

Minutes of a Meeting of the Planning Committee - East held in the Council Chamber, Council Offices, Cannards Grave Road, Shepton Mallet BA4 5BT, on Tuesday, 4 July 2023 at 2.00 pm

Present:

Cllr Nick Cottle (Chair)

Cllr Barry Clarke

Cllr Dawn Denton

Cllr Susannah Hart

Cllr Bente Height

Cllr Helen Kay

Cllr Martin Lovell

Cllr Tony Robbins

Cllr Claire Sully

23 Apologies for Absence - Agenda Item 1

Apologies for absence were received from Councillors Adam Boyden, Martin Dimery, Edric Hobbs and Alex Wiltshire. Councillor Heather Shearer substituted for Councillor Hobbs and Councillor Michael Dunk substituted for Councillor Dimery.

24 Minutes from the Previous Meeting - Agenda Item 2

The Committee was asked to consider the Minutes of the meeting held on 6 June 2023. Councillor Martin Lovell proposed and Councillor Tony Robbins seconded that they be accepted.

These Minutes were taken as a true and accurate record and were approved.

25 Declarations of Interest - Agenda Item 3

All Councillors declared a personal but non-prejudicial interest in Agenda Item 5 - 2022/1945/REM - Land Northeast of Tor View, Top Road, Westbury Sub Mendip. This was because one of the objectors to the application was an elected Somerset Councillor and was known to them all.

Councillors Martin Lovell and Bente Height declared a personal but non-prejudicial interest in Agenda Item 9 - 2022/0258/FUL - Blostins Restaurant, 29 - 33 Waterloo

Road, Shepton Mallet. Both said that they had eaten at the restaurant and knew the applicant.

All Councillors advised that they would participate in the discussions and vote on these agenda items.

26 Public Question Time - Agenda Item 4

There were none.

27 Planning Application 2022/1945/REM - Land North East Of Tor View, Top Road, Westbury Sub Mendip, Wells, Somerset - Agenda Item 5

Application for the approval of reserved matters following outline approval 2020/0364/OTA for the erection of a single dwelling. Matters of access, appearance, landscaping, layout and scale to be determined.

The Officer's Report stated that this application had been referred to the Planning Committee by the Chair as the Officer Recommendation was contrary to the Parish Council's. The Recommendation was for approval.

The Report continued that the site was set within a slope in the land surrounded by agricultural land and vineyard. The proposed development was set within the cut out in the slope and was accessed via an existing farm gate enclosed on either side by hedgerow.

The site was located within the Mendip Hills Area of Outstanding Natural Beauty (AONB) on its southern edge.

There was an extant permission, reference 2020/0364/OTA, for a dwelling on this site, although there were outstanding pre-commencement conditions. When planning permission was granted all matters were reserved for future consideration. Since outline permission was granted the application site has been included within the phosphate catchment area which affects the Somerset Levels and Moors Ramsar.

Following the outline approval, a reserved matters application reference 2020/1678/REM, was submitted and refused for one reason, which was due to phosphates and foul drainage issues. The current application seeks approval of all the reserved matters for the erection of a dwelling and it seeks to overcome the

previous single reason for refusal.

Westbury Sub Mendip Parish Council had recommended refusal. The reasons given were:

- Dwelling is too tall.
- Window design is inappropriate in terms of light pollution in the AONB
- Dwelling is not sympathetic to the needs / existing character of the village.

Other consultees such as Contaminated Land, Land Drainage, Ecology and Natural England had no objections, subject to various conditions. There had been one letter of objection received and 6 letters of support. Objections included:

- The reserved matters application has not overcome our concerns which were raised at the outline stage and on the previously refused application.
- Objection in principle to the location of the site in the AONB outside the settlements.
- It is detrimental to the character of the area and will result in light pollution.

Comments from the letters in support included:

- The development is in keeping with surroundings.
- The Ph of the land stands at 0.02 the development will be for 2 people and as such it will not change.

In conclusion, the Officer's Report said that subject to a legal agreement to secure the provision of phosphate mitigation habitat comprising of woodland planting and a landscape and ecological management plan (LEMP), the application was recommended for approval.

The Planning Officer explained the application to the Committee with the aid of a PowerPoint presentation.

The Committee was then addressed by 2 objectors to the application. Their comments included:

- The development is outside the development boundary of the village in inside the AONB.
- The countryside and views of the Somerset Levels will be affected.
- The application has many changes to the original proposal and alter the whole character of the development in a significant and detrimental way.
- The original green roof has gone, the floor area and height has increased, celestial windows are proposed and the garage located below the living space makes it a 2-storey structure.
- Impact on dark skies.

