

Planning Committee - 11 May 2009

Report of the Head of Legal and Democratic Services

Application No 06/08/0057

Change of use for a mobile home to that of game and pheasant rearing at Mill Field Bishops Lydeard

Background

Members will recall that at the meeting of the Planning Committee on the 15 April the above application was considered. A copy of the Planning Officer's report is attached at Appendix 1.

The initial recommendation to approve the application conditionally was refused by six votes to four with two abstentions but a subsequent resolution to refuse permission was inconclusive with five votes in favour and five votes against, The Chairman cast her vote against the refusal and in favour of granting permission.

The effect of the vote was not immediately clear to the officers so the meeting was adjourned to seek legal clarification. Following that advice the Committee was advised that conditional approval had been granted.

This decision was subsequently queried as to its validity and the true effect of the voting and it was agreed that Counsel's Opinion would be sought.

Counsel's Advice

That advice has now been received and concludes as follows;

1. There is a valid resolution to grant planning permission
2. That that resolution was made legitimately after hearing further information, which clearly changed the mind of one voter
3. Although there was much discussion around conditions, the question of conditions was not put to the vote and a resolution passed

4. Further there is a duty to give reasons when planning permission is granted
5. The matters of the conditions and the reason for granting permission needs to be considered by the Planning Committee as soon as possible in order to “complete” the resolution.

The current permission

The situation is therefore that permission has been granted and that decision cannot be re-visited. However, to ensure that the permission is subject to conditions the Committee now need to consider the recommended conditions as set out in the Agenda at Appendix 1 since it was not clear from the resolution on the 15 April 2009 that the Committee intended the permission to be conditional.

The Committee further need to give a reason for granting the permission. A reason is given in the Planning Officer’s report but Members may have their own reasons for granting permission.

Recommendation.

Members are therefore recommended;

1. to consider the suggested conditions and vote to impose such of the recommended conditions as they consider as appropriate and any further conditions they wish to impose.
2. to give a reason for granting the permission which must be clear, precise and full and specify the relevant policies.

Tonya Meers
Head of Legal and Democratic Services

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CHANGE OF USE FOR MOBILE HOME FOR GAME BIRD REARING AND PHEASANT REARING AT MILL FIELD, BISHOPS LYDEARD AS AMENDED BY PLANS RECEIVED 3 SEPTEMBER 2008; AS FURTHER SUPPLEMENTED BY LETTER AND PLAN FROM AGENT RECEIVED 6 OCTOBER 2008; AND LETTER, ECOLOGICAL SURVEY AND MANAGEMENT PLAN RECEIVED 16 JANUARY 2009 AND AS FURTHER AMENDED BY PLAN RECEIVED 06 APRIL 2009

316639.129306

Full Planning Permission

BACKGROUND

Members last considered this application on 24 September 2008. At that meeting, concerns were raised over a number of issues and Members felt that they had insufficient evidence to reach a decision. These concerns revolved around three main issues: The control of pollution, the impact on neighbouring residential property and the general management of the site.

In terms of pollution, there were concerns regarding the control of effluent from the site in normal operation and during cleaning, the disposal of manure and used bedding, and the prevention of pollution to the adjoining watercourse. In terms of neighbouring impact, concerns revolved around the control of smell, noise and vermin. In respect of general management, concerns revolved around the disposal of dead birds, the movement of the rearing pens, the continual re-use of the same sites for the pens, the storage of gas bottles and the housing of the incubator.

The applicant has responded to these concerns by providing further information and the Environment Agency and the Council's Environmental Health Officers have been re-consulted in respect of the new information. Subsequently, neighbouring residents have identified the presence of otters in the stream, and the investigation and resolution of this matter is the main cause of the delay in returning this application to committee. Finally, the applicant has decided to move the access further to the south, closer to the neighbouring dwellings and the position of the existing access.

This report seeks to update members, explaining and assessing the new information received.

The previous report is attached to this agenda for reference.

