

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 29 September 2009 at 17:00.

---

### Agenda

- 1 Apologies
- 2 Public Question Time
- 3 Declaration of Interests. To receive declarations of personal or prejudicial interests, in accordance with the Code of Conduct
- 4 Members' Code of Good Practice
- 5 10/09/0016 - Change of use of barn to dwelling (resubmission of 10/08/0033) at Buttles Farm, Churchinford
- 6 10/09/0018 - Erection of 2 storey extension to side and detached garage at 4 Trickey Warren Cottages, Culmhead, Churchstanton as amended by agent's email and revised drawing C4611/101A and amplified by drawings C4611/102 and C4611/002 received 8 September 2009 and further amended by revised drawings C4611/102A and C4611/101B received 17 September 2009.
- 8 14/09/0023 - Erection of 2 units for Class B1 (Business) and B8 (storage and distribution) at Creech Mills Industrial Estate, Creech St Michael (amended proposal to 14/08/0037)
- 9 14/09/0032 - Outline application for the erection of a detached dwelling and garage within the garden of Chants, Creech Heathfield as amended by email and plans received on 28 August 2009.
- 10 24/09/0024 - Replacement of 4 isolation kennels and erection of 6 additional kennels for applicant's own dogs at St Giles Kennels, Wrantage
- 11 43/09/0058 - Erection of single storey extension, conversion of one outbuilding to form additional dwelling and external door to potato room omitted (as amended by drawing noT7/3 REV 4 received 24 July 2009) 29/31 North Street, Wellington
- 12 Determination under Section 70A Town and Country Planning Act 1990 in respect of application 24/09/0030 for the change of use (of Plot 15 Oxen Lane) as a small gypsy site to site one mobile home and one touring caravan. Report of the Head of Legal and Democratic Services (to follow)

- 13 Planning (Listed Buildings and Conservation Areas) Act 1990 - Wet Finishing Works, Tone Works, Milverton Road, Wellington
- 14 E0192/43/09 - Erection of timber shed on driveway at 17b Walkers Gate, Wellington (attached)
- 15 E0193/38/07 - Erection of a smoking shelter at Eagle Tavern, South Street, Taunton
- 16 Planning Appeals - Appeals lodged and the latest appeal decisions received (details attached)

Tonya Meers  
Legal and Democratic Services Manager

18 December 2009

Members of the public are welcome to attend the meeting and listen to the discussions.

There is time set aside at the beginning of most meetings to allow the public to ask questions.

Speaking under “Public Question Time” is limited to 4 minutes per person in an overall period of 15 minutes. The Committee Administrator will keep a close watch on the time and the Chairman will be responsible for ensuring the time permitted does not overrun. The speaker will be allowed to address the Committee once only and will not be allowed to participate further in any debate.

If a member of the public wishes to address the Committee on any matter appearing on the agenda, the Chairman will normally permit this to occur when that item is reached and before the Councillors begin to debate the item.

This is more usual at meetings of the Council’s Planning Committee and details of the “rules” which apply at these meetings can be found in the leaflet “Having Your Say on Planning Applications”. A copy can be obtained free of charge from the Planning Reception Desk at The Deane House or by contacting the telephone number or e-mail address below.

If an item on the agenda is contentious, with a large number of people attending the meeting, a representative should be nominated to present the views of a group.

These arrangements do not apply to exempt (confidential) items on the agenda where any members of the press or public present will be asked to leave the Committee Room.

Full Council, Executive, Committees and Task and Finish Review agendas, reports and minutes are available on our website: [www.tauntondeane.gov.uk](http://www.tauntondeane.gov.uk)



Lift access to the John Meikle Room and the other Committee Rooms on the first floor of The Deane House, is available from the main ground floor entrance. Toilet facilities, with wheelchair access, are also available off the landing directly outside the Committee Rooms.



An induction loop operates to enhance sound for anyone wearing a hearing aid or using a transmitter.

**For further information about the meeting, please contact Democratic Services on 01823 356382 or email [d.durham@tauntondeane.gov.uk](mailto:d.durham@tauntondeane.gov.uk)**

## **Planning Committee Members:-**

Councillor P Watson  
Councillor D Wedderkopp  
Councillor M Floyd  
Councillor K Durdan  
Councillor B Denington  
Councillor M Hill  
Councillor D House  
Councillor C Bishop  
Councillor R Bowrah, BEM - Mayor  
Councillor J Allgrove  
Councillor C Hill  
Councillor S Brooks  
Councillor G Copley  
Councillor P Critchard  
Councillor L James  
Councillor T McMahon  
Councillor N Court

## **Declaration of Interests**

### **Planning Committee**

- Members of Somerset County Council – Councillors Brooks, McMahon and Wedderkopp
- Employee of Somerset County Council – Councillor Mrs Hill
- Employee of Viridor – Councillor Miss James
- Director of Southwest One – Councillor Coles

***Planning Committee  
Members' Code of  
Good Practice***

# ***Planning Committee Members' Code of Good Practice***

<b>Background</b>	<b>3</b>
<b>Introduction</b>	<b>3</b>
<b>1. Relationship to the Members' Code of Conduct</b>	<b>5</b>
<b>2. Development Proposals and Interests under the Members' Code of Conduct</b>	<b>5</b>
<b>3. Fettering Discretion in the Planning Process</b>	<b>7</b>
<b>4. Contact with Applicants, Developers and Objectors</b>	<b>8</b>
<b>5. Lobbying of Councillors</b>	<b>9</b>
<b>6. Lobbying by Councillors</b>	<b>10</b>
<b>7. Site Visits</b>	<b>11</b>
<b>8. Public Speaking at Meetings</b>	<b>12</b>
<b>9. Officers</b>	<b>12</b>
<b>10. Decision Making</b>	<b>12</b>
<b>11. Training</b>	<b>13</b>
<b>Annex: A Broad Definition of the term "Fettering a Discretion"</b>	<b>14</b>
<b>Annex B: Further reading</b>	<b>15</b>

# Planning Committee Members' Code of Good Practice

## Background

Planning has a positive and proactive role to play at the heart of local government. It is a powerful tool that helps councils achieve the ambitions of local communities. Good planning stimulates growth and promotes innovation. It helps to translate goals for healthier communities, higher employment, better housing, reduced congestion, educational attainment, safe and sustainable communities into action through well-designed medical centres, offices, universities, homes, roads and other facilities vital to achieving them.

The planning system works best when the roles and responsibilities of the many players essential to its effective operation are clearly understood. It is vital that elected Councillors understand their role and the context and constraints in which they operate.

Planning decisions involve balancing the needs and interests of individual constituents and the community with the need to maintain an ethic of impartial decision-making on what can be highly controversial proposals.

The planning process is complex and sometimes highly emotive. It is essential that members of the Planning Committee conduct themselves correctly to avoid complaints which could have personal consequences, and may in some cases involve the Council in substantial costs.

All Councillors must follow the rules laid out in the Members' Code of Conduct to ensure they are, and are seen to be, fair and impartial in their work as a Councillor.

For many members of the public, the Planning Committee is the most visible operation of the Council, and one that can affect their lives most directly. Some stand to gain substantial financial benefit from the outcome of a Planning Committee decision.

This Code of Good Practice has therefore been prepared to provide members with additional guidance on their role on the Planning Committee. It updates the previous Code in the light of new government guidance, particularly on the encouragement to greater involvement of members in the pre-application consultation phase. Annex B lists references of further information available. The LGA document 'Probity in Planning: the role of Councillors and officers – revised guidance note 2009', which has been issued to all Planning Committee members, is particularly useful.

## Introduction

- **The aim of this code of good practice:** to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.
- **The key purpose of Planning:** to control development in the public interest to facilitate place-shaping and community planning as laid out in the Local Development Framework.
- **Your role as a member of the Local Planning Authority:** to make planning decisions openly, impartially, with sound judgment and for justifiable reasons.
- **When the Code of Good Practice applies:** this code applies to members at **all times** when involving themselves in the planning process. (This includes decision making meetings of the Local Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings.) It applies as equally to planning enforcement matters or site-specific policy issues as it does to planning applications.

***Members are reminded that this document is only for general guidance, as it cannot cover all eventualities. It is the individual Member's responsibility to act correctly under all circumstances. If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Monitoring Officer (Tonya Meers) or one of the Council's Solicitors, and preferably well before any meeting takes place.***

## 1. Relationship to the Members' Code of Conduct

**Always** apply the rules in the Members' Code of Conduct first, which must be complied with. The Members' Code of Conduct can be found in your copy of the Council's Constitution.

**Do** then apply the rules in this Planning Code of Good Practice, which seeks to explain and supplement the Members' Code of Conduct for the purposes of planning control.

If you do not abide by this Code of Good Practice, you may put the Council at risk of proceedings on the legality or maladministration of the related decision, and yourself at risk of either being named in a report made to the Standards Committee of the Council or, if the failure is also likely to be a breach of the Code of Conduct, a complaint being made to the Standards Board for England.

## 2. Development Proposals and Interests under the Members' Code of Conduct

**Do** disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other members. Disclose your interest prior to the commencement of discussion on the particular matter in which you have an interest.

**Do** then act accordingly.

Where your interest is personal and prejudicial:-

**Do not** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the Local Planning Authority.

**Do** ask another ward member to represent the views of the ward. If this is not possible then it is recommended that you put those views in writing to the Committee.

**Do not** get involved in the processing of the application.

**Do not** seek or accept any preferential treatment, or place yourself in a position that could give the public the impression you are receiving preferential treatment. In other words, if you have a personal and prejudicial interest in a planning application, you should not seek to use your position as a Councillor to discuss the matter with officers and other members when a normal member of the public would not have the same opportunity to do so.

**Do** be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have a personal and prejudicial interest to an appropriate officer (either in person or in writing), this Code of Good Practice places greater limitations on you in representing that proposal than would apply to a normal member of the public.

*For example, where you have a personal and prejudicial interest in an application to be put before the Planning Committee, you would have to withdraw from the Committee Room whilst the meeting considers it, whereas an ordinary member of the public would be allowed up to the three minutes to address the Committee and to observe the meeting's consideration of the application.*

**Do** also be aware that, whilst the Members' Code of Conduct provides for a presumption that you may regard yourself as not having a prejudicial interest in matters which relate to the organisations mentioned below, you must exercise your discretion in deciding whether or not to participate in each case. Where:-

- you have been significantly involved in the preparation, submission or advocacy of a planning proposal on behalf of another local or public authority of which you are a member; or
- you have been appointed or nominated to an outside body or organisation by the Council as its representative; or
- you are a trustee or company director of the body submitting the proposal and were appointed by the Council:

you should always disclose a prejudicial as well as personal interest and withdraw from the meeting of the Planning Committee.

**Do** consider yourself able to take part in the debate on an application when acting as part of a consultee body (where, for example, you are also a member of the parish council or you are both a Borough and a County Councillor), provided:-

- the proposal does not substantially affect the well being or financial standing of the consultee body;
- you make it clear to the consultee body that:-
  - your views are expressed on the limited information before you only;
  - you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before

the Planning Committee and you hear **all** of the relevant information; and

- you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Planning Committee; and
- you disclose the personal interest regarding your membership or role when the Planning Committee comes to consider the proposal.

**Do** notify the Monitoring Officer (Tonya Meers) in writing of your own applications, and those of relatives and close associates, and note that:-

- notification to the Monitoring Officer should be made no later than submission of the application;
- the proposal will always be reported to the Planning Committee and not dealt with by officers under delegated powers; and
- it is advisable that you employ an agent to act on your behalf on the proposal in dealing with officers and any public speaking at the Planning Committee.

### **3. Fettering Discretion in the Planning Process**

**Before considering this section, it will be helpful to the reader to refer to the broad definition of the term “fettering a discretion” which is set out at Annex A**

**Do not** fetter your discretion and therefore your ability to participate in the decision making process by making up your mind, or clearly appearing to have made up your mind (particularly in relation to an external interest or lobby group), on how you will vote on any planning matter prior to its formal consideration at the Planning Committee without having heard the full discussion at the meeting.

Fettering your discretion in this way and then taking part in the decision will put the Council at risk of:-

- (a) a finding of maladministration; and
- (b) legal proceedings on the grounds of there being a danger of bias or pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.

**Do** be aware that you are likely to be considered to have fettered your discretion where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief advocate for the proposal. Through such significant personal involvement you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits.

**Do not** speak and vote on a proposal where you have fettered your discretion. You do not also have to withdraw, but you may prefer to do so for the sake of appearances.

**Do** explain that you do not intend to speak and vote because you have, or you could reasonably be perceived as having, judged (or reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes of the meeting.

**Do** take the opportunity to exercise your separate speaking rights as a ward member where you have represented your views or those of local electors and fettered your discretion, but do not have a personal and prejudicial interest.

Where you do:-

- advise the Chairman that you wish to speak in this capacity before commencement of the item;
- remove yourself from the member seating area for the duration of that item; and
- ensure that your actions are recorded.

#### **4. Contact with Applicants, Developers and Objectors**

**Do** refer those who approach you for planning, procedural or technical advice to officers.

**Do not** agree to any formal meeting with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should never seek to arrange that meeting yourself but should request the Chief Planning Officer to organise it. The officer will then ensure that those present at the meeting are advised from the start that the discussions will not bind the Local Planning Authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Planning Committee.