On behalf of Westbury sub Mendip Parish Council, a speaker then made the following points:

- The original application showed a green roof which was not in the latest proposal.
- Dark skies will be affected.
- Application has suffered from “planning creep” and is now much bigger than previous.
- Proposed dwelling no longer “nestles” into the slope.
- The Parish Council objects to the application as it will be obtrusive and will have an unacceptable impact on the countryside and AONB.

Councillor Heather Shearer then spoke. She advised she was the Division Member. She supported the views of the Parish Council. The site was in designated open countryside and was a brownfield site in a disused quarry. When outline permission was granted, the dwelling was shown to be sited well within the quarry, with a green roof and would only be glimpsed from the surrounding landscape. However, this application shows a much bigger, higher dwelling. The windows on the western side of the dwelling would impact dark skies and water courses could become contaminated. If it were to be approved, she said conditions should be added to retain the western wall and hedges planted. There should be an assessment of light pollution and water course contamination.

The final speaker was the applicant’s agent who made the following points:

- The reserved matters application had been refused on one issue only, which was due to phosphates and foul drainage issues.
- The Council’s ecology, drainage and Natural England have independently agreed the mitigation is acceptable.
- Nothing new has been included in this application to what was previously found acceptable at reserved matters.
- There were no comments from the AONB, who did not identify any concerns.

During the discussion which followed, Members had a number of concerns which included the following:

- The earlier reserved matters application had not been debated by Mendip District Council Planning Board and was refused by the Chair and Vice-Chair in line with the Officer’s Recommendation purely on phosphates issues. Had it been debated at Planning Board, other reasons for refusal and conditions may have been included.
- Concerns about the proposed windows on the western side of the dwelling, the increase in height, the contouring of the dwelling within the landscape and lack of a landscaping plan to shield the western side from the village.
- Drainage a concern and would want conditions or assurances that drainage

will be sufficient.

- Light pollution to the dark skies should be conditioned against.
- The white colour of the render would make the dwelling stand out even more in the landscape.
- The height of the proposed dwelling appears to have increased. Members requested clarity on the height of the proposed dwelling compared to height above the sloping ground level.
- To protect from further development, permitted development rights should be removed for this property.

In response to some of these comments the Legal Advisor said that Outline permission had been granted for the principle of the development so this could not be questioned. It did not matter who had made the decision to refuse the reserved matters application – it was a lawful decision of the LPA and formed part of the planning history. Whilst it was open for Members to consider and discuss the detail of the reserved matters, if it was moved for refusal for reasons of, for example, scale and appearance, he would advise Members that it could be regarded as an unreasonable decision as the same scheme had previously not been refused for those reasons.

The Team Leader – Development Management advised that the detail of landscaping was included in the reserved matters application and therefore it would not be possible to condition additional landscaping at this stage. But she did say that a condition to deal with light spill could be added by requesting a lighting strategy. She also advised that a condition could be added requiring details of materials to be submitted and approved. Regarding removal of permitted development, she reminded Members permitted development rights were more restricted as the site was in the AONB. Officers could review this and see what could be done under permitted development rights and assess whether the PD rights needed to be removed.

In response to the question regarding landscaping, the Chair permitted the applicant's agent to speak again. He reassured Members that extra landscaping in the west of the development would be provided to screen the dwelling.

It was proposed by Councillor Michael Dunk and seconded by Councillor Heather Shearer that the application be approved in accordance with the Officer's Recommendation set out in the Report with the addition of the following conditions, the wording of which to be delegated to Planning Officers:

1. A lighting strategy to control the light spill
2. Building materials and colours
3. Building levels

4. Consideration as to whether further Permitted Development rights should be removed

On being put to the vote, the proposal to approve was carried by 10 votes in favour and 1 vote against.

RESOLVED

That planning application 2022/1945/REM be approved in accordance with the Officer's Recommendation subject to the imposition of additional conditions relating to:

1. A lighting strategy to control the light spill
2. Building materials and colours
3. Building levels
4. Consideration as to whether further Permitted Development rights should be removed

That delegated authority be granted to Planning Officers to agree the wording.

28 Planning Application 2023/0411/FUL - Stonecot, Frys Lane To Mill Lane, Batcombe, Shepton Mallet, Somerset - Agenda Item 6

Application for the change of use from agricultural land to residential garden. Creation of driveway, hardstanding, turning and parking area

The Officer's Report stated that this application had been referred to the Planning Committee as it was a departure from the Local Plan. The Recommendation was for approval.

