

## Planning Committee - 18 February 2004

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

Officers: Mr T Burton (Area Planning Officer (East)), Mr J Hamer (Area Planning  
Officer (West)), Mrs J M Jackson (Senior Solicitor) and Mr R Bryant (Review  
Support Manager)

(The meeting commenced at 5.00 pm).

(Councillor Miss Cavill arrived at the meeting at 5.06 pm).

### 16. Apologies

The Mayor (Councillor Govier) and Councillors Bowrah and Wedderkopp.

### 17. Minutes

The minutes of the meeting held on 28 January 2004 were taken as read and were signed.

### 18. Applications for Planning Permission

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

- (1) That the **detailed plans be approved** in respect of the undermentioned development, subject to the standard conditions adopted by Minute No 86/1987 of the former Planning and Development Committee and such further conditions as stated:-

#### **38/2004/003**

Erection of two storey building to accommodate Oncology Centre with associated access and car parking at Musgrove Park Hospital, Taunton.

#### Conditions

- (a) Noise emissions including those with tonal characteristics such as hum, drone or whine, arising from any plant, generators or air conditioning units or from any premises to which this permission relates shall not exceed background levels at any time when measured at any point 1.5m from any residential or other noise sensitive boundary. For the purposes of this permission, "background levels" shall be those levels of noise which occur in the absence of noise from the development to

which this permission relates, expressed in terms of an A-Weighted 90<sup>th</sup> percentile level, measured at an appropriate time of day and for a suitable period of not less than ten minutes;

- (b) C201 - landscaping;
- (c) C918 - floodlighting;
- (d) C926B - remediation investigation/certificate;
- (e) C101 - materials;
- (f) Details of the means of obscuring glazing in the north and west elevations shall be submitted to, and approved in writing by, the Local Planning Authority. The glazing shall be installed in accordance with the approved scheme and shall not be altered thereafter without the prior written consent of the Local Planning Authority;
- (g) Prior to the development hereby approved commencing, details of the proposed additional car parking referred to in the outline consent shall be submitted to, and approved in writing by, the Local Planning Authority. The building hereby approved shall not be occupied until the car parking becomes available for use.

(Notes to applicant:- (1) N021 - conditions; (2) N024 - development in accordance with approved plans; (3) N118A - disabled access; (4) N051B - health and safety; (5) Applicant was advised that means of escape in case of fire should comply with Approved Document B1 of the Building Regulations 2000. Detailed recommendations concerning other fire safety matters will be made at the Building Regulations stage; (6) Applicant was advised that access for fire appliances should comply with Approved Document B5 of the Building Regulations 2000; (7) Applicant was advised that all new water mains installed within the development should be of sufficient size to permit the installation of fire hydrants conforming to British Standards).

Reason for approving detailed plans:-

The proposed building was of good quality design and would not detract from the character of the locality. The relationship with nearby dwellings was acceptable and would not cause harm to residential amenity. The proposal therefore complied with Taunton Deane Local Plan Revised Deposit Policy S2.

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

**18/2003/020**

Erection of 12 cattery pens in a single block to be used as a boarding cattery, single pen to be used as an isolation unit and improvement of vehicular access onto highway at 1 Buddle Oak, Halse.

Conditions

- (a) C001 - time limit;
- (b) C102 - materials;

- (c) Full details of the improved access including visibility splays and levels shall be submitted to, and approved in writing by, the Local Planning Authority prior to commencement of any work on site, and the improved details shall be implemented prior to commencement of any use of the site for the boarding of cats, and thereafter shall be maintained;
- (d) C324 - parking;
- (e) There shall be no more than 12 cats housed in the development hereby approved;
- (f) C706 - restricted use - no retail sales;
- (g) Noise emissions from any part of the premises or land to which this permission refers shall not exceed background levels by more than three decibels expressed in terms of an A-Weighted five minute Leq at any time when measured at any point 1.5m from the façade of any residential or other noise sensitive boundary. Noise emissions having tonal characteristics such as hum, drone or whine shall not exceed background levels at any time when measured as above. For the purposes of this permission, "background levels" shall be those levels of noise which occur in the absence of noise from the development to which this permission relates, expressed in terms of an A-Weighted, 90<sup>th</sup> percentile level, measured at an appropriate time of day and for a suitable period of not less than ten minutes;
- (h) Odours arising from the cattery pens or from any part of the land or from any premises to which this permission relates shall not be detectable at the façade of any residential or other odour sensitive premises;
- (i) The proposed development shall be served by a new access sited on the middle of the site frontage with the highway;
- (j) There shall be no obstruction to visibility greater than 900mm above the adjoining road level forward of lines drawn 2m back from the carriageway edge of the centre line of the access, and extending to the extremities of the site frontage. Such visibility splays shall be fully provided before the access hereby permitted is first brought into use and thereafter shall be maintained at all times;
- (k) Full details of the unloading proposals shall be forwarded to the Local Planning Authority prior to commencement of the use and the approved details shall thereafter be implemented.  
(Notes to applicant:- (1) Applicant was advised to notify customers that a collection/delivery service for the cats is operated and that there is an appointment system in operation; (2) Applicant was advised to notify customers that if they make their own way to the premises, they should arrived via Halse; (3) Applicant was advised to ensure that the existing septic tank/cesspit is in a good state of repair, regularly emptied and of sufficient capacity to deal with any potential increase in load which may occur as a result of this proposal. If it is found that a new system is necessary, its discharge will require the consent of the Environment Agency).