**Always:-**

- follow the rules on lobbying (see below);
- consider whether or not it would be prudent in the circumstances to make notes when contacted; and
- report to the Chief Planning Officer any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.

*In addition in respect of presentations by applicants or developers:-*

**Do not** attend a planning presentation unless an officer is present and/or it has been organised by officers.

**Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.

**Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application. This will be carried out by the Planning Committee.

**Do** be aware that a presentation is a form of lobbying and you must not express any strong view or state how you or other members might vote.

## **5. Lobbying of Councillors**

Discussions between a potential applicant and a Council prior to the submission of an application can be of considerable benefit to both parties and are encouraged. With the recognition of the need to allow and encourage Councillors to be champions of their local communities in the local government white paper, there has followed a realisation that councillor engagement in pre-application discussions on major development is necessary to allow Councillors to fulfil this role.

**Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it would prejudice your impartiality, and therefore your ability to participate in the Planning Committee's decision making, to express an intention to vote one way or another or take such a firm point of view that it amounts to the same thing.

**Do** remember that your overriding duty is to the whole community not just to the people in your ward. You therefore need to make decisions impartially, that should not improperly favour, or appear to improperly favour, any person, company, group or locality.

**Do not** accept gifts or hospitality from any person involved in, or affected by, a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible and remember to register the gift or hospitality where its value is over £25 in accordance with the Council's rules on gifts and hospitality.

**Do** copy or pass on any lobbying correspondence you receive to the Chief Planning Officer at the earliest opportunity.

**Do** promptly refer to the Chief Planning Officer any offers made to you of planning gain or constraint of development, through a proposed S106 Planning Agreement, or otherwise.

**Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality) who will, in turn, advise the appropriate officers to follow the matter up.

**Do** note that, unless you have a personal and prejudicial interest, you will not have fettered your discretion or breached this Planning Code of Good Practice through:-

- listening to, or receiving viewpoints from residents or other interested parties;
- making comments to residents, interested parties, other members or appropriate officers, provided they do not consist of, or amount to, pre-judging the issue and you make clear you are keeping an open mind;
- seeking information through appropriate channels; or
- being a vehicle for the expression of opinion or speaking at the meeting as a ward member, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard **all** the facts and listened to the debate.

## **6. Lobbying by Councillors**

**Do not** become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If you do, you will have fettered your discretion and are likely to have a personal and prejudicial interest and have to withdraw from any Planning Committee meeting where the application is discussed.

**Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, CPRE, Ramblers Association or a local Civic Society. However, you will need to disclose a personal interest where that organisation has made representations on a particular planning application and make it clear to that organisation (if approached by them) and the Committee that you have reserved judgement and the independence to make up your own mind on each separate proposal.

**Do not** lobby fellow Councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.

**Do not** decide or discuss how to vote on any planning application at any sort of political group meeting, or lobby any other Member to do so. Political Group Meetings should **never** dictate how Members should vote on a planning issue. Any vote taken on political lines will leave the Council open to challenge as set out in section 3 of this code.

## 7. Site Visits

Whilst it is not the practice for the Planning Committee to make site visits as a Committee, **do** make a personal visit to an application site if you do not feel you will be able to come to a fair decision without seeing the site. Always try to view the land or building concerned from a public vantage point, for example an adjoining road or a public footpath.

**Do** ensure that any particular observations you make during the site visit, which are not referred to either in the Chief Planning Officer's report or the visual presentation, are reported back to the Planning Committee, so that all Members have the same information.

**Do** ensure that you treat the site visit only as an opportunity to observe the site to clarify particular issues. Wherever possible, make the visit unaccompanied.

**Do not** hear representations from any other party during the visit. Where you are approached by the applicant, agent or a third party, advise them that they should make representations in writing to the Local Planning Authority and direct them to the Chief Planning Officer.

**Do not** express opinions or views to anyone.

If you need to enter the site the subject of a planning proposal, **do not** do so without the consent of the owner or occupier and **do not** do so in circumstances where you believe you will not be able to abide by the Good

Practice Rules. **Do not** accept an invitation to be shown around by either the applicant, agent or a third party unless you are accompanied by one of the Council's Planning Officers.

## 8. Public Speaking at Meetings

**Do not** allow members of the public to communicate with you during the Planning Committee's proceedings (orally or in writing) other than through the scheme for public speaking, as this may give the appearance of bias.

**Do** ensure that you comply with the Council's procedures in respect of public speaking.

## 9. Officers

**Do not** put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Chief Planning Officer which may be incorporated into any Planning Committee report.)

If you wish to discuss a particular planning proposal outside of any arranged meeting, **do** try to contact the relevant Case Officer or, in his/her absence, another Planning Officer or the Chief Planning Officer.

**Do** recognise and respect that officers involved in the processing and determination of planning matters must act in accordance not only with the Council's Code of Conduct for Officers, but also their professional codes of conduct (primarily the Royal Town Planning Institute's Code of Professional Conduct). As a result, Planning Officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

## 10. Decision Making

**Do** come to meetings with an open mind and demonstrate that you are open-minded.

**Do** comply with the requirements of the Town and Country Planning Act 1990 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.

**Do** come to your decision only after due consideration of **all** of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or, that there is simply insufficient information before you, request that further information. If necessary, defer a decision on an application for planning permission or refuse it.

**Do not** vote or take part in the meeting's discussion on an application unless you have been present to hear the entire debate, including the officers' introduction to, or visual presentation in respect of, the matter.

**Do** have recorded the reasons for the Planning Committee's decision to defer any proposal.

**Do** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the Development Plan, that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.

## 11. Training

**Do not** participate in decision making at meetings dealing with planning matters if you have not attended the mandatory planning training prescribed by the Council.

**Do** endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.

## ANNEX A

### A Broad Definition of the term “Fettering a Discretion”

*Fettering a Discretion* is one of those unfriendly and legalistic phrases which derive from the statutory basis which underlies all local government decision-making. Unfortunately it is quite difficult to replace - or to translate into normal English. So here’s a broad definition instead:-

It means that where a decision-making body (like a Council - or a Committee or an Executive Councillor) is obliged to exercise some discretionary power under statute – then it must **exercise** that discretion fairly, at the right time and only after taking all proper factors into account. (Deciding upon the fate of a planning application is a good example of such a discretion).

If - instead of keeping that essential open mind - it can be seen that it (or its members) have already **committed** themselves – in one direction or another - **before the moment when that discretion must be exercised** (ie - **after** all material factors have been considered) then they are said to have “fettered their discretion”.

The consequence of such pre-judging can be dire. In a bad case the validity of the decision could be challenged in a number of ways – including through the courts – with painful and expensive consequences for all concerned – including the Council itself – and for individual councillors who have left themselves open to this criticism.

## ANNEX B

Committee on Standards in Public Life (1997) **Third Report: Standards of Conduct in Local Government in England, Scotland and Wales, Volume 1 Report** Cm 3702-1:  
<http://www.public-standards.org.uk/Library/OurWork/3rdInquiryReport.pdf>

**The Local Authorities (Model Code of Conduct) (England) Order 2007:**  
[http://www.opsi.gov.uk/si/si2007/uksi\\_20071159\\_en\\_1](http://www.opsi.gov.uk/si/si2007/uksi_20071159_en_1)

National Development Control Forum (1988) **Guidelines for the Handling of Planning Applications**  
Royal Town Planning Institute **Code of Professional Conduct:**  
<http://www.rtpi.org.uk/download/154/Code-of-Professional-Conduct-2007.pdf>

Royal Town Planning Institute (1997) - **The Role of Elected Members in Plan-making and Development Control** - A Study Commission from the School of Planning, Oxford Brookes University

**Code of Conduct – Guide for members** Standards Board for England, May 2007  
[http://www.standardsboard.gov.uk/TheCodeofConduct/Guidance/CodeofConduct/filedownload\\_16126.en.pdf](http://www.standardsboard.gov.uk/TheCodeofConduct/Guidance/CodeofConduct/filedownload_16126.en.pdf)

**Predisposition, Predetermination or Bias and the Code**  
Standards Board for England Occasional paper August 2007  
[http://www.standardsboard.gov.uk/Publications/OccasionalPaper/filedownload\\_16105.en.pdf](http://www.standardsboard.gov.uk/Publications/OccasionalPaper/filedownload_16105.en.pdf)

**Members involvement in planning decisions,**  
Department of Communities & Local Government 2007

**Connecting Councillors with strategic Planning Applications** London Councils November 2007  
<http://www.londoncouncils.gov.uk/Transport/Publications/connectingcouncillorswithstrategicplanningapplicationsagoodpracticeguideforlondon.htm>

**Positive Engagement – a guide for planning councillors** 2008 leaflet PAS  
<http://www.pas.gov.uk/pas>

/

**Model Members' Planning Code of Good Practice** Association of Council Secretaries and Solicitors, 2007 update:  
[http://www.acses.org.uk/public\\_file/filename/8/ACSeS\\_Members\\_Planning\\_Code\\_update\\_draft\\_07\\_07.pdf](http://www.acses.org.uk/public_file/filename/8/ACSeS_Members_Planning_Code_update_draft_07_07.pdf)

f

**Councillor Involvement in pre application discussions** Development Management Practice Project  
Guidance note 3, 2007 Planning Officers Society:  
[http://www.planningofficers.org.uk/documents/Guidance\\_Note\\_3\\_Member\\_pre\\_application\\_discussions.pdf](http://www.planningofficers.org.uk/documents/Guidance_Note_3_Member_pre_application_discussions.pdf)

**The Planning System – matching expectations to capacity** Audit Commission, February 2006:  
[http://www.audit-commission.gov.uk/Products/NATIONAL-REPORT/EFF8A0E9-4071-4fc9-8099-77FDFBD3D7CB/Planning\\_FINAL.pdf](http://www.audit-commission.gov.uk/Products/NATIONAL-REPORT/EFF8A0E9-4071-4fc9-8099-77FDFBD3D7CB/Planning_FINAL.pdf)

Published by CLG on behalf of the Killian Pretty review  
**Planning applications; a faster and more responsive system Final Report** November 2008:  
[http://www.planningportal.gov.uk/uploads/kpr/kpr\\_final-report.pdf](http://www.planningportal.gov.uk/uploads/kpr/kpr_final-report.pdf)

10/09/0016

MR P TUTCHER

**CHANGE OF USE OF BARN TO DWELLING (RESUBMISSION OF 10/08/0033) AT BUTTLES FARM, CHURCHINFORD**

319588.111779

Full Planning Permission

---

—

**PROPOSAL**

The existing building is a stone and corrugated sheet small one and a half storey barn with an adjoining single storey element to the side. The barn sits in a small paddock, bounded by stone walls and hedges, abutting a country lane to the north-west. The barn lies to the south-east of Buttle's Farm, which comprises of a farmhouse and range of modern and traditional buildings. It is the only structure on this side of the road and is surrounded by agricultural fields. The site lies within the Blackdown Hills Area of Outstanding Natural Beauty.

This application seeks permission for the change of use and conversion of the barn to a dwelling, which would consist of two bedrooms and bathroom on the first floor and kitchen and lounge/dining room on the ground floor. The adjoining single storey element would be demolished, retaining only the two sides of natural stone walling. Access would be gained through the existing field access, in the stone wall forming the boundary with the lane.

The application is accompanied by a bat survey report; wildlife survey report; and reptile survey report. It was also accompanied by a structural engineers survey, which found the barn to be in reasonable condition.

A similar application for the conversion of this barn to a dwelling was refused in April 2009 by delegated powers, which also included conversion of the adjoining single storey element to a hall, WC, store and two bay car port. It was refused on sustainability grounds due to the remote area distant from services and facilities and consequent reliance on the private car; the poor state of repair of the single storey element and significant alterations required to convert it to residential use; and the introduction of the residential appearance (domestic paraphernalia and parking/turning area) into the rural environment, to the detriment of the natural beauty of the Blackdown Hills Area of Outstanding Natural Beauty.

Members are referred to an application opposite Westcroft, Churchstanton (10/08/0032), refused by committee in January 2009, which is a substantially similar scheme.

**CONSULTATION AND REPRESENTATION RESPONSES**

**Consultees**

*WARD COUNCILLOR - CLLR JOHN THORN -*

As the ward councillor, I have visited this site and viewed the barn with the applicant's father, who now lives in Churchinford and who previously owned Buttles Farm until he retired and sold up a few years ago. I have also spoken personally with the nearest neighbours of the barn, who occupy the former farmhouse almost immediately opposite the barn.

This is a resubmission of an application which was refused in April on three grounds, which in essence were:

- The occupants would have to use a car to get around
- Part of the barn need rebuilding or altering
- It would introduce a residential element into the AONB

While I can understand the reasons for refusal, they all appear to be policy-is-black-and-white type reasons which could be trotted out to refuse applications for almost anything within the AONB, and this is an approach to planning which disappoints me deeply.

The use of a car to get around is something which is essential for anybody living in the countryside and until the day arrives when sufficient has been invested in public transport services to allow rural dwellers to be able to catch a bus as regularly as they desire, then it has to be accepted that private cars will be the usual form of transport.

