

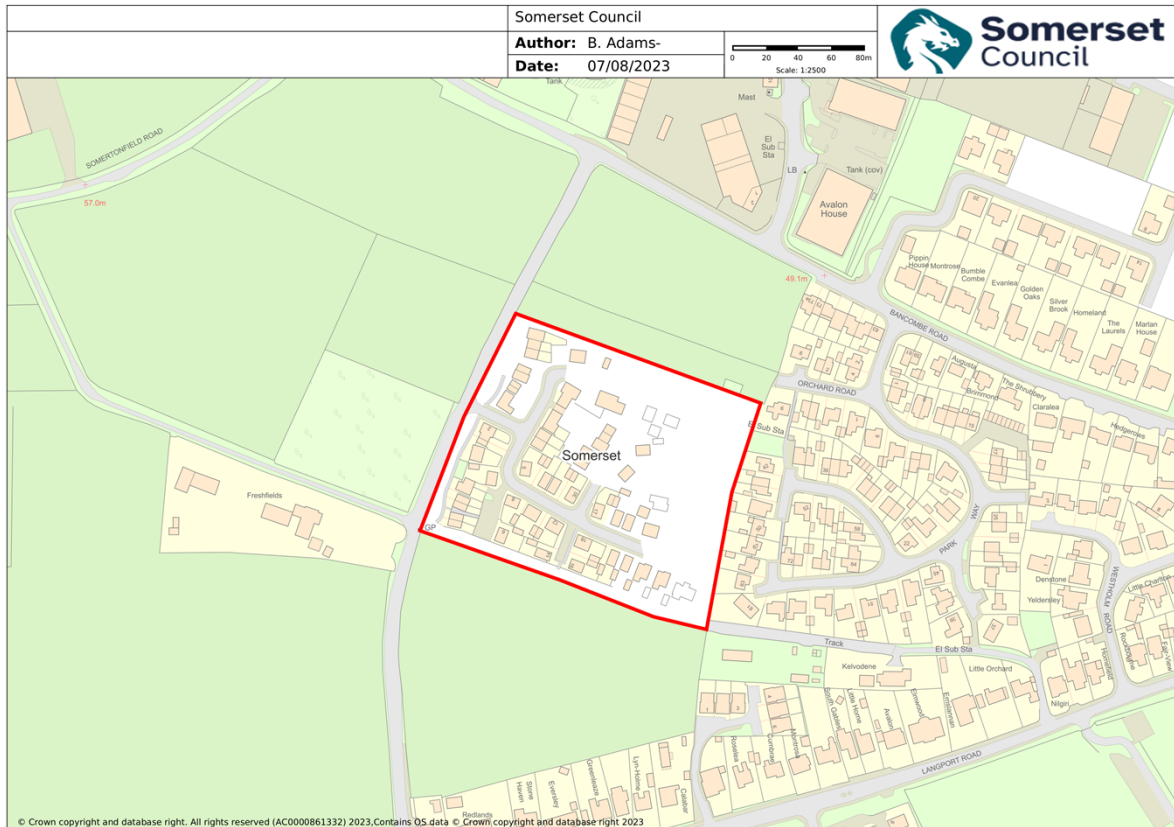
## Officer Report On Planning Application: 23/00850/DPO

