

23/14/0014

S NOTARO LTD

ERECTION OF 70 NO. DWELLINGS WITH ASSOCIATED WORKS ON LAND AT CREEDWELL ORCHARD, MILVERTON

Location: CREEDWELL ORCHARD, MILVERTON, TAUNTON

Grid Reference: 312361.125598

Full Planning Permission

RECOMMENDATION AND REASON(S)

Recommended Decision: Refusal

- 1 The proposed development would not provide any on site affordable housing. The proposed off-site contribution is both unacceptable in principle and insufficient in amount and the proposal is, therefore, contrary to Policy H4 of the Taunton Deane Core Strategy.

The development would have a harmful impact upon the character and appearance of the Milverton Conservation Area as the location and scale of the development would undermine the connection that the village enjoys with the surrounding rural landscape, contrary to Policy CP8 of the Taunton Deane Core Strategy. The harm would not be outweighed by other public benefits of the proposal when assessed in accordance with the National Planning Policy Framework (NPPF).

The proposed development fails to provide an acceptable travel plan and future residents would likely be reliant on the private car for most of their day to day needs with insufficient measures in place to encourage travel by other modes, contrary to Policy CP6 of the Taunton Deane Core Strategy, policy A2 of the Draft Site Allocations and Development Management Plan and guidance in the NPPF.

The proposed development would provide insufficient children's play space to meet the needs of the development, contrary to retained Policy C4 of the Taunton Deane Local Plan or policy C2 of the Draft Site Allocations and Development Policies Plan.

Insufficient information has been provided to assess the likely impact upon potential archaeological interests on the site, contrary to Policy CP8 of the Taunton Deane Core Strategy and guidance in the NPPF.

In accordance with Policy SD1 of the Taunton Deane Core Strategy and Paragraph 14 of the NPPF it is considered that there are very limited benefits to outweigh these significant and demonstrable harms and the proposal is, therefore, not sustainable development.

Notes to Applicant

1. In accordance with paragraphs 186 and 187 of the National Planning Policy Framework the Council has worked in a positive and pro-active way with the applicant and has looked for solutions to enable the grant of planning permission. The Council has worked with the applicant to maximise common ground and minimise any reasons for refusal. However in this case the applicant was unable to satisfy the key policy test and as such the application has been refused.

PROPOSAL

This application seeks full planning permission for the erection of 70 dwellings. The vehicular access would be via Creedwell Orchard, at the point of an existing turning head and across the site of three Council owned garages that would be demolished.

The dwellings would be primarily arranged around a loop road with dwellings predominantly organised around a 'perimeter block' layout, where the fronts of dwellings face the street and the rear elevations face the rear of neighbouring properties. In places, mews and other cul-de-sacs are formed off the principal loop. In the south western corner, the mews would be arranged to appear as a continuation of Creedwell Orchard in terms of the built form and layout of dwellings, albeit that access cannot be obtained at this point.

A green area would be provided to the top of the hill, with new tree planting and 4 dwellings behind, designed to resemble a farmhouse and 3 converted barns. Tree planting at the crest of the hill is intended to ensure that the highest point is largely seen as a green area rather than skyline housing development.

The northern part of the site would be laid out to public open space incorporating SuDS attenuation ponds and a children's play area of around 800 square metres. A public car park would be provided at the entrance to the site. The public footpath that bisects the site, running in a straight line from north to south would be retained on its current line.

There would be a variety of house types finished in a mix of coloured render, natural stone and facing brick. The majority would have a slate roof; some would be finished with tiles. Final material choices have not been submitted and would have to be a condition of any planning permission.

In February 2015 the application was amended by a statement that 25% of the dwellings would be affordable. No amended plans accompanied the letter. The amendment was subsequently withdrawn and the application now proposes no affordable housing.

SITE DESCRIPTION

The site comprises an area of steeply sloping agricultural land on the southern side

of Milverton. The ground slopes down from the south to the north where it abuts Bartletts Lane and Burgage Lane. The land beyond the site to the north slopes steeply up towards the historic core of the village.

To the east is the 1960s development of Creedwell Orchard. At the northern end of the site, dwellings back onto the application site, at the southern end, they are side on to the site. The boundary is a mix of hedges and fences. To the east, residential dwellings adjoin the site, but the closest dwelling, 'Linley', does not have any windows facing towards it. Further east is the hamlet of Houndsmoor, which is linked to Milverton on foot by Burgage Lane which runs along the site's northern boundary.

To the south is open agricultural land. The western part of the southern boundary is a mature hedge, but the eastern part is open to the remainder of the field in which the development would sit, albeith this land is excluded from the application site. Further south is Huntash Lane, which connects Houndsmoor with the Wellington Road on the western side of Milverton, opposite the entrance to the primary school.

A public footpath runs through the site on a north-south line, connecting Huntash Lane to Bartletts Lane.

PLANNING HISTORY

The site has a long and fairly complex planning history, detailed below:

1965 Two applications refused relating to different portions of the Creedwell site on grounds of inadequate infrastructure.

1975 Outline planning permission granted (ref 23/74/0011) for the development of 80 dwellings.

1979 Reserved matters approved (ref. 23/78/0025) pursuant to the 1975 outline permission for the development of 80 dwellings.

1979 Outline planning permission refused (ref. 23/78/0026) for the renewal of the 1975 permission for residential development. Permission was refused for reasons of being a substantial and disproportionate increase in the population of Milverton and the north-western part of the Borough that would prejudice the proper development of other settlements in the area; that the proposal would have an adverse effect upon the visual and other amenities of the Milverton conservation area and village; and that the site comprises good quality agricultural land where development would not take place except in strong extenuating circumstances.

1991 Full planning permission refused (ref. 23/91/0026) for the erection of 42 dwellings on the site. Permission was refused because the site was outside the settlement limits, was in an elevated and prominent position, would detract from the character, environment and harm the visual amenity of the area and outstanding heritage settlement, is outside areas identified for development and sufficient land is available for development elsewhere within the district.

In 2001, at the Taunton Deane Local Plan Inquiry, the Council argued that the site

should not be allocated for residential development. The inspector agreed with that position and decided not to allocate the site.

2007 Certificate of Lawfulness for a proposed development issued (ref. 23/06/0045) on the basis that the Council was satisfied that on the balance of probabilities that the proposed development was commenced prior to 6th August 1981. This certificate confirms that the 1975 outline planning permission (and associated 1979 reserved matters) were implemented in accordance with the permission and, therefore, can be lawfully recommenced.

2012 Variation of S52 agreement relating to planning permission 23/74/0011 was approved, removing the requirement to carry out road widening to Creedwell Close and the need for two points of access.

CONSULTATION AND REPRESENTATION RESPONSES

Consultees

MILVERTON PARISH COUNCIL – Objects for the following reasons (summarised):

Design and layout

The Parish Council acknowledges the effort that the applicant has gone to. The current design is a marked improvement on the 2012 [draft, pre-application] proposals.

The village is a designated Heritage Village, high quality design is required. The encroachment of this development up and over the slope is regarded as incompatible with the settlement and an unnecessary extension to the village boundary.

Some of the larger 3-storey houses would be on the eastern boundary, causing unacceptable overlooking to the Linley bungalow and Anchorage just beyond.

There is a need to deliver a housing stock that is affordable to the whole range of buyers that would keep a good demographic distribution in the Parish. There is a need for affordable housing, and the PC objects to the design which limits the mix to 3, 4 and 5+ bedrooms, particularly as 2/3rds will have 4 bedrooms or more.

There is a lack of detail regarding street lighting. This is a dark area of the village and a sympathetic lighting plan is required to avoid light pollution and cause disruption to residents and wildlife.

The play area is not central to the development site. Children would have to cross the road to access it.

Scale

The size of the development would 'unbalance' the settlement by concentrating large scale development in one corner of the village. The proposal fails to provide any affordable housing, educational provision or community benefits. The size of

the development is unsustainable in development terms and contrary to the requirements of the NPPF.

The PC has broadly accepted the TDBC policy position that Milverton should accommodate some additional housing throughout the plan period. However, the PC wishes to avoid large scale development on one site because that would impact significantly on the restricted road and infrastructure that is inherent in a village of this age. Instead, the village should grow organically, with groups of 5-10 properties distributed around the edge of the settlement. The Creedwell site offers scope for around 20-25 dwellings but the current proposal is too large.

Growth on the scale now proposed has not been seen since the 1960s and that was only acceptable for a short period of time. The proposal would increase the size of the village by 17% and would run counter to national and local sustainable development policies.

Visual impact

The site is locally prominent. The impact must be considered not only as an extension to the built up area but also in terms of the setting of Milverton in landscape and historic settlement terms.

The Conservation Area Appraisal indicates that Milverton has a ridge top location in the midst of rolling hills. It has a rural setting which is largely unspoiled by modern development and this remains appreciable from many parts of the Conservation Area.

The site rises steeply, 14m from the entrance to a prominent knoll on which it is intended to site the 'farmhouse' and 'barns' and a focal point for the scheme and would be highly visible from within the village. The extant permission granted in 1975 had a condition expressly limiting development to below the ridge line, to avoid sky line development. The hilltop development is large and bulky and would dominate views from the conservation area; the setting of the village would be irretrievably damaged if these structures were allowed.

If permitted, the development would fill the gap between Milverton and Houndsmoor, contrary to Core Strategy objectives. Whilst Milverton does not have a designated 'green wedge' the PC believes that green infrastructure provision and protection should not be limited to Taunton and Wellington.

Traffic and Parking

The development would have a detrimental impact upon the traffic flow and parking within the village. The applicant's evidence is poor, weak and flawed. It is not fit for purpose and should not be relied upon. Furthermore the Travel Plan proposed is brief and inadequate.

The Transport Statement is, to all intents and purposes, the same as that which accompanied an earlier application. It has not been produced for the application under consideration and is out of date. It contains factual errors.

The PC notes that the developer has overprovided vehicular parking within the

development. However, the transport statement does not account for these additional vehicle movements. The 300% parking provision implies that the village cannot accommodate the number of houses within normal limits and also indicates that the developer recognises that the private car will be a significant consideration for purchasers, which must call into question the sustainability of the whole proposal.

Anyone who lives in Milverton knows that the B3187 along Fore Street and Silver Street is totally inadequate for the size and number of modern vehicles using it.

The PC welcomes increased public parking, but is concerned that parking displaced from Creedwell Close should restrictions be imposed is more likely to add to existing problems on Fore Street. This proposal may actually exacerbate the tension between traffic flow and on street parking. Whilst it is suggested that the PC may acquire the car park as a gift, it does not have the resources to manage the car park. The PC suggests that it is offered to TDBC instead.

Drainage

The PC considers the proposed drainage plans to inadequate. The FRA is a lightweight desktop study. A comprehensive FRA is required. The level and fall of the Flood Relief Culvert to which connection is proposed make conventional drainage solutions difficult. A siphon will be required that will require ongoing maintenance.

The PC is concerned about the location of the SUDS ponds across the TDBC culvert; it would like assurances that both services can be accommodated in such a small area. It would appear that the SUDS need redesigning. The PC seeks assurance that the attenuation ponds will not overtop and flood properties at a lower level.

General remarks

The site is outside the village envelope and is of a scale that will dominate and overwhelm the village and its conservation area. The application offers no affordable housing or community contributions. The site will sterilise over 5ha of the best and most versatile agricultural land – it is grade 1/2. With the high provision for the private car, the proposal cannot be regarded as representing sustainable development.

The 'fallback position'

TDBC are obliged to consider the fallback position as a material consideration and should consider 3 tests in turn:

Test 1: Legal Standing – The extant permission must satisfy certain legal criteria clearly determined by extensive case law to be considered to have legal standing as a fall-back.

The legal standing is questionable due to the history of its resurrection after a considerable period. The long history of refusals for planning permission or

inclusion in strategic plans and the telling lack of reliance on the 1979 permission during this period calls its status into doubt.

The mismatch on the southern boundary between the existing permitted area and the new application and the status of parcels of land to the east where parts of the site have already been developed call the standing of the fallback into question.

Test 2: Implementation of the extant permission should be both realistic and likely

TDBC must find evidence to be satisfied that these tests are fulfilled. The loss of parts of the site mean that it cannot be fully built out, modern building standards need variation of the existing plans and there is no complete set of plans for the extant permission. It is not possible to build out the fallback completely and to the required standard making implementation unrealistic.

The extant permission was granted in the 1970s for a style of housing that is no longer suitable or marketable. The commercial viability of the scheme is questionable and therefore reduces the likelihood of it coming forward.

Test 3: The 'harm' (in planning terms) of the existing permission should exceed that of the new application in order for it to carry significant weight.

