

Democratic Services

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Date: 5 March 2013

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To: All Members of the Development Control Committee

Councillors:- Neil Butters, Nicholas Coombes, Gerry Curran, Liz Hardman, Eleanor Jackson, Les Kew, Malcolm Lees, David Martin, Douglas Nicol, Bryan Organ, Martin Veal, David Veale and Brian Webber

Permanent Substitutes:- Councillors: Rob Appleyard, Sharon Ball, John Bull, Sarah Bevan, Sally Davis, Manda Rigby, Dine Romero, Jeremy Sparks and Vic Pritchard

Chief Executive and other appropriate officers
Press and Public

Dear Member

Development Control Committee: Wednesday, 13th March, 2013

You are invited to attend a meeting of the **Development Control Committee**, to be held on **Wednesday, 13th March, 2013 at 2.00pm** in the **Council Chamber - Guildhall, Bath**

The Chair's Briefing Meeting will be held at 10.00am on Tuesday 12th March in the Meeting Room, Lewis House, Bath.

The rooms will be available for the 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.

This Agenda and all accompanying reports are printed on recycled paper

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.

**Development Control Committee - Wednesday, 13th March, 2013
at 2.00pm in the Council Chamber - Guildhall, Bath**

A G E N D A

1. EMERGENCY EVACUATION PROCEDURE

The Chair will ask the Committee Administrator to draw attention to the emergency evacuation procedure as set out under Note 6

2. ELECTION OF VICE CHAIR (IF DESIRED)

3. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

4. DECLARATIONS OF INTEREST

At this point in the meeting declarations of interest are received from Members in any of the agenda items under consideration at the meeting. Members are asked to indicate:

(a) The agenda item number and site in which they have an interest to declare.

(b) The nature of their interest.

(c) Whether their interest is **a disclosable pecuniary interest** *or* an **other interest**, (as defined in Part 2, A and B of the Code of Conduct and Rules for Registration of Interests)

Any Member who needs to clarify any matters relating to the declaration of interests is recommended to seek advice from the Council's Monitoring Officer before the meeting to expedite dealing with the item during the meeting.

5. TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

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: 13TH FEBRUARY 2013 (Pages 11 - 60)

To approve as a correct record the Minutes of the previous meeting held on Wednesday 13th February 2013

9. MAJOR DEVELOPMENTS

The Senior Professional – Major Developments to provide an oral update

10. PLANS LIST - APPLICATIONS FOR PLANNING PERMISSION ETC FOR DETERMINATION BY THE COMMITTEE (Pages 61 - 208)

11. ENFORCEMENT REPORT - RED HILL HOUSE, RED HILL, CAMERTON (Pages 209 - 218)

Following the Site Visit held on 4th March, to consider a recommendation to authorise enforcement action for a material change of use to a mixed use dwelling, daily yoga classes, weekend retreats and associated business activities

12. NEW PLANNING APPEALS LODGED, DECISIONS RECEIVED AND DATES OF FORTHCOMING HEARINGS/INQUIRIES (Pages 219 - 230)

To note the report

13. UPDATE ON FORMER FULLERS EARTHWORKS, COMBE HAY, BATH

The appropriate Officer(s) will make an oral report to update Members on progress

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

Delegated List Web Link: <http://www.bathnes.gov.uk/services/planning-and-building-control/view-and-comment-planning-applications/delegated-report>

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 (Mode Code of Conduct) Order 2001 adopted by the Council on 21st February 2002 to which full reference should be made as appropriate).*

1. Declarations of Interest (Disclosable Pecuniary Interest or an Other Interest)

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 the 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, Principal 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.

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DRAFT MINUTES PENDING CONFIRMATION AT THE NEXT MEETING

BATH AND NORTH EAST SOMERSET

MINUTES OF DEVELOPMENT CONTROL COMMITTEE

Wednesday, 13th February, 2013

Present:- Councillor Gerry Curran in the Chair

Councillors Nicholas Coombes, Liz Hardman, Eleanor Jackson, Les Kew, Malcolm Lees, David Martin, Douglas Nicol, Bryan Organ, Jeremy Sparks (In place of Neil Butters), Martin Veal, David Veale and Brian Webber

Also in attendance: Councillor Sally Davis

124 EMERGENCY EVACUATION PROCEDURE

The Senior Democratic Services Officer read out the procedure

125 ELECTION OF VICE CHAIR (IF DESIRED)

A Vice Chair was not required

126 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

An apology for absence was received from Councillor Neil Butters whose substitute was Councillor Jeremy Sparks

127 DECLARATIONS OF INTEREST

Councillor Eleanor Jackson referred to the planning application at The Fir Tree Inn, 140 Frome Road, Radstock, as the applicant had undertaken some work at her house a few years ago. However, she did not consider that this amounted to an interest and therefore she would speak and vote on the item.

128 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There were no items of Urgent Business

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

The Senior Democratic Services Officer informed the meeting that there a few speakers on the Enforcement Reports who would be able to speak for up to 3 minutes each when reaching those Reports on the Agenda. There were also a few speakers on the 3 planning applications at Hinton Organics which would be considered together and therefore they would be able to speak for up to 9 minutes in total when reaching those applications in Report 10.

130 ITEMS FROM COUNCILLORS AND CO-OPTED MEMBERS

There were no items

131 MINUTES: 16TH JANUARY 2013

The Minutes of the previous meeting held on 16th January 2013 were approved as a correct record and signed by the Chair

132 MAJOR DEVELOPMENTS

The Senior Professional – Major Development updated the Committee on various developments as follows:

K2, Keynsham – Work had commenced for development of 285 dwellings plus shops and extension to the Primary School

Bath University, Claverton Down, Bath – As part of the University Master Plan, permission had been granted for development of 708 units of student accommodation

Bath Western Riverside – Work was to be undertaken to the 2 bridges, a redesign of Victoria Bridge and the Destructor Bridge to be made two-way. Some public consultation would be undertaken in association with the Museum of Bath Work.

MoD sites – Preliminary discussions had been held regarding redevelopment of the Ensleigh and Warminster road sites.

Somerdale, Keynsham – Archaeology had not yet been finalised but there was a preliminary design for the 1st Phase of approximately 200 dwellings. A planning application was anticipated in April/May.

After the Officer had responded to Members' queries about some of these developments, the Committee noted the update.

133 PLANS LIST - APPLICATIONS FOR PLANNING PERMISSION ETC

The Committee considered

- The report of the Development Manager on various applications for planning permission etc
- An Update Report by the Development Manager on Item Nos. 1-4, a copy of the Update being attached as *Appendix 1* to these Minutes
- Oral statements by members of the public etc on Item Nos. 1-3, the Speakers List being attached as *Appendix 2* to these Minutes

RESOLVED that, in accordance with their delegated powers, the applications be determined as set out in the Decisions List attached as *Appendix 3* to these Minutes.

Items 1&2 Hinton Organics Ltd, Charlton Field Lane, Queen Charlton – (1) Variation of Conditions 13 and 16 of planning permission Ref 97/02626/MINW dated 2nd December 1998 to allow permanent recycling of cardboard waste and increase in truck movements; and (2) increase size of concrete storage area and variation of Condition 13 of planning permission Ref 97/02626/MINW to accept wood waste; and Item 3 Parcel 5319, Charlton Field Lane, Queen Charlton – Variation of Conditions 13, 16 and 19 of planning permission Ref 97/02626/MINW to extend composting operations, increase vehicle movements and permit cardboard and wood recycling (Temporary use of land for 10 years for manufacture of organic green compost as amended by revised drawings received 14th April 1998 at land formerly Queen Charlton Quarry) – The Case Officer reported on these applications and her recommendations to refuse permission on the grounds that the applications are for EIA development and should have been accompanied by an Environmental Statement. The information submitted in support of the applications was not considered to constitute an Environmental Statement within the terms of Regulation 2 of the Town and Country Planning (Environmental Impact etc.) Regulations 1999 in particular because it fails to address the risk of pollution of the NVZ, fails to give information on restoration of the site and fails to include a Non-Technical Summary. Therefore, in accordance with Regulation 3 of the Town and Country Planning (Environmental Impact etc.) Regulations 1999, the applications must be refused.

She referred to the Update Report which comprised further representations, corrected a date in the report and attached the Legal Opinion on the issue of an Environmental Statement not being submitted. The Officer responded to queries by the Chair.

The public speakers made their statements against and in favour of the applications which was followed by a statement by the Ward Councillor Sally Davis.

Members asked various questions for clarification to which Officers responded. In particular, Councillor Les Kew enquired how long the applicants might need in order to submit an Environmental Statement which met the requirements of the legislation and whether the Council had received any letters supporting the development. The Case Officer replied that the Council had received letters of support from approximately 16 people, several of whom had written 3 letters (one for each application). In her view, it would not take the applicants long to rectify the Environmental Statement although she was unable to give a timescale for the provision of the outstanding ecological information.

Councillor Bryan Organ noted that the Parish Council had not yet been in a position to make detailed comments. He considered that there were a number of benefits from the recycling operation and supported a deferral for 2 months to give the applicants a final opportunity to submit an Environmental Statement and for the Council to then consult upon the new information. He therefore moved accordingly on all 3 applications. The motions were seconded by Councillor Doug Nicol.

A number of Members spoke in favour of the motion to defer. Councillor Les Kew asked the Case Officer whether 2 months was a reasonable amount of time for an Environmental Statement to be submitted and consulted upon. The Case Officer replied that, in her view, the process could take longer than 2 months and suggested that 3 months might be more realistic. Councillor Kew therefore suggested to the

mover and seconder that the motions be amended to a 3 month deferral. This was accepted by the mover and seconder.

Members debated the motions. It was generally accepted that a deferral was the best course of action. The Chair summed up the debate. Councillor Doug Nicol queried whether a Site Visit would be useful for those Members who hadn't seen the site. The Chair stated that a Pre-Committee Site Visit could be arranged.

The motions to defer as above were put to the vote and were carried, 11 voting in favour and 2 against.

Item 4 The Fir Tree Inn, 140 Frome Road, Radstock – Erection of 2 residential dwellings with associated amenity space and parking – The Case Officer reported on this application and her revised recommendation to Delegate authority to the Development Manager to Permit subject to no new objections being received by 21st February 2013 and subject to the conditions set out in the Report with the Agenda.

Councillor Eleanor Jackson spoke in favour of the proposal and the various reasons why it should be permitted. She therefore moved the Officer recommendation which was seconded by Councillor Les Kew.

Members briefly debated the motion after which it was put to the vote and was carried unanimously.

134 ENFORCEMENT REPORT - RED HILL HOUSE, RED HILL, CAMERTON

The Committee considered (1) a report by the Development Manager recommending that enforcement action be authorised to require the cessation of the unauthorised use of the above property for business purposes, yoga classes and weekend retreats; and (2) oral statements by members of the public etc speaking in favour and against proposed enforcement action.

The Enforcement Officer reported that a blanket Tree Preservation Order had recently been issued to protect trees at the property and that an application had been received for consent to fell 2 trees – sycamore and cherry - adjoining the entrance to the property.

Councillor Les Kew considered that there was conflicting information and that, before considering any enforcement action, it would be useful if Members could view the site with particular regard to the highway, the access and trees. He therefore moved that consideration be deferred for a Site Visit which was seconded by Councillor Martin Veal.

Members debated the motion and asked questions to which the Officer responded. Councillor Eleanor Jackson requested that the Highways Officer's report be made available to Members when a report on this matter is resubmitted.

RESOLVED to defer consideration to enable a Site Visit to be held

(Note: Prior to consideration of this matter, Councillor Bryan Organ had declared an interest in the item as the Parish Council representative speaking in favour of

enforcement was a personal friend and he therefore left the meeting for its consideration.)

135 ENFORCEMENT REPORT - PARCEL 5319, CHARLTON FIELDS LANE, QUEEN CHARLTON

In view of the decisions to defer consideration of related planning applications considered earlier in the meeting, this Report was withdrawn from the Agenda.

136 UPDATE ON FORMER FULLERS EARTHWORKS, COMBE HAY, BATH

The Chair varied the order of business to enable the following item to be considered next as a decision was required.

Referring to the Minutes of the meeting held on 9th May 2012, the Committee considered the report of the Development Manager which updated Members following a Preliminary Hearing by the Inspector into Enforcement Notice Appeals at this site.

The Planning and Environmental Law Manager submitted an Update Report (see *Appendix 4* attached to these Minutes) updating Members on the situation since the despatch of the Agenda papers and on the papers that had been received. She also informed the Committee that there was a further report containing Leading Counsel's advice which needed their consideration and should be taken in Exempt Session.

The Development Manager referred to the Public Local Inquiry held recently where the Inspector held the Preliminary Hearing on the Appellants' submissions on a point of law ("res judicata") and the interpretation of the Secretary of State's decision on the 2003 "call-in" Public Inquiry on the extent of the B2 fall-back position. The Inspector's Ruling had now been received and was before Members for information and from which the Committee could see that the Inspector found in favour of the Council and the Rule 6 parties on both the "res judicata" point and on the interpretation of the 2003 Secretary of State's decision. Due to the Preliminary Hearing, the Inspector had put forward a revised timetable. The time for the Council to consider receipt of late information by the Appellants was 1st March. The Committee's attention was also drawn to the Inspector's concerns regarding the wording of Notice 1 and Members were advised that further consideration was being given to this to take on board those concerns.

After Officers responded to some queries by Members, the Committee noted the Reports.

The Committee considered the proposal to move into Exempt Session for the further report. After a short debate, the following Resolution was agreed:

That, having been satisfied that the public interest would be better served by not disclosing relevant information, and in accordance with the provisions of Section 100 (A) (4) of the Local Government Act 1972, the public be excluded from the meeting for the following item of business because of the likely disclosure of exempt information as defined in Paragraph 5 (Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings) and Paragraph 6 (Information which reveals that the authority proposes (a) to give under any

enactment a notice under or by virtue of which requirements are imposed on a person, or (b) to make an order or direction under any enactment) of Part 1 of Schedule 12A of the Act as amended (Voting: 11 in favour and 1 against and 1 abstention.)

The Committee considered further information relating to issuing “second bite notices” under Section 171B (4) (b). A date at the end of the penultimate paragraph was amended from 2012 to read 2013.

RESOLVED to authorise the Divisional Director for Planning and Transport Development, in consultation with the Planning and Environmental Law Manager, to exercise the powers and duties (as applicable) under Part VII of the Town and Country Planning Act 1990 (including any amendments to or re-enactments of the Act) to issue an enforcement notice or enforcement notices under Section 171B (4) (b) within 4 years of the purported enforcement action (the 2009 enforcement notices). The Committee further resolved that the “second bite” notice or notices should therefore be issued by the Council on or before 24th February 2013.

(Note: At this point, the Committee returned into Open Session to consider the remaining business)

137 QUARTERLY PERFORMANCE REPORT - OCTOBER TO DECEMBER 2012

The Committee considered the report of the Development Manager on performance information across a range of activities within the Development Management function for the period 1st October to 31st December 2012.

After some queries by Members, the Committee noted the report and extended their thanks to Officers for their hard work and endeavours.

138 NEW PLANNING APPEALS LODGED, DECISIONS RECEIVED AND DATES OF FORTHCOMING HEARINGS/INQUIRIES

The Committee considered the report of the Development Manager on planning appeals.

Members raised various queries about appeals to which the Development Manager and the Chair responded. Councillor Martin Veal raised the issue of “expediency” required for Officers to take action which he found frustrating at times and considered that the public should be better informed on such issues. The Development Manager replied that the term was used in the appropriate legislation and therefore had to be used by Officers; however, she would see if the Revised Enforcement Policy could be better worded on this particular issue. Councillor Martin Veal requested that it be worded in plain language so that it could be easily understood.

The Committee noted the report.

The meeting ended at 4.45 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services

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BATH AND NORTH EAST SOMERSET COUNCIL

Development Control Committee

13th February 2013

OBSERVATIONS RECEIVED SINCE THE PREPARATION OF THE MAIN AGENDA

ITEM 10

ITEMS FOR PLANNING PERMISSION

ITEMS 1, 2 and 3

Planning Applications

- 1) 05/00723/VAR, Variation of condition 13 and 16 of Planning Permission: 97/02626/MINW dated 02/12/1998 to allow permanent recycling of cardboard waste and increase in truck movements.
- 2) 05/01993/FUL - Increase size of concrete storage area and variation of condition 13 of planning permission 97/02626/MINW to accept wood waste.
- 3) 11/00022/VAR Variation of conditions 13, 16 and 19 of permission no. 97/02626/MINW to extend composting operations, increase vehicle movements and permit cardboard and wood recycling (Temporary use of land for 10 years for manufacture of organic green compost as amended by revised drawings received 14th April 1998 at land formerly Queen Charlton Quarry)

COMPTON DANDO PARISH COUNCIL

An email has been received from the Chair of Compton Dando Parish Council (7 Feb)

As chairman of the parish council, I would like to state that I now believe that odour and traffic movements associated with the composting business have not been an issue in the last 12 – 18 months, and that I have no objection in principle to the application, but would like any extension to the composting business to be finite.

If the committee determination is delayed, I will ask Planning if we can give them a full council decision after our February meeting and add it to the agenda.

ENVIRONMENTAL HEALTH

Environmental Protection has no objection

The Odour Management Plan submitted as item 2 in the Reg 19 Response from the applicant is sufficient and satisfies the points listed below:

1. Precise details of proposed odour monitoring and mitigation measures
2. Height of windrows to be maintained (Page 8, Para 3.1.2 30m x 5m x 3m)

With regard to the need to identify triggers for management measures by reference to specific wind speeds, odour intensity and character, temperature and weather conditions, we consider that the OMP is considered adequate with regard to all of the above, however the reference made to specific wind speeds is poorly addressed.

We conclude that the **wind direction** is the important trigger with regard to potential odour complaints from nearby receptors and that specifying wind speeds as a trigger is not necessary as this is addressed within the OMP (3.2.7, 4.2.1, 4.3.1 4.5, 5.6)

3. The monitoring form is considered adequate as part of the OMP
4. Generally the OMP is considered adequate however the daily monitoring process could require external checks to ensure compliance

COUNCIL ECOLOGIST

The operational site for the proposal is surrounded by land all of which adjacent is part of the Wooscombe Complex designated Site of Nature Conservation Interest (SNCI).

There is a need for the submitted documents to assess likely ecological impacts of the proposal, on land within the site boundary and any potential impacts on adjacent land and further afield.

The submitted documents do not provide sufficient information to properly assess likely impacts of the proposals on ecology, ecological value of the watercourses / drainage channels and bankside habitats, and ground water quality, and impacts of the existing and proposed operations.

The consideration of such information by the LPA is likely to require further specialist input (hydrological / water quality assessment and pollution).

However I am confident that the documents provided so far for these applications do not in any case sufficiently address the ecological issues.

There is no ecological assessment – including provision of information regarding previous and existing ecological value at and adjacent to the site (such as ecological survey & mapping of habitats and habitat quality; botanical value; species diversity; protected species; water quality in drainage channels; identification of non-native invasive species); recognition of historical ecological value of land including land within the designated SNCI; provision of assessment of likely impacts of all operations and these proposals on habitats, species and overall ecological value of the area. A significant proportion of the submitted information that would relate to potential impacts on ecology is theoretical, and fails to provide data or factual evidence of current or historical conditions of the above features at and adjacent to the site, on which assessment can confidently be made.

I object to the proposal due to insufficient information to assess ecological value at the site (prior to and existing) and demonstrate that the proposals will not harm ecology and water quality. The likelihood that ecological damage has in the past already resulted from operations at the site can not be eliminated; any such historical impacts need to be addressed.

Should the LPA decide to consent these proposals, I would expect the above issues to be properly addressed by:

- Full EIA and ecological assessment by suitably experienced and qualified personnel that comply with best practice methods and meet all current good practice standards
- Detailed proposals for ecological mitigation, compensation and enhancement (on and off site) and long term provision of new ecological benefits on and adjacent to the site to compensate for impacts
- Details for prevention of spread of non-native species (eg Japanese knotweed) and treatment of such when found to occur on the site or adjacent or nearby land (when it may have originated from the site)

OTHER REPRESENTATIONS AND THIRD PARTIES

One further letter of objection has been received, but does not raise any issues that have not already been raised by others.

15 local residents have written in support of all three applications. The points made are

- The site is a good operation and serves a useful and valued role to local businesses and there is no alternative.
- It provides much needed jobs and work for local people
- The business is doing its bit for the environment by producing a great compost from waste, also used as farm fertiliser.
- The staff are very helpful people.
- The site is being held back by red tape and it seems inappropriate to remove the consent with the consequential detrimental effects on a sustainable local business.

CORRECTIONS

On Page 3

'The applicant sent a document which purported to be an environmental statement to the Council on 17 July 2012'. not 2013 as stated.

IN THE MATTER OF LAND AT
CHARLTON FIELD LANE, KEYNSHA

OPINION

Legal and Democratic Services
Bath and North East Somerset Council
Upper Borough Walls
Bath BA1 1RG

IN THE MATTER OF LAND AT CHARLTON FIELD LANE, KEYNSHAM

OPINION

1. I am asked to advise Bath and North East Somerset Council ('the Council') in relation to three undetermined planning applications concerning the above land, nos. 05/000723, 05/01993 and 11/00022.

Relevant background

2. Use of the land for the composting of waste started in January 2001, pursuant to a temporary planning permission granted in 1999 (97/02626). Applications 05/000723 and 05/01993, submitted in 2005, sought to vary conditions in the 1999 permission. These applications were granted in November 2006 but the two decisions were quashed in February 2009. The applications remain undetermined.
3. The period of use permitted by permission 97/02626 expired in January 2011. Application 11/00022 seeks permission for a further period of use. The original applicant, Hinton Organics Limited, stated that it sought permission to continue the use for 18 months after a favourable determination of the application.
4. The composting use has continued to take place since January 2011.
5. As applications 05/000723 and 05/01993 are made under s73 of the Town and Country Planning Act 1990, the Council is required to reconsider the conditions imposed in permission 97/02626 generally, including the time limit condition. These applications therefore give the Council the opportunity to grant permissions for composting use in the future, as does application 11/00022.
6. Officers did not consider that any of these applications were for EIA development. However in March 2012 the Secretary of State made a screening direction to the opposite effect. He identified in particular odour and the pollution of the NVZ by the leak of leachate and the spreading of non-PAS100 compost/waste.

7. The Council made a scoping opinion in April 2012 and imposed a deadline of 17 July 2012 for the submission of an environmental statement. The applicant did not challenge the screening direction, the scoping opinion or the imposition of this deadline.
8. The applicant sent a document which it contended was an environmental statement on 17 July 2012, but only managed to comply with the publicity requirements for the submission of an environmental statement on 14 September 2012. Officers then determined that the document did not in fact constitute an environmental statement and notice under r19 of the 1999 EIA Regulations was given on 31 October 2012, identifying the deficiencies. The Council required submission of the missing information by 17 December 2012. The applicant did not challenge the r19 notice or the imposition of this deadline.
9. A significant volume of material was submitted to the Council on 17 December 2012. In the remainder of this Opinion I set out why I consider that this material does not address the requirements for an environmental statement set out in the r19 notice.

The 1999 EIA Regulations

10. All three applications are governed by the 1999 EIA Regulations since they were all submitted before 24 August 2011, the date on which the 2011 EIA Regulations came into effect (see r65 of the 2011 Regulations).
11. The 1999 Regulations define an environmental statement as a statement
 - ‘(a) that includes such of the information referred to in Part I of Schedule 4 as is reasonably required to assess the environmental effects of the development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile, but
 - ‘(b) that includes at least the information referred to in Part II of Schedule 4.’
12. Part II of Schedule 4 of the Regulations covers -

1. A description of the development comprising information on the site, design and size of the development.
2. A description of the measures envisaged in order to avoid, reduce, and, if possible, remedy significant adverse effects.
3. The data required to identify and assess the main effects which the development is likely to have on the environment.
4. ...
5. A non-technical summary ...

13. Part I of Schedule 4 covers -

1. A description of the development, including in particular (a) a description of the physical characteristics of the whole development and the land-use requirements during the construction and operational phases ... (c) an estimate, by type and quantity, of expected residues and emissions ... resulting from the operation of the proposed development.
2. ...
3. A description of the aspects of the environment likely to be significantly affected by the development including, in particular, population, fauna, flora, soil, water air, climatic factors, material assets ...
4. A description of the likely significant effects of the development on the environment, which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, negative and positive effects ... and the description by the applicant of the forecasting methods used to assess the effects on the environment.
5. A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.
6. A non-technical summary ...
7. An indication of any difficulties (technical difficulties or lack of know-how) encountered by the applicant in compiling the required information.

Deficiencies

14. All the information required in the r19 notice is needed before the material submitted by the applicant constitutes an environmental statement. I set out in paragraphs 16 - 26 deficiencies in the material submitted which I have been able to discuss with the Case Officer. She has seen a draft of this Opinion and is happy with my comments.
15. In paragraphs 27 et seq I identify further matters which I have not had the opportunity to discuss with the Case Officer but which, in my opinion, constitute serious deficiencies, or raise serious questions requiring further investigation.

'Q.8 The restoration and aftercare proposed. Timescale proposed for restoration and aftercare.'

16. This information is required under paragraph 1 of Part II and paragraph 1 of Part I of Schedule 4 of the Regulations.

17. There is no answer to the question. The applicant merely states that it does not intend to comply with condition 20 of permission 97/02626. However it would not be acceptable for the applicant simply to abandon the site when the temporary composting use ceases and any planning permissions granted on the present applications would have to provide for proper restoration. How the site will be used after the temporary composting use ceases is part of the development requiring to be described and assessed.

'Q.9 Details of physical measures incorporated into the operational development on the Site for the purposes of environmental protection. Include details of features which retain run-off on the concrete pad and drain it into the lagoon. The capacity of the lagoon.'

18. This information is required under paragraph 2 of Part II and paragraph 5 of Part I of Schedule 4 of the Regulations.

19. In answer to the question the applicant merely provides reports on the laying of the lagoon liner in March 2003 and on the extension of the pad in June 2005. I do not think that a description of the liner is good enough as a description of the lagoon. The answer does not address the drains (appendix 8 of the Management System gives the capacity of the lagoon).

20. The applicant does not address the misting system, the weather station or the bunds (see Odour Management Plan paragraphs 3.2.1, 3.2.2, 3.2.4, 4.3.1).

'Q.13 An assessment of the impact on the soil, water, flora and fauna of the NVZ if effluent enters it from the Composting Site. State quantity, strength and duration of leakage of effluent assumed for the purposes of assessment. Include long term effects.'

21. The Case Officer is consulting the Environment Agency on the adequacy of the information provided on (i) the vulnerability of this particular NVZ and (ii) the composition of the leachate, in particular the materiality of a measurement of Biochemical Oxygen Demand and Chemical Oxygen Demand to the question of harm to a NVZ.

'Q.15 Assess the quantity of leachate which would be generated in a 1 in 100 year storm event (making an allowance for climate change).'

22. The question is not answered at all. This information is required under paragraph 3 of Part II and paragraph 4 of Part I of Schedule 4 of the Regulations.

'Q.16 Provide a water balance detailing how leachate from the composting area is managed annually, with a breakdown per month. Show the level of rainfall assessed, the rate at which leachate is generated and assumptions made about the loss of leachate through evaporation. Explain how the lagoon is managed to ensure that it always has sufficient capacity to accommodate the quantity of leachate assessed under paragraph 15.'

23. This information is required under paragraph 3 of Part II and paragraphs 1(c) and 5 of Part I of Schedule 4 of the Regulations. The question is not answered at all. The calculations in Appendix 8 of the Management System state what the capacity of the lagoon is but do not justify it. I understand that the Case Officer nevertheless wants to consult the Environment Agency on this question since the Agency must have assessed the adequacy of the lagoon when granting the environmental permit.

'Q.20 Precise details of proposed odour monitoring and mitigation measures, including height of windrows to be maintained. In particular (a) identify triggers for management measures by reference to specific wind speeds, odour intensity and character, temperature and weather conditions ...'

24. There is no reference to specific wind speeds or weather conditions. However the Case Officer is consulting with the EHO on whether the fairly comprehensive control

regime described in the Odour Management Plan obviates the need for triggers to be formulated in this way.

'Q.23 The Council is faced with an appeal in relation to the continuation of inert landfill operations on adjoining land. This constitutes 'other development' within the meaning of paragraph 1(b) of Schedule 3 of the 1999 Regulations. Provide data required to identify and assess the main effects of this cumulation. In particular address (i) whether the cumulation of traffic and of noise emissions are main effects and (ii) whether the proposed landfill operations will generate odour. If any of the main cumulative effects are likely to involve significant effects on the environment, provide a description of such effects, including the effect of intended mitigation measures.'

25. There is no answer to (i). The applicant is obliged to provide the data needed to identify and assess the main impacts of the cumulation by paragraph 3 of Part II of Schedule 4 of the Regulations. This certainly requires data about the cumulative traffic impact.

