

## Planning Committee

You are requested to attend a meeting of the Planning Committee to be held in The John Meikle Room, The Deane House, Belvedere Road, Taunton on 28 October 2009 at 17:00.  
(Reserve Date: 2 NOVEMBER 2009 AT 17:00)

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### Agenda

- 1 Apologies
- 2 Minutes of the meeting of the Planning Committee held on 23 September 2009 (attached)
- 3 Public Question Time
- 4 Declaration of Interests. To receive declarations of personal or prejudicial interests, in accordance with the Code of Conduct
- 5 38/09/0195 - Construction of helicopter take off and landing apron (helipad), together with associated traffic control barriers, warning lights and modification to car park area and landscaping at Musgrove Park Hospital, Taunton
- 6 42/09/0034 - Erection of new dwelling within the curtilage of 2 Church Road, Trull (resubmission of 42/08/0033) as amended by Plan BHT09086/SK01 revision C received 19 October 2009
- 7 E/0283/38/06 - Non-compliance with the requirements of an Enforcement Notice dated 12 April 2007, land at Sherford Bridge Farm, Sherford Road, Taunton. Report of the Head of Legal and Democratic Services (attached)
- 8 E0181/24/09 - Stationing of two touring caravans for residential occupation in excess of 28 days, Orchard adjacent to Bowldish Farm, North Curry (attached)
- 9 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

## **Planning Committee – 23 September 2009**

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

Officers:- Mr T Burton (Place Development Manager), Mrs J Jackson (Legal  
Services Manager), Ms M Casey (Planning and Litigation Solicitor) and  
Mrs G Croucher (Democratic Services Officer)

Also present: Councillors Morrell, Paul and Stuart-Thorn

(The meeting commenced at 5.00 pm)

### **96. Apologies**

Councillors Bowrah and C Hill.

### **97. Minutes**

The minutes of the meeting held on 2 September 2009 were taken as read and were signed.

### **98. Declarations of Interest**

The Chairman (Councillor Mrs Hill) declared a personal interest as an employee of Somerset County Council; Councillors Brooks, McMahon and Wedderkopp declared a personal interest as Members of Somerset County Council; Councillor Miss James declared a personal interest as an employee of Viridor; Mr J Hamer (Development Control Area Manager) and Mr D Woodbury (Health and Safety Advisor) declared a prejudicial interest as local residents and left the meeting during the consideration of the item; and Mrs G Stratford (Corporate Finance Assistant) declared a personal interest as a local resident.

### **99. Residential development of 7.65 ha, together with open space provision and access on land west of Bishops Hull Road, Bishops Hull (05/07/0057)**

Reported this application.

**Resolved** that the application be deferred for further consideration and negotiation to take place between the developers and the Highways Authority on the transport and highways issues raised, taking into account the views expressed at this meeting.

(The meeting ended at 7.55 pm)



## **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

TAUNTON & SOMERSET NHS FOUNDATION TRUST

**CONSTRUCTION OF HELICOPTER TAKE OFF AND LANDING APRON (HELIPAD), TOGETHER WITH ASSOCIATED TRAFFIC CONTROL BARRIERS, WARNING LIGHTS AND MODIFICATION TO CAR PARK AREA AND LANDSCAPING AT MUSGROVE PARK HOSPITAL, TAUNTON**

321569.124148

Full Planning Permission

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**PROPOSAL**

The proposal is to provide an emergency helipad facility on site in front of the Accident and Emergency Department to allow for landings by the air ambulance. The proposal includes the provision of three sets of traffic control barriers and 5 sets of warning lights on the approach roads within the site for traffic safety and the removal of a number of larger trees for the safe landing of the helicopters. A noise report and ecological report has been submitted with the proposal.

**SITE DESCRIPTION AND HISTORY**

The application site consists of the current area of car parking and landscaping in front of the Queens Building at Musgrove Park Hospital. The site was originally considered for a helipad at the time of the building's construction, however due to the size of helicopters at the time there was inadequate space for them to operate safely.

**CONSULTATION AND REPRESENTATION RESPONSES**

**Consultees**

*SOMERSET COUNTY COUNCIL - TRANSPORT DEVELOPMENT GROUP* - The proposal will see the construction of a helipad with associated traffic control barriers. The development is located on private land within the grounds of the hospital and will not generate any additional traffic movements over and above the existing. I therefore raise no objection to the proposal.

*Taunton -*

*CIVIL AVIATION AUTHORITY -*

*AVON & SOMERSET CONSTABULARY - COMMUNITY SAFETY TEAM* - No observations to make.

*CHIEF FIRE OFFICER - DEVON & SOMERSET FIRE RESCUE* - The following observations are made. The proposal should ensure they do not have an adverse affect upon the means of escape in case of fire from the hospital buildings and should comply with the Building Regulations 2000. The proposals should ensure that they do not have an adverse affect on the access and facilities provided by the hospital buildings, which include access to dry risers and nearby fire hydrants for appliances. Proposed alterations should comply with the provisions contained in Approved Document B, Part B5 of the Building Regulations 2000. These premises are subject to the above legislation and for the purposes of identifying the measures to be taken to comply with current fire regulations, the Responsible Person must

carry out a review of fire risk assessment taking specific account of these proposals and act upon the 'significant findings' of that assessment.

*PRINCIPAL ENVIRONMENTAL HEALTH OFFICER - NOISE & POLLUTION* - I refer to the information that you recently submitted along with the above application:

- Proposed Air Ambulance Helipad Environmental Noise Study, September 2009. The report suggests that the noise from the planned helipad will be high but of a short duration, usually between 4-5 minutes on average 2-3 times a week and that the helipad is to be used in connection with air ambulance emergencies only. This being the case I wish to advise planning for the information available to me at this time suggests that the noise from the proposed development will be loud, but not sufficient for Environmental Health to object to the above application.

*HERITAGE AND LANDSCAPE OFFICER* - There will be a significant loss of tree cover but given the relatively large number of replacement trees there should be no longer term loss of amenity.

*SOUTH WESTERN AMBULANCE SERVICE* -

### **Representations**

1 letter of support

9 letter raising no comments.

7 letters suggesting relocation of helipad to the side of the building to save trees or the roof of the A&E building or of the car park building and concern over damage to property being compensated and vortex between buildings. Can there be no night usage. Concern over noise and disturbance, increased light pollution, loss of parking and impact on surrounding roads, impact on wildlife and badgers, tree loss and people's safety.

### **PLANNING POLICIES**

PPS1 - Delivering Sustainable Development,

PPS9 - Biodiversity and Geological Conservation,

PPG24 - Planning and Noise,

STR4 - Development in Towns,

S&ENPP1 - S&ENP - Nature Conservation,

S&ENPP49 - S&ENP - Transport Requirements of New Development,

S1 - TDBCLP - General Requirements,

S2 - TDBCLP - Design,

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

### **DETERMINING ISSUES AND CONSIDERATIONS**

The main consideration with the scheme is the impact on the amenity of local residents, safety and wildlife impact.

