

**Democratic Services**

Riverside, Temple Street, Keynsham, Bristol BS31 1LA

Telephone: (01225) 477000 *main switchboard*

Direct Lines - Tel: 01225 394414

Web-site - <http://www.bathnes.gov.uk>

**Your ref:**

**Our ref:** DT

**Date:** 10 May 2011

**E-mail:** [Democratic\\_Services@bathnes.gov.uk](mailto:Democratic_Services@bathnes.gov.uk)

**To: All Members of the Development Control Committee**

**Councillors:** Les Kew (Chair), Sharon Ball, John Bull, Nicholas Coombes, Gerry Curran, Eleanor Jackson, Malcolm Lees, Bryan Organ, Brian Simmons, Martin Veal and Brian Webber

**Permanent Substitutes:-**Councillors: Neil Butters and Rob Appleyard

Chief Executive and other appropriate officers  
Press and Public

Dear Member

**Development Control Committee: Wednesday, 18th May, 2011**

You are invited to attend a meeting of the **Development Control Committee**, to be held on **Wednesday, 18th May, 2011 at 2.00 pm** in the **Council Chamber - Guildhall, Bath.**

The Chairman's Briefing Meeting will be held at 10.00am on Tuesday 17th May in the Meeting Room, Lewis House, Bath.

The rooms will be available for meetings of political groups. Coffee etc. will be provided in the Group Rooms before the meeting.

The agenda is set out overleaf.

Yours sincerely

David Taylor  
for Chief Executive

**If you need to access this agenda or any of the supporting reports in an alternative accessible format please contact Democratic Services or the relevant report author whose details are listed at the end of each report.**

## NOTES:

- 1. Inspection of Papers:** Any person wishing to inspect minutes, reports, or a list of the background papers relating to any item on this Agenda should contact David Taylor who is available by telephoning Bath 01225 394414 or by calling at the Riverside Offices Keynsham (during normal office hours).
- 2. Public Speaking at Meetings:** The Council has a scheme to encourage the public to make their views known at meetings. They may make a statement relevant to what the meeting has power to do. They may also present a petition or a deputation on behalf of a group. Advance notice is required not less than two full working days before the meeting (this means that for meetings held on Wednesdays notice must be received in Democratic Services by 4.30pm the previous Friday)

The public may also ask a question to which a written answer will be given. Questions must be submitted in writing to Democratic Services at least two full working days in advance of the meeting (this means that for meetings held on Wednesdays, notice must be received in Democratic Services by 4.30pm the previous Friday). If an answer cannot be prepared in time for the meeting it will be sent out within five days afterwards. Further details of the scheme can be obtained by contacting David Taylor as above.

- 3. Details of Decisions taken at this meeting** can be found in the minutes which will be published as soon as possible after the meeting, and also circulated with the agenda for the next meeting. In the meantime details can be obtained by contacting David Taylor as above.

Appendices to reports are available for inspection as follows:-

**Public Access points** - Riverside - Keynsham, Guildhall - Bath, Hollies - Midsomer Norton, and Bath Central, Keynsham and Midsomer Norton public libraries.

**For Councillors and Officers** papers may be inspected via Political Group Research Assistants and Group Rooms/Members' Rooms.

- 4. Attendance Register:** Members should sign the Register which will be circulated at the meeting.
- 5. THE APPENDED SUPPORTING DOCUMENTS ARE IDENTIFIED BY AGENDA ITEM NUMBER.**
- 6. Emergency Evacuation Procedure**

When the continuous alarm sounds, you must evacuate the building by one of the designated exits and proceed to the named assembly point. The designated exits are sign-posted.

Arrangements are in place for the safe evacuation of disabled people.

**The List of Planning Applications and Enforcement Cases Determined under Delegated Powers are available using the following link:**

<http://www.bathnes.gov.uk/ENVIRONMENTANDPLANNING/PLANNING/PLANNINGAPPLICATIONS/Pages/Delegated%20Report.aspx>

**Development Control Committee - Wednesday, 18th May, 2011**

**at 2.00 pm in the Council Chamber - Guildhall, Bath**

**AGENDA**

1. EMERGENCY EVACUATION PROCEDURE

The Chairman will ask the Committee Administrator to draw attention to the emergency evacuation procedure as set out under Note 7

2. ELECTION OF VICE CHAIRMAN (IF DESIRED)

3. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

4. DECLARATIONS OF INTEREST

Members who have an interest to declare are asked to state:

(a) the Item No and site in which they have an interest; (b) the nature of the interest; and (c) whether the interest is personal or personal and prejudicial.

Any Member who is unsure about the above should seek advice from the Monitoring Officer prior to the meeting in order to expedite matters at the meeting itself.

5. TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIRMAN

6. ITEMS FROM THE PUBLIC - TO RECEIVE DEPUTATIONS, STATEMENTS, PETITIONS OR QUESTIONS

(1) At the time of publication, no items had been submitted.

(2) To note that, regarding planning applications to be considered, members of the public who have given the requisite notice to the Committee Administrator will be able to make a statement to the Committee immediately before their respective applications are considered. There will be a time limit of 3 minutes for each proposal, ie 3 minutes for the Parish and Town Councils, 3 minutes for the objectors to the proposal and 3 minutes for the applicant, agent and supporters. This allows a maximum of 9 minutes per proposal.

7. ITEMS FROM COUNCILLORS AND CO-OPTED MEMBERS

To deal with any petitions or questions from Councillors and where appropriate Co-opted Members

8. MINUTES: 13 APRIL 2011 (Pages 9 - 56)

9. MAJOR DEVELOPMENTS

The Senior Professional – Major Developments to provide a verbal update

10. SITE VISIT LIST - APPLICATIONS FOR PLANNING PERMISSION ETC FOR DETERMINATION BY THE COMMITTEE (Pages 57 - 66)

11. MAIN PLANS LIST - APPLICATIONS FOR PLANNING PERMISSION ETC FOR DETERMINATION BY THE COMMITTEE (Pages 67 - 104)
12. REPORT ON FORMER FULLER'S EARTH WORKS (Pages 105 - 160)
13. QUARTERLY PERFORMANCE REPORT OCTOBER-DECEMBER 2010 (Pages 161 - 172)
14. NEW PLANNING APPEALS LODGED, DECISIONS RECEIVED AND DATES OF FORTHCOMING HEARINGS/INQUIRIES (Pages 173 - 176)

To note the report

The Committee Administrator for this meeting is David Taylor who can be contacted on 01225 394414.

## **Member and Officer Conduct/Roles Protocol\*** **Development Control Committee**

*(\*NB This is a brief supplementary guidance note not intended to replace or otherwise in any way contradict Standing Orders or any provision of the Local Authorities (Model Code of Conduct) Order 2001 adopted by the Council on 21<sup>st</sup> February 2002 to which full reference should be made as appropriate).*

### **1. Declarations of Interest (Personal and Prejudicial)**

- These are to take place when the agenda item relating to declarations of interest is reached. It is best for Officer advice (which can only be informal) to be sought and given prior to or outside the Meeting. In all cases the final decision is that of the individual Member.

### **2. Local Planning Code of Conduct**

- This document as approved by Full Council and previously noted by the Committee, supplements the above. Should any Member wish to state declare that further to the provisions of the Code (although not a personal or prejudicial interest) they will not vote on any particular issue(s) , they should do so after (1) above.

### **3. Site Visits**

- Under the Council's own Local Code, such visits should only take place when the expected benefit is substantial eg where difficult to visualize from the plans, or from written or oral submissions or the proposal is particularly contentious. Reasons for a site visit should be given and recorded. The attached note sets out the procedure.

### **4. Voting & Chair's Casting Vote**

- By law the Chair has a second or "casting" vote. It is recognised and confirmed by Convention within the Authority that Chair's casting vote will not normally be exercised. A positive decision on all agenda items is, however, highly desirable in the planning context although exercise of the Chair's casting vote to achieve this remains at the Chair's discretion .

Chairs and Members of the Committee should be mindful of the fact that the Authority has a statutory duty to determine planning applications. A tied vote leaves a planning decision undecided. This leaves the Authority at risk of appeal against non determination and/or leaving the matter in abeyance with no clearly recorded decision on a matter of public concern/interest.

The consequences of this could include (in an appeal against " non determination" case) the need for a report to be brought back before the Committee for an indication of what decision the Committee would have come to if it had been empowered to determine the application.

## **5. Officer Advice**

- Officers will advise the meeting as a whole (either of their own initiative or when called upon to do so) where appropriate to clarify issues of fact, law or policy. It is accepted practice that all comments will be addressed through the Chair and any subsequent Member queries addressed likewise.

## **6. Decisions Contrary to Policy and Officer Advice**

- There is a power (not a duty) for Officers to refer any such decision to a subsequent meeting of the Committee. This renders a decision of no effect until it is reconsidered by the Committee at a subsequent meeting when it can make such decision as it sees fit.

## **7. Officer Contact/Advice**

- If Members have any conduct or legal queries prior to the Meeting then they can contact the following Legal Officers for guidance/assistance as appropriate (bearing in mind that informal Officer advice is best sought or given prior to or outside the Meeting) namely:-
  1. Maggie Horrill, Planning and Environmental Law Manager  
Tel. No. 01225 39 5174
  2. Simon Barnes, Senior Legal Adviser  
Tel. No. 01225 39 5176

General Member queries relating to the Agenda (including Public Speaking arrangements for example) should continue to be addressed to David Taylor, Committee Administrator Tel No. 01225 39 4414

**Planning and Environmental Law Manager, Planning Services Manager,  
Democratic Services Manager, Solicitor to the Council  
April 2002**

### Site Visit Procedure

- (1) Any Member of the Development Control or local Member(s) may request at a meeting the deferral of any application (reported to Committee) for the purpose of holding a site visit.
- (2) The attendance at the site inspection is confined to Members of the Development Control Committee and the relevant affected local Member(s).
- (3) The purpose of the site visit is to view the proposal and enhance Members' knowledge of the site and its surroundings. Members will be professionally advised by Officers on site but no debate shall take place.
- (4) There are no formal votes or recommendations made.
- (5) There is no allowance for representation from the applicants or third parties on the site.
- (6) The application is reported back for decision at the next meeting of the Development Control Committee.
- (7) In relation to applications of a controversial nature, a site visit could take place before the application comes to Committee, if Officers feel this is necessary.





**MINUTES OF DEVELOPMENT CONTROL COMMITTEE**

Wednesday, 13th April, 2011

Present:- Councillor Les Kew in the Chair  
Councillors Rob Appleyard (In place of John Bull), Sharon Ball, Nicholas Coombes,  
Paul Crossley (In place of Colin Darracott), Gerry Curran, Eleanor Jackson, Bryan Organ,  
Martin Veal (In place of Malcolm Lees), Brian Webber and Stephen Willcox

**131 EMERGENCY EVACUATION PROCEDURE**

The Democratic Services Officer read out the procedure.

**132 ELECTION OF VICE CHAIRMAN (IF DESIRED)**

**RESOLVED** that a Vice-Chair was not required on this occasion.

**133 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

Apologies were received from Councillor John Bull (substituted by Councillor Rob Appleyard), Councillor Colin Darracott (substituted by Councillor Paul Crossley) and Councillor Malcolm Lees (substituted by Councillor Martin Veal).

**134 DECLARATIONS OF INTEREST**

There were none.

**135 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIRMAN**

There was none.

**136 ITEMS FROM THE PUBLIC - TO RECEIVE DEPUTATIONS, STATEMENTS, PETITIONS OR QUESTIONS**

There were none.

**137 ITEMS FROM COUNCILLORS AND CO-OPTED MEMBERS**

There were none.

**138 MINUTES: 16 MARCH 2011**

These were approved as a correct record and signed by the Chair, subject to the amendment of the attendance list to show that Councillor Jackson was present and that Councillor Appleyard was substituting for Councillor Bull, not Councillor Jackson.

**139 MAJOR DEVELOPMENTS**

The Senior Professional Major Developments said that he nothing specific to report, but he would be happy to answer any questions from Members.

## 140 MAIN PLANS LIST - APPLICATIONS FOR PLANNING PERMISSION ETC FOR DETERMINATION BY THE COMMITTEE

The Committee considered

- The report of the Development Manager on the applications
- Oral statements by members of the public, the Speakers List being attached as Appendix 2 to these Minutes
- The update report by the Development Manager, attached as Appendix 3 to these Minutes

**RESOLVED** that, in accordance with their delegated powers, the planning applications be determined as set out in the Decisions List attached as *Appendix 4* to these Minutes.

**NOTES:** Decisions were made by the Committee as per the Officers' recommendations set out in the Report with the Agenda, and were carried unanimously or without dissension unless stated otherwise. Where the Officer's recommendation was overturned, or there were amendments whether lost or carried, or there were decisions on matters other than on planning applications, these are listed below.

**Item 1, Street Record, Bath Spa University Campus, Newton St Loe, Bath (10/04747/EFUL)** – the Senior Professional Major Developments informed Members that the application had been withdrawn from the agenda.

**Item 2, 38 High Street, Keynsham, BS31 1DX (11/00407/FUL)** – the case officer made a presentation on the application and the recommendation to refuse. The public speakers were heard. Councillor Organ said that he could not accept the officer's recommendation to refuse. He did not believe suitable alternative premises were available on the High Street. The application premises had been vacant for eighteen months, so that occupation by the applicant would improve the appearance of the area. The applicant had occupied its present premises for forty years and had been a good tenant of the Council. Since the applicant proposed merely to move from one retail unit to another, there would be no net reduction in the number of retail units. He moved to permit the application. This was seconded by Councillor Veal. Councillor Curran asked officers to comment on the argument put forward by the applicant's agent that PPS4 would allow flexibility in the application of local plan policy S5. The Team Leader, Development Management said that the view of officers remained as set out on pages 54-55 of the agenda. Councillor Willcox said that although there were concerns about the loss of high street shops, there were estate agents mixed in with retailers on many high streets. He felt that it was necessary to accept changing economic conditions. Councillor Jackson noted that there was already an estate agency offering financial services nearby and that the post office offered financial services. The units on one long section of the High Street were occupied by charity shops. She could see no reason to refuse the application. Councillor Organ observed that there was also a building society not far from the post office. The Team Leader, Development Management advised that if the application were permitted it would have to be advertised as a departure from the

development plan and if any objections were received that raised new issues, the application would be brought back to Committee. Councillor Organ said that he would therefore amend his motion from “permit” to “delegate to permit subject to appropriate conditions and no new issues being raised as a result of the advertising process”. The motion was put and it was **RESOLVED** by 8 votes in favour, 2 against with 1 abstention to delegate to permit the application as above.

## **REASONS**

The applicant is an established local business. The application premises have been empty for eighteen months and currently detract from the appearance of the High Street. The change of use will not result in a net reduction of retail units in Keynsham town centre and would improve the appearance of the area.

**Item 3, Council Depot, Upper Bristol Road, Clutton ( 10/04904/REG04)** – the case officer made a presentation on the application and the recommendation to permit. The public speaker was heard. Councillor Willcox, ward Member for Clutton, said that he currently had difficulties in his relationship with Clutton Parish Council and felt unable to comment on the application as he had not been asked by the Parish Council to support their objection. Councillor Veal asked officers whether it was correct, as stated by the public speaker, that 100 people had signed a petition opposing the application and, if so, whether they all lived locally. The case officer said that a petition had indeed been received, which had been signed by local residents and by people from surrounding villages. Councillor Crossley said that he was concerned that the development, if permitted, would lead to a change of use of the site to a waste processing facility. He was concerned that there would be an increase in the intensity of the use of the site, which would be detrimental to local residents, some of whom lived immediately opposite. He moved to refuse the application. This was seconded by Councillor Coombes, who did not agree that effluent from gulleys would not smell when left out to dry and this would be detrimental to the amenity of nearby residents. What was envisaged was clearly processing. Councillor Jackson was also concerned about the proximity of the site to residential properties. If the application was permitted, she thought that the trees adjacent to the site would eventually die. She feared that odours from drying waste would cause nuisance to local residents, particularly in the summer. Councillor Webber accepted the advice given by the Environmental Health Officer that the potential for nuisance from odour was minimal; the material would be left to dry for one or two days and then removed, not left to ferment. He also considered that the proposal for the site was an efficient way of avoiding extra road journeys. Councillor Coombes thought there was no evidence that the waste would dry out within a day or two. Councillor Curran thought that a waste services officer should have attended to provide further explanation. The motion was put, and it was **RESOLVED** by 6 votes in favour, 3 against with 3 abstentions to refuse the application.

## **REASONS**

The Committee considered that the proposed development could lead to a more intensive use of the site to the detriment of residential amenity. The development would also have a detrimental impact on local residents by reason of odour from the drying bays.

**Item 4, Church View, Packhorse Lane, South Stoke, Bath BA2 7DW (10/04317/FUL)** – the case officer made a presentation on the application and the recommendation to permit. The public speakers were heard. The Chair moved that the application be deferred for a site visit. This was seconded by Councillor Veal. The motion was put and it was resolved by 8 votes in favour, 2 against with 2 abstentions to defer the application for a site visit to assess the impact of the proposal on the conservation area and on neighbouring residents.

**Item 5, 36 Farmborough Lane, Priston, Bath BA2 9EH (11/00229/FUL)** – the case officer made a presentation on the application and the recommendation to refuse. The public speakers were heard. Councillor Coombes noted that there was no agricultural tie on these dwellings. The Team Leader, Development Management responded that officers had not suggested to the applicant that he should accept an agricultural tie because the application was being recommended for refusal. He added that any application to construct a new dwelling with an agricultural tie in the Green Belt would be considered on its merits, though it would be proper to take into consideration any other properties in the area that were in the possession of the applicant. Councillor Willcox said that he thought agriculture in the Green Belt should be supported and that dwellings should have living space that was adequate by contemporary standards. He felt that these factors amounted to very special circumstances and moved to permit the application. This was seconded by Councillor Veal. Councillor Crossley said that account must be taken of the era in which the buildings were constructed. He believed that the removal of the existing lean to at the rear of the building would significantly improve its appearance and this would be a benefit to the Green Belt. He also felt that enabling agricultural workers to live near their place of work would benefit the rural economy. He believed these were sufficient reasons for departing from Green Belt policy in this case. He asked whether it would be possible to make the dwellings subject to an agricultural tie. The Team Leader, Development Management replied that officers would discuss this with the applicant, if the motion were amended from permit to delegate to permit with appropriate conditions. The proposer and seconder accepted this amendment. The motion was put and it was **RESOLVED** by 11 votes in favour with 1 abstention to delegate to permit the application with appropriate conditions.

## **REASONS**

The Committee considered that the agricultural need for the development and the improvements to the appearance of the building amounted to very special circumstances which clearly outweighed the harm to the Green Belt and any other harm. The proposal would allow farm workers to live on site in modern conditions which would be beneficial to the rural economy.

**Item 6, 4 Ellsbridge Close, Keynsham, Bristol BS31 1TB (11/00668/FUL)** – the case officer made a presentation on the application and the recommendation to permit. Additional information was tabled, a copy of which is attached to these minutes as Appendix 1. Councillor Organ moved to follow the officer's recommendation and permit the application. This was seconded by Councillor Veal. The motion was put and it was **RESOLVED** by 11 votes in favour with 1 abstention to permit the application.

## **141 NEW PLANNING APPEALS LODGED, DECISIONS RECEIVED AND DATES OF FORTHCOMING HEARINGS/INQUIRIES**

**RESOLVED** to note the report.

**Appendix 1: additional information: agenda item 140, application 6, 4  
Ellsbridge Close, Keynsham**

**Appendix 2: speakers' list**

**Appendix 3: update report**

**Appendix 4: decision list**

The meeting ended at 3.35 pm

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**



## Additional information

Planning application 11/00668/FUL

4 Ellsbridge Close, Keynsham

The applicant has explained why he has submitted this application following the granting of the previous planning permission. The extension has been reduced in size due to concerns of the neighbouring occupiers. The applicant states that they hope that this is a satisfactory solution but if the proposal is not successful, they will of course continue with the previously approved extension.

Although the extension is considered to be a disproportionate addition to the original dwelling and is therefore by definition inappropriate development in the Green Belt, officers consider that significant weight should be given to the fall back position cited above. There is considered to be no harm to the adjoining residents and the Committee has previously considered an extension like the proposed to enhance the appearance of the building. On balance, this, coupled with the fall back position is considered to represent very special circumstances to outweigh the harm by reason of inappropriateness.





**SPEAKERS LIST  
BATH AND NORTH EAST SOMERSET COUNCIL  
DEVELOPMENT CONTROL COMMITTEE**

**MEMBERS OF THE PUBLIC ETC WISHING TO MAKE A STATEMENT AT  
DEVELOPMENT CONTROL COMMITTEE AT ITS MEETING ON  
WEDNESDAY 14<sup>TH</sup> APRIL 2011**

<b>ITEM 10: MAIN PLANS LIST</b>		
<b>SITE</b>	<b>NAME/REPRESENTING</b>	<b>FOR/AGAINST</b>
38 High Street, Keynsham (Item 2, pages 51-57)	Cllr Tony Crouch (Keynsham Town Council)	Against
	Amanda Sanders (Alpha Planning)	For
Council Depot, Upper Bristol Road (Item 3, pages 57-61)	Clive English	Against
Church View, Packhorse Lane, South Stoke (Item 4, pages 62-69)	Robert Hellard (Vice-Chair, South Stoke Parish Council)	Against
	Geoffrey Davis	Against
	Mrs Dhalivaal-Elmes	For
36 Farmborough Lane, Priston (Item 5, pages 70-74)	Matthew Barden (representing applicant)	For
	Councillor Vic Clarke	For



**Planning Application Ref: 10/04747/EFUL Bath Spa University**

**Bath and North East Somerset Council**

**Development Control Committee 13<sup>th</sup> April 2011**

Agenda Item 10 - Item 01 – Planning Application Ref: 10/04747/EFUL

Bath Spa University Campus, Newton St Loe, Bath

## **CONTINUATION REPORT**

*[NB: This Continuation Report was initially intended to be read in conjunction with the first part of the officer Report on this item which is included within the main Agenda. However, it has come to your Officers' attention that in the preparation of the main Agenda papers, a section of the initial Report has unfortunately been omitted. Accordingly, and for the convenience of Members and other interested parties, the entire Report is now presented below in its intended form. Members should disregard the incorrect version in the main Agenda papers.]*

### **Corrections / Updates**

1. The description of the development given in the main Agenda Report is incorrect. Members should note that the correct wording is as follows:

“Demolition of existing residential (C2) and education (D1) buildings and redevelopment of part of Newton Park for educational purposes as Phase 1 of the campus master plan to provide a two/three storey academic building (approximately 8,528.7 sq m) together with associated access, landscaping, car parking and infrastructure, in addition to temporary extension to main car park south of campus.”

An Objection comment received from the **Bath Preservation Trust** was inadvertently omitted from the main Agenda Report and is inserted below as intended

2. **Newton St Loe Parish Council** had intended to comment on this application, but submitted their letter of support under another application reference. Their comments are now incorporated into the report that follows.

# REPORT OF THE DEVELOPMENT MANAGER OF PLANNING AND TRANSPORT DEVELOPMENT ON APPLICATIONS FOR DEVELOPMENT

Item No: 01

**Application No:** 10/04747/EFUL

**Site Location:** Street Record, Bath Spa University Campus, Newton St. Loe, Bath

**Ward:** Bathavon West      **Parish:** Newton St. Loe      **LB Grade:** N/A

**Ward Members:** Councillor Victor Clarke

**Application Type:** Full Application with an EIA attached

**Proposal:** Demolition of existing residential (C2) and education (D1) buildings and redevelopment of part of Newton Park for educational purposes as Phase 1 of the campus master plan to provide a two/three storey academic building (approximately 8,528.7 sq m gea) together with associated access, landscaping, car parking and infrastructure, in addition to temporary extension to main car park south of campus.

**Constraints:** Agric Land Class 1,2,3a, Agric Land Class 1,2,3a, Agric Land Class 3b,4,5, Coal fields, Cycle Route, Forest of Avon, Greenbelt, Major Existing Dev Site,

**Applicant:** Bath Spa University

**Expiry Date:** 11th March 2011

**Case Officer:** Geoff Webber

## REPORT

### Reason for Reporting Application to Committee

This application represents the initial phase of a major regeneration programme proposed by Bath Spa University. The scheme as a whole has strategic significance because of the importance of the higher educational sector to the economy of the area, and because of the location of the university campus at Newton Park, which is a sensitive historic park environment within the Green Belt. The proposed MasterPlan is intended to underpin the university's development for the foreseeable future.

### The Proposed Development and its Context

Bath Spa University has occupied Newton Park at Newton St Loe as its principal site for many years, and it has long been recognised that the historic park is both a major asset to the university and a significant constraint to development. As the university has grown, so it has become increasingly clear that a piecemeal approach to development is unsuitable for taking the university through what now emerges as a major programme of regeneration during the next two decades or so.

In discussion with your Officers, and with other key stakeholders including English Heritage ("EH") and the Duchy of Cornwall ("the Duchy"), the university has agreed that it will bring future development forward on a master planned basis, so that each individual scheme can be understood and evaluated both in the context of the

historic parkland setting and in terms of its contribution towards the university's overall ambitions.

Members are advised that within the educational framework that now exists in the UK, any university must be viewed as a commercial enterprise in so far as it has to compete for funding and for students alongside a wide range of other institutions. As a result, Bath Spa University considers that it is essential in 2011 to provide an ever-improving range of academic, leisure, social and residential opportunities for students and staff which enable it to remain competitive with other universities which offer similar courses. It is no longer enough for the university to rely upon the "wow factor" of its wonderful setting to attract the most able students and staff, and some of the facilities at the university are looking tired and increasingly insufficiently attractive.

Accordingly, over a two year period, the university has appointed a team of consultants who have been advising on all aspects of the emerging proposals. The university has produced a Draft MasterPlan which is intended to operate on a "living document" basis, allowing revisions and updates to be incorporated whenever necessary in order to ensure that the university can respond to changes in national educational policy, or to other equally unpredictable factors such as unexpected fluctuations in the availability of funds. The MasterPlan has been submitted alongside the current application, but remains the subject of detailed discussion and negotiation, and will therefore be presented to the Committee in due course, once the university is satisfied that it has taken adequate account of the views of all its key stakeholders. That is likely to be in association with the next significant proposal for development which is expected to be submitted during the summer of 2011.

Meanwhile, your officers have satisfied themselves that the initial redevelopment phase represented by the current application can in principle be determined in advance of concluding the work on the MasterPlan, and the university has sought the earliest possible approval of the Phase 1 academic building, in order that the proposed building can be made available for use as soon as possible.

Prior to the committee meeting, Members will have had an opportunity to visit Newton Park, and to see for themselves the manner in which the university buildings sit within the historic landscape. An awareness of the benefits and sensitivities of this parkland setting is an essential prerequisite to coming to terms with the implications of the development programme upon which the university is embarking. However, Members must also bear in mind that the university is not based just at Newton Park. Many of its students occupy student accommodation in Bath, both in purpose-built developments such as Waterside Court (in Lower Bristol Road) and in smaller residential properties in various locations across the city. In addition, the university itself occupies a number of sites within and around Bath for academic purposes, and the site at Sion Hill is perhaps the most significant of these within the city. The operational and functional inefficiency of this multi-location character is a major factor in the university's decision to progress a master planned approach to its future, and underpinning the emerging MasterPlan is a strategic decision to focus future development at Newton Park, and to create opportunities for as many students as possible – certainly all first-year students – to be housed on the Newton Park campus.

Your Officers recognise the significant benefits that will arise from reducing the need for students to shuttle back and forth between Bath and Newton Park, and also understand that from the university perspective increasing the academic punching power of the campus is key to the future success of the university. However, all this needs to be balanced against the need to safeguard the special character and qualities of Newton Park as a historic setting, and it is believed that this can only be achieved through the application of the MasterPlan. Your Officers have encouraged the University, through its master planning work, to seek to establish where there are “ceilings” on development at Newton Park, in order that the most effective use can be made of the campus, without prejudicing the historic environment. Members will see from the consultation responses set out in detail below that it would seem that the university is generally considered to have set its MasterPlan sights a little too high in terms of the Park’s capacity to absorb additional development. As a result, and in response to the comments from EH in particular, the university has in the last few days indicated an intention to review its MasterPlan proposals for the later phases of development. In a recent email, the university has stated that it is

“... committed to the Masterplan process for identifying and providing guidance on the future development of the Newton Park Campus. The current Masterplan that has evolved over a two year period has identified and established the principle of development on particular sites within the Newton Park Campus, specifically these have been identified as development in the vicinity of the walled garden, existing main car park and ground maintenance area and the northern area of the campus currently utilised as student accommodation. The Masterplan has also identified opportunities to ‘undevelop’ parts of the existing campus and continue restoration of the historic landscape.

The University’s Design Team has established the maximum capacity of these areas in the light of the environmental and historic constraints. It has always been agreed with you that the Masterplan is a living document. It is the intention of the University to produce further iterations of the Masterplan as agreed with B&NES early in the pre-application process. The University will consult further with English Heritage, B&NES and other key stakeholders in order to refine the proposals for the identified development areas in the Masterplan.

The University is not requesting B&NES to ratify or adopt the Masterplan in its current form. Rather, it is requesting that B&NES endorse the process to date and commit to a process of further consultation in advance of the Phase II residential proposals coming forward.”

At the meeting Members will be given an introduction to the concepts set out in the MasterPlan, and this will include not only the proposed development programme, but also indications of where the approach has identified that “undevelopment” can take place in order to enhance the Park’s special qualities. The end result is intended to be a balanced approach to the redevelopment of the university, and the MasterPlan should in due course form a key foundation for the consideration of all future significant applications for planning permission on this important site.

The initial phases of the development programme involve the shuffling of various uses around between different parts of the campus, and the Officer presentation to Members will explain how this concept will work. During this time, the university has indicated that there will be no growth in student numbers as the programme requires there to be sufficient “wriggle room” to allow development to proceed whilst the university continues to operate. Overall, it is anticipated that the programme of redevelopment will increase the size of the university’s operation at Newton Park, and increase the proportion of students that will be accommodated on the campus. In turn, this is expected to reduce demand for students to move between Newton

Park and Bath, enhancing the sustainability of the university's activities. In order to secure government funds, the university is required to substantially decrease the energy footprint of its operations, and this is an element which will be a key consideration at every stage of the development programme.

In short, the underlying concept of a master planned approach to the redevelopment and regeneration of Bath Spa University is recognised by your Officers as being a major positive consideration in the evaluation of the various development proposals that will be submitted. Not all these proposals will be brought to this Committee for determination, but the university's representatives have made it clear to your Officers that they consider it crucial to the university that the Committee endorses the general approach.

### **The Current Application**

The current application is accompanied by an Environmental Impact Assessment, and seeks permission for a substantial new two/three-storey academic building in place of three existing buildings which are to be demolished. The building will have a floorspace of just over 8500 sq metres. In addition, the current application includes a proposal for temporary car parking, and also for the landscaping of the area around the new building. The proposal demonstrates many of the characteristics that will be seen in other applications that will be submitted in the future. Outmoded buildings are to be removed, whilst other buildings that are either of historic significance or which remain valuable assets will be retained and enhanced. In some cases, demolished buildings will be replaced – as here – by new development, and in other cases, the demolition will offer an important opportunity to restore or enhance the visual qualities of the Park. The demolition of specific buildings has been an integral part of the scheme from the outset, and the EIA and the Draft MasterPlan both take account of the relative significance of demolitions and of the benefits to the Park that can flow from the removal of some of the less attractive existing structures.

The ground and first floors of the proposed Phase 1 academic building mainly comprise teaching rooms, whilst the second floor is mainly for staff and academic use. The building will also house an “e library” and digital and media suites, along with a central atrium that separates the two more solid elements of the structure. The development has been designed to be of a scale that sits well in relation to the Listed “Main House”, and to avoid the introduction of development that introduces new and undesirable visual impacts upon the parkland setting.

The Officer presentation at the meeting will describe the principal characteristics of the building, and it is anticipated that having previously viewed the site, Members will be readily able to assess the extent to which the architects employed by the university have achieved their aims. The proposals will speak for themselves, and there is therefore no need to describe the scheme in detail here.

However, this report sets out the key considerations, and your Officers' comments and advice regarding those matters. Essentially, there are seven principal areas to which Members' attention is drawn in this report. These are:

1. The correctness of the EIA approach adopted by the university.
2. The acceptability of the Draft MasterPlan.

3. The appropriateness of the proposed development within the Green Belt.
4. The impact of the proposed development upon the special character of the historic parkland setting.
5. The impact of the proposed development upon the special character and setting of the Listed Buildings at Newton Park.
6. The impact of the proposed development upon the ecology of the Park.
7. The “knock on” impacts of the proposed development in terms of the need to relocate functions elsewhere within the campus and the on and off-campus implications of the development.

### **Statutory Consultation Responses and Internal Comments**

As indicated above, the current proposals are the result of a lengthy and highly effective consultation process organised by the university. This has taken the form of workshops and exhibitions that have been intended to offer the widest possible range of opportunities for interested organisations and individuals to express views and thus to influence the emerging designs.

**Newton St Loe Parish Council** has submitted a general comment about the impact of the university upon the village. They make no comments about the design or appearance of the currently proposed development (save to say that they are sure that it “will be done beautifully”), but seek the closure of the access into the university via Newton St Loe, and express concern about noise from events on the campus. They are also concerned about the impact of the illumination of the campus.

**Corston Parish Council** has simply commented that “The proposals ... have the full support of Corston Parish Council.”

**English Heritage** have been closely involved in every stage of the evolution of the current proposals, and in response to your Officers’ statutory consultation, EH’s Regional Landscape Architect has in the last few days submitted an extremely detailed commentary on the proposals, which is reproduced below in full:

“The application is for the redevelopment of part of the campus of Bath Spa University, being Phase 1 of a campus masterplan, to provide a three storey academic building with associated access, landscaping and related infrastructure. English Heritage’s interest arises from the fact that the whole of the area covered by the masterplan lies within a site that is included on our Register of Parks and Gardens at grade II\*. Additionally, the masterplan area encompasses a number of listed buildings, including the main house which is listed grade I, and a scheduled monument, St Loe’s Castle.

#### **Summary**

Subject to a number of comments, set out below, English Heritage does not wish to object to Phase 1 of the masterplan. However, we do have concerns about the location, scale and mass of development proposed as part of Phase 2 and 3 of the masterplan, and would advise your authority that this needs further consideration.

#### **English Heritage Advice**

Newton Park, as it survives today, is largely the creation of the 18th century, when Stiff Leadbetter was commissioned to design the house and ‘Capability’ Brown to lay out the grounds. The site incorporated earlier elements, including a fortified manor house and a probably 17th century park. On the death of the last private owner, Lord Temple, in the 1940s, the estate was purchased by the Duchy of Cornwall, who remain the owners. The Duchy leased the site to the city council for educational use. During the second half of the twentieth century there has been a continuous expansion of education facilities on the site. The status of the institution has grown and Newton Park is now the home of Bath Spa University. This has changed the site from a country house set within its



designed landscape to a busy university campus.

The university has identified a need to improve and, in some cases, replace existing academic and residential buildings, many of which date from the mid-twentieth century. We understand that your authority has been actively encouraging the university to provide more campus-based residential accommodation and, consequently, the university is proposing to accommodate all first year students on site. The scale of the proposals is substantial and the university has initiated a period of pre-application discussions and workshops to inform and develop the overall masterplan and initial phases of the development.

### **The masterplan: general**

The masterplan approach was deemed necessary in order to demonstrate the university's long-term vision, and to provide an overview and context within which to judge each individual phase of the scheme. The masterplan would show where buildings were proposed to be demolished, where new buildings were to be constructed, and the position of roads, car parking and other infrastructure and the nature of landscape proposals including opportunities for historic landscape restoration. It would, for our purposes, enable a clearer assessment of the positive and negative impacts of the proposals on the significance of the site, as expressed in the heritage assets described above.

Throughout the development of the masterplan we have expressed concern about the capacity of the site and the fact that the masterplan is a plan and does not allow any appreciation of 3-D massing. In order to be able to offer an informed assessment of the impact of the proposals on the historic environment, this information is critical. The information supplied about proposed storey heights (figure 22 of the masterplan document) is welcome but is not sufficient to judge mass. The main focus of our pre-application discussions has been Phase 1 (see below) and Phase 2. The location, scale, mass and form of Phase 2 (residential accommodation) has changed significantly. An earlier iteration showed the proposed accommodation aggregated around the walled garden; the current masterplan shows it relocated to the car park at the south end of the site. We need further material to be submitted, including sections and photomontages, as appropriate, to inform our comments. However, in pre-application discussion with the applicant we have already expressed concerns about the mass and form of the proposed Phase 2 development, which is now proposed as a large quadrangle at the south end of the campus. The site selected is outside the MEDS (Major Existing Development Site) that provides one of the exceptions to Green Belt policy in the local plan and would therefore appear to be contrary to policy.

Phase 3 of the masterplan relates, primarily, to the north end of the site, adjacent to the Corston (approach) drive, where it is proposed to demolish existing student accommodation and replace it with accommodation blocks of larger footprint arranged around a courtyard or quadrangle. There has been little discussion regarding Phase 3. Earlier versions of the masterplan appeared to show buildings removed from this location, which was considered to be advantageous as the buildings would no longer be visible on the hillside on the approach. In the submitted masterplan, however, new academic as well as residential buildings have appeared, each of which has a much larger footprint than any building they replace. We have limited information to assess this aspect of the masterplan but the quantum of development, its location in relation to topography and its inferred mass, are all of concern. The impression is given that the 'exception' of a building of the scale of Phase 1 has been taken as 'the norm' for Phases 2 and 3. Worryingly, the use of Phase 1 as a benchmark is already apparent in the LVIA; when assessing the visual impact of Phase 3 from Viewpoint 17, it is stated that the impact will be neutral because 'development will be perceived at a comparative height to Phase 1'. We have reservations about the introduction of so many buildings of greater footprint (and, we assume, greater mass) than those that typify the campus at present. The cumulative effect could, in our view, be harmful to the significance of the heritage assets and change the relationship to the main house with its landscape park.

Car parking is an ongoing issue and the masterplan shows a considerable quantum of car parking provision. We hoped that there would be a greater reduction in car movements by the end of the process. We suggest that more work is undertaken to enhance the routes and facilities to increase usage of other modes of transport.

### **Masterplan: mitigation and restoration**

Unfortunately most of the benefits in terms of removal of buildings which at present block key views are not going to be implemented until Phase 3. The funding for this phase is not yet in place. We would therefore ask if there is a mechanism by which the Local Planning Authority can ensure these benefits are delivered? In the LVIA supporting this application it is regularly stated that 'architectural design, materials and finishes' will assist integration. This is unsubstantiated by the level of detail provided. Mitigation relies heavily on tree planting, some of it by transplanting existing trees. Establishment after transplanting is difficult to achieve and all planting needs to be covered by a condition requiring successful establishment. A landscape maintenance plan may also be required.

Section 2.5 of the LVIA identifies a series of landscape proposals for the wider park which influence the assessment of visual impact from a number of viewpoints. We support these proposals and consider their implementation will enhance the historic environment. In the main, these proposals for historic landscape restoration are to be delivered by an agri-environment scheme (HLS). HLS rules prohibit funding of landscape restoration required by condition or legal agreement. At the same time, funding from HLS for future landscape restoration cannot be taken as certain. The Local Planning Authority should consider if it is satisfied that the landscape restoration offered in mitigation with this application should be delivered by external funding.

It should be noted that the LVIA is descriptive and no attempt has been made to indicate in the photographed viewpoints the approximate dimensions of the build in phases 2 and 3. Additionally the viewpoints are summer views with vegetation in full leaf. Winter views would offer a different perspective.

### **Phase 1**

The proposals for Phase 1 involve the demolition of three existing buildings: Nevill; Hungerford; and Doynton. It is accepted that these buildings have little or no architectural merit and their demolition is uncontentious.

The main issue to address is the acceptability of the new academic building and associated landscaping in terms of the impact on the registered landscape and the setting of listed buildings. The proposals need to comply with the following policies in PPS5.

*HE10.1 When considering applications for development that affects the setting of a heritage asset, local planning authorities should treat favourably applications that preserve those elements of the setting that make a positive contribution to or better reveal the significance of the asset.*

*HE9.4 Where a proposal has a harmful impact on the significance of a designated heritage asset which is less than substantial harm, in all cases local planning authorities should: (i) weigh the public benefit of the proposal (for example that it helps to secure the optimum viable use of the heritage asset in the interests of its long-term conservation) against the harm; and (ii) recognise that the greater the harm to the significance of the heritage asset the greater the justification needed for any loss.*

*HE7.5 Local planning authorities should take into account the desirability of new development making a positive contribution to the character and local distinctiveness of the historic environment. The consideration of design should include scale, height, massing, alignment, materials and use.*

Originally the house would have been set within a designed landscape unencumbered by ancillary buildings, especially on its approach from the main drive. However, the long-established development of the site for educational purposes has compromised its approach and setting. The location of the proposed Phase 1 building is already developed, albeit at a lower density. The principle of redevelopment in this location is considered to be acceptable. The key issue is the height, mass, scale and materials of the proposed new building.

In the initial stages of the evolution of the scheme and masterplan the option of a quadrangle was proposed. However, this entailed locating the building closer to the landscape boundary. When this footprint was drawn in three dimensions it was concluded that the structure would have a significantly adverse visual impact from a number of viewpoints, particularly from the Corston and Newton drives. The preferred option was to set back the proposed building within the existing built form. This creates the opportunity, with the removal of Doynton, to extend the landscape over the ridge from the historic pleasure grounds. In addition, it provides a zone within which effective landscaping can be established on Corston Drive.

It is recognised that the new academic block, as proposed, has significant mass and bulk. The impact of this form will, in our judgement, be most apparent in near views within the academic area of the site. It is only in more distant views (for example Clay Lane) that the new academic block will be perceived in conjunction with the main house. Having considered the evidence of the LVIA, we consider there is sufficient physical distance between the main house and Phase 1 to enable the house to retain its primacy within the landscape. The increase in visual presence of this building needs to be weighed against the overall public benefit of the proposals. We are also mindful of the fact that no new development is proposed in the vicinity of the house and that the historic drives and planting (including further restoration planting proposed in the masterplan) reinforce the concept of a country house set in its landscape park. If, alternatively, Phase 1 was split into smaller buildings the overall footprint within the campus would be much higher. Again, whilst it is acknowledged that the proposed finishes of the new building are not, like the main house, Bath stone and slate, the colour palette is not dissimilar. The proposal, in our view, has architectural integrity as a building clearly of the 21st century to provide [a] hi-tech academic centre.

### **Recommendation**

This application relates to the phase 1 academic building and for the reasons set out above English Heritage does not wish to raise an objection to this aspect of the proposals. We suggest you consider the issues set out above and recommend that the application be determined in accordance with national and local policy guidance and on the basis of your own specialist conservation and landscape advice.

We consider that further information and discussion is required regarding the extent, location and form of development for phase 2 and 3. We are happy to continue discussions with the Local Planning Authority, the applicant and their agents in order to inform the evolving scheme for the later phases of the masterplan.

We would welcome the opportunity of advising further. Please consult us again if any additional information or amendments are submitted. If, notwithstanding our advice, you propose to approve the scheme in its present form, please advise us of the date of the committee and send us a copy of your report at the earliest opportunity.”

### **The Senior Conservation Officer has commented that:**

“The English Heritage letter does a very good job of dissecting the application and I am happy to endorse their comments. In summary;

- There is sufficient distance between the main house and the academic block to preserve the setting of the listed building.
- The extent and location of new development indicated in the master plan for phases 2 and 3 is likely to impact adversely on the setting of the listed buildings and the wider landscape and further discussion and revision is therefore required.”

**Natural England** has submitted a holding Objection to the scheme, focussing principally upon the lighting of the development and its impact upon bats, but indicated from the outset that its objections are capable of being addressed by the applicants. Indeed, Members are advised that discussions have progressed between the university and Natural England (“NE”), and NE have very recently contacted your Officers to advise that they expect to be able to withdraw their objections by the time of the Committee meeting. Members will be updated on this

matter prior to (or at) the meeting, and it is likely that a number of Conditions will be necessary in order to address the issues raised by NE.