Non-technical summary

26. There is no non-technical summary, in breach of paragraph 5 of Part II of Schedule 4 of the Regulations.

Failure to address pollution from 'the spreading of non-PAS 100 compost/waste in the NVZ'

27. The screening direction and Q.14 required an assessment of the potential for pollution from 'the spreading of non-PAS 100 compost/waste in the NVZ'. I do not consider that any useful information on this is provided by the applicant. The answer to Q.14 consists almost entirely of generalisations. The only detailed information about the composition of compost is of PAS 100 compost. The answer ends by stating 'the combination of possibilities of impacts and influences are too numerous to be covered completely within the scope of this report' (a comment seemingly made only in the context of PAS 100 compost). Since 'the report' is supposed to be an environmental statement, 'the combination of possibilities of impacts and influences' is precisely what it is required to cover. If the applicant wants to rely on technical

difficulties or lack of know-how within paragraph 7 of Part I of Schedule 4, it must give an 'indication' of these.

28. The difficulty with this part of the screening direction is that 'non-PAS 100 compost/waste' could cover just about anything. Of course, if the applicant thought that the Secretary of State's direction was unclear or unreasonable, it should have challenged it. The applicant does not contend that no non-PAS 100 compost/waste ever leaves the site: I therefore consider that it is required to specify what products/wastes other than PAS 100 compost are generated and what they contain. However, as far as I can make out, there is only a single sentence dealing specifically with this.
29. It is not sufficient merely to state that any spreading of non-PAS 100 compost would be in accordance with an Environment Agency permit.

Accuracy of information provided

30. Q.6 asked for records of leachate removal. The applicant states baldly that 'no leachate has been removed from the site', presumably ever. If this is true it is a complete answer to the request. However this statement is difficult to reconcile with what is said elsewhere, eg about annual removal of leachate. I note that the Environment Agency states that it inspects the lagoon liner annually. This presumably means that the lagoon has to be empty.
31. Q.7 asked about details of past monitoring of odour. The applicant refers to its present daily monitoring record sheet. However this sheet could not have been used to record the monitoring required since 2007 by the 2007 Working Plan, let alone the monitoring required since September 2012 by the 2012 Odour Management Plan. Officers are investigating what the applicant actually records and whether monitoring has actually been carried out in accordance with these Plans (as the applicant implies).
32. The following points arising from the response of the Environment Agency also concern me -
- a. The response to Q.13 states 'the leachate is monitored by the Environment Agency' and 'there has never been cause for concern with the COD and BOD

in the leachate'. The first of these statements is essentially untrue. The Environment Agency in no sense monitors the leachate, and has tested it only once, in 2006. Apart from the concentrations recorded in 2006, it appears that there is no information about 'the COD and BOD in the leachate'.

- b. The response to Q.16 states that, should the lagoon reach 90% capacity, 'an appropriate quantity of leachate is recirculated over the windrows to bring the lagoon level down to between 40 and 60%'. This implies the removal of 30-50% of the capacity of the lagoon (130m³ – 216m³). According to the Environment Agency, such recirculation is prohibited by the environmental permit. The applicant does not mention this, nor the fact that compliance with the environmental permit presumably requires substantial volumes of leachate to be removed from the site.

Conclusion

33. Since the information provided by the applicant does not amount to an environmental statement, the Council has no power to grant any of the three applications (see r3 of the 1999 Regulations).



RICHARD
LANGHAM
Landmark
Chambers
180 Fleet Street
LONDON EC4A 2HG

5 February 2013

Item No.	Application No.	Address
04	12/04932/FUL	Fir Tree Inn, 140 Frome Road, Radstock

The wording of the recommendation to permit this application is incorrect on the main Agenda as a decision cannot be issued until after the 'departure advertisement' has expired. The recommendation should therefore be as follows:

Delegate authority to the Development Manager to PERMIT subject to no new objections being received by 21st February, and subject to the following conditions.

**SPEAKERS LIST
BATH AND NORTH EAST SOMERSET COUNCIL**

**MEMBERS OF THE PUBLIC ETC WHO MADE A STATEMENT AT THE MEETING
OF THE DEVELOPMENT CONTROL COMMITTEE ON WEDNESDAY, 13TH
FEBRUARY 2013**

PLANS LIST – REPORT 10		
Hinton Organics, Charlton Field Lane, Queen Charlton (Items 1-3, Pages 39-82)	Mr Morgan Angus Cunningham, Hinton Organics (Applicant) <u>AND</u> Nicholas Stubbs (Applicant's Agent)	Against – Up to 9 minutes For – To share up to 9 minutes
ENFORCEMENT – REPORT 11		
Red Hill House, Red Hill, Camerton	Maggie Hutton, Camerton Parish Council Jackie Lithgo Charlotta Martinus (Owner)	Statement in favour of enforcement Statement in favour of enforcement Statement against enforcement

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BATH AND NORTH EAST SOMERSET COUNCIL
DEVELOPMENT CONTROL 'B' COMMITTEE
DEVELOPMENT CONTROL COMMITTEE
13th February 2013
DECISIONS

Item No:	01	
Application No:	05/00723/VAR	
Site Location:	Hinton Organics Ltd, Charlton Field Lane, Queen Charlton, BS31 2TN	
Ward: Farmborough	Parish: Compton Dando	LB Grade: N/A
Application Type:	Application for Variation of Condition	
Proposal:	Variation of condition 13 and 16 of Planning Permission: 97/02626/MINW dated 02/12/1998 to allow permanent recycling of cardboard waste and increase in truck movements.	
Constraints:	Greenbelt,	
Applicant:	Hinton Organics (Wessex) Limited	
Expiry Date:	3rd September 2009	
Case Officer:	Anthea Hoey	

DECISION Defer consideration for three months to enable the applicant to submit further information in connection with the Environmental Statement and to allow members to visit the site

Item No:	02	
Application No:	05/01993/FUL	
Site Location:	Hinton Organics Ltd, Charlton Field Lane, Queen Charlton, BS31 2TN	
Ward: Farmborough	Parish: Compton Dando	LB Grade: N/A
Application Type:	Full Application	
Proposal:	Increase size of concrete storage area and variation of condition 13 of planning permission 97/02626/MINW to accept wood waste.	
Constraints:	Greenbelt,	
Applicant:	Hinton Organics (Wessex) Ltd	
Expiry Date:	3rd September 2009	
Case Officer:	Anthea Hoey	

DECISION Defer consideration for three months to enable the applicant to submit further information in connection with the Environmental Statement and to allow members to visit the site

Item No:	03
Application No:	11/00022/VAR
Site Location:	Parcel 5319, Charlton Field Lane, Queen Charlton, Bristol
Ward: Farmborough	Parish: Compton Dando LB Grade: N/A
Application Type:	Application for Variation of Condition
Proposal:	Variation of conditions 13,16 and 19 of permission no. 97/02626/MINW to extend composting operations, increase vehicle movements and permit cardboard and wood recycling (Temporary use of land for 10 years for manufacture of organic green compost as amended by revised drawings received 14th April 1998 at land formerly Queen Charlton Quarry)
Constraints:	Agric Land Class 1,2,3a, Forest of Avon, Greenbelt,
Applicant:	Hinton Organics Ltd
Expiry Date:	2nd March 2011
Case Officer:	Anthea Hoey

DECISION Defer consideration for three months to enable the applicant to submit further information in connection with the Environmental Statement and to allow members to visit the site

Item No:	04
Application No:	12/04932/FUL
Site Location:	Fir Tree Inn, 140 Frome Road, Radstock, Bath And North East Somerset
Ward: Radstock	Parish: Radstock LB Grade: II
Application Type:	Full Application
Proposal:	Erection of 2 no. residential dwellings with associated amenity space and parking.
Constraints:	Agric Land Class 3b,4,5, Coal fields, Forest of Avon,
Applicant:	Mr J Hill
Expiry Date:	15th January 2013
Case Officer:	Heather Faulkner

DECISION Delegate authority to the Development Manager to Permit subject to no new objections being received by 21st February and subject to 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 The area allocated for parking and turning on the submitted plan shall be 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, and thereafter 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.

3 Provision shall be made within the site for the disposal of surface water, so as to prevent its discharge onto the highway, details of which including the means of outfall shall be submitted to and approved in writing prior to construction.

Reason: In the interests of flood risk management.

4 No dwelling shall be occupied until its associated screen walls/fences or other means of enclosure have been erected in accordance with the approved plans and thereafter retained.

Reason: In the interests of privacy and/or visual amenity.

5 No development shall be commenced until a hard and soft landscape scheme has been first submitted to and approved in writing by the Local Planning Authority, such a scheme shall include details of all walls, fences, trees, hedgerows and other planting which are to be retained; details of all new walls, fences and other boundary treatment and finished ground levels; a planting specification to include numbers, density, size, species and positions of all new trees and shrubs; details of the surface treatment of the open parts of the site; and a programme of implementation.

Reason: To ensure the provision of an appropriate landscape setting to the development.

6 All hard and/or soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the Local Planning Authority. 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.

7 No development shall commence until a schedule of materials and finishes, and 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 surrounding area.

8 The development shall not be occupied until the proposed first floor window in the north east side elevation has been glazed with obscure glass and thereafter permanently retained as such.

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

9 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 north east side elevation at first floor level or above 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.

10 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:

The development shall be carried out strictly in accordance with the details shown on the following drawings/documents:

Received 8th November 2012
Planning, Design and Access Statement
679/300A Existing Topographical Survey/Site Plan
679/302 Proposed Floor Plans

Received 29th November 2012
Housing Land Supply Assessment

Received 24th December 2012
679/301C Proposed Site Plan
679/303B Existing and proposed street scene
679/304B Proposed front (SE) and Side (NE) Elevations
679/305B Proposed rear (NW) and Side (SW) Elevations
679/306A Site Location Plan and Existing and Proposed Block Plans

REASONS FOR GRANTING APPROVAL

1 The proposed development is contrary to Policy HG.4 of the Local Plan, being located outside any Housing Development Boundary. However the proposals also need to be considered in the light of the NPPF which promotes sustainable development, the importance of boosting significantly the supply of housing and encouraging the effective use of land by re-using previously developed/brownfield land not of high environmental value.

Given the characteristics of this site and its setting and the lack of a five year supply of housing land it is considered that on balance and subject to conditions the proposed development is acceptable. The development is considered not to harm the setting of the adjacent Listed Building or the character of the surrounding area. The development is not considered to have an adverse impact upon highway safety, drainage or residential amenity.

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.

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

IMP1 Planning Obligations
D2 General design and public realm considerations
D4 Townscape considerations
CF1 Protection of land and buildings used for commercial purposes
CF7 Loss of public houses
HG1 Meeting the District housing requirement
HG7 Minimum residential density
HG10 Housing outside settlements
BH2 Listed buildings and their settings
BH4 Change of use of a listed building
NE14 Flood Risk
T1 Overarching Access Policy
T24 General development control and access policy
T26 On-site parking and servicing provision

The National Planning Policy Framework

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

The proposed development is not fully in accordance with the Policies set out below at B, but the planning merits of the proposed development outweigh the conflict with these Policies.

B: HG4 Residential development in the urban areas and R1 settlements of the Bath & North East Somerset Local Plan (including minerals and waste policies) 2007.

Bath and North East Somerset Submission Core Strategy (May 2011)

Decision Taking Statement

In determining this application the Local Planning Authority considers it has complied with the aims of paragraphs 186 and 187 of the National Planning Framework. Negotiations have taken place during the application process resulting in revised plans being submitted. For the reasons given, and expanded upon in a related case officer's report, a positive view of the submitted proposals was taken .

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.

The proposed development lies within a coal mining area which may contain unrecorded mining related hazards. If any coal mining feature is encountered during development, this should be reported to the Coal Authority.

Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires the prior written permission of the Coal Authority.

Property specific summary information on coal mining can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at www.groundstability.com

Condition Information: The applicant has indicated that surface water will be disposed of via soakaways. Infiltration testing to BRE Digest 365 should be carried out and the soakaway appropriately designed. The results of the testing and the sizing of the soakaways should be submitted as part of an application to discharge the above condition..

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BATH AND NORTH EAST SOMERSET COUNCIL

Development Control Committee

13 February 2013

FURTHER UPDATE FOLLOWING THE PREPARATION OF THE MAIN AGENDA

ITEM 15 on main Agenda

UPDATE ON THE FORMER FULLERS EARTH WORKS

Additional papers (not exempt and already in the public domain) :

- K. Inspectors Ruling. The Committee will have already received a copy of the Inspector's Ruling dated 31 January 2013 which arrived after the preparation of the above report, but earlier than anticipated.
 - L. Letter from Harrison Grant. The Council have also received a letter from Harrison Grant dated 5 February 2013. Harrison Grant are the Solicitors acting on behalf of Protect Bath and Victims of Fullers Earth. A copy of that letter is attached, together with the Council's response dated 6 February 2013.
1. INSPECTOR'S RULING ON '*RES JUDICATA*'
 - 1.1. The Committee will see that the Inspector has found in favour of the Council and the Rule 6 parties on both the '*res judicata*' point and the interpretation of the 2003 decision letter. Please see Page 3 paragraph 1 of his Ruling.
 - 1.2. Ashfords, the Solicitors acting on behalf of the Appellants, had in their letter of 18 January 2013 (Annex A of the Update Report), advised that if the Inspector's determination went against the Appellants, they would seek judicial review of that determination. The Inspector, in his Ruling has asked that the Appellants make their position on this clear by 8 March 2013.
 2. INSPECTOR'S COMMENTS REGARDING NOTICE NO. 1
 - 2.1 As stated in the Update Report, suggested revisions, on a 'without prejudice' basis were tabled by the Council at the Preliminary hearing. These initial proposals were not accepted by the Appellants at that stage. Whilst it is considered that there is no doubt that anyone reading/receiving the Notice would not be confused about what they are required to do and it is clear from the appeal papers that indeed this was not an issue for the Appellants, further consideration is being given by your Officers to the wording of Notice No. 1 to take on board the Inspector's concerns.

3. APPELLANTS' EVIDENCE

- 3.1. The Council raised concerns prior to and at the Preliminary hearing with the amount of new evidence that has been presented in the Appellants' proofs which had not been disclosed to the Council or third parties in the Appellants' Statement of Case.
- 3.2. The Council have until 1 March to give proper consideration to this new evidence submitted by the Appellants. This process is currently under way.
- 3.3. The Council have had to appoint an expert in the interpretation of aerial photography to make an assessment of what the aerial photographs submitted by the Appellants' expert show and to confirm or refute the propositions put forward by their expert. This is a very specialist area and those working in this field use specialist equipment to make their deductions.
- 3.4. The Appellants have also produced a number of statements from those operating from the site as well as a number of tenancy agreements which have, as previously stated, not been referred to in their Statement of Case, or indeed produced previously in their responses to Planning Contravention and other Notices. The Council is investigating these submissions by the Appellants and their former/present tenants..
- 3.5 Whether or not it will be necessary for the Council to reconsider the issue of the 2012 enforcement notices will depend on the outcome of the Council's investigations as referred to above. If reconsideration does prove necessary a special meeting of this Committee will have to be called.



Inspector's Ruling

Inquiry opened on 29 January 2013

by **Brian Cook BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Ruling date: 31 January 2013

Notice No. 1: Appeal Ref: APP/F0114/C/12/2179426

Land at the Former Fullers Earth Works, Odd Down, Bath BA2 8PD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Gazelle Properties Limited against an enforcement notice issued by Bath & North East Somerset Council.
- The Council's reference is 12/00404/UNAUTH.
- The notice was issued on 30 May 2012.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the Land from agriculture and general industrial use (B2) to the mixed use of the Land including the following activities:
The mixed use of the areas described below for general industrial use (within use class B2), storage and distribution use within the areas shown on the plan attached to Notice No. 1:
 - i) Area 'A' coloured yellow;
 - ii) Part of Area 'E' coloured brown;
 - iii) Area 'D' coloured green as well as;
 - iv) The car parking area in front of the dwellings known as Nos 1 and 2 The Firs, coloured blue.
- The requirements of the notice are
 - i) Permanently cease using the following areas shown on the plan attached to the notice (the part of Area 'E' coloured brown, area 'D' coloured green as well as the car parking area in front of the dwellings known as Nos 1 and 2 The Firs, coloured blue) for waste processing (within use class B2) and storage and distribution;
 - ii) Permanently cease using the Area A coloured yellow shown on the plan attached to the notice for storage and distribution uses other than those which are ancillary to the remaining B2 use;
 - iii) Permanently remove from the land referred to in requirement (i) above all stored and processed sands, aggregates, stone, top-soils, sub-soils, green-waste and waste awaiting processing including hard-core, rubble, road-scalpings, timber, pallets, plastic, skips, tyres, vehicles, window and door frames;
 - iv) Demolish the bund along the north-east boundary of the Land in the approximate position indicated by the black dashed line shown on the plan attached to the notice and reduce to the level of the adjoining land;
 - v) Dismantle all concrete, hardstandings, underlying sub-bases, fences and storage bays (other than within Area A coloured yellow shown on the plan attached to the notice) and remove the resultant materials from the site;
 - vi) Following the removal of all materials from the land referred to in requirement (i) above, restore that land to its condition before the breach took place and level with top-soil.
- The period for compliance with the requirements is 18 months.

- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d) and (g) of the Town and Country Planning Act 1990 as amended.
-

Notice No 2: Appeal Ref: APP/F0114/C/12/2179435

Land at the Former Fullers Earth Works, Odd Down, Bath BA2 8PD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Gazelle Properties Limited against an enforcement notice issued by Bath & North East Somerset Council.
 - The Council's reference is 12/00404/UNAUTH.
 - The notice was issued on 30 May 2012.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use of the Land from agriculture to use for the storage, distribution and repair of scaffolding.
 - The requirements of the notice are
 - i) Permanently cease using the Land outlined in red on the plan attached to the notice for the storage, distribution and repair of scaffolding;
 - ii) Permanently remove from the Land referred to in requirement (i) above all scaffolding, steel containers, storage crates, storage bins, machinery and vehicles;
 - iii) Demolish all fencing and remove all resultant materials from the Land;
 - iv) Dismantle all concrete hardstandings, underlying sub-bases and remove the resultant materials from the Land;
 - v) Restore the Land to its condition before the breach took place and level with top-soil.
 - The period for compliance with the requirements is 18 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (d) of the Town and Country Planning Act 1990 as amended.
-

Notice No. 3: Appeal Ref: APP/F0114/C/12/2179431

Land at the Former Fullers Earth Works, Odd Down, Bath BA2 8PD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Gazelle Properties Limited against an enforcement notice issued by Bath & North East Somerset Council.
 - The Council's reference is 12/00404/UNAUTH.
 - The notice was issued on 30 May 2012.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use of the Land from agriculture to use for stonemasonry including the preparation, cutting, forming and storage of stone.
 - The requirements of the notice are:
 - i) Permanently cease using the Land outline red on the plan attached to the notice for stonemasonry including the preparation, cutting, forming and storage of stone;
 - ii) Permanently remove from the Land referred to in requirement (i) above all stone, steel containers, pallets, machinery and vehicles;
 - iii) Demolish all fencing and remove all resultant material from the Land;
 - iv) Dismantle all concrete, hardstandings, underlying sub-bases and remove the resultant materials from the Land;
 - v) Restore the Land to its condition before the breach took place and level with top-soil.
 - The period for compliance with the requirements is 18 months.
-

- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (d) of the Town and Country Planning Act 1990 as amended.
-

Summary of rulings

Res Judicata

1. There are two aspects to this issue. On the extent of the B2 fallback I agree with the Council and the Rule 6 parties that it is restricted to the buildings and hardstandings only. However, for the reasons I set out, although that will be a matter of fact, it is not a matter about which I am currently clear from the evidence. On the point of principle, I also agree with the Council and the Rule 6 parties that *Porter* (authority no. 10) is fatal to appellant's argument. I therefore conclude that the extent of the B2 fallback is not finally determined by the decision of the First Secretary of State (FSS) in 2003 although I also conclude that it will be a material consideration to which, subject to certain qualifications, substantial weight is likely to be given as it is so clear.

Notice No 1

2. I conclude that the notice is flawed and that the breach of planning control alleged requires correction since the word 'including' in a mixed use allegation where the Council is under-enforcing is contrary to guidance and an albeit non-binding judgement in a permission hearing. I am unable to conclude at this stage whether the notice can be corrected using the powers available in s176(1) of the Act and have identified a number of matters that the Council and the appellant will need to consider.

Background

3. On 30 May 2012 the Council issued three notices as set out in the summary details above. Appeals were made against each and each appeal is proceeding on the grounds within s174 of the Act, again as set out above. Of great significance to the cases of all parties to the Inquiry is a decision of the FSS in August 2003 (the DL). This concerned an application (ref: 00/02417/FUL) submitted by the appellant in these appeals for a development on about 3.38 hectares of land very similar in extent to the land covered by Notice No 1. That application was recovered by the FSS for determination under s77 of the Act and an Inquiry was opened in the autumn of 2002. The report of the Inspector to the FSS on that Inquiry (the IR) is dated 13 February 2003.
4. A letter dated 18 January 2013 from the appellant's legal representatives (the Ashfords letter) identified what it termed 'a preliminary issue for the Inspector' to be resolved at the outset of the Inquiry. A written determination was requested with the statement that if that determination went against the appellant a judicial review of that determination would be sought. Following my own review of the evidence and the wording of notice No 1 it became apparent that there was an additional matter that would need to be resolved before the evidence could be heard. In my view, both issues affected the nature of the evidence to be called and, potentially, whether the Inquiry should proceed at all. In the interests of all parties I considered these matters should be dealt with at the outset and rulings given.
5. I prepared a response in these terms to the Ashfords letter on 20 January 2013 (my first response) and this was circulated to the main and Rule 6 parties by the Planning Inspectorate. This response prompted a flurry of further

correspondence from the Council, Bath Preservation Society and Harrison Grant who represent Protect Bath and Victims of Fullers Earth. I prepared a further response to this correspondence on 23 January 2013 (my second response) which was also circulated by the Planning Inspectorate. The first two days of the Inquiry proceeded in accordance with the programme set out in the second response. However, the Inquiry was then adjourned to be resumed at a future date as necessary following the parties' consideration of my rulings and the position of the Council and the appellant in response to them. This was set out in a further note dated 30 January 2013 (my third response).

6. I set out my conclusions on the two issues raised in the following paragraphs.

Res Judicata

7. There are two issues to address. The first is the extent of the land considered by the FSS in August 2003 to be covered by Use Class B2 of the Town and County Planning (Use Classes) Order 1987 (as amended) as a fallback position. The second is whether the principle of *res judicata* is applicable in these appeals. I deal with them in this order purely because this was the way the submissions were presented.
8. The appellant's submissions were provided as Appendix L to the evidence of Mr Kendrick and were in the form of a Joint Opinion (JO) by David Elvin QC and Alex Goodman. The Council's submissions came in the form of a Joint Rebuttal Opinion (JRO) by Richard Humphreys QC and Thea Osmund-Smith dated 23 January. Further submissions from all parties were made both in writing and by way of oral submissions during the Inquiry. All barristers were supported by those instructing them and I therefore see no merit in summarising the detail of these submissions. All interested parties will have read the papers and heard the material points made and will no doubt use their own records if this becomes necessary at some point in the future.

The extent of the Use Class B2 fallback

9. It was common ground that the starting point must be the DL which should be read, as a whole, as if by an informed reader rather than being subjected to a forensic analysis of syntax and vocabulary. It was further agreed that by analogy with several very well known cases¹ referred to by Mr Humphreys, it was appropriate to look at the IR where it was expressly incorporated into the DL or where it was necessary to do so to attempt to resolve a lack of clarity in the DL itself. There was no firm view as to whether documents referred to and listed in the IR were extraneous material or not but I do not find I need to refer to these in any event.
10. Putting the cases at their simplest, the appellant considers that the DL concluded that the B2 fallback covered the entire application site while the Council and the Rule 6 parties do not.
11. At DL 1 it is confirmed that the FSS has given consideration to the IR and the conclusions of the IR are annexed to the DL (DL 2). At DL 3 the FSS confirms that he disagrees with the IR recommendation. At DL 8 the FSS sets out what he considers the main issues in the case to be and under those relating to Green Belt identifies one as being 'whether a fallback position exists'. Throughout the DL there are references to 'the site' and the FSS never refers

¹ For example *Barnett v SSCLG & East Hampshire DC* [2009] EWCA Civ 476

to it in any other terms. In my view, he can only mean the application site and I believe support for that interpretation can be found at DL 33. Here, there is a reference to IR 445-448 shortly after the use of the term and when IR 445 is turned up it specifically states 'the application site'.

12. There is only one apparent reference in the DL (at DL 28) to any part of the IR that does not form part of its conclusions. However, this appears from the context to be a typographic error and the reference to IR 241 should probably be to IR 421. The FSS does not therefore refer to any of those parts of the IR dealing with the description of the application site and its surroundings or the nature of the proposals. Nevertheless, on any fair reading of DL 15-25 it is quite clear that the FSS fully appreciated the nature and extent of the existing development on the application site and how the development proposed would relate to it.
13. Having set out some context, I turn now to the issue in contention, namely the extent of the area to which the FSS concluded that the fallback position applies. Attention in submissions focussed on DL 30, DL 35 and DL 59. There is also reference in DL 51 to 'fallback' but this does not assist in clarifying its extent and I do not consider this further. Nor do I consider DL 59 any further since, in my judgement, this simply flows from what is said in DL 35.
14. In DL 30 the FSS expressly incorporates IR 427-436 into the DL and the agreement of the FSS with the conclusions in IR 436 as to whether a fallback position exists is explicit. It could be argued that this section of the IR is concerned only with whether a fallback position exists (that being its heading) and that the concluding paragraph (IR 436 explicitly endorsed by the FSS) confirms only that it does and gives a view on the likelihood of the fallback continuing while saying nothing about the extent. This was not however put to me and would be entering the realm of sophistry.
15. The approach taken by Mr Robinson in these IR paragraphs is more a matter for the second strand of the *res judicata* point. Irrespective of how he got there, his conclusion at the opening of IR 435 cannot, in my judgement, be in question. To quote, he says 'I conclude, therefore, 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. In addition, building A enjoys a warehouse/storage (B8) fallback.' He goes on in IR 435 to identify three possible scenarios arising from that conclusion and expresses a view as to which would be the worst in terms of visual, environmental and traffic impact.
16. It flows from what is said about incorporation above [paragraph 9] that this passage should be read as if it is a part of the DL given what is said at DL 30.
17. Moving on to DL 35, this is in the section of the DL that addresses the other considerations that need to be weighed against the totality of the harm to the Green Belt arising from the development to determine whether the very special circumstances necessary to justify inappropriate development in the Green Belt exist. DL 35 considers one of those other considerations, namely the benefit that would flow from the development proposed preventing the fallback positions being pursued.
18. The main reason the extent of the fallback is in contention is because of the sentence midway through DL 35 which says 'The (FSS) is not satisfied on the

basis of the evidence before him that it is likely that the **entire site** will be used for B2 use under the fallback position.' (my emphasis). In my first response I expressed what could only be an initial view given that no submissions (other than the appellant's JO) or evidence had at that point been heard and tested, that this paragraph was unambiguous. On its face and in the context of the way the FSS has used the words 'the site' [paragraph 11], I do not consider that initial view to have been unreasonable and it remains the view of the appellant.

19. However, it was put by the Council and the Rule 6 parties (most robustly by Mr Forsdick) that the DL had not been challenged on any point and was therefore a lawful decision attracting a presumption of regularity. To now interpret it as inconsistent with the IR would be wrong as a matter of law. I asked for the authority to support this contention but by the time of the adjournment none had been produced². Mr Goodman accepted that the DL was valid until quashed but argued that this did not constrain me from interpreting its meaning. Mr Forsdick's position however was that, as a lawful decision, the correct approach was to identify the reasons why it was consistent, not the other way round. I can see the force of that argument if what I considered to be the proper interpretation of DL 35 could only be explained by concluding that the FSS had misunderstood the IR.
20. DL 35 begins by recording the agreement of the FSS that the three fallback positions identified by Mr Robinson are theoretically available. In doing so the FSS refers to IR 435 which is where the unequivocal conclusion about the B2 fallback quoted above [paragraph 15] appears. That does appear to set the context for DL 35. It continues by addressing the first of these fallbacks and saying (with reference to IR 455-6) that the FSS accepts that there is a real prospect of the B2 use **of the site** continuing although a reservation is expressed (my emphasis). DL 35 goes on beyond the sentence at issue before concluding on the first fallback. The other two fallbacks are then addressed in brief. Mr Humphreys therefore invited me to construe 'the site' in DL 35 as being the site of the first fallback when reading that part of it.
21. The use of the phrase 'of the site' in DL 35 is drawn from IR 455-6 where it appears more than once and differs from the phrase in IR 436 where the phrase used in the exact same context is 'on the site'. I raised this distinction in my second response but none of the advocates addressed this. To do so would probably stray into the realm of forensic analysis and the better view is most likely to be that Mr Robinson simply used a different word within what is a very lengthy report.
22. Having said that, to agree with Mr Humphreys' interpretation would mean accepting that in this one paragraph of the DL 'the site' had a meaning ascribed to it different to that throughout the rest of the DL. However, given that the conclusion in IR 435 and incorporated by the FSS in DL 30 is so clear, on balance, I accept that is the correct interpretation.
23. I therefore conclude that there is no inconsistency between DL 30 and DL 35 and find therefore that the B2 fallback relates only to the buildings and hardstandings on the site.