The proposal will require the removal of the existing small car park and the adjacent landscaped area to provide a helipad in front of the Queens Building and access to the Accident and Emergency Department. There is considered to be adequate on site parking available to compensate for the loss of parking area to provide the helipad. The works would also include the removal of a number of trees, including ten sycamores, to make the flight path safe. Replacement tree planting in the vicinity of the site but not in the flight path is proposed. The use of the site is restricted to the size of helicopter and is intended for recognised air ambulance operators and not to

be licensed by the CAA for general helicopter use. It is anticipated, based on current arrivals, that the use for critical patients will be 2-3 flights per week. Noise levels will clearly be high during any visit in the nearest properties at Parkfield Drive and Ashley Road. However the duration of the visits will be short and limited in number over a week. Alternative locations have been suggested for the helipad, however the proposed site has been chosen to limit further delay to access the A&E Department. Roof top locations are impractical due to the need for a permanent Fire Brigade presence and the logistics of ensuring any easy transfer to the Emergency Department. Other locations within the hospital grounds would be further away from the A&E Department and would cause similar noise issues for residents elsewhere, if the flight path were changed to another location.

There would be an element of noise disturbance to certain residents wherever a helipad were to be located. It is recognised in PPG24 that housing and hospitals are noise sensitive developments. Policy S1 of the Local Plan seeks to avoid noise pollution that would harm health or safety or amenity of dwellings. It is considered the development would not harm health or safety but would impact on amenity of dwellings for limited periods. However the level of noise caused by helicopter take-off and landing cannot be mitigated against and a level of noise disturbance during these occurrences, lasting around 5 minutes per visit, has to be accepted if permission is to be granted. The only way to limit noise impact is controlling the frequency of flights to the site. However it is not possible to control the timing and number of emergency events requiring critical emergency transfer. The information provided by the applicant indicates flights will normally be restricted to between 07:00 and 23:00 except for critically ill patients. It would seem unreasonable therefore to restrict the timing of flights given that an emergency could happen at any time. The Environmental Health Officer has considered the submitted Noise Report and comments that while the noise will be high it will be of limited duration and on this basis an objection is not raised.

The site has been selected and designed with safety in mind for both people on the ground and operators and patients. The down draft effect from the helicopter is an early consideration in determining suitable and safe landing areas. Recessed ground lights are proposed which will only illuminate during helicopter arrival/departure and safety barriers for the roads and warning light systems are proposed to safeguard staff and visitors during the use of the helipad.

The provision of an Ecological Assessment has been carried out and this addresses concerns raised by locals over the wildlife impact of the development. The report concludes that there will be no adverse impact on badgers or bats from the development and in view of the recommendations an informative note in terms of wildlife impact and site clearance is proposed.

The proposed development will clearly have a noise impact on local residents and this impact cannot be mitigated against other than restricting the timing of flights. The impact of this on local residents has to be weighed against the importance of speedy care for critical emergency patients and the limited use intended for the helipad and on this basis it is recommended that permission be granted.

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

Recommended Decision: Conditional Approval

Permission be GRANTED subject to conditions of time limit, hard and soft landscaping, lighting and flights limited to registered air ambulances only and note re wildlife.

The proposal is considered not to have a significant adverse 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), S2 (Design) and EN6(Protection of Trees).

### **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.
  - (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.

3. Before any part of the development hereby permitted is commenced, a scheme of hard landscaping showing the layout of areas with stones, paving, walls, cobbles or other materials shall be submitted to and approved in writing by the Local Planning Authority. Such scheme shall be completely implemented before the development hereby permitted is occupied.

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

- Deposit Policy S2.
4. No lighting units other than those specified on the submitted drawing 578/02C shall be erected on site unless otherwise submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details and thereafter maintained as such.

Reason: To minimise the impact of the development in accordance with Policy S1(E) of the Taunton Deane Local Plan.

5. The site shall be used by licensed air ambulance operators only.

Reason: In the interest of limiting flights to the site and impacting on residential amenity in accordance with Policy S1 of the Taunton Deane Local Plan.

#### Notes for compliance

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

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

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

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

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

**CONTACT OFFICER: Mr G Clifford Tel: 01823 356398**

42/09/0034

MR & MRS TEAGLE

**ERECTION OF NEW DWELLING WITHIN THE CURTILAGE OF 2 CHURCH ROAD, TRULL (RESUBMISSION OF 42/08/0033) AS AMENDED BY PLAN BHT09086/SK01 REVISION C RECEIVED 19TH OCTOBER 2009**

321467.122225

Full Planning Permission

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**PROPOSAL**

The site currently forms the garden area to 2 Church Road, which lies within the Trull Conservation Area. The site slopes from west to east and is bounded on the front by a bank with a high yew hedgerow above, with close boarded timber fence (approximately 2 metres in height) to the side and rear. The existing property is a white render and tile detached dormer property directly fronting Church Road, it is surrounded on the south and east by large two storey properties, whilst to the north are bungalows of varying designs. The surrounding area sees a mix of materials including bricks, render, slate and tiles.

An application for a dwelling and garage was refused and dismissed at appeal in 1991 as it was considered to detract from the setting of Vine Cottage and the amenity of the locality.

Last year an application for a three bedroom dormer property on the site was refused due to the substandard access and poor visibility splays and the adverse impact the removal of the front hedge would have on the Conservation Area.

This application is now a revised scheme following lengthy discussions with the County Highways Authority regarding the access. The application seeks permission for a three bedroom brick and clay tile dwelling, although the design has been revised. Two car parking spaces will be provided to the rear of both the existing and proposed property and there will also be a small area of amenity space to the rear. The front boundary hedge is proposed to be retained, although the access will be widened from 3 metres to 5 metres involving the removal of only a small element of the hedge.

The applicant considers that sufficient visibility splays to the east can be provided by means of a covenant on land owned by the adjacent property, no.4 Church Road. This covenant does not permit the adjacent landowner "to do or permit to be done on the Property anything which may grow to cause a nuisance or annoyance to the Vendors or otherwise interfere with their free use and enjoyment of the retained land".

**CONSULTATION AND REPRESENTATION RESPONSES**

**Consultees**

*SCC - TRANSPORT DEVELOPMENT GROUP -*

As the Planning Officer is aware, this is a resubmission of a previous proposal,

42/08/0033, following post-application correspondence that took place to address the highway issues previously raised.

For the purpose of this latest submission, I will reiterate the applicable points.

The proposal is located within the development limit of Trull and will utilise an existing access from/onto, Church Road, which is a well-utilised local route and a classified unnumbered highway that is subject to a 30mph speed restriction. The Agent previously stated that there were movements afoot to reduce the speed limit through the village to 20mph, in line with other villages in the vicinity. However, the Traffic Team Manager, confirmed that there were currently no plans to reduce the speed limit in this location.

Since the last application a speed survey has been carried out by the Applicant and the Highway Authority, to ascertain actual speeds of traffic for the purpose of agreeing visibility splays.

### **Speed Survey**

I confirm that I am satisfied with the conclusion of Applicant's speed survey, and would accept that the 85<sup>th</sup> percentile, in the west bound direction of 25mph.

### **X-Distance/Visibility**

Church Road, from my personal observations appears to be a well utilised local route through the village, and is in what I consider to be a built up situation in line with point 7.7.6 of Manual for Streets.

I consider that a 2.0m 'x' distance in this particular instance is acceptable, given that the road is not heavily trafficked and that traffic speeds are in the region of 25mph. It was noted during a site meeting (6 July 2009) with Mike Bellamy from Byways and Highways that westbound cars tend to position themselves away from the access, in terms of their driving line, as they pass by the entrance to the site due to the on-street parking that occurs on the southern side of Church Road just to the west of the site entrance.

I would be willing to accept measuring the sight-line to a point 1.0m away from the nearside carriageway edge, but not to the centreline of the road as suggested by Mr Bellamy.