The location of the barn is on a narrow, almost single-track road, but it is a straight stretch of road with good visibility in both directions and flat, wide grass verges which could facilitate passing. It is also a road which can hardly be described as busy, leading to nowhere in particular and having an ultra-low traffic flow, so the addition of another car will have insignificant impact and is not going to make the road unsustainable. I note that the county highways officer does not advise refusal, and, in fact, says a decision on the roads aspect is a matter for the planning committee to consider.

I would consider the pressing need to provide housing within the Deane, and preferably to utilise existing sites rather than greenfield land, would outweigh any concern about highways sustainability.

I note the highways officer is confused about access through the existing stone wall. This will be through an existing gateway which Mr Tutcher senior assures me was there before even he acquired the farm around 40 years ago.

The previous refusal reasons state the proposed dwelling cannot be created 'without significant rebuilding or alteration'. I have to disagree that the barn will need significant rebuilding, while the main alteration is the addition of one window opening in a gable end and a conservation-style rooflight, which is hardly 'significant'. The unsightly corrugated iron roof of the barn will be replaced with a natural slate roof which will make the building much easier on the eye than it is at present. While there is obviously considerable work needed internally, it is not the case that externally there will be significant rebuilding. On my visit, I looked at the first floor of the barn and saw there was grain dust in the air which was clearly dry, indicating the building is weatherproof.

The lean-to at the rear, which would have required significant rebuilding, is actually being demolished to allow for car parking.

As to 'introducing a residential element to the AONB', this is, quite frankly, a nonsensical argument as the barn is located almost exactly opposite an existing 'residential element in the AONB', namely the former Buttles Farmhouse, whose occupants I have spoken to.

Conversion of the barn to a small dwelling will, in fact, tidy up and complement this attractive area. If the property is left as it is, it will simply deteriorate and become an eyesore which will positively detract from the beauty of the AONB countryside. The architects have gone so far as to even retain the existing stone steps on the roadside gable end to the first floor of the barn, which has lately been used as a grain store.

The site in its entirety, including the parking and garden area, is a compact and enclosed site with natural stone walls on all sides, and therefore cannot not spill out into the surrounding countryside. The only public view into the site will be from the road, and, as mentioned earlier, it is not a road which is much used.

I firmly believe this is the sort of planning application to bring back into use an otherwise derelict building which the council should be supporting and not hindering. There is an opportunity here to provide a small family home or starter home in a rural area where there is a shortage of accommodation.

At the time of writing, there are five letters of support from eight residents in the nearby area, and the nearest-neighbours have confirmed to me that they have no objections.

The parish council supported the application last time and I am confident they will do so again when they consider this new application at their meeting on 9<sup>th</sup> September.

I, too, wish to support the application as the ward councillor and I hope that it will be recommended for approval.

#### *SSC - TRANSPORT DEVELOPMENT GROUP -*

The proposed development site is remote from any urban area and therefore distant from adequate services and facilities, such as, education, employment, health, retail and leisure. In addition, there is no bus service operating, within close proximity of the site. As a consequence, occupiers of the new development are likely to be dependant 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, and to the provisions of policies STR1 and STR6 of the Somerset and Exmoor National Park Joint Structure Plan Review (adopted policies: April 2000).

Notwithstanding the aforementioned comments, it must be a matter for the Local Planning Authority to decide whether the re-use of the barn and/or any other overriding planning need, outweighs the transport policies that seek to reduce reliance on the private car.

It is not clear if the use of the barn will result in additional traffic movements or a substitution as this will depend upon whether the barn's use will need to be re-provided on any adjoining farm/agricultural land that the Applicant owns/control.

A residential or holiday use may generate a similar level of traffic to that of the agricultural use of the barn, but the nature of the trip patterns connected with a

residential use are likely to be very different with a higher level of longer distance trips.

In detail it has been stated in the Design and Access Statement that a vehicular and pedestrian access into the site will be formed through the existing natural stone wall. However it would appear from my site visit that there is already a gateway in this location. Perhaps the planning officer can clarify this point.

*CHURCHSTANTON PARISH COUNCIL* - The above application was discussed by my Council at its Meeting yesterday and it was agreed by an overwhelming majority that it fully supports the proposals. It is felt that the development of a small residential property on this site is preferable to the continued deterioration of the existing structure. Its "sustainability" is thought to be equal to other buildings in the neighbourhood and that its conversion (and associated paraphernalia) would not have an adverse impact on the AONB - it might, in fact, have a positive impact on said Area.

*NATURE CONSERVATION & RESERVES OFFICERS* -

Three wildlife reports which formed part of the application 10/08/0033 have been submitted with this application along with a supporting letter from Acorn Ecology dated 6<sup>th</sup> August 2009, confirming that the situation with regard to bats and reptiles remains unchanged. No bird nests were noted in earlier surveys but the surveyor found nests (swallow and robin/wren) this year. The advice given in the 2008 report to carry out works outside of the nesting season therefore still stands. I support the recommendation to provide bird boxes. I agree that the earlier reports if read in conjunction with the letter are still valid and so support earlier comments made by Ms Motum. (see below)

Comments made by Ms Motum under previous application.

Acorn's submitted reports include an emergence survey for bats (June 2008) and a reptile survey (June 08). The report concludes that bats are not using the building to be converted but there is potential for bats to roost; reptiles are not present. I support the report Conclusion 41.1 for careful work to protect bats.

In applying PPS9 and TDLP EN4 I advise that future provision is made for bats – this could be through the design of the roof ridge to allow crevice dwelling bats to enter small cavities or the provision of a bat box on placed high up on the south east gable end. Suggest conditions and notes to applicant.

*HERITAGE AND LANDSCAPE OFFICER* - My main concern is the change of character from farm buildings to residential. It may be possible to provide some landscape mitigation but overall, given its location within the Blackdown Hills AONB, the proposals will be detrimental to policy EN10.

*ENVIRONMENTAL HEALTH - NOISE & POLLUTION* - Comments awaited.

## **Representations**

10 letters of support have been received from 9 different households on the grounds of:

- Property is in a bad condition, pity to see it deteriorating, could become an eyesore. This application could save property and enhance its appearance.
- Barn no longer viable as an agricultural building but could make a small dwelling, possibly affordable for a starter home.
- Barn is attractive in a prominent position next to the road.

- There is a shortage of Country housing for locals. This could be “affordable housing” due to its size, for a local young family helping the rural economy and local amenities. This size and type of property is exactly what the area needs.
- The barn would integrate with existing buildings at Buttles Farm.
- Previous reason was primarily due to need of a motor vehicle, but in a rural area all properties need a car to function and this will always be the case.
- Road is of a good standard for the amount of extra traffic this would produce.
- Permission has recently been granted for a barn conversion at Kedget Barton, Churchstanton.
- Primary school at Churchstanton is an easy walk or cycle ride away and Churchinford village is only 1.5 miles away.

Other non-planning issues also raised:

- Applicant was born at this property. If planning was granted the property would be there should the siblings need to look after their elderly parents who now live in the village.
- Applicant has relatives in Churchinford
- If left to deteriorate, barn could become dangerous to children and animals.

## **PLANNING POLICIES**

PPS7 - Sustainable Development in Rural Areas,  
 STR6 - Development Outside Towns, Rural Centres and Villages,  
 S&ENPP3 - S&ENP - Areas of Outstanding Natural Beauty,  
 S&ENPP5 - S&ENP - Landscape Character,  
 S1 - TDBCLP - General Requirements,  
 S2 - TDBCLP - Design,  
 S7 - TDBCLP - Outside Settlement,  
 H7 - TDBCLP - Conversion of Rural Buildings,  
 EN4 - TDBCLP -Wildlife in Buildings to be Converted or Demolished,  
 EN10 - TDBCLP - Areas of Outstanding Natural Beauty,

## **DETERMINING ISSUES AND CONSIDERATIONS**

Members are referred to an application determined by committee in January 2009 opposite Westcroft, Churchstanton. This application was refused on the grounds of: (1) unsustainable location remote from services and facilities which would require reliance on the private car; (2) barn not of permanent and substantial construction and would require significant alterations to convert to residential use; and (3) conversion to residential by virtue of introduction of paraphernalia of domestic living and installation of driveway would introduce a residential element into a rural environment, eroding the rustic nature of the site, failing to preserve and enhance the rural beauty of the Blackdown Hills Area of Outstanding Natural Beauty.

It is important that members are aware of the significant similarities between these two sites in order to maintain consistency.

In addition, it is important to note that there are also several recent refusals of barn conversions to residential use, which have been dismissed at appeal. At Great Herswell Farm, West Buckland (Application Reference: 42/08/0024) (decision date

25<sup>th</sup> March 2009) the inspector concluded that “In sustainability terms, I certainly do not consider that the benefits of converting it to permanent residential use would outweigh the harm caused by creating another dwelling in the countryside, remote from services and facilities”. Whilst at Church Farm, Culmhead (Application Reference: 29/08/0004) (decision date 26<sup>th</sup> March 2009), a different inspector concluded “Notwithstanding my finding that the harm to the character and appearance of the complex could be mitigated through removal of the dividing wall, this does not outweigh the harm I have identified in relation to the increased traffic and sustainability of a further residential unit on this site.”

A supporter referred to a barn recently granted approval for conversion to residential use at Kedge Barton. This was granted in May 2005, therefore in excess of four years ago. There has been a significant drive in achieving sustainability since then, as supported by the appeal decisions referred to above.

The barn at Buttles Farm lies in a remote countryside location, some distance from any urban area and therefore distant from adequate services and facilities, such as education, employment, health, retail and leisure. There are no public transport services in close proximity to the site and therefore very limited transport opportunities other than the private car. As such, occupiers of a residential unit in this location would be largely dependent on private vehicles, rendering this an unsustainable form of development. The barn is not considered to be of any significant historic or architectural importance or interest, nor does it contribute to the local area significantly to justify a need to preserve it. It is not therefore believed that there are any significant planning merits of this proposal that would outweigh the highway sustainability concerns raised.

The existing barn is small and its conversion would provide very limited accommodation, which could result in significant future pressure for further extensions, to the detriment of the traditional character of the barn. Paragraph 17 of PPS7 refers to the need to take account of the suitability of different types of buildings for re-use. In view of the limited size of the barn and the adjoining single storey element not being of permanent or substantial construction, it is not considered that the barn in question lends itself to conversion to residential use.

The site lies within the countryside of the Blackdown Hills AONB, where the natural beauty should be preserved and enhanced and development should not adversely affect the landscape character or appearance. The conversion of the barn, provision of associated amenity space and installation of the parking/turning area, would domesticate the appearance in a rural area that currently forms part of an agricultural field. Whilst the existing stone wall boundaries and incorporating the parking, dustbin and drying area within the area of the former single storey element and close to the barn, would reduce this impact slightly, this is not considered to be to an acceptable level that would not materially change the rural character of the building and surrounding curtilage to a domestic one. As such, the introduction of the paraphernalia of domestic living would erode the rustic character of the site and fail to preserve and enhance the rural beauty of this part of the Blackdown Hills Area of Outstanding Natural Beauty.

## **RECOMMENDATION AND REASON(S)**

Recommended Decision: Refusal

- 1 The site is remote from any urban area and therefore distant from adequate services and facilities, such as, education, employment, health, retail and leisure and there are no public transport services in close proximity to the site. As a result, occupiers of the proposed dwelling are likely to be dependent on private vehicles for most of their daily needs, which would foster a growth in the need to travel and it is not considered that there are sufficient planning merits of the proposal to outweigh the highway sustainability issues raised. On this basis, the proposal is contrary to advice given in PPG13 and RPG10 and policies STR1 (Sustainable Development) and STR6 (Development Outside Towns, Rural Centres and Villages) of the Somerset and Exmoor National Park Joint Structure Plan Review and policy S1(b) of the Taunton Deane Local Plan.
- 2 The site lies within a rural part of the Blackdown Hills Area of Outstanding Natural Beauty, where the natural beauty should be preserved and enhanced and development should not adversely affect the landscape character or appearance. The conversion of the barn, by virtue of the introduction of paraphernalia of domestic living, along with the installation of a parking/turning area, would introduce a residential element, into a rural environment. The rustic nature of the site and the surrounding landscape would be eroded, which would fail to preserve and enhance the character of the landscape and the rural beauty of the Area of Outstanding Natural Beauty. As such, the proposal is contrary to policies P3 (Areas of Outstanding Natural Beauty) and P5 (Landscape Character) of the Somerset and Exmoor National Park Joint Structure Plan Review and policies S1 (General Requirements), H7 (Conversion of Rural Buildings) and EN10 (Areas of Outstanding Natural Beauty) of the Taunton Deane Local Plan.

### **RECOMMENDED CONDITION(S) (if applicable)**

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**

10/09/0018

MR K PASCOE

**ERECTION OF 2 STOREY EXTENSION TO SIDE AND DETACHED GARAGE AT 4 TRICKEY WARREN COTTAGES, CULMHEAD, CHURCHSTANTON AS AMENDED BY AGENT'S EMAIL AND REVISED DRAWING C4611/101A AND AMPLIFIED BY DRAWINGS C4611/102 AND C4611/002 RECEIVED 8TH SEPTEMBER 2009 AND FURTHER AMENDED BY REVISED DRAWINGS C4611/102A and C4611/101B RECEIVED 17TH SEPTEMBER 2009.**

320375.114827

Full Planning Permission

---

—

## **PROPOSAL**

This application has been referred to the Committee as the agent is related to a member of staff at Taunton Deane Borough Council.

