

Public Agenda Pack



Notice of Meeting of

PLANNING COMMITTEE - WEST

Tuesday, 15 August 2023 at 2.00 pm

**John Meikle Room, The Deane House, Belvedere
Road, Taunton TA1 1HE**

To: The members of the Planning Committee - West

Chair: Councillor Simon Coles

Vice-chair: Councillor Derek Perry

Councillor Norman Cavill

Councillor Caroline Ellis

Councillor Andy Hadley

Councillor Steven Pugsley

Councillor Sarah Wakefield

Councillor Gwil Wren

Councillor Dixie Darch

Councillor Habib Farbahi

Councillor Ross Henley

Councillor Andy Sully

Councillor Rosemary Woods

For further information about the meeting, including how to join the meeting virtually, please contact Democratic Services – see contact details below.

Requests to speak at the meeting about a planning application must be made to the Democratic Services Team no later than **12noon on Monday, 14 August 2023** by email to democraticserviceswest@somerset.gov.uk. Further information on the public speaking arrangements at Planning Committee is provided in the Public Guidance Notes near the front of this agenda pack.

The meeting will be webcast and an audio recording made.

This meeting will be recorded and then uploaded to YouTube following the meeting.

Members of the public are welcome to attend the meeting.

This meeting will be open to the public and press, subject to the passing of any resolution under the Local Government Act 1972, Schedule 12A: Access to Information.

Issued by David Clark, Monitoring Officer (the Proper Officer) on Monday, 7 August 2023.

AGENDA

Planning Committee - West - 2.00 pm Tuesday, 15 August 2023

Public Guidance Notes for Planning Committees (Agenda Annexe) (Pages 7 - 10)

Webcast link to view the meeting (Pages 11 - 12)

1 Apologies for Absence

To receive any apologies for absence and notification of substitutions.

2 Minutes from the Previous Meeting (Pages 13 - 20)

To approve the minutes from the previous meeting held on 18 July 2023.

3 Declarations of Interest

To receive and note any declarations of interests in respect of any matters included on the agenda for consideration at this meeting.

(The other registrable interests of Councillors of Somerset Council, arising from membership of City, Town or Parish Councils and other Local Authorities will automatically be recorded in the minutes: [City, Town & Parish Twin Hatters - Somerset Councillors 2023](#))

4 Public Question Time

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 limit applies to each speaker.

Requests to speak at the meeting at Public Question Time must be made to the Monitoring Officer in writing or by email to democraticserviceteam@somerset.gov.uk by 5pm on Wednesday 9 August 2023.

5 Planning Application 20/23/0019 - Plots 15 to 18 Mill Meadow, Parsonage Lane, Kingston St Mary (Pages 21 - 40)

To consider an application for the removal of Condition No. 05 (holiday occupancy) of application 20/05/0005 and Condition No. 01 of 20/22/0027 (approved plans) at Plots 15 to 18 Mill Meadow, Parsonage Lane, Kingston St Mary.

6 Planning Application 20/23/0020 - Plots 19 and 20 Mill Meadow, Parsonage Lane, Kingston St Mary (Pages 41 - 58)

To consider an application to remove Condition No. 01 (holiday occupancy) of appeal decision of application 20/06/0039 at Plots 19 and 20 Mill Meadow, Parsonage Lane, Kingston St Mary.

7 Planning Application 38/20/0151 - 9-11 Burton Place, Taunton, TA1 4HD (Pages 59 - 80)

To consider an application for the conversion of terrace building (part of former police station) into 6 No. dwellings at Burton Place, Taunton

8 Objection to Somerset West and Taunton (Trull No.2) Tree Preservation Order SWT73 (2023) (Pages 81 - 84)

To consider the confirming of a Tree Preservation Order.

9 Appeal Decisions (for information) (Pages 85 - 124)

Other Information:

Exclusion of the Press and Public for any discussion regarding exempt information

The Press and Public will be excluded from the meeting when a report or appendix on this agenda has been classed as confidential, or if the Committee wish to receive confidential legal advice at the meeting. If the Planning Committee wish to discuss information in Closed Session then the Committee will asked to agree the following resolution to exclude the press and public:

Exclusion of the Press and Public

To consider passing a resolution having been duly proposed and seconded under Schedule 12A of the Local Government Act 1972 to exclude the press and public from the meeting, on the basis that if they were present during the business to be transacted there would be a likelihood of disclosure of exempt information, within the meaning of Schedule 12A to the Local Government Act 1972:

Reason: Para 3 - Information relating to the financial or business affairs of any particular person (including the authority holding that information).

(Or for any other reason as stated in the agenda or at the meeting)

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Public Guidance Notes for Planning Committees

Can I speak at the Planning Committee?

The Applicant or Agent, Parish, Town or City Council, Division Members and objectors or supporters are able to address the Planning Committee. **All speakers need to register – please see details on the next page.**

The order of speaking will be:-

- Those speaking to object to the proposal - maximum of 5 speakers of 3 minutes each
- Those speaking in support of the proposal - maximum of 5 speakers of 3 minutes each
- Parish, Town or City Council(s) - 3 minutes each
- Councillors of Somerset Council (non-Committee members) - 3 minutes each
- The applicant or their agent - 3 minutes

Public speaking will be timed and the Chair will be responsible for bringing the speech to a close. The speaker/s will be allowed to address the Committee during their registered slot only and will not be allowed to provide further clarification. If an item on the Agenda is contentious, with a large number of people attending the meeting, a representative speaking to object or support the proposal should be nominated to present the views of a group.

The Chair can exercise their discretion in consultation with the Legal Adviser and this maybe, for example, it maybe that comments are derogatory in which case the Chair will exercise discretion to prevent the speaker from continuing, or if balance was required in terms of speakers for and against or to make a specific point, to allow a further speaker.

Comments should be limited to relevant planning issues. There are limits to the range of issues that can be taken into account when considering planning applications.

Although not an exhaustive list, these might include:

- Government planning policy and guidance
- Planning legislation
- The suitability of the site for development
- Conflict with any planning policies such as the relevant Development Plan – which are available for inspection on the Council's website
- Adopted Neighbourhood Plans
- Supplementary Planning Documents (SPD)

- Previous planning applications and decisions
- Design, appearance, layout issues and relationship with the surrounding area.
- Living conditions such as privacy, noise and odour.
- Highway safety and traffic issues
- Biodiversity and ecology
- Impact on trees and the landscape
- Flood risk in identified areas at risk.
- Heritage assets such as listed buildings, conservation areas and archaeology
- The economy, including job creation/retention.
- Drainage and surface water run-off.

Issues that are not usually relevant will vary with each application, but the courts have established that the following matters cannot be taken into account when considering planning applications:

- The history or character of an applicant
- Perceived or actual impact of development on property values.
- Land ownership, restrictive covenants or other private property rights including boundary and access disputes or maintenance.
- An applicant's motivations or future intentions.
- Retrospective nature of applications;
- Impact on private views;
- The extent of public support or opposition for a proposal alone;
- Competition between businesses;
- Matters controlled by other (non-planning) legislation such as licensing and building regulations or other laws.

How do I register to speak at Planning Committee?

A request to speak must be made to the Council's Democratic Services team no later than 12 noon on the working day before the Committee meeting by email to democraticserviceswest@somerset.gov.uk . For those speaking to object or support the proposal, the speaking slots will be allocated on a first come first served basis. If there are numerous members of the public wishing to speak in one slot it is advisable to make arrangements for one person to make a statement on behalf of all. The meetings are hybrid and you can speak either in person at the meeting or virtually. If you wish to speak at the meeting virtually please inform Democratic Services so that they can advise you of the details. If you have registered to speak, the Chairman will invite you to speak at the appropriate time during the meeting.

Can I present information to the Committee?

Please be advised that you cannot present documents in any form to the Committee Members at the meeting – this includes photographs and presentations (including Powerpoint presentations).

How do I know what time an application will be heard?

If you have registered to speak in person, we recommend arriving at the meeting venue about 15 minutes before the start time. If joining virtually, please consider joining the meeting a few minutes early to ensure your technology is working correctly - you may have to wait in a lobby until being admitted to the meeting. It is not possible to estimate the exact time an application will be heard.

What if my Division Member does not sit on the Planning Committee?

If your local Councillor is not a member of the Planning Committee, he or she can still address the meeting to outline any concerns or points of support. However, they will not be permitted to take part in the main debate, to make or second a proposal or to vote on any item.

Presentation of planning applications

The Planning Officer will present the case to the Committee explaining the factual matters and any salient points which need to be drawn out with the use of a visual presentation. It is important to note that the Planning Officer is not an advocate for either the applicant or any third parties but will make an impartial recommendation based on the merits of the proposal and any relevant material considerations.

The role of Officers during the debate of an application

When an application is considered at Planning Committee, it is the Officers' role to explain why they have concluded that permission should be approved or refused and answer any questions that Members may have. Whilst the Committee has to reach its own decision bearing in mind the Officer advice, report and recommendation, the Lead Planning Officer and Council Solicitor in particular have a professional obligation to ensure that a lawful and unambiguous decision is made in accordance with the Council's Development Plan, planning legislation, regulations and case law. This means, in the event that a contrary decision is sought, they will need to explain the implications of doing so. This can sometimes mean that Officers need to advise and guide Members as to planning policy, what are or are not material considerations, what

legally can or cannot be considered or given weight and the likely outcome of any subsequent appeal or judicial review.

Officers' views, opinions and recommendations may, on occasion, be at odds with the views, opinions or decisions of the Members and there should always be scope for Members to express a different view from Officers. However, any decision by the Committee must be based on proper planning reasons as part of the overall aim to ensure that a lawful and unambiguous decision is made. Where this is contrary to that recommended within the Officer report, the Lead Planning Officer and Council Lawyer will advise Members in making that decision.

Recording of the Meeting

Please note that this meeting will be recorded, and the recording will be made available on the Council's website and/or on YouTube. You should be aware that the Council is a Data Controller under the Data Protection Act 2018. Data collected during the recording will be retained in accordance with the Council's policy. Therefore, unless you are advised otherwise, by taking part in the Council meeting during public participation you are consenting to being recorded and to the use of the sound recording for access via the website or for training purposes.

The Council supports the principles of openness and transparency. It allows filming, recording, and taking photographs at its meetings that are open to the public – providing this is done in a non-disruptive manner. Members of the public may use Facebook and Twitter or other forms of social media to report on proceedings, No filming or recording may take place when the press and public are excluded for that part of the meeting.



This is the on-line invite to join the Planning Committee – West meeting on Tuesday 15 August at 2.00pm. Please note this is an in-person meeting in the John Meikle Room, The Deane House, Belvedere Road, Taunton TA1 1HE

Microsoft Teams meeting

Join on your computer, mobile app or room device

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Meeting ID: 313 959 917 578

Passcode: jBoSt4

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Phone Conference ID: 511 807 286#

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Minutes of a Meeting of the Planning Committee - West held in the John Meikle Room, The Deane House, Belvedere Road, Taunton TA1 1HE, on Tuesday, 18 July 2023 at 1.00 pm

Present:

Cllr Simon Coles (Chair)
Cllr Derek Perry (Vice-Chair)

Cllr Norman Cavill
Cllr Andy Hadley
Cllr Dawn Johnson
Cllr Andy Sully
Cllr Gwil Wren

Cllr Caroline Ellis
Cllr Ross Henley
Cllr Steven Pugsley
Cllr Rosemary Woods

21 Apologies for Absence - Agenda Item 1

Apologies for absence were received from Councillors Dixie Darch, Habib Farhabi and Sarah Wakefield.

It was noted that Councillor Dawn Johnson was attending as substitute for Councillor Dixie Darch.

22 Minutes from the Previous Meeting - Agenda Item 2

Resolved that the minutes of the Planning Committee - West held on 20 June 2023 be confirmed as a correct record.

23 Declarations of Interest - Agenda Item 3

Planning Application 3/39/21/028 - Land to the North of the Transmitting Station, Washford, Williton

Councillor Rosemary Wood said she was predetermined in relation to planning application 3/39/21/028. She would make comment and then move to the public seating area.

Councillors Gwil Wren and Steven Pugsley stated that they had both received telephone calls regarding this application but they had not committed to any view. At the time the item was discussed, Cllr Steven Pugsley declared a personal interest in this application as an appointed representative of the Exmoor National Park Authority.

Planning Application 3/26/23/005 - The Blue Anchor, Cleeve Hill, Watchet

The Solicitor asked that it be noted all Members of the committee held a personal interest in Item 7 - Planning Application 3/26/23/005 as they were all elected Members and acknowledged they were colleagues of the applicant.

Planning Application 42/23/0016 - Orchard Grove, Land at Comeytrowe/Trull, Taunton

Councillor Dawn Johnson noted that she was the Division Member Comeytrowe & Trull.

24 Public Question Time - Agenda Item 4

There were no questions from members of the public.

25 Planning Application 3/39/21/028 - Land to the North of the Transmitting Station, Washford, Williton - Agenda Item 5

The Planning Officer introduced the application to the Committee with the assistance of a power point presentation. He provided the following updates including:

- Reiterated the development would be for a temporary period of 40 years.
- There would be no permanent change of land use.
- Provided brief overview of late representations.
- Clarified that personal circumstances could be a material consideration but only in exceptional or special cases and that it was for Members to decide whether it was justified to take them into account and the weight to be afforded to them in the planning balance.
- Updated on the consultation and discussions taken place regarding concerns raised around utilities and potential fire risk.

He also referred to the key considerations. The recommendation was for approval.

Five members of the public addressed the committee in objection to the application, and some of their comments included:

- Development would be detrimental to the farmland and have a huge impact on the operation and viability of the farms.

- Adverse impact on the visitor's perception of area.
- 40 years is not temporary, the damage to the soil and wildlife would be irreversible.
- Tenant farmers circumstances were a material consideration that should be considered.
- Contrary to local plan policies and not given true consideration.
- Development would have huge impact on the landscape character and visual amenity of the area.
- Unsuitable location for a solar development that would industrialise the local landscape.
- Should not presume that every proposal that provides green energy should be approved, and that suitable alternative options should be explored.
- Supportive of renewable energy but not at the loss of best and most versatile agricultural land.

The Committee were addressed by a representative of the Williton Parish Council, Nettlecombe Parish Council and Old Cleeve Parish Council. Some of their comments included:

- Appreciate the need to contribute to green energy but not at the loss of good agricultural land and the ability to grow valuable crops on this land.
- Development would have huge impact on the viability of the local farm businesses and local tourism.
- This location is not suitable for this solar farm development and that alternative options and locations should be sought.
- No local employment benefits.
- Contrary to local plan policies and the Council's climate emergency strategy.

The Committee were addressed by the agent. Some of his comments included:

- Permission was for a limited period of 40 years.
- Applicant fully engaged with the community and the proposal had been refined to address issues raised.
- Consider the public benefits outweigh any levels of harm and loss of any agricultural land.
- Compliant with local plan policies and believe it to be a sustainable development for solar regeneration.

The Committee were addressed by the Division Member for the application. Some of her comments included:

- This site was very visible and a main tourist route into the area. The proposal would destroy this and have a detrimental impact on the tourism for the area.
- Loss of prime agricultural land.

Councillor Rosemary Woods, having earlier declared that she was predetermined, then moved to the public seating and took no further part in consideration of this item.

Following legal advice, Cllr Steven Pugsley wished to declare a personal interest that he was an appointed representative of the Exmoor National Park Authority.

During discussion, the following points were made by Members: -

- Proposal would have an adverse visual impact on the landscape and AONB.
- Concern for the tenant farmer and viability of the farm businesses and that personal circumstances should be considered.
- Do not believe 40 years is temporary.
- Would result in the loss of best and most versatile agricultural land and the damage would be irreversible.
- Questioned the Biodiversity Net Gain.
- Adverse impact on the listed buildings, setting of the national park and noted the Heritage England objection.
- Appreciate the need for sustainable energy however this does not outweigh the harms associated with this proposal.
- Believe it contrary to policy given the degree of quality and grading classification of the agricultural land.

The Solicitor and Planning Officer responded to technical questions and specific points of detail raised by Members including:

- The definition of 'temporary' regarding the period of time this application seeks to permit.
- Personal circumstances. It was clarified that Officers were not advising Members that they were unable to take personal circumstances into account. Personal circumstances were capable of being material considerations, but only exceptionally. It was a matter for Members to consider and decide whether the circumstances of the tenant farmers were exceptional and should be treated as material and, if so, the weight to be afforded to the same in the planning balance. It was the view of Officers that little or no weight could be afforded, but ultimately it was a matter for Members to determine.
- Agricultural land classification and gradings.

At the conclusion of the debate, it was proposed by Councillor Simon Coles and seconded by Councillor Gwil Wren to refuse the application contrary to the Planning Officer's recommendation for the following reasons:

1. The proposed development due to scale, and layout would result in the loss of best and most versatile agricultural land which is contrary to Policy NH8 of

the West Somerset Local Plan to 2032.

2. The proposed development due to its scale, layout, location and appearance fails to take into account the local visual adverse impact upon the local landscape notably in relation to the Exmoor National Park and the Quantock Hills Area of Outstanding Natural Beauty and is therefore contrary to Policies SD1, CC1, NH5 and NH14 of the West Somerset Local Plan to 2032.

On being put to the vote the proposal was carried unanimously.

RESOLVED:

That application 3/39/21/028 for the installation of a ground mounted solar farm with battery storage and associated development on land to the north of the Transmitting Station, Washford, Williton be REFUSED permission for the following reasons:

1. The proposed development due to scale, and layout would result in the loss of best and most versatile agricultural land which is contrary to Policy NH8 of the West Somerset Local Plan to 2032.
2. The proposed development due to its scale, layout, location and appearance fails to take into account the local visual adverse impact on the landscape notably in relation to the Exmoor National Park and the Quantock Hills Area of Outstanding Natural Beauty and is therefore contrary to Policies SD1, CC1, NH5 and NH14 of the West Somerset Local Plan to 2032.

(voting: unanimous in favour of refusal)

26 Planning Application 42/23/0016 - Orchard Grove, Land at Comeytrove/Trull, Taunton - Agenda Item 6

The Planning Officer introduced the application to the Committee with the assistance of a power point presentation. He explained why the application had been submitted and the planning history of the site. He also provided the following updates to the written report:-

- No objections raised by Highways or Natural England.
- Amendment to condition 2 to revise the wording of the final paragraph.
- Amendment to condition 14 to add further bullet point regarding the construction management plan.
- Amendment to condition 22 to ensure correct plan is referenced.

- Amendment to condition 26 to revise the opening wording relating to cycleways and footways.

He referred to the material considerations and that the recommendation was for approval subject to the proposed, amended and additional conditions and informatives.

The Solicitor also explained to the committee:

- The use of a Section 73 application, which should Members be minded to approve, would result in a new free standing permission in parallel to the original outline permission.
- The legal mechanism to address the implications of the *Hillside* judgement.

The Committee were addressed by the applicant. Some of his comments included:

- The proposal sought to address the recent implications of the *Hillside* judgement in particular the care home.
- No new or increased housing was proposed within the application.
- As part of the Section 73 application a review of the Environmental Impact Assessment had been undertaken and supported.
- The application was purely to protect the validity of the outline planning permission and ensure delivery of the scheme,

During a short discussion, Members voiced their support of the application, and it was proposed by Councillor Andy Sully and seconded by Councillor Gwil Wren that the application be approved, as per the Officer's recommendation, subject to the conditions outlined in the report and the proposed amended and additional conditions.

On being put to the vote the proposal was carried by 7 in favour, 0 against and 1 abstention.

RESOLVED:

That planning application 42/23/0019 for the variation of Condition No. 02 (approved Plans) of application 42/14/0069 for the removal of 0.58ha of land from the approved employment area on land at Comeytrove, Taunton be APPROVED subject to the conditions (as amended) listed in the Agenda report.

(voting: 7 in favour, 0 against, 1 abstention)

27 Planning Application 3/26/23/005 - The Blue Anchor, Cleeve Hill, Watchet, TA24 6JP - Agenda Item 7

The Planning Officer introduced the application to the Committee with the assistance of a power point presentation and referred to the key considerations. The recommendation was for approval.

The Chairman referred to the issue raised regarding the publication of some objector's comments and then proceeded to read out parts of the statement from the applicant who was unable to attend the meeting. Some of the comments included:

- He intended to appeal the original decision but had no choice but to submit a separate application for the installation of the solar panels.
- The caravans were not in poor condition.

During a short discussion Members voiced their support of the application and at the conclusion of the debate it was proposed by Councillor Gwil Wren and seconded by Councillor Andy Sully that the application be approved, as per the Officer's recommendation, subject to the conditions outlined in the report.

On being put to the vote the proposal was carried unanimously.

RESOLVED:

That planning application 3/26/23/005 for the installation of solar panels on static caravans (Resubmission of 3/26/22/013) at The Blue Anchor, Cleeve Hill, Watchet, TA24 6JP be APPROVED subject to the conditions listed in the Agenda report.

(voting: unanimous in favour)

28 Planning Application 18/22/0014 - Brufords Farm, Northway Lane, Halse, Taunton, TA4 3JL - Agenda Item 8

The Planning Officer introduced the application to the Committee with the assistance of a power point presentation and referred to the key considerations. The recommendation was for approval.

In response to a Member's question, she confirmed a condition was included to ensure a suitable water drainage system within the site.

There being no further discussion it was proposed by Councillor Steven Pugsley and

seconded by Councillor Andy Sully that the application be approved as per the Officer's recommendation and subject to the conditions outlined in the report.

On being put to the vote the proposal was carried unanimously.

RESOLVED:

That planning application 18/22/0014 for the change of use of land with construction of a horse riding arena on land to the west of Brufords Farm, Northway Lane, Halse be APPROVED subject to the conditions listed in the Agenda report.

(voting: unanimous in favour)

29 Planning Application 45/22/0010 - Blue Ball Inn, Cockercombe Road, Bagborough, Taunton, TA4 3HE - Agenda Item 9

This planning application was withdrawn by the applicants prior to the meeting.

At the conclusion of the meeting the Assistant Director for Strategic Place and Planning advised that the Jurston Farm statutory challenge by CG Fry to the High Court had been unsuccessful. However, the claimant had sought permission to appeal the decision to the Supreme Court and further information was contained in the report to the Strategic Planning Committee on 21 July 2023.

(The meeting ended at 4.10 pm)

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CHAIR

Application Details	
Application Reference Number:	20/23/0019
Application Type:	Removal or Variation of Condition(s)
Earliest decision date:	02 June 2023
Expiry Date	29 June 2023
Extension of time	
Decision Level	Committee
Description:	Removal of Condition No. 05 (holiday occupancy) of application 20/05/0005 and variation of Condition No. 01 of 20/22/0027 (approved plans) at Plots 15 to 18 Mill Meadow, Parsonage Lane, Kingston St Mary
Site Address:	PLOTS 15 - 18 MILL MEADOW, PARSONAGE LANE, KINGSTON ST MARY, TAUNTON, TA2 8HL
Parish:	20
Conservation Area:	NA
Somerset Levels and Moors RAMSAR Catchment Area:	Within
AONB:	NA
Case Officer:	Briony Waterman
Agent:	CarneySweeny
Applicant:	MR C HEAYNS
Committee Date:	18/07/2023
Reason for reporting application to Committee	Representations contrary to Officer recommendation

1. Recommendation

1.1 That permission be APPROVED subject to conditions

2. Executive Summary of key reasons for recommendation

2.1 The proposal comprises two elements. It seeks to vary Condition no. 01 (approved plans) of 20/22/0027. The changes include the redesign of plot 15 to be the same as plot 14 and the remaining plots would have the balconies removed and remain as 1.5 storey units. The variation increases the floor area of the remaining plots. The alterations are not considered to have a significant impact upon the visual amenity of the area and are considered acceptable.

The proposal also seeks to remove condition no 05 (holiday occupancy) of application 20/05/0005, this condition states:

“The occupation of the holiday accommodation shall be restricted to bona fide holidaymakers for individual periods not exceeding 4 weeks in total in any period of 12 weeks. A register of holidaymakers shall be kept and made available for inspection by an authorised officer of the Council at all reasonable times.

Reason: The accommodation provided is unsuitable for use as a permanent dwelling because of its size, and inadequate facilities on site and the Local Planning Authority wish to ensure the accommodation is available for tourism in accordance with Taunton Deane Local Plan Policy EC23”.