The **Environment Agency** has raised no objections to the development, subject to the imposition of appropriate Conditions.

The **Highways Development Control** Officer has made detailed comments on both the first phase development and the Draft MasterPlan which are as follows:

“The proposal involves the demolition of three existing buildings (Hungerford and Nevill student accommodation and the Doynton office building) and the loss of a car park next to the Michael Tippett Centre, in order to enable the construction of a two/three storey academic building as Phase 1 of a longer term development plan.

The Phase 2 development is intended to include the provision of up to 600 bed spaces of student accommodation around the walled garden and adjacent to the existing stables and workshops by 2015. Phase 3 is intended to provide further academic facilities to the north of the Phase 1 development and the redevelopment of existing student accommodation in this area, together with further student accommodation to achieve a total of approximately 1,000 bed spaces between 2015-2030.

The proposed Academic Building, as part of the Phase 1 works, is intended to provide digital teaching spaces, a new e-library, reception/support services, Learning Commons (social areas for students), teaching spaces and Staff Commons.

The application form states that 2,337m<sup>2</sup> of C2 floorspace will be demolished and 7,917m<sup>2</sup> will be constructed, giving an increase in overall floorspace of 5,580m<sup>2</sup> for *[educational]* use. This proposal would result in the loss of 82 bedrooms, but 312 bed spaces will be retained in the existing accommodation to the north of the Phase 1 development. The application form also states the existing parking levels to be 137 car spaces and 32 cycle spaces, with only 13 car spaces being retained (6 for disabled use), but an additional 8 cycle spaces being provided.

The proposal includes for the footway adjacent to the Corston Drive to be replaced by safe pedestrian routes across the site, and also includes a new bus drop off point in front of the academic building.

#### Parking

The level of car parking is stated as having been reduced from 844 in 2007 to 776 (including 35 disabled spaces) in 2010, as a result of the University Travel Plan. The parking levels currently accommodate 610 staff (420 FTE) and 5,258 students (4,650 FTE) at Newton Park.

Whilst the surveys from the Travel Plan have indicated the reduction in the daily flows, the peak parking demand has remained constant. For this reason, the University would maintain a level of 776 spaces for Phases 1 and 2 of the development, with reductions being considered to 650 spaces for Phase 3.

There appears to be some discrepancy/confusion in the supporting documents on the level of car parking. It is mentioned that the Phase 1 proposals would seek to increase the car parking provision from 380 spaces to 515, through a temporary extension to the main car park. The provision of 124 spaces has been mentioned in the Environmental Statement, to replace those lost due to the location of the proposed Academic Building, but this does not equate to the 515 spaces overall that has been stated. A further 13 spaces are proposed elsewhere, but this still does not correlate to the 515.

The Transport Assessment sets out the current level of parking to be 776 spaces which are provided outside Michael Tippett Centre, in front of the main house, adjacent to Newton and the main car park at the south-western end of the campus on the former hockey pitch. It goes on to say that the loss of 137 parking spaces is to be replaced as an extension of Hockey Pitch Car Park, with 13 parking spaces being provided with the Academic Building.

It is mentioned that to address the loss of car parking from adjacent to the Michael Tippett building, there will be a re-arrangement and extension of the car parking to the south of the Stable Block, through the removal of grass areas and drainage ditches. This presumed to be the 137 spaces, however, there are no details of the layout of the car parking to confirm that this level can be achieved, and the impact this may have on the drainage ditches. Furthermore, there are no details to indicate the car parking areas will be formally marked out, which will ensure maximum occupancy levels are achieved, however, it is noted that the surfacing is suggested as granular material and therefore it would not appear that any marking of spaces is anticipated.

Plans showing all the proposed parking areas with the marking of the bays should be submitted to ensure that all the intended number of spaces can be accommodated, together with sufficient room between spaces for manoeuvring. The relocated parking bays should also ensure the same level of disabled parking bays is maintained, and that their location are easily accessible.

#### Cycle Parking

Covered cycle parking is proposed in two areas close to the academic building and some existing uncovered cycle parking close to the Michael Tippett Centre is to be retained. It is understood that the Campus currently has 116 cycle parking spaces (comprising 47 uncovered and 69 covered spaces), and this will be increased by the proposed 40 spaces as part of the development. However, the loss of the existing student accommodation blocks to enable the Phase 1 development will also result in the loss of 32 cycle stands, although in the Transport Assessment this is referred to as 32 spaces. These 32 spaces are also suggested as being replaced with the development of new residential development on the campus (later phase), but there is no interim provision.

The MasterPlan document seems to contradict the cycle parking level detailed in other documents stating 166 cycle spaces, and there needs to be some clarity of the number of stands or the corresponding number of spaces. There should also be some interim replacement cycle parking. Whilst it is accepted that the current overall provision is under-utilised, it has been suggested that the one area around the accommodation in Langdon Court is always fully utilised, and therefore additional provision should be considered in this location.

I understand that there are shower and changing facilities in the sports block, and university theatre, together with a shower in the female WC in the main house, but no drying rooms or lockers on campus. Appropriate consideration should be given to providing facilities for lockers and a drying room, which could encourage more cycle use, and also consideration for cycle parking facilities at the bottom of Corston Drive, where cyclist could park their bicycles and get a lift up into the Campus.

#### Student Accommodation

The University seeks to accommodate all first year students requiring residential accommodation on the campus, and out of 1,900 first year students at Bath Spa University, 1,000 are based at Newton Park Campus. The long term vision to provide 1,000 bedspaces by 2030 is intended to meet this demand. This would also aim to address the shortfall in housing stock in and around the city, where currently there is a high level of accommodation being used as student lets.

The Strategic Framework document sets out details of the student accommodation currently available for the University as 587 bed spaces off-site within purpose built accommodation at Bankside (43), Waterside Court (316) and Charlton Court (228) (although the provision of only 129 bed spaces at Charlton Court is also referred to in the same document!), and 394 bed spaces being available on the Newton Park Campus. The level of student bed spaces is further contradicted in the Environmental Statement which details approximately 885 bed spaces (394 at Newton Park and 488 in purpose built accommodation).

The Transport Assessment sets out the level of accommodation as 394 bed spaces on site and 316 bed spaces off-site at Waterside Court, 129 bed spaces at Charlton Court and 43 bed spaces at Bankside, and this is backed up at 11.3.14 of the Environmental Statement. It is assumed that this is the correct level, but having regard to some inconsistency, clarification of the actual number is required. All students residing in university accommodation are not permitted to keep cars or use them for travel to and from the university, and therefore the applicants consider the loss of on-site accommodation is unlikely to result in increased car travel, with the bus being the likely mode of

travel. However, this would not be the case for students residing in non-university controlled accommodation.

The Planning Supporting Statement states, at 7.3.43 that “there is a high level of student car ownership and despite an overall reduction in vehicular movements to and from the campus, achieved as a result of the existing Travel Plan, there has been no change to vehicular movements at peak times.” The increased residential accommodation at Newton Park is seen as a method to reduce the need for student car ownership, and consequent car movements to and from the university. The on-site residential accommodation could achieve this through parking being restricted on campus for resident students, through the Travel Plan.

The Environmental Statement (Non Technical Summary) at Section 11. indicates that it is proposed to re-provide the 82 bed spaces, lost as a consequence of the development, within University controlled accommodation in Bath, with students not being permitted to keep cars or use them to travel to and from the University.

The Design and Access Statement, at 9.2, states that “the proposed Phase 1 Academic Development will not affect the number of students and staff travelling to and from the campus, but it will change on-site movement, ...”. However, as the proposal will result in the loss of on-site student accommodation, there will clearly be a need for students to travel more frequently to the campus.

The Planning Supporting Statement states that “the loss of 82 residential units is expected to result in an increase of 7.6% movements and the travel surveys have revealed that there is sufficient bus capacity to accommodate this without the need for improvements.” It is therefore suggested that the relocation of students will increase bus usage.

However, whilst all indications seem to suggest the loss of the 82 bed spaces would be reprovided in University controlled accommodation, there has been no detail of any additional accommodation having been secured, and the current accommodation within the purpose built facilities are presumed to be fully occupied. Therefore, it is clear to me that there will be a displacement of 82 resident students elsewhere, and this could be anywhere in and around the City, and in locations where the University may not be able to control car ownership or usage by students.

The ES (11.4.3) states that “the University’s Strategic Framework and Campus Masterplan assume no growth in staff or student number over the next 10 years based on current policies.” This suggests that there will be no increase in staff or students until 2020, but I would be grateful for clarification of the policies that restrict the number of student intake, and whether this relates to both UK and overseas students.

#### Traffic Impact

The Transport Assessment indicates that Newton Drive carries around 15% of daily traffic, with the majority of the traffic using the Corston Drive onto the A39. The University has carried out some widening works to the A39 end of the driveway in order to improve access for buses, pedestrians and cyclists on a section which was quite narrow for all shared users. The University would like to improve the remainder of the driveway, subject to approval, which would then enable them to close the Newton Drive to daily traffic.

This would result in a material increase in the use of the Corston Drive junction with the A39, which has a shortfall in visibility, and may require some improvement to the access, at that time.

The split of mode of travel to and from the campus has been surveyed as 53% by car and 44% by bus. The proposed loss of 82 on-site bed spaces for the temporary period will result in some increase in travel to and from the campus, and whilst the applicants consider this will be achieved by bus, the lack of clarity on the location of the alternative accommodation does not give me comfort that this will necessarily be the case.

The Planning Supporting Statement indicates that the proposed Academic Development would not result in an increase in student numbers, and therefore does not result in any change to the impact on the highway network and the traffic generated by the site. It also refers to the contribution secured for the development of performing arts theatre towards improvements to pedestrian/cycle facilities between the campus and the City Centre, and considers no further contributions are necessary.

Whilst the University states that the proposed Academic Development is not intended to result in an increase in staff and student numbers, the additional facilities would allow for additional capacity, when the policies referred to allow for such increases.

As part of the proposal to construct the performing arts centre, the University is committed to contribute towards improvements to cycle and pedestrian facilities between the Newton Park Campus and the City Centre, and to achieve a modal shift away from the car. The Council is currently considering options to improve the cycle and pedestrian routes from Corston Drive, across Pennyquick and the A4 dual carriageway and into the City. The improvements would also seek to improve access to public transport facilities on the A4 dual carriageway, which would benefit staff and students using other bus services.

The current proposal and the future phases identified will have a significant effect on the way students travel to and from the campus, with the pattern of movement changing in favour of shopping and leisure trips away from the campus, rather than travelling to the campus for study purposes, and this may have implications for the capacity of buses, which will need to be addressed at that time.

Construction Management

The Environmental Statement refers to a construction programme in Chapter 4. At 4.5.9 of the ES, it states that the existing footpath along Corston Drive would be relocated to a temporary footpath route behind the trees along the east side of Corston Drive, and all other footpath routes through the construction site would be suspended during the works. At 4.5.11 it identifies the proposal for contractors to identify an off-site park & ride facility for construction operatives, and encourage the use of public transport.

The construction programme would last for almost 2 years, and there needs to be careful management of site traffic and deliveries to ensure there is minimal disruption to University traffic, in terms of vehicular, pedestrian and cyclists. At 4.5.17, the ES identifies the need for the Construction Management Plan to be agreed with the Client for each phase of development, and this Plan would set out details of routing, timing and management of construction traffic. These details would clearly need to be agreed with the Local Planning and Highway Authority to ensure that any impact on the use of the highway, pedestrian routes and site accesses are minimised and properly managed, particularly having regard to the restricted nature of Corston Drive and the need to maintain regular bus access.

#### Travel Plan

The application details refer to the existing University Travel Plan, and I am aware of considerable work being undertaken, in consultation with Transportation Planning colleagues, with regard to updating the Travel Plan and addressing the implications of the future proposals. I am happy that the University is committed to updating the Travel Plan to address the changes in travel habits and needs resulting from the development, and to achieve a reduction in car usage etc. I do not therefore feel any condition is required, as a consequence of this proposal, to secure any updated Travel Plan document.

#### Land Drainage

The Land Drainage Engineer has provided *[detailed]* comments, and these should be given appropriate consideration in the determination of the application.

#### Public Rights of Way

The Public Rights of Way Team has made the following comments on the proposal:-  
Public Footpath BA17/17 crosses the access road to the University Campus. The public's use of the path must not be restricted during the construction works or by any increase of use of the access road caused by the new development. Public Footpath BA17/14 crosses the line of the existing car park. The route of the footpath shown in the proposal documents is not the definitive line. Please see the attached plan which shows the correct line. In order to develop the car park site, a diversion order is required to move the footpath from its current legal line. However, the PROW Team is not currently processing Diversion Orders. The proposals do not appear to affect public footpath BA17/15. The public's use of the path must not be affected during or after the construction works.

I have, however, discussed the issue of the Rights of Ways and it was agreed that the route of the Public Footpath would not be affected by the car park extension works, although the route is adjacent to it, and users rights need to be maintained.

Having regard to my comments above, I feel there is a lack of clarity on the provision of replacement student accommodation, and the impact such locations of accommodation may have on the travel demand by students to and from the campus. Furthermore, there is insufficient information regarding the replacement car parking provision, and details of the layout of the parking facilities need to be submitted for confirmation that the same level of parking can be maintained on the site during the Phase 1 works.

I would also be grateful for some clarity on the number of existing and proposed cycle parking spaces, as there is both reference to spaces and stands, and I need to establish the actual number of cycles that are, and can be, accommodated.

Depending on the information provided regarding the relocation of student accommodation, there may be some requirement for contributions to support improvements to modes of travel. Subject to the receipt of satisfactory information for the above, I am likely to recommend that no highway objection is raised subject to [appropriate] conditions being attached to any permission granted.

The issue of any appropriate contributions will need to be considered in light of any additional information received.”

**The Archaeological Officer has commented that:**

“Newton Park Campus has been the subject of a desk-based archaeological assessment, which outlines significant evidence of human occupation on the site from the Iron Age through to the present day. The current applications (phase 1) involve the redevelopment of existing academic buildings with new energy centres to the north of the historic house and castle site, and has recently been archaeologically evaluated with test pit survey by AC Archaeology.

This survey revealed that the development area has been extensively terraced with a thin layer of top soil over the underlying bedrock. Nevertheless, there is still the possibility that pockets of significant archaeology may survive within the phase 1 area. I would therefore recommend that [appropriate] conditions are attached to any planning consents.”

**The Arboricultural Officer has confirmed that she has No Objections, subject to the imposition of appropriate Conditions.**

**The Senior Landscape Officer has commented that he supports the proposed building in principle, but has serious reservations regarding the MasterPlan and also identifies the proposed car park extension as a specific area of concern. His comments in full are as follows:**

“The site falls within the Newton St. Loe Grade II\* Park and Garden of Historic Importance and is also within the Bristol – Bath Green Belt. The historic character of the site and its surroundings provide a strong sense of place which needs to be conserved by any interventions. This is a requirement of local plan policy BH.9. The local plan includes two Major Existing Developed Sites which under Policy GB.3 allows for ‘limited infilling and redevelopment’ subject to a number of requirements relating to Green Belt requirements, height and footprint. The phase 1 proposal, which these comments primarily refer to, falls within the northernmost one.

The site currently contains two blocks of 2 storey domestic scale buildings each arranged around a rectangular courtyard with a car park containing and fronted by well-established trees which make an important contribution to views.

The general character of the area around the site is of domestic scale buildings set within a well-treed landscape. The proposed building in contrast is more monumental in appearance occupying a large footprint. The proposals eat into the well-treed character and introduce a large scale building which will break the skyline from some parkland views such as from Newton Drive. The proposed building would be large in scale emphasised by the unbroken roofline particularly seen from the key views to



the east. The site is widely visible from a number of viewpoints where the full scale of the proposed building will be evident. Views from Clay Lane to the south-east and the southern edges of Corston and Newton St Loe are particularly significant.

The design of the building appears to respond to the needs of the university however I question some aspects such as the provision of storage spaces on the ground floor providing an unsatisfactory façade seen from the important public space in front of the building. There would be no visual connection between the inside of the building and the outside at this point which would be further diminished by hedging shown against the front of the building. A similar issue arises on the north side of the proposed building.

The proposals include removal of a building called Doynton which enables restoration of the parkland character and of the open setting of the Main House at this location.

There are no trees east of the drive for most of the length of the proposed building. The retention of existing trees west of the drive is therefore welcomed but it should be noted that even with the proposed new planting this would provide only a relatively narrow belt given the bulk of the proposed building.

#### Lighting

The large expanse of glass particularly the glazed atrium will intrude into night-time views where because of the context needs to remain dark and where lighting needs to be carefully directed such as onto paths. It is hard to see how the lighting from the building can be adequately controlled. The Environmental Statement and Design and Access Statement gives aspirations for directional lighting and reducing spillage and particular care will be required in developing an appropriate lighting scheme.

#### Car Parking

The proposed car park extension will considerably increase the impact of what is already a large expanse of parking within a key part of the historic park and within the setting of listed buildings. The masterplan does not adequately address the very significant impact of parking on the site.

#### Landscape objectives

I am generally supportive of the landscape approach outlined in the Environmental Statement and the proposed green roof is welcomed. I am not clear however how surface water run-off from the building and associated paved areas is being addressed. I encourage the proposal to relocate existing trees and look forward to receiving further details in due course. The success of relocating trees will be dependent on careful preparation in advance, timing of the move and ongoing maintenance.

#### Other considerations

The details show the amphitheatre steps as stone. These are intended for seating and finishing with timber may be more comfortable and encourage more use.

#### Newton Park Masterplan

The masterplan includes a number of beneficial elements for the environment including removal of a number of low quality buildings and implementation of aspects of the management plan. However it is noted that:

- a major part of the development is proposed outside the Major Existing Developed Sites,
- the masterplan doesn't seem to adequately address the very significant impact of parking on the site and
- the proposals would have a major impact on the walled garden which is an integral part of the historic park and garden and is an important part of the historic workings of the estate. The proposals severely impact on the relationships between the walled garden and the Main House and parkland.

#### Conclusion

In conclusion while I support the proposals in principle I have significant misgivings referred to above and in particular I cannot support the masterplan in its current form which I consider if implemented would be contrary to BH9.

If the application is likely to be approved the following conditions need to be included.

- Landscape design (hard and soft) LND01
- Landscape design implementation LND02
- Lighting details

I am assuming tree protection issues have been addressed by the arboricultural officer.”

## **Other Representations**

The **Duchy of Cornwall** has been one of the key stakeholders involved most closely by the university in the evolution of its current proposals and its Draft MasterPlan, Members may well be aware that Bath Spa University occupy Newton Park under the terms of a long lease granted by the Duchy as owner of the site. Members will also be aware that issues relating to the relationship between a lessee and their landlord are typically not material to the consideration of a planning application by the LPA.

In this case, the Duchy has submitted very lengthy and detailed Objections to the LPA in respect of the current proposals, supported by extensive technical documentation. The Duchy objects on the grounds that the overall scale of the proposals – both for Phase 1 and for the campus as a whole – is excessive, and that it will harm the special character of the Park’s sensitive historic landscape. The Duchy expresses dissatisfaction that the university’s submitted scheme does not comply with a design code document produced by the Duchy [*which, Members are advised, has no formal Planning status and has not been endorsed in any way by the Council*]. The Duchy’s correspondence states that the design code document was produced at the university’s request (although the university has subsequently made it clear in writing to your Officers and the Duchy that that was not the case).

Additionally, the Duchy has submitted a detailed technical and legal argument to the effect that the EIA approach adopted by the university does not comply with statutory requirements, and argues that it does not provide an adequately comprehensive assessment of all the environmental effects of the full range of development that is envisaged in the MasterPlan.

Finally, solicitors acting on behalf of the Duchy have indicated that the university has included development proposals on parts of the Duchy’s land over which the university has no control. The elements of the site affected are small in relative terms, but in any case this is not a material Planning consideration as it is a matter for the applicants in any particular case to secure any property rights that they need in order to implement their proposed development.

Members will be aware that a Planning application can be lawfully submitted even in a case where the applicant has no legal interest in any part of the site.

The EIA issue raised by the Duchy is of significance to the LPA’s determination of this application and is dealt with further later in this Report, but Members should be cautious in attaching any significant weight to issues that are principally between the university and its landlord. The Duchy has requested meetings with the LPA in order to promote what can be described as an alternative approach to the design of the university premises. However, the LPA’s position is clear – the Council is required to consider the application that has been submitted by the university as applicant. As a result no discussions have been held with the Duchy.

Your Officers have sought clarification from the university and have been informed that the university wishes to proceed with its own proposals, notwithstanding the objections raised by the Duchy. Alternative approaches or proposals suggested by the Duchy have no status whatsoever within the Planning system as the Duchy are not the applicants, and their suggestions have not been formally endorsed by the Council. The Duchy's design suggestions are thus not material to the consideration of the current application, will not be reported here, and should not be given significant weight by Committee Members.

The **Bath Preservation Trust** has Objected on the grounds that considers that the scale of the proposed building is too great and that as a result and because of its design characteristics, the proposal will detract from the setting of listed buildings in the Park within close and more distant proximity and would have a detrimental impact on the character and historic interest of the registered parkland.

The **South West Design Review Panel of CABE** is not a formal consultee, but was asked by the university to assess the submitted scheme, and has provided your Officers with a copy of its response letter, in which CABE makes a number of constructive comments about elements of the design, and advises that:

"The large block you propose is acceptable, as the case for digital arts with all the uses housed in one building is strong and as you have reduced the height of the building since we last saw the scheme. ... The architectural language ... we want to encourage. You have skilfully derived a rhythm and proportion from the mansion that is just what we would want to see in a campus in the park of a Palladian mansion in the hinterland of Bath. ... We support the concept of views through the hall (although they may not be evident at all times of the day. ... We wish you well with this important scheme. The campus has a powerful heritage to which the mid-20<sup>th</sup> century was not very kind and we hope to see your scheme become a fine and contemporary 21<sup>st</sup> century addition."

### **Planning Considerations**

Members are reminded that there are seven principal areas to be covered in this report. These are:

- 1 The correctness of the EIA approach adopted by the university.
- 2 The acceptability of the Draft MasterPlan.
- 3 The appropriateness of the proposed development within the Green Belt.
- 4 The impact of the proposed development upon the special character of the historic parkland setting.
- 5 The impact of the proposed development upon the special character and setting of the Listed Buildings at Newton Park.
- 6 The impact of the proposed development upon the ecology of the Park.
- 7 The "knock on" impacts of the proposed development in terms of the need to relocate functions elsewhere within the campus and the on and off-campus implications of the development.

All these must be considered in the light of the relevant Planning Policy background, and so, before continuing with an assessment of the Planning Considerations in this case, it is important to set out the range of Policies which are relevant to the proposals.

Section 38(6) of the **Planning and Compulsory Purchase Act 2004** states that for the purposes of making decisions under the Town and Country Planning Acts, the decision should be made in accordance with the Development Plan for the area,

unless other material considerations indicate otherwise. Accordingly, the Planning Policy starting points for the consideration of the Bath Spa University proposals are the provisions of the **Development Plan** which comprises:

- The Joint Replacement Structure Plan (Adopted September 2002);
- The Draft Core Strategy and the emerging Bath & NE Somerset Local Development Framework (LDF)
- The saved policies in the Bath and North East Somerset Local Plan (Adopted October 2007).

The **Joint Replacement Structure Plan** originally had an expiry date of 2011. The majority of policies were saved by the former Secretary of State and will remain relevant in the assessment of planning applications until the Core Strategy is adopted. However, the document is of only limited direct relevance to the consideration of individual planning applications.

In December 2010 the Council published its **Draft Core Strategy** for further consultation, and the document includes Proposed Policy B5, which refers specifically to University Development. The document can still be given only limited weight, and in most respects the Local Plan policies retain the highest level of significance in determining the current application. However, unlike the Local Plan the Draft Core strategy includes a policy (B5) specifically relevant to the Universities.

In respect of Newton Park, Policy B5 seeks "... the redevelopment and intensification of the Newton Park campus to provide additional study bedrooms and academic space. Proposals should seek to optimise opportunities within the Major Existing Developed Site in the Green Belt Designation (MEDS) and in accordance with Policy GB.3 of the B&NES Local Plan before seeking to justify very special circumstances for development beyond it."

In addition, Policy B5 indicates that off-campus student accommodation will be refused where it "... would adversely affect the realisation of other aspects of the vision and spatial strategy for the city."

The **Bath and North East Somerset Local Plan** was adopted in October 2007. The majority of its policies have been saved by the Secretary of State, and the saved policies will remain relevant in the assessment and determination of planning applications until the Core Strategy and any other Development Plan Documents are adopted.

The Local Plan includes no policies specifically relevant to the Universities or Educational establishments, but a substantial number of Local Plan policies are relevant to a complex proposal such as this. The saved Local Plan policies that are relevant to the current case are listed below:

- IMP.1** Planning obligations
- D.2** General design & public realm considerations
- ES.1** Renewable energy proposals
- ES.2** Energy conservation and protection of environmental resources
- ES.5** Foul and surface water drainage
- ES.9** Pollution and nuisance
- ES.10** Air quality
- ES.12** Noise and vibration
- HG.17** Purpose built student accommodation
- GB.1** Control of development in the Green Belt
- GB.2** Visual amenities of the Green Belt
- GB.3** Major Existing Developed Sites
- NE.1** Landscape character
- NE.10** Nationally important species and habitats
- NE.11** Locally important species & habitats
- NE.12** Natural features: retention, new provision and management
- NE.15** Character, amenity and wildlife value of water courses
- BH.2** Listed buildings and their settings
- BH.9** Parks and Gardens of Special Historic Interest
- BH.11** Scheduled Ancient Monuments & other sites of national importance
- BH.12** Important archaeological remains
- T.1** Overarching access policy
- T.3** Promotion of walking and use of public transport
- T.5** Cycling Strategy: improved facilities
- T.6** Cycling Strategy: cycle parking
- T.8** Bus strategy: facilities & traffic management to improve efficiency & reliability of bus operations
- T.24** General development control and access policy
- T.25** Transport assessments and travel plans
- T.26** On-site parking and servicing provision

### **Supplementary Planning Documents (SPDs)**

The following SPDs are applicable to the proposal:

Planning Obligations SPD (2009);  
 Rural Landscapes of Bath and North East Somerset: A Landscape Character  
 Assessment SPG (2003); and  
 Archaeology in Bath and North East Somerset (2004)

### **National Planning Policy**

National planning policies relevant to the assessment of the planning application are:

PPS 1: Delivering Sustainable Development (2006)  
 Planning and Climate Change – Supplement to PPS 1  
 PPG 2: Green Belts  
 PPS 4: Planning for Sustainable Economic Growth (December 2009)  
 PPS 5: Planning for the Historic Environment (March 2010) *[NB: Members are referred to the comments on this application from English Heritage, set out earlier in this report, which address the relevant parts of PPS 5 in some detail]*  
 PPS 7: Sustainable Development in Rural Areas (2004)  
 PPS 9: Biodiversity and Geological Conservation (2005)  
 PPG 13: Transport (March 2001).  
 PPS 23: Planning and Pollution Control (2005)  
 PPG 24: Planning and Noise (September 1994)  
 PPS 25: Development and Flood Risk (December 2006)

## **Regional Planning Policy**

Regional planning policy is contained within Regional Planning Guidance for the South West (RPG 10, September 2001), which looks ahead to 2016. RPG 10 is now out-of-date and should therefore be given minimal weight in the determination of planning applications.

## **Planning Considerations 1 – the Scope of the Submitted EIA**

Mention has already been made of the approach adopted by the university, in line with the conclusions reached in discussions with your Officers, to the preparation of its Environmental Impact Assessment. The proposed redevelopment of the campus at Newton Park represents a major programme of development over a lengthy period, and is of a scale that is inevitably likely to have significant environmental impacts within this very special and sensitive parkland environment. Accordingly, your Officers advised the university that an EIA would be necessary, and the scoping of the assessment was the subject of further detailed discussions.

Case law and guidance on the scoping of EIAs has established that a large development scheme which requires an EIA cannot legitimately be fragmented in order to create a patchwork of smaller schemes which, individually, fall beneath the thresholds that trigger a need for an EIA. With this in mind, your Officers have sought, in discussion with the university, to secure an approach that provides a level of assessment such as to satisfy the requirements of the relevant Regulations, but which does not unreasonably constrain the university's desire to undertake a phased design, demolition and construction process.

As a result, the university has undertaken a campus-wide EIA aimed at establishing key base-line information regarding the likely environmental impacts of the overall scheme, but has limited its assessment to a relatively high-level overview of these issues where they are dependent upon detailed design considerations. This overarching EIA will be reviewed as appropriate but will underpin all the future detailed Planning submissions for demolition and development on the campus. In tandem with this document, the university intends to bring forward a focussed additional (and complementary) EIA document related to each element of the proposed development, to be submitted on an application by application basis.

Thus, at each stage of the development programme, the LPA and its statutory consultees will be able to assess the environmental impact that will be generated by the development under consideration, whilst also having the ability to consider the wider implications of the full development programme including the cumulative impacts of the various individual schemes. This means that the EIAs do not have to be prepared on the basis of guesswork as to what each individual phase will look like, and the university is able to review and refine its detailed proposals so that each one is genuinely able to respond to contemporary functional requirements and financial opportunities. After consideration of the provisions of the relevant Regulations, this approach was agreed by your Officers, because it was considered that for a development programme of this duration and complexity, it would not be reasonable to expect the university in 2011 to design every part of its development programme in full detail so that the whole could be considered together as one exercise.

In the past, in a situation like this, an applicant could have been expected to submit an Outline planning application for the development as set out in the MasterPlan, with the details of individual buildings coming forward on a step by step basis as Reserved Matters. However, whilst there is in theory still an opportunity to submit an Outline application, the current requirements of the Planning system effectively preclude this approach, as every Planning application must now be accompanied by a Design and Access Statement detailing how the development has been designed with appropriate regard to its surroundings. In the case – as here – of a site that includes important Listed buildings, the LPA must consider the impact of the proposed development on the special character and setting of the Listed buildings, and this would not be possible with an Outline application. As a result any Outline application without extensive design details would be likely to be rejected by the LPA as inadequate to facilitate the necessary level of scrutiny.

Accordingly, if the current “staged approach” had not been acceptable, then the only alternative would be for the LPA to have required a fully-detailed set of development proposals for the entire campus. That would be a massive task that would severely prejudice the ability of the university to proceed with any proposals at all, and in such circumstances your Officers consider that the university would be unlikely to be able to implement its regeneration plans.

However, that is in effect what the Duchy is promoting in making its objection to the current proposals and to their supporting EIA documents. If the Duchy is correct, then it would be unwise for the university to pursue its proposals in the current fashion, and any Planning permission granted by the Council might provide an opportunity for legal challenge.

In response to the Duchy objections, the university has sought legal advice and have provided your Officers with a copy of a joint opinion from experienced Planning Counsel Timothy Fancourt QC and David Forsdick. That opinion is to the effect that the approach adopted by the university is sound and that the LPA can determine the application, subject to the normal procedural requirements associated with EIA matters. On that basis the university has elected to proceed with its proposals in their current form.

Your Officers have considered the university’s legal advice, alongside the contrary views expressed by the Duchy, and have concluded that there is no in-principle EIA-related reason why the current application cannot now be determined.

However, the comments received from EH within the last few days, in association with those already received from other sources, made it necessary for your Officers to review the appropriateness of the Draft MasterPlan and this had not been possible in the very limited time available before the preparation of the Committee Agenda. Responding to the EH comments, the university has also just given an indication (set out above) of its intention to further review the MasterPlan, and again the implications of this position needed to be considered by your Officers.

Members are now advised that the original Environmental Impact Analysis prepared by the university has been supplemented by an Addendum EIA which reviews and amends the original documentation in the light of emerging alternative proposals for the second phase of the proposed development programme. Although this second phase is not part of the current application, the proposals before the Committee have

regard to and rely upon the EIA. The Addendum EIA is the subject of statutory publicity at present, and as a result, the Officer recommendation on this application must address the potential for new material Objections to be submitted within the stated response time.

Your Officers recognise the importance of the EIA in the consideration of the current application, and have given consideration to the procedural objections raised by the Duchy. The Duchy argues that the EIA is inadequate and does not meet the relevant statutory requirements because it does not address the full details of the later phases of the development.

As indicated earlier, the university has obtained Counsels' opinion to the effect that the procedure adopted by the university, and scoped and agreed with your Officers, is acceptable. The fact that the EIA has been supplemented by the Addendum documentation serves to demonstrate how the university's approach to the EIA adequately addresses the cumulative impacts of the development programme as a whole, and how the overall documentation can be expected to be refreshed and updated as more details of the proposed design and layout of the later phases emerge. It is of note that the university has recently submitted a Scoping Request for further EIA work that is intended to cover the future applications for Phase 2 of the development programme.

The statutory consultees on the current planning application include English Heritage and Natural England. Your Officers are satisfied, based upon the comments received from the various consultees, that the university's EIA (which must be considered in tandem with the Draft masterplan for the campus) adequately addresses the anticipated cumulative impact of the proposed development programme including, where appropriate, building demolitions, and has allowed the consultees to demonstrate an acceptance of the principles of the overall programme, whilst making comments and expressing reservations about the detailed configuration of the later phases of the scheme. The university has committed to bringing forward updated detailed versions of the EIA as design work progresses, meaning that whenever the LPA is called upon to determine a planning application, it will be able to do so with the benefit of a fully detailed EIA assessment of the development under consideration, in the context of an over-arching EIA addressing the cumulative impacts of the development programme as a whole.

Your Officers can advise members that this approach meets the requirements of the relevant Regulations, and in particular that the documentation submitted to date has allowed an understanding of the likely environmental effects of the current application development, **and of the cumulative effects of the development programme as a whole**. The Addendum EIA does not alter the assessment of the impacts of the current application, but rather builds in further details of the university's emerging proposals for Phase 2, as incorporated into the latest revision of the Draft MasterPlan. It is considered unlikely that new comments will be made in response to the Addendum EIA that materially impact upon the consideration of the current application, but any such comments will be given consideration before any final decision is made on the application.



However, the Duchy has also raised concerns regarding the adequacy of the Environmental Statement submitted in connection with Phase 1 generally. That document is criticised in some detail in the “*Review of Historic Landscape and Heritage Issues*” prepared on behalf of the Duchy Estate by the Environmental Dimension Partnership. In particular, Section 4 of the Review contains criticisms of the methodology employed and conclusions reached in the part of the Environmental Statement dealing with “*Landscape and Visual Impacts, including Historic Landscape and Architectural Heritage*”, while section 5 contains criticisms of the way in which the developers’ consultants have dealt with heritage issues.

Your Officers have assessed the Duchy’s concerns, but have also had regard to the extremely detailed comments received from English Heritage and other consultees, and to our own assessment of the level of information available to the LPA. Members are advised that the EIA documentation has been prepared by a highly experienced locally-based Consultancy, and that your Officers are of the view that whilst it is always possible to suggest alternative approaches or to criticise the methodology adopted by Consultants, ultimately, it is necessary only for the LPA to be satisfied that all the relevant environmental impacts (both specific and cumulative) have been assessed adequately in order to inform the determination of the current application. The landscape analysis and historic environment assessments undertaken for the university are considered to be satisfactory, and it is evident too that EH is satisfied that the analysis of likely impacts is adequate in connection with the current application. Further detailed analysis will follow as later phases come through the Planning process and the healthy debate now under way regarding the design details of Phase 2 will form a platform for the submission and assessment – on its own merits – of the detailed planning application for that phase.

In summary, the university is aware (and Members are now reminded) that any approval of the currently proposed Phase 1 of the development does not imply that future proposals will also be approved, and legally there can be no guarantee of LPA approval for future applications in respect of later phases of the scheme. Each planning application must be determined on its merits having regard to all material considerations, and at each stage, the extent to which the LPA is satisfied that there has been an adequate EIA analysis will be one of those material considerations. Notwithstanding the objections raised by the Duchy, Officers are satisfied that the current application can be determined.

## **Planning Considerations 2 – the Draft MasterPlan**

The Draft MasterPlan has been submitted by the university as a supporting document, and does not form a formal part of the application under consideration. However, the existence of the MasterPlan, and the understanding that it brings of the strategic approach to development to which the university is now committed, are crucial elements in the assessment and determination of the current application. It is evident from the comments and objections received in connection with the current application that the Draft MasterPlan is proving to be an invaluable tool in the ongoing discussions regarding the detailed form and layout of later phases of the development programme. The university has committed itself to the review of the Draft MasterPlan as may become appropriate in the light of continuing liaison with EH and other key stakeholders, and it must be emphasised that the MasterPlan is

seen by all parties as a “living document” that allows significant changes in circumstances to be fully reflected in the university’s programme and avoids the otherwise almost inevitable obsolescence from which a more rigid MasterPlan would suffer.

In terms of the current application, the proposed new academic building will displace existing student accommodation and car parking facilities, and the Draft MasterPlan is critical in understanding the extent to which the University is facing up to the challenges posed by its need to remain functional as its development programme proceeds. In the next section of this report, the issues raised by Green Belt policy will be considered, but it can be made clear here that the existence of the MasterPlan (albeit in a Draft form subject to review and potential revision) is an important element in the case being made for the development by the university.

Your Officers welcome the university’s commitment to a master planned approach to the future development of the Newton park campus, and can advise members that the current Draft MasterPlan has emerged from detailed workshop-based negotiations between the university, the LPA, and other key stakeholders (including EH and the Duchy). The MasterPlan facilitates an understanding of the form and general location of the elements of the university’s programme, and also allows due recognition to be given to the demonstrable environmental benefits to the historic Park. Whilst there will be substantial new development, this will be designed and located in order to minimise the visual intrusion of the buildings into the historic setting, and wherever possible existing buildings that are unattractive and/or intrusive are to be removed as an integral part of the university’s proposals. Not only will the open Park character be safeguarded, but the appearance of the park will be enhanced by what the university has called “undevelopment”.

It is clear that EH in particular, recognises the benefits that will flow from the one-off strategic opportunity afforded by the MasterPlan, in moving away from the challenging (and ultimately flawed) piecemeal approach adopted in the past. By negotiating and then implementing a comprehensive strategy for Newton Park, EH and your Officers have agreed in principle that the benefits of the current proposals are such as to justify the granting of planning permission for the first phase of the development programme. This conclusion could not have been reached in the absence of a MasterPlan. In addition, the extension of the master planned approach to encompass the university as a whole is a further benefit, bringing an opportunity to work with the university in respect of its off-campus impacts. These are principally focussed upon the location of student accommodation, and the implications of student movements between Bath and the Newton Park campus.

Thus, Members are advised that the current Draft MasterPlan remains the subject of ongoing discussion. It is anticipated that this document will be ready for more detailed consideration by Members when the Phase 2 planning application emerges during the summer of 2011. In the meantime, the existence of the document and the university’s commitment to the approach are important positive material considerations in connection with the current application.

It must be noted here that EH has raised a significant concern regarding the manner in which the Draft MasterPlan currently uses the scale of the proposed Phase 1

academic building as a pointer towards acceptable scale elsewhere on the campus. That approach is also rejected by your Officers, and Members are advised that the university has committed to holding further discussions with the key stakeholders on all unresolved elements of the Draft MasterPlan. The approval of the current application would not imply that a similar scale of development is acceptable elsewhere and it will be necessary for the university to undertake further visual analysis in order to facilitate the necessary discussions on this point, and future applications will succeed only if the university is able to put forward convincing arguments in support, including demonstrating to the satisfaction of the LPA that the scale of each proposal is appropriate in its specific setting.

### **Planning Considerations 3 – Green Belt Policy**

Members will be familiar with the saved Green Belt policies set out in the Local Plan, which are themselves closely related to the National guidance contained in PPG 2. The entire Newton Park campus lies within the designated Green Belt, and the university benefits from two Major Existing Developed Sites (MEDS), also designated in the Local Plan, which cover the two principal groups of existing buildings on the campus. The Green Belt and the MEDS are also referenced in Draft Core Strategy Policy B5 (see above). The currently proposed academic building sits entirely within the more northerly of the two MEDS on the campus.

In essence, the university is able to undertake limited infill and redevelopment within the MEDS sites, under the provisions of Local Plan Policy GB.3, but any other substantive development proposals on the campus are to be regarded as Inappropriate Development within the Green Belt that should be refused under the provisions of Policies GB.1 and GB.2 , **unless the university is able to demonstrate that very special circumstances exist such as to justify the granting of planning permission on an exceptional basis.**

Your Officers have assessed the current proposal against the provisions of Policy GB.3, and conclude that whilst the proposed building meets most of the stated criteria, the building represents a significant increase in footprint size when compared with the buildings to be demolished. On that basis the current proposals do not fall within the scope of this Policy, and accordingly, they have to be regarded in principle as Inappropriate Development in the Green Belt. However, the location of the proposed building within the MEDS must be recognised, as must the environmental benefits to the MEDS that will flow from the replacement of existing buildings with a new structure that sits further away from the edges of the MEDS and which will be well-landscaped, and also the university's design that limits the height of the structure so that it sits comfortably within the group of existing buildings that will remain.

In its Draft MasterPlan and in the other supporting documentation with this application, the university has put forward a compelling argument in favour of a strategic approach to the future development of the campus. That argument demonstrates why only some of the university's proposals can be accommodated within the MEDS on the site, and also seeks to establish the principle that new use-based zones of development should be established within the campus in order to enable the university to optimise the efficiency of its site, to enhance the character

and amenity of this historic parkland setting, and to provide the best possible facilities for staff and students in the future.

The principles incorporated into the Draft MasterPlan have been the subject of the closest scrutiny through a prolonged pre-application consultation phase, and the comments received from the primary statutory consultees demonstrate the support that has been earned through that approach. Whilst there will clearly need to be further discussions regarding the design details of the later phases of the university's programme, the principles established by the Draft MasterPlan are generally welcomed and are seen as an invaluable platform for the consideration of development proposals. The whole exercise gains additional credibility through its foundation upon the results of the university's EIA.

Members are referred to Draft Core Strategy B.5, which indicates that whilst development should first be focussed on the MEDS, the principle of development outside the MEDS is not ruled out. The currently-proposed building is within one of the MEDS on the campus, and the Draft MasterPlan sets out the basis upon which later parts of the development will be located.

Having regard to all the submitted documents, together with all the material comments submitted by interested parties, your Officers are satisfied that the university has demonstrated the most robust set of very special circumstances to justify not only the currently proposed academic building, but also the principles for the other phases of the development programme, as set out in the Draft MasterPlan.

Members are advised that the currently proposed building can be approved within the terms of the Local Plan's saved Green Belt policies, and does not fall to be considered as a Departure from the Development Plan. The proposed temporary car park extension is seen as a stop-gap arrangement only, and because of its temporary nature and limited impact upon the openness of the Green Belt is not considered to be Inappropriate Development. A Condition will be necessary in order to secure the reinstatement of the land affected by the temporary car park at the end of the temporary period, which (in the light of the university's stated intentions regarding Phase 2) should not exceed 3 years.

It is likely that the temporary car park will, within three years, be superseded by permanent parking proposals as part of Phase 2. However, and for clarity, Members are advised that whilst it is appropriate for the decision on the current application to indicate a level of agreement with the principles set out in the Draft MasterPlan, there can be no real or implied indication of pre-determination in respect of future planning applications. The applications that will in due course be submitted in respect of Phases 2 and 3 of the university's development programme must each be considered on their own planning merits, having regard to all material considerations. Acceptance of principles now does not lead directly to approval of details in the future, and the university will need, where appropriate, to make further very special circumstances arguments in support of each individual application.

## **Planning Considerations 4 and 5 – the impacts of the proposed development on the special character and appearance of the historic parkland and the special character and setting of the Listed buildings at Newton Park**

Bath Spa University occupies the “Main House” at Newton Park as its administrative core, and the visual and functional primacy of the building has been safeguarded as the university complex has grown over the years. The site is included on EH’s Register of Parks and Gardens at grade II\*, and additionally, the masterplan area encompasses a number of listed buildings, including the main house which is listed grade I, and a scheduled monument, St Loe’s Castle.