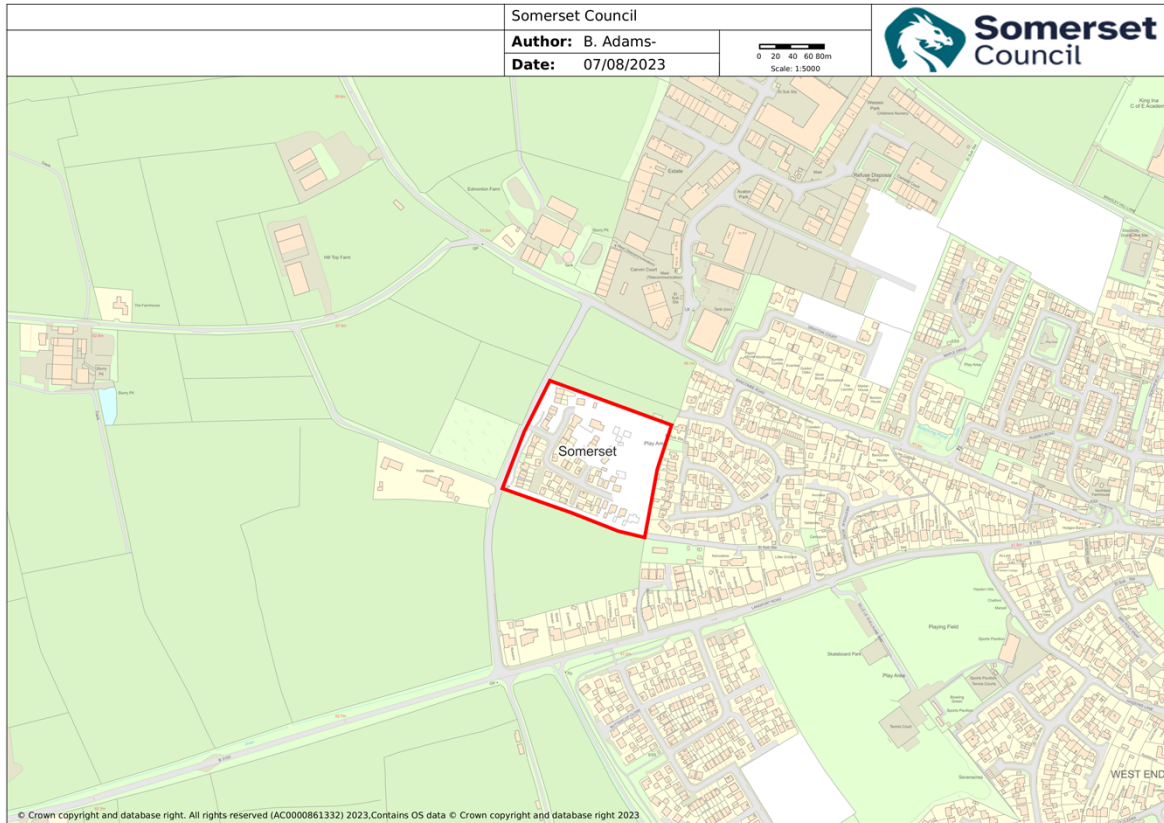
<b>Proposal :</b>	Application to Vary Part 2 of the Second Schedule of the S106 Agreement Dated 2nd November 2020 relating to planning application 15/03585/OUT
<b>Site Address:</b>	Land OS 4575, Cartway Lane, Somerton, Somerset,
<b>Parish:</b>	Somerton
<b>SOMERTON Division</b>	Cllr T Kerley Cllr D Ruddle
<b>Recommending Case Officer:</b>	Sarfaraz Khan (Specialist)
<b>Target date :</b>	19th May 2023
<b>Applicant :</b>	Andy Cattermole
<b>Agent: (no agent if blank)</b>	
<b>Application Type :</b>	Non PS1 and PS2 return applications

### REASONS FOR REFERRAL TO COMMITTEE:

The Chair and Vice Chair have requested that the current application be referred to and heard at planning committee.

### SITE AND ITS SURROUNDINGS:





The application site is approximately 2.35 hectares of grade 3a agricultural farmland located at the western periphery of Somerton immediately adjacent to the development area and within the direction of growth as set out within policy LMT3 of the local plan. There is an existing field access into the application field within the west boundary leading on to Cartway Lane which also serves as access for a public right of way (bridleway) which passes along through the field from west to east along the south boundary.

Given that the original application (app ref: 15/03585/OUT) was permitted subject to conditions on 23.03.2017, the application site as of the date of the submission of the current discharge of condition application is currently fenced off by HERAS fencing, and extensive construction works are currently being undertaken, with several dwellings on-site already completed and occupied, roads already built and other dwellings still under construction and partially constructed. The application field is enclosed on three sides by mature native hedges and a mix of fencing and planting along the east boundary where it adjoins the adjacent housing. The application site has a very slight gradient but is at a similar level to the adjacent housing and surrounding agricultural land.

There are no listed buildings or archaeological designations within or immediately adjacent to the site and the application site is within flood zone 1.

## **PROPOSAL:**

Outline planning consent was granted subject to conditions on 23.03.2017 (app ref: 15/03585/OUT) for the construction of up to 59 dwellings with a new vehicular access from Cartway Lane, associated car parking and open space including the provision of a play area and laying out of an access road. (The maximum height of buildings to be two storeys above existing ground level) with some matters reserved (GR:347498/128822).