The site lies outside of the defined settlement limits where new residential development is not normally permitted and the proposal to remove the occupancy condition is considered contrary to policies SP1 and SB1 of the Site Allocations and Development Management Plan and policies CP1, SP4 and DM2 of the Taunton Deane Core Strategy.

Whilst the overall recommendation is for approval, the removal of the occupancy condition is not supported and a condition that reimposes a tourism occupancy condition is recommended.

3. Planning conditions and informatives

Conditions to be imposed will be carried over from the original permission and will be set out in full in the Committee Update Sheet.

3.2 Informatives (bullet point only)

3.2.1 Proactive Statement

3.3 Obligations

NA

4. Proposed development, site and surroundings

4.1 Details of proposal

The proposal seeks to vary Condition 01 (approved plans) at Plots 15 to 18. of 2planning permission ref 0/22/0027. The changes include the redesign of plot 15 to be the same as plot 14 and the remaining plots would have the balconies removed

and remain as 1.5 storey units. The variation increases the floor area of the remaining plots.

The proposal also seeks to removal of Condition No. 05 (holiday occupancy) of application 20/05/0005 which states:

“The occupation of the holiday accommodation shall be restricted to bona fide holidaymakers for individual periods not exceeding 4 weeks in total in any period of 12 weeks. A register of holidaymakers shall be kept and made available for inspection by an authorised officer of the Council at all reasonable times.

Reason: The accommodation provided is unsuitable for use as a permanent dwelling because of its size, and inadequate facilities on site and the Local Planning Authority wish to ensure the accommodation is available for tourism in accordance with Taunton Deane Local Plan Policy EC23”.

Removal of the Condition 5 would allow unrestricted residential occupancy of units 15-18.

There is a separate application awaiting determination for the removal of the holiday occupancy condition on plots 19 and 20 which have been built out and currently used as holiday accommodation.

Mill Meadow is an existing eco-friendly complex of 20 no. holiday units, 9 of which remain unbuilt. Four of the unbuilt properties are the subject of this application.

4.2 Sites and surroundings

The proposed site is located within the Mill Meadow Eco-holiday lodges to the north of the site. The site is located to the south of Kingston St Mary, outside of the settlement limits. The site is accessed via an existing access from Parsonage Lane.

5. Planning (and enforcement) history

Reference	Description	Decision	Date
20/22/0027/NMA	Application for a non-material amendment to application 20/05/0005 to add a condition listing the approved plans to enable a future section 73 application to amend the design of the approved	Conditional approval	21/09/2022

	holiday lodges		
20/22/0014/LEW	Application for a lawful development certificate for an existing use of a building as a dwelling	Decision of approval	18/08/2022
20/22/0019/NMA	Application for a non-material amendment to application 20/05/0005 to add a condition listing the approved plans to change the building	Refusal	22/06/2022
20/10/0004	Erection of detached 3 bedroom dwelling for accommodation for warden/manager and dependants in connection with tourism business and carp fishery together with separate services and storage facilities	Conditional approval	08/01/2013
20/06/0039	Amendment to wording of condition 3 of permission 20/2006/026	Allowed at appeal	29/03/2007
20/06/0038	Amendment to wording of condition 6 of permission 20/2005/022	Allowed at appeal	29/03/2007
20/06/0037	Amendment to wording of condition 5 of permission 20/2005/05	Allowed at appeal	29/03/2007
20/06/0026	Conversion of building into two units for holiday lets and removal of conditions 5 and 6 of planning permission 20/2000/025	Conditional approval	02/11/2006
20/05/0022	Erection of 13 log cabins for holiday let	Conditional approval	06/12/2005
20/05/0012	Erection of 13 log cabins for holiday let	Conditional approval	16/09/2005
20/05/0005	Erection of 5no log cabins for tourism/education.	Conditional approval	26/04/2005

6. Environmental Impact Assessment

NA

7. Habitats Regulations Assessment

The earlier permission was for five holiday units, one of which has been built out and

occupied as a permanent residential dwelling. The permission is considered to be lawfully implemented and the four additional units could be built out at any time. This application therefore benefits from an existing 'fallback position' allowing the proposal to be screened out from requiring a HRA to demonstrate nutrient neutrality.

The site lies within the catchment area for the Somerset Moors and Levels Ramsar site. As competent authority it has been determined that a project level appropriate assessment under the Conservation of Habitats and Species Regulations 2017 is not required as the Council is satisfied that as the proposed development seeks removes the holiday condition it does not increase the number of units of accommodation on the site or amend drainage details and will not therefore increase nutrient loadings at the catchment's wastewater 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.

8. Consultation and Representations

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

8.1 Date of consultation: 05 May 2023

8.2 Date of revised consultation (if applicable): NA

8.3 Press Date: NA

8.4 Site Notice Date: A site notice was posted to the applicant on the 5th May 2023, Whilst the LPA has not had confirmation that it was displayed by the applicant, it is considered that the statutory duty to advertise has been met as the application was advertised in the local paper and neighbour letters were sent out.

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

Consultee	Comment	Officer Comment
KINGSTON ST MARY PARISH COUNCIL	Support based on the following: <ul style="list-style-type: none"> • Meets the additional housing need as identified in the housing needs survey • Provision of additional 	See section 10.

	<p>residential accommodation is considered to be a social benefit, to meet the need for more affordable housing, complies with Paragraph 78 of the NPPF</p> <ul style="list-style-type: none"> • Mill Meadows is not located in open countryside, surrounded by existing properties • Serviced by a regular bus service to Taunton and within a safe walking route (via the Spinney and Church path) to the village • Policy DM2-6 allows for affordable housing • Mill Meadows plots 15-18 already have planning permission and the Parish council would rather they were full time than holiday homes • In line with Cornwall and Devon who have taken action to reduce the number of holiday homes • Draft on the neighbourhood plan states "modest development will be welcome" 	
<p>SCC - TRANSPORT DEVELOPMENT GROUP</p>	<p>Standing advice, the LPA should also take into consideration the following</p>	

	points: <ul style="list-style-type: none"> Residential parking standards vehicular and cycles EV charging points 	
WESSEX WATER	No comments received	

8.6 **Internal Consultees** the following were consulted:

Consultee	Comment	Officer comment
Economic Development	No comments received	

8.7 Local representations

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

14 letters have been received making the following comments (summarised):

Support	Officer comment
High quality development which enhances the village	Noted
Evident shortage of smaller houses, affecting those who wish to downsize	Noted
Exactly the type of infill development that is required.	Noted
Commitment to eco-friendly and sustainable development should be an essential factor in all new housing	Noted
Respect the natural beauty of the village	Noted
Great development for the village and for those who want to stay in the village but are priced out.	Noted
Lack of 2/3 bedroom properties that this application would help to redress	Noted
Increase in Airbnb accommodation reducing demand for purpose built	Noted
Better to have unrestricted residential planning permission that would satisfy a local demand and provide council tax	Noted
Location is within the boundaries of a revised	Noted, however the

Kingston St Mary Neighbourhood Plan	Neighbourhood plan has yet to be formally adopted.
Location is not within the open countryside	See para 10.1.1
Village has a pre-school, primary school, public house, village hall and church.	Noted
Demand outstrips supply	Noted
A solution without needing to build on additional green belt land.	Noted
Providing homes for more local people	The application is for open market housing, which may not necessarily mean "local people"

Cllr Darch:

- Although outside the settlement boundary, there is a strong demand for smaller houses in Kingston, as evidenced in the 2016 Housing Needs Survey, and the current draft Neighbourhood Plan.
- Although the homes may not be considered as "affordable" as social housing the smaller dwellings are more affordable than many of the large homes
- Mill Meadow eco lodge development is an exemplar of sustainability in response to the climate emergency
- Existing lodges are highly energy efficient,
- Lake and surrounding area are managed to encourage biodiversity of flora and fauna
- EVCP charging points
- Opportunity to extend "green ethos" of the holiday site to a wider resident community through this application.

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).

Section 73 of the 1990 Act provides for applications for planning permission to develop land without complying with previously imposed planning conditions. The local planning authority can grant permission unconditionally or subject to different conditions, or they can refuse the application if they decide the original condition(s) should be kept. The planning permission granted will be a new planning permission. The application must be considered against the current development plan and material considerations and the conditions attached to the existing permission.

As a result of local government reorganisation Somerset Council was established from the 1 April 2023. The Structural Change Order agreeing the reorganisation of local government requires the Council to prepare a local plan within 5 years of the 1 April 2023 and the Council will be bringing forward a Local Development Scheme to agree the timetable for the preparation of the local plan and scope in due course.

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

DM1 - General requirements,
DM2 - Development in the countryside,
SP1 - Sustainable development locations,
SD1 - Presumption in favour of sustainable development,
A5 - Accessibility of development,
CP1 - Climate change,
SP4 - Realising the vision for rural areas,
SB1 - Settlement Boundaries,
CP8 - Environment,

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:

A Kingston St Mary Neighbourhood Plan is, at the time of writing, out for consultation under Regulation 14, which is consultation with the community, and at this stage can carry only little weight as a material consideration.

9.1 National Planning Policy Framework

Paragraph 80 of the NPPF states that planning decisions should avoid the development of isolated homes in the countryside unless:

- (a) There is an essential need for a rural worker,
- (b) The development would represent the optimal viable use of a heritage asset or would be appropriate enabling development,
- (c) The development would re-use redundant or disused buildings and enhance the 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 the 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.

The proposal to remove the tourist condition and to allow open market residential occupancy is considered contrary to the above paragraph and the general sustainability principles of the NPPF.

10. Material Planning Considerations

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

Amendment to Condition 01 (approved plans)

10.1 Principle

The proposed alterations to the previously approved plans, due to their scale and design are considered to be acceptable and would not conflict with policies in the development plans.

10.2 Visual impact

The proposed alterations to the external design and footprint are not considered to have a detrimental effect on the visual amenities of the area and are considered acceptable.

10.3 Residential impact

The proposed changes to the design, including the removal of balconies, and the change to the building footprint would not increase overlooking or loss of light that would be detrimental to the occupants of nearby properties. The proposed changes to the previously design are therefore considered acceptable.

Removal of Condition No. 05 (holiday occupancy) of application 20/05/0005

10.4 History

Application 20/02/005 approved 5 log cabins, now known as plots 14.15.16,17 and 18 Mill Meadow. Only Plot 14 has been constructed. Plot 14 is occupied as a single storey dwelling. The design differed from the approved design. This variation and the residential occupancy has been regularised through the approval of Certificate of Lawfulness. The permission for the remaining cabins is safeguarded by the commencement on the site. Condition 5 of the original permission stated:

“The occupation of the holiday accommodation shall be restricted to bona fide holidaymakers for individual periods not exceeding 4 weeks in total in any period of 12 weeks. A register of holidaymakers shall be kept and made available for inspection by an authorised officer of the Council at all times.

Reason: The accommodation provided is unsuitable for use as a permanent dwelling because of its limited size, and inadequate facilities on site and the Local Planning Authority wish to ensure the accommodation is available for tourism in accordance with Taunton Deane Local Plan Policy EC23.”

Application 20/06/0037 sought permission to alter the wording of condition no5 to:

“The chalets shall be occupied for holiday purposes only. The chalets shall not be occupied as a person’s sole or main residence. The site operator or owner shall maintain as up to date register of the names of all owners/occupier of individual chalets on the site and of their main home addresses and shall make this information available at all reasonable times to the local planning authority. For the purposes of this condition, holiday purposes shall mean that each chalet shall be available for rent by various groups or individuals (other than and in addition to the owner) for leisure and recreational purposes”.

Permission was refused by the Local Planning Authority for the following reason:

“The proposed amended wording would make it difficult to enforce against the accommodation being occupied on a long term/permanent basis rather than as short term holiday accommodation, which would be contrary to open countryside policies and sustainable development objectives and would reduce the economic benefits of the accommodation, which justifies its presence in this open countryside location in accordance with Taunton Deane Local Plan Policies S7 and EC24.”

This refusal was appealed. In March 2008, the Inspector allowed the appeal and imposed the following condition:

“The chalets shall be occupied for tourism purposes only and shall not be occupied as a person’s sole or main residence. The site operator and owners shall maintain an up-to-date register of the names of all owners/occupiers, including their guests, of individual chalets on the site and of their main home addresses, and shall make this information available at all reasonable times to the local planning authority.”

20/06/0037 is now a freestanding planning permission which sits in parallel with the original permission 20/02/005. The current application now seeks to remove the occupancy condition to allow unfettered residential occupancy.

10.5 The principle of development

The application lies outside the defined settlement limits and is therefore considered to be within the open countryside as identified by Policy SP1 of the Site Allocations and Development Management Plan (SADMP). As such policies CP1, CP8, SP4 and DM2 of the Taunton Deane Core Strategy are considered relevant.

Core Strategy Policy SP1 establishes the desire to provide sustainable development, which focuses development in the most sustainable and accessible locations. This policy states that outside of the settlement boundaries, development will be treated as within the open countryside and therefore Policy DM2 shall be applied. This identifies the type of development considered as acceptable for which open market housing is not supported other than in very specific circumstances. The 5 units were granted permission in the first instance due to their use as holiday lets, which was confirmed at the appeal in 2006 which retained the holiday use. The location of this proposal is not identified within SP1 as a major or minor rural centre. It is one of the villages listed that retain settlement boundaries and have no further allocations made through the SADMP but does allow for small scale proposals within the settlement limits. The proposed development is therefore considered contrary to Policy SP1, outside of a defined settlement boundary for Kingston St Mary and not within a

sustainable location.

Policy SP1 re-enforces the need to shape *"patterns of development to reduce the need to travel, reducing pollution and CO2 emissions"*. By having defined settlement boundaries, the Local Planning Authority is seeking to apply strict control over sustainability. It is noted that there is a footpath from the site to the centre of the village, however it is likely that the occupiers of the proposed development would be reliant on the private car rather than walking along an unlit footpath, for things other than basic day to day needs.

Policy DM2 is positively worded and sets out what type of development will be supported in the open countryside of which open market residential is not one. In the case of residential dwellings, the policy is specifically related to replacement dwellings, dwellings linked to agriculture and forestry employment and affordable housing where it can be demonstrated that this cannot be accommodated within the nearest Rural Centre. The proposed development is for none of these. Whilst DM2 does not specify what types of development should be resisted, comments received from the Council's Policy Officer have stated that this *"should logically be read into the policy, and it does not mean that other development would thereby be considered acceptable"*.

Within the justification for Policy DM2 it states that *"Tourism is a key element of the local economy, providing around 1500 jobs and generating an estimated £129 million in 2007. The Somerset Delivery Plan recognises the need for sustainability so as not to undermine the local environmental quality."* The use of these units as dwellings would result in a loss of tourist income for the site and a reduction in the tourist spend in the area. No justification has been submitted to show that there is no longer a need for holiday lets in the area.

Policy CP1 requires that *"development proposals should result in a sustainable environment and will be required to demonstrate that the issues of climate change has been addressed by:*

a: Reducing the need to travel through locational decisions and where appropriate, providing a mix of uses: and/or

h: impact on the local community, economy, nature conservation or historical interests does not outweigh the economic and wider environmental benefits of the proposal."

The developments "eco" credentials are noted, as is the care taken to promote biodiversity and sustainable practices such as electric charging points. However, given the location of the proposal, approximately 2.6 miles from the nearest railway

station in Taunton, along an unlit road with no cycle path and an irregular bus route, with no safe lit pedestrian route to the village, occupiers of the dwellings would have to travel for everyday activities such as work, school, shops etc. The limited local services, facilities and amenities would increase both the use and reliance on the private car which is contrary to policy.

Policy A5 relates to accessibility, the policy states that residential development should be within walking distance of, or should have access by public transport to, a wide range of services and facilities. The proposed dwellings would be outside the settlement boundary, although not isolated from other dwellings, there is no safe walking route to facilities and an irregular bus service. The proposal is therefore considered contrary to both policies CP1 and A5.

Policy CP8 states that *"Development outside of settlement boundaries will be permitted in a limited number of circumstances and are subject to a number of criteria including "be appropriate in terms of scale, siting and design: and protect, conserve or enhance the landscape and town scape character whilst maintaining green wedges and open breaks between settlements. and provide for any necessary mitigation measures"*. The removal of the Condition no. 5 relating to holiday occupancy on four of the units would not significantly change the appearance of the buildings and is considered to comply with policy CP8 of the Taunton Deane Core Strategy.

Policy SP4 states that *"Growth in the rest of the borough will be limited, respecting and reflecting the rural character and sustainability considerations"*. The policy goes on to state that *"it is vital that any development respects the integrity of the countryside"*. The proposed removal of Condition no. 5 to allow for residential occupancy would be in conflict with Policy SP4 in that it is outside settlement limits which would not respect the rural character or sustainability considerations and would be detrimental to the visual amenity of the area.

Given the above it is considered that the proposal would be in conflict with policies SP1, SB1, SP4, CP1, DM2 and A5 and is unacceptable in terms of policy, given the location of the proposals.

10.6 SHLAA and Five Year Housing Land Supply:

The latest housing land supply position is published in the [2023 SHLAA for Somerset West Area](#) (formerly Somerset West and Taunton). For the former Taunton Deane LPA the Housing Land Supply is 5.16. Therefore, the 'tiled balance' in Paragraph 11(d) of the NPPF is not applicable.

10.7 Kingston St Mary Neighbourhood Plan

A number of responses mention the emerging Kingston St Mary Neighbourhood Development Plan for the Parish of Kingston St Mary. This plan is currently in the public consultation stage on the draft Neighbourhood Plan (Regulation 14) which closes on the 14th July 2023. At this stage of the Neighbourhood Plan process, the plan sets out the intentions of the Parish but as the plan may change following the consultation and its evidence base has not yet been submitted to the LPA or subject to independent examination, the draft Neighbourhood Plan can carry only little weight in the determination of planning applications.

The emerging Kingston St Mary Neighbourhood Plan (KSMNP) proposes a change to the settlement limit and have produced a supporting document. However, the Regulation 14 Neighbourhood Plan makes clear that this is unlikely to be adopted until the new unitary authority has a new Local Plan, as stated on page 67 of the KSMNP:

“Alterations to Settlement Boundary It is also worth noting that submissions have been made by the Parish Council in respect of the Settlement boundary. In relation to the settlement boundary the Parish Council requested in 2021 for Kingston St Mary village’s settlement boundary to be extended (see the Settlement Boundary report in Supporting Guidance). However, this change, if accepted, is unlikely to be adopted until the new Unitary authority creates a new Local Plan”

10.8 Highways

There is an extant permission to build out the four units as holiday lets and it is considered that the proposal would increase the number of vehicle movements including those from deliveries. However, there is an existing access with good visibility splays and space for vehicles to pass off the highway. It is considered that the proposal would not result in an unacceptable rise in vehicle movements.

10.9 Visual impact

It is considered that the removal of the holiday occupancy condition could increase the domestic paraphernalia associated with full time, permanent residential occupancy. This could have a detrimental impact on the impact rural character of the area.

10.10 Residential impact

It is considered that the proposed development would not have a significant impact upon the residential amenity of the surrounding properties due to its location outside of the village. The four residential units would be located in an area removed from the holiday units at the far end of the site grouped around a roundabout. It is considered that due to this separation that there would not be a significant impact upon the residential amenity of the future occupiers.

10.11 Additional comments

Many of the comments received state that the removal of the occupancy condition would allow local people to be able to afford houses, including the response from the Parish Council regarding the development being for "affordable homes". It should be noted that if the holiday condition is removed, these units will become open market dwellings, with no guarantees that they will fill the local housing need. It is noted that infill development may be required and indeed encouraged within the settlement boundaries of Kingston St Mary. However, as noted above, the site is outside of the settlement limits.

The Planning Statement submitted as part of the application mentions the housing needs survey, The Kingston St Mary Housing Needs Survey published in 2021 showed that 58% of respondents wanted more affordable housing for people with a local connection, and 54% of respondents wanted more homes to downsize to. dwellings however as already stated this proposal is not for affordable housing but for open market dwellings with no guarantees that the proposal would be ring-fenced for those in the village. Nor does the application as it is currently submitted comply with the NPPF definition of affordable housing.

11 Local Finance Considerations

11.1 Community Infrastructure Levy

Creation of dwellings is CIL liable.

This is a S73 application that increases the floor area of the previously approved dwellings.

The previous pre-CIL application 20/05/0005 approved 352.5sqm for these dwellings.

This application proposes approx. 538sqm for these dwellings.

Therefore the additional floor area of 185.5sqm proposed by this application is CIL liable.

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 £23,250.00. With index linking this increases to approximately £35,000.00.

12 Planning balance and conclusion

12.2 For the reasons set out above, having regard to all the matters raised, it is considered the variation to the previously approved plans is acceptable. However, as set out above it is considered the removal of the occupancy condition is contrary to policies contained within the development plans and therefore whilst permission for the variation of the plans (design) is recommended for approval, that an occupancy condition to limit the units to tourism use be imposed

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 – Conditions

To be set out in full the Update Sheet

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 entered into pre-application discussions 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.



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Application Details	
Application Reference Number:	20/23/0020
Application Type:	Removal or Variation of Condition(s)
Earliest decision date:	26 May 2023
Expiry Date	27 June 2023
Extension of time	
Decision Level	Committee
Description:	Removal of Condition No. 01 (holiday occupancy) of appeal decision of application 20/06/0039 at Plots 19 and 20 Mill Meadow, Parsonage Lane, Kingston St Mary
Site Address:	PLOTS 19 AND 20 MILL MEADOW, PARSONAGE LANE, KINGSTON ST MARY, TAUNTON, TA2 8HL
Parish:	20
Conservation Area:	NA
Somerset Levels and Moors RAMSAR Catchment Area:	Within the catchment area
AONB:	NA
Case Officer:	Briony Waterman
Agent:	CarneySweeny
Applicant:	MR T HEAYNS
Committee Date:	18/07/2023
Reason for reporting application to Committee	Representations contrary to Officer recommendation

1. Recommendation

1.1 That permission be REFUSED

2. Executive Summary of key reasons for recommendation

2.1 The proposal is to remove of Condition No. 01 of application 20/06/0039, which states:

“The chalets shall be occupied for tourism purposes only and shall not be occupied as a person’s sole or main residence. The site operator and owners shall maintain an up-to-date register of the names of all owners/occupiers, including their guests, of individual chalets on the site and their main home addresses, and shall make this information available at all reasonable times to the local planning authority.”

This condition was imposed at appeal after the applicant sought to amend the

wording of the condition imposed under application 20/06/0026 which stated:

“The occupation of the holiday accommodation shall be restricted to bona fide holidaymakers for individual periods not exceeding 4 weeks in total in any period of 12 weeks. A register of holidaymakers shall be kept and made available for inspection by an authorised officer of the Council at all reasonable times.”

It is considered that removing the condition restricting the site to use as holiday accommodation is contrary to policies SP1 and SB1 of the Site Allocations and Development Management Plan and policies CP1, SP4 and DM2 of the Taunton Deane Core Strategy. as the site falls outside of the defined settlement limits of Kingston St Mary.

3. Planning Obligations, reasons for refusal and informatives

3.1 Reasons for refusal (full text in appendix 1)

3.1.1 Outside settlement limits

3.2 Informatives (bullet point only)

3.2.1 Proactive Statement

3.3 Obligations

N/A

4. Proposed development, site and surroundings

4.1 Details of proposal

The proposal seeks the removal of Condition No. 01 (holiday occupancy) attached to the appeal decision of application 20/06/0039 at Plots 19 and 20 Mill Meadow, which are currently occupied as holiday lets. The condition states: *“The chalets shall be occupied for tourism purposes only and shall not be occupied as a person's sole or main residence. The site operator and owners shall maintain an up-to-date register of the names of all owners/occupiers, including their guests, of individual chalets on the site and of their main home addresses, and shall make this information available at all reasonable times to the Local Planning Authority.”*

4.2 Sites and surroundings

The site is located within the Mill Meadow Eco-holiday lodges to the north of the site. The site is located to the south of Kingston St Mary, outside of the settlement limits. The site is accessed via an existing access from Parsonage Lane.

