

Taunton Deane Borough Council

Planning Committee – 30 January 2013

Report of the Legal Services Manager

Consideration of Planning Application No 42/12/0013, Land at Amberd Lane, Trull

Background

At the meeting of this Committee on 5 September 2012 the above application was considered for the residential development of land at Amberd Lane, Trull. A copy of the original report to Committee is attached to this report for ease of reference as Appendix 1.

Following the Committee's decision to recommend approval of the application subject to the conclusion of a Section 106 (S106) Agreement, a letter was received from TLT Solicitors dated 5 November 2012 on behalf of a local resident. The letter was the first step in the pre-action protocol for Judicial Review of the Council's decision to approve the application, subject to the completion of a S106 Agreement.

The letter detailed the issues identified as the grounds for challenge and a response was sent to the solicitors by the Head of Legal and Democratic Service on the 5 November 2012. The letter countered the various issues raised by the solicitors but an offer was made to refer the matter back to the Committee so that the objectors concerns could be aired and the Committee asked if, having considered the issues, the Committee wished to affirm its earlier resolution to grant. The S106 Agreement has not yet been completed.

Following this, a meeting was held with two local residents on the 12 December 2012 when the issues were discussed and it was agreed that the objectors would submit a written statement of their concerns which would be put to Committee. That document is also attached to this report as Appendix 2.

Responses to issues raised:-

1. The Planning Officer failed to recognise that the policies of the Taunton Deane Core Strategy were pertinent to this application.

2. The Planning Officer failed to acknowledge that the proposal was not in accord with the policies of the development plan.

In his report the Planning Officer does refer to various Policies of the Core Strategy as being relevant planning policies (DM1, DM2, SP1 and CP8). However, the point is that at the present time there is no Small Sites Allocation Document relating to sites such as Amberd Land although by the date of the Committee the first draft should be out for consultation but is unlikely to be adopted until 2014 at the earliest.

Paragraph 14 of the Framework makes it clear that in decision making, as is the case here, if the development plan is absent, permission should be granted unless:-

- any adverse impacts of doing so would so significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or
- specific policies in this Framework indicate development should be restricted.

It is this test against which the Planning Officer judged the application and his recommendation of conditional approval reflects this.

3. The items sought by way of a S106 Agreement do not comply with Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010

It was detailed in both the report to the Committee and verbally at the meeting that some of the obligations offered by the developer were in excess of the standard requirements of the authority which would accord with the CIL Regulations.

However, it was made very clear to Members of the Committee that they should not allow additional obligations to sway their judgment on the application and there is no evidence of this. Such obligations can be made by way of a Unilateral Undertaking to which the Council is not a party.

Other administrative shortcomings

It has been explained earlier in the report why it is considered that the application should be determined in accordance with the test set out in Paragraph 14 of the Framework.

It is accepted that although the Environment Agency had been consulted, they had not responded. They have again been consulted and any response will be reported to the meeting.

There is no evidence that undue weight was given by Members of the Committee to the views of Trull Parish Council, and representations made at the meeting made it clear that objectors considered that the Parish Council had been unduly swayed by the proposed benefits for the community.

Assessment

It is not considered that any of the issues raised by the objector are sufficient to affect the validity of the decision reached at the meeting on the 5 September 2012.

Members are therefore recommended, having considered the issues raised by the objector, to endorse their earlier decision.

Legal Services Manager

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OUTLINE APPLICATION FOR A RESIDENTIAL DEVELOPMENT AT AMBERD LANE, TRULL

Grid Reference: 321452.121721

Outline Planning Permission

RECOMMENDATION AND REASON(S)

Recommended Decision: Conditional Approval subject to the applicants entering into an appropriate legal agreement to secure:

Affordable Housing

- 10 units of affordable housing to be delivered on site in a distributed manner in accordance with the requirements of local housing need.

Community Facilities

- Contributions of £80,640 towards a Neighbourhood Equipped Area for Play (NEAP) to be located on the existing recreation field to the north.
- Contribution of £43,620 towards Active Outdoor Recreation.
- Contribution of £33,340 towards Community Hall Facilities.
- Contribution of £5,820 towards Allotment Provision.

As an alternative to the contribution towards the NEAP, Active Outdoor Recreation and Community Hall Facilities above (totalling £157,600), the provision of:

- Land to the south of the existing playing field (as shown on the deposited plans) to form an extension of that playing field, including the levelling, cultivation and seeding of the field;
- Provision of the NEAP;
- Provision of a Pavilion and Store Building of gross floor area not less than 200 square metres.

Public Art

- A contribution towards the provision of public art and public realm enhancements in accordance with the Council's Public Art Policy.

Landscaping

- The provision and subsequent maintenance of the landscaped belt proposed on the field to the east of the site prior to works commencing on site.

Education

- Contribution of £73,530 towards Primary School Facilities.

Highways

- The design and construction of a footpath/cycletrack within the site and the widening and surfacing of the existing footpath between the northern end of the site and the south western corner of the existing recreation field to 2.5m.
- The design and construction of a new traffic island at the junction of Amberd Lane and Honiton Road.
- A minimum sum of £10,000 for Travel Planning requirements, including travel vouchers upon first occupation and production of information leaflets. This 'minimum' should be considered against the provision of a full Travel Plan Statement, and any additional elements arising from the Statement.

Reason for Granting

The proposed development of 30 houses would result in a sustainable form of development which, with appropriate landscaping, would not prejudice the open character of the Vivary green wedge or lead to the coalescence of settlements. As such the proposal is not contrary to policy EN13 of the adopted Local Plan and is in accordance with the provisions of policy SP1 of the Core Strategy. The adverse impacts of the development do not significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole and therefore the proposal is approved as advised in paragraph 14 of the NPPF.

RECOMMENDED CONDITION(S) (if applicable)

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

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

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

2. Before any part of the permitted development is commenced, the hedges to be retained on the site shall be protected by a chestnut paling fence 1.5 m high, placed at a minimum distance of 2.0 m from the edge of the hedge unless otherwise agreed in writing by the local planning authority.

Reason: To avoid potential harm to the root system of any hedge leading to possible consequential damage to its health which would be contrary to

Taunton Deane Local Plan Policy EN6.

3. The development shall provide for covered and secure storage facilities, details of which shall be indicated on the plans submitted in accordance with condition 1 above. Such facilities shall be provided prior to the occupation of any dwelling to which it relates and shall thereafter be retained for those purposes.

Reason: To ensure that adequate facilities are included for the storage of cycles, in accordance with policy S1 of the Taunton Deane Local Plan and policy 49 of the Somerset and Exmoor National Park Joint Structure Plan Review.

4. (i) Before any part of the permitted development is commenced, a landscaping scheme, which shall include details of the species, siting and numbers to be planted, shall be submitted to and approved in writing by the Local Planning Authority.
- (ii) The scheme shall be completely carried out within the first available planting season from the date of commencement of the development, or as otherwise extended with the agreement in writing of the Local Planning Authority.
- (iii) For a period of five years after the completion of each landscaping scheme, the trees and shrubs shall be protected and maintained in a healthy weed free condition and any trees or shrubs that cease to grow shall be replaced by trees or shrubs of similar size and species, or the appropriate trees or shrubs as may be approved in writing by the Local Planning Authority.

Reason: To ensure that the proposed development makes a satisfactory contribution to the preservation and enhancement of the local character and distinctiveness of the area in accordance with Taunton Deane Local Plan Policy S2.

5. No development shall begin until a surface water drainage scheme for the site, based on sustainable drainage principles has been submitted and approved by the Local Planning Authority, all as set out in the submitted Flood Risk Assessment by Three Counties dated 30 March 2012.

The scheme shall include full details of proposed on site storage where run off rates have been limited to those from a 1 in 1 year storm on the green field site. Calculations are to be provided showing this attenuation provided for all storms up to and including the 1 in 100 year plus climate change event. The details shall clarify the intended future ownership and maintenance provision for all drainage works serving the site. Details of exceedance flow paths and depths of flow shall be mapped and shown to be safe.

Reason - To ensure that the site is adequately drained without having an adverse impact on water flows or flooding elsewhere in accordance with the

NPPF.

6.

The development hereby permitted shall not be commenced until details of a strategy to protect wildlife has been submitted to and approved in writing by the Local Planning Authority. The strategy shall be based on the advice of JH Ecology's Ecological impact assessment submitted report, dated March 2012 and up to date surveys and include:

1. Details of protective measures to include method statements to avoid impacts on protected species during all stages of development;
2. Details of the timing of works to avoid periods of work when the species could be harmed by disturbance
3. Measures for the retention and replacement and enhancement of places of rest for the species

Once approved the works shall be implemented in accordance with the approved details and timing of the works unless otherwise approved in writing by the Local Planning Authority and thereafter the resting places and agreed accesses for bats and nesting birds shall be permanently maintained. The development shall not be occupied until the scheme for the maintenance and provision of the new bird and bat boxes and related accesses have been fully implemented

Reason: To protect and accommodate wildlife and their habitats from damage bearing in mind these species are protected by law.

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

Reason - In the interests of highway safety in accordance with the provisions of the NPPF

8. Before the dwellings hereby permitted are first occupied, a 1.8m wide footway shall be constructed over the frontage of the site between the western edge and the vehicle access in accordance with a specification to be approved in writing by the Local Planning Authority.