The new application does not comply with a very great number of modern standards and requirements, not least the provision of affordable housing. The great gulf between adherence to national planning standards and policies and TDBC's own Core Strategy implies a very great level of harm from the new application. It is, therefore, very similar to the extant permission, such that the harm resulting from the new application in planning terms is similar to the fall-back position.

Although there has been considerable work with regard to the design, 'greening' and landscaping, over-provision of parking and contemporary SUDS, it is clear that the 'harm' in planning terms is broadly comparable between the two schemes.

The extension of the southern boundary will have the effect of introducing a heightened impact on the horizon which was deliberately absent in the original fallback scheme. MPC contends that this will be a serious additional harm arising from the new proposal, not present in the original, and the weight given to the fallback should be reduced accordingly.

MPC urges TDBC to confer low weight to the fall-back position in its consideration of the new application.

SCC - TRANSPORT DEVELOPMENT GROUP – Comment as follows:

The Highway Authority initially responded indicating that additional information was required to be submitted to address the weaknesses that had been previously highlighted in the 2012 application.

To address the Highway Authority's concerns the applicant has submitted a more substantial Travel Plan. This has now been audited and the Highway Authority has

the following comments to make.

The emphasis behind the Entran report has been to provide a more substantive response to the range of measures the applicant hopes will mitigate a reduction in the use of the private car. The site audit is required to provide the current range of travel opportunities to and through the application site. The submitted report has made reference to Appendix A, which provides photographs of Creedwell Orchard plus its junction with Fore Street. However this appendix appears to be missing from the Travel Plan. As such it will need to be included as part of any further submission.

The table shown in fig 2.1 provides the total walking distances from the site to local facilities. However this does not give any indication of any 'barriers' i.e. roads etc. that pedestrians would need to overcome to reach these destinations. The primary school is included in this table indicating a distance of 800m. This is considered to be acceptable; however on closer inspection this becomes a significant concern as there are no footpaths/verges from the junction of Sand Street/Butts Way for approximately 291m to the school. Therefore sustainable travel for parents and children using this route cannot be safely achieved.

Turning to the use of public transport table 2.3 provides a summary of the 25 service. It appears from further investigation that the bus times have altered from those provided in Entran's report. It is understood that this service stops at Wood Street and in close proximity to St Michaels Church, both of which are approximately 482m from the application site. The Travel Plan indicates that the nearest bus stops are at Silver Street and Fore Street, but no details have been provided on which bus services operate from these locations and their frequency. In addition two other services the 9a and 10 have not been included in the submission.

Moving onto section 4, which relates to the Action Plan, the majority of the points appear to be acceptable. However there is one point that the applicant would need to address, which relates to car parking. The cover sheet from the Local Planning Authority indicates that this is a full application and not outline, the number of parking spaces would therefore need to be provided and set out in the Travel Plan. Furthermore the applicant has indicated that an overprovision of car parking will be provided to mitigate for local residents concerns regarding parked vehicles being displaced onto the surrounding highway network. Although the Highway Authority understands what the applicant is trying to accomplish, it will require further detailed justification.

In regards to setting targets and monitoring the Travel Plan no monitoring strategy has been outlined in the report. Further no targets have been set as per the requirements of Somerset County Council's Travel Plan Guidance Document. Finally the safeguarding sum has been omitted from the Travel Plan. All of these points must be addressed to a suitable level for the Travel Plan to be considered acceptable.

Therefore to conclude although this Travel Plan submission is considered to be an improvement on the previously submitted report there are still areas that are not considered to be acceptable. Furthermore from the information provided it is the Highway Authority's opinion that the mitigation measures and other elements in the Travel Plan will not cause a significant modal shift away from the use of the private

car.

Therefore although the Highway Authority has accepted that in our opinion the traffic impact of the proposal would not be severe in terms of capacity and consideration of the NPPF. There are still outstanding concerns over the level of mitigation measures being put forward to reduce the need to travel by car. The Travel Plan has in fact shown that the bus service is not considered to be regular enough for it to become a viable 'alternative' option to the private car, and upon further investigation there are concerns that pedestrians do not have a direct 'safe' walking link to the school even though the distance is considered to be acceptable. As a consequence the Highway Authority does not believe that the Travel Plan would have the necessary effect.

The Highway Authority recognises that there is an extant permission on this site. Consequently the applicant could look to develop the site irrespective of the decision on this application. Therefore on balance although the Highway Authority does not believe that the current Travel Plan is sufficient it would be prudent to secure a Travel Plan that can be discussed and improved rather than have no Travel Plan and thereby no mitigation measures at all. However if the Local Planning Authority concludes that there is limited or no weight can be placed on the extant permission and that this proposal should be determined on its own merits, then the Highway Authority would object to the application on the following grounds:

“Inadequate Travel Plan to mitigate traffic impact”.

In terms of the internal site layout, discussions have been on-going through the Design Review Panel with Taunton Deane Borough Council. The principle of the review panel is to try and deliver a development, which is sympathetic to the existing character of Milverton.

Having reviewed the submission there are potential issues related to the three small cul-de-sac's. The applicant is looking for these to be adopted although the turning facilities are limited. It is understood that the Design Review Panel did not wish to see large spaces given over to standard turning heads as it was not in keeping with what they were trying to achieve.

Consequently the Highway Authority will need to address these as part of the S38 process. As part of the design review process the Highway Authority advised that the applicant should look at providing a gradient at 1:12 with some short sections at 1:10 but these should avoid drives off these steeper sections as the angle and gradient of the entry/exit may be steeper excessive depending on its alignment. Whilst the Highway Authority accepts this layout is indicative there is a concern that our previous comments have not been adhered to. It is likely that these details can be resolved from a technical point of view however it may have a knock on effect on the design which might not be acceptable in planning terms.

Finally after discussions with my colleagues in the Rights of Way Team it is noted that the footpath through the site is shown crossing a SUDS attenuation basin. The Rights of Way Team would prefer to see this crossing to be in the form of a causeway rather than a bridge.

SCC - DEVELOPMENT CONTROL ARCHAEOLOGIST - The site lies within an area of reasonably high archaeological potential due to its proximity to the early settlement of Milverton as well as potential for prehistoric activity. Therefore the proposal is likely to impact on a heritage asset. However, there is currently insufficient information contained within the application on the nature of any archaeological remains to properly assess their interest.

For this reason I recommend that the applicant be asked to provide further information on any archaeological remains on the site prior to the determination of this application. This is likely to require a desk-based assessment and a field evaluation as indicated in the National Planning Policy Framework (Paragraph 128).

SCC - RIGHTS OF WAY - I can confirm that there are public rights of way (PROW) recorded on the Definitive Map that run through the site at the present time (footpaths WG. 7/16, WG. 7/18 & WG. 7/19). I have attached a plan for your information.

Any proposed works must not encroach on to the current available width of the footpaths.

The current proposal will obstruct the footpaths. The proposal either needs to be revised to prevent any obstruction or a diversion order applied for. The applicant must apply to the Local Planning Authority for a diversion order.

The County Council do not object to the proposal subject to the applicant being informed that the grant of planning permission does not entitle them to obstruct a public right of way. Please include the following paragraph as an informative note on the permission, if granted.

“Development, insofar as it affects a right of way should not be started, and the right of way should be kept open for public use until the necessary (diversion/stopping up) Order has come into effect. Failure to comply with this request may result in the developer being prosecuted if the path is built on or otherwise interfered with”.

DIVERSIONS ORDER OFFICER – The Public Footpaths WG7/16, WG7/18 and WG7/19 will be affected if consents are granted for this development. It is recommended that early attention be given to these matters (applications to divert public paths may now be concurrent with applications to develop).

BIODIVERSITY – The site comprises of agricultural fields bordered by largely defunct hedgerows and banks. Several ponds were identified within and adjacent to the site. Michael Woods Associates carried out an impact assessment report of the site in December 2013. A baseline survey was carried out on the site in April 2012, Great crested Newt surveys in May and June 2012, Bat activity surveys in May and July 2012 and dormouse surveys in June, July, August, October and November 2012. Findings of the reports were as follows:

Badgers

A badger sett was identified on site. The status of the sett needs to be confirmed. If

occupied, the sett will need to be temporarily closed under a Natural England licence and an artificial sett constructed.

Licensable activities can only take place between July and November.

Bats

The bat survey identified several species of bats foraging and commuting within the site. No tree, which may have suitability for roosting bats, was identified on site. New planting will help to compensate for loss of foraging. I agree that a lighting strategy sympathetic to wildlife will need to be designed to ensure that habitat remains unlit.

Dormice

Dormice were not confirmed as being present on site but suitable habitat is present. A number of nests were found during the surveys, but these were not typical of dormice nests. I agree that a precautionary approach is required for removal of vegetation

Great Crested Newts

The smaller ponds on site were dry at the time of survey and the larger pond was dry in June. Surveys did not reveal the presence of GCN.

Reptiles

A small area of habitat suitable for reptiles (unmanaged grassland and rubble or stone piles) was identified on site. This area is so small that if reptiles are present the population is likely to be small also. I support the recommendation that a phased clearance of the area should take place, followed by a destructive search.

Birds

The hedgerows and scrub on site were considered suitable for nesting birds. Clearance of vegetation should take place outside of the bird nesting season.

I support the mitigation recommended in the report, including the provision of bird and bat boxes.

Recommends a condition to protect wildlife.

LANDSCAPE – Notes site characteristics and comments as follows:

Proposed landscape scheme

The landscape is generally well considered as part of the proposals through the submitted landscape assessment. However, I consider the southern boundary interface with the open countryside needs more substantial planting to provide better landscape mitigation both as a buffer when approaching the site from the south but also to provide a treed framework when looking at the site from the north. Slate roofs on the higher southern houses would help to reduce the impact of new

houses as opposed to tiled roofs which would be particularly prominent. There is scope for further tree planting within the street layout. The proposed properties on the western boundary are very close to the boundary and don't provide any space for landscape mitigation.

Future management and maintenance issues

It is not clear how the areas of open space will be maintained longer term.

Analysis

I consider the southern boundary interface with the open countryside needs more substantial planting to provide better landscape mitigation. There is scope for further tree planting within the street layout. It is not clear how the areas of open space will be maintained longer term.

If the application is to be approved I recommend conditions covering protection of hedges to be retained, new hedge and bank required, boundary treatments, landscaping scheme planting, phasing, hard landscaping, earth mound, location of retained trees, control over trenching within canopy, no felling or lopping of retained trees, tree protection.

HOUSING ENABLING – The current application does not make provision for affordable housing on the basis of the extant permission, however 25% of the new housing should be in the form of affordable homes in line with the adopted Core Strategy. The tenure split is 60% social rented 40% intermediate housing.

The affordable housing should meet the Homes and Communities Agency Design and Quality Standards 2007, including at least Code for Sustainable Homes Level 3 or such Standards which may supercede at the date of approval of the full application / reserved matters application.

The affordable housing scheme, including details of the unit mix, layout, tenure and location of the affordable housing must be submitted to and approved in writing by the Housing Enabling Lead at Taunton Deane Borough Council.

The developer should seek to provide the Housing Association tied units from Taunton Deane's preferred affordable housing development partners list.

A local connection clause is to be included within the S106 agreement to prioritise the homes for local people.

WESSEX WATER – The site is served by separate systems of drainage constructed to current adoptable standards – Wessex Water's Advice Note 16 provides further guidance.

The nearest public sewer is North of the site in Burgage Lane, the sewer has current available capacity to accommodate predicted foul flows only from the development. (please note crossing a large land drainage culvert will be necessary to connect to this shallow pipe line).

Sewage treatment; there is sufficient current spare capacity to treat the additional flows.

Water supply; the existing system is adequate for the new dwellings although a relatively short off-site link main will be necessary.

DRAINAGE ENGINEER – The Drainage Engineer has been involved in considerable discussion with the applicants and local residents during the consideration of this application. He has reviewed various iterations of the FRA and has considered a number of supporting documents, such that his formal response is not as follows:

“Following correspondence etc. with the developer I feel that the following condition requiring a detailed design be submitted for the site, prior to any construction works commencing on the site [should be included on any grant of planning permission]:

No development works shall commence on site until a surface water drainage scheme for the site, based on the principles agreed in the Flood Risk Assessment has been submitted to and agreed in writing by the Local Planning Authority. The above scheme shall also include full details of an operation and maintenance strategy for the surface water drainage scheme to be submitted. This should include the information from the agreed extra soakaway tests taken at locations of large parking areas where permeable construction is to be used and at the location of the proposed attenuation pond etc.”.

LEISURE DEVELOPMENT – In accordance with Local Plan Policy C4, provision for play should be made for the residents of these dwellings. The proposed provision of a play area is therefore to be welcomed.