Reason for granting planning permission:-

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

**24/2003/040**

Conversion of bungalow to form two bungalows at The Meadows, 1 White Street, North Curry.

Conditions

- (a) C001 - time limit;
- (b) C104 - materials to match existing;
- (c) Notwithstanding the garages shown on the submitted plans, plans showing a parking area providing for four vehicles shall be submitted to, and approved in writing by, the Local Planning Authority before the development is commenced. This area shall be properly consolidated, surfaced and drained before the use commences or the building(s) are occupied and shall not be used other than for the parking of vehicles in connection with the development hereby permitted;
- (d) C327 - turning space;

Reason for granting planning permission:-

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

**42/2004/001**

Retention of flue to car spray oven to rear of Trull Garage, Honiton Road, Trull

Conditions

- (a) Odours arising from the car spray oven shall not be detectable at the boundary of the premises to which this permission relates. (This potential problem could be overcome by the fitting of a suitably filtered air extraction system and/or the use of low solvent based paint);
- (b) Noise from any air extraction system shall not exceed background noise levels by more than three decibels for a two minute Leq at any time when measured at the façade of any residential or other noise sensitive premises during the following times:- Monday to

Friday 0800-1800 hours; Saturdays 0800-1300 hours. At all other times, including public holidays, noise from any air extraction system shall not be audible.

(Note to applicant:- Applicant was reminded that a permit under the Pollution Prevention Control Regulations 2000 will be required if the usage of solvents (for example paint solvents) is likely to exceed one tonne per year).

Reason for granting planning permission:-

The flue was considered visually acceptable taking into account its location within a commercial premises. Conditions proposed would alleviate existing problems relating to noise and odour. The proposal therefore accorded with Taunton Deane Local Plan Revised Deposit Policies S1(D) and (E).

(The Chairman (Councillor Mrs Allgrove) declared a personal interest in the following application).

**46/2003/046**

Erection of single storey extension to link garage to house, The Old Piggery, Gerbestone Manor, Wellington.

Conditions

(a) C001 - time limit;

(b) C102 - materials.

(Notes to applicant:- (1) N024 - development in accordance with approved plans; (2) N040A - drainage/water).

Reason for granting planning permission:-

The proposal was considered acceptable having regard to visual and residential amenity and in accordance with Taunton Deane Local Plan Revised Deposit Policy H19.

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

**38/2003/627**

Change of use and conversion of building to form nine flats and one maisonette, Hunts Court, Corporation Street, Taunton.

Reason

The proposal, by reason of the introduction of numerous partitions, will seriously compromise the original layout of the building (designed as an Arts College) and hence be detrimental to the character of this Grade II listed building, contrary to Policy 9 of the Somerset and Exmoor National Park Joint Structure Plan Review and Policies EN17 and EN18 of the Taunton Deane Local Plan Revised Deposit and guidance on such matters in Planning Policy Guidance Note No 15.

### **38/2003/628LB**

Alterations to form nine flats and one maisonette at Hunts Court, Corporation Street, Taunton.

#### Reason

The proposal, by reason of the introduction of numerous partitions, will seriously compromise the original layout of the building (designed as an Arts College) and hence be detrimental to the character of this Grade II listed building, contrary to Policy 9 of the Somerset and Exmoor National Park Joint Structure Plan Review and Policies EN17 and EN18 of the Taunton Deane Local Plan Revised Deposit and guidance on such matters in Planning Policy Guidance Note No 15.