Reason - In the interests of highway safety in accordance with the provisions of the NPPF

9. The proposed estate roads, footways, footpaths, tactile paving, cycleways, bus stops/bus lay-bys, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car parking and street furniture shall be constructed and laid out in accordance with details to be approved by the Local Planning Authority in writing before their construction begins.

Reason - In the interests of highway safety in accordance with the provisions of the NPPF

10. The proposed roads, including footpaths and turning spaces where applicable, shall be constructed in such a manner as to ensure that each dwelling before it is occupied shall be served by a properly consolidated and surfaced footpath and carriageway to at least base course level between the dwelling and existing highway.

Reason - In the interests of highway safety in accordance with the provisions of the NPPF

Notes for compliance

1. The condition relating to wildlife requires the submission of information to protect the species. The Local Planning Authority will expect to see a detailed method statement clearly stating how the wildlife will be protected through the development process and to be provided with a mitigation proposal that will maintain favourable status for species that are affected by this development proposal.

2. Most resident nesting birds are protected under the Wildlife and Countryside Act 1981 (as amended)

3. It should be noted that the protection afforded to species under UK and EU legislation is irrespective of the planning system and the developer should ensure that any activity they undertake on the application site (regardless of the need for planning consent) must comply with the appropriate wildlife legislation.

4. Dormice are known to be present on site. The species concerned are European Protected Species within the meaning of the Conservation of Natural Habitats and species Regulations 2010 (as amended 2011). Where the local population of European Protected Species may be affected in a development, a licence must be obtained from Natural England in accordance with the above regulations. NE requires that the Local Planning Authority must be satisfied that a derogation from the Habitats Directive is justified prior to issuing such a licence.

5. The applicant should be advised that at least seven days before access works commence the Highway Service Manager: Taunton Deane Area Highways, Burton Place, Taunton, Somerset TA1 4HE (Tel: 0845 345 9155) must be consulted.

6. The applicant shall ensure that all vehicles leaving the site are in such condition as not to emit dust or deposit mud, slurry or other debris on the highway. In particular (but without prejudice to the foregoing), efficient means shall be installed, maintained and employed for cleaning the wheels of all lorries leaving the site, details of which shall have been agreed in advance in writing by the Local Planning Authority and fully implemented prior to commencement of the 1st dwelling, and thereafter maintained until the use of

the site discontinues.

PROPOSAL

This is an outline application for the erection of 30 houses on the eastern side of Trull. The site would be accessed off Amberd Lane and an indicative layout has been submitted which shows a cul-de-sac type development of 20 large detached houses and 10 terraced and semi-detached houses.

As part of the proposal, the applicant has offered the following.

- 10 affordable houses to be delivered on-site,
- Contributions towards a Neighbourhood Equipped Area for Play (NEAP) to be located on the existing recreation field to the north,
- Contribution towards Active Outdoor Recreation,
- Contribution towards Community Hall Facility,
- Contribution towards Allotment Provision,
- Public Art contributions to be included through integrated public art on any community/sports building,
- Education contributions at a level set by the TBDC interim Community Infrastructure Levy (CIL),
- Incorporated cycleway provision within the site to link to the public footpath at the north west of the site,
- Resurfacing and widening to 2.5m of the existing publicly owned footway T21/72 between the site and the existing village recreation field.
- Construction of a new traffic island at the junction of Amberd Lane Honiton Road to improve visibility,
- Provision of a 'virtual footway' along Amberd Lane to link the site with existing footways on Honiton Road,
- Provision of landscaped belt along eastern site boundary within the adjoining field, and
- Transfer of ownership of the field to the east of the site to Parish of Trull (at no cost).

As an alternative to making contributions towards Play and Active Recreation, the NEAP, Active Outdoor Recreation and Community Hall Facilities the applicant/developer would prefer to meet the obligations by an undertaking secured through a Section 106 agreement which would include:

- (i) The submission and successful determination of a planning application for change of use to community and recreation on the land to the south of the existing field (as shown on the deposited plans) to be contiguous with the existing facility.
- (ii) Levelling, cultivation and seeding of the field
- (i) Provision of the NEAP
- (ii) Provision of a Pavilion and Store Building of gross floor area not less than 200 square metres maybe similar in design and layout to that which was provided by the applicant in similar circumstances at North Curry
- (iii) The cumulative cost and value of the foregoing will far exceed the contributions sought, but in the event that for reasons outside the developer's control any element has to be omitted then a capital contribution to address any shortfall between that provided and the stated requirement will be made

in the normal manner

SITE DESCRIPTION AND HISTORY

The site is located on the northern side of Amberd Lane to the east of Patrick's Way. It comprises a single field that slopes down from west to east with a strong hedgerow boundary. Slightly raised up from the western boundary is a public footpath (T21/72) which links Amberd Lane with Church Road to the north. Some of the houses in Patrick's Way have rear pedestrian access onto the footpath.

To the north of the site are The Bell House and The Bell Cottage. These have quite large grounds that extend along the entire northern boundary of the field and include a tennis court. The northern boundary can therefore be described as domestic rather than agricultural.

The eastern boundary is agricultural and there is a second field, approximately 80 metres wide, and this adjoins the Sherford Stream. This is the field which has been offered for public ownership.

The site is almost 2 hectares in size but specifically excludes the north east corner of the field which adjoins The Bell Cottage.

The site is outside of the defined settlement limits contained in the Local Plan and Core Strategy and is also within the Vivary Green Wedge. There is no relevant planning history.

CONSULTATION AND REPRESENTATION RESPONSES

Consultees

TRULL PARISH COUNCIL – support:

The Parish Council has on numerous occasions approached the landowner of the field between Bell House and the King George V Playing Field with a view to purchasing or renting it to extend the play area. To date this has always been unsuccessful. This landowner is also owner of the field which is the site of the proposed development. If the development goes ahead the developer and landowners propose to gift two areas of land to the Parish, the meadow next to the weir, between the proposed development site and Sherford Stream, and the field between King George V Playing Field and the Bell House thereby extending the play area. Restrictive covenants will be attached to both areas to prevent their future development. Trull is vulnerable to the encroachment of extended development westward from Killams which threatens the identity of Trull as a village separate from Taunton. The protected open green space attached to this development would help protect the boundaries of Trull and provide leisure space for the benefit of the entire community.

Trull will inevitably grow in the future. This development is small scale and low density. Affordable housing is still very much needed for local people who otherwise would not be able to afford to buy property in Trull. Landowners are unwilling to release land solely for such housing but, by supporting the building of market value housing on this site, Trull will not only gain the affordable housing it needs but will also gain green leisure space that will be protected.

By supporting this application the Parish Council feels that they have more say in how the site is developed and, at the same time, gain additional facilities for the whole village.

SCC - TRANSPORT DEVELOPMENT GROUP – no objection

Bearing in mind the response provided above and in the event of the LPA granting permission, I have no objections to the proposed development subject to a Section 106 Agreement to secure the following:

1. The design and construction of a footpath/cycletrack, as far as reasonable within the Applicants control, linking Amberd Lane and Church Road. Where this is not achievable, then a contribution for these works should be provided.
2. The design and construction of a new traffic island at the junction of Amberd Lane Honiton Road. The design of this has yet to be agreed.
3. A minimum sum of £10K for Travel Planning requirements, including travel vouchers upon first occupation and production of information leaflets. This 'minimum' should be considered against the provision of a full Travel Plan Statement, and any additional elements arising from the Statement.

[the full 8 page County Highway Authority response is contained at the end of this report as an appendix]

SCC - RIGHTS OF WAY – I can confirm that there are two public right of ways (PROW) recorded on the Definitive Map, one within the proposed village field and one to the west of the site abutting the boundary.

T 21/72 that abuts the western boundary has been considered as a potential cycle route to the Primary School and beyond into Taunton. The transport statement makes a mistaken assumption about how willing people will be to cycle from the site on carriageway. Due to the nature of the carriageway and the volume of traffic on the road many people will be put off. If land cannot be secured as part of this development to widen the footpath between the site and the primary school then the opportunity to offer a safe and attractive alternative to Honiton Road for cyclists will be lost forever.

Given the future growth in this area, we request that a strip of land is dedicated for cyclists alongside the footpath, as the footpath width is currently too narrow to accommodate cycle use. We would also request that it is surfaced to a standard to be agreed with Area Highways. Where pinch points might remain in terms of a link to Church Road, 'Cyclists Dismount' signs could be erected until a solution is agreed.

LANDSCAPE LEAD – My main concerns are:

- The significant visual impact of the proposal on the open riverside character of the area.
- Impact on the character and function of the Green Wedge.
- Impact of the Highway requirements on the important southern boundary hedgerow to meet visibility splay standards.

Further comments in response to amended plans

Further to the Swan Paul revised landscape scheme which involves parkland tree and woodland edge planting I would like to revise my comments.

My assessment is that the current proposals will help to reduce the impacts of the proposed development on the open riverine character of the area to the east which is planned for wider public access. It will take time for the landscaping to mature sufficiently but within 10 years, subject to detailed proposals and maintenance, it should be possible to establish a useful woodland edge character to the area and reduce significantly visual impacts.

