

BATH AND NORTH EAST SOMERSET COUNCIL

Development Management Committee

Date 21st October 2015

**OBSERVATIONS RECEIVED SINCE THE PREPARATION OF THE SITE
VISIT AGENDA, MAIN AGENDA AND ENFORCEMENT REPORTS**

**OBSERVATIONS RECEIVED SINCE THE PREPARATION OF THE SITE
VISIT AGENDA**

ITEMS

ITEMS FOR PLANNING PERMISSION

Site Visit Agenda Item

Item No.	Application No.	Address
001	15/00453/FUL	10 Entry Hill, Bath

Correction:

1. The consultation responses are incorreced listed below the policies/legislation section of the report and the planning policies are missing from the report. The policies/legislation section should read as below:

Policies/Legislation

At the meeting of the full Council on the 10th July 2014, the Bath and North East Somerset Core Strategy was adopted. Please note that from the 10th July 2014 the Development Plan for Bath and North East Somerset comprises:

- Bath and North East Somerset Core Strategy (July 2014);
- Saved policies from the Bath and North East Somerset Local Plan (2007);
- West of England Joint Waste Core Strategy (2011).

CORE STRATEGY

DW1	District Wide Spatial Strategy
B1	Bath Spatial Strategy
B4	World Heritage Site
CP6	Environmental Quality

LOCAL PLAN

D.2	General Design and public realm considerations
D.4	Townscape considerations

BH.2	Listed buildings and their setting
BH.6	Conservation Areas
GB.2	Visual amenity of the Green Belt
NE.1	Landscape character
NE.2	Areas of Outstanding Natural Beauty
NE.9	Locally important wildlife species
NE.10	Nationally important species and habitats
NE.11	Locally important species and habitats
T.1	Overarching access policy
T.24	General development control and access policy
T.26	On-site parking

The National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG) are also material considerations. The following sections of the NPPF are of particular relevance:

Section 6: Delivery a wide choice of high quality homes

Section 7: Requiring good design

Section 9: Protecting Green Belt land

Section 11: Conserving and enhancing the natural environment

Section 12: Conserving and enhancing the historic environment

There is a duty placed on the Council under Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 'In considering whether to grant planning permission for development which affects a listed building or its setting' to 'have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.'

There is also a duty placed on the Council under Section 72 of the Planning (Listed Buildings and Conservation Areas) Act to pay special attention to the preservation or enhancement of the character of the surrounding conservation area.

2. Within the officer assessment section of 'Character and appearance' reference is made to s16 of the Listed Buildings Act. This should be a reference to S66 of Planning (Listed Buildings and Conservation Areas) Act 1990 which states that

"In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

Representations:

One additional letter of objection has been received. It requests that the existing access lane is re-surfaced. It also discusses concerns about possible damage to adjoining properties and states that there is a water pipe buried under the bank alongside the track.

Officer notes on additional comments: As the proposed dwelling is has no associated parking, it is considered that there is insufficient justification for requiring the access lane to be re-surfaced.

OBSERVATIONS RECEIVED SINCE THE PREPARATION OF THE MAIN AGENDA

ITEMS

ITEMS FOR PLANNING PERMISSION

Main Agenda Item

Item No.	Application No.	Address
01	15/01965/RES	Former Gwr Railway Line Frome Road Radstock

Planning reference - Approval of reserved matters with regard to outline application 13/02436/EOUT for access, appearance, layout, scale and landscaping for area 3 (phase 2) of the development.

REPRESENTATIONS

Urban Design comments have been received. In line with the officers report these identify outstanding concerns with the Brook treatment but advise the scheme as a whole is on balance acceptable.

Third Party Representations

Radstock Town Council have objected on the basis that ground conditions are uncertain and have not been surveyed, provision for drainage has not been made, the position regarding the railway is unclear and clarification of the status of Policy T9 is sought.

A further objection has been received on the basis of the relationship of houses to adjoining properties and suggests that boundaries have been altered and historical footpaths not considered.

Officer Assessment

In response to the points raised above:-

The applicant has provided additional clarifications in relation to ground stability as follows:-

“The Planning Officer’s report (page 80) makes reference to current surveys being undertaken on site in relation to ground conditions. The further ground investigation works have been completed to inform the foundation designs and retaining solutions on the Fox Hill’s area of the proposed development. They are limited to Fox Hills and have been undertaken by the relevant technical consultants. As stated in the officer’s report the proposed development is based on expected ground levels and there is no reason to dispute these can be achieved.”

With regard to boundary’s this concern has been clarified and the boundary’s as shown have been clarified by the applicant as correct.

Public Rights of Way have not been compromised by the development.

The relationship of properties existing and proposed has been assessed and this is confirmed in the main report.

Saved Policy T9 is identified in the officer report as a Saved Policy and it carries full weight. The text says that Development will not be permitted which would prejudice: 1) the efficient functioning and acceptable development of the railway network; or 2) the use of former railway land shown on the Proposals Map for Sustainable Transport purposes.

In the case of the proposals the scheme does provide for a sustainable transport link through the site i.e. the cycleway and therefore does comply with the terms of the policy. With regard to a railway route no proposals to develop the site to include a rail link have been made and there is no policy requirement to provide a railway link through the site.

Other Clarification

The concluding paragraph which advises that the scheme overall is an enhancement to the character of the Conservation Area should read preserves the character of the Conservation Area consistent to the assessment above. The application does not impact adversely on Heritage assets and the restoration of the Brunel shed is considered a Heritage benefit.