NEW INFORMATION RECEIVED

Since the previous consideration of this application, a considerable amount of new information has been submitted and discussions have taken place. An initial response to members' concerns from the applicant's agent provided the following information:

Pollution related issues:

Confirmation that wood shavings were used in the brooder huts to absorb droppings, which were then swept out and moved to a dedicated composting heap near to the western site boundary. This compost was then spread in the spring. Within the shelter pens, droppings fell to the ground and were naturally absorbed. The applicant suggests that there would be no pollution from surface water run-off as the lack of hard surfacing on the site meant that there was no significant run-off.

Neighbouring impact related issues

The applicant's agent has suggested that noise generating activities on the site are minimal, relating to the collection of gas bottles once or twice a year and occasional repairs to the pens. It is suggested that the potential smell generation would be no worse than for other livestock and that there was no evidence of vermin on the site, with no stock having been lost to vermin. That said, feed is stored within vermin proof containers and poison bait has been laid below the wooden floors of the brooder huts as a precaution.

Management related issues

The agent has confirmed that the pens each comprise a 9x6 metre timber framed enclosure, covered with chicken wire, a shelter and a brooder hut. It is planned to disassemble the pens at the end of each rearing season and erect them in a different area of the field each year. Dead birds would be removed and stored on site in air tight, vermin proof containers and then removed for destruction at a licensed incinerator. Gas bottles out of use would be stored in a permanent enclosure near to the site entrance, and those in use would be placed on pre-cast paving slabs and strapped to the huts to prevent toppling. It is proposed to house the metal chest incubator in the refurbished barn, within the site.

Following receipt of the above information, the Environment Agency and Environmental Health were re-consulted. The Environmental Health Officer confirmed their previous position that an enterprise of this scale, in this location should not give rise to unacceptable impacts in terms of noise, odour or vermin. However, it is clear that the position of no objection is based upon the assumption that the site would be well managed. Given the claimed history of problems, it seems that the proposed use will only be acceptable if adherence to the management principles can be enforced.

Your officers, therefore, requested that a management plan was submitted for the enterprise. This submitted plan covers the following key aspects:

- The rearing pens to be set up in April, day old poults introduced in late April and reared for 7 weeks on site. A second batch is then introduced in June and the rearing process repeated.
- The rearing pens to be dismantled in August and stored on the site.
- Vehicle movements and service delivery to be restricted to hours between 08:00 and 17:00.
- Waste to be collected from pens and moved to an onsite composting facility. It would then be spread on the land or bagged for off site use.
- Pens would be inspected daily for dead animals. Any dead animals would be

collected and placed in sealed, vermin proof containers and then sent to a licensed incinerator.

- The dismantled pens and huts would be power washed and disinfected.
- Feed would be stored in vermin proof containers and vegetation around the pens would be regularly trimmed. Poison bait would be placed below the wooden floors of the brooder huts and traps placed where rats are discovered.
- A pest control record would be maintained.
- Gas bottles would be stored on a level base adjacent to the pens and once used would be transferred to the secure compound.

Following the identification of otters in the area, the applicant submitted a full ecological assessment for the site. This confirmed that the site was not used for otter 'holts' and as such there were no protected otter habitats. However, their use of the stream was confirmed. The report also revealed that there could be implications for dormice and reptiles stemming from works to the hedgerow when the new access is formed.

The proposed location of the new access is some 14 metres to the south of the original point, involving the removal of fewer trees and allowing the visibility splay to be accommodated entirely along the slip-road before its junction with the A358 Bishops Lydeard bypass.

SUMMARY ADDITIONAL CONSULTATION RESPONSES

Note: responses not included where there has been no change in response since the original report.

ENVIRONMENTAL HEALTH: No objection, subject to compliance with the submitted management plan.

ENVIRONMENT AGENCY: No objection. Recommends a condition that no more than two batches of pheasants are raised in one year. Also suggests informatives.

SOMERSET COUNTY COUNCIL TRANSPORT AND DEVELOPMENT GROUP: This amended layout is seeking to re-site the access approximately 14m to the south of the point that was previously agreed. It would appear that the required visibility splays can still be achieved (on land controlled by the Applicant and/or highway land/verge) and therefore I would not wish to raise an objection. Please note that all previous comments and recommended conditions equally apply.

