



PLANNING COMMITTEE

YOU ARE REQUESTED TO ATTEND A MEETING OF THE PLANNING COMMITTEE TO BE HELD IN THE PRINCIPAL COMMITTEE ROOM, THE DEANE HOUSE, BELVEDERE ROAD, TAUNTON ON WEDNESDAY 18TH FEBRUARY 2004 AT 17:00.

(RESERVE DATE : MONDAY 23RD FEBRUARY 2004 AT 17:00)

AGENDA

1. Apologies
2. Minutes
3. Public Question Time
4. HALSE - 18/2003/020
ERECTION OF 12 CATTERY PENS IN A SINGLE BLOCK TO BE USED AS A BOARDING CATTERY, SINGLE PEN TO BE USED AS AN ISOLATION UNIT AND IMPROVEMENT OF VEHICULAR ACCESS ONTO HIGHWAY AT 1 BUDDLE OAK, HALSE WITH ADDITIONAL INFORMATION SENT BY E-MAIL DATED 30TH DECEMBER 2003 FROM APPLICANT AND AS AMENDED BY LETTER FROM APPLICANT, LETTER FROM FELINE ADVISORY BUREAU WITH ADDITIONAL INFORMATION AND AMENDED PLAN FROM APPLICANT RECEIVED ON 5TH JANUARY 2004.
5. NORTH CURRY - 24/2003/040
CONVERSION OF BUNGALOW TO FORM TWO BUNGALOWS AT THE MEADOWS, 1 WHITE STREET, NORTH CURRY.
6. TAUNTON - 38/2003/627
CHANGE OF USE AND CONVERSION OF BUILDING TO FORM 9 FLATS AND ONE MAISONETTE, HUNTS COURT, CORPORATION STREET, TAUNTON AS AMENDED BY AGENTS LETTER DATED 7TH JANUARY, 2004 AND DRAWINGS 0309/01B, 05A AND 06A ATTACHED
7. TAUNTON - 38/2003/628LB
ALTERATIONS TO FORM 9 FLATS AND 1 MAISONETTE AT HUNTS COURT, CORPORATION STREET, TAUNTON.
8. TAUNTON - 38/2004/003
ERECTION OF TWO STOREY BUILDING TO ACCOMMODATE ONCOLOGY CENTRE WITH ASSOCIATED ACCESS AND CAR PARKING AT MUSGROVE PARK HOSPITAL, TAUNTON AS AMENDED BY AGENTS LETTER DATED 26TH JANUARY, 2004
9. TRULL - 42/2004/001
RETENTION OF FLUE TO CAR SPRAY OVEN TO REAR OF

TRULL GARAGE, HONITON ROAD, TRULL

10. WEST BUCKLAND - 46/2003/046
ERECTION OF SINGLE STOREY EXTENSION TO LINK GARAGE
TO HOUSE, THE OLD PIGGERY, GERBESTONE MANOR,
WELLINGTON.
11. Enforcement action in respect of Foxmoor Nurseries, Haywards
Lane, Wellington. Joint report of the Chief Solicitor and the Chief
Planning Officer. Miscellaneous item
12. 48/2003/064 - Outline application for the residential development of
land at Sidbrook Farm, Monkton Heathfield. Miscellaneous item
13. E108/42/2003 & 42/2003/023 - Retention of canopy and change of
use of garage to provide ancillary storage space, Rebit House, land
to the rear of Holmesdale, Ladylawn, Wild Oak Lane, Trull Enforcement item

G P DYKE
Member Services Manager

The Deane House
Belvedere Road
TAUNTON
Somerset

TA1 1HE

11 February 2004

TEA FOR COUNCILLORS WILL BE AVAILABLE FROM 16.45 ONWARDS IN COMMITTEE ROOM NO.2

Planning Committee Members:-

Councillor Mrs Allgrove (Chairman)
Councillor Mrs Hill (Vice-Chairman)
Councillor Beaven
Councillor Bowrah
Councillor Miss Cavill
Councillor Croad
Councillor Denington
Councillor Floyd
The Mayor (Councillor Govier)
Councillor Guerrier
Councillor Henley
Councillor House
Councillor Morrell
Councillor Miss Peppard
Councillor Mrs Smith
Councillor Stuart-Thorn
Councillor Vail
Councillor Wedderkopp

Planning Committee - 28 January 2004

Present: Councillor Mrs Allgrove (Chairman)
Councillor Mrs Hill (Vice-Chairman)
Councillors Beaven, Croad, Denington, Floyd, Guerrier, Henley, House,
Morrell, Miss Peppard, Mrs Smith, Stuart-Thorn, Vail and Wedderkopp.

Officers: Mr N T Noall (Chief Planning Officer), Mrs J M Jackson (Senior Solicitor)
and Mr R Bryant (Review Support Manager)

(The meeting commenced at 5.00 pm).

4. Apologies

The Mayor (Councillor Govier) and Councillors Bowrah and Miss Cavill.

5. Minutes

The minutes of the meetings held on 17 December 2003 and 7 January 2004 were taken as read and were signed.

(The Chairman (Councillor Mrs Allgrove) declared a personal interest in the matter covered by Minute No. 6 below).

6. Enforcement Action in respect of Foxmoor Nurseries, Haywards Lane, Wellington

RESOLVED that this item be deferred until the next meeting of the Planning Committee on 18 February 2004 to allow:-

- (1) The submission of further information from the owners of Foxmoor Nurseries and their current tenants;
- (2) A further site visit to be undertaken by the Senior Solicitor and the Enforcement Officer;
- (3) Detailed consideration of the report prepared by the Vehicle and Operator Services Agency; and
- (4) Traffic levels and the suitability of the bridge on the access road leading to the site to be assessed.

7. Applications for Planning Permission

The Committee received the report of the Chief Planning Officer on applications for planning permission and it was RESOLVED that they be dealt with as follows:-

- (1) That **outline planning permission be granted** for the under-mentioned developments subject to the standard conditions adopted by Minute No 86/1987 of the former Planning and Development Committee and such further conditions as stated:-

38/2003/641

Erection of bungalow on land to rear of 34 - 40 Greenway Crescent, Taunton (outline application).

Conditions

- (a) C005 - outline - reserved matters;
- (b) C009 - outline - time limit;
- (c) C014 - time limit;
- (d) C101 - materials;
- (e) C402 - single storey dwelling;
- (f) C414 - no increase in site level;
- (g) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any subsequent Order amending or revoking and reenacting that Order), no entrance gates shall be erected without the prior written permission of the Local Planning Authority;
- (h) Before the dwelling hereby permitted is occupied, a properly constructed and surfaced turning space for vehicles shall be constructed within the curtilage in accordance with the details shown on the submitted plan, and thereafter kept unobstructed for the benefit of 36 and 38 Greenway Crescent in addition to the dwelling hereby approved;
- (i) Sufficient space for one garage and one parking space, together with parking spaces or garages for 36 and 38 Greenway Crescent, together with a vehicular access thereto shall be provided for the dwelling. The said garages (or garage spaces), parking space and access shall be constructed or hardsurfaced before the dwelling hereby permitted is occupied and shall not be used other than for the parking of domestic vehicles or for the purposes of access.
(Notes to applicant:- (1) N118A - disabled access; (2) N024 - development in accordance with approved plans; (3) N040A - drainage/water; (4) N051B - health and safety.

Reason for granting outline planning permission:-

The proposal accorded with the requirements of the Taunton Deane Local Plan Revised Deposit Policy H1 in that a dwelling could be accommodated without material adverse impact upon adjoining properties. Safe access and suitable levels of parking could also be achieved.

48/2003/064

Residential development of land at Sidbrook Farm, West Monkton.

Conditions

- (a) C005 - outline - reserved matters;
- (b) C009 - outline - time limit;
- (c) C014 - time limit;
- (d) Within a period of three years from the date of this permission, details of the arrangements to be made for the disposal of foul and surface water drainage from the proposed development shall be submitted to, and approved in writing by, the Local Planning Authority before any work hereby permitted is commenced. The agreed drainage works shall be completed in accordance with these details and timescale;
- (e) C101- materials;
- (f) The number of dwellings to be provided on the site shall not exceed six;
- (g) (i) Prior to the commencement of works on site, full details of a landscaping scheme to incorporate a landscaping belt (an average 8m wide) along the western boundary of the site, together with details of the implementation and future management of the landscape belt shall be submitted to, and approved in writing by, the Local Planning Authority. (ii) The scheme shall be completely carried out within the first available planting season from the date of commencement of the development, or as otherwise extended with the agreement in writing of the Local Planning Authority. (iii) For a period of five years after the completion of the planting scheme the trees, shrubs and hedges shall be protected and maintained to the satisfaction of the Local Planning Authority and any trees, shrubs or hedges that cease to grow shall be replaced by trees, shrubs or hedges of similar size and species, or the appropriate trees, shrubs or hedges as may be approved in writing by the Local Planning Authority;
- (h) C013 - site levels;
- (i) C215 - walls and fences.
- (j) A fully equipped recreational open space shall be provided in accordance with the Local Planning Authority's approved standards and the detailed site layout shall provide for this accordingly. This area shall be laid out to the satisfaction of the Local Planning Authority within six months of the date of commencement of the development and shall thereafter be used solely for the purpose of recreational open space incorporating a children's play area;
- (k) Before the development hereby permitted is commenced, the existing access shall be modified in accordance with details shown on the submitted plan, drawing no. SF.01RevA and shall be available for use before the commencement of the development hereby approved;
- (l) Provision shall be made within the site for the disposal of surface water so as to prevent its discharge onto the highway, details of which shall have been submitted to, and approved in writing by, the Local Planning Authority. Such drainage shall be provided prior to the access first being brought into use;
- (m) Prior to the commencement of development, the turning area shown on the submitted plan no. SF.01RevA shall be fully constructed on site

and thereafter maintained to the satisfaction of the Local Planning Authority;

- (n) C321A - parking;
- (o) No development shall take place until the existing access track leading to the development site has been upgraded and resurfaced in accordance with details and specifications to be submitted to, and approved in writing by, the Local Planning Authority. Such detail shall include provision of an acceptable visibility splay and appropriate traffic management works to augment the existing 30 mph speed limit on Greenway Road;
- (p) No development shall take place until details showing a restriction to the width of the highway, in white lining painted on the road, to provide the required visibility splays are submitted to, and approved in writing by, the Local Planning Authority and the road markings carried out.

(Notes to applicant:- (1) With regard to condition (g), applicant was advised that the landscape belt should be planted as soon as work commences on the site; (2) N096 - bats; (3) Applicant was advised that the existing barns on the site may provide nesting sites for birds. All British birds, their nests and eggs are protected under Section 1 of the Wildlife and Countryside Act 1981 and you are therefore advised to contact English Nature for advice in this matter; (4) N111 - disabled access; (5) N112 - energy conservation; (6) N114 - meter boxes; (7) N116 - disabled access; (8) N117 - crime prevention; (9) Having regard to the powers of the County Highway Authority under the Highways Act 1980, applicant was advised that a Section 184 Permit must be obtained from the Highway Services Manager, Taunton Deane Area. Application for such a permit should be made at least three weeks before access works are intended to commence; (10) Applicant was advised to investigate the use of Sustainable Drainage Systems (SUDS) for surface water drainage on this site, in order to reduce the rate of run-off and to reduce pollution. These methods consist of controlling the sources of surface water and include:- (a) infiltration techniques; (b) detention/attenuation; (c) porous paving/surfaces; and (d) wetlands.)

Reason for granting outline planning permission:-

The proposal was located within the settlement limits of Monkton Heathfield where residential development was considered acceptable in accordance with the Somerset and Exmoor National Park Joint Structure Plan Review Policy STR4 and Taunton Deane Local Plan Revised Deposit Policies S1, H1 and T1. The access improvements would have an acceptable impact on the highway network as required by Somerset and Exmoor National Park Joint Structure Plan Review Policy 49. Landscaping would be required in accordance with Policy S1(D) of the Taunton Deane Local Plan Revised Deposit.

- (2) That **planning permission be granted** for the undermentioned developments, subject to the standard conditions adopted by Minute No 86/1987 of the

former Planning and Development Committee and such further conditions as stated:-

09/2003/010

Change of use of barn to dwelling and associated garaging, Rowlands Barn, Chipstable

Conditions

- (a) C001 - time limit;
 - (b) C106 - second-hand materials;
 - (c) C101 - materials;
 - (d) C010A - drainage - not commenced until percolation test approved;
 - (e) C112 - details of guttering, downpipes and disposal of rainwater;
 - (f) C215 - walls and fences;
 - (g) C205 - hard landscaping;
 - (h) C917 - services - underground;
 - (i) C416 - details of size, position and materials of meter boxes;
 - (j) C654A - windows;
 - (k) C601 - schedule of works to ensure safety and stability of structure;
 - (l) The area allocated for parking on the submitted plan shall be kept clear of obstruction and shall not be used other than for the parking of vehicles in connection with the development hereby permitted;
 - (m) The proposed access over the first 6m of its length, as measured from the edge of the adjoining carriageway, shall be properly consolidated and surfaced (not loose stone or gravel) in accordance with details which shall have been submitted to, and approved in writing by, the Local Planning Authority;
 - (n) Any entrances gates erected shall be hung to open inwards and shall be set back a minimum distance of 4.5m from the carriageway edge;
 - (o) C306 - access - gradient;
 - (p) Provision shall be made within the site for the disposal of surface water so as to prevent its discharge onto the highway, details of which shall have been submitted to, and approved in writing by, the Local Planning Authority. Such drainage shall be provided prior to the access first being brought into use;
 - (q) C321B - parking;
 - (r) C926B - remediation investigation/certificate;
 - (s) P001A - no extensions;
 - (t) P003 - no ancillary buildings;
 - (u) P006 - no fencing;
 - (v) P010 - no further windows;
 - (w) C201 - landscaping;
- (Notes to applicant:- (1) N024 - development in accordance with approved plans; (2) N025 - conversion; (3) N111 - disabled access; (4) N112 - energy conservation; (5) N115 - water conservation; (6) N114 - meter boxes; (7) N095 - owls and bats; (8) N048A - remediation strategy; (9) Having regard to the powers of the County Highway Authority under the Highways Act 1980, applicant was advised that a Section 184 Permit must be obtained from the Highway

Services Manager, Taunton Deane Area. Application for such a permit should be made at least three weeks before access works are intended to commence; (10) N25A - conversion.)