This is a discharge of planning obligation application (DPO) to modify the S106 agreement (dated 22 March 2017) for which a Deed of Variation was previously agreed (dated 2 November 2020) and which previously sought a variation to the affordable housing provisions. The applicant has secured a s278 agreement and subsequent Technical Approval for undertaking these works (and others) from Somerset County Council (06 December 2022) and could therefore implement the details as required. The applicants have also agreed to the resurfacing and draining of the Public Right of Way. However, this DPO has been made to vary part 2 of the Second Schedule which relates to covenants given to the former Somerset County Council (now part of Somerset Council). This is because the applicant considers that the introduction of street lighting along the bridleway would be inappropriate as light pollution generated by street lighting would harm bats and other ecological interests, the introduction of streetlights would necessitate digging for cables and power supply which would harm trees and hedgerows along the bridleway and street lighting along the bridleway would also have a detrimental impact upon and lead to increased usage of the existing PROW.

The applicant wishes to vary paragraph 1 of part 2 of the S.106 agreement (dated 22 March 2017) to read as follows:

'The owner shall not Commence the Development until it has submitted to and received approval from the County Council in respect of works to improve the Bridleway including surface and drainage improvements between the Site and the existing metaling on the Bridleway'.

## **PLANNING HISTORY:**

22/03242/NMA - Non-Material Amendment to approved application 20/00451/REM to Change to external materials on Plots 20,43, 44 & 48. - Application Permitted - 06.01.2023.

22/00809/NMA - Non-Material Amendment to approval 20/00451/REM. Amendment to site layout to provide for an increase in attenuation basin size following

consultation with the LLFA and Wessex Water, and a minor change to the internal road alignment following the technical audit by SCC Highways - Application Permitted with Conditions - 30.08.2022.

21/00861/DOC - Application to Discharge Conditions No. 5 (Fencing), No. 7 (Access), No. 8 (Layout), No. 10 (Surface Water), No. 11 (CMP), No. 13 (Archaeological Work), No. 14 (Travel Plan), No. 15 (Surface Water), No. 16 (Drainage), No. 17 (Lighting) and No. 18 (Phasing Programme) of Planning Application 15/03585/OUT. - Conditions Discharged - 14.01.2022.

21/00862/DOC - Application to Discharge Condition No. 2 (Lighting Design) of Planning Application 20/00451/REM - Conditions Discharged - 15.07.2021.

19/03391/DPO - Application to modify S106 agreement dated 22nd March 2017 between South Somerset District Council, Somerset County Council, Deborah Joy Hilborne and Intelligent Land Limited to vary planning obligations. - Application Permitted - 24.08.2020.

20/00451/REM - Application for approval of reserved matters following outline approval of 15/03585/OUT seeking approval of appearance, landscaping and scale and compliance with conditions as described in the submitted application form. - Application Permitted with Conditions - 08.07.2020.

17/03237/DPO - Application to vary S106 agreement dated 22nd March 2017 between South Somerset District Council, Somerset County Council, Deborah Joy Hilborne and Intelligent Land Limited to vary planning obligations. - Application Permitted with Conditions - 06.12.2017.

15/03585/OUT - Outline application for the construction of up to 59 dwellings with a new vehicular access from Cartway Lane, associated car parking and open space including the provision of a play area and laying out of an access road. (The maximum height of buildings to be two storeys above existing ground level) with some matters reserved (GR:347498/128822) - Application Permitted with Conditions - 23.03.2017.

## **CONSULTATION:**

Below is a summary of the consultation responses received at the time of writing this report. Responses are available to view in full on the Council's website, via the online Planning Register.

## **PARISH/TOWN COUNCIL AND NEIGHBOURHOOD FORUMS:**

**Somerton Town Council** - Raises points of concern regarding the pedestrian access and the ecological need for hedges to be reinstated as originally agreed.

## **OTHER CONSULTEES:**

**Conservation Unit** - No comments or objections received at time of writing.

**Somerset Ecology Services** - No objections.

**Open Spaces** - No comments or objections received at time of writing.

**Legal Services** - No comments or objections received at time of writing.

**Somerset Council Education Department** - No objections.

**Public Rights of Way** - No comments or objections received at time of writing.

## **PUBLICITY CARRIED OUT:**

This application has been publicised by letters sent to properties adjoining the application site that the Council has been able to identify from its records. The overall final date for comments was 17th May 2023.