BISHOPS LYDEARD AND COTHELSTONE PARISH COUNCIL: The altered access does not address the Council's previous concerns regarding the safety of the access. Previous comments still stand.

NATURE CONSERVATION AND RESERVES OFFICER: The proposed development should not directly impact upon otters, dormice or reptiles. However, conditions should be imposed to ensure the protection of their habitats during the operation of the site and construction of the new access.

FURTHER REPRESENTATIONS RECEIVED

9 Further representations have now been received raising the following issues:

- The 'edge of village' site is too cramped and too close to residential properties;
- The new access is no better in highway safety terms than the previous proposal;
- No account is taken of the actual speed of traffic and the road position of the vehicles;
- The road is too narrow;
- The road is fast and very busy;
- The new turning area cannot accommodate large HGVs;
- The turning area has moved closer to the neighbouring dwellings;
- The gas bottle store is now too close to neighbouring dwellings;
- No drainage details have been shown for the hardstanding and traps will be required for oil etc. spills;
- The drive/turning head would be inconvenient for unimpeded access for the electricity distributor (there is a transformer box at the edge of the site, accessed from within);
- Otters have been sited within the stream;
- Pollution from the site could contaminate water sources and damage their habitat;
- Works are already underway to the hedge/ditch and the applicant is not waiting as recommended in the ecological report;
- No submission has been made regarding the time limits suggested by the nature conservation officer;
- Waste storage facilities and an interceptor would be required, which would create additional smells, and require regular emptying leading to greater traffic movements;
- The financial test must be brought into question as false assumptions have been made about the profitability of the second batch: The second batch are not old enough to shoot in the open season, August is too hot leading to increased stress and loss of stock, there is increased risk of disease from using the same pens for two consecutive batches, an oversupply of first batch pheasants would make the second batch virtually unsaleable;
- The recent banning of an antibiotic (Emtryl) in pheasant food will force a reduction in stocking by a third;
- Grass and weeds grow in profusion, providing an easy cover for vermin;
- Intensive rearing can lead to mites which can cause health risks;
- Dead pheasants are not being collected;
- The complete hedge will require removal to create the access, leading to clear views of the site;
- The site is not well screened from the public domain as indicated in the previous committee report;
- There is insufficient screening for 7 months of the year;
- Sewage from the caravan needs to be addressed;
- The previous appeal, which dismissed the use, suggests that the use is unacceptable;
- There is still insufficient information to assess the application.

PLANNING POLICIES

PPS7 - Sustainable Development in Rural Areas,
 PPS9 - Biodiversity and Geological Conservation,
 EN25 - TDBCLP - The Water Environment,

EN26 - TDBCLP - Water Resources,
EN27 - TDBCLP - Water Source Protection Areas,
H13 - TDBCLP - Agricultural of Forestry Workers,
M1 - TDBCLP - Non-residential Developments,
S1 - TDBCLP - General Requirements,
S2 - TDBCLP - Design,
S7 - TDBCLP - Outside Settlement,
S&ENPP49 - S&ENP - Transport Requirements of New Development,

ASSESSMENT

POLLUTION/NOISE/SMELL ETC.

Having studied the submitted management plan, Environmental Health officers consider that their previous concerns have been fully addressed. They have no further comments or concerns to raise.

On receipt of the management plan, the Environment Agency was initially concerned that the intensity of rearing and composting operations proposed could give rise to pollution. However, further clarification has been provided indicating the precise location of the huts will be relocated from one year to the next. This reduces the amount of pollutants falling on the ground in any one place and the Environment Agency is now satisfied that the use does not present a significant pollution risk. The management plan is currently being amended to remove the composting operation (waste will be collected and transported off-site for disposal) and detailing the precise rotation arrangements. Subject to receipt of this, the pollution concerns will have been overcome.