Reason for granting planning permission contrary to the recommendation of the Chief Planning Officer:-

The Committee took the view that the proposed building was in keeping with the surroundings and would not harm the rural character of the area in accordance with Policy H9 of the Taunton Deane Local Plan Revised Deposit.

22/2003/019

Creation of vehicular access and parking area, 2 Nethercott Way, Lydeard St Lawrence

Conditions

- (a) C001 - time limit;
- (b) The area allocated for parking on the submitted plan shall be kept clear of obstruction and shall not be used other than for the parking of vehicles in connection with the development hereby permitted;
- (c) The proposed access over the first 4.5m of its length, as measured from the edge of the adjoining carriageway, shall be properly consolidated and surfaced (not loose stone or gravel) in accordance with details which shall have been submitted to, and approved in writing by, the Local Planning Authority.

(Notes to applicant:- (1) NO24 - development in accordance with approved plans; (2) Having regard to the powers of the County Highway Authority under the Highways Act 1980, applicant was advised that a Section 184 Permit must be obtained from the Highway Services Manager, Taunton Deane Area. Application for such a permit should be made at least three weeks before access works are intended to commence).

Reason for granting planning permission:-

Whilst the proposal would have some adverse affect on the visual amenity of the street, this was not deemed to be so significant as to warrant permission being refused. The proposal had been amended to meet the requirements of the County Highway Authority and was considered to satisfy the requirements of Taunton Deane Local Plan Revised Deposit Policies S1 and S2 and Somerset and Exmoor National Park Joint Structure Plan Review Policy 49.

32/2003/004

Conversion of agricultural building into dwelling and conversion of barn into car port and store, Broadleigh, Whiteball, Wellington

Conditions

- (a) C001 - time limit;
- (b) C010A - drainage - not commenced until percolation test approved;
- (c) C106 - second-hand materials;

- (d) C112 - details of guttering, downpipes and disposal of rainwater;
- (e) C201A - landscaping;
- (f) C215 - walls and fences;
- (g) C321B - parking;
- (h) Before the dwelling hereby permitted is occupied, a properly constructed and surfaced turning space for vehicles shall be constructed within the curtilage in accordance with the approved plan and shall thereafter be kept unobstructed.
- (i) C416 - details of size, position and materials of meter boxes;
- (j) C601 - schedule of works to ensure safety and stability of structure;
- (k) The new windows and doors indicated on the approved plans shall be made of timber only and no other materials, unless the written consent of the Local Planning Authority is obtained to any variation thereto and thereafter shall be retained in timber without the express written consent of the Local Planning Authority to the use of a different material;
- (l) C926B - remediation investigation/certificate;
- (m) P001A - no extensions;
- (n) P003 - no ancillary buildings;
- (o) P006 - no fencing;
- (p) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification), no doors and windows/dormer windows (other than those expressly authorised by this planning permission) shall be constructed.
(Notes to applicant:- (1) N025 - conversion; (2) N25A - conversion; (3) N024 - development in accordance with approved plans; (4) N111 - disabled access; (5) N112 - energy conservation; (6) N115 - water conservation; (7) N048 - remediation strategy; (8) N051B - health and safety; (9) N095A - owls and bats; (10) Applicant was advised that soakaways should be constructed in accordance with Building Research Digest 365 (September 1991)).

Reason for granting planning permission:-

The proposal was considered to comply with Taunton Deane Local Plan Revised Deposit Policies S1 (general criteria) and H9 (conversion of rural buildings) and Policies STR1 and STR6 of the Somerset and Exmoor National Park Joint Structure Plan Review.

42/2003/046CA

Demolition of buildings, Gatchell House, Honiton Road, Trull

Condition

C002 - time limit - listed building.

Reason for granting Conservation Area Consent:-

The buildings were of limited interest and their removal did not conflict with Taunton Deane Local Plan Revised Deposit Policy EN16 taking into account the other proposals at this location.

42/2003/047CA

Demolish former squash club buildings, outbuildings and walls, Gatchell House, Honiton Road, Trull

Condition

C002 - time limit - listed building.

Reason for granting Conservation Area Consent:-

The buildings were of limited interest and their removal did not conflict with Taunton Deane Local Plan Revised Deposit Policy EN16 taking into account the other proposals at this location.

42/2003/048

Erection of extension to Gatchell House in the form of an 'orangery' as a meeting room to serve elderly persons' dwellings to be constructed in accordance with planning permission No 42/1999/010 at Gatchell House, Honiton Road, Trull.

Conditions

- (a) C001 - time limit;
- (b) C101 - materials;
- (c) C112 - details of guttering, downpipes and disposal of rainwater;
- (d) C113 - details of structure and colour of mortar;
- (e) Specific details of all external joinery, at a scale of 1:50, shall first be submitted to, and approved in writing by, the Local Planning Authority. Such details to include sections, mouldings, relationship to outer face of structure, profiles, working arrangement, ventilation and finished treatment.
(Notes to applicant:- (1) N051B - health and safety; (2) N040A - drainage/water; (3) N024 - development in accordance with approved plans; (4) N052 - fire safety).

Reason for granting planning permission:-

The proposal respected the character and appearance of Gatchell House and would not have any adverse impact on the surrounding area. The proposal therefore accorded with Taunton Deane Local Plan Revised Deposit Policy EN15.

43/2003/136

Retention of wooden fence and use of land as domestic curtilage to rear, and formation of pedestrian access onto Champford Lane, 26 Champford Lane, Wellington

Reason for granting planning permission contrary to the recommendation of the Chief Planning Officer:-

The Committee felt the fencing did not constitute an intrusive feature in the street scene. The proposal would not therefore affect the visual or residential

amenity of neighbouring properties in accordance with Taunton Deane Local Plan Revised Deposit Policy S1.

48/2003/067

Change of use of existing office to residential use as part of Cherry Grove Cottage and change of use of outbuilding to office use at Winsford, West Monkton

Conditions

- (a) C001 - time limit;
- (b) This permission shall enure for the benefit of the office business operated by Mr Rodney Bates, whilst he is resident at Winsford only and not for the benefit of the land;
- (c) Within 28 days of the use at Winsford hereby approved commencing, the use of Cherry Grove Cottage shall revert to that of a single dwelling house and shall remain so at all times thereafter;
- (d) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any subsequent Order amending or revoking and reenacting that Order) there shall be no construction of any hard surface designed for vehicle parking within the curtilage of Winsford unless an application for planning permission in that behalf is first submitted to, and approved in writing by, the Local Planning Authority or, in default, by the Office of the Deputy Prime Minister;
- (e) The access and parking arrangements as shown on drawing no 0340/03A shall be completed to the satisfaction of the Local Planning Authority prior to the use hereby permitted commencing.

Reason for granting planning permission:-

In light of the condition requiring the cessation of the office use at Cherry Grove Cottage, it was concluded that no demonstrable harm would be caused in terms of either sustainability or highway safety. The proposal was therefore considered not to conflict with Taunton Deane Local Plan Revised Deposit Policy EC3 which related to the conversion of rural buildings to business use.

- (3) That **planning permission be refused** for the undermentioned development, subject to the standard reasons adopted by Minute No 86/1987 of the former Planning and Development Committee and such further reasons as stated:-

38/2003/650

Erection of dwelling for use as a unit of multiple occupation (six bedrooms) at land adjacent to 14 Greenway Road, Taunton

Reason

The proposed building would result in an over intensive use of the site likely to give rise to undue nuisance and disturbance to neighbouring properties and would be contrary to Taunton Deane Local Plan Revised Deposit Policy S1(F).

Reason for refusing planning permission contrary to the recommendation of the Chief Planning Officer:-

The Committee considered that a unit of multiple occupation on this site would be an over-development and would give rise to undue noise and nuisance to adjacent properties.

8. Erection of two dwellings with garages on land adjoining Thornhams, Henlade (31/2003/032)

Reported this application.

RESOLVED that subject to the receipt of no adverse views from the Council's Drainage Officer, the Chief Planning Officer be authorised to determine the application in consultation with the Chairman and, if the detailed plans were approved, the following condition be imposed:-

- (a) Climbers and shrubs shall be planted along the eastern boundary fence in accordance with details which shall first be submitted to, and approved in writing by, the Local Planning Authority. Such a scheme shall be carried out within the first available planting season from the commencement of the development.

(Note to applicant:- Applicant's attention was drawn to the conditions of outline planning permission 31/2003/023 which must be complied with before development commences).

Reason for approving detailed plans, if granted:-

The application site lay within the settlement limits of Henlade and it was considered that the scale and design of the dwellings was appropriate. The scheme would not harm the appearance of the street scene nor significantly harm neighbouring amenity. Therefore the proposal accorded with Taunton Deane Local Plan Revised Deposit Policies S1 and H1.

9. Erection of 28 apartments/cottages for the elderly and disabled, the conversion of part of Gatchell House to provide support accommodation, erection of extension to Gatchell House in the form of an orangery as a meeting room to serve the proposed apartments/cottages at Gatchell House, Honiton Road, Trull (42/2003/049)

Reported this application.

RESOLVED that subject to the applicants entering into a Section 106 Agreement by 18 February 2004 to:-

- (1) Restrict occupancy to elderly or disabled persons;
- (2) Provide seven social housing units; and
- (3) Provide a financial contribution of £80,000 towards new squash facilities or the development of existing facilities and, if such could not be provided within two years, the contribution to be used towards the provision of other forms of sports/recreation facilities, the Chief Planning Officer be authorised to

determine the application in consultation with the Chairman and, if planning permission were granted, the following conditions be imposed:-

- (a) C001 - time limit;
- (b) C101 - materials;
- (c) C112 - details of guttering, downpipes and disposal of rainwater;
- (d) C113 - details of structure and colour of mortar;
- (e) C201 - landscaping;
- (f) C205 - hard landscaping;
- (g) C206A - existing and proposed levels;
- (h) C208A - protection of trees to be retained;
- (i) C210 - no felling or lopping;
- (j) No windows other than those shown on the plans hereby approved shall be constructed in any wall of the buildings which abut the boundary with Gatchell Meadow without the prior written consent of the Local Planning Authority;
- (k) There shall be no obstruction to visibility greater than 300mm above the adjoining road level in advance of lines drawn 4m back from the carriageway edge on the centre lines of the access and extending to points on the nearside carriageway edge 70m either side of the access. Such visibility splays shall be fully provided before any of the accommodation hereby approved is first occupied and shall thereafter be maintained at all times;
- (l) The access road shall not be less than 5m in width over the first 25m of its length;
- (m) A radius of not less than 6m shall be provided on the southern side of the access road junction with the Honiton Road and a radius of not less than 12.5m shall be provided on the northern side;
- (n) Development shall not begin until full details of any proposed alterations in existing ground levels and of the position of any proposed excavation within the crown spread plus 25% of the American Oak situated to the east of Gatchell House are submitted to, and approved in writing by, the Local Planning Authority. The above details shall include an investigation and assessment to identify the extent of any damage or disturbance which may be caused to the root system and the measures to be taken to avoid any damage which is likely to affect the American Oak when the site is developed. Development shall not commence until the measures approved in the details submitted have been implemented;
- (o) Details of proposals to ensure protection of bats shall be submitted to, and approved in writing by, the Local Planning Authority before any works commence and any resulting measures shall be implemented in accordance with an agreed programme;
- (p) Specific details of all external joinery, at a scale of 1:50, shall first be submitted to, and approved in writing by, the Local Planning Authority. Such details to include sections, mouldings, relationship to outer face of structure, profiles, working arrangement, ventilation and finished treatment.

(Notes to applicant:- (1) N051B - health and safety; (2) N040A - drainage/water; (3) N052 - fire safety; (4) N024 - development in

accordance with approved plans; (5) N075 - Section 106 Agreement; (6) Applicant was advised that noise emissions from the site during the construction phase should be limited to the following hours if nuisance is likely at neighbouring premises:- Monday to Friday 0800 - 1800 hours; Saturdays 0800 - 1300 hours. At all other times, including public holidays, there shall be no noisy works).

