

PLANNING COMMITTEE

YOU ARE REQUESTED TO ATTEND A MEETING OF THE PLANNING COMMITTEE TO BE HELD IN THE JOHN MEIKLE ROOM, THE DEANE HOUSE, BELVEDERE ROAD, TAUNTON ON WEDNESDAY 25TH MARCH 2009 AT 17:00.

(RESERVE DATE : MONDAY 30TH MARCH 2009 AT 17:00)

AGENDA

1. Apologies
2. Minutes of the meeting of the Planning Committee held on 25 February 2009 (to follow)
3. Public Question Time
4. Declaration of Interests. To receive declarations of personal or prejudicial interests, in accordance with the Code of Conduct
5. 27/08/0037 - Erection of entrance walls and gate (retention of development already undertaken) and removal of Condition 05 from Planning Permission 27/06/0019 (personal occupancy) at Altona Park, Hillfarrance
6. 38/08/0546/LB - Alteration of first floor layout to form wc and removal of wall section to form office at 33 Staplegrove Road, Taunton, as amplified by agents letter dated 12 February 2009 and e-mail dated 18 February 2009
7. 42/09/0001 - Erection of 7 affordable cottages and 2 affordable flats at land opposite Dipford Cottage, Dipford Road, Trull, as amended by Plan 3987/08A and 3986/08A with e-mail dated 25 February 2009.
8. 48/09/0003 - Change of use of site to private hire minibus business (amended plans to 48/07/0070) at 154 Bridgwater Road, Bathpool, Taunton
9. 48/09/0007 - Construction of loft conversion incorporating a dormer to the rear elevation, erection of conservatory to the rear and a new porch to the front at 148 Bridgwater Road, West Monkton as amended by revised drawings 09025-101B received 5 March 2009 and 09025-102B received 11 March 2009.
10. Monkton Heathfield Major Development Site, Taunton appeal decision Miscellaneous item
11. Legal proceedings in respect of non-compliance with the requirements of an Enforcement Notice dated 12 April 2007, Sherford Bridge Farm, Sherford Road, Taunton (to follow) Miscellaneous item

- | | | |
|-----|---|------------------|
| 12. | E/0342/08/08 - Large extensions to barns to form tea room/restaurant etc., Nerrols Farm, Nerrols Lane, Cheddon Fitzpaine, Taunton | Enforcement item |
| 13. | E/0335/38/08 - Erection of extension to rear of property without planning permission, Pink Garlic, 53 Hamilton Road, Taunton | Enforcement item |
| 14. | Planning Appeals - Appeals lodged and the latest appeal decisions received | Appeals |

Tonya Meers
Legal and Democratic Services Manager
19 March 2009

Tea for Councillors will be available from 16.45 onwards in Committee Room 1

Planning Committee Members

Councillor Mrs Hill (Chairman)

Councillor Mrs Allgrove (Vice-Chairman)

Councillor Bishop

Councillor Bowrah

Councillor Mrs Copley

Councillor Critchard

Councillor Denington

Councillor Mrs Floyd

Councillor C Hill

Councillor House

Councillor Miss James

Councillor McMahon

Councillor Mrs Smith

Councillor Watson

Councillor Ms Webber

Councillor D Wedderkopp

Councillor Miss Wood

Councillor Woolley



Members of the public are welcome to attend the meeting and listen to the discussion. Lift access to the main committee room on the first floor of the building is available from the main ground floor entrance. Toilet facilities, with wheelchair access, are also available. There is a time set aside at the beginning of the meeting to allow the public to ask questions



An induction loop operates to enhance sound for anyone wearing a hearing aid or using a transmitter. If you require any further information, please contact Greg Dyke on:



Tel: 01823 356410
Fax: 01823 356329
E-Mail: g.dyke@tauntondeane.gov.uk

Website: www.tauntondeane.gov.uk (Council, Executive, Review Board & Review Panel Agenda, Reports and Minutes are available on the Website)

Planning Committee – 25 February 2009

Present:- Councillor Mrs Hill (Chairman)
Councillor Mrs Allgrove (Vice-Chairman)
Councillors Bishop, Bowrah, Mrs Copley, Critchard, Denington,
Mrs Floyd, C Hill, House, Miss James, McMahon, Mrs Smith, Watson,
Ms Webber and D Wedderkopp

Officers:- Mr T Burton (Development Manager), Mr J Hamer (Development
Control Area Manager – West), Mr M Bale (Principal Planning Officer),
Mrs J Jackson (Legal Services Manager), Miss M Casey (Planning and
Litigation Solicitor) and Mrs G Croucher (Democratic Services Officer)

Also present: Councillor Coles

(The meeting commenced at 5.00 pm)

18. Apology

Councillor Woolley.

19. Minutes

The minutes of the meeting held on 21 January 2009 were taken as read and were signed.

20. Declarations of Interest

Councillor C Hill declared personal and prejudicial interests in application No 32/09/0001 and left the meeting during consideration of this item; Councillors Bowrah, Mrs Copley and Critchard declared personal interests in application No 43/09/0004 as members of Wellington Town Council. Although they had spoken on this item they felt they had not “fettered their discretion”; Councillor Bishop declared a personal interest in application No 45/08/0013 and did not speak or vote on this item; Councillor Wedderkopp declared a personal interest in the enforcement item relating to premises in North Street, Wellington and stated that he would not vote on this item; and Councillor Critchard declared a prejudicial interest in the enforcement item relating to land at Wrangway and left the room during consideration of this item.

21. Applications for Planning Permission

The Committee received the report of the Development Manager on applications for planning permission and it was **resolved** that they be dealt with as follows:-

(1) That **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:-

32/09/0001

Erection of extension to agricultural building at Sampford Farm, Sampford Arundel

Conditions

- (a) The development hereby permitted shall be begun within three years of the date of this permission;
- (b) Only those materials specified in the application shall be used in carrying out the development hereby permitted unless otherwise agreed in writing with the Local Planning Authority.

(Notes to applicant:- (1) Applicant was advised that there must be no discharge of foul or contaminated drainage from the site into either groundwater or any surface water whether direct to watercourses, ponds or lakes or via soakaways/ditches; (2) Applicant was advised to ensure that any manure/dung heaps within the site must be kept within an area where it/they would not cause pollution of any watercourse or water source by the release of contaminated run-off; (3) Applicant was advised that all waste should be disposed of in accordance with the Code of Good Agricultural Practice to ensure protection of nearby water courses.)

Reason for granting planning permission:-

The proposal was considered not to have a detrimental impact upon visual or residential amenity and was therefore considered acceptable and did not conflict with Taunton Deane Local Plan Policies S1 (General Requirements) and S2 (Design).

43/09/0004

Erection of a pair of semi-detached dwellings (amended scheme to previous permission 43/06/0159 and previous application 43/08/0090) on land adjoining 8 Burgage, Wellington

Conditions

- (a) The development hereby permitted shall be begun within three years of the date of this permission;
- (b) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to, and approved in writing by, the Local Planning Authority. Development shall be carried out and thereafter retained as such, in accordance with the approved details as above, unless otherwise agreed in writing by the Local Planning Authority;
- (c) Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995, or any Order revoking and re-enacting the Order with or without modification, no extensions, additions or other alterations other than those expressly authorised by this permission shall be carried out without the further grant of planning permission;
- (d) Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995, or any Order

revoking and re-enacting the Order with or without modification, no means of pedestrian or vehicular access other than those expressly authorised by this permission shall be made to the development from Burgage or White Hart Lane without the further grant of planning permission;

- (e) The stone wall forming the south-west boundary of the site with Burgage shall be retained. The pedestrian openings within the wall hereby permitted shall be formed in accordance with details that shall first have been agreed in writing by the Local Planning Authority and no other openings shall be made.

(Notes to applicant:- (1) Applicant was advised that any soakaways should be constructed in accordance with Building Research Digest 365 (September 1991); (2) Applicant was advised that a point of connection to the foul sewerage network must be agreed with Wessex Water; (3) Applicant was advised to be aware of the importance of checking with Wessex Water to ascertain whether there are any uncharted sewers or water mains within, or very near to, the site. If any such apparatus exists, applicant should plot the exact position on the design layout to assess the implications. The grant of planning permission does not, where apparatus will be affected, change Wessex Water's ability to seek agreement as to the carrying out of diversionary and/or conditioned protection works at the applicant's expense or, in default of such agreement, the right to prevent the carrying out of any such development proposals that may affect its apparatus; (4) Applicant was advised to ensure that any asbestos on the site is disposed of in strict accordance with the relevant guidelines.)

Reason for granting planning permission:-

The proposed dwellings were considered to be acceptably designed, not impacting unreasonably upon the character of the area, the amenities of neighbouring residents or highway safety in accordance with Policies S1, S2 and M4 of the Taunton Deane Local Plan and Policy 49 of the Somerset and Exmoor National Park Joint Structure Plan Review.

45/08/0013

Change of use of annexe to separate dwelling and associated parking (revised design of 45/07/0015) at Mayfield House, West Bagborough

Conditions

- (a) The development hereby permitted shall be begun within three years of the date of this permission;
- (b) The dormer windows to the north-western elevation and the first floor bedroom window to the south-western elevation shall be obscure glazed to the reasonable satisfaction of the Local Planning Authority;
- (c) The highway boundary stone wall shall be made good using matching materials and shall be built to the same height as existing;
- (d) The proposed window to the north-eastern elevation shall be constructed from timber;
- (e) Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995, or any Order revoking and re-enacting the Order with or without modification, no

- extensions shall be carried out without the further grant of planning permission;
- (f) The access and parking area 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;
 - (g) There shall be no obstruction to visibility greater than 900mm above adjoining road level forward of a line drawn 2.4m back from the carriageway edge on the centre line of the access and extending to a point on the nearside carriageway edge 10m to the north of the access. Such visibility shall be fully provided before works commence on the development hereby permitted and shall thereafter be maintained at all times;
 - (h) 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.
- (Notes to applicant:- (1) Applicant was advised that the proposed change of use may result in the existing septic tank system drainage system becoming overloaded, thereby giving rise to possible drainage nuisance. Should such nuisance arise action could be taken against the owner by the Council to ensure that the necessary works are undertaken to abate the nuisance. Applicant was advised to contact the Drainage Officer of Taunton Deane Borough Council, to ensure that the present drainage system was adequate before any works are commenced: (2) Applicant was advised that a Section 184 Permit must be obtained.)

Reason for granting planning permission:-

The proposal would not detract from the character and appearance of the Conservation Area, would harm neither visual nor residential amenity and would not prejudice road safety. Accordingly the proposal did not conflict with Taunton Deane Local Plan Policies S1 (General Requirements), S2 (Design), M4 (Residential parking requirements) and EN14 (Conservation Areas).

(2) That **planning permission be refused** for the under-mentioned 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:-

26/08/0010

Erection of 20 affordable dwellings and provision of recreation field and playground area on land opposite the Village Hall, Nynehead

Reasons

- (a) The proposed development fails to accord with the provisions of Local Plan Policy H11 (Rural Local Needs Housing) on the grounds that it could not be considered to be small scale as required by the Policy, in particular with regard to the size of the existing village. Insufficient information has been provided to demonstrate that there is a proven local affordable

housing need of the scale proposed. Furthermore there is insufficient evidence to indicate that satisfactory arrangements are to be made to secure the availability of the dwellings in perpetuity for occupiers who are in a category of local need. As such the proposal would be contrary to the provisions of Taunton Deane Local Plan Policy H11;

- (b) The site lies beyond the recognised limits of a designated settlement in open countryside where it is the policy of the Local Planning Authority to resist new housing development unless it is demonstrated that the proposal serves a genuine agricultural or other appropriate need. In the opinion of the Local Planning Authority the proposal does not constitute a genuine agricultural or other appropriate need and would therefore be contrary to PPS7, STR6 of the Somerset and Exmoor National Park Joint Structure Plan Review and S7 of the Taunton Deane Local Plan;
- (c) The village has an existing playing field and equipped area for children nearby and it has not been demonstrated that there is need for additional recreation facilities as part of this proposal, rather than off site contributions towards improving existing facilities in the village (Taunton Deane Local Plan Policy C4);
- (d) The site is located outside the confines of any major settlement in an area that has very limited public transport services. The development will increase the reliance on the private motor car and foster a growth in the need to travel, contrary to advice given in PPG13, RPG10 and Policies STR1 and STR6 of the Somerset and Exmoor National Park Joint Structure Plan Review.

26/08/0011

Residential development comprising 19 x 2 and 3 bedroom affordable houses with parking, access road and associated works at Nynehead Road, Poole, Nynehead

Reasons

- (a) The development is in the countryside not adjoining a recognised settlement and harming the rural character of the area contrary to Taunton Deane Local Plan Policies S1, S2, S7, H11 and EN12 and unsustainable location fostering the growth in the need to travel contrary to advice in PPG13, RPG10, Somerset and Exmoor National Park Joint Structure Plan Review Policies STR1 and STR6 and Taunton Deane Local Plan Policy S1;
- (b) The proposed development does not immediately adjoin any recognised settlement and as such would create a form of unacceptable sporadic development in the open countryside. The proposal would harm the rural character and appearance of the area and be contrary to the provisions of Taunton Deane Local Plan Policies S1, S2, S7, H11 and EN12;
- (c) The site is located outside the confines of any major settlement in an area that has very limited public transport services. The development will increase the reliance on the private motor car and foster a growth in the need to travel, contrary to advice given in PPG.13, RPG10 and Policies STR1 and STR6 of the Somerset and Exmoor National Park Joint Structure Plan Review (adopted April 2000);

(d) It has not been demonstrated to the satisfaction of the Local Planning Authority that the proposed development would not have an adverse impact on the residential amenity of the future occupiers of the properties due to the incidence of noise from the adjacent railway line or that the measures proposed to alleviate such adverse impact would not have a detrimental impact on the visual amenity of the area. (Taunton Deane Local Plan Policies S1 and S2).

22. Amendment to delegated powers in respect of Planning Enforcement matters and arrangements for Ward Members to address the Planning Committee

Reported that changes to the scheme of delegations in respect of planning applications had successfully reduced the length of the agendas considered by the Planning Committee. This had enabled Members to have more time to concentrate on the most significant proposals.

It was proposed that delegated powers be extended to include the taking of enforcement action in respect of all unauthorised development within the curtilage of a dwelling.

However, if an enforcement notice was not complied with, Members would still be responsible for deciding if prosecution action should be authorised.

It was also reported that concern had been expressed at the lack of any restriction over the time allowed for Ward Members to address the Planning Committee.

It was proposed that Ward Members should be restricted to a maximum of five minutes per item in future.

Resolved that:-

1. Enforcement matters relating to householder development other than prosecution in respect of non-compliance with an enforcement notice be delegated to officers; and
2. Ward Members be restricted to a maximum of five minutes each when addressing the Planning Committee.

23. Taunton Vale Hockey Club, Staplegrove Road, Taunton

Reported that since the Taunton Vale Hockey Club had been brought into use local residents had made a number of complaints regarding the lights provided. Negotiations had taken place between the Council and the Hockey Club to rectify the situation without a solution being agreed.

A further application for planning permission had been granted in 2007 with a condition requiring the shielding of existing lights. This condition had not been complied with and the Council continued to receive complaints. A Breach of

Condition Notice was served on the Hockey Club that required the light shields to be fitted by late November 2008.

The Hockey Club had since been advised to submit an application to vary the condition imposed but an application had not been received.

Resolved that, subject to being satisfied with the evidence, the Solicitor to the Council institute legal proceedings against Taunton Vale Hockey Club for failure to comply with the Breach of Condition Notice served on 10 October 2008.

24. Use of first floor as a recording studio, 14-18 North Street, Wellington

Reported that an application had been submitted for the change of use of part of the first floor of 14-18 North Street, Wellington to a recording studio.

Although the application had been refused under delegated powers on 2 February 2009 the premises continued to be used as a recording studio.

Resolved that:-

1. Enforcement action be taken to stop the unauthorised change of use of the first floor at 14-18 North Street, Wellington continuing; and
2. Subject to being satisfied with the evidence, the Solicitor to the Council institute legal proceedings should the enforcement notice not be complied with.

25. Retention of two steel containers for the storage of fireworks, The Stores, Wrancombe Road, Wrangway, Wellington

Reported that an application had been submitted for the retention of two steel containers for the storage of fireworks at The Stores, Wrancombe Road, Wrangway, Wellington.

Although the application had been refused under delegated powers on 26 February 2008 and a subsequent appeal had been dismissed on 12 January 2009, the containers remained on site.