4 Trickey Warren Cottages is a cream render/painted stone and slate semi-detached cottage of traditional style. It is set on a steep slope, appearing as two storeys on the east side and three storeys on the west side. It is accessed by a long private track and lies within the Blackdown Hills Area of Outstanding Natural Beauty. To the east of the site, a courtyard of barns are currently being converted to residential properties.

This application seeks permission for a two storey extension to the side (although this will only appear as a single storey extension on the east side due to the slope of the land) to form a new kitchen/dining area at ground floor level with an extended lounge area above. A double garage of timber and slate construction is also included in the application.

No.3, to which this property is attached was granted consent for an extension of similar style and size in May 2006.

Following an assessment of the impact the garage will have on the adjacent trees, amended plans were received repositioning the garage slightly to the north.

## **CONSULTATION AND REPRESENTATION RESPONSES**

### **Consultees**

*SSC - TRANSPORT DEVELOPMENT GROUP* - Proposal will not have a detrimental impact on the adjoining highway network – No objection.

*CHURCHSTANTON PARISH COUNCIL* -

It was agreed by a substantial majority to fully support the proposal. It is felt that the proposed work will impart a welcome "balance" to the property and that the recent amendments will help to reduce any undue impact.

*HERITAGE AND LANDSCAPE OFFICER* - The garage is likely to impact on existing trees, but the exact position of the garage in relation to the trees is not clear from the plans. Requests plan showing position of trees with garage plotted. If there is a conflict details of foundations would be helpful, to assess root damage.

Subsequently suggested a suitable position for the garage to avoid impact on tree roots and suggested condition regarding protecting trees.

## **Representations**

None

## **PLANNING POLICIES**

S1 - TDBCLP - General Requirements,

S2 - TDBCLP - Design,

H17 - TDBCLP - Extensions to Dwellings,

EN6 - TDBCLP -Protection of Trees, Woodlands, Orchards & Hedgerows,

EN10 - TDBCLP - Areas of Outstanding Natural Beauty,

## **DETERMINING ISSUES AND CONSIDERATIONS**

The side extension is designed to be in keeping with the existing property, reflecting its character and mirroring the current fenestration and roof style. Although only set in marginally from the front and rear, by virtue of its height, it will appear subservient. The proposed extension will be similar in appearance to the former extension at no.3 and will not unbalance the appearance of the semi-detached properties.

The garage is of gabled design to reflect the style of the existing properties. Being of timber and slate construction, it will appear sympathetic to the Blackdown Hills Area of Outstanding Natural Beauty and is considered to be of a suitable size that will not appear dominating to the existing property. Following it's revised position, there will be no harm to the health of the surrounding trees.

The garage will be on a lower level than the barns and is considered to be a sufficient distance from the rear elevations to avoid impacting upon their outlook. Whilst the garage will be positioned close to the boundary with the barns, this will be the boundary at the bottom of the gardens away from the main amenity space and will not therefore result in an adverse impact upon the residential amenities of those future properties. The extension is to the other side of the garage and on a lower level again and will therefore have no impact upon neighbouring amenities.

## **RECOMMENDATION AND REASON(S)**

Recommended Decision: Conditional Approval

The proposed extension and garage have been designed to be subordinate to and in keeping with the existing style of the property and will not compromise

its character or that of the surrounding Blackdown Hills Area of Outstanding Natural Beauty. There will be no adverse impact upon the amenities of the neighbouring properties or any trees within the site. As such, the proposal is in accordance with policies S1 (General Requirements), S2 (Design), H17 (Extensions to Dwellings) and EN10 (Areas of Outstanding Natural Beauty) of the Taunton Deane Local Plan.

### **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. Before development commences (including site clearance and any other preparatory works), the trees shown to be retained on drawing C4611/102A shall be protected by protective fencing located 0.5 metres around the perimeter of the proposed garage. Such fencing shall be erected prior to commencement of any other site operations and at least two working days notice shall be given to the Local Planning Authority that it has been erected. It shall be maintained and retained for the full duration of works or until such time as agreed in writing with the Local Planning Authority. No activities whatsoever shall take place within the protected areas without the prior written agreement of the Local Planning Authority.

Note: The protective fencing should be as specified at Chapter 9 and detailed in figures 2 and 3 of BS 5837:2005.

Reason: To ensure the enhancement of the development by the retention of existing trees and natural features during the construction phase in accordance with Taunton Deane Local Plan Policies S2 and EN8.

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**



14/09/0023

L.A.T. ACCESS

**ERECTION OF 2 UNITS FOR CLASS B1 (BUSINESS) & B8 (STORAGE & DISTRIBUTION) AT CREECH MILLS INDUSTRIAL ESTATE, CREECH ST MICHAEL (AMENDED PROPOSAL TO 14/08/0037)**

326999.125375

Full Planning Permission

---

**PROPOSAL**

The proposal is to erect two new buildings within the scaffold business site for the storage of scaffold poles and planks. One of the proposed units, unit 1B, would be constructed in between the existing units 1 and 2 shown on the site plan. It would measure 15m x 6.5m x 6.1m(high) and utilise the side walls of the existing buildings. The other unit, 1A, would be sited to the west of the existing unit 1 and would measure 13m x 4.7m x 4m(high) both buildings would be constructed of materials to match the existing units.

**SITE DESCRIPTION AND HISTORY**

The site lies directly to the south of the former Mill building which is to be used as offices at the western end of the Creech Mills complex. To the south of the site lies the River Tone and its floodplain. Whilst the site levels are raised above the surrounding floodplain a flood risk assessment was submitted in association with the proposal.

A previous application for the current proposal (14/08/0037) was withdrawn in 2008 following objections from the Environment Agency and Highway Authority. The application has been re-submitted following the provision of additional information which has overcome those original objections.

Planning permission was granted in 2000 and amended in 2006 for the construction of two buildings for the B1 use and storage of alloy towers and powered access equipment for L.A.T. Access.

**CONSULTATION AND REPRESENTATION RESPONSES**

**Consultees**

*SSC - TRANSPORT DEVELOPMENT GROUP* - the proposal relates to the erection of 2 units for B1 and B8 use. The proposal is located on the existing Creech industrial estate which is served by Mill Lane. Although the majority of Mill Lane is unadopted the junction with St Michael Road is adopted and considered to be substandard. The Highway Authority would resist any proposal that would lead to an increase in traffic movement. The agent has stated that the current proposal would not result in an increase in traffic and would not result in any additional members of staff as it merely covers existing areas of land used for storage. Taking this into account and provided the permission is limited to the one current user and stops the site being subdivided

into more than one business I raise no objection to the proposal.

*CREECH ST MICHAEL PARISH COUNCIL* - Unanimous objection. Building the unit for B1 could reduce any future access along the road. New businesses would generate an increase in traffic flow which is already an issue along Mill Lane. A new point of access should be planned.

### **Representations**

5 Letters of objection have been received raising the following points:- The quantity type and speed of traffic using Mill lane is dangerous and any further development such as this is likely to result in increased traffic that would have a detrimental impact on the junction at the top of Mill Lane and highway safety especially the safety of children and other residents of Mill Lane, Additional use of Mill Lane will make the potholes at the base of the road worse; the County Highway Authority raised an objection to an earlier application (14/08/0037) for this development as they felt to allow additional B8 uses would "increase traffic and set an undesirable precedent for allowing similar uses ...prejudicial to road safety" since this objection, traffic volume using Mill Lane has increased by 12% (over the last 6 months) and totals 786(74HGV) movements per day and all of this exiting at a sub-standard junction which has no pavements for children's or residents to use, when will this development stop?

### **PLANNING POLICIES**

S&ENPP49 - S&ENP - Transport Requirements of New Development,  
S1 - TDBCLP - General Requirements,  
S2 - TDBCLP - Design,  
EN21 - TDBCLP - Nationally Important Archaeological Remains,  
EN22 - TDBCLP Dev Affecting Sites of County Archaeological Importce,  
PPG4 - Industrial & Commercial Development & Small Firms,

### **DETERMINING ISSUES AND CONSIDERATIONS**

The land is currently used for the storage of alloy towers (scaffolding poles) and planks in association with the existing business operation. The proposed buildings would provide under cover storage for the equipment with added security and protection against the weather. The applicant has confirmed that the new buildings would not increase employee numbers or traffic movements to the site and has stated in his letter to the Highway Authority that there would be no objection to a personal permission to avoid the subdivision of the site in the future and the likelihood of additional traffic movements that may be associated with more than one business. Local residents have expressed their concern over the existing levels of traffic using Mill Lane and object to any proposal that is likely to result in an increase in those levels and highway safety. In this case the land is already used to store equipment and placing this storage under cover is unlikely, in itself to result in additional traffic to the site. The structures themselves are designed in keeping with the existing buildings on the site and I do not consider that they will be detrimental to the visual amenity of the area and I therefore consider the proposal to be acceptable.

### **RECOMMENDATION AND REASON(S)**

Recommended Decision: Conditional Approval

The proposal is considered not to result in additional traffic movements such as would be prejudicial to road safety nor to have a detrimental impact upon visual or residential amenity and is therefore considered acceptable and, accordingly, does not conflict with Somerset and Exmoor National Park Structure Plan (first alteration) policy 49, Taunton Deane Local Plan Policies S1 (General Requirements) and S2 (Design).

### **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. The materials to be used in the construction of the external surfaces of the buildings hereby permitted shall match those used in the existing buildings on the site 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. The new buildings hereby permitted shall be used for B1 or B8 use solely in connection with the current business known as L.A.T. Access. At no time shall the buildings or planning unit, contained within the red line shown on the submitted site plan, be subdivided either by being leased, sold or used as a separate planning unit, use or business without the prior express grant of planning permission .

Reason: To prevent the fragmentation of the planning unit , which would be likely to result in an increase in the potential numbers of traffic visiting the site, in the interests of highway safety and residential amenity to comply with Somerset and Exmoor National Park Joint Structure Plan policy 49 and Taunton Deane Local Plan policy S1

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: Mrs J Moore Tel: 01823 356467**

14/09/0032

MR B CAMPBELL

**OUTLINE APPLICATION FOR THE ERECTION OF A DETACHED DWELLING AND GARAGE WITHIN THE GARDEN OF CHANTS, CREECH HEATHFIELD AS AMENDED BY EMAIL AND PLANS RECEIVED ON 28TH AUGUST 2009.**

327774.126783

Outline Planning Permission

---

—

The application has been referred to the committee as the agent is related to a member of staff.

**PROPOSAL**

The proposal is for the erection of a detached dwelling to the rear of Chants, itself a detached dwelling. There are to be 2 points of access, one for the existing and one for the new property; these use the existing 2 points of access. The existing single garage to the side of Chants will be removed, and a new double garage is proposed for Chants, which will be sited to south of the house. It is proposed to use the existing double garage to the north of Chants for the new dwelling.

**SITE DESCRIPTION AND HISTORY**

The site is on the southern end of the development boundaries to the settlement of Creech Heathfield. There are several mature trees close to the boundaries of the site, and an established hedge fronting the highway. Planning permission has recently been granted for two new dwellings in the rear garden of Mallow, the dwelling to the north. This uses the agricultural access just to the north of that dwelling. History of Chants includes approvals for extension, use of office as ancillary accommodation, and conversion to 2 dwellings (1988). Refusals include change of use to office and conversion to surgery.

**CONSULTATION AND REPRESENTATION RESPONSES**

**Consultees**

*SCC - TRANSPORT DEVELOPMENT GROUP* - No objection subject to conditions. The proposals include increased visibility.

*CREECH ST MICHAEL PARISH COUNCIL* - Supported

*HERITAGE AND LANDSCAPE OFFICER* - subject to some additional tree planting around the southern boundary of the detached dwelling, it should be possible to soften the impact of the proposed dwelling.

**Representations**

None received

**PLANNING POLICIES**

PPS3 - Housing,

S1 - TDBCLP - General Requirements,

S2 - TDBCLP - Design,

## **DETERMINING ISSUES AND CONSIDERATIONS**

The site is within settlement limits, uses an existing access, which will be widened, with the other access (to the existing house) also being widened. The application is in outline, and can be designed such that there are no windows overlooking the approved dwelling in the garden of Mallow, or Chants itself. Both the existing and proposed dwellings will have garaging and parking spaces, and reasonable garden areas with established trees. There will be a requirement to provide additional tree planting on the southern boundary, and a new hedge or similar is required on the highway frontage, as the existing hedge will be removed to accomplish the visibility splays. There is no objection to the additional garage.

## **RECOMMENDATION AND REASON(S)**

Recommended Decision: Conditional Approval

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

## **RECOMMENDED CONDITION(S) (if applicable)**

1. Approval of the details of the layout, scale, appearance, and landscaping of the site (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced.

Application for approval of the reserved matters shall be made to the Local Planning Authority not later than the expiration of **three** years from the date of this permission. The development hereby permitted shall be begun, not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason: In accordance with the provisions of S92 (2) Town and Country Planning Act 1990 (as amended by S51 (2) Planning and Compulsory Purchase Act 2004).