5. Planning (and enforcement) history

Reference	Description	Decision	Date
20/07/0010	Conversion of building into two units for Holiday Lets (revision to 20/06/0026)	Conditional Approval	24/05/2007
20/06/0039	Amendment to wording of condition 3 of permission 20/06/0026	Allowed at appeal	29/03/2007
20/06/0038	Amendment to wording of condition 6 of permission 20/05/0022	Allowed at appeal	29/03/2007
20/06/0037	Amendment to wording of condition 05 of permission 20/2005/05	Refusal, allowed at appeal	29/03/2007
20/06/0026	Conversion of building into two units for holiday lets and removal of conditions 5 and 6 of planning permission 20/00/0025	Conditional approval	02/11/2006
20/06/0017	Removal of conditions 5 and 6 of planning approval 20/00/0025 to permit the use of the building for warden accommodation, reception, office and storage in connection with holiday cabin development	Withdrawn	
20/06/0010	Removal of condition 5 and 6 of planning approval 20/00/0025 to permit the use of the building for general office use	Refusal	15/06/2006
20/05/0005	Erection of 5no. log cabins for tourism/education	Conditional approval	26/04/2005
20/00/0025	Erection of building to provide additional staff room, kitchen, and toilet facilities	Conditional approval	13/11/2000

6. Environmental Impact Assessment

N/A

7. Habitats Regulations Assessment

The two units are currently being used for holiday lets. Under the phosphate guidance, Section 73 applications can benefit from a 'fallback position' allowing them to be screened out from requiring a HRA to demonstrate nutrient neutrality if the original permission has been lawfully commenced.

The site lies within the catchment area for the Somerset Moors and Levels Ramsar site. As competent authority it has been determined that a project level appropriate assessment under the Conservation of Habitats and Species Regulations 2017 is not required as the Council is satisfied that as the proposed development seeks removal of the holiday condition it does not increase the number of units on the site or amend drainage details and will not therefore increase nutrient loadings at the catchment's wastewater 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.

8. Consultation and Representations

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

8.1 Date of consultation: 04 May 2023

8.2 Date of revised consultation (if applicable): NA

8.3 Press Date: NA

8.4 Site Notice Date: A site notice was posted to the applicant on the 5th May 2023. Whilst the LPA has not had confirmation that it was displayed. However, it is considered that the statutory duty to advertise has been met as the application was advertised in the local paper and neighbour letters were sent out.

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

Consultee	Comment	Officer Comment
KINGSTON ST MARY PARISH COUNCIL	<p>Support based on the following:</p> <ul style="list-style-type: none"> • Meets the additional housing need as identified in the housing needs survey • Provision of additional residential accommodation is considered to be a social benefit, to meet the need for more affordable housing, complies with Paragraph 78 of the NPPF • Mill meadows is not located in open countryside, surrounded by existing properties • Serviced by a regular bus service to Taunton and within a safe walking route (via the Spinney and Church path) to the village • Policy DM2-6 allows for affordable housing • Mill Meadows plots 15-18 already have planning permission and the Parish council would rather they were full time than holiday homes • In line with Cornwall and Devon who have taken action to reduce the number of holiday homes <p>Draft of the neighbourhood plan states "modest development will be welcome"</p>	See section 10
WESSEX WATER	No comments received	
SCC - TRANSPORT DEVELOPMENT GROUP	<p>Standing advice the LPA should also take into consideration the following points:</p> <ol style="list-style-type: none"> 1. Residential parking standards vehicular and cycle 2. EV charging points in line with the relevant strategy 	Noted

8.6 **Internal Consultees** the following were consulted:

Consultee	Comment	Officer comment
Economic Development	No comments received	

8.7 **Local representations**

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

Nine letters have been received making the following comments (summarised):

	Officer comment
Support	
Village needs more permanent housing with full time occupancy	Noted
Village needs 2&3 bedroom homes	Noted
Perfect infil in the village	Noted
Need more family homes	Noted
Demand outstrips supply	Noted
Removes the problem of needing to build on green belt land	Noted
Airbnb reducing demand for purpose built holiday accommodation	Noted
Unrestricted residential would satisfy local demand and provide council tax for local council	Noted
Location is not within the open countryside	See para 10.1.1
Location would be within the Neighbourhood Plan	not a material consideration at the time of writing.
Provide homes for local people and should be approved	Noted.

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).

Section 73 of the 1990 Act provides for applications for planning permission to develop land without complying with previously imposed planning conditions. The local planning authority can grant permission unconditionally or subject to different conditions, or they can refuse the application if they decide the original condition(s) should be kept. The planning permission granted will be a new planning permission. The application must be considered against the current development plan and material considerations and the conditions attached to the existing permission.

As a result of local government reorganisation Somerset Council was established from the 1 April 2023. The Structural Change Order agreeing the reorganisation of local government requires the Council to prepare a local plan within 5 years of the 1 April 2023 and the Council will be bringing forward a Local Development Scheme to agree the timetable for the preparation of the local plan and scope in due course.

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

- DM1 - General requirements,
- DM2 - Development in the countryside,
- SP1 - Sustainable development locations,
- SD1 - Presumption in favour of sustainable development,
- A5 - Accessibility of development,
- CP1 - Climate change,
- SP4 - Realising the vision for rural areas,
- SB1 - Settlement Boundaries,
- CP8 - Environment,

Supplementary Planning Documents

N/A

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:

A Kingston St Mary Neighbourhood Plan is, at the time of writing, out for consultation under Regulation 14, which is consultation with the community, and at this stage can carry only; little weight as a material consideration.

9.1 National Planning Policy Framework

Paragraph 80 of the NPPF states that planning decisions should avoid the development of isolated homes in the countryside unless:

- (a) There is an essential need for a rural worker
- (b) The development would represent the optimal viable use of a heritage asset or would be appropriate enabling development
- (c) The development would re-use redundant or disused buildings and enhance the 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 the 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.

The proposal to remove the tourism condition and to allow open market residential occupancy is considered contrary to the above paragraph and the general sustainability principles of the NPPF.

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 application site lies outside the defined settlement limits and is therefore considered to be within the open countryside as identified by Policy SP1 of the Site Allocations and Development Management Plan (SADMP). As such policies CP1, CP8, SP4 and DM2 of the Taunton Deane Core Strategy are considered relevant.

Core Strategy Policy SP1 establishes the desire to provide sustainable development, which focuses development in the most sustainable and accessible locations. This policy states that outside of the settlement boundaries, development will be treated as within the open countryside and therefore Policy DM2 shall be applied. This identifies the type of development considered as acceptable. The location of this proposal is not identified within SP1 as a major or minor rural centre, it is one of the villages listed that retain settlement boundaries and have no further allocations made through the SADMP but does allow for small scale proposals within the settlement limits. The proposed development is therefore considered contrary to Policy SP1, outside of a defined settlement boundary for Kingston St Mary and not within a sustainable location.

Policy SB1 states that to *"maintain the quality of the rural environment and ensure a sustainable approach to development, proposals outside of the boundaries of settlements identified in the Core Strategy policy SP1 will be treated as being within the open countryside and assessed against Core Strategy policies CP1, CP8 and DM2 unless:*

A: It accords with a specific development plan policy or proposal: or

B: Is necessary to meet a requirement of environmental or other legislation: and in all cases, is designed and sited to minimise landscape and other impacts"

The proposed open market dwellings do not accord with Criteria A or B outlined above as it does not meet a specific development plan policy and is not necessary to meet a requirement of environmental or other legislation. Furthermore, the location within an established tourist site raises concerns regarding conflict between holiday makers and residents. The different uses on the site would lead to conflict with traffic movements, noise and disturbance. The introduction of permanent residential properties would increase the domestic paraphernalia associated with full time occupation such as washing lines, deliveries etc which would result in an adverse impact upon the visual amenity of the site.

Policy SP1 re-enforces the need to shape *"patterns of development to reduce the need to travel, reducing pollution and CO2 emissions"*. By having defined settlement boundaries, the Local Planning Authority is seeking to apply strict control over sustainability. It is noted that there is a footpath from the site to the centre of the village, however it is likely that the occupiers of the proposed development would be reliant on the private car rather than walking along an unlit footpath, for things other than basic day to day needs.

The applicant has made reference to appeal APP/G1630/W/14/3001706 (Bagley Road), dated July 2015 which was for a residential development of up to 58 dwellings,

the current proposal is for the removal of a holiday occupancy condition of two holiday lets be given consent as open market dwellings. Each application is determined upon its own merits, and it is considered that a proposal for two open market dwellings with no wider community benefit is not a fair comparison when assessed against the Bagley Road decision. The aforementioned is contiguous to Wellington with a wide range of facilities being accessible by walking along lit footpaths, which differs from the proposed site which would be wholly reliant on the private car. The view of the LPA is that the proposed development does not comply with policy SP1 due to its countryside location.

Policy DM2 is positively worded and sets out what type of development will be supported in the open countryside of which open market residential is not one. In the case of residential dwellings, the policy is specifically related to replacement dwellings, dwellings linked to agriculture and forestry employment and affordable housing where it can be demonstrated that this cannot be accommodated within the nearest Rural Centre. Whilst DM2 does not specify what types of development should be resisted comments received from the Council's Policy Officer have stated that this *"should logically be read into the policy, and it does not mean that other development would thereby be considered acceptable"*.

Within the justification for Policy DM2 it states that *"Tourism is a key element of the local economy, providing around 1500 jobs and generating an estimated £129 million in 2007. The Somerset Delivery Plan recognises the need for sustainability so as not to undermine the local environmental quality."* The use of these units as dwellings would result in a loss of tourist income for the site and a reduction in the tourist spend in the area. No justification has been submitted to show that there is no longer a need for holiday lets in the area.

Policy CP1 requires that *"development proposals should result in a sustainable environment and will be required to demonstrate that the issues of climate change have been addressed by:*

a: Reducing the need to travel through locational decisions and where appropriate, providing a mix of uses: and/or

h: impact on the local community, economy, nature conservation or historical interests does not outweigh the economic and wider environmental benefits of the proposal."

The developments "eco" credentials are noted as is the care taken to promote biodiversity and sustainable practices such as electric charging points. However, given the location of the proposal, approximately 2.6 miles from the nearest railway station in Taunton, along an unlit road with no cycle path and an irregular bus route,

with no safe lit pedestrian route to the village, occupiers of the dwellings would have to travel for everyday activities such as work, school, shops etc. The limited local services, facilities and amenities would increase both the use and reliance on the private car which is contrary to policy.

Policy A5 relates to accessibility, the policy states that residential development should be within walking distance of, or should have access by public transport to, a wide range of services and facilities. The proposed dwellings would be outside the settlement boundary, although not isolated from other dwellings, there is no safe walking route to facilities and an irregular bus service. The proposal is therefore considered contrary to both policies CP1 and A5.

Policy CP8 states that *"Development outside of settlement boundaries will be permitted in a limited number of circumstances and are subject to a number of criteria including "be appropriate in terms of scale, siting and design: and protect, conserve or enhance the landscape and town scape character whilst maintaining green wedges and open breaks between settlements. and provide for any necessary mitigation measures"*. The removal of the holiday occupancy condition on of the 2 holiday lets would not change the appearance of the buildings and the proposal is considered to comply with policy CP8 of the Taunton Deane Core Strategy.

Policy SP4 states that *"Growth in the rest of the borough will be limited, respecting and reflecting the rural character and sustainability considerations"*. The policy goes on to state that *"it is vital that any development respects the integrity of the countryside"*. The proposed removal of the condition to allow for residential occupancy would be in conflict with Policy SP4 in that it is outside settlement limits which would not respect the rural character or sustainability considerations. and would be detrimental to the visual amenity of the area.

Given the above it is considered that the proposal would be in conflict with policies SP1, SB1, SP4, CP1, DM2 and A5 and is unacceptable in terms of policy, given the location of the proposals.

10.1.2 SHLAA and Five Year Housing Land Supply:

The latest housing land supply position is published in the 2023 SHLAA for Somerset West Area (formerly Somerset West and Taunton). For the former Taunton Deane LPA the Housing Land Supply is 5.16. Therefore, the 'tiled balance' in Paragraph 11(d) of the NPPF is not applicable.

10.1.3 Kingston St Mary Neighbourhood Plan

A number of responses mention the emerging Kingston St Mary Neighbourhood Development Plan for the Parish of Kingston St Mary. This plan is currently in the public consultation stage on the draft Neighbourhood Plan (Regulation 14) which closes on the 14th July 2023. At this stage of the Neighbourhood Plan process, the plan sets out the intentions of the Parish but as the plan may change following the consultation and its evidence base has not yet been submitted to the LPA or subject to independent examination, the draft Neighbourhood Plan can carry only little weight in the determination of planning applications.

The emerging Kingston St Mary Neighbourhood Plan (KSMNP) proposes a change to the settlement limit, and have produced a supporting document. However, the Regulation 14 Neighbourhood Plan makes clear that this is unlikely to be adopted until the new unitary authority has a new Local Plan, as stated on page 67 of the KSMNP:

“Alterations to Settlement Boundary It is also worth noting that submissions have been made by the Parish Council in respect of the Settlement boundary. In relation to the settlement boundary the Parish Council requested in 2021 for Kingston St Mary village’s settlement boundary to be extended (see the Settlement Boundary report in Supporting Guidance). However, this change, if accepted, is unlikely to be adopted until the new Unitary authority creates a new Local Plan”

10.1.4 History

The building subject to this application was constructed as office accommodation by application 20/00/0025. Application 20/06/0026 permitted the change of the use of the building into two holiday let units. Section 73 Application 20/06/0039, allowed on appeal, sought to relax the holiday occupancy condition to allow second home ownership. The appeal decision deleted the tourism occupancy Condition 3 of application 20/06/0026 and imposed a new, more relaxed tourism occupancy Condition 1. The current occupancy condition states:

"The chalets shall be occupied for tourism purposes only and shall not be occupied as a person's sole or main residence. The site operator and owners shall maintain an up-to-date register of the names of all owners/occupiers, including their guests, of individual chalets on the site and of their main home addresses, and shall make this information available at all reasonable times to the Local Planning Authority."

10.1.5 Highways

The current use of the units 19 and 20 are holiday let, whilst there may be a small rise in traffic movements with deliveries etc, this is not considered significant.

10.1.6 Visual impact

The proposed lifting of the condition would not alter the appearance of the buildings and is not considered to result in a significant impact on the visual amenity of the area. It is noted that there could be an increase in domestic paraphernalia. However the site is well screened from the highway and it is considered that there would not be a significant impact upon the visual amenity of the area.

10.1.7 Residential impact

It is considered that the proposed development would not have a significant impact upon the residential amenity of the surrounding properties. However, it is considered that there is the potential for conflict between the uses of the site in relation to traffic movements and potential noise and disturbance. However, given that the proposal is for two units this is not considered to be significant.

10.1.8 Additional comments

Many of the comments received state that the removal of the occupancy condition would allow local people to be able to afford houses, including the response from the Parish Council regarding the development being for "affordable homes". It should be noted that if the holiday condition is removed these units will become open market dwellings, with no guarantees that they will fill the local housing need. It is noted that infill development may be required and indeed encouraged within the settlement boundaries of Kingston St Mary. However as noted above the site is outside of the settlement limits.

The Planning Statement submitted as part of the application mentions the housing needs survey, The Kingston St Mary Housing Needs Survey published in 2021 showed that 58% of respondents wanted more affordable housing for people with a local connection, and 54% of respondents wanted more homes to downsize to. dwellings however as already stated this proposal is not for affordable housing but for open market dwellings with no guarantees that the proposal would be ring-fenced for those in the village. Nor does the application as it is currently submitted comply with the NPPF definition of affordable housing.

11 Local Finance Considerations

11.1 Community Infrastructure Levy

N/A

12 Planning balance and conclusion

12.1 For the reasons set out above, having regard to all the matters raised, it is 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.

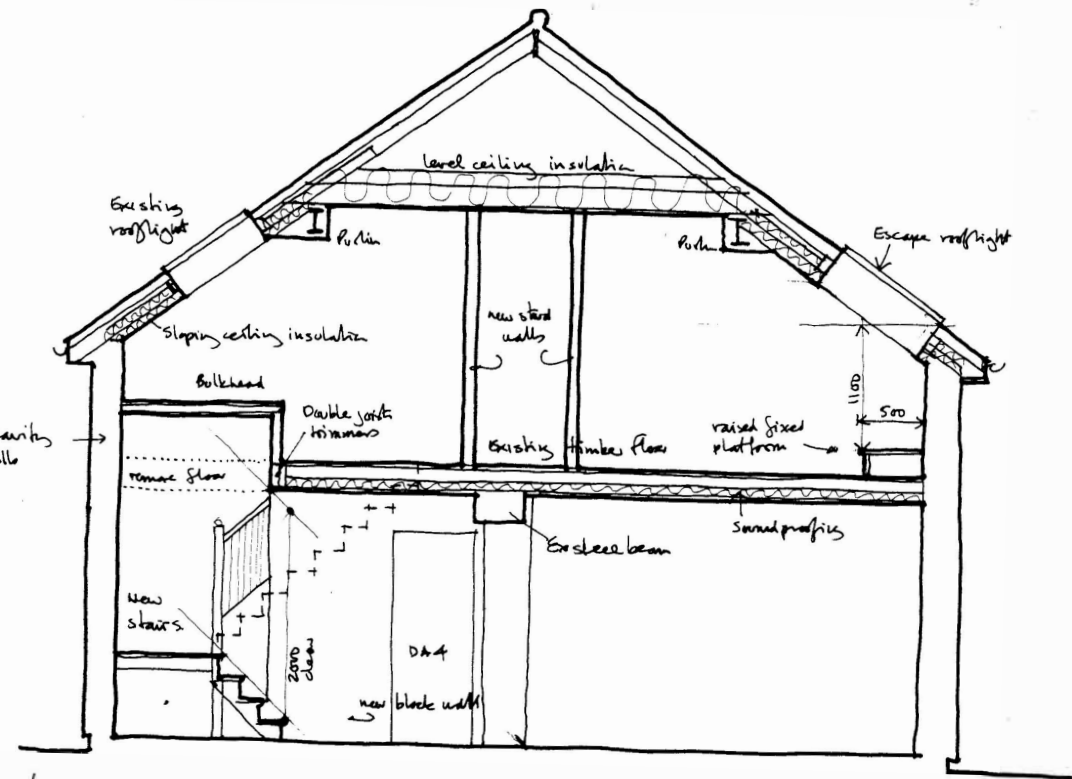
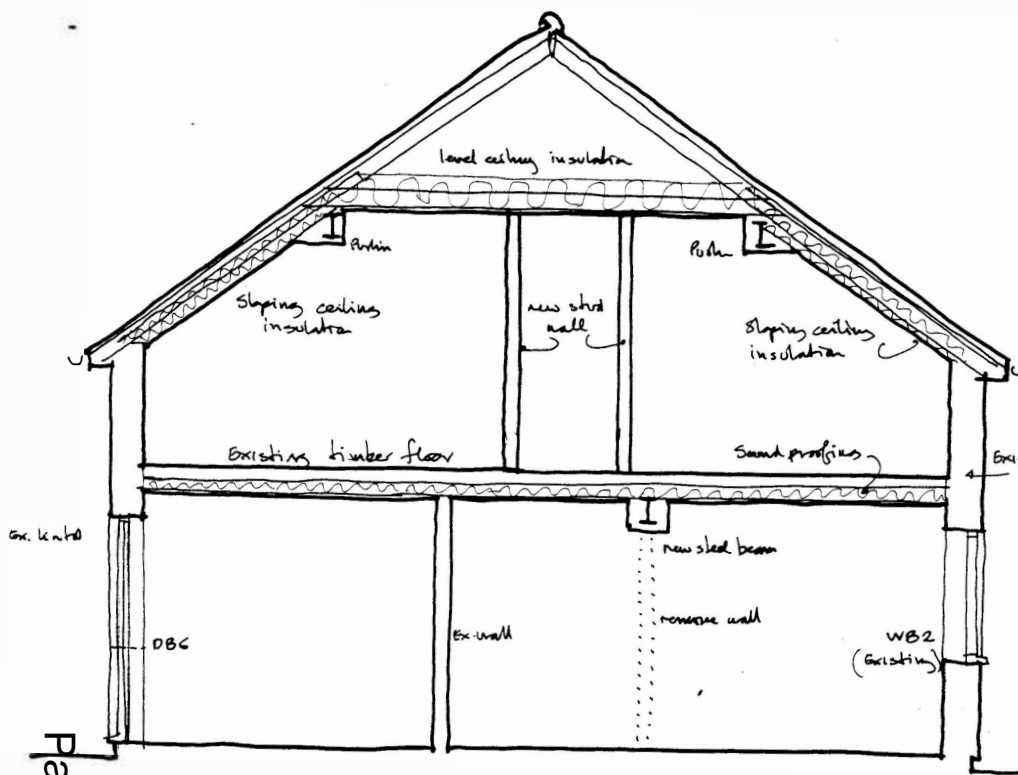
Appendix 1 – Reason/s for refusal

- 1 The proposed development is outside any defined settlement limits and therefore falls within open countryside. The site is located in an unsustainable location where future occupiers would be heavily reliant on the private car to access facilities and amenities that are not available within close proximity to the site. The proposed is therefore contrary to policies SP1, SD1 and CP1 of the Taunton Deane Core Strategy and policies A5 and SB1 of the Taunton Deane Site Allocations and Development Management Plan.

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 applicants and looks 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.

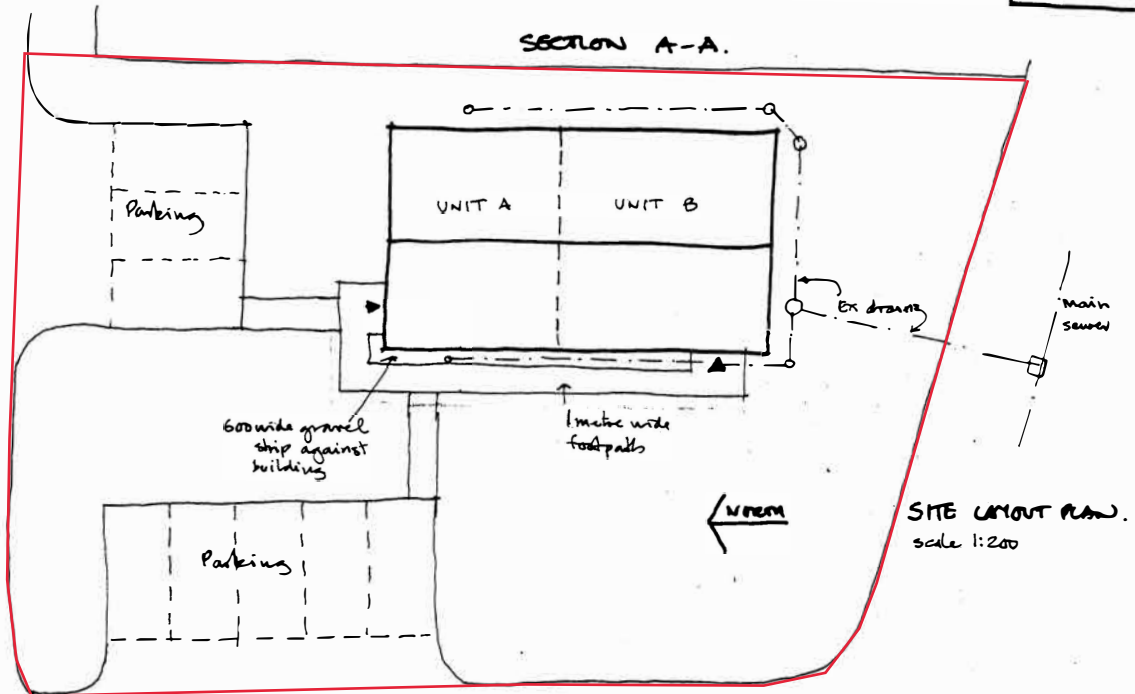
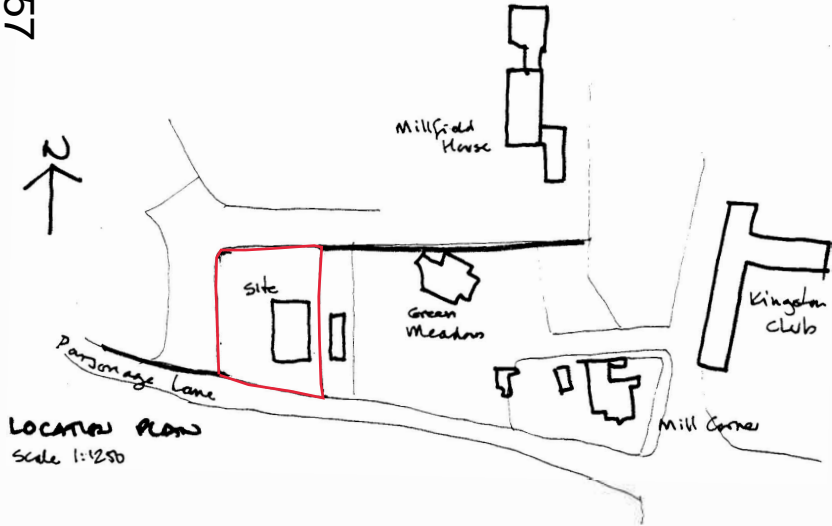
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SECTION B-B

SECTION A-A.