(The Chairman (Councillor Mrs Allgrove) declared a personal interest in the item covered by Minute No 19 below).

#### 19. Enforcement action in respect of Foxmoor Nurseries, Haywards Lane, Wellington

Reference Minute No 6/2004, considered report previously circulated, concerning the apparent use of Foxmoor Nurseries, off Haywards Lane, Wellington, in breach of the planning permission and the Section 106 Agreement applicable to the site.

Planning permission was granted in 1996 for the relocation of Foxmoor Nurseries from a site at Rockwell Green to its present site at Haywards Lane, to the east of Wellington.

The permission for two large greenhouses was subject to a Section 106 Agreement which required various highway works, including a right hand turning lane off the Wellington Relief Road.

Whilst the first glasshouse was under construction in 2000, an application was received to change the use of 50% of this glasshouse to B1 use (light industrial) for the design, production, assembly and distribution of small garden products.

Despite this application being refused, a further application was made a few months later for the same use but specifically for the production of "flower towers" by Foxmoor Nurseries themselves. Permission for this use was granted subject to a further Section 106 Agreement which sought to limit the B1 use to such uses carried out by Foxmoor Nurseries itself or associated companies.

Following the granting of this permission, a request was made in 2001 for the earlier Section 106 Agreement to be varied to remove the obligation to provide the right hand turning lane. On the basis of evidence stating that the second glasshouse was unlikely to be built and that traffic generation to the site was lower than had been predicted, the request, supported by the County Highway Authority, was approved.

Since that time regular complaints had been received that the "flower tower" permission and associated Section 106 Agreement were being breached. The complaints had mainly arisen due to the amount and nature of traffic now using Haywards Lane. As a result, meetings were held with the owners of the glasshouse

where it was made clear that only B1 uses carried out by Foxmoor Nurseries or an associated company were authorised.

Following further complaints, the Council's Enforcement Officer visited the site and found that over 4,000 sq m of the glasshouse was being used by a variety of companies for B8 uses (storage and distribution) instead of the 235 sq m allowed by virtue of permitted development rights.

Further discussions with Foxmoor Nurseries had taken place where it was claimed the occupants of the glasshouse were "associated" companies within the terms of the Section 106 Agreement.

Details of the arrangements put in place by the owners of the Nurseries were received and Taunton Deane had taken Counsel's opinion on this information. The advice received was that the arrangements in place were not sufficient to meet the definition of an associated company in accordance with the Section 106 Agreement.

Due to doubts surrounding the meaning of the term "associated company", the owners of the Nurseries and the Council had agreed to submit documentation to ascertain the intentions of the parties prior to the Agreement being signed.

The Council had already supplied evidence to the owner's solicitor indicating that the proposed B1 use was to be the production of "flower towers" by Foxmoor Nurseries, or one of its associated companies, or similar garden products. At the last meeting of the Committee, it was reported that documentation from the owners of the Nurseries was still awaited.

Most, if not all, of the B1 and B8 activities at the glasshouse appeared to be in contravention of either the Section 106 Agreement or the planning permission relating to the site. As such, it was considered expedient to take enforcement action even though such action would need to be reasonable and measured and took account of the fact that businesses located at Foxmoor Nurseries would need time to relocate.

On this latter issue, the Council's Economic Developments Manager had indicated that the glasshouse was at present providing flexible and low cost workspace, the demand for which would increase as the Taunton Trading Estate at Norton Fitzwarren was redeveloped. Whilst there might be a supply of good quality workspace in the medium term, it was believed this was not the case for low cost space, and the types of businesses using Foxmoor Nurseries were likely to be lost to neighbouring authorities as a result.

Noted that, in his recent report, the Taunton Deane Local Plan Inspector had not identified any shortfall in the allocation of B1 or B8 land. The Chief Planning Officer had also indicated that even if a further application to use the glasshouse for a general B1 or B8 use was submitted, there were other factors which made the site unsuitable for these uses.

When the matter was considered by the Committee on 28 January 2004, members agreed to defer the matter to allow:-

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

Reported that the submissions on behalf of Foxmoor Nurseries had now been received. Although many of the submissions were not accepted, in particular to the interpretation of what constituted a B8 use, some new relevant information had been included.