Resolved that:-

1. Enforcement action be taken seeking the removal of the unauthorised steel containers at The Stores, Wrancombe Road, Wrangway, Wellington; and
2. Subject to being satisfied with the evidence, the Solicitor to the Council institute legal proceedings should the enforcement notice not be complied with.

26. Replacement UPVC windows to flat above shop, 4 Silver Street, Wiveliscombe

Reported that it had come to the Council's attention that the traditional windows to the flat above the shop at 4 Silver Street, Wiveliscombe had been replaced with UPVC windows without planning permission being obtained.

The owners had declined to submit a planning application to regularise the situation. However, no objection would be raised if an application was to be submitted.

Resolved that no further action be taken.

27. Appeals

Reported that four appeal decisions had been recently received, details of which were submitted. All four appeals had been dismissed.

Also reported that four new appeals had been lodged, details of which were submitted.

Resolved that the report be noted.

(The meeting ended at 7.40 pm)

27/08/0037

MRS S WOODBURY

ERECTION OF ENTRANCE WALLS AND GATE (RETENTION OF DEVELOPMENT ALREADY UNDERTAKEN) AND REMOVAL OF CONDITION 05 FROM PLANNING PERMISSION 27/06/0019 (PERSONAL OCCUPANCY) AT ALTONA PARK, HILLFARRANCE

317581.124754

Retention of Building/Works etc.

—

PROPOSAL

The part of the application related to the walls and gate is retrospective. The gate pillars are 2 metres high and 4 metres apart, with the two lengths of wall of 4.5 metres in length of a height of 1.9 metres. Applicant states that the grass banks at each side of the entrance will be re-planted with natural hedging. The purpose of the gate and walls is to make the entrance safe and secure. With regard to the removal of the personal condition, the applicant is now reconciled with her husband and his name is not included in the condition. The applicant considers that removal of the condition is in line with Central Government guidance and has been done on other sites within the area.

SITE DESCRIPTION AND HISTORY

The application site was originally granted planning permission in 2006, reference 27/2006/019, for the siting of one mobile home and one touring caravan for a single gypsy family (comprising Mrs Sally Tucker and her two young children) and the erection of stables. Condition 05 restricted occupation to Mrs Tucker and her children. A further application (27/08/0026) for the siting of an additional mobile home for gypsy family and transit pitch for touring caravan was granted planning permission by the Planning Committee on 4th September 2008. There was no restrictive personal condition imposed on that permission. The applicant now seeks to put the original permission on the same basis by removing the personal condition.

CONSULTATION AND REPRESENTATION RESPONSES

Consultees

Oake Parish Council - views awaited.

Somerset County Council - Transport Development Group - on the basis that the siting of the walls and gate and removal of the condition does not impact negatively on any highway conditions previously imposed, it may be unreasonable to raise an objection.

Representations

FIVE LETTERS OF OBJECTION

- structures have been in place for 6 months despite condition on previous planning permission. Applicant is ignoring the law.
- security of applicant's children could have been more easily achieved by the erection of a 5 barred gate and fence, which would have been more conducive to a country lane in a rural setting and helped blend the site into its surroundings. The large wall and wrought iron gate are pretentious and do not do this. Looks more like a leafy avenue in suburbia or a footballer's type monstrosity and present a considerable eyesore.
- removal of condition is against the objectives of Circular 2006/01. The Circular gives preferential treatment to gypsies. Mr Woodbury is not a gypsy. The Circular appears to have been manipulated and hi-jacked by gypsies who have not led a nomadic lifestyle and do not need preferential treatment.
- if this application is granted, it will make a total mockery of the democratic system. Applicant has succeeded in obtaining land for the original purpose of stabling horses through to a site on which two mobile homes for the use of travellers are now permitted. Proposal must be viewed with some suspicion when considered in the context of what has gone before. If purpose of application to remove condition is to allow applicant's husband to live there, why not amend condition just to cover that.
- Seems little point in objecting, as any planning application appears to be automatically approved where gypsies are concerned.
- If personal occupancy condition is removed, the site would be subject to further applications for development for residential purposes for all comers and therefore must not be removed. Government guidance is just that - common sense should be applied and a stand made.
- if permitted, will give a formal signal for the applicant to repeat the process in other locations ad infinitum.

PLANNING POLICIES

STR6 - Development Outside Towns, Rural Centres and Villages,
S&ENPP5 - S&ENP - Landscape Character,
S&ENPP36 - S&ENP - Sites for Gypsies and Travelling People,
S&ENPP49 - S&ENP - Transport Requirements of New Development,
S1 - TDBCLP - General Requirements,
S7 - TDBCLP - Outside Settlement,
EN12 - TDBCLP - Landscape Character Areas,
H14 - TDBCLP - Gypsy and Traveller Sites,

EXECUTIVE REPORT DATED 3RD MAY 2006 - PROVIDING FOR GYPSIES AND TRAVELLERS

This looked at the impact of Circular 01/2006 on the determination of planning applications. It noted that the guidance indicates that local planning authorities should not refuse applications solely because the applicant has no local connections, but comply with planning policies.

It notes that all proposals for gypsy sites will still need to be assessed in terms of Policy H14 of the Taunton Deane Local Plan.

However, in the light of the new Circular the criteria may need to be considered more flexible in cases where an identified need has been established. The fact that a site

may be in an area with a landscape, wildlife or conservation designation should no longer in itself be a reason for refusal, unless it can be demonstrated that the development would undermine the objectives of that designation. A more flexible approach should also be taken in terms of distance to local facilities. Whilst sites immediately adjoining settlements may best meet sustainability criteria they can also give rise to other problems, particularly in relation to impact upon residential amenity.

Circular 01/2006 identifies the issue of the scale of sites in relation to existing settlements. Large-scale gypsy sites should not dominate existing communities. In implementing Policy H14, the relative size of any proposed site in relation to nearby settlements must be taken into account.

RELEVANT CENTRAL GOVERNMENT GUIDANCE

Up to date Government advice is contained within ODPM Circular 01/2006 Of particular relevance are paragraphs referred to below:-

Paragraph 12 The Circular's main intentions are;

- (a) to create and support sustainable, respectful, and inclusive communities where gypsies and travellers have fair access to suitable accommodation, education, health and welfare provision; where there is mutual respect and consideration between all communities for the rights and responsibilities of each community and individual; and where there is respect between individuals and communities towards the environments in which they live and work;
- (b) to reduce the number of unauthorised encampments and developments and the conflict and controversy they cause and to make enforcement more effective where local authorities have complied with the guidance in this Circular;
- (c) to increase significantly the number of gypsy and traveller sites in appropriate locations with planning permission in order to address under-provision over the next 3-5 years;
- (d) to recognise, protect and facilitate the traditional travelling way of life of gypsies and travellers, whilst respecting the interests of the settled community;
- (e) to underline the importance of assessing needs at regional and sub-regional level and for local authorities to develop strategies to ensure that needs are dealt with fairly and effectively;
- (f) to identify and make provision for the resultant land and accommodation requirements;
- (g) to ensure that DPDs include fair, realistic and inclusive policies and to ensure identified need is dealt with fairly and effectively;
- (h) to promote more private gypsy and traveller site - provision in appropriate locations through the planning system, while recognising that there will always be - those who cannot provide their own sites; and
- (i) to help to avoid gypsies and travellers becoming homeless through eviction

from, unauthorised sites without an alternative to move to.

Paragraph 48

In applying rural exception site policy, local planning authorities should consider in particular the needs of households who are either current residents or have an existing family or employment connection.

Paragraph 53

However, local landscape and local nature conservation designations should not be used in themselves to refuse planning permission for gypsy and traveller sites.

Paragraph 54

Sites on the outskirts of built-up areas may be appropriate. Sites may also be found in rural or semi-rural settings. Rural settings, where not subject to special planning constraints, are acceptable in principle. In assessing the suitability of such sites, local authorities should be realistic about the availability, or likely availability, of alternatives to the car in accessing local serviced. Sites should respect the scale of, and not dominate the nearest settled community. They should also avoid placing an undue pressure on the local infrastructure.

DETERMINING ISSUES AND CONSIDERATIONS

The walls and gate are set back from the road frontage, so that they are only glimpsed in passing the site. As such I do not consider that they are particularly prominent in the landscape. The entrance is not to an agricultural field, but a gypsy site, and I feel that it would be unreasonable to require the applicant to provide a five barred gate in this location.

Two planning permissions have been previously granted on the site, each for a mobile home and touring caravan. One of these (27/06/0019) has a personal condition imposed, the other (27/08/0009) has not. The current application seeks to remove the relevant condition on the former permission, which would make it consistent with the other. Other similar permissions have been granted on other gypsy sites, viz Sunnydene at Cotford St Luke and Little Shamba at Bishops Hull. At the latter site, there had been an appeal decision where an Inspector had noted that as the site would be subject to a caravan site licence, there was no need to make the planning permission personal. Against the background of that appeal decision, decisions at other sites and advice contained in Circular 01/2006, it would be unreasonable to resist the removal of the condition. Government advice on conditions states that a condition should not be retained unless there are sound and clear cut reasons for doing so.

I therefore consider that the proposal is acceptable. The original planning permission continues to subsist and the other conditions related to that permission remain valid.

RECOMMENDATION AND REASON(S)

Recommended Decision: Approval

It is considered that the proposal will have limited impact on the visual amenity

of the rural area and furthermore the proposal is in line with Central Government advice contained in ODPM Circular 01/06. The remaining conditions ensure that the site will only be occupied by bona fide gypsies in this open countryside location, in accordance with Taunton Deane Local Plan Policy H14 (Gypsy and Traveller Sites).

RECOMMENDED CONDITION(S) (if applicable)

Notes for compliance

1. You are advised that notwithstanding the removal of condition 05 of planning permission 27/06/0019, the latter planning permission still subsists and the remaining conditions remain in force.

In preparing this report the Planning Officer has considered fully the implications and requirements of the Human Rights Act 1988.

CONTACT OFFICER: Mr J Hamer Tel: 01823 356461

38/08/0546/LB

MRS C BRIGGS

ALTERATION OF FIRST FLOOR LAYOUT TO FORM WC AND REMOVAL OF WALL SECTION TO FORM OFFICE AT 33 STAPLEGROVE ROAD, TAUNTON. AS AMPLIFIED BY AGENTS LETTER DATED 12 FEBRUARY 2009 AND EMAIL DATED 18 FEBRUARY 2009

322424.125043

Listed Building Consent: Works

PROPOSAL

The proposal comprises the change of use of a two storey residential property to offices. The change of use will involve internal alterations, including forming a WC and the removal of an internal wall in the first floor.

This application is before the committee as the agent is related to a member of staff.

SITE DESCRIPTION AND HISTORY

The site is within close proximity of the town centre within a Conservation Area. The building is Grade II Listed.

CONSULTATION AND REPRESENTATION RESPONSES

Consultees

Taunton - No PARISHES -

Conservation Officer - (Initial) In principle objection to removal of first floor wall. Need confirmation that sole use will be for offices. (Further Comment) - as clarified by emails dated 13 and 18 February, proposals deemed acceptable, subject to conditions.

Representations

PLANNING POLICIES

EN14 - TDBCLP - Conservation Areas,
S&ENPP9 - S&ENP - The Built Historic Environment,
PPG15 - Planning and the Historic Environment,

DETERMINING ISSUES AND CONSIDERATIONS

The site is within the centre of Taunton within a Conservation Area, and the building is within a row of terrace properties with commercial and residential use. The proposed alterations are not considered to have a detrimental impact on the appearance of the Conservation Area.

The agent has confirmed the proposed use of the building and clarified the proposed internal alterations, as such the Conservation officer no longer objects to the proposal.

The proposal is therefore not considered to harm the character and appearance of the listed building.

RECOMMENDATION AND REASON(S)

Recommended Decision: Conditional Approval

It is considered that the proposal is in line with PPG15 and Policy 9 of the Somerset and Exmoor National Park Joint Structure Plan Review in respect of proposals relating to listed buildings.

RECOMMENDED CONDITION(S) (if applicable)

1. The works for which consent is hereby granted shall be begun not later than the expiration of three years from the date of this consent.

Reason: To comply with the requirements of Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended by S51(4) Planning and Compulsory Purchase Act 2004).

2. Only those materials specified in the application shall be used in carrying out the development hereby permitted unless otherwise agreed in writing with the Local Planning Authority.

Reason: In the interests of preserving the listed building, its setting and any features of historic or architectural interest that it possesses, in accordance with Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, Policy 9 of the Somerset and Exmoor National Park Joint Structure Plan Review and guidance contained in Planning Policy Guidance note 15.

3. Prior to commissioning, specific details of the following shall be submitted to and approved in writing by the Local Planning Authority, with such approved details being strictly adhered to in the implementation of the approved works, unless any variation thereto is first agreed in writing by the Local Planning Authority: new door to wc on the first floor.

Reason: To ensure the use of materials and details appropriate to the character of the Listed Building, in accordance with Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990, Policy 9 of the Somerset and Exmoor National Park Joint Structure Plan Review and guidance contained in Planning Policy Guidance note 15.

Notes for compliance

1. You are advised that only those works specifically identified in the above application, have the benefit of Listed Building consent. Should you wish to undertake other work to convert the building to offices eg suspended ceilings, air conditioning, satellite dish, such will also require formal consent. The Council's

Conservation officer will be pleased to advise on the need for further consents.

In preparing this report the Planning Officer has considered fully the implications and requirements of the Human Rights Act 1988.

CONTACT OFFICER: Mr D Addicott Tel: 01823 356463

42/09/0001

FALCON RURAL HOUSING & WEST OF ENGLAND DEVELOPMENTS (TAUNTON) LTD

ERECTION OF 7 AFFORDABLE COTTAGES AND 2 AFFORDABLE FLATS AT LAND OPPOSITE DIPFORD COTTAGE, DIPFORD ROAD, TRULL AS AMENDED BY PLAN 3987/08A & 3986/08A WITH EMAIL DATED 25 FEBRUARY 2009.

320778.122191

Full Planning Permission

—

PROPOSAL

The proposal is a revised application, now for full permission for 9 affordable housing units with associated parking and access. As the application is for full permission, plans have been submitted to show the elevations and floor layouts. The layout is for a pair of semi-detached cottages, a group of two flats and a 3 bedroom cottage and a row of four terrace houses. The dwellings are all two storey with a simple design, with 2/3 bedrooms. The proposal is for 2 x 2 bed flats, 1 x 2 bedroom house and 1 x 3 bedroom house for renting and 2 x 2 bedroom and 3 x 3 bedroom houses for sale at a discounted rate capped at 70% market value. Access is proposed to run from towards the west of the frontage of the site, perpendicular to the rear of the site, where two car parking spaces per dwelling are proposed. There is amenity space to the front and rear of each house plot, with garden stores to the rear and each dwelling has a pedestrian access at the front.

The scheme as revised includes improvements to the footway opposite the site in order to clear it to its original width and surface it and widen it in the area adjacent to Dipford House.

A housing needs survey was submitted with the application, which was carried out by Trull Parish Council and the Community Council for Somerset's Rural Housing Enablers. In summary the survey found that 18 households have a need for affordable housing in Trull Parish. There has been a follow up survey carried out by Falcon Rural Housing which identifies a specific need of 9 units within the parish from the earlier survey. An assessment has also been made assessing the suitability or availability of 25 other sites.

SITE DESCRIPTION AND HISTORY

The site is approximately 0.3 hectares and is located to the west of Trull, and 3km south west of Taunton Town Centre. The site is currently vacant and was previously probably an orchard. The nearest settlement is Trull, which has a small range of facilities and limited local public transport. Previous applications for 8 affordable houses and subsequently 9 units were refused last year, on grounds of sporadic development in the countryside detrimental to the rural character of the area and the use of private vehicles fostering the growth in the need to travel.

CONSULTATION AND REPRESENTATION RESPONSES

Consultees

Trull Parish Council - Recommend support of the application.

Somerset County Council - Transport Development Group - The site lies outside the development boundary of Trull but is accessible and is in reasonable proximity to the village and accessible by a public footway running along the south side of the road between the site and the village. In terms of the layout of the development, the plan and layout are generally acceptable but I would require assurance that the visibility splays shown are commensurate with the speed of traffic on the local highway network, bearing in mind that this site is outside the 30mph limit.

The applicant proposes clearance and footway widening works and it is my opinion that a minimum width of 1m should be available on the footway over its entire length. I have discussed this with the applicant and he is to submit an amended plan showing the amended footway design. In all other respects I do not propose to raise an objection to the development; however when I receive amended plans I will comment further and provide conditions to be attached to any consent which may be granted.