² On 5 February Mr Forsdick provided *R(Holland) v SSCLG* [2009] EWHC 2161 (Admin) and *Save* [1991] 1 WLR 153. In my view, *Save* does not assist Mr Forsdick since, as I state in paragraph 11, read fairly, the proper construction of the DL is that the FSS means the application site when referring to 'the site'. However, I agree that the part of the speech of Lord Bridge in *Save* referred to me (page 164) is authority for the point made.

24. Unfortunately, for the purposes of the appeals before me this only takes us so far at present since the actual extent of the fallback area remains unknown on the evidence before this Inquiry. The IR defines these areas by description, not by a plan. The areas now identified by letter in the notices are not referred to in that way in the IR so there is no direct read across. Appendix C to the proof of Mr Kendrick (the application boundary plan) is drawn on a base plan that is different to that used for the notice plans. However, Figure 4 in Core Document 43 appears to be a much closer fit to the notice plan base and purports to show the existing buildings and hardstandings. The area covered by these seems significantly less than that shown as Area A on the notice plans.
25. Nevertheless, what did comprise the buildings and hardstandings at the time of the DL must be a matter of fact that should be known to most, if not all, of the parties to these appeals since they also took part in the 2002 Inquiry. This is therefore something that will need to be agreed upon and included in the Statement of Common Ground.

Principle

Context

26. The courts have held that on appeals under ss77, 78 and 174(a) the Secretary of State does not have to cast about for a fallback position. However, where it is argued that a lawful fallback position is available it is a material consideration that must be taken into account with the weight attributed to it being influenced by the likelihood of the fallback being taken up³.
27. It is axiomatic that a fallback must be lawful otherwise it could not be taken up. This was discussed at my request during the Inquiry and it was common ground that to be lawful the fallback position must be subject of an extant planning permission, be permitted by Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) or have been determined to be lawful by application under s191 or s192 or by appeal under s174 (b), (c) or (d) or s195.
28. It was put to the FSS in 2002 that there was a fallback position so he had to take it into account. He explicitly did so by identifying it as being among his main issues [paragraph 11 above] and he concluded on the point at DL 30. As set out above he incorporated without any reservation or comment Mr Robinson's reasoning and conclusions [paragraph 16 above].
29. At the 2002 Inquiry Mr Robinson was faced with a situation where there was no material planning permission in place, no material application under s191 or its predecessors had been made and no material enforcement action had been taken by the local planning authority. Moreover, although the applicant and the Council were agreed on the position, the Umbrella Group of Rule 6 Parties disputed the existence of a lawful fallback. The existence of a lawful fallback was therefore contested. None of the oral evidence as to fact was taken under oath and none of the written evidence as to fact was by way of statutory declaration; both would be usual in enforcement appeals or submissions and appeals under s191 and s195 respectively. It would be usual also to conclude on the balance of probabilities.

³ See *Snowden* listed at authority no. 15 and the numerous others referenced at P70.30 in the Encyclopedia of Planning Law and Practice

30. It is quite clear from IR 427 and IR 428 that Mr Robinson was concerned with establishing the lawful fallback use. These two paragraphs set out the well established principles in such considerations. He then assesses the evidence before concluding in IR 433 that '...the works thus have a lawful use for general industry (B2).' At IR 435 he draws the unequivocal conclusion that has been referenced at various points above. He, and by incorporation the FSS, therefore confirmed that a fallback existed; defined (in words) the area over which it applied; and stated what the lawful use was. In my view there can be no doubt about this since two of the three fallback scenarios set out what could be done without the need for **further** planning permission (my emphasis).

The gist of the cases made

31. The appellant argues that *Thrasyvoulou* (authority no. 9) imports a private law principle into public law. That principle is that, once an issue of legal right has been determined in a matter, it becomes the final determination of that issue between those parties. It is a matter of public interest that the finality of the determination is recognised and not subjected to further litigation between the parties. While *Thrasyvoulou* was an enforcement case the appellant argues that the determination by the FSS in 2003 of the lawful fallback amounts to a determination of a legal right and thus the principle of *res judicata* applies in the case before me. The effect is to require the notices to be varied to ensure that the lawful B2 use is preserved across the material area. For the reasons set out above, I disagree with the appellant as to the extent of that area.

32. The Council and the Rule 6 parties disagree with this analysis. They argue that the FSS did not have the specific jurisdiction under s77 of the Act to determine an issue which established a legal right and that, respectfully, the appellant is therefore mistaken to rely so heavily on *Thrasyvoulou*. In any event, *Porter* is fatal to the appellant's case.

Jurisdiction

33. In *Thrasyvoulou* Lord Bridge stated that the twin principles that underpin the doctrine of *res judicata* must apply to adjudications in the field of public law where the statute has created a specific jurisdiction for the determination of any issue which establishes the existence of a legal right (p289 C-D). In my view it is not clear whether the 'specific jurisdiction' referred to in that case is the Town and Country Planning code as a whole or the more limited part of it dealing with the enforcement of planning control. At p288 F-H Lord Bridge summarises the appellants' cases as put and the second submission refers to the 'complete and self-contained statutory code governing the enforcement of planning control'. I believe that at p289 C-D Lord Bridge is dealing with the second submission. On balance, I therefore consider that in context Lord Bridge is referring at p289 C-D to what is now Part VII of the Act rather than the Act as a whole.

34. However, in 2003 the FSS was placed in some difficulty. I have already noted that where a fallback position is put forward the courts have held that it must be taken into account [paragraph 26]. Typically in determinations of planning applications and appeals, the nature of the fallback position is clear. What is often in issue is the likelihood of it being taken up in the event of the application being refused permission and/or the appeal being dismissed. That was not the case in the matter before the FSS.

35. Although the main parties were agreed, the Umbrella Rule 6 Parties were not and there appears on the evidence in the IR to be no settled legal basis for the main parties' position [paragraph 29]. It seems to me therefore that to meet the obligation placed upon him by the courts the FSS had no alternative but to come to a view about the fallback position in the first instance. As the matter was being dealt with under Part III of the Act the specific jurisdiction for doing so was not available to the FSS.
36. While those opposing the appellant argued that the FSS had no jurisdiction, no authorities were put to me to say that a decision of this nature taken under the incorrect part of the Act was invalid. In my view therefore any lack of jurisdiction does not alter the fact that a decision was made and then acted upon.

Determination

37. In oral submissions Mr Humphreys and Mr Forsdick both characterised the FSS as having 'come to a view' about the fallback position. I believe it was more definitive than that.
38. What is said in IR 427-436 is unequivocal. Indeed, that this is so is fundamental to the Council's and the Rule 6 Parties' cases on the extent of the fallback determined. If the FSS considered that the evidence did not justify such an unequivocal finding he could have said so. However, in DL 30 he accepted the conclusions and the reasons for them without qualification. In my view, this amounts to a determination of the lawful fallback and thus a determination of a legal right.

The effect of Porter

39. So far on this matter of 'principle' I have concluded that the FSS had to conclude on the fallback since this was a necessary part of the reasoning required for him to meet the obligations placed upon him by the courts. I have also found that the finding was so clear that it amounted to a determination of a legal right on this subsidiary issue. As I understand the appellant's case that is sufficient for the doctrine of *res judicata* to be applicable in these appeals.
40. However, this does appear to ignore *Porter* where this very point was taken and found, on the majority decision, to be a misinterpretation of *Thrasylvoulou*. While Mr Goodman argued that *Porter* was a case turning on hypothetical facts, this does not appear relevant to the passages on pages 702 and 703. At p702j to p703a Stuart-Smith LJ reviews what Lord Bridge was saying and concludes that if he had meant to imply that an issue estoppel could arise from some finding of fact by the Secretary of State and necessary to his conclusion on whether or not to grant planning permission he would have said so. Stuart-Smith LJ concludes that it is implicit from his judgement in *Thrasylvoulou* that he thought no such thing.
41. Since I understand this to be the point from *Thrasylvoulou* that the appellant relies upon I agree with the Council and the Rule 6 parties that it is fatal to the appellant's case. There may be an argument against this fatality but again I agree with the Council and the Rule 6 parties that it was not put other than in terms of an inherent fairness issue about the public interest need for finality in litigation on the same essential point.

42. In the light of this conclusion I have not found it necessary to comment upon the other authorities relied on and listed since it was not argued by Mr Goodman that any of these overcame the *Porter* case put against him.

Conclusions

43. On the matter of *res judicata* I have found against the appellant on both points in the preliminary issue raised. The Ashfords letter states that in these circumstances a judicial review shall be sought although at the Inquiry Mr Goodman took a more flexible position. The appellant will need to be absolutely clear about this not later than midday on 8 March in order that all parties may assess their positions on the timetable set out in my third response.
44. At the Inquiry there was a short discussion about the effect had I agreed with the appellant on both points. I believe it was common ground that it would simply have set a benchmark for the appeals although there was no settled view as to the date of that benchmark.
45. In my view, even though I have not agreed with the appellant's position, this may not alter the determination that the FSS made regarding the lawful B2 use of whatever, as a matter of fact, was then the extent of the buildings and hardstandings. This would thus be a material consideration to which, subject to submissions, I am likely to attach substantial weight unless the evidence demonstrates, on the balance of probabilities, that finding of the FSS was wrong.

The wording of Notice No 1

46. In the first response I set out my concerns regarding the drafting of this notice and referred the parties to a non-binding judgement⁴ in a permission hearing that I considered relevant. In response to a number of points raised by the Council in its letter of 22 January I made a number of further comments in the second response. Although the Council tabled two alternatives for the wording of the notice at the end of the first day there was little substantive discussion on the second day as the appellant wished to consider the matter further.
47. The breach of planning control alleged is entirely a matter for the Council as are the steps required to deal with it. It is for the Council alone to decide what it is expedient for it to seek to achieve through taking enforcement action. However, the principle established in *Miller-Mead*⁵ is that the person to whom the notice is issued must be told fairly both what he has done wrong and what he must do to remedy it from within the four corners of the document. The breach of planning control alleged and the steps set out to deal with it must therefore be clear and unambiguous. In deciding whether to use the power available to me under s176(1) my only concern is to correct what would otherwise be a notice that is invalid for uncertainty or even a nullity.
48. Although the wording is somewhat cumbersome, the nature of the appeal made suggests that the appellant is nevertheless clear as to what is alleged and required. As I understand it (with the benefit of now having seen the evidence), as issued the allegation means that the Council believes one mixed

⁴ *The Queen on the application of East Sussex County Council v Secretary of State for Communities and Local Government*, Michael Robbins, Gary Robbins [2009] EWHC 3841 (Admin)

⁵ *Miller-Mead v Minister of Housing and Local Government* [1963] 2 WLR. 225

use of the land (agriculture and B2) has been changed to another (B2, storage and distribution plus other use(s) unspecified-implicit in the use of the word 'including'). Four separate areas of land are identified with all being in the unauthorised mixed use.

49. Requirements 5 (i) and (ii) set out the uses that are to cease. Requirement 5 (i) identifies these as 'waste processing (within use class B2) and storage and distribution' in all areas within the notice land except Area A. Requirement 5 (ii) correctly seeks to preserve what the Council considers to be the lawful use of the land, namely the B2 use of Area A, by requiring the cessation of only specific storage and distribution uses within Area A thus leaving any B2 uses, and storage and distribution uses ancillary to them, not enforced against.
50. In my view, there are a number of matters raised by the wording of the issued notice.
51. First, the use of the word 'including' in a mixed use allegation implies that not all of the uses taking place (both lawful and allegedly unauthorised) are listed. Where, as in this case, the Council intends through the requirements to leave some uses in place across the whole of the notice land (under-enforcement) this is not acceptable for the reasons set out in paragraphs 2.9 to 2.13 of Circular 10/97 (*Enforcing Planning Control: Legislative Provisions and Procedural Requirements*) and paragraph 20 of the judgement referred to at footnote 4. While the Council may use s173A of the Act to waive or relax any requirement of a notice, this power does not extend to the terms of the allegation which, once issued and appealed, can only be corrected under s176(1) and, only then, if no injustice to either party would be caused as a result of so doing.
52. Second, requirement 5 (i) requires the cessation of a use (waste processing) that may not be a use included in the alleged breach. I say 'may not be' because the requirement either assumes that all waste processing uses on the specified areas of the site fall within the B2 Use Class alleged or it intentionally enforces against only those waste uses that do so; this is not clear and so the notice is uncertain.
53. Third, I have already raised an issue in respect of requirement 5 (iv) in both my first and second responses. This may well be a matter for the evidence unless the Council wishes to reflect further at this stage.
54. I am aware of correspondence between the Council and the appellant during November and December 2012 following the Council's discovery of what it considers a relevant case commentary and appeal decision. This has caused it to review its assessment of the waste uses on the site and in its letter to the appellant on 12 December it suggested the alleged breach might be more appropriately described as 'mixed waste processing and B2 and storage and distribution'.
55. In a letter to the Planning Inspectorate dated 22 January 2013 replying to my first response it proposed a correction of the alleged breach to 'general industrial use (within Use Class B2), storage and distribution' to deal with the 'including' point. While it would remove the word, this would not deal with the substance of the point if the alleged breach still failed to include all the uses taking place when the notice was issued.

56. Finally, at the end of the first day of the Inquiry the Council tabled, without prejudice, a revised notice No1 with the alleged breach saying '....to a mixed use for general industrial use (B2), storage and distribution use (B8) and the deposit of waste material'.
57. To conclude on this matter, I am clear that the breach of planning control alleged needs correction to address the point raised in *East Sussex*. Since December 2012 the Council has put forward three different versions of the alleged breach of planning control which might replace that in the notice. The Council therefore needs to make its intentions for this notice absolutely clear by not later than 1 March. In doing so it will need to satisfy itself that the alleged breach of planning control includes all the uses taking place on the site on 30 May 2012. It will also wish to have regard to paragraph 2.11 of Circular 10/97 in particular when it considers the relationship between the corrected allegation and the existing requirements.
58. By not later than 8 March the appellant will then have to consider the corrected notice. In doing so the proof of evidence of Mr Kendrick (and section 8 in particular) should be reviewed and a view taken about the extent to which the matters that might be raised by the new notice wording have already been addressed.

Brian Cook

Inspector

APPEARANCES

FOR THE APPELLANT:

Alex Goodman of Counsel Instructed by Ashfords Solicitors

FOR THE LOCAL PLANNING AUTHORITY:

Richard Humphreys QC and Instructed by Mrs M Horrill, Solicitor & Planning &
Thea Osmund-Smith of Counsel Environmental Law Manager with the Council

Rule 6 Parties:

David Forsdick of Counsel Instructed by Protect Bath and Victims of Fullers
Earth

Alison Potter of Counsel Instructed by Bath Preservation Trust
Trevor Osborne Representing himself

SUBMITTED AUTHORITIES

- 1 *Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment and others* [1985] 1 AC 132
- 2 *Williamson v Mid Suffolk DC* [2006] EWLands LCA 73 2002
- 3 *Watts v Secretary of State for the Environment and South Oxfordshire DC* [1991] 62 P. & C.R.
- 4 *R (on the application of Wandsworth LBC) v Secretary of State for Transport, Local Government and the Regions* [2003] EWHC 622 (Admin)
- 5 *Keevil v Secretary of State for Communities and Local Government* [2012] EWHC 322 (Admin)
- 6 *The Queen on the application of Exmouth Marina Ltd v First Secretary of State* [2004] EWHC 3166 (Admin)
- 7 *Stancliffe Stone Co Ltd v Peak District National Park Authority* [2004] EWHC 1475
- 8 *David Saxby v Secretary of State for the Environment and Westminster City Council* [1998] EWHC QBD
- 9 *Thrasyvoulou v Secretary of State for the Environment* [1990] 2 AC 273
- 10 *Porter and another v Secretary of State for Transport* [1996] 3 All ER 693
- 11 *Johnson v Gore Wood & Co* [2002] 2 AC
- 12 *Specialist Group International Limited v Richard Simon Deakin and Charles David Deakin* [2001] EWCA Civ 777
- 13 *Special Effects Limited V L’Oreal SA and another* [2007] EWCA Civ 1
- 14 *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13
- 15 *Snowden v Secretary of State for the Environment and Bradford City Metropolitan City Council* [1980] JPL 749

DOCUMENTS

- 1 Licence Number EAWML 100028 submitted by the appellant

Annex 2

HARRISON

SOLICITORS

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Bath BA1 1RG

Our Ref: V0F0012
Your Ref: MH/PEV7241

By Post and Email

5 February 2013

Dear Ms Horrill

FORMER FULLERS EARTH WORKS, ODD DOWN, BATH


We write further to the Inquiry held at the Fry Club & Conference Centre on 29 and 30 January 2013 for the above.

We have asked for a copy of your revised EN1 and look forward to receiving this shortly. We note that the Council will be reviewing the merits of proceedings with the EN in the light of the late evidence received from the Appellant. We have studied that evidence with care and consider that far from establishing that which the Appellants need to establish it conclusively demonstrates that area E was not used as part of a single planning unit prior to 2002. In the unlikely event that you consider that there is any basis for withdrawal of any or all of the notices, please ensure that you give us advance notice of your intention to do so, so that we may make representations. It would, of course, be impermissible for you to withdraw the notices having heard only one side of the story.

Further, and in any event, please accept this letter as a formal request for you to reissue your Enforcement Notice of 22 February 2009 in accordance with section 171B(4)(b) of the Town and Country Planning Act 1990. Plainly any such enforcement notice would ensure that the Appellants do not benefit from the three year gap between the initial enforcement notice and the issuing of EN1, EN2 and EN3.

I look forward to hearing from you.

Yours sincerely,



Nnenna Morah
Harrison Grant

Bath & North East Somerset Council

Legal & Democratic Services
Bath & North East Somerset Council
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Nnenna Morah
HARRISON GRANT
Solicitors
175-185 Gray's Inn Road
LONDON
WC1X 8UE

By Post and email

Dear Ms Morah

FORMER FULLERS EARTH WORKS, ODD DOWN, BATH

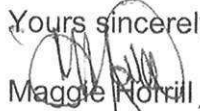
Thank you for your letter dated 5 February 2013.

Enforcement Notice EN1 has not been formally revised. As specifically indicated to the Inspector at the inquiry last week, the Council had put forward provisional wording, on a 'without prejudice' basis, to show how the Inspector's initial concerns could be addressed, if considered necessary. I forwarded, under cover of my email of 1 February, the 'Possible revised wording' you requested.

With regard to the 2012 Notices, the Council, as the Local Planning Authority, will further consider its position once we have had the opportunity to consider the Inspector's ruling (which we have just received since preparing this letter). If the Council were minded to withdraw the notices following investigation of the evidence received from the applicant, I can confirm that, in the circumstances of this case, we would first give you notice, as requested.

As you will be aware, an update report is going before the Council's Development Control Committee on 13 February 2013 (this had been despatched today before receipt of the Inspector's ruling). Any legal advice given to the Committee will be likely to be given in private session, in the usual way. I can confirm, however, that the formal request which you make in your letter concerning a "second-bite" notice will be raised with the Committee.

Yours sincerely


Maggie Horrill,
Solicitor

Planning and Environmental Law Manager

Legal and Democratic Services

Planning & Environmental Law Team
Manager - Maggie Horrill, Solicitor

Bath & North East Somerset Council	
MEETING:	Development Control Committee
MEETING DATE:	13th March 2013
RESPONSIBLE OFFICER:	Lisa Bartlett, Development Manager, Planning & Transport Development (Telephone: 01225 477281)
TITLE:	APPLICATIONS FOR PLANNING PERMISSION
WARDS:	ALL
BACKGROUND PAPERS:	
AN OPEN PUBLIC ITEM	

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	12/03335/FUL 27 September 2012	Bath Abbey Abbey Church Of St Peter & St Paul, Abbey Churchyard, City Centre, Bath, Bath And North East Somerset Provision of improved public and ancillary support facilities to Bath Abbey, alterations to 8-13 Kingston Buildings, basement of Abbey Chambers, the 1920s Jackson Extension to Bath Abbey, the Clergy Vestry and adjoining vaults and cellars south of the Abbey, creation of newly excavated below ground spaces north of Kingston Buildings and below the Jackson Extension, associated landscape improvement works to the public realm and to the garden north of the Seventh Day Adventist chapel	Abbey	Rachel Tadman	Delegate to PERMIT
02	12/03336/LBA 27 September 2012	Bath Abbey Abbey Church Of St Peter & St Paul, Abbey Churchyard, City Centre, Bath, Bath And North East Somerset Internal and external alterations for the provision of improved public and ancillary support facilities to Bath Abbey, alterations to 8-13 Kingston Buildings, basement of Abbey Chambers, the 1920s Jackson Extension to Bath Abbey, the Clergy Vestry and adjoining vaults and cellars south of the Abbey, creation of newly excavated below ground spaces north of Kingston Buildings and below the Jackson Extension, associated landscape improvement works to the public realm and to the garden north of the Seventh Day Adventist chapel	Abbey	Lisa Bartlett	Delegate to CONSENT

03	12/05418/FUL 10 April 2013	Sainsbury's Supermarkets Ltd & CFH Total Document Management St Peter's Factory, Wells Road, Westfield, Radstock, Bath And North East Somerset Erection of foodstore and petrol filling station with associated development.	Westfield	Sarah James	REFUSE
04	12/04238/OUT 8 January 2013	Edward Ware Homes Ltd Parcel 3567, Stitchings Shord Lane, Bishop Sutton, Bristol, Erection of 35no. dwellings and associated infrastructure.	Chew Valley South	Daniel Stone	PERMIT
05	12/05279/FUL 5 March 2013	Barratt Homes (Bristol) Ltd And Messrs Parcel 9181, Wick Road, Bishop Sutton, Bristol, Erection of 41 no. two, three, four and five bedroom dwellings including 14 no. affordable housing units along with the provision of informal public open space, vehicular access from the A368, landscaping and drainage.	Chew Valley South	Richard Stott	PERMIT
06	12/04834/FUL 11 February 2013	Mr Robert Barrett Pack Horse Farm, Old Midford Road, Midford, Bath, BA2 7DQ Change of use of land to equestrian, retention of 2no. mobile stable units for current DIY livery business and conversion of existing outdoor turnout area/starvation paddock to an all- weather riding arena (revised resubmission).	Bathavon South	Rachel Tadman	REFUSE
07	13/00154/REG03 26 March 2013	Bath And North East Somerset Council City Of Bath College, Avon Street, City Centre, Bath, Bath And North East Somerset Installation of a public sculpture and plinth.	Abbey	Tessa Hampden	PERMIT

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

Item No: 01
Application No: 12/03335/FUL
Site Location: Abbey Church Of St Peter & St Paul Abbey Churchyard City Centre
 Bath Bath And North East Somerset



Ward: Abbey **Parish:** N/A **LB Grade:**
Ward Members: Councillor B J Webber Councillor Manda Rigby
Application Type: Full Application
Proposal: Provision of improved public and ancillary support facilities to Bath Abbey, alterations to 8-13 Kingston Buildings, basement of Abbey Chambers, the 1920s Jackson Extension to Bath Abbey, the Clergy Vestry and adjoining vaults and cellars south of the Abbey, creation of

newly excavated below ground spaces north of Kingston Buildings and below the Jackson Extension, associated landscape improvement works to the public realm and to the garden north of the Seventh Day Adventist chapel

Constraints:	Agric Land Class 3b,4,5, Scheduled Ancient Monument SAM, Article 4, Bath Core Office Area, City/Town Centre Shopping Areas, Conservation Area, Forest of Avon, Hotspring Protection, Listed Building, Prime Shop Front, World Heritage Site,
Applicant:	Bath Abbey
Expiry Date:	27th September 2012
Case Officer:	Rachel Tadman

REPORT

REASON FOR REPORTING APPLICATION TO COMMITTEE:

The application has been referred to Committee at the request of the Chair of Development Control.

DESCRIPTION OF SITE AND APPLICATION:

The application site is highly significant in terms of designated heritage assets. The site includes part of Bath Abbey (grade I), Nos 9-13 Kingston Buildings (grade II), 11A York Street (grade II), Abbey Chambers (grade II) and the Seventh Day Adventist Chapel at the east end of Kingston Parade (grade II). The site is also within the Bath World Heritage Site and the heart of the designated conservation area. A small area of vault to the south of the Jackson extension lies within the Roman Baths Scheduled Ancient Monument. An application for scheduled ancient monument has been consented by English Heritage. The site is within the Bath Conservation Area.

In addition to being a place of worship, the Abbey is a significant visitor destination as well as a venue for concerts, performance and other events. Bath Abbey has an important role in the musical life of the city and is responsible for three choirs. The Statement of Need which is included in the application Appendices gives a full list of the all the activities the Abbey is involved in.

The application proposes the provision of improved public and ancillary support facilities to Bath Abbey, alterations to 8-13 Kingston Buildings, basement of Abbey Chambers, the 1920s Jackson Extension to Bath Abbey, the Clergy Vestry and adjoining vaults and cellars south of the Abbey, creation of newly excavated below ground spaces north of Kingston Buildings and below the Jackson Extension, associated landscape improvement works to the public realm and to the garden north of the Seventh Day Adventist chapel.

The proposal would provide both essential and enhanced facilities across the development site and includes a number of interrelated elements which are discussed in more detail under the Officer Assessment section of the report. In summary the key components of the scheme comprise;

Carry out extensive alterations to Kingston Buildings including the removal of walls and ceilings to create a double height (basement/ground floor) choir practice room spanning Nos 10 and 11. On the upper floor partial demolition of walls and the removal of staircases is proposed to achieve linked office accommodation for the Abbey.

Excavation between the Abbey and Kingston Buildings to create a new subterranean meeting room. The room will have a central window feature in the roof expressed as a raised lantern in the pavement above. This large meeting room will be capable of holding up to 150 people for conferences and presentations. The configuration of spaces will allow this room to be connected to the Abbey, the vaults and Kingston Buildings.

Alterations to the 18th Century vaults beneath Kingston Parade (currently known as the Heritage Vaults) to provide a refectory and servery for visitors and users of the Abbey. This area will also act as a hub/intersection point for circulation to different parts of the development.

Alterations to the vaults beneath Abbey Chambers to create kitchen spaces, publically accessible toilets, storage for the Abbey archives and an archive work space.

Alterations to the 1920s Jackson extension on the south side of the Abbey to convert the traceried windows into doors. Inside the Jackson extension (the new Welcome Cloister) will become the principal point of entry into the Abbey for visitors. The extension will serve a number of purposes including a welcoming space, shop and foyer when the Abbey is being used for performances. Stairs and lifts in the Jackson extension will provide public access to vaults level. The West Front entrance will still be used for Sunday services.

Excavation below the Jackson Extension to create a new Interpretation Space to showcase the Abbeys archaeology.

Small extension and alterations to link the rear of Kingston Buildings with 11A York Street where the basement and vaults will be used as workshop space.

Create a quiet garden in the existing garden of Nos 7/8 Terrace Walk adjacent to the Seventh Day Adventist Church.

Retain the existing second floor extension to what was number 8 Kingston Buildings for use as the parish room/small meeting room. This element of the scheme has been revised to remove a proposed two storey glass and stone extension across Nos 8 and 9 Kingston Buildings. The proposal to install double glazing into Kingston Buildings has also been removed from the scheme.

The application has also been supported by a Design and Access Statement, Heritage Statement and Appendices and a further written justification for the changes to Kingston Buildings. This additional justification document seeks to balance the acknowledged harm to the fabric of Kingston Buildings against the public benefits the applicant believes will flow from the scheme. These supporting documents set out in detail the Abbey's case for proposing the work, including their Statement of Need. They provide essential background to the application and should be read in conjunction with this committee report.

The application proposals form part of a larger project known as the Abbey Footprint. This project includes elements of work inside the Abbey which fall under Faculty Jurisdiction Rules (the Churches own internal procedures to protect listed buildings) and are not included in the application before the Committee for consideration. The current application does not include any proposals for work to extract energy from the Roman Great Drain.

PLANNING HISTORY:

12/03336/LBA - Provision of improved public and ancillary support facilities to Bath Abbey, alterations to 8-13 Kingston Buildings, basement of Abbey Chambers, the 1920s Jackson Extension to Bath Abbey, the Clergy Vestry and adjoining vaults and cellars south of the Abbey, creation of newly excavated below ground spaces north of Kingston Buildings and below the Jackson Extension, associated landscape improvement works to the public realm and to the garden north of the Seventh Day Adventist chapel.