The Report continued that Batcombe Parish Council had recommended approval subject to Highways not raising any objection. There had been no letters of support or objection from local residents.

In conclusion, the Officer's Report said although the development would be outside development limits, it would abut an existing residential property. The proposed use was not considered to have a detrimental impact on the adjoining land uses or highway safety and was considered to represent a sustainable form of development. It was therefore recommended that planning permission be granted as a departure from the development plan.

The Planning Officer explained the application to the Committee with the aid of a

PowerPoint presentation.

There were no speakers on the application.

After a brief discussion some Members noted the possibility of the parking area being developed in future and wondered if permitted development rights should be removed to prevent this. The Planning Officer advised that the permission was for a parking area for private domestic use and it was not possible to know what applications may come forward in the future. However, removal of Permitted Development rights would be a possible condition.

Another Member raised concerns about increased run-off from the new driveway and requested that permeable paving be used. The Planning Officer confirmed that this was already recommended as a condition. It was noted that road safety on the lane was an issue and permitting the property to have its own parking area would alleviate some highway safety risks.

At the conclusion of the debate, it was proposed by Councillor Claire Sully and seconded by Councillor Heather Shearer that the application be approved in accordance with the Officer's Recommendation set out in the Report. On being put to the vote the proposal was carried with 10 votes in favour and 1 abstention.

RESOLVED

That planning application 2023/0411/FUL be approved in accordance with the Officer's Recommendation.

29 Planning Application 2023/0431/FUL - Westhayes, Springers Hill, Coleford, Frome, Somerset - Agenda Item 7

Application for change of use from land in the open countryside to residential garden.

The Officer's Report stated that this application had been referred to the Planning Committee as it was a departure from the Local Plan. The Recommendation was for approval.

The Report continued that the Development Limit of Coleford lay along the existing southern boundary of the curtilage of the property and therefore the application site lay outside of the development limits of Coleford.

Coleford Parish Council had originally objected to the application as they

misunderstood the requirement for the applicant to complete a bio-diversity checklist. They subsequently withdrew the objection. There had been no letters of support or objection from local residents.

In conclusion, the Officer's Report said that, although the development would be outside development limits, it would abut the existing residential property and would provide garden similar in size to neighbouring properties. The proposed use was not considered to have a detrimental impact on the adjoining land uses or ecological habitat and was therefore recommended that planning permission be granted as a departure from the development plan, subject to conditions.

The Planning Officer explained the application to the Committee with the aid of a PowerPoint presentation. She also advised that she was minded to amend condition 3 which related to hard and soft landscaping, as the applicant had submitted a more organic plan. Also, there was a contractual covenant which meant the fencing must be open to allow for wildlife.

The applicant was then invited to address the Committee. He made the following comments:

- The proposed boundary of the garden would align with the neighbour's garden boundary.
- The land is totally hidden from road and is only visible from neighbouring properties.
- The intention is to protect the current view and land from being developed. It was an old hay meadow and intend to introduce a water meadow.
- Intend to further conserve and protect existing wildlife.

In the discussion which followed, Councillor Barry Clarke, although a little concerned that the field would be turned into a water meadow, proposed that the application be approved in accordance with the Officer's Recommendation outlined in the Report, but with delegation to the Planning Officers to amend Condition 3. This was seconded by Councillor Susannah Hart.

One Member wished to add an additional reason given to Condition 4 regarding the removal of permitted development rights to include the words "bio-diversity loss,". There was discussion as to whether this was necessary. Councillor Helen Kay proposed an amendment to the substantive motion to add these additional words and this was seconded by Councillor Michael Dunk. On being put to the vote the amendment was carried by 5 votes to 4, with 2 abstentions.

The substantive motion was then put to the vote to approve the application in accordance with the Officer's Recommendation with the additional wording "biodiversity loss," in the reasons for Condition 4. This was carried unanimously.

RESOLVED

That planning application 2023/0431/FUL be approved in accordance with the Officer's Recommendation but subject to the addition of the words "biodiversity loss," to the reasons for imposing Condition 4 and with delegated authority to the Planning Officers to amend Condition 3.

30 Planning Application 2021/0050/FUL - Land at 378206 147347, Adderwell Road, Frome, Somerset - Agenda Item 8

Application for residential development comprising 25 dwellings, new vehicular access, landscaping, sustainable urban drainage and other associated infrastructure works.

The Officer's Report stated that this application had been referred to the Planning Committee as the recommendation was to approve with conditions, but the Divisional Councillors had objected and called for a referral to the Planning Committee.