COMMENT ON AMENDED PLAN

The Planning Officer will recall my letter dated 23 February 2009 where I found that the site was accessible and in reasonable proximity to the village by means of a public footway and, in terms of the layout of the development, the plan and the layout were generally acceptable.

I did point out, however, that I needed assurance that the visibility splays were commensurate with the speed of traffic and that I required a widening of the footway to a minimum width of 1m at all points between the site and the junction with Trull Road. Amended plans have been submitted showing the widening of the footway and I am content that these plans are suitable to be incorporated in a Section 278 Agreement which will be required between the applicant and the highway authority to deal with the design, construction and funding of the works. I have had representations from local residents regarding the width of the footway saying that it is in places only .8m and that location is not covered by the amendments to the plan. I am content that this can be dealt with at the time of the Section 278 Agreement as the applicant has assured me that he will widen the footpath to a minimum of 1m.

A question has also been raised about the location of the proposed tactile crossings and this is also a matter that can be dealt with at the detailed design stage.

In consequence, therefore, subject to the applicants entering into a Section 278 Agreement with the highway authority, I would have no highway objection to the proposed development. I would request the following Conditions be attached to any consent which may be granted:-

1. The proposed estate roads, footways, footpaths, tactile paving, cycleways, bus stops/bus lay-bys, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car parking, and street furniture shall be constructed and laid out in accordance with details to be approved by the Local Planning Authority in writing before their construction begins. For this purpose, plans and sections, indicating as appropriate the design, layout, levels, gradients, materials and method of construction shall be submitted to the Local Planning Authority.

2. The details of access shown on drawing Number 3987/08 shall be constructed and available for use prior to the occupation of any other dwellings proposed.

Housing Enabling Manager - The Housing Enabling Manager fully supports this application for 9 affordable homes. The need has been established in this village and these new homes will go some way towards reducing the current need for local people. This response supports my comments of the first consultation.

Leisure Development Manager - In accordance with Policy C4 provision for play and active recreation must be made. A contribution of £1023 for each dwelling should be made for the provision of facilities for active outdoor recreation and a contribution of £1785 for each 2 bed+ dwelling should be made towards children's play provision. The contributions should be index linked and spent in locations accessible to the occupants of the dwellings.

Somerset County Council - Development Control Archaeologist - There are limited or no archaeological implications to the proposal and we have no objection on archaeological grounds.

Wessex Water - The site is not in a Wessex Water sewered area. The developer has indicated disposal of foul drainage to a packaged treatment plant and surface water to soakaways or existing watercourse. The Council should be satisfied with the arrangement of flow and surface water flows generated by the development. There is a water supply in the vicinity and a point of connection will need to be agreed. The developer should check with Wessex with regard to uncharted sewers or water mains.

Somerset Environmental Records Centre (SERC) – One or more legally protected species are found within proximity of the site.

Drainage Engineer - I note foul drainage is to be dealt with by means of a private sewage treatment plant. This will require the consent of the Environment Agency and they should be consulted. With regard to surface water disposal I have the following concerns; 1) I note surface water is to be discharged to a SUDs system (grey water and permeable paving). However no details of how this is to be achieved including calculations, porosity tests etc. have been provided. 2) The choice of concrete filled sandbags as a headwall is not acceptable. 3) Details should be provided to prove water levels in the receiving water course do not compromise the working of the sewage treatment plan and the on site surface water storage facilities. No approval should be given until a comprehensive surface water disposal system has been designed and agreed with the Authority.

Forward Plan & Regeneration Unit – As this proposal is essentially the same as the previous application on the site (42/2008/037), the comments that I made in relation to that application are still relevant. The main difference between the proposals is that the current application now includes measures to improve the footpath between the site and Trull on the south side of Dipford Road.

My comments on the previous application indicated that although the proposal is contrary to planning policy in certain respects, the need to facilitate the provision of affordable housing is a significant material consideration, which should be accorded some weight in evaluating the proposal. That remains the case, although the proposed improvements to the footpath link to the village, with its facilities and access to public

transport, remove one of the concerns with the original scheme.

Heritage and Landscape Officer - The proposed development will have a detrimental impact on the rural character of the area contrary to EN12. If however the proposal is recommended for approval the suggest further reinforcement of the northern boundary to maintain a strong countryside edge to the development. The existing proposals have a two non hedge rowed areas to the east and west of the northern hedgerow that should be filled. Otherwise detailed landscape proposals and protection of existing trees should be provided.

Nature Conservation & Reserves Officers - Please see earlier comments 42/08/0037.

If you are minded to grant permission I suggest the following condition to protect and enhance opportunities for species that may be affected:

The development hereby permitted shall not be commenced until details of a strategy to protect bats, badgers and breeding birds has been submitted to and approved in writing by the Local Planning Authority. The strategy shall be based on the advice of Michael Woods Associates submitted report, dated January 2008 and include:

1. Details of protective measures to include method statements to avoid impacts on protected species during all stages of development;
2. Details of the timing of works to avoid periods of work when the species could be harmed by disturbance
3. Measures for the retention and replacement and enhancement of places of rest for the species

Once approved the works shall be implemented in accordance with the approved details and timing of the works unless otherwise approved in writing by the Local Planning Authority and thereafter the resting places and agreed accesses for species name shall be permanently maintained.

Reason: To protect bats, badgers and breeding birds and their habitats from damage bearing in mind these species are protected by law and in accordance with PPS9.

Informative Note

It should be noted that the protection afforded to species under UK and EU legislation is irrespective of the planning system and the developer should ensure that any activity they undertake on the application site (regardless of the need for planning consent) must comply with the appropriate wildlife legislation.

CIVIC SOCIETY - For the third time the Civic Society objects to this scheme.

We do not consider that this third application (although a full application rather than an outline one) contains any material change that makes it any more acceptable. To repeat, we contend that:

- This Greenfield site is outside the settlement boundary and as the development proposed is quite intensive for a rural setting and will harm the character of the area it clearly fails Policy S7 and cannot be justified under Policy H11.
- Car use is very likely to increase (18 spaces provided). Residents would drive to and from this site not only for convenience but for safety reasons: the site is near a bend, a road on which traffic can be quite fast, unlit for much of the way into Trull, with an inadequate footway. The site thus fails Policies H9 (C) and S1 (B). In fostering growth in the need to travel it is in direct conflict with Somerset & Exmoor National Park Structure Plan saved policy STR6.

The applicants propose footpath improvements that will be insufficient to address the general inadequacy. The narrowest measurements are not shown on the plan 3986/08, (see photograph 1 overleaf, which is 3m west of the gate pillar at the entrance to Dipford House – width is 0.65M). Furthermore, vehicles find it difficult to pass each other without using the full width of the road (see photograph 2). All this means that a substantial improvement would be required to make the footway safe for an adult with a child.

We note that the all the units in the development are excessively large (and hence unaffordable) for the largest part of the identified need, and that only 1 household is identified as requiring a 3-bed property. The argument that the development meets needs is therefore somewhat disingenuous. We are also concerned that given the need to plan a well designed urban extension in this area, the development could well be an impediment to necessary road improvements and to the layout of a much more significant scheme.

COMMENTS ON AMENDED PLAN: All of our previous objections on policy grounds continue to apply (see letter of 31 January '09). We think that these alone should be an adequate reason to refuse approval. Further, our comment about the poor fit of the proposed development to recorded need still stands.

On the practical concern about footpath safety, we consider that the improvements proposed are inadequate, only tinkering with the problem. The scheme will still require residents to cross this unregulated road to access the footpath into Trull, and the proposed crossing point is just after the bend in Dipford Road and the exit road from the site, thus requiring approaching traffic to look at and react to two potential hazards – the site exit and the crossing point – in a relatively short time. We have earlier noted that vehicles sometimes have difficulty in passing on this road.

We note Mr Copp (SCC Transport Development Group) recommends that the available footway width is a minimum of 1m over the whole path to Trull. Since it is quite unreasonable to assume that vegetation and minor soil slips will be constantly and regularly tidied up in perpetuity, the available width will be at least 0.25M to 0.4M less than the absolute maximum as measured or proposed by the applicant, particularly along the stretch from Dipford House to Trull. Some guidance from Mr Copp as to the realistic margin needed to achieve a practical 1M minimum width at all times would be appreciated.

Representations

3 LETTERS OF SUPPORT on grounds of need, houses nearby and proximity to village with good pedestrian access along a footpath. It is a safe area and will support local economy including business and the school.

Cllr Horsley: I am a passionate supporter of affordable housing but believe these should be delivered in appropriate areas which are within the Local Plan. This plan is a) disproportionate to the hamlet where it is proposed, b) contrary to the Local Plan and c) creates a dangerous precedent for future applications throughout the district.

A Petition of 288 signatures has been submitted opposing the proposal.

26 LETTERS OF OBJECTION on grounds of on dangerous corner and road, there have been deaths and minor crashes near the site in the past, flooding in winter,

development not suitable for rural area and narrow footpath not suitable. The site is in open countryside; it is not in keeping with the area and does not accord with the tests of Policy H11. It is ribbon development. It will increase the numbers of housing in Dipford above the stream by 100%. The site is not an infill site, it does not adjoin the settlement, it would harm the rural character of the area, and occupiers would be reliant on private vehicles and would set a precedent for similar sites in the countryside. The submitted assessment of other sites by the applicant is flawed. There are more suitable sites for the development. Utilities in the area would need to be upgraded. The local school is over subscribed. It does not adjoin the settlement and would create an unacceptable form of sporadic development in the countryside. The site is too far away from the village and would marginalise owners on low incomes who would be unable to integrate with the community. The need should be planned for in an over all strategy, not piecemeal. What provision is made for children to access the recreation ground? It will add to congestion in the area, particularly the Honiton Road junction. There will be an increase in traffic in an area used by high speed emergency service vehicles. The road is also used by tractors and large lorries and there have been accidents in the area. The access is not visible from the Angersleigh direction and will be hazardous. The pavement improvements are unlikely to be adequate. The pavement will be too narrow and a danger to pedestrians. The footpath is unlit and impassable by pushchairs and wheelchairs. The site is not sustainable with no safe pedestrian access. Cars will be used irrespective of the footway works and people will be reliant on them. The footway widening does not remove the hazards of the area, it will narrow the road and does not make Dipford closer to Trull, nor make it a rural exception site. Trull is an associated settlement (policy T1) with no obligation to provide affordable housing. The exception policy H11 is misused but the proposal is still harmful to the rural character of the area. A suitable site should be identified through the LDF. Increase in noise and light and loss of amenity and privacy. There is no need for more low cost housing here in the current market and the needs survey is not met. The proposal will add to run-off and concern over foul water entering the stream. The proposal has been rejected twice and the reasons still apply and there has been no significant change. The Council should refuse to determine the application under Section 43 of the Planning & Compulsory Purchase Act 2004 as it is yet another submission of a similar scheme following two refusals and this is an attempt to wear down opposition and undermine the system. Committee Members should visit between 8-9am and 4-6pm before making their decision on the application.

8 additional letters from previous objectors reiterating previous comments and advising the site is a bad/dangerous place to cross the road, the pavement would still be narrow, it will not provide adequate security for pedestrians, it will narrow the road, it would increase vehicle speeds and therefore hazards, trimming side growth is only a short term palliative and no provision is made to maintain the situation better than at present, the further adjustment makes no fundamental difference to the main objection regarding location and sustainability.

PLANNING POLICIES

PPS1 - Delivering Sustainable Development,
PPS3 - Housing,
PPS7 - Sustainable Development in Rural Areas,
STR1 - Sustainable Development,
STR6 - Development Outside Towns, Rural Centres and Villages,
S&ENPP33 - S&ENP - Provision for Housing,

S&ENPP35 - S&ENP - Affordable Housing,
S&ENPP48 - S&ENP - Access and Parking,
S&ENPP49 - S&ENP - Transport Requirements of New Development,
S1 - TDBCLP - General Requirements,
S2 - TDBCLP - Design,
S7 - TDBCLP - Outside Settlement,
H11 - TDBCLP - Rural Local Needs Housing,
M4 - TDBCLP - Residential Parking Provision,
C4 - TDBCLP - Standards of Provision of Recreational Open Space,
EN12 - TDBCLP - Landscape Character Areas,
T1 - TDBCLP - Extent of Taunton,
H03 - RPG 10 H03 - Affordable Housing,
TRAN1 - RPG 10 TRAN 1 - Reducing the need to Travel,
RSS-SD1 - Draft RSS SD1 - The Ecological Footprint,
RSS - SD2 - Draft RSS SD2 - Climate Change,
RSS - H1 - Draft RSS H1 - Affordable Housing,

DETERMINING ISSUES AND CONSIDERATIONS

The main issues in considering this proposal are the policy considerations, need for affordable housing, amenity impact and access and sustainability in terms of the location. The site was considered by Members in May and November last year when similar proposals were refused.

The site is located beyond the designated settlement limits of Trull and Taunton, and policies relating to development in the countryside are therefore relevant. Structure Plan (STR6) and Local Plan Policy (S7 & H11) allow as an exception for the development of affordable local needs housing sites, where there is clear evidence of local need and providing the site is within or adjoining the village.

In order to demonstrate the requirement for affordable housing provision to accord with the exceptions policy a rigorous local needs survey is required. The local needs assessment that was carried out to justify the type and number of dwellings proposed was carried out by the Community Council and this was further assessed by Falcon Rural Housing's own assessment. Planning Policy Statement 3 - Housing makes it clear that proposals for affordable housing should reflect the size and type of affordable housing required (paragraph 23). It is accepted that a need for affordable housing in the Trull area has been demonstrated and that potential sites are limited. The provision of affordable housing is one of the Council's key aims and there therefore needs to be given significant weight in assessing any such proposal.

Trull is an associated settlement in relation to Taunton and therefore is therefore strictly speaking not a rural settlement. Policy H11 clearly states that exception housing should be located within or adjoining settlement limits. Clearly this site meets neither test. The proposal therefore is clearly not in accordance with Policy H11.

The site has a frontage of over 80m along this rural road and is beyond the settlement limit and is not considered to be an infill site. In addition it could be argued that it will lead to more of a ribbon form of development in this rural location which is not characteristic of this area. These concerns are important planning considerations that must also be given considerable weight in the determination of this application.

The proposal would provide for 9 new dwellings sited in a row set back from the road frontage. The plan shows the properties set back approximately 16m from the wall of the properties opposite. The new properties would be set at a lower level than the existing and there will be a loss of outlook and an impact on the amenity of the existing properties. However loss of view is not a reason to object and it is not considered that this relationship would cause such as loss of amenity through overlooking and loss of privacy to warrant refusal.

The proposal has been submitted with a wildlife survey of the site and the Council's Nature Conservation Officer recommends mitigation conditions for birds and bats as well as for badgers during construction. The Leisure Manager has identified a need for play and recreation facilities as a result of the development in accordance with policy C4 and has requested the provision of a contribution as part of a Section 106 Agreement should permission be granted. It is considered that there is a requirement for such facilities to serve the residents of the new units and therefore it is considered that the Section 106 should address this point if permission is to be granted, although some reduction may be appropriate to take account of residents already in the community who would not be freeing up other accommodation.

The Drainage Officer's concerns with the nature of the drainage system have been addressed by the agent subject to the outfall construction detail. This detail would be subject to any land drainage consent. The concern remains over the foul treatment if the Environment Agency do not grant consent. A condition to ensure satisfactory drainage provision prior to occupation can be conditioned.

The Highway Authority have previously expressed a concern over the sustainability of the site, as occupiers of the new development are likely to be dependent on private vehicles for most of their daily needs – such fostering of growth in the need to travel would be contrary to government advice given in PPG13 and RPG10. The footway that links the site to Trull, the nearest bus stop, local shop and school are all in excess of 400m away and outside the target distances set out in RPG10. Furthermore the footway is narrow in places making it difficult for wheelchairs and prams/pushchairs etc. In order to address the concern the developer has agreed an improvement scheme for the footway which will include clearing and re-surfacing and widening to a minimum of 1m, including in the area of the Dipford House entrance. The Highway Authority considers the improvements are adequate and sufficient to remove their sustainability objection.

As has been stated above similar proposals have been refused on two previous occasions at this site. The proposed site does not adjoin the settlement limit and its development cannot therefore be considered to be in accordance with the development plan. These valid policy and impact concerns must be weighed against the need to facilitate the provision of affordable housing which is not simply an important material planning consideration, but is also one of the Council's key objectives.

What differs with this proposal as compared with the previous is the proposed improvements to the footway which are such that the County Highways Authority have withdrawn their objection on sustainability grounds now stating that the site is 'accessible and in reasonable proximity to the village'. I strongly believe that all new housing, but particularly affordable housing, needs to be located in sustainable locations where there is good pedestrian access to services and facilities. The footpath works proposed therefore take away one of the primary concerns with the

previous proposals on this site.