2. In this condition 'retained tree' means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs (a) and (b) below shall have effect until the expiration of **5 years** from **the date of the occupation of the building for its permitted use**.
  - (a) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the Local Planning Authority. Any topping or lopping approved shall be carried out in accordance with [British Standard 3998:1989 (Tree Work)].
  - (b) If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size

and species, and shall be planted at such time, as may be specified 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.

3. Before development commences (including site clearance and any other preparatory works) a scheme for the protection of trees to be retained shall be submitted to and approved in writing by the Local Planning Authority. Such a scheme shall include a plan showing the location of the protective fencing, and shall specify the type of protective fencing, all in accordance with BS 5837:2005. Such fencing shall be erected prior to commencement of any other site operations and at least two working days notice shall be given to the Local Planning Authority that it has been erected. It shall be maintained and retained for the full duration of works or until such time as agreed in writing with the Local Planning Authority. No activities whatsoever shall take place within the protected areas without the prior written agreement of the Local Planning Authority.

Note: The protective fencing should be as specified at Chapter 9 and detailed in figures 2 and 3 of BS 5837:2005.

Reason: To ensure the enhancement of the development by the retention of existing trees and natural features during the construction phase in accordance with Taunton Deane Local Plan Policies S2 and EN8.

4. No service trenches shall be dug within the canopy of any existing tree within the land shown edged red on the approved drawing without the prior written approval of the Local Planning Authority.

Reason: To avoid potential harm to the root system of any tree leading to possible consequential damage to its health which would be contrary to Taunton Deane Local Plan Policies EN6 and EN8.

5. Prior to commencement of trenching works within the canopy spread of existing trees all trenching works shall be agreed with the Local Planning Authority. All trenching works should be hand dug and no roots larger than 20mm in diameter should be severed without first notifying the Local Planning Authority. Good quality topsoil should be used to backfill the trench and compacted without using machinery.

Reason: To avoid potential harm to the root system of any tree leading to possible consequential damage to its health which would be contrary to Taunton Deane Local Plan Policies EN6 and EN8.

6. Before development commences (including site clearance and any other preparatory works) a scheme for the protection of trees to be retained shall be submitted to and approved in writing by the Local Planning Authority. Such a scheme shall include a plan showing the location of the location of the protective fencing, and shall specify the type of protective fencing, all in

accordance with BS5837:2005. Such fencing shall be erected prior to any other site operations and at least two working days notice shall be given to the Local Planning Authority that it has been erected. It shall be maintained and retained for the full duration of works or until such time as agreed in writing with the Local Planning Authority. No activities whatsoever shall take place within the protected areas without the prior written agreement of the Local Planning Authority.

Note: The protective fencing should be as specified at Chapter 9 and detailed in figure 2 and 3 of BS5837:2005.

Reason: To ensure the enhancement of the development by the retention of existing trees and natural features during the construction phase in accordance with Taunton Deane Local Plan Revised Deposit Policies S2 and NE8.

7.
  - (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.

8. The new dwelling shall not be occupied until the means of vehicular access has been constructed in accordance with the details shown on plan D4590/102B, hereby permitted 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.

9. At the proposed access there shall be no obstruction to visibility greater than 900mm above adjoining road level within the visibility splays shown on the submitted plans (drawing no D4590/102). Such visibility splays shall be constructed prior to the commencement of the development hereby permitted and shall thereafter be maintained at all times.

Reason: To preserve sight lines at a junction and 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.

10. The area allocated for turning on the submitted plan shall be kept clear of obstruction and shall not be used other than for parking and turning of vehicles in connection with the development hereby permitted.

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.

11. Notwithstanding the provisions of Article 3, Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) Order 1995 ("the 1995 Order") (or any order revoking and re-enacting the 1995 Order) (with or without modification), no window/dormer windows shall be installed in the northern elevation of the development hereby permitted without the further grant of planning permission.

Reason: To protect the amenities of adjoining residents in accordance with Policy S1(E) of the Taunton Deane Local Plan.

12. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, or any order revoking and re-enacting that Order, with or without modifications, no vehicular access gates shall be erected at any time unless they are set back a minimum distance of 5m behind the highway boundary and hung so as to open inwards only.

Reason: To allow a vehicle to wait off the highway while the gates are opened or closed and thus prevent an obstruction to other vehicles using the highway. In the interests of highway safety in accordance with Policy 49 of the Somerset and ENP Joint Structure Plan Review.

#### Notes for compliance

1. The landscaping required as part of condition 7 refers to the need to provide additional tree planting on the southern boundary and a hedge will be expected to replace that removed fronting the highway.
2. You are advised that the alteration of the access and/or minor works will involve construction works within the existing highway limits. Please contact Highway Service Manager Taunton Deane, 0845 345 9155.
3. According to Wessex Water records, there is a public foul sewer crossing to the east of the site. Wessex Water requires a minimum, three-metre, easement width on either side of its apparatus, for the purpose of maintenance and repair. Diversion or protection works may need to be agreed. There should be no planting within 6 metres of the sewer. The developer is required to protect the integrity of Wessex systems and must agree prior to the commencement of

works on site, any arrangements for the protection of infrastructure crossing the site. The developer must agree in writing prior to the commencement of works on site, any arrangements for the protection of our infrastructure crossing the site.

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

**CONTACT OFFICER: Ms K Marlow Tel: 01823 356460**

24/09/0024

MR R BAVERSTOCK

**REPLACEMENT OF 4 ISOLATION KENNELS AND ERECTION OF 6 ADDITIONAL KENNELS FOR APPLICANT'S OWN DOGS AT ST GILES KENNELS, WRANTAGE**

331987.123224

Full Planning Permission

---

—

**PROPOSAL**

St Giles Kennels lies in a countryside location just north of the A378 near Wrantage. There are a range of low buildings within the site, some of permanent construction and some more temporary wooden structures, providing kennels, cattery pens and a staff/office/reception area. A public bridleway passes along Sedgemoor Drove, directly to the north of the site and a scattering of residential properties surround the site. The site is generally well screened and is not clearly visible from the A378 or the country road to the west.

To the east is St Giles Cottage, a bungalow occupied by the proprietor of the business. The land in between is surrounded by a 1.8 metre wire fence and utilised as a dog run, with four kennels currently which has been used as an isolation block and for homeless dog collection but has recently been used to house the applicant's own dogs as it is no longer fit for purpose.

This application seeks permission for the replacement of the former isolation kennels (block of five) with a block of four isolation kennels and a further block of six kennels to house the applicants own dogs, thus a net gain of five kennels. The kennels would be constructed of timber with galvanised steel runs to the front, 1.84 metres to the eaves and 2.3 metres to the ridge.

Planning permission was granted in November 2008 for the relocation of cattery pens, new kennel pens and the erection of a single storey extension to provide a reception area and grooming room. These alterations involved the re-arrangement of the existing business and the design and access statement submitted stated that overall only four additional pens were being created.

The description on the application submitted stated 'Replacement of Kennels', however, on visiting the site, it became apparent that the proposal was not solely for replacement kennels. The description was subsequently amended and neighbours and consultees re notified.

**CONSULTATION AND REPRESENTATION RESPONSES**

**Consultees**

*SSC - TRANSPORT DEVELOPMENT GROUP* - No Observations

*NORTH CURRY PARISH COUNCIL* - The Parish Council proposed that it should oppose the application on the basis of inadequate materials for noise insulation together with the further intensification of an already disruptive noise issue, adding that following the previous application neighbours have reported that the noise has increased.

*SCC - RIGHTS OF WAY* - I can confirm that there is a public right of way (PROW) that runs along Sedgemoor Drove, abutting the site of the proposed development at the present time (bridleway T 17/70). From the information provided it appears that the proposal would not affect the bridleway, suggests notes to applicants.

*DIVERSIONS ORDER OFFICER* - The proposals will not affect the Public Bridleway adjacent to the site. However adequate health and safety measures need to be put in place during and demolition/construction work to safeguard the well-being of bridleway users. Care should be taken to ensure that works vehicles do not cause unnecessary wear/tear/damage to the bridleway surface.

## **Representations**

Seven letters have been received from six households raising objections on the grounds of:

- Misleading proposal of replacement kennels, there is actually an increase. This increase on top of last year will be an increase from 40 to 60 kennels.
- Additional kennels will increase noise levels even further to what is already an unacceptable level. Barking noises are loud, continuous and intolerable. Noise has already increased dramatically since November 2008 and proposal will bring kennels closer to some nearby dwellings. Additional six kennels to house the owners dogs could leave their original housing vacant for more dogs, which will also increase noise.
- Insufficient staffing levels contribute to the dogs causing disturbance by barking.
- Proposal does not state any specific material to contain noise levels.
- Note attached to last decision notice regarding adequate noise insulation seems to have been disregarded, kennels have failed to reduce the level of noise as intended. Concerns that new installations will also fail to reduce level of noise.
- Application form part 25 states that proposal cannot be seen from bridleway/public land, but this is a fabrication.
- Proposed floor space of the additional six kennels is considered capable of accommodating 10 – 16 dogs, which is believed to be excessive for a domestic situation.

## **PLANNING POLICIES**

PPS7 - Sustainable Development in Rural Areas,  
STR6 - Development Outside Towns, Rural Centres and Villages,  
S&ENPP5 - S&ENP - Landscape Character,  
S1 - TDBCLP - General Requirements,

## **DETERMINING ISSUES AND CONSIDERATIONS**

The proposed kennels are in keeping with other structures within the site. The replacement kennels will be positioned on the footprint of the existing kennels, whilst the additional six kennels will be adjacent and are therefore closely related to other structures. All are low structures, which are no higher than existing buildings on the site and are screened from the surrounding landscape by either existing buildings or mature trees and hedges.

A public bridleway crosses the front of the site. The replacement/new kennels will have no significant adverse affect on it. A note to the applicant is attached below concerning health and safety.

Part of the proposal relates to the replacement of existing isolation kennels, it is therefore important to note that these can and do house dogs at present and therefore limited weight can be attached to the argument that these kennels will significantly increase noise levels.

The application states that the new six kennels are for the applicants own dogs, which are already at the site and therefore it is not proposed to expand the business further. However it is acknowledged that these kennels could be used for dogs associated with the business, which would be difficult to control by the local planning authority. The existing business is a well established business, which does emanate a certain amount of noise, as would any business of this nature. Whilst the net gain of a further five kennels would have some impact on noise, it is not considered to result in such a material increase, beyond the levels currently experienced, to warrant refusal.

The application permitted last November involved alterations and re-arrangements to the existing well-established business, with a net gain of only four additional pens. This along with the additional five now proposed results in a gain of nine since last November, not the increase from 40 to 60 claimed by one objector.

## **RECOMMENDATION AND REASON(S)**

Recommended Decision: Conditional Approval

The proposed kennels are not considered to adversely affect the character and appearance of the surrounding countryside. Whilst there could be some effect on noise levels, this proposal is not considered to contribute to the existing situation to such an extent as to result in material detriment to the residential amenities of neighbouring properties. As such, the proposal is in accordance with policy P5 (Landscape Character) of the Somerset and Exmoor National Park Joint Structure Plan Review and policy S1 (General Requirements) of the Taunton Deane Local Plan.

## **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.

#### Notes for compliance

1. Note at request of County Rights of Way Section:
  - We ask that the health and safety of walkers, horse riders and cyclists using the path be taken into consideration during any works involved in carrying out the proposed development.
  - Somerset County Council (SCC) has maintenance responsibilities for the surface of the bridleway, but only to a standard suitable for pedestrians, horse riders and cyclists. SCC will not be responsible for putting right any damage occurring to the surface of the bridleway resulting from vehicular use during or after works to carry out the proposal. It should be noted that it is an offence to drive a vehicle along a public bridleway unless the driver has lawful authority to do so.
  - If the development would make the public right of way less convenient for continued public use, require changes to the existing drainage arrangements or surface, or require new furniture, authorisation for these works must be sought from Somerset County Council Rights of Way Group. If the works would make the public right of way less convenient for continued use or create a hazard to users of it, a temporary closure order will be necessary and a suitable alternative route must be provided. This can be arranged through Sarah Hooper on 01823 483086.

**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**

43/09/0058

MR C CHEUNG

**ERECTION OF SINGLE STORY EXTENSION, CONVERSION OF ONE OUTBUILDING TO FORM ADDITIONAL DWELLING, AND EXTERNAL DOOR TO POTATO ROOM OMITTED (AS AMENDED BY DRG NO. T7/3 REV 4 RECEIVED 24 JULY 2009) 29/31 NORTH STREET, WELLINGTON**

313784.120678

Full Planning Permission

---

—

**PROPOSAL**

As originally submitted, the proposal comprised: the erection of a modest single-storey rear extension ( potato-room ); and the conversion and extension of two rear outbuildings to form two additional residential dwellings. This has since been amended several times however, and the latest proposal comprises: the same single-storey extension ( but with a door omitted to avoid any overlooking ); and conversion of only one outbuilding to form one additional dwelling. The conversion relates to a single-storey outbuilding, and the applicant has categorically advised that there will be no increase in height of the roof line. There would also be a modest single-storey extension to its northern gable.

A wildlife survey has been submitted.

Pedestrian access would be from North Street via a shared existing pedestrian access, and there is vehicular access to the rear via lodge Close.

**SITE DESCRIPTION AND HISTORY**

29/31 North Street is currently a take-away with living accommodation above and to the rear.