This is a concurrent application that is also being considered by Committee on this Agenda.

Pre-application discussions: The Local Planning Authority, in conjunction with English Heritage, has engaged in extensive pre application discussion with the applicants. This process established that, whilst significant elements of the work were acceptable in principle, if not detail, the work directly affecting Kingston Buildings would result in the loss of fabric, plan form and character which would unacceptably harm the significance of the heritage asset.

Prior to lodging the formal application, and at the applicant's instigation, the scheme was presented to the South West Design Review Panel. Following the site visit the panel commented in writing that Kingston Buildings makes an important contribution to the townscape and historic character of the area. They suggested locating the choir practice room elsewhere to allow less dramatic changes to the terrace.

SUMMARY OF CONSULTATIONS/REPRESENTATIONS

HIGHWAYS DEVELOPMENT OFFICER:

All the proposed works will involve a significant amount of work at basement/ vault levels, including alterations and extensions of the vaults, and some of these parts of the building extend beneath the existing public highway.

All works would need to be the subject of structural approval, in order to ensure that the integrity of the highway is not adversely affected. It is also noted that new lightwells are proposed adjoining the buildings, together with a new circular lightwell feature within the existing pedestrian paved area between Kingston Buildings and the Abbey. This feature would be raised and form a structure on the highway, for which approval would also be required.

The general nature of the proposals are considered acceptable, in highway terms, subject to the details of all the structural works directly beneath and adjoining the highway being submitted to and approved by the Structures Team. The approval process will need to be

fully funded by the applicant, and there may also be a need to contribute to the future maintenance of any features on the highway.

The proposal will clearly affect the use of the highway during the works, and a Construction Management Plan will be required to agree the method of working and traffic management etc.

No highway objection is raised subject to conditions being attached to any permission granted.

HIGHWAYS DRAINAGE: No objections subject to conditions.

ARCHAEOLOGICAL OFFICER: Raises the following concerns:

Below Ground Archaeology

A programme of archaeological evaluation trenching, within the 1920s Jackson extension (Abbey shop) and public open space between Kingston Building and the east end of the church, was carried out of behalf of the Abbey by Cotswold Archaeology between January and March 2011.

The archaeological investigations within the Jackson extension demonstrated that the area may be able to accommodate additional lower floor level, without impacting on the more significant medieval and Roman levels/deposits. Nevertheless, there remains the potential for archaeological deposits of higher significance to be found above these levels, and this is a clear risk in an area of such high archaeological potential between the medieval Abbey church and Roman Baths scheduled ancient monument.

Proposed use of the area between the Abbey church and Kingston Buildings to provide a new below ground meeting room will require a large amount of excavation. And whilst the archaeological evaluation trench revealed deposits and structures of generally low to moderate archaeological significance, the site as a whole still has high archaeological potential.

Listed Buildings

I share the grave concerns raised by the Council's conservation officer and English Heritage in relation to the conversion of Kingston Buildings into open plan office space with a two story height choir practice room. All parties accept that the destruction of the historic building plan will cause 'substantial harm' to the historic asset and its significance.

However, I am not convinced that the uses proposed for Kingston Buildings demonstrate the clear 'substantial public benefits' that are required to justify such changes in the National Planning Policy Framework (NPPF 133). Furthermore I am not convinced that less damaging options have been fully explored, such as the use of Abbey Chambers for office space, and the Friends Meeting House, York Street, for the choir practice room.

I again share the concerns raised by the Council's conservation officer and English Heritage in relation to proposed changes to the Heritage Vaults. In particular the widening of access routes through the vaults, which will involve the loss of significant historic fabric and insertion new engineered supports, harming the character and integrity of the vaults.

ENGLISH HERITAGE: (Original comments dated 8 October 2012):

Summary

We welcome the overall objective of works to improve and upgrade the facilities of the Abbey. We consider the works to the Jackson wing, heritage vaults and the creation of the large underground meeting room to be generally acceptable, subject to some suggested revisions. However overall the proposals will have a significant adverse impact on the grade II listed terrace of Kingston Buildings. It is acknowledged by the applicant's agent that these works will cause significant harm however they contend that the works will provide significant public benefit to outweigh this harm. We are of the view that it is not been demonstrated and the harm to these historic assets outweighs the public benefit. We are unable to support these applications.

English Heritage Advice

The proposal site is highly significant in terms of designated heritage assets. The medieval Abbey is a grade I listed building, the area has high archaeological interest, and potential, as close to the Roman complexes and the remains of the earlier Norman church, plus the later 18th and 19th century remains. Kingston Buildings, Abbey Chambers, and 11 York Street are all grade II listed buildings. The whole site is within the World Heritage Site. The site is also in the Bath Conservation Area and the proposals have the potential to impact on the settings of many other designated and undesignated heritage assets.

We note that these proposals form part of a wider project by the Abbey involving internal alterations to the Abbey. Some of these proposals are included in the appendices however as these works are still evolving and fall under faculty jurisdiction rules we will not be commenting on them as part of this consultation.

We have been involved in considerable pre-application discussions regarding these proposals and the submitted scheme does address some of the comments we have made. We are supportive of the main objective of the Abbey and a substantial element of the works is considered to be generally acceptable namely; the works to the Jackson extension, the creation of the large meeting room and the majority of the works to the heritage vaults. It is acknowledged by all parties that the works Kingston Buildings will result in substantial harm to the heritage assets. The main focus of the discussion centres on the policies set out in the NPPF paragraph 132 As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. In addition paragraph 133 Where proposed development will lead to substantial harm to or total loss of significance of designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss.

In addition, the Historic Environment Practice Guide which accompanied PPS5 is still applicable.

Jackson Extension

This extension was added in the 1920s to the south aisle of the Abbey. It has a gothic detailing picking up on the perpendicular style of the medieval building. This area of the site has been subject to redevelopment over time so it is likely to contain evidence of Victorian, Georgian, Norman and Roman archaeology. Some archaeological

investigations have been undertaken in order to establish whether it is possible to excavate in this location. These investigations have shown it may be possible to lower the levels and create a two storey accommodation in this location. Of course any development here will need to be subject to on going archaeological assessment and monitoring.

The alteration to the elevation involves alteration to the windows to create doors. This will represent a visual change, and some loss of 1920s fabric, but it will enable a greater physical connectivity between the Abbey and Kingston Parade. We have no objection to the principle of opening up of this elevation although we are concerned at the extent of opening up proposed. The floor plan of the site seems to show the setting back of the existing windows however the larger scale plan shows them in their existing position. This detail will need to be clarified.

Heritage Vaults

The area under Kingston Parade contains the remains of 18th century vaults but also the potential for archaeological remains under the floor surfaces. These vaults are currently used to house the museum and have potential to provide cafe and toilet facilities. The proposals involve removal of part of the vault walls which support the barrel vaults. In order to achieve this, a concrete structure at ceiling level is required to support the vault. It is unclear why such a large opening is required. We would recommend that the servery is moved to another vault in order not to obstruct the route to the toilets. If this was done then the opening could be reduced in size.

New Large Meeting Room

This area has high archaeological potential. In order to create this new meeting room there will be substantial excavation in this location. We understand that Richard Sermon the Council's archaeologist has been heavily involved in the archaeological investigations and is content that there is the potential to carry out these works, subject to archaeological monitoring. The removal of the railings to the existing well area around the south east side of the abbey is acceptable subject to details of the connection of the glazing and grilles with the fabric of the abbey itself.

Kingston Buildings

8 -13 Kingston Buildings is a row of modest terrace houses dating from the early 19th century. The Architectural History Practice assessment of these buildings states that "they illustrate the development of this part of the Kingston Estate in central Bath during the Georgian era. Much of the surviving fabric is original, including the front elevations, party walls, and chimneybreasts, some partitions, most of the staircases and some of the windows, doors and doorframes. All of the Kingston Building houses have been altered internally, albeit to varying degrees. Common minor alterations include the insertion of openings in the party walls and the blocking of fireplaces. Three of the houses (nos.8,9 and 13) had more significant alterations..." The Heritage Statement recognises that alterations such as openings between rooms and buildings, alterations to the staircases have eroded the sense of the original plan in several areas.

These buildings were designed as houses and their most appropriate use would be residential. We acknowledge that the majority of the floor space has been in office use for a substantial period of time. However, the proposed increase in office use brings with it pressure to make further physical changes to the fabric, layout and significance of the

buildings. The proposed changes to create offices does result in further loss of fabric and plan form. We acknowledge that there is an opportunity to improve the thermal efficiency of the buildings but have reservations regarding the extent of works proposed. For example, repairing and improving the draught proofing of windows will increase the energy performance of the building. It is also proposed to replace all the glazing with slim lite double glazing. In our experience of talking to joiners who work with upgrading sash windows it is very difficult to install slim lite double glazing in multipane sashes without losing most of the original joinery, it also has implications for the weights. We would suggest secondary glazing as an alternative option. It is also proposed to add internal wall insulation which will hide the mouldings on the ground and first floor of numbers 8 and 9. The type of insulation has not been specified but consideration needs to be given to not only the impact on the aesthetic value of the buildings but also their technical performance.

The greatest of the proposed changes to these buildings is the introduction of the choir/song school which involves removal of a significant quantum of fabric and major alteration to the plan form of the basement and ground floor of numbers 10 and 11. All the vaults under the pavement will be removed to create a new connection and corridor with the new large scale meeting room.

In addition, major structural interventions are necessary to achieve the degree of proposed change. Unfortunately the scale of the drawings makes it difficult to read the detailed notes at A4 or on the computer. The works to create the proposed Choir practice rooms will involve installation of a steel portal structure. Other alterations such as removal of spine walls with steel and concrete lintels. We can surmise that these works involve lowering all the basement floors and installing new concrete floors. No information has been provided on the significance of the floors to be removed and how the concrete will perform on a technical level especially in conjunction with the wall insulation. These are traditional breathable buildings and these works involve substantial alterations to their structure and how the materials breathe.

The small scale of the terrace, in a City of grand houses, is part of its special interest and significance. We are of the view that the existing addition on No 8 has a negative impact on the aesthetic value of the terrace. Whilst its removal is uncontentious the proposals to replace it with a new wider addition is considered to be harmful to the aesthetic value and significance of the external appearance of the terrace.

In our view, due to the impact on fabric, floor plan, aesthetic value and potential impact on technical performance and structural integrity of Kingston Buildings these works would cause substantial harm to the significance of these designated heritage assets. These buildings are capable of a viable future without the need for such substantial changes. In applying the policies in the NPPF the Local Planning Authority should refuse consent unless it can be demonstrated that the substantial harm is necessary to achieve substantial public benefit. The justification in the Design and Access statement is that the development will enable the Abbey to continue to serve the city, its congregation and its visitors, the long term viability of the Abbey as an institution will ensure the long-term protection of the Grade I listed Abbey Church and its ancillary building, it will alleviate pressure on the Abbey itself and will enhance the viability of the Abbey as the setting for major cultural events. Whilst we do not disagree that the scheme will improve the overall

facilities of the Abbey which will benefit the public, we do not consider these benefits to outweigh the harm to the heritage assets.

Recommendation

We are supportive of all the aims and objectives to conserve the Abbey as a heritage asset and to ensure its long term viability in terms of use and financial security. The alterations within the Jackson wing, basement vaults and the new large meeting room will provide considerable improvement in terms of facilities and potential new income streams for the Abbey. We appreciate that a number of alternative options have been explored. It is the new choir school and small meeting room which will have the greatest impact on the significance of the buildings. Whilst we appreciate the desire to enhance these facilities we remain unconvinced that these provide substantial public benefit to outweigh the harm to the heritage assets.

Whilst we welcome much of what the scheme will deliver, there are areas of the scheme which cannot be supported as they are contrary to the Government policy set out in the NPPF. We therefore object to these proposals.

If, notwithstanding our advice, your Authority is minded to grant consent, in light of our objection you should treat this letter as a request to notify the Secretary of State of this application, in accordance with Circular 08/2009.

REVISED COMMENTS DATED 22 JANUARY 2013:

Following our initial comments on the proposals and the meeting held on 7th December 2012 we have received revised drawings and additional justification for the proposals. The changes include the omission of the proposed new extension to number 8 and 9 Kingston Buildings and the retention of the existing extension. An alternative location for the small meeting room will be discussed with Bath and North East Somerset Council who own adjacent properties and land. We welcome this amendment especially as we suggested in our earlier correspondence that there was an opportunity for the Abbey and the Council to work together to find accommodation for the Abbey administration in close proximity to the Abbey. The scheme will now retain the existing windows and omits the double glazing proposal. The works to the exterior of the building are now more limited and essentially maintain the existing appearance with some aesthetic improvements.

We maintain our position that the physical works to Kingston Buildings will cause substantial harm to these designated heritage assets. The proposals therefore need to be considered as a whole in relation to policy 133 of the NPPF, whether it has been demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss. Further justification for the proposals has been presented. This underlines the fact that the public benefits which relate specifically to Kingston Buildings concern the transformation of the currently inadequate ad hoc arrangements for the choral users of the Abbey. Proposed changes will result in better, safer, more efficient, practical and enjoyable spaces which will help ensure the continued and improved functioning of the Abbey and visiting choirs with their integral contribution to cultural activities throughout the year. The proposals will also significantly improve facilities for the choir's outreach programme for schools around the city. In addition the works to Kingston Buildings need to be considered in the context of the scheme as a whole. The scheme will provide an effectively functioning Abbey community and seeks to

reduce the physical pressures on the principal listed building - the Abbey, and to make the Abbey's future more sustainable. Taken together we consider that these public benefits constitute an acceptable justification for the substantial harm to Kingston Buildings and we therefore withdraw our objection to the scheme.

If the Council is minded to approve the scheme there remains matters of detail regarding structural and thermal upgrading works which may require further discussion, consideration and review.

GEORGIAN GROUP: Object to the scheme with the following comments:

Kingston Buildings is a comparatively rare survival of a modest early 19th century terrace as many others were demolished in the mid 20th century. The interior retains planform and the exterior gives a sense of a row of modest terraced houses. Kingston Buildings therefore makes a strong contribution to the streetscene of this part of the World Heritage Site.

Kingston Buildings is unlikely to be suited as accommodation for the choir school and the level of internal alteration would essentially make the terrace unlistable. It would be more feasible to locate the choir practice room in the proposed crypt works or to rationalise the existing practice room to provide segregated vestries. Or to practice in the Abbey. Altering the planform of Kingston Buildings would be very damaging to the significance of this artisans terrace.

The addition of the meeting room to Kingston Buildings would have a negative impact on the conservation area and the World Heritage Site. The design does not reflect the architectural language of the terrace and would damage the World Heritage Site and the setting of the Abbey itself.

If the Local Authority is minded to grant consent, the Georgian Group objection letter should be treated as a request to notify the Secretary of State of the application, in accordance with Circular 08/2009.

REVISED COMMENTS: The Georgian Group maintain their objection to the scheme and reiterate comments already made and make the following additional comments;

The historic integrity of Kingston Buildings lies not only in its facade but in its remaining internal features and planform. The proposed alterations and demolition work would be damaging to the significance of Kingston Buildings and could make the terrace delistable.

There is concern about the structural impact of the proposed work. The entire single skin facade may be supported by the first floor bressumer and the thicker walls to the vaults. Removing a large part of the vaults, party walls and the ground floor, would leave the facade and first floor mostly supported by this bressumer which could lead to serious structural damage. The first concern must be for the integrity of the listed terrace.

If the Local Authority is minded to grant consent, the Georgian Group do not want the application referred to the Secretary of State.

ENVIRONMENTAL HEALTH OFFICER:

The applicant has submitted a Plant Noise Assessment, dated 15 June 2012 which assesses the impact of the proposed plant in accordance with the methodology in British Standard 4142: 1997. Accordingly, noise limits have been proposed by the applicant to ensure that residential amenity is not adversely affected. I would therefore suggest a condition is attached should the application be permitted.

OTHER REPRESENTATIONS / THIRD PARTIES

BATH PRESERVATION TRUST: Objects to the scheme with the following comments;

The Trust is broadly supportive of the Abbey's desire to reorder space to allow it to be used more effectively. They accept the alterations to the Jackson Extension, the Vaults, Abbey Chambers basement, York Street and the clergy vestry. Kingston Buildings is one of a few surviving artisan terraces in the city. Losses during the war and the Sack of Bath amplify the importance of this remaining terrace.

The proposed top floor meeting room would have an unacceptable visual impact. The additional height, bulk and massing would further undermine the subservient character of the terrace. The design would relate poorly to the proportions and order of the modest terrace. Meeting spaces could be accommodated in Abbey Chambers. It would be better if the Abbey could use the whole of Abbey Chambers which would provide capacity for their activities.

The proposal to open the existing herb garden is welcomed, but the proposal is poorly detailed and the garden could become bland and sterile.

Taken as a whole the application is contrary to the Act, the NPPF and Local Plan policies.

REVISED COMMENTS: In response to the revised plans the Bath Preservation comment;

The withdrawal of the roof extension is welcomed but reiterate the significance of Kingston Buildings as a surviving artisan terrace. However the Justification and Design and Access Statement does not adequately acknowledge the harm caused to the significance of the terrace through loss of fabric and planform.

Concerns remain about the structural integrity of the terrace once the walls, floor and lateral connections have been removed. Finally there are concerns that proposals for the garden will make what is an informal space bland.

On balance their objection to the scheme is withdrawn because they take on good faith the Abbey's assurances that there is not suitable alternative location for the song school.

LETTERS OF REPRESENTATION:

A total of 271 representations have been received. Of these 266 are in support, 3 object and 1 contains general comments. The representations are summarised below.

A total of 3 letters of objection have been received along with 1 letter of general comment. This includes a letter of objection by Bath Heritage Watchdog and the comments are summarised below:

- Lack of justification for the proposals
- The loss of historic fabric is detrimental and unjustified.
- Changes to the windows of the Jackson extension to create doors leading to loss of gothic tracery.
- Lighting to the archway recesses would cause light pollution.
- Loss of fabric and planform caused by the proposed pavement skylight is not justified and would cause an obstruction.
- Proposed signage in Kingston Parade is unnecessary.
- Photovoltaics on the roof of Kingston Buildings would harm views from the Abbey Tower.
- The extensive alterations to Kingston Buildings would result in loss of historic fabric and planform.
- The substantial benefit will be to the Abbey not the public.
- The neglect of Kingston Buildings does not justify the proposed work.
- The two storey roof extension will upset the balance of the terrace.
- Double glazing the windows in Kingston Buildings will be harmful to the listed building and the conservation area.
- Insulation to the internal walls of Kingston Buildings would damage the spatial qualities of the rooms and conceal mouldings.
- Waterproof tanking to the vaults is of concern.
- Repainting the bathstone at 11A York Street may harm the stone.
- The works are contrary to the Act, the NPPF and Local plan policies.

A total of 266 letters of support have been received. However a significant proportion have been in the form of standard proformas provided by the Abbey for visitors to complete.

At the time of writing this report the expiry date of the final consultation exercise had not expired. Any additional representations received will therefore be provided in the form of an update report.

POLICIES/LEGISLATION

From the point of view of the historic environment the primary consideration is the duty placed on the Council under S 16 of the Listed Buildings Act to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

There is also a duty under S 72 to pay special attention to the preservation or enhancement of the character of the surrounding Conservation Area.

The National Planning Policy Framework sets out government advice concerning alterations to listed buildings, development in conservation areas and world heritage sites.

If the Council is minded to grant consent there is not a requirement to notify the Secretary of State before a decision is issued.

The following policies of the Bath & North East Somerset Local Plan including minerals & waste policies adopted 2007 are relevant to this proposal:

D.2 and D.4 - General design and residential amenity
ET.2 - Development including the provision of office accommodation
S.6 - Provision of A3, A4 and A5 uses - cafés and restaurants
BH.1 - Development affecting Bath World Heritage Site
BH.2, BH.4, BH.3 - Development affecting Listed buildings
BH.6 - Development within a Conservation Area.
BH.12, BH.13 - Archaeological remains
HG.13 - Loss of residential accommodation
CF.2 - Provision of community facilities
ES.2 and ES.5 - Energy and Utilities
T.24 and T.26 - Highway Safety.

Bath and North East Somerset Submission Core Strategy (May 2011) is out at inspection stage and therefore will only be given limited weight for development management purposes.

National Planning Policy Framework - March 2012

OFFICER ASSESSMENT

EXPLANATION OF THE NEED FOR THE DEVELOPMENT:

The Abbey, through its Statement of Need, has identified a number of specific requirements to substantially improve the facilities on offer. The Abbey has also provided a brief summary of why the development is required which includes:

1. The Abbey has reduced facilities compared to other similarly important facilities at Winchester, Salisbury and St Albans. Supporting infrastructure such as the cloister, chapter house and other buildings were sold at the time of the Reformation.
2. The existing choir facilities are inadequate and are not large enough to hold a complete choir of 24 people. The changing facilities are inadequate which are raising safeguarding issues and there is a lack of distinction between public and private spaces/uses.
3. The existing poor quality choir facilities limit the number of public events/concerts held in the Abbey to two a week. This is due to poor quality sound proofing allowing noise to transfer into the Abbey. It also means that the Abbey itself has to be used on occasions for choir practice which further limits its ability to be used for public events.
4. Significant lack of toilet facilities for the use of both staff and visitors. Currently there is one semi-accessible toilet and three other toilets within the Abbey. Visitors are directed to toilets in the Roman Baths or to a nearby bar, All Bar One.
5. The existing ancillary facilities for volunteers, staff and others working within the Abbey are very small and inadequate and also have to double up as changing rooms for the Choir etc.

6. Lack of facilities for schools such as rooms for education purposes, toilets, catering facilities and storage for coats, bags etc.
7. Inadequate facilities for visiting performers, musicians and choirs including a lack of changing rooms, storage or practice rooms.

The development therefore seeks to provide:

1. Dedicated choir facilities including practice room, music library and vestries. A room height in excess of six metres is considered desirable for choral rehearsal.
2. Additional office accommodation for Abbey staff.
3. Additional meeting room space for activities and functions.
4. Cafe and toilet facilities for visitors and users of the Abbey.
5. Kitchen and related facilities to support the refectory.
6. More spacious entrance arrangements into the Abbey/retail space.
7. Interpretation space to showcase the Abbeys archaeology.
8. Maintenance workshop.

However in order to provide these facilities within the significant constraints of the existing site it has been found that the scheme hinges on moving the choir practice room from its current location within the 1920's Jackson Extension to a new location. This is because the choir school is within the only suitable location for the staircase down to the remainder of the new facilities e.g. refectory, public toilets. Therefore, in addition to the inadequate facilities provided by the existing Choir School, its relocation is also integral to the provision of the scheme as a whole.

PRINCIPLE OF PROPOSED USE:

The overall scheme proposes a variety of changes to the existing uses which will result in a mix of uses across the site. However the individual changes to the uses of areas of the site are described below:

Abbey Chambers and the Heritage vaults: The application proposes to change the use of these areas from offices and storage to a refectory/restaurant and associated facilities such as kitchens and toilets. This area would link into the new interpretation space within the excavation below the Jackson Extension.

The proposals in these areas would fall within Use Class A3 restaurant use which is considered to be acceptable due to their location within the City Centre shopping area. Furthermore the development, being wholly subterranean, would not have an impact on the character and appearance of this part of the Bath Conservation Area and therefore is in accordance with Policy S6 of the Local Plan.

The proposals would result in the loss of some ancillary office storage space, specifically within the basement of Abbey Chambers. However this net loss would be balanced against the provision of the large subterranean meeting room within Kingston Parade and is considered to be acceptable.

Kingston Buildings: At the present time Kingston Buildings is in use as offices with one residential flat within. The proposal would expand the existing office use within Kingston Buildings to include the residential flat which would be lost as a result of this application.

The residential dwelling does not have its own access with entry gained by passing through the existing offices within Kingston Buildings. Nevertheless the proposed development would result in the loss of residential accommodation and, for reasons explained later in this report, there is not considered to be substantial conservation benefits that could only be achieved through a non-residential use and is therefore considered contrary to Policy HG.13 of the Local Plan.

The proposed development would also result in the loss of some office accommodation within Kingston Buildings with the inclusion of the Choir School room and associated facilities. However this loss needs to be balanced against the improvement to the remaining office facilities as a result of the alterations to the building and the provision of the large subterranean meeting room. At the present time the plan form of Kingston Buildings remains largely as it would historically have been laid out in its original use as dwelling houses. This has resulted in small interconnected rooms accessed by a number of different staircases resulting in an inflexible layout.

The proposed development of Kingston Buildings would also provide improved office accommodation over the existing three floors. The office accommodation would still be divided up into relatively small rooms but overall its layout would be an improvement on the existing situation particularly with the provision of a lift.

The proposal also includes the provision of a large subterranean meeting room which has been designed to be flexible as a multi-purpose space it would provide also space for public meetings, conferences and similar events. A meeting room such as this would enhance the office facilities within Kingston Buildings and go some way to balancing the loss of office accommodation. In light of this it is considered that whilst, on balance, the proposed development would result in the loss of a small amount of existing office accommodation, what remains would be of a higher quality and would be further enhanced by the provision of the large meeting room.

The provision of the Choir School at basement and ground level, along with its associated facilities, would not result in the establishment of a new use within the overall site, including the Abbey, as the use already exists. This proposal seeks to relocate the Choir School from within the Jackson Extension to Kingston Buildings with enhanced facilities.

Overall the proposed changes to the uses within the overall development are considered to be acceptable and are not considered to be contrary to Policy ET.2 or S.6 of the Local Plan. This is with the exception of the loss of the residential unit within Kingston Buildings which, as outlined above, is considered to be contrary to Policy HG.13 of the Local Plan.

IMPACT ON THE LISTED BUILDINGS, CONSERVATION AREA AND WORLD HERITAGE SITE:

This application is accompanied by a concurrent application for Listed Building Consent which covers in full the impact on the listed buildings, Conservation Area and World Heritage Site.

This part of the report deals with each element of the revised scheme in turn. The description in brackets explains how that area of the building would be used as part of the overall scheme.

Jackson Extension (proposed welcoming space and new subterranean Interpretation Space)

The Jackson Extension was added along the south aisle of the abbey in the 1920s. Archaeological investigation has established that excavation to create the new Interpretation Space can be achieved without harming critical deposits. This work will "reveal" the south wall of the abbey as an in situ archaeology for visitors. The new floor of the Jackson extension will be supported off the reduced floor levels without making any contact with the actual fabric of the Abbey south aisle.

The proposed work to the fenestration to convert the Jackson extension into the main Abbey entrance and welcome point for day and evening visitors will entail replacing most of the existing gothic traceried windows with paired doors, leaving the central mullions in place and extended down to ground level. Third party objections to these changes have been carefully noted. However on balance it is considered that the design of the extension is sufficiently robust to assimilate the alterations whilst still preserving the character of the Abbey and its role in the wider townscape.

This element of the application is acceptable.

18th century Heritage Vaults (proposed refectory and servery)

These vault spaces relate to former Georgian houses on the site which are long since demolished. The Abbey currently use them as an archaeology display space and storage.

The proposal requires the removal of part of the vaults and would also necessitate the introduction of concrete to support the remaining structure. The resulting harm to the historic fabric of the Vaults is significant concern and although alternative options that would have a less damaging impact are available, and despite requests for amendments, this part of the scheme remains.

Therefore, whilst the conversion of the Vaults is acceptable in principle, the loss of the historic fabric remains unacceptable.

Abbey Chambers vaults (proposed public toilets, kitchens, archive storage and workspace)

Abbey Chambers is a grade II listed building circa 1762 by Thomas Jelly, much altered in 1875 when it was used as part of Isaac Pitman's Fonetik Institute.

The proposals seek alterations to the basement and vaults to provide kitchens, toilets and support spaces. This will require new openings within the existing walls to link the vaults beneath Abbey Chambers with the Abbey. These vault areas have already been altered in the past and further adaption are considered to be acceptable as they would will still preserve the character of grade II listed Abbey Chambers.

This element of the application is considered acceptable.

Large subterranean room between the south side of the Abbey and Kingston Buildings (proposed large meeting room)

The proposal would result in the excavation of the pavement in front of Kingston Buildings to provide a subterranean meeting room. A roof window feature at pavement level is also proposed in order to provide light to the meeting room below.

This element of the proposal is significant in the level of excavation needed, especially in such close proximity to the Abbey building itself, and would be carried out within an area of high archaeological potential. However the application has been supported by investigations that show that the necessary groundwork can be carried out subject to archaeological excavation and monitoring and is therefore considered acceptable.

The design of proposed meeting room roof window feature would be expressed as a raised lantern in the pavement between the Abbey and Kingston Buildings. This element has not yet been fully worked up which is unfortunate as its full impact cannot be considered. However the principle of some form of raised lantern is considered to be acceptable and its detailed design could be dealt with by condition.