In terms of Green Wedge functions the proposals will have no impact on coalescence as the distances and topography are such that there should be no inter visibility between Killams to the eastern side of the Green Wedge and this site. In terms of the other functions there will be an impact on 'bringing the countryside into the town' but otherwise the impacts should be limited.

Subject to hedgerow relocation and replacement it should be possible to reduce the impact of the hedgerow loss but the rural character of the area will be largely lost to be replaced with a more residential/suburban character.

BIODIVERSITY OFFICER – This is an outline application for the construction of 30 dwellings on pasture land to the north of Amberd Lane, Staplehay, Taunton. The proposal is to develop the western field backing on to existing development and to retain the eastern field adjacent to Sherford stream as open space. The application also involves the widening of Amberd Lane by translocating part of the existing species rich roadside hedge. The site is enclosed by species rich and species poor hedgerows and the Sherford stream corridor. There are several mature trees located in the vicinity of the site.

JH ecology carried out surveys of the site from November 2011 — March 20 12. An Ecological Impact assessment was produced in March 2012. In addition, the mammal ecologist Dr Paul Chanin produced a report on a dormice survey, which forms an appendix to the main report. Findings were as follows

Dormice - The surveyor has made the assumption that dormice are present on site based on an assessment of the habitat; which contains a range of food plant species for dormice, local knowledge and on checking local records and SCC's Econet. Dr Paul Chanin also suggests that a nest tube survey, in this case, would not further inform the report. For the reasons stated, I tend to agree and also assume presence of dormice on site. I support mitigation proposed and agree that as dormice will be disturbed by this development an EPS licence will be required.

Badgers - The surveyor found evidence of badger activity on site. A badger sett has been recorded within 30 m of the site boundary in the bank of the woodland stream corridor. The hedgerows on site and adjacent woodland provide potential sett building habitat and the grassland and woodland provides potential opportunities for foraging. As badgers are mobile animals further monitoring will be necessary.

Bats - The nearby mature trees and the Sherford stream corridor provide potential

habitat for roosting, foraging and commuting bats. I agree with the surveyor that, should public realm lighting be a requirement on site, then bat surveys will be required. I support the proposed mitigation proposals

Otters - The stream corridor and associated woodland and scrub habitats are used by otter as confirmed by records of droppings.

Water Vole - No evidence of water vole was found. Although there are historical records of water vole from the Sherford stream corridor, the stream banks are now heavily shaded and lack potential foraging habitat and opportunities for cover.

Birds - Several bird species were noted on site. Kingfisher has been recorded along the Sherford stream. I agree that removal of vegetation should take place outside of the bird nesting season. I support the mitigation proposals.

Reptiles - Hedgerows, woodland edge and the stream corridor provide potential habitat opportunities for reptiles. I support the proposed measures to protect reptiles during the construction process.

If planning permission is granted a condition should require a strategy to protect wildlife

NATURAL ENGLAND – recommend using standing advice.

ENVIRONMENT AGENCY – no comments received

SOMERSET WILDLIFE TRUST – support the recommendations contained in the submitted wildlife report

COMMUNITY LEISURE – In accordance with Local Plan Policy C4, provision for play and active recreation should be made for the residents of these dwellings.

The policy in the Local Plan is for 20 square metres of play per every family size (2 bed+) dwelling. On a development proposal of 30 family size dwellings 600 square metres of children's play should be provided, by way of at least one LEAP, centrally located and overlooked by the dwellings. The location of the proposed play trail is not acceptable as it next to the main entrance to the site.

A contribution of £1,454.00 for each dwelling should be made towards the provision of facilities for active outdoor recreation.

A contribution of £194.00 per dwelling should be sought for allotment provision along with a contribution of £1,118.00 per dwelling towards local community hall facilities.

Contributions should be index linked.

A public art contribution should be requested, either by commissioning and integrating public art into the design of the buildings and the public realm or by a

commuted sum to value of 1 % of the development costs.

DRAINAGE ENGINEER – I have no objection to this proposal subject to conditions regarding a surface water drainage scheme which restricts surface water run off rates.

TDBC STRATEGY – comment:

The application site lies beyond existing settlement limits in open countryside. Hence the proposal is counter to policies in the adopted and emerging development plans (Local Plan policy S7, Core Strategy policies CP8, SP1, DM2). Despite being in the open countryside, the application site is considered sustainable as it has good levels of access to a reasonable level of services and facilities including; primary school, shop, post office and pub.

The site lies within designated green wedge and as such should be considered against policy EN13 of the Local Plan. It is not considered that this proposal will prejudice the open character of the green wedge or lead to the coalescence of settlements.

The wider area to the west of Trull has been identified within the Core Strategy as a Broad Location for up to 2,000 net additional dwellings over the period up to 2028. It is intended, however, that this should compromise a masterplanned urban extension and such the scheme can be considered outside of this requirement.

Trull Parish Council is in the early stages of producing a Neighbourhood Plan, Given that such a plan would be subject to referendum prior to adoption and that this scheme has attracted significant objection and involves an element of planning gain, it would seem preferable to see this proposal advanced through a Neighbourhood Plan.

It is not logical to exclude the north western corner from the application site without evidence that this land is not within the ownership or control of the applicants. Without this there is no justification to exclude this parcel and the scheme could be seen to fail to make effective and efficient use of land, contrary to the NPPF and Core Strategy Policy CP4.

POLICE ARCHITECTURAL LIAISON OFFICER – has made detailed comments on the submitted indicative layout which should be taken into account as part of any reserved matters application (subject to outline planning permission being granted).

BRITISH TELECOM – no comments received

SCC - CHIEF EDUCATION OFFICER – no comments received

WESTERN POWER DISTRIBUTION – no comments received

WESSEX WATER – recommends that the applicant contact Wessex Water regarding new connections and protecting existing assets.

HOUSING ENABLING LEAD – My comments for this application are based on housing need and the comments do not reflect the suitability of the site in terms of planning.

The affordable housing requirement for this scheme is 25% of the total number of units. The tenure split is 50% social rented, 50% intermediate housing. The requirement is for houses rather than flats. The houses should be predominately 2 and 3 bedrooms.

The affordable housing should meet the Homes and Communities Agency Design and Quality Standards 2007, or meet any subsequent standard at the commencement of development.

The affordable housing scheme must be submitted to and approved in writing by the Housing Enabling Lead at Taunton Deane Borough Council.

Representations

Cllr Mark Edwards

Highways - Amberd Lane is inadequate for this level of development and increase in traffic with the road and junction already struggling to cope with the present levels. I also have huge concerns with regards the suggestion of a virtual footpath, not only will this look dreadful, in what is presently a very picturesque lane, but I also understand it is an experiment and this leads me to question its validity as a solution.

The junction on to Honiton Road is already difficult to execute and increased traffic movements can only create more problems. The proposed traffic island will be a minor improvement but I do not believe it will make sufficient difference for the increase in traffic this development will create.

Trull School - The school is clearly at capacity and the development being considered with the type and scale of development will mean an increase in children eligible to go to school and as there is no space will have to be likely driven to a different school which is unsustainable or will put immense pressure on the school. The Neighbourhood Plan would be able to better assess this issue and any proposals will then be able to better reflect what happens in the future, I will return to this point later in my response.

Green Wedge - This site is not allocated in the development plan or the core strategy and is completely developer led with the only community involvement and support being the Parish Council who I believe are missing out on a major opportunity to consult and work with the whole community through the Neighbourhood Plan.

The Green Wedge is afforded protection through the Core Strategy and whilst I

appreciate that is not absolute in planning terms it should be given serious weight especially in view of the large number of negative comments on this application this is clearly an example where Localism can play its part and I believe that the community should be afforded that opportunity.

Neighbourhood Plan - The Parish Council with my assistance bid for funding to take part in the Neighbourhood Plan with Trull as a national front-runner in this process and as you are aware secured the funding to progress this from central Government.

The basis of that submission agreed by the Parish Council was:

With the area known as Comeytrove being put forward as a broad location for growth in the recently proposed Taunton Deane Core Strategy with up to 2000 houses earmarked, Trull is likely to see a level of development on its doorstep that will likely impinge on the settlement. In addition due to its proximity to the town centre other smaller developments are potentially being put forward in the locality as well which need consideration as to how the all interact with each other.

It is therefore important therefore that a cohesive plan for Trull and Staplehay and one that that brings the overall benefits without the risk of a lack of consideration or in making sure there is a reference point to each development taking place. .

I have highlighted the key points in the submission in particular the understanding there was developments coming forward and the Neighbourhood Plan was the perfect vehicle for these to be given consideration. This was accepted by the Parish Council so why this questionable decision to support? Why did they not suggest it went forward to the Neighbourhood Plan?

I am extremely disappointed that the Neighbourhood Plan has not been given any consideration by the Parish Council in their consideration of this application. I highlighted quite clearly my concerns with regards this issue and suggested the Parish Council take the opportunity to use the Neighbourhood plan to engage with the community with this development fitting perfectly with the criteria. I am concerned at the actions of the Parish Council firstly as the District Councillor where sadly I am not satisfied that the vast majority of the community were listened to, as the discussion they had at the Parish Council meeting when the debate was conveyed under standing orders the Parish Council was lacking in any detail regards the actual application, with concerns over what might happen to this land being paramount in their minds if they did not accept the proposals. Clearly this is not the basis for a planning decision.