EH has made detailed comments on the current proposal, and these have been set out in full earlier in this report. Your Officers advise that as the EH comments are so comprehensive, and as their conclusions are supported in full by the Council’s Senior Conservation Officer, there is no additional need to set out the historic environment issues associated with the site and with the current scheme. EH conclude that they have no objections to the current proposal, and recognise that the proposed academic building “...has significant mass and bulk. The impact of this form will, in our judgement, be most apparent in near views within the academic area of the site. It is only in more distant views (for example Clay Lane) that the new academic block will be perceived in conjunction with the main house. Having considered the evidence ... we consider there is sufficient physical distance between the main house and Phase 1 to enable the house to retain its primacy within the landscape. The increase in visual presence of this building needs to be weighed against the overall public benefit of the proposals. We are also mindful of the fact that no new development is proposed in the vicinity of the house and that the historic drives and planting (including further restoration planting proposed in the masterplan) reinforce the concept of a country house set in its landscape park. ... whilst it is acknowledged that the proposed finishes of the new building are not, like the main house, Bath stone and slate, the colour palette is not dissimilar. The proposal, in our view, has architectural integrity as a building clearly of the 21st century to provide [a] hi-tech academic centre.”

Your officers have had regard to the detailed advice from EH, as well as to the provisions of PPS 5, and have also taken account of the contrary views expressed by the Duchy and by the Bath Preservation Trust. However, on balance, and noting the visual benefits that will flow from the removal of some of the existing buildings on this part of the campus, your Officers conclude that the proposed academic block will not harm the character or appearance of the historic park, and that we support EH’s conclusion that the proposed building is far enough away from the Main House to avoid any significant threat to the Listed building’s special character, including its historic primacy in the landscape. The comments made by CABI were based more upon the architectural qualities of the submitted scheme, but it is evident from these comments as well as those from EH (quoted in the preceding paragraph) that there is a consensus within these organisations, again accepted by your Officers, that the design and materials proposed are appropriate in this sensitive location.

In contrast, the proposed car park is not considered to be acceptable in either its location or its visual appearance, and would be recommended for refusal were it a permanent proposal. However, as has already been observed in this report, the

imminent proposals for Phase 2 of the university development programme will be focussed on the same part of the site, and members are advised that the need for a temporary parking solution outweighs the limited harm that would be caused by the implementation of the car park extension **on a strictly temporary basis for a period of not more than three years**. Appropriate conditions to control this are essential.

### **Planning Considerations 6 – The impacts of the proposed development on the ecology of the campus**

As with EH and the historic environment issues, the LPA attaches great significance to the views of Natural England, who are the statutory consultees in respect of ecological issues associated with development proposals.

At the time of completing this report, Natural England has indicated an intention to withdraw their earlier objection, subject to the imposition of appropriate Conditions to address Biodiversity and Nature Conservation issues. However, their confirmatory letter had not arrived at the time of drafting this report, and Members will be advised at or before the meeting if the current position changes. In essence, it is anticipated that Natural England's views can be supported, but it is essential that proper consideration is given to their final comments before the formal determination of this application.

### **Planning Considerations 7 – The “knock on” impacts of the proposed development in terms of the need to relocate functions elsewhere within the campus and the on and off-campus implications of the development**

Members will by now understand that the university's redevelopment programme is predicated upon the ability to move various functions around within the campus as a whole. Thus the Phase 1 academic building is dependent upon the university being able to relocate the student accommodation that will be demolished in order to create the Phase 1 opportunity for new development.

This is the primary function of the Draft MasterPlan – to facilitate an understanding of how the various component proposals come together strategically, and to overcome the difficulties associated with piecemeal development.

There are a number of other matters that need to be addressed here that are associated with the development programme in a wider sense.

#### **Access and Parking**

Members are referred to the comprehensive comments made by the Senior Highways Development Control Officer. Since those comments were made, discussions have taken place with the university's highways consultant, and it is anticipated that further highways comments will be provided shortly which confirm that the uncertainties expressed previously have been resolved to the point where any remaining outstanding matters can be addressed by the imposition of appropriate Conditions.

Members are reminded that the current application is in many ways a provisional proposal in access and parking terms, and that both the first phase academic building and the second phase replacement/additional student accommodation proposals will need in many respects to be implemented in tandem in order to deliver the strategy set out in the emerging MasterPlan. As a result, the second phase planning application can be seen as an imminent second opportunity to address access and parking detail, but within a planning application that includes the proposals for the permanent parking and access arrangements.

Newton St Loe Parish Council has expressed concern regarding the future use of the drive access to the university from the village, and Members are advised that the university's MasterPlan is proposing the closure of that access to vehicles (other than for emergency use) as part of its strategic development programme. That can only happen following the widening of the main entrance drive, and that is the subject of separate discussions with your Officers.

Further advice on access and parking issues will be available to the Committee at the meeting, but in a general sense Members are advised that in a complex redevelopment programme such as this it is typically necessary to accept that at various stages in the project, temporary solutions may be needed, the acceptance of which does not imply that they would be acceptable on a permanent basis. We are satisfied that the university's strategic approach is sound, but we are continuing to negotiate regarding the implications in access and parking terms of the phasing of the programme's implementation.

The university's general strategy is to move a greater proportion of students on to the campus, thereby reducing the need for frequent student travel between Newton Park and Bath. As more details of these matters become fixed, your Officers will be seeking to secure a commitment by the university to the preparation and implementation of a Travel Plan. For the reasons stated above, that would seem to be more closely related to the Phase 2 student accommodation proposals which will emerge later this year.

#### Noise and Lighting

Newton St Loe Parish Council has expressed concern regarding the potential for noise from events at the university. Members are advised that the Phase 1 academic building does not seem likely to either improve or worsen the existing situation, and does not provide a legitimate opportunity to impose controls over the use of other buildings on the campus. Any significant noise disturbance from the campus generally is more readily controllable using the Council's Environmental Health powers.

An exception to this is the external amphitheatre area proposed as part of this application, and which is potentially to be used for outdoor performances. It is likely that Natural England will recommend Conditions to address the potential for the use of this area to impact upon wildlife, especially bats. However, it is appropriate for a Condition to be imposed requiring the submission and approval of an Operational Statement detailing the manner in which the amphitheatre is to be used, addressing the noise potential associated with each proposed use, and setting out what actions will be taken in order to control potential noise nuisance. This will enable the

concerns expressed by the Parish Council to be addressed insofar as they relate to the current application.

A lighting strategy for the campus has been prepared by the university, which includes an analysis of the impacts of the various lighting regimes within the site at present. That document is under consideration as part of the Draft MasterPlan and it is likely that following discussions with the university, a means of securing its proposals will be brought forward in conjunction with the Phase 2 student accommodation proposals.

However, the details of the illumination of the Phase 1 site are also of concern from an ecological point of view, and again it is likely that Natural England will recommend the imposition of Conditions. Again the potential for light nuisance can be addressed by appropriate Conditions and again this will enable the concerns expressed by the Parish Council to be addressed insofar as they relate to the current application.

#### Energy and Waste Management

As mentioned above, the university is aiming to achieve a significant improvement in its energy self-sufficiency, both because it recognises the importance of this from an economic and environmental perspective, and because it is a Government requirement associated with the availability of project funding.

Your Officers are currently dealing with a parallel Planning application for (inter alia) an Energy Centre, which is designed to house a biomass boiler as a major step in this direction. The university seeks to achieve "Excellent" BREEAM ratings for its new building, and is to be commended for this.

The university has adopted a Site Waste Management Plan aimed at identifying waste streams and addressing them within the development programme.

#### Air Quality

The university has indicated that the proposed development programme will not have a significant impact upon air quality as a result of traffic as there will be no increase in traffic on and around the campus.

Biomass boiler emissions will be monitored and controlled and again the university has confirmed that no significant impact on air quality is likely.

#### Archaeology

Members will note that the Council's Archaeologist has confirmed that following an expert assessment on behalf of the university the Park is not seen as a likely source of important archaeological remains. However, he has recommended that any permission should have appropriate Conditions attached in order to address any unexpected finds during construction.



## **Conclusions**

Your officers have considered the submitted proposals, along with all the supporting information, including the EIA documentation and the university's Draft MasterPlan (which does not form part of the current application). Consideration has also been given to the various matters raised by the Statutory Consultees and by other interested parties.

It is accepted that although the Draft MasterPlan provides an important strategic view of the university's proposals and so establishes *principles* with some clarity, it currently includes some *details* that are still the subject of negotiations between the university and your Officers. Accordingly, whilst your Officers have concluded that the document provides sufficient weight to enable the current application to be recommended for approval, the Draft Masterplan is not fully acceptable in its current form.

Having regard to all these matters, your Officers have formed the view that in principle the Phase 1 proposals can be supported. However, the statutory publicity for the university's Addendum EIA is still running, and a formal decision on the application cannot be taken until the response period ends on the 28<sup>th</sup> April. The Committee is therefore recommended to delegate the determination of this application to Officers, subject to there being no new material objections about the amendments incorporated into the Addendum EIA, subject to Natural England formally withdrawing its earlier objections, and subject to appropriate Conditions.

## **Recommendation**

That the Development Manager be delegated to PERMIT, subject to:

1. no new material objections being received in respect of the Addendum EIA;
2. Natural England formally withdrawing its earlier objections; and
3. such appropriate Conditions as the Development Manager may determine, but including Conditions limiting the life of the temporary car parking area to a maximum of three years; securing a high standard of landscaping and planting around the new building; requiring the submission and approval of an Operational Statement in connection with the future use of the proposed external amphitheatre; and addressing any requirements from Natural England.



**BATH AND NORTH EAST SOMERSET COUNCIL**  
**DEVELOPMENT CONTROL COMMITTEE**

**13th April 2011**

**DECISIONS**

<b>Item No:</b>	01
<b>Application No:</b>	10/04747/EFUL
<b>Site Location:</b>	Street Record, Bath Spa University Campus, Newton St. Loe, Bath
<b>Ward:</b> Bathavon West	<b>Parish:</b> Newton St. Loe <b>LB Grade:</b> N/A
<b>Application Type:</b>	Full Application with an EIA attached
<b>Proposal:</b>	Demolition of existing residential (C2) and education (D1) buildings and redevelopment of part of Newton Park for educational purposes as Phase 1 of the campus master plan to provide a two/three storey academic building (approximately 8,528.7 sq m) together with associated access, landscaping, car parking and infrastructure, in addition to temporary extension to main car park south of campus
<b>Constraints:</b>	Agric Land Class 1,2,3a, Agric Land Class 1,2,3a, Agric Land Class 3b,4,5, Coal fields, Cycle Route, Forest of Avon, Greenbelt, Major Existing Dev Site,
<b>Applicant:</b>	Bath Spa University
<b>Expiry Date:</b>	11th March 2011
<b>Case Officer:</b>	Geoff Webber

**DECISION    Defer**

Defer consideration to seek legal advice.

<b>Item No:</b>	02
<b>Application No:</b>	11/00407/FUL
<b>Site Location:</b>	38 High Street, Keynsham, Bristol, Bath And North East Somerset
<b>Ward:</b> Keynsham North	<b>Parish:</b> Keynsham Town Council <b>LB Grade:</b> N/A
<b>Application Type:</b>	Full Application
<b>Proposal:</b>	Change of Use from Use Class A1 (Retail) to Use Class A2 (Financial and Professional Services)
<b>Constraints:</b>	Agric Land Class 3b,4,5, City/Town Centre Shopping Areas, Conservation Area, Forest of Avon, Housing Development Boundary, Prime Shop Front,
<b>Applicant:</b>	Stroud And Swindon Building Society
<b>Expiry Date:</b>	28th March 2011
<b>Case Officer:</b>	Andrew Strange

**DECISION Defer**

Defer consideration to allow the application to be advertised as a departure and subject to no new issues being revised. Authorise the Development Manager to PERMIT with appropriate conditions.

<b>Item No:</b>	03	
<b>Application No:</b>	10/04904/REG04	
<b>Site Location:</b>	Council Depot, Upper Bristol Road, Clutton, Bristol	
<b>Ward:</b> Clutton	<b>Parish:</b> Clutton	<b>LB Grade:</b> N/A
<b>Application Type:</b>	Regulation 4 Application	
<b>Proposal:</b>	Construction of drying/storage bays	
<b>Constraints:</b>	Agric Land Class 1,2,3a, Coal fields, Forest of Avon,	
<b>Applicant:</b>	Bath & North East Somerset Council	
<b>Expiry Date:</b>	14th March 2011	
<b>Case Officer:</b>	Alice Barnes	

**DECISION REFUSE** for the following reasons

1 The applicant has not demonstrated that the use of the proposed bays would not result in a more intensive use of the existing depot or that their use would not give rise to unacceptable levels of odour to the detriment of the amenity of the surrounding residential occupiers. The proposed development is therefore contrary to policies D.2, ES.10 and ES.12 of the Bath & North East Somerset Local Plan including minerals and waste policies - adopted October 2007.

**PLANS LIST:**

Site Location Plan, date stamped 15th July 2010

Block Plan, date stamped 31st December 2010

Proposed Elevations, date stamped 17th January 2010

<b>Item No:</b>	04
<b>Application No:</b>	10/04317/FUL
<b>Site Location:</b>	Church View, Packhorse Lane, South Stoke, Bath
<b>Ward:</b> Bathavon South	<b>Parish:</b> South Stoke <b>LB Grade:</b> N/A
<b>Application Type:</b>	Full Application
<b>Proposal:</b>	Erection of 2no gable ends to south elevation, replacement of existing windows to the front with French doors opening onto a veranda, demolish existing steps to front, move existing door on east elevation and erection of cantilevered porch over and provision of larger window to side, erection of dormer to north elevation, provision of first floor window on west elevation and landscaping
<b>Constraints:</b>	Agric Land Class 1,2,3a, Agric Land Class 3b,4,5, Area of Outstanding Natural Beauty, Conservation Area, Greenbelt, Housing Development Boundary,
<b>Applicant:</b>	Mr And Mrs Elms
<b>Expiry Date:</b>	14th December 2010
<b>Case Officer:</b>	Victoria Griffin

#### **DECISION Defer**

Defer consideration to allow Members to visit the site.

Reason: To view the site in the context of its surroundings.

<b>Item No:</b>	05
<b>Application No:</b>	11/00229/FUL
<b>Site Location:</b>	36 Farmborough Lane, Priston, Bath, Bath And North East Somerset
<b>Ward:</b> Bathavon West	<b>Parish:</b> Priston <b>LB Grade:</b> N/A
<b>Application Type:</b>	Full Application
<b>Proposal:</b>	Erection of 2-storey extensions at 36 & 37 Priston following demolition of lean-to
<b>Constraints:</b>	Agric Land Class 1,2,3a, Coal fields, Forest of Avon, Greenbelt,
<b>Applicant:</b>	Duchy Of Cornwall
<b>Expiry Date:</b>	7th March 2011
<b>Case Officer:</b>	Rachel Le Huray

#### **DECISION Delegate to PERMIT**

Authorise the Development Manager to PERMIT subject to the applicant entering into an agreement to have agricultural ties on both properties and appropriate conditions.

<b>Item No:</b>	06
<b>Application No:</b>	11/00668/FUL
<b>Site Location:</b>	4 Ellsbridge Close, Keynsham, Bristol, Bath And North East Somerset
<b>Ward:</b> Keynsham East	<b>Parish:</b> Keynsham Town Council <b>LB Grade:</b> N/A
<b>Application Type:</b>	Full Application
<b>Proposal:</b>	Erection of a first floor side extension (Resubmission)
<b>Constraints:</b>	Agric Land Class 3b,4,5, Forest of Avon, Greenbelt,
<b>Applicant:</b>	Mr Andrew Jones
<b>Expiry Date:</b>	4th April 2011
<b>Case Officer:</b>	Tessa Hampden

**DECISION** PERMIT with the following conditions:

1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: As required by Section 91 of the Town and Country Planning Act 1990 (as amended) and to avoid the accumulation of unimplemented planning permissions.

2 All external walling and roofing materials to be used shall match those of the existing building in respect of type, size, colour, pointing, coursing, jointing, profile and texture.

Reason: In the interests of the appearance of the development and the surrounding area.

3 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification) no windows, roof lights or openings, other than those shown on the plans hereby approved, shall be formed in the east elevation of the extension hereby approved at any time unless a further planning permission has been granted.

Reason: To safeguard the amenities of adjoining occupiers from overlooking and loss of privacy.

4 The development/works hereby permitted shall only be implemented in accordance with the plans as set out in the plans list below.

Reason: To define the terms and extent of the permission.

**PLANS LIST:** This decision relates to plans, site location plan and 2008/1A and 2008/2 A date stamped 7th February 2011

## REASONS FOR GRANTING APPROVAL:

1. The decision to grant approval has taken account of the Development Plan, relevant emerging Local Plans and approved Supplementary Planning Guidance. This is in accordance with the Policies set out below at A.

A. Bath and North East Somerset Local Plan (including minerals and wastes) adopted October, D2, D4, NE5, HG15, GB1, GB2

2. The proposed extension is considered to be a disproportionate addition to the host dwelling and as such is considered to be inappropriate development in the Green Belt. However, given the extant planning permission, and the fact that there will be no harm to the amenity of the neighbouring occupiers and the proposal is considered to improve the appearance of the street scene, these are considered to be very special circumstances which outweigh the harm by reason of its inappropriateness.





<b>Bath &amp; North East Somerset Council</b>	
<b>MEETING:</b>	<b>Development Control Committee</b>
<b>MEETING DATE:</b>	<b>18th May 2011</b>
<b>RESPONSIBLE OFFICER:</b>	Lisa Bartlett, Development Manager, Planning & Transport Development (Telephone: 01225 477281)
<b>TITLE:</b>	<b>SITE INSPECTION REPORT</b>
<b>WARDS:</b>	ALL
<b>BACKGROUND PAPERS:</b>	
<b>AN OPEN PUBLIC ITEM</b>	

AGENDA  
ITEM  
NUMBER

**BACKGROUND PAPERS**

List of background papers relating to this report of the Development Manager, Planning and Transport Development about applications/proposals for Planning Permission etc. The papers are available for inspection online at <http://planning.bathnes.gov.uk/PublicAccess/>.

- [1] Application forms, letters or other consultation documents, certificates, notices, correspondence and all drawings submitted by and/or on behalf of applicants, Government Departments, agencies or Bath and North East Somerset Council in connection with each application/proposal referred to in this Report.
- [2] Department work sheets relating to each application/proposal as above.
- [3] Responses on the application/proposals as above and any subsequent relevant correspondence from:
  - (i) Sections and officers of the Council, including:
    - Building Control
    - Environmental Services
    - Transport Development
    - Planning Policy, Environment and Projects, Urban Design (Sustainability)
  - (ii) The Environment Agency
  - (iii) Wessex Water
  - (iv) Bristol Water
  - (v) Health and Safety Executive
  - (vi) British Gas
  - (vii) Historic Buildings and Monuments Commission for England (English Heritage)
  - (viii) The Garden History Society
  - (ix) Royal Fine Arts Commission
  - (x) Department of Environment, Food and Rural Affairs
  - (xi) Nature Conservancy Council
  - (xii) Natural England
  - (xiii) National and local amenity societies
  - (xiv) Other interested organisations
  - (xv) Neighbours, residents and other interested persons
  - (xvi) Any other document or correspondence specifically identified with an application/proposal
- [4] The relevant provisions of Acts of Parliament, Statutory Instruments or Government Circulars, or documents produced by the Council or another statutory body such as the Bath and North East Somerset Local Plan (including waste and minerals policies) adopted October 2007

**The following notes are for information only:-**

- [1] "Background Papers" are defined in the Local Government (Access to Information) Act 1985 do not include those disclosing "Exempt" or "Confidential Information" within the meaning of that Act. There may be, therefore, other papers relevant to an

application which will be relied on in preparing the report to the Committee or a related report, but which legally are not required to be open to public inspection.

- [2] The papers identified or referred to in this List of Background Papers will only include letters, plans and other documents relating to applications/proposals referred to in the report if they have been relied on to a material extent in producing the report.
- [3] Although not necessary for meeting the requirements of the above Act, other letters and documents of the above kinds received after the preparation of this report and reported to and taken into account by the Committee will also be available for inspection.
- [4] Copies of documents/plans etc. can be supplied for a reasonable fee if the copyright on the particular item is not thereby infringed or if the copyright is owned by Bath and North East Somerset Council or any other local authority.

## INDEX

ITEM NO.	APPLICATION NO. & TARGET DATE:	APPLICANTS NAME/SITE ADDRESS and PROPOSAL	WARD:	OFFICER:	REC:
01	10/04317/FUL 14 December 2010	Mr And Mrs Elms Church View, Packhorse Lane, South Stoke, Bath, BA2 7DW Erection of 2no gable ends to south elevation, replacement of existing windows to the front with French doors opening onto a veranda, demolish existing steps to front, move existing door on east elevation and erection of cantilevered porch over and provision of larger window to side, erection of 2no. dormers to north elevation, provision of first floor window on west elevation and landscaping	Bathavon South	Victoria Griffin	PERMIT

**Item No:** 01      **Application No:** 10/04317/FUL  
**Site Location:** Church View, Packhorse Lane, South Stoke, Bath



**Ward:** Bathavon South      **Parish:** South Stoke      **LB Grade:** N/A

**Ward Members:** Councillor Neil Butters

**Application Type:** Full Application

**Proposal:** Erection of 2no gable ends to south elevation, replacement of existing windows to the front with French doors opening onto a veranda, demolish existing steps to front, move existing door on east elevation and erection of cantilevered porch over and provision of larger window to side, erection of 2no. dormers to north elevation, provision of first floor window on west elevation and landscaping

**Constraints:** Agric Land Class 1,2,3a, Agric Land Class 3b,4,5, Area of Outstanding Natural Beauty, Conservation Area, Greenbelt, Housing Development Boundary,

**Applicant:** Mr And Mrs Elms

**Expiry Date:** 14th December 2010

**Case Officer:** Victoria Griffin

## **REPORT**

**REASON FOR REPORTING APPLICATION TO COMMITTEE:** The application was deferred from 13 April 2011 Committee to allow Members to visit the site. This application has been called to Committee by Councillor Butters following the Parish Council's objections. After discussions with the Chair of the Committee it was agreed this application should be determined at Committee.

### **DESCRIPTION OF SITE AND APPLICATION:**

The bungalow is one of three detached properties situated in an elevated position located centrally within the village of South Stoke. It has a garage situated at road level and the property overlooks the historic core of the village including the Church which is located to the south.

The site is situated within the Green Belt, an Area of Outstanding Natural Beauty and Conservation Area. The applicant seeks to update the bungalow and includes:

- the erection of 2 no. gables to the front elevation,
- replacement windows including French doors opening onto a verandah and larger window opening with Juliet balcony to the front elevation
- re-siting of front door to the side elevation,
- the erection of a porch over a new doorway opening (porch canopy) to the side,
- provision of a window in the gable end of the west elevation,
- erection of 2 no. rear dormers and
- landscaping to the front garden areas.

A section of the front boundary wall and part of the garden that it retains has been removed to create a parking area. For clarification, this work is unauthorised and, whilst a planning application has been requested, it does not form part of the current proposal.

**PLANNING HISTORY:** No history located

### **SUMMARY OF CONSULTATIONS/REPRESENTATIONS**

**BUILDING CONTROL** - No comment received

**SOUTHSTOKE PARISH COUNCIL** - Objections received raising the following points:

**PARISH COUNCIL COMMENTS 12/11/10**

Objection for the following reasons (summarised):

- adverse impact on historic setting
- unlawful works
- adverse impact on the Conservation Area
- Conservation Area Appraisal refers to negative impact of these properties
- Gables are overbearing and intrusive, the ridge height should be reduced
- Very large domineering dormer on rear

**PARISH COUNCIL COMMENTS 16/12/10** (summarised) following the submission of a revised proposal for two front dormers and other alterations:

Objection for the following reasons (summarised):

- build-ability issues with the drawings
- materials unclear in the Conservation Area
- veranda should be reduced in size
- welcome reduction in size of gables
- shallower pitch of dormers required to serve consistency of group appearance
- the rear extension should be shown
- the plan should show that the extension complies with the GPDO
- plans needed for BC
- subject to volume calculation
- judgement should be made of the whole of the site
- deterioration of rural character contrary to HG.15
- small bungalow being made into a substantial detached house with substantial parking
- unclear why level of parking is required for a two bedroom property
- the LPA should use powers regarding the loss of the boundary wall
- adverse impact on the historic setting (Church, Manor Farm and 15th century Tithe Barn)
- entire frontage lost to parking
- fails to respect street scene, views and roofscapes
- spoils existing symmetry of the three bungalows

PARISH COUNCIL COMMENTS RECEIVED 08/03/11 (summarised) following the submission of revised proposals including changes in the design of dormers:

- the changes proposed are very minor indeed
- the detailed comments made in our letter of objection of 16th December should still stand
- the proposed front gables will remain extremely overbearing particularly when viewed from the road below the property.
- Concern over the pitch of the dormers which has not been reduced and the impact on the appearance of these in such a crucial part of the Conservation Area
- damage that will be caused to the consistency of group appearance that currently exists here
- concerns expressed over the front veranda, which, with its wrought iron balustrade, at one point is shown as being 2.5 metres in width, considerably wider and more extensive than the one it replaces, and out of keeping with those of the other existing properties, again leading to concerns over consistency and group appearance.
- contrary to Conservation Area planning policy and contrary therefore to Local Plan policies BH.6 and BH.8

REPRESENTATIONS:

19 letters of objection received raising the following points (summarised):

- Development out of scale with neighbouring bungalows
- Property is in a sensitive elevated position in the village
- Engineering works underway require planning permission
- Unauthorised works to front access

- Highway safety implications created by the lay by works to the front of the property
- Significant adverse impacts on the appearance and character of the Conservation Area
- Adverse visual impact on the area
- Design of double gable ends plus small windows below the eaves on the front are totally out of keeping with the neighbouring properties.
- Design of the proposed cantilevered porch over the front door is totally out of keeping with the neighbouring properties
- The new larger window to the side of the front door is totally out of keeping with the neighbouring properties
- The proposed veranda is much larger than the neighbouring properties and is out of keeping
- The partially constructed car parking area is in total contradiction with the statements in the Application Form, items 6 (no new or altered vehicle access) and 8 (existing car parking arrangements are not affected)
- Existing character will be destroyed
- Size and volume is excessive and obtrusive
- Adverse affect on PROW that runs alongside the site
- Ruins the setting of weddings to the church below
- Removal of the boundary wall an original feature which has been lost
- Sets a precedent
- Fails to preserve or enhance the setting
- Creation of a large car park centrally
- Changes in building lines and heights
- Part of uniformity of setting
- Contrary to BH6 and BH7
- Overbearing
- Overlooking caused by increase in size of decking/balcony
- Refer to planning committee
- Other similar dormers refused for poor design
- Visible from East and West
- Extensions when viewed in their context would be disproportionate and overbearing
- Discrepancies in the drawings not showing rear extension and car parking to the front
- Are Building Control aware of the works underway
- Concern over the lack of further consultation on the revised drawings
- Loss of amenity caused by increased size of veranda
- Concern over views having not been taken into account
- Calculation misleading

Full objections and comments received can be viewed on the Council's website.

## **POLICIES/LEGISLATION**

### **POLICY CONTEXT:**

**BATH & NORTH EAST SOMERSET LOCAL PLAN:** At the meeting of the Council on 18th October 2007, the Bath and North East Somerset Local Plan, including minerals and waste policies was adopted. The following policies are relevant material considerations:

BH.6 - Development within or affecting Conservation Areas  
BH.8 - Improvement work in Conservation Areas  
D.2 - Considers design issues and residential amenity.  
D.4 - Considers design issues.  
GB.1 - Control of development in the Green Belt  
GB.2 - Visual amenities of the Green Belt  
HG.15 - Dwelling extensions in the Green Belt  
NE.2 - Areas of Outstanding Natural Beauty

Supplementary Planning Document - Extensions to existing dwellings in the Green Belt -  
Adopted October 2008

Planning Policy Statement 2 - Green Belts  
Planning Policy Statement 7 - Rural Areas

**PLANNING ISSUES:** The key issues in the consideration of the proposal relate to the impact of the extensions on the character and appearance of the Conservation Area, Green Belt and the AONB.

Revised drawings have been received that have reduced the size of the dormers and reverted back to the proposed front double gable design included within the original submission. This is in line with officer advice as it is considered that the proposed gables are less contrived than the proposed dormers to the front.

**IMPACT ON THE GREEN BELT:** In order to assess whether the proposed development does constitute inappropriate development and is therefore harmful by definition it is necessary to consider the advice contained in the Councils Supplementary Planning Document on extensions in the Green Belt which was adopted to give advice on the Councils interpretation of Policy HG.15. In drafting this advice consideration was given to the wording of Policy HG15.

Policy HG.15 states:

Proposals to extend a dwelling in the Green Belt will be permitted unless they would:

- i) represent a disproportionate addition over and above the size of the original dwelling; or
- ii) contribute to a deterioration in rural character as a result of the cumulative effect of dwelling extensions.

Policy HG.15 would suggest that the cumulative impact of extensions can only be taken into account under point ii) of the policy when assessing whether rural character is harmed. It should be noted that whilst this is the adopted policy of the Council, this is not strictly in line with the advice contained in PPG.2 as this interpretation means that whilst a single large extension may conflict with point i) of the policy, a proposal for a relatively small extension, that came after other extensions, would meet the requirements of point i) and would not conflict at all with the policy unless it also harmed rural character under point ii. Not all Green Belt areas fall within rural areas and furthermore this would allow for infinite small additions to a dwelling to take place as long as rural character remained

unharmful. The current SPD guidance on the basis that cumulative impact can be considered under Policy HG.15 because it is also necessary to consider Policy GB.1 which has been drafted with PPG.2 in mind.

The SPD on existing dwellings in the Green Belt notes that in many circumstances a well designed extension resulting in a volume increase of about a third of the original dwelling is likely to be acceptable.

For the purposes of the Green Belt calculation, the garage appears on the historic plotting sheet and is considered to have a functional link with the dwellinghouse. It is therefore included within this calculation.

Your officers' have calculated that the original dwelling, including the existing access steps, undercroft and garage to be approximately 318m<sup>3</sup>. These elements are all considered to be development requiring planning permission and have therefore been included in the volume calculation. The revised drawing (date received 09/02/11) has reduced the dormers to the rear, the proposed balcony has been reduced in size and the front gables have been re-introduced, upon advice from your officers'.

It is estimated the existing dwelling has a volume of approx. 318m<sup>3</sup>. The proposed volume increase is estimated to be 28%.

In September 2010 it was confirmed that a single storey rear extension could be added to the property under permitted development rights. The extension is estimated to have added approx. 72m<sup>3</sup>. The extension is now in-situ and for the purposes of this calculation can be considered. This is estimated to represent an increase of approx. 22% over the original dwelling. The cumulative impact therefore of extensions to the dwelling is estimated to be approx. 50%.

As the extension has been erected during the determination of this application it can be considered. Nevertheless the fallback position on the extension is that because it meets the permitted development criteria, as with many householder extensions in the Green Belt, could have been constructed after the completion of the application proposal.

The Supplementary Planning Document makes it clear that when considering whether an extension is disproportionate the character of the dwelling and its surroundings also need to be considered. The property occupies a linear plot with the dwelling situated at its most northern end. The plot has a large garden to the front that is stepped down towards the road. Due to the elevated position of the property the principal elevation and gardens is prominent in this part of the village. The front gables would be visible and whilst they would increase the massing of the roof it is not considered to be overly intrusive on the front elevation. The existing property has a single gable and the proposed gables would not form an incongruous feature of the host building. The extensions would be viewed against the backdrop of existing development to the east and from the south. Furthermore the rear proposal is not uncharacteristic of the area as neighbouring bungalows have similar rear extensions and dormers.

As referred to above, the interpretation of PPG.2 means that whilst a single large extension may conflict with point i) of the policy (HG15), a proposal for a relatively small



extension, that came after other extensions, would meet the requirements of point i) and would not conflict at all with the policy unless it also harmed rural character under point ii.

In this regard, it is concluded that whilst the extension, is over the third guideline it takes into account an extension allowed under permitted development, and when the character of the dwelling and the surroundings are taken into account it is not considered that this proposal would represent a disproportionate addition to the dwellinghouse and is therefore not inappropriate development.

On balance and in consideration of all the issues raised it is considered that the proposal would not be harmful to the rural character or openness of the Green Belt to warrant a refusal on this basis.

**IMPACT ON THE CONSERVATION AREA:** The rear extension would not be visible from the wider historic setting. The principal elevation is visible and seen within the setting of the Church and Manor Farm. The property is referred to in the Conservation Area Appraisal for South Stoke which states that the village has a dramatic south facing position. When viewed in this context the bungalow roofscapes are visible and it is evident that other gable ends exist, which add to the character and appearance of the existing built environment. The proposed front gables are not considered to harm or significantly unbalance the existing harmonious environment. It is considered that the proposal would preserve the character and appearance of the Conservation Area.

**IMPACT ON THE AONB:** Due to the siting and scale of the proposal it is not considered to adversely affect the natural beauty of the landscape in this part of the AONB.

**LANDSCAPING:** The front of the property is proposed to be remodelled to accommodate a larger veranda with planting. The existing front gardens have a terracing effect which is enhanced by tiered planting that contributes to the rural character of the area. The proposal also includes the retention of planting and landscaping to the front garden areas.

**IMPACT ON RESIDENTIAL AMENITY:** The existing situation has been considered in relation to significant harm to residential amenity. The side steps leading to the property are shared with the neighbouring property, Summus Summo, which due to the topography of the site are well above road level.

The main amenity areas for the bungalows are to the front where there is a high degree of open aspect and views across the village. When stood on the existing garden areas there is an opportunity to look over into and beyond neighbouring land and property caused by the elevated position of these properties. In this respect it is not considered that the proposed veranda, which is set in from the side building line by approx. 2.7m, and the subsequent reprofiling of the land to the front of the dwelling would cause significant harm to residential amenity to warrant a refusal on this basis.

## **OFFICER ASSESSMENT**

On balance, the proposed increase of the dwelling is not considered to represent inappropriate development in the Green Belt. Furthermore by reason of its siting, design and position it would not harm the openness or rural character of the Green Belt or the natural landscape beauty of the AONB. In addition, officers' agree that due to the design and size of the proposed works they would preserve the character and appearance of the

Conservation Area. The proposal would therefore accord with Local Plan policies BH6, BH8, D2, D4, GB1, GB2, HG.15 and NE.2 of the Bath and North East Somerset Local Plan (Adopted October 2007).

## **RECOMMENDATION**

PERMIT with condition(s)

## **CONDITIONS**

1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: As required by Section 91 of the Town and Country Planning Act 1990 (as amended) and to avoid the accumulation of unimplemented planning permissions.

2 All external walling and roofing materials to be used shall match those of the existing building in respect of type, size, colour, pointing, coursing, jointing, profile and texture.

Reason: In the interests of the development and the character and appearance of the Conservation Area.

3 The development/works hereby permitted shall only be implemented in accordance with the plans as set out in the plans list below.

Reason: To define the terms and extent of the permission.

**PLANS LIST:** Section A-A date received 09/02/11, Location plan date received 07/10/10, Proposed plans & elevations date received 09/02/11, Existing plans & elevations date received 07/10/10

## **REASONS FOR GRANTING APPROVAL**

1. The proposed development would not have an adverse impact upon the streetscene or the amenity of the surrounding residential occupiers. This does not affect the character of the Conservation Area.

2. The proposed development is not inappropriate development within the Green Belt and would not harm the openness or rural character of the area.

3. Due to the siting and scale of the proposal it is not considered to adversely affect the Area of Outstanding Natural Beauty.

4. The decision to grant approval has taken account of the Development Plan, relevant emerging Local Plans and approved Supplementary Planning Guidance. This is in accordance with the Policies set out below at A.

A.

BH6, BH8, D2, D4, GB1, GB2, HG15 and NE2 of the Bath & North East Somerset Local Plan including minerals and waste policies - adopted October 2007.

<b>Bath &amp; North East Somerset Council</b>	
<b>MEETING:</b>	<b>Development Control Committee</b>
<b>MEETING DATE:</b>	<b>18th May 2011</b>
<b>RESPONSIBLE OFFICER:</b>	Lisa Bartlett, Development Manager, Planning & Transport Development (Telephone: 01225 477281)
<b>TITLE:</b>	<b>APPLICATIONS FOR PLANNING PERMISSION</b>
<b>WARDS:</b>	ALL
<b>BACKGROUND PAPERS:</b>	
<b>AN OPEN PUBLIC ITEM</b>	

AGENDA  
ITEM  
NUMBER

### BACKGROUND PAPERS

List of background papers relating to this report of the Development Manager, Planning and Transport Development about applications/proposals for Planning Permission etc. The papers are available for inspection online at <http://planning.bathnes.gov.uk/PublicAccess/>.

- [1] Application forms, letters or other consultation documents, certificates, notices, correspondence and all drawings submitted by and/or on behalf of applicants, Government Departments, agencies or Bath and North East Somerset Council in connection with each application/proposal referred to in this Report.
  
- [2] Department work sheets relating to each application/proposal as above.
  
- [3] Responses on the application/proposals as above and any subsequent relevant correspondence from:
  - (i) Sections and officers of the Council, including:
    - Building Control
    - Environmental Services
    - Transport Development
    - Planning Policy, Environment and Projects, Urban Design (Sustainability)
  
  - (ii) The Environment Agency
  - (iii) Wessex Water
  - (iv) Bristol Water
  - (v) Health and Safety Executive
  - (vi) British Gas
  - (vii) Historic Buildings and Monuments Commission for England (English Heritage)
  - (viii) The Garden History Society
  - (ix) Royal Fine Arts Commission
  - (x) Department of Environment, Food and Rural Affairs
  - (xi) Nature Conservancy Council
  - (xii) Natural England
  - (xiii) National and local amenity societies
  - (xiv) Other interested organisations
  - (xv) Neighbours, residents and other interested persons
  - (xvi) Any other document or correspondence specifically identified with an application/proposal
  
- [4] The relevant provisions of Acts of Parliament, Statutory Instruments or Government Circulars, or documents produced by the Council or another statutory body such as the Bath and North East Somerset Local Plan (including waste and minerals policies) adopted October 2007

**The following notes are for information only:-**

- [1] "Background Papers" are defined in the Local Government (Access to Information) Act 1985 do not include those disclosing "Exempt" or "Confidential Information" within the meaning of that Act. There may be, therefore, other papers relevant to an

application which will be relied on in preparing the report to the Committee or a related report, but which legally are not required to be open to public inspection.

- [2] The papers identified or referred to in this List of Background Papers will only include letters, plans and other documents relating to applications/proposals referred to in the report if they have been relied on to a material extent in producing the report.
- [3] Although not necessary for meeting the requirements of the above Act, other letters and documents of the above kinds received after the preparation of this report and reported to and taken into account by the Committee will also be available for inspection.
- [4] Copies of documents/plans etc. can be supplied for a reasonable fee if the copyright on the particular item is not thereby infringed or if the copyright is owned by Bath and North East Somerset Council or any other local authority.

## INDEX

ITEM NO.	APPLICATION NO. & TARGET DATE:	APPLICANTS NAME/SITE ADDRESS and PROPOSAL	WARD:	OFFICER:	REC:
01	11/00614/FUL 12 April 2011	The Duchy Of Cornwall Coach House, Back Lane, Newton St. Loe, Bath, Restore and convert the existing two storey Coach House into a 3no. bedroom dwelling with the bedrooms located on the ground floor and the living space and kitchen on the first floor including access to a sunken courtyard to the south of the property, provision of a covered parking area with space for one vehicle and a bat roost in the loft space above	Bathavon West	Mark Reynolds	PERMIT
02	11/00539/FUL 13 April 2011	Mr Peter Godsiff Little Orchard, Ham Lane, Bishop Sutton, Bristol, Bath And North East Somerset Provision of new vehicular access through land south of site	Chew Valley South	Tessa Hampden	REFUSE
03	11/01266/FUL 5 May 2011	Mr S Barton 5 Apsley Road, Newbridge, Bath, Bath And North East Somerset, BA1 3LP Installation of side and rear dormers. (Retrospective)	Newbridge	Suzanne D'Arcy	REFUSE
04	11/00773/FUL 7 April 2011	HN Developments Ltd 93 Rush Hill, Southdown, Bath, Bath And North East Somerset, BA2 2QT Erection of 1no two storey house and 1no single storey house (revised proposals)	Odd Down	Victoria Griffin	PERMIT
05	11/00845/FUL 12 April 2011	Mr Simon And Paul Waller And Ms Alison Delve Little Meadow, Bromley Road, Stanton Drew, Bristol, Bath And North East Somerset Erection of a two storey rear extension and first floor extension over existing single storey annexe.	Clutton	Tessa Hampden	REFUSE



<b>Applicant:</b>	The Duchy Of Cornwall
<b>Expiry Date:</b>	12th April 2011
<b>Case Officer:</b>	Mark Reynolds

## **REPORT**

**REASON FOR REPORTING APPLICATION TO COMMITTEE:** The Chief Executive of the Council has an interest in the land and Newton St Loe Parish Council have objected in principle to the application and the application is being recommended for permission.

**DESCRIPTION OF SITE AND APPLICATION:** The coach house is located at the northern edge of the settlement of Newton St. Loe. The building is accessed along a green lane known as Back Lane. The lane is a public highway and is accessed from one of the three main routes accessing the village from Pennyquick which bypasses the village. The coach house is located within the Newton St. Loe conservation area and is located almost entirely within the housing development boundary for the village. To the south west of the coach house is a grade II listed property 'The Mount' and directly to the south there are further unlisted residential properties.

The coach house is a two storey stone built structure with a clay double roman tiled roof. The building, it is understood, was last used for the storage of hay and also for the stabling of animals. Most recently the building has been left empty.

The proposals involve the conversion of the coach house structure into a 3no. bed dwelling. The building itself is cut into the landscape and a proposed rear courtyard garden would effectively be accessed from the first floor of the coach house. Accordingly the bedroom accommodation would be located at the ground floor because these rooms would not receive natural light at the rear and the living accommodation would be located on the proposed first floor which would receive natural light from both the front and rear elevations. The only extension to the building would be for a carport with bat loft above to the west of the main building. This structure measures 4m in width (at the frontage) by 5.4m in depth and 2.6m in height at eaves level and 5m at ridge level of a proposed pitched roof. This structure would be constructed using stone and timber cladding with a clay tiled roof. In order to introduce this structure a 4m strip of stone walling would need to be removed at the frontage of the site. One further car parking space would be accommodated within the lane.

Physical alterations to the external appearance of the Coach House will be limited in their extent. The existing openings which are mostly detailed with ashlar surrounds will be retained. New bespoke timber windows and doors will be inserted into existing openings. Two new openings will be required to the south elevation to gain additional light to the rear which is south facing and to allow access to the external courtyard. Two rooflights would also be added to the southern facing roofslope of the building. The existing coach doors at the frontage of the building will be renewed and retained.

In order to form the rear external courtyard it will be necessary to undertake some excavation works of soil to create a level courtyard area. Likewise in order to accommodate the carport some excavation works will be required. Back Lane which provides access to the Coach House would need to be improved to make it passable for vehicles and it is proposed to restore the lane to its original state by clearing the mud

away from the top of the existing hoggin track which leads to the Coach House. The lane would be made good in places where required.

The application is supported with a design and access statement; access statement; arboricultural assessment, ecological report and a structural report. During the processing of the application additional information has also been submitted including an additional historic report in respect of the building and information regarding housing need in Newton St Loe.

RELEVANT PLANNING HISTORY: None

### **SUMMARY OF CONSULTATIONS/REPRESENTATIONS**

HIGHWAY DEVELOPMENT OFFICER: Advises that Back Lane is a public highway leading between Pennyquick and Smith's Hill. However, it is not passable to motor vehicles between Pennyquick and the vicinity of the Coach House, although it is suitable as a bridleway, and that section between Smith's Hill and the Coach House is only suitable for use by agricultural vehicles and off-road vehicles. Furthermore, due to the standard of it's junction with Smith's Hill He would not wish to risk any material increase in its use, which could arise if it were improved and remains public highway, i.e. whilst the traffic generated by the proposed development alone may be acceptable, greater public use that may arise from it's improvement would not be acceptable in addition.