The Report continued that, through the life of the application, consultation comments were received from the Urban Design Officer who recommended the attenuation pond originally proposed in the southern corner of the site, adjacent to the vehicular entrance, be replaced with an area of public open space. The applicant followed this recommendation and submitted revised plans and drainage details accordingly.

As revised plans and information had been received through the life of the application, consultation with the local community and statutory consultees had been undertaken as necessary.

The Divisional Councillors had objected to the applications.

Frome Town Council had not objected to the application. Other consultees such as the Local Flood Authority, Highways and Environmental Protection had no objections subject to various conditions. However, Frome Civic Society had objected for reasons such as poor design, insufficient pedestrian and cycle links and affordable housing not dispersed throughout the site.

There had been 5 letters from local residents with neutral comments and 3 letters of objection. Comments included:

- Highways safety concerns
- Insufficient parking
- Pedestrian and cycle connections into Printworks site required
- Amenity – there should be 21 m distances required between properties
- Insufficient planting
- Insufficient biodiversity net gain

In conclusion, the Officer's Report said that, as the Council could not demonstrate a 5-year housing land supply, the 'tilted balance' set out NPPF was engaged. This meant that residential proposals should only be refused if they would result in 'significant and demonstrable harm' which outweighed the benefits of the proposal. The scheme would be acceptable (subject to the inclusion of relevant conditions and obligations) in relation to impact on the character of the area; affordable housing provision; housing mix; education; highways, access and parking; contaminated land; refuse and recycling; trees; landscaping; carbon reduction; and ecology. The Report went on to say that considering the application under the 'tilted balance'. The harms were not considered 'significant and demonstrable' and therefore the Officer Recommendation was for approval, subject to planning conditions and the prior completion of a S106 legal agreement.

The Planning Officer explained the application to the Committee with the aid of a PowerPoint presentation.

Councillor Shane Collins then spoke. He advised he was one of the Division Members. He made the following points:

- Heat pumps require electricity and proper insulation to be effective.
- Developers should be building houses to exceed the requirements of the national regulations, not just meet them.
- Would like to see houses built to Passivhaus standards. They may be more costly to build but running costs would be reduced.
- Provision of an electric bicycle per household rather than just EV charging points would be preferable.
- Car parking provision was too high – on average more than 2 per dwelling.
- The proposal did not meet the Council's aim to be zero carbon and he hoped the Planning Committee would ask for solar panels, batteries, better insulation and the provision of ebikes.

Next to speak was the representative from Persimmon Homes, who was the applicant. He said:

- The provision of 8 affordable homes made it compliant with NPPF regulations.
- The site was redundant brownfield land.
- The applicant had worked with Frome Town Council who fully support the

application.

- The issue of parking had been addressed with Highways and now met the needs of the town and residents.
- The public open space will provide wildflowers, fruit trees and will create biodiversity.
- The development will have no reliance on gas boilers and will provide air source heat pumps which are a much more environmentally friendly method of heating.

In the Committee discussion which followed, the following points were made:

- The application was an improvement on the first one and pleased to see it linked to the Printworks site.
- Too many detached dwellings – should be more semi-detached which would help with the insulation of the properties.
- Pleased with the provision of air source heat pumps but would have liked to see solar panels.
- The gardens were too small for sustainability to allow occupants to grow their own food. Could permitted development rights be removed to prevent owners from building on the already small gardens?
- Concern about the cost of running the air source heat pumps and the noise emitted.
- Concern about land contamination, which if found to be a problem, might lead to ‘viability’ issues for the developer and result in them reapplying for permission with fewer affordable homes.

In response to some of these comments, the Planning Officer advised that the provision of parking spaces was in line with the requirements of the Highway Authority and was dependent on the number of bedrooms. She also confirmed that the provision of solar panels had been discussed with the applicant, but that the application had been considered acceptable without. The electricity supply for running the heat pumps was sufficient and there were permeable materials proposed for the shared public spaces. She also made the point that recommended Condition 5 would cover the possibility of noise disturbance from the heat pumps and that there was no justification to remove permitted development rights. Finally, she confirmed that the full suite of contaminated land conditions was recommended.

At the conclusion of the debate, it was proposed by Councillor Heather Shearer and seconded by Councillor Susannah Hart that the application be approved in accordance with the Officer’s Recommendation set out in the Report. On being put to the vote the proposal was carried with 10 votes in favour and 1 against.

RESOLVED

That planning application 2021/0050/FUL be approved in accordance with the Officer's Recommendation.