Reasons for planning permission, if granted:-

Gatchell House Squash and Fitness Club clearly provided a useful facility for a large number of people and a diverse range of groups. However, no evidence had been submitted which could lead to a different conclusion from that of the Appeal Inspector that "notwithstanding the outcome of this application, there was little or no likelihood of the club re-opening". The site was suitable for residential use and more particularly for elderly persons' accommodation. Appropriate provision of affordable housing was being proposed. The applicants had addressed previous concerns in respect of mass, form, detailed design and impact upon the Conservation Area. English Heritage no longer objected to the proposal. Overall, it was concluded that the scheme was appropriate in terms of preservation and enhancement of the Conservation Area, bearing in mind the need to provide densities that accorded with the requirements of Planning Policy Guidance Note No 3. The proposal accorded with Somerset and Exmoor National Park Joint Structure Plan Review Policy 37 and Taunton Deane Local Plan Revised Deposit Policies EN15, C3 and H1.

10. Erection of new dwelling on land to the rear of 2 Highland Place, High Street, Wellington (43/2002/159)

Reported that planning permission for this development was granted in January 2003.

An application for a minor amendment had recently been received to reduce the height of a wall at the new property, increase the height of a boundary fence to reduce the impact of the development and to replace one first floor window and insert two new windows all on the north-west elevation to serve a bathroom, landing and bedroom. Noted that the bathroom and landing windows were proposed to be obscure glazed.

Details of the minor amendment had been circulated to the Wellington Town Council and local residents for comment. Although the Town Council had raised no objection to the proposals, three letters of representation had been received, details of which were reported.

In the view of the Chief Planning Officer, the obscure glazing of two of the windows, the distance from the dwelling to the nearest neighbouring property, the difference in ground levels and the increased height of the boundary fence would all keep any overlooking or loss of privacy to a minimum.

Despite this, members considered that the three windows that had been installed on the north-west elevation were unacceptable.

RESOLVED that:-

- (1) The request for a minor amendment be refused;
- (2) Enforcement action be taken to ensure full compliance with the approved plans, in relation to the provision of one first floor window only on the north-west elevation of the new dwelling; and
- (3) Subject to being satisfied with the evidence, the Solicitor to the Council institute legal proceedings should the Enforcement Notice not be complied with.

11. Unauthorised fence to the rear and side of 99 Burge Crescent, Cotford St Luke

Reported that despite planning permission being refused for the retention of a 1.85m high fence to the rear and side of 99 Burge Crescent, Cotford St Luke, no action to remove the unauthorised fence had been taken to date.

RESOLVED that:-

- (a) Enforcement action be taken seeking the removal of the unauthorised fence erected at the rear and to the side of 99 Burge Crescent, Cotford St Luke; and
- (b) Subject to being satisfied with the evidence, the Solicitor to the Council institute legal proceedings should the Enforcement Notice not be complied with.

12. Planting of hedge and provision of timber protection at The Cothelstone, Lydeard Mead, Bishops Lydeard

Reported that the owner of the property known as The Cothelstone, Lydeard Mead, Bishops Lydeard had recently planted a hedge at the front of the property and erected a small fence to protect the hedging plants whilst they became established.

Although this appeared to be in contravention of one of the planning conditions relating to the property, a past appeal decision had deemed that as the planting of a hedge could not be classed as development, such conditions were unenforceable.

As the timber protection of the hedging plants was likely to be removed once the hedge had grown, it was not considered expedient to take any action over this matter.

RESOLVED that no further action be taken.

13. Occupancy of dwelling in breach of condition - Hopper Lodge, The Kingfisher Centre, Nailsbourne, Kingston St Mary

Reported that the dwelling known as Hopper Lodge, The Kingfisher Centre, Nailsbourne, Kingston St Mary was currently being occupied in breach of an agricultural tying condition.

The dwelling which had been granted planning permission in 1989 had previously been used in connection with Nailsbourne Nursery until it had been sold to the current owner in December 2002 without the existence of the agricultural tie being revealed.

It had been intended to let out two of the rooms as bed and breakfast accommodation for people who were carers of terminally ill friends or relatives.

Although it was open to the owner of the property to submit a planning application to lift the tying condition, this would be considered on its merits and would normally require evidence of marketing the property for sale as an agricultural dwelling at an appropriate price.

RESOLVED that:-

- (1) The service of a Breach of Condition Notice be authorised; and
- (2) Such action be deferred for a period of 18 months from the date of the Committee in order that the property could actively be marketed as an agricultural dwelling in compliance with the condition.

14. Unauthorised use of barn as business premises at Wellisford Manor, Lower Wellisford, Wellington

Reference Minute No 74/2003, reported that the owner of the barn from which the business was operated had now purchased a unit on phase 2 of the Chelston Industrial Estate, near Wellington. The unit, which was currently being constructed, would be ready for occupation by March 2004

RESOLVED that service of the previously authorised Enforcement Notice be further delayed until the end of March 2004 to enable the business to relocate to the newly purchased premises at Chelston Industrial Estate.

15. Erection of 1.8m high fence at Marlborough Cottage, Stoneyhead Hill, Wrantage, North Curry

Reported that despite planning permission being refused for the retention of a 1.8m high fence adjacent to the highway at Marlborough Cottage, Stoneyhead Hill, Wrantage, North Curry, no action to remove the unauthorised fence had been taken to date.

Further reported that the applicant was currently seeking to address the concerns of the Chief Planning Officer and had agreed a suitable landscaping scheme. A further application was anticipated to retain the fence.

RESOLVED that:-

- (1) enforcement action be taken seeking the removal of the fence adjacent to the highway at Marlborough Cottage, Stoneyhead Hill, Wrantage, North Curry;

- (2) such action be deferred for two months to allow the submission of a further planning application; and
- (3) subject to being satisfied with the evidence, the Solicitor to the Council institute legal proceedings should any Enforcement Notice served in respect of the fence be not complied with.

(Councillors Floyd and Henley left the meeting at 9.05 pm and 10.19 pm respectively).

(The meeting ended at 10.24 pm).

18/2003/020

MR S & MRS R HOLE

ERECTION OF 12 CATTERY PENS IN A SINGLE BLOCK TO BE USED AS A BOARDING CATTERY, SINGLE PEN TO BE USED AS AN ISOLATION UNIT AND IMPROVEMENT OF VEHICULAR ACCESS ONTO HIGHWAY AT 1 BUDDLE OAK, HALSE WITH ADDITIONAL INFORMATION SENT BY E-MAIL DATED 30TH DECEMBER 2003 FROM APPLICANT AND AS AMENDED BY LETTER FROM APPLICANT, LETTER FROM FELINE ADVISORY BUREAU WITH ADDITIONAL INFORMATION AND AMENDED PLAN FROM APPLICANT RECEIVED ON 5TH JANUARY 2004.

13953/28453

FULL PERMISSION

PROPOSAL

Nos 1 and 2 Buddle Oak are a pair of semi-detached houses sited to the north of Blake's Farm, on the northern-western side of Halse. Access to both properties is via a single track from an unclassified road leading north out of Halse. Access to No 2 is to the rear of No 1. The proposal is to erect a row of 12 cattery pens which comprise 'housing' and 'run' elements each with independent gates, a separated isolation unit, these being on the north-western side of the site, provision of car parking area and improvement of vehicular access to an unclassified road at 1 Buddle Oak, Halse. The overall size of the 12 pens would be 16.15 m in length, 4.39 m in length and 2.3m in height and constructed in timber. The isolation unit would be beside the rear of the house. The car parking area would be a widening of the accessway in front of no No.1 with an existing apple tree retained within the car parking area and the boundary wall which will be rebuilt.

A previous application for the erection of a 5 m x 7.3 m x 2.8 m high polytunnel for domestic horticultural and agricultural use, was approved by Planning Committee on 5th March 2003. This has now been erected, and landscaping has been put in.

The applicant has included a statement from the Feline Advisory Bureau, which comments that a cattery of this size would result in an increase of traffic at 1 car per day on average, with no cars on some days. The applicant would meet the food and any equipment lorry at an appropriate location; smells would be minimal as the cat pens would be kept clean; the site is below the surrounding land, with an existing retaining stone wall shielding 2 sides; existing trees screen No 2 Buddle Oak from the cattery; the existing access would be widened at the lane; all clients would visit by appointment only; a collection/delivery service would be offered; planting for the previous permission has now carried out; there would be little foul water, mainly clean water will go down the drains, cat litter will be binned and collected weekly; there is no covenant on the property. The applicant wishes to be employed at home in order to be on the small holding and be able to look after the family. She is trained in Business Management and Agriculture. Preliminary advice was sought from the County Highways Authority and the view was that the traffic increase was an insignificant amount. Clarification on this aspect is awaited given the comments below. The applicant has applied for

improvements at the point of access to the highway, which would allow vehicles to pass and for sufficient vision while turning into or out of the access. The applicant states that there is no room for expansion, as they would not wish to have the cattery pens in the field, away from the house.

CONSULTATIONS AND REPRESENTATIONS

COUNTY HIGHWAY AUTHORITY the proposed development site is located outside recognised boundary limits, visitors are likely to be dependent on private cars, the approach road is substandard in both width and alignment and the access has substandard visibility particularly in a north-westerly direction. Recommends refusal on basis of the approach road being unsuitable to serve as a means of access and the existing access is considered to be unsuitable.

ENVIRONMENTAL HEALTH OFFICER suggests noise and odour observations
DRAINAGE OFFICER no objection.

PARISH COUNCIL no objection.

THREE LETTERS OF SUPPORT two Halse residents would prefer to walk down the road to take two cats to 'holiday quarters'; a local enterprise is great news; people with young families should be able to run small business from their home; this would be a useful amenity for this and neighbouring villages.

ONE LETTER OF OBJECTION covenant on property prevents business use; cesspit is for domestic use only, extra usage could lead to health and safety implications to adjoining property; concern about annoyance/discomfort; required confirmation that a notice had been displayed on site; loss in value of neighbouring property; contests the traffic generation figures; part time help may also be required, and viewing of facilities would increase the amount of traffic; amount of cat litter produced will require additional waste services' traffic; concern about the proposal to meet delivery lorries and transfer of goods on the public highway; contrary to Taunton Deane Borough Council's Policy to restrict car traffic; difficult vehicular access; the cats will be noisy; diversification into selling food and other related items will occur.

ONE LETTER OF CONCERN no objection to the cattery, but the lane between Buddle Oak and Halse is unsuitable for any increase in motor traffic, conditions should be enforced, and a previous condition for planting appears not to have been carried out.

POLICY CONTEXT

S1 General requirements. EC1 Working from home: the creation of a workplace within the dwelling will be permitted provided the essentially residential character of the building and area is maintained by limiting the type and level of activity ..., preventing any harmful future intensification, and limiting any advertisement. This policy relates to running a business from the dwelling, rather than a diversification of a small holding. EC4 Rural employment proposals: outside settlements new small scale buildings... will be permitted provided the site is near a public road, adjacent to a village where there is

no suitable site available, no harm to residential amenity of neighbouring properties, landscape or highway safety and adequate arrangements can be made for the provision of services. This relates mainly to new small scale buildings for business, industry, or other employment generating uses rather than the low scale current application. EC5 Farm Diversification: generally acceptable provided that the proposal is compatible with the agricultural operations on the farm and the existing farm buildings are used. This policy is aimed mainly at larger scale farms, but the gist of the policy is applicable to the current proposal.

The site is outside the settlement limits of Halse as defined in the Taunton Deane Local Plan. Having regard to the policies above, the further development of an existing small holding to include other uses is in general acceptable depending on scale and possible harm to neighbouring properties.

ASSESSMENT

The application site is part of a small holding situated just outside Halse, being several hundred metres from Halse centre, but is within easy walking distance. The applicants have erected a polytunnel and are aiming to be self-sufficient; the holding also has hens, geese and sheep. The applicant wishes to run the business from home, and the level of business would be at a relatively low level and is considered to be appropriate to this rural location. Whilst the County Highways Authority has now objected, its initial pre-application comments were favourable. Given the amount of traffic assumed by the Feline Advisory Bureau, the applicant being willing to collect/deliver cats, and the amount of traffic which a domestic property could generate as a matter of course, it is considered that the proposal would not generate an exceptional amount of traffic. The comments in respect of restricted visibility are noted, but it is considered that most visitors will come via Halse, from which direction the visibility into the site is reasonable and will be much improved as a result of the proposed highway improvements. The approach road also serves Blake's Farm, Higher Blake's Farm and a number of other dwellings. It is not considered that the small increase in traffic using this lane will be of such significance to warrant refusal. The improvement to the point of the access should overcome the currently narrow access point. The concerns of the neighbour are not considered to warrant refusal of the proposal. Whilst it is acknowledged that the Council's policy is to try to restrict travel by car, the applicant will offer a collection/delivery service, and this type of use is considered to be more appropriate in a rural location than in town centres. Conditions will restrict the size, control noise and smell and any sales.

RECOMMENDATION

Permission be GRANTED subject to conditions of time limit, materials on plan, access to be in place prior to use commencing, parking area to be in place prior to use commencing, no ancillary sales, no more than 12 cats to be housed within the development permitted, noise, odour. Notes re advice to customers about collection/delivery service, any access should be from Halse and not from the northwest.

REASON(S) FOR RECOMMENDATION:- The use is considered to be acceptable within the scope of employment related Policies EC1, EC4 and EC5 and Policy S1 of Taunton Deane Local Plan Revised Deposit as neither the level of activity/potential nuisance to neighbours nor the amount of traffic is considered to be sufficient to warrant refusal; the development will provide economic diversification within a rural area for an existing occupier and provide an amenity to residents.

