable energy, but this would impact on the national grid as a result of the frequency volatility caused by such schemes. Historically, it has been proposed to manage this through the introduction of more nuclear power plants, but increasingly grid battery storage, such as the proposal, are being utilised for this purpose. Paragraph 2.2.4 of EN-1 states that the role of the planning system is to provide a framework which allows for the development of the types of essential infrastructure in areas of need where it is acceptable in planning terms, including the principles of sustainable development.

10.1.3 The Revised (Draft) National Policy Statement for Energy, which still remains in draft form, does not propose to alter this direction on a national renewable energy network. However, it should be noted that last year the Government confirmed that it wants to reduce the country's carbon emissions by 78% by 2035, and be net zero by 2050, which effectively puts greater pressure on finding an alternative energy network sooner.

10.1.4 EN-1 also confirms that that National Policy Statements (NPS) are capable of being important and relevant considerations in the planning decision-making process and that NPS's can also be material considerations in the determination of applications under the Town and Country Planning Act 1990.

10.1.5 In August 2022, the Government released its response on the topic of facilitating the deployment of large-scale and long duration electricity storage. The document states that *a smart and flexible energy system is essential for integrating high volumes of low carbon power, heat, and transport. The importance of flexibility for our energy security to ensure that we can efficiently match supply and demand and minimise waste was recognised in the British Energy Security Strategy. We anticipate that at least 30GW of low carbon flexible assets, which includes electricity storage, may be needed by 2030 to maintain energy security and cost-effectively integrate high levels of renewable generation.*

10.1.6 The document concludes that schemes such as this one before the Local Planning Authority have an important role to play in achieving net zero, helping to integrate renewables, maximising their use, contributing to security of supply, and helping manage constraints in certain areas. The document further concludes that BESS's would provide low carbon flexibility, replacing some unabated gas generation and diversifies the country's technology mix and provides optionality for meeting our ambitious 2035 power sector decarbonisation targets.

10.1.5 There is a clear national drive led by the Government to move the country from a fossil fuel based energy network to a net zero renewable energy network, and nuclear power plants and BESS's will play an important part in reducing carbon emissions, providing energy security and ensuring energy affordability by mitigating the frequency volatility created by a renewable energy network. Without these mitigating systems, the energy network that the country is moving towards would be subject to notable energy fluctuations.

10.1.7 Paragraph 152 of the National Planning Policy Framework (NPPF) states that the planning system should support the transition to a low carbon future in a changing climate and it should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience and support renewable and low carbon energy and associated infrastructure. Paragraph 158 states that when determining planning applications for renewable and low carbon development, local planning authorities should not require applicants to demonstrate the overall need for renewable or low carbon energy, and recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions; and approve the application if its impacts are (or can be made) acceptable.

10.1.8 In terms of sustainable development, EN-1 set out that the Government's wider objectives for energy infrastructure include contributing to sustainable development and ensuring that the country's energy infrastructure is safe. Sustainable development is relevant not just in terms of addressing climate change, but because the way energy infrastructure is deployed affects the well-being of society and the economy, for both current and future generations. EN-1 further states that the planning framework set out in this NPS and the suite of energy NPSs takes full account of the objective of contributing to the achievement of sustainable development and this has been tested through the Appraisal of Sustainability (AoS). The AoS has examined whether the NPS framework for the development of new energy infrastructure projects is consistent with the objectives for sustainable development, including consideration of other government policies such as those for the environment, economic development, health and transport.

10.1.9 Officers also note that the move to a low carbon economy meets the environmental objective of sustainable development as set out under Paragraph 8 of the NPPF. Having regard to this and EN-1, it can be concluded that the provision of BESS's to support a shift towards a renewable energy network contribute towards sustainable development and this in turns means that the scheme before the Local Planning Authority is compliant in principle with Policy SD1 of the adopted Local Plan. The scheme is considered to be supported in principle by the Local Plan when taken as a whole, particularly as the Local Plan supports a drive towards renewable energy.

10.1.10 It is acknowledged that the national mapping indicates that the site falls into Agricultural Land Classification Grade 2, which is very good soil for arable farming. The applicant has commissioned Askew Land and Soil Ltd to carry out an assessment of the soil in accordance with the Agricultural Land Classification (ALC) system for England and Wales. The report compiled by Askew Land and Soil Ltd confirms that a survey of the site has determined that agricultural land at the site is limited by soil wetness to Subgrade 3a (i.e., 0.45ha or 100% of the Site). The report acknowledges that a MAFF Post-1988 ALC survey has determined Grade 2 and Subgrade 3a to the south east of the site. Officers have no reason to question the results of the survey.

10.1.11 Policy NH8 of the adopted Local Plan states that the *best and most versatile agricultural land (Grades 1, 2 and 3a) will be protected from significant development proposals. Planning permission for development affecting such land will only be granted exceptionally if the presumption in favour of sustainable development outweighs the need to protect it and either:*

- *Sufficient land of a lower grade (Grades 3b, 4 and 5) is unavailable in an appropriate location to provide sustainable development; or*
- *Available lower grade land has an environmental value recognised by a statutory or non-statutory wildlife, historic or archaeological designation which outweighs the agricultural considerations.*

If best and most versatile land needs to be developed and there is a choice between sites in different grades, land of the lowest grade available should be used.

10.1.12 In terms of the overall area given over to the proposed development and the associated area of planting, and comparing this with the amount of best and most versatile land in the local area (Grade 1, 2 and 3a), the proposed development is not considered to be significant. As such, it does not fail the restrictive first part to Policy NH8. Turning to the second part of the policy, it is acknowledged that development on this type of agricultural land will be on an exceptions basis if the presumption in favour of sustainable development outweighs the need to protect it. Officers acknowledge that there is an ever increasing need for food security in this country, particularly in terms of grain and the ongoing impact on worldwide supply of grain caused by the war in Ukraine. However, there is also a need for energy security in this country and there is a clear drive for the country to move towards a renewable energy network and BESS's play an important part in that network. There is therefore a balance to be struck between the existing and proposed uses of the site, and it needs to be taken into account that the proposed use contributes towards sustainable development and is supported by the NPPF and the adopted Local Plan when taken as a whole.

10.1.13 The applicant has confirmed that they have a connection offer to connect the proposed development to the national grid. The offer letter restricts the connection to the national grid by a three pole tee onto the 33kV overhead line between Bowhays Cross BSP (1L5) and the former Watchet Paper Mill substation and laying a new 33kV cable to the site where the connection will be metered via a new 33kV metering substation. The applicant has also provided a plan showing the nearest 33kV overhead lines where this type of development may be able to connect to the national grid if the proposed location is not acceptable. All the lines in the local area are on best and most versatile land. In fact, almost the entire district of West Somerset, other than settlements and protected areas such as Exmoor National Park and the Quantock Hills AONB, is best and most versatile land. It is therefore difficult to see where the development can be located where it would not result in a loss of Grade 1, 2 or 3a agricultural land.

10.1.14 The proposed development is considered to contribute towards sustainable development and it is a type of development that is nationally supported through EN-1 and the NPPF. It is also supported by the adopted Local Plan when taken as a whole. Officers are satisfied that the development cannot be relocated to another part of the local area where it would not result in loss of best and most versatile land. The benefits towards a net-zero carbon future, which is the aim of the Government by 2050, must be given substantial weight, as must its contribution towards sustainable development due to it meeting the environmental role of sustainable development. Whilst it acknowledged that the loss of best and most versatile land will have an impact on the country's food security, the small area being lost as a comparison to the remaining high grade agricultural land in the local area reduces the negative impact. The proposed development would provide greater benefits than disbenefits and therefore the loss of best and most versatile land is not considered to form a reason for refusal under Policy NH8 of the adopted Local Plan.

10.2 Design of the proposal & the impact on the character and appearance of the landscape and designated heritage assets

10.2.1 The proposed BESS would have a utilitarian appearance as this type of

development is designed for a functional purpose rather than delivering aesthetically pleasing development. Other than choosing a suitable colour for the structures, which can be secured through a planning condition, there is little scope to alter the form and finish of containers. The siting of the BESS on a site adjacent to the gas substation would ensure that it would be seen in the context of the existing built form and it would take a similar appearance and character to it. This would help it to not appear as overtly isolated development in the open countryside. However, it would increase the amount of functional, not aesthetically pleasing, built form in the open countryside and therefore mitigation needs to be secured to reduce the cumulative landscape impact resulting from the existing gas substation and the proposed BESS.

10.2.2 The Landscape Officer initially objected to the proposed development. The Officer is satisfied that the proposed planting mitigation around the proposed compound would over time adequately screen the development from the immediate and wider landscape. However, the Officer raised concerns over the shape and form of the proposed compound area and the surrounding planting mitigation as the originally layout of the scheme represented a lack of regard to the patterns of the surrounding context of fields and therefore would not reflect good design and conflicts with the national and local planning policies.

10.2.3 The applicant took the comments of the Landscape Officer into account and subsequently amended the scheme. The position and shape of the proposed compound remains as originally proposed, but a new hedgebank boundary is now proposed along the southern side of the site connecting the eastern and western boundaries of the field. This has increased the area of planting and the result would be a larger wooded area to continue, and be in keeping with, the existing wooded area that borders the eastern side of the application site. The hedgebank would provide a strong boundary along the southern side of the site and it would result in a boundary feature that is seen across the local agricultural landscape. The planting on the hedgebank would offer further screening of the development.

10.2.4 The amendment made to the proposed development has result in a more natural subdivision of the field that retains the field patterns around the site. The Landscape Officer has confirmed that the revised layout has addressed the earlier landscape concerns. Consequently, the Landscape Officer has removed their objection and now has no objections to the proposed development.

10.2.5 Officers conclude that a condition should be attached to require the applicant to agree a colour for the exterior of the proposed structures with the Local Planning Authority and a condition should also be attached that requires approval from the Local Planning Authority to be sought by the applicant for the surface of the new access track. With the attachment of this condition and acknowledging that the development is function led and designed to meet a certain functional requirement, the application is not considered to represent a conflict with Policy NH13 where the application should be refused. The Landscape Officer's confirmation that there are now no landscape objections to the proposed development, the revised scheme is considered to comply with Policy NH5 of the adopted Local Plan.

10.2.6 Officers also note that reference has been made by an objector to potential harm being caused to the setting of a Scheduled Monument, Battlegore Burial

Chamber, which is a Bronze Age burial chamber located on the edge Williton, Somerset. It is composed of three round barrows and possibly a long, chambered barrow. The objector states that it is 400 metres to the east of the site but having measured the distance on the Council's mapping and on Google maps, the distance is nearly 1km. In between Battlegore and the application site is Outmoor Wood, which provides a significant level of screening of the site from the Scheduled Monument. The site is also not raised on higher ground than the Scheduled Monument or vice versa. As such, the site is not overtly visible from the Scheduled Monument, particularly when taking into account the distance and the presence of Outmoor Wood between the two. Therefore, the proposal would not conflict with Policies NH1 and NH2 of the adopted Local Plan or Section 16 of the National Planning Policy Framework.

10.3 Access, highway safety and parking provision

10.3.1 Access to the site would be via Smithyard Lane, which is a very narrow, single track lane, which egresses on to the A39 to the south and the B3190 to the north. The submitted plans show that the existing field access would be moved in a southward direction along Smithyard Lane. A new access track would be constructed from the vehicular entrance to the proposed compound. There would be a parking and turning area within the compound.

10.3.2 The Highway Authority initially objected to the proposed development as more information was required. They confirmed that their objection was not in relation to the principle of the development, however, they required further information before they could provide a recommendation. The application submission has included a Construction Traffic Management Plan (CTMP) that confirmed that once the development is operational there would be limited vehicle movements to and from the site as a maintenance van would travel to the site occasionally. This poses no concern for the Highway Authority. Their concern related to the construction phase of the development.

10.3.3 It is anticipated that the construction phase of the development would last approximately 16 weeks and generate significant vehicle movements to and from the site involving HGVs. The application papers confirm that there would be 10 construction workers on site on a daily basis and the Highway Authority have advised that due to the limited construction period there is no particular concern from a traffic management perspective. However, the number of HGV movements had not been indicated and how this might break down into daily movements over the construction period.

10.3.4 The submitted CTMP confirms that the majority of the equipment would take the form of containers and HGVs up to 10 meters in length would be used to transport these to the site. The Highway Authority noted that the swept path drawings have been provided demonstrating how vehicles of this size would enter, turn and leave the site in forward gear. However, no swept path analysis had been provided for the junctions at either end of Smithyard Lane, both of which are constrained. As mentioned above, the Highway Authority initially objected to the application and requested that swept path analysis for the junctions at both ends of Smithyard Lane and details on the number of HGV movements, including a

breakdown of the daily movements over the construction period, were provided.

10.3.5 The applicant had the CTMP revised to include the requested swept path analysis and the details on HGV movements. The Highway Authority have considered the revised CTMP and advised that the swept path drawings that have been provided for the two junctions at either end of Smithyard Lane demonstrate that 10 metres long HGV would be capable of negotiating the junctions. It is also noted that the CTMP confirms that there could be up to five HGV movements (two-way) in a day during the busiest periods of the construction phase. The Highway Authority advises that these numbers will not have a severe impact on the local highway network.

10.3.6 The Highway Authority now have no objection to the proposed development, subject to the attachment of a list of recommended conditions. Officers consider that with the attachment of these conditions, which are included in the list of conditions set out at Appendix 1 to this report, the impact on highway safety would not be materially harmful and the impact on the local road network would not be severe. As such, the application is not refusible under Paragraph 111 of the National Planning Policy Framework.

10.4 The impact on neighbouring residential amenity

10.4.1 The nearest residential property to the application site is Smithyard Cottage, which is approximately 250 metres to the north west of the site. The proposed development would be sited sufficiently far from the residential property to not cause material harm to residential amenity as a result of it being overbearing or loss of light.

10.4.2 The noise impact has been assessed as part of the application submission. The applicant has submitted a Noise Impact Assessment that was carried out by inacoustic earlier this year. The report sets out mitigation measures to ensure that there would not be an adverse impact on residential amenity. The recommendation is that the inverters are low-noise plant in order to reduce their sound level by at least 9dB. It is also recommended that the containers for the batteries and inverters are sound insulated and fitted with attenuated louvres. The containers should then be orientated such that the louvred side of the container is facing away from the nearest noise sensitive receptor. The report also recommends the installation of an acoustic barrier around the perimeter of the site that is solid, continuous and sealed. The acoustic fence is shown on the submitted plans and it shall be conditioned that it shall be constructed in accordance with the details shown on the plans and retained for the life of the development. A further condition shall also be attached that requires the mitigation measures set out in the assessment report to be carried out as part of the implementation of the development and retained as well in accordance with the mitigation measures for the life of the development.

10.4.3 Environmental Health have noted that within Section 5.1.4 of the report there are a suite of measures proposed and they have advised that provided that the plant is constructed and operated in accordance with this section, including low noise plant and an acoustic enclosure built to the specification and location identified and contained within the report, then they have no objection to the application. With the

attachment of the conditions set out above, the material harm to neighbouring residential would be mitigated and therefore the application would not conflict with the adopted development plan in terms of its impact on residential amenity.

10.5 The impact on ecology and biodiversity

10.5.1 The application has been accompanied by a preliminary ecological survey report. The report advises that in terms of bats, which are a protected species, the arable habitat of the application site is unlikely to support insects in sufficient numbers to be of importance for foraging bats, and loss of arable to the footprint of the application site would not impact foraging bats. However, it is also advised that it is likely that a variety of bats including light-averse species (such as Long-eared, Horseshoes and Myotis) are active around the boundaries of the application site. As such, mitigation would be required in relation to external lighting. It is therefore considered appropriate to attach a condition that requires the developer to agree a bat friendly lighting scheme prior to first use of the proposed development.

10.5.2 The ecology report goes on to advise on the impact on nesting birds and it states that it is likely that the hedgerows around the site provide potential habitat for birds to nest. Works to and around the hedgerows has the potential to impact negatively on nesting birds. As such, it is considered appropriate to attach a condition that prevents works during the bird nesting season unless an ecologist has surveyed the site prior to works commencing and confirmed that there are no nesting birds present. This condition is considered to provide the level of mitigation to prevent harm to nesting birds.

10.5.3 The report confirms that there is a small badger sett near to the application site. Siting of the proposed development has taken this into account such that no active entrance is within 30 metres of the footprint of the proposed compound and the access to the compound. The report advises that the separation from the compound and its access would result in a negligible potential to impact badgers and their setts in a way that could be considered an offence. However, there is potential for badgers to get trapped within the application site during the construction phases and mitigation is therefore recommended. The mitigation measures for badgers is set out under Section 5 of the report and a condition shall be attached to ensure that the developer complies with these measures when carrying out the development.

10.5.4 There is the potential for common dormice to be present within woodland and scrub with some potential in hedgerows. The report suggests that the proposed development does not impact on hedgerows and therefore the potential impacts in relation to dormice are considered to be negligible. However, the plans show that the existing field entrance would be moved southwards along the lane. As such, there would be an impact on hedgerows and therefore the mitigation measures for protecting dormice from such works, which are set out under Section 5 of the report, should be secured. These measures can also be secured through a condition.

10.5.5 With the attachment of the conditions set out above, the impact on wildlife interests on site would not be materially harmful and the application would comply with Policy NH6 of the adopted Local Plan. In order to comply with Paragraph 174(d) of the National Planning Policy Framework, a further condition should be attached

that secures ecological enhancement measures as part of the proposed development. The condition would require the developer to agree such measures with the Local Planning Authority and implement the measures prior to first use of the proposed development.