Finally the proposal also includes the removal of the existing railings around this part of the Abbey and the removal of the sunken moat. This would result in the pavement running up to the walls of the Abbey with the sunken moat covered over with a metal grille. This would have the effect of enlarging the width of Kingston Parade for pedestrians and is considered acceptable.

Overall this element of the application is considered acceptable.

11A York Street (workshop space)

11A is the end building in a terrace of shops with accommodation over circa 1819 possibly by William Wilkins who designed the Masonic Hall (now the Friends Meeting House) on the opposite side of the road. The terrace is part of an excellent example of Greek Revival town planning applied to a small scale non institutional buildings.

The current application proposes small scale alterations to link the rear of Kingston Buildings to No 11A York Street where the basement and vaults will provide workshop space for the Abbey.

Overall this element of the application is considered acceptable.

Garden adjacent to Seventh Adventist Chapel (proposed Abbey Garden)

This garden area immediately to the rear of Nos 7/8 Terrace Walk and Orange Grove is proposed as a quiet garden in connection with the use of Abbey. The garden is alongside the grade II listed Adventist Church circa 1820. However no alterations are proposed to the chapel which is outside of the application site.

The proposals include the renovation and redevelopment of the existing garden to provide a space that would be open for members of the public to use. The layout would be in the form of a walkway running round the edge of the garden with seating, and hedging behind, running in a horseshoe shape within the walkway. A herb garden would be located towards the rear of the Terrace Walk properties. The redevelopment of the garden would require some changes in levels through the removal of existing raised beds. An existing walkway running partway down the rear of the Orange Grove, currently separated from the garden by a wall, would also be removed and this area brought into the garden. Overall the proposed changes to the garden would result in an improvement to its appearance and would not have a detrimental impact on the setting of the surrounding listed buildings and would enhance this part of the Bath Conservation Area and World Heritage Site.

This element of the application is considered acceptable.

Kingston Buildings (proposed reception, choir school, vestries and office accommodation)

Kingston Buildings comprises a terrace of six houses circa 1819. Nos 8/9 have been combined in the past and the height of what was number 8 increased with the addition of a two storey roof extension circa 1887.

Bath is a City rich in high status 18th and early 19th Century architecture. In contrast Kingston Buildings represents the rare survival of a much more modest and humble 19th Century domestic terrace in Bath. The diminutive and yet nevertheless strong architectural form of Kingston Buildings makes a positive contribution to the townscape framed between Orange Grove and the imposing eastern end of the Abbey. Many other terraces of this type were either destroyed during the Second World War or later demolished in the 1950s and 1960s at a time when the significance and role of these smaller houses to the development and understanding of the City was less appreciated. Such terraces would have housed the many people engaged in trades that supported Bath as a 18th and 19th Century destination for polite society.

Kingston Buildings is currently used by the Abbey as offices and has done for many years. This has been done largely within the historic plan form and the internal layout of the terrace still reflects its residential origins.

As a result of negotiations, and following a meeting held on the 7th December attended by representatives from the Abbey, the Local Authority both Planning and Property Services and English Heritage this element of the scheme has been revised since it was originally submitted. The following amendments have been made:

The two storey extension over Nos 8/9 Kingston Buildings to provide a Parish Meeting Room has been deleted which is welcomed. The additional massing and design of the extension did not reflect the architectural language of the terrace and this significant alteration would have had an adverse impact on the setting of Bath Abbey and the World Heritage Site.

The proposal to replace the traditional single glazed windows with double glazing has also been deleted from the scheme. These amendments are also welcomed and will result in the external appearance and character of Kingston Buildings being preserved.

Nevertheless the proposals still seek some major alterations to the internal layout, historic plan form and fabric of Kingston Building.

It should be noted at this point that the protection afforded by the Grade II listing of Kingston Buildings covers both the exterior and the interior of Kingston Buildings.

Paragraph 182 from the Historic Environment Practice Guidance also states "The plan form of a building is frequently one of its most important characteristics Proposals to remove or modify internal arrangements, including the insertion of new openings or extension underground, will be subject to the same considerations of impact on significance as for externally visible alterations."

The revised application now proposes to provide the Choir School and its ancillary facilities, office space for staff and a reception area. The following key demolitions and alterations are proposed:

The removal of the ground floor plate and the party wall within the central portion of the terrace, Nos 10 and 11 to create a double height choir practice space. A narrow walkway around the perimeter of the space at ground floor level is proposed in order to retain internal circulation within the terrace. As a result of such substantial removal of critical structure it will require compensation in the form of a steel picture frame inserted into what is left of the building's interior.

The principal entrance into Kingston Buildings would be via No 8 which would be distinguished from the rest of the terrace by having a pair of doors instead of the existing single leaf door.

The internal layout of No 8 would be reconfigured to create the main reception on the ground floor. A completely new and enlarged staircase and lift enclosure would provide access to all the upper floor office accommodation in the rest of the terrace.

Partial demolition of internal walls to create openings to provide linked office accommodation at first floor level.

Three out of the four remaining 19th century staircases would be removed from the terrace to facilitate the linked offices and choir practice room

Largely demolish the vaults spaces which currently extend below the pavement to create the circulation corridor which would link Kingston Buildings to the large meeting room and other parts of the development.

Lower the basement floors and insert new concrete floors.

The result of these works would be to remove a very large quantity of historic fabric from the terrace and effectively obliterate the historic floor plan and circulation spaces of the original houses. Consent would not normally be granted for work for demolition and alteration which would in effect make Kingston Buildings a very strong candidate for delisting. Once delisted control over further alterations to the outside of the terrace to

protect its character would be reduced and the planning system could offer no further protection to the interior.

The most major and damaging of the interventions would be to create the double height choir practice space. Throughout the pre application discussions the Abbey were advised by both the Local Planning Authority and English Heritage that this highly contentious work was unlikely to be supported and they were urged to consider other options.

All the parties agree that the work listed above will cause significant harm to the historic fabric of Kingston Buildings. English Heritage in their revised comments state that the physical works to Kingston Buildings will cause substantial harm to these designated heritage assets.

PUBLIC BENEFITS OF THE DEVELOPMENT:

Paragraphs 132 and 133 of the NPPF states that applications for development causing substantial harm or loss should be refused consent unless it can be demonstrated the substantial harm or loss is necessary to achieve substantial public benefits that outweigh the harm or loss.

It is now acknowledged by the Applicants and all involved that the provision of the Choir School within Kingston Buildings would cause substantial harm and loss to the Grade II listed buildings of Kingston Buildings, primarily due to the location of the Choir School. It is also the case that the conversion of the Vaults, whilst acceptable in principle, would also result in the loss of the historic fabric. Supporting information has therefore been submitted to both justify the choice of location and identify the public benefits to outweigh the harm. These are explained below:

Section 2.1 (Site Options) the Heritage Statement sets out the site options originally considered by the Abbey. Section 5.1 (Development Options and Conclusions) from the Design and Access Statement deals with the same issues and additional supporting information has been provided in the supplementary document entitled Bath Abbey - Public Benefit resulting in proposed loss of Historic Fabric to Kingston Buildings.

However in summary the Abbey has identified a number of requirements that a site would need to provide to be considered suitable as a Choir School, these are:

- a. Close proximity to the Abbey and a convenient drop off location for children.
- b. Weatherproof access to the Abbey - Choir adults and children in robes, plus other performers and musicians, need a dry transfer from practice in the Choir School to performances in the Abbey.
- c. Good acoustic properties - this requires a double height room.
- d. Separate, and dedicated, changing facilities for children and adults with sufficient hanging space for robes
- e. Adequate toilets and washing facilities.
- f. A space that can provide a secure location for children, as young as 8 years old, when attending Choir Practice etc.
- g. Available on Sundays, a key time in the week when the Abbey need the use of the choir practice room before, between and after Sunday services.

In concluding that Kingston Buildings is the most suitable location for the Choir School a number of alternative options for its location have also been considered. These are:

1. Abbey Chambers - whilst an agreement has been reached in principle with B&NES Council regarding the basement there are no other spaces available at the present time. Nevertheless Abbey Chambers would still be unsuitable on grounds of accessibility, adjacency and likely impact on other existing or future users or tenants of the building. Furthermore the Choir School would still require room of sufficient volume and height which would involve the removal of a floor plate and a wall and a loss of historic fabric comparable to that within Kingston Buildings.

2. Friends Meeting House - this site has been considered in detail and discounted for the following reasons:

- i) The purchase or long term lease is not an option currently available.
- ii) The Quakers would nevertheless wish to retain the use of the principal room on Sundays.
- iii) Lack of a weather-proof walkway. The technical feasibility of a weather-proof walkway between the Meeting House and the Abbey beneath York Street, 11A York Street and 9 Kingston Buildings has been investigated and it is believed to be feasible. However this option has been dismissed for reasons including cost and risk to the Roman Great Drain as a walkway would have to pass very close.

3. Guildhall - A suitable space is not currently available. Furthermore the cost and disruption of constructing an underground passageway beneath the High Street between the Guildhall and the Abbey is impractical.

4. Other churches - A number of other Churches, including the adjacent Seventh Day Adventist Church, have also been considered but all are in use on Sundays, a key day for the Abbey choirs. Furthermore none have suitable dedicated space available at the required times by the Abbey choirs and all the other choirs who use the Abbey.

5. Other options included within the existing site and in the below ground spaces immediately to the North and East of the Abbey. All of these options were rejected as being unavailable, unsuitable or not possible.

As a result of this it is acknowledged that there are no other available spaces that would provide the facilities required without excessive expense, risk or similar harm to other historic buildings. It is therefore agreed that Kingston Buildings is the only other suitable location for the Choir School.

The Abbey has provided a comprehensive list of the public benefits that would result from this development as whole in order to justify the substantial harm to Kingston Buildings and the Heritage Vaults and to outweigh the harm or loss. The public benefits are listed in full in the application documents but consist primarily of:

a. Benefits for the Community. Many of the local community worship or volunteer at the Abbey and spend considerable time there on Sundays as well as during the week. There are many choirs, music groups and similar organisations throughout Bath and the surrounding area which will benefit greatly from using the new facilities when they are

available e.g. Golden Oldies, Bath Bach Choir, Bath Choral Society etc. For those members of the local community using the Abbey for performances, lectures or debates there will, for the first time be adequate and safe changing facilities, storage, toilets and catering. These benefits will of course also be available to the 800 people who worship at the Abbey each week and to the over 30,000 that come services and concerts in the lead up to Christmas.

b. Benefits for the Grade I Listed Abbey. The fabric of the Abbey is deteriorating because of the high usage of the building. The proposed changes will relieve the pressure on the building and provide it with adequate supporting buildings for the first time since before the Reformation.

c. Benefits for children. School children and their teachers make up an important part of the Abbey's visitors. The Abbey is an important destination for schools as a place where the National Curriculum can be brought to life. For the first time there will be safe and adequate facilities at Bath Abbey for:

- i. School groups for general visits throughout the year for whom there will be space for related activities, lunch breaks, storage of bags etc.
- ii. Schools taking part in the interactive experiences currently provided by the Abbey prior to Easter and proposed for other seasons of the year
- iii. Choirs from schools involved in the Bath Abbey Schools Singing Programme
- iv. Children who sing in the Abbey's choirs
- v. The children in the visiting choirs who sing at the Abbey during the school holidays
- vi. Children attending services and other events in the Abbey for whom alternative activities and crèche facilities will be able to be offered in the new spaces
- vii. Overseas children's groups who visit in large numbers during their holidays
- viii. Children visiting with friends and families.

d. Benefits for musicians. The Abbey's choirs have a national reputation for the quality of their choral music and will benefit significantly from many aspects of the proposed changes to Kingston Buildings. In addition however there are other beneficiaries:

- i. People requiring voice and instrumental coaching
- ii. Visiting choirs from around the world
- iii. Young choristers attending the Royal School of Church Music summer school each August (and the other similar events which will be feasible once the changes are complete)
- iv. Instrumentalists and singers involved in the many concerts and recitals which occur in the Abbey each year.

c. Benefits for Visitors and tourists - Around 400,000 people visit the Abbey annually from all over the world, more than any other UK parish church outside London.

Visitors and tourists will benefit from the new interpretation of the whole building which is planned to be centred on the proposed interpretation centre beneath the Jackson extension. They will also be the major beneficiaries of the proposed new toilets and catering facilities.

The above identified public benefits mainly relate to those already using the Abbey and its services. However it is also predicted that the provision of additional facilities, improvements to the existing and relocation and enhancement of the Choir School will also increase the number of people who will benefit.

As a result of the development it is predicted that:

- a. Visitor numbers will increase by 100,000 to 500,000
- b. Visitors will spend longer in the Abbey than they do at present.
- c. The number of performances can be significantly increased from the current 57 a year.
- d. The number of public events held at the Abbey can also be significantly increased.
- e. Increase in the number of Choir events such as the Royal School of Church Music choral summer school.

Therefore the supporting information provided clearly indicates that, as well as the benefits to the Abbey building itself, the proposed development will also provide substantial benefits to the wide range of existing users of the Abbey. However it is also clear that the development will improve the attractiveness of the Abbey as a visitor destination resulting in a significant increase in the predicted numbers of visitors to the Abbey itself as well as to the additional concerts, performances and public events that can also be held.

IMPACT ON RESIDENTIAL AMENITY:

The proposed development has the potential to create some noise and disturbance that could have a harmful impact on residential amenity. This impact would be within the following areas:

Kingston Buildings (proposed Choir School): The proposed Choir School would be located within close proximity to a holiday let in York Street that backs onto Kingston Buildings. In order to address any potential concerns mitigation measures have been included into the proposals and a noise assessment has also been submitted. This indicates that the use of the Choir School room would remain within acceptable noise limits and that the residential amenity of any neighbouring occupiers would not be detrimentally affected.

Large subterranean room between the south side of the Abbey and Kingston Buildings (proposed large meeting room): The proposed meeting room to be located under the paved area to the front of Kingston Buildings is not in close proximity to any residential dwellings and, in conjunction with its subterranean location, would have very little or no impact on the residential amenity of any neighbouring occupiers.

Proposed Refectory: The proposed Refectory would be located within the basement of Abbey Chambers, the Jackson Extension and the Heritage Vaults. These areas are also not in close proximity to any residential dwellings, and given their subterranean location, are therefore very unlikely to have a detrimental impact on the residential amenity of any neighbouring occupiers.

Garden adjacent to Seventh Adventist Chapel (proposed Abbey Garden): As explained above it is proposed that the garden area immediately to the rear of Nos 7/8 Terrace Walk and Orange Grove is proposed as a quiet garden in connection with the use of Abbey.

At the present time the garden is in a poor condition and is not open to the public and it is proposed to redevelop the garden to a much more attractive and useable space. The garden is enclosed on two sides by the rear walls of the buildings Terrace Walk and Orange Grove which both include windows at ground and upper floor levels that directly overlook the garden and would be affected by the use of the garden. However the adjoining buildings are in commercial/retail use at ground floor level and do not appear to have any residential dwellings above. In light of this it is considered that the redevelopment of the garden and its opening to the public would not have a significant detrimental impact on the residential amenity of any neighbouring occupiers.

IMPACT ON HIGHWAY SAFETY:

The proposed development would have very little impact above ground on the public highway, that being the pavements and areas surrounding the Bath Abbey and to the front of Kingston Buildings.

The only exception to this is the provision of the raised lantern in the pavement in front of Kingston Buildings and the filling in of the 'moat' around parts of the Abbey building itself which are not considered to harm highway safety.

With regard to the lantern, the area of paving surrounding its proposed location is quite large and would be expanded through the filling in of the 'moat'. Therefore it is unlikely that the lantern would harm the use of the area by pedestrians or result in a hazard to pedestrians.

Whilst the main parts of the development are subterranean the provision of the large meeting room would require excavation under the highway which is of interest to the Highways Development Officer. They have commented that, overall, the works to the subterranean room, the lantern and the 'moat' would need to be the subject of structural approval as a condition of the application.

Overall the proposed development is not considered to have a detrimental impact on highway safety.

CONCLUSION:

Overall the objectives of improving Abbey facilities, upgrading access and achieving greater overall integration are welcomed and supported.

The Abbey has responded positively to some of the pre application advice. It is acknowledged that the original pre application scheme which effectively destroyed both the inside and outside of the terrace has been amended. The removal of the two storey roof extension and double glazing from Kingston Buildings has also mitigated the impact of the scheme on the external appearance of the terrace and the wider public realm.

On the whole the proposed development is considered to be acceptable and would not have a significant or unacceptable impact on the Grade I and II listed buildings or this part of the Bath Conservation Area or World Heritage Site. Nevertheless the application still includes significant elements of work to the interior Kingston Buildings which is now acknowledged by all involved, including the Abbey, to result in the loss of historic fabric and substantially harms the Grade II listed terrace.

English Heritage, the Governments main advisors on all matters relating to the historic environment also agree that the work will cause substantial harm to the terrace. The Georgian Group, who have particular expertise in 18th and early 19th Century architecture have reached the same conclusion. The reality is that the choir school proposal and the linked office accommodation is a poor fit for the historic domestic layout of this significant listed terrace. Structural solutions to compensate for the enormous removal of fabric have been proposed. However it is difficult to predict how the modern interventions will co-exist with remaining traditional elements of the structure particularly in the longer term. The Georgian Group with their intimate knowledge of building construction of the period have raised concerns. English Heritage in their revised comments state that if the Council is minded to grant consent further discussion about both the structural work and the thermal upgrading need to take place.

However the Abbey has provided comprehensive information in an attempt to show the substantial public benefits required in order to outweigh the identified harm to the Grade II listed Kingston Buildings. The submitted information indicates that, as well as the benefits to the Abbey building itself, the proposed development will also provide substantial benefits to the wide range of existing users of the Abbey. This includes visitors and tourists, schools, congregation, performers and Choir. However it also indicates that the attractiveness of the Abbey as a visitor destination will be improved which will also result in a significant increase in the predicted numbers of visitors to the Abbey itself as well as to the additional concerts, performances and public events that can also be held.

The public benefits have been considered in full and clearly indicate that the proposed development will provide substantial benefits to the wide range of existing users of the Abbey as well as the additional visitors attracted as a result of the enhanced facilities and expanded performances etc. This has to be weighed against the considerable and substantial harm that will be caused, primarily to Kingston Buildings, with the loss of substantial elements of historic fabric and its historic plan form.

The arguments both in support and against the proposal are very finely balanced, however the public benefits identified are comprehensive and are compelling. It is for this reason that the public benefits are considered to be substantial and are of sufficient weight to outweigh the identified harm to the Grade II listed terrace of Kingston Buildings. Members will note that this is a different view to that of the Conservation Officer in respect of the balance to be struck in the consideration of whether the public benefits outweigh the harm to the listed building. In this regard the Planning Officer has weighed up all of the consultation responses and having regard to the wider context of the scheme and the advice contained within paragraph 133 of the NPPF it is concluded that the case may be supported.

In terms of the proposed uses within the development the changes of use of the existing buildings and the provision of additional and enhanced office facilities, restaurant, toilets

and the large meeting are considered to be acceptable. This is with the exception of the loss of an existing unit of residential accommodation within Kingston Buildings which, due to the lack of any conservation benefits, is contrary to Policy HG.13 of the Local Plan. However the existing residential unit is very small with an access through the existing offices which, although let at the moment, could prove to be unattractive to tenants and impractical by the Abbey in the future. Furthermore its loss is relatively minor when considered against the overall benefits of the scheme as a whole. Therefore, in this case, the loss of the residential unit is considered to be acceptable, although this would constitute a departure from the Local Plan.

The proposed development is also not considered to have a significant or detrimental impact on the residential amenity of any neighbouring occupiers. A noise assessment has been provided and the Environmental Health Officer has confirmed that he has no objections.

With regard to highway safety the proposed development does include the provision of a lantern in the paving to the front of Kingston Buildings, the filling in of the 'moat' in areas around the Abbey and also the provision of the large meeting room which would have an impact on highway safety. However the proposals are not considered to have a harmful impact and the Highways Development Officer has raised no objections subject to relevant conditions.

RECOMMENDATION

Authorise the Development Manager of Planning and Transport Development to PERMIT subject to condition(s)

CONDITIONS

Subject to:

1. The submission of additional information to clarify the proposed structural work and the thermal upgrading within Kingston Buildings.
2. Attaching appropriate conditions.
3. Awaiting the consultation period to lapse on the 28th March 2013 and no further material considerations being raised in representations received subsequent to the Committee meeting which have not been considered during the processing of this application which may indicate a required change to the recommendation.

PLANS LIST:

Drawings 1533/SU/004A (survey ground level plans), 1533/SU/100A (survey section A), 1533/SU/102A (survey section C), 1533/SU/106A (survey section H), 1533/SU/107A (survey section I), 1533/SU/117A (survey section W), 1533/SU/200A (survey Abbey north elevation), 1533/SU/201A (survey abbey east elevation), 1533/SU/202A (survey Abbey south elevation), 1533/SU/203A (survey Abbey west elevation), 1533/SU/205A (survey elevation 11a York Street) date stamped: 1st August 2012

Drawings 1533/P/001A (site location plan), 1533/P/002A (proposed site plan), 1533/P/004A (proposed ground floor plans), 1533/P/005A (proposed first floor), 1533/P/100A (section A proposed), 1533/P/102A (section C proposed), 1533/P/106A

(section H proposed), 1533/P/107A (section I proposed), 1533/P/110A (section P proposed), 1533/P/111A (section Q proposed), 1533/P/202A (Abbey proposed south elevation), 1533/P/205A (11a York Street elevations as proposed), 1533/P/300A (proposed Jackson extension joinery detail) date stamped: 1st August 2012

Mann Williams survey drawings 1-SU-111/P2 (Kingston Buildings survey trial pits basement plan), 1-SU-121/P2 (Kingston Buildings survey trial pits ground floor), 1-SU-131/P2 (Kingston Buildings survey opening up first floor plan), 1-SU-141/P2 (Kingston Buildings survey second floor), 1-SU-151/P2 (survey third floor), 1-SU-201/P2 (Kingston Buildings survey north elevation) date stamped: 1st August 2012

Mann Williams 1111/P4 (Kingston Buildings general arrangement basement plan), 1121/P4 (Kingston Buildings general arrangement ground floor plan), 1131/P2 (Kingston Buildings general arrangement first floor plan), 1141/P2 (Kingston Buildings general arrangement second floor plan), 01151/P2 (Kingston Buildings general arrangement third floor) date stamped: 1st August 2012

Mann Williams proposed drawings 2111/P2 (Jackson extension basement general arrangement), 2121/P2 (Jackson extension ground floor stone trays) date stamped: 1st August 2012 ,

Mann Williams drawings 1211/P4 (long section through meeting room), 1222/P4 (No 9 cross section elevation on cross wall), 1223/P4 (number 10 cross section elevation on cross wall), 2201/P1 (Jackson extension cross sections) date stamped: 1st August 2012

Vogt drawings VLA-DR-L1903-101 (proposed garden), VLA-DR-L1903-102 (proposed garden drainage), VLA-DR-L1903-103 (proposed Kingston Parade), VLA-DR-L1903-501 (proposed square section), VLA-DR-L1903-550 (proposed long garden section), VLA-DR-L1903-551 (proposed short garden sections) date stamped: 1st August 2012

Drawings dated 13th August 2012

Drawings 1533/SU/111B (survey section P), 1533/P/114B (section T proposed) date stamped: 13th August 2012

Mann Williams drawings 1-SU-202/P2 (Kingston Buildings survey south elevation), 2111/P1 (general arrangement basement floor) date stamped: 13th August 2012

Revised survey/demolition drawings December 2012

1533/SU/003B (survey vaults levels plan), 1533/SU/005A (survey first floor plan), 1533/SU/006B (survey upper levels plan), 1533/SU/101B (survey section B), 1533/SU/103B (survey section D), 1533/SU/104B (survey section E), 1533/SU/105B (survey sections F and G), 1533/SU/108A (survey sections J and K), 1533/SU/109B (survey section L), 1533/SU/110B (survey sections M, N O and Q), 1533/SU/112A (survey section R), 1533/SU/204B (survey Kingston Buildings north and south elevation) date stamped: 21st December 2012

Revised proposed drawings December 2012

1533/P/003B (proposed vaults levels plan), 1533/P/006C (proposed upper floors and roof plan), 1533/P/103B (proposed section D), 1533/P/104B (proposed section E),

1533/P/105B (proposed sections F and G), 1533/P/108A (proposed section K), 1533/P/109B (proposed section L), 1533/P/112B (proposed section R), 1533/P/201A (proposed east elevation of Abbey), 1533/P/204B (Kingston Buildings proposed north and south elevations), 1533/P/205A (11A York Street proposed elevations) date stamped: 21st December 2102

DECISION-TAKING STATEMENT

In determining this application the Local Planning Authority considers it has complied with the aims of paragraphs 186 and 187 of the National Planning Framework. For the reasons given, and expanded upon in a related Committee report, a positive view of the revised proposals was taken and permission was granted.

REASONS FOR GRANTING APPROVAL

The decision to grant approval has taken account of the Development Plan and approved Supplementary Planning Guidance.

The proposed development is in accordance with Policies:

D.2 and D.4 - General design and residential amenity
ET.2 - Development including the provision of office accommodation
S.6 - Provision of A3, A4 and A5 uses - cafés and restaurants
BH.1 - Development affecting Bath World Heritage Site
BH.2, BH.4, BH3 - Development affecting Listed buildings
BH.6 - Development within a Conservation Area.
BH12, BH13 - Archaeological remains
HG.13 - Loss of residential accommodation
CF.2 - Provision of community facilities
ES.2 and ES.5 - Energy and Utilities
T.24 and T26 - Highway Safety.

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

Bath and North East Somerset Submission Core Strategy (May 2011) is out at inspection stage and therefore will only be given limited weight for development management purposes.

National Planning Policy Framework - March 2012

The approved development involves would provide both essential and enhanced facilities across the wider site which affect a number of Grade II listed buildings and the Grade I listed Abbey. In the main the proposals are considered acceptable and would not have a harmful impact on the relevant listed buildings and would preserve or enhance this part of the Bath Conservation Area and World Heritage Site. However this is with the exception of the proposed alterations to the Grade II listed terrace of Kingston Buildings and some alterations within the Heritage Vaults. In this respect the development would result in the substantial loss of historic fabric and plan form which is considered unacceptable unless there are substantial public benefits to outweigh the harm. In response a comprehensive

statement of public benefits of the overall scheme has been provided which, on balance, are considered to be substantial and do outweigh the substantial harm to the listed buildings. With regard to the proposed changes of use across the site they are also, in the main, considered acceptable with the exception of the loss of one unit of residential accommodation within Kingston Buildings which will be replaced by offices. The loss of the residential unit is a departure from the Local Plan but is considered to be acceptable in these circumstances as it represents a small element of a much larger scheme for which the overall benefits outweigh the loss. The proposal is not considered to have a harmful impact on the residential amenity of any neighbouring occupiers and would not have a harmful impact on highway safety.

Item No: 02
Application No: 12/03336/LBA
Site Location: Abbey Church Of St Peter & St Paul Abbey Churchyard City Centre Bath Bath And North East Somerset



Ward: Abbey **Parish:** N/A **LB Grade:**
Ward Members: Councillor B J Webber Councillor Manda Rigby
Application Type: Listed Building Consent (Alts/exts)
Proposal: Internal and external alterations for the provision of improved public and ancillary support facilities to Bath Abbey, alterations to 8-13 Kingston Buildings, basement of Abbey Chambers, the 1920s Jackson Extension to Bath Abbey, the Clergy Vestry and adjoining vaults and cellars south of the Abbey, creation of newly excavated below ground spaces north of Kingston Buildings and below the

	Jackson Extension, associated landscape improvement works to the public realm and to the garden north of the Seventh Day Adventist chapel
Constraints:	Agric Land Class 3b,4,5, Scheduled Ancient Monument SAM, Article 4, Bath Core Office Area, City/Town Centre Shopping Areas, Conservation Area, Forest of Avon, Hotspring Protection, Listed Building, Prime Shop Front, World Heritage Site,
Applicant:	Bath Abbey
Expiry Date:	27th September 2012
Case Officer:	Lisa Bartlett

REPORT

This single listed building consent application relates to a major scheme of work to improve and enlarge the facilities and accommodation used and provided by Bath Abbey.

The application site is highly significant in terms of designated heritage assets. The site includes part of Bath Abbey (grade I), Nos 9-13 Kingston Buildings (grade II), 11A York Street (grade II), Abbey Chambers (grade II) and the Seventh Day Adventist Chapel at the east end of Kingston Parade (grade II). The site is also within the Bath World Heritage Site and the heart of the designated conservation area.

In addition to being a place of worship, the Abbey is a significant visitor destination as well as a venue for concerts, performance and other events. Bath Abbey has a important role in the musical life of the city and is responsible for three choirs. The Statement of Need which is included in the appendices attached to the application, gives a full list of the all the activities the Abbey is involved in.

In response to the Statement of Need the Abbey identified a number of specific requirements. In summary:

More dedicated choir school facilities including practice room, music library and vestries. A room height in excess of six metres is considered desirable for choral rehearsal.