Improvements to Back Lane would be required if the proposed development is to be permitted and, whilst Back Lane remains public highway, this would need to be in accordance with the requirements for an adopted highway with the applicant entering into an Agreement with the Council under S278 of the Highways Act 1980 in order to enable such works to proceed. Furthermore, a TRO would be required to prevent drivers attempting to travel between the proposed development and Pennyquick. However, this would result in the section between Smith's Hill and the proposed development remaining a highway available to the public at large and its potential use for parking by walkers, etc. This would not be desirable given the standard of access off Smith's Hill, the limited junction visibility, and the lack of adequate highway turning facilities.

However, there would be no objection to that section of Back Lane being downgraded between the proposed development and Smiths Hill subject to the creation of a bridleway over this length, thus maintaining its availability for existing users whilst preventing its attempted use over the full length by drivers of motor vehicles. This would have the added benefit of enabling the access route to be constructed to the standards of a private drive and controlled by the landowner (when stopped up, a highway reverts to the ownership of the adjacent landowners which, in this case, is the applicant). Application to stop-up this section of highway and create bridleway rights should be made under S247 of the Town and Country Planning Act 1980.

As part of the submitted application, the applicant proposes to stop up the relevant section of Back Lane whilst improving its standard to one suitable for a private drive, although this would not be suitable for a public highway designed to accommodate all traffic, whilst maintaining public rights in the form of a bridleway. This is supported and will not result in any detriment to existing users. Furthermore, it affords the applicant the opportunity to carry out further works on and maintain land on either side of the proposed driveway, which currently forms public highway, thus affording the potential for additional benefits. In

addition, the applicant can ensure that any agricultural access they may wish to maintain to adjacent land is maintained by their ownership as a result of the proposed stopping up or as a result of their creating private rights should ownership of the access be transferred.

Regarding the submitted plans, the creation of the proposed car port, together with the layout of the access, is considered to afford adequate parking for the proposed development whilst providing adequate turning opportunities for a private drive. He also comments in receipt of the revised plans that subject to the stopping up of the highway and the creation of a bridleway, this plan also details an acceptable solution. In both cases, the route of the bridleway, which will need to be defined and agreed, will need to be maintained in a suitable condition clear of obstruction, including parked vehicles.

This Consultee recommends conditions in respect of stopping up the existing highway, making up the access to an appropriate standard, securing a construction management plan and measures to prevent surface water runoff onto the highway.

**ARBORICULTURAL TEAM:** Advise that no objections are raised to the removal of trees 19 and 20 (on the survey). Advise that an arboricultural method statement for the works will be required.

**ECOLOGIST:** Advises that the submitted bat survey found that the building is used in summer by low numbers of greater horseshoe bat as a non-breeding day roost. Flight activity for an additional seven species of bat was recorded in the vicinity of the building but no further bat roosts were found.

The works affecting the roost will require a European Protected Species licence, and the LPA must demonstrate that it is satisfied that the 'three tests' of the Habitats Regulations will be met, before making any decision to permit.

The proposed mitigation is to replace the roost by providing a new roost within the roof space of the new garage, proposed as an extension to the existing Coach House building. This roost will be 4m x 5m, with a height of 2m. This meets the minimum dimensions required in the Natural England Bat Mitigation Guidance, although the preferred dimensions would be greater.

All the proposed mitigation measures will need to be in place prior to works affecting the existing roost spaces taking place. The details of the proposed mitigation, to include details of timing of works, should be secured by condition. A draft licence application method statement may be an appropriate means of providing this information to the Council. In addition, proposals for long term monitoring of the replacement roost need to form part of the mitigation scheme to be approved by the LPA. Provision of new alternatives for mitigation and roost replacement, if the original mitigation is shown to be failing, will need to form part of the scheme and be secured within any permission.

The proposed mitigation recommends tenancy agreements stipulating that the bat loft must not be used for storage or any other purpose. It would also need to stipulate that the bat loft may not be lit or disturbed. The recommended use of a tenancy agreement to stipulate the conditions required for the success of the bat roost space will need to be secured as part of any planning permission, either by condition or legal agreement.



TRANSPORTATION AND HIGHWAYS (DRAINAGE): Advise that the proposed redevelopment should drain as existing.

NEWTON ST LOE PARISH COUNCIL: Advise that they object in principle to the development. This is because of concerns about change of use of the lane and possible further development. They also raise concerns about the access which they advise is onto a very busy dangerous hill with limited sight lines.

OTHER REPRESENTATIONS / THIRD PARTIES: A public consultation exercise has been undertaken in respect of the application to which no comments have been received. Revised plans have been submitted along with an additional justification for the development a two week reconsultation exercise is therefore being undertaken and any additional comments which are received will be reported in the late observations to the Committee.

## **POLICIES/LEGISLATION**

### **POLICY CONTEXT:**

Joint Replacement Structure Plan 2002 - Saved Policies

1 : Sustainable Development

2 : Locational Strategy

16 : Green Belt

17 : Landscaping

54 : Car parking

Bath and North East Somerset Local Plan (including minerals and waste policies) 2007

SC.1 : Settlement classification

D.2 : General design and public realm considerations

D.4 : Townscape considerations

ET.7 : Non agricultural development on agricultural land

ES.5 : Foul and surface water drainage

HG.6 : Residential development in the R.3 settlements

HG.12 : Bringing empty homes back into use

GB.1 : Control of development in the Green Belt

GB.2 : Visual amenities of the Green Belt

NE.1 : Landscape character

NE.4 : Trees and woodland conservation

NE.10 : Nationally important species and habitats

BH.2 : Listed Buildings and their settings

BH.6 : Development affecting Conservation Areas

BH.7 : Demolition in Conservation Areas

T.24 : General development control and access policy

T.26 : On-site parking and servicing provision

National Policy:

PPS 1 : Delivering sustainable development

PPS : Planning and climate change supplement to PPS 1

PPS 3 : Housing

PPS 5 : Planning for the historic environment

PPS 9 : Biodiversity and geological conservation

PPG 13 : Transport

## **OFFICER ASSESSMENT**

**THE PRINCIPLE OF CONVERTING THE BUILDING:** The Coach House building is located almost entirely within the housing development boundary for Newton St Loe. A small single storey lean-to extension to the east appears to be located just outside of the housing development boundary. This is ancillary accommodation to the main building. This is a slightly odd situation in that the housing development boundary cuts across the building. However given that the majority of the building is located inside the boundary the principle of residential development is considered to be acceptable. Policy HG.6 of the Bath and North East Somerset Local Plan (including minerals and waste policies) 2007 advises that the residential conversion of non-residential buildings within the housing development boundary within R.3 villages such as Newton St Loe is permissible.

Policy HG.12 provides further guidance in respect of such conversions confirming that they will be permitted provided that the conversion is compatible with the character and amenities of established uses; that it does not seriously injure the amenities of adjoining residents or future occupiers. The existing building is surrounded by residential uses and the conversion of the building to a further residential use would be in keeping with the established character of the area. The Coach House sits in a relatively isolated plot of land with large separation distances to neighbouring residential dwellings to the south of the site. There would not therefore be any harm to residential amenity from the development. The Coach House could accommodate a three bed dwelling with a rear courtyard amenity area. The building is considered to be of a sufficient size for occupation as a residential dwelling and the amenities of the future occupiers of the building would be safeguarded in this respect.

As the building is within the housing development boundary there is no requirement for the conversion to be considered against the criteria of Local Plan Policy ET.9. Notwithstanding this the applicants have provided a structural survey in support of the application which assesses the suitability of the building for residential conversion. This report concludes that the Coach House walls are reasonably robust and stable and that the building is capable of conversion.

**GREEN BELT:** The village of Newton St Loe is washed over by the Green Belt. PPG 2 (Green Belts) advises that with suitable safeguards, the re-use of buildings should not prejudice the openness of Green Belts, since the buildings are already there. The alternative to re-use may be a building that is left vacant and prone to vandalism and dereliction. PPG 2 advises that in conversions strict control should be exercised over the extension of such buildings, and over any associated uses of land surrounding the building which might conflict with the openness of the Green Belt and the purposes of including land in it.

In this case the conversion of the existing Coach House involves an extension to create a carport and bat loft. The size of this extension has been reduced during the processing of the application and the current extension represents a modest addition to the building. The extension would result in a 14% increase in volume over the original building size. Whilst the conversion should not be considered against the extensions to residential properties in the Green Belt Policy H15 because it is not at present a residential property it is clear in this case that the extensions would not be disproportionate additions to the existing building. The proposed conversion would not represent inappropriate development in the Green Belt.

The second test for applications within the Green Belt should be an assessment of the proposal's likely impact on openness. The conversion of the existing building would have no materially greater impact in this regard. The extension to provide the car port would be cut into an embankment which is itself screened by a 1.7m high stone boundary wall. From Back Lane the eaves of the proposed extension would be set marginally higher than the existing boundary wall with a roof above which recesses away from the lane and would be viewed in the context of mature vegetation behind. The extension would not result in a loss of openness of the Green Belt.

The proposed excavation of levels to accommodate the courtyard garden would increase openness. The proposals involve the introduction of one parking space on the lane. The lane has historically had vehicles parked in it from time to time particularly those accessing the Coach House when it was used for storage and stabling. The parking of a car in the lane would not result in any increased impact on openness in this respect. The proposals are considered to accord with the advice contained within PPG 2 and Local Plan Policy GB.1.

The development has sought to sensitively bring back into use a historic structure and the proposals would not harm the visual amenities of the Green Belt.

**IMPACT ON THE CHARACTER AND APPEARANCE OF THE HOST BUILDING AND CONSERVATION AREA:** The applicants have provided an historical appraisal of the Coach House building. The building appears to have been constructed in the middle of the 19th Century. The plan form of the building indicates that staff accommodation would have been provided at first floor level above the garage with a hay loft situated above the stabling. The building appears to have been used in connection with the Mount which is grade II listed. The buildings became separated over time and the Coach House is not considered to be a listed building. Notwithstanding this it is a historic structure located within the Newton St Loe conservation area. The building makes a positive contribution to the conservation area.

The proposals would reintroduce a use into the building which if left unaltered will deteriorate further. The introduction of the use will lead to much needed investment in the building and its long term retention. The proposed conversion involves minimal external alterations and existing features would largely be retained. Internally the building is in a poorer state and the first floor would need to be almost entirely reintroduced. The extension to the building to accommodate the car port and bat loft has been reduced in size and would not harm the appearance of the building likewise the removal of a small section of walling would not be harmful. It is considered that the proposed works to the building would enhance both the character and appearance of the host building and the conservation area which would accord with Local Plan Policy BH.6.

Back Lane will need to be improved to make it passable for all traffic. The applicant's propose a light touch approach to the works. The track would not be widened. It would be cleared of mud and made good where required. The proposal is to retain trees adjacent to the track and the rural character of the lane generally will be retained by these proposals. There is no intention for the lane to be made up to adoptable standards.

The Coach House is not considered to form part of the setting of the Mount which is Grade II listed and the proposed works would not therefore have an impact on the setting of this building.

ECOLOGY: The submitted bat survey found that the building is used in summer by low numbers of greater horseshoe bats as a non-breeding day roost. Flight activity for an additional seven species of bat was recorded in the vicinity of the building but no further bat roosts were found.

The presence of a European protected species is a material consideration of the application. The works affecting the roost will require a European Protected Species licence, and the LPA must demonstrate that it is satisfied that the 'three tests' outlined in the Conservation (Natural Habitats, and c.) Regulations 1994 and EU Habitats Directive will be met, before making any decision to permit. Information has been submitted by the Agent in this respect to seek to justify that the development would meet the three tests. The three tests are outlined below along with a considered view on whether they are capable of being met.

1. Regulation 44(2)(e) : 'The Purpose Test' - Does the development meet a purpose of preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment;

The applicant has put forward two areas of justification seeking to demonstrate that this first test is capable of being passed. The Coach House as referenced above is considered to be an important historic structure which contributes significantly to the character and appearance of the conservation area. This building is currently unused and has fallen into a state of disrepair. Unless the building is converted this process is likely to continue unabated resulting in substantial harm in PPS 5 (Planning for the Historic Environment) terms to this heritage asset.

The retention of heritage assets be those designated heritage assets or undesignated assets should be given significant weight in decision making. PPS 5 guides that 'the value of the historic environment, and the contribution it makes to our cultural, social and economic life, is set out in the Government's Statement on the Historic Environment for England 2010. Planning has a central role to play in conserving our heritage assets and utilising the historic environment in creating sustainable places'. The preservation of the building is considered to be an overriding public interest capable of meeting the first test.

The second argument put forward by the applicant is that there is an unmet need for three bed accommodation within Newton St Loe. The Duchy of Cornwall who has control over the majority of the properties within the village undertook survey work of existing residents during 2005. The survey results indicated that 79% of respondents supported the provision of additional three bed accommodation within the village. The Coach House was identified in a Village Masterplan as one potential building to provide a three bed dwelling. Additionally 85% of respondents supported the levels of additional three bed units proposed in the Village Masterplan. There is unfortunately limited evidence of housing need for the village of Newton St Loe. The Council's Housing Development Team have however advised that there are 10 households on the register for affordable housing for the settlement but there is limited information on general needs housing.

The Duchy of Cornwall, due to their ownership of much of Newton St Loe and the survey work they have undertaken, have a good understanding of the aspirations of villagers and the needs of the community. Whilst the Council does not have evidence to confirm the need for housing within the village likewise it does not possess evidence to dispute the need which the Duchy of Cornwall identifies. There is generally a level of unmet housing need throughout the administrative area and the provision of an additional three bed dwelling within the village would provide a social benefit by going towards meeting a need which appears to exist. It has also been identified as a desirable objective by the majority of respondents to surveys undertaken by the Duchy of Cornwall.

In this case both of these issues need to be weighed in the balance when assessing whether the test has been met. The roost is a day roost and not a maternity roost and this should likewise be weighed in the consideration of this first test. In this case it is considered that the combination of factors outlined above result in a justification which can be accepted as meeting the first derogation test.

2. Regulation 44(3)(a) The 'No Satisfactory Alternative Test' - There is no satisfactory alternative;

The applicant has put forward a table in their submitted ecological report detailing the alternative options they have considered. The first alternative would be to do nothing. This would fail to meet the above identified strong benefits of converting the building. If the building is left to deteriorate further it may become unsafe and unusable for the bats. The building might eventually also need to be demolished which would not preserve the bat habitat. The second alternative would be to only convert the ground floor of the building. This would however render the development unviable. Conversion of the single storey element of the Coach House is indicated as an option to provide bat accommodation however it is of inadequate size for Great Horseshoe Bats. Several other buildings in close vicinity to the site have been identified but are unsuitable. The most appropriate option is that which is currently proposed which provides suitable space for the bats and is located adjoining the existing Coach House. There are no other satisfactory alternatives and this test can be passed.

3. Regulation 44 (3)(b) -The action authorised will not be detrimental to the maintenance of the population of the species concerned as a favourable conservation status in their natural range.

The Council's Ecologist has considered the information submitted by the Agent in respect of the third test and has come to the view that this information is sound in terms of ensuring favourable conservation status of the species of bat involved. The application is supported with details of mitigation measures to avoid harm to protected species which may be secured by condition and in light of this, and in the absence of any information to indicate otherwise, the overall development is also considered to meet the third test.

Overall the development is considered to meet the three tests set out in the Conservation (Natural Habitats, and c.) Regulations 1994 and EU Habitats Directive.

OFFICER ASSESSMENT OF HIGHWAY SAFETY ISSUES: The applicant has submitted a detailed access statement in support of the application. Back Lane is a public highway

although it is not passable along its length. The lane has historically been used for access to the Coach House and the neighbouring agricultural fields. At present there is nowhere to turn on the lane with vehicles likely to have had to reverse back out onto Smith's Hill. With two stables for example occupying the building this could generate 8 vehicle trips per day and the proposed dwelling would be expected to generate 8 vehicle trips per day. The applicants do not consider that there would be an intensification of the use of the access over the historic use of the lane.

The Highway Development Officer is concerned however that if the lane is made more accessible to cars as is proposed that this is likely to result in increased traffic using the lane. A solution to this would be stopping up the highway, with bridleway rights introduced along the lane. This is also required because if it were to remain as a highway then any works to the lane would need to be undertaken to an adoptable standard. This would require the widening of the track along with the introduction of footways all of which would clearly harm the rural character of the lane. If however the lane is stopped up and bridleway rights are introduced then the works would not need to be undertaken to an adoptable standard and existing users of the lane could continue to do so whilst the lane could function as a private drive. The securing of the stopping up of the highway requires a separate application and consent procedure to this planning application under S.247 of the Town and Country Planning Act 1990. A grampian condition may be used to prevent development until the stopping up has been achieved.

In respect of the parking arrangements the Highway Development Officer is content with the level of car parking and the introduction of one space in the lane is considered acceptable. The development will result in improvements to the lane and the introduction of a turning area adjacent to the Coach House. The development will not significantly increase traffic movements in the lane and therefore despite the fact that the junction with Smith's Hill has limited visibility because of the other improvements to the lane the development can be supported in highway safety terms.

**OTHER PLANNING POLICY CONSIDERATIONS:** The Parish Council suggested that a precedent will be set if this application is permitted for other developments in the area. The Case Officer would however advise that each case needs to be considered on its individual merits and he does not feel that a precedent would be set were this application to be permitted.

**CONCLUSION:** The Coach House building is located within the housing development boundary for Newton St Loe where additional housing is in principle acceptable under the terms of policy HG.6. The submitted structural survey indicates that the building is stable and capable of conversion. The conversion would be compatible with the character of the area and because it sits in a somewhat isolated position it would not harm the amenities of neighbouring occupiers. The building is considered to be of a sufficient size to accommodate a dwelling and a rear amenity space would be created.

The proposed extension to the building has been reduced in size and is a limited extension. The conversion works would accord with Green Belt policy and would not represent inappropriate development in the Green Belt. The works would not result in a loss of openness. The Coach House is an historic structure and the proposed conversion seeks to retain existing openings and features. The proposals would improve the

appearance of the building and would conserve the character and appearance of the conservation area.

Bats have been identified in the Coach House building however the three derogation tests under the Habitats Regulations can be met in this case so the development can be supported. The proposals would introduce a turning area and the lane would be improved. The lane needs to be stopped up as a public highway and downgraded to a private drive because the proposed works to the lane do not meet highway adoptable standards. The applicant proposes to apply for the lane to be stopped up and for bridleway rights to be introduced to ensure existing users remain able to use the lane. The parking provision is considered adequate and whilst the access onto Smith's Hill has limited visibility use of the lane would not be significantly intensified over historic usage levels.

## **RECOMMENDATION**

PERMIT with condition(s)

## **CONDITIONS**

1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: As required by Section 91 of the Town and Country Planning Act 1990 (as amended) and to avoid the accumulation of unimplemented planning permissions.

2 No development shall commence until samples of the materials to be used in the construction of the external surfaces, including roofs, have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out only in accordance with the details so approved.

Reason: In the interests of the appearance of the development and the character and appearance of the Conservation Area.

3 No development shall take place unless and until the public highway has been stopped up on Back Lane, between Smiths Hill and the eastern boundary of the application site and replacement bridleway rights across the site connecting the remaining length of the public highway, Back Lane, to Smiths Hill have been delivered. Details of which shall have first been submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety and public amenity.

4 No development shall take place, save for works required in complying with this condition, until the access and turning space serving the site from the public highway, Smiths Hill, has been improved to an appropriate standard in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of public amenity and highway safety.

5 The development hereby permitted shall not be commenced until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. Such a plan shall include details of phasing of development, routing of vehicles,

storage of materials, parking of contractor vehicles, access for construction plant, maintenance of public rights of way, hours of working and signing of the access/works. Construction works shall thereafter proceed in accordance with the approved details.

Reason: In the interests of amenity and highway safety.

6 The vehicular access shall not be constructed in such a manner as to permit surface water to run off the site onto the public highway.

Reason: In the interests of highway safety.

7 No development shall take place until a Detailed Arboricultural Method Statement with a Tree Protection Plan has been submitted to and approved in writing by the Local Planning Authority. The said statement shall incorporate a tree works schedule; position of all services; supervision and monitoring details by an Arboricultural Consultant. The statement should also include the control of potentially harmful operations such as the storage, handling and mixing of materials on site, burning, and movement of people and machinery. Development shall take place strictly in accordance with the approved details. A signed certificate of compliance with the Arboricultural Method Statement shall be provided to the local planning authority on completion of the works.

Reason: To ensure that trees to be retained are not adversely affected by the development proposals.

8 No development shall commence until the protective measures included in the approved Arboricultural Method Statement are implemented. These measures shall be retained throughout the duration of the construction works. The local planning authority is to be advised two weeks prior to development commencing of the fact that the tree protection measures as required are in place and available for inspection.

Reason: To ensure that the trees are protected from potentially damaging activities.

9 No development shall commence until full details of a Wildlife Mitigation and Enhancement Scheme and implementation plan have been submitted to and approved in writing by the local planning authority. These details shall include:

- (i) details of a Scheme for the replacement bat roost(s) and the provision of new accesses and the proposed timing of all works affecting the bat roost(s)
- (ii) details of a bat roost monitoring scheme, containing proposals for monitoring of the replacement roost, and for reporting of monitoring results to the LPA. Should monitoring show that the replacement bat roost is not being utilised successfully by greater horseshoe bats then new alternative mitigation proposals must be submitted to and agreed with the LPA and implemented thereafter
- (iii) details of the arrangements to stipulate to future occupiers measures that are required to safeguard the effectiveness of the bat roost, to include that the space must not be disturbed; used for storage; lit; or used for any other purpose.
- (iv) details of nest box provision on the Old Coach House and the car port extension; to include numbers, locations and specifications and to include provision for swallows
- (v) details of external lighting, confirming either that there will be no external lighting or demonstrating that lighting will not harm bat flight activity or use of the site, or access to roosts



(vi) details of all other measures to protect, retain and enhance wildlife interest at the site, including provision of bat boxes or other additional roost provision; reptile hibernacula; pre-works checks for birds and reptiles and detailed method statements for protection of wildlife such as reptiles where applicable.

All works within the scheme shall be carried out in accordance with the approved details, unless otherwise approved in writing by the local planning authority.

Reason: In order to protect ecology at the site.

10 The area of the adjacent field to the north of the Coach House which is shown within the application site shall only be used for drainage infrastructure and shall not form part of the domestic curtilage of the Coach House once converted.

Reason: In order to safeguard the Green Belt and the countryside from domestic encroachment.

11 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification) no extension, external alteration or enlargement of the dwelling(s) or other buildings hereby approved shall be carried out unless a further planning permission has been granted by the Local Planning Authority.

Reason: In order to protect the Green Belt and the character and appearance of the host building and the conservation area.

12 Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2008 (or any order revoking and re-enacting that Order with or without modification) no solar PV or solar thermal shall be installed on the dwellinghouse(s) or other building(s) hereby approved unless a further planning permission has been granted by the Local Planning Authority.

Reason: In order to protect the character and appearance of the host building.

13 The development/works hereby permitted shall only be implemented in accordance with the plans as set out in the plans list below.

Reason: To define the terms and extent of the permission.

**PLANS LIST:** This decision relates to the following drawing numbers; 1038-09, 1038-10, 1038-11, 1038-20, 1038-21A, 1038-22A, 1038-23A

#### REASONS FOR GRANTING PERMISSION:

The decision to grant approval has taken account of the Development Plan and any approved Supplementary Planning Documents. The proposed development is in accordance with Policies D.2, D.4, ET.7, ES.5, HG.6, HG.12, GB.1, GB.2, NE.1, NE.4, NE.10, BH.2, BH.6, BH.7, T.24 and T.26 of the Bath & North East Somerset Local Plan (including minerals and waste policies) 2007.

The Coach House building is located within the housing development boundary for Newton St Loe where additional housing is in principle acceptable under the terms of policy HG.6. The conversion would be compatible with the character of the area and because it sits in a somewhat isolated position it would not harm the amenities of neighbouring occupiers.

The proposed extension to the building has been reduced in size and is a limited extension. The conversion works would accord with Green Belt policy and would not represent inappropriate development in the Green Belt. The works would not result in a loss of openness. The Coach House is an historic structure and the proposed conversion seeks to retain existing openings and features. The proposals would improve the appearance of the building and would conserve the character and appearance of the conservation area.

There are bats present in the Coach House building however the three derogation tests under the Habitats Regulations can be met in this case so the development can be supported. The proposals would introduce a turning area and the lane would be improved. The parking provision is considered adequate and whilst the access onto Smith's Hill has limited visibility use of the lane would not be significantly intensified over historic usage levels.

**Item No:** 02  
**Application No:** 11/00539/FUL  
**Site Location:** Little Orchard, Ham Lane, Bishop Sutton, Bristol



**Ward:** Chew Valley South      **Parish:** Stowey Sutton      **LB Grade:** N/A  
**Ward Members:** Councillor V L Pritchard  
**Application Type:** Full Application  
**Proposal:** Provision of new vehicular access through land south of site  
**Constraints:** Agric Land Class 1,2,3a, Coal fields, Forest of Avon, Greenbelt, Water Source Areas,  
**Applicant:** Mr Peter Godsiff  
**Expiry Date:** 13th April 2011  
**Case Officer:** Tessa Hampden

## REPORT

### REASON FOR REPORTING APPLICATION TO COMMITTEE

This application has been referred to committee at the request of Cllr Kew.

## DESCRIPTION OF SITE AND APPLICATION

The application relates to a parcel of pasture land which is located next to a large detached property located off Ham Lane on the outskirts of Bishop Sutton Village. The field is currently bounded by a hedgerow with no vehicular access from the main road. Little Orchard has a vehicular access from Ham Lane which leads to the rear of the house to a parking/turning area. There is an existing mature hedge that divides Little Orchard and its curtilage with the pasture land to the south.

The application seeks planning permission for the provision of a new vehicular access to Little Orchard through the land to the south of the site. A section of the hedgerow fronting Ham Lane will be removed and an entrance gate erected. The land within the visibility splays will be regraded and new native species hedge planted behind the visibility splay.

The driveway will run through the west of the field where it will meet the existing drive to the rear of Little Orchard. A section of the field hedge will be removed at the boundary of Little Orchard and the field to the south to allow access through to Little Orchard.

The application is a resubmission of an application which was refused by the Development Control Committee in October 2009, for the following reason:

The proposed development would have a detrimental impact on the rural character on this part of Ham Lane and would represent inappropriate development in the Green Belt. In the absence of very special circumstances this development is contrary to policies NE1, GB1 and GB2 and D4 of the Bath and North East Somerset Local Plan (including Minerals and Waste) adopted October 2007

## SUMMARY OF CONSULTATIONS/REPRESENTATIONS

HIGHWAY DEVELOPMENT: the access is an improvement on the existing and there are no objections subject to the inclusion of conditions on any permission.

PARISH COUNCIL: Support the application.

## POLICIES/LEGISLATION

RELEVANT PLANNING HISTORY: No relevant history

POLICY CONTEXT:

Bath and North East Somerset Local Plan (including minerals and waste) adopted October 2007.

The following policies are relevant in this case:

D.2 considers design issues and residential amenity.

D.4 considers design issues

GB1 considers development in the Green Belt

GB2 Visual amenities of the Green Belt

NE1 Landscape character

T24 considers access and highway issues

**OFFICER ASSESSMENT:** As stated above, the planning application is a resubmission of a previously refused application. No changes have been made to the scheme since this refusal, and no additional information has been put forward with the current submission. Therefore a similar conclusion can be reached on this current application and this is outlined below.

**PRINCIPLE OF DEVELOPMENT:** This site and surrounding land is located within the Bath/Bristol Green Belt where special controls exist over development. Development is only acceptable if it falls into specified categories of 'appropriate development' or if very special circumstances exist to allow a departure from the usual policies of restraint.

A principle consideration here therefore is whether the development proposed is inappropriate development within the Green Belt and if so whether there would be exceptional circumstances of sufficient weight to permit the application.

The proposed development fails to fall within any of the exceptions for allowing development within the Green Belt and conflicts with the purposes of including land within it. The purposes are laid out in Planning Policy Guidance 2: Green Belts and the Local Plan, one of which is to assist in safeguarding the countryside from encroachment. As this development conflicts with this purpose, the proposal is considered to be inappropriate development within the Green Belt, and as no very special circumstances have been demonstrated to allow a departure from the usual policies of constraint, the principle of this development is opposed.

The use of part of this field to the south of the site to create the access is also considered to be visually extending the curtilage of the dwelling. The hoggin surface which is to be laid for the driveway, the regrading of the site, the removal of the hedgerow to the front of the site and at the boundary of the field and the property, and the insertion of the proposed entrance gates, cumulatively are considered to have a detrimental impact on the rural character of the area and the visual amenities of the Green Belt. The proposed access would also leave a small area of land separate from the remainder of the field.

**CHARACTER AND APPEARANCE:** The site is served from Ham lane which is a typical country lane enclosed at this part by a mature hedgerow which contributes to the rural character of the area. The removal of a section of the hedgerow, the regrading of the land and the new driveway are considered cumulatively to have a detrimental impact on the rural character of the area.

**HIGHWAY ISSUES:** The proposed access is considered to be acceptable on highway grounds and is considered to be an improvement on the existing access which is considered to be substandard. There is no highway objection to the scheme subject to the inclusion of conditions on any permission granted, which includes a condition which will require the existing vehicular access to be closed and its use permanently abandoned concurrently with the provision of the new access being first being brought into use.

However, no evidence has been submitted which explores upgrading the existing access in preference to creating a further access, which could have less of a harmful effect on the character of the area. Detailed information has not been submitted which justifies the development in terms of the dangerous nature of the development for example any evidence of previous accidents, which would serve to outweigh the harm to the Green

Belt. It should also be noted that whilst the existing access does not meet today's highways standards, no evidence has been submitted to suggest that the access is dangerous.

**RESIDENTIAL AMENITY:** There are no significant issues with regards to residential amenity which have arisen as a result of this application.

### **OFFICER ASSESSMENT**

The proposed development is considered to be harmful to the visual amenities of the Green Belt and the rural character of the area and inappropriate development in the Green Belt. It has been indicated that the new access proposed is for the applicant preferable to the existing but not fully justified in terms of highway safety overcoming the concerns of officers about the inappropriate nature of the development. Whilst the access is considered to be an improvement on the existing, this is not considered to outweigh the harm to the rural character of the area and the harm to the Green Belt. The reason for refusal on the previous planning application has not been overcome and the application is therefore recommended for refusal.

### **RECOMMENDATION**

REFUSE

### **REASON(S) FOR REFUSAL**

1 The proposed development would have a detrimental impact on the rural character on this part of Ham Lane and would represent inappropriate development in the Green Belt. In the absence of very special circumstances this development is contrary to policies NE1, GB1 and GB2 and D4 of the Bath and North East Somerset Local Plan (including Minerals and Waste) adopted October 2007

**PLANS LIST:** This decision relates to plan: PG/01, 02, photographs, and design and statement date stamped 26th January 2011.

**Item No:** 03  
**Application No:** 11/01266/FUL  
**Site Location:** 5 Apsley Road, Newbridge, Bath, Bath And North East Somerset



**Ward:** Newbridge      **Parish:** N/A      **LB Grade:** N/A  
**Ward Members:** Councillor L Brinkhurst      Councillor C M L Roberts  
**Application Type:** Full Application  
**Proposal:** Installation of side and rear dormers. (Retrospective)  
**Constraints:** Agric Land Class 3b,4,5, Forest of Avon, Hotspring Protection, World Heritage Site,  
**Applicant:** Mr S Barton  
**Expiry Date:** 5th May 2011  
**Case Officer:** Suzanne D'Arcy

## **REPORT**

### **REASON FOR REPORTING TO COMMITTEE**

This application has been called to Committee at the request of Cllr Caroline Roberts as the loft conversion will be a mirror image of the attached property and the building works completed are not in accordance with the approved plans but this was without the knowledge of the applicant.

### **DESCRIPTION OF THE SITE AND APPLICATION:**

5 Apsley Road is a two storey, semi-detached property sited within the World Heritage Site. The property has been previously extended with a single storey rear extension. Many of the properties in the street have been extended with dormer extensions in the roof.

This is a retrospective application for the installation of side and rear dormer windows. The site has permission for a side and rear dormer windows granted under planning permission 10/00639/FUL and the dormer windows have not been not been constructed in accordance with the approved plans. The dormer windows have been constructed with the side dormer having a pitched roof that projects from 3m from the ridge of the existing roof and be 3m wide. The rear dormer has a flat roof and is set approx 0.2m down from the ridge of the roof and project 3.6m. This dormer is 3.5m high.

The dormer windows differ from the approved drawings as the approved side dormer was set down from the ridge so to be wholly contained within the roofslope. The rear dormer has been increased in width by approx 0.7m.

### **RELEVANT PLANNING HISTORY:**

09/00021/FUL - Installation of dormer windows. - Refused 16th March. Appeal dismissed 23rd July 2009

10/00639/FUL - Installation of dormer windows (Resubmission) - Permitted 18th May 2010

Other relevant history

6 Apsley Road

None.

7 Apsley Road

10/05072/FUL - Erection of a single storey rear/side extension and provision of 1no. side and 1no. rear dormer following demolition of existing garage. - Permitted 28th January 2011

11/00871/FUL - Erection of a single storey rear/side extension and provision of 1no. side and 1no. rear dormer following demolition of existing garage (Revised proposal). - Refused 5th April 2011

## **SUMMARY OF CONSULTATIONS/REPRESENTATIONS**

**BUILDING CONTROL:** No comments



CLLR CAROLINE ROBERTS: Would like the application considered by the Committee as the loft conversion will be a mirror image of the attached property and the building works completed are not in accordance with the approved plans but this was without the knowledge of the applicant.

REPRESENTATIONS: 1 letter of objection received, raising the following points;  
Noisy, intrusive building work has been carried out for months without planning permission  
Property should be returned to its original state prior to the commencement of work  
(Officer note: This objection has been withdrawn following further submitted representation by this neighbour, which makes various comments regarding the process of advertising applications, which have no relevance to this application)

### **POLICIES/LEGISLATION**

D.2: General design and public realm considerations

D.4: Townscape considerations

BH.1: Impact of development on World Heritage Site of Bath or its setting.

Bath & North East Somerset Local Plan including minerals and waste policies - adopted October 2007

### **OFFICER ASSESSMENT**

The main issues to be considered in this case are the impact on the street scene and the impact on neighbouring properties.

IMPACT ON THE STREET SCENE: The side dormer extension is to project from the ridge of the existing roof. Local Plan Policy D.4 states at point d states that development will only be permitted where "the appearance of extensions respect and complement their host building." The side dormer extension is considered to alter the character and appearance of the roof thus not complementing the host building.

The Design and Access Statement, which accompanies the application, states that the dormer windows as constructed reflect the existing street scene as many of the properties in this part of Apsley Road. Having consulted the planning history for the properties in this part of Apsley Road, it appears that all of the existing side dormer windows were constructed under Permitted Development rights, prior to the changes of the General Permitted Development Order in October 2008. This in itself represents a material change in circumstances as the Local Planning Authority had no control over such developments before the change. Therefore this does not represent a precedent, nor do these dormer windows respect or complement the roofslopes of these properties.

It is acknowledged that the side dormer window represents the mirror image of the dormer that is constructed at number 6, which was constructed under Permitted Development. The applicants state that the dormer window as constructed therefore more closely reflects the street scene in this part of Apsley Road. The result of this is that this is the first pair of semi-detached properties in the street scene where both halves of the pair will have been extended with side dormer windows. The resultant property has an overly dominant roofscape, which is harmful to the wider street scene. The dormer windows as approved have a more subservient appearance on the roof and reduce the dominant appearance of this property.

7 Apsley Road has had planning permission refused recently for a side dormer of a similar scale and design to that which is the subject of this application.

The rear dormer window, which is the subject of this application, has been increased by approx 0.7m in width. This dormer window dominates the rear roofslope of the building and is no longer contained wholly within its own roofslope. The rear dormer window is considered to be contrary to Local Plan Policy D.4. This dormer window is larger than the one at number 7, which is considered acceptable.

**IMPACT ON THE NEIGHBOURING PROPERTIES:** The side dormer window faces onto the side of the adjacent property, and there will be no significant adverse impacts on residential amenity from this window.

The rear dormer window will allow some overlooking into the rear garden of 6 Apsley Road. It is not considered that this results in an increase in loss of privacy than the existing situation in overlooking from the first floor rear windows.

No other neighbouring properties will be affected.

**CONCLUSION:** The dormer windows are considered to dominate roofslopes of the property and therefore fail to respect or complement the appearance of the host building. Whilst it is acknowledged that several of the surrounding properties have been previously extended with dormer windows of a similar size and siting, these were constructed under permitted development and as such the Local Planning Authority did not have control over them.

## **RECOMMENDATION**

REFUSE

## **REASON(S) FOR REFUSAL**

1 The dormer windows, by reason of their size and siting, dominate the roofslopes, which fail to respect the character and appearance of this dwelling. The resultant host building will have a dominate appearance in the street scene, which is detrimental to this part of Apsley Road. This is contrary to Policy D.4 of the Bath & North East Somerset Local Plan including minerals and waste policies - adopted October 2007.

**PLANS LIST:** This decision relates to drawings numbered 001, 002, 003, 004 and 005 and related site location plan and Design and Access Statement, received by the Council on 10th March 2011.

**Item No:** 04  
**Application No:** 11/00773/FUL  
**Site Location:** 93 Rush Hill, Southdown, Bath, Bath And North East Somerset



**Ward:** Odd Down      **Parish:** N/A      **LB Grade:** N/A  
**Ward Members:** Councillor S P Hedges      Councillor N J Roberts  
**Application Type:** Full Application  
**Proposal:** Erection of 1no two storey house and 1no single storey house (revised proposals)  
**Constraints:** Agric Land Class 3b,4,5, Forest of Avon, Hotspring Protection, World Heritage Site,  
**Applicant:** HN Developments Ltd  
**Expiry Date:** 7th April 2011  
**Case Officer:** Victoria Griffin

## **REPORT**

**REASON FOR REPORTING APPLICATION TO COMMITTEE:** The application is being referred to Committee as part of the application site is co-owned by an employee of Planning Services.

The application site is positioned to the north of the steeply sloping Rush Hill. The surrounding area is characterised by mainly residential properties with a mixture of terrace, semi-detached and detached dwellings of a range of housing styles. The garden around No 93, provides spacious amenity areas between existing nearby properties, which is unusual in what is otherwise a compact area. To the north-eastern side of the plot is a footpath which runs alongside the boundary and the lower dwellings within Edgeworth Road.

The existing building is a large detached property located to the north of Rush Hill that is situated quite centrally within its plot that has previously been extended with extensions to the side/rear. The site is bordered by mature planting and fencing to the boundaries. Access into the site is from a vehicular access that opens into a large turning and parking area that slopes down towards the dwelling. Due to the topography of the site the dwelling is significantly lower than the road and is set down into the site which is orientated almost side on to the road.

The submitted planning application, seeks to make adjustments to the approved plans, determined under application references 07/02182/FUL and 08/02360/FUL for a bungalow and 2 storey house, respectively. The application is not for additional housing units for the site.

In both instances, the overall internal dimensions of the house and bungalow will remain the same, and the proposed floor levels, eaves and ridge heights will also remain the same as approved under the above mentioned planning consents. The position/orientation on the site will remain the same also.

The alterations consist of the following:

1. Adjustments to the internal room layouts of the house and bungalow, although the overall level of accommodation will remain the same as approved.
2. Adjustments to windows and doors in terms of style although the overall principle of size and position will generally remain the same as approved. The window cill heights to the North West elevation of the 2 storey house are as per the approved plan, in order to mitigate any issues of loss of privacy to the adjacent existing dwellings. Also, the number of windows to the South West elevation of the house have increased, which will serve low amenity spaces i.e. the upper ground floor hall, lower ground floor W.C. and lower ground floor study, in each case the planning drawings are noted as providing these windows with obscure glazing.
3. Adjustments will be made to the external materials and their distribution about the house and bungalow, although the intention is to still use traditional materials, in keeping with the surrounding area.

Since the last planning application the site context has changed. A planning approval was obtained at Planning Committee in September 2010 for the subdivision of the host

dwelling no.93 Rush Hill into two units (1no. two bed and 1 no. three bed). The site falls outside the local Conservation Area but within the World Heritage Site of Bath.

#### PLANNING HISTORY:

DC - 01/00370/OUT - Withdrawn - 26 April 2001 - Erection of 3 no. dwellinghouses, 1 no. detached and 2 no. semi-detached (Outline)

DC - 01/02684/OUT - Refused - 8 March 2002 - Erection of 5 no. detached dwellinghouses after demolition of existing building

DC - 02/00805/OUT - Refused - 1 July 2002 - Erection of 4 detached dwellinghouses, after demolition of existing house (Resubmission of Planning Application: 01/02684/OUT).

DC - 03/00079/FUL - Refused - 21 February 2003 - Change of use to residential parking (land south of No. 93)

DC - 03/01415/FUL - Permission - 31 July 2003 - Two storey extension and detached double garage and annexe

DC - 04/01988/FUL - Refused - 3 August 2004 - Detached house and garage

DC - 04/03062/FUL - Permission - 9 December 2004 - Detached double garage

DC - 07/02182/FUL - Permission - 4 October 2007 - Erection of a detached single storey dwelling

DC - 08/02360/FUL - Permission - 2 October 2008 - Erection of detached dwelling

DC - 09/01143/FUL - Withdrawn - 1 July 2009 - Conversion and alteration of existing dwelling to provide 2 no semi detached dwellings

DC - 10/02130/COND - Discharged - 13 July 2010 - Discharge of conditions 2, 3, 5, 7 and 8 of application 07/02182/FUL (Erection of a detached single storey dwelling)

DC - 10/02621/FUL - Permission - 30 September 2010 - Conversion and alteration of existing single dwelling to provide 2no semi detached dwellings

DC - 10/03185/COND - Discharged - 20 September 2010 - Discharge of conditions 2, 3, 6, and 15 of application 08/02360/FUL (Erection of detached dwelling)

#### **SUMMARY OF CONSULTATIONS/REPRESENTATIONS**

**BUILDING CONTROL:** No comment received

**DRAINAGE:** Section 12 of the planning application to be updated as there is information on flood risk missing. It is proposed to discharge surface water runoff via soakaways. To assess the feasibility of the soakaways, ground condition testing and permeability testing should be undertaken. If soakaway will prove to be unfeasible, an alternative drainage method should be considered.

HIGHWAYS: The proposal involves the erection of two dwellings in the grounds of 93 Rush Hill, and is based on a re-design of schemes approved under applications 07/02182/FUL and 08/02360/FUL. The current scheme maintains the same level of parking for the existing dwelling and the two proposed units, but there is a slight amendment to the arrangement of the parking spaces. The alterations to the access have already been carried out, in respect of the widening of the dropped kerbs, but the boundary wall still needs to be amended to allow for two way movement at the junction and to secure an improvement to visibility.

On the basis that there is no difference in the level of development, I recommend that no highway objection is raised subject to the following conditions being attached to any permission granted:-

The development hereby permitted shall not be occupied until the access has been widened, and the parking and turning areas have been provided in accordance with the details shown on the submitted drawing No. 288/P/01. Reason: In the interests of highway safety.

The area allocated for parking and turning on the submitted plan shall be kept clear of obstruction and shall not be used other than for the parking and turning of vehicles in connection with the development hereby permitted. Reason: In the interests of amenity and highway safety.

The development shall not be occupied until the access, parking and turning areas have been properly bound and compacted (not loose stone or gravel) in accordance with details which shall have been submitted to and approved in writing by the Local Planning Authority. Reason: In the interests of highway safety.

ENVIRONMENTAL PROTECTION: This development will be affected by external noise from Road Traffic. The applicant should be required to submit an assessment from a competent person to determine into which Noise Exposure Category in PPG24 this element of the development falls.

If the assessment shows that the site falls into NEC C or D then I would be recommending refusal of the application on the grounds of excessive exposure to External Noise from Road Traffic.