10.6 Other matters

10.6.1 Concerns have been raised locally regarding the potential safety issues that may arise from siting development that has the potential to catch fire on a site adjacent to a gas substation. These concerns are understandable given the September 2020 BESS fire in Merseyside. Officers have spent a considerable amount of time looking into this matter and seeking comments from three key consultees - the Health and Safety Executive (HSE), Avon and Somerset Fire Service and the operators of the adjacent gas substation, Wales and West Utilities.

10.6.2 The HSE advises that BESS proposals are typically not a relevant development in relation to land use planning in the vicinity of major hazard sites and major accident hazard pipelines. This is due to them not introducing people into the area. In the case of this particular BESS proposal, the applicant has confirmed that the proposed development would not provide a permanent place of work for someone. People would visit the site occasionally to carry out certain activities. It is confirmed that the HSE's land use planning advice is mainly concerned with the potential risks posed by major hazard sites and major accident hazard pipelines to the population at a new development.

10.6.3 The HSE's advice also steers the Local Planning Authority towards consulting HSE's Explosives Inspectorate if the site is within a safeguarding zone for a HSE licensed explosives site and consulting the Office for Nuclear Regulation (ONR) if the site is in the vicinity of a nuclear site. Officers can confirm that the site is not within an explosives safeguarding zone or the vicinity of a nuclear site. Hinkley Points A and B, and the construction site of Hinkley Point C, are approximately 14km from the application site. The HSE's advice also recommends contacting the operator if the site is over a major accident hazard pipeline or in the easement around a major accident hazard pipeline, or the site is adjacent to a Control of Major Accident Hazards (COMAH) establishment.

10.6.4 As acknowledged above, the site is adjacent to a gas substation. As such, Officers have sought the views of Wales and West Utilities, who have confirmed that should the application be approved then the applicant will need to contact WWU to discuss and agree mitigation of additional risks the new BESS installation may pose to their gas substation site. Wales and West do not wish to raise an objection, but they have made it clear that they require commitment from the applicant that they work with Wales and West over health and safety considerations.

10.6.5 Avon and Somerset Fire Service have also been consulted and their consultation response advises that the access and facilities proposed through this planning application, which should include where necessary the provision of private fire hydrants for Fire & Rescue Service appliances, should comply with the provisions contained within Fire Safety: Approved Document B (ADB), Part 5 of the Building Regulations 2000. They confirm that the expectation is that the developer

should produce a risk reduction strategy for the scheme. They also expect that safety measures and risk mitigation is developed in collaboration with the Fire Service. The strategy should cover the construction, operational and decommissioning phases of the project.

10.6.6 Taking the above comments into account, it is considered that there is potential for a fire safety risk to occur, particularly when having regards to the presence of the adjacent gas substation. However, Officers are confident that the risk can be mitigated through a planning condition that requires the developer to agree a Battery Safety Management Plan (BSMP) with the Local Planning Authority prior to works commencing. The BSMP would need to include safety measures and risk mitigation and it shall cover the construction, operational and decommissioning phases of the development. Officers have persuaded the applicant to agree to a prior to commencement condition rather than a prior to first use condition as it is important to establish whether a suitable and sufficient BSMP can be agreed before any of the works commence as should it not be possible to agree on a BSMP, abortive work would not be carried out and the site left as a construction site with the resulting harm to the landscape.

10.6.7 The Local Planning Authority will involve the HSE, Wales and West Utilities and Avon and Somerset Fire Service as part of the consideration of the BSMP to ensure that there is consensus that risk to the adjacent gas substation and wider risk are mitigated against through the BSMP. These consultees' views will ensure due process has been followed and that the condition is sufficient to ensure that the application does not conflict with the adopted development plan or the NPPF, in particular, Paragraph 130(f).

11 Local Finance Considerations

11.1 Community Infrastructure Levy - N/A

12 Planning balance and conclusion

12.1 The principle of development is considered to be compliant with Policy SD1, the overarching policy in the Local Plan, and it complies with the Local Plan when taken as whole given that the development plan supports a move towards renewable energy. The scheme is also supported national planning and energy policies. It is noted that the proposal would lead to a loss of an area of best and most versatile agricultural land, but the report sets out the reasons why it is considered that, on balance, this particular proposal cannot be refused under Policy NH8 of the Local Plan.

12.2 Through mitigation, it is concluded that there would not be material harm to the character and appearance of the landscape or the setting of heritage assets. The attachment of conditions ensuring that appropriate measures are put in place to reduce noise levels emanating from the site, the impact on neighbouring residential amenity would not be materially harmful either.

12.3 The Highway Authority have advised that they have no objections to the proposed development, subject to a list of recommended conditions being applied to

the planning permission. These conditions are considered to mitigate against a negative impact on highway safety and a severe impact on the local road network. Conditions are also considered necessary to ensure that harm to biodiversity would not occur and to secure ecological enhancements in line with the NPPF.

12.4 The proximity of a gas substation to the proposed battery storage site and the potential safety implications of this have been given due consideration. Relevant consultees have been consulted in relation to this matter and they have not raised objections to the proposal. However, it is clear that some form of safety management plan for the site is required and with this in mind, a condition requiring a Battery Safety Management Plan to be agreed with the Local Planning Authority and other relevant parties should be attached to the permission to ensure that the potential safety issues are mitigated against.

12.5 For the reasons set out above, having regard to all the matters raised, it is therefore recommended that planning permission is granted subject to conditions.

In preparing this report the planning officer has considered fully the implications and requirements of the Human Rights Act 1998 and the Equality Act 2010.

Appendix 1 – Planning Conditions and Informatives

Recommended Conditions

- 1 The development hereby permitted shall be begun within three years of the date of this permission.

Reason: In accordance with the provisions of Section 91 Town and Country Planning Act 1990 (as amended by Section 51(1) of the Planning and Compulsory Purchase Act 2004).

- 2 The development hereby permitted shall be carried out in accordance with the following approved plans:

(A3) DrNo 22016-LP-002 Rev B Location Plan
(A1) DrNo 22016-PP-003 Rev F Proposed Plan 1-500
(A1) DrNo 22016-PP-004 Rev F Proposed Plan 1-250
(A1) DrNo SPP07 Rev C Mitigation Plan
(A3) DrNo CEL-STD-AMENL-540 40ft Large Amenity Cabin
(A3) DrNo CEL-STD-AF-731 Timber Acoustic Fence

- (A3) DrNo CEL-STD-BATT-CK-385 Control Kiosk
- (A3) DrNo CEL-STD-BATT-INV-380 Containerised Inverter
- (A3) DrNo CEL-STD-BATT-RSU-381 Containerised Battery
- (A3) DrNo CEL-STD-CCTV-800 CCTV Column
- (A3) DrNo CEL-STD-PF-G-700 Metal Palisade Security Fence
- (A3) DrNo CEL-STD-WPD-205 GRP Substation
- (A3) DrNo CEL-STD-SW-100 Switch Room
- (A3) DrNo CEL-STD-TX-165 Auxiliary Transformer
- (A3) DrNo CEL-STD-CSF-720 Cattle Stock Fence

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

- 3 No removal of hedgerows, trees or shrubs shall take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check for active birds' nests immediately before the vegetation is cleared or works to or demolition of building structures commences. Should any active nests be found then works in the immediate area shall cease until the ecologist has confirmed to the Local Planning Authority in writing that the nests are empty. In no circumstances shall netting be used to exclude nesting birds.

Reason: In the interests of nesting wild birds and in accordance with West Somerset Local Plan to 2032: Policy NH6: nature conservation and the protection and enhancement of biodiversity.

- 4 Prior to the commencement of the development hereby permitted, a detailed Battery Safety Management Plan (BSMP) shall be submitted to, and approved in writing by, the Local Planning Authority. The BSMP shall include safety measures and risk mitigation and it shall cover the construction, operational and decommissioning phases of the development. Thereafter the batteries shall be installed and maintained for the duration of the permission in accordance with the approved BSMP.

Reason: In the interests of safeguarding the water environment and preventing a pollution incident or danger to the adjacent gas substation.

- 5 Prior to the commencement of the development hereby permitted, a Tree and Hedge Protection Plan (THPP) shall be submitted to, and approved in writing by, the Local Planning Authority. Once approved, such measures shall be fully implemented and maintained for the duration of the construction period of the development hereby permitted.

Reason: In order to protect existing vegetation from damage during the construction process.

- 6 Prior to the commencement of the development hereby permitted, a surface water drainage strategy shall be submitted to, and approved in writing by, the Local Planning Authority. Such strategy shall include measures to minimise the risk of a potential pollution incident. Once approved, the strategy shall be fully implemented as part of the development and retained in good working order for the duration of the permission.

Reason: In the interests of preventing a pollution incident and to ensure that surface water run-off is sufficiently managed within the site.

- 7 There shall be no obstruction to visibility greater than 600 millimetres above adjoining road level forward of a line drawn 2.4 metres back and parallel to the nearside carriageway edge over the entire site frontage. Such visibility shall be fully provided before works commence on the development hereby permitted and shall thereafter be maintained at all times.

Reason: In the interests of highway safety.

- 8 The proposed access shall be constructed in accordance with details shown on the submitted plan, drawing number 22016-PP-003 Rev D and shall be available for use prior to commencement of development. Once constructed the access shall be maintained thereafter in that condition at all times.

Reason: In the interests of highway safety.

- 9 Prior to commencement of the development hereby permitted the proposed access over at least the first 10.0 metres of its length, as measured from the edge of the adjoining carriageway, shall be properly consolidated and surfaced (not loose stone or gravel) in accordance with details which shall have been submitted to and approved in writing by the Local Planning Authority. Once constructed the access shall thereafter be maintained in that condition at all times.

Reason: In the interests of highway safety.

- 10 Provision shall be made within the site for the disposal of surface water so as to prevent its discharge onto the highway, details of which shall have been submitted to, and approved in writing by, the Local Planning Authority. Such provision shall be installed before first use of the permitted development and thereafter maintained at all times.

Reason: In the interests of highway safety.

- 11 The development hereby permitted shall be carried out in strict accordance with the mitigation measures set out under Paragraph 5.2 of the Preliminary Ecological Appraisal by Western Ecology and dated October 2021.

Reason: In the interests of protecting wildlife interests on site and to ensure compliance with Policy NH6 of the West Somerset Local Plan to 2032.

- 12 The construction phase of the development hereby permitted shall be carried out in accordance with the details set out within the submitted Construction Traffic Management Plan Rev B.

Reason: In the interests of highway safety.

- 13 Entrance gates in the access off the public highway shall be agricultural five bar

gates with a maximum height of 1.2 metres above ground level, and they shall be hung to open inwards and set back a minimum distance of 6.0 metres from the carriageway edge. The gates shall thereafter be maintained in that condition at all times.

Reason: In the interests of highway safety.

- 14 Prior to its installation, details of the surface for the access track shall be submitted to, and approved in writing by, the Local Planning Authority. The track shall then be installed in accordance with the approved details and retained as such thereafter.

Reason: In the interests of visual amenity and the satisfactory appearance of the development upon completion.

- 15 Notwithstanding the details on the approved plans, prior to first use of the development hereby permitted, details of the colour for the exterior of the amenity cabin, control kiosk, substation, switch room, the containerised batters and the containerised inverters shall be submitted to, and approved in writing by, the Local Planning Authority. The aforementioned structures shall then be coloured in accordance with the approved details prior to first use of the development and they shall be retained in that colour thereafter.

Reason: In the interests of visual amenity and the satisfactory appearance of the development upon completion.

- 16 Prior to first use of the development hereby permitted, a "Lighting Design for Bats", following Guidance Note 8 - Bats and Artificial Lighting (ILP and BCT 2018), shall be submitted to, and approved in writing by, the Local Planning Authority. The design shall show how and where external lighting will be installed (including through the provision of technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory or having access to their resting places. All external lighting shall be installed in accordance with the specifications and locations set out in the design, and these shall be maintained thereafter in accordance with the design. Under no circumstances shall any other external lighting be installed without prior consent from the Local Planning Authority.

Reason: In the interests of the 'Favourable Conservation Status' of populations of European protected species and in accordance with West Somerset Local Plan to 2032: Policy NH6: nature conservation and the protection and enhancement of biodiversity.

- 17 Prior to first use of the development hereby permitted, a scheme for ecological enhancement measures shall be submitted to, and approved in writing by, the Local Planning Authority. The ecological enhancement measures shall then be installed in accordance with the approved scheme and retained as such thereafter.

Reason: In the interests of securing ecological enhancement in accordance with

Paragraph 174(d) of the National Planning Policy Framework.

- 18 The landscaping of the site shall be carried out in accordance with the planting details and plant schedule shown on drawing number SPP07 Rev C within the first planting season following commencement of development, or within such other time as may be approved with the Local Planning Authority in writing beforehand. The landscaped areas shall be maintained to ensure establishment of the approved scheme, including watering, weeding and the replacement of any plants which fail within a period up to five years from the completion of the development. The landscaped areas shall then be maintained in accordance with the maintenance schedule shown on drawing number SPP07 Rev C. The landscaped areas shall be retained in accordance with the requirements of this condition for the lifetime of the development hereby permitted.

Reason: In the interests of visual amenity and the satisfactory appearance of the development upon completion.

- 19 Prior to first use of the development hereby permitted, the hedgebank shown on drawing number SPP07 Rev C shall be constructed as a battered bank that is 1.5 metres high and 1.5 metres wide at the base. The bank shall be faced with turf on both sides and topped with planting in accordance with the hedge planting details shown on drawing number SPP07 Rev C in a double staggered row at five plants per linear metre and the rows 0.5 metres apart. The planting on the hedgebank shall be maintained to ensure establishment of the approved scheme, including watering, weeding and the replacement of any plants which fail within a period up to twenty years from the completion of the development. The hedgebank and the planting on the bank shall then be retained and maintained thereafter at a minimum height of three metres for the lifetime of the development hereby permitted.

Reason: In the interests of visual amenity and the satisfactory appearance of the development upon completion.

- 20 Prior to first use of the development hereby permitted, the plant shall be installed in accordance with the mitigation measures set out under Paragraph 5.1.4 of the Noise Impact Assessment report by inacoustic and dated 11th January 2022. As part of this, a scheme for noise insulating the inverter and battery containers and fixing attenuated louvres on the containers shall be submitted to, and approved in writing by, the Local Planning Authority, and the scheme shall be implemented in accordance with the approved scheme prior to their first use. In addition, the acoustic fence shown on drawing number CEL-STD-AF-731 shall be constructed around the compound in the position shown on drawing number SPP07 Rev C prior to first use of the permitted development. The development shall be retained in accordance with the mitigation measures detailed above, and the acoustic fence shall be retained in situ, for the lifetime of the development hereby permitted.

Reason: To safeguard local residents from noise and disturbance.

- 21 The development hereby permitted shall be for a maximum temporary period of

40 years from the date of this permission. Thereafter, the site shall be decommissioned and returned to its former state in accordance with details that have been submitted to, and agreed in writing by, the Local Planning Authority. Such details shall include a timescale of the decommissioning works.

Reason: To determine the scope of this permission and in the interests of visual amenity.

- 22 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, as amended, (or any order revoking and re-enacting that Order), no fencing, walls or other means of enclosure (other than the fencing permitted as part of this approval) shall be installed within the application site without the granting of planning permission by the Local Planning Authority for such development.

Reason: In the interests of the conserving the development and the locality.

Recommended Informative

- 1 In accordance with Paragraph 38 of the National Planning Policy Framework 2021, the Council has worked in a positive and creative way with the applicant and has negotiated amendments to the application to enable the grant of planning permission.

Application Details	
Application Reference Number:	49/22/0016
Application Type:	Full Planning Permission
Earliest decision date:	01 July 2022
Expiry Date	18 July 2022
Extension of time	
Decision Level	
Description:	Erection of 1 No. dwelling, to be tied to farm, with demolition of outbuildings at Pitt Farm, Ford, Wiveliscombe (resubmission of 49/21/0032)
Site Address:	PITT FARM, BILLY LANE, LANGLEY MARSH WIVELISCOMBE, TAUNTON, TA4 2RH
Parish:	49
Conservation Area:	No
Somerset Levels and Moors RAMSAR Catchment Area:	Yes
AONB:	No
Case Officer:	Ben Gilpin
Agent:	TERRAPERMAGEO
Applicant:	MR & MRS T RILEY
Committee Date:	December 2022
Reason for reporting application to Committee	The proposal is contrary to adopted Policy, but has received support from more than 4 members of the public and the Parish Council (the PC have not objected, but have not supported either, providing a neutral comment)

1. Recommendation

1.1 That permission be REFUSED

2. Executive Summary of key reasons for recommendation

2.1 A planning application should be determined in accordance with the development plan unless material considerations indicate otherwise.

2.2 The site is in open countryside and the proposed development of a tied rural workers dwelling would not accord with the NPPF 2021 (para. 80 (a)-(e)), in that it (a) there is no essential need for a rural worker to live permanently at or near their place of work in the countryside (the site has an existing property on site); (b) the development would not represent the optimal viable use of a heritage asset (the heritage asset is already in use (house)); (c) the development would not re-use redundant or disused buildings, although it would have a negligible effect on its immediate setting; (d) the development would not involve the subdivision of an existing residential building (the proposal is for a new build house); and (e) the design is not considered to be of exceptional quality.

2.3 Although the scheme could contribute a single dwelling towards the Taunton

Deane Borough Council (TDBC) 5 year housing land supply (5YHLS), the provision of one property, in an unsustainable location, would be contrary to adopted policy and the development plan.