Additional office accommodation for Abbey staff.

Additional meeting room space for activities and functions.

Cafe and toilet facilities for visitors and users of the Abbey.

Kitchen and related facilities to support cafe.

More spacious entrance arrangements into the abbey/retail space.

Interpretation space to show case the Abbeys archaeology.

Maintenance workshop

The application includes a number of interrelated elements which are discussed in more detail under the Officer Assessment section of the report. In summary the key components of the scheme comprise:

Carry out extensive alterations to Kingston Buildings including the removal of walls and ceilings to create a double height (basement/ground floor) choir practice room spanning Nos 10 and 11. On the upper floor partial demolition of walls and the removal of staircases is proposed to achieve linked office accommodation for the Abbey.

Excavation between the Abbey and Kingston Buildings to create a new subterranean meeting room. The room will have a central window feature in the roof expressed as a raised lantern in the pavement above. This large meeting room will be capable of holding up to 150 people for conferences and presentations. The configuration of spaces will allow this room to be connected to the Abbey, the vaults and Kingston Buildings.

Alterations to the 18th century vaults beneath Kingston Parade (currently known as the Heritage Vaults) to provide a refectory and servery for visitors and users of the Abbey. This area will also act as a hub/intersection point for circulation to different parts of the development.

Alterations to the vaults beneath Abbey Chambers to create kitchen spaces, publically accessible toilets, storage for the Abbey archives and an archive work space.

Alterations to the 1920s Jackson extension on the south side of the Abbey to convert the traceried windows into doors. Inside the Jackson extension (the new Welcome Cloister) will become the principal point of entry into the Abbey for visitors. The extension will serve a number of purposes including a welcoming space, shop and foyer when the Abbey is being used for performances.

Stairs and lifts in the Jackson extension will provide public access to vaults level. The West Front entrance will still be used for Sunday services.

Excavation below the Jackson Extension to create a new Interpretation Space to showcase the Abbey's archaeology.

Small extension and alterations to link the rear of Kingston Buildings with 11A York Street where the basement and vaults will be used as workshop space.

Create a quiet garden in the existing garden of Nos 7/8 Terrace Walk adjacent to the Seventh Day Adventist Church.

Retain the existing second floor extension to what was number 8 Kingston Buildings for use as the parish room/small meeting room (Following a meeting held on the 7th December attended by representatives from the Abbey, the Local Authority, both Planning and Property Services and English Heritage the proposal to remove the existing single storey extension and construct a two storey glass and stone extension across Nos 8 and 9 Kingston Buildings to be used a small meeting room/parish room and the proposal to install double glazing into Kingston Buildings have been deleted from the current application).

Please see under Officer Assessment for a more detailed discussion of the proposals and their merits.

In addition to the submitted drawings showing the proposed work, a Design and Access Statement, Heritage Statement and Appendices, a further written justification for the changes to Kingston Buildings and a document entitled Bath Abbey - Public benefit resulting in proposed loss of historic fabric to Kingston Buildings are available on the file. These additional justification reports seek to balance the acknowledged harm to the fabric of Kingston Buildings against the public benefits the applicant believes will flow from the

scheme. These supporting documents set out in detail the Abbey's case for proposing the work, including their Statement of Need. They provide essential background to the application and should be read in conjunction with this committee report.

It should also be noted that a small area of vault to the south of the Jackson extension lies within the Roman Baths Scheduled Ancient Monument. It is understood that an application for scheduled ancient monument consent has been agreed on behalf of the DCMS.

The application proposals form part of a larger project known as the Abbey Footprint. This project includes elements of work inside the Abbey which fall under Faculty Jurisdiction Rules (the Churches own internal procedures to protect listed buildings) and are not included in the application before the committee for consideration.

Further, the current application does not include any proposals for work to extract energy from the Roman Great Drain.

Planning history

Parallel planning application 12/03335/FUL.

The Local Planning Authority in conjunction with English Heritage engaged in extensive pre application discussion with applicants. This process established that whilst significant elements of the work were acceptable in principle, if not detail, the work directly affecting Kingston Buildings would result in the loss of fabric, planform and character which would unacceptably harm the significance of the heritage asset.

Prior to lodging the formal application and at the applicants instigation the scheme was presented to the South West Design Review Panel. Following the site visit the panel commented that in writing that Kingston Buildings makes an important contribution to the townscape and historic character of the area. They suggested locating the choir practice room elsewhere to allow less dramatic changes to the terrace.

SUMMARY OF CONSULTATIONS/REPRESENTATIONS

Parish Council: NA

The Councils Archaeological Officer comments:

Below Ground Archaeology

A programme of archaeological evaluation trenching, within the 1920s Jackson extension (Abbey shop) and public open space between Kingston Building and the east end of the church, was carried out of behalf of the Abbey by Cotswold Archaeology between January and March 2011.

The archaeological investigations within the Jackson extension demonstrated that the area may be able to accommodate additional lower floor level, without impacting on the more significant medieval and Roman levels/deposits. Nevertheless, there remains the potential for archaeological deposits of higher significance to be found above these levels, and this is a clear a risk in an area of such high archaeological potential between the medieval Abbey church and Roman Baths scheduled ancient monument.

Proposed use of the area between the Abbey church and Kingston Buildings to provide a new below ground meeting room will require a large amount of excavation. And whilst the archaeological evaluation trench revealed deposits and structures of generally low to moderate archaeological significance, the site as a whole still has high archaeological potential.

If permission were granted for this development I would recommend that the following archaeological conditions are attached to the planning consent:

1. No development shall take place within the site (including any site clearance or demolition works) until the applicant, or their agents or successors in title, has produced detailed drawings of all underground works, including foundations, drainage and those of statutory undertakers, which have been submitted to and approved in writing by the Local Planning Authority. Such details shall include the location, extent and depth of all excavations and these works shall be carried out and completed in accordance with details as approved.

Reason: The site is within an area of major archaeological interest and the Council will wish to protect the archaeological remains.

2. No development shall take place within the site until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority. The programme of archaeological work should provide a controlled excavation of all significant deposits and features, which are to be disturbed by the proposed development, and shall be carried out by a competent person(s) and completed in accordance with the approved written scheme of investigation. Thereafter the building works shall incorporate any building techniques and measures necessary to mitigate the loss or destruction of any further archaeological remains.

Reason: The site is within an area of major archaeological interest and the Council will wish record and protect the archaeological remains.

3. The development shall not be brought into use or occupied until the applicant, or their agents or successors in title, has secured the implementation of a programme of post-excavation analysis in accordance with a publication plan which has been submitted to and approved in writing by the Local Planning Authority. The programme of post-excavation analysis shall be carried out by a competent person(s) and completed in accordance with the approved publication plan, or as otherwise agreed in writing with the Local Planning Authority.

Reason: The site has produced significant archaeological findings and the Council will wish to publish or otherwise disseminate the results.

Listed Buildings

I share the grave concerns raised by the Council's conservation officer and English Heritage in relation to the conversion of Kingston Buildings into open plan office space with a two story height choir practice room. All parties accept that the destruction of the historic building plan will cause 'substantial harm' to the historic asset and its significance. However, I am not convinced that the uses proposed for Kingston Buildings demonstrate

the clear 'substantial public benefits' that are required to justify such changes in the National Planning Policy Framework (NPPF 133).

Furthermore I am not convinced that less damaging options have been fully explored, such as the use of Abbey Chambers for office space, and the Friends Meeting House for the choir practice room.

I again share the concerns raised by the Council's conservation officer and English Heritage in relation to proposed changes to the Heritage Vaults. In particular the widening of access routes through the vaults, which will involve the loss of significant historic fabric and insertion new engineered supports, harming the character and integrity of the vaults.

If permission were granted for this development I would recommend that the following historic building recording condition is attached to the planning consent:

4. No development or demolition shall take place within the site until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority. The programme of archaeological work should provide a record of those parts of the building(s), which are to be demolished, disturbed or concealed by the proposed development, and shall be carried out by a competent person(s) and completed in accordance with the approved written scheme of investigation.

Reason: The building is of significant archaeological interest and the Council will wish to examine and record features of architectural interest.

English Heritage (comments dated the 8th October 2012):

Summary

We welcome the overall objective of works to improve and upgrade the facilities of the Abbey. We consider the works to the Jackson wing, heritage vaults and the creation of the large underground meeting room to be generally acceptable, subject to some suggested revisions. However overall the proposals will have a significant adverse impact on the grade II listed terrace of Kingston Buildings. It is acknowledged by the applicant's agent that these works will cause significant harm however they contend that the works will provide significant public benefit to outweigh this harm. We are of the view that it is not been demonstrated and the harm to these historic assets outweighs the public benefit. We are unable to support these applications.

English Heritage Advice

The proposal site is highly significant in terms of designated heritage assets. The medieval Abbey is a grade I listed building, the area has high archaeological interest, and potential, as close to the Roman complexes and the remains of the earlier Norman church, plus the later 18th and 19th century remains. Kingston Buildings, Abbey Chambers, and 11 York Street are all grade II listed buildings. The whole site is within the World Heritage Site. The site is also in the Bath Conservation Area and the proposals have the potential to impact on the settings of many other designated and undesignated heritage assets.

We note that these proposals form part of a wider project by the Abbey involving internal alterations to the Abbey. Some of these proposals are included in the appendices however as these works are still evolving and fall under faculty jurisdiction rules we will not be commenting on them as part of this consultation.

We have been involved in considerable pre-application discussions regarding these proposals and the submitted scheme does address some of the comments we have made. We are supportive of the main objective of the Abbey and a substantial element of the works is considered to be generally acceptable namely; the works to the Jackson extension, the creation of the large meeting room and the majority of the works to the heritage vaults. It is acknowledged by all parties that the works Kingston Buildings will result in substantial harm to the heritage assets. The main focus of the discussion centres on the policies set out in the NPPF paragraph 132 'As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification.' In addition paragraph 133 'Where proposed development will lead to substantial harm to or total loss of significance of designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss.'

In addition, the Historic Environment Practice Guide which accompanied PPS5 is still applicable.

Jackson Extension

This extension was added in the 1920s to the south aisle of the Abbey. It has a gothic detailing picking up on the perpendicular style of the medieval building. This area of the site has been subject to redevelopment over time so it is likely to contain evidence of Victorian, Georgian, Norman and Roman archaeology. Some archaeological investigations have been undertaken in order to establish whether it is possible to excavate in this location. These investigations have shown it may be possible to lower the levels and create a two storey accommodation in this location. Of course any development here will need to be subject to on going archaeological assessment and monitoring.

The alteration to the elevation involves alteration to the windows to create doors. This will represent a visual change, and some loss of 1920s fabric, but it will enable a greater physical connectivity between the Abbey and Kingston Parade. We have no objection to the principle of opening up of this elevation although we are concerned at the extent of opening up proposed. The floor plan of the site seems to show the setting back of the existing windows however the larger scale plan shows them in their existing position. This detail will need to be clarified.

Heritage Vaults

The area under Kingston Parade contains the remains of 18th century vaults but also the potential for archaeological remains under the floor surfaces. These vaults are currently used to house the museum and have potential to provide cafe and toilet facilities. The proposals involve removal of part of the vault walls which support the barrel vaults. In order to achieve this a concrete structure at ceiling level is required to support the vault. It is unclear why such a large opening is required. We would recommend that the servery is moved to another vault in order not to obstruct the route to the toilets. If this was done then the opening could be reduced in size.

New Large Meeting Room

This area has high archaeological potential. In order to create this new meeting room there will be substantial excavation in this location. We understand that Richard Sermon the Council's archaeologist has been heavily involved in the archaeological investigations and is content that there is the potential to carry out these works, subject to archaeological monitoring. The removal of the railings to the existing well area around the south east side of the abbey is acceptable subject to details of the connection of the glazing and grilles with the fabric of the abbey itself.

Kingston Buildings

8 -13 Kingston Buildings is a row of modest terrace houses dating from the early 19th century. The Architectural History Practice assessment of these buildings states that "they illustrate the development of this part of the Kingston Estate in central Bath during the Georgian era. Much of the surviving fabric is original, including the front elevations, party walls, and chimneybreasts, some partitions, most of the staircases and some of the windows, doors and doorframes. All of the Kingston Building houses have been altered internally, albeit to varying degrees. Common minor alterations include the insertion of openings in the party walls and the blocking of fireplaces. Three of the houses (nos.8,9 and 13) had more significant alterations..." The Heritage Statement recognises that alterations such as openings between rooms and buildings, alterations to the staircases have eroded the sense of the original plan in several areas.

These buildings were designed as houses and their most appropriate use would be residential. We acknowledge that the majority of the floor space has been in office use for a substantial period of time. However, the proposed increase in office use brings with it pressure to make further physical changes to the fabric, layout and significance of the buildings. The proposed changes to create offices does result in further loss of fabric and plan form. We acknowledge that there is an opportunity to improve the thermal efficiency of the buildings but have reservations regarding the extent of works proposed. For example, repairing and improving the draught proofing of windows will increase the energy performance of the building. It is also proposed to replace all the glazing with slim lite double glazing. In our experience of talking to joiners who work with upgrading sash windows it is very difficult to install slim lite double glazing in multipane sashes without losing most of the original joinery, it also has implications for the weights. We would suggest secondary glazing as an alternative option. It is also proposed to add internal wall insulation which will have hide the mouldings on the ground and first floor of numbers 8 and 9. The type of insulation has not been specified but consideration needs to be given to not only the impact on the aesthetic value of the buildings but also their technical performance.

The greatest of the proposed changes to these buildings is the introduction of the choir/song school which involves removal of a significant quantum of fabric and major alteration to the plan form of the basement and ground floor of numbers 10 and 11. All the vaults under the pavement will be removed to create a new connection and corridor with the new large scale meeting room.

In addition, major structural interventions are necessary to achieve the degree of proposed change. Unfortunately the scale of the drawings makes it difficult to read the detailed notes at A4 or on the computer. The works to create the proposed Choir practice

rooms will involve installation of a steel portal structure. Other alterations such as removal of spine walls with steel and concrete lintels. We can surmise that these works involve lowering all the basement floors and installing new concrete floors. No information has been provided on the significance of the floors to be removed and how the concrete will perform on a technical level especially in conjunction with the wall insulation. These are traditional breathable buildings and these works involve substantial alterations to their structure and how the materials breathe.

The small scale of the terrace, in a city of grand houses, is part of its special interest and significance. We are of the view that the existing addition on No8 has a negative impact on the aesthetic value of the terrace. Whilst its removal is uncontentious the proposals to replace it with a new wider addition is considered to be harmful to the aesthetic value and significance of the external appearance of the terrace.

In our view, due to the impact on fabric, floor plan, aesthetic value and potential impact on technical performance and structural integrity of Kingston Buildings these works would cause substantial harm to the significance of these designated heritage assets. These buildings are capable of a viable future without the need for such substantial changes. In applying the policies in the NPPF the Local Planning Authority should refuse consent unless it can be demonstrated that the substantial harm is necessary to achieve substantial public benefit. The justification in the Design and Access statement is that the development will enable the Abbey to continue to serve the city, its congregation and its visitors, the long term viability of the Abbey as an institution will ensure the long-term protection of the Grade I listed Abbey Church and its ancillary building, it will alleviate pressure on the Abbey itself and will enhance the viability of the Abbey as the setting for major cultural events. Whilst we do not disagree that the scheme will improve the overall facilities of the Abbey which will benefit the public, we do not consider these benefits to outweigh the harm to the heritage assets.

Recommendation

We are supportive of all the aims and objectives to conserve the Abbey as a heritage asset and to ensure its long term viability in terms of use and financial security. The alterations within the Jackson wing, basement vaults and the new large meeting room will provide considerable improvement in terms of facilities and potential new income streams for the Abbey. We appreciate that a number of alternative options have been explored. It is the new choir school and small meeting room which will have the greatest impact on the significance of the buildings. Whilst we appreciate the desire to enhance these facilities we remain unconvinced that these provide substantial public benefit to outweigh the harm to the heritage assets.

Whilst we welcome much of what the scheme will deliver, there are areas of the scheme which cannot be supported as they are contrary to the Government policy set out in the NPPF. We therefore object to these proposals.

If, notwithstanding our advice, your Authority is minded to grant consent, in light of our objection you should treat this letter as a request to notify the Secretary of State of this application, in accordance with Circular 08/2009.

English Heritage (comments dated the 22nd January 2012):

Following our initial comments on the proposals and the meeting held on 7th December 2012 we have received revised drawings and additional justification for the proposals. The changes include the omission of the proposed new extension to number 8 and 9 Kingston Buildings and the retention of the existing extension. An alternative location for the small meeting room will be discussed with Bath and North East Somerset Council who own adjacent properties and land. We welcome this amendment especially as we suggested in our earlier correspondence that there was an opportunity for the Abbey and the Council to work together to find accommodation for the Abbey administration in close proximity to the Abbey. The scheme will now retain the existing windows and omits the double glazing proposal. The works to the exterior of the building are now more limited and essentially maintain the existing appearance with some aesthetic improvements.

We maintain our position that the physical works to Kingston Buildings will cause substantial harm to these designated heritage assets. The proposals therefore need to be considered as a whole in relation to policy 133 of the NPPF, whether it has been demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss. Further justification for the proposals has been presented. This underlines the fact that the public benefits which relate specifically to Kingston Buildings concern the transformation of the currently inadequate ad hoc arrangements for the choral users of the Abbey. Proposed changes will result in better, safer, more efficient, practical and enjoyable spaces which will help ensure the continued and improved functioning of the Abbey and visiting choirs with their integral contribution to cultural activities throughout the year. The proposals will also significantly improve facilities for the choir's outreach programme for schools around the city. In addition the works to Kingston Buildings need to be considered in the context of the scheme as a whole. The scheme will provide an effectively functioning Abbey community and seeks to reduce the physical pressures on the principal listed building - the Abbey, and to make the Abbey's future more sustainable. Taken together we consider that these public benefits constitute an acceptable justification for the substantial harm to Kingston Buildings and we therefore withdraw our objection to the scheme.

If the Council is minded to approve the scheme there remains matters of detail regarding structural and thermal upgrading works which may require further discussion, consideration and review.

Georgian Group (visited the site in December 2011) object and comment:

Kingston Buildings is a comparatively rare survival of a modest early 19th century terrace as many others were demolished in the mid 20th century.

The interior retains planform and the exterior gives a sense of a row of modest terraced houses. Kingston Buildings therefore makes a strong contribution to the streetscene of this part of the World Heritage Site.

Kingston Buildings is unlikely to be suited as accommodation for the choir school and the level of internal alteration would essentially make the terrace unlistable.

It would be more feasible to locate the choir practice room in the proposed crypt works or to rationalise the existing practice room to provide segregated vestries. Or to practice in the Abbey.

Altering the planform of Kingston Buildings would be very damaging to the significance of this artisans terrace.

The addition of the meeting room to Kingston Buildings would have a negative impact on the conservation area and the World Heritage Site. The design does not reflect the architectural language of the terrace and would damage the World Heritage Site and the setting of the Abbey itself.

If the Local Authority is minded to grant consent, the Georgian Group objection letter should be treated as a request to notify the Secretary of State of the application, in accordance with Circular 08/2009.

In response to the revised drawings the Georgian Group object, reiterate comments already made above and make the following additional comments;

The historic integrity of Kingston Buildings lies not only in its facade but in its remaining internal features and planform.

The proposed alterations and demolition work would be damaging to the significance of Kingston Buildings and could make the terrace delistable.

There is concern about the structural impact of the proposed work. The entire single skin facade may be supported by the first floor bressumer and the thicker walls to the vaults. Removing a large part of the vaults, party walls and the ground floor, would leave the facade and first floor mostly supported by this bressumer which could lead to serious structural damage.

The first concern must be for the integrity of the listed terrace.

If the Local Authority is minded to grant consent, the Georgian Group do not want the application referred to the Secretary of State.

The applicant has responded to the Georgian Group comments and their letter is available on the file.

Bath Preservation Trust objects and comments;

The Trust is broadly supportive of the Abbeys desire to reorder space to allow it to be used more effectively.

They accept the alterations to the Jackson Extension, the Vaults, Abbey Chambers basement, York Street and the clergy vestry.

Kingston Buildings is one of a few surviving artisan terraces in the city. Losses during the war and the Sack of Bath amplify the importance of this remaining terrace.

The proposed top floor meeting room would have an unacceptable visual impact. The additional height, bulk and massing would further undermine the subservient character of the terrace. The design would relate poorly to the proportions and order of the modest terrace.

Meeting spaces could be accommodated in Abbey Chambers. It would be better if the Abbey could use the whole of Abbey Chambers which would provide capacity for their activities.

The proposal to open the existing herb garden is welcomed. But the proposal is poorly detailed and the garden could become bland and sterile.

Taken as a whole the application is contrary to the Act, the NPPF and Local Plan policies.

In response to the revised plans the Bath Preservation comment;
They welcome withdrawal of the roof extension.
Reiterate significance of Kingston Buildings as a surviving artisan terrace.
They consider the Justification and Design and Access Statement does not adequately acknowledge the harm caused to the significance of the terrace through loss of fabric and planform.
On balance they do not object because they take on good faith the Abbeys assurances that there is no suitable alternative location for the song school.
They remain concerned about the structural integrity of the terrace once the walls, floor and lateral connections have been removed.
They remain concerned that proposals for the garden will make what is an informal space bland.

Bath Heritage Watchdog objects and comments:

The loss of historic fabric is detrimental and unjustified.
They oppose cutting down the windows of the Jackson extension to create doors leading to loss of gothic tracery. Providing a foyer does not justify alteration.
Lighting is proposed to the archway recesses which is not the right approach and would cause light pollution.
The loss of fabric and planform caused by the proposed skylight is not justified.
Is it the intention to remove seating from the public area as indicated on the montages.
Kingston Parade does not need animating with signage. Walking around until a door indicating the entrance is found has been sufficient for many years.
Photovoltaics on the roof of Kingston Buildings would be incompatible with views from the Abbey Tower.
The extensive alterations to Kingston Buildings would result in loss of historic fabric and planform.
The substantial benefit will be to the Abbey not the public.
There is a credibility gap between what the Abbey claims it needs and desires which could have other solutions.
The neglect of Kingston Buildings does not justify the proposed work.
The proposed lightwell (above the large meeting room) will jar and cause an obstruction.
The two storey roof extension will upset the balance of the terrace and is an egotistical statement. Why the desire to create a "principal" building in the terrace.
They oppose slimline double glazing the windows in Kingston Buildings which will cause double imaging harmful to the host building and the conservation area and could result in delisting.
They oppose insulating the internal walls of Kingston Buildings which would damage the spatial qualities of the rooms and conceal mouldings.
No objection to principle of using vaults but waterproof tanking is a cause for concern.
Some aspects of the scheme have the hallmarks of the Public Realm and Movement Strategy showing a lack of understanding of the character of the city.
Repainting the bathstone at 11A York Street may harm the stone.
The proposals are damaging and overtly commercial.
There has been a lack of public consultation.
There is concern about the proformas used by the Abbey to show support.
The works are contrary to the Act , the NPPF and Local plan policies.

In response to the revised plans Bath Heritage Watchdog continue to object.

The local MP supports the application and comments;
The is impressed by the way the Abbey team have analysed their shortcomings and produced an integrated plan for addressing them.
The minor changes to the grade II listed building will provide significant public benefit especially for work with schools and the Abbeys singing programme.
Extracting energy from the water in the Roman Great Drain for a district heating system is imaginative.

Bath Festivals support application and comment that the Abbey is the largest Music festival venue and the new facilities will benefit audiences.

Business West support the application and comment that the development will add to the environment in which the Abbey sits and benefit generations to come.

Other representations:

A total of 266 representations of support have been submitted mostly comprising standard proformas provided by the Abbey for visitors to complete. The representations are summarised below. Only submitted representations which quoted the listed building consent number have been logged to the application. Representations which only quoted the full application number are logged only to the planning application.

Visitor facilities are needed.

Accommodation for the administration and choir school will improve community outreach and activities.

Application will benefit entire city.

Choir practice space is currently cramped.

Abbey should be used as well as protected.

The Abbeys long musical tradition draws in people who might not otherwise visit the building.

Visitors have commented on the social value of toilet, kitchen and rehearsal facilities in other Bath churches.

Facilities will help the Abbeys choirs and the Schools Singing Programme. Singing has a positive benefit impact on children's attitudes and behaviour, building skills critical for contributing back to society.

Work will increase profile of Abbey with tourists.

Scheme makes minimal contemporary intervention.

The project will reinforce Bath as a World Heritage Site.

Scheme will contribute to cultural life and give people a sense of direction.

Most of the accommodation will be hidden underground or in existing buildings which will have minimal impact on the city environment.

Alterations to Kingston Buildings will be done delightfully and respectfully.

New facilities will deliver public benefit.

Abbey is central to life of the city.

Only a small piece of old walling will be removed which is outweighed by the advantages gained.

The Abbey has commissioned award winning architects.

Members of the Architecture Club were impressed with the sensitivity of the scheme.

The rooftop extension to Kingston Buildings is a natural part of the terraces evolutionary development. It expresses Ruskins and Morris's ideas.

Scheme will make Abbey fit for purpose.

The flooring, lighting and heating have deteriorated over the years. The writer is delighted at the idea of using the geothermal energy from the hot springs (this work falls outside the scope of application and is not under consideration by the Local Planning Authority).

Current lack of toilets causes significant problems.

The footprint scheme which is imaginative and bold will address all the demands on the Abbey.

As the Abbey is a key aspect of the city's future alongside the Roman Baths and Pump Rooms the proposal should be adopted a city initiative.

The proposed plans address the problems in the best and most practical way.

The existing entrance lobby does not provide an appropriate physical welcome to visitors in an appropriate location. The Jackson extension entrance will improve visitor welcome and space.

Lack of visitor toilets is embarrassing.

The Abbey is the city's most important buildings and it has already been altered in many ways.

The Abbey team recognises that the Abbey must adapt to wider purposes than originally intended.

The applications are exemplary, imaginative, visionary and practical.

Abbey has international music profile and has received accolades for its work.

The rather rundown Kingston Buildings will be put to a more contemporary use.

The Council had the vision to rent the heritage vaults to the Abbey and these have attracted thousands of visitors.

The overall scheme is a brilliant solution to providing accommodation needs.

The Abbey is equal to St Marys Oxford for visitor numbers.

The proposals recognise and respond to the Abbey as a landmark whilst weaving new facilities and spaces into the surrounding vaults and buildings.

The project will attain international recognition cementing Baths position as an internationally important city for its historic and imaginative modern architecture.

The proposals will enhance the ways the Abbey can serve the widest community with minimum intervention to historic fabric.

Two representations of objection have been received making the following comments:

One writer refers to two letters to the local newspaper setting out his objections.

There has been little public debate. The letter sent by the Rector to the congregation is so general as to be meaningless. The letter of support does not give an opportunity to object.

Christ's teaching on the use of church buildings is clear. St John, Chapter 2 verse 16 "You have turned my house into a house of merchandise.

Letters to the newspaper have criticized the secularisation and commercialisation of the Abbey.

The £18 million development has not been justified in terms of propagating the Christian Gospel or producing a satisfactory return on the investment for the large commercial aspect of the development so as to provide a flow of income for future generations.

No research has been carried out to establish the chances of acquiring the £18m funding required. Previous more modest appeals have failed. What are the contingency plans if funds are not forthcoming.

Bath Preservation Trust and the Bath Heritage Watchdog object to the application.

Much of the development is for staff office space.

Work to the Abbey floor and central heating has been delayed for six years.

The desecration of a sacred place should not be allowed.

One general representation has been received commenting:
Reservations about modern lighting in the Abbey.
Pews are preferable to chairs because they are more and offer protection from strangers.
There is concern about increase in commercialism of the Abbey church.
Pews help slow people down.
Please impose appropriate conditions.

POLICIES/LEGISLATION

From the point of view of the historic environment the primary consideration is the duty placed on the Council under S 16 of the Listed Buildings Act to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

There is also a duty under S 72 to pay special attention to the preservation or enhancement of the character of the surrounding Conservation Area.

The National Planning Policy Framework sets out government advice concerning alterations to listed buildings, development in conservation areas and world heritage sites. It is supported by the Historic Environment Planning Practice Guide.