Planning application 43/09/0011 was withdrawn in April 2009. This was a similar scheme but incorporated significant extension to the outbuilding on the western boundary such that 3 no. dwellings were proposed.

**CONSULTATION AND REPRESENTATION RESPONSES**

**Consultees**

*SOMERSET COUNTY COUNCIL - TRANSPORT DEVELOPMENT GROUP* - The proposed development is located within the town centre and is therefore in close proximity to services, facilities and public car parks and I have no objection in principle. I would not insist upon on-site parking for this particular development in this location, however any parking area proposed should be fully accessible and of an appropriate size

Recommend a sheltered and secure cycle store.

*WELLINGTON TOWN COUNCIL, 28 FORE STREET* - Object. Recommend that permission be refused because the scale of the development would result in an adverse impact on adjoining properties.

*WELLINGTON COMMUNITY OFFICE* -N/A.

*WESSEX WATER* - Recommends Note

*NATURE CONSERVATION & RESERVES OFFICERS* - Country Contract's carried

out a protected species survey of this application site on 17 July 2009. Findings were as follows:

**BATS:** The only signs of bat usage were one pipistrelle bat dropping found in one of the outbuildings. However it was noted that there were a few locations in the outbuildings that could be exploited by crevice dwelling bats. Bats were detected flying over the garden area but none of the bats were considered to have emerged from the surveyed outbuildings. No bat roost was found, however because of the bat activity in the vicinity and in accordance with PPS9 I would like to see bats accommodated in this development.

**BIRDS:** No bird nests were noted at the time of survey, but a disused blackbird's nest was found in the ivy covering the wall on outbuilding 2.

Suggested Condition 4.

*SOMERSET WILDLIFE TRUST* - Don't normally comment on minor planning applications, but I need to highlight something. I'm aware of a number of small bat roosts in Wellington in residential houses-not an uncommon occurrence as I'm sure you are aware. There is a fair bit of early evening bat activity in the area around this application, indicating a roost in the immediate vicinity. I was alarmed to read in a supporting letter submitted by the applicant in response to concerns raised by a resident that he considers bats to be a "pest" and is employing the services of a pest control agent to deal with them. I hope this is a misunderstanding, but it raises some interesting questions. Is the applicant aware of a bat roost in his property? Has he attempted to eradicate them? His letter suggests both, and could potentially land the applicant and his pest control adviser in trouble, unless this is merely a case of crossed wires. I hope it is the latter, but I have to pass this information on to Natural England, in case a contravention of protected species legislation has occurred.

Either way, it would be prudent to establish whether this property is being used by bats as a roost prior to determining their planning application.

*NATURAL ENGLAND* - Requests that the recommendations of the ecological survey report and those of TDBC's Nature Conservation and Reserves Officer be used in determining the application and attaching conditions.

It is very important that the applicant be made aware that wildlife such as birds (breeding or otherwise ) snakes and bats are not considered "pests" and there is legislation and associated laws protecting certain wildlife species within the UK.

## **Representations**

9 letters of objection have been submitted on the following grounds: the height and close proximity of the potato room will result in loss of light; the working hours of the potato room will cause noise problems; the increase in ridge height of the conversion would also cause loss of light, and the proximity of the building would result in loss of privacy; the party wall of the converted building would not have the appropriate load bearing capacity; snakes and other wild life would be harmed by the proposal; the proposal should be refused in terms of overcrowding, overshadowing, and overdevelopment; vehicular access through Lodge Close would put elderly and disabled lives in danger; the building to be converted is not in a good state of repair and is dangerous;the proposal is contrary to PPS3; the design and access statement is inaccurate; overlooking will result; the development would be out of character with the area; guttering and downpipes would overhang the neighbour; and inadequate parking arrangements would prejudice road safety.

1 letter of support has been submitted.

## **PLANNING POLICIES**

EN23 - TDBCLP - Areas of High Archaeological Potential,  
EN14 - TDBCLP - Conservation Areas,  
S1 - TDBCLP - General Requirements,  
S2 - TDBCLP - Design,  
H17 - TDBCLP - Extensions to Dwellings,

## **DETERMINING ISSUES AND CONSIDERATIONS**

The most contentious element of the application as originally submitted has been omitted, namely the conversion and extension to the outbuilding on the western boundary.

Neither vehicular access nor car parking is at issue because parking provision can be waived on sites such as this in central Wellington. In addition the CHA raise no objection.

It is not considered that the single-storey extension in the form of the potato room could be resisted in terms of loss of light, particular when having regard to permitted development rights which allow either the applicant or his neighbour the right to construct a wall fence or other means of enclosure up to 2 metres in height without requiring planning permission.

The Nature Conservation Officer raises no objection in respect of impact on wildlife, subject to imposition of conditions.

The appearance of the site together with the character of the Conservation Area should be enhanced by the general refurbishment and building.

Finally, whilst the submitted drawings of the conversion indicate a modest increase in ridge height, ( 0.4 of a metre ), the applicant has categorically advised that there will be no increase, and he is to submit a more accurate drawing to demonstrate this. Accordingly the neighbour would not be unduly affected in terms of light loss.

The proposal, as amended, is considered acceptable.

## **RECOMMENDATION AND REASON(S)**

Recommended Decision:

That subject to the receipt of satisfactory amended drawings which demonstrate that there will be no increase in height in respect of the conversion, Conditional Approval be granted.

The proposed development would harm neither visual nor residential amenity, nor would it be damaging to the character of the main buildings. Accordingly, the proposal does not conflict with Taunton Deane Local Plan Policies S1 (General Requirements), S2 (Design) and H17 (Extensions to Dwellings).

## **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. Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 ("the 1995 Order") (or any order revoking and re-enacting the 1995 Order with or without modification), no development of the types described in Schedule 2 Part 1 of the 1995 Order other than that expressly authorised by this permission shall be carried out without the further grant of planning permission.

Reason: To safeguard visual and residential amenity in accordance with Taunton Deane Local Plan Policy S1.

4. The development hereby permitted shall not be commenced until details of a strategy to protect and enhance the development for bats and resting birds has been submitted to and approved in writing by the Local Planning Authority. The strategy shall be based on the advice of Country Contract's submitted reports, dated July 2009 and up to date surveys 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 bats, and nesting birds could be harmed by disturbance.
3. Measures for the enhancement of places of rest for bats.

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. The development shall not be occupied until the scheme for the maintenance and provision of the new bat boxes and related accesses have been fully implemented. Thereafter the resting places and agreed accesses shall be permanently maintained

Reason: to protect bats from damage bearing in mind the law protects these species.

5. The development hereby approved shall not be brought into use until a fully sheltered and secure cycle rack facility has been provided within the site in accordance with a design and specification to be submitted to and approved in writing by the Local Planning Authority and to be fully implemented to the satisfaction of the said Authority.

Reason: To safeguard road safety in accordance with Taunton Deane Local

Plan Policy S1.

6. Details of the arrangements to be made for the disposal of foul and surface water drainage from the proposed development, shall be submitted to and approved in writing by the Local Planning Authority before any work is commenced.

Reason: To avoid environmental amenity or public health problems in accordance with Taunton Deane Local Plan Policies S1 and EN26.

#### Notes for compliance

1. The development is located within a sewered area, with foul and surface water sewers. According to our records, there is a combined public sewer (foul/surface) crossing the site. Please find enclosed a copy of our sewer records indicating the approximate position of the apparatus. Wessex Water normally requires a minimum, three-metre, easement width on either side of its apparatus, for the purpose of maintenance and repair. Diversion or protection works may need to be agreed.

It is further recommended that a condition or informative is placed on any consent to require the developer to protect the integrity of Wessex systems and agree prior to the commencement of works on site, any arrangements for the protection of infrastructure crossing the site. The developer must agree in writing prior to the commencement of works on site, any arrangements for the protection of our infrastructure crossing the site.

It will be necessary, if required, for the developer to agree points of connection onto our systems, for the satisfactory disposal of foul flows and surface water flows generated by the proposal. The connection point can our systems, for the satisfactory disposal of foul flows and surface water flows generated by the proposal. The connection point can be agreed at the detailed design stage.

With respect to water supply, there are water mains within the vicinity of the proposal. Again, connection can be agreed at the design stage.

It is recommended that the developer should agree with Wessex Water, prior to the commencement of any works on site, a point of connection onto Wessex systems.

The developer should also be aware of the importance of checking with Wessex Water to ascertain whether there may be any uncharted sewers or water mains within (or very near to) the site. If any such apparatus exists, applicants should plot the exact position on the design site layout to assess the implications. Please note that 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 as may affect its apparatus.

2. The condition relating to wildlife requires the submission of information to protect species. The Local Planning Authority will expect to see a detailed method

statement clearly stating how bats and, nesting birds will be protected through the development process and to be provided with a mitigation proposal that will maintain favourable status for these species that are affected by this development proposal.

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.

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

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

**CONTACT OFFICER: Mr J Grant Tel: 01823 356465**

## **Planning Committee – 29 September 2009**

### **Report of the Head of Legal and Democratic Services**

#### **Miscellaneous Item**

#### **Application no 24/09/0030 Change of use of land to use as a small gypsy site to site one mobile home and one touring caravan at Plot 15, Greenacres, Oxen Lane, North Curry**

On the 26 August 2009 an application was received as above in respect of Plot 15 at Oxen Lane. The application was registered and consultees and neighbours were notified.

Given the history of the Oxen Lane site set out below, Members are asked to consider whether to exercise their power under s70A of the Town and Country Planning Act 1990 to decline to determine the application. If the Council declines to determine the application there is no decision on the application and there can be no appeal to the Secretary of State. A decision to decline to determine can be challenged by way of judicial review.

The relevant parts of s70A provide -

- (1) A local planning authority may decline to determine a relevant application if-
  - (a) any of the conditions in subsection (2) to (4) is satisfied, and
  - (b) the authority think there has been no significant change in the relevant considerations since the relevant event.
- (2) ...
- (3) The condition is that in that period the Secretary of State has dismissed an appeal-
  - (a) against the refusal of a similar application, or
  - (b) under section 78(2) in respect of a similar application
- (4) ...
- (5) A relevant application is –
  - (a) an application for planning permission for the development of any land:

- (b) an application for approval in pursuance of section 60(2).
- (6) The relevant considerations are –
  - (a) the development plan so far as material to the application;
  - (b) any other relevant considerations
- (7) The relevant event is-
  - (a) for the purposes of subsections (2) and (4) the refusal of a similar application;
  - (b) for the purposes of subsection (3) the dismissal of the appeal.
- (8) An application for planning permission is similar to another application if (and only if) the local planning authority think that the development and the land to which the applications relate are the same or substantially the same.

C8/05 gives guidance on the exercise of this power. The relevant extracts are as follows -

4. These new powers are intended to inhibit the use of repeated applications that are submitted with the intention of, over time, reducing opposition to undesirable developments. They are not intended to prevent the submission of a similar application which has been altered in order to address objections to the previous application.

8. Local planning authorities should use the power to decline to determine repeat applications only where they believe that the applicant is trying to wear down opposition by submitting repeated applications. If an application has been revised in a genuine attempt to take account of objections to an earlier proposal, the local planning authority should determine it.

12. Where an authority considers that an application is similar, it is not automatically obliged to decline to determine the application. However, local planning authorities should be mindful of the intention behind this power. It can be a major cause of frustration to members of the public and the local community to have to deal with a repeat application when they have already dealt with the original application and seen the development be refused.

13. Local planning authorities should decide what constitutes a “significant change” in each case. An authority may consider that a change in a Development Plan Document or other material consideration will be “significant” for the purpose of this section if it is likely to alter the weight given to any planning consideration in the determination of an application.

14. In considering whether to exercise its power under sections 70A ... an authority will sometimes be faced with a doubtful case. In such a case, the authority should generally give the benefit of the doubt to the applicant and

determine the application.

## **Introduction**

The site is a field on the edge of the village of North Curry. It is just under 6 acres in area and immediately adjoins a residential property, 6 Oxen Lane, to the north. There are several other residential properties further along Oxen Lane. The site slopes, with plots 1 and 9 being at the top (and being therefore the most prominent) and 8 and 16 being at the bottom. Plot 15 adjoins plot 16.

Over the weekend of 23/24 October 2004 a gypsy caravan site was created on the site involving 16 pitches, in breach of planning control. A number of pitches were occupied at that time, including one by Mr and Mrs Loveridge, the present applicants. There has been a lengthy planning history since then, involving 8 separate refusals of planning permission by the Council, an enforcement notice and three appeal decisions, as set out in more detail below. In April 2007 the Council secured an injunction to restrain further development on the site. Mr and Mrs Loveridge presently reside on plot 15, in breach of the enforcement notice and the injunction. Contempt proceedings against them have recently been started.

## **Planning history and previous decisions**

In October 2004 an application for planning permission for use of the entire site for 16 pitches for gypsy caravans was submitted and refused and the Council issued an enforcement notice. This required the cessation of the caravan use and the restoration of the site to its previous condition.

Following the lodging of appeals against the enforcement notice and the refusal of planning permission, a first inquiry took place in June 2005. The appellants included Mr Loveridge. The Inspector recommended the refusal of planning permission and the upholding of the enforcement notice. The Secretary of State agreed, by decision letter dated 25 September 2005. The deadline for compliance with the enforcement notice, as upheld and varied by the Secretary of State, was 26 September 2006.