In line with Local Plan Policy C4 on a development of 70 family sized (2 bed+) dwellings a play area of 1,000 square metres should be provided. The play area should be centrally located and overlooked by dwellings to promote natural surveillance. It is therefore concerning to note the proposed play area site can only be accessed by crossing one of the main access roads through the development. Consideration should be given to relocating the play area within the development or safe crossing for children using the play area.

Open Spaces should be asked to comment on the design of the play area and public open space when known.

POLICE ARCHITECTURAL LIAISON OFFICER – Having reviewed the documentation submitted in support of the application, I would make the following comments:

National Planning Policy Framework

Para.58 states that developments should create safe and accessible environments where crime and disorder or the fear of crime do not undermine quality of life or

community cohesion. Para. 69 goes on to state that safe and accessible developments should contain clear and legible pedestrian routes and high quality public space which encourage the active and continual use of public areas.

Design & Access Statements

CLG guidance on the contents of statements makes a similar comment and further states that statements for major outline and detailed applications should demonstrate how crime prevention measures have been considered in the design of the proposal and how the design reflects the attributes of safe, sustainable places set out in '*Safer Places, the Planning System & Crime Prevention*'. The DAS submitted in support of this application does not do so.

Crime & ASB Statistics

Reported crime for the area of this proposed development during the period 01/04/2013-31/03/2014 (within 500 metre radius of the grid reference) is as follows:-

Criminal Damage - 1 Offence (damage to a vehicle)

Drug Offences - 2 (both possess cannabis)

Theft & Handling Stolen Goods - 2 Offences (incl. 1 theft from motor vehicle)

Violence Against the Person - 1 Offence

Total - 6 Offences

This averages just one offence every two months which are very low crime levels. Anti-social behaviour reports for the same period are higher at 23 but still only average approx. 2 per month, which are also low levels.

Layout of Roads & Footpaths

Appears to be visually open and direct with the only segregated footpath being through the communal area to the north of the development. A number of surface changes are also proposed which can help define the defensible space of the development and limit access to residents and legitimate visitors, psychologically giving the impression that the area is private. The fact that only one entry/exit route is proposed can also enhance the defensible space of the development in that it helps frustrate the search and escape pattern of the potential criminal.

Communal Areas

Play Areas and Public Open Space have the potential to generate crime, the fear of crime and ASB and should be designed to allow supervision from nearby dwellings with safe routes for users to come and go. The proposed Play Area/Communal Area to the north of the development does appear to be overlooked by dwellings opposite but backs onto existing dwellings which could result in crime and ASB affecting these dwellings. Although, I note that they appear to be separated by a hedge. Features should be incorporated which prevent unauthorised vehicular access to this area.

Orientation of Dwellings

The majority of dwellings appear to be positioned to face the street and public places, which is also recommended, as this allows neighbours to easily view their

surroundings thus making the potential offender feel vulnerable to detection.

Dwelling Boundaries

It is important that boundaries between public and private space are clearly indicated which, from the Site Plan, appears to be the case. Dwelling frontages should be kept low so walls, fences, hedges etc should be maximum height of 1 metre to assist resident surveillance of the street. Vulnerable areas such as side and rear gardens need more robust defensive barriers by using walls, fences or hedges to a minimum height of 1.8 metres, which appears to be proposed. Access gates to rear gardens should be the same height as the fencing and lockable.

Car Parking

Cars should be parked in locked garages or on a hard standing within the dwelling boundary, which in a number of cases appears to be proposed. Where communal parking areas are necessary e.g. to the north-west of the development near Green Hill, they should be in small groups, close and adjacent to homes and within view of active rooms within these homes. A number of parking courtyards also appear to be proposed and those at the rear of dwellings are discouraged, as they allow access to the vulnerable rear elevations of dwellings where the majority of burglary occurs.

Landscaping/Planting

Proposals should not impede opportunities for natural surveillance and, in areas where good visibility is needed, shrubs should be selected which have a mature growth height of no more than 1 metre and trees should be devoid of foliage below 2 metres, so allowing a 1 metre clear field of vision.

Street Lighting

All street lighting for both adopted highways and footpaths, private estate roads and footpaths and car parks should comply with BS 5489:2013.

Secured by Design

The applicant is advised to formulate all physical security specifications of the dwellings i.e. doorsets, windows, security lighting, intruder alarm etc in accordance with the police approved 'Secured by Design' award scheme, full details of which are available on the SBD website.

I trust you find the above comments helpful, if I can be of any further assistance please do not hesitate to contact me.

ENVIRONMENT AGENCY – Refer to Standing Advice. Standing advice requires:

- Flood risk from all sources should be considered.
- Infiltration of surface flows to be provided where feasible. If not, multifunctional SUDS should be provided to attenuate surface water flows. At least one level of treatment must be included to minimise pollution, two may be necessary in large parking areas.

- Discharge should be attenuated to 2l/s/ha and sufficient attenuation facilities indicated on a concept masterplan.
- Adoption and maintenance should be agreed and secured for all applications.
- Exceedance routes should not adversely affect primary access routes and buildings.
- The discharge point of surface flows should be confirmed.
- Existing drainage routes and proposed exceedance routes should be mapped.

HERITAGE - The submitted scheme is clearly an improvement to that initially considered under application 23/78/0025.

Whilst English Heritage has appropriately restricted its comments on the setting of Listed Buildings to Grades 1 and 2*, I consider its findings to also be relevant to Grade 2 Listed Buildings.

EH's comments on the setting of the Conservation Area and in particular the essentially retained relationship of the historic core with the open countryside beyond are supported i.e. the development would conflict with this essential quality, which is identified in the adopted Conservation Area Appraisal.

As with EH, if the proposal is allowed, I would wish to see conditions covering certain detailed aspects of the scheme and the taking away of certain PD rights (including solar panels and the like).

SCC – EDUCATION - The County Council estimates that ten secondary school places would need to be available for a development of 70 dwellings. The Pupil Capacity of Kingsmead School, the catchment school in Wiveliscombe, is currently 750 following the completion of the new science block, but the existing roll already exceeds this, and forecasts rise to 831 by 2015 and over 840 by 2018, without taking into account any new development. The school will therefore be unable to cater for the additional pupils from this development without further enhancing its accommodation; and the school will come under increased pressure in the future when the current large primary school population moves up to the secondary tier.

As the County Council is now unable to receive developer contributions for these purposes in the Borough direct, it would need assurances that investment in necessary school accommodation could be facilitated through the allocation of receipts collected via the Community Infrastructure Levy.

PLANNING POLICY - It is not considered appropriate for the Planning Policy Team to comment on the appropriateness of the 'fall-back' position arising from the Certificate of Lawful Use issued in 2007 and whether or not the historic planning consent is 'implementable'.

Land at Creedwell Orchard has a complex and lengthy planning history and in view of on-going uncertainties and challenges to its development, the Planning Policy team has not sought to allocate the site through our emerging Site Allocations and

Development Management Plan (SADMP).

The site lies beyond existing and proposed settlement limits as set out in the SADMP and the planning application is for a scale of housing well in excess of that proposed in the SADMP. Consequently the planning application is counter to policies CP8 and DM2 of the adopted Core Strategy and SP1: Sustainable Development Locations (since the proposal will not provide for an appropriate balance of market and affordable housing or be 'small scale').

As proposed, the planning application includes no affordable housing provision. This means that the proposal is counter to policy CP4 of the adopted Core Strategy which requires 25% of affordable housing on sites of over 5 units. We would question the validity of providing no affordable housing contribution.

Should planning permission be granted for this planning application it should be noted that this will not affect the proposed allocation of Butts Way.

ENGLISH HERITAGE – The land that is the subject of the application is positioned to the south of the Milverton Conservation Area, beyond existing dwellings off Creedwell Close. In line with the Planning Act 1990 and guidance from the Secretary of State the primary designations that are considered within this response are the Milverton Conservation Area and four highly graded listed buildings: Church of St Michael, Homedale, The Old House and Netherfield.

The planning history relating to this site is complex. In the 1970's planning permission was granted for 80 dwellings, though in a different arrangement to that currently proposed. Reserved matters were discharged in 1979 and in May 2007 a Certificate of Lawfulness issued. We note that the current scheme has been arrived at following consultation with the South West Design Review Panel, Taunton Deane Borough Council and Somerset County Council.

Fundamental to our advice to local authorities is the requirement of the Planning (Listed Buildings and Conservation Areas) Act 1990 in Section 66(1) for the local authority to "have special regard to the desirability of preserving the building or its setting or any features of architectural or historic interest which it possesses". When considering the current proposals, in line with Para 129 of the NPPF, the significance of the asset's setting require consideration. When considering development that has the potential to affect setting English Heritage's guidance the Setting of Heritage Assets should be referred to. The key principles for understanding setting are set out at page 5 of the guidance. The guidance sets out that "views of, across, or including that asset, and that views of the surroundings from or through the asset" should be considered when reviewing proposals.

Listed Buildings

From the south porch of the Church of St Michael (grade I) the development will be visible, at a distance. In terms of views towards the church these are gained from many points within and beyond the village. The new development would not sit within the foreground of key views.

From the Old House (grade II*) and Holmdale (grade II*), due to screening and

adjoining buildings, the inter-visibility will be limited. The new development would not compromise key views towards the buildings.

Whilst it was not possible to access Netherfield, in considering views eastwards from the house, it is apparent that the property currently overlooks the modern council housing, and so there is unlikely to be inter-visibility.

Conservation Area

The character of the Milverton Conservation Area is defined by the Appraisal Document that was adopted in September 2007. Section 2.1 states that "Milverton is of interest in that the historic form and spatial character of the settlement has not been greatly obscured by modern development. There remains a very close and tangible connection between the village and surrounding rural landscape which has often been lost elsewhere." From Fore Street the new development will be visible, set upon an area of rising ground; however it would be seen alongside 20th century developments outside the Conservation Area.

In terms of detailed design the current scheme uses arches; continuous frontages, raised walkways, key individual buildings and an open green space and walls to gardens, typically found in old Milverton. Proposed materials include: natural stone slate roof tiles, clay pan tiles, stone, red brick and render walls, and clay pots. In contrast the previous scheme does not appear to have been designed to be reflective of the conservation area.

Summary

The proposals would conflict with one of the key characteristics discussed within the conservation area appraisal, namely the direct relationship that the historic core has with the open countryside beyond. However, mindful of the extant permission the current proposals are an improvement and more responsive to the characteristics of the Conservation Area.

If the council is minded to support the scheme then we would recommend close involvement with your conservation officer to ensure that appropriately worded conditions are applied focusing on the details of the scheme, namely: all external building materials; all paving surfaces; the detailed design of windows, doors, canopies and other architectural details. We would suggest that inclusion of large areas of Photovoltaic panels across south facing roof slopes be omitted from the scheme.

Representations

Somerset Wildlife Trust

"We have noted the above mentioned Planning Application. In general we would agree with the comments made by the Authority's Biodiversity Officer. In particular we would agree that the development shall not be permitted until a wildlife strategy has been submitted and approved. The enhancements proposed in this strategy should include the provision of bat and bird boxes, the planting of native plant species and the retention of any existing trees and hedgerows and the design of any

external lighting so as to minimise light pollution”.

Milverton C.P. School

The development will have an impact on Milverton School. At the moment, there is a low roll (195), but since 2005, pupil numbers have been close to the school's capacity of 210 and have exceeded that on a number of occasions. This is likely to occur in the future, without the Creedwell development. It must therefore be a reasonable assumption that the capacity would be breached by the development, especially if taken in conjunction with a further 20 houses at the top of Butts Way. There may be a need for extra staff and classrooms.

The existing Elliot buildings may be due for replacement within 10 years. Purpose built modern classroom blocks would help to minimise energy use.

The school would like to bid for the applicants to agree to replace the Elliot buildings with permanent purpose built buildings, which would be more energy efficient and could give some capacity to increase school numbers.

Milverton and Fitzhead Society (Summarised)

- Support development that meets the village's actual housing need. This proposal goes beyond the needs of the village in terms of quantum and does not provide any affordable. Planning Policy officers recommend 40 dwellings including 10 affordable, but this is reduced to 20 with 5 affordable given that the extant permission at Creedwell Orchard.
- The scale is contrary to the hierarchical principle of development in the Core Strategy.
- It does not contribute to a reduction in the need to travel by private car.
- There is no employment component and Milverton does not have an employment base capable of absorbing the population growth. Milverton will become a commuter settlement.
- The proposal does not contribute towards the preservation of green spaces; Milverton will merge with Houndsmoor.
- Requirements for development outside settlement boundaries are not met.
- The Heritage Impact Statement is in draft form and cannot be relied upon.
- The development will have an adverse impact upon the conservation area.
- The transport assessment is inadequate in scope.
- With one exception development has been resisted on this site since 1965. That exception came about in a policy vacuum.
- If Taunton Deane accepted that the existing permission overrides the current conflict with planning policy, they would be seriously negligent in their duty as LPA.
- Case-law suggests that significant shifts in planning policy can outweigh the presence of an extant permission.
- Development in such complete conflict of current planning policy should not be allowed to proceed.
- The decision should be made in accordance with the development plan unless material considerations indicate otherwise.