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CONVEYANCE TO TWO HOLIDAY LETS
SWALLONS BAY PARSONAGE LANE KILKISTON ST MARY

MR. HEAYNS

Scale 1:50 + as noted
Date Feb 2017
Drawing No 4.

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Application Details	
Application Reference Number:	38/20/0151
Application Type:	Full Planning Permission
Earliest decision date:	05 June 2020
Expiry Date	02 July 2020
Extension of time	31 March 2023
Decision Level	Committee
Description:	Conversion of terrace building (part of former police station) into 6 No. dwellings at Burton Place, Taunton
Site Address:	9-11 BURTON PLACE, TAUNTON, TA1 4HD
Parish:	38
Conservation Area:	N/A
Somerset Levels and Moors RAMSAR Catchment Area:	River Tone Catchment
AONB:	Quantock Hills/ Blackdown Hills amend as appropriate
Case Officer:	Harrison Moore
Agent:	
Applicant:	PHOTINIA LTD
Committee Date:	17 September 2020
Reason for reporting application to Committee	N/A

Recommendation

That permission be GRANTED subject to the conditions set out in the report previously considered by the Planning Committee in September 2020 (Appendix A), the additional conditions set out in this report and the completion of a S106 to secure phosphate mitigation.

Reasons for application reference 38/20/0151 being considered at the 15th August 2023 Planning Committee West

In September 2020 Somerset West and Taunton (Now Somerset Council) Planning Committee resolved to grant permission for the conversion of terrace building (part of former police station) into 6 No. dwellings at Burton Place, Taunton (Application reference 38/20/0151).

On 17 August 2020 the former council received a letter from Natural England about the high levels of phosphates in the Somerset Levels and Moors. Subsequently, in March 2022 Somerset West and Taunton Council, South Somerset District Council and Somerset County Council received similar letters relating to high levels of phosphates in the River Axe.

In light of a court Judgement (known as Dutch N), Natural England advised the former councils that, in light of the unfavourable condition of the Somerset Levels and Moors Ramsar Site and subsequently the River Axe SAC, before determining a planning application that may give rise to additional phosphates within the catchment, competent authorities should undertake a Habitats Regulations Assessment (HRA).

The types of development include:

- New residential units – including tourist accommodation, gypsy sites /pitches
- Commercial developments – where overnight accommodation is provided
- Agricultural Development – additional barns, slurry stores etc. where it is likely to lead to an increase in herd size
- Anaerobic Digesters
- Possibly some tourism attractions
- Within the River Axe SAC catchment development undertaken through the “prior approval” decision making process under the General Permitted Development Order (2015)

The September 2020 Planning Committee resolved to grant application reference 38/20/0151 planning permission but a decision could not be issued given the potential negative impact the scheme would have on the Somerset Levels and Moors Ramsar Site. The proposed development included new residential units was therefore caught by phosphates and subsequently held in abeyance until a resolution in the form of the ‘Somerset West and Taunton Interim Strategy’ was formally adopted.

The application has not changed or been amended since the September 2020 Planning Committee. The only subject for consideration is phosphates and impact to Somerset Levels and Moors Ramsar Site. Since notification from Natural England and as part of the interim strategy, the applicant has submitted a Habitats Regulations Assessment (HRA) proceeding to an Appropriate Assessment which has been considered below.

Listed Building Consent was gained under application reference 38/20/0386/LB for retention and repair of timber sash windows, replacement of lean-to structure to the rear and internal alterations to include formation of walls and staircase at Burton

Place, Taunton on 22nd January 2021. Works have already commenced on site in accordance with the Listed Building Consent.

The site is located in an area that is hydrologically connected to the Somerset Levels and Moors (SL&M) Ramsar site and as such the proposal has the potential to contribute to additional phosphates entering the Ramsar site. As a result, this planning application has been subject to a HRA proceeding to an Appropriate Assessment.

Somerset Council, as the competent authority under The Conservation of Habitats and Species Regulations 2017 (the 'Habitats Regulations') must be certain beyond a reasonable scientific doubt that any new residential development will not have an adverse impact upon the Somerset Levels and Moors Ramsar Site. To do this, the proposed development must be 'nutrient neutral', demonstrated through an HRA, before planning permission can be granted.

Somerset Council has adopted an Interim Phosphates Mitigation Strategy (previously known as the Somerset West and Taunton Interim Phosphates Mitigation Strategy) in order to establish nutrient mitigation projects and create 'phosphate credits' for the River Tone catchment area known as 'SWT P-credits' associated with this mitigation, that developers can acquire.

The Interim Phosphates Mitigation Strategy, and projects therein have received the approval of Natural England, as set out within the 'Standard Appropriate Assessment' of the Strategy, available to view on the Council's website. Natural England has confirmed that SWT P-credits generated through the Interim Strategy will enable a commensurate quantum of development to be approved on the basis that it is nutrient neutral and will not therefore adversely affect the integrity of the Somerset Levels and Moors Ramsar Site.

In this case, the applicant has agreed via a Section 106 agreement to the acquisition of 0.5 no. SWT P-credits. The number of SWT P-credits required to ensure that the proposed development would be nutrient neutral have been derived using the Somerset Phosphorus Budget Calculator and reviewed by the Somerset Council Nutrient Neutrality Officer. They are based on best available evidence at the time of writing.

The applicant has prepared a Shadow HRA (sHRA) which the Council, as competent authority, has adopted as the HRA for the proposed development. The HRA confirms that as a result of the acquisition of SWT P-credits it is possible to conclude beyond all reasonable scientific doubt that the proposed development would not have an adverse effect on the integrity of the Somerset Levels and Moors Ramsar site as a result of excessive phosphates. Somerset Council as the competent authority has

therefore fulfilled its statutory duty under Regulation 63(5) of the Conservation of Habitats and Species Regulations 2017.

Section 106 Agreement

A Section 106 agreement has been agreed as part of this planning application in order to covenant the following:

- The applicant has covenanted with the Council to:
- Pay a non-refundable 10% deposit to acquire SWT P-credits on the date planning permission is issued.
- To commence development within three calendar months of the date planning permission is issued.
- Not to commence development on site until the remaining payment of 90% for the acquisition of SWT P-credits has been paid to the Council.
- To notify the Council of the anticipated date of commencement not less than 10 working days before such date, and to commence development within 5 working days of the anticipated date of commencement.

The Council has covenanted to:

- Issue written confirmation that SWT P-credits have been reserved for the proposed development upon payment of the 10% deposit.
- To issue written confirmation to the applicant of all payments made.
- To implement and maintain the Interim Strategy and ensure that the P-credit requirement for the development is maintained in perpetuity.

Taking the above into consideration, members are urged to only consider phosphates impact on the Somerset Levels and Moors Ramsar Site as all other planning matters have been previously approved by the September 2020 Planning Committee. It has been demonstrated beyond all reasonable scientific doubt that the proposed development would not have an adverse effect on the integrity of the Somerset Levels and Moors Ramsar site as a result of excessive phosphates. The proposal would be 'nutrient neutral' and it is recommended that planning permission be granted. The proposed residential development would not have an adverse impact upon the Somerset Levels and Moors Ramsar Site.

Updated planning policy since the application has been held in abeyance

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 new unitary authority for Somerset (Somerset Council) was formed on 1 April 2023 and as part of this reorganisation a Structural Change Order was agreed. The Structural Change Order requires the new Somerset authority to prepare a local plan within 5 years of vesting day.

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).

National Planning Policy Framework

The proposal is considered to accord with the general principles of the NPPF.

Additional consultation comments received since the application has been held in abeyance

NATURAL ENGLAND	Thank you for consulting us on the above, received on 22/02/23. Somerset Levels and Moors Ramsar Site - HRA Natural England notes that your authority, as competent authority, has undertaken an appropriate assessment of the proposal in accordance with regulation 63 of the Conservation of Species and Habitats Regulations 2017 (as amended). Natural England is a statutory consultee on the appropriate assessment stage of	Noted.
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	<p>the Habitats Regulations Assessment process.</p> <p>Your appropriate assessment concludes that your authority is able to ascertain that the proposal will not result in adverse effects on the integrity of the Somerset Levels and Moors Ramsar Site. Having considered the assessment, and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, Natural England advises that we concur with the assessment conclusions, providing that all mitigation measures (i.e. purchase of sufficient phosphorous credits from Somerset West and Taunton Council) are appropriately secured in any planning permission given.</p> <p>Other advice</p> <p>Further general advice on the consideration of protected species and other natural environment issues is provided at Annex A.</p>	
<p>SCC - ECOLOGY</p>	<p>The site as a whole supports bat. I have observed signs of night roosting lesser horseshoe bats in one part and the police station tunnel to Shire Hall supports a maternity colony of Daubenton's bats.</p> <p>Informative requested reminding developers of the legal protection afforded to bats and bat roosts.</p> <p><i>An updated Ecological Appraisal</i></p>	<p>Conditions attached in accordance with these comments.</p>

	<p><i>titled 'Updated Ecological Appraisal - Burton Place, Taunton', authored by Richard Green Ecology Ltd dated 5th April 2023. This has been reviewed by the Ecology Officer and offered the following comments:</i></p> <p>Having reviewed the updated walkover survey undertaken by Richard Green Ecology Ltd 5th April 2023 indicated the following are recommended:</p> <p>Conditions to add:</p> <ul style="list-style-type: none">• A check should be made for any nesting birds prior to completing the roof works on the single storey section. If nesting birds are found, exclusion of birds must be delayed until the birds have fledged. Reason: Nesting birds are afforded protection under the Wildlife and Countryside Act 1981 (as amended). Although this is a legal obligation the law does not specify a time period – some species can breed outside the time frame given.• As enhancement and compensation measures, and in accordance with National Planning Policy Framework (NPPF), please apply the following conditions to any planning permission granted. The following will be incorporated into the site proposal with photographs of	
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	<p>the installed features submitted to the Local Planning Authority prior to first occupation:</p> <ul style="list-style-type: none"> · It is recommended to install two large bat boxes (Beaumaris Woodstone maxi, or similar) on the southern gable wall of the three storey unit. This is considered the best location for placement as it would avoid light spill from windows and receive warmth from sunlight throughout the day. · It is recommended that 4 no. 1SP Schwegler sparrow terraces (or equivalent) be provided on the northern and/or eastern elevations of the building to provide nesting opportunities for birds. <p>Reason: In accordance with Government policy for the enhancement of biodiversity within development as set out in paragraph 174(d) of the National Planning Policy Framework</p>	
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Additional conditions added since the 2020 September Committee in response to additional ecological comments received

Nesting birds

9. A check should be made for any nesting birds prior to completing the roof works on the single storey section. If nesting birds are found, exclusion of

birds must be delayed until the birds have fledged.

Reason: Nesting birds are afforded protection under the Wildlife and Countryside Act 1981 (as amended). Although this is a legal obligation the law does not specify a time period – some species can breed outside the time frame given.

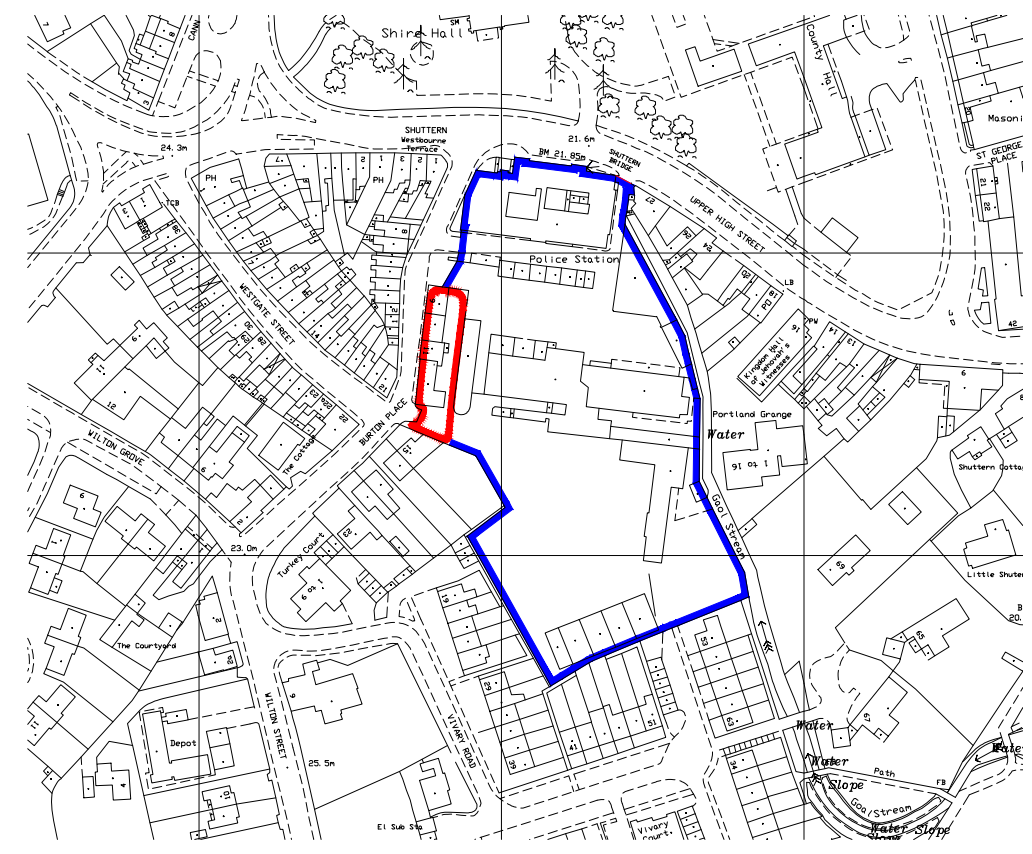
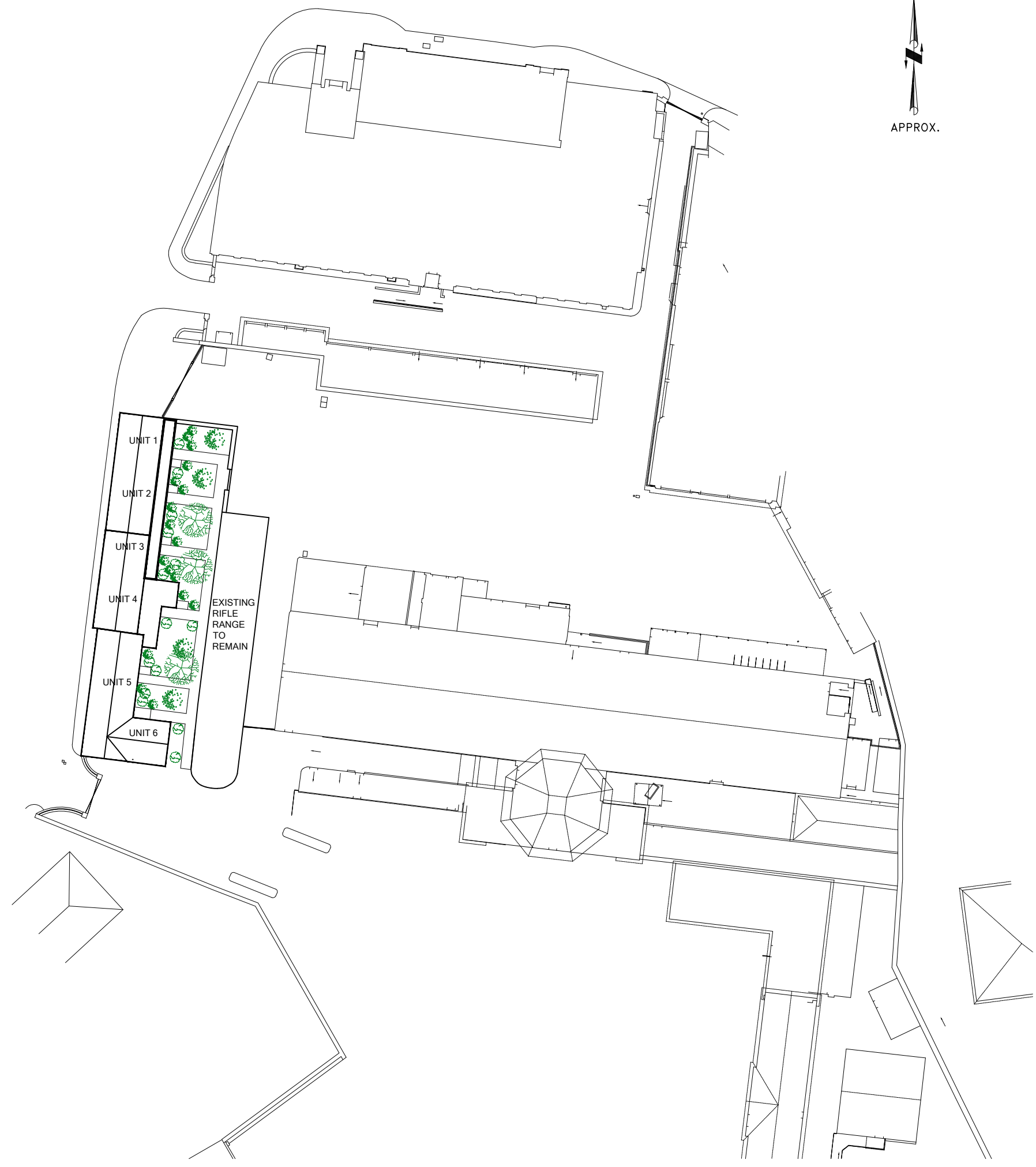
Enhancement and compensation measures

10. The following will be incorporated into the site proposal with photographs of the installed features submitted to the Local Planning Authority prior to first occupation:

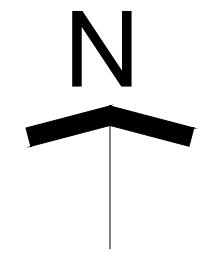
- It is recommended to install two large bat boxes (Beaumaris Woodstone maxi, or similar) on the southern gable wall of the three storey unit. This is considered the best location for placement as it would avoid light spill from windows and receive warmth from sunlight throughout the day.
- It is recommended that 4 no. 1SP Schwegler sparrow terraces (or equivalent) be provided on the northern and/or eastern elevations of the building to provide nesting opportunities for birds.

Reason: In accordance with Government policy for the enhancement of biodiversity within development as set out in paragraph 174(d) of the National Planning Policy Framework.

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SITE LOCATION PLAN Scale 1:2500



REVISION	NOTE	DATE
<p>KEITH WOTTON ARCHITECTURAL SERVICES 16 PENDEEN CRESCENT THREEMILESTONE TRURO TR3 6SP Mob. 07900 676469 e-mail kw.architectural@btinternet.com</p>		
TITLE	AUTHOR	
CONVERSION TO RESIDENTIAL DEVELOPMENT AT BURTON PLACE TAUNTON TA1 4HD	KW	
CLIENT	DATE	
PHOTINIA LTD	23-09-2019	
SCALE		
SITE LOCATION AND BLOCK PLANS	1:2500, 200 @ A3	
STATUS	REVISION NO.	REVISION
PLANNING	264-010	

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PHOTINIA LTD

Conversion of terrace building (part of former police station) into 6 No. dwellings at Burton Place, Taunton

Location: 9-11 BURTON PLACE, TAUNTON, TA1 4HD

Grid Reference: 322379.124174

Full Planning Permission

Recommendation

Recommended decision: Conditional Approval

Recommended Conditions (if applicable)

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 264-030 Elevations as Proposed
(A1) DrNo 264-012 Floor Plans as Proposed
(A3) Drno 264-011B Site Plan as Proposed
(A3) DrNo 264-020 General Section as Proposed
(A3) DrNo 264-010 Site Location and Block Plans

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

3. Prior to the construction of the development, hereby permitted, 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 completed in accordance with the approved details and thereafter maintained as such.

Reason: In the interests of preserving the listed building, its setting and any features of historic or architectural interest that it possess to comply with Policy CP8 of the Taunton Deane Core Strategy.

4. Notwithstanding the details regarding the materials for new windows stated within the application form, there shall be no installation of windows in new openings unless revised details are agreed in writing by the Local Planning Authority. The revised details shall include a full schedule of materials, technical plans to an appropriate scale, cross sections, colour and finish. The approved windows shall be installed in accordance with the approved details.

Reason: In the interests of preserving the listed building, its setting and any features of historic or architectural interest that it possess to comply with Policy CP8 of the Taunton Deane Core Strategy.

5. Notwithstanding the details regarding the materials for new windows stated within the application form there shall be no replacement of existing windows without the prior grant of permission for such works under a Listed Building Consent. Such an application shall include a full heritage justification including an assessment of the existing windows, method statement, materials, details of the recess, colour and finish (including the method of opening) for the new windows.

Reason: In the interests of preserving the listed building, its setting and any features of historic or architectural interest that it possess to comply with Policy CP8 of the Taunton Deane Core Strategy.

6. Prior to any works relating to the eaves, rainwater goods, foul waste and provision of external services and ventilation a full schedule of the works shall be submitted and approved in writing by the Local Planning Authority. The schedule shall include materials, specification (including the submission of technical drawings to an appropriate scale if necessary), colour and finish. The development shall be carried out and completed in accordance with the approved details and shall not be altered without the prior written consent of the Local Planning Authority.

Reason: In the interests of preserving the listed building, its setting and any features of historic or architectural interest that it possess to comply with Policy CP8 of the Taunton Deane Core Strategy.

7. Prior to the first occupation of any of the dwellings hereby approved, cycle and bin storage facilities shall be constructed in accordance with details that shall be submitted and approved in writing by the Local Planning Authority. The submitted details shall include full scale plans and details of materials including colour and finish. The facilities shall thereafter be retained for those purposes.

Reason: To ensure that adequate facilities are included for the storage of cycles, in the interests of sustainable transport to comply with Policies A1, A of the Taunton Deane Site Allocations and Development Management Plan.

8. (i) The development shall be carried out and completed in accordance with a hard and soft landscaping scheme that shall have been submitted and

approved in writing by the Local Planning Authority. The scheme shall include details of the species, siting and numbers to be planted, details of all hard surfacing (including submission of samples if necessary).

(ii) The soft landscaping shall be completely carried out within the first available planting season from the date of commencement of the development.

(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 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 to comply with Policy CP8 of the Taunton Deane Core Strategy.

Notes to Applicant

1. The applicant is advised that listed building consent is required for the conversion works as the building is curtilage listed in association with the Grade II listed goal. The applicant is further advised that listed building consent must be granted prior to the commencement of any works to the building.
2. The developers and their contractors are reminded of the legal protection afforded to bats and bat roosts under legislation including the Conservation of Habitats and Species Regulations 2017. In the unlikely event that bats are encountered during implementation of this permission it is recommended that works stop and advice is sought from a suitably qualified, licensed and experienced ecologist at the earliest possible opportunity.
3. In accordance with paragraph 38 of the National Planning Policy Framework the Council has worked in a positive and pro-active way with the applicant and has negotiated amendments to the application to enable the grant of planning permission.

Proposal

The application proposes the change of use and conversion of Burton Place into six dwellings comprising the following:

- 2 x 1-bed dwellings;
- 3 x 2-bed dwellings;
- 1 x 3-bed dwelling.

Access would be gained from the rear of the terrace. An amenity area is included to the rear of the properties. No parking spaces are proposed as part of the

development. The proposal includes the demolition of an existing lean to extension to the rear of the building and the construction of a replacement lean to extension.

Site Description

The site consists of a red brick terraced building which fronts Burton Place. The building is considered to be curtilage listed in association with the former gaol building. It was originally used by the TA in 1910 in connection with the wider use of the adjacent former gaol site. Since then it is understood to have been occupied in connection with the use of the wider Police Station site.

To the rear there is a single storey flat roof building that forms the rear site boundary but is outside the application site. This building was originally constructed as the treadmill building in association with the former goal and is also listed.