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

CONTACT OFFICER: 356460 MS K MARLOW (MON/TUES ONLY)

NOTES:

24/2003/040

V J IMRIE

**CONVERSION OF BUNGALOW TO FORM TWO BUNGALOWS AT THE MEADOWS,
1 WHITE STREET, NORTH CURRY.**

32468/25197

FULL PERMISSION

PROPOSAL

This proposal is for the conversion of one large detached bungalow into two, three bed-roomed bungalows. The proposal would involve the conversion of the current garage to provide a bedroom and kitchen for one of the dwellings and two new garages would be provided on the site to provide one parking space per dwelling. The drive and turning area to the front of the bungalows would be kept clear to allow access to the garages and to ensure cars can leave the site in a forward gear. The site lies in a semi rural location on the outskirts of North Curry and has open fields to the north and east. To the southeast of the site lies Barton way, a group of 15 bungalows. The site is accessed off a shared drive that serves No. 2 White Street and the Meadows bungalow.

CONSULTATIONS AND REPRESENTATIONS

COUNTY HIGHWAY AUTHORITY recommend refusal of the application, The existing visibility splays are inadequate and provide visibility of 2 m x 25 m instead of 2 m x 90 m as is required. Increased use of the access would result in a danger to highway safety. In addition the driveway is only 3 m in width, which is too narrow for two cars to pass, and it is considered that the proposal would result in additional conflicting traffic movements that would be prejudicial to road safety

NORTH CURRY PARISH COUNCIL supports the application.

2 LETTERS OF SUPPORT have been received, including one from Councillor P Stone, raising the following points: - the existing property is large and its conversion would have little impact on neighbouring residents; the access is adequate to serve the dwellings and is much better than many others within the village; the conversion will result in two relatively lower value dwellings that are to be welcomed in the area; there should be no overall increase in the height of the building; there should be no clear windows on the elevation facing the neighbouring dwelling; the boundaries should all be maintained by the owners of the dwellings; each household using the access should have to contribute equally, to its maintenance.

POLICY CONTEXT

Somerset and Exmoor National Park Joint Structure Plan Review the following policies apply: - STR1 requiring proposals to be a sustainable development, of high quality, good design and locally distinctive. STR3 identifies rural centres and villages as focal points for social and community activity; identifies settlements that act as focal centres for employment, shopping, social and community activity as rural centres and settlements with limited local services as villages. Policy 49 requires development proposals to be compatible with the road network or, if not, to provide an acceptable improvement.

Taunton Deane Local Plan Revised Deposit the following policies apply:- S1 governing the general requirements of all development; criteria (A) additional road traffic would not lead to overloading of access roads or road safety problems; (B) the accessibility of the site for public transport, walking, cycling and pedestrians would minimise the need to use the car; (D) requires that the appearance and character of the street scene would not be harmed as a result of the development; (F) the health, safety or amenity of any occupants or users of the development will not be harmed by any pollution or nuisance arising from an existing or committed use; S7 identifies North Curry as a village where small scale development, supporting the social and economic viability, maintaining or enhancing the environmental quality and not resulting in a significant increase in car travel, is acceptable; M3a requires adequate parking for residential.

ASSESSMENT

The proposed conversion is within the settlement limits of North Curry where the principal of an additional dwelling is acceptable subject to the details. The bungalow has an "L" shaped form and would be subdivided to provide a semi-detached pair of bungalows. The proposal would be likely to result in a slight increase in domestic activity in and around the site but I do not consider that this would be materially detrimental to the current amenity of neighbouring residents. Only one garage for each dwelling has been proposed (In the event that the access to the site was acceptable then this detail could be amended to provide two parking spaces per dwelling). Policy 49 of the Somerset and Exmoor National Park Joint Structure Plan Review and Taunton Deane Local Plan Revised Deposit Policy S1 (A), require that new development has adequate access onto the existing highway infrastructure and that additional road traffic would not lead to overloading of access roads or be detrimental to road safety. The County Highway Authority have advised that the access onto White Street and the width of the existing would be inadequate to serve the additional traffic likely to be generated by the extra dwelling. The existing dwelling is very large and would generate additional traffic if used to capacity. Taking this into account, it is not considered that there would be a material increase in the amount of traffic resulting from a sub-division of the property. Proposal considered acceptable.

RECOMMENDATION

Permission be GRANTED subject to conditions of time limit, materials, turning area, 4 parking spaces.

REASON(S) FOR RECOMMENDATION: The proposal would be within the settlement limits of North Curry where additional dwellings are considered to be acceptable in accordance with Taunton Deane Local Plan Revised Deposit Policy S7. It is also considered that there would be no material harm to highway safety in accordance with the requirements of Policy 49 of the Somerset and Exmoor National Park Joint Structure Plan Review and Policy S1 (A) of the Taunton Deane Local Plan Revised Deposit.

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

CONTACT OFFICER: 356467 MRS J MOORE

NOTES:

38/2003/627

W & H DEVELOPMENTS LTD

CHANGE OF USE AND CONVERSION OF BUILDING TO FORM 9 FLATS AND ONE MAISONETTE, HUNTS COURT, CORPORATION STREET, TAUNTON AS AMENDED BY AGENTS LETTER DATED 7TH JANUARY, 2004 AND DRAWINGS 0309/01B, 05A AND 06A ATTACHED

22583/24469

FULL PERMISSION

PROPOSAL

Hunts Court is a Grade II listed building. It was purpose built as the former Somerset College of Arts and is an imposing neo-classical building dated 1905. It was last used by the Social Services Department of Somerset County Council. A proposal to subdivide into twelve flats and one maisonette was refused in May 2003 on the grounds that the loss of some original internal walls and the introduction of numerous new partitions would seriously compromise the original layout of the building and that the proposal lacked detail with regard to the full extent of alterations required to facilitate the buildings use for residential purposes.

This revised proposal reduces the number of flats from twelve to nine and provides more detailed information on how the conversion may be achieved and an appraisal of the important features of the building. A marketing report has also been submitted indicating that despite the active marketing and publicity the building has received no financially backed commercially viable proposal whether for community or commercial use.

CONSULTATIONS AND REPRESENTATIONS

COUNTY HIGHWAY AUTHORITY no objection. COUNTY ARCHAEOLOGIST this site lies within the Area of high Archaeological Potential next to the schedule area of the Taunton Castle Moat. Applicant should therefore be required to provide archaeological monitoring of the development and report on any discoveries made. Suggest relevant condition. WESSEX WATER refer to sewer crossing the site and need for protection. POLICE ARCHITECTURAL LIAISON OFFICER the entrances on both the basement level and the ground floor level have limited opportunities for natural surveillance. This is particularly very relevant to the basement entrance. The situation could be slightly improved by the removal of the wall at the entrance next to the steps. If this was replaced with railings, similar to the gates, then some natural surveillance opportunities would be possible and the entrances would appear more 'open' and safer to use. Adequate external security lighting should also be installed to cover these areas. I would also recommend that a system of access control, using intercom possibly with CCTV facility, should be installed at both entrances.

TOWN CENTRE PARTNERSHIP We appreciate that this revision reduces the number of units proposed, thus the internal space is less 'carved -up' (as per our previous concerns). There is however no provision for public access to this listed building, and a

'mixed- use' for this building would be preferable in this town centre location. Given the Master plan proposals for this area of Taunton, suggested in the Terence O'Rourke study, the use of this building solely for residential use, would appear to run counter to those suggested therein, for Hunt's Court to play a significant role in the area designated the 'Cultural Quarter'. I know that strenuous efforts are being made for the building to fulfil an arts based role. Perhaps planning applications that would prevent the building from contributing to the Master plan, should be deferred until such time as a definitive decision has been made on the alternative use for Hunt's Court as an art centre, has been reached. The work that has been done to clean the external elevations of Hunts Court is very much appreciated and has done a great deal to enhance Corporation St. CIVIC SOCIETY maintain earlier objection on grounds that any plans for residential use here would be inappropriate.

CONSERVATION OFFICER 1. The amended plans and letter of clarification, received 8th January, 2004, produce a much improved scheme to that refused under 28/2003/165. This is in no small part due to the reduction in the number of proposed flats from 12 to 9, 2. Confirmation from Building Control re the acceptability of the proposed ventilation is required to negate reason for refusal attached to 38/2003/165. 3. PPG15 understandably advises that clearly the best use for a building, is that for which it was designed. As reuse of Hunts Courts as an Arts College is negated by the SCAT facilities, clearly this is not an option. 4. Finding a new use for an historic building, particularly one that is listed, is one of the most import and sensitive assessments that need to be made. In respect of this, the principle aim is to identify the optimum viable use that is compatible with the fabric, interior and setting of the building. The options available to Hunts Court, have however been limited by the covenant put on the sale by S.C.C. 5. In assessing the current proposal, the following is of direct relevance:- (a) the proposals seek to and achieve in the main, the rectification of inappropriate alterations carried out by the former owner. (b) the conversion entails the subdivision of main, original lofty spaces in the following areas:- (i) modelling - as part of proposed flat 7. (ii) woodwork - as part of proposed flat 3. (iii) lecture room - as part of proposed flat 4. (iv) elementary room - by subdivision to from flats 3 and 4. (v) light and shade - by subdivision to form flat 6, which includes the insertion of a mezzanine. (vi) subdivision of an unnamed space to rear at first floor. (vii) painting room - as part of subdivision to form flats 5 and 6. Conclusion:- whilst the current proposals are a significant improvement, in terms of spatial subdivision, to that refused under 38/2003/165, I am still of the opinion that certain designed spaces are compromised to the extent that I can only still raise an objection.

DRAINAGE OFFICER no observations. LEISURE DEVELOPMENT OFFICER S.106 please request 3 x 1 bed dwellings at £850.00 per dwelling for off-site playing pitch provision £2,550.00. 7 x 2+ bed dwellings (being 6 x 3 beds and 1 x 2 beds) at £2,050.00 per dwelling towards play and open space provision £14,350.00. Improvement to the gardens to the side of the property could be an option. Developers could be asked to draw up a specification for this and subject to our approval carry out the works as part/all of the S.106. COMMUNITY ARTS OFFICER (a) CHANGE OF USE As I understand it, the application would necessitate a change from the current office use to residential use. The Vision for Taunton flags up Hunts Court in the master plan as an integral part of the development of the Cultural Quarter. Several agencies and partners are keen to see the Old Art School remain in the public domain for a number of reasons. The Cultural Consortium see the Old Art School as a key driver in the

regeneration of the Cultural Quarter. They are currently consulting stakeholders about their needs and will be putting forward their response to the master plan, making recommendations for the whole of the Castle Green area including Hunts Court to Taunton Deane Borough Council. It would therefore be premature to change the use to residential use, since new planning guidelines coming out in October are likely to seek to retain Hunts Court for commercial activities. (b) ALTERNATIVE PROPOSAL There is an alternative proposal currently being developed. As community arts officer for Taunton Deane Borough Council, I have been researching a proposal to develop a Creative Enterprise Centre at Hunts Court. This will include a county art gallery, a writers' cafe, an art bar, a community arts resource, artists' & makers' studios, shops and offices for other creative enterprises. This concept of supporting incubation units until they reach sustainability follows RDA policy of investing in creative industries, and is far more in line with the original purpose of the building. We are currently researching the feasibility of the proposal by testing it against the market. Arthur C. Clarke Foundation are interested in taking the whole of the basement. Somerset Art Gallery Trust are working with Somerset Art Week and The Brewhouse to develop a regional art gallery on the ground floor. Somerset College of Arts and Technology are interested in renting space on the top 2 floors in the longer term while other makers and artists are being informed about the opportunity. It would not be necessary to subdivide the building as it is proposed in the residential planning application. Instead, this listed building could be returned more to its former glory and usage, rather than the subdivisions it has currently undergone under SCC ownership, and the further divisions it would undergo as flats. Hunts Court is a valuable asset to Taunton. The RDA have indicated they will consider involvement in Hunts Court as part of the wider Taunton Vision, specifically as part of the Cultural Quarter. We are currently exploring sources of set up funds for the first initial year, to pilot the scheme. The owners and developers are aware of this proposal, and have indicated to me that they would prefer the Creative Enterprise Centre option to selling the building off as residential flats. They have been patient in understanding that it takes time to work up a feasible solution and draw in external funds to do this, and are prepared to lease Hunts Court on a pilot basis for a year. They have indicated to the press and myself that they see the planning application for residential use as necessary to secure a fall back option.

ENVIRONMENTAL HEALTH OFFICER (Housing Standards)

1. All building works should be carried out in accordance with the current Building Regulations.
2. An appropriate automatic fire detection system is to be fitted to the individual lettings and Common/circulation areas.
3. In relation to all habitable rooms in the lower ground floor Housing Standards have concerns regarding the provision of suitable and sufficient natural light and ventilation to these rooms, in view of the existing bars and obstructing walls.
4. In regard to the Maisonette it is strongly recommended that the window in the ground floor kitchen/lounge shall have a minimum opening area of 550 mm x 800 mm to allow rescue by the Fire Brigade, or for egress by the occupants.

8 LETTERS OF OBJECTION have been received on the following grounds:- should have a cultural use; an arts centre would be in keeping with proposed growth status; building is ideally suited for teaching and display of art; buildings structure, on a largely restricted ground floor, its large windows and high room heights, and top floor roof lighting all mitigate against residential use; a decision before the O'Rourke study would be premature; residential use would not fit comfortably with the other activities of Corporation Street.