Nevertheless, Members will need to consider very carefully the valid policy objections to this proposal in deciding whether the need for affordable housing is considered such as to warrant setting aside the provisions of the development plan in this instance.

In light of the limited impact and improvements to pedestrian access which will benefit existing as well as proposed residents, on balance I consider that this is now a proposal worthy of support.

RECOMMENDATION AND REASON(S)

Recommended Decision: Awaiting S106 Completion

Subject to advertisement as a departure and a S106 obligation relating to footpath improvements, provision of affordable housing and leisure and recreation contribution, the Development Manager in consultation with the Chair/Vice Chair be authorised to determine and PERMISSION BE GRANTED subject to the following conditions: time limit, materials, landscaping, boundary treatment, wildlife mitigation, drainage, access, recessed windows, parking and footway improvements prior to occupation and note re wildlife.

Should the S106 agreement not be completed by 30 April 2009 the Development Manager in consultation with the Chair/Vice Chair be authorised to refuse permission on grounds of inadequate affordable housing and leisure and recreation provision.

Whilst the proposal comprises development in the countryside and does not therefore accord with various policies in the Taunton Deane Local Plan in this case it is considered that the need for affordable housing is such as to warrant the granting of permission, particularly in light of the improvements to pedestrian access to local facilities proposed.

RECOMMENDED CONDITION(S) (if applicable)

1. The development hereby permitted shall be begun within three years of the date of this permission.

Reason: In accordance with the provisions of Section 91 Town and Country Planning Act 1990 (as amended by Section 51(1) of the Planning and Compulsory Purchase Act 2004).

2. Only those materials specified in the application shall be used in carrying out the development hereby permitted unless otherwise agreed in writing with the Local Planning Authority.

Reason: To protect the character and appearance of the existing building in accordance with Policy S2 of the Taunton Deane Local Plan.

3. (i) Before any part of the permitted development is commenced, a landscaping scheme, which shall include details of the species, siting

and numbers to be planted, 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 each landscaping scheme, the trees and shrubs shall be protected and maintained in a healthy weed free condition and any trees or shrubs that cease to grow shall be replaced by trees or shrubs of similar size and species, or the appropriate trees or shrubs as may be approved in writing by the Local Planning Authority.

Reason: To ensure that the proposed development makes a satisfactory contribution to the preservation and enhancement of the local character and distinctiveness of the area in accordance with Taunton Deane Local Plan Policy S2.

- 4. No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The agreed boundary treatment shall be completed before the buildings are occupied and thereafter maintained as such, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that the proposed development makes a satisfactory contribution to the local character and distinctiveness of the area in accordance with Taunton Deane Local Plan Policy S2.

- 5. The development hereby permitted shall not be commenced until details of a strategy to protect bats, badgers and breeding birds has been submitted to and approved in writing by the Local Planning Authority. The strategy shall be based on the advice of Michael Woods Associates submitted report, dated January 2008 and include:

- Details of protective measures to include method statements to avoid impacts on protected species during all stages of development;
- Details of the timing of works to avoid periods of work when the species could be harmed by disturbance;
- Measures for the retention and replacement and enhancement of places of rest for the species.

Once approved the works shall be implemented in accordance with the approved details and timing of the works unless otherwise approved in writing by the Local Planning Authority and thereafter the resting places and agreed accesses for bats, badgers or birds shall be permanently maintained.

Reason: To protect bats, badgers and breeding birds and their habitats from damage bearing in mind these species are protected by law and in

accordance with PPS9.

6. None of the dwellings shall be occupied until the sewage disposal and surface water drainage works have been completed in accordance with the details hereby permitted unless otherwise agreed in writing by the Local Planning Authority.

Reason: To prevent unauthorised discharge into nearby water courses in accordance with Policy EN26 of the Taunton Deane Local Plan.

7. The dwellings shall not be occupied until a means of vehicular access has been constructed in accordance with the drawing number 3987/08 hereby permitted and made available for use unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of highway safety in accordance with Policy 49 of the Somerset and Exmoor National Park Joint Structure Plan Review and relevant guidance in PPG13.

8. The windows hereby permitted shall be recessed in the walls by a minimum of 70mm or as otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure details appropriate to the character of building and area in accordance with Policy S2 of the Taunton Deane Local Plan.

9. The area allocated for parking on the submitted plan shall be properly consolidated, surfaced, drained and marked out before the dwellings are occupied and shall not be used other than for the parking of vehicles in connection with the development hereby permitted.

Reason: To ensure that there is adequate space within the site for the parking of vehicles clear of the highway in accordance with Taunton Deane Local Plan Policy M4.

10. No dwelling shall be occupied until the footpath improvements indicated on the submitted drawings have been agreed with the Highway Authority and carried out.

Reason: In the interests of highway safety in accordance with policy 49 of the Somerset and Exmoor National Park Joint Structure Plan Review.

11. The proposed estate roads, footways, footpaths, tactile paving, cycleways, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car parking, and street furniture shall be constructed and laid out in accordance with details to be approved by the Local Planning Authority in writing before their construction begins. For this purpose, plans and sections, indicating as appropriate the design, layout, levels, gradients, materials and method of construction shall be submitted to the Local Planning Authority.

Reason: To ensure that the proposed estate is laid out in a proper manner with adequate provision for various modes of transport in accordance with Somerset and Exmoor National Park Joint Structure Plan Review Policy 49.

Notes for compliance

1. WILDLIFE AND THE LAW. The protection afforded to wildlife under UK and EU legislation is irrespective of the planning system and any activity undertaken on the site must comply with the appropriate wildlife legislation.

BREEDING BIRDS. Nesting birds are protected under the Wildlife and Countryside Act 1981 (as amended) and if discovered must not be disturbed. If works are to be carried out during the breeding season (from February to August, possibly later) then the tree(s) should be checked for nesting birds before work begins.

BATS. The applicant and contractors must be aware that all bats are fully protected by law under the Wildlife and Countryside Act 1981 (as amended) and the Conservation (Natural Habitats) Regulations 1994 (as amended 2007), also known as the Habitat Regulations. It is an offence to intentionally or recklessly damage, destroy or obstruct access to structures or places of shelter or protection used by bats, or to disturb bats whilst they are using these places.

Trees with features such as rot holes, split branches or gaps behind loose bark, may be used as roost sites for bats. Should a bat or bats be encountered while work is being carried out on the tree(s), work must cease immediately and advice must be obtained from the Government's advisers on wildlife, Natural England (Tel. 01823 285500). Bats should preferably not be handled (and not unless with gloves) but should be left in situ, gently covered, until advice is obtained.

In preparing this report the Planning Officer has considered fully the implications and requirements of the Human Rights Act 1988.

CONTACT OFFICER: Mr B Kitching Tel: 01823 358695

48/09/0003

MR & MRS CHEMIEWISKI

CHANGE OF USE OF SITE TO PRIVATE HIRE MINIBUS BUSINESS (AMENDED PLANS TO 48/07/0070) AT 154 BRIDGWATER ROAD, BATHPOOL, TAUNTON

326057.126862

Full Planning Permission

—

PROPOSAL

The proposal is for the provision of two parking bays for use to park two minibuses on land to the rear of 154 Bridgwater Road, Bathpool and the siting of a steel container for storage purposes to the east of the minibus parking. The dwelling is currently used for bed and breakfast and there are 4 car parking spaces two at the front and two at the side of the property used for that purpose. The minibuses are used for the school run and are available for private hire.

SITE DESCRIPTION AND HISTORY

The site is located to the east of the A38 and the front and side of the property can be seen from that location. The 5m wide access into the plot runs along the south of the property and serves both 154 Bridgwater Road and 154A Bridgwater Road which lies to the rear of the subject property. There are other residential properties to the north and east of the site with agricultural fields to the south and the roadway to the west. The whole site is included within the Monkton Heathfield major development site with the field to the south currently allocated for a proposed school.

In 2006 planning permission was granted for the use of the dwelling for bed and breakfast purposes. The proposal included the provision of 2 parking spaces at the front of the property, two to the rear of the dwelling and the erection of a garage across the rear of the site (excluding the drive). This use has commenced but the garage has not been provided and the parking spaces are not laid out or used in accordance with the approved plans and condition.

In August 2007 a planning application was requested for the unauthorized minibus business being carried out at 154 Bridgwater Road.

In October 2007 an application for the change of use of the site to private minibus business with parking for four minibuses, two in the front garden of the property and two at the rear and turning was submitted.

In June 2008 this application was refused. It was considered that the Minibus business as proposed at that time would be detrimental to residential amenity due to noise and other likely disturbance and that the visual impact of minibuses parked in the front garden would be detrimental to the street scene.

In October 2008, following the refusal of planning permission, members declined to approve enforcement action for the unauthorized use but requested that the applicant submit another application to regularize the situation at the time.

CONSULTATION AND REPRESENTATION RESPONSES

Consultees

West Monkton Parish Council - A limit of two mini buses should be imposed as a maximum if allowed

Somerset County Council - Transport Development Group - There is already a minibus business operating at this location and this proposal will not materially effect that use and as such I have no objections in principle. (The Highway Authority have been advised that the current use is unauthorised and revised comments requested that take this into account).

Principal Environmental Health Officer - Noise & Pollution - views awaited

Representations

2 letters of representation have been received raising the following points of objection :- the proposals do not represent a reduction in the number of vehicles likely to operate from the site as the site was always too small for 4 minibuses; the applicants own a total of 5 vehicles which they park on the site and there are 2 permanent lodgers and 1 additional room available for occupation resulting in a requirement for 8 spaces for their current uses rather than the 7 spaces shown on the plans; The proposed turning area is too small to allow the minibuses to turn in the site and exit in forward gears without using the neighbours private domestic hard standing area causing a potential safety hazard for the occupants including their children; currently I am disturbed by engines left to warm up in the morning, doors slamming, headlights shinning into my property whilst using the entrance to turn; buses leaving and returning at all hour; drivers talking and shouting to each other; the site has not been used for HGV's since the dwelling was built at the rear of the site several years ago and the workshop that was at the rear was demolished when the house was built; the whole site is unsightly and unkempt and the shipping container sited to the rear adds to the unsightly character of the site; the vehicle movements to and from the site is more than suggested in the application forms; the storage container has been moved right next to the rear boundary of our garden and is unsightly when viewed from our house and garden; in addition to the applicants and their son who they claim work from the site there is a part time worker which they have failed to mention it is obvious that the business does not just create 6 movements a day; although the applicant's state that they are halving the proposal, they still own a third smaller minibus which they claim is for their own private use and a taxi sized Audi; the lodgers are full time and not bed and breakfast; they state that the hard surface allows surface water to drain and yet there the front exit to the A38 floods regularly; the increased use of the access will be detrimental to the safety of pedestrians using the pavement outside the property.

PLANNING POLICIES

PPS1 - Delivering Sustainable Development,
PPG4 - Industrial & Commercial Development & Small Firms,
PPG13 - Transport,
PPG24 - Planning and Noise,
STR1 - Sustainable Development,
S&ENPP49 - S&ENP - Transport Requirements of New Development,
S1 - TDBCLP - General Requirements,
S2 - TDBCLP - Design,

DETERMINING ISSUES AND CONSIDERATIONS

The proposal is for the continued use of the garden of 154 Bridgwater Road for the

parking of 2 minibuses and the retention of a storage container. Whilst the minibuses are generally used for the school run they are also available for hire at other times of day and night.

The previous planning permission for bed and breakfast required the provision of two car parking spaces to the front of the dwelling, two parking spaces to the rear and a garage across the rear of the site (excluding the access drive) resulting in 6 spaces in total plus a turning area. The garage has not, to date been provided and that area of land has been used to resite the storage container. The applicant has since removed a section of hedgerow at the side of the site and converted it to additional parking. This is evident from the A38 and footway and the combination of the existing and proposed parking on the site for the dwelling, bed and breakfast and minibus uses results in a cramped commercial appearance to the property, detrimental to the visual amenity of the area and contrary to Taunton Deane Local Plan policy S1 (D) and S2(A).

The property is part of a semi-detached pair of dwellings fronting onto Bridgwater Road. Between the properties at the front there is a hedge just under 2m in height and to the rear a 1.2m high fence with 0.5m wood trellis on top. The land adjacent to these boundaries is laid out as parking areas for cars(associated with the dwelling and bed and breakfast use of the dwelling) and the two minibuses, at the rear. At their meeting on 29th October 2008, Planning Committee members considered that the unauthorized minibus use was acceptable and invited the submission of the current application to regularize the situation. However, having considered the submitted layout of the minibus parking areas, arranged at right angles to the rear boundary, I believe that the proposal would be likely to result in unacceptable disturbance to the neighbouring occupants due to potential noise and lights from the minibuses and this would be detrimental to their amenity and contrary to the requirements of Taunton Deane Local Plan policy S1 (E) and S2(F).

RECOMMENDATION AND REASON(S)

Recommended Decision:

REFUSE PERMISSION

In the opinion of the Local Planning Authorities opinion the introduction of a minibus business of the nature proposed here by reason of potential noise and disturbance and adverse visual impact would have an unacceptable detrimental affect on neighbouring residential properties, contrary to the provisions of Taunton Deane Local Plan Policies S1 (General Requirements) & S2 (Design).

RECOMMENDED CONDITION(S) (if applicable)

Notes for compliance

1. In light of the detailed report and site plans for consideration by Committee tonight the Planning Committee are requested to authorise enforcement action

to secure the cessation of the unauthorised uses for the reasons as stated in the reason for refusal above.

In preparing this report the Planning Officer has considered fully the implications and requirements of the Human Rights Act 1988.

CONTACT OFFICER: Mrs J Moore Tel: 01823 356467

48/09/0007

MRS L WEBB

CONSTRUCTION OF LOFT CONVERSION INCORPORATING A DORMER TO THE REAR ELEVATION, ERECTION OF CONSERVATORY TO THE REAR AND A NEW PORCH TO THE FRONT AT 148 BRIDGWATER ROAD, WEST MONKTON AS AMENDED BY REVISED DRAWINGS 09025-101B RECEIVED 5TH MARCH 2009 AND 09025-102B RECEIVED 11TH MARCH 2009.

325939.126666

Full Planning Permission

—

PROPOSAL

148 Bridgwater Road is a brick and tile bungalow set in a row of six bungalows, of similar style. It lies on the east side of Bridgwater Road (A38), close to the junction with Brittons Ash. To the rear of the site is an agricultural field, with the Brittons Ash/Hyde Lane road running beyond this.

This application seeks planning permission for a rear flat roof dormer occupying the majority of the rear roof slope to form a new master bedroom with an en-suite bathroom, a dressing space and two walk in wardrobes; and a new porch to the front. The application also seeks permission for the retention of a conservatory to the rear.

This application comes before committee as the applicant is an employee of the Council.

CONSULTATION AND REPRESENTATION RESPONSES

Consultees

SOMERSET COUNTY COUNCIL - TRANSPORT DEVELOPMENT GROUP - No observations.

West Monkton Parish Council - The Parish Council objects to this application because it is not in keeping with the nature and design of the original building, it is out of proportion with the existing dwelling, and with its neighbours (Comments were based on the original proposal, at the time of writing no comments have been received on the amended scheme).

Representations

None received at time of writing.

PLANNING POLICIES

S1 - TDBCLP - General Requirements,
S2 - TDBCLP - Design,
H17 - TDBCLP - Extensions to Dwellings,

DETERMINING ISSUES AND CONSIDERATIONS

The proposed rear dormer, by virtue of its size and design, appears as an incongruous addition, which dominates the rear elevation of the bungalow, to the detriment of its character. However, following the recent changes in legislation, this dormer could now be constructed as permitted development, without the need to obtain planning permission. As a result, despite the concerns of the local planning authority, it would not be expedient to refuse the dormer window on these grounds.

The rear conservatory has already been constructed. It is a large conservatory but is separated from no.150 by the garage at that property and from no.146 by the flat roof kitchen extension and garage belonging to no.148. The conservatory will therefore have no impact on the residential amenities of the occupiers of the neighbouring properties. Whilst the conservatory is not considered to be of a size and design, which is in keeping with the traditional bungalow, it is only marginally larger than could be erected under permitted development. On balance, it is therefore considered acceptable.

The porch is the only alteration on the front of the property and consequently the only alteration visible from the street. The porch will have no adverse impact on the character of the property or on the appearance of the street scene.