31 Planning Application 2022/0258/FUL - Blostins Restaurant, 29 - 33 Waterloo Road, Shepton Mallet, Somerset - Agenda Item 9

Application for part change of use from restaurant Class E(b) to residential Class C3.

The Officer's Report stated that this application had been referred to the Planning Committee as requested by the Chair and Vice Chair of the previous Planning Board at Mendip District Council as they disagreed with the Officer's proposal to refuse the application.

The Report continued that the proposal was for the change of use of the restaurant to residential with the overall result being two dwellings. The site was located within a Conservation Area and was within the development limits of Shepton Mallet. The site was also located within the Somerset Levels and Moors Ramsar catchment.

Shepton Mallet Town Council had supported the application but there had been no letters of support or objection from local residents.

Regarding phosphates, the Report stated that the application site fell within the catchment flowing into the Somerset Levels and Moors Ramsar, designated for its rare aquatic invertebrates. There was a major issue with nutrients entering watercourses and any new housing, including single dwellings, would result in an increase in phosphates contained within foul water discharge. As the designated site was in 'unfavourable' condition, any increase, including from single dwellings, was seen as significant.

The applicant had not provided a Nutrient Neutrality Assessment and Mitigation Statement (NNAMS) and based on the information available, it was not possible for the Council to determine whether the proposal would have an acceptable effect in relation to the Somerset Levels and Moors Ramsar site, and as such it failed Regulation 63 of the Habitat Regulations 2017. The Report continued that it was also not possible to determine the effect on protected species and as such the Recommendation was for refusal.

The Planning Officer explained the application to the Committee with the aid of a PowerPoint presentation.

The Chair invited the agent for the applicant to speak on their behalf. He made the following points:

- The owners of the restaurant had been trying to sell it for a considerable amount of time but have been unsuccessful. They would like to convert the restaurant to a residence and make two properties, one of which they would sell.
- The Phosphate calculator was flawed as it did not take into account the loss of the restaurant business and how that would result in an overall reduction in phosphates emitted.
- As a restaurant, the water usage was between 400 and 600 litres per day. As a dwelling this would reduce to 150 litres per day. This was an obvious benefit to the Somerset Levels and Moors Ramsar site.

Before the Committee debated the application the Legal Advisor re-iterated that the proposal failed Regulation 63 of the Habitat Regulations 2017, which prohibits the Council from granting planning permission unless it is sure beyond reasonable doubt that the development it will not adversely affect the integrity of the Ramsar Site. He urged Members not to make an unlawful decision by granting permission for the development without the necessary evidence to demonstrate that it would be nutrient neutral.

During the debate the following points and questions were raised by some Members:

- Great sympathy was felt for the owners of the restaurant that they were in this difficult position.
- The Phosphate calculator did not seem fit for purpose. How could it be fixed?
- What solution could the Planning Officer offer the applicant to solve the problem?
- It seemed common sense to approve the application despite the Regulations. What would be the risk of doing this?
- Could the application be deferred to allow the applicant to work with Planning Officers to find a phosphate solution?

In response to these questions the Legal Advisor said that the Phosphate calculator had been adopted Somerset-wide and that it had been approved by Natural England. It would not be lawful to ignore the Habitat Regulations. The Team Leader – Development Management advised there were a number of mitigation schemes available, and the applicant could purchase P-credits in those schemes to mitigate against the phosphates. Deferral of the application to explore these options would be a possibility.

Many Members agreed that deferral would be useful as it would give the applicant

every opportunity to consider the Phosphate mitigation. Councillor Susannah Hart requested that Planning Officers agreed to undertake to contact Natural England about the issue with the Phosphate calculator.

At the conclusion of the debate, it was proposed by Councillor Heather Shearer and seconded by Councillor Nick Cottle to defer the application for up to 2 months to allow the applicant to secure mitigation against the Phosphate emissions. On being put to the vote the proposal was carried with 9 votes in favour and 1 against with 1 abstention.

RESOLVED

That planning application 2022/0258/FUL be deferred for a period of up to 2 months to allow the applicant to secure mitigation against the Phosphate emissions.

Before the meeting was closed, the Chair permitted Councillor Helen Kay to raise the issue regarding the lack of ability to browse Minutes and papers from the old Mendip District Council website. In response, the Head of Service explained that the link from the former District Council website to the new Somerset Council website would be secured in time. However, this had been an issue from the migration and was still being resolved. In the meantime, Members and the public could request to see previous Minutes and papers via an online form.

(The meeting ended at 5.00 pm)

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CHAIR