I would also add that if the assessment determines the site to be NEC C and the scheme for the site is to be recommended for planning approval, then I would advise that then the following must be applied as planning conditions for both applications.

- On completion of the works but prior to any occupation of the approved development, the applicant shall submit to and have approved in writing by the Local Planning Authority, an assessment from a competent person to demonstrate that the development has been constructed to provide sound attenuation against external noise in accordance with BS8233:1999. The following levels shall be achieved: Maximum internal noise levels of 30dBLAeq,T for living rooms and bedrooms. For bedrooms at night individual noise events (measured with F time-weighting) shall not (normally) exceed 45dBLAmax.

- Prior to the occupation of the dwellings the applicant shall submit an assessment to demonstrate that the noise levels which are likely to be experienced in the gardens and amenity areas do not exceed those recommended by the World Health Organisation for the avoidance or serious community annoyance. The upper limit for this is 55dBA Leq.

This site is in close proximity to existing residential premises and in my view the following conditions would be essential to protect residential amenity during demolition and construction. I would therefore ask that the following be applied as planning conditions.

1. No materials arising from the demolition of any existing structure(s), the construction of the new dwelling, nor any material from incidental works shall be burnt on the site.
2. The developer shall comply with the BRE Code of Practice to control dust from construction and demolition activities (ISBN No. 1860816126). The requirements of the Code shall apply to all work on the site, access roads and adjacent roads.
3. The requirements of the Council's Code of Practice to Control noise from construction sites shall be fully complied with during demolition and construction of the new dwellings. (copy attached)

REPRESENTATIONS: None received

#### **POLICIES/LEGISLATION**

The following policies are a material consideration:

BH.1: Impact of development on World Heritage Site of Bath or its setting

D.2: General design and public realm considerations

D.4: Townscape considerations

HG.12: Residential development involving dwelling subdivision, conversion of non-residential buildings, re-use of buildings for multiple occupation and re-use of empty dwellings

T.24: General development control and access policy

T.26: Onsite parking and servicing provision

Bath & North East Somerset Local Plan including minerals & waste policies adopted 2007.

Planning Policy Guidance (PPS) 3: Housing

#### **OFFICER ASSESSMENT**

The key issues of this proposal relate to the impact of the changes on the character and appearance of the site and residential amenity. The changes are minor in nature and include;

1. Adjustments to the internal room layouts of the house and bungalow, although the overall level of accommodation will remain the same as approved.
2. Adjustments to windows and doors in terms of style although the overall principle of size and position will generally remain the same as approved. The window cill heights to the North West elevation of the 2 storey house are as per the approved plan, in order to mitigate any issues of loss of privacy to the

adjacent existing dwellings. The number of windows to the South West elevation of the house has been increased however, these serve low amenity spaces ie the upper ground floor hall, lower ground floor W.C. and lower ground floor study, in each case the planning drawings are noted as providing these windows with obscure glazing.

3. Adjustments will be made to the external materials and their distribution about the house and bungalow, although the intention is to use traditional materials, in keeping with the surrounding area.

**THE PRINCIPLE OF DEVELOPMENT:** The site is within the urban area of Bath where residential development is broadly acceptable in principle provided it accords with other policy requirements. The revised PPS:3 on housing has reclassified domestic gardens so that they are no longer "previously developed land" (PDL or brownfield land). This means that garden areas are not prioritised within PPS:3 for development. Furthermore there are two implemented permissions on this site for the residential properties. Works have commenced on-site and it is not considered that the proposal would conflict with the revised policy parameters to warrant a refusal in principle.

**SINGLE STOREY DWELLING:** The changes to the external fenestration have introduced larger window openings on each elevation and a pergola to the north-east elevation. The design of the windows are of a vertical panel design which is more contemporary than the approved scheme. The site context is of varied housing styles and designs and is not considered to be harmful to the character and appearance of the area. The internal layout has rearranged the accommodation and living areas to a more open plan arrangement. External materials are proposed in western red cedar cladding and random rubble stone walling which is considered to preserve the character of the development and is acceptable.

**TWO-STOREY DWELLING:** External alterations to the two-storey dwelling include the replacement of a roof-overhang with a pergola structure to the north elevation. Other alterations include larger window openings on the ground floor and vertical windows on the west elevation. In the previous application windows at first floor level were conditioned to be retained in obscure glazing. The window openings are larger and it is considered necessary to ensure obscure glazing to maintain the privacy of the neighbouring property. The corner windows on the west elevation have a cill height of 1700mm above floor level and are also conditioned accordingly as the previous application.

**PLANNING OFFICER ASSESSMENT OF HIGHWAY ISSUES:** The highways officer has requested conditions are attached in accordance with the submitted details based on a re-design of schemes approved under applications 07/02182/FUL and 08/02360/FUL. As noted by highways the current scheme maintains the same level of parking for the existing dwelling and the two proposed units, but there is a slight amendment to the arrangement of the parking spaces. The alterations to the access have already been carried out, in respect of the widening of the dropped kerbs, but the boundary wall still needs to be amended to allow for two way movement at the junction and to secure an improvement to visibility. Relevant conditions are attached in this regard.

**DRAINAGE:** Land drainage details have been previously submitted and discharged on condition. It has demonstrated that the necessary infrastructure is available on-site. It is



considered to be reasonable to condition that is implemented in accordance with the submitted information that forms part of this application.

**ENVIRONMENTAL PROTECTION:** Environmental Protection have requested the submission of a noise assessment with the application. The application for development of the site was approved under application references 07/02182/FUL and also 08/02360/FUL, without the submission of a noise survey.

This application constitutes relatively minor alterations to these approved schemes, and it would be unreasonable to request a noise survey for works that have commenced on-site at this late stage. The applicant has confirmed that if this planning application for minor alterations to the approved scheme is not successful then they will simply implement the approved scheme, which is essentially the same proposal. Therefore, the lack of a submission, in the circumstances, is not considered to warrant a refusal on this basis.

**CONCLUSION:** It is considered that the principle of the proposal has been established under 07/02182/FUL and also 08/02360/FUL. The minor alterations proposed within this application are considered to preserve the character and appearance of the development. In addition the amendments to the fenestration would not cause harm to residential amenity. The proposal is considered to be acceptable with appropriate conditions.

## **RECOMMENDATION**

PERMIT with condition(s)

## **CONDITIONS**

1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: As required by Section 91 of the Town and Country Planning Act 1990 (as amended) and to avoid the accumulation of unimplemented planning permissions.

2 The development hereby permitted shall not be occupied until the access has been widened, and the parking and turning areas have been provided in accordance with the details shown on the submitted drawing No. 288/P/01.

Reason: In the interests of highway safety.

3 A schedule of materials and finishes of the materials to be used in the construction of the external surfaces, including roofs, shall be submitted to and approved in writing by the Local Planning Authority within two months of the date of this decision. The development shall thereafter be carried out only in accordance with the details so approved.

Reason: In the interests of the appearance of the development and the surrounding area.

4 The dwellings hereby approved shall not be occupied until space has been laid out within the site in accordance with the approved plans for the parking and turning of vehicles, and such areas shall not thereafter be used for any purpose other than the parking and turning of vehicles associated with the development.

Reason: To ensure that sufficient provision is made for off-street parking and turning of vehicles in the interests of highway safety.

5 The ridge height of the main roof to the two-storey dwelling hereby approved shall not exceed that of the existing dwelling identified as No 93 Rush Hill.

Reason: To safeguard the amenities of the adjoining occupiers and appearance of this part of Rush Hill.

6 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification) no garages or other free standing buildings shall be erected within the curtilage of the dwelling(s) hereby approved, other than those expressly authorised by this permission, without the prior written permission of the Local Planning Authority.

Reason: The introduction of further curtilage buildings requires detailed consideration by the Local Planning Authority to safeguard the appearance of the development and the amenities of the surrounding area.

7 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), there shall be no enlargement or external alteration to any building(s) hereby approved without the prior written permission of the Local Planning Authority.

Reason: In the interests of the appearance of the development and of the amenity and character of the area.

8 The lowest part of the window cill of the upper floor windows on the North elevation of the two-storey dwelling shall be a minimum of 1.7 metres above floor level (measured internally) and shall be retained as such.

Reason: To ensure that nearby residents are not overlooked from the development.

9 Prior to occupation of each dwelling the hard and soft landscape scheme (date received 04/04/11) shall be carried out in accordance with details submitted. Any trees or plants indicated on the approved scheme which, within a period of five years from the date of the development being completed, die, are removed or become seriously damaged or diseased shall be replaced during the next planting season with other trees or plants of a species and size to be first approved in writing by the Local Planning Authority. All hard landscape works shall be permanently retained in accordance with the approved details.

Reason: To ensure that the landscape scheme is implemented and maintained.

10 Prior to the occupation of any dwelling hereby approved the sewage disposal and surface water drainage shall be carried out in accordance with details received dated 04/04/11. The development thereafter shall be carried out only in accordance with the approved details.

Reason: To ensure that the development can be adequately served by sewerage and drainage infrastructure

11 The construction works shall be carried out in accordance with the submitted construction details (date received 04/04/11) showing that the development can be constructed without causing instability of adjoining land.

Reason: To ensure that the development does not lead to instability of adjoining land.

12 The existing hedgerow that borders the site shall be retained and in the event that the hedgerow dies or is removed for any reason, the hedgerow or part thereof shall be replaced with screening at the equivalent height.

Reason: In the interests of the appearance of the site and to safeguard adjoining residents from further overlooking.

13 Prior to occupation the proposed first floor windows on the west elevation of the two-storey dwelling (as shown on drawing no. 288/P/02) shall be glazed with obscure glass and permanently retained as such.

Reason: To safeguard the amenities of adjoining occupiers from overlooking and loss of privacy.

14 The development/works hereby permitted shall only be implemented in accordance with the plans as set out in the plans list below.

Reason: To define the terms and extent of the permission.

**PLANS LIST:** Design & Access Statement, Topographic survey 2924-01DEC10-01, 288/P/01 to 288/P/02 date received 10/02/11, 288/P/03, 288/P/04, 288/P/05 date received 10/02/11, Additional details (including hard and soft landscaping details, foul and surface water drainage details, inter-visibility details, land stability report, details of materials for access, parking and turning areas and details of maintenance of hedgerow) and drawing no.240-101 submitted date received 04/04/11

**ADVICE NOTE:** Where a request is made to a Local Planning Authority for written confirmation of compliance with a condition or conditions attached to a planning permission or where a request to discharge conditions is submitted a fee shall be paid to that authority. Details of the fee can be found on the "what happens after permission" pages of the Council's Website. Please send your requests to the Registration Team, Planning Services, PO Box 5006, Bath, BA1 1JG. Requests can be made using the 1APP standard form which is available from the Planning Portal at [www.planningportal.gov.uk](http://www.planningportal.gov.uk).

Informatives:

1. No materials arising from the demolition of any existing structure(s), the construction of the new dwelling, nor any material from incidental works shall be burnt on the site.
2. The developer should comply with the BRE Code of Practice to control dust from construction and demolition activities (ISBN No. 1860816126). The requirements of the Code shall apply to all work on the site, access roads and adjacent roads.

3. The requirements of the Council's Code of Practice to Control noise from construction sites shall be fully complied with during demolition and construction of the new dwellings.

**Item No:** 05      **Application No:** 11/00845/FUL  
**Site Location:** Little Meadow, Bromley Road, Stanton Drew, Bristol



**Ward:** Clutton      **Parish:** Stanton Drew      **LB Grade:** N/A  
**Ward Members:** Councillor S J Willcox  
**Application Type:** Full Application  
**Proposal:** Erection of a two storey rear extension and first floor extension over existing single storey annexe.  
**Constraints:** Agric Land Class 1,2,3a, Coal - Standing Advice Area, Forest of Avon, Greenbelt, Housing Development Boundary,  
**Applicant:** Mr Simon And Paul Waller And Ms Alison Delve  
**Expiry Date:** 12th April 2011  
**Case Officer:** Tessa Hampden

## **REPORT**

### **REASON FOR REPORTING APPLICATION TO COMMITTEE**

This application is being reported to Committee due to the Parish Council supporting the application and following discussions with the Chairman of the Committee.

### **DESCRIPTION OF SITE AND APPLICATION:**

The application relates to a detached property located off Bromley Road on the outskirts of Stanton Drew. The application property is set in a relatively generous plot and has previously been extended by virtue of a single storey front and side extension. The properties in this part of the street scene vary in terms of their scales and design and in this regard there is no particular uniformity in this part of Bromley Road.

The site is situated within the designated Green Belt.

The application seeks planning permission for the erection of a two storey side extension and first floor extension over the single storey annexe to the front of the dwelling. Revised plans have been submitted which reduce the ridge height of the extension so that it sits below that of the main roof. The application also includes alterations to the access with Bromley Road.

### **PLANNING HISTORY:**

64504 Addition to dwelling to form private garage, bedroom and sitting room Permitted September 1963

64504/A Erection of garage Permitted May 1972

### **SUMMARY OF CONSULTATIONS/REPRESENTATIONS**

STANTON DREW PARISH COUNCIL: Support the application. Minimal increase in the footprint size improves the appearance of the property. Existing 'add ons' spoil the appearance.

HIGHWAY DEVELOPMENT: No objection subject to the inclusion of conditions relating to the access.

REPRESENTATIONS: None received

### **POLICIES/LEGISLATION**

D.2: General design and public realm considerations

D.4: Townscape considerations

NE5 Forest of Avon

HG15 Dwelling extension in the Green Belt

GB1 Control of development in the Green Belt

GB2 Visual amenities of the Green Belt

Bath and North East Somerset (including minerals and waste) October 2007

Policy HG.15 states:

"Proposals to extend a dwelling in the Green Belt will be permitted unless they would:

- i) represent a disproportionate addition over and above the size of the original dwelling; or
- ii) contribute to a deterioration in rural character as a result of the cumulative effect of dwelling extensions."

Supplementary Planning Document - Existing Dwellings in the Green Belt adopted 2008.

PPG 2- Green Belts states that there is a general presumption against inappropriate development within Green Belts and that inappropriate development is, by definition, harmful to the Green Belt. It goes on that the construction of new buildings in the Green Belt is inappropriate development unless it is included in the listed exceptions one of which is for limited extension, alteration or replacement of existing dwellings. It advises that as long as it does not result in disproportionate additions over and above the size of the original building, the extension or alteration of dwellings is not inappropriate in Green Belts.

### **OFFICER ASSESSMENT**

**PRINCIPLE OF DEVELOPMENT IN THE GREEN BELT:** Policy GB.1 of the adopted Local Plan follows the guidance in Planning Policy Guidance 2 and states that permission will not be given for development, inter alia, except for limited extensions provided it is in accordance with Policy HG.15. Policy HG.15 of the Local plan further requires that in relation to existing dwellings permission will not normally be given for development other than limited extensions that do not result in a disproportionate addition over and above the size of the original dwelling or contribute to a deterioration in rural character as a result of the cumulative effect of dwelling extensions.

In order to assess whether the proposed development does constitute inappropriate development and is therefore harmful by definition, it is necessary to consider the advice contained in the Councils Supplementary Planning Document on extensions in the Green Belt which was adopted to give advice on the Councils interpretation of Policy HG.15.

In order to guide consideration of what constitutes a disproportionate addition to the original building a calculation of its volume of the original building can be used. "Original" means how the building existed on the 1st July 1948 or if the building was built after this date, as originally built. The applicant has submitted a Design and Access Statement which requests that the existing building is counted as the original as the extensions were built prior to the designation of the Green Belt in this area. However, whilst these comments are noted, the application must be considered in line with the adopted policy and the definition of original dwelling as cited above.

Within the Design and Access Statement the applicant has provided volume calculations illustrating the volume of the original, existing and proposed dwelling. The original building is estimated to have had a volume of approximately 473m<sup>3</sup>. The existing extensions have added approximately 696m<sup>3</sup> to the original building. This means that the original host building has already been extended by 47%. The proposed extension would add approximately a further 341m<sup>3</sup> which is a 49 % increase on the existing dwelling. Therefore this proposal would result in an approximate increase of 119% over the original

building. This extension can therefore not be considered to be a proportionate addition in size terms.

The Supplementary Planning Document also makes it clear that when considering whether an extension is disproportionate the character of the dwelling and its surroundings also need to be considered. In this case, due to the scale and the siting of the proposed extension in comparison to the original dwelling, the development is not considered to appear as a proportionate addition to the original dwelling. The extension appears larger than the original dwelling and the siting of the extension to the front and side, results in an extension which appears disproportionate to the original dwelling.

The extension is therefore considered to be a disproportionate addition to the dwelling in both its volume and appearance.

**OPENNESS AND RURAL CHARACTER OF THE GREEN BELT:** Due to the siting of the extension to the side and front of the dwelling at first floor level, the openness of the Green Belt is considered to be unduly harmed.

Although the resultant building would be seen within the lines of buildings along the built up Bromley Road and is not considered to have significant harm on the rural character of the area, this does not outweigh the harm to the openness of the Green Belt by such inappropriate development.

**CHARACTER AND APPEARANCE OF THE DWELLING:** The existing single storey extensions detract from the character and appearance of this dwelling, particularly due to their flat roof design and the extent of the footprint of these in comparison to the two storey original building. The proposal seeks to build over these existing extensions and to further extend to the side. Revised plans have been submitted which reduce the height of the two storey extension so that the ridge of the roof sits below that of the host dwelling. This is considered to achieve a degree of subservience to the main dwelling. Whilst this is a large extension it is partly built over an existing ground floor extension removing this unattractive element of the property.

There is no particular uniformity in terms of dwelling styles in this part of Bromley Road, and the proposals would not result in a development that would be out of keeping with the surrounding properties. Although the extension would result in a dwelling that is much larger than the original, the scale of the resultant property would be appropriate for the size of the plot and would not be significantly larger than a number of the surrounding properties.

On balance, the proposed extension is considered to be an acceptable addition to the application property in terms of its design, which will preserve the visual amenities and the rural character of the area. However, although it is considered that the dwelling will have an acceptable overall appearance this does not outweigh the harm caused by the development by reason of its inappropriateness.

**RESIDENTIAL AMENITY:** The proposed development is set a sufficient distance away from the neighbouring properties to ensure that the proposals would not have a detrimental impact on the residential amenity currently enjoyed by the occupiers of these properties.

**HIGHWAY SAFETY:** The proposal would maintain an acceptable level of parking for the dwelling, but also proposes the slight widening of the access drive at its junction with Bromley Road. The gates are proposed to be set back 3m from their current position at the edge of the carriageway, but it is considered that they should be set back further to enable a car to pull clear of the road whilst gates are opened. This will require them to be set back a minimum of 5m. This could be secured through a condition.

On balance, subject to the inclusion of appropriate conditions on any permission, no highway objections are raised.

**CONCLUSION:** The proposed development, due to the design, size, scale and siting of the extension would result in a disproportionate addition over and above the size of the original dwelling which would fail to maintain the openness of the Green Belt. This represents inappropriate development within the Green Belt which is, by definition harmful. No very special circumstances have been demonstrated to outweigh the presumption against inappropriate development in the Green Belt. It is therefore recommended that this application is refused.

## **RECOMMENDATION**

REFUSE

## **REASON(S) FOR REFUSAL**

1 The proposed development, due to the design, size, scale and siting of the extension would result in a disproportionate addition over and above the size of the original dwelling which would fail to maintain the openness of the Green Belt. This represents inappropriate development within the Green Belt, which is, by definition, harmful. No very special circumstances have been demonstrated to outweigh the presumption against inappropriate development in the Green Belt. The proposal is contrary to Policies GB.1, GB.2 and HG.15 of the Bath and North East Somerset Local Plan including minerals and waste policies adopted 2007.



<b>BATH AND NORTH EAST SOMERSET COUNCIL</b>			
MEETING: <b>Development Control Committee</b>		AGENDA	
MEETING DATE <b>18 May 2011</b>		ITEM NO:	
<p><b>REPORT OF David Trigwell, Divisional Director of Planning and Transport Development</b></p> <p><b>Maggie Horrill, Planning and Environmental Law Manager (Tel: 01225 395174)</b></p> <p><b>REPORT ORIGINATOR: Ms Lisa Bartlett, Development Manager (Tel:01225 477281)</b></p>			
<b>AN OPEN PUBLIC ITEM</b>			
<b><u>BACKGROUND PAPERS:</u></b>			
Application for planning permission: 00/02417/FUL			
Development Control Committee reports of 29 October 2008 and 26 February 2009;			
Two Enforcement Notices dated 25 February 2009			
West of England Joint Waste Core Strategy			
Inspector's Report on the Joint Waste Core Strategy			
<b><u>Annexes:</u></b>			
Annex A – Order of the High Court dated 7 December 2010.			
Annex B - Site Location Plan			
Annex C - Minute of Development Control Committee Meeting of 18 February 2009			
Annex D - Judgement of Mr Justice Lindblom dated 3 December 2010			
Annex E - Extract Joint Waste Core Strategy – Key criteria and development management policies relating to the Fullers Earth land.			
TITLE: Land at former Fullers Earth Works, Fosseyway, Combe Hay, Bath			
WARD :- Bathavon West			

## **1.0. THE PURPOSE OF THIS REPORT**

1.1. The purpose of this Report is to inform the Committee of the Order of the High Court (**Annex A**) following the claim for Judicial Review against the Council's decision to issue Enforcement Notices for alleged unauthorised development at the Former Fullers Earth Works ("Fullers Earth") and to update the Committee on the West of England Joint Waste Core Strategy ("JWCS") so far as it relates to the Fullers Earth land.

## **2.0. LOCATION AND DESIGNATION**

2.1. The Fullers Earth Land is shown edged in bold on the attached site location plan (**Annex B**). It is within the Bath and Bristol Green Belt and close to the Cotswold Area of Outstanding Natural Beauty. It is on high ground about 800 metres from the south-western edge of the city of Bath, on the south-eastern side of the Fosse Way which, as the A367 road, forms the main route into the city from that side. The city is a World Heritage Site.

2.2. In the late 19<sup>th</sup> century, and for some time after that, the land, or part of it, was used for the extraction of Fuller's Earth. Latterly it has been used for a variety of purposes, including the use of the Land for the recycling of waste.

## **3.0. INTRODUCTION AND BACKGROUND**

3.1. Fullers Earth has a complex planning history and has been the subject of concern and complaints from the Bath Preservation Trust, Combe Hay Parish Council, South Stoke Parish Council and local residents.

3.2. At the meeting of this Committee on the 18 February 2009 the Development Control Committee delegated authority to take enforcement action when it resolved that the Divisional Director for Planning and Transport Development, in consultation with the Planning and Environmental Law Manager, be authorised to exercise the powers and duties (as applicable) under Parts VII and VIII of the Town and Country Planning Act 1990 (including any amendments to or re-enactments of the Act or Order or Regulations made under the Act) in respect of the above site. A copy of the full Minute is attached to this Report as **Annex C**.

3.3 Two Enforcement Notices were served on 25 February 2009 and the owner of Fullers Earth, together with another appealed against the notices on 20 April 2010. The appeals were held in abeyance by the Planning Inspectorate pending the out come of the Judicial Review Claim.

3.4. The Hearing into the Claim for Judicial Review was heard in the High Court on 23 and 24 November 2010. The Order of the High Court is attached as Annex A to this report, but a summary of the main points set out in Mr. Justice Lindblom's Judgement of 3 December 2010 is set out in paragraph 5 below.

## 4.0 ORDER OF THE HIGH COURT

4.1. A copy of the Order is annexed to this Report at **Annex A** and from which the Committee will see that the Court quashed the Council's decision to take enforcement action and to issue the two enforcement notices. It also ordered the Council to pay the Claimant's costs.

## 5.0. HIGH COURT JUDGEMENT

5.1 A copy of the whole Judgement is annexed to this Report at **Annex D**, but I set out below a summary of what I consider to be the salient points in the Judgement for the Committee to consider when assessing the way forward for the Fullers Earth land.

The Court held that:-

5.1.1. the Court had jurisdiction to hear a claim for judicial review of a local authority's decision that it was expedient to take enforcement action against a landowner for change of use of its land.

5.1.2. when making its decision to take enforcement action the Council had failed to take account of material considerations and had excluded relevant information.

5.2. The Owner of Fullers Earth, and another, applied for judicial review of the Council's decision to issue enforcement notices. It was successfully argued in the High Court that the Council's decision to issue the notices was unfair and irrational. This was primarily based around the case made that:-

5.2.1. Firstly, the negotiations with another Company should have been taken into account when the decision was made. There was criticism that the Council had failed to take into account the intentions of that Company who argued that they were negotiating with the co-operation of the Owner. The Council argued that the negotiations with the Company were unsubstantiated and not well advanced with Planning Services and that the harm caused by the uses and development on the Land should not be allowed to continue. I would draw your attention to paragraph 65 of the Judgement:

*"Even if one were to take the view that the considerations which bear on the expediency of issuing an enforcement notice must be considerations relating to the character, use and development of land, and must go no wider than that, it would be my view that the matters the members were told to disregard at the committee meeting on 18 February 2009 were matters truly germane to that question. They clearly embraced not only factors of relevance to the planning history of the site but also factors relevant to its planning future. And they were clearly capable of affecting the view to which the members had come as to the good sense or otherwise of taking formal steps to remove the existing use or uses of the land. Whether, in land use planning terms, it would be advantageous to compel the present industrial activity on the site to cease when another*

*form of industrial development might possibly commend itself to the Council surely had the potential to influence the decision with which the members were faced. They were not determining such a proposal, or pre-empting any future decision. But the prospect of such a scheme coming forward, against the background which Mr. White wanted to describe and within the timescale he envisaged, was, in my judgment, a consideration material to expediency. There is, and could be, no suggestion that what Mr. White wanted to say to the committee was motivated by bad faith, or was simply a last minute ruse to deflect the enforcement of planning control. His remarks, had they been listened to, might not have proved decisive, or even significant. But that is not for the court to judge. The court is concerned only with establishing materiality. And in my view the representations Mr. White wanted to make to the members were a material consideration" (my emphasis)*

5.2.2. The Second issue was the Council's support for the allocation of the Fullers Earth land in the JWCS as a 'Residual Waste Facility'. Whilst the allocation was included *after* the Enforcement Notices were authorised and issued and notwithstanding the fact that the Council argued that the existing use is not only contrary to the current development plan but *would also be contrary* to the emerging policy in the JWCS, since it is not a Residual Waste site, the Judgement is clear in that (1) the allocation of the land in the JWCS is a material change in circumstances and the matter should have been reported back to Committee to allow the Committee to consider whether, in light of the Council's support for the allocation, it was still expedient to continue with the enforcement action and (2) the Council's self-evident acceptance in principle of this form of industrial use of the land, notwithstanding its designation. In this regard I would refer you to paragraphs 104 to 106 of the Judgement:-

*"104 I see a distinction between the situation in which a local planning authority has not yet issued a statutory decision on an application for planning permission, though it may have resolved to grant such permission, and that in which it has both resolved to issue and has issued an enforcement notice to remedy a breach of planning control. The former situation can be said to be one in which the particular statutory process involved is still incomplete; in the latter the relevant process has reached its finality. But, as Mr. Elvin points out, the position is not quite as simple as that. The existence of the power in section 173A to withdraw or amend an enforcement notice after it has been issued, and even after it has taken effect implies a continuing responsibility for the authority to keep under review the expediency of the action it has decided to take.*

*105 Whether or not it would be right to construct from section 173A a continuous proactive duty to review, as Mr. Elvin's submissions suggest, it is only necessary for the purposes of the present case to discern the requirement that the power conferred by this provision be exercised in accordance with public law principle. What this means at least, in my view, is that when there emerges, while an enforcement notice subsists, some new factor of which the local planning authority is or should be aware, and which is material to the expediency of the notice, the authority should consider whether to exercise its power to withdraw or amend. It seems to me that this accords with the rather broader statement in the*

*note at p173a.03 IN THE Encyclopaedia of Planning Law and Practice, which I would respectfully endorse:*

*"The ability to withdraw a notice that has come into effect allows the authority to sweep clean the planning title of a site where the enforcement notice is no longer relevant."*

*106 What then are the consequences of such a requirement in this case? I think they are clear. In pursuing the allocation of the site for a waste recycling facility the Council has self-evidently accepted the principle of this form of industrial use on the site, no matter whether it is properly to be categorized as a "sui generis" or as a Class B2 use. To have done this the Council must presumably have considered whether such a facility could be acceptable in principle, notwithstanding the site's presence in the Green Belt and the Area of Outstanding Natural Beauty and its proximity to the World Heritage Site.....".*

## **6.0 WEST OF ENGLAND JOINT WASTE STRUCTURE CORE STRATEGY**

6.1 The West of England Joint Waste Core Strategy ("JWCS") sets out the spatial planning policy framework for waste management for the four West of England Unitary Authorities ("UAs"), namely Bristol City, North Somerset, South Gloucestershire and Bath and North East Somerset Council. It has been prepared with the other UAs.

6.2. The JWCS was subject to Independent Examination in Public in November 2010 and the Inspector who held the Public Examination has concluded that the JWCS has met all legal requirements and is 'sound' in his binding report. A copy of the Inspector's report is a background paper to this report and is available on the Council's website.

6.3. The JWCS was adopted by the Council on 25 March 2011. It sits within the Bath and North East Somerset Development Framework and is a key element of the development plan when considering development proposals for waste management superseding some of the Council's Local Plan Policies.

The JWSC sets out vision and objectives for sustainable waste management and sets the planning framework up to 2026 reflecting the waste hierarchy. The key policies are:-

6.3.1 **Policy 1 Waste Prevention:** Waste prevention is a fundamental principle that has clear links to spatial planning and policy will encourage waste generation to be reduced across the sub-region.

6.3.2. **Policy 2 - 4 Recycling & Composting (Non-residual waste treatment facilities):** Additional recycling and composting capacity requirements across the sub-region will be encouraged through positive criteria based policy. Specific sites are not allocated but opportunities are presented in policies 2, 3 and 4.

6.3.3. **Policies 5 - 7 Residual Waste Treatment:** The Spatial Strategy provides an appropriate spatial distribution for the residual waste management infrastructure required to meet the sub-regions needs. Sites and locations considered to be key to the delivery of the Spatial Strategy have been identified in policy 5. 'Key Development Criteria' (Appendix 1 of the JWCS) outlines the issues that have to be considered. Policy 6 presents operational expectations of residual waste treatment facilities. Policy 7 identifies how residual waste treatment proposals not allocated in the JWCS, which seek to deliver the spatial strategy, will be considered.

6.3.4. **Policies 8 & 9 Landfill:** The Strategic Objectives of the JWCS seek to ensure that value is recovered from waste prior to disposal and to reduce reliance on landfill. Any new landfill capacity required will be considered against criteria based policy. Proposals will be expected to demonstrate that the waste to be disposed of could not reasonably and practicably have been treated otherwise.

6.3.5 **Policy 10 Waste Water treatment:**

6.3.6 **Policies 11 & 12 Development Management Policies:** Development Management Policies 11 and 12 complement the Spatial Strategy and will ensure all new waste related development maximises opportunities and minimises adverse impacts.

6.3.7 **Policy 13 Safeguarding operational and allocated sites for waste management facilities:** Operational and allocated waste sites are safeguarded by policy 13.

6.4. The JWCS seeks to deliver, by 2020, diversion from landfill of at least 85% of municipal, commercial and industrial wastes through recycling, composting and residual waste treatment. A minimum of 50% of this total recovery target is intended to be achieved through recycling and composting, leaving **35%** to be delivered through **residual treatment capacity**. The JWCS is not technology specific, recognizing that residual waste treatment facilities incorporate:

- **mechanical and biological processes:** A generic term given to any facility incorporating mechanical (eg. material recycling/recover facilities) and biological (eg in vessel composting) processes.
- **thermal processes:** Waste management processes involving medium and high temperatures to recover energy from the waste which includes pyrolysis and gasification based processes.

## 7.0 The JWCS and Fuller's Earth

7.1 The Fuller's Earth land is allocated through Policy 5 of the JWCS, along with Broadmead Lane in Keynsham, with indicative requirements for residual waste treatment of Zone C 150,000 tonnes per annum.

7.2 **Residual Waste Facility:** Residual waste is defined as that which remains after recycling and composting has or can reasonably be assumed to have occurred. (ie. the waste no longer able to be recycled, re-used or composted)

7.3 Planning permission for development involving the treatment of residual wastes where it supports the delivery of the Spatial Strategy is likely to be granted on the sites allocated, subject to the Key Development Criteria and development management policies.

7.4 The Key Development Criteria and development management policies that relate to Fullers Earth are annexed to this report at **Annex D**. Fullers Earth has been found to be unsuitable for a thermal treatment facility under the Habitats Regulation Assessment (HRA), but potentially suitable for the other waste facility types considered.

## 8.0 BACKGROUND TO ALLOCATION PROCESS

8.1 Fuller's Earth was one of 32 of the original sites identified but was discounted based on a discretionary negative criteria due to it being in the Green Belt and its proximity to the AONB. The land was therefore not included as a potential residual waste facility site in the JWCS Preferred Options strategy (public consultation held from 15<sup>th</sup> January to 12 March 2009). It was not proposed to be allocated as a potential residual waste facility site at the time the Council as Local Planning Authority issued the Enforcement Notices.

8.2 During the Preferred Options public consultation held from 15 January to 12 March 2009, **SITA (Southern) Ltd** submitted their representation recommending the re-appraisal and allocation of the Fullers Earth Site for a potential strategic waste management site for recovery (residual) facility.

8.3 Following the end of the public consultation, Environmental Resources Management Ltd (ERM) were appointed by the West of England Partnership as Project Manager and they reviewed the plan including assessing new sites and re-assessing sites considered previously. ERM produced a Revised Detailed Site Assessment Report (June 2009) and recommended the

inclusion of the Fullers Earth Site's allocation for development of a strategic residual waste management facility to meet 'the soundness test' through which the plan should be 'justified, effective and consistent with national policy'.

8.4 A JWCS Progress Update including the potential allocation of the site was published for public consultation from early July to August 2009. Following the Progress Update consultation, the draft submission document was prepared which included the allocation of the Fullers Earth Site. The Council at its meeting on the 19 November 2009 approved the JWCS for the purposes of publication in December 2009 in order for representations relating to issues of soundness to be made during January/February 2010; and submission in April 2010 to the Secretary of State after taking into account comments received.

8.5 Following the consultation, the JWCS was submitted to the Secretary of State in July 2010 and the independent examination was held in November 2010 in which the Inspector concluded that the JWCS provides an appropriate basis for the waste planning of the area over the next 15 years. The Partnership has sufficient evidence to support the strategy and can show that it has a reasonable chance of being delivered.

8.6 In his report the Inspector states that;

*"the former Fuller's Earth site is subject to a number of constraints. Amongst other things, reference has been made to the ecological value of the site; its geological importance; its location relative to the Cotswolds Area of Outstanding Natural Beauty and any extension of the AONB; the presence of a major aquifer; its location within the Green Belt; and the potential effect on the setting of the nearby City of Bath World Heritage Site. Additional concerns include the alleged carrying out of unauthorised development (the subject of enforcement action<sup>1</sup>) and the fact that the previously envisaged growth of the area may not occur.*

*The Partnership recognises that the site is constrained. Its approach has been to set down key development criteria, specific to the site, which would need to be taken into account in any scheme of development. The location is seen as important. It would serve the needs of the south east of the plan area as well as the area as a whole. ----- In terms of the impact on the environment, I see no reason in principle why an*

---

<sup>1</sup> The enforcement notices were subsequently quashed by the High Court (Order issued 3 December 2010)



*acceptable development could not come forward. I support the approach of the Partnership and the identification of key development criteria. -----On a related matter, I see no need to extend the boundaries of the allocated site. From a developer's point of view, I can see the sense of locating infrastructure such as balancing ponds on adjacent land. However, any scheme would have to be considered on its merits. Bearing in mind also the Green Belt location, it would be wrong to anticipate the acceptability of forms of development different from those assessed through preparation of the Joint Waste Core Strategy”*

8.7 In summary, the re-consideration of the Fullers Earth Site was triggered by the representation made by SITA promoting the inclusion of the site through the Preferred Options consultation held from January to March 2009 and the subsequent site assessment (June 2009) undertaken by ERM. The site was not included as a potential residual waste facility sites when the Council issued the Enforcement Notices.

8.8. The Former Fuller's Earth Works is now allocated as a Strategic Site for residual waste facility and safeguarded for that use. Any planning applications apart from this safeguarded use will be contrary to the policies and will be subject to Development Criteria and Development Management policies.

## **9.0 CURRENT POSITION**

9.1 The two enforcement notices have been quashed by the High Court

9.2 The Inspector who resided over the Examination in Public of the JWCS has confirmed the allocation of Fullers Earth as a 'residual waste facility'

9.3 The Council adopted the JWCS on 25 March 2011 and by doing so is promoting Fullers Earth as a residual waste facility.

## **10.0 CONCLUSION**

10.1. It is acknowledged that there is still third party local concern regarding the current uses and development on Fullers Earth. It is, however, clear from the High Court judgement, given the allocation of Fullers Earth in the JWCS as a residual waste facility that it would not be expedient to take further enforcement action regarding the current uses and development on Fullers Earth but that the Council should work with the Owner of Fullers Earth and assist in getting a proposal through the process for the land to be used as a residual waste facility as allocated in the JWCS.

## **11.0 RECOMMENDATION**

11.1 That the Committee note the contents of this report, acknowledge the decision of the High Court and the allocation of Fullers Earth in the JWCS and in light of this endorse the Officer's proposal to work positively with the Owner to achieve delivery of a residual waste facility on Fullers Earth.

11.2. That the Owner of Fullers Earth be written to setting out the Council's support for the allocation of the land in the JWCS and inviting its assistance in achieving this aim and seeking representations from the Owner on any progress on its proposal to fulfil the allocation.

11 8 DEC 2010  
RECEIVED

*DOM BOSWORTH*

*Approved.*

*K.A.*

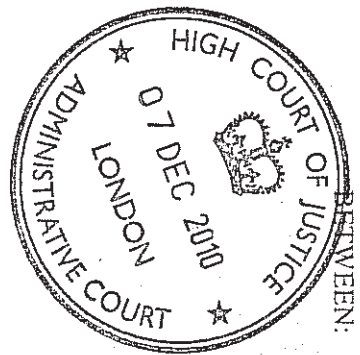
*S Millio*

IN THE HIGH COURT OF JUSTICE  
ADMINISTRATIVE COURT

Neutral Citation: [2010] EWHC 3127 (Admin)

CO/4717/2009

BETWEEN:



THE QUEEN  
ON THE APPLICATION OF  
GAZELLE PROPERTIES LIMITED  
AND

SUSTAINABLE ENVIRONMENTAL SERVICES LIMITED

Claimants

AND

BATH AND NORTH EAST SOMERSET COUNCIL

Defendant

DRAFT ORDER PROPOSED BY THE CLAIMANTS

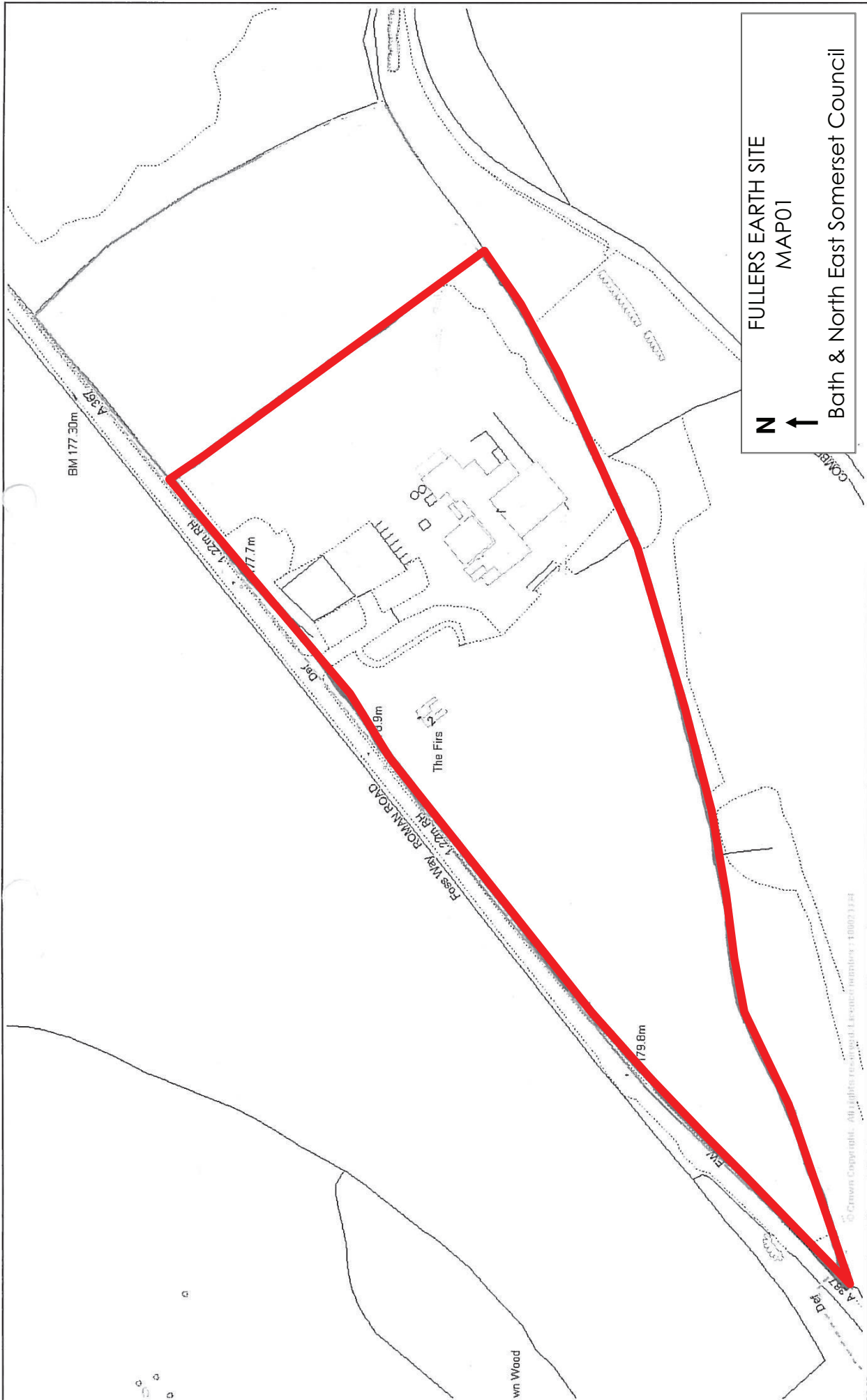
UPON hearing leading counsel for the Claimants and counsel for the Defendant it is ordered that:

1. There shall be an order quashing the decision of the Defendant's Development Control sub-Committee on 18 February 2009 to delegate authority to its Divisional Director of Planning and Transport Development to take enforcement action in respect of land at the site known as the former Fuller's Earthworks site, at Combe Hay, Bath ("the site").
2. There shall be an order quashing the subsequent decision of the Divisional Director of Planning and Transport Development on 23 February 2009 to issue two enforcement notices in respect of the site.
3. There shall be an order quashing the two enforcement notices in respect of the site issued by the Divisional Director of Planning and Transport Development, dated 25 February 2009.
4. There shall be an order that the Defendant do pay the Claimant's costs (which for the avoidance of doubt include the Claimant's costs in claim CO/123/2009) to be assessed if not agreed.

Dated 3 December 2010

*By the Court*

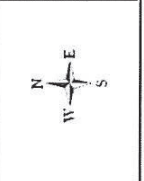




FULLERS EARTH SITE  
 MAP01  
 Bath & North East Somerset Council

Date 5/11/2007  
 Drawn by:

Scale 1/2500  
 Centre = 372835 E 161211 N



**Land Adjacent to the A367 Fosse Way, Odd Down, Bath**  
 Bath & North East Somerset Council, Planning Services,  
 Trimbridge House, Trim Street, Bath BA1 2DP

BATH & NORTH EAST SOMERSET  
 © Crown Copyright. All rights reserved 100023334 2006



## MINUTES OF THE DEVELOPMENT CONTROL COMMITTEE

Wednesday 18th February 2009

### **291 ENFORCEMENT ITEM - LAND AT FORMER FULLER'S EARTHWORKS, ODD DOWN, BATH (Report 11).**

Referring to the Report and the Minutes of this Committee held on 29<sup>th</sup> October 2008, the Committee considered the joint report of the Divisional Director of Planning and Transport Development and the Planning and Environmental Law Manager which gave the Committee the opportunity to consider the alleged planning contraventions afresh having regard to (a) the responses received on the Planning Contravention Notices (PCN's), and (b) the accusations made by Gazelle Properties Ltd, the owners of the land, in the Judicial Review proceedings claim against the Council to the Committee's decision of 29<sup>th</sup> October regarding the above land.