RECOMMENDATION AND REASON(S)

Recommended Decision: Conditional Approval

The extensions are not considered to compromise the character of the property or result in harm to the street scene. There will be no adverse impact on the amenities of the occupiers of neighbouring properties or highway safety. As such, the proposal is in accordance with policies S1 (General Requirements), S2 (Design) and H17 (Extensions to Dwellings) of the Taunton Deane Local Plan.

RECOMMENDED CONDITION(S) (if applicable)

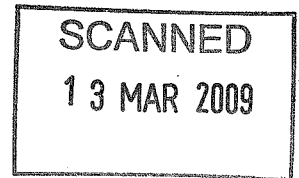
1. Only those materials specified in the application shall be used in carrying out the development hereby permitted unless otherwise agreed in writing with the Local Planning Authority.

Reason: To protect the character and appearance of the existing building in accordance with Policy S2 of the Taunton Deane Local Plan.

Notes for compliance

In preparing this report the Planning Officer has considered fully the implications and requirements of the Human Rights Act 1988.

CONTACT OFFICER: Miss K Purchase Tel: 01823 356468



12 March 2009

John Milverton
Persimmon Homes South West
Mallard Road
Sowton Trading Estate
Exeter
Devon, EX2 7LD

Our Ref: APP/D3315/A/07/2055995
APP/D3315/A/07/2055998

Dear Mr Milverton,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78:
APPEALS BY REDROW HOMES (WEST COUNTRY), PERSIMMON HOMES
(SOUTH WEST) – SITE AT MONKTON HEATHFIELD MAJOR DEVELOPMENT
SITE, TAUNTON, TA2 8DA AND LAND NORTH OF LANGALLER LANE,
MONKTON HEATHFIELD, TAUNTON, TA2 8DA
APPLICATION REFS: 48/2005/072 AND 48/2007/006**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, C J Tipping MA (Cantab), who held a public local inquiry on 1, 2, 3 and 8 April 2008, which was then closed in writing on 22 April 2008, into the appeals:

Appeal A: against the failure of Taunton Deane Borough Council (the Council) to give notice within the prescribed period of a decision on your application for outline planning permission for the construction of 900 dwellings, employment development (B1 and B8 uses), a primary school, a local centre, open space and playing pitches, and associated infrastructure (reference 48/2005/072, dated 30 November 2005), and;

Appeal B: against the failure of the Council to give notice within the prescribed period of a decision on your application for full planning permission for the formation of a road (reference 48/2007/006, dated 16 February 2007).

2. A copy of the Secretary of State's letter of 22 October 2008 is enclosed with this letter and forms part of the decision in this case.
3. The Inspector recommended that Appeal A be allowed and planning permission granted, subject to conditions and a further undertaking being provided, and recommended that Appeal B be allowed subject to conditions. For the reasons set out in her letter of 22 October 2008, the Secretary of State indicated that she

was minded to agree with the Inspector's recommendations, subject to further agreements and information as set out below.

Matters arising since the Secretary of State's letter of 22 October 2008

4. In her letter of 22 October 2008, the Secretary of State stated that she was minded to grant permission, subject to:
 - the submission of a new s.106 Unilateral Undertaking: to remove the provision relating to discount market housing; to introduce a provision specifying a mechanism for reaching agreement on the final split of tenures, in the event that there is insufficient demand for the shared ownership units; and to correct the errors and inconsistencies in the document;
 - the submission of a new s.106 Agreement to correct the errors and inconsistencies in the document;
 - the imposition of a condition requiring at least 10% of the energy supply of the development to be secured from decentralised and renewable or low-carbon energy sources.

5. The Secretary of State received the following replies to that letter:
 - letter (via email) dated 12 November 2008 from Persimmon Homes South West;
 - letter dated 18 November from Judith Jackson, Legal Services Manager for Taunton Deane Borough Council;
 - letter dated 12 November 2008 from Clarke Wilmott including: an amended certified copy of the original s.106 Unilateral Undertaking dated 18 April 2008, an amended certified copy of the original s.106 Agreement dated 14 April 2008, and a certified copy of a Deed of Variation dated 12 November 2008.

6. The Secretary of State wrote to Persimmon Homes South West on 28 November 2008, seeking further information on the following matters:
 - the name of James Michael Nelson Hedderwick, which appears as a landowner on both the Unilateral Undertaking and the Agreement, is not included on the list of parties on the cover of the Deed of Variation, and has been struck through elsewhere in the document. Please confirm the reason for this. In some places this has been done incorrectly (e.g. where a reference is being made to the Unilateral Undertaking). In addition, the crossing-out of the name has not been initialled;
 - Colin Hedderwick has signed as Attorney for both Ian Nelson Hedderwick and Peter Benson Sidgwick, yet there is no Power of Attorney documentation attached to the Deed of Variation. Please confirm that the relevant Power of Attorney details in the Unilateral Undertaking still apply;
 - as requested in the Secretary of State's letter of 22 October, discrepancies and manuscript amendments in both the Unilateral Undertaking and the Agreement have now been initialled. Please confirm the identity and position of the person initialling the amendments;
 - in her letter of 22 October, the Secretary of State noted that none of the plans in the Unilateral Undertaking had been signed. Said plans have now been

inscribed "We certify that this is plan [x] on the attached Agreement" – with two unidentified signatures added. Please confirm the identity and position of the people signing these plans.

7. She also requested, in her letter of 28 November 2008, further information on a provision specifying a mechanism for reaching agreement on the final split of tenures, in the event that there is insufficient demand for the shared ownership units, which had not been addressed following her previous letter, and invited comments on her proposed revised condition 22:

"At least 10% of the energy supply of the development shall be secured from decentralised and renewable or low-carbon energy sources unless it is agreed in writing with the Local Planning Authority that this is not feasible or viable. Details and a timetable of how this is to be achieved, including details of physical works on site, shall be submitted to, and approved in writing as part of the reserved matters submission required by condition 2. The approved details shall be implemented in accordance with the approved timetable and retained as operational thereafter, unless otherwise agreed in writing by the Local Planning Authority."

8. The Secretary of State received the following replies to that letter:
- letter dated 8 December 2008 from Clarke Willmott;
 - letter dated 11 December 2008 from Taunton Deane Borough Council;
 - letter (incorrectly) dated 28 August 2008 from Persimmon Homes South West (received 19 December 2008).
9. She wrote further to Persimmon Homes South West on 22 December 2008, requesting further information on:
- the names of the individuals initialling the amendments on the Unilateral Undertaking and the Agreement, and signing the plans in the Unilateral Undertaking;
 - what had happened to James Michael Nelson Hedderwick's interest in the land, following his death.
10. The Secretary of State received the following replies to that letter:
- letter dated 5 January 2009 from Clarke Willmott;
 - letter dated 12 January 2009 from Persimmon Homes South West;
 - email dated 15 January 2009 from Charles Tharnthong on behalf of Hookipa Developments Ltd.
11. She wrote further to Persimmon Homes South West on 29 January 2009 to request final and corrected versions of the s.106 Agreement, the Unilateral Undertaking, and the Deed of Variation.
12. The Secretary of State received the following replies to that letter:
- letter dated 2 February 2009 from Clarke Willmott;
 - letter dated 18 February 2009 from Clarke Willmott.
13. Where responses addressed these matters, or raised significant new issues material to the case, the Secretary of State has taken account of them in her

consideration of her decision. The majority of the correspondence has already been circulated to parties, and the Secretary of State does not consider it necessary to attach it here, or to further refer back to parties on these issues. Copies of the correspondence can be provided on application to the address at the bottom of the first page of this letter.

Development plan

14. The Secretary of State notes that the Taunton Town Centre Area Action Plan was adopted in October 2008, and now forms part of the development plan. However, she does not consider that its contents raise any matters that require a reference back in the consideration of the present appeals.

Affordable housing

15. As requested in her letter of 22 October 2008, the appellants have removed the provisions relating to discount market housing from the s.106 Unilateral Undertaking, via the Deed of Variation, dated 12 November 2008. Taunton Deane Borough Council, in their letter of 18 November 2008, asked why the Secretary of State has discounted the Council's evidence and approach to affordable housing.
16. The Secretary of State has fully taken into account the Council's preferred split, as set out at the inquiry and in their letter of 19 September 2008, and recognises that the Council has drawn on advice in the Tetlow King study 'Report on the Provision of Intermediate Affordable Housing on Development Sites in and Around Taunton' of August 2006, which is a material consideration. She has taken into account that the overall percentage of affordable housing to be provided is in agreement with the development plan, and that the appellant and the Council are in accordance over the 50% social rented housing to be provided, and differ only on matters relating to the question of discounted market housing.
17. On this matter, the Secretary of State wrote to the appellants on 22 October 2008 requesting the introduction of a provision specifying a mechanism for reaching agreement on the final split of tenures, in the event that there is insufficient demand for the shared ownership units. In their response of 19 December 2008, the appellants state that they consider the existing Unilateral Undertaking already provides a framework to resolve any future negotiations regarding tenure split, in the event that there is limited demand for shared ownership units, as Schedule 1, Part 1, paragraph 1.1 of the Unilateral Undertaking allows for variation in the 50% social rented housing/50% shared ownership housing split if agreed in writing between the Council and the owners. No comments were received from the Council or other parties on this point. The Secretary of State has considered the appellants' comments and concluded that the current wording provides adequate flexibility in the event of insufficient demand for the shared ownership units. In the circumstances of this case, she therefore considers that the appellants' offer is reasonable and acceptable.

Renewable energy condition

18. The Secretary of State's letter of 22 October 2008 suggested a revised condition 22 to deal with renewable energy. In their letter of 12 November 2008, Persimmon Homes Southwest commented that the proposed condition placed an absolute requirement to provide renewables on site, and did not reflect the wording of the PPS1 supplement or draft RSS policy RE5. The Secretary of State considered these representations, and proposed a revised condition in her letter of 28 November 2008:

“At least 10% of the energy supply of the development shall be secured from decentralised and renewable or low-carbon energy sources unless it is agreed in writing with the Local Planning Authority that this is not feasible or viable. Details and a timetable of how this is to be achieved, including details of physical works on site, shall be submitted to, and approved in writing as part of the reserved matters submission required by condition 2. The approved details shall be implemented in accordance with the approved timetable and retained as operational thereafter, unless otherwise agreed in writing by the Local Planning Authority.”

19. The Secretary of State noted that the appellants had not in their representations sought to demonstrate that this requirement was neither feasible nor viable for the proposed development. However, in order to expedite matters in this particular case, she proposed this revised condition which allows for this demonstration, subject to the Council's agreement, in discharging the condition.

20. The Council stated in their letter of 11 December 2008 that they did not consider that the revised condition proposed by the Secretary of State met the tests of precision and reasonableness as set out in Circular 11/95. They pointed out that although '10% of the energy supply' is the current standard in the RSS, this is subject to extensive representation and a decision on this is awaited. They suggested changing the phrase '10% of the energy supply of the development' to '10% carbon reduction in energy use' as in their view it is more precise, and further suggested removing the words 'unless it is agreed in writing with the Local Planning Authority that it is not feasible or viable', as they considered this introduced an element of uncertainty. They further considered that the energy reduction measures should be spread across the development to cover both residential and employment uses, and that therefore the word 'each' should be placed in front of 'reserved matters'.

21. Persimmon Homes South West responded to these points in their letter of 12 January 2009. They considered that the introduction of the wording '10% carbon reduction in energy use' would cause a degree of uncertainty about what is intended to be covered by the condition, as it would not be clear what the benefits or technical implications are, or what aspects of 'energy use' are intended to be covered.

22. As stated in the Secretary of State's letter of 28 November 2008, policy RE5 in the proposed changes to the South West RSS expects at least 10% of the energy to be used in new developments of more than 10 dwellings or 1000m² of non-residential floorspace to come from decentralised and renewable or low-carbon sources unless, having regard to the type of development involved and its design, this is not feasible or viable. Although the emerging RSS is not yet finalised, it

carries significant weight, and is the most up-to-date expression of policy. The Secretary of State therefore considers it appropriate for the condition to reflect this policy. She does not consider that the insertion of the word 'each' is necessary. The Secretary of State considers that her proposed revised condition is precise and reasonable, and in accordance with Circular 11/95, and is imposing it as condition 22.

Planning obligations

23. The Secretary of State has in her various letters requested the correction of errors in the planning obligations, including the Deed of Variation. She wrote to Persimmon Homes South West on 29 January 2009 to request that a signed and dated version of the obligations and the Deed of Variation be forwarded to her. An amended version of the Deed of Variation was received on 18 February 2009, with the Unilateral Undertaking and Agreement being unchanged since the amended versions were submitted by Clarke Willmott with their letter of 12 November 2008.
24. The Secretary of State notes that the corrections on the documents have been initialled by Richard Hogg of Somerset County Council, and Timothy John Walker of Clarke Willmott, and that the Legal Estate in the Hedderwick land remained vested in the three surviving Trustees following the death of James Michael Nelson Hedderwick. She now considers that these documents have addressed her concerns adequately, and are in accordance with Circular 05/2005.
25. The Secretary of State has taken into account the comments made by Charles Tharnthong on behalf of Hookipa Developments Ltd in his email of 15 January 2009, that Plan 8 of the s.106 Agreement is incorrect, in that it shows the position of the southern roundabout and its ERR approach encroaching on Hookipa's land. Plan 8 is marked as being incorrect in this respect. The Secretary of State further notes Clarke Willmott's response (2 February 2009), on behalf of the appellants, that Plan 8 pertains only to the Traffic Calming Scheme, that no part of the Traffic Calming Scheme is to be carried out on land belonging to Hookipa, and that the intention is that the Traffic Calming Scheme would be carried out entirely within the carriageway of the existing highway. The Secretary of State considers that the error on Plan 8 is not material to the effect of the Agreement, and does not affect her decision in this case.

Conclusion

26. The Secretary of State considers that the concerns set out in her letters of 22 October 2008, 28 November 2008, 22 December 2008 and 29 January 2009 have been adequately addressed, and therefore concludes that the appeals should be allowed and permission granted for the reasons set out in her letter of 22 October 2008.

Formal decision

27. For the reasons given above, the Secretary of State hereby grants permission, subject to the conditions set out in Annex A, for:

Appeal A: outline planning permission for the construction of 900 dwellings, employment development (B1 and B8 uses), a primary school, a local centre, open space and playing pitches, and associated infrastructure (reference 48/2005/072, dated 30 November 2005), and;

Appeal B: full planning permission for the formation of a road (reference 48/2007/006, dated 16 February 2007).

28. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

29. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.


30. This letter serves as the Secretary of State's statement under regulation 21(2) of the Town and Country (Environmental Impact Assessment) (England and Wales) Regulations 1999.

Right to challenge the decision

31. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

32. A copy of this letter has been sent to Taunton Deane Borough Council and all parties who appeared at the inquiry.

Yours faithfully,



Maria Stasiak

Authorised by the Secretary of State
to sign in that behalf

Annex A: Conditions

1. Before any phase of the development hereby permitted is begun (with the exception of the Eastern Relief Road ("ERR")), detailed drawings to an appropriate scale of the proposed public and private access (excluding the ERR), appearance, landscaping, layout and scale of the development shall be submitted to and approved in writing by the Local Planning Authority for such phase. The development shall thereafter be carried out in accordance with the agreed drawings.
2. Application for approval of reserved matters under (1) above relating to the first phase of the development shall be made to the local planning authority within 3 years of this planning permission; and application for approval of reserved matters under (1) above relating the remaining phases shall be made to the Local Planning Authority within 10 years of the date of this permission. Phases are as shown in the submitted Design and Access Statement dated December 2007 unless otherwise agreed in writing by the Local Planning Authority.
3. The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission, or before the expiration of 2 years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
4. No development shall take place on the site (with the exception of the ERR) until there has been submitted to and approved in writing by the Local Planning Authority, a design code for the site in its entirety (hereafter called the design code). The design code shall be approved prior to the submission of any application for reserved matters. The design code shall include detailed codings for:
 - Architectural and sustainable construction principles;
 - Character areas, street types and street materials;
 - Block types and block principles;
 - Renewable and energy efficiency measures;
 - Principles of internal highways, cycle-ways and footpaths;
 - Car and cycle parking principles;
 - Building types;
 - Building heights;
 - Building materials;
 - Surface treatments; and
 - Boundary treatments.
5. Applications for the approval of reserved matters shall accord with the approved design code unless otherwise agreed in writing by the local planning authority.
6. Prior to the commencement of development a strategy for the proposed surface and foul water drainage arrangements for the site, to include timescales for implementation and details of future maintenance regimes, shall be submitted to and approved in writing by the Local Planning Authority. Drainage arrangements shall thereafter be provided in accordance with the approved

strategy unless an alternative is first agreed in writing by the Local Planning Authority.