To reiterate the findings:

From 2.0m back the measurements are as follows (these are measurements that do **not** cross the small section of land which is the subject of the restricted covenant:

- 22m to the nearside carriageway edge
- 28m to a point 1.0m off the nearside carriageway edge

The equivalent distances from 2.4m back, they are:

- 21m to the nearside carriageway edge
- 27m to a point 1.0m off the nearside carriageway edge

## **Covenant**

The details of this covenant are duly noted and I have liaised with the Planning Officer, Karen Purchase who has discussed this issue with Judith Jackson, Manager of Legal Services. She is of the opinion that as they have control of the land through a legally enforceable covenant, a visibility condition could be imposed across that land. Therefore a condition could be attached and if the Applicant or future owner did not comply, a breach of condition notice could be served and they would then have to take action against their neighbours in order to meet this condition.

A condition cannot be attached on land, which is not outlined in red or blue. As the covenant forms a crucial part of the application site in terms of providing visibility, this piece of land has now been included within the red line of the application site and I assume that notice has been duly served on the landowner.

Judith Jackson also confirmed during post-application discussions, that it is possible to re-word a covenant if both parties agreed to this, and this would be the most satisfactory way of dealing with the matter as it would not rely on further action having to be taken by the Applicant or any future occupier of the dwelling as obviously legal disputes can be lengthy and potentially visibility could be obstructed until the issue has been resolved, thus resulting in highway safety issues for users of that highway.

This was not an option that the Applicant chose to pursue and it would appear that as this latest application has progressed that the adjoining land owner is not in favour of the proposal.

## **Visibility utilising the land covered by the Covenant**

Therefore if the vegetation along the roadside edge on land the subject of the restricted covenant were cut back, from 2.0m back the visibility measurements would be:

- 33m to a point 1.0m off the nearside carriageway edge

From 2.4m back the equivalent measurements would be:

- 32m to a point 1.0m off the nearside carriageway edge including

## **Access**

Both the Planning and Conservation Officers at TDBC have agreed that they would be happy for the access to be widened to 5.0m, over the first 10m of its length, as it would not result in a significant loss of the boundary trees/hedge.

This will enable vehicles to pass each other when entering/exiting the site and to avoid conflicting movements resulting in vehicles reversing or waiting on the adjoining public highway.

The Planning Officer may wish to seek an amended plan to resolve this issue, any

amended plan should also include the visibility splay, as the centreline of the access will be in a slightly different position, to what is currently shown.

### **Parking and Turning** .

Sufficient parking provision that incorporates a segregated and shared turning area has been denoted on the submitted plan which will enable vehicles to enter and exit site in a forward gear when the parking areas are occupied.

Taking the above points into consideration, I would not wish to raise a highway objection and in the event of permission being granted I would recommend conditions.

*TRULL PARISH COUNCIL* - The Council unanimously rejects this application on the following grounds:

- Wholeheartedly agree with the Inspectors decision at appeal in 1990 and consider nothing has changed.
- Adverse impact on the streetscene, next to Grade II Listed property.
- Site is imposing as higher than houses in the vicinity, destroying privacy of houses on all sides.
- Extra noise generated to rear due to parking next to dividing fence.
- Poor access onto busy road.
- Proposal to reduce length of mature hedge would destroy street scene and lesson privacy of houses facing it.
- Once planning/building is completed, hedge could be removed in its entirety.
- Footpath finishes at the access to the site, this is a hazardous spot.
- Dwelling would take up most of the garden of no.2 leaving two properties with very small gardens, little amenity space and parking for 4 cars.
- Houses in the locality are detached with generous gardens.

*CONSERVATION OFFICERS* - No objection, improved design.

*HERITAGE AND LANDSCAPE OFFICER* - I am pleased to see the retention of the roadside yew hedgerow. I recommend a condition to protect it during construction and another to retain it into the future.

*WESSEX WATER* - The development is located within a foul sewerred area and there are water mains within the vicinity of the proposal. It will be necessary for the developer to agree a point of connection onto the system for water supply and for the satisfactory disposal of foul flows generated. Council should be satisfied with arrangements for surface water disposal. Suggests note to applicant regarding uncharted sewers or water mains.

### **Representations**

TWO LETTERS OF SUPPORT RECEIVED on the grounds of:

- There is a row of properties on the other side of the road and this will balance out the appearance of the properties in Church Road.
- It is better to build within the village rather than on the edge, encroaching on the countryside, as has been proposed recently
- The proposed property has an attractive design and will fit very well within other

houses in the road.

- Adding a dwelling would be in keeping with the rest of the road, where houses are generally closer together, and would not spoil the appearance of the road.
- This is a large plot with plenty of space for an extra house and both houses would still have a surrounding garden.
- This dwelling would go some way towards alleviating the need for more housing in Trull, reducing the waiting list for housing in the area and would increase revenue to local services.
- There is already an access to the property and provision for parking so new property would not add to parking problems.

1 LETTER RECEIVED STATING NO OBJECTION (No reasons given)

6 LETTERS OF OBJECTION RECEIVED on the grounds of:

- Proposal is a squeezed into garden of no.2, leaving little space around either house and not at a scale that relates well with the local character of the area. Immediate surrounding area characterised by detached houses in their own gardens giving an aura of space and tranquillity. The proposed house will not continue this theme and will be out of keeping with and ruin the character of the area.
- Overdevelopment of the small site in an area of relatively low density housing, is detrimental to character of immediate area and village and would result in two cramped dwellings, both with inadequate amenity space.
- Site in elevated position and would dominate building line.
- Cramped development and a dwelling in this location (particularly of chalet style design) will detract from the historic and attractive street scene of the Conservation Area.
- Loss of privacy and amenity for surrounding properties including nos 7, 9, Earls wood House, occupiers of 2 Church Road, along with overlooking of the proposed dwellings itself.
- Parking spaces will be right up against the boundary of adjoining properties, leaving no room for landscaping and causing noise and disturbance.
- Highway safety concerns to both vehicles and pedestrians on busy village road due to further traffic using exit, poor sight lines, no footpath, no waiting bay. It does not appear that anything will be done to improve and address pedestrian or traffic issues. Current visibility standards should be met in such a location.
- Suggestion that findings of traffic survey are flawed as undertaken when the road from Pitminster to Corfe was closed, the road from Corfe to Trull is often used as a "rat run" and wouldn't have been included. In addition, the school at Blagdon Hill has since been closed, adding to school traffic.
- Own traffic survey was undertaken by an objector, indicating peak traffic is from 0840 to 0855 when 35 vehicles and 41 pedestrians travelled East (to the school) and 3 pedestrians and 13 vehicles were Westbound.
- Requests preservation order to prevent hedge being removed.
- The proposal may result in detriment to a yew tree on the adjacent site.
- An appeal was dismissed in 1990 as the proposal would be unacceptable detract from the setting of Vine Cottage, result in a cramped appearance, remove a mature hedge which contributes to the street scene and leave little existing garden area. The current application is now for a larger dwelling on a smaller site (as a strip has been sold off).
- Will set a precedent for future development

LETTER RECEIVED FROM AGENTS ON BEHALF OF OCCUPIERS OF NO.4

## CONCERNING COVENANT (NON-PLANNING MATTER)

- Our client is not supportive of this planning application nor does she recognise any obligation on her part to co-operate with the applicant regarding the creation of an adequate visibility splay.