There had been recent changes of directors and dealings in Foxmoor Nurseries' shares, a number of tenants not previously known to the Council had been identified and the further activity on site of "pallet checking" had been referred to. It was therefore possible that the existing Counsel's advice could alter in the light of these new arrangements.

The solicitors acting for the Nurseries were keen for no enforcement action to be taken without recourse first to mediation. This was considered to be an appropriate way forward in respect of the interpretation of the term "association" in the Section 106 Agreement.

Reported that a further site visit had taken place on 10 February 2004. A thorough inspection was carried out but it became clear during the visit that the Council and the owners of Foxmoor Nurseries were not interpreting planning legislation in the same way. Whilst the Nurseries alleged that virtually all the activity on the site was B1, it was the view of Taunton Deane that many of the uses were in fact B8.

In terms of the report from the Vehicle and Operator Services Agency, noted that a Traffic Examiner had visited the site in August 2003 in connection with an application by one of the businesses at the Nurseries for a licence to operate 14 vehicles.

The Traffic Examiner had concluded that Haywards Lane appeared unsuitable for even the current volume and type of traffic and any increase would not be beneficial to the safety of pedestrians or vehicles using the lane.

Although it was not possible to give accurate details of the level of traffic accessing the site without a full survey, details of some of the known vehicles using the site were submitted.

Reported that the Bridge Engineer at Somerset County Council had indicated that the bridge along Haywards Lane had a carrying capacity of up to 40 tonnes and was in a satisfactory condition the last time it had been inspected. If the bridge was now in



regular use by a higher number of vehicles, further inspections were likely to be necessary.

Having obtained the further information requested by the Committee, there were two issues to be considered. Firstly, whether the various occupants at Foxmoor Nurseries were "associated companies" within the meaning of the Section 106 Agreement and, secondly, even if they were associated companies, were the uses being carried out B1 uses rather than B8.

It was felt that further guidance was needed as to the interpretation of the Section 106 Agreement in the light of the most recent changes to the shareholdings and changes of directors referred to in the Foxmoor Nurseries submissions. The owners of the Nurseries had indicated a willingness to enter into mediation on this specific point within a limited timescale.

RESOLVED that:-

- (1) The Solicitor to the Council be authorised to enter into mediation with Foxmoor Nurseries through an appropriate mediation service in respect of the interpretation of the Section 106 Agreement only, with such mediation to take place by 19 March 2004; and
- (2) A further report be made to the Committee at its meeting on 31 March 2004.

20. Outline application for the residential development of land at Sidbrook Farm, Monkton Heathfield (48/2003/064)

Reported that outline planning permission for this development had been granted by the Committee at its last meeting subject to a number of conditions.

One of the conditions related to the need to restrict Greenway in width, through the use of white lines painted on the highway, to provide the required visibility distances for the access leading to the site.

Although it had initially been proposed to achieve this narrowing by the formation of an island built out into Greenway, the Committee had considered representations from local people and had agreed that the restriction in width could be provided through markings on the road.

Immediately following the last meeting, the County Highway Authority had stated that this would not be acceptable because the junction had to be constructed to full specification to enable the new access road and junction to be adopted as public highway.

In the circumstances, it was recommended that the added condition relating to white lining be deleted.

RESOLVED that condition (p) of outline planning permission 48/2003/064 be deleted.

21. Retention of canopy and change of use of garage to provide ancillary storage space at Rebmit House, Ladylawn, Trull

Reported that at the meeting of the Committee on 18 June 2003, a planning application to retain a canopy and change the use of the garage to provide ancillary storage space at Rebmit House, Ladylawn, Trull, had been refused. In addition, enforcement action had been authorised to reinstate the previously approved garage.

Further reported that the condition imposed on the original planning permission for the property relating to parking on the site, required sufficient space to be provided to park two vehicles.

Even though the approved garage had not been provided, it was clear that space for two vehicles was still available on the driveway to the property, effectively complying with the condition. As there was no condition restricting the use of the garage for other domestic purposes, it was considered that no action could be taken.

As far as the canopy was concerned, this had been considered acceptable by the Committee at the meeting last June even though it was part of the refused application. Despite the canopy not being authorised, it was not considered expedient to take any further action.

During the discussion of this item, members were of the opinion that as the provision of a garage was part of the approved plans, it ought to be provided.

RESOLVED that the previous decision of the Committee to authorise enforcement action to provide the previously approved garage, be endorsed.

(Councillor Henley left the meeting at 7.05 pm).

(The meeting ended at 7.35 pm).