Victoria Rooms Management Committee (Summarised)

- The Victoria Rooms are Milverton's village hall.
- The Rooms have no parking, visitors must park on the street or the limited public car parks nearby.
- Reduced on-street parking capacity may deter people from using the Rooms, resulting in a loss of income. This could result in the village hall having to close.
- Users may not want their functions disrupted by construction traffic and may look to hold them elsewhere. A development on this scale is forecast to take 3 years to complete.

Save Milverton Action Group

The Save Milverton Action Group have provided a very detailed representation OBJECTING to the planning application (dated 25th April 2014). The representation included its own 'executive summary' which, with the exception of cross references to more detailed parts of the representation, is reproduced verbatim below.

The Save Milverton Action Group objects strongly to the grant of any new planning permission for housing on the Creedwell Orchard site. In summary, its grounds of objection are as follows:

1. The Council is under a statutory duty under Section 70(2) TCPA, when dealing with a planning application, to have regard to the provisions of the development plan so far as material to the application, and to any other material considerations.
2. It is manifestly apparent that, in 1975, the Council granted Outline Consent in the context of a unusually lax rural planning policy environment which ignored the special character of Milverton.
3. The 1979 statement of the leading Country Planning Officer, Eric Barnett, 'the County Planning Authority would play its full part in preparing a strategic policy and local amenity case against residential development on this land' lends significant weight to the proposition that the grant of Outline Consent was an ill-considered planning anomaly which the Council later came to regret.
4. Subsequently, the planning history of the site and the current Core Strategy (adopted 2013) demonstrate the Council's consistent policy view of the Creedwell site as unsuitable for large scale development.
5. Although there is clear case law to the effect that an existing permission (in this case the 1975 permission) may be a material consideration in determining an application, the Council is also entitled to consider the reasons why that permission had been granted (such as where there had been a special need which had prompted an exception to established policies on that occasion).
6. The Council are entitled to have regard to the "fallback" position, i.e. what the applicant could do without any fresh planning permission. The case law, however, is clear that the prospects of fallback occurring must be real and not merely theoretical.

Also, the weight to be attached to such a consideration is a matter wholly for the Council.

7. There is little prospect of the 1975 permission (only kept alive by a Certificate of Lawfulness granted by the Council's legal department in 2007) being implemented ... There are missing plans; there are surface runoff issues; the site is the subject of an application for Village Green Registration; and by submitting a new application the applicant clearly acknowledges that the existing permission is neither marketable, nor viable, nor compliant with existing building regulations. The consented site has also since been encroached on by other development, and by changes in land ownership to the point where the 1975 permission cannot now be implemented in full, or importantly, consistent with the Reserved Matters approval [See Appendix 1]

8. The applicant has offered no evidence, with the current application, to suggest that the scheme referred to in the Certificate of Lawfulness is implementable, or even if it was that there is a realistic prospect of it being implemented. The very fact that the current application has chosen a different red line boundary clearly suggests that the applicant now has no intention or desire to build the scheme approved under the 1975 permission.

9. The Council are fully entitled to, and should, take the view that, because the current application:

- is in complete conflict with current policy
- would impact adversely on the Conservation Area
- would offer no affordable housing
- would raise serious transport and traffic issues
- exceeds the originally permitted site

and because the historic 1975 permission

- was clearly a planning decision anomaly
- is unlikely ever to be implemented

therefore

- the 1975 permission, while a still material consideration, cannot be accorded weight of any significance in determining the current application
- the current application should be refused as being clearly contrary to policy.

10. The Council can be confident that the legal basis for a recommendation for refusal is sufficiently robust to withstand any appeal.

The Action Group's main objection document sets out their detailed reasoning for the above statements.

Subsequently, additional representations have been received, summarised as follows:

Housing need – The Council has made proper provision, identified in the SHLAA to

meet its housing need in more suitable locations. The proposed housing mix is clearly designed to cater to the desire to live in the rural shire and makes no contribution to affordable housing. Refusal of the current application is unlikely to impact adversely upon the 5 year housing supply to a degree sufficient to justify setting aside the policies of the development plan.

Play area – The Community Leisure Officer has noted that the proposed play area is inadequate in size and poorly located. In the Action Group's view, its proximity to SUDS could create a hazard. The ground raising required by the proposed attenuation ponds and any safety fencing would further isolate the play area from natural surveillance.

Transport issues – the supplementary Travel Plan is a hastily concocted document drawing heavily on the earlier report. It does not reflect the proposed dwelling configuration and the proposed financial contributions are meagre. The TRICS evidence provided is inadequate and impossible to review. A better assessment of the likely traffic movements is evidenced from the proposed 200 parking spaces (excluding visitor spaces), which could equate to some 400 movements. There is no capacity at the local school, so the transport assumptions regarding proximity to this facility are flawed.

Supplementary planning statement – various rebuttals made to the applicant's suggestions about the weight to be attributed to the extant permission, suggesting *inter alia* that all problems could be overcome – but they have not suggested how some of the problems could be overcome. However, to meet the required tests that there is more than a theoretical possibility of implementing the extant permission, the applicant must demonstrate that any problems can be overcome. The farmhouse and barn break the southern horizon, unlike the 1979 approved layout.

Any comments that the applicant makes on the extant permission do not relate to an approved plan of the Council.

In undertaking any comparison of the two schemes, the proposed development can be regarded as more harmful in terms of the number of dwellings, the variety of house types, the breach of the ridgeline, impact on public footpaths, the proposed play area, the lack of replacement of garages at the access, the extent of the development, the drainage arrangements, traffic and parking and the entrance and exit points. It is only less harmful in terms of its design. There would be a neutral comparison in terms of building regulations, impact on the conservation area and visual impact, sustainability, and impact on green space.

Where there has been a significant shift in policy, this may outweigh the important material consideration of an extant permission. This was tested at appeal in Ashford in 2007 in respect of affordable housing. The decision to grant in 1975 was in accordance with the prevailing policy context (the 1966 Milverton Policy Map), but by 1979 the greater part of Milverton had been designated a conservation area, the Somerset Structure Plan had emerged and the policy environment had changed beyond all recognition. Furthermore, issues such as sustainability, affordable housing and heritage protection were simply not on the table when the outline permission was granted in 1975.

The way leave around the culvert would prevent the construction of some of the

garages required by a condition of the 1975 planning permission, which could be an additional impediment to implementation of the extant permission. In the late spring of 2013, the applicant is understood to have put the site on the market. This casts doubt over the applicant's intention to build the extant permission.

Individual representations

1 letter confirming NO COMMENT to make.

1 letter raising NO OBJECTION to the principle, but raising concerns over traffic, included in the summary of issues below.

180 letters of OBJECTION from 138 individuals have been received raising the following points:

Principle

- It is hoped that a village green application will be granted and we will not have to consider this unsuitable application.
- There are no social houses of any description, but there is a pressing need for these. A new application at today's date should meet its proper quota, otherwise it is contrary to policy.
- New conditions have been imposed on other extant permissions.
- The scale of development is out of proportion with the village. It would increase the village footprint by about 20%, the number of dwellings by 15%, and the population by 12-19%.
- Additional housing is required, but this should be more spread out and at a slower rate.
- It is understood that an alternative site has been identified just off the Milverton bypass and this would not cause traffic problems.
- Green spaces are required for mental and physical health.
- The village is too small to cater for the needs of such a large population.
- There is no need for additional affordable housing which has already been provided for in the village.
- There have been many refusals of planning permission on this site and nothing has changed significantly.
- Most people will need cars to get to their place of work, which is not sustainable. There are very few employment opportunities in the village.
- The proposal provides no opportunities for small-scale employment growth, as required by Core Strategy policies.
- TDBC has consistently opposed the development of this site and has been supported by inspectors. The planning history may be a relevant consideration and this suggests that permission should be refused.
- The development has no benefits to the community but does present substantial costs.
- The site is now much larger than the original permission.
- The land is grade 1 agricultural land and should be opposed on sustainability and environmental grounds.
- Development on this scale goes against the hierarchical principles of settlement policy in the Core Strategy.
- Milverton has its own housing strategy in hand and does not need to be invaded

with uncertain pretentious development.

- If the developer believed the scheme had any merit, he would not attempt to ride on the back of the ancient permission to make it acceptable.
- We are only the trustees for those who come after us. The current generation should not ruin such a historically important village as Milverton.
- It is unclear whether the development will be liable for CIL and this has a huge impact on its consideration.
- The Prime Minister said that in reforming the planning system in 2012, local communities would be able to resist large housing estates being 'plonked' on the edge of villages.

Social issues

- There is insufficient employment in Milverton and surrounding villages. The estate and ultimately the village will be turned into a dormitory.
- The sense of community in Milverton will be substantially diminished by the inhabitants of the majority of the new homes having to leave the village every day for work.
- The development is large and such a large sudden growth in population cannot be absorbed into the mainly cooperative, common sense and considerate village life.
- There could be an increase in crime and tensions.
- Pollution will increase, as will waiting times for medical appointments.
- The school is already at full stretch, could not deal with an influx of additional people and the County Council consider that this will get worse.
- The village cannot bear the extraordinary burden on local facilities, such as schools, doctors, dentists and other essential services. There is no provision for enhancement of these by the developer and no commitment to fund from the local authority.
- The number and proposed house types do not reflect the needs of the community – there are no 1 or 2 bedroom dwellings and no bungalows.
- There will be more dog faeces on Burgage Lane – a private road and part public footpath.
- TDBC must ensure that CIL is secured as requested by the Local Education Authority and that the necessary infrastructure should be provided prior to any major expansion in the population.
- The proposed play area should be moved to a more central location such as the proposed village green.

Fall back position/previous permission

- The previous permission was never lawfully implemented. Even if it had, it has been abandoned, evidenced from the intervening 32 years where no development occurred. The Council were wrong to issue a certificate of lawfulness.
- The proposal cannot be regarded as an amendment of the previous permission; it bears no relationship to it and the site area is different.
- Nobody has been able to produce extant plans sufficient enough to implement the scheme.

- The S52 agreement attached to the previous permission requires that the children's play facilities are provided within 2 years of the date of commencement of development. If development really did commence in 1981, the agreement has never been and cannot now be complied with.
- The applicant's statement that this is a reconfiguration of an extant permission is at best disingenuous.
- The titled land is not the same and therefore any new application should be subject to modern conditions and approvals.
- The ingress and egress are entirely different.
- The application is incorrect on its current basis.
- A number of the houses deemed to be required in the 1970s have since been provided elsewhere in the village.
- Car ownership has substantially increased since the late 1970s.
- It is not possible to implement the extant permission: part of the approved site has been built upon, eliminating the flood management provisions; only one of the 2 approved access points now exists and road widening was a contractual condition of that permission.
- Even if the extant permission is accepted, it is only for the original permission and does not set a precedent for a new permission.
- The application draws in more land than in the original application. The plan on the Certificate of Lawfulness was incorrect and this does not set a precedent for the additional land now required.
- The original plan protected the skyline. This should be a condition of any new permission.
- To accept the applicant's argument regarding the extant permission would be an extreme dereliction of the Council's duty to have regard to the provisions of the development plan so far as material to the application.
- It is unlikely that an application like the 1975 application would succeed under current planning guidance.
- Part of the site is no longer available and the development cannot be increased in its entirety.
- The final approved plans do not exist – the developer could not build and the Council could not enforce.
- The properties would be virtually unsalable without the approved plans.
- The planning legislation should be used as a guide for all, not an obstacle to be circumvented by hook or by crook.
- It has not been demonstrated that acceptable surface water disposal/attenuation methods for the extant scheme can be achieved, so it cannot yet be implemented. Major (material) alterations to the extant scheme would have to be made to achieve the required drainage, reducing the weight to be attributed to the fallback position.
- The extant permission does not circumvent current planning rules, it is merely a material consideration in dealing with the current application.
- The developer appears to be cherry picking items that suit from previous and current planning regulations – i.e. they seek to provide no affordable housing because of the extant permission, but seek to provide a road layout and access based upon today's standards.
- The certificate of lawfulness cannot be treated as some form of outline planning permission which establishes a wider principle of residential development on the site.
- For the fallback to be accepted, there must be a greater than theoretical

possibility that the development permitted under 23/74/011 might take place. Section 192 (4) [certificate of lawful proposed use or development] of the Act limits its scope to the specific permission and approval referred to in it and not any subsequent variation.