## LETTER RECEIVED FROM AGENTS ON BEHALF OF APPLICANT'S

- Application in 1990 involved removing large parts of Yew hedge and building garaging as well as house. These issues have now been addressed.
- A lot has been done to improve application and address issues raised by Parish Council last year.
- Development is some way away from Kings Gatchell, it neighbours land belonging to Camelot and has no connection to Kings Gatchell. New property would be between Vine Cottage and no.4.
- Property would be at same level as other properties on that side of road. Being a dormer bungalow, design is in keeping with Vine Cottage and roof line will be lower than Earlswood House and no.4. No windows overlooking no.4, only frosted velux rooflights on rear.
- Access very good, probably one of best in road. Road not heavily trafficked, proven by speed survey.
- Applicants are not planning to remove hedge at later date.
- Footpath ends in a safe place as visibility is good here.
- Development would allow for adequate garden space for both properties, park is only three minutes away. There is already parking for four cars. Not all houses in vicinity have large gardens, there are terraces within metres of proposed development.

## PLANNING POLICIES

PPS1 - Delivering Sustainable Development,  
PPS3 - Housing,  
PPG15 - Planning and the Historic Environment,  
S&ENPP9 - S&ENP - The Built Historic Environment,  
S1 - TDBCLP - General Requirements,  
S2 - TDBCLP - Design,  
EN14 - TDBCLP - Conservation Areas,

## DETERMINING ISSUES AND CONSIDERATIONS

There is a mix of materials in the surrounding area and the proposal of brick and clay tiles with timber doors is considered acceptable. Whilst the use of upvc is not ideal within the Conservation Area, neighbouring properties already have upvc windows, as does no.2, and it is not considered to cause harm to the area. The dormer windows are of traditional design and reflect the dormer window at no.2, whilst the steep roof pitch and internal chimney are characteristic of surrounding properties. The proposed rooflights are positioned on the rear and are of Conservation style, therefore will have no adverse impact on the Conservation Area. The proposed dwelling has therefore been designed to reflect the appearance of surrounding properties and respect the character of the Conservation Area.

Whilst the properties directly adjacent are situated on larger plots, there is evidence of smaller plots in close proximity and opposite. The proposed development is not

therefore considered to be out of keeping with the general pattern of development in this part of Trull. There are no set standards which govern the minimum acceptable amount of amenity space. Each property retains an element of amenity space, which is considered satisfactory.

In order to widen the access, the removal of approximately 2 metres of the Yew hedge is required. The removal of this minimal amount is not considered to result in detriment to the appearance of the street scene and will preserve the surrounding Conservation Area.

Situated on the boundary between the proposed site and no.4 is a large garage, with the dwelling being situated to the other side of this. The proposed dwelling is situated adjacent to the garage/area to the front of the property, rather than the main amenity space so is not considered to harm the amenities of the occupiers of that dwelling. To the rear, Eastwood House is separated from the plot by a 2 metre high wooden fence. The proposed dwelling is situated approximately 9 metres from the boundary and is therefore considered a sufficient distance to avoid a loss of light or overbearing impact. Whilst there are rooflights in the rear of the proposed dwelling, these are frosted and serve two bathrooms and a landing, rather than habitable rooms, therefore there are no concerns regarding overlooking of Earlswood House from these windows. The proposed side first floor window serving bedroom 3 will face onto the driveway. There are no habitable room windows in the end of no.2 and this window is a sufficient distance from the garden at the rear of no.2 to avoid overlooking.

Since the refusal of the previous application, there have been lengthy discussions with the County Highways Authority and an independent speed survey has been undertaken. Following the results of this survey, a satisfactory distance for visibility has been agreed with the County Highways Authority. This application indicates that the visibility splay to the east can be achieved, utilising land owned by the neighbouring property at its eastern extremity. Although outside of the ownership of the applicant's, there is a covenant attached to the land, preventing the landowner doing or permitting to be done, anything that may grow to cause a nuisance or annoyance to the Vendors. As such, the applicant's have control of the land through this legally enforceable covenant, although this could be lengthy process.

The access is proposed to be widened to allow cars to pass when entering/exiting the site and avoiding the need for cars to reverse out onto or wait on the highway. In addition, adequate parking and turning facilities have been provided to each property.

Although it is acknowledged that an appeal was dismissed in 1991, this was for a scheme of different layout and also included a detached garage. In view of the significant drive of PPS1 and PPS3 towards sustainable development and making best use of land within urban areas, this site is now considered a suitable infill site for a modest dwelling of appropriate design. By virtue of the design of the property and retention of the roadside Yew hedge, it is considered that the proposal would not result in detriment to the residential amenities of neighbouring properties or harm to the character and appearance of the surrounding Conservation Area.

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

Recommended Decision:

The proposed dwelling has been designed to be in keeping with surrounding properties and to avoid harm to the residential amenities of nearby dwellings. It is considered to preserve the character and appearance of the Conservation Area, not to detract from the street scene and to be in keeping with the surrounding pattern of development. Sufficient car parking is available and adequate visibility splays can be provided, by virtue of the restrictive covenant on the adjacent land, to overcome previous highway safety concerns. As such, the proposal is in accordance with policy 49 (Transport Requirements of New Development) of the Somerset and Exmoor National Park Joint Structure Plan Review and policies S1 (General Requirements), S2 (Design) and EN14 (Conservation Areas) 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. No development shall take place until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out and thereafter retained as such, in accordance with the approved details as above, unless otherwise agreed in writing by the Local Planning Authority.

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

3. All rooflights hereby approved shall be flush fitting Conservation Style with a central glazing bar.

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 Policies S1(D) and S2(A).

4. All windows/doors hereby approved shall be of the design shown on the approved plans, unless otherwise agreed in writing with 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 Conservation Area in accordance with Taunton Deane Local Plan Policies S1(D), S2(A) and EN14.

5. The existing hedge on the roadside (north) boundary shall be retained at a height no less than 1.8 metres above ground level, with the exception of the small element to be removed to widen the access, unless otherwise agreed in writing with the Local Planning Authority. Before any part of the development hereby permitted is commenced, this hedge shall be protected by a chestnut paling fence 1.5 m high, placed at a minimum distance of 2.0 m from the edge of the hedge, unless otherwise agreed in writing. The fencing shall be removed only when the development has been completed. During the period of construction of the development the existing soils levels around the base of the hedge shall not be altered.

Reason: To avoid potential harm to the root system of any hedge leading to possible consequential damage to its health and to ensure the preservation of the local character and distinctiveness of the Conservation Area in accordance with Taunton Deane Local Plan Policies S1(D), S2(A), EN6 and EN14.

6. Before any part of the development hereby permitted is commenced, the access to be used in connection with the proposed dwelling shall be widened so as to have a minimum width of 5m over the first 10m of its length.

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

7. Before the dwelling is first occupied, the revised access/parking/turning shall be properly consolidated and surfaced (not loose stone or gravel). It shall be made of porous material, or alternatively provision shall be made to direct run-off water from the hard surface to a permeable or porous area or surface with the curtilage of the dwelling.

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

8. The area allocated on the approved plan as parking and turning for the existing and proposed dwelling shall be kept clear of obstruction and shall not be used other than for the parking and turning of vehicles in connection with the existing dwelling, no. 2 Church Road and the dwelling hereby permitted.

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

9. Before any part of the development hereby permitted is commenced, there shall be no obstruction to visibility greater than 900mm above the adjoining road level forward of a line drawn 2.0m back from the carriageway edge on the centreline of the access and extending to a point on the nearside carriageway edge 33m to the east and 50m to the west of the access. Such visibility shall thereafter be maintained at all times.

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

10. Provision shall be made within the site for the disposal of surface water so as to prevent its discharge onto the highway, details of which shall have been submitted to and approved by the Local Planning Authority.