POLICY CONTEXT

The site lies within the Taunton Central Area where in accordance with Policy H1 and H4 of the Taunton Deane Local Plan Revised Deposit there is a presumption in favour of the principle of new residential development. However, Policy EN18 states that the change of use, alteration, conversion or extension of a listed building will not be permitted unless:- (A) the internal and external fabric of the building including its architectural and historic features would be preserved, leaving them in situ where possible; (B) the buildings internal space would be retained where this is important to its character or historic integrity; (C) no subdivision of a garden or other green space would occur, where this would harm the buildings's character, setting and historic integrity; (D) the design, materials and building methods used are sympathetic to the age, character and appearance of the building. Natural materials reflecting those in the original building should be used, where possible; (E) any extension is sufficiently limited in scale so as not to dominate the original building or adversely affect this appearance. This accords with advice in PPG15 which indicates that "listed buildings do vary greatly in the extent to which they can accommodate change without loss of special interest, some may be sensitive even to slight alterations, this is especially true of buildings with interiors and fitting." What is particularly relevant in this case is the comment that better solutions are possible where an applicant is willing to exploit unorthodox spaces rather than then set a standardised requirement.

ASSESSMENT

The development plan clearly indicates that residential use would be appropriate in this type of location. Whilst the master plan being prepared by Terence O'Rourke sees this site as part of a new cultural quarter, this study is still in the process of preparation and does not yet constitute supplementary planning guidance. The master plan is a material consideration but can only carry limited weight when balanced against the policies of the Local Plan which have been rigorously tested through the Local Plan Inquiry process. Refusal on the grounds that the building must be used for cultural purposes would therefore be difficult to justify. However the master planning work does provide some confidence that should the building remain empty in the short term, in the longer term support and possible funding may be available to secure its reuse for cultural purposes.

The determining factor in the assessment of this proposal is whether the previous concerns in relation to the impact of subdivisions on the character of the building have been overcome. Overall, this is an improved scheme which appears to have resolved the issues relating to the ability to comply with building regulations. As indicated by the Council's Conservation Officer the proposals are generally successful in rectifying the inappropriate alterations carried out by the County Council. However, in order to accommodate the number of dwellings proposed some of the more important spaces are still compromised through subdivision. The proposal therefore fails to meet the necessary test of Policy EN18 and conflicts with the guidance in PPG15.

RECOMMENDATION

Permission be REFUSED for reason that the introduction of numerous partitions will seriously compromise the original layout of the building and hence be detrimental to the

character of this Grade II listed building, contrary to Policy 9 of the Somerset and Exmoor National Park Joint Structure Plan Review, Policies EN17 and EN18 of the Taunton Deane Local Plan Revised Deposit and guidance as such matters in PPG15.

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

CONTACT OFFICER: 356464 MR T BURTON

NOTES:

38/2003/628LB

W & H DEVELOPMENTS LTD

**ALTERATIONS TO FORM 9 FLATS AND 1 MAISONETTE AT HUNTS COURT,
CORPORATION STREET, TAUNTON.**

22583/24469

LISTED BUILDING CONSENT-WORKS

PROPOSAL

The application seeks listed building consent for the works outlined in planning application 38/2003/627.

CONSULTATIONS AND REPRESENTATIONS

COUNTY HIGHWAY AUTHORITY no objection. COUNTY ARCHAEOLOGIST this site lies within the Area of high Archaeological Potential next to the schedule area of the Taunton Castle Moat. Applicant should therefore be required to provide archaeological monitoring of the development and report on any discoveries made. Suggest relevant condition. WESSEX WATER refer to sewer crossing the site and need for protection. POLICE ARCHITECTURAL LIAISON OFFICER the entrances on both the basement level and the ground floor level have limited opportunities for natural surveillance. This is particularly very relevant to the basement entrance. The situation could be slightly improved by the removal of the wall at the entrance next to the steps. If this was replaced with railings, similar to the gates, then some natural surveillance opportunities would be possible and the entrances would appear more 'open' and safer to use. Adequate external security lighting should also be installed to cover these areas. I would also recommend that a system of access control, using intercom possibly with CCTV facility, should be installed at both entrances.

TOWN CENTRE PARTNERSHIP We appreciate that this revision reduces the number of units proposed, thus the internal space is less 'carved -up' (as per our previous concerns). There is however no provision for public access to this listed building, and a 'mixed- use' for this building would be preferable in this town centre location. Given the Master plan proposals for this area of Taunton, suggested in the Terence O'Rourke study, the use of this building solely for residential use, would appear to run counter to those suggested therein, for Hunt's Court to play a significant role in the area designated the 'Cultural Quarter'. I know that strenuous efforts are being made for the building to fulfil an arts based role. Perhaps planning applications that would prevent the building from contributing to the Master plan, should be deferred until such time as a definitive decision has been made on the alternative use for Hunt's Court as an art centre, has been reached. The work that has been done to clean the external elevations of Hunts Court is very much appreciated and has done a great deal to enhance Corporation St. CIVIC SOCIETY maintain earlier objection on grounds that any plans for residential use here would be inappropriate.

CONSERVATION OFFICER 1. The amended plans and letter of clarification, received 8th January, 2004, produce a much improved scheme to that refused under

28/2003/165. This is in no small part due to the reduction in the number of proposed flats from 12 to 9, 2. Confirmation from Building Control re the acceptability of the proposed ventilation is required to negate reason for refusal attached to 38/2003/165. 3. PPG15 understandably advises that clearly the best use for a building, is that for which it was designed. As reuse of Hunts Courts as an Arts College is negated by the SCAT facilities, clearly this is not an option. 4. Finding a new use for an historic building, particularly one that is listed, is one of the most important and sensitive assessments that need to be made. In respect of this, the principle aim is to identify the optimum viable use that is compatible with the fabric, interior and setting of the building. The options available to Hunts Court, have however been limited by the covenant put on the sale by S.C.C. 5. In assessing the current proposal, the following is of direct relevance:- (a) the proposals seek to and achieve in the main, the rectification of inappropriate alterations carried out by the former owner. (b) the conversion entails the subdivision of main, original lofty spaces in the following areas:- (i) modelling - as part of proposed flat 7. (ii) woodwork - as part of proposed flat 3. (iii) lecture room - as part of proposed flat 4. (iv) elementary room - by subdivision to form flats 3 and 4. (v) light and shade - by subdivision to form flat 6, which includes the insertion of a mezzanine. (vi) subdivision of an unnamed space to rear at first floor. (vii) painting room - as part of subdivision to form flats 5 and 6. Conclusion:- whilst the current proposals are a significant improvement, in terms of spatial subdivision, to that refused under 38/2003/165, I am still of the opinion that certain designed spaces are compromised to the extent that I can only still raise an objection.

DRAINAGE OFFICER no observations. LEISURE DEVELOPMENT OFFICER S.106 please request 3 x 1 bed dwellings at £850.00 per dwelling for off-site playing pitch provision £2,550.00. 7 x 2+ bed dwellings (being 6 x 3 beds and 1 x 2 beds) at £2,050.00 per dwelling towards play and open space provision £14,350.00. Improvement to the gardens to the side of the property could be an option. Developers could be asked to draw up a specification for this and subject to our approval carry out the works as part/all of the S.106. COMMUNITY ARTS OFFICER (a) CHANGE OF USE As I understand it, the application would necessitate a change from the current office use to residential use. The Vision for Taunton flags up Hunts Court in the master plan as an integral part of the development of the Cultural Quarter. Several agencies and partners are keen to see the Old Art School remain in the public domain for a number of reasons. The Cultural Consortium see the Old Art School as a key driver in the regeneration of the Cultural Quarter. They are currently consulting stakeholders about their needs and will be putting forward their response to the master plan, making recommendations for the whole of the Castle Green area including Hunts Court to Taunton Deane Borough Council. It would therefore be premature to change the use to residential use, since new planning guidelines coming out in October are likely to seek to retain Hunts Court for commercial activities. (b) ALTERNATIVE PROPOSAL There is an alternative proposal currently being developed. As community arts officer for Taunton Deane Borough Council, I have been researching a proposal to develop a Creative Enterprise Centre at Hunts Court. This will include a county art gallery, a writers' cafe, an art bar, a community arts resource, artists' & makers' studios, shops and offices for other creative enterprises. This concept of supporting incubation units until they reach sustainability follows RDA policy of investing in creative industries, and is far more in line with the original purpose of the building. We are currently researching the feasibility of the proposal by testing it against the market. Arthur C. Clarke Foundation are interested in taking the whole of the basement. Somerset Art Gallery

Trust are working with Somerset Art Week and The Brewhouse to develop a regional art gallery on the ground floor. Somerset College of Arts and Technology are interested in renting space on the top 2 floors in the longer term while other makers and artists are being informed about the opportunity. It would not be necessary to subdivide the building as it is proposed in the residential planning application. Instead, this listed building could be returned more to its former glory and usage, rather than the subdivisions it has currently undergone under SCC ownership, and the further divisions it would undergo as flats. Hunts Court is a valuable asset to Taunton. The RDA have indicated they will consider involvement in Hunts Court as part of the wider Taunton Vision, specifically as part of the Cultural Quarter. We are currently exploring sources of set up funds for the first initial year, to pilot the scheme. The owners and developers are aware of this proposal, and have indicated to me that they would prefer the Creative Enterprise Centre option to selling the building off as residential flats. They have been patient in understanding that it takes time to work up a feasible solution and draw in external funds to do this, and are prepared to lease Hunts Court on a pilot basis for a year. They have indicated to the press and myself that they see the planning application for residential use as necessary to secure a fall back option.

ENVIRONMENTAL HEALTH OFFICER (Housing Standards)

1. All building works should be carried out in accordance with the current Building Regulations.
2. An appropriate automatic fire detection system is to be fitted to the individual lettings and Common/circulation areas.
3. In relation to all habitable rooms in the lower ground floor Housing Standards have concerns regarding the provision of suitable and sufficient natural light and ventilation to these rooms, in view of the existing bars and obstructing walls.
4. In regard to the Maisonette it is strongly recommended that the window in the ground floor kitchen/lounge shall have a minimum opening area of 550 mm x 800 mm to allow rescue by the Fire Brigade, or for egress by the occupants.

8 LETTERS OF OBJECTION have been received on the following grounds:- should have a cultural use; an arts centre would be in keeping with proposed growth status; building is ideally suited for teaching and display of art; buildings structure, on a largely restricted ground floor, its large windows and high room heights, and top floor roof lighting all mitigate against residential use; a decision before the O'Rourke study would be premature; residential use would not fit comfortably with the other activities of Corporation Street.

POLICY CONTEXT

Policy 9 of the Somerset and Exmoor National Park Joint Structure Plan Review, Policies EN17 and EN18 of the Taunton Deane Local Plan Revised Deposit and guidance in PPG15 are relevant.

ASSESSMENT

The same considerations apply as the planning application in terms of the impact of the proposed upon the internal spaces of this important building.

RECOMMENDATION

Consent be REFUSED for reason that the introduction of numerous partitions will seriously compromise the original layout of the building and hence be detrimental to the

character of this Grade II listed building, contrary to Policy 9 of the Somerset and Exmoor National Park Joint Structure Plan Review, Policies EN17 and EN18 of the Taunton Deane Local Plan Revised Deposit and guidance as such matters in PPG15.

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

CONTACT OFFICER: 356464 MR T BURTON

NOTES:

38/2004/003

TAUNTON & SOMERSET NHS TRUST

ERECTION OF TWO STOREY BUILDING TO ACCOMMODATE ONCOLOGY CENTRE WITH ASSOCIATED ACCESS AND CAR PARKING AT MUSGROVE PARK HOSPITAL, TAUNTON AS AMENDED BY AGENTS LETTER DATED 26TH JANUARY, 2004

21345/24321

RESERVED MATTERS

PROPOSAL

Outline permission was granted in August 2002 for the establishment of a new oncology department on land towards the northeastern corner of the hospital site. The site previously accommodated a children's day nursery which has since been relocated elsewhere on the site. It also involves the loss of a car parking area. As a result a requirement of the outline permission was that a deck was added to the surface car park close to the western side of the site roughly in the location where permission has subsequently been granted for the erection of a multi-storey car park. The two storey oncology unit has a curved front providing a day ward, out patients, pharmacy, radiotherapy and reception at ground floor level with in patient ward, staff and admin accommodation above. The majority of the necessary plant located is on the roof where it will be largely screened from public view.

CONSULTATIONS AND REPRESENTATIONS

COUNTY ARCHAEOLOGIST no objections. WESSEX WATER no comments. FIRE OFFICER suggest notes.

ENVIRONMENTAL HEALTH OFFICER suggests noise condition.

ONE LETTER OF OBJECTION raising the following:- a larger building than presently exists on the site will make the view to the rear of our home less appealing; the potential loss of privacy caused by the building; the levels of noise generated by construction (particularly if this overruns schedule), and later by the new car park included in the proposal; risk of damage to our own property; risk of negative impact to our property's value; loss of light to the rear garden, and the consequent damage to plants

POLICY CONTEXT

Policy S1(D) of the Taunton Deane Local Plan Revised Deposit requires that new development takes account of potential pollution, public health and safety and the amenity of individual dwellings or residential areas. Policy S2 requires all new development to be of good design.

ASSESSMENT

The principle of a building in this location has been established by the granting of outline consent. The site backs onto rear gardens in Musgrove Road. However, distances to dwellings are such that no material loss of light will occur. Any windows facing this boundary will be obscure glazed, details of which are conditioned. The design of the building is considered appropriate to its location. Details of the replacement car parking is also conditioned.