- Even if the previous scheme would generate a profit, it does not mean that the houses would be sold. Even if it were marketable, there is no logic in the Council granting a further planning permission on a different area of land, and for a different scheme in order to assist Notaro.
- The developer has not addressed the weight to be attributed to the change in Council policy since 1975, the weight that should be attributed to the grant of the 1975 permission, the weight to be attached to the planning history of the site or the implementability of the approved layout.
- The new scheme would be more harmful than the extant scheme.
- The approach to assessing fallback is not simply an issue of discounting the development plan and making a comparison of schemes. Rather the relevance of the development plan, the 1975 permission and the overall weight to fallback is looked at in the round. All this points to attaching minimum weight to the fallback and maximum weight to the development plan.

Visual impact

- The site is outside the settlement limit, elevated and prominent.
- The footpath is currently open (save for a wire fence); the proposals will make it very dark and urban.
- The proposal does not contribute toward the preservation of green spaces. The development will join the hamlet of Houndsmoor to the village. This would be contrary to Policy CP8 which seeks to prevent coalescence.
- The proposed development will impact on the special relationship between the village and open countryside.
- The approach from Taunton Road will be spoiled.
- There will be a loss of a beautiful green site.
- The light pollution will mask the night sky and extinguish the sight of many stars.
- The development, sited on the hillside, will detract from views of the church on approach to the village.

Heritage issues

- This is very historic village with a large number – 85 within the historic core – of very significant listed buildings. The development would disturb the whole balance of the village.
- Milverton should stay as it is – there are few enough pretty villages left in the south west.
- The desk based archaeological investigations are insufficient bearing in mind other finds nearby in the area, the known origins of the settlement in medieval times and the high number of important buildings.
- No heritage impact statement upon Milverton's Conservation Area and designated Heritage Asset has been made.
- Development will destroy archaeology around Milverton and the ability to study it will be lost and destroyed for ever.
- The solar panels on the south facing roofs will not be sympathetic to the

conservation area.

- The design does not include any detailing which would reflect the variety of dwellings in the conservation area.
- The character of the existing settlement is derived from over 1 thousand years of naturally evolving development built in response to local need. The huge scale proposed will destroy the village as it exists today.
- In 2010 an appeal inspector noted that unusually the historic form and character of Milverton have not been greatly obscured by modern development.
- The development spreads beyond the original building line and will rise above the horizon, obliterating it from sight.

Design & layout

- Common sense must see that this Disneyland development is out of place, unsustainable and destructive.
- The development is more in keeping with a suburban housing estate than a historic Conservation village.
- The design is 'phony urban'.
- The development is bland, unimaginative, cheap, badly built and unsustainable.
- The size and appearance of the proposed development is out of character and not in keeping with the village. It will loom over the existing development on high ground.
- The hill site will visually dominate the village. It is elevated and prominent. There was previously a condition that the development was below the highest point on the site. Query whether this could be reinstated.
- The largest houses are placed at the top of the hill.
- The loss of views to the open countryside will result in a loss of sense of place.
- The farmhouses are out of proportion in their tiny gardens.
- The play area is in the wettest part of the site and adjacent to large ponds that are designed as a huge soakaway.
- Comparisons are made to Woodbarton, but that is on a totally different scale.
- As 60% of the dwellings will have solar panels, this would be an eyesore to anybody walking from Huntash Lane (to the south), a stark contrast to the array of heritage roofs currently seen in the village.
- The development will be a carbuncle on the side of the village when viewed on approach from Preston Boyer.
- The farmhouse complex is over large and will dominate the skyline. It will be a fundamental change to the present village appearance. It is nothing like a traditional low aspect Somerset farmhouse, but more like a Bavarian style with a highly pitched roof and high internal ceilings resulting in a very high roof line.
- There has been no analysis of the type of housing development that would be appropriate for Milverton. There are no 2 bedroom, 1 bedroom, bungalows or affordable houses.
- UPVC windows are not appropriate for the development and there is insufficient variety in the house design.
- Houses on the left hand side of Creedwell Orchard will all be overlooked, as will houses on Bartlett's Lane.
- The ponds would be a death trap for children and domestic pets. They need to be sufficiently integrated into the landscaping.
- Notaro have a track record of building a different development to that for which they obtained planning permission.

- The proposed SUDS features require a raise in ground levels by approximately 2m, which would put the average person approximately 3.5m above Bartletts Lane, overlooking the various properties. Spot heights suggest that plot 39 will have to be raised by 1.5 to 2m. More information should be provided to clarify.
- It is not clear who will own and maintain the boundary landscaping/hedgerows.
- Gabion basket retaining walls and UPVC doors are not appropriate.

Transport

- The transport assessment is out of date and does not account for recent permissions for around 120 dwellings in Wiveliscombe and applications for additional development in Cotford St. Luke.
- The transport census figures of 25/26 Jan 2012 do not reflect the true volume of traffic on B3187 through Milverton as they are not at the peak usage times. Further surveys should be undertaken at times when lorries are likely to use the road.
- The construction traffic will cause difficulties in the roads beyond Milverton village and needs to be considered.
- Local concerns about traffic generation have not been taken seriously.
- Traffic congestion in Milverton is already bad enough without 70 additional dwellings.
- The infrastructure of the village is inadequate.
- The village is often congested.
- The access is right opposite the medical centre and is a main route for children. It cannot work.
- The developers claim to have made provision for over 200 cars – this added amount of cars will create traffic congestion.
- Fore Street is narrow – just 5m wide at the junction with Creedwell. The junction too is bad, often with many parked cars.
- There will be extra pressure on village infrastructure – for example parking facilities.
- There is severe and ongoing problems with parking on the narrow village streets.
- Query how 70 more dwellings can be safe for emergency vehicles from a single access route used by a further 100 existing residential properties.
- The proposal will make the village streets unsafe for pedestrians.
- The proposed 14 space public car park is inadequate and should be at least doubled in size.
- The inevitable consequence of double yellow lines in Fore Street will be most unfair to those who have no garages and nowhere else to park. A one way system would be a more appropriate solution.
- The developers have not yet worked out how to get construction traffic to the site. The village could not cope with such traffic and building will be damaged by the construction vehicles.
- There is not enough space for cars on the new development as garages are used mainly for storage. Space will be taken up in existing car parks or left on the road.
- The transport statement is inadequate and there are errors and omissions in the report. There are errors in the way that the TRICS database has been interrogated and applied to the development. There has been no effort to update the report to reflect the current application so it makes assumptions based on a

different development.

- The absence of any cycle-specific access, narrow roads and on-road parking all make cycling in the village a very dangerous pursuit, which will be exacerbated by an increase in motor traffic.
- Access to secondary and higher education will require additional car traffic that is not accounted for in the report.
- There are no bus services through the centre of the village – people have to walk over 450 yards up hill to the nearest bus stop; 150 yards of which does not have a footpath.
- The required infrastructure must be in place before any development begins.
- Query how construction traffic will be accommodated. Query where construction workers will park. Construction traffic will not physically be able to access the site.
- Huntash Lane is not suitable for construction traffic – it is used by school children, there are stone walls beneath the hedges and important badger setts on either side.
- Query who will pay for any road maintenance arising from additional use.
- Additional traffic will make add to problems controlling the 20mph speed limit.
- TDBC planners have stated that they will make Notaro supply extra parking, but Notaro know nothing of this obligation and it is not planned.
- It is incorrect to say that increased traffic will reduce speeds and make the roads safer.
- Double yellow lines, chicanes, sleeping policemen and associated signage will destroy the character of the village.
- In 1994, a Planning Inspector concluded that the he considered that the road system of the village was generally inadequate to accommodate the vehicle movements from a development of only 42 dwellings. There is significantly more traffic and car ownership now.
- There is only one daily bus to Wellington; the last bus from Taunton leaves at 6.20 pm.
- There are frequently log jams on St. Michaels Hill, Sand Street and Fore Street.
- Children can no longer cycle to school in the village.

Flood risk

- There are numerous underground waterways within the field that flood periodically causing surface water run-off.
- There is inadequate provision for surface water run-off on the site.
- Water has previously run-off this site to neighbouring properties at the north.
- The field has been an excellent supplier of food.
- The proposed attenuation pond will pose a serious flood risk to nearby properties.
- Whatever technologies are employed, the impact will be far greater than an open field. Insufficient analysis of this has been carried out.
- Surface water discharge from the development to the stream north of the site could overwhelm neighbouring dwellings.
- Query future maintenance of proposed SUDS features.

Land ownership matters

- It is disappointing that TDBC has exchanged contracts with the applicant on the ransom strip ahead of a decision being made. Query whether this indicates a certain amount of favouritism towards the developer. Even if this money is used for providing affordable homes, there is no certainty that these would be in Milverton.
- There is no benefit for this application other than the financial gain for TDBC.

Other matters

- There will be noise, inconvenience and mess whilst the dwellings are built. This is not acceptable.
- A full ecological assessment has not yet been completed.
- The development will destroy the habitats of many birds and small animals.
- Plans showing levels are misleading.
- TDBC has acted improperly in issuing the certificate of lawfulness in the past.
- Previous assurances were given that the Creedwell field would not be built on.
- Query how any restrictions and caveats would be enforced and what penalties apply to non-compliance.
- Deliveries of oil and furniture, emptying of septic tanks and access by emergency services can only be achieved to properties on Burgage Lane by traversing the development site. This would no longer be possible and residents would be forever more dependent on the good will of their neighbours. A new access from the development into the lane would alleviate some of these concerns.
- Taunton Deane should require the developer to deposit a large sum of money to be paid out to rectify damage caused to listed buildings, cars and other property caused by the construction of the development.
- The development will obstruct public footpaths. Any changes to the paths and their surfaces will require the permission of SCC.

Positive comments made, in the context of an overall objection in principle

- The amended design is an improvement in terms of aesthetics and saleability.
- The location of the children's play area will be more accessible to current residents than previously proposed.

In respect of the amendment submitted in February, 55 further representations were received. In the main these commented that there was insufficient information available to make a judgement on the affordable housing proposals and in any case, it was suggested that the alteration did not change the harm that the development would cause. It was also suggested that more affordable housing would likely bring more children and a greater impact upon the school. Further representations were made suggesting that the 'last minute' decision to include affordable housing was a clear statement that the extant scheme could not be delivered and that it is necessary to comply with current planning policy. Since this amendment has now been withdrawn, little weight should be attributed to these representations.

PLANNING POLICIES

SD1 - SD 1 TDBC Persumption in Favour of Sustain. Dev,
CP1 - TD CORE STRAT. CLIMATE CHANGE,
CP4 - TD CORE STRATEGY - HOUSING,
CP6 - TD CORE STRATEGY - TRANSPORT AND ACCESSIBILITY,
CP8 - CP 8 ENVIRONMENT,
SP4 - TD CORE STRATEGY REALISING THE VISION FOR THE RURAL AREAS,
C4 - TDBCCLP - Standards of Provision of Recreational Open Space,
DM1 - TD CORE STRATEGY - GENERAL REQUIREMENTS,
DM2 - TD CORE STRATEGY - DEV,
SP1 - TD CORE STRATEGY SUSTAINABLE DEVELOPMENT LOCATIONS,

LOCAL FINANCE CONSIDERATIONS

New Homes Bonus

The development of this site would result in payment to the Council of the New Homes Bonus.

1 Year Payment

Taunton Deane Borough Council (Lower Tier Authority)	£75,553
Somerset County Council (Upper Tier Authority)	£18,884

6 Year Payment

Taunton Deane Borough Council (Lower Tier Authority)	£453,209
Somerset County Council (Upper Tier Authority)	£113,302

Community Infrastructure Levy

The application is for residential development outside the settlement limits of Taunton and Wellington where the Community Infrastructure Levy (CIL) is £125 per square metre. Based on current rates and the information provided by the applicant in terms of proposed dwelling sizes, the CIL receipt for this development would be approximately £1,389,310.

DETERMINING ISSUES AND CONSIDERATIONS

This application, like all others, must be determined in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 which sets out the legal framework for considering planning applications. It states that the application must be determined in accordance with the development plan unless material considerations indicate otherwise. The first task, therefore, is to assess whether the development accords with the development plan. This is in terms of the general principle of the development and its ability to meet certain obligations such as the provision of affordable housing, children's play and the like. It must also be considered whether the development meets certain highway requirements, will prevent any increase in off-site flood risk and whether it will preserve the setting of Milverton Conservation Area, listed buildings and whether it would deal adequately

with potential archaeology on the site.