Reason: To prevent surface water being deposited into the highway, in the interests of highway safety and neighbouring amenities, in accordance with Taunton Deane Local Plan Policies S1(D) and (E).

11. Before any works are commenced, details of all guttering, downpipes and disposal of rainwater shall be submitted to and approved 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 Conservation Area in accordance with Taunton Deane Local Plan Policies S1(D), S2(A) and EN14.

12. All services shall be placed underground.

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 Policies S1(D) and S2(A).

13. 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 extensions, other alterations (including balconies, windows, chimneys, flues, antennae) or curtilage structures (of the types described in Schedule 2 Part 1 Class A-E and G-H 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 ensure that the amenities of neighbouring properties is not harmed, in accordance with Policies S1 and S2 of the Taunton Deane Local Plan.

#### Notes for compliance

1. Note at request of Wessex Water  
It will be necessary, if required, for the developer to agree points of connection with Wessex Water, for water supply and the satisfactory disposal of foul flows.
2. Note at request of Wessex Water  
The developer should 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.

3. Note at request of County Highways Authority:  
Having regard to the powers of the Highway Authority under the Highways Act 1980 the applicant is advised that a Section 184 Permit must be obtained from the Highway Service Manager, Taunton Area Office, tel 0845 3459155. Application for such a Permit should be made at least three weeks before access works are intended to commence.
4. Note at request of County Highways Authority:  
Where works are to be undertaken on or adjoining the publicly maintainable highway a licence under section 171 of the Highways Act 1980 must be obtained from the Highway Authority. Application forms can be obtained by writing to Roger Tyson of the Transport Development Group, Environment Department, County Hall, Taunton TA1 4DY, or by telephoning him on 01823 356011. Applications should be submitted at least four weeks before works are proposed to commence in order for statutory undertakers to be consulted concerning their services.
5. Soakaways should be constructed in accordance with British Research Digest 365 (September 1991).

**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**

## Planning Committee – Wednesday 28 October 2009

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

#### Enforcement Item

1. **File/Complaint Number** E/0283/38/06
2. **Location of Site** Land at Sherford Bridge Farm, Sherford Road, Taunton
3. **Names of Owners** Mr Alan Parris, Mr Richard Parris and Mrs Sylvia Parris
4. **Nature of Contravention** Non-Compliance with the requirements of an Enforcement Notice dated 12 April 2007

#### Background

1. The owners of the Site are Mr Alan Parris, Mr Richard Parris and Mrs Sylvia Parris.
2. With reference to the Environment Agency Online Flood Map, the Site is located in an area Zone 3b:Functional Floodplain as defined in PPS25. Taunton Deane Local Plan policy EN28 seeks to locate development on land at little or no risk of flooding.
3. Planning Permission was granted in 2000 for a building to house livestock to replace an existing agricultural building at the Site (“the 2000 Planning Permission”).
4. The 2000 Planning Permission was not implemented. Instead, a building (“the Unauthorised Building”) and concrete yard was erected on the Site in 2006 and used for a commercial valeting business.
5. On 14 February 2007 this Planning Committee resolved that enforcement action be taken to secure the removal of the Unauthorised Building and concrete yard and cessation of the vehicle valeting business at the Site and institute legal proceedings should the enforcement notice not be complied with.
6. An Enforcement Notice dated 12 April 2007 was issued on the Owners with 2 requirements:- **1.** to stop using the steel framed, profile sheeted building as an agricultural workshop and machinery repair/store shed together with commercial vehicle valeting business; and **2.** to dismantle the steel framed, profile sheeted building, remove all the dismantled materials from the land and restore the land to the condition it was in before the breach of planning control occurred.

7. It has since become apparent that the concrete yard is not mentioned in the Enforcement Notice itself. The notice is only concerned with the use and dismantling of the steel building.
8. An appeal was made against the enforcement notice but was largely dismissed. The requirement to dismantle the building remained.
9. The Owners failed to dismantle the building within the time required and on 2 September 2008 the Council wrote to the Owners advising them that if they did not comply with the requirements of the Enforcement Notice by 16 September 2008 then it might commence legal proceedings in the Magistrates' Court for the offence of Non-Compliance with the Enforcement Notice.
10. The Council's Senior Planning Enforcement Officer visited the Site in October 2008 and reported that the unauthorised building had been demolished but the concrete base which formed the floor of the unauthorised building plus concrete yard in front of the unauthorised building, remained.
11. On 27 November 2008 the Council received a telephone call from Graham Foster who lives at Sherford Bridge House which is adjacent to the Site. Mr Foster was concerned because the Enforcement Notice required the Owners to reinstate the land to its former condition and this has not been done. Mr Foster explained that the Remaining Concrete has increased the risk of flooding to his property.
12. Legal proceedings were issued in the Taunton Magistrates' Court to prosecute for Non Compliance with the Enforcement Notice under Section 179(2) of the Town and Country Planning Act 1990 and the date of the first hearing was listed on 12 March 2009. The proceedings have subsequently been adjourned until the next hearing listed on Thursday 19 November 2009.
13. Subsequent to the Owners being advised of the commencement of legal proceedings, the Owners argue that the whole of the area where the Unauthorised Building was sited has always been concreted and the Remaining Concrete would also fall within Permitted Development rights because it is a concrete yard ancillary to agricultural use.
14. The Council has been in contact with the Environment Agency (EA). In January 2009 it wrote asking whether or not the Remaining Concrete could pose the threat of flooding. The EA replied in February 2009 and advised *"It is recommended that the entire building is removed and the ground is returned to its original level and composition i.e. green field. A concrete platform is likely to be impermeable and increase run-off into the watercourse, while in a greenfield state water would soak into the ground attenuating rainfall."*

15. Regarding the owner's contention that the Remaining Concrete is lawful because it is either established from long use (albeit that it has been repaired or renewed from time to time) and/or permitted development the EA commented "*If the platform can be shown to be in position for over 10 years then presumably we could not expect it to be broken up and removed*".
16. A Report went to this Committee on 30 March 2009 recommending that the legal proceedings in the Magistrates' Court be withdrawn because it was not considered to be in the public interest to continue with the prosecution. On conviction the penalty in the Magistrates' Court is a fine, there is no power to order the Remaining Concrete to be removed so the legal proceedings would not achieve the required result, i.e., removal of the Remaining Concrete.
17. A letter dated 27 March 2009 was received from the EA on 30 March 2009 and was reported to this Committee. The pertinent comments within that letter were "*From reviewing your brief for the scheduled meeting, it is evident that the forecourt and slab of the illegal building still remains and you are classifying this as permitted development rights. For as it stands it has increased flood risk to the community. This is unfortunate and we would argue that the remaining concrete area is removed in its entirety, returned to its previous ground level and natural permeable state. Therefore we would respectfully request that the LPA fully enforce its enforcement notice and not just partially.*
- We can assist in providing some historic ground levels for the area. This survey information can then be compared with the appellant's current slab/forecourt level. Please contact at the earliest opportunity so that we can obtain this information on your behalf.*"
18. At the meeting of this Committee on 30 March 2009 the members deferred the matter as they required further advice from the EA to (i) identify the additional risk of flooding directly attributable to the Remaining Concrete and (ii) asking the EA if they would use their powers to regulate works if development was constructed in a flood plain under permitted development rights.
19. The Council wrote to the EA on 14 April 2009 and in its letter of reply dated 24 April 2009 the EA advised with regard to point (i): "*By removing the illegal building the main obstruction to out of channel flows has been removed. The remaining slab, if it is to remain, will have a minimal impact **provided** that its finished crest level is the same as the surrounding ground levels. This has still not been confirmed to this organisation. It is our opinion that the slab should be removed as part of the enforcement notice and returned to natural ground. In its current state runoff will occur much more quickly during short intense storms due to its impermeable composition*" and with regard to point (ii): "*I can confirm that we would use our flood defence powers to regulate works that fall under Permitted Development (PD) rights sited in the floodplain*