If the Council is minded to grant consent there is not a requirement to notify the Secretary of State before a decision is issued

OFFICER ASSESSMENT

EXPLANATION OF THE NEED FOR THE DEVELOPMENT:

The Abbey, through its Statement of Need, has identified a number of specific requirements to substantially improve the facilities on offer. The Abbey has also provided a brief summary of why the development is required which includes:

1. The Abbey has reduced facilities compared to other similarly important facilities at Winchester, Salisbury and St Albans. Supporting infrastructure such as the cloister, chapter house and other buildings were sold at the time of the Reformation.
2. The existing choir facilities are inadequate and are not large enough to hold a complete choir of 24 people. The changing facilities are inadequate which are raising safeguarding issues and there is a lack of distinction between public and private spaces/uses.
3. The existing poor quality choir facilities limit the number of public events/concerts held in the Abbey to two a week. This is due to poor quality sound proofing allowing noise to transfer into the Abbey. It also means that the Abbey itself has to be used on occasions for choir practice which further limits its ability to be used for public events.
4. Significant lack of toilet facilities for the use of both staff and visitors. Currently there is one semi-accessible toilet and three other toilets within the Abbey. Visitors are directed to toilets in the Roman Baths or to a nearby bar, All Bar One.
5. The existing ancillary facilities for volunteers, staff and others working within the Abbey are very small and inadequate and also have to double up as changing rooms for the Choir etc.

6. Lack of facilities for schools such as rooms for education purposes, toilets, catering facilities and storage for coats, bags etc.
7. Inadequate facilities for visiting performers, musicians and choirs including a lack of changing rooms, storage or practice rooms.

The development therefore seeks to provide:

1. Dedicated choir facilities including practice room, music library and vestries. A room height in excess of six metres is considered desirable for choral rehearsal.
2. Additional office accommodation for Abbey staff.
3. Additional meeting room space for activities and functions.
4. Cafe and toilet facilities for visitors and users of the Abbey.
5. Kitchen and related facilities to support the refectory.
6. More spacious entrance arrangements into the Abbey/retail space.
7. Interpretation space to showcase the Abbeys archaeology.
8. Maintenance workshop.

However in order to provide these facilities within the significant constraints of the existing site it has been found that the scheme hinges on moving the choir practice room from its current location within the 1920's Jackson Extension to a new location. This is because the choir school is within the only suitable location for the staircase down to the remainder of the new facilities eg refectory, public toilets. Therefore, in addition to the inadequate facilities provided by the existing Choir School, its relocation is also integral to the provision of the scheme as a whole.

This part of the report deals with each element of the revised scheme in turn. The description in brackets explains how that area of the building would be used as part of the overall scheme.

Jackson Extension (proposed welcoming space and new subterranean Interpretation Space)

The Jackson Extension was added along the south aisle of the abbey in the 1920s. Archaeological investigation has established that excavation to create the new Interpretation Space can be achieved without harming critical deposits. This work will "reveal" the south wall of the abbey as an insitu archaeology for visitors. The new floor of the Jackson extension will be supported off the reduced floor levels without making any contact with the actual fabric of the Abbey south aisle.

The proposed work to the fenestration to convert the Jackson extension into the main Abbey entrance and welcome point for day and evening visitors will entail replacing most of the existing gothic traceried windows with paired doors, leaving the central mullions in place and extended down to ground level. Third party objections to these changes have been carefully noted. However on balance it is considered that the design of the extension is sufficiently robust to assimilate the alterations whilst still preserving the character of the Abbey and its role in the wider townscape. This element of the application is therefore acceptable.

18th century Heritage Vaults (proposed refectory and servery)

These vault spaces relate to former Georgian houses on the site long since demolished. The Abbey currently use them as an archaeology display space. Their conversion to the

Abbey refectory is acceptable in principle. Nevertheless it would be possible to introduce this use in a way which preserves more of the historic fabric than is currently proposed. Removal of part of the vaults would necessitate the introduction of concrete to support the remaining structure. The applicant has been made aware of these concerns but this part of the scheme has not been amended.

Abbey Chambers vaults (proposed public toilets, kitchens, archive storage and workspace)

Abbey Chambers is a grade II listed building circa 1762 by Thomas Jelly, much altered in 1875 when it was used as part of Issac Pitmans Fonetik Institute.

New openings will link the vaults beneath Abbey Chambers with the Abbey. These vault areas have already been altered in the past and further adaption for use as kitchens, toilets and support spaces will still preserve the character of grade II listed Abbey Chambers. This element of the application is therefore considered acceptable.

Large subterranean room between the south side of the Abbey and Kingston Buildings (proposed large meeting room)

This area has high archaeological potential. However investigation has established that the necessary groundwork can be carried out subject to archaeological excavation and monitoring. There is no objection to this significant element of work being carried out to the site.

As part of the work the existing railings around this part of the Abbey would be removed and the sunken moat covered over with a metal grille. This would have the effect of enlarging the width of Kingsnton Parade for pedestrians. There is no objection in principle to this alteration.

The design of meeting room roof window feature which would be expressed as a raised lantern in the pavement between the Abbey and Kingston Buildings has not been fully worked up.

11A York Street (workshop space)

11A is the end building in a terrace of shops with accommodation over circa 1819 possibly by William Wilkins who designed the Masonic Hall (now the Friends Meeting House) on the opposite side of the road. The terrace is part of an excellent example of Greek Revival town planning applied to small scale non institutional buildings.

The current application proposes small scale alterations to link the rear of Kingston Buildings to No 11A York Street where the basement and vaults will provide workshop space for the Abbey. There is no objection to this small scale intervention work (Please also refer to parallel planning application report).

Garden adjacent to Seventh Adventist Chapel (proposed Abbey Garden)

This garden area immediately to the rear of Nos 7/8 Terrace Walk is proposed as a quiet garden in connection with the use of Abbey. The garden is alongside the grade II listed Adventist Church circa 1820. However no alterations are proposed to the chapel which is outside of the application site. There is no building conservation objection to the principle of the use (Please also refer to parallel planning application report).

Kingston Buildings (proposed reception, choir school, vestries and office accommodation)
Kingston Buildings comprises a terrace of six houses circa 1819. Nos 8/9 have been combined in the past and the height of what was number 8 increased with the addition of a two storey roof extension circa 1887.

Bath is a city rich in high status 18th and early 19th century architecture. In contrast Kingston Buildings represents the rare survival of a more modest and humble early 19th century domestic terrace in Bath. The diminutive and yet nevertheless strong architectural form of Kingston Buildings makes a positive contribution to the townscape framed between Orange Grove and the imposing eastern end of the Abbey. Many other terraces of this type were either destroyed during the second world war or later demolished in the 1950s and 1960s at time when the significance and role of these smaller houses to the development and understanding of the city was less appreciated. Such terraces would have housed the many people engaged in trades that supported Bath as a 18th and 19th century destination for polite society. The internal layout of the terrace reflects its domestic origins.

Following a meeting held on the 7th December attended by representatives from the Abbey, the Local Authority both Planning and Property Services and English Heritage the submitted scheme has been amended:

The proposal to demolish the existing extension over No 8 Kingston Buildings and build a two storey extension over Nos 8/9 has been deleted from the current application. The removal of the two storey extension from the application is welcomed. The additional massing and design of the extension did not reflect the architectural language of the terrace and this significant alteration would have had an adverse impact on the setting of Bath Abbey and the World Heritage Site.

The proposal to replace the traditional single glazed windows with double glazing has also been deleted from the scheme

It is acknowledged that these revisions will better protect the exterior appearance and character of Kingston Buildings.

However the protection afforded by the listing covers both the exterior and the interior of Kingston Buildings.

Paragraph 182 from the Historic Environment Practice Guidance states "The plan form of a building is frequently one of its most important characteristics Proposals to remove or modify internal arrangements, including the insertion of new openings or extension underground, will be subject to the same considerations of impact on significance as for externally visible alterations."

Although Kingston Buildings has been used for many years by the Abbey as offices this has been done largely within the historic planform much of which is still intact.

As part of the overall Abbey strategy the revised application still proposes the intensive exploitation of Kingston Buildings to provide the accommodation for the choir school, enhanced office space for staff and a reception area. The following key demolitions and alterations are proposed:

The principal entrance into Kingston Buildings would be via No 8 which would be distinguished from the rest of the terrace by having a pair of doors instead of the existing single leaf door.

The internal layout of No 8/9 would be reconfigured to create the main reception and waiting area on the ground floor. A completely new and enlarged staircase and lift enclosure in number 8 would provide access to the upper floor office accommodation in the rest of the terrace.

Creating the linked office accommodation at first floor level would require the partial demolition of the party walls to create openings.

The central portion of the terrace, Nos 10 and 11 would be radically altered with the removal of the ground floorplate and the party wall to create the double height choir practice space. A narrow walkway around the perimeter of the space at ground floor would allow circulation between the ends of the terrace still. Obviously such substantial removal of critical structure will require compensation probably in the form of a steel frame inserted into what is left of the interior.

In total three out of the four remaining 19th century staircases would be removed from the terrace to facilitate the linked offices and choir practice room

Largely demolish the vaults spaces which currently extend below the pavement to create the circulation corridor which would link Kingston Buildings to other parts of the development.

Install internal insulation to walls to improve thermal performance. This would entail concealing traditional plaster cornices in some rooms which currently contribute to the character of the terrace.

Lower the basement floors and insert new concrete floors.

The result of these works would be to remove a very large quantity of historic fabric from the terrace and effectively obliterate the historic floor plan and circulation spaces of the original houses. Consent would not normally be granted for work for demolition and alteration which would in effect make Kingston Buildings a very strong candidate for delisting. Once delisted control over further alterations to the outside of the terrace to protect its character would be reduced and the planning system could offer no further protection to the interior.

The most major and damaging of the interventions would be to create the double height choir practice space. Throughout the pre application discussions the Abbey were advised to consider other options.

All the parties agree that the work listed above will cause significant harm to the historic fabric of Kingston Buildings. English Heritage in their revised comments state that the physical works to Kingston Buildings will cause substantial harm to these designated heritage assets.

PUBLIC BENEFITS OF THE DEVELOPMENT

In line with the National Planning Policy Framework paragraphs 132 and 133 applications for development causing substantial harm or loss should be refused consent unless it can be demonstrated the substantial harm or loss is necessary to achieve substantial public benefits that outweigh the harm or loss.

The submitted Design and Access Statement and more particularly the addendum "Justification for Changes to Kingston Buildings" seeks to address this issue. The Justification provides a useful summary of the statement of need, the options for the choir school which were rejected and the public benefits the Abbey believe will flow from the scheme. The report identifies a number of communities and organisations which will benefit from the work including congregations, choirs, concert performers, volunteers, friends of the Abbey, residents, homelessness project, city of Bath, visitors and tourists, educational institutes, historians and researchers. The most direct benefits of the work to Kingston Buildings would accrue to the Abbey choirs, children and musicians. The Abbey argue in the report that the public benefits listed justify the loss of historic fabric.

It is now acknowledged by the Applicants and all involved that the provision of the Choir School within Kingston Buildings would cause substantial harm and loss to the Grade II listed buildings of Kingston Buildings, primarily due to the location of the Choir School. It is also the case that the conversion of the Vaults, whilst acceptable in principle, would also result in the loss of the historic fabric. Supporting information has therefore been submitted to both justify the choice of location and identify the public benefits to outweigh the harm. These are explained below:

Section 2.1 (Site Options) the Heritage Statement sets out the site options originally considered by the Abbey. Section 5.1 (Development Options and Conclusions) from the Design and Access Statement deals with the same issues and additional supporting information has been provided in the supplementary document entitled Bath Abbey - Public Benefit resulting in proposed loss of Historic Fabric to Kingston Buildings.

However in summary the Abbey has identified a number of requirements that a site would need to provide to be considered suitable as a Choir School, these are:

- a. Close proximity to the Abbey and a convenient drop off location for children.
- b. Weatherproof access to the Abbey - Choir adults and children in robes, plus other performers and musicians, need a dry transfer from practice in the Choir School to performances in the Abbey.
- c. Good acoustic properties - this requires a double height room.
- d. Separate, and dedicated, changing facilities for children and adults with sufficient hanging space for robes
- e. Adequate toilets and washing facilities.
- f. A space that can provide a secure location for children, as young as 8 years old, when attending Choir Practice etc.
- g. Available on Sundays, a key time in the week when the Abbey need the use of the choir practice room before, between and after Sunday services.

In concluding that Kingston Buildings is the most suitable location for the Choir School a number of alternative options for its location have also been considered. These are:

1. Abbey Chambers - whilst an agreement has been reached in principle with B&NES Council regarding the basement there are no other spaces available at the present time. Nevertheless Abbey Chambers would still be unsuitable on grounds of accessibility, adjacency and likely impact on other existing or future users or tenants of the building. Furthermore the Choir School would still require room of sufficient volume and height which would involve the removal of a floor plate and a wall and a loss of historic fabric comparable to that within Kingston Buildings.

2. Friends Meeting House - this site has been considered in detail and discounted for the following reasons:

i) The purchase or long term lease is not an option currently available.

ii) The Quakers would nevertheless wish to retain the use of the principal room on Sundays.

iii) Lack of a weather-proof walkway. The technical feasibility of a weather-proof walkway between the Meeting House and the Abbey beneath York Street, 11A York Street and 9 Kingston Buildings has been investigated and it is believed to be feasible. However this option has been dismissed for reasons including cost and risk to the Roman Great Drain as a walkway would have to pass very close.

3. Guildhall - A suitable space is not currently available. Furthermore the cost and disruption of constructing an underground passageway beneath the High Street between the Guildhall and the Abbey is impractical.

4. Other churches - A number of other Churches, including the adjacent Seventh Day Adventist Church, have also been considered but all are in use on Sundays, a key day for the Abbey choirs. Furthermore none have suitable dedicated space available at the required times by the Abbey choirs and all the other choirs who use the Abbey.

5. Other options included within the existing site and in the below ground spaces immediately to the North and East of the Abbey. All of these options were rejected as being unavailable, unsuitable or not possible.

As a result of this it is acknowledged that there are no other available spaces that would provide the facilities required without excessive expense, risk or similar harm to other historic buildings. It is therefore agreed that Kingston Buildings is the only other suitable location for the Choir School.

Therefore the Abbey has provided a comprehensive list of the public benefits that would result from this development as whole in order to justify the substantial harm to Kingston Buildings and the Heritage Vaults and to outweigh the harm or loss. The public benefits are listed in full in the application documents but consist primarily of:

a. Benefits for the Community. Many of the local community worship or volunteer at the Abbey and spend considerable time there on Sundays as well as during the week. There are many choirs, music groups and similar organisations throughout Bath and the surrounding area which will benefit greatly from use the new facilities when they are available e.g. Golden Oldies, Bath Bach Choir, Bath Choral Society etc. For those members of the local community using the Abbey for performances, lectures or debates

there will, for the first time be adequate and safe changing facilities, storage, toilets and catering. These benefits will of course also be available to the 800 people who worship at the Abbey each week and to the over 30,000 that come services and concerts in the lead up to Christmas.

b. Benefits for the Grade I Listed Abbey. The fabric of the Abbey is deteriorating because of the high usage of the building. The proposed changes will relieve the pressure on the building and provide it with adequate supporting buildings for the first time since before the Reformation.

c. Benefits for children. School children and their teachers make up an important part of the Abbey's visitors. The Abbey is an important destination for schools as a place where the National Curriculum can be brought to life. For the first time there will be safe and adequate facilities at Bath Abbey for:

- i. School groups for general visits throughout the year for whom there will be space for related activities, lunch breaks, storage of bags etc.
- ii. Schools taking part in the interactive experiences currently provided by the Abbey prior to Easter and proposed for other seasons of the year
- iii. Choirs from schools involved in the Bath Abbey Schools Singing Programme
- iv. Children who sing in the Abbey's choirs
- v. The children in the visiting choirs who sing at the Abbey during the school holidays
- vi. Children attending services and other events in the Abbey for whom alternative activities and crèche facilities will be able to be offered in the new spaces
- vii. Overseas children's groups who visit in large numbers during their holidays
- viii. Children visiting with friends and families.

d. Benefits for musicians. The Abbey's choirs have a national reputation for the quality of their choral music and will benefit significantly from many aspects of the proposed changes to Kingston Buildings. In addition however there are other beneficiaries:

- i. People requiring voice and instrumental coaching
- ii. Visiting choirs from around the world
- iii. Young choristers attending the Royal School of Church Music summer school each August (and the other similar events which will be feasible once the changes are complete)
- iv. Instrumentalists and singers involved in the many concerts and recitals which occur in the Abbey each year.

c. Benefits for Visitors and tourists - Around 400,000 people visit the Abbey annually from all over the world, more than any other UK parish church outside London.

Visitors and tourists will benefit from the new interpretation of the whole building which is planned to be centred on the proposed interpretation centre beneath the Jackson extension. They will also be the major beneficiaries of the proposed new toilets and catering facilities.

The above identified public benefits mainly relate to those already using the Abbey and its services. However it is also predicted that the provision of additional facilities,

improvements to the existing and relocation and enhancement of the Choir School will also increase the number of people who will benefit.

As a result of the development it is predicted that:

- a. Visitor numbers will increase by 100,000 to 500,000
- b. Visitors will spend longer in the Abbey than they do at present.
- c. The number of performances can be significantly increased from the current 57 a year.
- d. The number of public events held at the Abbey can also be significantly increased.
- e. Increase in the number of Choir events such as the Royal School of Church Music choral summer school.

Therefore the supporting information provided clearly indicates that, as well as the benefits to the Abbey building itself, the proposed development will also provide substantial benefits to the wide range of existing users of the Abbey. However it is also clear that the development will improve the attractiveness of the Abbey as a visitor destination resulting in a significant increase in the predicted numbers of visitors to the Abbey itself as well as to the additional concerts, performances and public events that can also be held.

Based on the addendum report English Heritage now consider that the public benefits constitute an acceptable justification for the substantial harm to Kingston Buildings and withdraw their directive (the full text of both the original English Heritage advice and their amended comments is included under the Representations section of this committee report).

CONCLUDING COMMENTS

Overall the objectives of improving Abbey facilities, upgrading access and achieving greater overall integration are welcomed and supported.

The Abbey has responded positively to some of the pre application advice. It is acknowledged that the original pre application scheme which effectively destroyed both the inside and outside of the terrace has been amended. The removal of the two storey roof extension and double glazing from Kingston Buildings has also mitigated the impact of the scheme on the external appearance of the terrace and the wider public realm.

On the whole the proposed development is considered to be acceptable and would not have a significant or unacceptable impact on the Grade I and II listed buildings or this part of the Bath Conservation Area or World Heritage Site. Nevertheless the application still includes significant elements of work to the interior Kingston Buildings which is now acknowledged by all involved, including the Abbey, to result in the loss of historic fabric and substantially harms the Grade II listed terrace.

English Heritage, the Governments main advisors on all matters relating to the historic environment also agree that the work will cause substantial harm to the terrace. The Georgian Group, who have particular expertise in 18th and early 19th Century architecture have reached the same conclusion. The reality is that the choir school proposal and the linked office accommodation is a poor fit for the historic domestic layout of this significant

listed terrace. Structural solutions to compensate for the enormous removal of fabric have been proposed. However it is difficult to predict how the modern interventions will co-exist with remaining traditional elements of the structure particularly in the longer term. The Georgian Group with their intimate knowledge of building construction of the period have raised concerns. English Heritage in their revised comments state that if the Council is minded to grant consent further discussion about both the structural work and the thermal upgrading need to take place.

However the Abbey has provided comprehensive information in an attempt to show the substantial public benefits required in order to outweigh the identified harm to the Grade II listed Kingston Buildings. The submitted information indicates that, as well as the benefits to the Abbey building itself, the proposed development will also provide substantial benefits to the wide range of existing users of the Abbey. This includes visitors and tourists, schools, congregation, performers and Choir. However it also indicates that the attractiveness of the Abbey as a visitor destination will be improved which will also result in a significant increase in the predicted numbers of visitors to the Abbey itself as well as to the additional concerts, performances and public events that can also be held.

The public benefits have been considered in full and clearly indicate that the proposed development will provide substantial benefits to the wide range of existing users of the Abbey as well as the additional visitors attracted as a result of the enhanced facilities and expanded performances etc. This has to be weighed against the considerable and substantial harm that will be caused, primarily to Kingston Buildings, with the loss of substantial elements of historic fabric and its historic plan form.

The arguments both in support and against the proposal are very finely balanced, however the public benefits identified are comprehensive and are compelling. It is for this reason that the public benefits are considered to be substantial and are of sufficient weight to outweigh the identified harm to the Grade II listed terrace of Kingston Buildings. Members will note that this is a different view to that of the Conservation Officer, as reported, in respect of the balance to be struck in the consideration of whether the public benefits outweigh the harm to the listed building. In this regard the Case Officer has weighed up all of the consultation responses and having regard to the wider context of the scheme and the advice contained within paragraph 133 of the NPPF it is concluded that this listed building application should be supported.

The revised application is accordingly recommended for delegate to consent to draft appropriate conditions and secure further structural information.

This report has had regard for all other matters raised by the applicant and any representations received. These are not of such significance to outweigh the considerations that have led to my conclusions on the main issues.

RECOMMENDATION

CONDITIONS

Subject to:

1. The submission of additional information to clarify the proposed structural work and the thermal upgrading within Kingston Buildings.
2. Attaching appropriate conditions.

PLANS LIST:

1 Drawings 1533/SU/004A (survey ground level plans), 1533/SU/100A (survey section A), 1533/SU/102A (survey section C), 1533/SU/106A (survey section H), 1533/SU/107A (survey section I), 1533/SU/117A (survey section W), 1533/SU/200A (survey Abbey north elevation), 1533/SU/201A (survey abbey east elevation), 1533/SU/202A (survey Abbey south elevation), 1533/SU/203A (survey Abbey west elevation), 1533/SU/205A (survey elevation 11a York Street) date stamped: 1st August 2012

Drawings 1533/P/001A (site location plan), 1533/P/002A (proposed site plan), 1533/P/004A (proposed ground floor plans), 1533/P/005A (proposed first floor), 1533/P/100A (section A proposed), 1533/P/102A (section C proposed), 1533/P/106A (section H proposed), 1533/P/107A (section I proposed), 1533/P/110A (section P proposed), 1533/P/111A (section Q proposed), 1533/P202A (Abbey proposed south elevation), 1533/P/205A (11a York Street elevations as proposed), 1533/P/300A (proposed Jackson extension joinery detail) date stamped: 1st August 2012

Mann Williams survey drawings 1-SU-111/P2 (Kingston Buildings survey trial pits basement plan), 1-SU-121/P2 (Kingston Buildings survey trial pits ground floor), 1-SU-131/P2 (Kingston Buildings survey opening up first floor plan), 1-SU-141/P2 (Kingston Buildings survey second floor), 1-SU-151/P2 (survey third floor), 1-SU-201/P2 (Kingston Buildings survey north elevation) date stamped: 1st August 2102

Mann Williams 1111/P4 (Kingston Buildings general arrangement basement plan), 1121/P4 (Kingston Buildings general arrangement ground floor plan), 1131/P2 (Kingston Buildings general arrangement first floor plan), 1141/P2 (Kingston Buildings general arrangement second floor plan), 01151/P2 (Kingston Buildings general arrangement third floor) date stamped: 1st August 2012

Mann Williams proposed drawings 2111/P2 (Jackson extension basement general arrangement), 2121/P2 (Jackson extension ground floor stone trays) date stamped: 1st August 2012 ,

Mann Williams drawings 1211/P4 (long section through meeting room), 1222/P4 (No 9 cross section elevation on cross wall), 1223/P4 (number 10 cross section elevation on cross wall), 2201/P1 (Jackson extension cross sections) date stamped: 1st August 2012

Vogt drawings VLA-DR-L1903-101 (proposed garden), VLA-DR-L1903-102 (proposed garden drainage), VLA-DR-L1903-103 (proposed Kingston Parade),

VLA-DR-L1903-501 (proposed square section), VLA-DR-L1903-550 (proposed long garden section), VLA-DR-L1903-551 (proposed short garden sections) date stamped: 1st August 2012

Design and Access Statement, Bath Abbey Heritage Statement and Appendices document date stamped: 1st August 2012

Drawings dated 13th August 2012

Drawings 1533/SU/111B (survey section P), 1533/P114B (section T proposed) date stamped: 13th August 2012

Mann Williams drawings 1-SU-202/P2 (Kingston Buildings survey south elevation), 2111/P1 (general arrangement basement floor) date stamped: 13th August 2012

Revised survey/demolition drawings December 2012

1533/SU/003B (survey vaults levels plan), 1533/SU/005A (survey first floor plan), 1533/SU/006B (survey upper levels plan), 1533/SU/101B (survey section B), 1533/SU/103B (survey section D), 1533/SU/104B (survey section E), 1533/SU/105B (survey sections F and G), 1533/SU/108A (survey sections J and K), 1533/SU/109B (survey section L), 1533/SU/110B (survey sections M, N O and Q), 1533/SU/112A (survey section R), 1533/SU/204B (survey Kingston Buildings north and south elevation) date stamped: 21st December 2012

Revised proposed drawings December 2012

1533/P/003B (proposed vaults levels plan), 1533/P/006C (proposed upper floors and roof plan), 1533/P/103B (proposed section D), 1533/P/104B (proposed section E), 1533/P/105B (proposed sections F and G), 1533/P/108A (proposed section K), 1533/P/109B (proposed section L), 1533/P/112B (proposed section R), 1533/P/201A (proposed east elevation of Abbey), 1533/P/204B (Kingston Buildings proposed north and south elevations), 1533/P/205A (11A York Street proposed elevations) date stamped: 21st December 2012

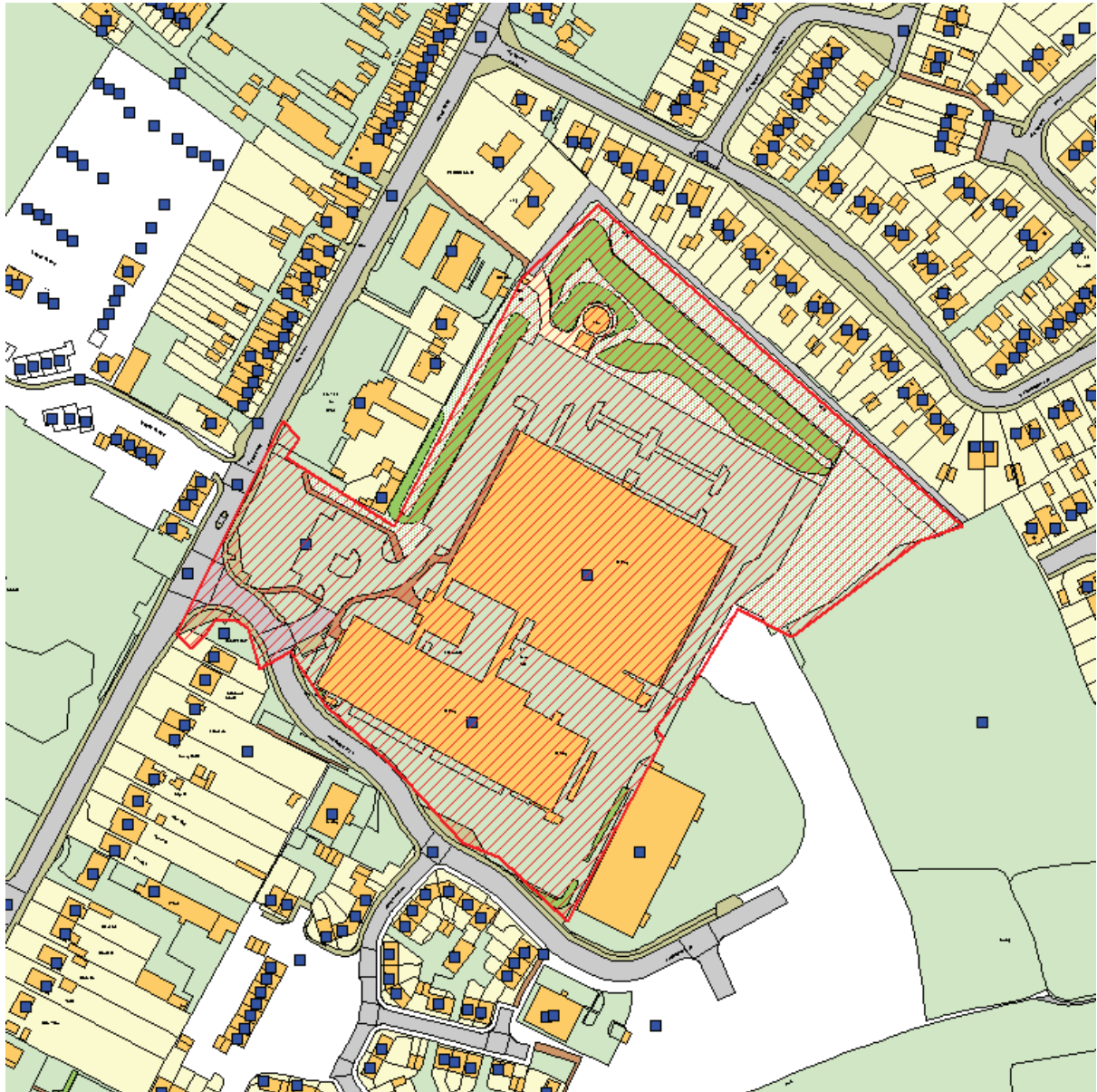
Addendum Justification for work to Kingston Buildings date stamped: 21st December 2012

Bath Abbey - Public Benefit resulting in proposed loss of historic fabric to Kingston Buildings

DECISION-TAKING STATEMENT

In determining this application the Local Planning Authority considers it has complied with the aims of paragraphs 186 and 187 of the National Planning Framework. Notwithstanding informal advice offered by the Local Planning Authority the submitted application was unacceptable for the stated reasons and the applicant was advised that the application was to be recommended for refusal. Despite this the applicant chose not to withdraw the application and having regard to the need to avoid unnecessary delay the Local Planning Authority moved forward and issued its decision. In considering whether to prepare a further application the applicant's attention is drawn to the original discussion/negotiation.

