

<b>Application Details</b>	
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 15<sup>th</sup> 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 22<sup>nd</sup> 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.  <b>Somerset Levels and Moors Ramsar Site - HRA</b>  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><b>Other advice</b></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>

*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:*

Having reviewed the updated walkover survey undertaken by Richard Green Ecology Ltd 5<sup>th</sup> April 2023 indicated the following are recommended:

Conditions to add:

- 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

	<p>the installed features submitted to the Local Planning Authority prior to first occupation:</p> <ul style="list-style-type: none"> <li>· 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.</li> <li>· 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.</li> </ul> <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.