I also find myself as the Executive Councillor for Planning and Transport wondering if the Parish Council has any grasp of the basis of the Neighbourhood Plan and what it can deliver. I had attended the Parish Council in advance of this application so I could highlight the vehicle that they had secured significant funding for but again it was not given any consideration as part of this application.

The Neighbourhood Plan has the ability to designate land that can be protected and that which could be developed so the main concern of the Parish Council that a national developer is going to suddenly swoop on this land is frankly ridiculous and if the PC wants to protect it for the future the Neighbourhood Plan is actually by far the best vehicle.

The Neighbourhood Plan is central in planning terms to complete community engagement and taking forward plans that will ultimately have support of the whole community and it is a huge disappointment that this has been ignored and more importantly I am not sure how easy it will be for the Parish Council to engage in the future after clearly completely ignoring the vast majority of the community.

I can confirm from the huge number of discussions I have had in my ward and from the communications I have seen sent to you directly that the vast majority of the residents of Trull would wish to see this potential development being given consideration as part of the Neighbourhood Plan, it is a perfect fit in what it wishes to deliver to the community.

This application is premature to that process and as its sits within the Green Wedge and is clearly not being considered as part of a future plan I would ask for the support of TDBC in achieving this more pragmatic and community led approach by refusing the application on the basis that it will be able to be submitted as part of the Neighbourhood Plan process for better consideration of its implications and how it can better achieve more for the whole community.

189 Letters of OBJECTION have been received which raise the following issues:

Green Wedge

- The development would not protect or preserve the green wedge.
- It is contrary to the Core Strategy
- Once it has gone, it can't be replaced.
- Development would set a precedent.
- Development should be on brownfield sites first.
- The green wedge is valued by walkers.
- The green wedge has a positive effect on mental and physical health.
- Residential development would be out of character with the rural area.
- If the development at Killams proceeds then the green wedge will be narrowed on both sides.
- The green wedge helps to combat pollution.
- Development will result in the loss of the riverside character.

Local opinion

- The proposal is contrary to local views.
- The Parish Council views do not reflect those of the local community.
- The proposal is premature against the Neighbourhood Plan.
- A Neighbourhood Plan would have to go through a local referendum.
- 85% of households are against development in the green wedge.
- The government supports local views influencing planning.
- The developers argument that if he doesn't develop, someone else will is flawed.
- The public consultation event drew significant objection to the proposal.

Highways

- Amberd Lane is a narrow minor road with blind spots.

- The virtual footpath will restrict on-street parking.
- The virtual footpath will be dangerous for pedestrians.
- Increase in traffic.
- Increase in congestion.
- The proposed traffic island will not provide the necessary visibility splays on Honiton Road.
- More traffic using the junction leading to congestion.
- Knock on impact on Church Road traffic (dangerous around the school).
- The character of the country lane would be lost.
- Adverse impact on driveways to properties in Amberd Lane.
- Cars parked in Amberd Lane make it difficult for cars to pass.
- The Patricks Way junction will be more difficult to use.
- The Spearcey Lane Way junction has blind spots and increase in traffic would be dangerous.
- Large houses are likely to have two or more cars.
- The sewerage system will not be able to cope.
- Noise and disturbance from construction traffic.
- The bridge over Sherford Stream would not be able to cope with extra traffic.
- Amberd Lane is used as a 'ratrun' and therefore is very busy.

Wildlife

- Housing will have an adverse impact on wildlife.
- Greater use of the adjoining field will disturb wildlife.
- Loss of hedgerow.

Layout

- Poor and chaotic layout shown on the submitted plans.
- It looks like the affordable housing is being squeezed into a corner and not distributed throughout the site.
- Why is there a rectangle of land that is not being developed?

Other issues

- The local school could not cope with an increase in numbers.
- There is no need for additional local facilities.
- The development is unsustainable and site is in an unsustainable location.
- It would change the nature of the village.
- Footpaths would get busier resulting in a loss of amenity to houses that adjoin them.
- Risk from flooding.
- Development in this area should not be piecemeal and should be properly planned.
- Loss of agricultural land..
- Noise from additional traffic.
- No need for more houses in the village.
- Health services are already over-stretched.
- Loss of identity.
- Street Lighting will cause light pollution.
- Existing drainage problems in field
- There are no good reasons to grant planning permission.

10 letters of SUPPORT have been received which raise the following issues:

- Government advocates the building of new housing and affordable housing for local people
- There will be a number of community benefits.
- Affordable housing will allow people who grew up in the village to stay and access affordable homes
- The village has a history of providing small cul-de-sac developments.
- Adjacent fields will be saved from development.
- Development is inevitable so small scale is better than large scale.
- Traffic and congestion problems are no different to anywhere else.

In response to the applicants confirmation of the package of contributions that would be secured as part of the development proposal, a further round of public consultation took place which resulted in a further 86 letters of objection (27 of which raised no new issues to those above) and 6 letters of support being submitted

OBJECTION letters raise the following additional issues:

- The proposals go beyond the site and affect the whole village,
- The proposals are vague and lack detail,
- Where would the proposed pavilion be built and how would it be accessed?
- The off-site works have no relevance to the planning application,
- The community does not need another public building to maintain,
- The offer appears to be a bribe to get/buy planning permission,
- The foot/cycle path to the village is not deliverable,
- The foot/cycle path would not be wide enough,
- Any lighting of the foot/cycle path would harm wildlife, change the character of the area and harm residential amenity,
- Residents along the foot/cycle path would not be able to safely exit their rear gates.
- Widening the footpath will result in a loss of habitat.
- The school is at capacity and in a location where it can not expand,
- Trull already has a cricket pitch and pavilion,
- The off-site contributions should not be considered as part of this planning application and should be subject to a separate application.
- Comments challenging the County Highways Authority consultation response.

SUPPORT letters raise the following additional issues:

- Some people in the community support the proposals and objectors do not represent the whole community.
- Support for more play space and a new pavilion

PLANNING POLICIES

S7 - TDBCLP - Outside Settlement,
DM1 - TD CORE STRATEGY - GENERAL REQUIREMENTS,
DM2 - TD CORE STRATEGY - DEV,
SP1 - TD CORE STRATEGY SUSTAINABLE DEVELOPMENT LOCATIONS,

LOCAL FINANCE CONSIDERATIONS

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)	£35,172
Somerset County Council (Upper Tier Authority)	£8,793

6 Year Payment

Taunton Deane Borough Council (Lower Tier Authority)	£211,032
Somerset County Council (Upper Tier Authority)	£52,758

DETERMINING ISSUES AND CONSIDERATIONS

Policy

The Planning Policy team have commented that the application site lies beyond existing settlement limits in open countryside. Hence the proposal is counter to policies in the adopted and emerging development plans (Local Plan policy S7, Core Strategy policies CP8, SP1, DM2). Despite being in the open countryside, the application site is considered sustainable as it has good levels of access to a reasonable level of services and facilities including; primary school, shop, post office and pub.

The site has been previously identified in the 2010 and 2011 Strategic Housing Land Availability Assessment (SHLAA) and on both occasions has been shown to be 'developable'.

Developable status means that in the broad terms in which the SHLAA considers suitability as well as availability and achievability, the Panel felt on balance the site meets the basic tests. However, the SHLAA conclusion does not prejudice or prejudice the outcome of any planning application nor indicate that the site will ultimately be allocated through a future development plan document. From an allocation point of view, the site would need to be considered as part of an Allocation Document which will follow the adoption of the Core Strategy. Although many would consider that a plan-led route would be most appropriate way for this site to be assessed, the application has been submitted and must be considered now and on its own merits.

In the absence of a Site Allocations Document the application must be considered against paragraph 14 of the NPPF which states that for the purpose of decision taking (where the development plan is absent, silent or relevant policies are out of date) local planning authorities should grant planning permission unless:

- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken

- as a whole; or
- specific policies in the NPPF indicate development should be restricted.

The following sections consider the impacts of the proposed development.

Sustainable Development and Accessibility

The site is outside of the defined development limits of Taunton. However, in this case it is not remote from local facilities and services. The primary school and village community hall are approximately 520m (walking distance) and the post office, shops and pub are 720m (walking distance) from the centre of the site. These distances increase if these journeys are made by road (either on foot or by car) and it can be reasonably assumed that people are less likely to walk along the footpaths in inclement weather or in the dark. However, even when the distances are increased, the facilities remain accessible in the context of the local area.

Access by foot along the existing public footpath network can be improved and the County Council Rights of Way Team have suggested the widening and upgrading of the existing footpath on the western side of the site. However, this will require the removal of an existing hedge and it is considered that it would be more appropriate to ensure that the site has a cycle/pedestrian through-route that links to the footpath at the north west corner. It is also considered essential that the remainder of the footpath which extends to the playing fields and on to Church Road (Primary School) is upgraded as far as reasonably possible to ensure that it is of a width and surface which will encourage greater use. These are both achievable and the applicant has submitted plans to show that the required land is under his control.

The nearest bus stop is within 300m of the site at the Crown Inn. This is served by two routes which provide an hourly service to the town centre. Given the scale of development and distance to the town centre, this is considered appropriate. The town centre is also accessible by foot along an existing public footpath network, although this is a journey which would probably only be undertaken by the most committed walkers. These footpaths are not considered to be suitable for cycling. It is possible to cycle to the town centre without having to remain solely on the main road (Honiton Road/Trull Road) as there are cycle routes which link Sherford with Vivary Park.