Following assessment against the development plan, it is then necessary to consider whether there are any other material considerations which outweigh the development plan so as to indicate that a different decision should be reached. Some material considerations, such as those relating to the principle of development and other 'impacts' of the development are best discussed in conjunction with the assessment against the development plan (as is customary), for the main material consideration in these regards will be the policies in the National Planning Policy Framework, views of the various consultees and those views of members of the public which are material in planning terms.

However, in this case, there is one major material consideration which warrants separate analysis once the 'usual' planning assessment has been made as that has a potential bearing on the overall decision as a whole. This is the existence of an extant planning permission for 80 dwellings dating back to 1975. The presence of this is considered to be a decisive matter in this case.

This report will, therefore, be structured as follows:

1. Principle of development – whether the general provision of additional housing on this site, on the scale proposed, is acceptable.
2. Affordable housing and other obligations – whether the development would meet the necessary requirements.
 1. Design matters and Heritage impacts – whether the proposed design is acceptable; whether the development would preserve heritage assets and their settings.
 2. Landscape impacts – whether the development would cause an adverse impact on the landscape; whether the development would cause Milverton and Houndsmoor to be 'merged' to an unacceptable degree.
 3. Highway impacts – whether the development would provide adequate access to the highway; would it have an adverse impact on the local highway network.
 4. Flood risk – whether the development would lead to an increase in off-site flood risk.
5. Other matters – including residential amenity and biodiversity.
6. Conclusions on the acceptability of the development, when assessed against the development plan.
7. Other material considerations – principally, whether the presence of the extant permission should lead to a different conclusion.
8. Final summary, conclusion and recommendation.

1. Principle of development _

The site lies outside the settlement limit for Milverton. The proposal is, therefore, contrary to Policy CP8 of the Taunton Deane Core Strategy. However, Milverton is identified in the plan as a Minor Rural Centre. Policy SP1 indicates that the Minor Rural Centres should deliver at least 250 additional dwellings, with allocations to be made through the Site Allocations and Development Management Policies plan (SADMP). At the present time, the SADMP has not been adopted and is, therefore, technically absent in defining where these allocations would be or what the overall quantum of development for Milverton would be. That said, the SADMP has now been approved by the Council and submitted for examination. That plan proposes that Milverton has an allocation of around 20 on a site at Butts Way, giving an indication of the appropriate level of development for Milverton, albeit that the allocation was, proposed on an assumption that there may also, ultimately, be some development on the current application site.

Where the plan is absent, silent or out of date, paragraph 14 of the NPPF indicates that the presumption in favour of sustainable development should be engaged and that planning permission should be granted unless the adverse impacts of doing so significantly and demonstrably outweigh the benefits. Last year's appeal decision at Overlands, North Curry clearly indicates that in a situation such as this, an argument that the development would significantly exceed the likely scale of development for a settlement is unlikely in itself to significantly and demonstrably outweigh the benefits sufficient to warrant refusal in accordance with the Framework, so your officers do not recommend refusal for this reason. Of course, the other more technical considerations below could point to a different conclusion and this will be summed up in section 7 of this report.

2. Affordable housing and other obligations

The proposed development would not deliver any on site affordable housing. The supporting planning statement suggests that "TDBC will receive a substantial sum from the sale of the access land [which] it is understood will be allocated to provide social housing within the Borough. If [Milverton Parish Council] have identified suitable sites in the village it is hoped these new social homes might be built in Milverton". However, the way that the Council may or may not spend the money it receives from the sale of land is not a material planning consideration and this proposal must be assessed against planning policy and relevant considerations.

The current planning policy requires that 25% of the dwellings are provided as affordable housing and the absence of such provision should lead to refusal. Despite maintaining that the presence of the extant permission (discussed at length below) indicates that no affordable housing is required the developer has subsequently proposed a 'half-way-house' compromise. The suggestion is that a contribution is paid to enable the Council to buy land for affordable housing off-site and they propose a contribution of £153,000. This is based on the developer's assessment of likely land values for affordable housing for 18 dwellings, being 25% of 70.

Even if the Council were minded to accept a monetary contribution, a scheme for 70 dwellings would usually generate a requirement for a payment of £1,064,067, so the suggested contribution falls woefully short. Fundamentally, however, it is not

considered acceptable as a matter of principle to take an off-site contribution in lieu of on-site provision on a development of this scale. The proposed contribution does not outweigh the conflict with Policy H4 surrounding the non-provision of affordable housing. This suggests that the application should be refused on the basis of an inadequate contribution to affordable housing.

The extant permission is subject to a Section 52 Agreement (a pre-cursor to today's S106 agreements) which sets out various obligations in terms of highways and children's play provision. The applicant maintains that this agreement relates to the site and, therefore, should inform the relevant obligations for this application. Whilst it is true that the S52 agreement 'runs with the land', it runs with the land as opposed to the developer and is conditional upon the implementation of the previous planning permission. It would not automatically bind the current application, which should be determined in accordance with today's planning policy. This suggests that planning permission should be refused due to the inadequate provision of affordable housing.

In addition to affordable housing, the application would be expected to provide on-site public open space and children's play facilities. This has been proposed within the development on the southern end. The layout of this will be discussed in section 3 below, but the quantum is relevant here. The application proposes an area of public open space at the lower end of the site – at the northern end. The proposed space would be approximately 800 square metres, which is short of the 1000 square metres recommended by the community leisure officer. There would be additional open space elsewhere in the development, but this would not be suitable for play given its size and location. The under provision of public open space is considered to be another reason for refusal of the proposed development.

3. Design matters and Heritage impacts

The proposed design has had a long gestation and been subject to substantial input from experts in the form of the South West Design Review Panel. The applicant has embraced the design review process and worked positively in response to criticism and constructive feedback from the panel. The result is considered to be a well-designed scheme that responds well to the topography and surrounding constraints.

There has been criticism in the representations in respect of the design proposed, with suggestions that it is a 'Disneysque' pastiche, and phoney urbanism. It is always going to be challenging to provide a response to a settlement as architecturally and historically rich as Milverton and it is likely that any development of this scale will look like a modern addition and will probably be read as such, especially as it lies beyond and is accessed through the existing 1960s Creedwell Orchard development. The quality of the listed buildings and conservation area in Milverton is undeniable, but it not considered that this in itself can prevent a large scale addition such as this, unless the actual development itself can be demonstrated to cause harm.

The design approach, then, picks up on the mainly Georgian detailing present through the main part of the village. It also picks up on architectural features such as raised footways that already exist in Milverton and these have been used in a

positive way to respond to the substantial changes of level within the site. From an urban design perspective, the development is sound – dwellings have a good relationship with the street, there is good continuity in the building lines and parking has been accommodated so that it does not dominate in the streets. Changes in building types rather than ad-hoc changes in materials add variety without being starkly apparent. In this regard, the scheme as now presented has received the endorsement of the design review panel. Where the design review panel has taken issue with the proposals is over the proposed level of parking and this is considered below. However, it was more an issue for improving the design and cost effectiveness of the scheme for the developer to take on board, rather than an overt criticism that the parking provision was detracting from the proposed residential environment. It is still considered, therefore, that the design and layout proposed has the overall backing of the design review panel. With such backing, it is not recommended that the Local Planning Authority should take issue with the design, its approach or the overall layout of the development and your officers consider that it is an acceptable solution.

In terms of the designated heritage assets, the impact on the conservation area and settings of the many listed buildings must be specifically considered. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act requires that special regard is paid to the desirability of preserving or enhancing the character and appearance of the conservation area, whilst Section 66 of the same Act requires that special regard is paid to the desirability of preserving listed buildings, their settings and any features of historic or architectural interest when deciding whether to grant planning permission. Given that there will be no intervention into the historic fabric making up the conservation area itself, perhaps the most important matter is the setting of the conservation area and the impact on its character formed by views through and from the heritage asset. In this regard, the Milverton Conservation Area Appraisal identifies that there remains a very close and tangible connection between the village and surrounding rural landscape which has often been lost elsewhere.

Given the quality of the historic environment, Historic England have been consulted on this application. They have reached the view that there would be harm to the conservation area, in that views to open countryside from the junction of Fore Street with Creedwell Orchard would be lost as a consequence of the development, however it would be seen alongside other 20th century developments outside the Conservation Area. In this regard, it is perhaps unfortunate that the development will break the skyline when seen from here and will not be kept below the ridge and this is considered further in section 4, below.

In verbal discussion with the Historic England Inspector, it has been confirmed that the views out and relationship to the open countryside are important to the character of Milverton. However, the most significant impact is the view from the corner of Fore Street and Creedwell Orchard. Here, the view of open countryside is already harmed by the existing development at Creedwell. In light of this, he considered that this particular view is not a defining part of the character of Milverton, therefore, although there would be demonstrable harm to the character and appearance of the conservation area, this would be less than substantial.

It has been suggested in the representations from members of the public that previous planning applications have been refused on the grounds of causing unacceptable harm to the character and appearance of the conservation area. It is

suggested that little can have changed in terms of the relationship with the historic core of Milverton and the application site and, therefore, it must follow that the development of the site would continue to have a harmful impact on the character and appearance of the conservation area.

The NPPF clarifies at paragraph 134 that “where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use”. In the context of the NPPF, taken as a whole, the general delivery of additional housing should be regarded as a public benefit to weigh against the harm. However, given the inadequate provision of affordable housing as part of the development mix – noted above – it is considered that any benefit arising from additional housing does not outweigh the harm to the character and appearance of the conservation area and this points to refusal of the application.

In assessing the impact on the character and appearance of the conservation area, Historic England have also assessed the impact on the settings of the grade 1 and 2* listed buildings, finding that they are sufficiently distanced from the site for the development not to have a substantial impact upon them. St. Michael’s churchyard warrants particular attention here and whilst it may be possible to see the development from parts of the churchyard, this would always be within the context of the existing 1960s Creedwell Orchard development. The overall connection with the open countryside beyond would be retained and the church would retain its prominent and focal position within the settlement when viewed from outside.

There are a number of grade 2 listed buildings from where it would be possible to see the development. However, this in itself would not harm the listed buildings and their settings are largely considered to be derived from their presence within the overall streetscape and setting of Milverton as a whole, rather than in the particular context of the development site.

Objectors to the scheme have levelled hefty criticism at the archaeological report. It is argued that its presentation as a ‘draft’ means that we cannot rely on its overall conclusions. The applicant has subsequently suggested that this was an error on behalf of the author and a ‘clean’ version has been provided with the same conclusions and recommendations. That said, the County Archaeologist does consider that the submitted archaeological report is not detailed enough to demonstrate that archaeology will not be harmed by the proposed development. He recommends that a field evaluation is carried out to inform the likely nature of archaeological remains on the site. This has been requested from the applicant and nothing further has been provided other than a statement that this could be adequately covered by a planning condition requiring work to be done during construction.

With regard to the above, then, it is considered that the proposed development is acceptably designed and would not cause sufficient harm to listed buildings or the conservation area. However, it has not been possible to determine the likely impact on archaeology and this indicates that the application should be refused on this basis.

4. Landscape impacts

A landscape analysis has been prepared as part of the Design and Access statement. This indicates that from most locations, the development would be seen as continuous with Milverton and would not have an excessively harmful impact upon the landscape character or visual amenity of the rural area. The Landscape Officer commented that the proposed landscaping scheme was a generally well considered response to the site's landscape setting, although it would benefit from greater tree planting on the southern boundary and this would help to assimilate the site into the landscape when viewing the site from the south.

It is fair to say that the development would break the skyline when viewed from the junction of Creedwell Orchard and Fore Street. However, this is also true of the existing development at Creedwell Orchard and the proposed development would largely continue this theme. The impact that the loss of these open views would have on the character and appearance of the conservation area was considered above, but in terms of a landscape and visual impact, it would be hard to argue that in breaking the skyline the development caused significant harm in this regard. There would be more landscaping on the higher ground around the proposed pseudo farmstead, on the highest part of the site, whereas there is no significant landscaping within the existing Creedwell Orchard development. This helps to reduce the harm in this regard.

The Landscape Officer suggested that there should be additional tree planting and landscaping to the south of the proposed development. With such in place, in the context of the adjoining development at Creedwell Orchard, it is considered that the proposed development would not have an unacceptable impact on the landscape when viewed from the south. Such could be achieved with relatively minor amendments to the submitted plans or through planning conditions and, therefore, this is not considered to warrant refusal of the application.

It has been suggested that the proposed development would result in the merging of the hamlet of Houndsmoor and Milverton. It has further been submitted that the Council should regard this separation in the same way as those green wedges identified in the Core Strategy and that the development therefore presents a conflict with Policy CP8 of the Core Strategy in this regard. On plan, it appears that Milverton and Houndsmoor are already linked, however, it is fair to say that the characteristics of Bartletts Lane and especially Houndsmoor Lane south of Rosebank Road do give a distinct feeling of separation between the two areas when moving between them on the ground. The comments in the public representations appear to indicate that Houndsmoor is considered by local residents to be distinct from Milverton.