7. Prior to the commencement of each phase of the development a landscape strategy and management plan shall be submitted to and approved in writing by the local planning authority. The landscape strategy shall include details of the proposed structural and internal landscaping and the proposed phasing of landscaping works. The landscape management plan shall include a maintenance plan specifying the extent and timing of grass cutting, shrub pruning and tree maintenance. The landscape strategy shall thereafter be implemented on site in accordance with the approved strategy and management plan unless otherwise agreed in writing by the Local Planning Authority.
8. Before any phase of the development is commenced the following shall be submitted to and approved in writing by the Local Planning Authority:
 - (a) a plan showing the location of and allocating a reference number to each existing tree on the site which has a trunk with a diameter exceeding 100 mm, indicating which trees are to be retained and which are to be removed and the crown spread of each retained tree (in accordance with Section 5 of BS 5837:2005);
 - (b) details of the species, height, trunk diameter at 1.5m above ground level, age, vigour, canopy spread and root protection area of each tree on the site and on land adjacent to the site; and
 - (c) a scheme for protection of the trees, to be erected, maintained and retained for the period of the construction of that phase of development.The development shall thereafter be carried out in accordance with the scheme unless otherwise agreed in writing by the Local Planning Authority.
9. Before any phase of the development is commenced, the hedges to be retained within that part of the development shall be protected by a chestnut paling fence 1.5m high, placed at a minimum distance of 2.0m from the edge of the hedge and the fencing shall be removed only when the development has been completed, unless otherwise agreed in writing by the Local Planning Authority. During the period of construction of the development the existing soil levels around the base of the hedges so retained shall not be altered.
10. All trenching works within the canopy spread of existing trees should be agreed with the Local Planning Authority's landscape officer. All works shall be hand dug and no roots larger than 20 mm in diameter shall be severed without first notifying the Local Planning Authority. Good quality topsoil shall be used to backfill the trench and compacted without using machinery.
11. The proposed roads, footpaths, turning spaces and parking where applicable, shall be constructed in such a manner as to ensure that each dwelling or building before it is occupied shall be served by a properly consolidated and surfaced carriageway and footpath.
12. Reserved matters for each phase, shall include the provision of open space in accordance with Plan No. ACD5294 drawing 001 Rev A, unless a variation is first submitted to and approved in writing by the Local Planning Authority

13. Prior to the submission of reserved matters for the first phase of development, a waste management plan for the whole site shall be submitted to and approved in writing by the Local Planning Authority. The waste management plan shall include proposals for the means by which waste from the site can be managed and recycled to accord with the Somerset Waste Local Plan Policies W9 and W18. The works approved in accordance with the plan shall be implemented and thereafter maintained in full.
14. Prior to the commencement of development a wildlife management strategy shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall be based on the information contained within Section 10 – “Ecology” of the Environmental Statement dated December 2007. Prior to the development of each phase a wildlife management sub-plan for that phase shall be submitted to and approved in writing by the Local Planning Authority. The sub-plans shall be in accordance with the overall approved wildlife management strategy and be based on up-to-date surveys for protected species. Development for each phase shall thereafter be implemented in accordance with the wildlife management strategy and the relevant sub-plan.
15. Prior to the commencement of the development (other than the ERR) a detailed plan for the relocation underground of the 33Kv electricity cables crossing the development site shall be submitted to and approved in writing by the Local Planning Authority. The plan shall include details of the phasing of such relocation in correlation with the phasing of the development overall. The relocation shall be carried out in accordance with the approved plan.
16. The hours of on-site working during construction of the development shall be restricted to 08:00 to 18:00 on Mondays to Fridays and 08:00 to 13:00 on Saturdays. No on-site working shall take place on Sundays or Public Holidays. The term “working” shall, for the purpose of clarification of this condition include: the use of any plant or machinery (mechanical or other), the carrying out of any maintenance or cleaning work on any plant or machinery, deliveries to the site and the movement of vehicles within the site. No on-site working outside these hours, other than within buildings, shall take place without the prior written consent of the Local Planning Authority.
17. The development shall not commence until a scheme of attenuation measures to be adopted to reduce road traffic noise at existing and proposed residential properties affected by the development has been prepared by a duly qualified acoustics consultant and submitted to and approved in writing by the Local Planning Authority. The scheme shall include the following:
 - (a) A plan showing the locations where noise attenuation measures are to be installed; and
 - (b) Details of the noise attenuation measures that are to be installed at each location including heights and design and materials to be used.

The development shall be carried out in accordance with the scheme and the noise attenuation measures shall thereafter be retained in position.

18. Prior to the commencement of works on the relevant phase of development, the following shall be carried out:

- (a) (i) an investigation of the area of potential hydrocarbon contamination on the western margins of the site; and
- (ii) a basic ground gas monitoring exercise on the south-western and eastern site margins,

as defined in the submitted report by Johnson Poole and Boomer dated 13 October 2004 on site investigations at Monkton Heathfield.

The investigation and risk assessment shall include the collection and interpretation of relevant information to form a conceptual model of the site and a preliminary risk assessment of all the likely pollutant linkages. The results of this assessment should form the basis of any subsequent site remediation strategy.

(b) A ground investigation shall be carried out as above, if required, to provide further information on the location, type and concentration of contaminants in the soil and groundwater and other characteristics that can influence the behaviour of the contaminants.

(c) A site-specific risk assessment shall be carried out on the whole site to evaluate the risks to existing or potential receptors, which could include human health, controlled waters, the structure of any buildings and the wider environment. All the data should be reviewed to establish whether there are any unacceptable risks that will require remedial action.

(d) If any unacceptable risks are identified a remediation strategy shall be produced to deal with them effectively, taking into account the circumstances of the site and surrounding land and the proposed end use of the site.

Two copies of the consultants' written report, which shall include, as appropriate, full details of the initial research and investigations, the risk assessment and the remediation strategy shall be submitted to the Local Planning Authority for the approval in writing. The report and remediation strategy shall be implemented as approved.

If any significant underground structures or contamination is discovered following the acceptance of the written report, the local planning authority shall be informed within two working days. No remediation works shall take place until a revised risk assessment and remediation strategy has been submitted to and accepted in writing by the Local Planning Authority.

On completion of any required remedial works two copies of a certificate confirming the works have been completed in accordance with the agreed remediation strategy, shall be submitted to the Local Planning Authority.

All investigations, risk assessments and remedial works shall be carried out in accordance with current and authoritative guidance.

All investigations and risk assessments shall be carried out using appropriate, authoritative and scientifically based guidance. Any remedial works should use the best practicable techniques for ensuring that there is no longer a significant pollutant linkage.

19. The proposed employment sites shall be used for Class B1 (Employment) or B8 (Warehousing) purposes only as referred in the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) or in any provision equivalent to that class in any statutory instrument revoking or re-enacting that order.

Within the B1 use, office use shall be subject to a maximum floor area of 600 square metres across the whole application site, unless a sequential test in accordance with the requirements of PPS6 is first submitted to and approved in writing by the Local Planning Authority.

20. No development shall take place until a programme of archaeological investigation has been submitted to and approved in writing by the Local Planning Authority.
21. The Secondary School Playing Field site shall be provided with a boundary fence incorporating a lockable gate at the point where the path to the Playing Field meets the public footpath in accordance with details that shall have been submitted to and approved by the Local Planning Authority. The fencing and gate shall be erected before the Playing Field is brought into use.
22. At least 10% of the energy supply of the development shall be secured from decentralised and renewable or low-carbon energy sources unless it is agreed in writing with the Local Planning Authority that this is not feasible or viable. Details and a timetable of how this is to be achieved, including details of physical works on site, shall be submitted to, and approved in writing as part of the reserved matters submission required by condition 2. The approved details shall be implemented in accordance with the approved timetable and retained as operational thereafter, unless otherwise agreed in writing by the Local Planning Authority.



T D B C
PLANNING

13 MAR 2009

RECEIVED

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

22 October 2008

John Milverton
Persimmon Homes
Mallard Road
Sowton Trading Estate
Exeter
Devon, EX2 7LD

Our Ref: APP/D3315/A/07/2055995
APP/D3315/A/07/2055998



Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78:
APPEALS BY REDROW HOMES (WEST COUNTRY), PERSIMMON HOMES
(SOUTH WEST) – SITE AT MONKTON HEATHFIELD MAJOR DEVELOPMENT
SITE, TAUNTON, TA2 8DA AND LAND NORTH OF LANGALLER LANE,
MONKTON HEATHFIELD, TAUNTON, TA2 8DA
APPLICATION REFS: 48/2005/072 AND 48/2007/006**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, C J Tipping MA(Cantab), who held a public local inquiry on 1, 2, 3 and 8 April 2008, which was then closed in writing on 22 April 2008, into the appeals:

Appeal A: against the failure of Taunton Deane Borough Council (the Council) to give notice within the prescribed period of a decision on your application for outline planning permission for the construction of 900 dwellings, employment development (B1 and B8 uses), a primary school, a local centre, open space and playing pitches, and associated infrastructure (reference 48/2005/072, dated 30 November 2005), and;

Appeal B: against the failure of the Council to give notice within the prescribed period of a decision on your application for full planning permission for the formation of a road (reference 48/2007/006, dated 16 February 2007).

2. On 6 December 2007 the appeals were recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to the Town and Country Planning Act 1990. Appeal A was recovered because it raises policy issues relating to residential development of 150 or more dwellings or on more than 5 hectares of land which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities. Appeal B was recovered because it is most efficiently and effectively decided with

Appeal A. Given that the appeal schemes are interdependent, the Secretary of State has considered them together.

Inspector's recommendation and summary of the decision

3. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report. The Inspector recommended that Appeal A be allowed and planning permission granted, subject to conditions and a further undertaking being provided (IR8.6.10 and IR9.1), and recommended that Appeal B be allowed subject to conditions. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and is minded to agree with his recommendation that the appeals be allowed and planning permission granted, subject to:
 - the submission of a new s.106 Unilateral Undertaking: to remove the provision relating to discount market housing; to introduce a provision specifying a mechanism for reaching agreement on the final split of tenures, in the event that there is insufficient demand for the shared ownership units; and to correct the errors and inconsistencies in the document (paragraphs 25 and 26 below);
 - the submission of a new s.106 agreement to correct the errors and inconsistencies in the document (paragraph 26 below);
 - the imposition of a condition requiring at least 10% of the energy supply of the development to be secured from decentralised and renewable or low-carbon energy sources (paragraph 23 below).

Procedural matters

4. In reaching her decision, the Secretary of State has taken into account the Environmental Statement dated November 2005 which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, and to the revised Environmental Statement submitted in December 2007. She is content that the Environmental Statement and revised Environmental Statement comply with the above regulations and that sufficient information has been provided for her to assess the environmental impact of the appeals.

Matters arising after the close of the inquiry

5. On 7 August 2008, the Secretary of State informed you via your former agents, together with the other parties to the appeals, that she was not in a position to determine the appeals as she had insufficient information with regard to the proposed discounted market housing. To enable the Secretary of State to make a fully informed decision, she invited comments on the following matters:
 - the impact of the provision of some or all of the affordable housing provision as discounted market housing on meeting local housing need;

- the possibility of securing within the scheme a guaranteed minimum level of social rented housing and shared ownership housing;
- the effect on the viability of the scheme of increasing the discount level on any discounted market housing provided from the currently proposed 20% level.

The Secretary of State also sought clarification of the status of further applications submitted by Persimmon Homes and Redrow Homes for the appeal sites.

6. Your response of 28 August 2008 was then circulated under cover of a letter dated 5 September 2008. Further representations received were recirculated under cover of a letter dated 23 September 2008 seeking any final comments by 1 October 2008.
7. A schedule of correspondence received following the closure of the inquiry is attached at the end of this letter. Copies of this correspondence are not enclosed with this letter but can be made available on written request to the address at the foot of the first page of this letter. The Secretary of State has taken account of all representations on relevant matters in reaching her decision on the appeals.

Policy considerations

8. In determining the appeals, the Secretary of State has had regard to Section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
9. In this case, the development plan comprises the Regional Spatial Strategy (RSS) in the form of Regional Planning Guidance 10 for the South West (RPG10); the saved policies of the Somerset and Exmoor National Park Joint Structure Plan Review (SP), adopted in 2000; and the saved policies of the Taunton Deane Local Plan 2004 (LP), adopted in 2004.
10. Material considerations which the Secretary of State has taken into account include the draft replacement Regional Spatial Strategy for the South West 2006 – 2026 (“draft RSS”), which will replace RPG10. The draft RSS has undergone an Examination in Public (EiP) and the EiP Panel Report was published on 10 January 2008. The Secretary of State published her proposed modifications to the draft RSS on 22 July 2008, and consultation on them is now open until 24 October 2008. As the draft RSS is now at an advanced stage she accords it significant weight.
11. Other material considerations which the Secretary of State has taken into account include Planning Policy Statement 1, *Delivering Sustainable Development* (PPS1) and its supplement *Planning and Climate Change*; Planning Policy Guidance 2, *Green Belts* (PPG2); Planning Policy Statement 3, *Housing* (PPS3); Planning Policy Statement 6: *Planning for Town Centres* (PPS6); Planning Policy Statement 7, *Sustainable Development in Rural Areas* (PPS7);

Planning Policy Statement 9, *Biological Diversity and Geological Conservation* (PPS9); Planning Policy Statement 11, *Regional Spatial Strategies* (PPS11); Planning Policy Guidance Note 13, *Transport* (PPG13); Planning Policy Guidance Note 17: *Planning for Open Space, Sport and Recreation* (PPG17); Planning Policy Statement 22: *Renewable Energy* (PPS22); Planning Policy Statement 25, *Development and Flood Risk* (PPS25); Circular 11/95: *Use of Conditions in Planning Permission*; and Circular 05/2005: *Planning Obligations*.

12. The Secretary of State has had regard to the Tetlow King study 'Report on the Provision of Intermediate Affordable Housing on Development Sites in and around Taunton', of August 2006.

Main issues

The extent to which the proposal accords with the development plan

13. For the reasons set out by the Inspector at IR8.3.3 – IR8.4.3 and IR8.4.4, the Secretary of State agrees that other than the conflict with LP Policy EN12 relating to development on the green wedge, the scheme is in all substantive respects in compliance with the development plan. The Secretary of State has gone on to consider whether there are other material considerations which outweigh the lack of accordance with the development plan.

The green wedge and Western Relief Road

14. The Secretary of State has had regard to LP Policy EN13 which states that development which would harm the open character of green wedges will not be permitted, and to the supporting text to LP Policy T8 which, in relation to the appeal sites, refers to the maintenance of the open wedges of land separating Monkton Heathfield and Bathpool as a key planning consideration (IR8.4.1).
15. For the reasons set out at IR8.4.4, the Secretary of State agrees with the Inspector that any additional encroachment into the green wedge must have an impact on the openness of the green wedge, which at the proposed point of encroachment is at its narrowest. However, she notes that the proposed land take would constitute less than 0.2% of the total area of the green wedge, and for the reasons set out in IR8.4.5, she agrees with the Inspector's conclusion at IR8.4.6 that the adverse impact arising from the implementation of the Consortium's proposed ERR alignment would be at worst slight.
16. The Secretary of State has taken into account the Local Plan Inspector's conclusions in his report of 2003 that any narrowing of the green wedge in this area should be resisted (IR8.4.10). However, for the reasons given in IR 8.4.10, she considers that a different approach is now justified given the changes in context in the period of 5 years and the need for substantial housing as recognised in the draft RSS. Whilst the Secretary of State recognises that allowing the appeals may be of potential benefit in terms of the options for the Western Relief Road (WRR), the alignment, status and other details of the WRR do not form part of the appeals proposals, and as there is currently uncertainty about the possible future route of the WRR and the form of other future

development in the area, she does not consider that this matter weighs in support of the appeals proposals.

Deliverability of the scheme

17. The Secretary of State has carefully considered the points made in relation to the deliverability of the scheme, as set out in IR 8.4.12 – IR8.4.15. Whilst she appreciates that dismissal of the appeals may not significantly affect delivery of the scheme given the parallel application by the appellants, she does not consider that this is a reason to refuse the appeals.
18. The Secretary of State has considered the Inspector's view at IR8.4.16 that if the Hatcheries land were not needed for the ERR alignment, this would represent an increase in the developable area of the major development site, and would represent a small but significant additional benefit arising from acceptance of the Consortium's ERR alignment. However, given the uncertainties surrounding future development of the area, and because this increase would be gained at the expense of the green wedge, she does not consider that this potential benefit, in itself, lends support to the appeals proposals.