Shortly before the deadline expired the occupants of six plots (1, 7, 8, 12, 15 and 16) submitted further applications seeking planning permission to remain. The applicants in relation to plot 12 were Mr and Mrs Loveridge (application 24/08/2006). The Council refused the applications in March 2007 and appeals were made in relation to plots 1, 7, 8, 15 and 16, but not in relation to plot 12. The Loveridges in fact left the site in early 2007.

The appeal in relation to plot 1 was later withdrawn.

A second inquiry was held in December 2007 and March 2008, to consider the appeals in relation to plots 7, 8, 15 and 16. The Inspector dismissed the appeals by decision letter dated 3 June 2008.

The appellants in relation to plots 8 and 16 then challenged the Inspector's decision. This challenge was dismissed on 19 June 2009.

In January 2008, while the second inquiry was adjourned, a Lena Wilson bought plot 1, stationed 2 caravans there and started to live there. On 14 February 2008 she applied for planning permission. The Council refused her application on 27 May 2008 and she appealed. A third inquiry was held in January 2009. By a decision letter dated 20 April 2009 the Inspector dismissed her appeal.

All three decision letters are available to Councillors for inspection.

### **Issues for decision**

In order to decline to determine the present application Councillors must address the following questions/issues.

Q1. In the period since 26 August 2007, has the Secretary of State dismissed an appeal against a refusal of an application which is 'similar' to the present application (s70A(3)).

Q.2 If so, do Councillors think that there has been no significant change in the 'relevant considerations' since the Secretary of State's decision (s70A(1)).

Q.3 If so, do Councillors consider that the guidance in C8/2005 suggests that the discretion under s70A should be exercised?

These questions are considered below.

**Q1. In the period since 26 August 2007, has the Secretary of State dismissed an appeal against a refusal of an application which is 'similar' to the present application (s70A(3)).**

An application is a 'similar application' for this purpose if Councillors think that 'the development and the land to which the application relate are the same or substantially the same' (s70A(8)).

There have in fact been five dismissal decisions by the Secretary of State in the period since 26 August 2007, each of which could be said to relate to land and development which are either the same or substantially the same as that involved in the present application. These are -

1. The decision of 3 June 2008 to refuse planning permission for use of plot 15 for the stationing of gypsy caravans.
2. The decision of 3 June 2008 to refuse planning permission for plot 7
3. The decision of 3 June 2008 to refuse planning permission for plot 8
4. The decision of 3 June 2008 to refuse planning permission for plot 16
5. The decision of 20 April 2009 to refuse planning permission for plot 1

All the decisions relate to development which (save only for the different intended occupier) is exactly the same. However decision 1 relates to exactly the same land as well, whereas decisions 2-5 only relate to land which is substantially the same. It therefore seems to officers that any decision under s70A is most properly based on this decision. This means that the date for the purposes of Q.2 is 3 June 2008.

**Q.2 If so, do Councillors think that there has been no significant change in the 'relevant considerations' since the Secretary of State's decision (s70A(1)).**

The 'relevant considerations' are the development plan (so far as is material to the application) and any other material considerations (s70A(6)).

The development plan

The development plan consists of the Taunton Deane Local Plan, the Somerset and Exmoor National Park Joint Structure Plan and RPG10. All were in force at the time of the second Inspector's decision on 3 June 2008.

The site in the countryside and the North Curry ridge landscape character area.

The relevant policies are EN1 of RPG10 (dealing with the impact of development on the countryside), policies 5, 36 and 49 of the Structure plan (dealing with the impact of development on the countryside, gypsy sites and transport requirements respectively) and policies H14, S1 and EN12 of the local plan (dealing with gypsy sites, general guidance for all development (including a requirement not to harm the landscape) and the need to respect the character and appearance of landscape character areas respectively).

There has been no change to these policies since 3 June 2008.

Other material considerations

Other policy

National policy on the provision of sites for gypsies is contained in C1/2006: this has not changed since June 2008.

There has been no change in other relevant national policy since June 2008.

At the time of the second decision letter the gypsy policy in the emerging RSS had just been subject to an EIP. The Panel report has now been published, and

proposed changes to the draft policy promoted, but no policy has yet been adopted. The implications of this are considered below.

Apart from this there has been no change in emerging regional or local policy which is material to this application since June 2008.

#### Precedent effect of granting planning permission for plot 15

The second Inspector dismissed the appeal in relation to plot 15 principally because of the precedent effect which granting planning permission for any one of the 4 plots before him would have. He considered that, if such planning permission were granted, it would be impossible for the Council to refuse planning permission for further pitches: a further individual pitch would not by itself involve *material* additional harm. He also considered that the circumstances of the Site were such that further applications were very likely.

Nothing has changed since 3 June 2008 in relation to this consideration. The entire site remains divided into 16 pitches, each of which is under gypsy control. A number of plots (8, 16 and 9 as well as 15) remain occupied by gypsies. In the period since 8 June 2008 the Council has been faced with two further applications - even without any planning permission having been granted for any part of the site. No part of the site is being put to an active, beneficial non-gypsy use. No physical works have taken place to make any part of the site unsuitable for the stationing of caravans.

Officers also consider that the harms which would arise if such a precedent were set and if further permissions had to be granted have not changed since 3 June 2008, as explained below.

#### Impact on the landscape of several pitches

The site is visible in the wider landscape, especially from the A378. The second Inspector considered that the development of only one plot at the bottom of the site would not cause material harm to the landscape, but that the development more than two pairs of parallel plots would.

Nothing has changed since 3 June 2008 in terms of the site or the surrounding land to change the physical effect which development of several plots on the site would have on the wider landscape. The landscape classification of the area has not changed.

#### Impact on the highway network of development of several pitches

The only access from the site is onto Oxen Lane. This lane connects to Windmill Hill at north and to Greenway at the south. The first and second Inspectors accepted that the junction with Windmill Hill was acceptable. However the junction with Greenway has severely restricted visibility in both directions (see paragraph 31 of second decision letter). The second Inspector found that material extra use of this junction would be unacceptable in highway terms. He found that the traffic generated by only one plot would be so insubstantial as not to involve material harm to highway safety at this junction, but that the traffic from 3 plots would be materially harmful (paragraph 37 of decision letter).

No improvements to the junction between Oxen Lane and Greenway have taken place since June 2008. Nothing has happened to reduce existing traffic flows on the relevant network materially since June 2008. There has been no change in applicable highway standards since then. In April 2009 the third Inspector also found that the traffic from 'several' plots would materially reduce highway safety.

#### Impact on residential amenity of development of the site

The second Inspector found that the use of plot 15 and the other plots before him would not have an adverse effect on the residential amenity of 6 Oxen Lane, given the intervening distance. However he found that development of higher plots (which would be impossible to resist if any one of the plots were granted planning permission) would have an adverse effect on the amenity of 6 Oxen Lane. Both the first and the third Inspectors (who were considering higher plots) also found that the impact of their use on 6 Oxen Lane would be/was severe and unacceptable.

6 Oxen Lane remains in residential use – indeed there has been no change of ownership since June 2008. None of the windows in 6 Oxen Lane overlooking the

site has been blocked up. No screening between 6 Oxen Lane and the site has been provided since June 2008.

Plots 1 and 9 have been occupied in breach of planning control at various times (indeed plot 9 is still occupied). This means that it has been possible to assess the *actual* effect on the residential amenity of 6 Oxen Lane of plots at the top of the site. Officers consider that the effect has been severely detrimental.

#### General need for gypsy pitches and implications of C1/2006

The second inquiry took place after the publication of C1/2006 and the decision letter takes full account of its implications.

The position at the time of the second decision letter was that -

- a. An initial GTAA (the so-called Ark report) had been supplemented by further work which suggested that in the period 2006-2011 Taunton Deane should provide an extra 17 non-transit pitches. This was the figure suggested as a pitch requirement for Taunton Deane in the emerging RSS gypsy policy. This had just been considered at an EIP (the Panel report was awaited).
- b. In the period since 2006 the Council had granted planning permission for an extra 11 pitches (see decision letter at paragraph 84).
- c. The Council did not expect to adopt an allocations DPD for about 3 years. As a result the Inspector concluded that the remaining unmet need was not likely to be met by the development of allocated sites for some time (see decision letter at paragraph 82).

In the period since 8 June 2008 the Panel has reported and has recommended that the pitch requirement for Taunton Deane for 2006-2011 should be 20 non-transit pitches. This recommendation has been accepted by the Secretary of State but the intended gypsy policy has not yet been adopted.

Planning permission for 25 non-transit caravans (equating to 15 pitches) has now been granted by the Council in the period since 2006.

The adoption of an allocations DPD by the Council remains about 3 years away.

In the opinion of officers these changes simply reflect the passage of time and are not 'significant'. It could not be suggested that they mean that the weight of this consideration in the planning balance should change. The Council remains in the position of having made very good progress towards meeting what is likely to be its RSS pitch requirement. There remains no *adopted* RSS pitch requirement and no imminent prospect of the adoption of an allocations DPD.

The present position is in fact identical to that considered by the third Inspector.

#### 6 monthly counts

The number of unauthorised caravans recorded in the district in the 6 monthly counts since January 2007 have been -

Jan 2007	21 (all at Oxen Lane)
July 2007	24 (of which 19 at Oxen Lane)
Jan 2008	23 (of which 15 at Oxen Lane)
July 2008	51 (of which 17 at Oxen Lane)
Jan 2009	15 (all at Oxen Lane)
July 2009	23 (of which 20 at Oxen Lane)

The second Inspector considered all but the last three of these returns. Officers do not consider that the last three returns, taken together, suggest any change in the broad level of unauthorised development/encampment in the district. The position remains that most of the unlawful caravans in the district are on the Oxen Lane site.

#### Level of provision of gypsy sites

At the present time in Taunton Deane planning permission exists for –

- (i) 163 non-transit gypsy caravans;
- (ii) 20 transit gypsy caravans; and
- (iii) 6 further pitches at Otterford, to be used as an extension to the existing site, for periods of up to 6 months.

In June 2008 the figure in (i) was slightly less, since the 163 includes caravans on 4 pitches which have been permitted since that date. Also the planning permission in (iii) had not been granted in June 2008.

Again these changes are no more than would be expected with the passage of time and certainly do not represent a 'significant' change. The position remains that there is a high level of existing provision in Taunton Deane, the highest of any of the 5 authorities in Somerset.

#### Human rights and hardship caused by the refusal of planning permission

Plot 15 is the home of the applicants and a refusal of planning permission will interfere with their A8 rights. The same was true of the plots and appellants at the second inquiry. The Inspector found that the interference would be justified and proportionate, despite the fact that, at the time of the inquiry, there was no alternative site for the appellants to go to if they had to leave Oxen Lane.

At the second inquiry the occupants of plot 15 (Mr and Mrs Small) did not give evidence, but the other appellants gave evidence, based on their personal circumstances of the hardship they would suffer if they were made homeless (in fact pitches at the Tintinhull site had previously been offered to them but not accepted). The account of the personal circumstances of the other appellants can be found at paragraphs 86-90 of the second decision letter.

Plainly the second Inspector did not consider the personal circumstances of the present applicants, Mr and Mrs Loveridge. Their circumstances are set out in the application and can be summarised as follows –

They are gypsies;

Mr Loveridge suffered several seizures in 2008, affecting his ability to work and drive;

They have two children, one of whom is enrolled at North Curry Primary School. This child has eczema and asthma.

Officers consider that the personal circumstances of the present applicants are not especially remarkable and are comparable to the personal circumstances considered at the second inquiry. In any event, it seems to officers that issues of hardship arising from the likely effects of homelessness should be entitled to little weight in the planning balance as the Council is able to offer an alternative site to the applicants, namely a pitch on the Otterford site. It follows that the Loveridges do not have to become homeless if they are unable to live at Oxen Lane and that any interference with their A8 rights arising from a decision to refuse planning permission (or to decline to determine the present application) would be less serious than the interference considered by the second Inspector.

**Q.3 Do Councillors consider that the guidance in C08/2005 suggests that the discretion under s70A should be exercised?**

The guidance quoted above is a material consideration which Members must take into account.

Officers comments on this are as follows.

There is nothing in the present application which represents an attempt to overcome the objections identified by the second Inspector. The physical development proposed is the same as considered in June 2008. There is no suggestion that the concern about the precedent effect of granting planning permission for one pitch has been overcome or can be avoided. Officers note that, far from seeking to address this concern, the applicants' agent suggests that the Inspector's conclusions are simply wrong.

As for trying to wear down opposition, it seems to officers that, given the planning history of the site since 2004, the applicants cannot entertain any hope that planning permission will be granted following a *genuine* consideration of the planning merits. There are now three appeal decisions in relation to this site adverse to them. Insofar as changes have occurred over this period, they reduce the prospects of the grant of planning permission. As time passes the Council grants more planning permissions and so comes closer to meeting the pitch requirement in the emerging RSS. The availability of an alternative site means that the applicants cannot claim that the effect of a refusal of planning permission will inevitably be homelessness and the hardship which this would involve.