Relevant Planning History

None relevant

Consultation Responses

SCC - TRANSPORT DEVELOPMENT GROUP - Standing advice applies
SCC- PARKING SERVICES-

Properties that do not have an existing permit allocation would not be added into the scheme.

If a property within an permit zone is converted into multiple units, the number of permits allocated to that initial property does not change.

For example, no. 4 Hypothetical Street is in a permit zone with no off-street parking so has a full permit allocation of:

- one first residents permit (cost £60 / £30 / £0 depending on vehicle emissions);
- one second residents permit (£100);
- one visitors permit (£60);
- plus a full allocation of 100 single use one-day visitor vouchers (scratch cards).

If the property is converted into two flats, the residents (or property owner if it becomes a rental property) should agree how the permit allocation is divided. For example, one flat may 'get the first permit and the visitor vouchers, and the second flat 'gets' the second permit and the visitor permit. This can be allocated on the permit system we use.

If the property was redeveloped into 5 flats, the permit allocation may be on a first come, first served basis.

We would not increase the permit allocation for new dwellings because the number of parking places does not change. Increasing the permit allocation because existing properties were redeveloped or new residential properties were created would be unfair on all other existing residents who may then have difficulty finding a parking place due to a larger demand for an unchanged supply.

SCC - COUNTY ARCHIVIST – As far as we are aware there are limited or no archaeological implications to this specific proposal and we therefore have no objections on archaeological grounds. The buildings are part of the former Police Station complex and it may be that an historic building recording condition is required by your Conservation Officer and we would urge you to check if that is appropriate here.

Other development of buildings and yards associated with the Police station complex may well require a Written Scheme of Archaeological Investigation.

HERITAGE – No objections (verbal advice)

WESSEX WATER – No objections. Comments made regarding new drainage and water supply connections, surface water and safeguarding Wessex Water

SCC - ECOLOGY - The site as a whole supports bat. I have observed signs of night roosting lesser horseshoe bats in one part and the police station tunnel to Shire Hall supports a maternity colony of Daubenton's bats.

Informative requested reminding developers of the legal protection afforded to bats and bat roosts.

DEVELOPMENT ENABLING-

CP5 from the Core Strategy along with Policy C2 and Appendix D of Taunton Deane Adopted Site Allocations and Development Management Plan (Dec 2016) stipulates the provision for new open space. Provision of 0.8 hectare of children and teenager play space is required per 1000 persons. This constitutes a mixture of both informal play space and formal equipped play space. For new developments children's play should provide a minimum of 20sq meters of equipped children's playing area for all dwellings of 2 or more beds in the form of Local Equipped Play Area (LEAP) and Neighbourhood Equipped Play Areas (NEAP).

The trigger for play provision is 6 or more family dwellings (2 bedrooms +). Based on the proposed scheme of 6 dwellings with 4 of the dwellings being 2 bed + the development falls below the requirement for onsite and offsite play.

Representations Received

Following consultation representations have been received from 28 nearby households, 27 objecting and 1 in support of the proposal. The following issues are raised:

- Concerns over lack of parking provision within the permit zone and significant parking congestion particularly in the evenings.
- Proposed properties should include parking provision.
- Non residents park before 08.00 in the permit area.
- Available space has been significantly reduced by driveways being constructed and double yellow lines.
- Additional areas could be added to E09 to alleviate the congestion such as part of The Crescent, three spaces outside the Police Station and parking area within Shire Hall.
- Properties in Orchard Rise rely on the permit parking spaces.

Support:

- Proposal would be an improvement to the area. Overall more positive than negative despite concerns over lack of parking.

Planning Policy/Legislative Context

Section 66 of the Listed Building and Conservation Areas Act requires that planning authorities have 'special regard to the desirability of preserving the building or its setting'.

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications are determined in accordance with the development plan unless material considerations indicate otherwise.

The development plan for Taunton Deane comprises the Taunton Deane Core Strategy (2012), the Taunton Site Allocations and Development Management Plan (2016), the Taunton Town Centre Area Action Plan (2008), Somerset Minerals Local Plan (2015), and Somerset Waste Core Strategy (2013).

Relevant policies of the development plan are listed below.

SD1 - Presumption in favour of sustainable development,
SP1 - Sustainable development locations,
CP1 - Climate change,
CP4 - Housing,
CP6 - Transport and accessibility,
CP8 - Environment,
DM1 - General requirements,
DM4 - Design,
A1 - Parking Requirements,
D10 - Dwelling Sizes,
D7 - Design quality,
ENV4 - Archaeology,
A5 - Accessibility of development,
C4 - Protection of community facilities,
D12 - Amenity space,

Local finance considerations

Community Infrastructure Levy

The proposed development measures approx. 480sqm.

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 £33,500.00. With index linking this increases to approximately £47,750.00.

Determining issues and considerations

Principle of development:

The key issues relate to the loss of floor space associated with the police station and the principle of converting the listed building into residential accommodation. Policy C4 of the Taunton Deane Site Allocations and Development Management Plan

relates to the protection of community facilities. It states:

"The loss or change of use of existing community, cultural and social facilities will only be permitted where:

- A. Evidence is submitted to demonstrate that there is no longer a community need for the facility; and*
- B. The facility is no longer financially viable; and*
- C. It could not be put to another similar, community use; or*
- D. Replacement facilities are provided on site, or within the vicinity to meet the needs of the local population.*

In the case of destination facilities serving more than one community, it must be demonstrated that the need can be met in an alternative or existing facility in Taunton, Wellington or a defined rural centre and is accessible to its intended users by a range of sustainable transport modes".

In this instance the police station and all associated facilities have been moved to a different location in the centre of Taunton. The subject building is therefore currently redundant and there is no prospect of the use needing to continue in this location. An alternative facility has been provided and accordingly it is considered that the proposal would accord with the above policy. In addition to the above, the change of use to residential use is considered to present an optimum use of the building in terms of its future preservation and accordingly the proposal is considered to be appropriate in heritage terms in accordance with Policy CP8 of the Taunton Deane Core Strategy.

Heritage:

Section 66 of the Listed Building and Conservation Areas Act requires that planning authorities have 'special regard to the desirability of preserving the building or its setting'.

The external and internal alterations proposed are considered to be acceptable and will preserve the character, historic interest and fabric of the listed building. Conditions relating to matters such as hard and soft landscaping, cycle storage, and details of external alterations, including materials are considered necessary and reasonable in planning terms. A listed building consent application will be required which will further consider the fabric of the building and may include additional conditions. This consent will have to be in place prior to works commencing on the building. Subject to conditions it is considered that the proposal would accord with Policy CP8 of the Taunton Deane Core Strategy.

Residential amenity:

The use of the building for residential purposes will not create any additional undue issues in relation to the impact on adjoining occupiers by way of noise, disturbance and overlooking. The dwellings will exceed the minimum floor space requirements set out in Policy D10 of the Taunton Deane Site Allocations and Development Management Plan. There will be an area of amenity space to the rear of the

properties. This space will not be divided by fencing into individual plots to retain a sense of openness although it is anticipated that individual plots will each be allocated an area of space. Whilst the size of the space is small and not completely private, in the circumstances it is the best compromise that can be provided within the constraints of the site and whilst preserving the setting of the listed building. Having regard to the above it is considered that whilst there is not full compliance with Policy D10 the proposal is nevertheless considered to be acceptable in this regard for the above reasons.

Highway safety and parking:

The application does not propose any car parking within the site. The Highway Authority have indicated that 'standing advice' applies. The site is considered to be a highly sustainable location, within a short walk of a wide range of employers, local services, facilities, recreation and public transport. Policy A1 of the Taunton Deane Site Allocations and Development Management Plan refers to parking standards for new development. It sets out a maximum of 1 space for new developments in the town centre. It also states that car free developments will be sought in appropriate locations such as within or adjacent to Taunton and Wellington Town Centres.

A significant number of objections have been received from local residents particularly in Westgate Street expressing concerns over the lack of parking within the development and the impact on existing residents ability to find a parking space. This site is located within a residents parking permit zone. It is understood that the enforcement times that a permit is needed are 08.00-20.00 Monday – Saturday. There are no restrictions on Sundays. The County Council parking services department have commented that it is the Councils policy not to allocate additional permits to new where an existing property is subdivided. Accordingly, occupiers would not be able to park within the permit zone. This factor partially mitigates the concerns expressed by local residents, although there would be added competition for spaces outside the enforced times. The alternative options to retain the parking areas to the rear of the properties would be substandard in terms of the impact on the setting of the listed building and in terms of amenity space for occupants which would conflict with Policy D10 and accordingly there are drawbacks with both of these options. A central aim of the planning system is to encourage sustainable modes of travel and this is set out in the NPPF and Policies A1 and C5 of the Taunton Deane Site Allocations and Development Management Plan and Policy CP6 of the Taunton Deane Core Strategy. Within a town centre location, the expectation would be that the lack of parking spaces would be more likely to attract occupiers with low car use/ownership and would encourage a greater use of alternative means of travel such as car pool clubs, sharing, car hire etc.

The concerns and frustrations of local residents are fully acknowledged in this instance. The acceptability of the proposal is dependant on weighing up the competing issues outlined above. There are no objections from the Highway Authority and there is no clear evidence that the proposal would harm highway safety. Additionally the proposal would not conflict with Policy A1 as the site is adjacent to the town centre.

Having regard to the above, it is considered despite the objections received, that there are insufficient grounds to warrant refusal of the application on highway and parking congestion grounds. The proposal would therefore be acceptable in this regard and would comply with Policies A1, A5 of the Taunton Deane Site

Allocations and Development Management Plan and Policies CP6 and DM1 of the Taunton Deane Core Strategy.

Bin and cycle storage:

The applicant has indicated areas for bin and cycle storage on an amended plan. It is considered acceptable to agree these details via a planning condition. The applicant has indicated that bins can be sited on the pavement adjacent to the building frontage on bin day. These arrangements are considered to be acceptable in relation to general amenity and highway safety.

Ecology:

The County Ecologist has been consulted and has commented that bats have been recorded in the vicinity of the site, however it is considered highly unlikely that bats would be encountered during construction. Given this very low likelihood an informative is recommended to be included within the decision that reminds the developer of their legal duties in respect to protected species. The proposal would therefore comply with Policy CP8 of the Taunton Deane Core Strategy.

Archaeology:

The site is located within an Area of High Archaeological Potential and County Archaeology Site. The Somerset Heritage Trust have commented that given the nature of the development converting an existing building and very limited external works there would be limited or no implications for archaeology. Accordingly planning conditions in respect to archaeology are not required.

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

Contact Officer: Mike Hicks

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Objection to Somerset West and Taunton (Trull No.2) Tree Preservation Order SWT73 (2023)

The Tree Preservation Order protects 9 groups of trees growing in two lines running from Dipford Road at the northern end, going south towards Gatchell House which is located on Honiton Road.

RECOMMENDATION

That the Tree Preservation Order is CONFIRMED unmodified, but mindful that a small number of the protected trees will need to be removed to allow the construction of the access road. The definitive layout will be approved under 'reserved matters'.

Background

The Tree Preservation Order (TPO) SWT73 was served on 24th March 2023.

The grounds for serving the TPO were stated on the Notice as follows:

SWT73 replaces SWT64, which has not been confirmed. SWT73 protects selected trees that were protected in Area 1 of SWT64. Outline planning permission has been granted to develop this land for housing. The trees protected by this Order are prominent in the landscape, have present and future amenity value and should therefore be retained as part of the detailed development layout.

Following receipt of the objection to TPO SWT64, a site meeting was carried out between the developer's arboricultural consultant and the council's tree officer. On closer inspection a significant number of the trees within A1 of SWT64 were found to have been seriously damaged by livestock. It was therefore agreed that those most seriously affected, or otherwise in poor condition or of insignificant size, would be omitted from a revised and re-served TPO that would identify in more detail the trees considered worthy of retention. SWT73 identified 9 groups, including 41 trees in total, comprising oak, field maple, pine and birch.

Procedure

A Tree Preservation Order comes into force on the day that it is served for a period of 6 months. The TPO lapses after that date unless it has been confirmed by the Council. If there are no objections to the TPO, it can be confirmed. If any objections

are received, the points raised must be considered and a decision made as to whether to confirm the TPO, either with or without modification. The decision whether to confirm a TPO that raises objections is taken by members of the Planning Committee.

When deciding whether to serve and confirm a TPO, the present or future public amenity value of the trees must be considered. Tree Preservation Orders are served to protect selected trees if their removal would have a significant impact on the local environment. TPO trees should therefore be visible from a public place, such as a road or footpath.

In assessing a tree's amenity value, consideration must be paid to its visual impact, its health and structural integrity, its life-expectancy and its suitability to the location. The tree's potential impact on highways, services and structures should be considered.

Representations

One objection to the TPO has been received from the arboriculturalist at EDP on behalf of the development consortium Taylor Wimpey and Vistry.

The reasons given for the objection can be summarized as follows:

a) SWT73 seeks to protect trees that have been approved for removal within outline planning application 42/14/0069 (permitted 08 August 2019), condition 2 stating that the development permitted shall be carried out in accordance with approved plans, such as the Green Infrastructure Parameter Plan, and plans in the Environmental Statement Addendum.

b) It is not considered expedient for Somerset Council to serve a TPO on trees that have been shown on approved plans to be removed, three years after that approval, and in areas of key access points for the development.

c) Further to the approved scheme, it has been agreed that some trees will require removal to facilitate the delivery of the outline planning consent. The TPO will be a hindrance to the delivery of this scheme. Furthermore, the lost trees could be replaced by new planting as mitigation and approved under 'reserved matters'.

Determining Issues and Considerations

The line of trees protected by SWT73 forms a prominent landscape feature which can currently be seen from surrounding roads and properties on Honiton Road and Dipford Road. Once development of the land has occurred, their prominence will increase considerably. The trees therefore have high amenity value.

The TPO aims to protect the best trees in the line (actually two lines close together), mindful that a small number of those included will need to be removed to facilitate the construction of the access road that is proposed to flow east to west through the line.

In response to the points raised in the objection to the TPO:

a) Under the legislation relating to Tree Preservation Orders, if only outline planning permission has been granted the LPA's consent is still required to fell or carry out works to the protected trees. The approved plans, such as the Green Infrastructure Parameter Plan', relate to this outline approval, not to 'full planning permission'.

b) As the land is still only subject to outline approval, it is considered reasonable for the council to strive to retain and protect prominent trees in the landscape, albeit mindful of the requirement for the developer's access road. The retained parts of the tree line will enhance the development.

c) As stated in the objection, it has been agreed that some trees may be lost from the TPO to facilitate the construction of the access road. The plan shown in the objection shows that the road would require the removal of a small number of trees in the central part of the line, whilst those either side to the north and south are unaffected. The details of this could be finalized at the 'reserved matters' stage when the precise layout would be known and approved.

The proposal for replacement planting is not considered sufficient justification for the removal of established and prominent trees but should be carried out in addition to the retention of these trees, to enhance this landscape feature and the development as a whole.

The council accepts that this line of trees should have been included in TPO TD1076, which was served in 2010 in anticipation of the land being allocated for development. Its omission is thought to have been due to officer error rather than due to the quality of the tree line, which is clearly prominent and has been found to contain numerous

trees that merit retention and protection. The EDP tree survey shows that many of the trees have been classed as category 'A' or 'B' under the criteria in BS5837.

The plans included in the objection clearly show that it would only be necessary to remove a small number of the trees in the protected line to facilitate the construction of the access road. It should therefore be the aim to retain those trees not affected so that this established landscape feature can enhance the development and provide structure, with additional new tree planting.

The suggestion that the retention and protection of the trees in SWT73 will affect the national and local housing supply is considered somewhat of an exaggeration. Under current national and local planning policies, as well as guidance in BS5837, it is standard practice that developers are required to incorporate prominent and healthy existing trees into their layouts. There is a significant gap in the tree line at the northern end, between the protected trees and Dipford Road, that will help with the practical delivery of the scheme.

It should be noted that the council has already agreed to the removal of a significant number of previously-TPO'd trees along Honiton Road to facilitate the road junction, demonstrating the council's collaborative approach and willingness to compromise in certain situations. The loss of the belt of trees along Honiton Road has increased the importance of those within SWT73. The fact that the developer's arboriculturalist agreed the detail of SWT73 in principle on site suggests that the new TPO has merit.

In conclusion, given the above points, it is therefore recommended that Tree Preservation Order SWT73 is confirmed.



APPEAL DECISIONS

PLANNING COMMITTEE WEST

TUESDAY 16 AUGUST 2023

Application No:	46/22/0005
Address:	LLANTARNAM, NURSERY LANE, CHELSTON, WELLINGTON, TA21 9PH
Description:	Erection of 1 No. 3 bed detached house with garage and formation of access in the garden to the side of Llantarnam, Chelston Nurseries, Nursery Lane, Chelston (resubmission of 46/20/0023)
Application Decision:	Committee Decision
Appeal Decision:	Refused



Appeal Decision

Site visit made on 13 July 2023 by **S D Castle BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 July 2023

Appeal Ref: APP/W3330/W/22/3313229 Llantarnum, Nursery Lane, Chelston, Wellington, TA21 9PH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Alan Hale against the decision of Somerset West and Taunton Council.
- The application Ref 46/22/0005, dated 11 March 2022, was refused by notice dated 19 October 2022.
- The development proposed is erection of 1 no. 3 bed dwelling and formation of access.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the site is a suitable location for housing having regard to the development plan and national policy.

Reasons

3. The proposed dwelling would be located on a site bounded by the A38 to the north-west and Nursery Lane to the south-east. Existing dwellings are located to the south-west and north-east of the site. Policy SP1 of the Council's Core Strategy¹ (CS) sets out the overarching spatial strategy for the district and seeks to direct new housing to the most sustainable and accessible locations in accordance with a settlement hierarchy. The site is not within a settlement identified by Policy SP1 and is therefore within the open countryside.
4. Policy SB1 of the Council's Site Allocations and Development Management Plan² (DMP) seeks to maintain the quality of the rural environment, and secure a sustainable approach to development, by ensuring proposals outside of the settlement boundaries comply with CS Policies CP1, CP8, and DM2. Policy CP1 advises that development should result in a sustainable environment, and that locational decisions should be made to reduce the need to travel. Policy A5 of the DMP further expands on this and advises residential development should be within walking distance of, or should have access by public transport to, employment, convenience and comparison shopping, primary and secondary education, primary and secondary health care, leisure and other essential facilities.

¹ Taunton Deane Core Strategy 2011- 2028, Development Plan Document, September 2012

² Taunton Deane Adopted Site Allocations and Development Management Plan, December 2016

5. The route from the appeal site to the nearest convenience store at the Westpark business park requires pedestrians to either walk eastwards along the grass verge at the side of the A38, or on the main carriageway. At the time of my site visit, there was frequent traffic in both directions. The grass verge along the A38 is narrow, uneven, and includes protruding road signage and overgrown boundary vegetation. The signage and vegetation must be avoided by moving close to the highway, an uncomfortable experience given the risk of tripping on the uneven surface of the grass verge. For the most part, the route from the site to the retail park is unlit.
6. The appellant suggests alternative routes into Wellington or to the Jurston Farm development, either walking west along the grass verge to the A38 or crossing the A38 and using the green lane byway. Neither of these alternatives provides an even walking surface and there is poor visibility of traffic when crossing the A38 to get to the green lane byway. Furthermore, future occupants who wish to cycle to Wellington, or to the Jurston Farm development, would have to use the busy A38 for part of their journey which does not have a cycle lane.
7. I acknowledge that the distances to the business park and to the Jurston Farm development could reasonably be walked or cycled. The conditions of the grass verges, and the busy unlit main road, would, however, make such journeys unattractive and potentially unsafe. I have had regard to the

appeals at Shepton Mallet¹ and Gatchell Farm² drawn to my attention by the appellant. However, in this case, the opportunity to seek refuge for certain groups of people, such as users of mobility scooters and people with mobility issues, blind or partially sighted persons, and people with prams, would not be readily available. Furthermore, I am not persuaded that access to facilities and services meeting day-to-day needs would only be required during daylight hours.

8. As such, the siting of the proposed dwelling would not provide safe and suitable routes to facilities by sustainable modes for all users. I have reached my own conclusions on the appeal proposal based on the evidence before me and following a detailed site visit. The lack of suitable walking and cycling routes from the site would result in future residents relying on the private motor car to meet their regular day-to-day needs, such as schools, shops, public transport, employment and health services. This would significantly reduce the likelihood of sustainable journeys.
9. CS Policy DM2 sets out a permissive approach to a range of developments in the open countryside that are not applicable in this case. Therefore, whilst the proposal is not supported by this policy, nor does the policy specifically oppose it either. This policy interpretation is consistent with the Bagley Road appeal decision³ where the Inspector concluded that if a use/development is not explicitly listed under Policy DM2, it does not automatically follow that it should be refused. It is also consistent with other examples of housing development, cited by the appellant, which have been granted permission on land falling outside of defined settlement limits.
10. Notwithstanding the lack of conflict with CS Policy DM2, the site is not a suitable location for an additional dwelling and would conflict with the objectives of CS Policies SP1, SP4, CP1 and CP8, and DMP Policies SB1 and A5. Taken together, amongst other things, these policies seek to direct new housing to the most sustainable and accessible locations. It would also contravene CS Policies SD1 and CP6, which again promote the importance of sustainable development and the need to reduce travel for jobs, services and community facilities. The development would also conflict with Section 9 of the National Planning Policy Framework (the Framework), including paragraph 105, which promotes managing patterns of growth to maximise sustainable transport opportunities in both urban and rural areas.

Other Matters

11. The site is within the Somerset Levels and Moors Ramsar Site and Special Protection Area (SPA) hydrological catchment. There is potential for significant effects on these protected sites due to increases in nutrients as a result of foul and surface water discharges from the proposed dwelling. Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 (as amended) indicates the requirement for an Appropriate Assessment is only necessary where the competent authority is minded to approve planning permission. Thus, given my overall conclusion, it has not been necessary for me to pursue this matter any further.

Planning balance

12. The proposal would result in some economic and social benefits, including through the dwellings' construction and as a result of a slight increase in spending and patronage of services in the local area. The proposal would also make a limited contribution to the Government's objective of

¹ APP/Q3305/W/22/3296599

² APP/D3315/W/19/3220853

³ APP/D3315/W/17/3179264

significantly boosting the supply of homes. However, as the proposal is for only a single dwelling, the benefits identified attract limited weight.

13. I note that a range of ecological enhancements are proposed, including bird and bat boxes. Subject to these matters being secured by condition, I acknowledge that limited biodiversity net gain could be achieved and afford this benefit limited weight. The dwelling would also include a range of energy efficiency measures, representing a limited environmental benefit.
14. There would, however, be environmental and social harms arising from the poor accessibility to necessary day-to-day facilities by sustainable transport modes. This would not promote sustainable development in rural areas or encourage the healthy lifestyles and community building supported by the Framework. The proposal would not comply with the spatial strategy of the development plan and would not represent a plan led development, thereby undermining the settlement hierarchy. I give these harms and the consequent conflict with the above noted development plan policies significant weight.
15. The main parties differ on whether the Council can demonstrate a five-year supply of deliverable housing land (5YHLS). Even if I were to conclude that there is a shortfall in the 5YHLS as suggested by the appellant, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
16. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission to be determined in accordance with the development plan, unless material considerations, including the Framework, indicate otherwise. The proposal would conflict with the development plan when read as a whole and there are no other considerations that outweigh that identified conflict.

Conclusion

17. For the reasons above, the appeal is dismissed.

S D Castle

INSPECTOR

Application No: 31/21/0022/T

Address: 40 NEWLANDS ROAD, RUISHTON, TAUNTON, TA3 5JZ

Description: Application to fell one Oak tree included in Taunton Deane Borough (Ruishton No.1) Tree Preservation Order 2008 at 40 Newlands Road, Ruishton (TD1051)

Application Decision: Committee Decision

Appeal Decision: Refused



Appeal Decision

Site visit made on 19 April 2023 by **Nick Davies BSc(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9 May 2023

Appeal Ref: APP/TPO/W3330/9037 40 Newlands Road, Ruishton, Taunton TA3 5JZ

- The appeal is made under regulation 19 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 against a refusal to grant consent to undertake work to a tree protected by a Tree Preservation Order.
- The appeal is made by Ruth James against the decision of Somerset West and Taunton Council.
- The application Ref: 31/21/0022/T, dated 3 December 2021, was refused by notice dated 8 February 2022.
- The work proposed is T1 Oak - Fell.
- The relevant Tree Preservation Order (TPO) is the Somerset West and Taunton (Ruishton No.1) Tree Preservation Order 2022 (SWT54), which was confirmed on 15 September 2022.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The decision to refuse consent was made by Somerset West and Taunton Council, which ceased to exist on 1 April 2023, following a merger with Mendip, Sedgemoor, and South Somerset District Councils, and Somerset County Council, to form the new Somerset Council.