The County Council consider that a Travel Plan Statement to be more appropriate than the submitted Measures Only Travel Plan. This will require a contribution towards travel vouchers upon first occupation and production of information leaflets. It is considered that this will encourage occupiers to use alternative means of transport other than the private car.

Green Wedge

The site lies within designated green wedge and as such should be considered against policy EN13 of the Local Plan which is proposed to be replaced with policy CP8 of the Core Strategy.

In respect of the green wedge, policy EN13 states “development which would harm the open character of green wedges will not be permitted”. Policy CP8 allows development outside of settlement boundaries where it will “protect, conserve or enhance landscape and townscape character whilst maintaining green wedges and

open breaks between settlements” (alongside other criteria). The policy therefore controls development in the green wedge rather than place an absolute restriction on all development in the green wedge. The appropriate consideration must be one of harm and it is necessary to consider the harm that would be caused to the character, appearance and functionality of the green wedge.

As the Vivary Green Wedge runs south it generally becomes wider and more open. At the application site, the distance to Killams (the other side of the green wedge) is 2km and Cotlake Hill separates the two developed areas. I agree with the Landscape Lead’s view that the proposals will have no impact on coalescence and will not significantly erode the open break between settlements. Therefore the function of the green wedge to prevent coalescence is not lost and the proposal does not result in any harm in this regard..

To the south of the site is residential development which currently forms a 100m projection out towards the wedge and the dwellings and garden to the north of the site have a domestic character which protrude into the wedge by a similar distance. This results in the site forming a small ‘green projection’ into the fringe of the developed area. The Sherford Stream provides a significant visual barrier (with it’s tree lined edges) and when combined with the proposed planting in the field between the site and the stream, will result in limited impact on the character and appearance of the green wedge. The strengthening the eastern boundary of the site by additional landscaping would also result in a much better screen between the built development and green wedge than at present.

Due to the above factors it is considered that this proposal will not prejudice the open character of the green wedge or lead to the coalescence of settlements. Therefore the proposal is not considered to significantly harm the green wedge and there is not sufficient reason to withhold planning permission on these grounds.

Highways

The County Highway Authority have carefully considered the submitted Transport Statement and response made by LGPS Resources Traffic Consultations who have been commissioned by a group of local residents. This has resulted in an 8 page response which is contained at the end of this report. After considering all of the information, the County Highways Authority raise no objection.

The main traffic considerations are increased traffic on Amberd Lane, the proposed alterations to the Junction between Amberd Lane and Honiton Road, and the proposed virtual footway for pedestrians using Amberd Lane.

With regard to the capacity of Amberd Lane, the Highway Authority consider that the total predicted vehicle flows are well below the 300 vehicles per hour, which can normally be expected to be accommodated by a rural lane with passing places. They do not consider that there will be a significant traffic impact on Amberd Lane, or the Amberd Lane / Honiton Road junction.

The proposed alterations to the Honiton Road junction include the introduction of a traffic island to displace vehicles to the left, which then provides additional visibility in line with Manual for Streets. This is desirable and would improve an existing situation. The LGPS report highlights an area of detailed design for the island that will need addressing. The County Highways Authority consider that amendments

can be provided as there is sufficient space available at the existing junction. They also consider that the additional 20 movements per peak hour period will mean a slight increase in delay on Amberd Lane, and some impact on junctions towards Taunton. However, they do not consider that there will be a significant traffic impact on the Amberd Lane / Honiton Road junction

In order to address an area of concern regarding the lack of any pavements/footways on Amberd Lane, it has been suggested that a 'virtual footway' be provided and this would encourage pedestrians to walk down one side of the road and vehicles to use the other side. This could comprise a solid white line and pedestrian symbols marked on the road. It could also include an appropriately coloured surface. This would extend approximately 200m from the Amberd Lane / Honiton Road junction and the site.

This has resulted in much debate as it is not possible to construct a formal standard footway due to lack of available road width. The Highways Authority conclude that here is little supportive evidence of the success, or not, of these virtual footways both locally and nationally. In the absence of this evidence, the Highway Authority will not consider the provision of the virtual footway as part of this application. With that consideration, they do not raise any objection to the potential result of more people walking in Amberd Lane.

Access into the site can be provided but will require the removal/translocation of a part of the existing hedgerow so that visibility splays and a footway can be provided. It is considered that a formal footway would be appropriate at the front of the site between the existing public footpath opposite Spearcey Lane (where there is a short section of footway) and the site entrance. It is not considered appropriate to require the removal of the remainder of the hedge to the east of the access in order to provide a continued footway to the edge of the site.

Community Benefits

Under existing Council policies, any residential development should make appropriate provision for children's play, outdoor recreation, community facilities, allotments etc. This would normally be provided on-site for large developments, or on smaller developments (where provision is best suited off-site) an appropriate financial contribution is secured. The Community Development Team have requested contributions amounting to £82,980 in addition to an on-site Local Equipped Area for Play (LEAP) of 600 sq metres. If children's play were to be provided off-site, then an additional contribution of £80,640 would normally be required. This results in a total contribution of £163,620 to provide the required facilities off site.

In respect of the outdoor recreation, children's play and community hall requirements, the applicant has offered to provide:

- Land to the south of the existing playing field (as shown on the deposited plans) to form an extension of that playing field, including the levelling, cultivation and seeding of the field;
- Provision of the Neighbourhood Equipped Area for Play (NEAP)
- Provision of a Pavilion and Store Building of gross floor area not less than 200 square metres (maybe similar in design and layout to that which was provided by the applicant in at North Curry)

The applicant suggests that the cumulative cost and value of the foregoing will exceed the contributions sought, but in the event that for reasons outside the developer's control any element has to be omitted then a capital contribution to address any shortfall between that provided and the stated requirement will be made in the normal manner.

In addition to this, as stated in the 'proposal' section of the report, the applicant has also confirmed that they would make appropriate contributions towards allotments, transfer the land to the east of the site to the Parish of Trull, and make financial contributions towards primary education facilities in line with the Council's Interim CIL. Education contributions would amount to £2451 per dwelling, resulting in a total contribution of £73,530 towards primary school facilities in the area.

It is considered that these are benefits which are over and above what would be required from a development of 30 houses in terms of the securing and laying out of land for outdoor recreation. However, it must be noted that many of the contributions are those which are normally required for any residential development whether it be on an allocated site or not.

Neighbourhood Planning

The Planning Policy team has commented that Trull Parish Council is in the early stages of producing a Neighbourhood Plan and that given that such a plan would be subject to referendum prior to adoption (and that this scheme has attracted significant objection and involves an element of planning gain) it would seem preferable to see this proposal advanced through a Neighbourhood Plan. This view is re-iterated by many of the objectors and local Ward Member, although not by the Parish Council who support the application.

However, an application has been submitted and it is necessary for it to be determined in light of current policy and guidance. In the absence of a Neighbourhood Plan guidance in paragraph 14 of the NPPF states that where a plan is absent, the local planning authority should grant planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

It is therefore considered that application could not be refused simply on the grounds of prematurity.

Other Issues

Wildlife has been raised as an issue and the Council Biodiversity Officer has considered the submitted ecological reports. It is concluded that it is possible to grant planning permission with appropriate conditions to protect and preserve wildlife in the local area.

The submitted layout is indicative only. However it is agreed that it would be wrong to build a new development with all the affordable homes 'cramped' into one corner. It would be possible to build 30 houses on the site with an appropriate layout which addresses the road and did not have such a clear distinction between the affordable and open market houses.

The receipt of the New Homes Bonus is noted, however, your officer's consider that this matter carries limited weight in this case.

Conclusion

The NPPF contains 12 core planning principles that underpin decision taking and the proposal has been considered against these. The application is not genuinely plan led in that it pre-dates the small sites allocations document or Neighbourhood Plan. However, it would deliver homes in a sustainable way and provide community benefits.

It is considered that one of the most important considerations is whether there are any adverse impacts which would significantly and demonstrably outweigh the benefits. I believe that the harm does not outweigh the benefits and therefore planning permission should be granted.

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

CONTACT OFFICER: Mr B Kitching Tel: 01823 358695

Appendix 1 – Full transcript of County Highway Authority response received on 8th June 2012

I refer to the above-mentioned planning application received on 19th April 2011, and after carrying out a site visit on 15th May 2012 have the following observations on the highway and transportation aspects of this proposal. I apologise for the delay in responding.

The proposed development site lies outside the Development Boundary Limits for Trull and Taunton and is therefore classified as distant from adequate services and facilities, such as education, health, employment, retail and leisure. As a consequence, it is considered that occupiers of the new development are likely to be dependant on their private vehicles. Such fostering of growth in the need to travel would be contrary to government advice given in PPG13 and RPG10, and to the provisions of policies STR1 and STR6 of the Somerset and Exmoor National Park Joint Structure Plan Review (Adopted: April 2000), and Policy 7 of the Taunton Deane Local Plan adopted November 2004, and would normally receive a recommendation of refusal from the Highway Authority as a result.