## **MATERIAL 3RD PARTY COMMENTS RECEIVED:**

Eight comments received in support of the proposals from neighbours/third parties.

Five comments received from neighbours/third parties which object to the proposals on the following grounds:

- Cannot find plans of the exact land.
- Object to having lighting on the bridleway which should be left as a wildlife corridor (which is also horse friendly) and unlit and as a safe place for wildlife to rear their young.
- There is no requirement to have lights installed on the bridleway which is not an access road to the estate.
- The new surface being laid on the bridleway should be horse friendly as it is a designated bridle path.
- Any permission granted on this DPO should require a safe, well-drained and hard-surfaced pathway from the site to Langport Road.

- Lighting on the bridleway would shine onto properties (including back gardens and windows) backing onto the bridleway.
- The local wildlife (Bats, badgers, foxes and deer) have been adversely affected by this development and illuminating what's left of their habitat would be a travesty.
- The implementation of street lighting could have a detrimental impact on bats and their foraging and commuting habitat along the bridleway and Cartway Lane and neighbouring land parcels.
- Surveys have not been undertaken to determine if bats are commuting along the bridleway, Cartway Lane, or commuting and foraging within land adjacent to Cartway Lane.
- The adjacent land includes an orchard, hedgerows, and cut and graze agricultural fields, all habitats which can provide considerable insect biomass suited to species of bats including greater horseshoe bats which forage on beetles that can be found on cattle dung.
- Bat species within the local area includes those less tolerant to light (lesser horseshoe, greater horseshoe, barbastelle and long-eared species) and a maternity roost of soprano pipistrelle bats backing onto the development immediately to the east in a house on Parklands Way.
- The wider considerations and also the specifics of the immediate area should necessitate bat activity surveys along both the bridleway and Cartway Lane to determine bat behaviour throughout the active season (April-October (inclusive)) prior to the deployment of any outdoor lighting strategy in accordance with all accepted guidance including lighting standards.
- Surveys would include automated static detector surveys and transect surveys.
- Once all data from the bat surveys are collated at the end of the season, a decision can only then be made on the type of lighting and its output.
- Lighting design and output should only be detailed following the completion of the surveys and installed with agreed and sufficient mitigation.
- Therefore, prior to granting permission to this amendment the correct lighting strategy can only be detailed following a full suite of surveys to determine both bat presence and the species found and as per the norm where street lighting is proposed on a new development.
- Lighting should be developed in accordance with Guidance Note 8, Bats & Artificial Lighting, BCT / ILP (2018 - update in press).
- Low lighting bollards might be required for PROW or lights that are timed to turn off between the time of midnight and 5am to create suitable habitat conditions for bats.
- To determine the correct lighting strategy, a full suite of surveys is required to determine bats presence and the species.
- Murmuration's of starling make their way to reed beds during evenings to the north & northwest of Somerton. The starlings fly along the length of Somerton

- Door Drove onto the north, likely used as a navigation aid at dusk
- Lighting new unlit areas that creep out from Somerton to its west should undergo bird surveys (especially for migratory birds) to determine flight routes used at dusk and dawn which covers all months, especially winter months for species such as starlings.
  - All bat species have preferences for the amount of light that they will tolerate at foraging habitat such as fields, orchards, woodlands, wetlands, watercourses, & hedges/field boundaries.
  - Lighting foraging habitats can have a detrimental effect on bats especially those with higher protection (under Annexe II of the Habitats Directive) such as horseshoes by severing their flight lines.

## **DEVELOPMENT PLAN POLICIES AND OTHER MATERIAL CONSIDERATIONS RELEVANT TO THIS REPORT:**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 repeats the duty imposed under S54A of the Town and Country Planning Act 1990 and requires that decision must be made in accordance with relevant Development Plan Documents unless material considerations indicate otherwise.