*of a Main River. As stated in our previous letter we cannot begin enforcement procedures on this illegal building. We would hope that TDBC would advise members of the public to contact us when reviewing PD applications sited in a Main River floodplain”.*

20. The Council sought further clarification from the EA as to how the finished crest level is determined and in an emailed response on 15 May 2009 the EA replied that *“The finished crest level is normally referred to highest level of a flood defence wall or earth embankment. In this case what is the highest level of the concrete slab? To achieve this they need to survey the yard area to gain a level to metres above ordnance datum. This spot level information can then be compared to our flood level data and historic ground level data.”*
21. The Owners claim that historically the ground level was at a much higher level than the concrete slab. However, Mr and Mrs Foster dispute this claim saying the hedge and bank were only recently built up by the Owners meaning the concrete slab is above ground level. The EA were asked to provide the historic ground level data mentioned in its email of 15 May 2009 so the data could be compared with the finished crest level and the Owners claim. The EA wrote back on 8 June 2009 saying *“Unfortunately we do not have historical ground information for this site prior to 2006. Please accept our apologies on this error”.*
22. In June 2009 an independent drainage engineers report was carried out by Mr Andrew Wilcox on behalf of TDBC to ascertain the impact of the Remaining Concrete on the flooding of the area. Both Mr Broom, acting for the Owners and Mr Foster met with Mr Wilcox at the Site on separate occasions during the course of him preparing his Report. In the Conclusion to his Report, Mr Andrew Wilcox considers the Remaining Concrete does not materially affect the levels of flooding.
23. In August 2009 Advice was sought from a senior barrister specialising in drainage and environmental issues in respect of the following:-
  1. Is the Remaining Concrete permitted to remain at the Site under the remit of long/established use and/or under Permitted Development rights? If so please confirm it is practical to put the matter before the Committee with a recommendation to withdraw the court proceedings in the Magistrates’ Court for Non-Compliance with the Enforcement Notice.
  2. Regardless of whether or not the Remaining Concrete could be permitted to remain under the remit of long/established use and/or under Permitted Development rights, are there any legal courses of action (e.g., Injunction, Direct Action) available to the Council to ensure the removal of the Remaining Concrete due its impact on flooding and if so, what are the Council’s chances of success of legal action?

3. Which is the most appropriate body to take responsibility for taking legal action to enforce the removal of the Remaining Concrete, the Council or the Environment Agency?
24. The barrister advised that the concrete slab is 'permitted development' under Schedule 2, Part 6, Class A(b) of the General Permitted Development Order, saying it is an engineering operation within the permitted size limits of A1(d).
25. With regard to the 3 points put to the barrister set out at para 23 above, a summary of the barrister's Advice is set out in italics below:-

1. *Withdrawal of proceedings*

- a. *My view is that the Council can only enforce to the extent of the enforcement notice. This means that the part of the concrete slab that formed part of the yard cannot be enforced against.*
- b. *In my view it would be disproportionate to enforce against the part of the concrete slab that formed the floor of the steel building, particularly as the whole has only a very minor effect on flooding.*
- c. *I would recommend that the court proceedings in the Magistrates' Court be withdrawn.*

2. *Other legal options*

- a. *In my view a judge is unlikely to grant an injunction. In Hart DC v Benford [2006] EWHC 240 (QB) the court found that the Defendant was in breach of the GPDO but declined to issue an injunction because it would not be just or proportionate to do so. I consider that if the Council applied for an injunction here the result would be the same as in Hart DC.*
- b. *The Council could use its powers under section 178 to enter onto the farm and remove that part of the concrete slab that formed the floor of the steel building. In my view such an exercise of power would be disproportionate to the breach.*

3. *Action to enforce removal of the remaining concrete*

- a. *If the stream did not become a main river until after the concrete was laid the Environment Agency has no power under its byelaws to remove it. Byelaw 28 is concerned with new works. There is no ability to control works already done before the byelaws entered into force.*

- b. *Section 109 of the Water Resources Act 1991 is only concerned with works in, on or over a main river – which the concrete slab is not – and would only apply once the stream had become a ‘main river.’*
- c. *While the Council may have had powers to prevent obstructions to the flow of the stream under the Land Drainage Act 1991 prior to it becoming a main river, in my view none of those powers could have been used to prevent it being laid or to require its removal thereafter.*
- d. *Section 259 of the Public Health Act 1936 would not apply here as it concerns obstructions to artificial watercourses.*
- e. *DEFRA is considering adding a new form of ‘statutory nuisance’ to tackle the risk of run-off flooding – Consultation on the Draft Flood and Water Management Bill (April 2009), para. 488. This would be the responsibility of the Council. However, if the effect of the concrete slab is ‘very minor’ it is unlikely that it would be enough to constitute an actionable nuisance here.*

Conclusion (of Barrister’s Advice)

- 1. *In my view proceedings in the Magistrates’ Court would be considered disproportionate and should be withdrawn.*
- 2. *If Mr Foster is concerned about the flood risk to his home he has a private right of action in nuisance against Mr and Mrs Parris under the doctrine of Leakey v The National Trust [1980] QB 485.*

**RECOMMENDATION**

It is therefore RECOMMENDED that the Solicitor to the Council:-

- (i) be authorised to apply to the Magistrates to withdraw the current legal proceedings against the owners because it is not in the public interest to continue with the prosecution and
- (ii) in light of Counsel’s Advice no further action be taken to secure removal of the concrete base either by way of injunction or direct action.

CONTACT OFFICER Maria Casey 01823 356413 or  
m.casey@tauntondeane.gov.uk

## Planning Committee – 28 October 2009

### Report of the Development Manager

#### Enforcement Item

#### Parish:

1. **File/Complaint Number** E0181/24/09
2. **Location of Site** Orchard adjacent to Bowldish Farm, North Curry
3. **Names of Owners** Mr John Horacek, Oaktrees, Heathfield Road, Freshwater, Isle of Wight. PO40 9SH
4. **Name of Occupiers** As above
5. **Nature of Contravention**  
Stationing of two touring caravans for residential occupation in excess of 28 days.
6. **Planning History**

In May of this year reports were received that works were being carried out on the above site. The site was being cleared of old apple trees and the area generally cleared of undergrowth. A site visit was made and the owner confirmed that he had just purchased the site and was proposing to replant the apple trees, tidy the site and intended to keep a few bees. The caravans had always been on site but were obscured from view due to the density of the brambles etc. Mr Horacek said he lived on the Isle of Wight and would periodically stay on the site for routine maintenance etc. He has a motor home but would prefer to leave a caravan on site for occupation when visiting the site. A detailed letter was sent to Mr Horacek setting out the options open to him with regard to accommodation on the site. His options are limited due to the 28 day rule under Part 4 Class B1b of the Town and Country Planning Act 1990. Recently one of the smaller touring caravans has been removed but replaced with a larger touring caravan together with a gazebo structure. There have been reports that the caravan is occupied from time to time. A site visit was made on 5<sup>th</sup> October 2009 but no persons were seen on site. No further apple trees have been planted and no evidence of a bee keeping operation has been seen. Mr Horacek has now submitted a planning application for a large log cabin type dwelling together with a timber constructed apple store.