The report to the October meeting set out the requirements for enforcement action, namely:

- (i) residential use at Nos 1 and 2 The Firs (within Use Class C3) be allowed to continue
- (ii) use of land at "The Works" and adjoining hardstandings for the purposes within Use Class B2 be allowed to continue (within Area "A" of the CLEU Plan);
- (iii) cessation of all non-agricultural use outside of Area "A" (on the CLEU Plan) including:
  - the storage and repair of scaffolding
  - building/engineering/stone mason' contractors' yard
  - skip-hire/storage yard
  - storage of aggregates, hard core and green waste
  - the production/distribution of concrete
  - the siting and use of a hot food takeaway trailer; and
  - storage of an advert trailer, metal cages and other scrap items
- (iv) demolition of the hopper and aggregate storage bays; car parking areas (CP1 and CP2); all fencing and concrete slab on the compound within Area "E"; and demolition/removal of portacabin
- (v) removal of the bund currently forming the north east boundary of the site and, following this, the levelling of the land to match the adjoining land; and
- (vi) restoration of the land to its former condition following compliance with the foregoing, including the covering with clean top soil and sowing of grass seed.

The report to today's Committee meeting set out the responses from occupiers of the site to the PCN's. It was considered that these responses confirmed the conclusions in the October Committee report regarding the mixed use of the land.

The report went on to discuss the expediency of enforcement action. It recommended that the B2 use be allowed to continue on part of the land (albeit a smaller part than had previously been accepted by the Council as having a B2 fallback use). Elsewhere non-agricultural activity should be ceased (apart from residential use of Nos 1 and 2 The Firs). It also considered that the encroachment of the mixed use for the various businesses close to the residential properties of Nos 1 and 2 The Firs would have a harmful impact upon the living conditions at those properties. The structures including the concrete manufacture and batching plant, storage silos, aggregate storage bays, ancillary metal buildings and the permanently sited office building were considered unacceptable.

The Development Manager read out the following statement:

"It is the view of Officers that the land outlined in bold on plan at Annex D is now in a mixed use. This view has been reached after careful consideration of the history of the site and to any fall back B2 Use (General Industrial) that may have existed at the time of the "call-in " Inquiry in 2002. You will see that the site area for the "call-in" Inquiry application at Annex G is smaller than that shown on the current site location plan and as such any B2 fall back position agreed at that time can not in any case cover the whole site within the Freeholding of the Owner. There is, however, disagreement between the Council and the Owner as to the significance of what was agreed within the Statement of Common Ground at the Inquiry.

The land does not have the benefit of planning permission; its status is therefore subject to evidence and the Council must take into account any material information that comes to its attention.

As such, a different view was taken by Officers regarding the extent of the B2 fall back position following the processing of the CLEU application in 2006. There is no consideration of planning merits when certificate applications are assessed but instead it is necessary for evidence submitted by the applicant to be assessed along with any other information that the Council has available such as the aerial photographs referred to in the main report. The aim of the application was to establish a general B2 use throughout the site. However, after detailed assessment of the evidence, your Officers did not consider that the application could demonstrate on the balance of probabilities such an established use across the area within the red line. No formal determination was made in relation to the CLEU as it was withdrawn by the Owner. Therefore, neither the SOCG or the CLEU were formal determinations.

It is acknowledged that the Council in the past accepted that the land which formed part of the application site at the 2002 "call-in" Inquiry had a B2 fall back use and it would have been inexpedient at that time to take enforcement action. However, this was based on evidence available to the Council at that time.

The site visit in September 2008 provided more evidence to Officers, which has subsequently been endorsed by the returned PCN's, that a material change of use of the land has now taken place as there are currently several uses taking place on the land and over a wider area than has historically been the case, although they do retain a link with the central use of the site.

This change of use has taken place within the last 10 years and so is unauthorised. It would not be possible now to revert back to a previous B2 use without the grant of planning permission or compliance with an enforcement notice. The Owner does not concur with this view.

In terms of the presentation, it would be helpful if Members could have open before them Annex F attached to the main report as I will show you photographs of various parts of the site and link them back to this plan.



For clarity, the Officer recommendation then is seeking your authority to take enforcement against the uses and operations listed in the main report."

The Development Manager then took the Committee through the presentation which included a series of photographs of the site.

The Planning and Environmental Law Manager reported on legal aspects of the matter and referred to the Judicial Review challenge made by the owners of the property regarding the decision made by the Committee at its meeting on 29<sup>th</sup> October 2008. The Committee then heard the statements by the public speakers. (Note: During the statement made by Mr White, the Chairman had to ask him to refrain from making references to his proposals for the site.)

It was then moved by Councillor Eleanor Jackson and seconded by Councillor Colin Darracott to delegate authority as set out below.

**RESOLVED** that delegated authority be granted to the Divisional Director of Planning and Transport Development, in consultation with the Planning and Environmental Law Manager, to take any necessary action on behalf of the Authority in respect of the alleged planning contraventions set out above by exercising the powers and duties (as applicable) under Parts VII and VIII of the Town and Country Planning Act 1990 (including any amendments to or re-enactments of the Act or Regulations or Orders made under the Act) in respect of the above land.

*General Note:*

*This specific delegated authority will, in addition to being the subject of subsequent report back to Members in the event of Enforcement Action being taken, not being taken or subsequently proving unnecessary as appropriate, be subject to:*

*(a) all action being taken on behalf of the Council and in the Council's name;*

*(b) all action being subject to statutory requirements and any aspects of the Council's strategy and programme;*

*(c) consultation with the appropriate professional or technical officer of the Council in respect of matters not within the competence of the Divisional Director of Planning and Transport Development; and*

*(d) maintenance of a proper record of action taken.*

(Note: The voting on this matter was 7 in favour and 2 against with 3 abstentions.)



**Gazelle Properties Ltd, Sustainable Environmental Services  
Limited v Bath & North East Somerset Council**

Case No: CO/4717/2009

High Court of Justice Queen's Bench Division Administrative Court

3 December 2010

**[2010] EWHC 3127 (Admin)**

**2010 WL 4863705**

Before: Mr Justice Lindblom

Date: 3 December 2010

Hearing dates: 23 & 24 November 2010

## **Representation**

Mr David Elvin Q.C. & Mr Alex Goodman (instructed by Ashfords Solicitors) for the Claimants.

Mr Peter Towler & Mr Gary Grant (instructed by Council Legal Department ) for the Defendant.

## **Judgment**

Mr Justice Lindblom:

### **Introduction**

1 In this claim for judicial review the Claimants, Gazelle Properties Limited ("Gazelle" ) and Sustainable Environmental Services Limited (" SES" ) challenge the decision of the Defendant, the Bath and North East Somerset Council (" the Council" ), by its Development Control Committee, on 18 February 2009, to delegate to its Divisional Director of Planning and Transport Development the taking of enforcement action in respect of land known as the former Fuller's Earthworks site, at Combe Hay, Bath, and the decision of that officer, on 23 February 2009, to issue enforcement notices against an alleged change of use and certain operational development on that land. Gazelle owns the site. SES had an option over all or part of it, and, although that option has expired, says that it remains keen to develop a waste processing facility on the land. Both contend that in several respects the Council erred in law in deciding to take enforcement action against the existing development, asserting that the Council's consideration of the expediency of such action was flawed, that the decision was irrational and unfair, and that factors material to it were ignored.

### **The issues in the claim**

2 Seven issues for the court arise. They are:

(1) whether the court has jurisdiction to hear the claim;

(2) whether the decision to delegate to officers the taking of enforcement action is vitiated by the Council's committee's failure to recognize the materiality of negotiations and to take account of those negotiations as a material consideration;

(3) whether the delegated decision is itself vitiated by the officers' failure to recognize the materiality of negotiations and to take account of those negotiations as a material consideration;

(4) whether the committee's decision to delegate and the delegated decision itself were unfair and irrational;

(5) whether the committee's decision was infected with procedural unfairness;

(6) whether the Council's enforcement action is vitiated by a failure to ascertain the extent of the relevant planning unit; and

(7) whether the Council's continuing decision to enforce is, in any event, vitiated by the Council's failure to reconsider the expediency of enforcement action in the light of the proposed allocation of the Fuller Earth Site in the emerging Joint Waste Core Strategy.

### **Procedural history**

3 Originally there were two related claims in this case. The claim that is still live is the second. The first claim challenged an earlier decision of the Council's Development Control Committee (taken on 29 October 2008) to delegate to officers the taking of enforcement action on the same site. Permission for that claim to proceed was refused by Mr Mark Ockelton, sitting as a deputy judge of the High Court, on 4 September 2009.

4 By an application notice lodged on 4 November 2010 the Claimants sought to add a further ground of challenge and to rely on further evidence detailing events that have occurred since permission for the claim to proceed was granted. That application was opposed by the Council. At the start of the hearing and in view of the inherent flexibility in judicial review and in the absence of any apparent prejudice to the Council in that ground being added at this stage, I allowed the Claimants' application to do so.

### **Factual background**

#### *The site*

5 The site to which the enforcement notices relate extends to about 3.38 hectares. It is within the Bath and Bristol Green Belt and close to the Cotswold Area of Outstanding Natural Beauty. It lies on high ground about 800 metres from the south-western edge of the city of Bath, on the south-eastern side of the Fosse Way, which, as the A 367 road, forms the main route into the city from that side. The city is a World Heritage Site. In the late 19th century, and for some time after that, the land, or a part of it, was used for the extraction of Fuller's Earth. Latterly it has been used for a variety of purposes. Today it contains two dwellings, an agricultural field and an area on which general industrial use has taken place and which is at present used for the recycling of waste and other uses within Use [Class B2 of the Town and Country Planning \(Use Classes\) Order 1987](#) . It has a long planning history, which need not be recounted in detail here.

#### *The dispute and its history*

6 The substantial controversy in the case concerns the physical extent of the lawful industrial use. The Council has accepted that an area corresponding to " Area A" on a plan submitted with an application for a certificate of lawfulness, which extends to about 1.2 hectares, benefits from " historic" use in Class B2 and therefore could not or should not be subject to enforcement action. Gazelle considers that the area which should be regarded as enjoying that status is much larger, embracing the whole 3.38 hectares.

7 It is pointed out by Gazelle that on several occasions in the past a lawful Class B2 use has been accepted across the whole of the 3.38 hectares, and that these occasions include the decision of the Secretary of State on 1 August 2003 when refusing planning permission for a ~~Page 124~~ Class B1 development and live/work

units and subsequently in the Council's evidence for the inquiry into objections to the then emerging local plan in 2005. In the August 2003 decision the Secretary of State agreed (in paragraphs 30 and 31 of his decision letter) with his Inspector's conclusions (in paragraph 435 of his report) that " the buildings and hardstandings on the site enjoy a B2 fallback, that is, they may be used for general industry without the need for further planning permission" and (in paragraph 443) that " the use of the site for B2/B8 purposes has not been abandoned ...". Those conclusions seem consistent with the agreement between Gazelle and the Council recorded in paragraph 6.1 of the Statement of Common Ground submitted to the Inspector:

" The applicant and the local planning authority are in agreement that the existing use of the site is industrial processing which falls within Class B2 (General Industrial) of The [Town and Country Planning \(Use Classes\) Order 1987](#) ...." ,

although it is to be noted that this view was evidently not shared by third party objectors. The Secretary of State differed from his Inspector on the likelihood of the fallback position being taken up on the entirety of the site (in paragraph 35 of his decision letter).

8 It is not necessary here to recount all of the events in the planning history of the site after the Secretary of State's decision in August 2003. It is to be noted, however, that the Council was advised in May 2004 by junior counsel (Mr Peter Towler) that " it would be wholly inappropriate for [it] to take enforcement action in respect of any B2 use of the site" , and in May 2006 by leading counsel (Mr Timothy Straker Q.C.) that " [e]nforcement action against a B2 use on the land is inexpedient" .

9 The Council's Development Control Committee B considered enforcement action in respect of numerous alleged breaches of planning control in November 2006. It was accepted in the officer's report that the Secretary of State's decision of 1 August 2003 had determined the established use of the site then under consideration as being Class B2 general industrial use (paragraph 1.1 of the report). It was noted that an application for a certificate of lawfulness had been submitted. The committee resolved that it should continue to receive regular reports on the site.

10 In March 2008 the Ombudsman for Local Administration, who had received a complaint from Gazelle's principal shareholder, Mr Ridings, about the Council's decision in 2004 to pursue enforcement action against the recycling of aggregates on the site, criticized the Council for threatening such action, found maladministration and recommended to the Council that it pay compensation to Mr Ridings. He also recommended (in paragraph 93 of his report) that the Council should

" Determine the remaining planning enforcement issues at Mr [Ridings' ] site without further delay and notify him of the outcome."

The Ombudsman commented on the Class B2 use on the site, stating in paragraphs 81 and 82 of his report:

" 81. ... It seems to me that, when considering enforcement action, the Council might reasonably have deduced from paragraph 30 of [the Secretary of State's decision] that the B2 fallback position applied only to the buildings and hardstanding. That said, noting the ambiguity about the extent of the fallback position in the inquiry papers, Counsel had initially advised the Council against enforcement action and, in my view, it should have heeded that advice.

82. It was not until the Statement of Common Ground was brought to its attention by [Mr Ridings' ] Solicitor in 2004 that the Council, on the further advice of Counsel, revised its view and accepted that the B2 fallback position extended to the whole of [Mr Ridings' ] site. In the meantime, however, contrary to legal advice and without any direction from its Planning Committee, the Council wrote to [Mr Ridings] threatening the possibility of planning enforcement action if he did not cease industrial operations on some parts of his site. The Council's approach here was ill-considered and

the threats of enforcement action were not justified. That was maladministration."

### *The correspondence*

11 From the middle of 2007 until the second half of 2008 the Council and Gazelle's solicitors engaged in correspondence about the lawful use of the site and the possibility of finding an agreed way forward. Mr Towler referred to much of this correspondence in the course of his submissions. It seems fair to say that the tone of the correspondence is marked at times by a degree of frustration on either side. By the middle of 2008 little progress appears to have been made. In his letter to Mr Bosworth of Gazelle's solicitors dated 28 May 2008 Mr Trigwell expressed his disappointment that Gazelle considered a meeting between the parties to be unnecessary, and indicated his belief that the most appropriate thing for Gazelle to do would be to submit a planning application for the whole site. He said that in the determination of such an application " the B2 fall back position of Area A would, of course, be a material consideration" but that the Council would have to consider the application " in the light of the areas which it considers not to have a B2 fall back use, on its planning merits and including whether any very special circumstances have been put forward as to why an expansion of the B2 use, or such other use as [Gazelle] may apply for, would be acceptable on this prominent site within the Green Belt" . Mr Bosworth's reply on behalf of Gazelle, dated 30 June 2008, referred to the Council's acceptance of the Ombudsman's report, to the advice the Council had had from Mr Towler and Mr Straker as to the expediency of taking enforcement action, and to the several occasions on which the Council had accepted that the lawful use of the site was Class B2 use. Having made some comments on the principles relating to the determination of the planning unit, and having observed that he could see no reason why the the planning unit should not in this instance be taken as the historic unit of occupation, Mr Bosworth contended that there was " no case for the Council to be considering enforcement action" . His letter concludes as follows:

" You also suggest that our client submits a planning application for the whole site. I must advise you that our client has no intention of doing this. However, I can advise you that they have entered into an agreement with a development partner, Sustainable Environmental Services Limited, with a view to that company securing a comprehensive development of the site for waste recycling purposes. I understand that Sustainable Environmental Services have already held discussions with some of your colleagues about their proposal, and I enclose a copy of a recent letter that they have provided to my client, which sets out where they currently are with a view to submitting a planning application for their proposal.

...In the light of the plans that Sustainable Environmental Services have to develop the site, and the progress they are making with a comprehensive planning application, I would suggest that any meeting to discuss the points covered in your letter of 28 May is unnecessary."

12 The letter from SES to which Mr Bosworth was referring is dated 25 June 2008. It mentions the involvement of planning consultants in the preparation of an application. It also refers to SES having discussed the proposal with planning officers of the Council, and to " a very positive meeting" having been held with the Council's Estates Department. It goes on to state:

" It is therefore anticipated that a comprehensive application will be developed in private session with the principals involved before being selectively discussed with key Councillors, Ward Members and principal objectors before being made fully public."

13 On 25 July 2008 Mr Trigwell responded to Mr Bosworth's letter of 30 June 2008, stating that the Council was " disappointed with the approach taken to its

endeavours to negotiate a way forward” and that the Council was now left “ with no option other than to conclude that [Gazelle] has adopted an entrenched position against any regulation of the site” . It was now necessary, said Mr Trigwell, for the Council to conduct a site visit, relying, if it had to, on its powers of [section 196A](#) of the 1990 Act. As to Gazelle's partnership with SES and the possible submission of an application for planning permission, Mr Trigwell said that the Council, as local planning authority, had not received such an application and although SES had approached the Council with draft proposals some months ago those proposals had lacked the necessary information to enable it to make any detailed comment upon them.

### *The site visit and the planning contravention notices*

14 After officers of the Council had attended the site on 1 September 2008 at the appointed time and been denied access, a site visit eventually did take place, on 11 September 2008.

15 On 26 September 2008 Gazelle Properties was served with planning contravention notices by the Council's Development Manager, Ms Bartlett. The notice was not signed, and Gazelle declined to respond to the questions which it contained. The notices were subsequently signed and re-served; Gazelle answered the questions in them and sent them back, but this was not done until after the Council's committee met in October 2008.

16 On 21 October 2008 Gazelle was informed by the Council that officers were proposing to put before the Development Control Committee on 29 October 2008 a report which would recommend that delegated authority be granted to officers for the taking of enforcement action. The Council stated that, if the committee authorized such action and no new information emerged when the planning contravention notices were returned, all uses on the site would be required to cease, apart from any agricultural use, the “ historic” Class B2 use of the works and surrounding hard-standing areas and the continued occupation of the two dwellings. Various operational development would also have to be demolished or removed.

17 On 24 October 2008 Gazelle's solicitors wrote to Ms Bartlett, inviting her to postpone the committee's consideration of the report, contending that the members should not be asked to make any decision until officers had had the opportunity to consider the response to a valid planning contravention notice, and pointing out that the Council had not yet come back to explain what it considered the relevant planning unit to be and why.

18 Ms Bartlett's response, in her letter dated 28 October 2008, did not deal with those requests.

### *The meeting of the Development Control Committee on 29 October 2008*

19 On 29 October 2008, when the Council's committee convened, it received from its officers a report recommending the commencement of enforcement action. In paragraph 3.2 of the report the officers advised the members that it was

“ appropriate to consider what the correct “ planning unit” is and within this, whether there is a single primary use with other ancillary uses or separate primary uses which are distinct from each other or perhaps being mixed a composite use [sic]. It will also be necessary to consider whether the planning unit has changed as well as whether the uses have materially changed.”

In paragraph 3.3 the officers referred to the “ leading case” on the concept of the planning unit, namely [Burdle v. The Secretary of State for the Environment \[1972\] 3 All E.R. 240](#) . There follows an analysis of the activities taking place in various parts of the site, and, in paragraphs 3.23 to 3.27, the officers' conclusions on “ current use” , which culminate in the following passage (in paragraph 3.27):

“ The degree of physical and functional separation between some areas

makes the consideration of the current planning unit difficult. However, on balance bearing in mind the tests set out in the Burdle case, other case law and how these uses appear to operate, it could be argued that the site within the boundary shown on MAP01 is one planning unit and within this planning unit, there is a mix of primary uses ... rather than one overriding use with the others being ancillary. Again, clarification may be forthcoming on the return of the PCNs."

Under the heading " Historic use including any lawful " fall-back" position" , in paragraph 3.28 of their report, the officers noted that was necessary " to consider whether the uses taking place are materially different from any lawful use of the site, thereby constituting development requiring planning permission" . They went on to refer to the application which had previously been submitted – but withdrawn before it was determined – for a certificate of lawful existing use. Of the five areas into which the site had been broken for the purposes of considering that application, the report concentrates on areas " A" , " D" and " E" . The officers referred, in paragraph 3.33, to the Statement of Common Ground submitted to the 2002 inquiry, and said that it had been

" ... agreed that the whole of the application site at that time could lawfully be within B2 use, including part of the public highway. However, that was never a position confirmed within a formal legal determination i.e. a certificate of lawfulness. The planning inspector at the time of the call-in agreed that " the buildings and hard-standings on the site enjoy a B2 fallback" he was not definitive about which parts of the site this included. ..."

In paragraph 3.38 the officers stated: " On the balance of probabilities, the area approximating to area ` A' is that which had a " mothballed" lawful fallback situation at the time the current occupiers took ownership in 1999. ..."

In their " Conclusions regarding what use/uses require planning permission" , in paragraph 3.40, the officers said this:

" Given the conclusion above regarding the present mixed uses including B2 industrial use, sui generis storage builders/scaffold contractors yards, residential use (within the two dwellings), siting a hot-food trailer it is considered that there is a " material change" from any previous use. The responses to the PCNs may indicate that this is a new chapter in the planning history of a site."

The passage of the officers' report on " Unauthorised use" includes, in paragraph 3.55, the following comments:

" ... [The] industrial use of part of the site (the " main buildings" and surrounding hardstandings in the approximate area marked " A" on the CLEU plan) previously had a lawful fall-back position and although a new chapter in the history of the site may have occurred, this would be an important material consideration ... "

The minutes of the meeting record that the Council' Planning and Environmental Law Manager told the committee that further evidence had come to light which " undermined the previously assumed extent of the lawful B2 fall back position" . The officers' recommendations, in section 5.0 of the report, included the following action:

" 5.1 Subject to responses to the PCNs not disclosing information that would lead Officers to a materially different conclusion, the commencement of enforcement action. The requirements ... should be:

...

ii. Use of land at " the works" and adjoining hardstandings for purposes within use class B2 is allowed to continue (within area ` A' )

...



5.3 Authorise the Divisional Director for Planning and Transport Development in consultation with the Planning and Environmental Law Manager to exercise the powers and duties of the Authority ... under [Parts VII and VIII of the Town and Country Planning Act 1990](#) ... in respect of the above site."

20 The committee resolved in accordance with the officers' recommendation.

#### *Gazelle's solicitors' letter of 15 December 2008*

21 On 15 December 2008 Gazelle's solicitors sent a Pre-Action Protocol letter to the Council's Head of Legal Services. That letter complained about several aspects of the Council's decision-making on 28 October 2008. Among the complaints raised was the contention that the report which had been provided to the committee for its meeting on that day failed to provide a full picture of the planning history of the site, including the discussions that had taken place between Gazelle and the Council. The letter referred to Gazelle's solicitors' letter to Mr Trigwell of 30 June 2008 identifying " the occasions on which the Council had previously confirmed the B2 use of this part of the Land, namely:

- In the Statement of Common Ground prepared for the public inquiry in 2002;
- On 21 May 2004 Mr David Davis confirmed by letter that the Council had accepted that the 2002 Public Inquiry site has a B2 use throughout its entirety; • In May 2004 Counsel advised the Council that in his opinion " it would be wholly inappropriate for the Council to take enforcement action in respect of any B2 use at the site" ;
- The Development Control Sub-Committee B on 2 June 2004 confirmed that the Council accepted that the site has a B2 use throughout;
- In July 2004 the Council approved a pre-inquiry change to the revised Deposit draft local plan which stated that the 2002 Public Inquiry had established that the entire site had the benefit of B2 use;
- The Development Control Sub-Committee B at its meeting on 25 August 2004 accepted that the site has B2 use throughout;
- At the Public Inquiry that was held in 2005, into the revised Deposit Draft Local plan, the Council gave evidence that the site had a B2 use throughout.
- In March 2006 Queen's Counsel advised the Council that in his view planning enforcement action was inexpedient over any B2 use at the Inquiry Site;
- In an email sent on 17 October 2006 to our client, Mr Rowntree confirmed again, this time in the context of the Lawful Certificate Application, that the Council's agreement for the ' 2002 appeal boundary area' was not affected.
- The Development Control Sub-Committee B at its meeting in November 2006 accepted that the Inquiry in 2002 had " determined" the established use at the Site as B2" .

The letter went on to state:

" In the planning process the previous history of a site, including previous decisions of the authority, is a material consideration. A decision maker should realise the importance of consistency and should give reasons if they decide to depart from a previous decision ... In the current case, with the exception of the reference to the statement of common ground at paragraph 3.33 of the report, the Committee were not informed either of the numerous previous decisions that the Council had made regarding the use of the Land nor as to the correct approach to adopt in respect of those previous decisions. In the circumstances, the Committee's decision to delegate authority to take enforcement action was made without regard to a material consideration and was therefore made without knowledge of the available facts. Accordingly the decision can have been made lawfully."

### *The first claim for judicial review*

22 On 7 January 2009 Gazelle launched a claim for judicial review of the Council's decision of 28 October 2008, asserting, among other things, that officers had failed properly to inform the members of the discussions which had been taking place between the parties, and to explain to the committee the site's planning history and the circumstances relating to the relevant planning unit. The Council's immediate reaction to those proceedings was to undertake to bring the matter back before the committee in February 2009.

### *The meeting of the Development Control Committee on 18 February 2009*

23 On 18 February 2009, when the committee met again, it received a report which indicated that officers were of the view that the members had been properly apprised of the relevant history. By this time the Council had received responses to the planning contravention notices. [Section 6.0](#) of the officers' report dealt with the planning history. The corresponding part of the October 2008 report was referred to (in particular, paragraphs 2.6 and 3.28 and 3.29), and in paragraph 6.3 the officers stated:

" Members will also have a copy of the Owner's Solicitors letter dated 15 December 2008 – Annex B. The Committee's attention is, in particular, drawn to Paragraph 6 as the accusation in the Pre-Action Protocol letter from Gazelle Properties Limited is that the Committee [were] not provided with a full picture of the planning history of the site. This accusation is repeated in the application for leave to make the Judicial Review claim. Officers are of the opinion that the Committee did have all the relevant information to make its decision on the 29 October 2008, but are bringing this to the Committee's attention for the AVOIDANCE OF DOUBT. I would also refer the Committee to Paragraph 6 of the Council's letter at Annex C. If Members require any further clarification regarding any of the matters set out in either of these letters, I would ask that they seek this from Officers before the Committee meeting. Any queries raised by Members will be reported in the Update Report to this Committee."

The officers stated in paragraph 8.4 of their report:

" It is your officers' view, as set out in the October Committee Report, that the land outlined in bold on the Site Location Plan, Annex D, is now in a mixed use for the purposes set out above. Full consideration has been given to any " fall back" B2 use that may have existed up to the " call in" inquiry in 2002. There is, however, disagreement between the Council and the Owner of the land as to the significance of what was agreed within the SOCG ...

It is acknowledged that the Council had in the past accepted that the land which formed part of the application site at the 2002 ' call in' public inquiry had a B2 fall back use and that it would have been inexpedient at that time to take enforcement action against such use. However, this was based on the information available to the Council at the time."

The officers went on to tell the members that in their opinion a material change of use had occurred:

" The significance of these previous views is considered to be even less following the findings from the September 2008 site visit. These findings have been endorsed by the responses to the PCNs. It is considered that a material change of use of the land has now taken place as there are currently several uses taking place on the land and over a wider area than has historically been the case which, nevertheless, retain a link with the central part of the site. The material change of use to this current mixed use of the land has clearly occurred within the past 10 years and is therefore unauthorised. ... The Owner of the land does not concur with your officers'

view that planning permission is required for the present mix of uses on the land.”

In paragraph 9.1 of the report the officers expressed their view that the information in the responses to the planning contravention notices indicates that the conclusions in the October 2008 committee report regarding the mixed use of the site were correct. The officers also concluded (in paragraph 10.1) that, given the harm the unauthorized development was causing, the envisaged enforcement action would, represent “ a proportionate and necessary interference ... in the wider public interest” with the rights of the owner and occupiers of the land under the Human Rights Convention . They then turned to consider the expediency of enforcement action, concluding as follows (in paragraphs 11.1 to 11.5):

“ 11.1 It is considered expedient to commence enforcement action for the reasons set out in this Report having regard to the Development Plan and national planning policy (see paragraphs 3.49 – 3.52 of the October Committee Report). However, it is also considered reasonable to take account of the historical uses of the land when considering the extent of any enforcement action. To this effect, it is recommended that a B2 use is allowed to continue within Area A on the CLEU plan (Annex E) and that the residential use of 1 and 2 The Firs should not be fettered by the proposed enforcement notices. In this way, it is considered, that the action proposed is reasonable and proportionate to the harm caused by the breach of planning control.

11.2 It is recommended that within Area ‘ A’ on the CLEU plan, Annex E that the B2 use will be allowed to continue but that elsewhere, non agricultural activity should be ceased (apart from the residential use of 1 and 2 The Firs)....

11.4 The structures including the concrete manufacture and batching plant, storage bays, ancillary metal buildings and the permanently sited office building are considered unacceptable ... 11.5 The businesses on this site have become established and may encounter difficulties in re-locating. The users that will be allowed to remain within the core-area of the site will need to change their operations. The Council should therefore allow a reasonable period of time for compliance with the requirement to cease these unacceptable uses, the reduction in the area of industrial use and the removal/demolition of operational developments. ”

Thus the officers' advice was that, in view of the historic use of the site, enforcement action should not be taken against “ Area A” . Their recommendation to the committee was:

“ That delegated authority be granted to the Divisional Director of Planning and Transport Development, in consultation with the Planning and Environmental Law Manager, to take any necessary action on behalf of the authority in respect of the alleged planning contraventions set out above by exercising the powers and duties (as applicable) under [Parts VII and VIII of the Town and Country Planning Act 1990](#) (including any amendments to or re-enactments of the Act or Regulations or Orders made under the Act) in respect of the above land.”

24 Through requests for information made on behalf of Gazelle it has emerged that at the committee meeting the members received an annex, Annex B, which was not made public. This annex contains ten documents, which relate to the planning history of the site. This material was made available to the members outside the meeting. The public had no opportunity to see it or comment on it before the members reached their decision.

25 As the minutes of the meeting record, the committee resolved, by a vote of seven in favour and two against, with three abstentions, to accept the officers' recommendation in their report, though it is to be noted that in the resolution the

phrase "any necessary action" was used rather than "any necessary enforcement action". The resolution included a note which stated that the officers' delegated authority

"will, in addition to being the subject of subsequent report back to Members in the event of Enforcement Action being taken, not being taken or subsequently proving unnecessary as appropriate, be subject to:

...

(b) all action being subject to statutory requirements and any aspects of the Council's strategy and programme;

..."

### *Mr White's representations*

26 Mr White, the Managing Director of SES, was present at the committee meeting on 18 February 2009. SES had been set up as a special purpose vehicle to tender for the Council's waste contracts. Gazelle had entered into a formal agreement with SES, under which SES would be responsible for securing the requisite consents and commitments from the Council, whereupon SES would take a lease of the site and Gazelle would be entitled to share the profits from the waste contracts.

27 The background to Mr White's attendance at the committee meeting in February 2009 included correspondence and meetings, which may be understood from numerous documents that were produced to the court in evidence. It is not necessary to set out the whole of that story. The draft witness statement of Mr Matthew Smith, the Council's Divisional Director of Environmental Services, helpfully describes some of the salient events, and Mr White's witness statement adds detail of his own. It appears that in 2006 the Council had begun searching for suitable sites on which waste facilities could be located. Officers of the Council's Environmental Services team met Mr White on several occasions in 2006 and 2007 and discussed the concept of developing a waste recycling and treatment facility on the Fuller's Earth site. It is clear that a good deal of progress was made, to the point at which draft designs were being discussed in late 2007. In March 2008 Mr Smith indicated to Mr White that the Council would be willing to act with SES as joint applicant for planning permission for such a proposal. That position later changed. Mr Smith has explained how, and why:

"After a discussion with Planning Services (it was considered that a joint planning application was not a recommended route, particularly given our intention to apply for permission at other, more favourable sites) and consideration of our position (i.e. we could not enter into a formal contract with them and had no further funding to support this project), I informed Mr White (via a phone call) that although the Waste Authority would support the application, we would not be in a position to be joint applicants. I am sure that Mr White understood this.

..."

Mr Smith says that at a meeting in April 2008 it was made plain to Mr White that the Council would not be in a position to submit a joint planning application, and that

"Mr White was also advised that he should submit his application so that he would be in a position to tender for any work which we might offer. He was briefed on the West of England Partnership's plans to procure waste treatment facilities (to which we were a party) and the type of processing such a plant would be required to undertake. ... [SES] did not tender for the West of England contract."

28 Mr Smith concludes his draft witness statement with this:

" Discussions involving myself or Waste Services officers did not progress further following a meeting of the Waste Board at which I expressed concern about any further involvement in the matter. This was because the Board agreed (in October 2008) to place a moratorium on development proposals, pending greater clarity about whether the Western Riverside scheme would progress as planned and we could not be placed in a position where we might compromise the commercial confidentiality of the Western Riverside developer to another developer (Penhalt). It was therefore agreed that the authority's Property Services would act as the contact point for any further discussion with Mr White and I informed Mr White of this change. This moratorium also placed " on hold" work on proposals to develop our preferred sites (at Pixash Lane Keynsham and Lower Bristol Road Bath)."

29 Mr White states in his witness statement of 13 May 2009 (in paragraph 9) that after September 2008, progress with the application for comprehensive development of the site slowed, but that

" no-one from within the Council has withdrawn from supporting our proposals. SES remains fully committed to taking forward plans to develop the site comprehensively" .

As I understand it, no application has yet been submitted to the Council.

30 Mr White had registered with the Council his desire to speak at the meeting of the committee on 18 February 2009. He wanted to ask the members to defer their consideration of the taking of enforcement action, because he considered that such action would unnecessarily destabilize the process of negotiation between SES and the Council. In his witness statement Mr White described what happened at the meeting:

" 12. I attended the meeting of the Development Control Committee on 18 February 2009. I had previously registered with the relevant Council officer, expressing my wish to speak at the Committee. I was therefore surprised to hear the Chairman of the Committee state, prior to the Committee's consideration of the officers report, that the contents of my letter should be ignored. The Chairman then advised me that any future development proposals that my company might have for the site were not relevant to the deliberations of the Committee and that I should direct my statement only to the enforcement report on the agenda. I attach as exhibit JW2 a copy of the speech that I had prepared to read out at the Development Control Committee Meeting. I attempted to read this out to the Committee but was prevented from doing so by the Chairman who intervened to stop me raising these issues. I had no choice but to curtail my representations.

13. I remained at the Meeting during the Committee's consideration of the Item and noted, in particular, that one of the Councillors indicated that the Council should set up a " Select Committee" style Committee to consider the future of the site. My understanding of the proposal that the councillor was suggesting to the Committee was that this should be made up of Councillors and officers that would look into the history of the site, hear and consider evidence from all interested parties and then come up with recommendations in respect of the site. However, in view of the clear advice that the Chairman had given to the Committee regarding the matters that they were entitled to consider, I was not surprised that his attempt to persuade the Committee to adopt such a stance was not accepted."

31 The statement which Mr White intended to read to the committee introduced himself as the Managing Director of SES and stated:

" I hope you have all received my package of documents and have had the chance to peruse them

From the information contained you will see that my company has been engaged in negotiation with officers of Bath and Notheast Somerset Council

in order to deliver a solution concerning the land at The Former Fullers Earth Works, Combe Hay.

I appear today to urge deferment of this proposed enforcement action to allow negotiations with your officers, which have reached an advanced stage, to continue in line with this Council's own enforcement policy.

Enforcement would, in the context of these ongoing negotiations, be potentially destructive and achieve little but the frustration of all parties involved.

Continuation of these advanced negotiations could achieve the delivery of a comprehensive solution to problems at the site whilst providing a sustainable, low carbon, integrated waste facility serving the people of BANES for decades to come.

Proposals would provide for the recycling of organic wastes "in county" with the provision for renewable energy generation.

The facility would include a much needed replacement Household Waste and Recycling Centre.

To initiate enforcement action at this time would unnecessarily destabilize a process that your officers have clearly previously committed to, and would not accord with Banes published enforcement policy.

Proposed action would deprive the City once more of a rare chance to provide the ratepayers of BANES with a much needed facility and solve the existing problems at the site.

Your vote now is crucial.

A vote for enforcement is a vote for positive change enabling (deferment could enable) the delivery of a long term environmentally sound solution and the opportunity to transform for ever an eyesore at an important gateway to The World Heritage Site of Bath.

Let us not make the mistake made with previous comprehensive proposals for this site and grasp this opportunity for progress. A negotiated solution as proposed by this company is the only way forward."

32 The Council's enforcement policy to which Mr White alluded states, in the section headed "Principles" :

"The emphasis will be firmly on negotiating compliance or regularising breaches of planning control before considering formal enforcement action. The Council will take formal enforcement action only where it considers it **expedient to do so ...**"

In the section headed "General Principles for Good Enforcement Procedures" it is stated, among other things, that

"Unless immediate action is required, officers will endeavour to negotiate compliance or resolution and to provide the opportunity to discuss the circumstances of the case before formal action is taken."

The list of "planning enforcement criteria" includes

"Submission of planning application/listed building application"

and

"Not expedient to take enforcement action i.e. Permission is likely to be granted ... " .

These considerations seem broadly consistent with relevant national policy in PPG18 .

33 However, as the minutes of the meeting record, the Chairman of the committee, apparently in the light of advice he had received, was not content to allow Mr White to address the committee on proposals for development which SES might wish to bring forward in due course. The minutes record these remarks as having been made by the Chairman:

" Before we begin dealing with Agenda Item 11 regarding the former Fullers Earthworks site, I need to mention that I have received – and I believe that all other members have received – a letter and associated documents from Mr Jon White who has also registered to speak on this item. Mr White's correspondence relates principally to possible development proposals that he may bring forward for this site rather than the Enforcement Report in the Agenda papers.

I understand that Mr White has been informed that any future development proposals that his company may have for the site are not relevant to today's meeting and that he should direct his statement solely to the Enforcement Report on the Agenda.

Similarly, the documents received by Members from Mr White are not material to the Committee's assessment of the Enforcement Report and I am advised that Members must disregard those documents entirely in their determination of the matter before them. I will intervene if needed in order to ensure that the discussion remains focused on the issues relevant to the Report."

34 At the meeting there was no discussion of possible future development proposals or of the points raised by Mr White in correspondence.

#### *Mr Trigwell's delegated decision*

35 On 23 February 2009 a delegated decision to issue enforcement notices was made. The Council's Divisional Director of Planning and Transport Development, Mr Trigwell, to whom the decision to take " any necessary action" had been delegated, prepared a document entitled " Enforcement/Prosecution Considerations" . In that document Mr Trigwell recorded, among other things, the alleged breach of planning control as being " Change of use to mixed use site and operational development" ; the effect on the public and the environment as being an " Unauthorised use of land to the detriment of the Green Belt and other policies in Local Plan" ; the expediency of the proposed action being " As set out in Committee Report. Ongoing harm and Contrary to Policy" ; the effect of enforcement as being " To regularise and condition the site in the public interest" ; the attitude of the landowner as being " Unwilling to negotiate" ; and the " Conclusion (taking into account all of the above reasons why I am taking enforcement action[)]" being " An unregulated site, failure of negotiations to conclude issues, ongoing harm to Green Belt and other policy areas. In the public interest to proceed with enforcement action" .

*Gazelle's solicitors' letter of 24 February 2009* 36 On 24 February 2009 Mr Bosworth wrote to the Council stating that Gazelle did not accept that the breaches of planning control alleged by the Council had occurred, but that SES had been negotiating with the Council with a view to resolving " the situation that exists at this site" . Mr Bosworth also mentioned the fact that at the meeting of the committee on 18 February 2009 he had remarked that the advice the members had been given as to the relevance of what SES was attempting to say to the members was wrong. For this reason, said Mr Bosworth, he had advised Gazelle that the committee was misdirected in law, that the committee's decision to delegate the power to take enforcement action was " fundamentally flawed" , and that he was minded to advise Gazelle to commence further proceedings for judicial review.

#### *The enforcement notices*

37 Two enforcement notices were issued by the Council on 25 February 2009. The first notice, which relates to the use of the site, alleges a change of use of the whole site from residential use, agricultural use and general industrial use to a mixed use comprising nine different activities. It requires the permanent cessation of the use of the site, save for " Area A" , for several uses, including waste processing within Class B2, thus under-enforcing so as not to affect the area on which the Council considers general industrial use not to be unacceptable. The second notice, which relates to operational development, requires the demolition of the concrete batching plant on the site and the removal of the office building from it. The reasons given in notices for the taking of enforcement action referred to the planning harm and conflicts with policy upon which the Council relied.

#### *Gazelle's section 174 appeals*

38 On 20 April 2009 Gazelle appealed, under [section 174](#) of the 1990 Act, against both notices, the appeal against the first notice being made on grounds (a), (b), (c), (d), (f) and (g), and the appeal against the second notice on grounds (a), (c) and (g).

#### *The proposed allocation of the Fuller's Earth Site in the Joint Waste Core Strategy*

39 Since the enforcement notices were issued the Council has continued to participate, with the three other unitary authorities which belong to the West of England Partnership, in the production of a spatial planning framework for waste for its sub-region. This framework is called the Joint Waste Core Strategy. Ms Kaoru Jacques, a planning officer employed by the Council in its Planning Policy Team, has described the process in her witness statement of 16 November 2010. Among other things, the core strategy will identify indicative capacities for " Residual Waste" to be treated in the sub-region and will allocate " Residual Waste Facility sites" . The process is now well advanced. Several stages of consultation have been gone through. The draft core strategy was submitted to the Secretary of State in July 2010. Between 16 and 23 November 2010 an Inspector conducted an Examination in Public at which objections to the proposals in the document were heard. The Inspector will in due course issue his report, probably about eight weeks from now, setting out his conclusions and his recommendations, which will be binding. The core strategy is expected to be adopted in April 2011. Having been one of the 32 sites originally identified as possible locations for a strategic waste facility, the Fuller's Earth Site, which substantially overlaps the site which is the subject of the Council's enforcement action, did not progress to the Stage 3 assessment, which took place in early 2009, because it is in the Green Belt and close to the Area of Outstanding Natural Beauty. Thus the site was not included in the draft core strategy as a potential allocation for a residual waste facility at the time when the Council issued the enforcement notices. In July and August 2009 the Progress Update stage public consultation was carried out. The draft submission document was then prepared. It included the Fuller's Earth Site as a potential allocation for a residual waste facility. Thereafter the draft core strategy has proceeded with this allocation in place. Ms Jacques has explained in her evidence how proposals for development on the Fuller's Earth Site would be dealt with if it is retained as an allocation in the adopted core strategy, as the Council intends. In summary, she states (in paragraphs 53 and 54 of her witness statement):

" 53. The Fullers Earth site is proposed to be allocated as a residual waste facility with the safeguards and strict criteria that would require [sic] given the site's sensitive location.

54. The phasing of the Spatial Strategy suggests that Zone C is implemented to meet the medium term requirements ie 2016 – 2021. The Fullers Earth Site, even if allocated, might not therefore come forward for another 5 to 10 years which would leave the harmful impact caused by the unauthorised uses and development currently on a site in the Green Belt and in proximity to the AONB for some years to come."



40 In the material which it submitted in response to issues raised by the Inspector for consideration at the Examination in Public the Council, in answer to the questions " Is allocation of the Fuller's Earth Works site appropriate? Are any additional safeguards necessary?" , stated:

" The detailed site assessment report concluded that the Former Fullers Earth Works site is an appropriate site allocation for the development of a residual waste treatment facility because the site is well located to serve the needs of the south west of the Plan area.