3. The relevant TPO at the time the Council made its decision was the Taunton Deane Borough (Ruishton No. 1) Tree Preservation Order (2008) (PD22/870/TD1051). A new Order was made and confirmed during the appeal, and as this is the one that applies at the time of my decision, I have included it in the banner heading.

Main Issues

4. The main issues are the effect of the proposed felling of the tree on the character and appearance of the area; and whether sufficient justification has been demonstrated for the proposed felling.

Reasons

5. The appeal tree lies between the rear garden boundary fences of 34-40 Newlands Road and 17-20 Coronation Close. It is a large, mature oak tree, growing in an area that is predominantly residential, although there is a primary school on the opposite side of Newlands Road. The proposal is to fell the tree to ground level.
6. The site lies in a large area of houses, which are largely terraced or semidetached. They are set back from the road behind partially enclosed front gardens that are mainly given over to car-parking. Consequently, there is little in the way of mature planting in the front gardens. There are some large trees at the entrance to the school opposite, and along its roadside boundary. However, this is not an area that benefits from a significant degree of mature tree cover, so it is the rather unremarkable buildings that are visually predominant.
7. Although the tree is set behind houses on all four sides, its impressive scale means that it is widely visible from public viewpoints. I saw that it was clearly visible from the bend in the road at Newlands Grove, approximately 230 metres to the north. It is seen in the gaps between houses at various points around Newlands Road and Crescent, including between 10d and 11 Newlands Crescent, where its large, symmetrical rounded canopy is a notable feature in the street scene, softening the form of the buildings in front. From the stretch of Newlands Road to the east, it provides a green backdrop above the rooftops of the terraced houses. It is also prominent from the footpath running along the edge of the field to the south, where its entire crown can be appreciated.
8. The tree is also an important feature from the junction of Bushy Cross Lane and Coronation Close to the west. From here, it is seen almost in its entirety between the houses at the end of the cul de sac. It makes a striking focal point that terminates the views down this long straight road. It is, therefore, visible from a wide area, and from all directions, and it makes a significant contribution to the visual amenity of the locality. Its removal would result in the loss of a notable feature in the street scene, along with its softening impact on the built environment, and its role as a visual focal point.
9. The appellant has indicated a willingness to plant several smaller trees along the boundary. However, these would take many years to reach maturity, and until then would be largely concealed behind the frontage buildings, so would not make the same contribution to the visual amenity of the wider area as the existing tree. In a locality which already has relatively sparse tree cover, the felling of the oak would, therefore, result in substantial harm to the character and appearance of the area. Thus, any reasons given to justify its removal need to be compelling. It is to those reasons which I now turn.

10. The tree has recently shed a large limb, which was still loosely attached to the trunk at the time of my visit. As the tree overhangs the rear gardens of several houses, this has, understandably led to concerns regarding its stability and the potential for similar occurrences in the future. However, following the loss of the limb, an inspection, including Resistograph measurements, revealed no significant decay in the wound, or at the base of the tree. A potential crack was found in a low limb that overhung the garden of 40 Newlands Road, and I saw that this branch has been shortened to remove the risk. Although I have not been provided with a copy of the report, the evidence before me indicates that the failure of the limb was likely to be a result of "summer branch drop", rather than any inherent structural instability or weakness in the tree.
11. There is conflicting evidence regarding the consultant's advice at the time of inspection. The appellant contends that the advice was that the tree is outgrowing its structural integrity. However, the Council states it was advised that removal of the tree was unnecessary, and that careful crown reduction would be appropriate to manage the risk. As, in both cases, the advice was only given verbally and not committed in writing, I am unable to give it any weight. Consequently, there is no expert advice before me to indicate that there is any foreseeable risk of future failure of the tree, or the shedding of any more branches. Furthermore, I saw no obvious defects at the time of my visit, and little signs of any dead wood in the crown, which appears to be in good health and vigour.
12. I am mindful of the appellant's suggestion that the only way to completely remove the risk would be to fell the tree. However, such drastic action would not be justified in the absence of any evidence of the likelihood of failure. The same argument could be made for any mature tree in a residential environment, resulting in a gradual erosion of tree cover that would be harmful to visual amenity. The evidence indicates that the Council would be sympathetic to the reduction of the crown by 3-4 metres to reduce the sail area of the tree and the end weight of the branches. Such lesser works would result in substantially less harm to the character and appearance of the area. Consequently, there appears to be a reasonable alternative to felling the tree that would reduce any risk that it poses.
13. It is contended that the tree is disproportionate to its residential setting and that it impacts on the reasonable enjoyment of the surrounding properties. However, while it is undoubtedly a large specimen, the houses on either side have long rear gardens. Consequently, the canopy of the tree is a significant distance away from any of the dwellings, so it does not result in an unacceptable loss of light or outlook from any windows. Furthermore, all of the surrounding gardens have large areas that are outside the canopy spread of the tree, where normal outdoor activities would not be compromised by its presence. I saw that all of the adjacent gardens had grass and plant growth right up to their rear boundary fences, indicating that, even under the canopy, there is not continual dense shade. Overall, I do not find that the reasonable enjoyment of neighbouring properties is affected by the tree to such a degree that its felling would be justified.
14. It is likely that the surrounding houses pre-date the original TPO. However, it would appear that the layout was a response to the presence of the tree and has enabled its retention to date. The Council's evidence that, under current guidance⁴, the houses were constructed far enough away from the trees has not been challenged. Consequently, and in view of my findings regarding the impact of the tree on the reasonable enjoyment of the surrounding properties, I conclude that the houses were not built too close to the tree, and sufficient space was provided to allow for the successful retention of the tree in the long-term.

⁴ BS5837:2012 Trees in relation to design, demolition and construction - Recommendations

15. The tree is growing in an area outside the enclosed rear gardens of the adjacent houses, on a strip of land that allows rear access to Nos 36-40 Newlands Road. The relative locations of the tree and the boundary fences means that there is less than a metre access width to the rear gardens of Nos 36 and 38. Bearing in mind the slow rate at which the girth of a mature tree increases, the narrowness of the access will not have altered appreciably in recent years. Indeed, the location of the tree was known when these boundary features were installed in the relatively recent past. The limitation on access width is not therefore a new phenomenon, and it could readily be remedied by a minor realignment of the rear boundary fences. Consequently, the currently limited width of the rear access is not an issue that would justify the felling of the tree.
16. With any application to fell a protected tree, a balancing exercise needs to be undertaken. The essential need for the works applied for must be weighed against the resultant loss to the amenity of the area. In this case, the felling of the tree would result in substantial harm to the character and appearance of the area, and, in my judgement, insufficient justification has been demonstrated for its proposed felling.

Conclusion

17. For the reasons given above, I conclude that the appeal should be dismissed.

Nick Davies INSPECTOR

Application No: 24/21/0059

Address: THE NEW HOUSE, NEWPORT MILLS FARM, NEWPORT MILLS LANE, NORTH CURRY, TAUNTON, TA3 6DJ

Description: Removal of Condition No. 03 (agricultural occupancy) of application 24/87/0010 at New House, Mill Farm, Wrantage

Application Decision: Delegated Decision

Appeal Decision: Refused



Appeal Decision

Site visit made on 23 May 2023 by **Jonathan Edwards BSc(Hons) DipTP**

MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 June 2023

Appeal Ref: APP/W3330/W/22/3296806 New House, Newport Mills Farm, Newport, Wrantage, Taunton, Somerset TA3 6DJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Sarah Jones against the decision of Somerset West and Taunton Council.
- The application Ref 24/21/0059, dated 2 December 2021, was refused by notice dated 28 January 2022.
- The application sought planning permission for erection of agricultural worker's chalet bungalow without complying with a condition attached to planning permission Ref 24/87/010, stated on the application form as being dated 2 July 1987.
- The condition in dispute is No 03 which states that: The occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture, as defined in Section 290(1) of the Town and Country Planning Act 1971, or in forestry or a dependent of such a person residing with him or her or a widow or widower of such a person.
- The reason given for the condition is: The site is in an area where the Local Planning Authority's policy is to restrict new residential development to that required to meet the needs of agriculture or forestry.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application leading to this appeal was submitted by Mr Thomas Watson. He has since died. Evidence has been submitted that indicates the legal authority to proceed with the appeal has been passed to Sarah Jones. I have used this name in the banner heading.
3. The appellant has submitted a grounds of appeal document dated April 2022 (hereafter referred to as the appellant's original statement). An updated version of this document dated February 2023 as well as a marketing report have also been submitted. These have since been publicised and the Council and interested parties have had an opportunity to provide comments. I am satisfied no injustice would be caused by having regard to the latest documents.
4. I have been provided with a copy of a certificate of lawful use or development issued by the Council under reference number 24/15/0017/LE (hereafter referred to as the certificate of lawfulness). This is a material factor in my assessment.

Background and Main Issue

5. The disputed condition limits the occupancy of New House. In effect, this appeal seeks to remove the condition to allow unrestricted occupancy. The main issues are whether the condition is necessary, reasonable and enforceable in light of the policies of the Taunton Deane Borough Council Core Strategy 2012 (CS) and the Taunton Deane Site Allocations and Development Management Plan 2016 (SADMP) as well as the certificate of lawfulness.

Reasons

6. The appeal property is a 3 bedroom dwelling with outbuildings in its garden. It lies in a cluster of development including agricultural buildings as well as a small number of dwellings. Fields lie in the surrounding area and so there is a strong agricultural feel to the locality.
7. CS Policy SP1 looks to direct development to the most accessible locations. Proposals outside of identified settlements are to be treated as being in the open countryside. Under CS policy CP1, development should be located to reduce the need to travel. New House is not in a settlement defined in the CS and it is away from facilities to serve the day to day needs of its occupants. As such, it is in a location that normally would be deemed unsuitable for housing.
8. The original planning permission was granted on the basis the dwelling would accommodate an agricultural worker employed in the locality. Under the terms of SADMP policy H1a, housing is permissible to support rural activities subject to various criteria. This policy states that occupancy conditions will be applied to new dwellings. The disputed condition serves a purpose in ensuring that New House complies with this stipulation.
9. SADMP policy H1a sets out the circumstances when the removal of occupancy conditions will be permitted. There is no agricultural land associated with New House and so the dwelling is not needed to accommodate workers employed at the appeal property. Even so, the disputed condition refers to a person working in the locality, not just at the appeal site. Also, policy H1a requires there to be no demand for residences to accommodate agricultural workers from the local area before an occupancy condition is removed. Evidence is required that shows the dwelling cannot be sold or let at a price which reflects the occupancy restriction.

10. A marketing campaign for New House started in March 2022 with a £450,000 guide sale price. The updated statement claims that this price reflects the agricultural tie and so, in line with typical devaluation effects associated with occupancy conditions, it is 30% lower than the full market value. However, this contradicts the comment at paragraph 7 of the appellant's original statement that the £450,000 sale price reflects the full market value of the dwelling. Moreover, the appellant's evidence fails to explain how the guide price has been established and how it compares with the sale price of similar properties in the area. The Council claims there are other nearby dwellings for sale and of a similar size to New House with a lower asking price, despite not being subject to an agricultural tie. There is no evidence on local property values and sale prices that contradicts this claim.
11. In December 2022 the guide price for New House was reduced to £425,000. I am advised that there have been several enquiries but these have not resulted in any firm offers for the property. Nonetheless, there is no convincing evidence that demonstrates £425,000 is an appropriate guide price, particularly when considering the devaluation effect of the agricultural occupancy condition. Also, there is no evidence to indicate the property has been made available for let with rent levels that reflect the occupancy restriction. As such, the provisions of SADMP policy H1a on applications to remove occupancy conditions have not been complied with.
12. Furthermore, the appeal property lies in an area where I would envisage people are employed in agriculture. Therefore, it is reasonable to expect a local demand for agricultural workers dwellings, especially in the absence of an appropriate marketing campaign that shows otherwise. Accordingly, the disputed condition is necessary to ensure the appeal property continues to meet a local need for agricultural workers accommodation.
13. The certificate of lawfulness determines that a breach of the disputed condition was lawful on 17 June 2015. However, this determination only relates to the situation on the specified date. Since then, New House has been left empty from the time the former occupier died until the current day. The appellant accepts that this period of vacancy may constitute a cessation of the breach of the disputed condition. If so, any new breach of the condition would now be unlawful and so it is unlikely that non-compliant occupation would occur.
14. In light of the particular circumstances of this case and the appellant's comments, any fallback position in terms of occupation of New House that relies on the presence of the certificate of lawfulness attracts limited weight in my considerations. As such, I consider the disputed condition is enforceable, despite the certificate of lawfulness. The specific circumstances with this current appeal are not replicated in any of the other appeal decisions referred to by the appellant. Therefore, they fail to influence my overall conclusion.

Conclusion

15. The disputed condition is necessary as New House is in a location that is normally inappropriate for residences and to ensure it accords with development plan policies on rural workers dwellings. Also, insufficient evidence has been provided to show the dwelling is no longer needed to serve the needs of agricultural or forestry workers employed in the locality. In these regards, I conclude the development without the disputed condition would be contrary to CS policies SP1 and CP1 and SADMP policy H1a. The certificate of lawfulness does not result in the disputed condition being unenforceable. The condition is therefore necessary, reasonable and enforceable. As such, I conclude the appeal should fail.

Jonathan Edwards

INSPECTOR

Application No: 43/22/0047/A

Address: LAND IMMEDIATELY TO THE NORTH WEST OF THE
NYNEHEAD ROAD/TAUNTON ROAD/TORRES VEDRAS
DRIVE ROUNDABOUT, WELLINGTON

Description: Display of 1 No. internally illuminated flagpole, 2 No. internally illuminated fascia signs, 3 No. externally illuminated large wall mounted billboards, 2 No. externally illuminated small wall mounted, 1 No. non-illuminated trolley bay sign and 1 No. internally illuminated freestanding poster display unit on land immediately to the north west of the Nynehead Road/Taunton Road/Torres Vedras Roundabout, Wellington

Application Decision: Parish Delegation

Appeal Decision: Approved



Appeal Decision

Site visit made on 26 March 2023 by **Rebecca McAndrew, BA Hons, MSc,**

MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th May 2023

Appeal Ref: APP/W3330/Z/22/3310390 Land immediately to the north-west of the Nynehead Road/Taunton Road/Torres Vedras Roundabout, Wellington

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
- The appeal is made by Miss Victoria George-Taylor, Lidl Great Britain Ltd, against the decision of Somerset West and Taunton Council.
- The application Ref 43/22/0047/A, dated 7 April 2022, was refused by notice dated 13 September 2022.
- The advertisement proposed is a 1 x 6m flagpole style sign.

Decision

1. The appeal is allowed and express consent is granted for the display of the advertisement as applied for. The consent is for five years from the date of this decision and is subject to the five standard conditions set out in the Regulations and the following additional conditions:
 - i. The intensity of the illumination of the flagpole style sign permitted by this consent shall be no greater than 440 candela per square metre.
 - ii. Notwithstanding submitted information, the sign permitted by this consent shall only be illuminated during the opening hours of the premises to which it relates.

Procedural Matters

2. The appeal arises from the Council's refusal of a flagpole style sign as part of a split decision in which the Council also granted advertisement consent for other signs at the recently developed and now open Lidl store. I have therefore used the description of proposed development in relation to the single sign included on the Council's Decision Notice, rather than the application form, as this defines the part of the proposal refused consent.
3. I have used the appeal site address included on both the Council's Decision Notice and the Appeal Form in considering this appeal as it is more comprehensive than that included on the planning application form.
4. The position of the proposed flagpole style sign was amended during the course of the planning application. Plans have been submitted as part of the appeal which show both the original and amended locations of the proposed sign. As such, I have considered the appeal on the basis of amended Drawing AD50 Rev C.

Main Issue

5. The Council raised no objection in relation to public safety, subject to conditions. From the information before me, I have no reason to disagree with those findings. Consequently, the main issue is the effect of the proposed flagpole style sign on the visual amenities of the area.

Reasons

6. The proposed internally illuminated flagpole sign is a standard type of advertisement and is similar in design and scale to advertisements which can be found at many supermarkets across the country. It would provide a useful way marker for visitors to the supermarket and improve the legibility of the site.
7. The proposed internally illuminated flagpole sign would sit in a logical position in a landscaped area within the Lidl store site boundary, but adjacent to the entrance route to the supermarket off the roundabout/B3187. Whilst the sign would be visible on this main route into and out of Wellington, it would be set back from the highway and would be viewed in the context of the supermarket site. Moreover, this would be the only freestanding sign located away from the main building so would not give rise to visual clutter.
8. In view of the above, the flagpole sign would not appear overly intrusive or excessive in the streetscene. Consequently, it would not unduly harm the visual amenities of the appeal site or the area, including this main route into Wellington.

9. The proposal therefore meets the requirements of Paragraph 136 of the National Planning Policy Framework and Policies D2 and D3 of the Taunton Deane Adopted Site Allocations and Development Management Plan 2016. Taken together, these seek to protect the character and appearance of the area, including this route into Wellington, from poorly sited and designed advertisements.

Other matters

10. I note concerns regarding potential for anti-social behaviour in the supermarket car park. However, the application before me relates solely to the proposed flagpole style sign which would be unlikely to promote such a problem. Therefore, I attach limited weight to this matter in considering this appeal.

Conditions

11. I impose two conditions in addition to the five standard conditions. Conditions to limit the intensity of the illumination and to restrict the times when the sign is illuminated will safeguard the amenities of the area, including the living conditions of nearby residents.

Conclusion

12. For the reasons given above, and having regard to all other matters raised, the appeal is allowed.

Rebecca McAndrew

INSPECTOR

Application No: 3/21/21/025

Address: Land at Beacon Road, Minehead, Somerset TA24 5SE

Description: Application for Outline Planning Permission, with all matters reserved, for the erection of up to 12 No. dwellings

Application Decision: Chair Decision

Appeal Decision: Refused



Appeal Decision

Site visit made on 28 March 2023 **by J J Evans BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25 May 2023

Appeal Ref: APP/W3330/W/22/3295972

Land at Beacon Road, Minehead, Somerset TA24 5SE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr J Way against the decision of Somerset West and Taunton Council.
- The application Ref 3/21/21/025, dated 24 February 2021, was refused by notice dated 26 November 2021.
- The development proposed is the erection of up to 12 new houses on land south of Beacon Road, Minehead.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted as an outline, with all matters reserved for future consideration. However, the drawings submitted with the application show details of access and layout. The Council have considered these matters as being illustrative, albeit no such annotation was indicated on the drawings. The appellant has confirmed that all matters are reserved, with access details shown to demonstrate that they could be provided.
3. Clevelands and St Michael's Church are listed buildings (grade II and II* respectively), within the Higher Town Conservation Area. As required by Sections 66 and 72 of the Planning (Listed

Buildings and Conservation Areas) Act 1990 (the Act) I have paid special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses, and of preserving or enhancing the character or appearance of the conservation area.

4. The listing description for Clevelands refers to the property name as Cleveland, and this is the property name given on the ordnance survey plans that have been provided by the parties for the appeal. However, within the evidence of the parties the property is known as Clevelands, and this was consistent with what I saw at my site visit. I am satisfied that the two properties are the same, and have referred to the name Clevelands in the appeal decision.
5. The appeal site is within 0.5km of the Exmoor Heaths Special Area of Conservation. The Conservation of Habitats and Species Regulations (2017)(the Regulations) require the decision maker to undertake an Appropriate Assessment where there are likely to be significant effects, both directly and indirectly, from the proposal, either alone or in combination with other schemes, and this duty falls to me as the competent authority. I shall return to this matter below.

Main Issues

6. The main issues in this case are:

- firstly, the effect of the proposal upon the character and appearance of the area, having particular regard to the effect upon the settings of nearby listed buildings, upon the Higher Town Conservation Area, and upon protected trees;
- secondly, the impact of the proposal upon protected species within the area;
- thirdly, whether the proposal would make adequate provision for surface water drainage; and
- fourthly, whether the proposal would make adequate provision for securing any additional need arising from the development, having particular regard to affordable housing.

Reasons

Character and Appearance

7. The appeal site comprises an area of land upon a steeply sloping hillside. Beacon Road bounds the northern edge of the site, beyond which is a loose-knit row of detached houses positioned within generous gardens. The site is within the Higher Town Conservation Area, a designation which acknowledges the importance of the relationship between the town and the surrounding landscape. North Hill forms an impressive green backdrop to the town, and given its steep sides and proximity to the coast, it forms an imposing landscape feature that can be seen from many miles away. The presence of numerous tall trees, many of which are evergreen, creates a green top to the hill. Tree cover extends down the hillside, including within residential gardens. As such the verdant nature of the hill is a distinct feature of the conservation area, particularly as it makes a striking contrast with the dense urban grain found upon the lower slopes of the hill.
8. There are a variety of tall trees in the appeal site, as well as young trees and saplings, including self-seeded specimens. The long row of mostly evergreen trees that delineates Beacon Road, are a distinctive linear group within the landscape. Not only do they contribute to the verdant appearance of the hill, but they also serve to screen the houses to the northern side of the road.

The variety of species and the wide age ranges of trees within the site is an integral element of the green continuity of the hillside, and they make a positive contribution to the conservation area.

9. Large, detached houses are another feature of the area, many of which derive from the extension of the town during the Victorian and Edwardian periods. The high quality forms of the houses with their rich period detailing reflects the historic development of the town as a coastal resort. As many of these houses are positioned within generous plots, there are mature trees growing amongst them, thereby maintaining the verdant nature of the upper section of the hillside. These features are all part of the significance of the conservation area.
10. Clevelands is one of the large houses that positively contributes towards the character and appearance of the conservation area. Positioned within generous gardens, this villa has an attractive decorative domestic revival style, which is part of the special interest of this listed building. This, and its large size, hipped roofs and mock timber framing make it a distinctive building, and one that can be seen from long distances away. The generous gardens to the property set it apart from the other buildings, and as it is just below the treed hilltop, given its size and position this listed building is a landmark within the town. Not only does the house reflect the historic development of the town over time, but its dominating prominence is part of the significance of this listed building.
11. In addition to Clevelands, another focal point on the hillside is the church. This parish church has a commanding presence within the town, reflecting its social and historic importance. The elevated position of the church, and its large size makes it visible throughout the town, including from the A39 and from along the Esplanade. This, when combined with the imposing height of the tower makes it the focal building within the area, and this is part of the special interest of this listed building. The prominence of the church is enhanced by it being experienced against the treed hilltop. Given its position and its social importance within the town, the church is a landmark building, and this importance is part of the significance of this listed building.
12. Although the proposed houses would be higher up the hill than either Clevelands or the church, they would nevertheless be a harmfully intrusive group within the settings of these listed buildings, and the dwellings would draw the eye. Part of the prominence of the listed buildings is that they are set against a largely uninterrupted verdant backdrop. Whilst acknowledging that all matters are reserved, the provision of twelve dwellings in such a location would be conspicuously noticeable given their position high up the hillside.
13. It might be the case that the houses could be arranged in groups and be designed to minimise their visual impact, such as being two storey, having green roofs, and timber walling. From some views lower down the hillside and from the old harbour area the houses would not be visible. Notwithstanding this, the site is plainly visible from a number of other views within and beyond the town, and the hill is such a prominent feature in the area that such measures would not mitigate the essential change in the appearance of the site. The undeveloped verdant nature of the appeal site and the contribution it makes to the continuous green appearance of the hillside would be lost through the provision of not only the dwellings, but through the associated ancillary domestic uses, such as garages, multiple gardens, service roads and accesses.
14. The steep nature of the hillside and the narrow linear shape of the site would constrain any development. Even if the houses were grouped together to reduce their footprints, a characteristic of the area is the individual, detached nature of most of the dwellings, and any grouping of similar styled and sized houses in such a prominent location would be an incongruous

addition in such a context. The provision of up to twelve homes on such a steep hillside in an elevated position would be a conspicuous and distracting addition that would erode the landmark dominance of the listed buildings. Furthermore, the houses would harmfully interrupt the verdant continuity and dominance of the hillside and the contribution it makes to the conservation area.