#### 7. **Reasons for Taking Enforcement Action**

The site lies within a zone 3 flood area where residential development would not be appropriate. No justification has been submitted to support the need for a dwelling on agricultural/horticultural need therefore the use of the caravan is contrary to policies S1 (General Requirements) and S7 (Outside Settlement) of the Taunton Deane Local Plan and policies STR1 and STR6 of the Somerset and Exmoor National Park Joint Structure Plan Review.

**8. Recommendation**

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

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

**CONTACT OFFICER: Mr John Hardy – 01823 356466**

**APPEALS RECEIVED : FOR COMMITTEE AGENDA : 28 OCTOBER 2009**

<b>Appeal Proposal</b>	<b>Start Date</b>	<b>Application Number</b>
Erection of Motor Cycle Storage Unit on Concrete Hardstanding at 142 Eastwick Road, Taunton	29 SEPTEMBER 2009	38/09/0155

**APPEAL DECISION FOR COMMITTEE AGENDA – 28 OCTOBER 2009**

<b>APPEAL</b>	<b>PROPOSAL</b>	<b>REASON(S) FOR INITIAL DECISION</b>	<b>APPLICATION NUMBER</b>	<b>DECISION</b>
APP/D3315/H/09/2104958	Display of one internally illuminated free standing single sided display unit at the Post Office, Norton Fitzwarren	The proposed advertisement represents an incongruous feature in the street scene, to the detriment of its character. Furthermore, in addition to those already displayed on the premises, it creates a cluttered appearance to the detriment of the street scene and visual amenity. Accordingly, the proposal is contrary to Taunton Deane Local Plan policy EC26 (Outdoor Advertisements and Signs).	25/09/0003A	The inspector considered the proposed advertisement was not detrimental to the interests of visual amenity, is an appropriate scale in relation to its surroundings and does not result in excessive advertising in this location is not against the interests of public safety. The appeal was therefore ALLOWED.

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

## **Planning Committee – 28 October 2009**

Present:- Councillor Mrs Hill (Chairman)  
Councillor Mrs Allgrove (Vice-Chairman)  
Councillors Bishop, Mrs Copley, Denington, C Hill, Horsley, House,  
Miss James, Mrs Stock-Williams, Stuart-Thorn, Watson and  
D Wedderkopp

Officers:- Mr G Clifford (Area Planning Manager, South), Mr B Kitching (Area  
Planning Manager), Mrs J Jackson (Legal Services Manager) and  
Ms M Casey (Planning and Litigation Solicitor)

Also present: Councillor Coles and Mr P Malim (Independent Member, Standards  
Committee)

(The meeting commenced at 5.00 pm)

### **109. Apologies/Substitutions**

Apologies: Councillors Bowrah, Brooks, Mrs Floyd and McMahon.

Substitutions: Councillor Stuart-Thorn for Councillor Bowrah  
Councillor Horsley for Councillor Brooks  
Councillor Mrs Stock-Williams for Councillor Mrs Floyd.

### **110. Minutes**

The minutes of the meeting held on 23 September 2009 were taken as read  
and were signed.

### **111. Members' Code of Good Practice**

Reference Minute No. 102/2009, Mr Peter Malim reported that the Standards  
Committee had met on 20 October 2009 and had approved the revised  
Planning Committee Members' Code of Good Practice.

### **112. Apology by Councillor Bowrah**

The Chairman read out an apology she had received from Councillor Bob  
Bowrah to the Members of the Planning Committee.

Councillor Bowrah had recently been found by the Standards Committee  
to have breached the Code of Conduct over comments he had made in  
connection with a planning application, which had been reported in the local  
press.

**Resolved** that the apology be noted.

### **113. Declarations of Interest**

Councillor D Wedderkopp declared a personal interest as a Member of Somerset County Council. The Chairman (Councillor Mrs Hill) declared a personal interest as an employee of Somerset County Council. Councillor Miss James declared a personal interest as an employee of Viridor. Councillor Coles declared a personal interest as a Director of Southwest One. Councillor Stuart-Thorn declared a prejudicial interest as the Council's representative on the Board of the Taunton and Somerset NHS Trust and he left the meeting during the discussion of application No. 38/09/0195.

#### **114. Applications for Planning Permission**

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

That **planning permission be granted** for the under-mentioned developments:-

##### **38/09/0195**

**Construction of helicopter take off and landing apron (helipad), together with associated traffic control barriers, warning lights and modification to car park area and landscaping at Musgrove Park Hospital, Taunton**

##### **Conditions**

- (a) The development hereby permitted shall be begun within three years of the date of this permission;
- (b) (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;
- (c) Before any part of the development hereby permitted is commenced, a scheme of hard landscaping showing the layout of areas with stones, paving, walls, cobbles or other materials shall be submitted to and approved in writing by the Local Planning Authority. Such scheme shall be completely implemented before the development hereby permitted is occupied;
- (d) No lighting units other than those specified on the submitted drawing 578/02C shall be erected on site unless otherwise submitted to, and approved in writing by, the Local Planning Authority. Development shall

be carried out in accordance with the approved details and thereafter maintained as such;

- (e) The site shall normally be used by licensed air ambulance operators only;
- (f) The helipad and windsock lights shall only be illuminated when the helipad is in use and preparation for use.

(Notes to applicant:- (1) Applicant was advised that a clear management plan for the use of the helipad should be provided to safeguard the public; (2) Applicant was advised of the following requirements : **Wildlife and the law.** The protection afforded to wildlife under UK and EU legislation is irrespective of the planning system and any activity undertaken on the tree(s) must comply with the appropriate wildlife legislation; **Breeding birds.** Nesting birds are protected under the Wildlife and Countryside Act 1981 (as amended) and if discovered must not be disturbed. If works are to be carried out during the breeding season (from February to August, possibly later) then the tree(s) should be checked for nesting birds before work begins; **Bats.** The applicant and contractors must be aware that all bats are fully protected by law under the Wildlife and Countryside Act 1981 (as amended) and the Conservation (Natural Habitats) Regulations 1994 (as amended 2007), also known as the Habitat Regulations. It is an offence to intentionally or recklessly damage, destroy or obstruct access to structures or places of shelter or protection used by bats, or to disturb bats whilst they are using these places. Trees with features such as rot holes, split branches or gaps behind loose bark, may be used as roost sites for bats. Should a bat or bats be encountered while work is being carried out on the tree(s), work must cease immediately and advice must be obtained from the Government's advisers on wildlife, Natural England (Tel. 01823 285500). Bats should preferably not be handled (and not unless with gloves) but should be left in situ, gently covered, until advice is obtained.)

#### **Reason for granting planning permission:-**

The proposal was considered not to have a significant adverse detrimental impact upon visual or residential amenity and was therefore considered acceptable and, accordingly, did not conflict with Taunton Deane Local Plan Policies S1 (General Requirements), S2 (Design) and EN6 (Protection of Trees).