2.4 It has also been suggested that, as a material consideration, the proposal should be supported as it would allow for the management of the land (through a site management plan) and provision of a 'community hub'. It has been acknowledged that the site currently provides for a community hub (and that this use would be strengthened by the addition of a tied dwelling at the site).

2.5 It is considered that the Site Management Plan, although having worthy objectives, could be delivered on the identified 4.4 acres (1.8 hectares) of land without the need for an additional dwelling on the site (the site has an existing farmhouse) - the 'tests' in para.80(a) and (c) in particular of the NPPF have not been met as no robust evidence of a categorical need to be on site has been produced, and the scheme proposes the demolition of an existing building (with an approximate footprint of 72 sq.m), rather than its reuse and conversion.

3. Planning Obligations and conditions and informatives

3.1 Conditions (full text in appendix 1)

N/A - refusal

3.2 Informatives (bullet point only)

3.2.1 Proactive Statement

3.3 Obligations

N/A - refusal

4. Proposed development, site and surroundings

4.1 Details of proposal

Erection of 1 No. dwelling, to be tied to farm, with demolition of outbuildings at Pitt Farm, Ford, Wiveliscombe (resubmission of 49/21/0032). This would be an additional dwelling to be tied to existing farm.

The proposed dwelling would be a single storey house, requiring the demolition of an existing pottery building to provide sufficient space.

To provide phosphate mitigation, the scheme seeks to provide a new wetland area to accommodate outflows.

The finish / appearance of the proposed property has been described as follows: "The new house would have walls clad with timber. This would be a local species sourced from Somerset or Devon (likely larch- subject to availability at the time of construction). The arrangement would be a vertical 'board on batten' type. The stone walls that would form the 'plinth' of the house would be constructed using the stone that would be sourced from the demolished lean-to shed, which appear to have been originally sourced from on-site. This stone would be bonded using a traditional-mix

lime mortar.

The roof of the new dwelling would be clad in corrugated metal which would be powder coated in the interest of longevity. There would be PV panels mounted to this on the south facing side.

The new dwelling would have high-performance double and triple glazed timber windows, which would be faced with metal (composite-type).

New doors would be high-performance units and would include a portion of glazing. The frames would be constructed from timber and faced with metal (composite-type)."

4.2 Sites and surroundings

The site location is in open countryside and within the setting of the Listed Building (main farmhouse and curtilage listed barns).

The site has no statutory designation constraints.

The design is similar to that previously refused (see planning history below).

The site is part of a former farm complex (now with significantly reduced associated land - 4.4 acres (1.78 hectares)) with the main farmhouse being a listed building (Grade II LB).

There are a range of outbuildings and two agricultural fields associated with the site, to the north and south of the main farmhouse. The land is gently sloping to the south where there is a minor watercourse (just outside of the site). Access is via Grants Lane. There is also a public footpath running near to the proposed development area (along the private track providing access to the site and main dwelling - WH16/47 (Footpath)).

The site is approximately one mile north of Wiveliscombe.

5. Planning (and enforcement) history

Reference	Description	Decision	Date
49/21/0032	Erection of 1 No. dwelling, to be tied to farm, with demolition of outbuildings and formation of wetland area	Refusal	03.09.2021

6. Environmental Impact Assessment

N/A

7. Habitats Regulations Assessment

The proposal lies within the Phosphate Catchment Area and mitigation is required.

In this instance the statutory consultee has determined that the proposal would be acceptable from a phosphates perspective, subject to the securing of a Bio PTP by way of UU.

8. Consultation and Representations

Statutory consultees (the submitted comments are available in full on the Council's website).

8.1 Date of consultation: 23 May 2022

8.2 Date of revised consultation (if applicable):

8.3 Press Date:

8.4 Site Notice Date: 06 June 2022

8.5 **Statutory Consultees** the following were consulted:

Consultee	Comment	Officer Comment
WIVELISCOMBE TOWN COUNCIL	Wiveliscombe Town Council recognise that this application is contrary to existing policy regarding dwellings in the open countryside. However, we note extensive developments close by along Grants Lane that have been approved.	Recorded as neither support nor objection. Reference to 'extensive developments' are considered in this report.
SCC - ECOLOGY	No comments received	No objection is recorded.
SCC - RIGHTS OF WAY	I can confirm that there are public rights of way (PROW) recorded on the Definitive Map that run along the proposed access to the site (public footpath WG 16/47 and restricted byway WG 16/50) at the present time. I have attached a plan for your information. I have not visited the site. The Definitive Map and Statement are legally conclusive of the existence and status of those public rights of way that they show. However, they are not conclusive as to what they omit. Therefore, the fact that a right does not	No objection subject to conditions / informatives

	<p>appear either on the Map and Statement, does not necessarily mean that it does not exist.</p> <p>1. Specific Comments Restricted byways can be used by members of the public on foot, horseback, pedal cycle and by non-mechanically propelled vehicles such as horse drawn carriages.</p> <p>The local planning authority needs to be confident that the applicant can demonstrate that they have an all-purpose vehicular right to the property along the restricted byway WG 16/50 and public footpath WG 16/47. If they are unable to and permission is granted, then the local planning authority could potentially be encouraging criminal activity through permitting driving on a public path without lawful authority.</p> <p>2. General Comments</p> <p>Any proposed works must not encroach onto the width of the PROW. The following bold text must be included as an informative note on any permission granted:</p> <p>Development, insofar as it affects the rights of way should not be started, and the rights of way should be kept open for public use until the necessary Order (temporary closure / stopping up/diversion) or other authorisation has come into effect/ been</p>	
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	<p>granted. Failure to comply with this request may result in the developer being prosecuted if the path is built on or otherwise interfered with. The health and safety of the public using the PROW must be taken into consideration during works to carry out the proposed development. Somerset County Council (SCC) has maintenance responsibilities for the surface of a PROW, but only to a standard suitable for the public use. SCC will not be responsible for putting right any damage occurring to the surface of a PROW resulting from vehicular use during or after works to carry out the proposal. It should be noted that it is an offence to drive a vehicle along a public footpath, public bridleway or restricted byway unless the driver has lawful authority (private rights) to do so.</p> <p>If it is considered that the development would result in any of the outcomes listed below, then authorisation for these works must be sought from Somerset County Council Rights of Way Group:</p> <ul style="list-style-type: none"> • A PROW being made less convenient for continued public use. • New furniture being needed along a PROW. • Installing any apparatus within or across the PROW. • Changes to the surface of a PROW being needed. • Changes to the existing 	
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	<p>drainage arrangements associated with the PROW.</p> <p>If the work involved in carrying out this proposed development would:</p> <ul style="list-style-type: none"> • make a PROW less convenient for continued public use; or • create a hazard to users of a PROW, then a temporary closure order will be necessary and a suitable alternative route must be provided. For more information, please visit Somerset County Council's Rights of Way pages to apply for a temporary closure: https://www.somerset.gov.uk/roads-andtransport/apply-for-the-temporary-closure-of-a-right-of-way 	
WESSEX WATER	No objection	No objection
DRAINAGE ENGINEER (LLFA)	This appears to be a minor application and below the LLFA threshold for a response.	No objection is recorded
TREE OFFICER	I didn't object to the earlier application for this one – the current application doesn't look much different so I can confirm no further comment or objection from me.	No objection is recorded
HERITAGE	<p>No comments have been received in relation to the current application. However, the location and design are very similar to that detailed in application reference 49/21/0032. The Heritage comments in that application stated:</p> <p>"Determining Issues and Considerations.</p> <p>The proposals are for an</p>	Knowing the scheme is visually comparable to that detailed in application 49/21/0032, it is considered there is no objection from a heritage perspective, subject to the inclusion of a planning condition.

	<p>additional dwelling to be tied to existing farm which involves the demolition of an outbuilding.</p> <p>I have no objection to the demolition of the pottery barn south of the tithe barn. It is a later addition to the farmstead and is thought to have been built after 1927.</p> <p>Its subsequent alterations including concrete block walls lower its significance. The conversion of the threshing barn has not been discussed and is another option.</p> <p>I have no objections to the new dwelling. It does not strictly follow the courtyard plan however the design and materials is sympathetic to the group and the setting of the listed building. If the case officer is minded to approve the scheme I would recommend a materials condition including windows to be agreed.</p>	
SCC - TRANSPORT DEVELOPMENT GROUP	<p>On the basis this is an agricultural workers dwelling, Standing Advice can applied.</p> <p>Access if via a public footpath, WG 6/47 therefore Rights of Way should be also consulted.</p>	No Objection - Standing Advice
NATURAL ENGLAND	<p>Somerset Levels and Moors Ramsar Site</p> <p>The Somerset Levels & Moors Ramsar Site is in unfavourable condition due to excessive phosphate loading within its</p>	No objection is recorded, subject to a Bio Phosphate Treatment Plant (PTP) being used and secured in perpetuity by way of a Unilateral Undertaking (UU).

	<p>catchment.</p> <p>The submitted nutrient neutrality assessment indicates that the proposed development is able to achieve nutrient neutrality by replacing an existing inefficient PTP and using the resultant credits. This information should enable the LPA to carry out an HRA/AA. Natural England are a statutory consultee at AA stage.</p> <p>We look forward to further consultation on the AA.</p> <p>02.08.2022 - Subsequent Comments:</p> <p>"I have had a look at this and from a phosphates perspective all is acceptable. They are replacing a inefficient PTP with a biological PTP to serve both the existing and new dwelling.</p> <p>It looks like SES ecology are happy with the mitigation also and are producing the HRA.</p> <p>The only thing that will need to be completed is the unilateral undertaking to make sure that the PTP is monitored and maintained correctly."</p>	
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8.6 Internal Consultees the following were consulted:

Consultee	Comment	Officer comment
CIL Officer	<p>The creation of a dwelling is CIL liable regardless of size.</p> <p>This proposed development measures</p>	The proposal would incur a CIL payment requirement were it to be approved.

	<p>approximately 107 sqm. The application is for residential development outside the settlement limits of Taunton and Wellington where the Community Infrastructure Levy (CIL) is £125 per square metre. Based on current rates, the CIL receipt for this development is approximately £13,500.00. With index linking this increases to approximately £19,000.00.</p>	

8.7 Local representations

Neighbour notification letters were sent in accordance with the Councils Adopted Statement of Community Involvement.

29 number of letters have been received making the following comments (summarised):

Material Planning Considerations	
Objections	Officer Comment
None	
Support	Officer comment
Suitable Design	Considered below
Safe Access	Considered below
Appropriate for Open Countryside	Considered below
Phosphates are not an issue	Considered below

8.7.1 Summary of objections - non planning matters

- Restrictive Occupancy ties can be removed

This is not considered material to deliberations, as if the scheme were to be approved with the use tie as requested, to remove that tie would require a further planning application that would be considered on its own merits.

8.7.2 Summary of support - non planning matters

- The applicants are a nice, professional couple

Although complimentary, the character of an applicant (or applicants) is not a material consideration in deliberations.

- Would allow applicants to stay 'local' / provide multi-generation accommodation.

Desires of outcomes are admirable, but applications must be determined against the requirements of policy and the Development Plan.

9. Relevant planning policies and Guidance

Section 70(2) of the Town and Country Planning Act 1990, as amended ("the 1990 Act), requires that in determining any planning applications regard is to be had to the provisions of the Development Plan, so far as is material to the application and to any other material planning considerations Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) ("the 2004 Act") requires that planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise. The site lies in the former Taunton Deane area. The Development Plan comprises the Taunton Deane Core Strategy (2012), the Taunton Site Allocations and Development Management Plan (SADMP) (2016), the Taunton Town Centre Area Action Plan (2008), Somerset Minerals Local Plan (2015) and Somerset Waste Core Strategy (2013).

Both the Taunton Deane Core Strategy and the West Somerset Local Plan to 2032 were subject to review and the Council undertook public consultation in January 2020 on the Council's issues and options for a new Local Plan covering the whole District. Since then the Government has agreed proposals for local government reorganisation and a Structural Change Order agreed with a new unitary authority for Somerset to be created from 1 April 2023. The Structural Change Order requires the new Somerset authority to prepare a local plan within 5 years of vesting day

Relevant policies of the development plan in the assessment of this application are listed below:

TDBC Core Strategy:

SD1 – Presumption in favour of sustainable development
CP1 – Climate change,
CP6 – Transport and accessibility,
CP8 – Environment,
DM1 – General requirements,
DM2 – Development in the countryside,
DM4 – Design

TDBC Site allocations and development management plan 2028

H1A – Permanent housing for rural workers,

Supplementary Planning Documents

Public Realm Design Guide for the Garden Town, December 2021

District Wide Design Guide, December 2021

Other relevant policy documents:

Somerset West and Taunton Council's Climate Positive Planning: Interim Guidance Statement on Planning for the Climate Emergency (March 2022).

9.1 National Planning Policy Framework

10. Material Planning Considerations

The main planning issues relevant in the assessment of this application are as follows:

10.2.1 *The principle of development*

This application is for a new, open-market dwelling in Open Countryside (as defined by policy SP1 of the adopted TDBC Core Strategy).

As such it is subject to policies H1A, DM2 and CP8 which only allow for new dwellings in Open Countryside locations if certain criteria are met, such as for essential rural workers or affordable housing exception sites.

The above listed policies, and the development proposed, are detailed and considered below.

Policy H1A - Permanent housing for rural workers

The proposal has been detailed as an open market dwelling, albeit with a tie for occupation (rural workers' accommodation).

This policy is applicable as the application seeks to tie the occupation to the wider holding (identified as a 4.4-acre farm).

Policy H1A reads:

"New permanent housing for rural workers will only be allowed to support existing activities on well-established units, where:

- A. There is a clearly established existing functional need;*
- B. The need relates to a full-time worker, or one who is primarily employed in agriculture and does not relate to a part-time requirement;*
- C. The unit and the activity concerned have been established for at least three years, has been profitable for at least one of them, are currently financially sound, and has a clear prospect of remaining so;*
- D. The functional need could not be fulfilled by another existing dwelling on the unit, or any other existing accommodation in the local area which is suitable and available for occupation by the workers concerned; and*
- E. Other planning requirements, including definition of domestic curtilage, siting and access, and impact on the countryside, are satisfied."*

In relation to the above, the application has been supported by a 'Site Management Plan - 2022 to 2032' (SMP).

In this instance, the SMP does not identify, or seek to evidence, where there is an established functional need for the development or how development would relate to a full-time worker, or one who is primarily employed in agriculture.

The SMP does not evidence how the activity the tied dwelling is to support has been established for a minimum of three years, and profitable for at least one of them, or that the activity is financially sound and has a clear prospect of remaining so.

The SMP does not evidence how or why the existing dwelling on the unit could not accommodate the applicants, or why no other suitable accommodation for occupation by the workers concerned is not available in the local area (notably the town of Wiveliscombe)

Knowing the above, the scheme does not accord with Policy H1A requirements.

Policy DM2 – Development in the Countryside

Policy DM2 identifies the uses / development types that would be supported in open countryside. The policy states that:

“DEVELOPMENT IN THE COUNTRYSIDE

Outside of defined settlement limits the following uses will be supported:

- 1. Community uses;*
- 2. Class B Business Use;*
- 3. Holiday and Tourism;*
- 4. Agriculture, forestry and related
(a. new non-residential agricultural and forestry buildings commensurate with the role and function of the agricultural or forestry unit; b. farm shops);*
- 5. Replacement Dwellings;*
- 6. Affordable Housing;*
- 7. Conversion of existing buildings;*
- 8. Development for essential utilities infrastructure.”*

The development proposed does not fall within any of the above categories that would be supported by this policy. None of the exceptions allowed under policy DM2 are met within this application. Consequently, the proposal does not accord with the Development Plan.

Paragraph 80 of the National Planning Policy Framework (NPPF)

In addition to Policies DM2 and H1A, paragraph 80 of the National Planning Policy Framework (NPPF) is important. It reads:

“80. Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:

(a) there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside;

(b) the development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets;

(c) the development would re-use redundant or disused buildings and enhance its

immediate setting;

*(d) the development would involve the subdivision of an existing residential building;
or*

(e) the design is of exceptional quality, in that it:

- is truly outstanding, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and

- would significantly enhance its immediate setting and be sensitive to the defining characteristics of the local area."

In this case, and as reasoned, the scheme as proposed does not accord with the requirements of points (a) to (e) of para. 80 (it is acknowledged that the design is good, but not one that could qualify as truly outstanding in this case).

CP8 – Environment

Inherent to decision-making are adopted policies within the Development Plan.

The application has suggested that Policy DM2 of the Core Strategy (Development in the Countryside), which would ordinarily be used to determine applications, should not be applicable in this instance, and that consideration of the scheme against Policy CP8 is more appropriate.

This is suggested and reasoned in sections 2.1.3 and 2.1.4 of the Planning Statement. They read:

"2.1.3 We are also aware that in appeal APP/D3315/W/17/3179264 (Appendix 4) the Inspector concluded that:

'15. In terms of the settlement boundary, CS policy DM2 provides that, outside defined settlement limits, certain uses will be supported (not including housing development). However, it does not state that other types of development will be refused. As agreed by the Council the fact that a proposal is not one of the uses specifically supported by the policy does not mean that there is conflict. Other uses should be determined against Policy CP8, which deals with all development.

16. CS policy CP8 applies to all development outside the settlement boundary and is therefore relevant to the appeal proposal. It provides that development outside settlement boundaries will be permitted where a number of criteria are met....'

2.1.4 CP 8 is an environment policy. We feel [the applicant] that the proposals are 'appropriate in terms of scale, siting and design and also fulfil the other criteria, as evidenced on the supporting heritage and ecological information."