Housing land supply

19. For the reasons set out at IR8.4.17 – IR8.4.18, the Secretary of State agrees with the Inspector that it is likely that the Council faces a significant shortfall in the supply of housing land against the targets currently set out in the draft RSS. She further notes that since the inquiry closed, the EiP targets have been confirmed by the Secretary of State's Proposed Changes to the Draft Regional Spatial Strategy for the South West 2006 – 2026, issued for public consultation in July 2008. As the emerging RSS is at an advanced stage, it carries significant weight. The Council accepted at the inquiry that the dwellings identified as the current supply in Taunton would only represent a 3.7 year supply against the increased EiP figures (inquiry document TDBC/P1/A). She considers that this shortfall against emerging targets carries significant weight in favour of the appeals.
20. The Secretary of State has considered the Inspector's conclusion at IR8.4.20 that the impact of dismissing these appeals on the Council's supply of land for new housing would be broadly neutral. She agrees that as an allocated site, the Appeal A site would remain as part of the housing land supply. She further accepts that the Council's resolution to permit the parallel application is a material consideration. However, she considers that as planning permission has not yet been granted, the parallel application does not constitute a fall-back position. She therefore considers that the contribution the appeals scheme would make to meeting the need for both market and affordable housing, which is acknowledged to be acute (IR8.4.17), carries significant weight.

Other matters

21. The Secretary of State has considered the design and access statement and Masterplan, and is satisfied that what is before her forms the basis for an acceptable scheme. For the reasons set out in IR8.7.1, she considers that the

other adverse impacts claimed by objectors are not of sufficient weight to justify refusing permission.

Conditions

22. The Secretary of State has considered the proposed conditions and national policy as set out in Circular 11/95. For the reasons given at IR8.6.2 and IR8.6.4, she agrees with the Inspector's conclusions on the first proposed additional condition, and draft condition 19. The Secretary of State considers that the conditions set out in the Schedule to the IR are reasonable and necessary and meet the requirements of Circular 11/95.
23. She has considered carefully the Inspector's conclusions on the second proposed additional condition (IR8.6.3, IR7.2). She has taken into account that the Council were unable to demonstrate that the condition as proposed, which has significant cost implications, had been discussed substantively before the inquiry, and that there is no development plan requirement for the part of the condition requiring the development to be delivered at levels of the Code for Sustainable Homes and BREEAM standards. However, the Secretary of State notes the clear policy direction set out in PPS1 Supplement *Planning and Climate Change*, and considers that policy RE5 of the emerging RSS carries some weight in the absence of an adopted local requirement for decentralised energy to supply new development. The Secretary of State therefore considers that it is appropriate to impose a condition requiring a percentage of the energy to be used in the development to come from decentralised and renewable or low-carbon energy sources, and having taken into account the requirements of Policy RE5, invites the parties' comments on her proposed condition 22 as set out below:

"22. At least 10% of the energy supply of the development shall be secured from decentralised and renewable or low-carbon energy sources. Details and a timetable of how this is to be achieved, including details of physical works on site, shall be submitted to, and approved in writing as part of the reserved matters submission required by condition 2. The approved details shall be implemented in accordance with the approved timetable and retained as operational thereafter, unless otherwise agreed in writing by the Local Planning Authority."

Planning obligations

24. The Secretary of State has considered the two s.106 planning obligations and national policy as set out in Circular 05/2005.
25. Further to the reference back exercise, the Secretary of State has considered whether changes should be required to the s.106 Unilateral Undertaking to Taunton Deane Borough Council in respect of affordable housing. She has noted the appellant's offer to remove the provision which could result in discount market housing at a discount of 20% being provided if it has not been possible to exchange contracts for all of the affordable housing within any particular cluster within 12 months (schedule 1, part 1, paragraphs 1.1 – 1.15 of the undertaking). This would result in 50% social rented housing and 50% shared ownership

housing. The appellants have further offered to agree a final split with the Council if there proves to be insufficient demand for the shared ownership housing (letters of 28 August and 1 October). The Council seek a split of 50% social rented housing, 25% shared ownership housing and 25% discounted market housing, at a discount of 30% (letter of 19 September). The provision of discounted market housing and the level of discount sought by the Council is based on advice contained in the Tetlow King study, 'Report on the Provision of Intermediate Affordable Housing on Development Sites in and Around Taunton', of August 2006, although no tenure split is set out in development plan policy. The Secretary of State considers that the appellants' offers are reasonable in the circumstances of this case.

26. The Secretary of State also wishes to draw the appellants' attention to errors and omissions in the s.106 Agreement between the appellants and Somerset County Council dated 14 April 2008 and the Unilateral Undertaking to Taunton Deane Borough Council dated 18 April 2008. She considers that, as currently drafted, they would not successfully deliver their intended aims and objectives because:

a) In respect of the s.106 Agreement:

- i. covering page: there is an undecipherable manuscript amendment to the name "N P Cavill";
- ii. page 1: A manuscript amendment to the name "William Procter Pulman" has not been initialled;
- iii. page 1: The name "Norman Philip Cavill" (among those identified as the Third Owners) is crossed through and is replaced with the manuscript change to "Malcolm John Cavill" – this change has not been initialled;
- iv. page 23: A manuscript amendment to the name "William Procter Pulman" has not been initialled.

b) In respect of the Unilateral Undertaking:

- i. page 2: In contrast with page 1 of the s.106 Agreement, there is no amendment to the name of William Procter Pulman;
- ii. page 2: In contrast with page 1 of the s.106 Agreement, the name "Norman Philip Cavill" (as Third Owner) has not been amended;
- iii. page 18: A manuscript amendment to the name "William Procter Pulman" has not been initialled;
- iv. page 19: The name Norman Philip Cavill is deleted – however, it would need to appear among the parties twice, given that Norman Philip Cavill is listed, at page 2, among the names of both the Third Owners and the Sixth Owners;
- v. none of the plans included are signed by the parties.

c) The Secretary of State is also concerned that the two versions of the plan marked "Monkton Heathfield: Land Ownerships Within Red Line Boundary", identified as Plan 3 (rev: A dated 28.03.08) in the s.106 Agreement, and as Plan 2 (rev: B dated January 2008) in the Unilateral Undertaking, contain the following discrepancies:

- i. a different spelling is given for the name of "Mr Pullman" as the First Owner, compared with that given earlier in the documents;
 - ii. Plan 3 includes among the names identified as the Third Owner, the name "Mrs/Miss Cozens", whilst Plan 2 instead includes the name "Mrs Worledge";
 - iii. Plan 3 identifies "Mr Richards" as the Ninth Owner, whilst Plan 2 instead identifies "Mr Richards" and "Mrs Gothard".
- d) The Secretary of State has had regard to the Power of Attorney details, which in the case of the s.106 Agreement are stapled to the inside back cover. She considers, in the interests of clarity and to avoid unnecessary manuscript amendments, that it would be appropriate to also incorporate, where relevant, reference to the roles of the Powers of Attorney within the text of the planning obligations.

Overall conclusions

27. The appeals scheme is not in accordance with a key development plan policy relating to development in the green wedge but is otherwise in compliance with the relevant development plan policies. The Secretary of State has gone on to consider whether material considerations outweigh the lack of accordance with the development plan.
28. The Appeal A site is allocated in the Local Plan for the type of development proposed, and the Secretary of State considers that the design material before her forms the basis for an acceptable scheme. The site lies in a sustainable location, and the development would provide much-needed strategic growth in the Taunton area. In the light of the shortfall against emerging housing targets, she concludes that the contribution the appeals scheme would make to meeting the need for both market and affordable housing carries significant weight. She further considers that the damage to the green wedge would be, at worst, slight, and that there are no other reasons which justify a refusal of permission.
29. Accordingly, for the reasons given above, she is minded to agree with the Inspector's recommendation, and allow your appeals and grant planning permission for the proposed development subject to:
- the submission of a new s.106 Unilateral Undertaking: to remove the provision relating to discount market housing; to introduce a provision specifying a mechanism for reaching agreement on the final split of tenures, in the event that there is insufficient demand for the shared ownership units; and to correct the errors and inconsistencies in the document (paragraphs 25 and 26 above);
 - the submission of a new s.106 agreement to correct the errors and inconsistencies in the document (paragraph 26 above);
 - the imposition of a condition requiring at least 10% of the energy supply of the development to be secured from decentralised and renewable or low-carbon energy sources (paragraph 23 above).

30. The Secretary of State proposes to defer her decision on the appeals to enable you to submit the required documents and for parties to comment on the issues she has raised in paragraph 29 above. You are requested to submit these by 13 November 2008. She will, as soon as practicable thereafter, circulate responses for comment, giving a further 14 days within which final comments may be made.
31. The Secretary of State does not propose to allow a lengthy series of cross-representations and further comments. Please note, furthermore, that the Secretary of State does not regard this invitation as an opportunity to address other issues raised during the inquiry. Accordingly, interested parties are asked to restrict their representations to the matters set out in paragraph 29 above.

Variation of timetable

32. The Secretary of State will not be in a position to reach a final decision on these appeals by the statutory target of 23 October 2008 because of the need to allow parties time to submit the specified items. Therefore, in exercise of the powers conferred on her by paragraph 6(2) of Schedule 2 to the Planning and Compulsory Purchase Act 2004, she hereby gives notice that she has varied the timetable previously set and she will now issue her final decision on or before **18 December 2008**.
33. A copy of this letter has been sent to Taunton Deane Borough Council and all parties who appeared at the inquiry.

Yours faithfully

Maria Stasiak
Authorised by the Secretary of State
to sign in that behalf

Annex A

Schedule of Correspondence

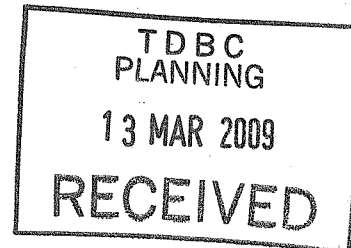
Correspondence received after the close of the Inquiry

11 August 2008	Hookipah Developments Ltd
28 August 2008	RPS Planning
28 August 2008	Persimmon Homes
12 September 2008	Philip T Broom
19 September 2008	Taunton Deane Borough Council
22 September 2008	Hookipa Developments Limited
22 September 2008	Scott Winnard of Bruton Knowles
1 October 2008	Persimmon Homes

12 March 2009

John Milverton
Persimmon Homes South West
Mallard Road
Sowton Trading Estate
Exeter
Devon, EX2 7LD

Our Ref: APP/D3315/A/07/2055995
APP/D3315/A/07/2055998



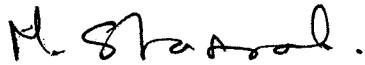
Dear Mr Milverton,

**LOCAL GOVERNMENT ACT 1972 – SECTION 250 (5)
TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 78 AND 320
APPEALS BY REDROW HOMES (WEST COUNTRY), PERSIMMON HOMES
(SOUTH WEST) – SITE AT MONKTON HEATHFIELD MAJOR DEVELOPMENT
SITE, TAUNTON, TA2 8DA AND LAND NORTH OF LANGALLER LANE,
MONKTON HEATHFIELD, TAUNTON, TA2 8DA
APPLICATION REFS: 48/2005/072 AND 48/2007/006**

1. I am directed by the Secretary of State for Communities and Local Government to refer to the enclosed letter notifying you of her decision on the above appeals.
2. This letter deals with the joint application made by Persimmon Homes (South West) Limited and Redrow Homes (West Country) Limited for an award of costs against Taunton Deane Borough Council. The application, as submitted, and the response of Taunton Deane Borough Council are summarised in the Inspector's costs report, a copy of which is enclosed.
3. In planning applications, the parties are normally expected to meet their own expenses, and costs are awarded only on grounds of "unreasonable behaviour" resulting in unnecessary expense. The application for costs has been considered in the light of the policy guidance in DOE Circular 8/93, the Inspector's costs report, the parties' submissions on costs, the appeal papers and all the relevant circumstances.
4. The Inspector's conclusions are stated at paragraphs 4.1–4.7 of his costs report. He recommended that the application for an award of costs be refused.
5. Having considered all the available evidence, and having particular regard to Circular 8/93, the Secretary of State agrees with the Inspector's conclusions in his report and accepts his recommendations. Accordingly, she has decided that an award of costs against Taunton Deane Borough Council is not justified in the particular circumstances. The application is therefore refused.

6. A copy of this letter has been sent to Taunton Deane Borough Council.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'M. Stasiak'.

Maria Stasiak
Authorised by the Secretary of State
to sign in that behalf



**Costs Report to the Secretary of
State for Communities and Local
Government**

By C J Tipping MA(Cantab)

**An Inspector appointed by the Secretary of State
for Communities and Local Government**

The Planning Inspectorate
4/09 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372

Date: 19 May 2008

TOWN AND COUNTRY PLANNING ACT 1990

TAUNTON DEANE BOROUGH COUNCIL

APPEALS BY

PERSIMMON HOMES (SOUTH WEST) LIMITED

AND

REDROW HOMES (WEST COUNTRY) LIMITED

MONKTON HEATHFIELD MAJOR DEVELOPMENT SITE

Inquiry opened: 1 April 2008

File Refs: APP/D3315/A/07/2055995 and /2055998

CASE DETAILS**The Monkton Heathfield Major Development Site, Taunton.****File Refs: APP/D3315/A/07/2055995 and /2055998**

- On 1 April 2008, I opened a public local inquiry at the Deane House, Belvedere Road, Taunton into the appeals by Persimmon Homes (South West) Limited and Redrow Homes (West Country) Limited (together known as the Monkton Heathfield Consortium and hereinafter referred to as "the Consortium") against the failure of Taunton Deane Borough Council ("the Council") to determine two applications for planning permission within the statutory period.
- By letter dated 6 December 2007, the Secretary of State for Communities and Local Government ("SoS") gave a direction under section 79 of and Schedule 6 to the Town and Country Planning Act 1990 that she would recover the appeals for her own determination.
- An application has been made by the Consortium for an award of costs against the Council, namely, the costs of preparing for and appearing at the inquiry.
- The application is made under sections 78 and 320 of the Town and Country Planning Act 1990 and section 250(5) of the Local Government Act 1972.

Summary of Recommendation: I recommend that no award of costs be made.

1. PREAMBLE

- 1.1 The inquiry was held on 1 to 3, and 8 April 2008. It was adjourned on 8 April until 22 April 2008 to allow further documents to be completed and submitted and was thereafter closed in writing. The Consortium appeared by Counsel on each of the four inquiry sitting days.
- 1.2 The appeals arise from proposals for the Major Development Site at Monkton Heathfield, Taunton. At the inquiry, the sole remaining issue of substance between the parties related to the alignment of an eastern relief road ("ERR") required to divert traffic round the proposed development. The Consortium's proposed ERR alignment would extend into a local green wedge designated under the Taunton Deane Local Plan 2004 ("the Local Plan").
- 1.3 I have prepared a report ("the main report") to the SoS regarding the appeals. This recommends that both appeals be allowed and that planning permission be granted subject to conditions.

2. THE SUBMISSIONS OF THE CONSORTIUM

The material points are:

- 2.1 The Consortium seeks an award of costs on the basis that the Council's case was substantively unreasonable as defined in Circular 8/93. The Council's Members were supplied with inadequate information by its officers and were thereby precluded from reaching a properly-informed decision when determining that the

appeals should be resisted. The Consortium has thereby suffered unnecessary expense, namely the cost of preparing for and appearing at the inquiry. It is accepted by the Consortium that the application for costs can succeed only if the appeals are allowed.

- 2.2 The duties of a local authority with regard to the determination of applications for planning permission are explained in paragraphs 7 to 11 of the Circular. In particular, paragraph 8 states, in so far as it is relevant:

"Each reason for refusal will be examined for evidence that the provisions of the development plan and relevant advice in Departmental planning guidance in PPGs, RPGs, MPGs or Circulars and any relevant judicial authority were properly taken into account; and that the application was properly considered in the light of these and other material considerations. In any such proceedings, authorities will be expected to produce evidence to show clearly why the development cannot be permitted."