The drainage will be offered to Wessex water for adoption and discussions to that end have been underway. Conditions 10 and 11 of the outline approval required drainage details to be agreed and implemented.

Recommendation

As per the main report

OBSERVATIONS RECEIVED SINCE THE PREPARATION OF
ENFORCEMENT REPORT

ITEM

ITEMS FOR ENFORCEMENT REPORTS

Item No.	Reference No.	Address
1	09/00168/UNAUTH	Rough Ground and Buildings Queen Charlton

Personal Circumstances Questionnaire

Updated personal circumstance questionnaires dated 9th October 2015 have been received since the publication of the report.

The information provided within the completed questionnaires identifies that changes have occurred to one of the occupant's employment status and medical needs and some of the occupants now receive health visitor support and an outreach worker.

No changes have occurred to the educational status of the children.

Gypsy and Traveller status

Supplemental information has been received dated 9th October 2015 in respect of the Gypsy and Traveller status of the occupants of the site in line with the updated Planning Policy for Traveller Sites (PPfTS) published August 2015.

The information requested by the Council was to gather information regarding the occupant's nomadic habit of life and in particular:

- a) Whether they previously led a nomadic habit of life
- b) The reasons for ceasing their nomadic habit of life
- c) Whether there is an intention of living a nomadic habit of life in the future, and if so, how soon and in what circumstances.

From the information dated 9th October 2015 received by the Council it is considered that there is no change to the status of the site occupants and therefore the occupants qualify as gypsies and travellers for the purposes of planning policy.

Additional representations received

Three additional representations have been received since the publication of the report from the occupants GPs and health visitor, summarised as follows:

- The occupants have established positive relationships with the local health care and children's services.
- Supporting positive engagement within local health care services is vital within traveller communities.
- The occupants of the site are within a local GP practice boundary and receive correspondence by post for health care services. If the family were evicted from the site they would have no postcode and therefore could not receive vital information about health care.
- Evicted families experience high levels of uncertainty, instability and anxiety caused by displacement and separation which is relevant to a family who have established themselves within the local community.
- Roadside living could lead to health risks for the children and lack of basic amenities for the family.
- Local authorities have a responsibility to provide space for travellers to camp on permanent sites.
- The family would like to send the children to local school and nursery which would improve educational attainment within the traveller community.
- The occupants require access to primary care services for their medical needs and require a postcode to be registered with a GP practice.

Appeal of 14/01379/FUL

The Council has received notification from the Planning Inspectorate that an appeal has been lodged in regard of planning application 14/01379/FUL (change of use of land to private gypsy and traveller caravan site (Retrospective) (Resubmission of 13/02781/FUL)) that was refused planning permission on 3rd September 2015. The appeal was received by the Planning Inspectorate on 19th September 2015.

Conclusion

The additional information received from the occupiers of the site and the additional representations received have been taken into account however they do not alter the recommendation given in the report.

Item No.	Reference No.	Address
2	14/00681/UNDEV	43 Upper Oldfield Park Oldfield Park Bath

Enforcement Report Update:

Site Address: 43 Upper Oldfield Park, Oldfield Park, Bath

Planning Reference: 14/00681/UNDEV

In the main report, members were advised to withdraw the enforcement notice because the Council retained the option of taking further enforcement action at a later date. That is still correct.

However, since the publication of the main report, a recent decision of the High Court has come to light which suggests that keeping the enforcement notice in place is also an option.

In Goremsandu v Secretary of State for Communities and Local Government [2015] EWHC 2194 (Admin) the High Court held that where an enforcement notice required that all of a building should be demolished and (as here) planning permission was subsequently granted to retain part of the building, the enforcement notice would still 'bite' upon that part of the building which remained unauthorised and would require demolition of those unauthorised elements. The Court's reasoning was that otherwise a landowner could circumvent the effect of an enforcement notice requiring complete demolition of an unauthorised building by obtaining planning permission for a smaller and less intrusive building which it did not then implement.

Applying the principle of Goremsandu to 43 Oldfield Park (and assuming that the partly retrospective planning permission has been granted), if members were to resolve to keep the enforcement notice in place then the notice would require the unauthorised elements of the building which remain (essentially the fourth floor balconies and elements of the roof) to be demolished. In theory this approach could leave the building in an unsatisfactory state. However, if the developer were to lose its appeal for full retrospective permission, then the enforcement notice would continue to be a blight on the property and the obvious solution would be for the developer to then modify

the building in accordance with the recently granted part retrospective planning permission.

Members are therefore advised that in the light of Goremsandu there are two options.

1. Withdraw the notice and serve a further notice later on if need be. That further notice could require that the building is modified to make it comply with the terms of the part retrospective planning permission. A reason for suggesting this course of action is because there is a risk that if the developer complies with the terms of the notice (if left in place) this could leave an unfinished building which would potentially be harmful to the character and appearance of the conservation area.
2. Keep the notice in place which would simply require that the unauthorised elements of the building are demolished. It could be argued that it is unlikely that the developer would elect to carry out the demolition works required by the notice and then leave the building unfinished and that leaving the notice in place is more likely to compel the developer to regularise the unauthorised building.

Officer Recommendation:

In light of the decision in Goremsandu, it is necessary to review the officer recommendation.

It is now recommended that Members should decide between withdrawing the enforcement notice, or keeping it in place.