Were the above to be accepted, Policy CP8 does need to be considered. In terms of determination, and not detailed in the submission, is the following wording in Policy CP8. That reads:

"Development outside of settlement boundaries will be permitted where it will:

- be in accordance with national, regional and local policies for development within rural areas (including those for protected Natura 2000 and Ramsar sites);"

In this instance, the requirement for development in open countryside to be in accordance with national, regional and local policies is fundamental to determination of the application.

The expectation of Policy CP8 is that development outside settlement boundaries (which is the case here) accords with 'national, regional and local policies for development within rural areas'. Such policies include Policy H1A (Permanent housing for rural workers) and DM2 (Development in the Countryside).

Knowing the above, the scheme does not accord with Policies H1A or DM2 and their requirements, and by default cannot accord with the requirements of Policy CP8 (in that the development would not be in accordance with policies for development in rural areas).

Option of a legally binding occupation tie

It is noted that legal agreements are often used for dwellings with an agricultural tie for occupation however this is not what has been suggested, and as outlined below, would not be appropriate given that neither of the applicants is in specifically rural or agricultural employment and the wider landholding is too small in scale to support such employment.

It appears from the submitted information that the applicants intend to occupy the proposed dwelling as a fully independent dwelling even if with a legal tie limiting occupation and sale/let to that in conjunction with occupation of the main dwelling.

A legal agreement would not change the situation regarding the creation of a stand-alone dwelling, and the suggestion to use this device would add complications to any future use of the land and existing and proposed dwellings, but with no clear planning benefits.

Furthermore, as the tie would not be explicitly for a rural worker (only to tie the occupation to extended family to the main house), it would not meet the requirements of adopted policies.

Town Council Comments

The comments from the Town Council appear to imply that, in their view, the other 'extensive developments' on Grants Lane (near this site) set an acceptable precedent for developments is not supported. Furthermore, no details of such developments have been provided by the Town Council.

From records (to 2015), there have been approvals for a Class Q Change of Use of a barn to house (as allowed by way of the GPDO), and an extension to a garden.

No new build, independent houses have been granted planning permission in close proximity.

Summary

The application does not accord with SADMP policy H1A 'Permanent Housing for

Rural Workers', nor Policies DM2, SP1, CP6 or CP8 or Paragraph 80 of the NPPF.

As such the proposal is not considered acceptable in principle.

10.2.2 Design of the proposal

The design is traditional in its use of materials and comparable to an adapted or converted agricultural building but does not meet the test to be assessed as being truly innovative or exceptional. This is evidenced in the Planning Statement (section 2.29) where it reads:

"The form of the building has been kept relatively simple, which offers benefits in respect of energy efficiency, including that it is more viable to achieve super-insulated, airtight and thermal bridge free construction."

Its design is intended to minimise effect and not detract from the setting of the Listed Building - it is meant to be visually subservient and meld with its surrounds.

It is accepted that the quality of the build could be one that follows and incorporates principles of PassivHaus design and the associated energy savings this could bring.

However, with the deliberately simple form of the building as proposed, although the design and use of materials are considered acceptable, it cannot be argued as being sufficiently innovative or exceptional."

Whilst the design does not form a reason to refuse the application it does not provide a significant reason to go against primary policy considerations in terms of the location of sustainable development or the principle of the scheme and, as such, the application is recommended for refusal.

10.2.3 Quality of Accommodation

The proposed dwelling would provide for independent living, with suitable sized living accommodation. The quality of accommodation is considered acceptable.

10.2.4 Access, Highway Safety and Parking Provision

The scheme is not considered to have a detrimental impact on highway safety or require improved access. In addition, the site has, and would continue to have, sufficient levels of parking to provide for the development proposed.

As per the previous refusal, the site is outside of recognised settlement limits and in a location which is approximately one mile from the nearest settlement of Wiveliscombe, which has a range of services, shops, schools and so forth. The roads towards Wiveliscombe do not have pavement provision or street-lighting in the main so it is considered that the development of a new dwelling in this location would result in a reliance in the use of private cars to access shops and services. This would make for unsustainable travel patterns and be against policy DM2 and transport policy CP6 which requires that developments 'contribute to reducing the need to travel'. By siting a new dwelling outside of a settlement, the proposal would create an increase in trip generation and a greater reliance on use of private cars to access services, and add increased distances to delivery services and similar mobile operations.

The lack of pavements would mean that walking into the nearest settlements would be impractical and potentially dangerous. Therefore whilst there are acknowledged planning benefits in regards to the approach to the building (the fact that the design seeks to incorporate the principles of PassivHaus design and the associated energy savings), on balance these are not considered to outweigh the harm that allowing a new dwelling would create in terms of traffic/trip generation impacts.

10.2.5 *The impact on the character and appearance of the locality*

The site is within the setting of a listed building (and curtilage listed structures).

Heritage aspects are considered below, but with the deliberate low-level finish, and use of materials that would blend with the rural aesthetic, the scheme would not detract from the character of the countryside in this location.

10.2.6 *The impact on neighbouring residential amenity*

Due to distances from neighbouring properties, the scheme would not adversely affect neighbours' amenity (after cessation of construction).

10.2.7 *The impact on trees and landscaping*

The scheme would have no effect on trees and would not require landscaping to mitigate effects of change.

10.2.8 *The impact on ecology and biodiversity and the Somerset Levels and Moors Ramsar Site.*

The proposed development would have a minimal effect on ecology / biodiversity, and with the use of a Bio PTP to manage phosphate emissions from the site (to be secured by way of a UU), wider impact on the RAMSAR site can be suitably addressed and controlled.

10.2.9 *Waste/Recycling facilities*

The site would have sufficient space to accommodate waste and recycling facilities, of a domestic scale, on site.

10.2.10 *Flood risk and energy efficiency*

The site would have no detrimental effect on, or be at risk from, flooding.

The design is such that it would incorporate and be built to design standards that intend to improve energy efficiency on site.

10.2.11 *Any other matters*

Public Rights of Way (PRoW):

Access to the site follows an established PRoW.

During deliberations, the PRoW Officer has been consulted who has not objected to

the scheme, subject to the inclusion of applicant informatives (if planning permission is to be granted).

10.3 *Heritage impact*

The site is within the setting of a listed building.

In this case, as the scheme is a resubmission of a previously refused proposal (see planning history), comments from the previous scheme are also applicable in this instance (the proposal is not dissimilar).

When considering the setting of a heritage asset, the guidance detailed in the NPPF is relevant (paragraph 19). That reads:

“195. Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset’s conservation and any aspect of the proposal.”

In this instance, the statutory consultees (qualifying as the ‘necessary expertise’ on heritage matters) stated:

“... the design and materials is sympathetic to the group and the setting of the listed building.”

Knowing the above it is not considered the proposal would be to the detriment of the heritage asset, subject to the inclusion of a planning condition (submission of materials).

11 Local Finance Considerations

11.1 Community Infrastructure Levy

The creation of a dwelling is CIL liable regardless of size.

This proposed development measures approximately 107 sqm.

The application is for residential development outside the settlement limits of Taunton and Wellington where the Community Infrastructure Levy (CIL) is £125 per square metre. Based on current rates, the CIL receipt for this development is approximately £13,500.00. With index linking this increases to approximately £19,000.00.

With regards to CIL relief, it has been established that as long as the applicants own the land and intend to occupy the property for a minimum of 3 years from completion date of the property and have not been granted Self Build Relief for any other property, they can submit a claim.

If granted this would be 100% relief, i.e., no CIL payable.

12 Planning balance and conclusion

12.2 For the reasons set out above, and having regard to all the matters raised the proposal conflicts with policies in the development plan. it is therefore recommended that planning permission is refused.

In preparing this report the planning officer has considered fully the implications and requirements of the Human Rights Act 1998 and the Equality Act 2010.

Appendix 1 – Planning conditions and Informatives / Reason/s for refusal

- 1 The proposal, for an open market dwelling (albeit tied) in open countryside cannot be supported in principle as to permit the development would be contrary to the requirements of adopted TDBC Core Strategy Policies DM2 and H1A of the Development Plan, as the scheme would not protect or enhance the quality of the local landscapes; it would not accord with, or promote sustainable patterns of development; nor does it represent a use that would be supported outside defined settlement limits.

- 2 The proposed residential development would be on a site in Open Countryside and at a distance from local shops and services. There is no pavement provision and limited opportunities for use of public transport or other sustainable transport modes. Therefore the proposal would be likely to lead to an increased reliance on the use of private cars and the creation of unsustainable patterns of transport which would be against policies CP6, SP1 and DM2 of the adopted TDBC Core Strategy.

Notes to applicant.

1. In accordance with paragraph 38 of the National Planning Policy Framework 2021 the Council has worked in a positive and creative way with the applicant and has looked for solutions to enable the grant of planning permission. However in this case the applicant was unable to satisfy the key policy test and as such the application has been refused.

Application Details	
Application Reference Number:	<u>38/21/0525</u>
Application Type:	<u>Full Planning Permission</u>
Earliest decision date:	18 May 2022
Expiry Date	<u>22 March 2022</u>
Extension of time	9th December 2022
Decision Level	Committee
Description:	Formation of synthetic pitch with perimeter fencing, sports lighting and wildlife area bunds with additional 7v7 and 11v11 grass pitches with site compound and accommodation facilities at Richard Huish College, South Road, Taunton
Site Address:	<u>RICHARD HUISH COLLEGE, SOUTH ROAD, TAUNTON, TA1 3DZ</u>
Parish:	Taunton
Conservation Area:	N/A
Somerset Levels and Moors RAMSAR Catchment Area:	Yes
AONB:	No
Case Officer:	<u>Darren Roberts</u>
Agent:	Richard McHugh
Applicant:	MR P LONSDALE
Committee Date:	8th December 2022
Reason for reporting application to Committee	Number of objections

1. Recommendation

1.1 That planning permission be GRANTED subject to conditions

2. Executive Summary of key reasons for recommendation

2.1 The application seeks permission for a new synthetic pitch, a new grass pitch and lighting. The proposed development will benefit the community by the creation of the synthetic pitch which will be able to be used by the college and local clubs and societies. It is not considered that the proposed floodlighting will harm protected species or adversely affect nearby residents. Other matters can be dealt with by planning condition. The proposal is considered to comply with the relevant policies and is recommended for approval.

3. Planning Obligations and conditions and informatives

3.1 Conditions (full text in appendix 1)

1. Standard Time limit of 3 years for commencement of development
2. Approved Plans as set out in the condition

3. Construction Management Plan with further details to be submitted
4. Landscaping details to be approved prior to implementation
5. Details of floodlighting to be submitted to and agreed within four months of the first use
6. A Noise Management Plan to be submitted and agreed prior to first use of the facility
7. Not to be in use and all flooding switched off between 2200 and 0700 hours
8. Ecological measures in appraisal to be carried out in full
9. Further details to be agreed on drainage system
10. Water treatment measures to be submitted and agreed prior to commencement
11. Pitch construction details to be approved prior to commencement

3.2 Informatives (bullet point only)

- 1 Proactive Statement
2. Badgers
3. Wildlife and the Law

4. Proposed development, site and surroundings

4.1 Details of proposal

The proposal is to form a new synthetic pitch, and a new grass small pitch, to install floodlighting and plant mounds forming a wildlife area at the rear of the Richard Huish College. The facility is intended for use mainly for football, although it is also designed to be used for rugby training and other multi-use activities. It is proposed to use the pitch up to 10pm on weekdays, and 6pm at weekends. In addition, it is proposed to reinstate the adult pitch at Ash Meadow, to the west of the site. The proposed mounds are to the north of the pitch and will be 2.5 metres high, planted with wildflowers, behind native tree planting. Some of the excavated topsoil will be used in construction of some additional mounds up to 1 metre high.

4.2 Sites and surroundings

The site is to the West of the main college building within the grounds of Richard Huish College (RHC). The site consists of open grass playing fields with boundary fencing, currently used for sports by the college. There is a rough area of land to the north, the Stockwell stream to the west, a car park to the south and a footpath to the east. Access to the field is by a bridge over this footpath. The boundaries of the site are well treed, particularly to the north and west, beyond which are further pitches and areas of open space.

5. Planning (and enforcement) history

Reference	Description	Decision	Date
38/15/0309	Erection of replacement sports hall	Approval	31/12/15
38/96/0114	Construction of bridge for pedestrian and vehicular use over	Approval	5/6/96

	Stockwell Stream		
Plus various applications for teaching blocks, parking areas, temporary buildings etc.			

6. Environmental Impact Assessment

Not required

7. Habitats Regulations Assessment

The site lies within the catchment area for the Somerset Moors and Levels Ramsar site. The development does not increase the number of dwellings or include any agricultural development. As competent authority it is considered that a project level appropriate assessment under the Conservation of Habitats and Species Regulations 2017 is not required as the Council is satisfied that the proposed development does not increase nutrient loadings at the catchment's waste water treatment works. The Council is satisfied that there will be no additional impact on the Ramsar site (either alone or in combination with other plans or projects) pursuant to Regulation 63(1) of the Habitats Regulations 2017.

8. Consultation and Representations

Statutory consultees (the submitted comments are available in full on the Council's website).

8.1 Date of consultation: 7/1/22

8.2 Date of revised consultation (if applicable): 11/7/22

8.3 Press Date: 7/1/22

8.4 Site Notice Date: 3/1/22

8.5 **Statutory Consultees** the following were consulted:

Consultee	Comment	Officer comment
SCC - ECOLOGY	Confirmation of dates/ times of use Lighting plan required Badger sett exclusion zone	See 10.6
Consultee	Comment	Officer comment
LEAD LOCAL FLOOD AUTHORITY	Application documents are insufficient to provide a substantive response. Further information required on drainage, SuDs hierarchy,	See 10.7

	infiltration testing. 16/11/22 Further information still required on details of the ditch and water treatment measures	
Consultee	Comment	Officer comment
SCC - CHIEF EDUCATION OFFICER	No comments received	Noted, the application is supported by the college
Consultee	Comment	Officer comment
SCC - RIGHTS OF WAY	No objections providing the development does not encroach on the PROW	There are no proposals to compromise the PROW
Consultee	Comment	Officer comment
SCC - TRANSPORT DEVELOPMENT GROUP	Refer to standing advice. CEMP required	See 10.3 See 10.4
Consultee	Comment	Officer comment
LANDSCAPE	<p>There is concern that the proposals to replace the existing grass playing field with a synthetic surfaced pitch, along with security fencing and sports lighting, would degrade and urbanise, a large part of the undeveloped, green, open, positively planned "Green Wedge" landscape and conflict with the purposes of the Green Wedge, as set out in paragraph 3.110 of the Local Plan.</p> <p>The landscape proposals included in the application, help to address the impact of the development from the dwellings to the northeast of the site, but otherwise do little to help to compensate for the loss of green infrastructure and urbanising of the site by improving the quality of the landscape that remains.</p> <p>It is considered therefore that proposals would conflict with Local Plan policy CP8 and, as a consequence, there is a landscape objection</p>	See 10.1
Consultee	Comment	Officer comment
TREE OFFICER	No comments	No trees are indicated to be lost. Additional trees are

		proposed, details of which are to be agreed
Consultee	Comment	Officer comment
LEISURE DEVELOPMENT	Support, subject to a community use agreement	See 10.8
Consultee	Comment	Officer comment
SPORT ENGLAND SOUTH WEST	Objection, concerns over the specification of the 3G pitch to include wider access	See 10.8
Consultee	Comment	Officer comment
ENVIRONMENT AGENCY	No objection subject to a condition of no raising of ground levels, and a scheme of pollution control to be agreed	See 10.7
Consultee	Comment	Officer comment
WILDLIFE TRUST	Concern over the impact on the stream Local Nature Reserve during and post construction, increase in floodlighting, impact on the green wedge.	See 10.9
Consultee	Comment	Officer comment
NATURAL ENGLAND	No comments	Noted
Consultee	Comment	Officer comment
Environmental Health - all Areas including Housing Standards	<p>Lighting</p> <p>Specifications noted in the drawing Proposed Sports Lighting Scheme (MCAMUK2520-12 rev E). Submitted drawing, Vertical Spill at 3m indicates that vertical illuminance at nearby housing will generally be at 0.3 to 0.4 lux. For reference, 0.3 lux is typical of the illuminance that results from moonlight.</p> <p>Condition</p> <p>The development should be conditional upon a report to verify levels of light spill outside the area of the pitch, to be submitted to and approved by the LPA within four months of the first use of the development.</p> <p>Noise</p> <p>I have considered the Noise Impact Assessment</p>	See 10.4

	<p>reference 9279, LN dated November 2021, submitted with the application. The principle noise source will be the human voice, with some impact sound to some structures. The conclusions regarding noise levels are generally accepted.</p> <p>Condition</p> <p>The development should be conditional upon Noise Management Plan (NMP), details to be submitted to the LPA for approval prior to the implementation of the permission.</p> <p>The NMP shall include as a minimum:-</p> <p>a. The measures outlined in the report.</p> <p>b. An explicit maintenance regime checking panel fixings and tightening as required (as per submitted document dated 25 / 8 /21, letter from Acoustic Consultants Ltd).</p> <p>The adverse noise and light impacts are both fairly low, but will be noticed by residents as the evening progresses. It is therefore strongly recommended that, given the proposed and likely light and noise impacts outlined in the application, the following is required, as part of the NMP</p> <p>c. Use of the development shall cease at 10pm</p>	

8.7 Local representations

Neighbour notification letters were sent in accordance with the Councils Adopted Statement of Community Involvement.