The site has a long and complex planning history, and is currently owned and managed by a waste recycling company, it is currently operational but B&NES has issued two enforcement notices for alleged breaches of planning control. The notices have been appealed, but the appeal has been held in abeyance due to a claim for Judicial Review in the High Court. The site is situated in Green Belt so ... any proposals to develop the site would therefore need to demonstrate ... very special circumstances. The site assessment process has identified very few opportunities for development of strategic waste facility in this area, which is a relevant consideration for development in Green Belt. ..." .

That summary seems consistent with what was said in the responses to representations received to the Pre-Submission Document earlier in 2010, and in particular with the response to the representation submitted on behalf of the Coombe Hay Parish Council, which had drawn attention to the " current (and very long running) planning, planning enforcement and environmental issues relating to Site BA12 and its surrounding area [which] MUST be resolved before Site BA12 is considered as a site for a potential Residual Waste Treatment Facility" . The response stated:

" The allocation of Site BA12 is for its future use as a residual waste treatment facility. Allocation of the site will give a better operational and planning outcome."

No change to the draft core strategy was proposed.

41 In her second witness statement, dated 16 November 2010, the Council's Development Manager, Ms Lisa Bartlett, observes that there are representations for and against the allocation of the Fuller's Earth Site and that the allocation is not a foregone conclusion. She states (in paragraph 19 of her witness statement):

" There are a number of interested third parties such as the local residents, including those that come under the banner of ' The Victims of Fullers Earth' , the Combe Hay Parish Council and the Bath Preservation Trust. Were the Council to take no action they would be entitled to hold the Council accountable for allowing the continuing harm caused by the development to continue unchecked in the hope that the site is:—

- (1) allocated as a residual waste facility;
- (2) a successful planning application is submitted for a residual waste facility; and
- (3) the approved planning application is implemented and the site is developed as a residual waste facility some time in the future."

Ms Bartlett goes on (in paragraph 23) to say:

" I can further advise that the Divisional Director for Planning and Transport, David Trigwell, using his delegated authority, has confirmed that he does not consider it appropriate to refer the matter back to the Development Control Committee at the moment, notwithstanding the potential allocation in the JWCS, due to the continuing harm caused by the unauthorised uses and operational development taking place on the Site. Clearly the outcome of these proceedings and, in due course, the Inspector's report, will be reported to the Committee who will then have an opportunity to consider what future

action the Council should take in these circumstances.”

## Delay

42 The Council has maintained its resistance to the claim on the grounds of the delay in the bringing of proceedings, contending that this is a matter to which the court should have regard in exercising its discretion as to the granting of relief. It is true, and unfortunate, that the claim has not come to a hearing until more than 14 months after permission for it to proceed was given by Mr Ockelton, some 18 months after the application for permission was lodged, and some 21 months after the Council's resolution to delegate to its officers the taking of any necessary steps for the enforcement of planning control on the site. I have not been able to discern where the responsibility for this delay rests. The Council complains, probably correctly, that had the enforcement appeals taken their course rather than having been held in abeyance while the present proceedings run their course, the substantive issues in the appeals would by now have been resolved. But it appears that neither side has at any stage sought to have the hearing of the claim expedited. This is the context in which the issue of delay has to be considered. Has any identifiable delay caused any real prejudice to the Council? Mr Elvin stated, rightly in my judgment, that no such prejudice has been identified. The Council has not pointed to any particular period within the span of approximately three months from the date of the Council's decision to the launching of proceedings which is said to have caused some specific detriment to good administration, or any hardship or prejudice. A detailed and uncontested account of what was done in the preparation of the claim has been provided by Mr Bosworth in his second witness statement (dated 2 September 2009). I see no reason to doubt the accuracy of that account, and I accept it. In my view, there was no undue delay in the bringing of the claim such as to warrant the withholding of relief under [section 31\(6\) of the Senior Courts Act](#). Nor do I consider that, in the circumstances of this claim and its history, it would be right to give any material weight to delay as a factor in the exercise of my discretion to withhold such relief as might otherwise be appropriate.

## The relevant statutory framework

43 Control over the development of land is effected by [section 57\(1\) of the Town and Country Planning Act 1990](#) (“ the 1990 Act” ) which provides:

“ Subject to the following provisions of this section, planning permission is required for the carrying out of any development of land” .

44 “ Development” is defined by [section 55\(1\)](#) of the 1990 Act as meaning “ the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.”

45 [Section 171A](#) of the 1990 Act provides:

“ (1) For the purposes of this Act –

(a) carrying out development without the required planning permission; or

(b) failing to comply with any condition or limitation subject to which planning permission has been granted,

constitutes a breach of planning control.

(2) For the purposes of this Act –

(a) the issue of an enforcement notice (defined in section 172); or

(b) the service of a breach of condition notice (defined in section 187A), constitutes taking enforcement action."

46 The power to issue an enforcement notice is contained within [section 172](#) of the 1990 Act, which provides:

" (1) The local planning authority may issue a notice (in this Act referred to as an " enforcement notice" ) where it appears to them -

(a) that there has been a breach of planning control; and

(b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations."

47 An enforcement notice, once issued, may be varied or withdrawn under [section 173A](#) of the 1990 Act, which so far as is material provides:

" (1) The local planning authority may-

(a) withdraw an enforcement notice issued by them; or

(b) waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with section 173(9).

(2) the powers conferred by subsection (1) may be exercised whether or not the notice has taken effect.

..." .

48 [Section 174](#) of the 1990 Act provides for appeals to be brought against enforcement notices, on specified grounds:

" (1) A person having an interest in the land to which an enforcement notice relates or a relevant occupier may appeal to the Secretary of State against the notice, whether or not a copy of it has been served on him.

(2) An appeal may be brought on any of the following grounds -

(a) that, in respect of any breach of planning control which may be construed by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;

(b) that those matters have not occurred;

(c) that those matters (if they occurred) do not constitute a breach of planning control;

(d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;

(e) that copies of the enforcement notice were not served as

required by section 172;

(f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;

(g) that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed."

49 [Section 285](#) of the 1990 Act provides that

" the validity of an enforcement notice shall not, except by way of an appeal under Part VII, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought." "

### Issue (i): **Jurisdiction**

#### *The law*

50 In [Davy v Spelthorne Borough Council \[1984\] AC262](#), the House of Lords considered the provision in the Town and Country Planning Act 1971 which was the predecessor to section 285 , and in similar terms. Lord Fraser of Tullybelton stated (at p.272 D-G):

" But, in my opinion, the respondent's claim for damages is not barred by section 243(1)(a). That paragraph provides that the validity of an enforcement notice shall not be questioned in any proceedings whatsoever " on any of the grounds on which such an appeal may be brought." The words " such an appeal" are a reference back to an appeal under Part V of the Act of 1971 [analogous to Part VII of the 1990 Act], and they mean in effect the grounds specified in section 88(2) [of the 1971 Act, analogous to s.174(2) of the 1990 Act]. But section 243(1)(a) [of the 1971 Act, i.e. s.285(a)(a) of the 1990 Act] does not prohibit questioning the validity of the notice on other grounds. If, for example, the respondent had alleged that the enforcement notice had been vitiated by fraud, because one of the appellants' officers had been bribed to issue it, or had been served without the appellants' authority, he would indeed have been questioning its validity, but not on any of the grounds on which an appeal may be brought under Part V. So here, the respondent's complaint that he acquiesced in the enforcement notice because of negligent advice from the appellants is not one of the grounds specified in section 88(2), and it would not have entitled him to appeal to the Secretary of State under Part V of the Act of 1971 [ i.e. Part VII of the 1990 Act]. Accordingly, even on the assumption that the validity of the enforcement notice is being questioned in the present proceedings (an assumption which in my opinion is open to serious doubt), it is certainly not being questioned on any of the grounds referred to in section 243(1)(a) [of the 1971 Act, i.e. s.285(1)(a) of the 1990 Act] and the proceedings are not barred by that subsection. ..." .

Amplifying that principle in [R v Wicks \[1998\] A.C. 92](#) Lord Hoffmann stated (at p.120):

" ... there remain residual grounds of challenge lying outside the grounds of appeal in section 174(2) of the Act of 1990, such as mala fides, bias or other procedural impropriety in the decision to issue the notice. I shall call these " the residual grounds" . ... If section 285(1) says that the notice cannot be questioned on certain grounds, it follows that it *can* be questioned on any other grounds. One has to ask why they were not included in the appeal procedure. The reason, as it seems to me, is obvious. Questions of whether the planning authority was motivated by mala fides or bias or whether the

decision to issue the notice was based upon irrelevant or improper grounds are quite unsuitable for decision by a planning inspector ..." ,  
and (at p.122):

" I do not think that in practice hardship will be caused by requiring the residual grounds to be raised in judicial review proceedings. The statutory grounds of appeal are so wide that they include every aspect of the merits of the decision to serve an enforcement notice. The residual grounds will in practice be needed only for the rare case in which enforcement is objectively justifiable but the decision that service of the notice is " expedient" (section 172(1)(b) is vitiated by some impropriety" . "

51 In *R v Caradon DC, ex parte Knott* , a challenge was made to a local planning authority's decision to take enforcement action. The first ground of the challenge was that the authority acted outside the powers granted to it under [section 172\(1\)](#) of the 1990 Act because the taking of enforcement action was not expedient, as that section requires or, in the alternative, that the decision that it was expedient was, in the circumstances, unreasonable. Revocation and discontinuance orders in respect of the enforced against development were already in place and beyond challenge, and, as it appeared to the authority at the time when it issued the enforcement notice, the notice would achieve no more than those two orders would achieve. Sullivan J., as he then was, said this (at p. 171):

" Under section 172(1), it must appear " expedient" to issue an enforcement notice, not for any purpose, but for a proper planning purpose. It would not be lawful for a local planning authority to serve an enforcement notice upon a landowner, for the sole purpose of reducing the compensation payable to that landowner if his land was going to be acquired by the local planning authority, for example, under a compulsory purchase order. Issuing an enforcement notice must have some planning purpose. The reduction of a potential liability to pay compensation is not, on its own, such a purpose."

52 In the recent decision of the Court of Appeal in [The Health & Safety Executive v. Wolverhampton City Council\[2010\] EWCA Civ 892](#) the court considered the meaning of the concept of expediency in the taking of decisions under [section 97](#) and other provisions of the 1990 Act. [Section 97](#) provides the power for the local planning authority, if it appears to it to be " expedient" to do so, to revoke or modify a planning permission. Sullivan L.J., with whose judgment Longmore L.J. agreed, stated (in paragraph 38):

" I readily accept that it was for Wolverhampton as the local planning authority to decide what was the best way forward, but a decision to rule out taking action under section 97 as one of the options had to be a rational one applying conventional *Wednesbury* principles. Thus, Wolverhampton had first to correctly direct itself as to the ambit of its powers under section 97, and then reach a decision not to exercise those powers having regard to relevant, and not irrelevant, considerations. ..." .

Sullivan L.J. went on to consider the decisions of Richards J. (as he then was) in *Alnwick District Council v. Secretary of State for the Environment, Transport and the Regions* (2000) 79 P. & C.R . and of Ouseley J. in [R. \(Usk Valley Conservation Group\) v. Brecon Beacons National Park Authority \[2010\] EWHC 71 \(Admin\)](#) , preferring the latter in its conclusions on the relevance of the liability to pay compensation to an authority's decision under [section 97](#) (see paragraphs 39 to 62). Sullivan L.J. referred (in paragraph 42) to the conclusions expressed by Ouseley J. in *Usk* (in paragraphs 198 to 202 of his judgment) on the implications of the need for the authority to consider expediency in the making of such a decision:

" 198. An *expedient* decision would, to my mind, necessarily require attention to be paid to the advantages and disadvantages of taking one or other or none of the available steps under s102. These advantages and disadvantages should not be confined to those which the subject of the

notice would face; they should be measured against the advantages and disadvantages to the public interest at large, including the costs and effectiveness of the various possibilities. The question of whether the cost to the public is worth the gain to the public is, I would have thought, the obvious way of testing expediency. At least it is difficult to see that expediency could be tested without consideration of that factor.

...

201. ... S102, like s97 and s172, deals with expediency decisions: what if anything should be done about a state of affairs that has arisen. They are processes which an authority can initiate to deal with that state of affairs, if it is *expedient* to do so. There is no obligation to take enforcement action in respect of every breach of planning control, nor to take revocation or discontinuance proceedings in respect of unlawful uses or permissions which the authority wishes had not been granted. The notion of " *expediency* " in the context of a decision as to what to do, if anything, about a state of affairs which has arisen, brings with it the issue of whether the gain is worth the cost, which I regard as an obvious part of any decision on expediency. The cost and time of taking enforcement proceedings balanced against the prospects of success and the gain from success would be obviously relevant to the decision on enforcement proceedings.

202. Although Richards J. in *Alnwick* may be right to say that what is expedient must be judged in a planning context, that context is provided by the statutory provision itself. The inclusion of the notion of " *expediency* " contrasts s102, s97 and s172 enforcement, with s70, the grant of permission whether prospective or retrospective. This shows quite clearly that these provisions, two of which are expropriatory, must be approached quite differently from the grant of a s70 permission. ... " *Expediency* " is not part of the s70 decision-making process which, by contrast, is initiated by the applicant and not the authority, and requires the authority to reach a decision one way or the other having regard to the development plan and other material considerations. A proper and substantial meaning has to be given to that contrast and to the notion of " *expediency* " . No interpretation of s102 which fails to draw a very clear distinction between decisions under s70 and decisions under s102, or s97 and s172 for that matter, can be correct."

Sullivan L.J. observed (in paragraph 47) that

" the mere fact that the word " *expedient* " is to be found in sections 97(1) and 102(1) but not in section 70(2), is not, of itself, a sufficient reason for concluding that a local planning authority may lawfully have regard to its liability to pay compensation when deciding whether to make an order under section 97 or 102. The question is one of substance, not semantics, and the need for decisions under sections 97(1), 102(1) and 172(b) to appear to the local planning authority to be " *expedient* " is, in part at least, a reflection of the different character of the decisions that have to be taken under those enactments."

He went on (in paragraph 59) to endorse the submission of counsel that if a local planning authority was entitled to have regard to its liability to pay compensation under [sections 107 and 115](#) when deciding whether it was expedient to make an order under [section 97 or 102](#) , the weight to be given to that factor would (subject to *Wednesbury* irrationality) be a matter for the local planning authority. Longmore L.J, agreeing with Sullivan L.J., noted (in paragraph 65 of his judgment) the absence of the word " *expedient* " from the statutory language relating to the grant or refusal of planning permission. Pill L.J., disagreeing with Sullivan L.J. and Longmore L.J. as to the breadth of the concept of expediency, stressed (in paragraph 91) the statutory context, and the question for the decision-maker, therefore, will be whether the decision contemplated is

" expedient having regard to the development plan and to any other material considerations? The word permits latitude in an evaluation but the evaluation must be based on matters lawfully taken into account, in my view considerations relating to the character, use or development of the land" .

### *Submissions*

53 For Gazelle and SES, Mr David Elvin QC submitted that, in the light of the principle acknowledged in the House of Lords decisions in *Davy v. Spelthorne* and *Wicks* , and following the approach adopted by the court in *ex parte Knott* , it is plain that the court does have jurisdiction, on a claim for judicial review, to entertain and determine issues, such as those which arise in the present case, which go to a local planning authority's consideration of the expediency of taking enforcement action. Though the Council relies on the provision in [section 285](#) of the 1990 Act that the validity of an enforcement notice shall not, except by way of an appeal under [Part VII](#) , be questioned in any proceedings whatsoever " on any of the grounds on which such an appeal may be brought" , it is those words themselves which demonstrate the difficulty with the argument it seeks to advance. The present claim for judicial review, submitted Mr Elvin, clearly raises matters which could not be the subject of an appeal under [section 174](#) of the 1990 Act.

54 For the Council Mr Towler submitted that the exclusive provisions cannot be avoided by bringing proceedings for a declaration in anticipation of a notice being issued and served, if the substance of the proceedings, once the notice has been served, is a challenge to its validity falling within [section 174\(2\)](#) . He referred to [Square Meals Frozen Foods v Dunstable \[1974\] 1 WLR 59, in which the Court of Appeal](#) held that the proceedings were barred by the predecessor provision to [section 285\(1\)](#) of the 1990 Act and should in any event be stayed because the statutory appeals procedure was a comprehensive and also more convenient procedure for dealing with all the matters raised in the case. In [R. \(on the application of Sivasubramaniam\) v. Wandsworth County Court \[2003\] 1 WLR 475](#) Lord Phillips M.R. (giving the judgment of the court) stated (in paragraph 47) that there was:

" an abundance of authority for the proposition that judicial review is customarily refused as an exercise of judicial discretion where an alternative remedy is available. Where Parliament has provided a statutory appeal procedure it will rarely be appropriate to grant permission for judicial review. The exceptional case may arise because the statutory procedure is less satisfactory than the procedure of judicial review."

In that case the Court of Appeal referred to a number of authorities to that effect (including [R v Birmingham City Council, ex parte Ferrero \[1993\] 1 All ER 530](#) per Taylor L.J. at p. 537c) and also recognized that special considerations applied in the case of immigration appeals (see paragraphs 51 and 52). Mr Towler submitted, in effect, that the authorities cited by Mr Elvin to found the proposition that the court has jurisdiction to hear the present claim in truth provide no support for it. The cases of *R v Camden L.B.C., ex parte Comyn Ching* and *R. v. Wiltshire County Council, ex parte Nettlecombe* are, said Mr Towler, clearly distinguishable on their facts. In the Camden case the CPO had not taken effect and therefore the privative provisions did not apply. In the Wiltshire case, which concerned the regime in [section 66 of, and Schedule 15](#) to, the Wildlife and Countryside Act 1981 , the respondent authority's counsel conceded that there was no factual basis to support the Council's resolution to designate a route as a Byway Open to All Traffic. *Davy v Spelthorne DC* concerned a claim for negligence relating to advice by a planning officer in connection with an issued enforcement notice, which clearly fell outside the statutory grounds of appeal. The case of *Wicks* involved a criminal prosecution in the Magistrates' Court for a failure to comply with an enforcement notice in which the defendant sought to rely on matters which might have been challenged under the statutory grounds of appeal as part of his defence to that criminal charge. In *ex parte Knott* revocation and discontinuance orders were already in existence and the court concluded that there was, ~~Page 43~~ those circumstances, no need to issue

enforcement notices as well.

### Discussion

55 I accept Mr Elvin's submissions on jurisdiction. [Section 285](#) leaves for the court, on a claim for judicial review, grounds of challenge to the decision of a local planning authority to take enforcement action which are not within the compass of a statutory appeal as provided in [section 174](#) . Such grounds were described by Lord Hoffmann in *Wicks* as "residual" . Nowhere in the relevant authorities are they precisely or comprehensively defined. But, as Lord Hoffmann emphasized, the deliberate inclusion by Parliament of the words "on any of the grounds on which such an appeal may be brought" in the preclusive provision in [section 285\(1\)](#) is recognition of the fact that there is a category of challenge to an enforcement notice which is not within the ambit of [section 174](#) . The specific grounds in [section 174](#) are for decision-makers on appeals, not for the courts. This much is effectively acknowledged in the statutory code itself. Where the line is to be drawn between the statutory grounds and the residual category is for the court to determine. And the court has been cautious in drawing that line no further than the traditional boundaries of judicial review, as is shown by the Court of Appeal's decision in the *Wolverhampton* case.

56 As Mr Elvin submitted, two conclusions which are pertinent here emerge from that case and Ouseley J.'s decision in *Usk* : first, that the concept of "expediency" in contexts which include the exercise of enforcement powers by a local planning authority goes wider than the concept of material planning considerations such as are engaged in the determination of an application for planning permission, extending, in the enforcement context, to the balance of advantage and disadvantage to the public interest and, in particular, the question of whether the potential gain in going ahead with enforcement action against an identified breach of planning control is worth the cost and time likely to be spent in doing so; and, secondly, that an authority's exercise of its discretion when making an "expediency" decision is susceptible to review by the court on conventional public law grounds.

57 The "residual" category of grounds is not so narrowly confined as being limited only to cases of bad faith or bias. It may safely be said to include the exceptional case where, as Lord Hoffmann put it in *Wicks* , "the decision to issue the notice was based upon irrelevant or improper grounds" . One illustration of the kind of case that falls on this side of the line is to be seen in *ex parte Knott* . Another, in my judgment, would be the case where a local planning authority's consideration of the question of expediency – an exercise embracing the factors mentioned by Ouseley J. in *Usk* – was vitiated by irrationality or unfairness. Moreover, if matters relevant to the question of expediency and beyond the reach of the statutory grounds of appeal are ignored, or, as a corollary, if matters not relevant to that question are taken into account, the court's jurisdiction is not excluded by [section 285](#) . In my view therefore Mr Towler was right to acknowledge, without conceding their merit, that there are some matters raised in the present claim which are susceptible to judicial review. Those matters are clearly to be distinguished from the appraisal of planning merit required by an appeal on ground (a) in [section 174\(2\)](#) (which is equivalent to the task facing an authority dealing with an application under [section 70](#) ), from the fact finding exercise entailed in considering an appeal on ground (b), (c), (d) or (e), and from the judgments called for by an appeal on ground (f) or (g). So to conclude is, I believe, wholly consistent with the principles to which I have referred in *Wicks* and *Davy v. Spelthorne* , and it is not at odds with the jurisprudence which informed the cases on which Mr Towler relied.

58 Further support for that conclusion, albeit on a somewhat different rationale, can be seen in the decision of Dyson J., as he then was, in the *Wiltshire* case (at p.713):

" In my judgment, the court does have jurisdiction to entertain the application in the instant case. No good reason has been advanced against the existence of the jurisdiction. The existence of the statutory regime alone, in circumstances where it is accepted that the ouster clause does not bite, is not enough. It might be said that the fact that the ouster clause deals with



certain situations gives rise to the inference that Parliament did not intend to exclude the availability of judicial review in other situations. I prefer, however, to rest my decision on wider considerations. There has to be a good reason to deny jurisdiction. Prima facie, a party is entitled to have recourse to the court. It seems to me that the existence of the statutory remedy of public inquiry by an Inspector and statutory appeal thereafter is relevant to the question of whether I should refuse relief in the exercise of my discretion. I do not consider that it goes to jurisdiction. I find it difficult to detect any material distinction between the present case and *ex parte Comyn Ching*. [Counsel] did not identify any such distinction. His argument involves the proposition that, where a Council is threatening to commit a plain error of law ... an aggrieved party cannot seek the intervention of the Court. Instead, he or she is obliged to embark on the often time consuming and costly procedure of a public inquiry, in which objectors can make representations, possibly involving detailed factual investigations, with the risk that the Inspector may repeat the Council's error of law. [Counsel] did not seek to justify this, save by reference to the existence of the statutory regime."

(cf. the judgment of Lord Denning M.R. in *Square Meals Frozen Foods Ltd.*, at p.65 F-H).

### Conclusion

59 For the reasons I have given, I am satisfied that, in principle, an attack on the Council's decision on the expediency of taking enforcement action may legitimately be pursued by means of a claim for judicial review. It will, however, be necessary, for each of the issues with which I now go on to deal, to consider whether the challenge on that particular issue truly belongs to the "residual" grounds outside the scope of [section 174\(2\)](#) of the 1990 Act.

### Issue (2): **whether the decision of the Council's committee was vitiated by a failure to have regard to negotiations**

#### Submissions

60 Mr Elvin submitted that a decision to take enforcement action is discretionary, and, as a statutory pre-requisite to the exercise of that discretion in favour of enforcement, it must appear to the local planning authority that it is "expedient" to take that course ( [section 172\(1\)](#) ). In the present case it was incumbent on the Council's committee to ask itself whether the objectives of enforcement might nevertheless be achieved without resort to enforcement action. The Council's own policy for the enforcement of planning control, reflecting national policy in PPG18, indicates that the Council will endeavour to negotiate compliance or a resolution of the dispute rather than taking enforcement action. The committee did not consider, for example, whether, in view of the progress that had been made in negotiations, it would be expedient to delegate the taking of enforcement action to officers or whether it might better defer such action to enable the SES initiative which Mr White had wanted to explain to members to be further explored. The officers' advice to the members appears to have been, in effect, that negotiations were immaterial and that they were not entitled to give any weight to the negotiations at all, because they were not material. At least one member on the committee, Councillor Wilcox, had asked whether a "select committee" approach to considering the future of the site could be adopted. The Council's position was that by the time the committee met in February 2009 there had been sufficient time for Gazelle or SES to submit an application for planning permission. But this was not what the Council had decided, and it was not what the committee's Chairman had said.

61 Mr Towler countered those submissions with the contention that, as a matter of fact, Gazelle had refused to negotiate and that SES was not in "advanced negotiations" with the Council. Preliminary discussions had taken place, but there had been no meetings of any substance since October 2008. Nor had an application

for planning permission been submitted. And, in any case, the use of the site envisaged by Gazelle and SES was, in principle, contrary to policy. Mr Towler submitted that the committee's refusal to allow Mr White to read the statement he wished to read at the meeting was correct. The Council had been endeavouring for some time to negotiate with Gazelle. In June 2007, because Gazelle had at that stage indicated that it wished to negotiate, officers of the Council had agreed not to take a report to committee recommending that authority be given for the taking of enforcement action. After that there had been no meaningful negotiations. Invitations to meet the Council's officers were rejected. SES, for its part, had never submitted an application for planning permission. This was the context in which the decision was taken to prevent Mr White from reading his statement. That statement was not accurate, in two respects. In the first place, it wrongly asserted that negotiations were at an advanced stage. And, secondly, it was incorrect to state that officers were committed to SES's proposal. Mr Towler added that if local planning authorities had to refrain from considering enforcement action whenever speculative proposals were put forward, the effective enforcement of planning control would be undermined. But in the present case the possibility of an application being made by SES was not material to the committee's consideration of the unauthorized development that had taken place on the site, nor would it have relieved the need for the Council to consider the harm resulting from breaches of planning control on this prominent site in the Green Belt. The notion of a "select committee" approach to enforcement was not recognized in the Council's Constitution. Deferring their decision was an option open to the members, as they well knew, but they did not want to do that.

### *Discussion*

62 I accept the submissions made by Mr Elvin on this issue.

63 One must begin, I believe, with an understanding of the statutory context for the decision the Council's committee went about making at its meeting in February 2009. The context is provided by [section 172\(1\)](#) of the 1990 Act, which required the committee to ask itself, first, whether there had been a breach of planning control ( [section 172\(1\)\(a\)](#) ) and, secondly, if the answer to that first question was " yes" , whether it would or would not be expedient, having regard to the provisions of the development plan and to any other material considerations, to issue an enforcement notice ( [section 172\(1\)\(b\)](#) ). It is important to keep in mind that those two questions are separate. They imply the distinction between discerning a breach and deciding pragmatically what, if anything, ought to be done about it. This distinction was, as I see it, at the heart of the observations made by Ouseley J. in paragraphs 198 to 202 of his judgment in *Usk* , with which I would respectfully agree. Both questions required the committee to consider the relevant circumstances as they were at the time when they met. But the second question, if it arose, also required them to ask themselves whether the public interest demanded that enforcement action be proceeded with at that stage, and this made it necessary for them to take a reasonable and realistic view of the likely consequences of their going ahead with such action. This was an essential element of the expediency decision.

64 Did the members approach that decision lawfully when they excluded from it information and comment available to them about the discussions which had taken place between the Council and Gazelle and SES, including the negotiations which SES had had with the Council's Environmental Services department, and about the intentions of Gazelle and SES for the development of a waste recycling facility on the site? I do not believe that they did. 65 Even if one were to take the view that the considerations which bear on the expediency of issuing an enforcement notice must be considerations relating to the character, use and development of land, and must go no wider than that, it would be my view that the matters the members were told to disregard at the committee meeting on 18 February 2009 were matters truly germane to that question. They clearly embraced not only factors of relevance to the planning history of the site but also factors relevant to its planning future. And they were clearly capable of affecting the view to which the members had to come as to

the good sense or otherwise of taking formal steps to remove the existing use or uses of the land. Whether, in land use planning terms, it would be advantageous to compel the present industrial activity on the site to cease when another form of industrial development might possibly commend itself to the Council surely had the potential to influence the decision with which the members were faced. They were not determining such a proposal, or pre-empting any future decision. But the prospect of such a scheme coming forward, against the background which Mr White wanted to describe and within the timescale he envisaged, was, in my judgment, a consideration material to expediency. There is, and could be, no suggestion that what Mr White wanted to say to the committee was motivated by bad faith, or was simply a last minute ruse to deflect the enforcement of planning control. His remarks, had they been listened to, might not have proved decisive, or even significant. But that is not for the court to judge. The court is concerned only with establishing materiality. And in my view the representations Mr White wanted to make to the members were a material consideration.

66 It may be, as Mr Elvin submitted, that the Council had confused or had failed to distinguish between, on the one hand, negotiations directed at securing compliance with planning control and, on the other, negotiations aimed at regularizing the use and development of the site, including the possibility of one form of industry being replaced with another as a result of the submission and approval of a proposal. These two purposes are not the same. In correspondence the Council's officers do seem to have concentrated on discussions about compliance rather than on any meaningful dialogue about the future of the site. But, in any event, the assertions made on behalf of the Council in the pre-application correspondence – and indeed the submissions made by Mr Towler – about the stage negotiations had reached late in 2008, and the unlikelihood of further progress being made, simply go to reinforce the point that those negotiations were relevant to the members' consideration of expediency. It might be the case that the parties were never going to reach agreement. It might be right that Mr White's optimism was misplaced, as the Council contends. There is clearly some contest about that. Mr Elvin suggested that a fair reading of Mr Smith's draft witness statement is that the withdrawal of the Council's Environmental Services' department from the submission of a joint application with SES was just a hiatus, and not an end to progress. This too might be so. But these were matters for the members to consider and give such weight as they saw fit.

67 The officers' advice to the committee was not that the negotiations about the future of the site had turned out to be abortive, nor that they had no more than a faint chance of coming to anything. The fact is that there seems to have been no advice at all on this topic, one way or the other.

68 The difficulty for Mr Towler's submissions on this issue lies in the crucial difference between materiality and weight. It is one thing to say that a consideration is not material, and quite another to say that it is material but should command little or no weight (see [Tesco Stores Ltd. v. Secretary of State for the Environment \[1995\] 1 W.L.R. 759](#) , per Lord Hoffmann at p. 780). Mr Towler could not argue that the negotiations over the future of the site and the intentions of SES were material but given no weight, because there is no doubt that, at the committee meeting, both the officers and the members appear to have convinced themselves that these matters were immaterial. Mr Towler was not able to refute the clear evidence in the minutes that the members simply prevented themselves from judging what weight the negotiations and the intentions of SES should have. The members ought to have been allowed to make up their own minds on the weight, if any, to be given to the negotiations and, in particular, to Mr White's representations so that they could put that factor in the balance with the others which militated for or against the taking of enforcement action. Without that factor they could not properly strike the balance they had to strike. That they failed to do this was, in my judgment, a basic and fatal error. And I am no doubt that it is the kind of error which attracts relief in a claim for judicial review, rather than one which ought to be left, or could be, to an inspector hearing a statutory enforcement appeal.

*Conclusion* 69 For the reasons I have given this ground of the challenge succeeds.

### Issue (3): **whether the delegated decision was vitiated by a failure to have regard to negotiations**

#### *Submissions*

70 Mr Elvin submitted that the scope of the officers' delegated authority was defined by the delegation. To paraphrase the resolution: the Divisional Director of Planning and Transport Development, Mr Trigwell, in consultation with the Planning and Environmental Law Manager, was given authority, by virtue of that delegation, to take any necessary action on behalf of the Council to deal as he saw fit with the contraventions of planning control the members had identified. On the face of the document which Mr Trigwell completed, his decision and the members' were incompatible. The members had purposely given no attention to whether negotiations had failed, or to the intentions of Gazelle and SES, whereas Mr Trigwell patently did have regard to negotiations, though it was not clear from his document quite what it was that he did consider. Matters that were irrelevant at the time of the committee meeting could scarcely have become relevant a few days later, and vice versa. It was not open to the officer under delegated authority unilaterally to issue enforcement notices, partly at least on the basis of factors which the committee had ruled out of account. This ran counter to the principle apparent in the decision of the Court of Appeal in *Kides*. And it was no answer to point out, as had the Council in its detailed grounds, that the alleged failure of negotiations was but one of several factors in the officer's decision. Even if everything else in Mr Trigwell's document was as it ought to be, this one factor was enough to make the officer's decision bad.

71 Mr Towler submitted that there could be no dispute about the committee's power to delegate the decision on the taking of any necessary enforcement action to its officers. The submissions made for Gazelle and SES betray a misunderstanding of what it was that the committee actually resolved. The resolution was to grant "delegated authority" to Mr Trigwell to "take any necessary action" on behalf of the Council "in respect of the alleged planning contraventions set out above by exercising the powers and duties (as applicable) under [Parts VII and VIII](#) of the 1990 Act ..." . [Parts VII and VIII](#) of the 1990 Act contain a range of enforcement powers. In authorizing the officer to take "any necessary action" the resolution left to him the decision as to what the appropriate action would be at the time of his decision. He had a discretion as to what he should do. The only limit on that discretion was that it must be exercised in respect of the planning contraventions identified in the minutes, which in turn refer to the reports given in writing and orally by officers to the committee. Neither the resolution itself nor legal principle required the officer when subsequently making his decision to restrict his consideration to the matters which were before the committee. The position here was not analogous to that in *Kides* . The fact that there had been no meaningful negotiations was material to the officer's decision. That decision, said Mr Towler, was consistent with the relevant advice in paragraph 5(5) of PPG18 , and was informed by all relevant matters, including the history of the site.

#### *Discussion*

72 On this issue too I accept Mr Elvin's argument.

73 There is, in my judgment, an obvious tension between Mr Towler's submissions here and those he made in resisting the contention that the committee was entitled to ignore what Mr White had wanted to say about the negotiations and the intentions of SES. What Mr Towler had to say on this issue was, in effect, that Mr Trigwell, when acting on the authority delegated to him, was not only entitled to have regard to the progress – or lack of it – in negotiations between the Council and Gazelle but bound to take that factor into account because it was – as it was put in paragraph 49 of Mr Towler's skeleton argument – "material" .

74 In my judgment, the Council cannot have it both ways on the relevance of the negotiations to its decision to take enforcement action. If the negotiations were material to the delegated decisionpage Mr 148 Trigwell, they were material to the

members' decision from which the delegation sprang. Because they went to expediency, as I have held they did, they were in my view clearly relevant at the committee stage, when that issue was addressed, and did not become so only after the members had made their decision. Moreover, if they were material, they were, in my judgment, relevant in both of their aspects – compliance and regularization – and not just the former. In other words, it was necessary to consider not merely the question of whether, if enforcement action were not taken, the alleged breach of planning control was going to be removed or controlled to the satisfaction of the Council within a period of its choosing, but also whether there was a prospect of a satisfactory solution being found for the site through the initiative of a development proposal.

75 Mr Trigwell has not produced any evidence to explain precisely what he meant in the succinct remarks about negotiations which he made in completing his document entitled " Enforcement/Prosecution Considerations" . If those remarks are taken at face value they seem to give rise to three conclusions. In the first place, the fact of " negotiations" itself and the perceived " failure of negotiations to conclude issues" were regarded, at least by Mr Trigwell when acting on his delegated authority, as material to the decision whether or not to issue enforcement notices. Secondly, the proposition that the " attitude" of the " landowner/offender" was one of unwillingness to negotiate seems to leave out of account the thinking and behaviour of SES, which, on a fair view, could be seen as the opposite of unwilling. And thirdly, following my conclusion on the previous issue, although the attitude and aspirations of SES were material considerations, they were apparently not regarded as such by the officer. It follows that Mr Trigwell's decision to issue the enforcement notices was, at least to this extent, infected by the same error as I have found in the members' approach.

76 I do not think that the officer's failure to have regard to the intentions of SES is overridden by the Government's advice in paragraph 5(5) of PPG 18 that where a local planning authority fails in an initial attempt to persuade the owner or occupier of the site to remedy the harmful effects of unauthorized development, " negotiations should not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds, or to compel it to stop" . That advice does not say that negotiations are generally immaterial to the question of whether enforcement action is required or not, and in my view it should not be read in that way. It needs to be set in the broader context of the advice in PPG 18 , the tenor of which is to support a case-specific consideration of whether the taking of enforcement action is essential.

77 As with the previous ground, so too with this: the error is an error of law, and there is no reason why the court should not intervene to grant appropriate relief.

### *Conclusion*

78 I conclude that the claim must succeed on this ground.

**Issue (4): whether the committee's decision to delegate and the delegated decision were unfair and irrational**

### *Submissions*

79 Mr Elvin's submissions on this issue mirrored what he had said on the previous two. He submitted that to both the members' decision to delegate and the officers' decision upon that delegation the basic principles of fairness applied. As Woolf J. (as he then was) held in *R. v. Monmouth District Council, ex parte Jones* [1985] 53 P. & C.R. 108 (at p.115) a local planning authority is " under an obligation to consider [an] application for planning permission fairly" . When it is considering the expediency of taking enforcement action, or when it is delegating the decision to do so, the obligation is the same. It is underpinned by Article 6 of the Human Rights Convention . In the present case, both the members' decision, deliberately taken in reliance on advice that the preceding negotiations and the intentions of SES for a

waste plant on the site were immaterial, and the officer's delegated decision, consciously taken on the basis that Gazelle was "unwilling to negotiate" and that negotiations had in fact "failed", were, in the first place, irrational. The first decision was irrational because no reasonable local planning authority could have regarded the negotiations and the intentions of SES as other than relevant and important in the Council's consideration of expediency. The second decision was irrational both because it was inconsistent in its approach with the first and because it was patently wrong as a matter of fact, or, at best, partial in the sense that it ignored the intentions of SES. And, secondly, both of these decisions were also unfair because both of them were taken after Mr White had been prevented from sharing with the members his comments on the proposals SES wanted to pursue, and the support they had received in discussions with the officers of the Council as waste authority. Had the officer acknowledged the willingness of SES to take forward its proposal for the site in co-operation with Gazelle as the owner of the land, he could not reasonably have characterized the attitude of the "landowner" as being hostile to negotiation. The perversity of this process of decision-making was only compounded by the Council's subsequent decision to allocate effectively the same piece of land for the kind of use that SES was urging in February 2009.

80 Mr Towler submitted that there was no unfairness or irrationality in the committee's decision to delegate the taking of enforcement action, nor in the delegated decision itself. This decision must be seen in the right context. That context included, as the background to the committee's consideration of alleged breaches of planning control on the site, the long history of such breaches, the lack of any tangible outcome to negotiations, and the absence of an application for planning permission for a real proposal which might have undone the harm that was being caused to the Green Belt. Viewed in that context the officer's decision should be seen as being a rational determination which he was entitled to make.

### *Discussion*

81 Again, I accept Mr Elvin's submissions.

82 This issue is closely connected with the previous two, and my conclusions on it are similar.

83 In my view, it cannot sensibly be denied that in preventing Mr White from speaking at its meeting on 18 February 2009 the Council's committee acted unfairly. Mr White had something relevant to say about the matters in hand. He was entitled to have that taken into account by the members. There was no reasonable basis for the committee refusing to do that. Fairness in the making of a planning decision extends in both directions: to applicant and to objector (see *R.v. Monmouth District Council, ex parte Jones* [1985] 53 P.& C.R. 108, per Woolf J. (as he then was) at p.115). The unfairness in Mr White not being heard affected not only SES, but also Gazelle, as landowner, facing the possibility of enforcement action being launched against the current use of its site. The interests of both were prejudiced. It is enough that there was something which might have affected the outcome. As was held in [\*Hibernian Property Co. Ltd. v. Secretary of State for the Environment and another\* \(1974\) 27 P.& C.R. 197](#), a case in which objectors to a compulsory purchase order had not had the opportunity of commenting on information taken by the inspector from other objectors in the course of her site inspection, the court is concerned here with the loss of a chance to influence the outcome. In that case Browne J. stated (at p. 211):

"... the question is not whether the information obtained by the inspector did in fact prejudice the applicants by contributing to the decision of the Secretary of State to confirm the compulsory purchase order but whether there is a risk that it may have done so."

That is not a high test. Applying it in this case, I find it impossible to say that there is no risk that what Mr White wanted to say to the members might have made a difference to their decision.

84 The other point in Mr Elvin's submissions is also made out. For the committee

consciously to rule out any consideration of what Mr White had to say was, I consider, neither reasonable nor rational. I would have reached this view even in the absence of the Council's enforcement policy – underpinned as it was by national policy in PPG 18 – which sees relevance of the prospect of a negotiating a satisfactory outcome or means of regularizing the use or development of a site. The existence of that policy does, however, strengthen the conclusion that for the members to deny themselves any discussion of those matters and how much, if any weight, to give them, was irrational.

85 As on the previous two issues, I do not doubt that this part of the claim falls well within the province of judicial review.

### *Conclusion*

86 This ground of the challenge therefore succeeds. Issue (5): **whether the committee's decision was procedurally unfair**

### *Submissions*

87 Mr Elvin's submissions on this issue were based on the complaint, which was made in the first claim, that the decision to delegate enforcement action made by the Council's committee in October 2008 was flawed by the committee's failure to have proper regard to the planning history of the site. The attack is now directed at the manner in which the planning history came to be dealt with in the course of the committee's meeting in February 2009. In particular, Mr Elvin submitted that the provision to the members outside the meeting of the ten documents comprised in Annex B to the committee report was procedurally unfair. The documents were not attached to the officers' report when it was made available to the public, nor were the public given the chance to comment on them. Despite the obvious importance of the history of the site, no advice was given to the committee during its meeting about the position the Council had previously taken on the presence and extent of a lawful Class B2 use on the site. No privilege could be claimed for the documents. Indeed, they were all familiar to Gazelle. There was, therefore, no good reason for the members to receive or consider the documents in private. Gazelle would have wanted to address the committee on the historic use of the site had it known this was going to feature in the members' deliberations. This was particularly unsatisfactory because Gazelle had been assured by Mr Trigwell that the rationale for any enforcement action, in the light of the planning history and the Council's understanding of the planning unit, would be explained to it. It was not fair to Gazelle that the members received advice on those matters "in secret". Mr Elvin referred to the well-known observations of Lord Russell of Killowen in [Fairmount Investments Ltd. v. The Secretary of State for the Environment \[1976\] 1 W.L.R 1255](#) (at pp. 1265A to 1266A) on the need for parties to be given "a fair crack of the whip", and to the speech of Lord Mustill in [R. v. The Secretary of State for the Home Department, ex parte Doody \[1994\] 1 A.C. 531](#) (at p. 560):

"... Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; .... Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer."

The reason for withholding from the public the information which the Council had about the site's planning history had not been explained, said Mr Elvin, and the unfairness of its having done so taints both the committee's and the officer's decision.

88 Mr Towler submitted that this part of the claim is misconceived. The members' decision to adjourn was properly taken. There was no closed session of their meeting. They simply adjourned to enable themselves to retire and consider the papers comprising Annex B to the officers' report. Those papers had been compiled

by the officers to assist the members in their understanding the planning history of the site. This reflected the complaint, made on behalf of Gazelle in its solicitors' letter dated 15 December 2008 preceding the first claim for judicial review, that at the October 2008 meeting the members had been given an incomplete history. This amounted to no more than doing what the Council had been asked to do by Gazelle's solicitors. What had happened in this instance was no different from the quite normal giving of informal advice to members before or during a committee meeting. To accept the principle that such briefings should never occur in private would, as Mr Towler put it in his skeleton argument, " cause chaos to local government administration" .