In terms of general management, your officers are satisfied that there is a commitment from the applicant to remove the huts at the end of each rearing season. This is suggested in the management plan and could be strictly controlled by condition. In light of this removal, it is considered that the huts themselves do not have a sufficient degree of permanence to require planning permission in their own right and they are simply part and parcel of the proposed use of the site. The removal in the winter would also reduce the presence of the structures at the time of year when tree cover was sparser and when some residents have claimed there is insufficient screening available.

ACCESS

The amended plans for the access have significantly changed the application and have, therefore, been subject to a formal re-consultation process. The highway authority has confirmed that they have no objection to the proposal in terms of highway safety, which would be no different to the previous proposal.

In visual terms, it is considered that the new proposal is a better solution than that previously presented, requiring the loss of fewer trees from a poorer section of hedgerow. More significantly, the required northern visibility splay no longer wraps around the corner and onto the A358 Bishops Lydeard bypass. This means that the potentially extensive hedgerow destruction that concerned the neighbouring residents will no longer occur.

Relocating the access meant that the turning head and proposed gas bottle store also moved south towards the neighbouring residents. Following the consultation period, it has been agreed with the agent that the turning head and gas bottle storage would be relocated to the north of the access, thus accounting for these concerns.

OTTERS AND OTHER WILDLIFE

Further to the representations received, and following consultation with the Nature Conservation and Reserves Officer, it was apparent that otters may use the stream to the east of the site. As such, a full ecological survey was requested. This revealed that there were otters passing the site, but they were unlikely to be affected by the proposal. It also revealed that there was potential habitat for dormice, reptiles and amphibians that could be damaged as a result of the proposed access works. However, it would be possible to impose conditions to ensure that the impacts were mitigated and, as such, wildlife would not be adversely affected.

The Nature Conservation and Reserves Officer is satisfied with the results of the survey and the recommended mitigation, subject to a further survey of reptiles in the summer. The requirement to submit a strategy to protect otters, dormice and reptiles could be enforced by condition on any grant of permission.

FINANCIAL TEST

The previous report discussed the matter of the functional and financial tests relating to the residential use of the site at length. It was concluded that the proposed increase in stocking in 2009 (from 8000 pheasants to 16000 pheasants per year, in two batches) together with proposals for laying and hatching on the site meant that a functional need would be established and the enterprise would become viable. Members agreed that this aspect of the proposal was acceptable, with the outstanding concerns relating solely to the matters addressed above.

The representations received since the last committee meeting have cast some doubt on the accuracy of the forecast predictions. It has been suggested that the second batch of pheasants may not be so profitable as the first, fetching lower retail prices and being likely to have a higher mortality rate. This suggestion from the neighbours stems from discussions that they have had with other game farmers and shoot managers.

In verbal discussions with the applicant's agricultural consultants, who prepared the original appraisal, they have given the opinion that there is no evidence that back rearing should not be carried out and that the suggested drop in stocking densities would not be a universal response to the removal of an antibiotic drug. Each farmer may choose to respond to new challenges and constraints in different ways. In terms of the value of the second batch, the applicant's consultant suggested that the shooting season runs until January, and the supply of fresh birds into the second half of the season may well be attractive to some shoots. Again, the management practices of different shoots may mean that some accept a second batch of birds and some do not.

Your officers' opinion is that there is little (if any) substantial evidence to support a

claim in favour of the proposed second batch or against it. Crucially, it must be remembered that the application of the financial test only relates to the residential occupation of the caravan and not the management of the enterprise as a whole. When permission is granted for residential accommodation for a new and developing business, it is generally given on temporary basis (as applied for here) in order to allow the business to demonstrate that it is capable of developing to the levels it predicts. If, after the expiration of a temporary permission, it appeared that the business was incapable of achieving the predicted profit levels – be this a result of poor management, false market forecasts or unforeseen disease control problems – then that temporary permission should not be renewed. Such a judgement would be based upon the actual performance of the enterprise, rather than the predictions available at the present time.

In light of this, it is recommended that there is insufficient evidence to cast substantial doubt over the applicant's predicted profit. As such, your officers maintain the view that the financial test is passed.