15. The intrusive nature of the development would be exaggerated by the need to undertake ground and levelling works. Even if the dwellings could be designed to accommodate the steep slope, the provision of service roads and multiple accesses would result in ground works that would necessitate the removal of both trees and understorey vegetation. It is the size of the trees and their abundance that gives a sylvan, cohesive identity to the hilltop. The trees within the appeal site as well as those on the site boundaries are integral to the character and appearance of the conservation area, as well as maintaining the green backdrop that sets off the importance of the church and Clevelands.
16. The National Planning Policy Framework (the Framework) emphasises the importance of trees and the contribution they make to an area, and BS5837 – Trees in Relation to Design, Demolition and Construction makes some allowance for disturbance to the roots and crowns of trees during construction works. Trees self-optimize with regard to their location, and in this instance the proposed protection measures have been tightly drawn around the trees. The Monterey Pines and Holm Oaks along Beacon Road are imposing trees with broad canopies. The provision of vehicular accesses would impact both upon the roots and crowns of these trees, but little information has been provided to demonstrate that such works would not be detrimental to their health and wellbeing. The size and age of these trees is such that they would have extensive root spreads, and neither this nor the impact of the slope upon these trees has been assessed with regard to root protection areas.
17. The presence of protected trees, including those protected through being within a conservation area, should inform development. This would be particularly pertinent in this case due to the number of trees, and the positive contribution they make to the conservation area, and to the biodiversity value of the locality. Even self-seeded trees and those of less than perfect form contribute. A survey of the trees along Beacon Road has been provided, but the tree protection plan does not accurately portray the position of the trees nor their canopy spreads, and little detail has been provided regarding the impact of the development upon either the surveyed trees or any of the others within or near the site. Whilst acknowledging that all matters are reserved, the lack of information before me relating to the direct and indirect impact of the development upon the trees is such that I am not convinced conditions would be sufficient to protect the trees during construction, nor that the development would ensure their long-term health and vitality, and thereby the contribution they make to biodiversity and the character and appearance of the conservation area. Additional planting is proposed to compensate for those trees that would be felled, but the impact of any replacement trees would take many years to make a similar contribution to the area, if ever.
18. Those trees that would be retained would impact on the living conditions of future occupiers, as they would dominate the homes and their gardens, particularly so as several are evergreens. It may be the case that some people would wish to live in a woodland setting, but this cannot be guaranteed for the lifetime of the development. The trees would impact on outlook and light levels, as well as create a sense of enclosure. The close proximity of the trees to any homes, gardens and access roads would require regular and ongoing management and maintenance, and in the case of the Monterey Pines this would include regular cone removal. Having regard to this

and the attractive panoramic views that would be available to future occupiers, there would be pressure to remove trees, with the consequential harm to the conservation area.

19. The appellant has drawn my attention to the permission for two dwellings at Beacon Road that are within the conservation area, pointing out that the development was considered acceptable in terms of policy issues. However, these houses are set well back from the road behind generous front gardens, and are away from the steep slope of the hillside on a levelled area. This separation retains the verdant nature of the hillside, and thereby significantly reduces the impact these houses have. Given these differences, these houses do not form a binding precedent for allowing the appeal.
20. The Framework requires 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. In this case the proposal would lead to less than substantial harm given the size of the development when compared to that of the conservation area and that of the settings of the listed buildings. Nevertheless, these harms carry considerable weight, and the Framework requires that these harms must be weighed against the public benefits of the proposal.
21. The provision of five affordable homes would be a significant public benefit, and such housing would assist in meeting the needs of the local community. Future occupiers would make a small contribution to the local economy, including supporting local services, and there would be a time-limited economic benefit arising from the construction of the housing. Balanced against this is that the affordable housing has not been secured and this significantly tempers the weight attributable to this public benefit. Given this, the public benefit arising from the scheme would not outweigh the significant harm that would arise to the conservation area and to the settings of the listed buildings.
22. For these reasons the proposal would have a significant and unacceptable impact upon the character and appearance of the area, and the suggested conditions would not mitigate this harm. The harms to the conservation area and to the settings of nearby listed buildings would not be outweighed by public benefits, and consequently the scheme would fail to accord with the Framework and the Act. The proposal would be contrary to Policies NH1, NH2 and NH6, of the West Somerset Local Plan (2016) (LP). These policies require, amongst other things, that development should sustain and/or enhance historic heritage, particularly those elements that contribute to an area's distinctive character and sense of place, that development in a conservation area should preserve or enhance its character and appearance, and that biodiversity and ecological networks are protected and enhanced.

Protected Species and Habitats

23. The site is approximately 0.5km away from the Exmoor Heaths Special Area of Conservation (SAC), and the appellant's Preliminary Ecological Survey and Protected Species Survey Report (dated September 2021) (PEA), refers to the ecological potential of the site for a variety of species, including breeding and feeding opportunities for birds and mammals. Local residents and the Council have referred to the presence of protected species in the area, including bats. In addition, the proximity of the appeal site to the SAC is such that future occupiers would be likely to impact upon the site, both directly and indirectly, including through increased recreational pressures. Having regard to this, an assessment of the impact of the development upon the integrity of the SAC and upon any protected species in the area would be necessary. I shall return to the matter of the impact of the proposal upon the integrity of the SAC later.

24. The impact of the proposal on protected species and habitats has not been assessed in any detail. The scheme would require the felling of trees and the removal of understorey vegetation, all of which could impact upon any protected species living within, near or using the site for breeding and foraging, including bats. The survey for the PEA was restricted to the accessible parts of the site, and consequently it could be the case that protected species are on the site or use it. A bat survey has been undertaken, but it occurred in February, which is a time of year when bat activity would be very limited. Having regard to these limitations, including that the PEA recommends a further bat survey, the impact of the proposal on protected species cannot be assessed with any certainty.
25. The presence, use or absence of protected species is a matter that should be assessed so as to inform the nature of any scheme. Circular 06/2005 – Biodiversity and Geological Conservation (the Circular) makes it clear that the presence of a protected species is a material consideration when development is being considered. Consequently, it is essential that the presence or otherwise of protected species and the extent that they may be affected by the development is established before planning permission is granted so as to ensure that all relevant material considerations have been addressed. The Circular requires that surveys should only be conditioned in exceptional circumstances. Having regard to the evidence before me, including the proximity of the appeal site to protected habitat sites, a condition requiring a survey would not be acceptable. Furthermore, any measures to increase the biodiversity value of the site would also need to be informed by an up-to-date ecology survey.
26. I have noted the comments of the previous Inspector (appeal ref: APP/W3330/W/20/3257876) and the precautionary actions and work recommendations within the PEA. However, the requirements of the Framework are that the planning system should contribute to and enhance the natural environment, and minimise impacts upon biodiversity. This should be integral to informing the nature of any proposal. In this case the scheme has failed to demonstrate whether the development would have an impact upon protected species and habitats, nor has it been demonstrated that any impacts could be minimised and successfully mitigated. The proposal would be contrary to the requirements of LP Policy NH6, which requires amongst other things, that development should not generate an adverse impact on biodiversity, with measures being taken to protect or mitigate adverse impacts, and to ensure a gain in biodiversity where possible, thereby reflecting objectives of the Framework.

Drainage

27. The scheme proposes a variety of drainage measures, including keeping hard surfaces to a minimum, green roofs, and rainwater harvesting. The appellant considers that suitable sustainable water drainage systems can be provided within the site, including through a proposed infiltration basin.
28. Wessex Water have referred to surface water drainage being rectified as the site progresses. However, the circumstances of this case are such that the matter of drainage would need to be addressed rather than left as a conditional requirement so as to ensure that development could take place without water discharging from the site into other land. This would be particularly necessary given the steep nature of the hillside, and I note that local residents have referred to there already being an existing runoff problem into adjoining land. The removal of trees and vegetation within the site would impact upon infiltration levels, and the concern in this situation would be flooding and ground instability. This is an issue identified in the appellant's Sustainable Drainage Assessment (June 2021) as it is recommended that infiltration capacity needs to be investigated, as well as advising that discharging to a nearby water feature would require the

relevant owner(s) consent. In the absence of such detail, and having regard to the nature of the site and the consequential risk to people and property, requiring such detail through conditions provides no certainty that these matters could be satisfactorily resolved.

29. In addition, the Council have also identified other outstanding issues regarding the capacity to accommodate event-specific discharge rates, and that the alterations to the climate change allowances need to be considered. Furthermore, the response of Wessex Water to the appellant refers to a requirement for connection to sewers to occur where infiltration is not possible and that any alternatives have the agreement of all the relevant stakeholders.
30. There are a number of infiltration and drainage uncertainties arising from the proposal and it remains unclear as to whether they could be satisfactorily addressed. In light of these unresolved issues, conditions would not be reasonable. Nor would this uncertainty accord with the requirements of LP Policy CC6, which requires amongst other things, that development will only be permitted if adequate and environmentally acceptable measures are incorporated that provide suitable protection and mitigation both on-site and through displacement to adjoining land.

Affordable Housing

31. Minehead is an area of high demand for affordable housing. The provision of five affordable homes would help to meet some of this need, and would accord with the objectives of LP Policy SC4, which requires on-site provision for affordable housing on all sites of eleven or more dwellings. The appellant has agreed to enter into a legal agreement and would accept a condition in relation to this.
32. The appeal has not been supported by any completed and agreed legal agreement. Consequently, there is no mechanism to ensure that the affordable housing could be provided and maintained as such, including to ensure that occupancy criteria is defined and enforced, and that it remains affordable to first and subsequent occupiers.
33. As regards a condition, the Planning Practice Guidance advises that a negatively worded condition limiting the development that can occur until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. No exceptional circumstances have been put before me explaining why an obligation has not been provided, nor for the necessity of imposing such a condition.
34. As it stands, the scheme would not secure the required on-site affordable housing provision, and would fail to accord with the requirements of the above referenced LP Policy. It follows that any benefits accruing from the provision of these affordable homes is significantly tempered.

Other Matters

35. The Exmoor Heaths SAC are an extensive network of upland heaths, maritime cliffs and slopes that are nationally and internationally recognised and protected. These host priority habitats and species, including trees, plants, grasses, birds, and butterflies as well as other typical species of heaths, and sea cliffs. The close proximity of the site to protected habitat sites is such that the development and future occupiers would be likely to impact upon the SAC having a significant effect upon its integrity, both directly and indirectly. The Regulations require the decision maker to undertake an Appropriate Assessment where there are likely to be significant effects from the proposal, either alone or in combination with other schemes, and this duty falls to me as the competent authority. Had I reached a different conclusion on the main issues, it would have

been necessary for me to undertake an Appropriate Assessment and give further consideration to the likely effectiveness of mitigation and avoidance measures. However, as I am dismissing the appeal for other reasons this has not been necessary.

36. The appellant has referred to the Council's identification of the site within the Strategic Housing Land Availability Assessment (SHLAA) for ten dwellings, and that pre-application advice encouraged the appellant to submit an application. Whilst noting the identification of the site within the SHLAA, I am obliged to consider the scheme on the basis of the issues that it raises. Given the harms raised by the proposal, including the significant harms arising to designated heritage assets, the identification of the site within the SHLAA would not override these.
37. The appellant's concerns regarding the Council's handling of the application and pre-application, are procedural matters that fall to be pursued by other means separate from the appeal process and are not for me to consider.
38. Local residents have raised a number of matters, including loss of privacy, highway safety and construction traffic concerns, use of the site as a public space, the creation of a precedent, and that there have been numerous applications for development on the site. As regards the latter points, each application and appeal has to be considered on its merits, and the future or any alternative use of the site is not a matter for consideration at the appeal. Of the planning considerations raised, following my findings on the main issues, I have no need to consider them further.

Conclusion

39. For the above reasons the adverse impacts arising from the proposal would significantly and demonstrably outweigh the aforementioned benefits, and the suggested conditions would not overcome these substantial harms. The proposal would conflict with the development plan and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Thus, for the reasons given above and having considered all other matters raised, the appeal is dismissed.

J J Evans

INSPECTOR

Application No: 3/10/22/001

Address: The West Somerset Community College Farm, Old A39
Ellicombe, Dunster, TA24 6TR

Description: Erection of open sided timber shelter to provide shelter for animals and students (retention of works already undertaken)

Application Decision: Delegated Decision

Appeal Decision: Refused



Appeal Decision

Site visit made on 23 May 2023 by J J

Evans BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 June 2023

Appeal Ref: APP/W3330/W/22/3302867

The West Somerset Community College Farm, Old A39 Ellicombe, Dunster, Somerset TA24 6TR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Andrew Smith of Bridgwater Taunton College Trust against the decision of Somerset West and Taunton Council.
- The application Ref 3/10/22/001, dated 7 February 2022, was refused by notice dated 22 April 2022.
- The development is described as "the erection of an open sided timber shelter to provide weather shelter to animals and students. The structure is 9m long, 6m wide and is constructed using round timber posts, dug into the ground, with timber trusses and timber planks to provide a shelter".

Decision

1. The appeal is dismissed.

Preliminary Matters

2. It was apparent from my visit that the shelter had been erected. Notwithstanding this, I have determined the appeal on the basis of the submitted drawings, rather than what has occurred on site.

Main Issue

3. The main issue with this case is the effect of the shelter on the character and appearance of the area, including having regard to the effect upon the setting of Exmoor National Park.

Reasons

4. Positioned within a field currently laid to grass, the shelter is on a level site close to the field boundary along the old A39 road. Although near to this road the field is level, the land slopes uphill towards the south, with mixed native woodlands beyond. Fields surround the shelter, with the college farm buildings forming a distinct cluster to the northwest.
5. The striking landscape is a distinct feature of the area. Edging the expansive coastal plains are steep hills that in places are dissected by sharply incised valleys. Agricultural fields are concentrated on the level land and more gentler slopes, with a rich tapestry of woodlands on the hills forming a distinct verdant contrast to the managed fields. Although the appeal site is outside of the Exmoor National Park, the hills to the south are within it.
6. The shelter is an open sided timber structure with timber shingled roof and an earth floor. At the time of my inspection there was a table and a few large logs underneath, with a fire pit and more logs nearby. The hedgerow along the road showed evidence of historic management, although it had not been managed during the last season.
7. Even though the hedge has been allowed to grow, the height and size of the shelter is such that it is visible within the surrounding area, including from the nearby public right of way, from the A39, and from Marsh Lane. The roof in particular can be seen from long distances away, partly due to the height of the building but also because of its size and the fresh, bright colour of the shingles.
8. The timber will weather in colour over time, thereby softening its bright appearance. Despite this the isolated location of the shelter is such that it would remain a conspicuous building in an open setting. It is some distance away from the college buildings and is also set back from the hedgerow. Given this, it has a curiously isolated position with no legible functional agricultural role as would be expected in a countryside setting. The building could be used for teaching purposes, and it could also function as an animal shelter. However, as the shelter is set apart from other buildings, away from the field boundary, and also away from the field entrance, the shelter has an incongruously discordant position.
9. Furthermore, this incongruity is exaggerated by the form and style of the shelter. It does not have a functional, agricultural appearance, but is a high-quality timber structure with a considered form. Taken as a whole, the size of the shelter, its form, and its position, are such that it is a building that draws the eye.
10. The tall hedgerow and recent tree planting would provide some degree of screening, particularly when viewed from the A39 and from Marsh Lane. Nevertheless, the shelter would still be visible

from longer viewpoints, including from higher up the hillside. Moreover, landscaping cannot be relied upon to screen development for its lifetime.

11. The shelter is not within the National Park, but it is close to it upon the coastal plains that comprise a lowland setting to the striking topography of this designated landscape. The National Planning Policy Framework (the Framework) requires that great weight should be given to conserving and enhancing the landscape and scenic beauty in National Parks, and that development in their settings should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas. Whilst acknowledging the high-quality form and materials, in this case the shelter is an intrusive and curiously discordant structure within a managed agricultural landscape that would harmfully detract from the open lowland setting of the National Park.
12. For these reasons the shelter would unacceptably harm the character and appearance of the area, and the contribution it makes to the setting of the National Park. The suggested conditions would not overcome this fundamental harm. The proposal would fail to accord with objectives of the Framework, nor with those of Policies NH5, NH13 and NH14 of the West Somerset Local Plan (2016) (LP). These policies seek, amongst other things, that development is located and designed so as to minimise adverse impact on the quality and integrity of local landscapes, that which makes a positive contribution to the local environment, and that which conserves or enhances the setting of the National Park.
13. The appellant considers the shelter would accord with the objectives of LP Policies OC1 and EC7, as they seek amongst other things, to strengthen the range and quality of training opportunities. The use of the building as an animal shelter and teaching facility would accord with the objectives of these policies. Notwithstanding this, these benefits do not outweigh the significant harms that arise from the scheme.

Other Matters

14. The appellant did not realise that planning permission was needed for the shelter and has drawn my attention to the discussions that have occurred with the Council. However, I am obliged to determine the appeal on the basis of the evidence before me, and alternative schemes would be matters for the parties to consider outside of the appeal process.

Conclusion

15. The shelter unacceptably harms the character and appearance of the area and the setting of the National Park. The scheme would conflict with the Framework and also with the development plan when taken as a whole, and the adverse impacts significantly and demonstrably outweigh the benefits. Thus, for the reasons given above and having considered all other matters raised, the appeal is dismissed.

J J Evans

INSPECTOR

Application No: 3/37/22/002 & 3/37/21/032

Address: 32 South Road, Watchet, TA23 0HE

Description: Erection of 1 No. dwelling (resubmission of 3/37/21/032)

Application Decision: Delegated Decision

Appeal Decision: Refused



Appeal Decisions

Site visit made on 23 May 2023 **by J J Evans BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 June 2023

Appeal A Ref: APP/W3330/W/22/3306275 32 South Road, Watchet, Somerset TA23 0HE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr R Beaven & Mr N Roberts against the decision of Somerset West and Taunton Council.
- The application Ref 3/37/21/032, dated 17 December 2021, was refused by notice dated 4 March 2022.
- The development proposed is erection of a single dwelling.

Appeal B Ref: APP/W3330/W/22/3306276 32 South Road, Watchet, Somerset TA23 0HE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr R Beaven & Mr N Roberts against the decision of Somerset West and Taunton Council.
- The application Ref 3/37/22/002, dated 9 March 2022, was refused by notice dated 24 May 2022.
- The development proposed is erection of a single dwelling.

Decision

1. Appeal A: the appeal is dismissed.
2. Appeal B: the appeal is dismissed.

Preliminary Matters

3. As set out above, there are two appeals on the same site, one seeking planning permission for a house and the other for a bungalow. I have considered each appeal on its individual merits, although to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.

Main Issues

4. The main issues for both appeals are the effect of the proposals on the character and appearance of the area; and in addition with regard to the house, the effect upon the living conditions of nearby residents, having particular regard to outlook, light levels and shading.

Reasons

Character and Appearance

5. The appeals site is a gravelled area to the rear of 32 and 32A South Road (Nos 32 and 32A), that is currently used to provide off-road parking. These houses are at one end of a long, terraced row that fronts South Road. To the rear of this terrace is a residential estate that comprises similar ages and styles of terraced housing, and these houses have deep rear gardens within which there are a variety of sheds and garages. The repeated styles of these terraced houses, along with their generous rear gardens and their recurring set back from the road behind similar sized front gardens, gives a distinctive visual cohesion to the area. Nos 32 and 32A are part of the more mixed residential development that occurs to either side of South Road, but the long length of this terrace and the deep rear gardens of these houses contributes to the spacious separation that is a distinctive feature of the layout of the estate.
6. The proposed dwellings would be positioned within the plot so as to front Quantock Road. The modest size of the plot and its tapering shape would be such that both the house and the bungalow would be positioned very close to the public footway, and in the case of the latter, one corner of this dwelling would be so close that it would abut the footway. Such a proximity to the public realm would be harmfully discordant. The juxtaposition of the dwellings so close to the public footway would appear conspicuous in an area where the houses are set back behind similar sized, regularly shaped front gardens. A repeated, and distinct feature of the area is that the terraces and their front gardens create long lines that frame the public realm. Rather than respecting this character, the dwellings would interrupt this linear harmony, as well as having an intimidating and overbearing proximity to the public highway.
7. The dwellings would be surrounded by gardens and parking areas, but the narrow dimensions of the gardens would serve to exaggerate the overly cramped and constrained nature of the proposals. The contrived shapes of the gardens would appear as an afterthought following the positioning of the dwellings and associated parking provision.
8. These harms would be exaggerated by the detached nature of the dwellings. There are a few detached properties nearby, but they are not part of the estate, with the appeals site being surrounded by terraced housing. The incongruous nature of a detached dwelling in such a position, whether it be a house or bungalow, would be readily evident from the public realm, including from long distances away. Even the modest size and height of the proposed bungalow would appear conspicuously intrusive in such a context.

9. The rear gardens of Nos 32 and 32A have been separated from their parking space by fences, albeit they retain a visual and functional relationship to the houses they serve. As such the parking contributes to the characteristic spacious nature of the rear gardens. There are a variety of garages and outbuildings within the gardens, but these have a legible subservience of form and function to the houses, unlike the appeals proposals. No 32 and 32A would retain external garden space and parking, but the short depths of these gardens and the dominance of parking provision would serve to exaggerate the cramped appearance of the scheme.
10. Although of modest size both the bungalow and the house would erode the domestic subservience that characterises the rear of the terraces. Not only would the function of the plot change with the provision of a dwelling, but in doing so it would erode the spacious open separation that exists between the terraces. Both dwellings would stridently interrupt the clear divisions that exist between the public facades of the front of the terraces and their private, subservient rears.
11. It might be that the smaller gardens of the existing dwellings and of those proposed may be attractive to some future occupiers. Nevertheless, this does not outweigh the substantial harm that derives from the schemes to the character and appearance of the area. A requirement of the National Planning Policy Framework (the Framework) is the effective use of land and to ensure that developments are sympathetic to local character as well as adding to the overall quality of the area. For the reasons given above, neither the house nor bungalow would accord with these objectives.
12. Thus, the dwellings would unacceptably harm the character and appearance of the area, and the suggested conditions would not overcome this fundamental harm. The schemes would fail to comply with Policy NH13 of the West Somerset Local Plan (2016) (LP), which seeks amongst other things, the highest standard of design, which responds to the local context and distinctive character of an area.

Living Conditions

13. The size and shape of the plot is such that the house would be close to the boundaries and rear gardens of the surrounding properties. The appellants consider the proposals would be an efficient use of land, as well as providing an improved outlook for nearby residents. However, rather than having an open outlook from the rear facing rooms of No 32 and No 32A, these residents would look out onto the flank wall of a house. The house would also create a tall and long enclosure to much of the rear garden of 31 South Road (No 31).
14. Whilst private views are not of themselves a planning matter, in this instance the close proximity of the house would have an imposing dominance upon nearby residents, and particularly for the users of the garden of No 31. Residents would experience a degree of mutual overlooking given the tight grain of the terrace, but the house would intrusively and conspicuously erode the open nature of the back gardens. In such a context, the house would harmfully draw the eye, and would thereby dominate the outlook of nearby residents.
15. Moreover, the house would be to the south of the garden of No 31. Given its height, size and proximity, it would unacceptably impact upon light levels experienced by the occupiers of this property, particularly as it would cast shade throughout much of the day during sunny periods.
16. Thus, the house would result in unacceptable living conditions for nearby residents, and the suggested conditions would not ameliorate this harm. The scheme would conflict with LP Policy

NH13, which requires amongst other things, that development responds positively to its neighbours, thereby reflecting objectives of the Framework.

Other Matters

17. Local residents have raised a number of issues, including that the proposals would remove an unattractive use from the site, and that it would cause an increase in on-street parking. Land maintenance would be for the relevant owners to address, and of those concerns connected with the planning considerations of the proposal before me, following my findings on the main issues, I have no need to consider them further.

Planning Balance

18. The appellants consider the Council does not have a five year housing land supply, and that Paragraph 11 of the Framework is engaged, whereby planning permission should be granted unless the adverse impacts of the proposal significantly and demonstrably outweigh the benefits.

19. The provision of an additional dwelling would be a benefit arising from the scheme as it would contribute towards the supply of housing. The dwellings would be in a sustainable location, and would be energy efficient, thereby resulting in small environmental benefits.