Policy CP8 indicates that development outside settlement limits will be permitted where it would (*inter alia*) "protect, conserve or enhance landscape and townscape character whilst maintaining green wedges and open breaks between settlements". This situation is not considering a designated green wedge – these are clearly identified as relating to Taunton and Wellington at paragraph 3.110 of the Core Strategy and are shown on the proposals maps. The plan does not otherwise define what is meant by 'open breaks between settlements' so this is open to interpretation. Given the identified separation noted above, it is considered that the application site could be construed as forming an open break between Houndsmoor and Milverton

and it is clear that this is valued by local residents. However, as suggested above, the separation is largely something felt on the ground – particularly in walking or driving along Houndsmoor Lane. This would not be affected by the proposed development and no links are proposed through the site between Milverton and Houndsmoor. Therefore, it is not considered that this erosion of open space between the settlements should be attributed significant weight in the determination of the application.

5. Highway impacts

The site is accessed via Creedwell Orchard from Fore Street/Silver Street. Creedwell Orchard is a typical 1960s estate road with footpaths on both sides. It accommodates on-street parking and gives access to the doctors' surgery, a public car park and around 100 dwellings. Fore Street and Silver Street, being the main road through the village and carrying the B3187 to Wellington are a typical village street being of varying width but generally narrow and with inconsistent footpath provision. The road becomes Sand Street to the west, which has similar characteristics up to its junction with Butts Way.

Milverton handles a significant amount of through traffic and the public representations suggest that the area around the junction with Creedwell Orchard is frequently clogged with large vehicles. The junction often appears to be used as a passing place and this causes a conflict of vehicular movements at this location. Queuing traffic in all directions, including trying access and egress Creedwell Orchard is commonplace. There is significant local concern, therefore, that the development of around 70 dwellings would have serious implications on what is perceived to be an already overloaded highway network.

The Highway Authority have examined the proposal. They consider that the level of analysis that has been undertaken is poor and they do not agree with the methodologies used in determining existing or proposed traffic generation. However, they are satisfied that a more rigorous assessment would not lead to a different conclusion, so they are content to accept the applicant's submissions as a basis for their assessment.

The Highway Authority has been asked to clarify the comments in their response to the proposal. It has now been confirmed that they believe that there will be an impact on the highway network, but that this will not be severe. Policy DM1 of the Core Strategy requires that "additional road traffic, taking account of any road improvements involved, would not lead to overloading of access roads, road safety problems or environmental degradation by fumes, noise, vibrations or visual impact". The NPPF (paragraph 32) indicates that "development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe". This sets a very high bar and indicates that some inconvenience and impact should be tolerated. In concluding that the impacts would not be severe, the advice of the Highway Authority strongly suggests that permission should not be refused on the basis of transport or highway safety impacts.

Given that the highway impacts in themselves do not point to a refusal, a travel plan is not required in this case to make the development acceptable in terms of its impact on the highway network. However, local and national policy is clear that

development that are likely to generate a significant amount of traffic movements should provide a travel plan. Policy CP6 of the Core Strategy, in referring to the County Council's Travel Plan SPD requires that any development of over 50 dwellings requires a Travel Plan. A Travel Plan has been submitted, but the Highway Authority consider that its measures are insufficient to create any significant modal shift. Given that residual highway impacts would still be acceptable, this reduces the weight that can be attributed to this matter, but Policy CP6 and paragraph 36 of the NPPF are clear that a Travel Plan should be provided. The lack of an acceptable travel plan, therefore, points to refusal.

In addition to the highway impacts arising from the completed development, there is also significant local concern about the potential impact of construction traffic on both the flow of traffic and inconvenience to other road users and in terms of potential damage to buildings which flank the access road, many of which are listed. Inconvenience during the build programme seldom carries significant weight in the decision making process as all development is likely to lead to some disruption. However, it is fair to say that Milverton's road network is not well suited to heavy traffic and the on-street parking situation could mean that deliveries to the site do lead to an increase in obstruction and a conflict of vehicle movements.

Construction Traffic Management Plans (CTMP) to deal with this are notoriously difficult to enforce. The developer has shown willingness to cooperate in this regard and give further consideration to traffic routing and hours of delivery, but your officers could not recommend that conditions were imposed to cover this. Development (generally) frequently causes disruption and some inconvenience, but this could not be a reason to refuse permission in this case.

Part of the development proposes a public car park accommodating 16 car parking spaces. This has been proposed in recognition of the already overstretched on-street parking situation in the village and seeks to provide some benefit. The applicant has also suggested that this could be provided early on in the development programme in order to mitigate any potential temporary loss of parking spaces in order to accommodate construction traffic through the village. This seems sensible and could also be enforced by condition.

6. Flood risk

The site is within Flood Zone 1 and is not, in itself, at risk of fluvial flooding. Any flood risk that does exist on the site relates to surface water run-off. Evidence in the representations suggests that run-off from the field can collect in the northern part of the site and can overspill into Bartletts Lane and some neighbouring residential gardens.

The application was originally accompanied by a flood risk assessment (FRA) which sought to demonstrate that the development would not give rise to any increase in off-site flood risk. However, the FRA was limited in scope and detail and did not comply with the Environment Agency's standing advice on flood risk. Following a series of objections from the Council's Drainage Engineer and SCC's Flood Risk Manager, the catchment hydrology has been modelled and an assessment has been made of the likely capacity of the Milverton Flood Relief Culvert that the development proposes to connect to at the northern end of the site.

The Drainage Engineer and Flood Risk Manager are now satisfied that the modelling in the FRA indicates that there is sufficient capacity within the culvert to accept the discharge flows from the development and that the indicative details within the FRA show that surface water attenuation could be provided on site to ensure that discharge to the culvert is at an appropriate rate. Bunding is required around the northern extent of the site to prevent exceedance flows leaving the site and causing flood risk to neighbouring property.

The bund would be provided along the boundary of the site with Bartletts Lane, but within the site. It would be around 1m in height above ground levels at the western end and around 2m opposite Burgage Lane. Given the existing tree/hedge planting along this boundary, it is not considered that the bund would have a significant adverse impact upon the visual amenities of the area or the neighbouring properties on the north side of Bartletts Lane.

The FRA remains fairly high level in its approach and relies on draft drainage strategies and assumptions about ground permeability. A condition would be required on any grant of planning permission to ensure that a detailed drainage scheme is submitted for approval.

7. Other matters

The site is bounded to the west, north and northeast by existing residential property at various distances from the development. The proposed development would provide acceptable separation distances from the existing dwellings such that there would be no unacceptable overlooking. One house type has been amended following consultation to reduce plot 34 from a 2.5 storey dwelling to a 2 storey dwelling, thereby reducing the impact on dwellings to the east to an acceptable degree.

All of the closest neighbours would, to a greater or lesser degree, lose the connection with the open countryside, but this is not considered to be so harmful as to warrant refusal of the application. The greatest impact in this regard would be felt to the properties on the south side of Bartletts Lane where the outlook across the rising ground to the south would be replaced by residential properties and the surface water attenuation bund. The closest properties, however, would be on the opposite side of the proposed open space and, therefore, would not be overbearing upon these existing residential dwellings.

An ecological survey has been submitted with the application. This identified the presence of a badger sett, but no bats, dormouse or other European Protected Species. It is, therefore, considered that the impact on wildlife can be made acceptable through the imposition of a condition to protect wildlife interests during the course of the development and to enhance provision once the site has been developed.

8. Conclusions on the acceptability of the development, when assessed against the development plan

The foregoing indicates that, whilst the development of the site in general terms would be acceptable in overarching policy terms, the lack of affordable housing provision within the application presents a fundamental conflict with the development plan. Furthermore, the development would cause harm to the conservation area, which is not outweighed by the wider public benefits of the proposal particularly due to the lack of affordable housing. There has been insufficient evidence to confirm that archaeological interests would not be harmed, there is insufficient play space and the submitted travel plan is not acceptable.

With regard to the foregoing, therefore, it is considered that the development is clearly harmful in a number of regards. In terms of paragraph 14 of the NPPF and Policy SD1 of the Taunton Deane Core Strategy, it is considered that the harms are substantial and outweigh the benefits of granting permission. This points to the refusal of the application, unless other material considerations indicate otherwise.

9. Other material considerations

Having considered the application against the development plan it is then necessary to establish whether there are any other material considerations that otherwise indicate that a different decision should be reached. In this particular case, the applicant encourages the Council to place great weight on the outline planning permission granted in 1975 and reserved matters approval given in 1978. The issue of a Certificate of Lawful Proposed Use or Development – commonly referred to as a Certificate of Lawfulness – in 2007 confirms that this planning permission was lawfully implemented and that the development can now be completed without the further grant of planning permission. There is considerable suggestion from the local community that the certificate was issued in error, but this is not correct. In any case, this is not a matter that can be taken into consideration in determining this application. It is a matter of fact that the Certificate of Lawfulness exists and that the 1975 permission has been formally confirmed as extant.

From this position, then, the applicant argues that the presence of the extant permission creates a fall-back position. That is, if planning permission were not given for the current application, he could recommence development on the 1970s scheme. He has confirmed that he has sufficient land within his control to build 72 of the 80 dwellings permitted under the earlier permission and stated that this is what he will do. He then argues that the current proposal is far better than the previous scheme in terms of its design and impact on the character and appearance of the village and that this indicates that permission should be granted for the new scheme. He claims that the development should not be expected to provide the usual standard of affordable housing, other contributions or travel planning because such is unreasonable in the face of the fall-back scheme which does not have any such requirement. It is also suggested that the impact on the highway network would be no greater than the extant scheme and that the existing scheme could be built out without any archaeology being undertaken so requests to do further work in respect of the current proposal are unreasonable.

Your officers have sought Counsel's advice on the consideration of any fall-back position. The assessment of fall-back has been the matter of decisive case law and this provides a very clear framework in which to assess this matter. Counsel has advised at best the extant permission can only amount to a material consideration to

be weighed in the planning balance not as *carte blanche* to grant permission for a proposal contrary to current planning principles.

Case law as recent as 2014 indicates that the development proposed in the fall-back position would amount to a material consideration where there was a greater than theoretical possibility that it might take place. Only once it has been accepted that this is the case should comparisons be made between the two schemes or the amount of weight that should be attributed to it be judged. The first task, then, is assessing whether the fall-back position can actually be treated as a material consideration, that is, whether there is a greater than theoretical possibility that it might take place.

Whether the extant permission is a material consideration

The mere existence of the extant permission and the applicant having control of the majority of the site certainly establishes that there is a theoretical possibility, but the test is higher than this. Having considered the various submissions of the Parish Council, Save Milverton Action Group and local residents, along with your officer's own views, it is considered that the likelihood of the extant permission being proceeded with hinges on 5 key arguments, set out below.

Whether the extant permission would be commercially viable

There is little doubt that an out dated design would potentially produce a lower commercial return than a development which reflects current design standards. The applicant considers that the scheme remains viable because they have agreed a price for the purchase of the access land with the Council and that a positive value of the site would not exist if there were no commercial return from the development. They say that a 'Red Book' valuation has been carried out to inform this view and that it shows a profit.

Your officers understand that the 'Red Book' is guidance to chartered surveyors in how to produce a valuation – it is not a viability appraisal of development and cannot categorically demonstrate development viability. Furthermore, the applicant has refused to share the report (even on a confidential basis) with planning officers; its assumptions and conclusions are not known and therefore it has not been possible to form any judgement as to its accuracy.

That said, it is reasonable to take a pragmatic view here. It is understood the applicant purchased the site for a very low amount and, as such, it would be relatively easy to turn a development profit from the site. Whilst a re-designed scheme along the lines of the current application would be more viable, it seems unlikely that the extant permission would be unviable. Therefore, your officers consider it unlikely that scheme viability would prevent completion of the extant permission.

There are no final approved plans for the extant permission

The decision notice for the extant reserved matters approval refers to revised drawings that are no longer on record. It is fair to say that this could cause problems

in selling the properties and uncertainty over whether the development had been carried out in accordance with the planning permission.

In response, the developer acknowledges that this causes a potential area of difficulty, but takes the view that the development can still be progressed. Your officers are satisfied that there are sufficient plans to illustrate the form of the development that was permitted in the 1970s to allow implementation.