OTHER MATTERS

The access to the electricity sub-station, which is mounted on a pole at the site boundary, is considered to be a civil matter that cannot affect the outcome of the application.

CONCLUSION

It is considered that the proposed use is an acceptable use for the rural area and conforms with planning policies for the open countryside. The presence of neighbouring dwellings has revealed that some transfer has smells, noise and an incidence of vermin has been evidenced by the neighbours. However, all consultation responses, especially from Environmental Health and the Environment Agency suggest that a well run enterprise will not give rise to a statutory nuisance or pollution of the water environment. It has also been shown that the effects of the development on established and protected wildlife can be mitigated. A management plan has been submitted and a condition is recommended requiring strict adherence to this.

Given the general acceptability of the development, it is considered that any visual harm that may result from the formation of the access is justified and, to some extent, can be mitigated against with additional landscaping. As previously reasoned, it is considered that there is a functional need for the caravan and that the enterprise has been planned on a sound financial basis, an opinion that Members' previously agreed in September.

In light of these considerations, it is considered that the proposal is acceptable. It is, therefore, recommended that planning permission is granted.

RECOMMENDATION AND REASON(S)

Recommended Decision: Conditional Approval

The use is considered to be acceptable, not impacting unreasonably upon the character of the area, highway network or neighbouring property. There

is considered that there is a functional need for the accommodation and the enterprise has been planned on a sound financial basis, in accordance with policies S1, S7 and H13 of the Taunton Deane Local Plan, Policy 49 of the Somerset and Exmoor National Park Joint Structure Plan Review, and advice contained in Planning Policy Statement 7.

RECOMMENDED CONDITION(S) (if applicable)

1. The occupation of the caravan shall be limited to a person solely or mainly working, or last working on the application site in game bird rearing, or a widow or widower of such a person, and to any resident dependants.
Reason: The site lies in area where new development is generally restricted to that for which there is a proven need in accordance with Policy H13 of Taunton Deane Local Plan and Guidance in PPS7.
2. The residential occupation of the caravan shall be for a limited period being the period of 3 years from the date of this permission and all materials and equipment, including the caravan, brought on to the premises in connection with that use shall be removed by the aforementioned time.
Reason: The permission is granted on exceptional grounds to allow the business to develop, in accordance with guidance contained in Planning Policy Statement 7
3. Within 1 month of the date of this permission, full details of the access indicated on the plans hereby permitted shall submitted to the Local Planning Authority for their agreement in writing. Such details shall indicate the works required to construct the visibility splays required by condition (4) below, the proposed surfacing materials, gradient of the access and method of disposal of surface water so that none is allowed to drain onto the highway. The agreed details shall be implemented within 2 months of the date of written agreement of the Local Planning Authority and shall thereafter be maintained as such, being kept clear of obstructions at all times.
Reason: In the interests of highway safety, in accordance with policy M1 of the Taunton Deane Local Plan and policy 49 of the Somerset and Exmoor National Park Joint Structure Plan Review
4. There shall be no obstruction to visibility greater than 900mm above adjoining road level in advance of lines drawn 2.4m back from the carriageway edge on the centre line of the access and extending to a point on the nearside carriageway edge 60m to the north and 40m to the south of the access unless otherwise agreed in writing by the Local Planning Authority.
Reason: In the interests of highway safety, in accordance with policy M1 of the Taunton Deane Local Plan and policy 49 of the Somerset and Exmoor National Park Joint Structure Plan Review.
5. Notwithstanding any details indicated on the plans hereby permitted, within 1 month of the date of this permission, plans showing a parking area and the proposed surfacing materials providing for both commercial and residential vehicles shall be submitted to the Local Planning Authority for their agreement in writing. The agreed details shall be implemented within

2 months of the date of agreement and shall thereafter be maintained as such, and shall not be used other than for the parking of vehicles in connection with the development hereby permitted.

Reason: To ensure that adequate facilities are available for the traffic likely to be attracted to the site, in the interests of highway safety, in accordance with policy M1 of the Taunton Deane Local Plan and policy 49 of the Somerset and Exmoor National Park Joint Structure Plan Review.