20. Weighing against these benefits would be the significant environmental and social harms. The schemes would deliver an additional high-quality home, but in doing so would cause significant harm to the distinct character and appearance of the area. The house would also unacceptably harm the living conditions of nearby residents. The LP policy referred to above would be broadly consistent with the Framework, as the Framework also requires development to be sympathetic to local character, and to provide adequate living conditions for nearby residents.

21. Whilst a key aim of the Framework is to significantly boost the supply of housing, when read as a whole the Framework does not suggest this should happen at the expense of other considerations. Even if there is a shortfall in the five year housing land supply on the scale suggested by the appellants, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.

Conclusion

22. The dwellings would unacceptably harm the character and appearance of the area, and the house would unacceptably impact upon the living conditions of nearby residents. The schemes would conflict with the Framework and also with the development plan when taken as a whole, and the adverse impacts would significantly and demonstrably outweigh the benefits. Thus, for the reasons given above and having considered all other matters raised, the appeals are dismissed.

J J Evans

INSPECTOR

Application No: ECC/EN/22/00048

Address: Blue Anchor Hotel, Blue Anchor

Description: Development - Change of Use - Accommodation to the East side of the Hotel main structure (rear)

Appeal Decision: Other – Enforcement Notice Varied



Appeal Decision

Site visit made on 29 June 2023 by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 July 2023

Appeal Ref: APP/W3330/C/23/3316711 Blue Anchor Hotel, Blue Anchor, MINEHEAD, TA24 6JP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Cara Strom against an enforcement notice issued by Somerset West and Taunton Council.
- The notice, numbered ECC/EN/22/00048, was issued on 12 January 2023.
- The breach of planning control as alleged in the notice is a material change of use of part of the building on the land (which part is shown edged blue on the plan attached to the notice) from garage and storerooms in connection with the hotel to use as a residential dwelling.
- The requirements of the notice are to:
 - (a) Cease the use of that part of the building on the land (which part is shown in blue on the plan) as a dwelling house.
 - (b) Remove from the land all items, fixtures and fittings which facilitate the unauthorised use of part of the building on the land as a residential dwelling.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (e), (f), (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice is corrected and varied by:

the deletion of the words "shown edged blue" and the substitution of the words "shown edged and hatched in black" in the allegation:

the deletion of the words "shown blue" and the substitution of the words

"shown edged and hatched in black" in requirement (a);

the deletion of 6 months and the substitution of 12 months as the time for compliance; and

the substitution of the plan annexed to this decision for the plan attached to the enforcement notice.

2. Subject to the correction and variations, the appeal is dismissed and the enforcement notice is upheld.

Preliminary matter

3. The Council failed to attend the site visit. In the event I carried out an access required site visit with the appellant providing access around and within the building.
-

The site and relevant planning history

4. The plan attached to the notice identifies a large site by a red line incorporating The Blue Anchor Hotel and attached residential accommodation comprising six letting rooms, one holiday apartment and the owner's accommodation. The site also includes a car park, a small static caravan site, gardens and grounds.
5. Part of the site is subject to considerable coastal erosion and collapse and remedial works are currently in progress which are anticipated to be completed by September 2023. The contractors are currently using the public house as their temporary site office.
6. The plan identifies a blue area as part of the building used as a residential dwelling but it was evident at the site inspection that this failed to indicate accurately the area that the allegation should refer to, which is on two floors. The upper floor is at ground level and is accessible from the car park and contains a number of rooms in residential use. Two separate staircases lead to a basement level also converted to residential use. There are two internal connecting doors between the hotel and the extensive living accommodation.
7. The change of use of land to the south east of the car park was granted in June 2022 (3//26/21/022) for the siting of 6 static caravans for holiday let use but permission was refused for the installation of solar panels on the main building and static caravans along with panels in the garden area (3/26/22/013).

The Notice

8. The appellant under his ground (b) appeal appears to be arguing a case that the notice is a nullity because it fails to enable the appellant to understand the allegation because it is ambiguous and uncertain.
9. The appellant contends that the alleged breach has not occurred within the area identified by the local planning authority in the plan attached to the notice. The notice identifies the alleged breach to have occurred within part of the building outlined in blue. In this respect the appellant has submitted as Appendix B to the statement of case a first floor plan and a basement plan indicating grey lines showing the corrected area. I have a duty to ensure the notice is in order and this allows me to correct the plan where no injustice would be caused to the parties. As the Council has had the opportunity to respond to this aspect of the appellant's case but has

chosen not to do so, I am satisfied that no injustice would occur through correcting the notice to indicate more accurately the area to which the allegation applies.

10. Additionally, the appellant claims that if there is a residential use it does not consist of the creation of a separate dwelling house but can be more accurately described as an incidental and ancillary residential use to the identified planning unit consisting of a mixture to commercial and residential. However the planning unit is that shown outlined in red on the plan attached to the notice and that the primary use of the site is as a hotel. The allegation specifically attacks the material change of use of those parts of the hotel building from use as garage and storerooms to use as a residential dwelling.
11. It is further argued that the steps required are not clear. The appellant states that the facilities to be removed are not identified, and the plan attached to the notice is misleading. The appellant states that as a consequence, it is not possible to establish the areas of the planning unit subject to the requirements.

The requirements of a notice cannot be so vague and uncertain that the recipient does not know how to comply. However in this case the appellant has identified that part of the site that he believes the notice relates to and I have accepted this through my intention to correct the plan. The appellant acknowledges that that the garage has been converted to residential accommodation and that the basement rooms were related to the pub and included a skittle alley, which have also been converted to residential accommodation. With a variation to the wording of the requirements I am satisfied that the appellant will have no doubt about what is required to be done to remedy the breach of planning control, and that such a variation would not lead to any injustice to the parties.

12. A notice must be drafted to tell the recipient fairly what has been done wrong and what must be done to remedy it. However the notice must be profoundly defective in order to be found 'hopelessly ambiguous and uncertain' to be a nullity. This is not the case here.

The appeal on ground (e)

13. An appeal on this ground is that copies of the notice were not served correctly as required by s172.
14. The appellant claims that it was not expedient for the Council to take enforcement action under s172(1)(b) due to circumstances outside the control of the appellant relating to coastal erosion. The appellant has not been able to submit a planning application or submit an appeal on ground (a) as Policy NH9 of the Local Plan cannot be satisfied until after remedial works have taken place to rectify coastal erosion issues. The appellant advises that these works were scheduled to start in Spring 2022 although they have now started and are the responsibility of the new unitary Somerset Council. The appellant refers to a recent application on the same site for solar panels and static caravans which was refused for coastal erosion reasons and believes this confirms that any applications where the site is considered unstable will be refused.
15. In response the Council state that due to the amount of time that had elapsed with no planning application to regularise the use, they have deemed it appropriate to serve the notice, having taken into account the history of the site and coastal erosion.
16. However the question of the expediency of taking enforcement action is a matter for the Council. In any event, the appellant has misdirected his appeal on this ground. Ground (e) may be argued where a copy of the notice was not served on the owner/occupier of the land or any other person

having an interest in the land; where it was served more than 28 days after its date of issue (or less than 287 days before the date for taking effect); where the appellant was not served a correct copy of the notice; and, the mechanics of service set out in s329 were not followed. None of these circumstances are pleaded here.

17. The appeal on this ground fails.

The appeals on grounds (b) and (c)

18. An appeal on these grounds is that the matters alleged in the notice have not occurred (ground (b)) or if they have occurred, they do not constitute a breach of control as they are lawful ancillary uses within the planning unit (ground

(c)). The onus of proof involving appeals on legal grounds rests solely with the appellant and the level of proof is on the balance of probabilities.

19. The appellant claims that the appellant is not able to understand which areas are subject to the requirements of the notice as there are a number of storerooms located within the area identified on the plan. The appellant's own submitted plan purports to show the areas of the planning unit (over two floors) that they consider are used for residential purposes ancillary, and incidental to the lawful mixed use of the site for commercial (public house) and residential (owner/occupier) areas of the building.

20. The appellant states that the kitchen and living area are contained within an area located at ground level that was previously a double garage used for residential purposes in connexion with the lawful residential elements of the rest of the building, as occupied by the appellant and her family. There has always been a doorway between the existing lawful residential element and the garage area. The appellant therefore claims that there has been no material change of use to residential as the garage element has always been residential. The bedrooms and bathroom facilities located within the basement were previously a skittle alley associated with the lawful mixed-use the building as commercial public house and owner/occupier accommodation.

21. The appellant contends that if there is a residential use it does not consist of the creation of a separate dwelling house but can be more accurately described as an incidental and ancillary residential use to the identified planning unit consisting of a mixture to commercial and residential.

22. The primary use of land or a building will be, as the term implies, the main use or activity carried out by the occupier. The concept of a mixed use is one or two or more primary uses existing within the same planning unit. One is not incidental to the other, although there may be incidental uses associated with each primary use. An incidental use, which is a matter of fact and degree, is one which is functionally related to the primary use and cannot be one that is integral or part and parcel of the primary use.

23. The Council considers that the residential use associated with the site is for the manager's accommodation and not to be used independently of the pub and that there has not been any application to turn the ancillary storage rooms into ancillary accommodation. The Council further states that whilst the identified areas may have been used as garage and/or storage ancillary to the planning unit, it is considered that the primary use of the site is as a 'public house' and therefore the conversion of the garage/storerooms would require planning consent which would need to be justified as either manager's accommodation, or accommodation associated with the hotel.

24. Having regard to the facts of the case, it appears to me that the site is not in a mixed use and the residential accommodation is as the Council conclude, this being either manager's accommodation or accommodation associated with the hotel. The appellant has not provided any clear evidence to indicate that the residential accommodation before its extension was anything other than that of the owner's/manager's accommodation which was fully integrated with the hotel use in terms of internal access.
25. I note also that the appellant states that if there has been any unauthorised development it consists of the alteration of existing accommodation, or commercial areas within the planning unit and not the creation of a new dwelling in the countryside.
26. Whilst there may be parts of the building identified by the Council with the blue line where there has been no breach of planning control, there has been a breach of control at basement and ground floor levels within that part of the building shown on the corrected plan attached to this decision.
27. I therefore conclude that the alleged works have occurred as a matter of fact. The works represent development by way of a material change of use of part of the building from hotel related use to residential accommodation for which planning permission is required for their conversion.
28. The appeals on grounds (b) and (c) fail.

The appeal on ground (f)

29. An appeal on ground (f) is that the steps to remedy the breach are excessive but no lesser steps are put forward which would overcome the harm caused by the unauthorised development.
30. The Council believe the steps are clear 'as far as the occupation of the ancillary accommodation is to cease' and believe that the main use of the planning unit to be a hotel/public house.
31. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of the notice in this case do not exceed what is necessary to remedy the breach.
32. The requirements do not preclude the appellants doing what they are lawfully entitled to do in the future once the notice has been complied with.
33. The appeal on this ground fails.

The appeal on ground (g)

34. An appeal on this ground is that the compliance period of 6 months is too short and that a period of 24 months would be reasonable to reflect the personal circumstances of her family, which includes children, and to the disruption to her business, although no evidence has been submitted to explain what the effects on the business and family would be. The appellant states that the compliance period does not take into account that the Council is aware that a planning application could be submitted to address perceived breaches and comply with policy once the remedial coastal works have been completed.

35. The Council indicates that the appellant became aware that a planning application was required in 2019 but none has been submitted. However the appellant states that the Council is aware that the alleged works did not take place until June 2021 at the earliest.

36. It is evident that coastal erosion has had an effect on the grounds of the hotel and that the Council has taken a cautionary approach through its planning policies relating to unstable land. The appellant explains the reason for not submitting a planning application or appealing on ground (a) is due to

anticipating a refusal of permission because of conflict with the policy. Whether this would be the case is not a matter for me to determine in this appeal in the absence of a ground (a) appeal. However, although the appellant has had a considerable amount of time to submit an application, I propose to extend the period of compliance from 6 months to 12 months. This will allow adequate time for the remedial works to be completed and for a planning application to be submitted and determined.

37. The appeal on ground (g) succeeds to this extent.

Conclusion

38. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice with correction prior to upholding it. The appeal on ground (g) succeed to that extent.

P N Jarratt

INSPECTOR

Plan

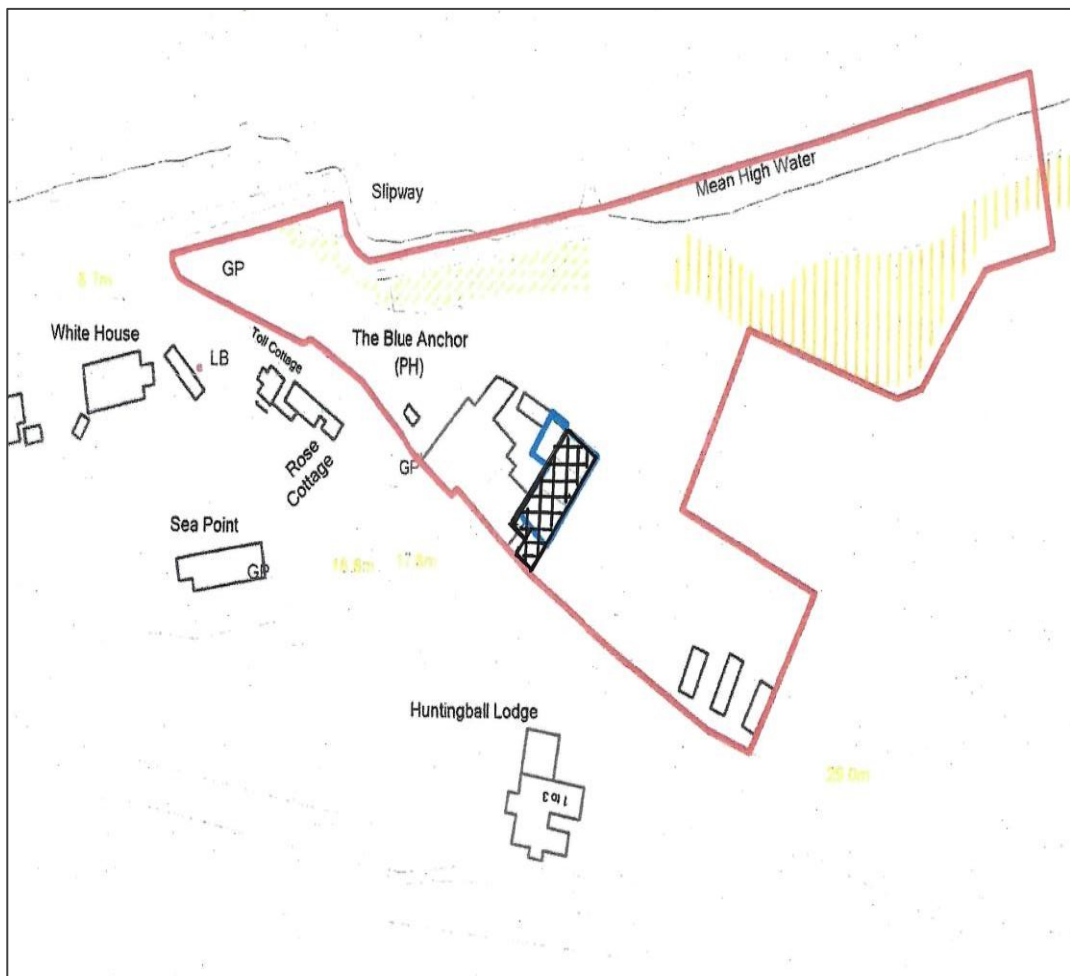
This is the plan referred to in the decision letter dated: []

by P N Jarratt BA (Hons) DipTP MRTPI

Blue Anchor Hotel, Blue Anchor, MINEHEAD, TA24 6JP

Appeal Ref: APP/W3330/C/23/3316711

Scale: Not to Scale



Note : The hatched area indicates the basement and ground floor areas of the hotel in which part or all of the alleged change of use has occurred, based on the greyline plans submitted by the appellants as Appendix B of the statement of case.

P N Jarratt
Inspector

Application No: ECC/EN/21/00066

Address: THE OLD SHIP AGROUND, QUAY STREET, MINEHEAD,
TA24 5UL

Description: Alleged Breach – unauthorised works to Roof Listed
Building

Appeal Decision: Allowed



Appeal Decision

Site visit made on 29 June 2023 by **P N Jarratt BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 July 2023

Appeal Ref: APP/W3330/F/22/3313180 The Old Ship Aground, Quay Street, MINEHEAD, TA24 5UL

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
- The appeal is made by Hall & Woodhouse against a listed building enforcement notice issued by Somerset West and Taunton Council.
- The enforcement notice, numbered EEC/EN/21/00006, was issued on 16 November 2022.
- The contravention of listed building control alleged in the notice is the unauthorised replacement of the roof slate on the building with slate of a different size and colour namely Westland Grey Green.
- The requirements of the notice are
 - i) Remove the Westland Grey Green roof slate on the building
 - ii) Replace the roof slate on the building with SIG112S Grey/blue slates or Welsh grey/blue slates
- The period for compliance with the requirements is four months
- The appeal is made on the grounds set out in section 39(1) (e) and (i) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Decision

1. The appeal is allowed and the listed building enforcement notice is quashed. Listed building consent is granted for the retention of Westland Grey Green roof slates at The Old Ship Aground, Quay Street, Minehead, TA24 5UL

Preliminary Matters

2. Since the appeal was lodged, the unitary Somerset Council has become the local planning authority.

The appeal site and relevant planning history

3. The appeal property is known as the Old Ship Aground and was listed in 1976 as a Grade II listed building within the Higher Town Conservation Area. It can briefly be described as a hotel of two stories and attic, and built of rubblestone with freestone dressings, hipped slate roof with a number of dormers, which in c1880 was remodelled from an earlier structure. It is described as occupying a prominent position next to the quay and is included for group value.
4. The property is L-shaped in plan and a small single storey building with a fibre slate tile pitched roof attaches the appeal property to the two storey pitched roof Courtyard Cottage. It is adjoined by St Peter's Church to the north east with its distinctive red clay tile pitched roof, which in turn is adjoined to the single storey flat roofed Echo Beach café. Beyond the appeal property is the substantial stone and red tiled lifeboat station, adjoining which is a contemporarily designed extension with a distinctive zinc roof. Also within the same group of buildings overlooking the harbour is a two storey stone pitched roof building with dormers known as 'Tides Reach.' This group of buildings contributes positively to the distinctive setting of this part of the Conservation Area between the harbour and the verdant cliffs to the west.
5. The allegation relates to the use of Westland Grey Green Slates (referred to as Brazilian slates) on the south east hipped roof, the north east roof slope, the south east roof slope, the north west roof slope and the use of the same slates on the cheeks of the dormers on those roof slopes, with the exception of the dormer to the west end of the north west roof slope. This dormer and the south west roof slope is covered with existing natural grey/green Brazilian slate. The new slates replaced deteriorating Welsh grey-blue slates.
6. A LB application for the retention of replacement roof tiles was withdrawn on 7/2/2022 (Ref. 3/21/21/097) as a result of incorrect product details of the replacement tiles being submitted in error, which the appellant acknowledges. Although the Conservation Officer at the time agreed with the original proposal to use blue-grey SIG 112S Spanish slates, these did not match what had been ordered.
7. A resubmission of the LB application was made for the retention of the Westland Grey Green slates (3/21//22/039). Following advice that these slates were considered incongruous to the listed building and its setting, the appellant provided a sample of the Westland Grey Green slate painted dark grey to match the SIGA 112S in colour, which was the Dark Blue Grey slate incorrectly referred to in the withdrawn application.
8. A LB application for external alterations to render and stone elements (retention of works already undertaken) was granted on 7/2/2022 (Ref 3/21/21/103).

Policy Framework

9. Section 16 of the LBCA requires special regard to be paid to the desirability of preserving a listed building or its setting or any features of special architectural or historical interest it possess, before granting listed building consent. Section 72 requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.

10. In addition the policies for the protection of heritage assets in the West Somerset Local Plan are also material considerations. These policies are in accordance with the aims of the National Planning Policy Framework (the Framework) which is also a material consideration in these cases. Paragraphs 194-208 of the Framework note that great weight should be given to conserving the significance of heritage assets and that any harm must be outweighed by public benefits of the proposal including securing the optimum viable use of the building before listed building consent is granted.

The appeal on ground (e)

11. An appeal on this ground is that listed building consent should be granted for the replacement of the roof slate on the building with slate of a different size and colour, namely Westland Grey Green. The appellant states that the suggested painting of the unauthorised slates to a dark grey colour does not concern this appeal. However, if I find that the unauthorised development could be made acceptable through the imposition of appropriate conditions, then such a condition concerning the painting of the slates could be relevant.
12. The main issue in the appeal on this ground is whether the installation of the Brazilian slates fails to preserve or enhance the listed building or the character or appearance of the conservation area. In considering this issue, regard needs to be taken of the aging and weathering that occurs naturally as a result of exposure to the elements. This impacts on the character and appearance of the slates and consequently on the building and the area.
13. On my site inspection, the obvious newness of the replaced slates was particularly evident, looking very perfect and uniform. The roof lacks the life and vibrancy that established and weathered slate roofs provide. This is a consequence of using natural materials and is generally acknowledged as being part and parcel of the re-roofing of any building. It is likely that if the slates are replaced with those specified in the requirements of the notice, they too would look very fresh and noticeably different from those that had preceded them.
14. When looking at the building within its immediate context, the replacement slates are very obvious at its hipped end but their impact is lessened by the busy composition and blue colourwash of the front elevation, together with its entrance, balcony, dormer window, the side cheeks of different colours of other dormers, and the very tall brick chimney stack.
15. The roofs facing the courtyard are significantly longer and have a greater impact although views of much of the building from the pedestrian area by the harbour wall are shared with St Peter's Church and its distinctive red clay tile roof that contrasts sharply with the appeal property. This view also contains the single storey Echo Beach Café in the foreground.
16. The roof of the property facing the RNLI building on Quay West is not particularly prominent because of the more restricted angle of view from the street and also because the lifeboat building is a significant building in the townscape in its own right with its roof of small red tiles, solar panels, roof lights and its contemporary extension with the zinc roof.
17. The south west roof slope has existing natural grey green Brazilian slate which looks little different in overall colour to the replacement slates elsewhere. This is the principal elevation of the building having many distinctive windows and dormers although the hipped end is more prominent in views from a greater distance.

18. The variety and colour of roof types of buildings in the conservation area is such that there is very little uniformity. Indeed, it is this variety in building and roof form, colours and materials that contributes positively to the character and appearance of the conservation area.
19. The appellant has assessed the slate types historically used and draws on advice that the Brazilian natural slate is popular in the south-west due to its colour similarity to the Delabole slate, that grey-green slates were commonly quarried in the Somerset, that they weather down in time to a silvery grey taking away their current starker appearance and stronger green tint.
20. The available historical evidence does not support the assumption that Welsh blue/grey slate (or a Spanish substitute) were used on the appeal property, or that the slates existing prior to the later changes were the originals, or that Welsh slate was universally used in the area.
21. Although the allegation in the notice refers to the colour and the size of the replacement slates, the Council has not specifically referred to how the size of the slates causes harm. Indeed, from street level, it is extremely difficult to recognise any incongruity in the size of the replacement slates.
22. The replacement of the slates has generated critical responses from a number of local residents and from the Minehead Conservation Society, all of whom are clearly proud of the heritage of Minehead. However some of the comments appear to relate more to anger at the approach to the re-roofing taken by the appellant and raise matters irrelevant to the determination of this appeal which, simply put, is whether the slates now in situ cause harm to the building or to the conservation area.
23. I conclude that the Westland Grey Green Brazilian slate is an appropriate slate for use on the appeal building as it preserves the listed building and its setting. As it weathers this roofing material will enhance the building's appearance. Similarly, in view of the variety, colour and materials of roofs within the area, the character and appearance of the conservation area is preserved. The use of the replacement slates accords with Local Plan Policies NH1 and NH2 regarding heritage assets and with national policies expressed in the Framework.
24. The appeal on this ground succeeds. Although the Council has suggested three conditions, none are relevant in the context of work that has already been carried out, and I do not consider that any conditions are necessary to limit the consent.

Conclusion

25. For the reasons given above I conclude that the appeal should succeed. In these circumstances the appeal on ground (i) set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended does not fall to be considered.

P N Jarratt

INSPECTOR