27 letters have been received, of which 22 are objections and 5 in support. These making the following comments (summarised):

Material Planning Considerations	
Objections	Officer Comment

Incursion into the green wedge	See 10.1
Impact on wildlife	See 10.6
Light pollution	See 10.4
Loss of green space	See 10.1
Impact on drainage, including Stockwell Stream	See 10.7
Creation of high bund will have visual impact	See 10.2.1
Storage facility out of character	See 10.2
Increased use will lead to noise pollution	See 10.4
New culvert has been created without planning permission	This is not part of this proposal
Lack of parking capacity	See 10.3
Support	Officer comment
Grass pitches are unusable in winter	See 10.1
Lack of facilities in Taunton	See 10.1
Great opportunity for young people, allowing for more inclusive use	See 10.1

8.7.1 Summary of objections - non planning matters

College parking issues have led to residents unable to park

8.7.2 Summary of support - non planning matters

None

9. Relevant planning policies and Guidance

Section 70(2) of the Town and Country Planning Act 1990, as amended ("the 1990 Act), requires that in determining any planning applications regard is to be had to the provisions of the Development Plan, so far as is material to the application and to any other material planning considerations Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) ("the 2004 Act") requires that planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise. The site lies in the former Taunton Deane area. The Development Plan comprises the Taunton Deane Core Strategy (2012), the Taunton Site Allocations and Development Management Plan (SADMP) (2016), the Taunton Town Centre Area Action Plan (2008), Somerset Minerals Local Plan (2015) and Somerset Waste Core Strategy (2013).

Both the Taunton Deane Core Strategy and the West Somerset Local Plan to 2032 were subject to review and the Council undertook public consultation in January 2020 on the Council's issues and options for a new Local Plan covering the whole District. Since then the Government has agreed proposals for local government reorganisation and a Structural Change Order agreed with a new unitary authority for Somerset to be created from 1 April 2023. The Structural Change Order requires the new Somerset authority to prepare a local plan within 5 years of vesting day

Relevant policies of the development plan in the assessment of this application are

listed below:

SD1 - Presumption in favour of sustainable development,
CP8 - Environment,
CP1 - Climate change,
CP5 - Inclusive communities,
SP2 - Realising the vision for Taunton,
DM1 - General requirements,
C3 - Protection of recreational open space,
A5 - Accessibility of development,
ENV1 - Protection of trees, woodland, orchards and hedgerows,
ENV2 - Tree planting within new developments,
ENV5 - Development in the vicinity of rivers and canals,

Supplementary Planning Documents

District Wide Design Guide, December 2021

Other relevant policy documents:

Somerset West and Taunton Council's Climate Positive Planning: Interim Guidance Statement on Planning for the Climate Emergency (March 2022)

Neighbourhood plans:

None for Taunton

9.1 National Planning Policy Framework

8. Promoting healthy and safe communities

10. Material Planning Considerations

The main planning issues relevant in the assessment of this application are as follows:

10.1 The principle of development

The proposal is to convert an existing grass pitch into a new 'synthetic' pitch, and to establish another grass pitch in another location close to the original pitch. In realising the vision for Taunton, Policy SP2 of the Core Strategy states that there should be the creation of balanced and sustainable communities through the provision of, inter alia, recreational space and schools. Conversely, the vision is to protect and extend the Town's distinctive green wedges and corridors. Whilst the site lies within the green wedge as shown on the proposals map, it does not constitute built development, merely the consolidation of existing recreational facilities.

10.1.1 The landscape officer refers to paragraph 3.110 of the core strategy, which sets out the purpose of green wedges. There are six policy objectives set out here: the prevent the coalescence of settlements; to maintain the open character or a green lung contributing to health and wellbeing; to bring the countryside into the

heart of the town; to provide accessible formal and informal recreation, sport and play; to provide valuable wildlife corridors and habitat; to protect areas of landscape importance and visual amenity; and to provide a positive approach to land use. Policy CP8 states that development proposals should not harm the natural or historic environment unless other material factors are sufficient to override their importance. In this case, the limited harm identified by the increased use of pitches within the green wedge are outweighed by increase in the amount of accessible formal recreation, sport and play. The application is therefore considered to comply with policies CP8, SP2 and paragraph 3.110 of the core strategy

10.2 Design of the proposal

The main aspect of the proposal is the conversion of the existing grass pitch into a synthetic pitch. This will incorporate a multi-use facility into the existing single pitch. As a result, there are proposed to be several areas used for storage of goals, nets, and other paraphernalia. This includes the need for a small storage container of 6 metres x 2 metres close to the path. It is agreed that this will change the nature of the facility to appear more 'urban', however on balance it is considered that the proposal is not contrary to any policy within the Local Plan, including DM1 of the Core Strategy. The proposal makes the most effective and efficient use of land, by allowing for the land to be used more frequently than at present, which will reduce the need to construct further grass pitches in other locations. The proposed storage container is 2.59 metres in height and will be situated behind fencing. Whilst visible from the path, it is not considered to be of a scale which would result in an unacceptable impact when viewed from the public path.

10.2.1 There is a concern regarding the height of the proposed bund, and the impact this would have on residents in Kings Close. The height of this bund would be 2.5 metres and is proposed to be planted with wildflowers. It is to be situated behind a row of newly planted trees. Whilst it is appreciated that this is a change from the more open views residents enjoy now, it is not considered that the introduction of a green area of planting is unacceptable and would assist in visual and noise screening.

10.3 Access, Highway Safety and Parking Provision

The proposal will be accessed via existing points off South Road. A car park is situated to the south, at Bishop Fox Drive. This is used for staff and visitors of RHC during the day, but is available for all at evenings and weekends, when the pitches are likely to be available for community use. Pedestrian access from the college is via a footbridge which goes above the footpath running along the west side of the site, and via gates adjacent to the car park. The site is well connected by foot and cycle path into the centre of Taunton. There is no requirement for additional road infrastructure and there will be no impact on parking provision, with users during the day coming from the school, and users in the evening and weekends able to use the existing car park or cycling or walking from other parts of Taunton.

10.4 The impact on neighbouring residential amenity

Concern has been raised by residents on several matters. Firstly, the noise and light pollution which will be created by the scheme. The proposal will introduce a use in the evenings. Immediately adjacent to the College, there are residential properties to the south on Bishop Fox Drive, and to the east on Kings Close.

The application is accompanied by lighting and noise reports. Regarding lighting, a modern lighting design which will emit lighting principally onto the pitch itself, with very little light spill (0.3 to 0.4 lux) visible at nearby properties. The Environmental Health Officer considers this to be an acceptable level of illumination.

10.4.1 In terms of noise, the main noise will be that of voices playing sport, as the numbers of spectators are limited. This is like the situation at present, albeit this would be more frequent due to the intensity of use of the pitch.

10.4.2 In order to comply with Policy DM1 of the Core Strategy, which requires development to not unacceptably harm public health or safety, it is recommended that further measures should be submitted in the event of permission, confirming the levels of light spill and noise to be within acceptable levels, and a condition that the facility is not used after 10pm, Monday to Fridays, and 6pm at weekends. This is a reasonable time to permit evening use of the facility whilst respecting the wishes of residents for the activity to cease in the evening. These times are in line with the opening hours of the college as stated within the feasibility report submitted with the application and have been agreed with the environmental health officer.

10.5 The impact on trees and landscaping

There is a substantial area of trees to the south and west of the existing pitch which would be maintained. The area to the north of the pitch, between the path and the stream, is described as a new nature area. This would consist of an L-shaped bund planted with wildflower seed, native trees adjacent to the path, and a 'wildlife area' formed of using topsoil to construct undulating mounds. The purpose of this is numerous- it would create screening from homes on Kings Close, allow for recycling of soil within the site, and increase biodiversity by the introduction of trees and wildflowers. It is important that the specification of the wildflowers and trees is agreed, as well as landscape maintenance.

10.6. The impact on ecology and biodiversity and the Somerset Levels and Moors Ramsar Site.

A Preliminary Ecological Assessment (PEA) has been submitted with the application. This identifies, amongst other things, an active badger sett to the north of the playing field. Proposed plans indicate protective buffers to be placed around this area, which would not have any public access. This can be further enhanced by a condition. There are several potential roosting sites within trees, for bats. These will be retained. There is a concern that the floodlighting will impact on bats. As stated above, lighting will not spill outside of the boundaries of the site and will be turned off after 10pm which will minimise any impacts on bats or other protected species.

10.7 Flood risk and drainage

The site is within flood zone 1. Due to the size of the site, a flood risk assessment is not required. However, due to the proposed drainage structure it is necessary to consult with the lead local flood authority.

At present, the pitch is natural, with no formal method of drainage required. With a change to a synthetic pitch, it is necessary to install drainage. In line with planning practice guidance, a hierarchy of drainage options needs to be undertaken. The drainage strategy submitted with the application concludes that the use of soakaways is not viable; therefore, the preferable route for runoff is into a surface

water body. The proposal is to restrict the runoff from the pitches to as close to greenfield runoff as possible. This will be in the form of a piped network, with the outfall situated in the southwest corner of the pitch, to reach the stream to the west. The LLFA have commented that the drainage ditch that will accept the water from the pitch requires assessment to confirm that the ditch is suitable and agreement with the relevant authority has been reached.

It is therefore necessary for the applicant to provide evidence that the ditch is suitable, and bodies have been consulted, before development can take place.

10.8 Sport England Comments

Due to the increased use of sports pitches, in line with statutory guidance, Sport England have commented on this application. They have stated that they are generally supportive of the proposal, however, raise concerns over the specification of the 3G pitch, in particular its ability to permit the use of rugby and allow for accessible users. As a result of this, the applicants have confirmed their intention and agreed to a condition requiring a detailed assessment of ground conditions and programme of implementation.

10.9 Construction Works

The application is accompanied by a proposed Construction Management Plan, which details how construction will take place, including routes, hours of operation, and monitoring of issues. For the construction of the 3G pitch, it is proposed to house a cabin within the car park and construct a temporary haul road into the site. Access to the Ash Meadows site for the construction of the grass pitch is proposed via Mount Road, using an existing track which passes Taunton Deane Cricket Club. It is unclear whether alterations to this access road, or any new or temporary bridges or culverts are required to enable vehicles to enter the site are required. For that reason, it is recommended that further details are required which would need to be agreed, for the authority to be satisfied that there is no impact on this part of the site, which is a sensitive natural area.

The proposed hours of construction are in keeping with the standard hours within residential areas, namely 0730-1800 Monday to Friday, and 0800 to 1300 on Saturdays. This is deemed acceptable.

11 Local Finance Considerations

11.1 Community Infrastructure Levy

N/A - relates to sports and leisure facilities

12 Planning balance and conclusion

12.1 Paragraph 47 of the NPPF states that applications for planning permission shall be determined in accordance with the development plan, unless material considerations indicate otherwise. The proposal is in keeping with the relevant policies referred to in this report.

12.2 It is acknowledged that nearby residents will experience a greater intensity of use of the site, which will lead to more noise and light pollution than at present. However, it is considered that the levels experienced will not be unacceptable given

the measures which have been submitted to minimise these concerns. Drainage and ecological issues have been satisfactorily addressed by the submission of further information. Overall, it is considered that the benefits of the proposal, which would include an increase in health and wellbeing of residents, outweigh any concerns raised in this matter, including any impact on the green wedge. For the reasons set out above, having regard to all the matters raised, it is therefore recommended that planning permission is granted subject to conditions.

In preparing this report the planning officer has considered fully the implications and requirements of the Human Rights Act 1998 and the Equality Act 2010.

Appendix 1 – Planning conditions and Informatives/ Reason/s for refusal

Conditions

1. The development hereby permitted shall be begun within three years of the date of this permission.

Reason: In accordance with the provisions of Section 91 Town and Country Planning Act 1990 (as amended by Section 51(1) of the Planning and Compulsory Purchase Act 2004).

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

(A1) DrNo MCA-MUK2520-44 Proposed Section
(A1) DrNo MCA-MUK2520-08 Rev F Proposed Location Plan
(A0) DrNo 21040 - E01 - Proposed Impermeable Area
(A0) DrNo 21040 - E02 - Proposed Drainage Layout
(A1) DrNo MCA-MUK2520-02 Rev I Proposed Site Layout with Grass Pitches
(A1) DrNo MCA-MUK2520-03 Rev C Proposed Drainage
(A1) DrNo MCA-MUK2520-04 Rev C Proposed Setting Out
(A1) DrNo MCA-MUK2520-07 Rev B Proposed Pitch Layout
(A1) DrNo MCA-MUK2520-10 Elevations
(A1) DrNo MCA-MUK2520-09 Rev B Proposed Fence Layout
(A1) DrNo MCA-MUK2520-11 Line Marking Plan
(A1) DrNo MCA-MUK2520-12 Rev E Proposed Sports Lighting Scheme
(A1) DrNo MCA-MUK2520-13 Rev F Contractors Access / Compound Plan
(A2) DrNo MCA-MUK2520-16 Rev B Kerb Detail to Spectator Area
(A1) DrNo MCA-MUK2520-17 Floodlight Base Detail
(A2) DrNo MCA-MUK2520-18 Container Elevations
(A2) DrNo MCA-MUK2520-19 Rev A Container Base Detail
(A2) DrNo MCA-MUK2520-20 Path Kerb Detail
(A2) DrNo MCA-MUK2520-21 Duct Box Detail
(A2) DrNo MCA-MUK2520-22 Feeder Pillar Detail
(A2) DrNo MCA-MUK2520-23 Rev C Pitch kerb and infill containment Barrier (FA Project)
(A2) DrNo MCA-MUK2520-24 Rev C Kerb and infil containment barrier to Spectator Area (FA Project)
(A2) DrNo MCA-MUK2520-25 Rev A Matwell detail Infill Retention Detail
(A2) DrNo MCA-MUK2520-26 Rev A Goal recess detail with infill containment barrier (FA Project)
(A1) DrNo MCA-MUK2520-28 Hydrobrake Detail
(A1) DrNo MCA-MUK2520-30 Rev D Proposed Natural Pitch Area
(A1) DrNo MCA-MUK2520-40 Proposed Landscaping
(A1) DrNo MCA-MUK2520-43 Proposed Tree Planting Plan

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

3. The details, including times of operation, stated in the submitted Construction

Management by McArdle Sport-Tec Ltd shall be adhered to. Further details are required in respect of the following:

Details of the route, including any temporary or permanent changes to the surface, new bridges or culverts, or any alteration or removal of vegetation, for the proposed access to the Ash Meadows pitch.

Details of any vehicles using this access and any turning/ manoeuvring details within the site

Details shall be submitted to and approved by the local planning authority prior to any development commencing on site.

(Reason: In the interests of protection of sensitive wildlife areas in accordance with Policy DM1 of the Taunton Deane Core Strategy)

4. A landscaping scheme shall be submitted to and approved in writing by the local Planning Authority prior to such a scheme being implemented. The scheme shall include details of the species, siting and numbers to be planted.

(ii) The scheme shall be completely carried out within the first available planting season (1 October to 31 March) from the date of commencement of the development. Written confirmation of the completion of the landscaping scheme shall be submitted to the Local Planning Authority.

(iii) For a period of five years after the completion of each landscaping scheme, the trees and shrubs shall be protected and maintained in a healthy weed free condition and any trees or shrubs that cease to grow or are uprooted shall be replaced by trees or shrubs of similar size and species.

Reason: To ensure that the proposed development does not harm the character and appearance of the area.

5. A further report which shows the levels of light spill outside of the area of the pitch shall be submitted to and agreed in writing by the LPA within four months of the first use of the facility. Should the report show the levels of light spill to be unsatisfactory, the floodlighting cannot be used until such a time that the matter is resolved to the satisfaction of the LPA.

(Reason: In the interests of residential amenity and to comply with Policy DM1 of the Core Strategy)

6. A Noise Management Plan (NMP) shall be submitted in writing and agreed by the LPA for approval prior to the first use of the facility

The NMP shall include as a minimum:-

a. The measures outlined in the Noise Impact Assessment Reference 9279, LN November 21

b. An explicit maintenance regime checking panel fixings and tightening as required (as per submitted document dated 25 / 8 /21, letter from Acoustic Consultants Ltd)

(Reason: In the interests of residential amenity and to comply with Policy DM1 of the Core Strategy)

7. The facility shall not be used, and all floodlighting shall be switched off, after

2200 hours Monday to Friday and 1800 hours at weekends.

(Reason: In the interests of residential amenity and to comply with Policy DM1 of the Taunton Deane Core Strategy)

8. The mitigation and enhancement measures detailed in Section 5 of the Preliminary Ecological Appraisal shall be carried out in full, unless otherwise agreed in writing. Particular attention is drawn to the need to protect the identified badger sett, and potential impacts on bats and hazel dormice.

(Reason: In the interests of maintaining protected species in accordance with Policy CP8 of the Taunton Deane Core Strategy)

9. Further details shall be submitted to and agreed in writing by the Local Planning Authority prior to the commencement of development, which include the dimensions and capacity of the existing ditch which is the proposed outfall from the drainage system within the new pitch. In addition, confirmation that the authority which maintains this ditch regarding the acceptability of discharging into the ditch shall be provided.

(Reason: In the interests of sustainable drainage and the prevention of flooding, in accordance with Policy CP8 of the Taunton Dean Core Strategy)

10. No development shall commence on the existing grass pitch until the following documents have been submitted to and approved in writing by the Local Planning

Authority, after consultation with Sport England:

a. A detailed assessment of ground conditions (including drainage and topography) of the land proposed for the new grass football pitch as shown on plan drawing

number MCA-MUK2530-30, revision D, which identifies constraints which could affect playing field quality; and

b. Based on the results of the assessment to be carried out pursuant to a above, a detailed scheme which ensures that the playing field will be provided to an

acceptable quality. The scheme shall include a written specification of soils structure, proposed drainage, cultivation and other operations associated with grass

and sports turf establishment and a programme of implementation.