6. Any entrance gates erected shall be hung to open inwards and shall be set back a minimum distance of 5m from the carriageway edge.

Reason: In the interests of highway safety, in accordance with policy M1 of the Taunton Deane Local Plan and policy 49 of the Somerset and Exmoor National Park Joint Structure Plan Review.

7. The existing vehicular access to the site shall be stopped up, its use permanently abandoned and the verge reinstated in accordance with details which shall have been submitted to and approved by the Local Planning Authority in accordance with condition (8) below. Such works shall be completed within 1 month of the new vehicular access hereby permitted being first brought into use.

Reason: In the interests of highway safety, in accordance with policy M1 of the Taunton Deane Local Plan and policy 49 of the Somerset and Exmoor National Park Joint Structure Plan Review.

8. (i) Within one month of the date of this permission, a landscaping scheme, which shall include details of the species, sizes, 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 the 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.

9. Within 1 month of the date of this permission, full details of the proposed method of disposal of foul drainage of the caravan shall be submitted to the Local Planning Authority for their agreement. The agreed details shall be fully implemented within 2 months of the date of agreement unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure adequate drainage facilities exist for the development proposed, in the interests of preventing pollution of the water environment, in accordance with policies EN25, EN26 and EN27 of the Taunton Deane Local Plan.

10. There shall be no vehicular deliveries to or collections from the site outside the hours of 08:00-18:00 Monday – Saturday.
Reason: To prevent disturbance to neighbouring residents in accordance with policy S1 of the Taunton Deane Local Plan.
11. The rearing pens shall be dismantled by 31 August in each calendar year and shall not be re-erected until 1 April in the following calendar year. No pens shall be erected on site between September in each year and March in the following year.
Reason: In the interests of the visual amenities of the area in accordance with policy S1 of the Taunton Deane Local Plan.
12. The details of paragraphs 3.2 - 3.6 of the management plan received 16 January 2009 shall be strictly adhered to.
Reason: To ensure the proper management of the site, in the interests of preserving the amenities of the neighbouring residents and preventing pollution, in accordance with policy S1 of the Taunton Deane Local Plan.
13. Entries in the pest control record required by condition 12 shall be kept for a period of 10 years and shall be made immediately available upon the written request of the Local Planning Authority.
Reason: To ensure that proper attention is given to the management of pests, in the interests of preserving the amenities of neighbouring residents, in accordance with policy S1 of the Taunton Deane Local Plan.
14. Within 2 months of the date of this permission, the gas bottle storage compound detailed on drawing no 097/G1, received 16 January 2009 shall be completed and available for use.
Reason: To ensure that proper facilities are available for the storage of gas bottles, in the interests of the safety of the site and neighbouring residents, in accordance with policy S1 of the Taunton Deane Local Plan.
15. Any gas bottles stored adjacent to pens shall be sited on a solid base, in accordance with paragraph 3.6 of the management plan received 16 January 2009 and shall be secured to prevent toppling and locked in place. Empty gas bottles shall be stored in the secure compound.
Reason: To ensure the proper storage of gas bottles, in the interests of safety, in accordance with policy S1 of the Taunton Deane Local Plan.
16. The development hereby permitted shall not be commenced until details of a strategy to protect otters, dormice, breeding birds and reptiles has been submitted to and approved in writing by the Local Planning Authority. The strategy shall be based on the advice of Paul Channin's submitted report, dated 07 January 2009 and up to date surveys and include:
- The results of a survey for reptiles done at the optimal time of year in April or September
 - Details of protective measures to include method statements to avoid impacts on protected species during all stages of development;
 - Details of the timing of works to avoid periods of work when the species could be harmed by disturbance
- Once approved the works shall be implemented in accordance with the approved details and timing of the works unless otherwise approved in

writing by the Local Planning Authority.

Reason: To protect otters, dormice, breeding birds and reptiles from harm bearing in mind these species are protected by law and in accordance with PPS9.

Notes for compliance

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

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