As explained above, the Council is now seeking to enforce the enforcement notice and the injunction against the Loveridges. It seems to officers that the present application is a tactic designed to frustrate this, with the aim of securing continued residence on the site despite the enforcement notice and the injunction, in the hope that the Council will eventually simply give up. Whilst solicitors acting for the applicant had indicated in early May 2009 that they would be submitting an application on behalf of the applicants, no application was received until after it was confirmed to them that the Council intended to pursue committal proceedings for breach of the injunction. Officers expect that the Loveridges will rely on the application in the forthcoming committal application, perhaps to argue that the injunction should be varied to allow them to remain on plot 15. Likewise the existence of an undetermined application/appeal would probably be relied on to resist/challenge any decision by the Council to take direct action to enforce the enforcement notice under s178 or to prosecute for breach of the enforcement notice under s179. It seems to officers that this kind of behaviour is of a kind which can properly be met by the exercise of the power under s70A.

Officers do not consider that this is a 'doubtful' case within the meaning of the guidance. It seems to them that it is about as clear a case as it is possible to imagine.

## **Conclusion**

Officers consider that the three issues identified above suggest that the discretion in s70A should be exercised and the application not determined. However it is important that members should themselves consider and answer the three questions posed.

## **RECOMMENDATION**

It is therefore RECOMMENDED the local planning authority decline to determine application no 24/09/0030 in respect of Plot 15 at Oxen Lane pursuant to its powers under S70A Town and Country Planning Act 1990.

Tonya Meers  
Head of Legal and Democratic Services

Contact Officer Judith Jackson 01823 356409 or email  
j.jackson@tauntondeane.gov.uk

## MISCELLANEOUS REPORT FOR COMMITTEE 29 SEPTEMBER 2009

### PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990 WET FINISHING WORKS, TONE WORKS, MILVERTON ROAD, WELLINGTON

#### 1.0 PURPOSE OF THE REPORT

- 1.1 To seek Member endorsement of the Chair's authorisation, to serve an Urgent Works Notice, in respect of the above Listed Building.

#### 2.0 LEGISLATION

- 2.1 Section 54 of the Act, enables Local Authorities to execute works, which are considered urgently necessary for the preservation of a Listed Building.
- 2.2 Section 55 of the Act, enables the expenses incurred in executing the works to be recovered.

#### 3.0 BACKGROUND

- 3.1 The Wet Finishing Works is part of a group of buildings, north of the River Tone, Listed Grade II\*.
- 3.2 Particular concern over the deteriorating nature of the subject building has increased in the last year, mainly as a result of unauthorised access and theft, the latter largely being stripping of lead to roofs.
- 3.3 Whilst the owner has robustly blocked openings to negate unauthorised access, there remain issues in preventing further deterioration, particularly by ingress of water.
- 3.4 With Member and Strategic Director support and an 80% grant from English Heritage, the Chair authorised service of the Urgent Works Notice, which was issued on 15 September 2009. The subject works should commence on or about 23 September 2009, by the Councils appointed contractor.
- 3.5 It is important to note that, the owner has been fully cooperative in allowing access to carry out the required survey to enable the schedule of works to be prepared and this is much appreciated.

#### 4.0 RECOMMENDATION

- 4.1 Members endorse the Chair's authorisation to serve an Urgent Works Notice in respect of The Wet Finishing Works, Tone Works, Milverton Road, Wellington.

Contact Officer: Diane Hartnell Tel: 01823 356492

## Planning Committee – 23 September 2009

### Report of the Development Manager

#### Enforcement Item

##### Parish:

1. **File/Complaint Number** E0192/43/09
2. **Location of Site** 17b Walkers Gate, WELLINGTON
3. **Names of Owners** Mr and Mrs McCarthy
4. **Name of Occupiers** Let property
5. **Nature of Contravention** Erection of timber shed on driveway
6. **Planning History**

A complaint was received on 19<sup>th</sup> May 2009 that a shed had been erected on the driveway associated with 17b Walkers Gate. The complainant stated that the shed had been in this position for at least 4 years and was aware that it was immune from any enforcement action. However, conditions were attached to the original planning approval in 1991 stating that at least one garage and one parking space shall be provided for each dwelling. It was claimed that the provision of the shed prevented two cars from being parked on the drive without impeding on others land. A site visit was made and photographs taken of the site. The Planning Officer was consulted and it was decided that the owners should be contacted to ascertain how long the shed has been on site and how many cars are parked on the drive at any one time. The owners of the property live in Cypress but Mrs Cottam, Mrs McCarthy's mother handled the letting of the property. She stated that the shed had been on site for many years but had recently had to be re-felted. The original approval did include a condition stating that two car spaces should be provided so initially it appeared that the condition may well have been breached albeit that approval dates back 18years. Mr and Mrs McCarthy recently visited the property and contacted the Enforcement officer. A meeting was held on Monday 17<sup>th</sup> August where measurements were given to establish the size of the shed and parking area. The length of the driveway is 10.8m. The shed occupies a space of 2.5m leaving 8.3m to accommodate two vehicles. However, only one vehicle is usually parked on the drive. Due to the fact that no action can be taken over the siting of the shed and it is the Local Planning Authorities opinion that it is possible to accommodate two vehicles on the remainder of the driveway it appears that the condition has not been breached. The complainant feels that the remaining space is not adequate to accommodate two vehicles and maintains that the condition has been breached.

**7. Reasons for Not Taking Enforcement Action**

It is considered that due to the time that has elapsed since the approval was first given and the changes in Policies relating to car parking on residential developments the remaining 8.3m is an adequate space to facilitate the parking of vehicles connected to 17b Walkers Gate. Therefore it is not expedient to commence formal Breach of Condition action.

**8. Recommendation**

That members agree that no further action is taken.

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

**CONTACT OFFICER: Mr John A W Hardy tel: 356466**

## Planning Committee – 29 September 2009

### Report of the Development Manager

#### Enforcement Item

#### Parish:

1. **File/Complaint Number** 0193/38/07
2. **Location of Site** Eagle Tavern, South Street, TAUNTON
3. **Names of Owners** Mr I Nation and Ms M Barnes  
7 Luttrell Close  
Taunton TA2 8SA
4. **Name of Occupiers** The Landlord  
The Eagle Tavern  
South Street  
TAUNTON  
TA1 3AF
5. **Nature of Contravention** Erection of a Smoking shelter at The Eagle Tavern, South Street TAUNTON
6. **Planning History** A complaint was received in July 2007 that a fence and smoking shelter had been erected at the Eagle Tavern. Both structures required Planning permission and the Landlord was requested to submit an application however, no application was forthcoming. An Enforcement Notice was issued on 4th March 2008 and the fence was removed in compliance with the Notice. The smoking shelter has been altered slightly but is still on site. The Area Planning Manager has visited the site and is of the view that the shelter, although requiring Planning permission, is acceptable and if an application were to be submitted it would be viewed favourably. In view of this it would not be expedient to take further action.
7. **Reasons for Not Taking Enforcement Action**  
  
It is considered that the smoking shelter in its present form is acceptable and would gain approval therefore it complies with Taunton Deane Local Plan Policies S1 and S2
8. **Recommendation**  
  
Members agree not to take any further action over the Smoking Shelter.

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

**CONTACT OFFICER: Mr JAW Hardy 01823 356466**

## APPEALS RECEIVED : FOR COMMITTEE AGENDA : 29 SEPTEMBER 2009

Appeal Proposal	Start Date	Application Number
Operation of Minibus Business at 154 Bridgwater Road, Bathpool (Enforcement Action)	01 SEPTEMBER 2009	E0394/48/06
Erection of Agricultural Machinery in Store at Vencroft Farm, Churchstanton (Enforcement Action)	07 SEPTEMBER 2009	E0076/10/08
Change of Use of Land to Domestic Curtilage and Formation of Access and Driveway on Land adjacent to Myrtle Tree Cottage, Saltmoor End, Burrowbridge, (Part Retention of Development Already Undertaken)	07 SEPTEMBER 2009	51/09/0001
Residential development comprising 19 no. 2 and 3 bedroomed affordable houses with parking, access road and associated works at Nynehead Road, Poole, Nynehead, as amended by letter dated 30 January 2009 with accompanying drawing no 08/114/02 rev A	08 SEPTEMBER 2009	26/08/0011

**APPEAL DECISION FOR COMMITTEE AGENDA – 29 SEPTEMBER 2009**

APPEAL	PROPOSAL	REASON(S) FOR INITIAL DECISION	APPLICATION NUMBER	DECISION
APP/D3315/A/08/2085517/NWF	Use of Land to Site 3no Mobile Homes and Provision of Septic Tank for one Gypsy Family at Sunnysdene, Dene Road, Cotford St Luke, Bishops Lydeard (Revised Siting)	Visual amenity; character and amenities of locality; avoid undue hardship on appellant; preservation and enhancement of local character and distinctiveness of area; ensure continuity of amenity afforded by existing trees, shrubs and hedgerows; satisfactory drainage is provided; highway safety.	06/08/0046	The Inspector considers the shed occupies an isolated and prominent position in the rolling hills of the AONB. It is highly visible from the road and nearby footpaths and the lime green colour of the roof is alien. He therefore concludes that the proposal harms the character and appearance of the surrounding AONB. The shed is located in Flood Zone 3 and the Flood Risk Assessment does not comply with requirements and is in conflict with PPS25. The appeal was therefore DISMISSED.
APP/D3315/C/08/2083953 and APP/D3315/C/08/2083956	Demolition of Building in Conservation Area, Erection of New Building, Erection of Roller Shutters on Exterior Door and Window Openings	Roller shutters fitted to exterior door and window openings without planning permission	E/226/49/2007	Inspector considered the roller shutters on the front elevation are harmful to the street scene and do not preserve the character or appearance of the Wiveliscombe Conservation Area. The appeals were DISMISSED and the Enforcement Notice upheld.
APP/D3315/A/09/2106771/WF	Erection of Extension to the Side of Property including First Floor Extension over garage at 1 Shepherds Hey, Trull	The proposed extension would result in loss of privacy to the amenity areas of the adjoining properties. The Planning Authority	42/09/0002	Inspector considered the proposed extension would remain subservient to the host property and have little impact on the street scene. He did not consider it would result in significant material harm to

		considered that the cumulative effect of the proposed development would not be subservient to the original dwelling and would adversely affect the appearance of the street scene, contrary to Taunton Deane Local Plan Policies S1(D), S2(A) and H17(C).		the living conditions of occupants of neighbouring properties or lead to unacceptable overlooking of the rear garden of No 2. He therefore ALLOWED the appeal.
APP/D3315/A/09/2105152/WF	Change of Use of Land for the Provision of a Temporary Occupational Dwelling in the Form of a Mobile Home for a Period of Three Years at Fairfield Stables, Moor Lane, Churchinford	The proposed mobile home is likely to be visually intrusive in a location within The Blackdown Hills Area of Outstanding Natural Beauty, would be detrimental to the Open Countryside	10/08/0026	The Inspector considered the proposed mobile home would not represent a great intrusion into the AONB, and would not have any significant impact on the setting of the listed building. and ALLOWED the appeal.
APP/D3315/A/09/2101713/NWF	Erection of New Dwelling with Drive and parking/turning Area on Land Adjacent to Furlongs, Shoreditch Road, Stoke St Mary	The site lies beyond the recognised limits of a designated settlement in open countryside The proposed development would derive direct access from a Country Route and, by reason of its distance to services and facilities such as education, employment, health, retail and leisure, would foster a growth in the need to travel. T	37/09/0002	The Inspector concluded that the proposal would represent development in the open countryside breaching a fundamental objective of national policy and set an unacceptable precedent. The highway adjacent to the site is narrow, has no footway and is unlit and adding to pedestrian movements would increase the risk. The appeal was DISMISSED.

APP/D3315/A/09/2104843/WF	Construction of Access Track and Formation of Turning Area to Serve Dwelling and Provide Improved Access to Agricultural Land at Lower Fyfett Farmhouse, Otterford as Supplemented by Letter dated 23 March 2009 (RETENTION OF DEVELOPMENT ALREADY UNDERTAKEN)	The unauthorised use as an access and driveway is not an appropriate use of the land, which is in the Blackdown Hills Area of Outstanding Natural Beauty as the driveway appears as a visual intrusion and detrimental to the visual amenities of the area,	29/09/0004	The Inspector considered the development would significantly harm the character and appearance of the surrounding countryside, within the Blackdown Hills AONB. Access for agricultural purposes could be achieved by a less substantial and visually less intrusive means. New access parking/turning facilities are not essential. The appeal was therefore DISMISSED.
APP/D3315/A/09/2101534/NWF	Erection of a Class A3 Unit and Associated Reconfiguration of Car Parking Arrangement, Deane Retail Park, Hankridge Way, Taunton	The proposed development represents an undesirable intensification of ancillary uses at the Retail Park to the detriment of the vitality and viability of the Town Centre, does not provide sustainable development and fails to satisfy the Sequential Approach to site selection. The proposal would result in the loss of car parking spaces required to serve the existing development and is likely to increase the demand upon the remaining	48/08/0044	The Inspector concluded that the proposed development should be permitted in the light of national and local planning policies on retail and leisure development, planning for town centres and sustainable development. Further conditions relating to materials, landscaping, control of car parking provision and control of details of ventilation and extraction equipment were imposed. The appeal was ALLOWED.

		spaces. Inadequate up to date information has been submitted to assess the impact of the development on the local highway network.		
--	--	--	--	--

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