It has not been shown that suitable drainage arrangements can be put in place for the extant permission

The extant permission is not detailed in terms of how surface water would be disposed of. This is unsurprising given that the scheme pre-dates current concerns with flood risk and development – there would likely have been an expectation at the time of approval that water would be discharged to sewers and taken off-site. Indeed, this is what is proposed, the application form stating that surface water would be disposed of ‘into [the] existing storm water system (recently completed)’ – this is now understood to be a flood relief ‘culvert’ and with regard to the planning permission, as Local Planning Authority, the Council could insist on no further information or alteration.

However, the Council does control that culvert and the relevant officers consider that as managers of the asset the Council would not wish to allow un-attenuated flows to enter that culvert. Furthermore, the asset management team have confirmed that these flows should be attenuated to the same degree as if planning permission were being granted today. After a considerable period of disagreement, the developer has produced an indicative drainage scheme showing how the extant permission could be drained. This shows that surface water flows can be attenuated to an appropriate rate using underground storage tanks below the public open space at the north of the site and under the proposed highway. There are still objections from local residents that this has been inadequately demonstrated, but it is possible that additional engineering solutions – such as oversized pipes – could be used to increase the storage capacity.

Ultimately, your officers are satisfied that there is the potential for an acceptable engineering solution that will enable the Council to agree connection to the culvert. This is likely to be in the form of underground storage facilities, which, in the context of the overall development, are unlikely to require any further grant of planning permission. Therefore, it is unlikely that the remaining uncertainties over the detailed mechanism of draining the site would prevent completion of the development.

The whole site is no longer owned by the developer and the development cannot, therefore, be completed in full accordance with the approved plans

Nothing in planning legislation or the planning permission itself requires the completion of development. Therefore, the fact that part of the site – principally an area to the northeast on the opposite side of Bartletts Lane – is not in control of the applicant and has already been developed for housing, does not prevent the completion of the remainder. It is fair to say that, in planning terms, the extant

permission could be built other than in those areas no longer owned. It is true that some amendments to the layout would be required to provide turning heads at the new, truncated site boundaries, but in this case, the applicant's opinion is that these could be the subject of further separate applications once development were under way. Clearly it is not possible to prejudge future hypothetical applications, but it would likely be difficult for the Council to resist such proposals. In the worst case scenario, there would not be any turning heads provided – this may prevent the roads from being adopted in the future, and may be undesirable, but this would not prevent development in itself.

That the certificate of lawfulness confirms that the original permission would be lawful; not some varied form of that permission (such as that subject to the varied terms of the S52 agreement).

On 26th September 2012, the Planning Committee agreed to vary the S52 obligations (similar to today's S106) on the extant planning permission to remove the requirement to widen Creedwell Orchard. It has been suggested that the Certificate of Lawfulness confirms that it would be lawful to continue to build the original scheme, but not some varied form of it – i.e. the permission could only be built out under the terms of that permission if Creedwell Orchard were widened (which it cannot be due to land ownership reasons). Your solicitor has given this matter some thought and considers that Certificate of Lawfulness confirms that the permission is extant and can be built out without the further grant of planning permission. The fact that a variation to clauses in the S52 agreement have been made – not to the planning permission itself – does not alter the legality of building out the planning permission. This matter, therefore, does not prevent completion of the original development.

Other matters relating to the extant scheme

In recent months the applicant has made two amendments to the scheme. The first was to introduce a proposal to provide affordable housing, the second was to retract it. The proposal to introduce affordable housing was a response to a suggestion from your officers that the application was likely to be recommended for refusal (for this very reason). Until that point, the applicant had been steadfast in his view that the extant scheme would be built out and felt that the Council could not reasonably refuse the scheme in the absence of affordable housing. However, this action now casts substantial doubt on whether or not the development can, or indeed would, be carried out – it appeared to your officers as a last ditch attempt to secure a planning permission and clearly would have altered the balance of considerations of the current application. Subsequently, when faced with a further prospect of refusal, a further deferral of consideration was requested by the applicant to consider the matter of affordable housing again. However, whilst this action adds further doubt over whether the extant scheme would be built out, it does not provide any categorical evidence that it would not.

Having considered that foregoing arguments, your officers consider that, on balance, there is a greater than theoretical possibility of the extant permission being recommenced. Therefore, the presence of the extant permission should be regarded as a material consideration and it must then be determined how much

weight to attribute to it.

Weight to attribute to the extant permission

In determining the weight to be attributed to the extant permission it is first necessary to consider the environment in which the original permission was granted.

The planning history is clear that, despite many applications over the years (before and after 1975) planning permission has been consistently refused for residential development of this land and there have also been decisions not to allocate the site for development. There was a short period in the mid-1970s where a change to policy allowed the development and it was permitted. Other than this, development of the site has been consistently resisted.

At the time of granting the 1975 permission, there was no requirement to build affordable housing. Therefore, the development permitted did not provide any and this was consistent with planning policy at the time. In this regard, Counsel's advice is clear that "in the present case TDBC are not constrained by that earlier decision on the question of affordable housing and indeed could be criticised if they did follow their own policies and only depart from them for clear and defensible reasons". The mere presence of a permission that provides no affordable housing, dating from a period where there was no requirement to provide any, is not considered to be reason to grant a new permission without affordable housing since the two schemes are not comparable in this regard.

Ultimately, the proposed development is contrary to the development plan and causes demonstrable harm. It is not incumbent upon the Council to grant planning permission, simply because some other development could be carried out. In this regard it is, however, useful to compare the relative harm arising from the two alternative developments. This is set out under the headings of main report above.

Affordable housing and other obligations

Neither scheme would result in the provision of affordable housing. The harm caused by both schemes in terms of current affordable housing planning policy is, therefore, comparable.

The children's play area at around 800m would be smaller than the 1100 square metres proposed on the extant reserved matters approval. The S52 agreement on the extant permission only required 150 square metres of children's play within this area, so both developments fall short of today's standard in this regard.

Design matters and Heritage impacts

The scheme now proposed is clearly of a better design. Not only does it benefit from almost 40 years of advancement in thinking, it also has the backing of the South West Design Review Panel. The proposed scheme is, therefore, considered to be better than the extant and better reflects the character of Milverton. It is, therefore, less harmful in this regard.

However, in terms of the impact on the conservation area, it is difficult to argue that the extant scheme is more harmful than the proposed. As detailed at Section 3, above, the harm to the conservation area arises from the disconnection of the historic core of the village from the surrounding agricultural land. Given that the development itself is not continuous with the conservation area boundary it is the presence of development on this land that causes the harm, not the detailing and layout of the individual dwellings. This is especially true given that the development (in whichever form) would be continuous with the existing Creedwell Orchard and this is already a substantial detractor from the character and appearance of the conservation area, particularly when viewed from Fore Street at its junction with Creedwell Orchard.

It is, therefore, considered that both schemes would result in harm to the character and appearance of the conservation area and, in both cases, this harm would be less than substantial. It is questionable whether the sole matter of an improvement in design quality is weighty enough to warrant granting planning permission for an otherwise unacceptable, and demonstrably harmful scheme.

Landscape impacts

Both developments give rise to a similar harm to the landscape. In the current application, there is scope to agree a softer boundary to the open countryside beyond. That said, there is limited wider landscape harm arising from the treatment of this northern boundary and it is largely limited to the visual amenities of the footpath that runs towards (and through) the site from Huntash Lane.

The proposed development would extend further to the south than the extant permission into an area – at the highest point on the site – that could make the overall development more visible in the landscape. The extant permission was made subject to a condition that the ridge line of the proposed dwellings would have to be below the ridge line of the land to the south. However, the approved reserved matters are not entirely clear on whether this would actually be achieved. Careful consideration of the detail suggests that the dwellings would be likely to break the ridge line, albeit that they would be sited on a relatively spacious layout so that the ridgeline would appear punctuated rather than obscured. They would, however, be dug into the site by a substantial amount so they would not break the ridge line to a great degree. In terms of views from the historic part of Milverton towards the site, the substantial tree planting proposed on the highest part of the site (which would be in front of the proposed ‘farmhouse and barns’) would mean that despite the increased height of dwellings now proposed, the landscape impact would be broadly similar between the two schemes, although the dwellings in the new application would be on higher ground than those of the previous scheme.

Highway impacts

Both schemes would result in approximately the same number of dwellings. There would, therefore, be a broadly comparable highway impact from either scheme.

Flood risk

Both schemes proposed to discharge surface water to the culvert that crosses the northern part of the site. The culvert is believed to be a Taunton Deane asset. Due to the likely conditions that would be placed upon the developer by TDBC as asset managers, it is likely that surface water would have to be attenuated to the same discharge rate regardless of which development were carried out.

The proposed scheme, if permitted, would attenuate surface water through a series of open ponds and swales and this would produce greater environmental benefit over the likely tanked system that would be used in draining the extant permission. However, in terms of ultimate rate of discharge from the site to the culvert, the schemes would be broadly comparable. The scheme now proposed would include other measures to help prevent exceedance flows leaving the site at times of peak rainfall and this benefit would not exist if the extant permission were developed and the asset management team have now confirmed that such would also likely be required in the event that the extant scheme were carried out.

Other matters

By reason of the positioning of the housing and the scale of development proposed, the two schemes would have a comparable impact upon the residential amenities of nearby residents.

The ecological interest of the site is relatively low and there is unlikely to be harm to European Protected Species, whichever development were carried out.

Summary and conclusions in comparing the two developments

The above discussion indicates that the relative harm of the two developments is broadly comparable in many aspects. The proposed development would bring with it a better design – indeed a good design with the added endorsement of the South West Design Review Panel. However, in terms of the harm that would be caused to the character and appearance of the conservation area, the schemes would be broadly comparable in terms of their impact. Arguably, the higher dwellings in the new scheme could introduce some additional harms, although this would be partially mitigated by landscaping. The proposed scheme could provide some ecological enhancement, both in terms of direct measures to enhance wildlife interests, additional tree planting and measures relating to the proposed methods of surface water drainage, when compared to the extant permission. True, this mitigation would not occur if the extant permission were built out rather than that now proposed, but they are not considered to be significant benefits.

Other material considerations

The proposed development would result in the payment of the Community Infrastructure Levy. In this case, it would amount to approximately £1,389,310. Such would not be received from the extant permission. Whilst CIL is a material consideration, it is not considered that the payment of CIL can outweigh the conflict

with the development plan, it merely goes towards meeting the infrastructure needs of the development.

10. Final summary, conclusion and recommendation

The foregoing report identifies that the development is contrary to the development plan. Although there would be benefits from allowing residential development generally speaking, this particular development would provide an unacceptably low contribution to affordable housing and this presents a major conflict with the development plan. It also means that the benefits that arise from housing generally would not result from the proposed development. Furthermore, there are other harms arising from the development in terms of the impact on heritage assets. In terms of the impact on the character and appearance of the conservation area, the above findings in terms of affordable housing and wider benefits from the development mean that these do not outweigh the harm that would be caused. Finally, there is no acceptable proposed travel plan to encourage travel by means other than the private car.

Policy SD1 of the Taunton Deane Core Strategy and Paragraph 14 of the NPPF indicates that where the development plan is absent in terms of housing allocations, the presumption in favour of sustainable development should apply, whereby planning permission should be granted for development unless the adverse impacts of doing so significantly and demonstrably outweigh the benefits. In this case, it is considered that the harm in terms of the lack of affordable housing and the harm to heritage assets does significantly and demonstrably outweigh the benefits when the proposal is considered against the adopted Core Strategy and the policies in the NPPF, taken as a whole. This proposed development is, therefore, not considered to be a sustainable one.

The existence of the extant planning permission dating from 1975 is considered to be a material consideration in that there is a greater than theoretical possibility that it would be constructed. Whilst in design terms the new scheme can be seen to be better than the extant, in comparing the harm of the two developments, the impacts would be broadly comparable in most regards – particularly when considered against the main reasons (affordable housing and heritage impacts) that lead to the fundamental conflicts with the development plan and NPPF.

The proposed development is unacceptable and it is not considered that the presence of the extant permission or the developers 'threat' to carry out this development is such a weighty material consideration to warrant granting permission for an otherwise unacceptable development. The comparison of harms between the schemes indicates that the new scheme would be no worse than the extant. However, this does not automatically mean that planning permission should be granted. Rather, it is a material consideration that weighs in favour of the proposed development. That material consideration that weighs in favour must be weighed against the fundamental policy conflicts and it is not considered that it is so weighty as to justify the grant of planning permission in the face of these conflicts which give rise to significant and demonstrable harms.

There remains, of course, the possibility that the extant permission will be built out. This will cause harm to the character and appearance of the conservation area and

may harm archaeological interests. It is clearly not so well designed as the scheme that is now proposed and would be a less sympathetic addition to Milverton. However, on balance, it is considered that this does not outweigh the fundamental objections to the current application and it is, therefore, recommended that planning permission is refused.

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

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