### *Discussion*

89 I consider that Mr Towler's submissions on this issue are correct.

90 In the circumstances I see nothing sinister or untoward in the documents that were provided to the members being given to them outside the meeting. No real prejudice or unfairness to anybody resulted from this. Gazelle had seen, or had had access to, all of these documents. Their solicitors had been able to comment on them in representations to the Council, and the members had those representations before them. 91 Reference to Annex B was made in the list of annexes on the first page of the report for the February 2009 meeting. The document referred to there was a front sheet identifying the documents mentioned in paragraph 6 of Gazelle's solicitors' letter of 15 December 2008. All of the documents identified were in Gazelle's possession and their solicitors had already commented on the matters they raised not only in that letter, which was itself provided to the members, but also, at length, in Mr Bosworth's letter of 30 June 2008 to Mr Trigwell. Indeed, it was for this very reason that the documents were made available to the committee. I do not doubt the evidence which has been given about what happened during the adjournment of the committee meeting, by Ms Horrill in her witness statement of 21 August 2009 (in paragraph 10) and by Ms Bartlett in hers of 20 October 2009 (in paragraph 78), the gist of which is that during the adjournment copies of the documents referred to in Annex B to the officers' report were made available to the members, but that neither any other material nor any additional advice was given to them by the officers.

92 This was not a case of members of a committee receiving, outside the meeting of that committee, entirely new material relating to an item on their agenda or material which had not previously been seen by the parties involved. What happened in this instance was that the committee was given the very material the absence of which at its meeting in October 2008 had moved Gazelle's solicitors to complain in their letter of 15 December 2008. The complaint had been that the officers' report to the October meeting had failed to provide the committee with a full picture of the planning history of the site. Behind this lay Mr Bosworth's letter of 30 June 2008 identifying the occasions on which the Council had previously confirmed the Class B2 use of the site.

93 I accept that the officers who were briefing the members at the committee meeting in February 2009, and presumably the members themselves, wanted to ensure that the Council could not again be criticized for failing to have regard to the planning history as it was displayed in materials which Gazelle, or their solicitors, thought significant. Had the documents not been provided to the committee, it seems likely that the complaint made in the first claim would have been repeated in the present proceedings. The point now taken is a very different one. It is not about the adequacy of the information the members received but about the circumstances in which they were given it. If the documents had been produced and discussed in the meeting itself Gazelle could not, and presumably would not, have complained. This does not mean, however, that the submissions made by Mr Elvin are cogent. In my judgment, for the reasons I have given, they are not.

### *Conclusion*



94 This ground of the application therefore fails.

## Issue (6): **the planning unit**

### *Submissions*

95 Mr Elvin's submissions on this issue took as their starting point the complaint made in Gazelle's first claim for judicial review that, in their report for the committee meeting in October 2008, the Council's officers had failed to apprise the committee of the considerations necessary to ascertain the relevant planning unit. The essence of the complaint was that although the officers' had recognized the relevance of the concept of the planning unit in a case where dispute had arisen as to a material change of use, had set out for the members the considerations bearing on the proper identification of the planning unit, and had suggested the location and extent of the planning unit within which the composite use was said to have been begun, they had not properly assessed the planning unit to which the lawful Class B2 use related. Mr Elvin submitted that this shortcoming had not been put right in the report for the committee meeting in February 2009. Once again the officers had acknowledged that it was necessary to identify the planning unit to which the enforcement action might relate. But again they had failed to come to grips with the question of what the planning unit actually was. Had they done so the members might never have concluded that the taking of enforcement action was expedient.

96 Mr Towler submitted that the question of the true extent of the planning unit was not a matter for the court, but for an inspector hearing a [section 174](#) appeal. In other words, this issue lies beyond the scope of the court's jurisdiction on a claim for judicial review. In any event, the question of the planning unit was addressed, and properly addressed, in both the October 2008 and the February 2009 committee meetings. The members were shown a power-point presentation and various drawings, as Ms Bartlett had described in her evidence. The Council's contention was that a new chapter has opened in the planning history of the site, changes having taken place in the extent of planning unit and in the uses going on within that unit. But, be that as it may, the committee did not fall into any justiciable error when grappling with this aspect of the whole matter.

### *Discussion*

97 I accept Mr Towler's submissions on this issue.

98 Here, in my judgment, although Mr Elvin maintained that this part of the challenge went no further than to impugn the process by which the planning unit had been considered, or not considered, by the Council, the claim does trespass into the territory defined by the statutory grounds of appeal in [section 172](#) of the 1990 Act. The court's jurisdiction is therefore excluded by [section 285](#) of the 1990 Act. There is good reason for this. Matters of fact and degree are quintessentially the responsibility of inspectors dealing with enforcement and other planning appeals. Inspectors find the facts. They scrutinize the relevant planning history. If there is dispute, which often there is, as to the implications of events that have occurred in what may be a lengthy and complex history, for example a material change in the use of land within or including the site on appeal, or the abandonment of a particular use or the intensification or expansion of a particular activity, it is for the inspector to resolve. He hears the evidence and submissions. He inspects the site and its surroundings. Ascertaining the extent of the planning unit, if that is controversial, will be a basic exercise for him to undertake, applying tests which are well established. None of this is the business of the court on a claim for judicial review.

99 It is true that Mr Elvin's submissions acknowledge all of that. He was careful to stress that his aim was at the procedural, not the substantive dimension of the Council's decision. But the divide is not distinct. When one looks at the statutory grounds which have been submitted to the Planning Inspectorate on behalf of Gazelle in its appeal against the first enforcement notice, one sees in the appeal on

ground (b) that the issue of the true extent of the planning unit is squarely raised:

“ The enforcement notice alleges that a single composite planning unit has been created throughout the area referred to in the notice. This is not the case. Although the freehold of the land identified in the notice is in one ownership the uses described in the notice are neither functionally nor physically related to one another and the change of use that is alleged has not occurred.”

Should those contentions be resisted by the Council this would be an issue for the inspector hearing Gazelle's [section 174](#) appeal. The strength of either side's case on that issue is not for the court to decide. Within the statutory process Gazelle would be able to put forward its case, through evidence and submissions, on the extent of the planning unit which it believes has the benefit of a lawful use in Class B2. The Council, whether or not it has so far considered the question as closely as Gazelle suggests it ought to have done, would have to confront that case. The inspector would have to decide which case was right. If the Council has not yet addressed its mind to the question, though it seems firm in its belief that it has, it would be well advised to do so before producing its evidence for the appeal. If its case did not stand up to scrutiny and it were shown to have behaved unreasonably in this respect it would be exposed to the possibility of costs being awarded against it. Those matters, however, would be for the inspector; they are not for the court.

### *Conclusion*

100 This ground of the claim therefore fails.

### **Issue (7): whether the Council's continuing decision to enforce is vitiated by failure to reconsider the expediency of enforcement action in the light of the proposed allocation of the Fuller's Earth Site in the emerging Joint Waste Core Strategy Submissions**

101 Mr Elvin submitted that, irrespective of the position in February 2009, the mandate to enforce conferred on the officers then could not survive the subsequent proposed allocation of the site for a waste recycling facility in the development plan. This was a material change of circumstances calling for the matter to be put back before the members, or, at least, for the officers to exercise their own discretion again. Neither had happened. It was, Mr Elvin submitted, well established that a decision coming after a claim for judicial review had been made might itself be reviewed if it were germane to the one already impugned. For this proposition he cited three immigration cases, namely [R. v. The Secretary of State for the Home Department, ex parte Alabi \[1997\] I.N.L.R. 124](#) , [R. v. The Secretary of State for the Home Department, ex parte Turgut \[2001\] 1 All E.R. 719](#) and [E v. The Secretary of State for the Home Department \[2004\] Q.B. 1074](#) , and two planning cases, namely *Kides* (to which I have already referred) and [R.\(on the application of Dry\) v. West Oxfordshire District Council \[2010\] EWCA 1143](#) . Mr Elvin submitted that in a case such as the present, in which more than 20 months have elapsed since the decisions under challenge were made, it was not merely possible but necessary for the court to have regard to the situation as it is now. For the Council to persist now in its decision that enforcement action is expedient in this case, without formally reconsidering that decision, was irrational. The exercise of the statutory discretion to take enforcement action is predicated, in the first place, on it appearing to the local planning authority that a breach of planning control had emerged, but also, secondly, on the authority considering it expedient to enforce having regard to the development plan and other material considerations. It is pertinent that, once an enforcement notice has been issued, the authority has power, under [section 173 A](#) of the 1990 Act, to withdraw it, or to waive or relax its requirements, at any time. The existence of this power implies the need for a continuing discretion to be exercised in the enforcement of planning control in the light of circumstances as they evolve. Analogous to this requirement, Mr Elvin argued, is the duty of a local planning authority, under [section 70\(2\)](#) , to take into account, before issuing its formal decision on an application for planning permission, any new material consideration –

indeed, anything that might rationally be regarded as a material consideration – arising after the resolution to grant or to refuse has been made. This duty had been underlined by the Court of Appeal's decisions in *Kides* and *Dry*. The principle was the same in an enforcement case. Enforcement action engages the public interest. If it ceases to be in the public interest to pursue it the local planning authority should not do so. In the present case it was obvious that the Council ought to have asked itself whether it ought to withdraw the enforcement notices once it had decided to promote the allocation of the site for waste recycling development in the joint waste core strategy. Having maintained that proposal in the face of opposition to it at the public examination of the draft core strategy, the Council now has no sensible choice but to desist from enforcing against industrial use on the site.

102 Mr Towler did not accept the concept that a local planning authority which has initiated enforcement action is under a continuing duty to review the appropriateness of proceeding with such action. None of the authorities cited by Mr Elvin sustains the proposition he sought to gain from them. Both of the planning cases relied upon could be materially distinguished on their facts. The immigration cases Mr Elvin relied on are also distinguishable. As Ms Jacques had explained in her witness statement of 16 November 2010, the present uses on the site which have been enforced against are contrary to Green Belt policy. The use now proposed to be allocated by the Council in the Joint Waste Core Strategy would also be contrary to that policy. That use is a "sui generis" use and is therefore not the same as the use for which planning permission is being sought through the ground (a) appeal against the first enforcement notice. Moreover, as Ms Jacques had said, even if the site is eventually allocated, the Council does not envisage a waste facility being built on it for some five years hence. The timescale for the site's development in accordance with the allocation remains to be resolved. Thus, on the facts of the present case, taking the question of the expediency of enforcement action back to the committee could not be justified. Only when the result of the Inspector's deliberations on the proposed allocation and the outcome of the present proceedings are known would it be right for the committee to consider the matter afresh. Gazelle has a remedy. If the Inspector who hears Gazelle's appeals against the enforcement notices concludes that the notices ought to have been withdrawn before the inquiry and, therefore, that the Council had behaved unreasonably, he would be able to award costs in favour of Gazelle.

*Discussion* 103 In *Kides* the authority's committee had resolved in 1995 that it was minded to permit residential development subject to the completion of a [section 106](#) agreement. That was done five years later, whereupon planning permission was issued by an officer without referring the matter back to the members for them to consider whether any new considerations which might cause them to change the authority's decision had arisen in the meantime. The Court of Appeal held that there was no requirement to take the proposal back to a committee in the particular circumstances of that case. Parker L.J. stated (in paragraphs 125 and 126 of his judgment):

" 125. ... where the delegated officer who is about to sign the decision notice becomes aware (or ought reasonably to have become aware) of a new material consideration, section 70(2) requires that the authority have regard to that consideration before finally determining the application. In such a situation, therefore, the authority of the delegated officer must be such as to require him to refer the matter back to committee for reconsideration in the light of the new consideration. If he fails to do so, the authority will be in breach of its statutory duty.

126. In practical terms, therefore, where since the passing of the resolution some new factor has arisen of which the delegated officer is aware, and which might rationally be regarded as a "material consideration" for the purposes of section 70(2), it must be a counsel of prudence for the delegated officer to err on the side of caution and refer the application back to the authority for specific reconsideration in the light of that new factor. In such circumstances the delegated officer can only safely proceed to issue the

decision notice if he is satisfied (a) that the authority is aware of the new factor, (b) that it has considered it with the application in mind, and (c) that on a reconsideration the authority *would* reach (not might *reach*) the same decision."

In *Dry*, Carnwath L.J. referred to what Parker L.J. had said in *Kides* (in paragraph 126) and stated (in paragraph 16):

" Without seeking to detract from the authority of the guidance in *Kides*, I would emphasise that it is only guidance as to what is advisable, " erring on the side of caution" . Furthermore, in that case there had been a gap of five years between the resolution and the issue of permission. The guidance must be applied with common sense, and with regard to the facts of a particular case."

104 I see a distinction between the situation in which a local planning authority has not yet issued a statutory decision on an application for planning permission, though it may have resolved to grant such permission, and that in which it has both resolved to issue and has issued an enforcement notice to remedy a breach of planning control. The former situation can be said to be one in which the particular statutory process involved is still incomplete; in the latter the relevant process has reached its finality. But, as Mr Elvin points out, the position is not quite as simple as that. The existence of the power in [section 173A](#) to withdraw or amend an enforcement notice after it has been issued, and even after it has taken effect, implies a continuing responsibility for the authority to keep under review the expediency of the action it has decided to take.

105 Whether or not it would be right to construct from [section 173A](#) a continuous, proactive duty to review, as Mr Elvin's submissions suggest, it is only necessary for the purposes of the present case to discern the requirement that the power conferred by this provision be exercised in accordance with public law principle. What this means at least, in my view, is that when there emerges, while an enforcement notice subsists, some new factor of which the local planning authority is or should be aware, and which is material to the expediency of the notice, the authority should consider whether to exercise its power to withdraw or amend. It seems to me that this accords with the rather broader statement in the note at P173A.03 in the Encyclopedia of Planning Law and Practice, which I would respectfully endorse:

" The ability to withdraw a notice that has come into effect allows the authority to sweep clean the planning title of a site where the enforcement notice is no longer relevant."

106 What then are the consequences of such a requirement in this case? I think they are clear. In pursuing the allocation of the site for a waste recycling facility the Council has self-evidently accepted the principle of this form of industrial use on the site, no matter whether it is properly to be categorized as a " sui generis" or as a Class B2 use. To have done this the Council must presumably have considered whether such a facility could be acceptable in principle, notwithstanding the site's presence in the Green Belt and its proximity to the Area of Outstanding Natural Beauty and the World Heritage Site. As Mr Elvin observed, the fact that the site had originally been kept out of the emerging core strategy, and was only put in after enforcement action had been taken, is itself a material change in circumstances. I do not think that the fact that any redevelopment of the site for such a waste recycling facility would necessarily require planning permission, or the fact that the Council apparently does not see the site being required for this purpose immediately, goes against that acceptance in principle. In my judgment, the fact of the site's having been promoted for waste recycling development is, on any sensible view, a consideration relevant not merely to the merits of Gazelle's ground (a) appeals against the enforcement notices but also to the expediency of the very decision to enforce.

107 Although the Allocation of the Fuller's Earth Site in the waste core strategy is not yet certain, the fact of its promotion by the Council is. It seems plain from paragraph 23 of Ms Bartlett's witness statement of 16 November 2010 that neither by a decision of its Development Control Committee nor by Mr Trigwell exercising his delegated authority – if, having issued the enforcement notices, he retains such authority – has the Council considered whether the progress of the proposed allocation and its own support for that allocation are factors which would justify the exercise of the power available to it under [section 173A](#) . I accept the submission of Mr Elvin that this ought to have been done. At this stage the proposed allocation is, without doubt, a material consideration which goes to the expediency of the enforcement action which the Council has seen fit to take. And for this reason, in my judgment, it is a matter for the members, not Mr Trigwell, to weigh.

### *Conclusion*

108 For the reasons I have given this ground is sustained.

109 To the extent that I have indicated this application therefore succeeds. I shall hear counsel as to the appropriate form of relief.

Crown copyright

© 2011 Sweet & Maxwell



## Figure 10

## BA12 Former Fuller's Earth Works, Fosseway, Bath

Identified for Policy

Policy 5

Site Area

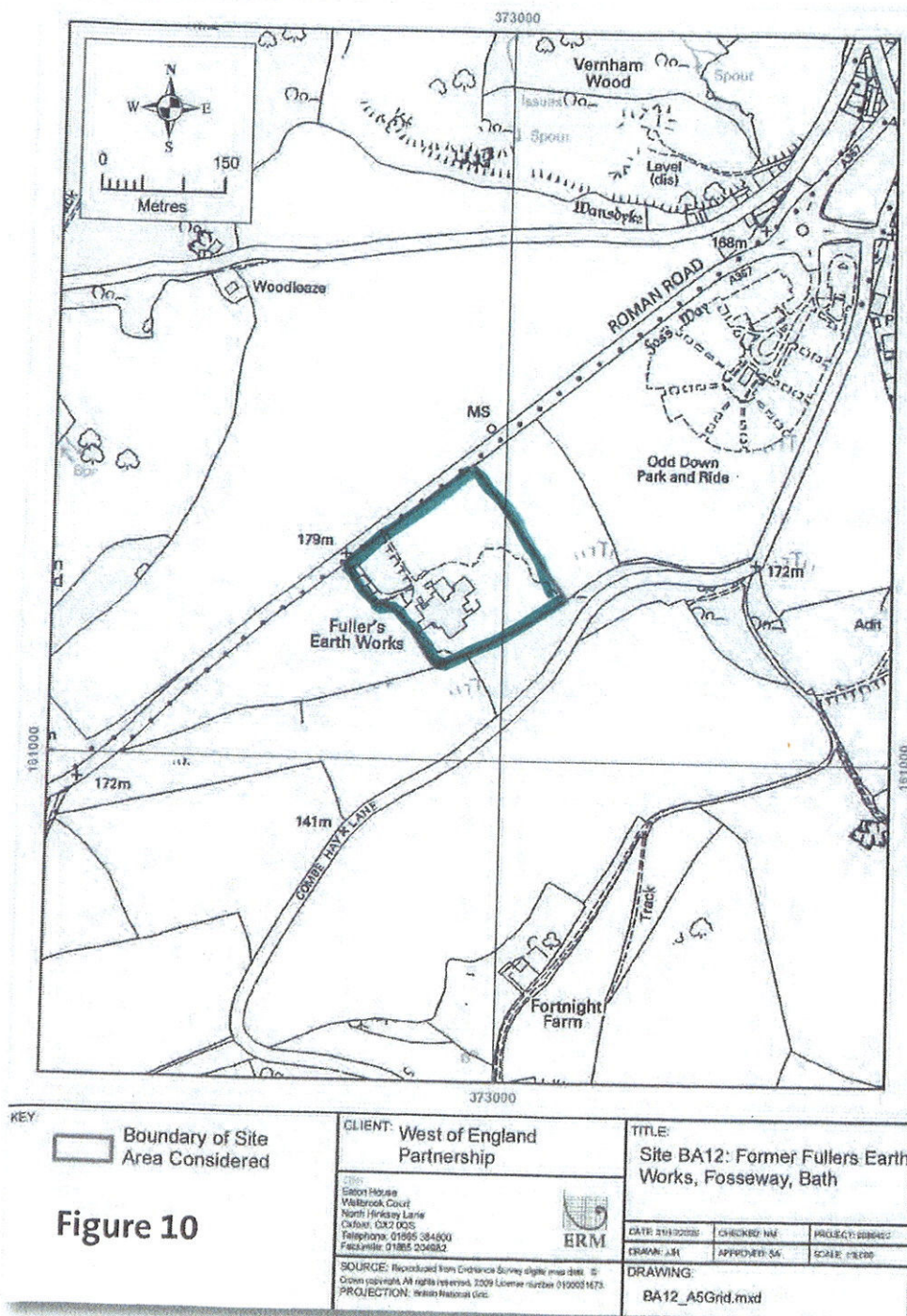
3.36 ha

Key Development  
Criteria

- Traffic: Any proposal should assess traffic movements and the relationship with adjacent development.
- Strategic Flood Risk Assessment: Any proposal should refer to the flood mitigation measures listed in the Joint Waste Core Strategy Strategic Flood Risk Assessment Report (June 2009).
- Habitats Regulation Assessment: The Joint Waste Core Strategy Habitats Regulations Assessment (August 2009) found BA12 to be unsuitable for a thermal treatment facility based on all parameters assessed, but potentially suitable for the other waste facility types considered. Any proposal for thermal treatment at BA12 would require further assessment which would have to demonstrate that it could meet the requirements of the Habitats Regulations and that it would not have an adverse effect on the integrity of European designated sites.
- Bats: A greater horseshoe bat roost is known to have been present on this site in 2000, however the exact location was not recorded. Bat radio tracking surveys between 2000 and 2009 suggest that horseshoe bats are using habitats in the local area for foraging and commuting. It is not known whether the identified bat roost was linked directly with the Bath and Bradford-on-Avon Bat Sites SAC. Bats and their roosts and the SAC are protected under the Habitats Regulations and any development at this site will need to demonstrate that it will not have an adverse effect on the integrity of the SAC (alone or in combination), or the favourable conservation status of any bat species present. Mitigation measures should be considered as part of further assessment as necessary to demonstrate that a development proposal will have no adverse effect on the integrity of the SAC or the bat species. Mitigation measures will need to be tailored to the precise use of the site by bats which will require further bat surveys, however could include the following measures:
  - Ensuring foraging areas and commuting routes are maintained and enhanced as necessary;
  - Provision of replacement artificial roosts and habitat as informed by further survey work; and
  - Any necessary monitoring surveys.
- Site Design: A high standard of design is expected for both built development and site layout, including landscaping, the relationship with nature conservation and geological interest on site.

## Appendix 1 – Key Development Criteria and Detailed Maps

- Site Design: A high standard of design is expected for both built development and site layout, including landscaping, the relationship with nature conservation and geological interest on site.
- Visual Impact: A landscape and visual impact assessment would be expected to address the Area of Outstanding Natural Beauty, World Heritage Site and its Setting.
- Green Belt: Any development should be designed to minimise any impact on the openness of the Green Belt.
- Land contamination: Any proposal should consider potential land contamination on site and appropriate remediation.





<b>Bath &amp; North East Somerset Council</b>		
MEETING:	Development Control Committee	
MEETING DATE:	11 <sup>th</sup> May 2011	AGENDA ITEM NUMBER
TITLE:	Quarterly Performance Report – Oct – Dec 2010	
WARD:	ALL	
<b>AN OPEN PUBLIC ITEM</b>		
<b>List of attachments to this report:</b>		
None		

## **1 THE ISSUE**

- 1.1 At the request of Members and as part of our on-going commitment to making service improvements, this report provides Members with performance information across a range of activities within the Development Management function. This report covers the period from 1<sup>st</sup> Oct – 31<sup>st</sup> Dec 2010 as comparative data is not available until the end of the following quarter (31<sup>st</sup> March 2011).

## **2 RECOMMENDATION**

- 2.1 Members are asked to note the contents of the performance report.

## **3 THE REPORT**

### **3.1 Commentary**

Members' attention is drawn to the fact that as shown in **Table 1** below, performance on 'Major', 'Minor' and 'Other' were all below government targets during Oct - Dec 2010, this is the first time since 2007/08.

Performance on determining 'Major' applications within 13 weeks rose slightly to 50% during the Oct to Dec 2010, but still below target. Performance on determining 'Minor' applications within 8 weeks fell from 66% to 59%. Performance on 'Other' applications within the same target time of 8 weeks dropped from 82% to 70%, again below target.

**Table 1 - Comparison of applications determined within target times**

<b>Government target for National Indicator 157</b>	<b>National Oct - Dec 2010</b>	<b>B&amp;NES Apr - Jun 2010</b>	<b>B&amp;NES Jul - Sep 2010</b>	<b>B&amp;NES Oct - Dec 2010</b>
'Major' applications 60%	66%	12/20 (60%)	9/21 (43%)	12/24 (50%)
'Minor' applications 65%	74%	115/176 (65%)	103/156 (66%)	86/145 (59%)
'Other' applications 80%	85%	294/379 (78%)	311/378 (82%)	263/378 (70%)

Note: An explanation of 'Major', 'Minor' and 'Other' categories are set out below.

**'LARGE-SCALE MAJOR' DEVELOPMENTS – Decisions to be made within 13 weeks**

- Residential – 200 or more dwellings or site area of 4Ha or more
- Other Land Uses – Floor space of more than 10,000 sq. metres or site area of more than 2Ha
- Changes of Use (including change of use or subdivision to form residential units) – criteria as above apply

**'SMALL-SCALE MAJOR' DEVELOPMENTS – Decisions to be made within 13 weeks**

- Residential – 10-199 dwellings or site area of 0.5Ha and less than 4Ha
- Other Land Uses – Floor space 1,000 sq. metres and 9,999 sq. metres or site area of 1Ha and less than 2Ha
- Changes of Use (including change of use or subdivision to form residential units) – criteria as above apply

**'MINOR' DEVELOPMENTS – Decisions to be made within 8 weeks**

- Residential – Up to 9 dwellings or site up to 0.5 Ha
- Other Land Uses – Floor space less than 1000 sq. metres or site less than 1 Ha

**'OTHER' DEVELOPMENTS – Decisions to be made within 8 weeks**

- Mineral handling applications (not County Matter applications)
- Changes of Use – All non-Major Changes of Use
- Householder Application (i.e. within the curtilage of an existing dwelling)
- Advertisement Consent
- Listed Building Consent
- Conservation Area Consent
- Certificate of Lawfulness
- Notifications

**Table 2 - Applications determined in comparison with other Unitary Authorities**

<b>Neighbouring Unitary Authorities: Oct – Dec 2010</b>	<b>'Major' decisions within 13 weeks (%)</b>	<b>'Minor' decisions within 8 weeks (%)</b>	<b>'Other' decisions within 8 weeks (%)</b>
Bath & North East Somerset	50%	59%	70%
Bristol City	72%	81%	90%
North Somerset	90%	73%	88%
South Gloucestershire	73%	79%	91%

The latest available data shown in **Table 2** above indicates that the Council's performance failed to meet all three categories of performance targets for the Oct – Dec 2010 period. It demonstrates also that all the surrounding unitary authorities are still determining applications above the national targets of 60%, 65% and 80% respectively.

There has been an increase in work received by the department since spring '10 and work loads have remained relatively high since. Officers have been dealing with this at the same time as concentrating effort in clearing backlog work following the departure of some members of staff in the summer. A backlog in registering applications has developed since Christmas, which has had a knock on affect in terms of the target dates for the determination of the applications by case officers, and whilst the situation is improving a mini review of the registration process is underway in order to improve efficiencies in the process. There will be renewed emphasis on performance management in the year ahead to bring the service back to consistently good performance levels achieved prior to these changes.

**Table 3 - 'New Residential Dwellings' development application analysis**

<b>Neighbouring Unitary Authorities: Oct – Dec 2010</b>	<b>Total Number of Applications determined</b>	<b>Number of 'new residential dwellings' applications determined</b>	<b>Percentage</b>
Bath & North East Somerset	547	57	10%
Bristol City	741	113	15%
North Somerset	491	38	8%
South Gloucestershire	523	52	10%

**Table 3** above shows that of the 547 applications that were determined in Bath & North East Somerset, only 10% related to new residential development. This follows a similar pattern for North Somerset Council (8%) and South Gloucestershire Council at 10%. These are all significantly less however, when compared with 15% for Bristol City Council, which is a much larger authority and has a more concentrated urban character.

**Table 4 - Recent planning application performance statistics**

Application nos.	2009/10				2010/11			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
On hand at start	487	492	554	438	576	544	562	
Received	530	620	525	590	601	629	499	
Withdrawn	36	59	42	44	59	56	36	
Determined	486	497	597	407	575	555	547	
On hand at end	495	556	440	577	542	562	478	
Delegated	467	484	571	389	557	528	520	
% Delegated	96.0	97.3	95.8	95.5	96.8	95.1	95.0	
Refused	99	72	106	62	99	81	99	
% Refused	20.3	14.4	17.7	15.2	17.2	14.5	18.0	

**Table 4** above shows numbers and percentages of applications received, determined, together with details of delegated levels and refusal rates.

Due to seasonal variation, quarterly figures in this report are compared with the corresponding quarter in the previous year. During the last three months, the number of new applications received and made valid has fallen by 5% when compared with the corresponding quarter last year. This figure is also a 5% drop on the same period two years ago, and 24% down on three years ago. Overall however applications received have risen 4% in the first 3 quarters of 10/11 when compared to the same 3 quarters in the previous financial year.

The current delegation rate is 95% of all decisions being made at officer level against cases referred for committee decision. England average for the same quarter is 91%.

**Table 5 - Planning Appeals summary**

	Jan – Mar 2010	Apr – Jun 2010	Jul – Sep 2010	Oct – Dec 2010
Appeals lodged	17	19	20	19
Appeals decided	26	17	17	23
Appeals allowed	4 (19%)	3 (25%)	4 (33%)	4 (21%)
Appeals dismissed	17 (81%)	9 (75%)	8 (67%)	15 (79%)

The figures set out in **Table 5** above indicate the number of appeals lodged for the Oct to Dec 2010 quarter remains around the same number when compared with the previous two quarters.

Members will be aware that the England average for appeals won by appellants (and therefore allowed) is approximately 32%. Because of the relatively small numbers of appeals involved figures will fluctuate slightly each quarter, but the general trend over the last 12 months for Bath & North East Somerset Council is that of the total number of planning appeals decided approximately 23% are allowed against refusals of planning applications, which demonstrates good performance by the authority.

**Table 6 - Enforcement Investigations summary**

	<b>Jan – Mar 2010</b>	<b>Apr – Jun 2010</b>	<b>Jul – Sep 2010</b>	<b>Oct – Dec 2010</b>
Investigations launched	170	165	179	153
Investigations closed	238	206	226	213
Enforcement Notices issued	1	3	0	2
Planning Contravention Notices served	6	2	1	2
Breach of Condition Notices served	0	0	0	1

The figures shown in **Table 6** indicate that slightly fewer investigations were received this quarter, when compared with the previous quarterly figure. Resources continue to be focused on the enforcement of planning control with 5 legal notices having been served during this quarter.

**Tables 7 and 8 - Transactions with Customers**

The planning service regularly monitors the number and nature of transactions between the Council and its planning customers. This is extremely valuable in providing management information relating to the volume and extent of communications from customers.

It remains a huge challenge to ensure that officers are able to maintain the improvements to the speed and quality of determination of planning applications whilst responding to correspondence and increasing numbers of emails the service receives.

**Table 7 - Letters and telephone calls**

	<b>Apr – Jun 2010</b>	<b>Jul – Sep 2010</b>	<b>Oct – Dec 2010</b>
Telephone calls answered within 20 seconds	89%	89%	90%
Number of general planning enquiry letters received	302	284	197

**Table 8 - Number of monitored emails**

	<b>Apr – Jun 2010</b>	<b>Jul – Sep 2010</b>	<b>Oct – Dec 2010</b>
Number of emails to 'Development Control'	1756	1705	1573
Number of emails to 'Planning Support'	1223	1077	1281
Number of emails to Team Administration within Development Management	2511	2489	3010

The volume of incoming e-mail is now substantial, and is far exceeding the volume of incoming paper-based correspondence. These figures are exclusive of emails that individual planning officers receive, but all require action just in the same way as hard copy documentation. The overall figure for the Oct - Dec 2010 quarter shows a notable increase in volume of electronic communications when compared to the previous quarter, and a continuing decrease for traditional postal methods, highlighting the continuing shift in modes of communication with the service over the last few years.

**Table 9 – Other areas of work**

The service not only deals with formal planning applications and general enquiries, but also has formal procedures in place to deal with matters such as pre-application proposals, Householder Development Planning Questionnaires and procedures for discharging conditions on planning permissions. **Table 9** below shows the numbers of these types of procedures that require resource to action and determine.

During the last quarter, there has been a very slight decrease in the overall volume of these procedures received in the service. This is partly due to the seasonal variation.

**Table 9**

	<b>Apr – Jun 2010</b>	<b>Jul – Sep 2010</b>	<b>Oct – Dec 2010</b>
Number of Household Development Planning Questionnaires	138	132	121
Number of pre-application proposals submitted	178	133	149

Number of 'Discharge of Condition' requests	137	140	118
Number of pre-application proposals submitted through the 'Development Team' process	5	4	7
Applications for Non-material amendments	23	26	16

**Table 10 – Works to Trees**

Another function that the Planning Service undertakes involves dealing with applications and notifications for works relating to trees. **Table 10** below shows the number and percentage of these applications and notifications determined. The figures show fluctuations in the numbers of applications and notifications received. However, during Oct – Dec 2010, performance on determining applications for works to trees subject to Tree Preservation Orders and performance on dealing with notifications for works to trees within a Conservation Area remained above 95%.

<b>Table 10</b>	<b>Apr – Jun 2010</b>	<b>Jul – Sep 2010</b>	<b>Oct – Dec 2010</b>
Number of applications for works to trees subject to a Tree Preservation Order (TPO)	6	13	21
Percentage of applications for works to trees subject to a TPO determined within 8 weeks	83%	100%	95%
Number of notifications for works to trees within a Conservation Area (CA)	134	148	180
Percentage of notifications for works to trees within a Conservation Area (CA) determined within 6 weeks	98%	100%	98%

### **Table 11 - Customer transactions using Council Connect**

As outlined in previous performance reports, Members will be aware that since 2006, 'Council Connect' has been taking development management related 'Frequently Asked Questions' (FAQs).

**Table 11** below shows an extract of volumes of customer transactions for the previous three quarters:

	<b>Apr – Jun 2010</b>	<b>Jul – Sep 2010</b>	<b>Oct – Dec 2010</b>
Total customer transactions to Council Connect	1,653	442	927
Total customer transactions (and percentage) resolved at First Point of Contact	1338 (81%)	101 (23%)	609 (66%)
Number of Service Requests to Development Management	315	341	318

318 'Service Requests' were made by customer service staff to Planning Information Officers and these types of requests usually relate to more complex matters, which need research in order to provide the customer with complete information. The transactions shown in the table above show a sizable volume of requests to resolve complex planning issues and Council Connect taking development management related FAQs. Note the dramatic changes in the top figures for the last 3 quarters. This is because as of around the summertime period Council Connect reception staff no longer recorded activity on the Customer Relationship Management (CRM) system so the figures now relate to the contact centre alone. Trends will no doubt become clearer as the new procedures regarding customer contact become established.

### **Table 12 - Electronic transactions**

The Planning Services web pages continue to be amongst the most popular across the whole Council website. Particularly busy web pages in the Planning area are 'View planning applications online' and 'Apply for planning permission'. Just over half of all planning applications are now submitted online through the Planning Portal link on the Council website, and **Table 12** below shows that the authority received **306 (61%)** Portal applications during the Oct to Dec 2010 quarter, compared with **51%** during the previous quarter. All previous quarterly figures far exceed the current national target of **10%**. This provides some evidence of a degree of online self service by the customer.



**Table 12** - Percentage of planning applications submitted electronically (through the national Planning Portal)

	<b>Government target</b>	<b>Jan – Mar 2010</b>	<b>Apr – Jun 2010</b>	<b>Jul – Sep 2010</b>	<b>Oct – Dec 2010</b>
Percentage of applications submitted online	10%	48%	50%	51%	61%

**Table 13 - Scanning and Indexing**

As part of the move towards achieving e-government objectives and the cultural shift towards electronic working, the service also scans and indexes all documentation relating to planning and associated applications. Whilst this work is a 'back office' function it is useful to see the volume of work involved. During the Oct to Dec 2010 quarter, the service scanned over 18,000 documents and this demonstrates that whilst the cost of printing plans may be reduced for applicants and agents, the service needs to resource scanning and indexing documentation to make them accessible for public viewing through the Council's website.

**Table 13**

	<b>Jan – Mar 2010</b>	<b>Apr – Jun 2010</b>	<b>Jul – Sep 2010</b>	<b>Oct – Dec 2010</b>
Total number of images scanned	22,883	21,352	27,095	18,183
Total number of images indexed	9,035	7,733	8,301	7,339

**Table 14 - Customer Complaints**

During the quarter Oct to Dec 2010, the Council has received the following complaints in relation to the planning service. The previous quarter figures are shown for comparison purposes. Further work is currently underway to analyse the nature of complaints received and to implement service delivery improvements where appropriate.

**Table 14**

<b>Customer Complaints</b>	<b>Apr – Jun 10</b>	<b>Jul – Sep 10</b>	<b>Oct – Dec 10</b>
Complaints brought forward	3	3	3
Complaints received	17	41	15
Complaint upheld	3	5	7

Complaint Not upheld	13	30	11
Complaint Partly upheld	1	5	0
Complaints carried forward	3	4	0

**Table 15 - Ombudsman Complaints**

The council has a corporate complaints system in place to investigate matters that customers are not happy or satisfied about in relation to the level of service that they have received from the council. However, there are circumstances where the matter has been subject to investigation by officers within the authority and the customer remains dissatisfied with the outcome of the investigation. When this happens, the customer can take their complaint to the **Local Government Ombudsman** for him to take an independent view. **Table 15** below shows a breakdown of Ombudsman complaints lodged with the Local Government Ombudsman for the previous four quarters.

**Table 15**

<b>Ombudsman Complaints</b>	<b>Jan – Mar 10</b>	<b>Apr – Jun 10</b>	<b>Jul – Sep 10</b>	<b>Oct – Dec 10</b>
<b>Complaints brought forward</b>	0	2	2	3
<b>Complaints received</b>	3	5	5	2
<b>Complaints upheld</b>				
<i>Local Settlement</i>				
<i>Maladministration</i>				
<i>Premature complaint</i>				
<b>Complaints Not upheld</b>		5	4	3
<i>Local Settlement</i>				
<i>No Maladministration</i>		2	2	3
<i>Ombudsman's Discretion</i>				
<i>Outside Jurisdiction</i>				
<i>Premature complaint</i>	1	3	2	
<b>Complaints carried forward</b>	2	2	3	2

<b>Contact person</b>	John Theobald, Data Technician, Planning and Transport Development 01225 477519
<b>Background papers</b>	CLG General Development Control returns PS1 and PS2 Live Tables on Development Control Statistics  ( <a href="http://www.communities.gov.uk/planningandbuilding/planningbuilding/planningstatistics/statisticsplanning/">http://www.communities.gov.uk/planningandbuilding/planningbuilding/planningstatistics/statisticsplanning/</a> )
<b>Please contact the report author if you need to access this report in an alternative format</b>	



<b>Bath &amp; North East Somerset Council</b>	
<b>MEETING:</b>	<b>Development Control Committee</b>
<b>MEETING DATE:</b>	<b>18<sup>th</sup> May 2011</b>
<b>RESPONSIBLE OFFICER:</b>	Lisa Bartlett, Development Control Manager, Planning and Transport Development (Telephone: 01225 477281)
	AGENDA ITEM NUMBER
<b>TITLE:</b>	<b>NEW PLANNING APPEALS, DECISIONS RECEIVED AND DATES OF FORTHCOMING HEARINGS/INQUIRIES</b>
<b>WARD:</b>	ALL
<b>BACKGROUND PAPERS:</b>	None
<b>AN OPEN PUBLIC ITEM</b>	

**APPEALS LODGED**

**App. Ref:** 10/04622/LBA  
**Location:** Land at Rear Of 4 Bloomfield Drive Bloomfield Drive Bloomfield Bath  
**Proposal:** Part demolition of wall to provide vehicular access (Regularisation)  
**Decision:** REFUSE  
**Decision Date:** 21 February 2011  
**Decision Level:** Delegated  
**Appeal Lodged:** 25 March 2011

---

**App. Ref:** 10/04570/FUL  
**Location:** 178 Englishcombe Lane Southdown Bath BA2 2EN  
**Proposal:** Provision of rear dormer window for loft conversion  
**Decision:** REFUSE  
**Decision Date:** 30 December 2010  
**Decision Level:** Delegated  
**Appeal Lodged:** 29 March 2011

---

**App. Ref:** 10/03876/FUL  
**Location:** Miles House Dunsford Place Bathwick Bath  
**Proposal:** Alterations to boundary wall to provide widened vehicular access and provision of new timber gates (Resubmission)  
**Decision:** REFUSE  
**Decision Date:** 22 October 2010  
**Decision Level:** Delegated  
**Appeal Lodged:** 30 March 2011

---

**App. Ref:** 10/03878/LBA  
**Location:** Miles House Dunsford Place Bathwick Bath  
**Proposal:** External alterations to boundary wall to provide widened vehicular access and provision of new timber gates (Resubmission)  
**Decision:** REFUSE  
**Decision Date:** 3 November 2010  
**Decision Level:** Delegated  
**Appeal Lodged:** 30 March 2011

---

**App. Ref:** 10/04818/FUL  
**Location:** Springhill House White Ox Mead Lane Peasedown St. John Bath  
**Proposal:** Erection of a stable block following removal of existing stable block.  
**Decision:** REFUSE  
**Decision Date:** 1 February 2011  
**Decision Level:** Chair Referral  
**Appeal Lodged:** 5 April 2011

---

**App. Ref:** 10/04017/LBA  
**Location:** Basement 13 Grosvenor Place Lambridge Bath  
**Proposal:** Internal alterations for the conversion of remainder of existing vault into dry-store room  
**Decision:** REFUSE  
**Decision Date:** 30 November 2010  
**Decision Level:** Delegated  
**Appeal Lodged:** 7 April 2011

---

**Enf Ref:** 07/00952/UNDEV  
**Location:** Parcel 7661 Widcombe Hill Hinton Blewett BS39 5AR  
**Breach:** Unauthorised development involving the change of use of land to stationing of a mobile home and for the use for residential purposes without planning permission in the last 4 years. Unauthorised development involving engineering works around the stone barn without planning permission in the last 4 years  
**Date Notice Issued:** 17 March 2011  
**Appeal Lodged:** 6 April 2011

---

## APPEAL DECISIONS

**App. Ref:** 10/04056/VAR  
**Location:** Komedia, 22 - 23 Westgate Street, City Centre, Bath  
**Proposal:** Variation of condition 2 of application 08/00706/FUL to extend opening hours by 1/2 hour on Friday and Saturday, so that customers can be served or remain on the premises until 2.00am on these days (Change of use from dis-used cinema (class D2) to comedy club, live music venue and cafe)

**Decision:** Allowed  
**Decision Date:** 2<sup>nd</sup> December 2011  
**Decision Level:** Delegated  
**Appeal Decision:** Allowed

**Summary:**

The application was refused on the basis the proposal would result in increased noise and disturbance in Westgate Street and the wider City Centre, at a time when there are generally reduced levels of noise and activity in the area.

Under the present operational arrangements at the premises, customers exit the appeal premises solely into Westgate Street via the main entrance. The Inspector decided that the proposed variation of the condition to allow extended opening hours of the venue by an additional half-hour on both the Friday and Saturday night would, if all customers were to exit into Westgate Street, lead to deterioration in the living conditions of occupants of nearby residential properties in Westgate Street. However as the appellant proposed in the application that after 0100 hrs, customers should exit through the rear doors of the premises onto Saw Close, the Inspector considered that this would adequately disperse customers in several directions reducing levels of noise in Westgate Street. Therefore subject to that exit arrangement being used the Inspector considered that the extended opening hours would not be harmful to amenity. The Inspector in allowing the appeal imposed a planning condition to the effect that Customers leaving the premises after 0100 hrs shall do so only by the exit doors leading directly on to Saw Close other than in an emergency.

---

**FORTHCOMING HEARINGS/INQUIRIES**

**App. Ref:** 10/02953/FUL  
**Location:** Widcombe Lodge South Widcombe Hinton Blewett Bristol BS40 6BN  
**Proposal:** Conversion and rebuilding of existing barn to form self catering holiday accommodation (retrospective) (resubmission)  
**Decision:** Refuse  
**Decision Date:** 27.08.2010  
**Decision Level:** Delegated  
**Hearing Date:** 17 May 2011  
**Venue:** Kapasvor Room, Guildhall, Bath

---

**App. Ref:** 09/04351/FUL  
**Location:** Parcel 4200 Parkhouse Lane Keynsham  
**Proposal:** Hybrid planning application for a housing led mixed use development comprising 285 dwellings, retail accommodation, flexible business/employment floor space, affordable housing, formation of new vehicular, pedestrian and cycle accesses, pedestrian and cycle improvements to Parkhouse Lane, formal and informal public open space including junior playing pitch and associated changing rooms and parking facilities, together with landscaping and tree planting and ancillary works including drainage (Full Application) and extension to Castle Primary School (Outline Application, All Matters Reserved)

**Decision:** Refuse  
**Decision Date:** 15.12.2010  
**Inquiry Date:** 7<sup>th</sup> – 24<sup>th</sup> June 2011  
**Venue:** Carter Room, Fry Club, Keynsham

---