However, the application draws attention to the close proximity of local services and facilities. Walking distances can be measures at: Trull Primary School (520m approx), the Post Office & Shops (740m approx) and the Village Community Hall (520m approx) and the pub (720m approx), with distances being measured using the public highway and from the centre of the proposed development. However, it is likely that during the winter months there may be an increase in the number of trips by private vehicles due to inclement weather and the limited or non-existent street lighting provision serving the pedestrian routes quoted.

Driving distances can be measured at: Trull Primary School (1100m approx), the Post Office & Shops (930m approx) and the Village Community Hall (1100m approx) and the pub (1320m approx), with distances being measured using the public highway and from the centre of the proposed development.

This information must be considered in conjunction with other policies as set out in National, Regional, County and Local policies, and will be discussed in more detail from a highways perspective through this response. However, it is a matter for the Local Planning Authority to decide whether the proximity of these services and facilities are considered adequate.

Existing Highway Conditions

Amberd Lane is an unclassified rural road, and is subject to a 30mph speed limit. The width of the road varies, and is generally between 4.5m to 5.5m in width. There are also small lengths of Amberd Lane that are above and below these dimensions, but they are limited in length and do not adversely affect the functioning of the highway.

Amberd Lane, from Honiton Road to the application site, can be divided into two sections.

The first section of lane, from Honiton Road to Spearcey Lane (approx 120m), appears visually narrow due to the boundary walls fronting the road. There is no footway along this section and there are parked vehicles serving the neighbouring properties. The second section of lane, from Spearcey Lane to the application site (approx 80m), appears visually wider due to the adjacent properties being set back from the road. Again, there is no footway although there are passing places due to the width of the road.

Due to the lack of dedicated footway, the Highway Authority has erected 'Pedestrian in road ahead' warning signs (DoT No: 544.1).

During several site visits throughout the application period, it was observed that both sections of the lane mentioned above are well used by pedestrians, cyclists and dog walkers as well as motorised vehicles.

The lane currently serves a total of approximately 80 dwellings and residents currently use the sections of highway discussed above to access the local facilities by walking, cycling and car. There has been no reported Personal Injury Accidents (PIA's) over the last five years on the above areas of highway.

Public Footpaths

There is a public footpath (T21/72), from Amberd Lane (adjacent to the application site) through to Church Road (adjacent to the Village Hall). The footpath is surfaced and restricted in width to approx. 1m for the majority of its length, with limited passing places for pushchairs and wheelchairs. Despite the restricted width of the footway, it was noted during site visits that both cyclists and families with pushchairs use this footpath.

This footpath crosses/links to another footpath (T21/75), from Honiton Road (through Wyatts Lane) to Church Road (opposite the Winchester Arms) and it is my understanding that the footpaths are well used by pedestrians, cyclists and dog

walkers.

Residents Feedback

Following a review of TDBC Planning website, many concerns have been expressed by local residents regarding this application. The highway comments have been extracted and are summarised below:

- Increased traffic/pedestrian conflict in Amberd Lane
- Lack of footways along Amberd Lane for safe pedestrian access
- Amberd Lane used as a rat-run, from the Corfe side of Taunton
- The new traffic island on Amberd Lane would serve no purpose
- The 'virtual pavement' is considered unsafe
- Hedgerow removal from the countryside, including the impact on nesting birds
- Overflow parking from the site being placed onto Amberd Lane
- Poor visibility from the site entrance onto Amberd Lane

All of these concerns have been considered by the Highway Authority, and it is considered that these views have been considered through the technical detail set out in this response.

Virtual Footway along Amberd Lane

It would not be possible to construct a formal standard footway due to the limited road width. This has been recognised by the applicant, who has included a 'virtual footway' to assist pedestrians through this area.

The proposal of a virtual footway has caused much debate with Engineers at the Highway Authority. There is little supportive evidence of the success, or not, of these virtual footways both locally and nationally. In the absence of this evidence, the Highway Authority will not consider the provision of the virtual footway as part of this application.

The remainder of the response assumes, as existing, that there will be no virtual footway provision between Honiton Road and Spearcey Lane provided by the application.

Sustainable Urban Drainage Systems (SUDS)

The application includes a brief Flood Risk Assessment, which is considered adequate at the Outline Planning stage. However, some concern is raised by the Highway Authority in reference to the surface water management strategy.

Reference has been made to achieving attenuation at 'Greenfield run-off rates' through the implementation of SUDS using either a sealed or filtration system under roads and parking areas. It is often the case that the highway is seen as a large area where SUDS storage can be obtained, but without adequately considering the long-term implications placed upon the adopting Highway Authority in terms of maintenance / costs.

It would appear from the application, that there is scope to provide a suitable SUDS solution that does not entail using the highway. The Highway Authority draws attention to this detail at the Outline stage, for the Applicants further consideration should the application be permitted.

Cycling

It is recognised that there is no dedicated cycle route from the application site, through to the local facilities or further into Taunton (apart from a small length when entering Taunton).

In terms of sustainability issues mentioned previously, it is recommended that such a cycle track should be provided by the Development and within the land controlled by the Applicant. Sufficient land can be provided along the site's western boundary, so that the existing footpath can be widened, upgraded and converted into a shared footpath/cycletrack with a suggested width of 3.5 metre.

Whilst this is the preferred desire line, to serve both the existing and proposed housing areas, it is recognised that this will impact on the environment with a substantial length of hedgerow being removed. Therefore, the LPA may consider it more appropriate that this facility should be provided within the confines of the application site to minimise the impacts on the environment and landscape. If this is the case, then an appropriate link should be made to the existing footpath at the north-western end of the site.

Any hedgerow removal will require appropriate timing, to ensure the impact of the environment (such as nesting birds, etc) is minimised.

In either case, this will only provide a partial upgrade of the footpath from Amberd Lane to Church Road. It is understood that further land may be available along this footpath, and within the applicant's control and it is recommended that the remainder of the existing footpath should be upgraded as far as practicable to provide a continuous footpath/cycle track with a suggested width of 3.5m.

Where the existing footpath cannot be upgraded for any reason, then a contribution should be sought to allow the Highway Authority to pursue this facility at a later date (including design, land, construction, signage costs, etc). With this in mind, any accesses from the development onto the footpath should be designed to accommodate cyclists with a view to the footpath being upgraded to enable cycling.

With regard to cycle parking, sufficient parking should be provided to meet the standards as set out in Manual for Travel Plans and levels set out in the County Parking Strategy. If cycle parking is to be provided within garages then additional space must be allowed specifically for this purpose.

Street Lighting will need to be considered for all footpath and cycle path links, to ensure year round use (including during the winter months) as well as providing enhanced pedestrian/cycle safety.

Travel Plan

The current application for 30 dwellings sits on the boundary between a Measures Only Travel Plan (less than 30 Dwellings) and a Travel Plan Statement (between 30 & 50 dwellings).

The application contains a Measures Only Travel Plan, and whilst the content is considered reasonable, given the site lies outside the Development Boundary Limits, the Highway Authority would consider a Travel Plan Statement more appropriate. This can be the subject of a suitable planning condition.

Traffic Impact

The Design and Access Statement, together with the Transport Statement provided by LvW Highways has been considered by the Highway Authority's Traffic Modelling Team.

In capacity terms, the Transport Statement is considered acceptable and the traffic impact of this proposal is estimated at around 20 new vehicle movements per peak hour period. The total predicted traffic flows are well below the 300 vehicles per hour, which can normally be expected to be accommodated by a rural lane with passing places (DfT TAL 2/04). The additional traffic generated by the application will mean a slight increase in delay on Amberd Lane, and some impact on junctions towards Taunton.

The Accident Database, which the Highway Authority holds, records Personal Injury Accidents (PIAs) that have been reported to and recorded by the Police. The Accident Database shows two accidents, just outside of the area in question.

These accidents have taken place near, but outside, of the area of concern. These are located along Honiton Road (not related to the Amberd Lane junction) and near "Amberd Barton" on Amberd Lane past the bridge.

There are no accidents recorded at the Honiton Road/Amberd Lane junction, or between this junction and the application site.

In summary, it is not considered that there will be a significant traffic impact on either Amberd Lane, or the Amberd Lane / Honiton Road junction.

However, it is accepted that there will be an increase in both pedestrian and vehicular activity along the sections of Amberd Lane where there is no footway facility. This should be considered by the LPA against the existing pedestrian and vehicular use by existing residents, as well as the fact that there have been no recorded Personal Injury Accidents within the last five years.

LGPS Resources - Technical Note

LGPS Resources have been commissioned by a group of local residents, to assess the accuracy and appropriateness of the Transport Case made by LvW Highways, which forms part of the planning application.

The following response is made in relation to the highway aspects of their report, rather than the planning issues, which should be considered by the Local Planning Authority. In general, the LGPS Resources report is considered acceptable and represents a reasoned argument. However, whilst there are a few points of minor detail which require clarification these are not considered sufficient by the Highway Authority to warrant further investigation at this time.

The speed survey along Honiton Road, provided by LvW Highways is considered acceptable by the Highway Authority, and it is recommended that the visibility splay is calculated using Manual for Streets. The Highway Authority has recommended 2.4m x 59m, which is slightly higher than required by the speed survey results, but will increase the visibility and safety at this junction.

The introduction of the traffic island displaces vehicles to the left, which in turn provides additional visibility which is likely to meet the required visibility requirements above.

The vehicle tracking plots (using the proposed traffic island) provided by LPGS is considered useful and highlights an area requiring detailed design. However, it is considered that a suitable traffic island can be provided in this case as sufficient space is available at the existing junction.

