

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

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

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

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

(The meeting commenced at 5.00 pm)

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

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

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

### **110. Minutes**

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

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

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

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

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

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

**Resolved** that the apology be noted.

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

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

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

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

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

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

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

##### **Conditions**

- (a) The development hereby permitted shall be begun within three years of the date of this permission;
- (b) (i) Before any part of the permitted development is commenced, a landscaping scheme, which shall include details of the species, siting and numbers to be planted, shall be submitted to and approved in writing by the Local Planning Authority;  
(ii) The scheme shall be completely carried out within the first available planting season from the date of commencement of the development, or as otherwise extended with the agreement in writing of the Local Planning Authority;  
(iii) For a period of five years after the completion of each landscaping scheme, the trees and shrubs shall be protected and maintained in a healthy weed free condition and any trees or shrubs that cease to grow shall be replaced by trees or shrubs of similar size and species, or the appropriate trees or shrubs as may be approved in writing by the Local Planning Authority;
- (c) Before any part of the development hereby permitted is commenced, a scheme of hard landscaping showing the layout of areas with stones, paving, walls, cobbles or other materials shall be submitted to and approved in writing by the Local Planning Authority. Such scheme shall be completely implemented before the development hereby permitted is occupied;
- (d) No lighting units other than those specified on the submitted drawing 578/02C shall be erected on site unless otherwise submitted to, and approved in writing by, the Local Planning Authority. Development shall

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

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

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

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

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

**42/09/0034**

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

#### **Conditions**

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

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

- (d) All windows/doors including obscure glazing hereby approved shall be of the design shown on the approved plans, unless otherwise agreed in writing with the Local Planning Authority;
- (e) The existing hedge on the roadside (north) boundary shall be retained and maintained at a height no less than 1.8m above ground level, with the exception of the small element to be removed to widen the access, unless otherwise agreed in writing with the Local Planning Authority. Before any part of the development hereby permitted is commenced, this hedge shall be protected by a chestnut paling fence 1.5m high, placed at a minimum distance of 2m from the edge of the hedge, unless otherwise agreed in writing. The fencing shall be removed only when the development has been completed. During the period of construction of the development the existing soils levels around the base of the hedge shall not be altered;
- (f) Before any part of the development hereby permitted is commenced, the access to be used in connection with the proposed dwelling shall be widened so as to have a minimum width of 5m over the first 10m of its length;
- (g) Before the dwelling is first occupied, the revised access/parking/turning shall be properly consolidated and surfaced (not loose stone or gravel). It shall be made of porous material, or alternatively provision shall be made to direct run-off water from the hard surface to a permeable or porous area or surface with the curtilage of the dwelling;
- (h) The area allocated on the approved plan as parking and turning for the existing and proposed dwelling shall be kept clear of obstruction and shall not be used other than for the parking and turning of vehicles in connection with the existing dwelling, no. 2 Church Road and the dwelling hereby permitted;
- (i) Before any part of the development hereby permitted is commenced, there shall be no obstruction to visibility greater than 900mm above the adjoining road level forward of a line drawn 2m back from the carriageway edge on the centreline of the access and extending to a point on the nearside carriageway edge 33m to the east and 50m to the west of the access. Such visibility shall thereafter be maintained at all times;
- (j) Provision shall be made within the site for the disposal of surface water so as to prevent its discharge onto the highway, details of which shall have been submitted to, and approved in writing by, the Local Planning Authority;
- (k) Before any works are commenced, details of all guttering, downpipes and disposal of rainwater shall be submitted to, and approved in writing by, the Local Planning Authority;
- (l) All services shall be placed underground;
- (m) Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 ('the 1995 Order') (or any Order revoking and re-enacting the 1995 Order with or without modification), no extensions, other alterations (including balconies, windows, chimneys, flues, antennae) or curtilage structures (of the types described in Schedule 2 Part 1 Class A-E and G-H of the 1995 Order), other than that expressly authorised by this permission shall be carried out without the further grant of planning permission.

(Notes to applicant:- (1) Applicant was advised that it will be necessary, if required, for the developer to agree points of connection with Wessex Water, for water supply and the satisfactory disposal of foul flows; (2) Applicant was advised that to be aware of the importance of checking with Wessex Water to ascertain whether there may be any uncharted sewers or water mains within (or very near to) the site. If any such apparatus exists, the applicant should plot the exact position on the design site layout to assess the implications. Please note that the grant of planning permission does not, where apparatus will be affected, change Wessex Water's ability to seek agreement as to the carrying out of diversionary and/or conditioned protection works at the applicant's expense or, in default of such agreement, the right to prevent the carrying out of any such development proposals as may affect its apparatus; (3) Having regard to the powers of the Highway Authority under the Highways Act 1980, applicant is advised that a Section 184 Permit must be obtained from the Highway Service Manager, Taunton Area Office. Application for such a Permit should be made at least three weeks before access works are intended to commence; (4) Applicant was advised that where works are to be undertaken on or adjoining the publicly maintainable highway, a licence under Section 171 of the Highways Act 1980 must be obtained from the Highway Authority. Application forms can be obtained by writing to the Transport Development Group, Environment Department, County Hall, Taunton TA1 4DY. Applications should be submitted at least four weeks before works are proposed to commence in order for statutory undertakers to be consulted concerning their services; (5) Applicant was advised that soakaways should be constructed in accordance with British Research Digest 365 (September 1991).)

**Reason for granting planning permission:-**

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

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

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

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

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

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

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

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

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

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

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

**Resolved** that:-

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

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

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

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

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

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

**Resolved** that:-

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

**117. Appeals**

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

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

**Resolved** that the report be noted.

(The meeting ended at 7.15 p.m.)