**42/09/0034**

**Erection of new dwelling within the curtilage of 2 Church Road, Trull**

#### **Conditions**

- (a) The development hereby permitted shall be begun within three years of the date of this permission;
- (b) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to, and approved in writing by, the Local Planning Authority. Development shall be carried out and thereafter retained as such, in accordance with the approved details as above, unless otherwise agreed in writing by the Local Planning Authority;
- (c) All rooflights hereby approved shall be flush fitting Conservation Style with a central glazing bar and fitted with obscure glazing in accordance with

details to be submitted to, and approved in writing by, the Local Planning Authority;

- (d) All windows/doors including obscure glazing hereby approved shall be of the design shown on the approved plans, unless otherwise agreed in writing with the Local Planning Authority;
- (e) The existing hedge on the roadside (north) boundary shall be retained and maintained at a height no less than 1.8m above ground level, with the exception of the small element to be removed to widen the access, unless otherwise agreed in writing with the Local Planning Authority. Before any part of the development hereby permitted is commenced, this hedge shall be protected by a chestnut paling fence 1.5m high, placed at a minimum distance of 2m from the edge of the hedge, unless otherwise agreed in writing. The fencing shall be removed only when the development has been completed. During the period of construction of the development the existing soils levels around the base of the hedge shall not be altered;
- (f) Before any part of the development hereby permitted is commenced, the access to be used in connection with the proposed dwelling shall be widened so as to have a minimum width of 5m over the first 10m of its length;
- (g) Before the dwelling is first occupied, the revised access/parking/turning shall be properly consolidated and surfaced (not loose stone or gravel). It shall be made of porous material, or alternatively provision shall be made to direct run-off water from the hard surface to a permeable or porous area or surface with the curtilage of the dwelling;
- (h) The area allocated on the approved plan as parking and turning for the existing and proposed dwelling shall be kept clear of obstruction and shall not be used other than for the parking and turning of vehicles in connection with the existing dwelling, no. 2 Church Road and the dwelling hereby permitted;
- (i) Before any part of the development hereby permitted is commenced, there shall be no obstruction to visibility greater than 900mm above the adjoining road level forward of a line drawn 2m back from the carriageway edge on the centreline of the access and extending to a point on the nearside carriageway edge 33m to the east and 50m to the west of the access. Such visibility shall thereafter be maintained at all times;
- (j) Provision shall be made within the site for the disposal of surface water so as to prevent its discharge onto the highway, details of which shall have been submitted to, and approved in writing by, the Local Planning Authority;
- (k) Before any works are commenced, details of all guttering, downpipes and disposal of rainwater shall be submitted to, and approved in writing by, the Local Planning Authority;
- (l) All services shall be placed underground;
- (m) 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 extensions, other alterations (including balconies, windows, chimneys, flues, antennae) or curtilage structures (of the types described in Schedule 2 Part 1 Class A-E and G-H of the 1995 Order), other than that expressly authorised by this permission shall be carried out without the further grant of planning permission.

(Notes to applicant:- (1) Applicant was advised that it will be necessary, if required, for the developer to agree points of connection with Wessex Water, for water supply and the satisfactory disposal of foul flows; (2) Applicant was advised that to 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, the applicant 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; (3) Having regard to the powers of the Highway Authority under the Highways Act 1980, applicant is advised that a Section 184 Permit must be obtained from the Highway Service Manager, Taunton Area Office. Application for such a Permit should be made at least three weeks before access works are intended to commence; (4) Applicant was advised that where works are to be undertaken on or adjoining the publicly maintainable highway, a licence under Section 171 of the Highways Act 1980 must be obtained from the Highway Authority. Application forms can be obtained by writing to the Transport Development Group, Environment Department, County Hall, Taunton TA1 4DY. Applications should be submitted at least four weeks before works are proposed to commence in order for statutory undertakers to be consulted concerning their services; (5) Applicant was advised that soakaways should be constructed in accordance with British Research Digest 365 (September 1991).)

**Reason for granting planning permission:-**

The proposed dwelling had been designed to be in keeping with surrounding properties and to avoid harm to the residential amenities of nearby dwellings. It was considered to preserve the character and appearance of the Conservation Area, not to detract from the street scene and to be in keeping with the surrounding pattern of development. Sufficient car parking was available and adequate visibility splays could be provided, by virtue of the restrictive covenant on the adjacent land, to overcome previous highway safety concerns. As such, the proposal was in accordance with Policy 49 (Transport Requirements of New Development) of the Somerset and Exmoor National Park Joint Structure Plan Review and Policies S1 (General Requirements), S2 (Design) and EN14 (Conservation Areas) of the Taunton Deane Local Plan.

**115. Non-compliance with the requirements of an Enforcement Notice – Sherford Bridge Farm, Sherford Road, Taunton**

Reference Minute No. 40/2009, reported that the Environment Agency had been contacted as to the additional risk of flooding which could be directly attributable to the remaining concrete area at Sherford Farm, Sherford Road, Taunton.

In its response, the Environment Agency had stated that the remaining slab would have a minimal impact provided its finished crest level was the same as the surrounding ground levels. The owners of the land had claimed that historically the ground level was at a much higher level than the concrete slab; a claim disputed by the owners of Sherford Bridge House.

An independent drainage engineer had subsequently been commissioned by the Council to ascertain the impact of the concrete slab on the flooding of the area. The engineer had concluded that the concrete did not materially affect the levels of flooding.

The Council had also sought advice from a senior barrister who specialised in drainage and environmental issues. He was specifically asked the following:-

- Was the remaining concrete permitted to remain at the site under the remit of long/established use and/or under permitted development rights? If so, would it be practical to put the matter before the Committee with a recommendation to withdraw the court proceedings in the Magistrates' Court for non-compliance with the enforcement notice?
- Regardless of whether or not the remaining concrete could be permitted to remain under the remit of long/established use and/or under permitted development rights, were there any legal courses of action (for example injunction or direct action) available to the Council to ensure the removal of the remaining concrete due its impact on flooding and if so, what were the Council's chances of success of legal action?
- Which was the most appropriate body to take responsibility for taking legal action to enforce the removal of the remaining concrete?

In his response the barrister advised that the concrete slab was "permitted development" as it was an engineering operation within the permitted size limits of A1(d).

The barrister's detailed responses to the above questions was detailed in the report. However, his conclusions were that:-

- (1) The proceedings in the Magistrates' Court could be considered disproportionate and should therefore be withdrawn; and
- (2) If the owner of Sherford Bridge House was concerned about the flood risk to his home, he had a private right of action in nuisance against the owners of Sherford Farm under the doctrine of *Leakey v The National Trust* [1980] QB 485.

In the circumstances, Members felt that there was nothing further the Council could do in relation to the concrete slab.

**Resolved** that:-

- (i) the Solicitor to the Council be authorised to apply to the Magistrates to withdraw the current legal proceedings against the owners because it was not in the public interest to continue with the prosecution; and

- (ii) in light of Counsel's Advice no further action be taken to secure removal of the concrete base either by way of injunction or direct action.

**116. Stationing of two touring caravans for residential occupation on the orchard adjacent to Bowdish Farm, North Curry**

Reported that it had come to the Council's attention that an orchard adjacent to Bowdish Farm, North Curry was being used without planning permission to station touring caravans used for residential occupation.

In recent weeks, one of two touring caravans which had previously been on the land had been replaced with a larger touring caravan together with a gazebo structure.

Although the owner of the land had now submitted a planning application for a large, log cabin type dwelling, no permission existed in respect of the touring caravans.

**Resolved** that:-

- (i) Enforcement action be taken to remove the unauthorised touring caravans being used for residential purposes on an orchard adjacent to Bowdish Farm, North Curry; and
- (ii) Subject to being satisfied with the evidence, the Solicitor to the Council institute legal proceedings should the enforcement notice not be complied with.

**117. Appeals**

Reported that one appeal decision had recently been received, details of which were submitted. The appeal had been allowed.

Also reported that one new appeal had been lodged, details of which were also submitted.

**Resolved** that the report be noted.

(The meeting ended at 7.15 p.m.)