The main issue within the LPGS report appears to highlight their view that Amberd Lane has a capacity as low as 135 vehicles per hour. Whilst the first section of Amberd Lane appears visually narrow, as it is bordered by walls, there are suitable passing places along this stretch and the Highway Authority considers that 250 – 300 vehicles per hour (at the upper end of the 300 vehicles quoted in DfT TAL 2/04) provides a more realistic assessment. It is therefore considered that Amberd Lane has sufficient capacity for the development.

Bearing these points in mind, the Highway Authority considers the original LvW Highways Transport Statement sufficiently robust to support the application.

Internal Layout – Technical Comments

The following technical comments are provided in relation to the submitted indicative Masterplan.

The application site is located within a 30mph speed limit. The submitted drawing indicates proposed visibility splays of 2.4m x 70m in both directions which is acceptable. However, consideration can be given to lowering the 70m distance in accordance with Manual for Streets, to minimise the impact of the access.

There shall be no obstruction to visibility within the splays that exceeds a height greater than 300mm above adjoining carriageway level and the full extent of the splays will be adopted by Somerset County Council.

The proposed junction should incorporate 6.0m radii. The gradient of the proposed access road should not, at any point, be steeper than 1:20 for a distance of 10m from its junction with Amberd Lane.

Where the tie into the existing carriageway is made, allowances shall be made to resurface the full width of Amberd Lane where disturbed by the extended construction and to overlap each construction layer of the carriageway by a minimum of 300mm.

Due to the proposed horizontal alignment of the internal estate road(s) and the length of them, it would be beneficial for pedestrian movement/safety if 2.0m wide footways were provided. The submitted plan shows a lack of footways. It may be acceptable to only provide a footway on one side with a 1.0m wide margin on the other, in order to try and soften the overall appearance of the site.

A minimum carriageway width of 5.0m should be provided in lieu of the 4.8m currently being proposed.

Forward visibility splays based on anticipated vehicle speeds of 20mph should be provided across the inside of bends outside plots 14, 15, 17 and 21. There shall be no obstruction to visibility within these splays that exceeds a height greater than 600mm above adjoining carriageway level and the full extent of the splays will be adopted by Somerset County Council.

In terms of parking, the indicative Masterplan provides parking significantly above the recommended SCC Parking Standards. It is recommended that the parking provision be altered to accord with the SCC Parking Standards, however the LPA may wish to consider the overprovision against the concerns raised regarding 'overspill' parking onto Amberd Lane.

The private parking bays behind plots 1-5 should be a minimum of 5.5m in length to prevent any possible vehicle overhang of the footpath. An unobstructed 6.0m aisle should still be maintained in front of the bays.

Minimum 6.0m long drives will be required between access gates when opened and garage doors. Where access gates are not provided, 6.0m long drives will be required between the back edge of the highway and garage doors.

The Highway Authority would not wish to be responsible for all of the grass margins/verges within the development site. The applicant should confirm who will be responsible, will they be offered to Taunton Deane Borough Council as Public Open Space?

Any proposed planting within adoptable areas will require payment by the developer of a commuted sum. Under Section 141 of the Highways Act 1980, no tree or shrub shall be planted within 4.5m of the centreline of a made up carriageway. Trees are to be a minimum distance of 5.0m from buildings, 3.0m from drainage/services and 1.0m from the carriageway edge. Root barriers of a type to be approved by Somerset County Council will be required for all trees that are to be planted adjacent to the back edge of the prospective publicly maintained highway to prevent future structural damage to the highway. A planting schedule will need to be submitted to Somerset County Council for approval purposes for any trees/shrubs that are either to be planted within the highway or immediately behind it.

The applicant should be aware that it is likely that the internal layout of the site will result in the laying out of a private street and as such, under Sections 219 to 225 of the Highways Act 1980, will be subject to the Advance Payments Code.

A condition survey of the existing public highway will need to be carried out jointly between the developer and the Highway Authority and agreed prior to any works commencing on site. Any damage to the existing highway as a result of this development is to be remedied by the developer to the satisfaction of the Highway Authority before occupation of the development.

It is therefore recommended that contact be made with the Highway Service Manager - Taunton Area (0845 345 9155) to make arrangements for such a survey to be undertaken. No doors, gates or low-level windows, utility boxes, down pipes or porches are to obstruct footways/shared surface roads. The Highway limits shall be limited to that area of the footway/carriageway clear of all private service boxes, inspection chambers, rainwater pipes, vent pipes, meter boxes (wall mounted), steps etc.

The provision of a new footway within Amberd Lane and fronting plots 1-5, will require the possible relocation of an existing telegraph pole together with adjustments to existing carriageway gullies.

Bearing in mind the response provided above and in the event of the LPA granting permission, I have no objections to the proposed development subject to a Section 106 Agreement to secure the following:

1. The design and construction of a footpath/cycletrack, as far as reasonable within the Applicants control, linking Amberd Lane and Church Road. Where this is not achievable, then a contribution for these works should be provided.
2. The design and construction of a new traffic island at the junction of Amberd Lane Honiton Road. The design of this has yet to be agreed.
3. A minimum sum of £10K for Travel Planning requirements, including travel vouchers upon first occupation and production of information leaflets. This 'minimum' should be considered against the provision of a full Travel Plan Statement, and any additional elements arising from the Statement.

The following conditions are also required:

1. Any entrance gates erected shall be hung to open inwards and shall be set back a minimum distance of 4.5m from the carriageway edge.
2. The gradient of the proposed access shall not be steeper than 1-in-10.
3. Provision shall be made within the site for the disposal of surface water so as to prevent its discharge onto the highway, details of which shall have been submitted to and approved in writing by the Local Planning Authority.
4. Before the dwellings hereby permitted are first occupied, a 1.8m wide footway shall be constructed over the frontage of the site between the western edge and the vehicle access in accordance with a specification to be approved in writing by the Local Planning Authority.
5. The proposed estate roads, footways, footpaths, tactile paving, cycleways, bus stops/bus lay-bys, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car parking and street furniture shall be constructed and laid out in accordance with details to be approved by the Local Planning Authority in writing before their construction begins.
6. For this purpose, plans and sections, indicating as appropriate, the design, layout, levels, gradients, materials and method of construction shall be submitted to the Local Planning Authority.
7. The proposed roads, including footpaths and turning spaces where applicable, shall be constructed in such a manner as to ensure that each dwelling before it is occupied shall be served by a properly consolidated and surfaced footpath and carriageway to at least base course level between the dwelling and existing highway.
8. The development hereby permitted shall not be brought into use until that part of the service road that provides access to it has been constructed in accordance with the approved plans.
9. The gradients of the proposed drives to the dwellings hereby permitted shall not be steeper than 1 in 10.
10. There shall be an area of hard standing at least 6m in length (as measured from the nearside edge of the highway to the face of the garage doors), where the doors are of an up-and-over type.

I would recommend that the following notes are attached to the Planning Certificate:

- a) The applicant should be advised that at least seven days before access works commence the Highway Service Manager: Taunton Deane Area Highways, Burton Place, Taunton, Somerset TA1 4HE (Tel: 0845 345 9155) must be consulted.

b) The applicant shall ensure that all vehicles leaving the site are in such condition as not to emit dust or deposit mud, slurry or other debris on the highway. In particular (but without prejudice to the foregoing), efficient means shall be installed, maintained and employed for cleaning the wheels of all lorries leaving the site, details of which shall have been agreed in advance in writing by the Local Planning Authority and fully implemented prior to commencement of the 1st dwelling, and thereafter maintained until the use of the site discontinues.

c) The applicant is informed that a Section 106 Agreement will need to be entered into with the Highway Authority.

The S106 agreement will be subject to a full technical & safety audit which may require alterations to the highway design and prior to works commencing on site. The developer should contact the Local Planning Authority in the event that any technical amendments are required in order to revise the submitted plans.

Appendix 2

PLANNING APPLICATION 42/12/0013 - REPORT ON THE RESOLUTION OF THE TDBC PLANNING COMMITTEE ON 5TH SEPTEMBER 2012.