### South Somerset Local Plan 2006-2028 (SSLP):

- EQ1 - Addressing Climate Change in South Somerset
- EQ2 - General Development
- EQ4 - Biodiversity
- EQ5 - Green Infrastructure

### National Planning Policy Framework (NPPF):

- Chapter 15 - Conservation and Enhancement of the Natural Environment
- Paragraphs 203-206 - Planning Conditions and Obligations

### Other Material Considerations:

- Planning Practice Guidance (PPG):
  - 1) Planning Obligations - Para. 012
- Use of Planning Obligations and Process for Changing Obligations (Planning Obligations) (2019):
  - 1) Paragraph: 001 Reference ID: 23b-001-20190315
  - 2) Paragraph: 002 Reference ID: 23b-002-20190901
  - 3) Paragraph: 003 Reference ID: 23b-003-20190901

- 4) Paragraph: 004 Reference ID: 23b-004-20190901
  - 5) Paragraph: 006 Reference ID: 23b-006-20190901
  - 6) Paragraph: 010 Reference ID: 23b-010-20190315
  - 7) Paragraph: 013 Reference ID: 23b-013-20190315
  - 8) Paragraph: 014 Reference ID: 23b-014-20190315
  - 9) Paragraph: 015 Reference ID: 23b-015-20190315
  - 10) Paragraph: 016 Reference ID: 23b-016-20190901
  - 11) Paragraph: 017 Reference ID: 23b-017-20190315
  - 12) Paragraph: 018 Reference ID: 23b-018-2019031
  - 13) Paragraph: 019 Reference ID: 23b-019-20190315
  - 14) Paragraph: 020 Reference ID: 23b-020-20190315
  - 15) Paragraph: 030 Reference ID: 23b-030-20190901
  - 16) Paragraph: 036 Reference ID: 23b-036-20190901
- Planning Appeal Reference: APP/M4320/A/10/2121418
  - Planning Appeal Reference: APP/N1215/W/17/3177714
  - Planning Appeal Reference: APP/N1215/W/17/3183099
  - Wildlife and Countryside Act 1981 (as amended)
  - Natural Environment and Rural Communities Act 2006
  - The Conservation of Habitats and Species Regulations 2017 (Habitats Regulations 2017) - More specifically Regulation 43
  - Planning Circular 11/95 - The Use of Conditions in Planning Permissions
  - Planning Circular 05/2005 - Planning Obligations

### **CONSIDERATION OF THE PLANNING ISSUES:**

Determination of an application to discharge/modify a planning obligation needs to take account of the 'useful purpose' test - i.e. whether the agreement continues to serve any planning purpose. Should the entire agreement no longer serve any useful or necessary purpose in planning terms, it should be discharged. Alternatively, the agreement should continue without modification if all its provisions relate to current planning objectives; or, should only certain provisions remain relevant, a modified agreement should replace the existing planning obligation.

When considering a planning application, it may be appropriate to impose a condition or enter into a planning obligation. Guidance contained within Planning Circular 11/95 advises that Local Planning Authorities should impose conditions rather than enter into a legal agreement, where appropriate. Furthermore, under paragraph 13, it is specified that where conditions are imposed, these should not be duplicated by a planning obligation.



## **ASSESSMENT:**

In this case, the application is made to modify the S106 agreement to modify the S106 agreement dated 22 March 2017 (part 2 of the Second Schedule) to prevent the need for the introduction of street lighting along the bridleway. The applicant remains committed to carrying out the surface and drainage improvements between the Site and the existing metaling on the Bridleway as the applicant has secured a s278 agreement and subsequent Technical Approval for undertaking these works (and others) from Somerset County Council (06 December 2022).

The third-party comments, Somerset Ecology Service comments and supporting information submitted in support of the application satisfactorily demonstrate the negative ecological impact of installing street lighting along the bridleway and therefore form material considerations which must be considered as part of the assessment of the current application. Having considered the third-party comments, Somerset Ecology Service comments and supporting information, it would be unreasonable not to give agreement to the proposed variation. It is considered that allowing the variation to (part 2 of the Second Schedule) will not be contrary to current policies as the surface and drainage improvements between the Site and the existing metaling on the Bridleway would still be honoured and carried out by the applicant even after the S106 agreement dated 22 March 2017 has been varied. Therefore, it is concluded that it is fair and reasonable to allow a modification of this agreement.

## **RECOMMENDATION:**

Agree to variation of Section 106 Agreement and to instruct the Council's Solicitor to modify the section 106 agreement dated 22nd March 2017 in relation to the changes as requested.

01. The modification of part 2 of the Second Schedule of the Section 106 agreement dated 22nd March 2017 to prevent the need for the introduction of street lighting along the bridleway is considered to be acceptable and not contrary to the aims and objectives of current relevant policies and the NPPF.

## **Informatives:**

01. A copy of this decision and site plan will be sent to the Councils Land Charges Department and Legal Department so that they can remove the restriction from their records. A copy of this certificate should be retained and kept with the deeds of the property.
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