The approved scheme shall be carried out in full before the new playing field is brought into use. The land shall thereafter be maintained in accordance with the

scheme and made available for playing field use in accordance with the scheme.

(Reason: To enable to full use of this facility by all potential users, in accordance with Para. 92 of the NPPF)

Notes to applicant.

1. In accordance with paragraph 38 of the National Planning Policy Framework 21 the Council has worked in a positive and creative way with the applicant and has negotiated amendments to the application to enable the grant of planning permission.
2. The developers are reminded of the legal protection afforded to badgers and their resting places under the Protection of Badgers Act 1992 (as amended). It is advised that during construction, excavations or large pipes (>200mm diameter) must be covered at night. Any open excavations will need a means of escape, for example a plank or sloped end, to allow any animals to escape. In the event that badgers, or signs of badgers are unexpectedly encountered during implementation of this permission it is recommended that works stop until advice is sought from a suitably qualified and experienced ecologist at the earliest possible opportunity.
3. WILDLIFE AND THE LAW. Any activities undertaken on trees must take into account the protection afforded to wildlife under UK legislation.

BREEDING BIRDS. Nesting birds are protected under the Wildlife and Countryside Act 1981 (as amended) and if discovered must not be disturbed. If works are to be carried out in the breeding season (February to August, possibly later) then the tree(s) should be checked for nesting birds before work begins.

BATS. The applicant and contractors must be aware that all bats are fully protected by law under the Conservation of Habitats and Species Regulations 2017 (as amended), also known as the Habitats Regulations, and by the Wildlife and Countryside Act 1981 (as amended). It is an offence to damage, deliberately destroy or obstruct access to structures or places of shelter or protection used by bats, or recklessly or intentionally disturb bats while they are using these places.

TREES with features such as rot and woodpecker holes, split branches or gaps behind loose bark, or covered with ivy with stems over 50mm may be used as roost sites for bats. Should a bat or bats be encountered while work is being carried out on the tree(s), work must cease immediately and advice must be obtained from the Government's advisers on wildlife, Natural England (tel. 0300 060 3900). Bats should preferably not be handled (and not unless with gloves) but should be left in situ, gently covered, until advice is obtained.

Application Details	
Application Reference Number:	3/21/22/105
Application Type:	Full Planning Permission
Earliest decision date:	07 November 2022
Expiry Date	02 December 2022
Extension of Time Date	16 December 2022
Decision Level	Planning Committee
Description:	Erection of ground mounted solar panels
Site Address:	Avondale, Martlet Road, Minehead, TA24 5QD
Parish:	21
Conservation Area:	Wellington Square Minehead
Somerset Levels and Moors RAMSAR Catchment Area:	No
AONB:	No
Case Officer:	Sarah Wilsher
Agent:	Architectural Studio SW Ltd
Applicant:	Mr Benet Allen
Committee Date:	08 December 2022
Reason for reporting application to Committee	Applicant is a Ward Member for the Periton and Woodcombe Ward in Minehead.

1. Recommendation

1.1 That permission be GRANTED subject to conditions.

2. Executive Summary of key reasons for recommendation

The proposal is for the erection of ground mounted solar panels. The application is recommended to be granted subject to conditions as it will not harm the setting of the conservation area or the appearance and character of the locality and will not impact on the character and appearance of the host dwelling, thereby complying with policies NH1 and NH2c. It is in keeping with the national and local climate emergency agenda to reduce carbon emissions and provide renewable energy thereby complying with policy CC1. There will also be no harm to residential amenity from its installation.

3. Planning Obligations and conditions and informatives

3.1 Conditions (full text in appendix 1)

3.3.1 Standard time limit of 3 years

3.3.2 Approved plans

3.3.3 Removal of standalone solar equipment when no longer needed.

3.2 Informatives (full text in appendix 1)

3.2.1 Proactive Statement

3.2.2 Nesting birds

4. Proposed development, site and surroundings

4.1 Details of proposal

It is proposed to erect a standalone solar panel array in order to produce renewable energy. The array will consist of three rows of five panels on a metal framework. The height of the panels including the frame will be 3.1m. The width of the array is 9m and the depth is 3m. The panels will be dark blue/black.

4.2 Sites and surroundings

Avondale is a semi-detached rendered five-bed dwelling under plain clay tiled roofs with Tudor detailing within the apex of the gable on the front elevation and timber fenestration. It is believed to have been constructed in the early 20th Century in the Edwardian era. The site for the solar panels is at the bottom of the garden with a wall/hedge to the north-west and neighbouring single-storey buildings to the north-east and south-east. Avondale is located close to the centre of Minehead and the dwelling is within the Wellington Square Conservation Area, whilst the site for the standalone ground mounted solar array is outside the Conservation Area.

5. Planning (and enforcement) history

Reference	Description	Decision	Date
3/21/20/013	Demolition of flat roof extension and erection of a painted metal verandah with associated railings.	Grant	18 May 2020
NMA/21/21/004	Non-material amendment to planning permission 3/32/20/013 to change the photovoltaic glazing on the roof of the verandah to a plain glass roof.	Grant	30 April 2021.

6. Environmental Impact Assessment

Not applicable.

7. Habitats Regulations Assessment

The application site is outside the catchment area for the Somerset Levels and Moors Ramsar site.

8. Consultation and Representations

Statutory consultees (the submitted comments are available in full on the Council's website).

8.1 Date of consultation: 07 October 2022

8.2 Date of revised consultation (if applicable): Not applicable.

8.3 Press Date: 13 October 2022

8.4 Site Notice Date: 17 October 2022

8.5 Statutory Consultees the following were consulted:

Consultee	Comment	Officer Comment
<u>Minehead Town Council</u>	The Committee can see no material planning reason to refuse this application but ask that officers consider the position in a Conservation Area is balanced against climate emergency considerations.	Addressed under 10.2.
<u>Highways Development Control</u>	No observations.	
<u>SCC - Ecologist</u>	No comments received.	Addressed under 10.1.7.

8.6 Internal Consultees the following were consulted:

Consultee	Comment	Officer comment
Arboricultural Officer	The house is within the Conservation Area, but some of the garden including the application site isn't. The applicant has no intention of pollarding the tree or significantly reducing it. I do not think it merits protection by TPO and being outside the Conservation Area no permission would be needed to prune the tree. It is not a tree of particular merit, it being a youngish sycamore with a double stemmed trunk which may	Addressed under 10.1.6.

	be an issue as the tree grows, so I think it will need to be kept at a smaller size to prevent the two trunks splitting apart. I have suggested a minor crown-lift (removal of lowest branches) which might suffice for now.	
Conservation Officer	As the solar array will not be visible from a public viewpoint there will be no harm to the setting of the Conservation Area and the existing character and appearance of the Conservation Area will be preserved (verbal comments).	Addressed under 10.2.

8.7 Local representations

Neighbour notification letters were sent in accordance with the Councils Adopted Statement of Community Involvement.

No letters from neighbours have been received.

Comments have been received from the Ward Councillor for the North Ward of Minehead, as follows:

Whilst I appreciate this application lies close to the conservation area of North Hill and Wellington Square I would like to make the following comment - it is paramount that we do whatever we can to protect the environment from climate change at all times, but we must also protect and enhance this conservation area at the same time. This application must conform to all the policies of the local authority with regards to this conservation area.

9. Relevant planning policies and Guidance

Section 70(2) of the Town and Country Planning Act 1990, as amended ("the 1990 Act), requires that in determining any planning applications regard is to be had to the provisions of the Development Plan, so far as is material to the application and to any other material planning considerations Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) ("the 2004 Act") requires that planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise. The site lies in the former West Somerset area. The Development Plan comprises comprise the Adopted West Somerset Local Plan to 2032, Somerset Mineral Local Plan (2015), and Somerset Waste Core Strategy (2013).

Both the Taunton Deane Core Strategy and the West Somerset Local Plan to 2032 were subject to review and the Council undertook public consultation in January 2020 on the Council's issues and options for a new Local Plan covering the whole District. Since then the Government has agreed proposals for local government reorganisation and a Structural Change Order agreed with a new unitary authority for Somerset to be created from 1 April 2023. The Structural Change Order requires the new Somerset authority to prepare a local plan within 5 years of vesting day.

Relevant policies of the West Somerset Local Plan to 2032 in the assessment of this application are listed below:

CC1	Carbon reduction - small scale schemes
NH1	Historic Environment
NH2	Management of Heritage Assets
SD1	Presumption in favour of sustainable development

Neighbourhood Plans:

Stogumber Neighbourhood Plan

Supplementary Planning Documents:

District Wide Design Guide, December 2021

Other relevant policy documents:

Somerset West and Taunton Council's Climate Positive Planning: Interim Guidance Statement on Planning for the Climate Emergency (March 2022)

9.1 National Planning Policy Framework
Chapter 14 paragraphs 152 and 158a). Chapter 16 Also paragraph 130a), b), c)

10. Material Planning Considerations

The main planning issues relevant in the assessment of this application are as follows:

10.1.1 *The principle of development*

The proposal seeks to provide renewable energy. Policy CC1 of the West Somerset Local Plan to 2032, states that 'energy generating development proposals (other than those for wind turbines) will be supported ... where they respect the local natural environment in which they are located and the local historic environment and the significance of any designated and identified potential heritage assets within and neighbouring it'. Policy NH1 states that 'proposals will be supported where the historic environment and heritage assets and their settings are sustained and/or enhanced in line with their interest and significance' and policy NH2C states that 'Development proposals that affect a conservation area should preserve or enhance its character or appearance, especially those elements identified in any conservation

area appraisal'.

It is considered that due to the low height, colour and discreet and secluded positioning of the PV panels within the rear garden, tucked between the stone and brick walls of neighbouring buildings and a stone boundary wall and vegetation, the proposal will respect the setting of the Conservation Area whilst providing a sustainable form of renewable energy which meets the local and national need for clean energy generating development proposals.

10.1.2 *Design of the proposal*

The array will cover an area of 27sqm, which in terms of the proportion of garden area covered is small, and due to the linear layout of the rear garden and the proposed siting of the array at the end of the garden, the solar array will not be easily visible from the dwelling. Although it will be just over 3m in height it will be enclosed by the north-east and south-east elevations of neighbouring buildings and the stone boundary wall to the north-west so the bulk of it will be screened, particularly with the presence of the Sycamore tree and hedging to the north-west. The dark colour of the panels will also enable it to merge into the background of the roof tiles to the rear. It is therefore considered that it is acceptable in terms of scale, form, appearance and siting.

10.1.3 *Access, Highway Safety and Parking Provision*

There are no access, highway safety or parking implications as a result of the proposed development.

10.1.4 *The impact on the character and appearance of the locality*

Due to the siting of the proposal, the standalone array will not be visible from a highway or public footpath and will have no impact on the character and appearance of the locality.

10.1.5 *The impact on neighbouring residential amenity*

The array will be sited to the rear of a single storey building located to the north-east, which is within the curtilage of Stables Cottage. There are no windows in this building so there will be no loss of light issues for users of the building and the array will be largely screened from the occupiers of Stables Cottage by the building. Only a top section of the frame/panel will be visible in the top north-east corner, rising above the roof of the building, where the roof ridge at this point is at a lower level.

To the south-east lies the rear of a building on Blenheim Mews, which is currently being converted from a garage to a dwelling under planning application 3/21/22/041. The three approved rooflights in the rear elevation of the converted garage are in situ. Two of these rooflights will lie opposite the end of the array, but as any viewing from the rooflights would be upwards rather than obliquely to the side or downwards it is considered that there will be no loss of amenity from the proposed array.

To the north-west lies the rear of Oak Lodge Crescent, a block of 14 apartments

situated at an elevated level. There are rear windows and balconies along the curved south-east elevation of Oak Lodge Crescent, but due to the boundary wall, hedging and tree and the distance between the site and Oak Lodge Crescent, it is considered that the array will not be easily visible, perhaps the end of the array in the Autumn/winter season, but this will not have any harmful impact on the occupiers.

There will thus be no impact on residential amenity.

10.1.6 *The impact on trees and landscaping*

There is a sycamore tree to the north-west of the proposed array. This will not be affected by the construction of the array and as the applicant has no plans to remove the tree and only do any necessary works to maintain it, the tree will help to soften the visual impact of the structure, and, together with the hedge sited beyond the boundary wall, will help to screen the proposal from neighbours to the north-west.

10.1.7 *The impact on ecology and biodiversity*

The site for the solar array is an area of paved and gravelled hardstanding, with some flowering and vegetable beds. It is well cultivated and maintained as part of the domestic garden and it is considered unlikely that there will be any loss of habitat as a result of the proposed array which will be raised above the ground and supported within a metal frame and posts. However, due to its proximity to hedging and greenery an informative will be added to the permission if granted to protect nesting birds.

10.1.8 *Flood risk and energy efficiency*

The site is not within an area of flood risk. The panels will produce renewable and sustainable energy which is welcomed, as part of the national and local climate change agenda to reduce the UK's carbon footprint.

10.2 *Heritage impact*

The ground mounted solar panels will not be within the Conservation Area, but lie to the north-west and north-east of Wellington Square Conservation Area. Therefore it is necessary to assess the impact of the proposal on the setting of the Conservation Area. As such, Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 applies, which states that where an area is designated a conservation area 'special attention shall be paid to the desirability of preserving or enhancing the character and appearance of the area'.

The panels and frame will not be visible from any public viewpoint and as such there will be no harm to the setting of the Conservation Area, and the existing character and appearance of the Conservation Area will be preserved. To ensure this remains the case, a condition will be added to the permission for the stand-alone solar equipment to be removed within three months of being no longer needed.

11 Local Finance Considerations

CIL does not apply in the former West Somerset Council area.

12 Planning balance and conclusion

12.1 The proposed development - complies with policies CC1, NH1 and NH2 within the West Somerset Local Plan to 2032 in respect of providing a renewable energy source which meets the local and national climate emergency agenda, whilst preserving the setting of the Conservation Area and causing no loss of amenity to neighbouring dwellings.

12.2 For the reasons set out above, having regard to all the matters raised, it is therefore recommended that planning permission is granted subject to conditions.

In preparing this report the planning officer has considered fully the implications and requirements of the Human Rights Act 1998 and the Equality Act 2010.

Appendix 1 – Planning conditions and Informatives/ Reason/s for refusal Recommended Conditions

- 1 The development hereby permitted shall be begun within three years of the date of this permission.

Reason: In accordance with the provisions of Section 91 Town and Country Planning Act 1990 (as amended by Section 51(1) of the Planning and Compulsory Purchase Act 2004).

- 2 The development hereby permitted shall be carried out in accordance with the following approved plans:

(A1) DrNo 2064.1/200 Proposed Plans & Elevations

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

- 3 The stand-alone solar equipment hereby permitted shall be removed within three months of when it ceases to be needed for energy production.

Reason: In the interests of the character and appearance of the area.

Notes to applicant.

- 1 In accordance with paragraph 38 of the National Planning Policy Framework 2021 the Council has worked in a positive and creative way and has imposed planning conditions to enable the grant of planning permission.
- 2 The developers are reminded of the legal protection afforded to nesting birds under the Wildlife and Countryside Act 1981 (as amended). In the unlikely event that nesting birds are encountered during implementation of this permission it is recommended that works stop until the young have fledged or then advice is sought from a suitably qualified and experienced ecologist at the earliest possible opportunity.