RECOMMENDATION

Permission be GRANTED subject to conditions of noise, landscaping, floodlighting, contamination, materials, obscure glazing, details of car parking. Notes re outline permission, compliance, Part M, CDM Regs, fire safety.

REASON(S) FOR RECOMMENDATION:- The proposed building is of good quality design and will not detract from the character of the locality. The relationship with nearby dwellings is acceptable and will not cause harm to residential amenity. The proposal therefore complies with Taunton Deane Local Plan Revised Deposit Policy S2.

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

CONTACT OFFICER: 356464 MR T BURTON

NOTES:

42/2004/001

MICHAEL COONEY

**RETENTION OF FLUE TO CAR SPRAY OVEN TO REAR OF TRULL GARAGE,
HONITON ROAD, TRULL**

21451/22457

FULL PERMISSION

PROPOSAL

The application seeks the retention of a flue which projects through the roof of a nissen hut type building located alongside (but set back from) the main garage building. The flue is necessary to vent a car spray area.

CONSULTATIONS AND REPRESENTATIONS

ENVIRONMENTAL HEALTH OFFICER odours arising from the car spray oven should not be detectable at the boundary of the premises to which this permission relates. (This potential problem could be overcome by the fitting of a suitably filtered air extraction system and/or the use of low solvent based paint). Noise from any air extraction system should not exceed background noise levels by more than 3 dB(A) for a 2 minute leq, at any time when measured at the facade of any residential or other noise sensitive premises during the following times:- Monday-Friday 0800-1800 Saturdays 0800-1300. All other times, including Public Holidays, noise from any air extraction system should not be audible. The applicant is reminded that a Permit under the Pollution Prevention Control Regulations 2000 will be required if the usage of solvents (for example Paint solvents) is likely to exceed 1 tonne per year.

PARISH COUNCIL object to this application. The flue is visually obtrusive, letters of objection from properties in the immediate area have previously been sent to TDBC and there is concern regarding health and safety issues. It also contributes to the steadily increasing industrialisation of the site within a residential area. A full environmental impact assessment is required.

TWO LETTERS OF OBJECTION have been received from nearby residents (in Furlong Green) objecting on the grounds of nuisance from fumes and smell; inappropriate in residential area; fire risk; too much noise from the fan; flue is unsightly.

POLICY CONTEXT

Policy S1 of the Taunton Deane Local Plan Revised Deposit sets out criteria that new development must meet. These include (D) the appearance and character of any affected landscape, settlement, building or street scene would not be harmed as a result of the development and; (E) potential air pollution, water pollution, noise, dust, glare, heat, vibration and other forms of pollution or nuisance which could arise as a result of the development will not harm public health or safety, the amenity of individual dwellings or residential areas or other elements of the local or wider environment.

ASSESSMENT

The visual impact of the flue needs to be assessed against its location as a 'utilitarian' nissen hut type building within a garage complex. It is set back from the main building in a location where its impact upon the street scene is limited. Whilst the objections on health and safety grounds are understood, the Council's Environmental Health Officer is satisfied that the conditions proposed will address the noise problem and prevent smell problems, although he does indicate that to comply with this second condition the applicant may have to install some suitable filtration equipment.

RECOMMENDATION

Permission be GRANTED subject to conditions of odour and noise. Note re pollution prevention control.

REASON(S) FOR RECOMMENDATION:- The flue is considered visually acceptable taking into account its location within a commercial premises. Conditions proposed will alleviate existing problems relating to noise and odour. The proposal therefore accords with Taunton Deane Local Plan Revised Deposit Policies S1(D) and (E).

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

CONTACT OFFICER: 356464 MR T BURTON

NOTES:

46/2003/046

MR B LORD

ERECTION OF SINGLE STOREY EXTENSION TO LINK GARAGE TO HOUSE, THE OLD PIGGERY, GERBESTONE MANOR, WELLINGTON.

16099/19288

FULL PERMISSION

PROPOSAL

Erection of single storey extension to provide link from detached garage to dwelling. Extension measures 4.1 m x 4.2 m x 3.6 m to the ridge (lower than the height of the garage and dwelling). Materials are render and salvaged clay double roman tiles to match existing.

The piggery was originally granted permission for holiday accommodation in 1994. Permission was varied to allow the accommodation to be occupied by an estate worker in 1998. A miscellaneous item was presented to the Committee in November 2003 to lift the occupancy condition.

CONSULTATIONS AND REPRESENTATIONS

PARISH COUNCIL object, concerned that concept of a worker's small dwelling on which planning permission was based has been lost. The Council feels this link is a precursor to using the garage for residential purposes

POLICY CONTEXT

Policy H19 of the Taunton Deane Local Plan Revised Deposit accepts extensions to dwellings provided there is no harm to residential amenity and no harm to the form and character of the dwelling; with the extension being subservient in scale and design. Policy S1 sets out general requirements and Policy S2 seeks good design.

ASSESSMENT

The site is secluded within the grounds of Gebestone Manor and will not harm the residential amenity of the area. When the garage was granted planning permission in 2003, a condition was attached stating that the garage shall remain available in perpetuity for the parking of motor vehicles for domestic purposes only. Considering the latter and that the extension is subservient and in character with the existing dwelling, the proposal is considered acceptable.

RECOMMENDATION

Permission be GRANTED subject to conditions of time limit and materials. Notes re compliance and building over sewer.

REASON(S) FOR RECOMMENDATION:- It is considered that the proposal complies with Taunton Deane Local Plan Revised Deposit Policies H19, S1 and S2, in that neither residential nor visual amenity would be adversely affected.

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

CONTACT OFFICER: 356463 MR D ADDICOTT

NOTES:

REPORT TO THE PLANNING COMMITTEE –18 FEBRUARY 2004

Joint Report of the Chief Solicitor and the Chief Planning Officer

Miscellaneous Item

Enforcement action in respect of Foxmoor Nurseries, Haywards Lane, Wellington

Background

Members will recall that at the meeting of the Committee on the 28 January 2004 consideration of a report in respect of possible enforcement action against Foxmoor Nurseries was deferred until this meeting. A copy of the original report is attached at Appendix A.

That decision to defer was made to allow:-

1. The owners and other interested parties to make representations to the Committee;
2. A further site visit to take place;
3. Detailed consideration of the report of the Traffic Examiner in respect of the highway access to the site; and
4. Further details of traffic levels to be assessed and enquiries made in respect of the bridge at Haywards Lane.

Representations on behalf of Foxmoor Nurseries

The submissions received on behalf of Foxmoor Nurseries are appended to the report – Appendix B.

Whilst many of the submissions made by Foxmoor are not accepted, in particular in relation to their reference to what constitutes B8 use, there is some new information contained in the submission.

In particular, there have been recent dealings in Foxmoor Nurseries shares which might affect the Council's existing advice on the interpretation of the word "association" in the S106 agreement. There are also references to tenants at the site who were not formerly known to the Council and also reference to a further activity of "pallet checking" by Foxmoor Nurseries themselves. The existing Counsel's advice might alter in the light of these new arrangements which were only implemented at the end of January 2004.

There is further reference to an agreement reached between the solicitors for Foxmoor Nurseries and the Council's Senior Solicitor that no enforcement action would be taken without there first being recourse to mediation. Whilst

there is some dispute as to the exact detail of what was agreed, it is accepted that the reference to such agreement in the letter from Bond Pearce of the 16 December was not challenged, and it is indeed now considered that this may be the appropriate way forward in respect of the interpretation of the term "association" in the S106 agreement. Indeed, mediation would be a necessary step if the Council ultimately decided to take Court proceedings to enforce the terms of the S106 agreement

Site Visit.

A site visit was carried out with the co-operation of Foxmoor Nurseries on the 10 February 2004. A thorough inspection of the site was carried out but it became clear during the visit that the Council and the owners of Foxmoor are not interpreting planning legislation in the same way. Whilst Foxmoor Nurseries allege that virtually all the activity on site is B1, it is the view of the Council's officers that many of the uses are B8. Such difference may ultimately only be resolved on appeal following service of enforcement notices.

Traffic Examiner's Report

The Traffic Examiner from the Vehicle and Operator Services Agency at Exeter visited the site in August 2003 in connection with an application by one of the occupiers of Foxmoor Nurseries for the a licence for an Operating Centre at the site for 14 vehicles. He notes in his report that Haywards Lane which leads to the site varies in width from 3.8 metres to 6.4 metres at the widest part, that in places the edge of the road is eroded and broken and that there is a narrow bridge 3.8 metres wide part way down the lane. He concludes:-

"I consider that an increase in traffic of any kind on (Haywards) Lane, a road which appears unsuitable for even the current volume and type of traffic, would not be beneficial to the safety of either pedestrians or vehicles using the lane."

Traffic levels and the bridge.

It is not possible to give accurate details of the levels of traffic accessing the site without a full survey. However, one of the occupiers, Scholastic Book Fairs, has an operator's licence to run 14 vehicles from the site. Conditions attached to that licence limit vehicles to 7.5 tonnes, with a limitation of hours and days of operation.

In addition however, vehicles serve five other units on site with no restriction on numbers or times of usage. The Nurseries business itself also carries out a "goods checking and inspection service" which currently is dealing with pre-built bathroom units for student accommodation. These are transported to and from site by articulated lorries.

Details of the condition of the bridge on Haywards Lane have been sought from the Bridge Engineer at the County Council and will be reported verbally.

Conclusion

There are two issues. Firstly, whether the various occupants at Foxmoor Nurseries are “associated companies” within the meaning of the S106 agreement. Secondly, even if they are associated companies are the uses being carried out B1 uses rather than B8.

Having visited the site it appears that some of the uses may be B1. However, further guidance is needed as to the interpretation of the S106 agreement in the light of the most recent changes to the shareholdings, and changes of directors, referred to in the Foxmoor Nurseries submissions. The latter needs to be clarified before a final decision on appropriate enforcement action can be taken. Foxmoor Nurseries have indicated a willingness to enter into mediation on this specific point within a limited time scale.

Recommendation

It is therefore RECOMMENDED that:-

- (1) the Solicitor to the Council be authorised to enter into mediation with Foxmoor Nurseries through an appropriate Mediation Service in respect of the interpretation of the S106 agreement only, such mediation to take place by the 19 March 2004; and
- (2) a further report be made to the Committee at its meeting on the 31 March 2004.

Chief Solicitor

Chief Planning Officer

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APPENDIX A

REPORT TO THE PLANNING COMMITTEE –28 JANUARY 2004

Joint Report of the Chief Solicitor and the Chief Planning Officer

Miscellaneous Item

Enforcement Action in respect of Foxmoor Nurseries, Haywards Lane, Wellington

Background

In 1996 planning permission was granted for the relocation of Foxmoor Nurseries from its existing site at Rockwell Green to a site in the open countryside at Haywards Lane, to the east of Wellington. The permission was for the erection of two large glasshouses, but there were concerns that the site was accessed by a narrow lane off the A38.

The permission was therefore subject to a S106 agreement requiring highway works. These were the widening of Haywards Lane itself prior to commencement of use of the glasshouses and the construction of a right hand turning lane from the A38, to be constructed prior to the commencement of the use of the second glasshouse, or within a year of commencement of use of the first glasshouse.

Whilst the first glasshouse was under construction in 2000, an application was received to change the use of 50% of this glasshouse to B1 use (light industrial) for the design, production, assembly and distribution of small garden products (Application No 46/2000/022). This was refused on the 18 September 2000 on the grounds of industrial intrusion into the open countryside and the possibility of precedent.

Subsequently, a further application was made (Application No 46/2000/0340) for the same use, but on that occasion it was explained by the applicant that the permission was being sought to permit the production of “Flower Towers” by Foxmoor Nurseries themselves. A written statement to this effect was submitted. Accordingly, permission was granted but subject to a S106 agreement which sought to limit the B1 use to such uses carried out by Foxmoor Nurseries itself or associated companies. The intention was to ensure that only horticultural type B1 uses were carried out.

Following the conclusion of the S106 agreement, an application was made to vary the earlier S106 agreement such that the right hand turning lane would not be required. Evidence was submitted on behalf of the nurseries stating that the second glasshouse was unlikely to be built and that traffic generation was significantly lower than had been predicted. The application, supported

by the County Highway Authority, was granted. This variation was completed in October 2001.

The Current Position

Since that time there have been ongoing complaints that the terms of the planning permission and the S106 agreement have been breached. This has caused particular concern because of the amount and nature of traffic generated along Haywards Lane by the unauthorised uses.

As a consequence of these complaints a site meeting was held in May 2002 with the nursery owners and their solicitor at which it appeared that a level of agreement had been reached. The Council's understanding of that position was set out in a letter of the 11 July 2002. The basis of the Council's position was that only B1 uses carried out by Foxmoor Nurseries or an associated company were authorised. The Council also accepted that by virtue of permitted development rights Foxmoor Nurseries were entitled to use up to 235 sq m for B8 use (storage and distribution).

However, complaints continued to be received and a visit by the Enforcement Officer in November found that over 4000 sq m of the area was being used for B8 use. There was also evidence that the premises were being used by several individual companies and further enquiries were made during the early part of 2003, including the service of Planning Contravention Notices on the various occupants.