- 2.3 Paragraph 12 states (again in so far as it is relevant): *"... a planning authority will be at risk of an award of costs against them if they refuse an application which accords with material policies or proposals in the development plan, and they are unable to show that there are any other material considerations supporting such a refusal."*

- 2.4 It is the Consortium's case that the proposals the subject of these appeals are in accordance with the development plan. Its case in this respect is set out as follows in the main report:

*"3.4.4. Section 38(6) of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act") provides that applications for planning permission are to be determined in accordance with the development plan unless material considerations indicate otherwise. Judicial authority establishes that, when making such a determination, the decision-maker must assess the proposed development as a whole against the development plan as a whole (**City of Edinburgh v Secretary of State for Scotland [1997] 1 WLR 1447**). It is therefore untenable for the decision-maker to maintain that, as here in the Council's determination of the main application, because there is a breach of any one policy in a development plan, a proposed development cannot be said to be in accordance with it (**R v Rochdale MBC, ex parte Milne [2001] JPL 470**). For the purposes of section 38(6) of the 2004 Act, it is enough that the proposal as a whole accords with the development plan considered as a whole; it does not have to accord with each and every development plan policy.*

3.4.5. Nowhere in the Council's officers' November 2007 Report to Committee relating to these appeals is there any acknowledgement that the proposals are compliant with a whole raft of development plan policies. If, which is not accepted by the Consortium, its proposals would cause any harm to the green wedge, this single breach of development plan policy should not result in a determination that overall the proposals are not in accordance with the development plan. The failure of the Officers' Report to put to the Committee on a proper basis the need to strike this balance means that the Committee has not been given the opportunity to reach a decision based on

section 38(6), as interpreted by the courts.

3.4.6. A comparison of the Council's officers' approach to the application the subject of the main appeal and their report to Committee regarding the Consortium's parallel application throws the shortcomings of the Council's consideration of the main appeal into sharp relief. ... The report on the parallel application records that the delivery of housing and particularly affordable housing is an important consideration which must weigh heavily in favour of this proposal. That is not a consideration which the officers appear to have applied to the main appeal application."

- 2.5 The Report to Committee regarding these appeals did not therefore address the proper test under section 38(6) as established by the judicial decisions referred to above. If the officers had explained to the members of the Committee the degree of compliance of the proposals with the development plan as a whole, then the members could have reached an informed decision.
- 2.6 Moreover, because they were not mentioned in the officers' report, the Council also failed to consider the material considerations advanced by the Consortium in favour of the proposals under appeal, namely:
- The highways advantages of the Consortium's proposed ERR alignment, especially by providing a more flexible context for the later construction of a western relief road ("WRR"), a matter frequently raised with the Council's officers from an early stage; and
 - The acute need in Taunton Borough for both market and affordable housing, and the emphasis in PPS3 on the need for a step change in the supply of housing. The Council relies heavily on windfall sites and on small sites which in many cases it has been unable fully to assess because of lack of resources. It has a history of failure to meet targets for the delivery of new dwellings, and it was acknowledged on its behalf in cross-examination at the inquiry that it faced an acute need for both market and affordable housing
- 2.7 Members resolved to resist the appeals on the sole substantive ground that they did not comply with Local Plan Policy EN13 (see paragraph 3.4). If these material considerations had been properly drawn to Members' attention, they would have been in a position to arrive at an informed planning judgment between the claimed non-compliance with Local Plan Policy EN13 and the material considerations in favour of permitting the development to proceed. Pursuing the appeals to inquiry might have proved unnecessary.
- 2.8 These issues remained unaddressed even in the Council's closing submissions, and the Council's response to this application in section 3 below does not grapple with the Consortium's main contention that the Council's officers failed to provide the Committee members with the information necessary to reach an informed decision.
- 2.9 The Council has resisted the proposals the subject of these appeals which on a proper application of section 38(6) accord with the development plan, and, contrary to paragraph 12 of Annex 3 of the Circular, has been unable to show that there are any material considerations supporting its objection. It follows

that the Council's position has been substantively unreasonable within the meaning of Circular 8/93, because the following were not properly taken into account:

- The full provisions of the development plan and relevant judicial authority regarding the application of section 38(6) of the 2004 Act;
- The guidance regarding the supply of housing land in PPS3; and
- Material considerations including the highways advantages of the Consortium's ERR alignment and the housing delivery benefit of granting planning permission for the Consortium's proposals.

3. THE RESPONSE OF THE COUNCIL

The material points are:

- 3.1 Claims for awards of costs against local planning authorities are addressed in Annex 3 of the Circular beginning at paragraph 7. The Council also relies on paragraph 8 of Annex 3, including the following additional relevant passage:

"Reasons for refusal should be complete, precise, specific and relevant to the application. In any appeal proceedings, the authority will be expected to produce evidence to substantiate each reason for refusal by reference to the development plan and all other material considerations. ... authorities will be expected to produce evidence to show clearly why the development cannot be permitted. ... In cases where planning issues are shown to be finely balanced, an award of costs relating to substantive, as distinct from procedural, matters is unlikely to be made against the planning authority."

- 3.2 The following extract from Paragraph 14 of Annex 3 is also relevant:

"When determining planning applications, planning authorities are expected to consider the impact of development on ... the landscape. Particular weight should be given to the impact of development on environmentally sensitive areas"

- 3.3 The Council accepts that the proposals are in accordance with the development plan in all respects save one. It wishes to see the Monkton Heathfield Major Development proceed. The proposals have been the subject of negotiations between the Consortium and the Council for more than two years. The time has allowed a rigorous analysis of policies as well as continuing negotiations. Members have been kept fully informed throughout.
- 3.4 The negotiations have narrowed the issues, but the Council has continued to take the considered view that planning permission could not be allowed for a scheme which included locating the ERR roundabout and its westernmost section in the green wedge. Policy EN13 is clear in its terms: "Development which would harm the open character of green wedges will not be permitted". The supporting text to Policy EN13 makes clear that the Policy seeks to protect predominantly open areas to prevent coalescence of settlements, commenting that there is otherwise a risk that successive appeal decisions would over time reduce these

areas and undermine their integrity.

- 3.5 The supporting text to Local Plan Policy T8, which allocates the appeal site and other land at Monkton Heathfield as a Major Development Site, states at paragraph 8.137 that: "The key planning consideration has been to maintain the open wedges of land which separate Monkton Heathfield from Bathpool" The use of the expression "The key planning consideration" means that the application of Policy EN13 carries a heavy degree of significance in the determination of any application for planning permission for the development provided for in Policy T8. The maintenance of the green wedges is a long-term planning objective.
- 3.6 The Council's position on Policy EN13 is supported by the Monkton Heathfield Development Guide which was adopted as supplementary planning guidance in September 2004, after public consultation, and is a material consideration. The Guide states that the ERR must not encroach on to the green wedge which is already the narrowest point of physical separation between Taunton and Monkton Heathfield.
- 3.7 The Council's position was endorsed following an objection on this issue by the Consortium at the Local Plan Inquiry. The Inspector's conclusion on the issue in his report is in the following terms: "The proposed Green Wedge at this point is relatively narrow and ... any further erosion would substantially reduce its function in preventing the coalescence of the settlements. ... I consider that the boundary should remain unchanged." The Inspector's view informed and confirmed the Council's approach to the protection of the green wedge in this locality.
- 3.8 The Consortium has for unexplained reasons on two occasions (the more recent during the inquiry itself) declined to reach a clearly available agreement with Hookipa Limited, owners of the land on which the Local Plan alignment of the ERR would be located. The Council has made it clear that planning permission for a development which complies with Policy EN13 by aligning the ERR across the Hookipa land would be promptly forthcoming, as its in-principle resolution to grant planning permission in respect of the parallel application made by the Consortium confirms. The Consortium had no need to pursue the appeals to which this application relates.
- 3.9 The Council does not accept that it currently faces a shortfall in the 5-year supply of housing land. Given the Council's agreement in principle to grant planning permission in respect of the parallel application and the availability of the Hookipa land, it also does not accept that dismissal of these appeals would materially delay or place in jeopardy the implementation of the proposals for the Major Development Site, including the 900 new dwellings proposed. The impact on the supply of housing land of refusing these applications and/or dismissing these appeals is broadly neutral.
- 3.10 In these circumstances, whatever the Secretary of State's decision may be, the Council considers that its decision to resist these appeals resulted from a duly- and cogently-struck planning judgment. It has not acted unreasonably and any expense the Consortium has been put to results from its own decision to pursue the appeals.

4. CONCLUSIONS

- 4.1 Having regard to the foregoing, I have reached the following conclusions, references to earlier paragraphs of this report being given in square brackets where appropriate.
- 4.2 The circumstances in which an award of costs can be made in town and country planning and analogous cases are set out in Circular 8/93. The normal rule in such cases is that the parties meet their own expenses. If I am to recommend that costs be awarded, then the Consortium will need to establish that, in accordance with the Circular, unreasonable behaviour on the part of the Council has resulted in the incurring of unnecessary expense by the Consortium.
- 4.3 I turn first to the issue of whether the proposals are in accordance with the development plan, having regard to section 38(6) of the 2004 Act and the judicial authorities relied on by the Consortium [2.4]. In the main report I reached the following conclusion on this issue:

"8.4.2 I have acknowledged above, as is not in dispute, that the scheme is in all other material respects in accordance with the development plan. I have had regard to the arguments set out and the judicial decisions cited on behalf of the Consortium in paragraphs 3.4.3 to 3.4.7. Nevertheless, the Local Plan Policy is clear, and its application to Policy T8 and the development is in strong terms: "The key consideration ..." . This is not a case where a policy of general application is in conflict with a site-specific policy where the latter may properly be assumed to prevail. It seems to me accordingly that, notwithstanding that non-compliance is in respect of Policy EN13 alone, it cannot be said that the proposals are in accordance with the development plan."

- 4.4 As appears from this extract, I do not agree that the proposals can be said to be in accordance with the development plan when they do not comply with the clear terms of Local Plan Policy EN13 and the strong terms in which it is expressly applied to Policy T8. In the main report I also conclude that, as submitted by the Council [3.9], the impact of dismissing these appeals on the supply of housing land is likely to be broadly neutral.
- 4.5 I decided to recommend that the appeals be allowed and planning permission be granted because the impact on the green wedge is in my view slight and, though also relatively small, the highways flexibility advantage of the Consortium's alignment is a material consideration which outweighs it. In the main report, my conclusion is set out as follows:
- "8.4.11 In all these circumstances and given the very limited impact of the Consortium's alignment on the green wedge which I have identified above, the benefit of providing a more flexible starting point for the WRR is in my view sufficient to establish that the Consortium's proposed ERR alignment should be approved."*
- 4.6 The balance to be struck between the potential damage to the green wedge and the highways benefit was in my view a fine one, and I note the advice in

paragraph 8 of Annex 3 of the Circular that, where planning issues are shown to be finely balanced, an award of costs against a local authority is unlikely to be made [3.1].

- 4.7 It is accepted by the Consortium that, if the SoS disagrees with my recommendation and dismisses the appeals, this application for costs cannot succeed [2.1]. Even if she allows the appeals, however, it is my view that, for the reasons set out above, the Council has not behaved unreasonably and that, having regard to Circular 8/93, the circumstances in this case are not such as to demonstrate that an award of costs in favour of the Consortium would be justified.

5. RECOMMENDATION

- 5.1 I recommend that the application for costs be refused.

C J Tipping

Inspector

Award of Costs – Guidance

How to apply for a detailed and independent assessment when the amount of an award of costs is disputed

This note is for general guidance only. If you are in any doubt about how to proceed in a particular case, you should seek professional advice.

If the parties cannot agree on the amount of costs to be recovered either party can refer the disputed costs to a Costs Officer or Costs Judge for detailed assessment. This is handled by:

The Supreme Court Costs Office
Cliffords Inn
Fetter Lane
London EC4A 1DQ
(Tel: 020 7947 7124).

But before this can happen you must arrange to have the costs award made what is called an order of the High Court. This is done by writing to:

The Administrative Court Office
Royal Courts of Justice
Strand
London WC2A 2LL

You should refer to section 250(5) of the Local Government Act 1972, and enclose the original of the order of the Secretary of State, or his Inspector, awarding costs. A prepaid return envelope should be enclosed. The High Court order will be returned with guidance about the next steps to be taken in the detailed assessment process.

The detailed assessment process is governed by part 47 of the Civil Procedure Rules that came into effect on 26 April 1999. You can buy these Rules from Stationery Office bookshops (formerly HMSO) or look at copies in your local library or council offices.

Please note that no interest can be claimed on the costs claimed unless and until a High Court order has been made. Interest will only run from the date of that order.

Planning Committee – Wednesday 25 March 2009

Report of the Development Manager

Enforcement Item

Parish:

1. **File/Complaint Number** E/0342/08/08
2. **Location of Site** Nerrols Farm, Nerrols Farm Lane, Cheddon Fitzpaine, Taunton, TA2 8QJ
3. **Names of Owners** Mr B Jeffrey, Nerrols Farmhouse, Priorswood, TA2 8QJ
4. **Name of Occupiers** Mr B Jeffrey
5. **Nature of Contravention**

Large extensions to barns to form tea room/restaurant etc.

6. **Planning History**

An enquiry was received from the Environmental Health Section on 12th December 2008 regarding the provision of a restaurant, tea room and other accommodation created at The Fun Farm. Whilst the owner claims that he thought he had permission for these buildings when granted a change of use, this is not the case. He was advised to submit an application without delay and to also liaise with Building Control. No application has been received so a further letter was sent dated 4th March 2009 requesting that an application be submitted. Environmental Health continue to pursue breaches of their legislation.

7. **Reasons for Taking Action**

It is considered that the erection of the timber buildings are detrimental to the setting of Nerrols Farmhouse being a Grade II listed building. Also one of the buildings abuts the original farm barn and therefore it is considered that it an inappropriate extension to the listed barn and therefore contrary to Policy 9 of the Somerset and Exmoor National Park Joint Structure Plan Review, Guidance as contained in PPG 15. Also it is considered that the development does not accord with Policy EC21 of the Taunton Deane Local Plan.

8. Recommendation

The Solicitor to the Council be authorised to serve an Enforcement Notice and take prosecution action, subject to satisfactory evidence being obtained that the notice has not been complied with.

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 01823 356466

Planning Committee – 25 March 2009

Report of the Development Manager

Enforcement Item

Parish:

1. **File/Complaint Number** E/0335/38/08
2. **Location of Site** 53 HAMILTON ROAD, TAUNTON, TA1 2EL
3. **Names of Owners** Pink Garlic, 53 Hamilton Road, Taunton, TA1 2EL
4. **Name of Occupiers** Pink Garlic
5. **Nature of Contravention**

Erection of extension to rear of property without planning permission

6. **Planning History**

A complaint was received on 11th December 2008 that building works were being undertaken at the rear of the property. At the time the premises were being refurbished and converted into a restaurant. A site visit was carried out and it was found that the small extension was to house the boiler and other equipment. The contractor was informed that the extension required planning permission. Further applications for signs and a new shop front were submitted but no application has been submitted for the rear extension. There is a concern that the extension abuts a neighbouring property and has been built against a window thus blocking out any light to the room in the neighbouring property.

7. **Reasons for Taking Action**

It is considered that the development has a detrimental impact on the neighbouring properties and therefore contrary to Policy S1(e) and S2(f) of the Taunton Deane Local Plan

8. Recommendation

The Solicitor to the Council be authorised to commence Enforcement action and take prosecution action, subject to satisfactory evidence being obtained that the notice has not been complied with.

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 01823 356466

Appeal Received for Committee Agenda 25th March 2009

Appeal	Start Date	Application Number
Sir Kevin Vale	09 March 2009	38/08/0449

Appeal	Proposal	Reason/s for initial decision	Application Number	Decision
Mr I Wright	DEMOLITION OF BUNGALOW AND ERECTION OF TWO ONE AND A HALF STOREY DWELLINGS AT ROSEWOOD, NORTH END, CREECH ST MICHAEL	TDLP Policies S1, S2 SENP STR 1, Policy 49	14/08/0017	Dismissed 19 January 2009
John Birch	CHANGE OF USE OF AGRICULTURAL LAND FOR THE PROVISION OF 4 PITCHES FOR GYPSY OCCUPATION TO PROVIDE UP TO 1 CARAVAN AND 1 TOURING CARAVAN FOR EACH PITCH AND ASSOCIATED CAR PARKING AT FOSGROVE PADDOCK, SHOREDITCH	TDLP Policies S1, S7 and H14 SENP Policy 49 Circular 1/2006	30/07/0006	Dismissed 24 February 2009
Mr A Prole	ERECTION OF DWELLING ON LAND ADJACENT TO BEVERLEY, HOUNDSMOOR LANE, MILVERTON	TDLP Policy S7 SENP Policy STR6 PPS7	23/08/0025	Dismissed 06 March 2009
Redrow Homes (West Country) Persimmon Homes (South West)	FORMATION OF ROAD AT LAND NORTH OF LANGALLER LANE, MONKTON HEATHFIELD		48/05/0072 and 48/07/0006	Allowed 12 March 2009

Appeals
Decisions
for
Committee
Agenda – 17
February
2009

TDLP
=
Taunton
Deane
Local
Plan
SENP
=
Somerset &
Exmoor
National
Park