K.HOBDEN – 10th JANUARY 2013

1. BACKGROUND

- 1.1 Many residents of Trull parish were outraged by the conditional decision of TDBC in September 2012 to grant outline planning permission for residential development on agricultural land at Amberd Lane, Staplehay.
- 1.2 That outrage stemmed from the fact that the decision flew in the face of a strong and well-established TDBC commitment to protect the Green Wedges, as expressed in both the Core Strategy and the preceding Local Plans. In addition, the Trull Parish Plan and Trull Action Plan Review (2010) identified as the priority issue the clear wish of parishioners to see the Green Wedge protected against housing and development “in any circumstances”.
- 1.3 Following the Committee decision and encouraged by a large number of local residents, I sought legal advice on the soundness of a challenge against TDBC on points of law. TLT Solicitors gave the opinion that TDBC did indeed have a case to answer, advice which reinforced the local view that the manner in which the application had been considered by the Committee amounted to a fundamental failure by the planning authority to observe statutory requirements, the legitimate expectations of the community and fundamental democratic principles.
- 1.4 On my instructions, a pre-action protocol letter was sent by TLT to the planning authority and the applicant for planning permission on 5th November 2012.
- 1.5 Section 3 of this report summarises the points in that pre-action protocol letter, the TDBC response to that letter and my response to the TDBC response.
- 1.6 The documents that are referred to in this report are:
 - Planning Officers Report to Committee on 5/9/2012
 - PAP Letter (TLT Solicitors – 05/11/2012)
 - TDBC Response (Tonya Meers – 15/11/2012)
 - TDBC Core Strategy (as adopted September 2012)
 - NPPF (March 2011)
 - The Trull Action Plan (2005) and Review (2010)

2. SUMMARY

- 2.1 The decision of the Committee did not comply with Section 38(6) of the 2004 Planning and Compulsory Purchase Act because it failed to acknowledge that the policies of the Core Strategy were material. In addition, the items required by way of a Section 106 agreement as a condition of the grant of planning permission do not comply with Regulation 122 of the 2010 Community Infrastructure Regulations.
- 2.2 As a result, I believe that the September resolution was arrived at unlawfully and have launched Judicial Review proceedings against TDBC on that basis.
- 2.3 I also believe that the decision failed to take into account a number of other important issues, which, while they do not necessarily constitute unlawful practice, may well amount to maladministration.
- 2.4 It is my view that had these issues been properly addressed by the planning officer during his determination, then he could and indeed should have come to a different recommendation from that included in the report that was the basis for the resolution on 5th September.
- 2.5 These categories of concern are set out in more detail below.

3. POINTS OF LAW

Leave for Judicial Review is being sought on the following grounds:

3.1 The planning officer failed to recognise that the policies of the Taunton Deane Core Strategy were pertinent to this application.

3.1.1 TDBC Response (Tonya Meers – 15/11/12):

At the time of consideration [of the application] the Core Strategy was not adopted. In any case, the Core Strategy only identifies strategic sites, which the site in question is not all or part of. As a consequence there are no policies within the Core Strategy that are pertinent to this application and therefore the policies of the NPPF are the only ones that apply.

3.1.2 KH response:

TDBC know full well that the policies of the emerging Core Strategy are a material consideration in the planning process, even if that document is not

fully adopted. Paragraph 216 of Annex 1 of the NPPF makes this clear but it is a long established planning principle anyway.

Included in the Committee report is an internal consultation response from “TDBC Strategy” which cites Core Strategy policies CP8 (Section 3.9, Conservation and enhancement of the natural environment), SP1 (Section 4.1, Sustainable development locations) and DM2 (Section 6.2, Development in the countryside) as being pertinent.

It is also known that TDBC were citing Core Strategy policies in their decision notices during August 2012, the month prior to consideration of 42/12/0013.

I understand that only a few days after this application was determined (11th September), the Core Strategy was adopted by TDBC. To all intents and purposes it should have been afforded full weight in determining this application. The policies quoted by the planning officer had virtually no weight by that time.

3.2 The planning officer failed to acknowledge that the proposal was not in accord with the policies of the development plan.

3.2.1 TDBC Response (Tonya Meers 15/11/12):

In the absence of a Site allocations Document, the decision is required to be taken only in accordance with NPPF Policy 14, which says that “planning permission should be granted unless any adverse impacts of doing so would demonstrably outweigh the benefits, when assessed against the policies in [the NPPF] taken as a whole.”

3.2.2 KH response:

As a point of law, which is the basis on which a JR challenge must and is being mounted, Section 38(6) of the 2004 Act requires that all planning decisions must be taken in accordance with the policies of the development plan unless.....etc. The NPPF does not constitute development plan policy. Whilst the statements it contains are a material consideration, it is nonetheless guidance only (NPPF Paragraph 13) and does not change the statutory status of the Development Plan as the starting point for decision making (NPPF Paragraph 12).

Aside from that, my view and that of TDBC’s own ‘Strategy’ section in their consultation response included in the report to Committee, is that there are pertinent policies in the Core Strategy and therefore that the development plan is not absent, silent or the relevant planning policies out-of-date. Therefore the provisions of NPPF Paragraph 14 do not apply and TDBC have quoted selectively from the NPPF to try (unsuccessfully) to justify their

incorrect assessment of the weight that should have been attached to the Core Strategy. There are many other paragraphs within the NPPF with which this application is not in accord. We would draw the attention of TDBC to the fact that the abstract from the NPPF which they have chosen to cite includes the phrase “when assessed against the policies in this Framework taken as a whole.”

3.3 The items sought by way of a Section 106 Agreement do not comply with Regulation 122 of the Community Infrastructure Regulations 2010.

3.3.1 TDBC Response (Tonya Meers 15/11/12):

Only contributions at the standard rate would be required of the developer. Contributions towards the cost of alternative planning gain could not be demanded as a condition of granting permission being granted but could go into a Section 106 agreement.

3.3.2 KH Response:

Whilst it may or may not be lawful for contributions of the type offered by the applicant to be the basis for a Section 106 agreement (clarification will be sought before this report is considered by the Committee), what is certain is that such contributions can only be a material planning consideration if they comply with the criteria set out in Regulation 122. Even if TDBC has been accustomed to seeking contributions at the rate stated, this practice should have been reviewed in the light of the 2010 Regulations.

Only matters which constitute a planning consideration should have been in the report to Committee.

In my view, the Committee resolution to grant permission should not have been made subject to certain of the contributions being secured through Section 106 obligations, as those contributions are not related to matters which are a valid planning consideration.

It is the Government objective that, in order to retain public confidence, S106 agreements should be operated in accordance with the fundamental principle that planning permission may not be bought or sold. The ambiguous and opaque manner in which planning gain has been handled in this instance leaves little doubt that the applicant believes that he can buy planning permission. Public confidence in the planning system will certainly not be retained unless the applicant is disabused of that belief by the actions of the Committee.

4. OTHER ADMINISTRATIVE SHORTCOMINGS

- 4.1 The consultation responses of the TDBC strategy section, the Highway Authority and the TDBC landscape lead (Mr I.Clark), either state unequivocally or indicate that the proposal is contrary to development plan policy. In his representation dated 15/6/2012 Mr T Noall, who is a former Taunton Deane Chief Planning Officer, is unequivocal in his belief that the proposal is in serious conflict with Green Wedge policies.
- 4.2 As a consequence, to support a recommendation of approval, the planning officer should have set out precisely what the material considerations are that override the need for the decision to be made in conformity with the development plan. In resolving to grant planning permission the Committee should similarly set out what those overriding considerations are if the decision is not to be vulnerable to challenge.
- 4.3 It is my belief that no such material considerations which could possibly override Core Strategy policy CP8 have been identified by the planning officer and there are most certainly none if that planning gain that does not meet the Regulation 122 criteria is excluded. In relation to sites like the application area, which is unallocated greenfield land outside of settlement boundaries and within the Green Wedge, CP8 requires that any development must preserve the overall quality of the natural environment, the open landscape character and visual amenity. The proposal cannot possibly satisfy those requirements. Planning permission should therefore be refused.
- 4.4 In addition, proceeding to a decision without the benefit of an opinion from the Environment Agency when part of the site is in Flood Zone 2, has been flooded several times in 2012 and must serve to attenuate peak rainfall events in an already stressed catchment, seems reckless.
- 4.5 This is made worse by the fact that the flood risk assessment submitted by the applicant is deficient. It considers neither the flood risk to others arising as a result of the development nor how climate change over the life of the development will be taken into account as required by the NPPF (Technical Guidance, Paragraph 9).
- 4.6 Flood risk management proposals by the applicant are restricted to the incorporation of a SUDS scheme within the development site which does not meet the requirements of Core Strategy Policy CP8 (fifth paragraph). No details are provided of how that SUDS scheme would operate and correspondence indicates that there is some doubt as to how a SUDS scheme could be made to operate on the site.
- 4.7 There are plenty of sites within the immediate area that are not currently within or adjacent to designated flood zones and are far less likely to be included in those zones in the future as a result of extensions in the light of climate change predictions. The proposal fails the sequential test as a

consequence and is not in accord with the TDBC commitment to “direct development away from land at risk of” flooding. Permission should therefore be refused in line with the NPPF (Paragraph 101).

- 4.8 As a final point, I believe that undue weight was given to a consultation response from Trull Parish Council which was clearly contrary to local opinion, and more importantly was based entirely on inducements (see the letter from the PC Chairman dated 21st May 2012) which are not valid planning considerations.
- 4.9 The value attached by residents of the Parish to preventing development in the Green Wedge as set out in the Trull Action Plan was at least as material to this decision as the consultation response of the Parish Council and yet the Action Plan was not cited by the planning officer.
- 4.10 Procedural shortcomings in the way the Parish Council reached their opinion, could and should have been brought to the attention of the Committee. Amongst these was the fact that they were only able to produce a statement of their reasons for supporting the application some five weeks after making their decision.

5. CONCLUSIONS

- 5.1 It is my view that the manner in which the Committee arrived at the resolution on planning application 42/12/0013 on 5th September was flawed.
- 5.2 It would be appropriate for the Committee to reconsider the application in the light of the points made in this report and I am grateful to the officers of TDBC who made that option available.
- 5.3 Unless as a result of this report I receive explanations of why, in particular, the points of law that I have raised have no foundation, or as an alternative, that the planning officer will reconsider the application addressing fully the points raised, I will have no alternative but to resume the judicial review process.