This led to a further meeting with the owner at which it was acknowledged that the property was occupied by different companies. However, it was claimed that all such companies were "associated" companies within the terms of the S106 agreement and therefore their activities were lawful within the terms of the existing planning permission and S106 agreement. Details of these arrangements were subsequently provided.

The Council has taken Counsel's Opinion in respect of the "association" of the companies and Counsel's advice is very firmly that the arrangements in place are not sufficient to meet the definition of an associated company within the terms of the S106 agreement. Additionally, it appears that the level of B8 use at the property far exceeds the level allowed under permitted development rights. It would therefore appear that all the companies trading at Foxmoor Nurseries other than the nurseries themselves, are unauthorised.

The Economic Development Position

However, it is acknowledged by the Economic Development Manager that the property at present is providing flexible and low cost workspace. He believes that there is clearly a demand for the type of space at Foxmoor Nurseries and that such demand will increase particularly as Taunton Trading Estate is gradually redeveloped.

He believes that currently some of these types of businesses are being lost to neighbouring authorities and that that problem needs to be addressed. Furthermore, his view is that Taunton Deane needs to maintain a diverse/balanced economy and the types of businesses located at Foxmoor should have a place in the Taunton economy. Whilst there may be a supply of good quality workspace in the medium term, he does not believe this is the case for low cost space.

The Owners Position

The owners were advised of the outcome of the Counsel's Opinion and the fact that the situation at Foxmoor was to be reported to the Planning Committee to consider enforcement action. As a result, a meeting was held with the owners and their solicitor to try and establish any common ground.

The meeting concentrated on the interpretation of the S106 agreement and the meaning of "associated company" within that document. Since there is no definition of associated company within the document, it was agreed that the parties would need to look to extraneous material to ascertain the intentions of the parties. There was a suggestion by the owners that at the time the Council entered into the S106 agreement it was aware of "non conforming" uses at the property and that the S106 agreement was entered into in full knowledge of these.

The Council's position was that it had entered into the agreement on the basis that B1 uses by associated companies would be those related to the production of Flower Towers and similar products. Each side was to submit to the other evidence in support of their viewpoint, and if the position was still unclear it was agreed that mediation as to the interpretation of the agreement could be sought.

Since that meeting the Council has supplied evidence to the owners' solicitor indicating that the proposed B1 use was to be the production of Flower Towers by Foxmoor Nurseries, or one of its associated companies, or similar garden products.

The owners have not been able to supply any evidence to the contrary as they have not yet obtained files held by former solicitors. They have been advised that the matter was going to be reported to the Planning Committee at its meeting on the 28 January and asked for the submission of any evidence prior to the drafting of this report.

Assessment

Most, if not all, of the B1 activities at Foxmoor Nurseries would appear to be in contravention of the S106 agreement relating to the site, and the bulk of the B8 uses also in contravention of the planning permission. Whilst the views of the Economic Development Manager are acknowledged, the Local Plan Inspector, who reported in September 2003, has not identified any shortfall in the allocation of B1 or B8 land.

In addition, the Chief Planning Officer considers there are other factors which make this site unsuitable for a general B1 or B8 use and that it is unlikely that planning permission would be granted for such use, even with the imposition of conditions. It is therefore considered expedient to take enforcement action in respect of the unauthorised uses at Foxmoor Nurseries.

However, any enforcement action must be reasonable and measured and take account of the fact that businesses located at Foxmoor will need time to re-locate. The Council would normally also allow a planning application to be made in respect of an unauthorised use prior to the commencement of enforcement action.

In this case, the recommendation to Members allows both a reasonable period of time for companies to re-locate prior to expiry of the enforcement notices, and also time for the owner of the nurseries to make a planning application to seek to regularise the position within the time for compliance, albeit that the indication is that such application is unlikely to be successful.

In this respect Members should note that although the site currently provides low cost units, in the event that permission were to be granted it is likely that rents would rise given the site's close proximity to the motorway junction.

Recommendation

It is therefore RECOMMENDED that:-

- (1) the Solicitor to the Council be authorised to serve enforcement notices on the occupiers of each of the unauthorised uses currently trading at Foxmoor Nurseries requiring the uses to cease within a period of 12 months from service of the notices;
- (2) the owner of Foxmoor Nurseries be advised that any application seeking to regularise the position should be submitted expeditiously; and
- (3) the owner of Foxmoor Nurseries be advised against any further lettings at the Nurseries without prior confirmation that the Council considers such proposed letting to be for an authorised use.

Chief Solicitor

Chief Planning Officer

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APPENDIX B

**Submissions of Foxmoor Nurseries Limited ("Foxmoor")
in response to Joint Report of the Chief Solicitor
and the Chief Planning Officer to the Planning Committee
dated 28 January 2004**

The following submissions are put forward in response to the Report of the Chief Solicitor and the Chief Planning Officer dated 28 January 2004 ("**the Report**") in which it is recommended that Enforcement Notices be served upon Foxmoor and each of the unauthorised users currently trading at Foxmoor Nurseries.

1. **Grounds for enforcement action**

1.1 It appears from the Report that the grounds for taking enforcement action are, first, that Foxmoor is acting in breach of the user conditions contained in the Section 106 Agreement dated 26 March 2001 ("**the s.106 Agreement**") and, secondly, that unauthorised B8 usage is taking place at the property which exceeds permitted levels. Both of these grounds for taking enforcement action are challenged, in turn, as follows:

2. **Breach of Section 106 Agreement User Conditions**

2.1 The Council alleges that Foxmoor is acting in breach of the B1 user condition contained in Clause 2(c) of the s.106 Agreement. Clause 2(c) states that "*the permitted use shall only be carried out by Foxmoor Nurseries Limited or any associated or subsidiary companies which may from time to time be formed or by individual persons associated therewith ("**the Associated Users**").*" The Council claims that some or all of the businesses currently occupying the Foxmoor site, and who are carrying on B1 uses on the site, do not comply with Clause 2(c) in that those businesses are not "associated users" within the meaning of Clause 2(c). Foxmoor contend that all the existing B1 users on their site are indeed "associated users" within the meaning of Clause 2(c), on

the basis that they are either companies who are associated, as individuals, with Foxmoor, or represent sole traders who are associated with Foxmoor.

2.2 The key issue to date between Foxmoor and the Council in ascertaining whether or not Foxmoor is acting in breach of Clause 2(c) has been defining the word "associated" as it appears in Clause 2(c). The Council's position throughout has been that the phrase "associated" should be defined very narrowly on the basis of a strict statutory definition of the word "associated", as would be found in the relevant provisions of the Companies Act 1985 and the Income and Corporation Taxes Act 1988. In short, such statutory definitions require there to be shown to be either a substantial element of shareholder ownership or alternatively, a substantial degree of executive control through executive involvement in operational matters. The Council does not consider that the existing B1 users satisfy such a definition.

2.3 Foxmoor contend that the word "associated" should not be defined by reference to a strict "Companies Act" statutory definition, but should be given its normal everyday English language meaning, such as (to paraphrase the definitions appearing in the Oxford English Dictionary) "*connected with, joined with, or to have frequent dealings with*". Foxmoor support their wide interpretation of this phrase on the basis that:

- (i) the s.106 Agreement contains no express definition of the word "associated", and if the parties had intended it to have a narrow statutory based meaning then such a definition would and should have been included. In the absence of any express definition, the wider normal English language meaning should apply;
- (ii) the word "associated" was added into the s.106 Agreement specifically at the request of Foxmoor and its previous solicitors in order to allow greater latitude than would have been afforded simply by the inclusion of the word "subsidiary", which had appeared in the original first draft of the s.106 Agreement and the heads of agreement which preceded it. The fact that the word "associated" was inserted at a later date, without any specific definition, clearly evidences that the intention of the

parties at the time was to permit the application of a wide definition of the phrase "associated";

- (iii) the principal B1 user which the s.106 Agreement was designed to allow at the time it was entered into was Flower Tower Company Limited ("**Flower Tower**"). It was Flower Tower's light industrial activities on the site that the s.106 Agreement was specifically designed to cover. At the time of the s.106 Agreement Flower Tower was not a subsidiary company of Foxmoor, and Foxmoor held no substantial shareholdings in it. The only link between Foxmoor and Flower Tower were that 2 of the 3 directors of Flower Tower were also directors of Foxmoor. Applying the Council's strict Companies Act definition of "associated" to Flower Tower would have meant that Flower Tower itself would not have come within such a definition. Flower Tower would however have fallen within the wider, plain speaking, definition of "associated" that Foxmoor submit to be the correct intended definition.

3. **The current B1 Users situate at Foxmoor Nurseries**

- 3.1 The following is a description of the current businesses occupying space at Foxmoor Nurseries which are all presently carrying out B1 light industrial use within the meaning as required by the s.106 Agreement and associated planning permission (i.e. light industry use incorporating process function including testing, development, planting, assembly, packing, storage and despatch). The reference to B1 (light industrial) use in the 2001 Planning Permission and the s.106 Agreement is clearly intended to have its statutory definition as contained in the 1987 Use Classes Order. There is no attempt to cut down that definition by any condition contained in the planning permission. Class B1 includes use for "any industrial process". "Industrial process" is defined by Art 2 to the 1987 Order as a process for or incidental to, amongst others, the following purposes:

- (a) the making of an article or part of an article

- (b) the altering, repairing, maintaining, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article
- (i) Flower Tower – they assemble, pack and despatch plastic garden and household product items of varying designs which are manufactured off site. The primary activity is the assembly of the garden and household products, a use clearly within the definition of an industrial process, with the subsequent packing and despatch of the assembled products being incidental to that primary activity.
- (ii) RH Fibreboard Limited – manufacturers and suppliers of cardboard and other packing materials, who supply packaging for Foxmoor and Flower Tower products, and store on site materials and stocks of goods manufactured by them. The primary activity is the manufacture and finishing of cardboard and other packing materials, again clearly within the definition of an industrial process with the storage and subsequent despatch of such manufactured materials being incidental to that primary activity.
- (iii) Office Furniture Direct Limited – assemblers and suppliers of office furniture. They store on site quantities of material for the assembly of their products, as well as storing quantities of finished products prior to their despatch. Again, the primary activity is the assembly of units with the storage of materials and the finished goods being incidental to that process.
- (iv) Scholastic Book Fairs Limited – they supply books to schools which are sold at book fairs. They obtain, sort, and pack books supplied by wholesalers ready for supply to schools, and retain on site stocks of books and cabinets awaiting display and sale at such book fairs. The sorting and packing of goods for subsequent sale is clearly within the definition of an industrial process and is the primary activity on the site. The sales to schools and individual parents take place off site and

would not, in any event, form part of any warehouse or distribution use within Class B8 of the 1987 Order.

- (v) Cards and Stationary Limited – manufacturers and suppliers of cards and stationary who store finished items on site following manufacture for sorting and despatch. Again, the primary activity is the manufacture and finishing of goods with the subsequent supply being incidental to that use.
- (vi) Cider Woods Theme Beds – an incorporated business owned by Mr Ian Addison who designs and manufactures beds, and who store on site materials used for the manufacture of their beds as well as storing and despatching finished products. The design and manufacture of beds is clearly an industrial process within the meaning of the 1987 Order.
- (vii) Georgina Cardew – an unincorporated sole trader who weaves textiles. She stores materials on site prior to weaving, and subsequently stores finished products prior to despatch. The weaving of textiles is the primary activity and is clearly within the definition of an industrial process within the meaning of the 1987 Order.

3.2 The Report contains no particulars of the users which the authors of the Report consider to be within the B8 category. It is clear, however, that this cannot include any of the above businesses.

4 **B1 Users – Shared Services and Activities with Foxmoor**

4.1 In support of Foxmoor's contention that each of the above B1 users are "associated users" within the meaning of Clause 2(c) of the s.106 Agreement, to the extent that they share operational activities and services with Foxmoor, the following points should be noted:

- (i) Foxmoor provides operational assistance to each of the B1 users through the supply of forklift truck services when required for the movement of their products and materials.
- (ii) Foxmoor provides joint office facilities on site for reception and administration purposes.
- (iii) Foxmoor staff provide office support and reception services for the B1 users through telephone answering, fax receipt and other office support services.
- (iv) Foxmoor provide additional staff to the B1 users to assist in storage and despatch activities when needed during busy periods.
- (v) All the B1 users share power and water services with Foxmoor.

5 Inter-Company Shareholdings and Directorships between Foxmoor and other B1 Users

5.1 As from 23 January 2004 each of the B1 limited company users, being RH Fibre Board, Scholastic Book Fairs, Office Furniture Director and Cards and Stationary Limited have acquired shareholdings of 20% each in the shares of Foxmoor. The two unincorporated B1 users, Mr Ian Addison of Cider Woods Theme Beds and Miss Georgina Cardew, have both been appointed directors of Foxmoor. There is attached to this Report as Schedule 1 copies of the relevant Share Certificates issued to each of the four limited company B1 users, copies of the director appointments in relation to the two unincorporated traders, together with copies of the relevant resolutions authorising such actions.

6 Compliance with Clause 2(c) of Section 106 Agreement

6.1 Taking account of the sharing of operations and facilities described in paragraph 4.1, together with the substantial inter-company shareholdings and individual directorships as described in paragraph 5.1, Foxmoor submits that as at the present time all of the current B1 users clearly fall within the definition of "associated users" within Clause 2(c). Although Foxmoor

continues to submit that its looser definition of "associated user" more accurately reflects the true intention of the parties to the s.106 Agreement, it contends that the inter-company shareholdings and related directorships entirely satisfies the narrower statute based definition that the Council seeks to apply. On the basis of either interpretation, therefore, the B1 users qualify as "associated users", and there is currently no breach of this provision of the s.106 Agreement.