APPEALS RECEIVED – 8 December 2022

Site:

4 The Elms, Crowcombe, Taunton, TA4 4AE

Proposal: Erection of short-wave mast and aerial[s]

Application number: 3/07/22/018

Appeal reference: APP/W3330/D/22/3311299

Decision: REFUSED

Enforcement Appeal: N/A

Site: Cridlands, Kingswood, Stogumber, Taunton, TA4 3TP

Proposal: Erection of a two storey rear extension and formation of vehicle access hardstanding (resubmission of 3/31/22/001)

Application number: 3/31/22/011

Appeal reference: APP/W3330/D/22/3311994

Decision: N/A

Enforcement Appeal: N/A

Site: LAND AT SWEETHAY, TRULL, TA3 7PB

Proposal: Change of use of land from agricultural for the siting of 10 No. bell tents and the erection of a service building with car parking and landscaping on land at Sweethay, Trull

Application number: 42/21/0059

Appeal reference: APP/W3330/W/22/3307369

Decision: REFUSAL

Enforcement Appeal: N/A

APPEAL DECISIONS – 08 December 2022

Site: LAND AT JURSTON LANE, WELLINGTON, TA21 9PQ

Proposal: Application for approval of reserved matters following outline application 43/14/0130 for the erection of 190 No. dwellings, formation of pedestrian and cycle routes, public open space and associated works for Phase 3 at Jurston Farm, Wellington

Application number: 43/19/0106

Reason for refusal: Conditional Approval

Appeal Ref: APP/W3330/W/22/3296248

Phase 3, Jurston Farm, Wellington, Grid Ref Easting: 314634, Grid Ref Northing: 120336

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for consent, agreement or approval to details required by a condition of an approval.
- The appeal is made by Mr Paul Hoffmann (C G Fry and Son) against Somerset West and Taunton Council.
- The application dated 9 June 2021, sought discharge of conditions 3, 4, 5, 6, 7 and 10 of reserved matters approval 43/19/0106.
- The details of the conditions for which approval is sought are:
 - Condition 3 – Before development commences (including site clearance and any other preparatory works) a scheme for the protection of trees to be retained shall be submitted to and approved in writing by the Local Planning Authority. Such a scheme shall include a plan showing the location of the protective fencing, and shall specify the type of protective fencing, all in accordance with BS 5837:2012. Such fencing shall be erected prior to commencement of any other site operations and at least two working days' notice shall be given to the Local Planning Authority that it has been erected. It shall be maintained and retained for the full duration of works or until such time as agreed in writing with the Local Planning Authority. No activities whatsoever shall take place within the protected areas without the prior written agreement of the Local Planning Authority. (Reason: To ensure the enhancement of the development by the retention of existing trees and natural features during the construction phase).
 - Condition 4 – No development shall be commenced until details of the surface water drainage scheme based on sustainable drainage principles together with a programme of implementation and maintenance for the lifetime of the development have been submitted to and approved in writing by the Local Planning Authority. The drainage strategy shall ensure that surface water runoff post development is attenuated on site and discharged at a rate and volume no greater than greenfield runoff rates and volumes. Such works shall be carried out in accordance with the approved details. These details shall include: - • Details of phasing (where appropriate) and information regarding the management and maintenance of drainage systems during construction of this, and any other subsequent phases. • Information about the design storm period and intensity, discharge rates and

volumes (both pre and post development), temporary storage facilities, means of access for maintenance (6 metres minimum), the methods employed to delay and control surface water discharged from the site, and the measures taken to prevent flooding and pollution of the receiving groundwater and/or surface waters. • Any works required off site to ensure adequate discharge of surface water without causing flooding or pollution (which should include refurbishment of existing culverts and headwalls or removal of unused culverts where relevant). • Flood water exceedance routes both on and off site, note, no part of the site must be allowed

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to flood during any storm up to and including the 1 in 30 event, flooding during storm events in excess of this including the 1 in 100yr (plus 40% allowance for climate change) must be controlled within the designed exceedance routes demonstrated to prevent flooding or damage to properties.

- A management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by an appropriate public body or statutory undertaker, management company or maintenance by a Residents' Management Company and / or any other arrangements to secure the operation and maintenance to an approved standard and working condition throughout the lifetime of the development. (Reason: To ensure that the development is served by a satisfactory system of surface water drainage and that the approved system is retained, managed and maintained throughout the lifetime of the development, in accordance with National Planning Policy Framework (July 2018) and the Technical Guidance to the National Planning Policy Framework).

- Condition 5 – No development shall commence unless a Construction Environmental Management Plan has been submitted to and approved in writing by the Local Planning authority. The works shall be carried out strictly in accordance with the approved plan. The plan shall include: Construction vehicle movements, Construction operation hours, Construction vehicle routes to and from site including a map showing the route, Construction delivery hours, All construction deliveries being made off highway, On-site turning facility for delivery vehicles and egress onto highway only with guidance of a trained banksman, Expected number of construction vehicles per day, All contractor vehicle parking being accommodate off highway including a plan showing the onsite parking arrangements, Specific measures to be adopted to mitigate construction impacts in pursuance of the Environmental Code of Construction Practice, A scheme to encourage the use of Public Transport amongst contractors, On-site vehicle wheel washing facilities and the regular use of a road sweeper for local highways. (Reason: To ensure that construction traffic does not result in a nuisance to other highway users in accordance with Core Strategy Policies CP6 Transport & Accessibility, DM1).

- Condition 6 – The proposed estate roads, footways, footpaths, tactile paving ,cycle ways, bus stops/bus lay-bys, verges, junctions, street lighting, sewers drains retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car motorcycle and cycle parking and street furniture shall be constructed and laid out in accordance with details to be approved by the Local Planning Authority in writing before their construction begins . For this purpose, plans and sections, indicating as appropriate, the design, layout, levels, gradients materials and method of construction shall be submitted to the Local Planning Authority. (Reason: To ensure that an acceptable highway design is provided in accordance with Core Strategy Policies CP6 Transport & Accessibility, DM1, General and DM4 Design; and Site Allocations & Development Management Plan Policies A1, Parking (Linked to Appendix E), A5 Accessibility of Development and A7 Design Quality).

- Condition 7 – In the interests of sustainable development none of the dwellings hereby permitted shall not be occupied until a network of cycleway and footpath connections has been constructed within the development site in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority. (Reason: To ensure that adequate provision is made for cyclists and pedestrians in accordance with Core Strategy Policies CP6 Transport & Accessibility, DM1, General and DM4 Design; and Site Allocations & Development Management Plan Policies A1, Parking (Linked to Appendix E), A5 Accessibility of Development and A7 Design Quality).

- Condition 10 - Prior to the construction of any of the development above damp proof course level, samples of the materials to be used in the construction of the external surfaces of the development shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and thereafter maintained as such. (Reason: To ensure satisfactory appearance of the area).

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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the application for discharge of conditions set out above is taken from the Appeal Form, rather than the Planning Application Form, as it more accurately describes what is proposed.

3. A Case Management Conference was held on 22 June 2022. My note documenting the discussion was issued to the Appellant and the Council on the same day. The purpose of the conference was to provide a structure for the ongoing management of the Inquiry. No discussion of the merits of the respective cases took place.

4. Prior to the Inquiry (11 August 2022) I issued a Supplementary Note to the Appellant and the Council which included a series of questions that I wanted to explore with them, in the interests of assisting with preparation and making the best use of Inquiry time.

5. A list of core documents relating to the Inquiry is set out at the end of the decision. Where it is necessary to refer to a document, I have adopted the same numbering system with the additional prefix 'CD'.

6. Two Statements of Common Ground were submitted over the course of the Appeal. The first relates to general matters and was signed by the Appellant on 11 July 2022 and the Council on 15 July 2022. The second (Planning Merits SOCG) was signed by both parties on 19 July 2022 and includes the respective detailed assessment and positions in relation to the planning merits of the conditions that are the subject of this appeal. In light of my conclusions on the main issue, and as it is not a matter in dispute, it has been unnecessary for me to consider the planning merits of the conditions.

7. Prior to the Inquiry the Council submitted a Habitats Regulations Assessment report dated July 2022 (Shadow Appropriate Assessment) [CD1.3] in line with the timetable agreed in the Case Management Conference. The Appellant declined to provide a detailed written response to the

document, instead indicating in more general terms that they did not accept the method of quantifying the predicted phosphate loading and wished to reserve their position. The report was the subject of consultation with Natural England undertaken after the Inquiry. This matter is discussed further in my conclusions.

Background and Main Issue

8. The appeal site is phase 3 of a large housing led development located to the east of Wellington. The entire development is 8 phases in total and was granted outline planning permission with all matters reserved (except access) in 2015 (Ref:43/14/0130) (Outline Planning Permission). It comprises up to 650 houses, community and commercial uses, a primary school, public open space and associated infrastructure. Works on phases 1 and 2 are taking place under separate reserved matters approvals, with some of the homes now completed and occupied. Phases 4 to 8 are yet to receive reserved matters approval.

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9. Phase 3 obtained reserved matters approval in June 2020 (Ref 43/19/0106) (Reserved Matters Approval) and relates to the provision of 190 dwellings with associated works. The Appellant's application to the Council for agreement of matters covered by conditions attached to this approval was made in June 2021. As indicated in the Planning Merits SOCG, the subject conditions (the Conditions) relate to the following:

- Condition 3: Tree protection measures
- Condition 4: Surface water drainage
- Condition 5: Construction environment management plan
- Condition 6: External works
- Condition 7: Cycle and footpath network connection details
- Condition 10: Materials

10. The Council do not object to the planning merits of the details that have been submitted. Withholding their agreement instead arises as a result of their belief that Appropriate Assessment pursuant to the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations) [CD3.3] is necessary in order to agree the Conditions.

11. Their position is influenced by Natural England's advice as set out in their note to Councils in Somerset of 17 August 2020 (Natural England Note). The note relates to development in the Somerset Levels and Moors Ramsar Site (the Ramsar Site) and gives advice on determining planning applications that may give rise to additional phosphates and the need to undertake Appropriate Assessment. The advice arises from the outcome of the Dutch N case [CD6.11], which postdates both the Outline Planning Permission and the Reserved Matters Approval.

12. In light of the background set out above, the main issue in this appeal is a procedural one, namely:

-
- Whether Appropriate Assessment pursuant to the Habitats Regulations is necessary in order to agree the Conditions attached to the Reserved Matters Approval and, if it is necessary, the scope of any such Appropriate Assessment.

13. In order to address the main issue it is necessary to answer a number of questions that were the focus of the Inquiry. Firstly, whether Paragraph 181 of the National Planning Policy Framework (The Framework) applies. Paragraph 181 states that listed or proposed Ramsar sites should be given the same protection as habitats sites.

14. If Paragraph 181 does apply, there is then a question of whether the Council's decision making in relation to the Outline Planning Permission and Reserved Matters Approval has an effect in terms of the scope of any Appropriate Assessment. There are also questions of whether the requirements of the Habitats Regulations apply at the discharge of conditions stage and whether EU withdrawal has an effect. I will address each of these in turn.

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Reasons

Does Paragraph 181 of The Framework apply?

15. The Somerset Levels and Moors are designated as a Special Protection Area (SPA) under the Habitats Regulations and listed as a Ramsar site under the Ramsar Convention. The SPA and Ramsar Site cover around the same land area and include the appeal site.

16. The effects of additional nutrients from development on the SPA is not at issue in this appeal, in line with the advice in the Natural England Note. The focus of the dispute between the Appellant and the Council, is the effect of additional nutrients on the Ramsar Site. In this regard, the Natural England Note advises that the interest features of the site are considered to be unfavourable, or at risk, from the effects of eutrophication caused by excessive phosphates. As such, there is limited scope for permitting further development that would add additional phosphates either directly or indirectly to the Ramsar Site.

17. The correctness of Natural England's advice, as set out above, is not a matter of specific disagreement between the Appellant and the Council. The question is instead whether the advice applies to phase 3, given that it has reached the point where reserved matters approval has been given and related conditions are being discharged.

18. The trigger in the Natural England Note for applying the advice relating to the need to undertake Appropriate Assessment is 'before determining a planning application that may give rise to additional phosphates within the catchment'. 'Planning application' is not defined within the advice note itself. Nor is there an indication on a plain reading of the advice that it is intended to be tied to an existing legal trigger point within the Planning Acts¹ or associated secondary legislation. Such an approach may limit the scope of the advice to a single moment in the planning application process where it should be considered. This would go against the overarching goal of avoiding authorising activities which may subsequently compromise the ability to restore the site to a favourable condition.

19. As such, when the advice in the note is considered alone, I am satisfied that it can reasonably be interpreted as applying to the discharge of conditions stage. In reaching this view I have paid regard to the Written Ministerial Statement of 20 July 2022 [CD5.2] which confirms that the provisions in

the Habitats Regulations may apply to circumstances that include post permission approvals; reserved matters or discharges of conditions.

20. While this may be the case, it is right that there must also be a legal basis for securing this outcome. In this regard, it is of significance that the requirements of the Habitats Regulations in relation to Ramsar sites apply as a result of paragraph 181 of the Framework. This is as opposed to Ramsar sites falling within the definition of a European Site in Regulation 2 of the Habitats Regulations.

1 Principally Town and Country Planning Act 1990 (1990 Act) and Planning and Compulsory Purchase Act 2004 (2004 Act)

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21. If Paragraph 181 is engaged, then it follows that Ramsar sites should be given the same protection as European Sites would receive under the Habitats Regulations in all respects. To give them anything less would be inconsistent with the requirements of national policy.

22. This is a matter of policy, rather than an express legal requirement. *Elsick*² provides some authority for the Appellant's proposition that policy cannot make relevant that which is legally irrelevant. Although the *Elsick* case turns on its own facts, it should be regarded as uncontroversial that all parties involved in the planning system should expect that it will aim to create legal certainty

23. It follows that, in order for the Framework policy in paragraph 181 to be applied, there should be some connection with what is under consideration. This principle is important but should not be applied over rigidly. It is common at the discharge of conditions stage to consider matters that were unknown at the point at which planning permission was granted, in many cases that is the entire point of them. A sensible balance therefore needs to be struck between providing certainty and allowing a degree of necessary flexibility.

24. In the context of the present appeal, the Natural England Note sets out specific concerns about managing the issue of permitting further development that would add additional phosphates to the Ramsar Site, either directly or indirectly. As discussed above, as a matter of principle, the application of this advice is not limited to a specific trigger point within the planning application process. Discharge of the Conditions would be an authorising act, as part of the wider consent process, that would allow the realisation of potential effects on the Ramsar Site that the Natural England Note seeks to manage.

25. As a consequence, the advice in the Natural England Note is of relevance to the discharge of the Conditions. As a result of this relevance, it is legitimate to apply the Framework policy in paragraph 181 and to give the Ramsar site the same protection as a European Site under the Habitats Regulations in all respects. Paragraph 181 cannot therefore be regarded as legally irrelevant.

26. For the reasons explained, the act of discharging the Conditions is of sufficient relevance to allow paragraph 181 to be applied. Considering the overarching nature of paragraph 181, this applies regardless of the specific subject matter of the Conditions themselves. As such, the focus the Natural England Note places on wastewater a potential source of phosphate load does not affect my conclusions.

27. For the same reasons, the contents of the Shadow Appropriate Assessment [CD1.3] and its consideration of site specific sources of potential phosphate loading does not alter my conclusions.

More broadly, the Shadow Appropriate Assessment is limited in relevance to the main issue, which relates to whether it is necessary for an Appropriate Assessment to be carried out in the first place, rather than the conclusions of that assessment.

28. In conclusion on this point, it is legitimate to apply Paragraph 181 of the Framework which confers the same level of regulatory scrutiny for Ramsar sites as European Sites would receive under the Habitats Regulations.

2 [2017] UKSC 66

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Does granting Outline Planning Permission and Reserved Matters Approval have an effect on the scope of any necessary Appropriate Assessment?

29. I have considered the Appellant's arguments relating to whether applying the requirements of the Habitats Regulations would amount to reopening any of the issues that are established by the Outline Planning Permission and the subsequent Reserved Matters Approval.

30. In this respect, the Appellant draws my attention to the case of Cranston [CD6.2] as authority for the proposition that conditions may not alter the nature of the development. Proberun [CD6.4] is also cited in support of the point that Council's cannot refuse to approve details on grounds going to the principle of the development. Both these cases turn on their own facts and related to changes in access which directly altered how the physical development on the ground could be carried out.

31. As a matter of fact and degree in the present case, I am not persuaded that managing the effects on the Ramsar Site is an issue that goes to the principle of the development or alters its nature, directly or indirectly. Whether the effects on the Ramsar Site are mitigated, or not, the development itself remains the same in terms of land use, quantum of development, and other main details. Further, no evidence has been submitted to suggest that the operational development on the ground would be carried out any differently as a result of needing to consider effects on the Ramsar site.

32. Managing the effects on the Ramsar Site is an important issue but, in all likelihood, is one that would be addressed off site. While I have paid regard to the principles they set out, the circumstances in this appeal are fundamentally different to those in the cases of Cranston and Proberun.

33. The Appellant has referred to the site wide drainage strategy, which includes phase 3. This was agreed by the Council pursuant to Condition 7 attached to the Outline Planning Permission.

34. The reasons given for imposing Condition 7 are to ensure that proper provision is made for sewerage on the site and that development does not increase the risk of sewer flooding to downstream property.

35. The Council have not suggested that the site wide drainage strategy should be changed or otherwise regarded as not agreed. Nor is there evidence to demonstrate that the strategy would be indirectly altered in a fundamental way as a result of managing the effects on the Ramsar Site. As such, the strategy remains, it is not in question, and the discharge of Condition 7 is not under direct or indirect challenge in this appeal.

36. As a consequence, the validity of the Outline Planning Permission or decisions relating to the agreement of Condition 7 attached to it are not under threat. The presumption of validity, which the Appellant cites by reference to the cases of Hoffmann La Roche [CD6.1] or, in a European context, Noble [CD6.6], is not therefore offended in this case.

37. In light of my conclusions above, applying the secondary legislation requirements of the Habitats Regulations would not be an attempt to trump primary legislation. This is because none of the principles in the legal authorities presented by the Appellant that consider the interpretation of Sections 70, 72, and 92 of the 1990 Act are offended. In any event, the distinction the Appellant

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makes relating to the hierarchy of the legislation is not a straightforward one as it is affected by Section 4 of the Withdrawal Act, for the reasons explained later in this decision.

38. Whilst the validity of the planning permission is not in question, neither can its present status be rightly regarded as implementable as there is a need to satisfy the Conditions prior to implementation. As discussed above, it is legitimate to apply national policy in Paragraph 181 of the Framework and therefore confer the same level of regulatory scrutiny for the Ramsar site as a European Site would receive under the Habitats Regulations.

39. It would be an incomplete response to the policy to adopt a position that the Council's agreement of Condition 7 attached to the Outline Planning Permission limits all scope of further consideration of drainage to only surface water, with no ability to look at the issue in its broader sense. The discharge of Condition 7 predates the Natural England Note and hasn't included consideration of effects on the Ramsar Site at all. As such, the agreement of Condition 7 has not narrowed the parameters of further consideration in the way suggested by the Appellant.

40. It is hard to see in practice how an Appropriate Assessment carried out on such a basis could be regarded as satisfactory or, indeed, a rational response to ensuring that the requirements relating to Appropriate Assessment have been complied with. Such an approach would also not be consistent with the precautionary principle which, for the reasons explained later in this decision, is of relevance to this appeal.