7 **Linkage of B1 User to Horticultural User**

7.1 The Council has sought to indicate at various times that any B1 user on the site must be carrying out some user that is related to horticulture. Foxmoor submits that such an interpretation is neither supported by the wording of the s.106 Agreement and its related planning permission, and nor does it represent the true intentions of the parties at the time of the s.106 Agreement. The following points should be noted:

- (i) Flower Tower, whose activities the s.106 Agreement was originally designed to accommodate, was not carrying out horticultural activities. Its uses have always been, and continue to be, B1 light industrial uses comprising the assembly packaging and despatch of plastic garden and household products.
- (ii) Horticultural use was specifically allowed by the original primary 1996 permission allowing Foxmoor to relocate and transfer its horticultural operations to Haywards Lane. Ongoing horticultural use was therefore already fully covered, and the subsequent Planning Permission of March 2001 which permitted a change of use to B1 light industrial use was needed specifically because light industrial use of a non-horticultural type was to be carried on the premises. Non-horticultural use was therefore the very reason behind the grant of the March 2001 Change of Use and accompanying s.106 Agreement.
- (iii) Foxmoor note that Recital (4) to the s.106 Agreement states that "*the Council is concerned to ensure that the permitted use remains related to the existing horticultural use of the land.*" Foxmoor submit that this

recital (although of no legal effect in itself) was given effect through the provisions of Clause 2(d), which stipulated that the permitted B1 use should be conditional upon Foxmoor continuing to operate or trade from the site. Foxmoor was engaged in horticultural activities at the time of the s.106 Agreement (and continues to be so engaged), and its continuing operations on the site would thereby satisfy the intention set out in Recital 4 (i.e. retaining a link with horticultural use).

8 The trading activities of Foxmoor

8.1 Although not an issue expressly raised by the Council in its Report, Foxmoor is aware that the Council has drawn attention at various times during this dispute to allegations that Foxmoor is no longer trading from the site, and that in those circumstances the condition set out in Clause 2(d) is not being fulfilled, thereby disallowing the permitted B1 usage. Foxmoor wishes to make clear, to avoid any misunderstanding on this point, that Foxmoor continues to trade actively from the site. Its business involves two primary operations. The first is as a partner in a joint venture horticultural business with Frank Rowe Limited relating to the cultivation of fuchsias and geraniums. Under the terms of the joint arrangement Foxmoor provide growing areas, as well as technical expertise and support in relation to the cultivation of the plants, together with further staff assistance in relation to cultivation, sales and accounting functions. Foxmoor's second business operation on the site involves the provision of a goods checking and inspection service on behalf of customers. Customers deposit consignments of goods with Foxmoor who then proceed to check those consignments for quality control purposes, palletising and bar coding as necessary. The customers then subsequently collect those checked goods from Foxmoor. Foxmoor submits that this activity falls squarely within its B1 light industrial permission.

9 Other horticultural users

9.1 In order to avoid any misunderstanding Foxmoor wish to clarify what other horticultural users there are on the site other than the horticultural activities of

Foxmoor and Frank Rowe which have already been described in paragraph 8.1.

9.2 The only other horticultural user is Riverford Organics Limited. They presently occupy 1260 square feet of premises and are solely engaged in the cultivation, production and delivery of organic plants. Foxmoor submit that this is a clear example of horticultural use which falls within the terms of the original 1996 Permission.

10 **Unauthorised B8 User**

10.1 In their Report, the Council claim that the second ground for bringing enforcement action against Foxmoor and the other site users is the excessive level of B8 usage, in the form of distribution activities, which materially exceed existing B8 user limits.

10.2 Foxmoor deny entirely that there is presently any breach of B8 usage limitations. The B1 usage which is expressly permitted under the s.106 Agreement and its related planning permission is expressly stated to include "*light industrial use incorporating a processing function including testing development planting assembly packing storage and despatch*". Foxmoor wishes to make clear that the only storage and despatch of goods that is presently being carried out on the site relates to (i) the storage by existing B1 users of either materials or finished products and (ii) the subsequent despatch by the B1 users of their finished products. There are no distribution centre activities being carried out on the site by any other parties which could constitute unlawful B8 user. Foxmoor submits that the storage and despatch of finished goods by the B1 occupants is expressly permitted under the wording of the B1 definition contained in the s.106 Agreement and its associated Permission and is clearly incidental to an industrial process as defined in the 1987 Order.

10.3 A similar example of ancillary storage and despatch activities are those carried out by Foxmoor in the course of carrying out its pallet checking service. This involves not only the storage of customers' goods for checking, but their subsequent collection and despatch once Foxmoor has completed its checking

operations. These activities are fully permitted under Foxmoor's B1 user entitlement. Foxmoor consider it possible that third parties may have confused the delivery and collection of consignments of goods to Foxmoor for checking and palletising as constituting some form of commercial distribution centre operation, which is certainly not the case.

10.4 Foxmoor is aware that the Council were concerned at the storage activities of a previous occupant of the site, Bales Removals. Bales have now vacated the site entirely.

11 **Summary**

11.1 For the reasons stated in paragraphs 4 to 10 Foxmoor submits that the Council has no basis for claiming that there has been any breach of Clause 2(c) of the s.106 Agreement by itself or any other site users, as all current B1 users properly fall within the definition of "associated users".

11.2 However, notwithstanding this submission, should the Council still be minded to proceed with enforcement action in respect of such an alleged breach, the Council should be aware their solicitor Judith Jackson expressly agreed with Foxmoor's solicitors at a meeting on 11 December 2003 that no enforcement action would be taken in respect of this alleged breach until the parties had referred to mediation the issue of the definition of "associated users" within the s.106 Agreement. We attach the letter from Foxmoor's solicitors, Bond Pearce, at Schedule 2 which confirms the agreement reached. For the Council to now proceed with enforcement action on this issue without first seeking to settle the matter through mediation, would, it is submitted, be a serious and unjustified breach of an agreement reached in good faith between the respective parties' solicitors.

11.3 Foxmoor submits that, for the reasons detailed in paragraph 10, there is at present no unauthorised B8 user being carried out on the site, and that all storage and despatch activities that are being conducted are all being carried out by the existing B1 users squarely within the terms of the permitted B1 usage as described in the s.106 Agreement and related permission.

11.4 Should the Council, notwithstanding the submissions of Foxmoor set out in this Report, decide to proceed with enforcement action against Foxmoor it should be very aware of the dire financial consequences of such action for Foxmoor. The serving of enforcement notices, whatever their validity, will place Foxmoor in breach of its banking covenants, which will almost certainly lead to the immediate withdrawal of vital banking support. This will cause Foxmoor to cease trading, with the likelihood of substantial financial losses, together with a loss of jobs. It will of course also bring about the cessation of the supply of flexible low cost work space for small businesses currently provided at the nursery site. The Council's own Economic Development Manager has specifically recognised the lack of availability of such space in the Taunton area.

Bond Pearce, Solicitors for Foxmoor

6 February 2004

SCHEDULE 2

**BOND PEARCE
LETTER OF 15 DECEMBER 2003**

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Our Reference
ABT/AM

Your Reference

15 December 2003

Dear Ms Jackson

**FOXMOOR NURSERIES
SECTION 106 AGREEMENT**

I thought it would be helpful to all parties if I wrote following our meeting on 11 December to summarise the various points agreed:

- 1 With regard to the "associated company" user issue, we agreed that this was a complex matter that merited further evidential investigation on both sides. We would therefore look further at our respective background files and see if the contents of those files cast useful light upon the intended definition of "associated company" and then report back on our findings.
- 2 Should that further evidential investigation cast no further light upon the definition of "associated company", then we would agree to refer to mediation the issue of the definition of "associated company" as used in the Section106 Agreement, with the aim of seeking to find a mutually acceptable definition for that phrase. We agreed that pending the outcome of any such mediation it would be inappropriate for the Council to commence any form of enforcement proceedings.
- 3 You agreed to take immediate steps to remove the Pending Land Action entry in a Land Charges Register as against Foxmoor Nurseries. Please confirm as soon as your application to remove has been made.

Both my clients and myself considered last Thursday's meeting to be most helpful in clarifying a way forward in resolving the "associated company" user issue. My clients remain committed to seeking a way forward that will avoid the need for costly and unpleasant litigation, and I am confident that the framework as described above will assist towards such a resolution.

I look forward to hearing from you when you have had chance to review your files on this issue. I confirm that I will do likewise.

Yours sincerely

Andrew Tobey
Partner

PLANNING COMMITTEE – 18 FEBRUARY, 2004

Report of Chief Planning Officer

MISCELLANEOUS ITEM

48/2003/064 OUTLINE APPLICATION FOR THE RESIDENTIAL DEVELOPMENT OF LAND AT SIDBROOK FARM, MONKTON HEATHFIELD.

At its meeting in 28 January 2004 the Planning Committee were recommended to allow the above development subject to a Grampian condition to secure highway improvements to make the existing access suitable for the proposed level of traffic that would use it as a result of the development. The Committee were advised that the highway, adjacent to the junction of the access drive and Greenway, would need to be restricted in width to provide the required visibility distances. This was to be achieved by the formation of an island built out into Greenway.

Members will recall that letters of objection were received to the proposal (from 5 people) raising the following concerns over the highway issues:- Greenway is a very busy road with traffic visiting Hestercombe and using it to bypass the busy main road through the village, the traffic travels at speed and accidents have almost occurred; the additional traffic generated by the proposal, regardless of how the access would be improved; would be dangerous and inappropriate; there is only 30 m from the access position to the nearest bend and with traffic moving fast this is dangerous; the existing access track has a poor surface generating significant noise and dust when in use; it would be more appropriate to use the alternative access to the site from Gotton, this could be used by the refuse lorry to avoid the noise and dust currently generated and give a greater level of peace back to surrounding area; Greenway is narrow and the visibility from existing accesses is poor; the existing surface of the drive to the barn conversions and the speed of traffic using it causes unacceptable levels of noise and disturbance.

The Planning Committee considered all the issues and resolved to grant planning permission for the above development subject to the imposition of an additional condition:-

“No development shall take place until details showing a restriction to the width of the highway, in white lining painted on the road, to provide the required visibility splays is submitted to and approved in writing by the Local Planning Authority and the agreed road markings thereafter carried out”

Following this decision, the County Highway Authority have stated that the painting of lines would not be acceptable to them because “the junction must be constructed to full specification with either kerbed radii or some other physical works to define the carriageway line as the access road and junction are required to be suitable for adoption as public highway.” The Highway Authority have respectfully pointed out that these works are to take place on the existing public highway where it is the Highway Authority’s responsibility to ensure that they are safe and appropriate and that they will not accept the painting of lines as a solution for this development.

As a result of the above comments the planning condition would be unenforceable, as it requires alterations that would not be within the control of the applicant, and if pursued would result in a development that would not secure highway improvements that are necessary to provide a road to adoptable standards and overcome the concern of local residents regarding the noise and dust associated with the existing use of the trackway.

RECOMMENDATION

In the light of the addition information, the Planning Committee are recommended to agree to the deletion of the following condition:-

“No development shall take place until details showing a restriction to the width of the highway, in white lining painted on the road, to provide the required visibility splays is submitted to and approved in writing by the Local Planning Authority and the agreed road markings thereafter carried out”

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

CONTACT OFFICER: Mrs J Moore Tel. 356467

PLANNING COMMITTEE – 18 FEBRUARY, 2004

Report of the Chief Planning Officer

ENFORCEMENT ITEM

Parish: Trull

- 1. File/Complainant No.** E108/42/2003 – 42/2003/023
- 2. Location of Site** Land to rear of Holmesdale,
Ladylawn, Wild Oak Lane, Trull, TAUNTON.
- 3. Names of Owners** Mr P Dadson
- 4. Names of Occupiers** Mr P Dadson
- 5. Nature of Contravention**

Retention of canopy and change of use of garage to provide ancillary storage space.

- 6. Planning History**

Members may recall that at the Planning Committee on 18th June, 2003 an application to retain a canopy and change of use of the garage at Rebit House, Ladylawn, Trull was refused. Following that refusal the enforcement procedure would normally have commenced in order to reinstate the garage. The condition relating to the parking of vehicles etc. states that "Sufficient space for one garage and one parking space, together with a vehicular access thereto shall be provided for each dwelling comprising more than one bedroom accommodation". Measurements have been taken on site and it was found that there is sufficient space for two vehicles to be parked on the driveway in front of the garage, thus negating the need to use the garage as one of the parking spaces. As there is no condition restricting the use of the garage for other domestic purposes it is considered that no action can legitimately be taken in respect of the garage. With regard to the canopy linking the main house with the garage, this was built whilst the house was under construction. An amended application was requested at the time as effectively the dwelling was increased in size. No application was received until June of last year when it was included in the same application as the garage. Whilst the canopy was considered acceptable there is no facility to give a split decision and the application was refused. It would not be expedient to take further action in respect of the canopy.

- 7. Reasons for Not Taking Action**

It is considered that the condition relating to the provision of a garage and parking space is complied with and the canopy linking the house with the garage is acceptable therefore it is not expedient to take further action.

8. Recommendation

That no further action be taken.

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

CONTACT OFFICER: Mr J A W Hardy Tel: 356479