41. In conclusion on this point, the Council's decision making in relation to the Outline Planning Permission and Reserved Matters Approval does not have an effect in terms of the scope of any Appropriate Assessment.

Do the requirements of the Habitats Regulations apply at the discharge of conditions stage?

42. In the absence of an Appropriate Assessment, Regulation 63 of the Habitats Regulations prevents a competent authority from giving consent, permission, or other authorisation for a project which is likely to have significant effects. The Habitats Regulations do not specifically require an assessment at the discharge of conditions stage. Nor is Regulation 63 simply concerned with the grant of planning permission. In this respect the language is broad.

43. This is unsurprising as the function of the Habitats Regulations is to give effect in UK Law to the Habitats Directive [CD4.2]. Article 6(3) of the Directive is transposed by Regulation 63 of the Habitats Regulations, which is similarly broad in its language. This is consistent with the purposes of the Directive as expressed in its opening recitals, including the preservation, protection, and improvement of the quality of the environment and ensuring Appropriate Assessment is made of

any plan or programme likely to have a significant effect. The thrust of the regime set out in the Habitats Regulations is concerned with the achievement of these outcomes and therefore achievement of the purposes of the Directive.

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44. The inclusion of specific provisions relating to the grant of planning permission, including outline, at Regulation 70 of the Habitats Regulations does not diminish the applicability of Regulation 63 in planning matters. There is nothing in Regulation 70 itself to say that it is intended to give effect or implement the requirements of Regulation 63. Nor am I persuaded that it simply acts as a sweep up provision to cover subject areas that do not have their own bespoke regulations. Adopting such an interpretation would serve to narrow the effect of Regulation 63 in a way that would risk creating gaps in coverage that would run counter to the underlying purpose of the Habitats Regulations. Instead, it is more credible to view the two Regulations as together providing the level of coverage that the regime demands in order to meet the purposes discussed.

45. Even adopting the Appellant's approach that the permission in 'consent, permission or other authorisation' in Regulation 63 is the planning permission referred to in Regulation 70, the concept of 'other authorisation' is a broad one. It is therefore capable of catching other planning related activities, including the discharge of conditions. That doesn't have the effect of making Regulation 70 serve no practical purpose, it simply acts to capture activities in a way that ensures that gaps in coverage do not result. In this respect, I disagree with the Appellant's proposition that their approach to interpreting Regulations 63 and 70 would not create loopholes that would run counter to the underlying purpose of the regulatory regime that the Habitats Regulations create.

46. My conclusions on this matter are consistent with those in the Dutch N case [CD6.11] in relation to ensuring that the assessment required under Article 6(3) can have no lacunae, must contain conclusions and findings capable of removing all reasonable scientific doubt as to the effects on the protected site, and integrate the precautionary principle. In light of the relationship between the two, it is logical that these principles apply equally to Regulation 63 as they do to Article 6(3).

47. For these reasons, I am satisfied that Regulation 63 applies to the discharge of conditions stage. This is the case on a plain reading of the words 'consent, permission, or other authorisation', which are broad. It is also the case when a purposive approach is considered in light of the objectives of both the Habitats Regulations and the Directive. In forming this view I have paid regard to the Appellant's comments arising from the observations in R Bucks CC [CD6.9]. Although there are reasonable limits to applying a purposive interpretation, my conclusions are well within those limits and are based on a plain reading of the legislation.

48. I acknowledge that the principle of procedural autonomy applies when seeking to give effect to Directives. Both Noble [CD6.6.] and Wells [CD6.5] establish this in general terms, but turn on their own facts. Carefully considering the evidence put forward in this case, I am satisfied that the approach to applying Regulation 63 set out above is procedurally appropriate, particularly in light of the breadth of the relevant wording. Considering my conclusions above on scope, I see no conflict with the domestic law principles that have been drawn to my attention. This includes the law relating to use of conditions, specifically Sections 70, 72, and 92 of the 1990 Act.

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49. In light of my conclusions on scope and view that Regulation 63 requires Appropriate Assessment at the discharge of conditions stage on the plain reading of the legislation, much of the case law on multi stage development consents, advanced primarily by the Council, is not determinative of the main issue. This is because no potential gap in administrative protection arises from my conclusions. Therefore, discussion of the case law relating to Environmental Impact Assessment and whether, by analogy, the Habitats Regulations places a continuing obligation to assess effects, is not necessary. I have found already that there is an obligation to conduct an Appropriate Assessment at the point of assessing compliance with planning conditions.

50. In terms of relevance to my conclusions, the Council's reliance on Wingfield [CD6.12] and Swire [CD6.16] mainly serves to support the position that undertaking Appropriate Assessment following the grant of outline planning permission is legally permissible. This isn't particularly controversial as there is no legal requirement that assessment should be undertaken at the earliest time, unlike in Environmental Impact Assessment.

51. In conclusion on this issue, I am satisfied that the requirement for Appropriate Assessment in the Habitats Regulations applies to the discharge of conditions stage.

Does EU withdrawal have an effect on the relevance of the Habitats Directive and related case law

52. The question of whether, following EU withdrawal, the Habitats Regulations are to be interpreted in the light of the Habitats Directive and related case law was considered at the Inquiry. Following the event, judgment in the case of Harris³ was handed down by the High Court. Although the specifics of the case relate to water abstraction licences, it is of relevance as it considers the operation of the Habitats Regulations in the post withdrawal legal framework, and specifically the continuing relevance of the Habitats Directive and related case law. As such, I have paid regard to this judgment.

53. It is common ground between the Appellant and the Council that, following EU withdrawal, the Habitats Directive does not have direct effect in administrative decision making or in the courts. The European Union (Withdrawal) Act 2018 (Withdrawal Act) [CD3.4] preserves the domestic law which has implemented Directives, including the Habitats Regulations (Section 2(1)).

54. In this respect, the Habitats Regulations are retained EU Law, a position confirmed by Section 6(7) of the Withdrawal Act. The provisions in Section 6(3) of the Act are therefore of relevance as they set out how questions as to the validity, meaning or effect of the Habitats Regulations are to be decided. This includes the role of retained case law and general principles of EU law.

55. In relation to case law, in order to fall within Section 6(3) retained domestic case law must fall within the definition at Section 6(7). Specifically, the case law must include 'any principles laid down by, and any decisions of, a court or tribunal in the United Kingdom' so far as they 'relate to anything' to which the Habitats Regulations applies.

3 [2022] EWHC 2264 (Admin)

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56. As discussed above, the cases of Wingfield [CD6.12] and Swire [CD6.16] support the position that undertaking Appropriate Assessment following the grant of outline planning permission is legally permissible. They were both considered in the specific context of the Habitats Regulations and establish principles that are of relevance to the present appeal. As a consequence, this case law falls

within the definition of retained domestic case law in Section 6(7) of the Withdrawal Act and has been paid due regard in this decision.

57. Turning to retained general principles of EU law, as set out in Section 6(3) of the Withdrawal Act. What constitutes a general principle is open to question, resulting from it being what the Appellant describes as 'a term of art' to describe cross cutting fundamentals. The conclusions of Harris saw the precautionary principle as a general principle of EU law. I would agree with this approach, given the cross cutting and fundamental nature of the precautionary principle.

58. Application of the precautionary principle is of relevance in this case as it supports the approach to Regulation 63 set out above, particularly viewing 'consent, permission, or other authorisation' as broad terms that seek to achieve the outcome of the regime set out in the Habitats Regulations and, in turn, the purposes of the Habitats Directive. As a consequence, the precautionary principle is a retained principle of EU law for the purposes of Section 6(3) of the Withdrawal Act and has been paid due regard.

59. Moving on to the question of interpreting Regulation 63 of the Habitats Regulations by reference to the Habitats Directive. There are clear references to securing compliance with the requirements of the Directive in Regulation 9(1) of the Habitats Regulations and paying regard to it in Regulation 9(3). It is correct that Article 6(3) of the Directive does not prescribe the process to be followed. That is perhaps to be expected given the implementing relationship that the Habitats Regulations has with the Directive and that the principle of procedural autonomy applies, as discussed above.

60. However, the Appellant's argument that the Habitats Regulations have to be interpreted on their own terms without regard to the Habitats Directive is a more contentious one. Regulation 3A of the Habitats Regulations is of assistance here and is of relevance given it was introduced as an amendment to the Habitats Regulations in 2019 to ensure they would function appropriately post EU withdrawal.

61. The Explanatory Memorandum [CD3.5] explains the reasons for amending the Regulations, namely to ensure that the protection and standards set out in the Directive are implemented in the same or an equivalent way following EU withdrawal. The document goes as far as confirming there is no change in policy.

62. Regulation 3A itself points towards the continuing relevance of the Habitats Directive in 2 respects. Firstly regulation 3A(1) indicates that the Habitats Directive is to be construed as if it still included the United Kingdom. Secondly, 3A(4) gives the power for guidance to be issued as to the interpretation of the requirements of the Directives. No such guidance has been brought to my attention. However, the provision itself undermines the proposition that the Habitats Directive plays no further role in interpreting the Habitats Regulations.

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63. For the reasons set out above, I am satisfied that the Habitats Directive itself along with relevant associated case law and general principles of EU law continue to be of relevance to interpreting the provisions of the Habitats Regulations. In summary, in the present case there are three areas of particular relevance to the main issue.

64. Firstly, consideration of Article 6(3) and the Directive's purpose as part of adopting a purposive approach. Secondly, applying the precautionary principle as a general principle of EU law. Finally, the

specific principle that undertaking Appropriate Assessment following the grant of outline planning permission is legally permissible. Each of the areas set out are therefore unaffected by EU Withdrawal.

65. Further, in light of my view on scope, I do not agree with the Appellant's view that conflict arises between the 1990 Act and the Habitats Regulations in this case. However, even if there were to be conflict, it is not correct to say that it must automatically be resolved in favour of the primary legislation in the 1990 Act. This is because Section 4 of the Withdrawal Act makes provision for the continuance of obligations on or after EU withdrawal. The need to secure compliance with the Habitats Directive in Regulation 9(1) of the Habitats Regulations is one such obligation. The Withdrawal Act and the 1990 Act are therefore on an equal statutory footing and one cannot therefore be assumed to trump the other.

66. For the reasons set out, EU withdrawal does not have a practical effect on the consideration of this appeal in terms of whether the Habitats Directive and related case law are of relevance.

Conclusions

67. In light of the above discussion, it is legitimate to apply Paragraph 181 of the Framework which confers the same level of regulatory scrutiny for Ramsar Sites as European Sites would receive under the Habitats Regulations. This includes the requirement for Appropriate Assessment.

68. The scope of the Assessment is not limited, including by virtue of the Council's decision making in relation to the Outline Planning Permission or the Reserved Matters Approval. The Habitats Regulations, and Regulation 63 specifically, makes the requirement for Appropriate Assessment applicable to the discharge of conditions stage. This position on each of these issues is unaffected by EU withdrawal.

69. As such, in direct response to the main issue in this appeal, Appropriate Assessment pursuant to the Habitats Regulations is necessary in order to agree the Conditions attached to the Reserved Matters Approval and the scope of any such Appropriate Assessment is not limited.

70. The Council submitted the Shadow Appropriate Assessment in the event that I should conclude that an assessment is necessary. Following the Inquiry the document was subject to consultation with Natural England, with the Appellant and the Council given the opportunity of commenting on their response. Natural England note that it is not possible for the Shadow Appropriate Assessment to ascertain that adverse effects on the integrity of the Ramsar site will not result and that there is not enough information and/or certainty to enable adverse effects on integrity to be ruled out.

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71. I have no evidence or other basis on which to reach a different conclusion. As such, (as competent authority) I am unable to carry out the necessary Appropriate Assessment in order to agree the Conditions.

72. Notwithstanding my conclusions, I recognise the other relevant planning considerations which the Appellant draws my attention to and have considered these in drawing my conclusions.

73. Requiring Appropriate Assessment, and identifying any necessary mitigation, inevitably holds up the delivery of both phase 3 and the wider development. This is both in terms of potentially slowing

the delivery of later phases and the establishment into the surroundings of the phases that have been built and are at least partially occupied.

74. This issue is of importance, both in terms of the national policy priority given to housing delivery but also for Wellington itself given the scale of the overall development and, therefore, its importance to the local area. As such, there is a public interest in not holding up the delivery of the development.

75. It is also correct that the potential harm to the Ramsar Site arises as a result of being unable to rule out potential adverse effects, rather than as a consequence of a direct allegation of harm resulting from some finer detail of the site's development. Nevertheless, the Habitats Regulations regime exists to ensure that the in combination effects of plans and projects are considered.

76. The Natural England Note indicates that the need for greater scrutiny arises in order to limit the scope for permitting further development that would add additional phosphate either directly or indirectly to the Ramsar Site. The need to consider in combination effects means that the lack of a site specific allegation of harm is immaterial. In any event, as the requirement to carry out Appropriate Assessment has not been fulfilled in this case, I cannot draw firmer conclusions about the effects.

77. The unfulfilled requirement for Appropriate Assessment is an issue of material significance. To say otherwise would fail to give the same protection to the Ramsar Site as would be afforded to habitats sites (as defined in the Framework). Such an outcome would severely undermine the purpose of Paragraph 181 of the Framework. The consequence would also lead to effects on the Ramsar Site not being assessed that rightly should be under the terms of the Natural England Note.

78. In final conclusion, for the reasons set out and taking account of all other points made, the Appeal is dismissed.

D.R. McCreery

INSPECTOR

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Appearances

FOR THE APPELLANT

Charles Banner KC of Keating Chambers, instructed by CG Fry and Son Ltd

Assisted by Caroline Waller (Clarke Willmott LLP) and Paul Hoffmann (CG Fry and Son Ltd)

FOR THE COUNCIL

Christopher Boyle KC of Landmark Chambers, instructed by the Council

Assisted by Luke Wilcox (Landmark Chambers), Martin Evans (Shape Legal, for the Council), Alison Blom-Cooper MRTPI and Emmeline Brooks MRTI (both of the Council)

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Appendix

Core Documents (CD)

1 Evidence

1.1 Short form Statement of Common Ground dated 15 July 2022

1.2 Comprehensive Statement of Common Ground dated 19 July 2022

1.3 LPA's Shadow Appropriate Assessment

2 Legal Submissions

2.1 Appellant Skeleton Argument

2.2 LPA Skeleton Argument

2.3 Appellant Response

3 UK Legislation

3.1 Town and Country Planning Act 1990

3.2 Conservation of Habitats and Species Regulations 2017

3.3 Conservation of Habitats and Species Regulations 2017 (as amended)

3.4 European Union (Withdrawal) Act 2018

3.5 Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 & Explanatory Memorandum

3.6 Environment Act 2021, s. 17

4 European Legislation

4.1 EU Directive 92/43/EEC ("the Habitats Directive")

4.2 Directive 2014/52/EU (EIA Directive) - Article 2

5 Policy

5.1 NPPF Paragraph 181

5.2 Written Ministerial Statement of 20 July 2022

5.3 Chief Planner's Letter 21 July 2022

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5.4 "Changes to the Habitats Regulations 2017" , government consultation paper

6 Case Law

6.1 F Hoffmann La Roche & Co AG v Secretary of State for Trade and Industry [1975] A.C. 295

6.2 Centre Hotels (Cranston) Ltd. v. Secretary of State for the Environment [1982] J.P.L. 108

6.3 O'Reilly v Mackman [1983] 2 A.C. 237

6.4 Proberun Ltd. v. Secretary of State for the Environment [1991] 61 P.C.R. 77

6.5 Case C-201/02 R (Wells) v. Secretary of State for Transport, Local Government and the Regions [2004] 1 C.M.L.R. 31

6.6 R (Noble Organisation Ltd.) v. Thanet District Council [2006] Env. L.R. 8

6.7 Case C-508/03 Commission v. UK [2006] QB 764

6.8 Case C-290/03 R (Barker) v. Bromley LBC [2007] 1 AC 470

6.9 R (Bucks CC) v. Secretary of State for Transport [2014] P.T.S.R. 182

6.10 Commission v Germany [2017] EUECJ C-142/16

6.11 Cooperatie Mobilisation for the Environment UA v College van Gedeputeerde [2019] Env LR 27

6.12 R (Wingfield) v. Canterbury City Council [2019] EWHC 1975 (Admin)

6.13 R (Wyatt) v. Fareham Borough Council [2021] EWHC 1434 (Admin)

6.14 Target Group Ltd v HMRC [2021] STC 1662

6.15 Rossendale BC v Hurstwood Properties Ltd [2021] 2 WLR 1125

6.16 R (Swire) v Canterbury CC [2022] JPL 1026

7 Commentary

7.1 Wetherill, Cases and Materials on EU Law, 9th Edition, Oxford University Press, Chapter 2 Section 3 entitled "The General Principles of EU Law".

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Documents submitted at or post the Inquiry

From the Appellant

- Aberdeen City and Shire Strategic Development Planning Authority (Appellant) v Elsick Development Company Limited (Respondent) (Scotland) [2017] UKSC 66 • Speaking note • Response to the Council's further additional submissions dated 7 October

From the Council

- R (Wyatt) v Fareham Borough Council [2022] EWCA Civ 983 • R. (on the application of Buckinghamshire CC) v Secretary of State for Transport [2013] EWHC 481 (Admin) • Harris & Harris v The Environment Agency and Natural England [2022] EWHC 2264 (Admin) with accompanying commentary from the Council dated 15 September • Annotated version of the Inspector's Supplementary Note dated 11 August Other documents • Email response from Natural England dated 14 September and associated comments from the Appellant (dated 15 September)