Item No: 03
Application No: 12/05418/FUL
Site Location: St Peter's Factory Wells Road Westfield Radstock Bath And North East Somerset



Ward: Westfield **Parish:** Westfield **LB Grade:** N/A
Ward Members: Councillor R Appleyard Councillor Robin Moss
Application Type: Full Application
Proposal: Erection of foodstore and petrol filling station with associated development.
Constraints: Agric Land Class 3b,4,5, Coal - Standing Advice Area, Forest of Avon, General Development Site, Tree Preservation Order,
Applicant: Sainsbury's Supermarkets Ltd & CFH Total Document Management
Expiry Date: 10th April 2013
Case Officer: Sarah James

REPORT

REASON FOR REPORTING APPLICATION TO COMMITTEE

The application is a major development which is contrary to the Council's adopted policies. There is significant third party interest in the application. Councillor Eleanor Jackson has requested that the application be brought to the committee for determination on that basis. This has been agreed with the Chair.

DESCRIPTION OF SITE AND APPLICATION

The application site is approximately 3.5 hectares in size and consists of the existing CFH factory site (including parking and servicing areas). The site is approximately 1 km east and 1.75 km south west of Midsomer Norton Town Centre and Radstock Town Centres. The site is located to the south east of the Wells Road (A367), from where vehicular access is gained. To the north east is existing residential development, to the south east is an emerging mixed residential and employment development and a Jewson's builders merchant, to the south west is Cobblers Way and beyond this residential development, to the north west is a public house, and residential properties. The site itself is relatively flat, but Cobblers Way slopes up towards the Wells Road. The site has significant planting to the boundaries and a group of trees adjacent to the Wells Road are subject to a Tree Preservation Order.

The application site is currently the location of the existing CFH Total Document Management, which has been on the site for the past 15 years and is stated to employ 200 persons (the full and part time split has not been specified within the submission). The CFH building provides in excess of 9,000 sq m (gross) floorspace as well as servicing and parking arrangements.

The planning application seeks approval for the development of a foodstore, petrol filling station and associated car parking and landscaping. It is proposed to demolish the existing buildings on site. The proposed development comprises :- A new foodstore with a gross floorspace of 8,699 sq m (GEA) and a net sales area of 5,083 sqm; The store would include a mezzanine level 969 m² (10429 ft²), housing a customer cafe, WC's and the Colleague (staff) area. A customer car park would provide 461 spaces, comprising 421 standard parking spaces, 25 disabled parking spaces and 15 parent and child spaces. Dedicated motorcycle parking and cycle parking is also provide. There would be an area for recycling and a 4 pump petrol filling station and landscaping. The proposal also includes the upgrading of the Cobblers Way junction with the Wells Road to provide a signal controlled junction.

The Proposed Retail Store

The retail store would be located toward the north east boundary of the site. It would have a service yard adjacent in the east corner. The main parking area would be located to the south west of the main building. The building has a maximum height to the ridge of 11.2m (two storey element). The single storey areas have a maximum ridge height of 7.0m. The building has a maximum depth (front to back) of 68.7m, this includes the lobby on the 'south' elevation. The maximum width of the building is 148.5m this includes the docking bays and online delivery area on the 'east' elevation. The foodstore is of a modern appearance and in terms of materials is clad in a mix of grey non reflective panels and

timber cladding, both laid horizontally. High level glazing and curtain walling is used to add interest to the elevations and also to provide good natural light into the store. The roof is finished again in a non-reflective grey single ply membrane.

The applicant has not confirmed the hours of opening which it would like to operate. This is discussed further below in the main agenda report. It is the applicants estimate that the store would provide 50 Full Time and 100 part time jobs.

Petrol Station

A new petrol station would be located at the entrance to the site adjacent to a newly created junction. The petrol filling station would be primarily clad with mid-grey cladding with a single ply roof and a glazed curtain wall facing the pumps. The petrol filling station canopy would be a steel frame with cladding surround.

Landscape Works

There would be some planting along the boundaries of the site primarily along the boundary adjacent to the store on its north east boundary.

Sustainability

The BREEAM pre-assessment for the store submitted with the application demonstrates that the store will achieve the 'very good' rating. The proposed store would incorporate a number of specific sustainability measures and design initiatives including, Sun optic roof lights and high level glazing to maximise natural light and reduce energy demand. 100% renewable heat through the use of biomass boiler. 2 electric charging points within the car park for electric cars. Efficient lighting.

The application is accompanied by the following background papers Design & Access Statement, Statement of Community Consultation, Retail Assessment Transport Assessment (and appendices), Travel Plan, Sustainability Assessment, Visual/Landscape Assessment, Lighting Assessment, Noise Assessment, Air Quality Screening Study , Phase 1 Ecology Habitat Report & Bat Survey Report , Flood Risk Assessment, BREEAM Pre-assessment , Land Contamination Assessment, Survey and Arboriculture Constraints Report, Vent and Extract Statement, Waste Minimisation Statement, Archaeological Desk Top Survey

RELEVANT PLANNING HISTORY

DC - 98/03009/FUL - WD - 3 December 1999 - Factory unit and associated works.

DC - 04/01419/FUL - WD - 16 July 2004 - Redevelopment at St Peters Factory and Jewson sites comprising 103 no. residential units, 7 no. business units, recreational facilities and associated parking, access and landscape works

DC - 10/03668/FUL - RF - 9 December 2010 - Erection of 12no apartments and 2no coach houses on land to the front of Continu-Forms Holdings, St Peter's Park, Wells Road, Radstock

DC - 11/00121/FUL - PERMIT - 1 July 2011 - Erection of 4no apartments and 7no 2 bed houses and 3no. 3 bed houses on land to the front of Continu-Forms Holdings, St Peter's Park, Wells Road, Radstock (revised resubmission).

SUMMARY OF CONSULTATIONS/REPRESENTATIONS

ECONOMIC DEVELOPMENT OFFICER - comments made 28th February 2013 - Should a redevelopment proposal be agreed on the St Peter's Park site the applicants should be made aware that the Council will be seeking to include provisions within a Section 106 Agreement relating to the scheme which will require the developer to, Provide for replacement employment either on site or through a contribution to replacement provision in an alternative off-site location in the Somer Valley, Make a financial contribution towards the cost of delivering a local training, skills and employment package, Participate in a Training Skills & Employment (TS&E) Management Board, Undertake to facilitate an agreed level of local employment, together with associated training and skills, both during the construction of a scheme and in connection with the subsequent occupation of the employment space

PLANNING POLICY OFFICER - comments made 28th February 2013. The core part of Policy ET.3 (3) refers to ET.1(B) ET.1B set out limit the loss of industrial floorspace in Norton Radstock Somer (2001-2011) to 14,000 net m². ET.1B is out of date as the policy is time bound to 2011 and the evidential basis for it was prepared in 2006 (pre-recession). ET.1B will be replaced by Policy SV.1 of the Draft Core Strategy. This policy again seeks to limit losses of industrial space to 14,000m² net 2011-29. In that context , the Draft Core Strategy , as a material consideration, is accepting of the loss of sites such as the CPC site. It is also material that loss of this site from the supply of industrial land and premises in the Somer Valley area will not prejudice the realisation of enquiries for land an premises in this area that might come forward. This is because there remains undeveloped land on a number of allocations (Peasdown , Paulton , Westfield, and MSN Enterprise Park) and vacant sites/units (e.g. Old Mills)

ET.3(i) and (ii) are also relevant, but in my view do not supersede the assessment made against the core part of the policy. Re (i) the site is still capable of being used as a factory and re (ii) the site is not creating unacceptable environmental or traffic problems. Ultimately the decision should be made on the basis of demand and supply and on that basis there is no reason to refuse the scheme based on the loss of industrial land.

HIGHWAY DEVELOPMENT OFFICER - comments made 6th February 2013 - A town centre location would be preferable for this scale of development. The proposed development is in an out of centre location, close to the fringe of the built up area, thus reducing accessibility by sustainable means of travel. Concerns are raised in respect of the Travel plan however it is considered these could be covered by a suitable condition. However the adequacy and operation of the proposed signal controlled junction has not been adequately demonstrated due to the lack of information submitted to enable the figures to be verified. If the development were to be acceptable various transport upgrades to the existing highway and through contributions are identified as being required.

Further comments made 26th February 2013 confirm that outstanding matters relating to the junction could be controlled by conditions / section 106 agreement and subject to contributions as sought being provided no objections are raised.

AIR QUALITY MONITORING OFFICER - comments made 7th February 2013. I have reviewed the Air Quality Assessment submitted. I object to the planning application as I

have concerns about the accuracy of the air quality assessment. Further clarifications have been sought from the applicant. My main concern at present is that the predicted pollutant concentrations presented in the report are less than the background concentrations used. This is incorrect and I have asked for clarification.

Further comments made 26th February 2013 I have reviewed the revised air quality assessment submitted. The results from the assessment show some small increases in air pollution due to the development but there are no predicted exceedences of the air quality standard. In the event that permission is granted conditions are suggested to secure mitigation.

HIGHWAYS DRAINAGE OFFICER - comments made 9th January 2013 refer to the need to consult with the Environment Agency and agree discharge rates with Wessex Water. Details of the maintenance of drainage should be provided.

ENVIRONMENT AGENCY - comments made 1st February 2013 - Object to the grant of planning permission and recommend refusal on the basis of the inadequacy of the flood risk assessment.

URBAN DESIGN OFFICER - comments made 5th February 2013 - The retail element of the scheme is excessive and would fail to create a balanced and diverse land use package, responding to local need. The built form has a functional and standard appearance. It would have a massive prominence and would rely on landscaping to break and soften the form. However the landscape approach is unsatisfactory. It would be harmful to existing trees and would not make adequate provision for required new planting. It would also cause harm to residential amenity particularly at the junction and service areas.

LANDSCAPE OFFICER - comments made 7th February 2013 an objection is raised in principle to the loss of the protected trees at the main site entrance. The main building is located too close to the North Eastern boundary resulting in unacceptable losses to the woodland which provides an important buffer between the application site and the residential properties beyond (Waterside Rd).Where planting has been proposed it is considered largely inadequate.

ECOLOGY - comments made 1st February 2013 - Comprehensive ecological survey and assessment has been completed including surveys of bats and the findings of these are accepted. The proposed landscape scheme and lighting plans do not achieve the recommendations of the ecological report consequently an objection is raised on ecological grounds.

ARBORICULTURAL OFFICER - comments made 7th February 2013 - The most significant trees along the frontage which are protected by TPO 533/28 have not been accommodated to allow for the development of a three lane junction and footpaths which presumably is necessary to improve capacity. The remaining space left by the junction does, however, provide opportunities to plant similar trees for the future. The remaining trees by the frontage can be adequately protected during development. The development impacts significantly and unacceptably on trees and woodland to the north east and south east of the site and the proposed tree planting does not fully compensate for the loss of trees comprising the woodland or the screening or green infrastructure value lost.

CRIME PREVENTION OFFICER - comments made 8th February 2013- No objection comments are made.

CONTAMINATED LAND OFFICER - comments made 15th January 2013. The application is accompanied by reports which make recommendations that should be followed through. Conditions are suggested in accordance with the recommendations made.

ENVIRONMENTAL HEALTH OFFICER - comments made 15th January 2013 suggest conditions that are intended to control or mitigate the effect of lighting, noise and construction activities including restrictions to the hours of operation of the development following its completion. The applicant has commented on some of the restrictions suggested and this is discussed within the main report.

ARCHEOLOGICAL OFFICER - comments made 5th February 2012. The application was submitted with a desk based archaeological assessment of the site which concluded that the site's archaeological and heritage potential is very low. I agree with these broad conclusions of that assessment and I am content that no further archaeological investigation or conditions are required.

OTHER REPRESENTATIONS / THIRD PARTIES

SUPPORT

115 letters of Support have been received which make the following comments

- The development would provide choice and competition
- The proposals would support CFH to relocate
- The development would provide jobs
- The development would look nice
- The store would reduce the need to travel

OBJECTIONS

Councillor Jackson objects on the grounds of the impact of the proposal on existing retail stores, the impact on the area and community more widely and on the highway impact.

Councillor Myers and Watt object on the basis that given the inevitable detrimental impact of the application on the vitality and viability of Midsomer Norton and the existence of two other sites (categorised under Section A in sequential terms) in the town under the sequential test, there is no justification for permitting the application for a 95,000 square foot (gross) supermarket on the CFH site at Westfield.

Westfield Parish Council object on the basis of the size of the store, the associated adverse highway impacts, the harmful impact on local jobs and investment, inadequate infrastructure and the development would be out of keeping with the area.

Radstock Co-Operative Society object on the basis that the proposal would have a significant retail impact and is not in accordance with retail planning policies. Any jobs created would be in replacement for those lost. The Co-op has also submitted

independent professional examinations of the traffic and retail submissions and raise objection on both of these.

Midsomer Norton Residents Society have objected on the grounds of the size of the store, the impact on existing retail centres and the proposal is not in accordance with the retail regeneration proposals that have been developing.

The Rotary Club of Midsomer Norton and Radstock object on the basis that the development would be harmful to many local businesses.

McKays stores Object on the grounds that the out of town store would reduce footfall in the town centre reducing viability for stores within the town.

Radstock Action Group Object on the basis it is inappropriate to the needs of local communities, flies in the face of the Local Plan and national policy.

Midsomer Norton and Radstock Chamber of Commerce object on the grounds that the proposal to develop a new retail food store at Westfield on such a large scale would irrevocably damage the viability and vitality of Midsomer Norton and Radstock.

Thatcham and Hallam Solicitors object on the basis of the harmful impact on the town centre

Terrace Hill (Midsomer) Ltd objects on the basis that the application site fails the sequential test and the Welton Bobby and Baron site is more accessible and a sequentially preferred site.

298 Residents have objected on the following grounds:

- Traffic/highway impact
- Adverse impact on existing retail centre
- Adverse impact on local shops
- The site should be used for housing
- Lack of need
- The site should be retained for employment
- Air Pollution
- Adverse Impact on residents
- Noise
- Loss of existing jobs
- Not in accordance with planning policy

POLICIES/LEGISLATION

POLICY CONTEXT:

REGIONAL PLANNING GUIDANCE 10
Policy EC6 Town Centres and Retailing

JOINT RELACEMENT STRUCTURE PLAN 2002 - saved policies

1 - Sustainable Development

- 2 - Locational Strategy
- 4 - Transport strategy
- 21 - Forest Of Avon
- 23 - Water Resources
- 30 - Employment sites
- 38 - Town centres and shopping
- 40 - New Retail
- 41 - Local shopping
- 47 - Sustainable Travel
- 54 - Car parking
- 58 - Transport

ADOPTED LOCAL PLAN

Bath & North East Somerset Local Plan (including Minerals and Waste policies) 2007

- IMP.1 Planning obligations
- SC.1 Settlement classification
- NE1 Landscape Character
- NE4 Trees and Woodlands
- NE5 Forest of Avon
- NE10 Protected Species and Habitats
- NE.11 Species and Habitats
- NE.14 Flooding
- D.2 General Design and public realm considerations
- D.4 Townscape considerations
- ES.2 Energy Use Reduction
- ES.4 Water Supply
- ES.5 Foul and surface water drainage
- ES.9 Pollution and Nuisance
- ES.10 Air Pollution
- ES.12 Amenity
- ES.15 Contaminated land
- T.1 Travel and transport
- T.3 Pedestrians
- T.5 Cyclists
- T.6 Cycle Parking
- T.24 General Development control and access policy
- T.25 Transport assessments
- T.26 On-site parking and servicing provision
- ET.1 Employment Land Overview
- BH.12 Archaeology
- BH.22 External lighting
- S.1 Retail Hierarchy
- S.4 Retail Development outside Shopping Centres

The Bath and North East Somerset Submission Core Strategy (May 2011) is currently subject to Examination and therefore it can only be given limited weight for development management purposes. The following policies should be considered

CP2: Sustainable construction

CP3: Renewable Energy
CP5: Flood Risk Management
CP6: Environmental Quality
CP7: Green Infrastructure
CP12: Centres and Retailing
CP13: Infrastructure provision
DW1: District-wide spatial Strategy
SV1: Spatial Strategy Somer Valley
SV2: Town Centre Redevelopment

NATIONAL PLANNING POLICY FRAMEWORK has been published and its policies are relevant to the case.

Other Relevant Documents

The Local Planning Authority commissioned a firm of retail consultants, GVA Grimley ("GVA"), to update its Retail Floorspace Quantitative Need Assessment in 2011. That update is publicised on the Council's website and is used in the consideration of The Bath & North East Somerset Local Development Framework incorporating the Core Strategy and relevant documents of the Regeneration Delivery Plans.

Supplementary Planning Document 'Planning Obligations (adopted 2007)

Midsomer Norton Economic Regeneration Delivery Plan (MSN ERDP)

OFFICER ASSESSMENT PLANNING CONSIDERATIONS

DEPARTURE

The proposal includes retail development in a location that is 'out of centre' and is not in accordance with the Development Plan for the area and exceeds the 5,000 square metres floorspace referred to in relevant guidelines. Consequently if a recommendation to approve was made it would be necessary, in accordance with the Town and Country Planning (Consultation) (England) Direction 2009, to refer the decision to the Secretary of State.

SITE ALLOCATION POLICY

The site was allocated in the Local Plan as part of General Development Site NR4 for a mixed use development of residential and business units within Use Classes B1, B2 and B8. It should be noted that this policy was not saved, and therefore the site is not currently allocated for any use. The site is in an 'out of centre' location.

RETAIL

RELEVANT RETAIL POLICY

The development plan for the area comprises of RPG10, saved policies in the Joint Replacement Structure Plan (JRSP) 2002 and saved policies in the Bath & North East Somerset Local Plan 2007. Since the adoption of these plans, national planning policy towards retail and town centre development has been updated and, therefore, whilst the Local Plan and the Structure Plan remain part of the development plan, their retail policies should be considered alongside the contents of the NPPF.

Policy 38 of the JRSP identifies Midsomer Norton and Radstock as Major Town and District centres that should be maintained and enhanced and policy 40 of the JRSP identifies that new retail provision will be made within major town and district centres (alongside other specified locations) where suitable sites are available.

Local Plan Policies S1 and Policy S4 are key considerations. Policy S1 of the Local Plan also identifies Midsomer Norton and Radstock as part of the retail hierarchy as well as a smaller local centre at Westfield which is situated to the north of the application site. It identifies the need to maintain and enhance defined retail centres. Policy S4 is also key and sets out the approach for considering retail development which follows a sequential approach.

The NPPF is in broad conformity with the provisions of S4 in that at Section 2 paragraph 24 it clarifies that Local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. In addition, the NPPF continues to require flexibility to be incorporated into the assessment of alternative sites. The NPPF also retains an 'impact' test for retail, leisure and office development outside of town centres which are not in accordance with an up-to-date Local Plan. The NPPF advises clearly that where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the above factors, it should be refused.

Extant Practice Guidance on need, impact and the sequential approach provides relevant guidance on the application of the sequential approach including the assessment of the suitability, availability and viability of alternative sites and also the factors to be considered when assessing flexibility.

In terms of the emerging Core Strategy policy SV2 is relevant setting out the objectives for the spatial strategy of the area including its retail element. This includes provision to strengthen the existing retail centre in Midsomer Norton High street unlocking redevelopment sites and providing the opportunity for a modern foodstore in the area of the South Road car park.

In order for the proposed development to comply with national and local planning policy, it must demonstrate compliance with the prevailing retail planning policy tests of the sequential approach to site selection and its impact on nearby defined town centres. In addition, and as a contributory factor to both assessments, it is useful to assess the scale of quantitative need (i.e. retail expenditure capacity) to accommodate new retail floorspace within the wider Midsomer Norton and Radstock area.

The applicant's retail assessment indicates that the net sales area of the store will be 5,083sq m, with 3,252sq m devoted to the sale of convenience goods and 1,831sq m to comparison goods sales. The types of products to be sold from the comparison goods

sales area would not be restricted. The application site is not within any defined retail centre.

KEY RETAIL ISSUES

Retail expenditure capacity in the Midsomer Norton Radstock area.

Retail expenditure has been carefully assessed taking account of all the data available including that submitted by the applicant. A summary of the assessment is set out within the GVA consultants report. It is assessed that there will be insufficient available expenditure to accommodate the proposed Sainsbury's store and also allow existing floorspace to trade at benchmark turnover levels. Whilst the lack of a sufficient level of quantitative (expenditure) capacity would not be sufficient reason to refuse the application (in accordance with national policy) it could have implications for the flexibility which should be employed when assessing the 'suitability' of alternative sites in the sequential approach to site selection. It will also be a material consideration in the assessment of the overall impact of the proposal on the health of Midsomer Norton and Radstock town centres and other defined centres, given the finite level of available expenditure.

The Sequential approach to site Selection

The Sequential Test requires applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. Taking account of the location of the application to both the main centres of Midsomer Norton and Radstock and the Westfield centre the application site is regarded to be in an out of centre location. It is necessary therefore to consider if there are any sequentially preferable sites first in centre then edge of centre, that are capable of forming suitable, available and viable alternatives to the application site. The applicant has in their submission made an assessment of alternative sites however the parameters set by the applicant within this assessment and the approach adopted to this assessment are not agreed with. In addition the applicant's business model is not explained clearly and there is confusion over the way in which sites have been assessed. This is discussed in further detail within the GVA assessment. In summary the applicants approach to this issue is not considered to be robust and does not properly apply the purposes of the Sequential Test which should be based upon the supermarket use not the retailers use.

It is considered that 3 sites should be assessed for their potential to accommodate new retail development in accordance with the sequential tests.

1. South Road

The applicant has dismissed the potential of South Road for reasons which are not agreed with. It is in this regard of note that the South Road car park site will soon be formally marketed and the Council has undertaken design work which indicates that a large supermarket can be accommodated on this site. It is considered that the tests of availability and suitability are capable of being met on the South Road site and it would be inappropriate to dismiss the site on viability grounds until the marketing process has been completed.

2. Welton, Bibby and Baron (WBB)

The applicant agrees that this site is available and it is agreed with the applicant that the site would be classed as edge of centre in terms of its distance from the Midsomer Norton retail centre. It is of note that there are third party submissions made which confirm that the site is in the process of being purchased and that there is an intention to submit a planning application (including a retail store) on the site in 2013. The applicant dismisses this site as being unviable and also on the basis of its local plan allocation which is for a mixture of employment and residential land uses. Whilst it is accepted that a large retail store on the site would limit the scope for the Local plan allocated uses the potential for retail to occur alongside the allocated uses cannot be easily ruled out in advance of having sufficient information to make that judgement. Therefore whilst this assessment does not conclude that a retail store on this site would be acceptable and a planning application would be required to make that assessment properly, it is equally not considered appropriate to rule this site out in terms of its availability and it is regarded as being in a sequentially preferable location to the application site.

The Hollies

Whilst the applicant's submissions do not provide enough evidence to dismiss the potential for a larger store to be provided at the Hollies its redevelopment would depend on the commitment to the Economic Regeneration Development Plan (ERDP) which pursues the retention of the Hollies alongside a mixed use development and which requires the availability of various pieces of land. If the EDRP is pursued then the Hollies site would be dismissed from consideration.

Summary of Sequential approach

In conclusion it is considered two sites the South Road car park and the WBB site, offer potentially suitable, available and viable alternative locations which lie much closer to Midsomer Norton town centre than the application site.

Retail Impact

The application has been assessed with regard to the two impact tests set out within the NPPF i.e. the impact on town centre investment and the impact on town centre vitality and viability.

Town Centre Investment

The applicant has considered the impact of the development on four sites within their application. These have been considered by the B&NES consultant GVA and in addition the impact upon the Radco store in Radstock has been considered taking account of representations made by the store. It is considered that the proposed Sainsbury's has the potential to have a negative impact on town centre investment in both Midsomer Norton and Radstock. Of particular note is the potential for the proposed store to affect the ability to deliver a new supermarket development on the South Road car park in Midsomer Norton town centre, which is a key aspiration of B&NES Council.

Impact on Vitality and Viability

This assessment includes a need to consider the financial impact of the proposed floorspace, the impact upon retail diversity (particularly the range, type and quality of

goods available), town centre vitality levels and the potential for the proposal to benefit the town centre via linked trips.

The applicant predicts that the largest single local impact would be upon the Tesco store at Old Mills the largest food store in the area with 16 % trade diversion from Midsomer Norton, 4% from Radstock and some from smaller surrounding settlements. The applicant predicts a similar level of trade diversion from settlements farther afield (combined) such as Shepton Mallet, Bristol and Frome as would come from the local Tesco store taking account of leakage occurring to those stores however the predictions made are not well explained or justified. The applicants assertions in this regard are disputed as unlikely based on the evidence provided. It is in this regard predicted that Radstock and Midsomer Norton town centres, along with the out of centre Tesco store will experience larger reductions in turnover than is being suggested by the applicant. Bringing the convenience and comparison impact levels together, it is assessed that the retail sector in Midsomer Norton town centre would lose 28% of its retail turnover as a consequence of the proposed supermarket. This impact is spread across both the convenience and comparison goods sector, with the balance in favour of the convenience goods sector. The impact on the retail sector in Radstock town centre is slightly smaller, at 24%, although it remains a large amount of trade loss. Here, the majority of the impact falls upon the convenience goods sector. These impact estimates represent a significant loss of trade from both Midsomer Norton and Radstock town centres.

In addition to the direct financial impacts there would be impacts upon retail diversity and town centre vitality. Store closures within both convenience and comparison sectors could not be ruled out. The effect on national retailers in particular would affect town centre vitality and linked trips from visitors primarily going to those stores are likely to reduce. Unlike a similar store in a more sequentially preferable location a store on the application site is unlikely to offer linked trips and is likely to operate as a standalone destination. The proposals would also affect Radstock in particular the effects would be felt by the Rado co-op and the smaller Westfield retail centre would also be likely to suffer adverse impact.

Summary of impact

Paragraph 27 of the NPPF also asks Local Planning Authorities to consider whether the impacts associated with retail proposals can be classified as 'significant adverse impacts'. Where there are 'significant adverse impacts', paragraph 27 of the NPPF recommends that applications are refused. In this regard it is considered that the Sainsbury's proposal would have a significant adverse impact upon Midsomer Norton town centre and a clear adverse impact upon Radstock town centre.

CONCLUSION of RETAIL ASSESSMENT

It is considered that the application fails the Sequential approach to site selection and would have a significant adverse impact on identified retail centres and refusal on both grounds is recommended.

HIGHWAYS: Whilst there are detailed matters to resolve relating to the junction and travel plan the highway officers are satisfied that these can be controlled by planning conditions and Section 106 contributions. The highway officer has indicated the matters which would need to be secured by the section 106 contributions and in the absence of any compelling justification to set aside those requirements it is accepted that is the case. Regarding the contributions sought (which are set out within the highway officers

comments) these have been discussed with the applicant. Whilst it has been indicated (informally) that the applicant would be prepared to pay necessary contributions there has been no agreement to the contributions sought. The applicant has also not put forward any grounds to challenge what has been identified to be required. In the event that the application is refused this shortfall needs to be addressed within the decision.

FLOOD RISK / DRAINAGE: The site is located within flood zone 1 whereby a flood risk assessment (FRA) must accompany any planning application and an FRA has in this case been submitted. The viability of the drainage strategy within that FRA has been questioned by the Environment Agency and a number of discrepancies within it have been identified. It is acknowledged that the site being within flood zone 1 is at a low risk of flooding and that the use proposed (i.e. retail) is classed as 'less vulnerable' in accordance with the NPPF Technical Guidance on flood risk. Whilst the overall risk is considered low there is an objection from the Environment Agency. The applicant suggests that further information would be submitted to the Environment Agency and Wessex Water in respect of the concerns raised by the Environment Agency however no additional information has been submitted with the planning application. The NPPF Technical Guidance sets out policy aims for each flood risk zone. Within zone 1 it identifies that developers and local authorities should seek opportunities to reduce the overall level of flood risk in the area and beyond through the layout and form of the development, and the appropriate application of sustainable drainage systems. In this case and taking account of the advice of the Environment Agency the applicant has failed to demonstrate that the development would reduce flood risk or that it would employ a suitable sustainable drainage system due to the inadequacies of the FRA. As it stands refusal is recommended.

DESIGN AND LANDSCAPE: The store largely replicates the existing factory height and is acceptable on that basis. The proposed building and petrol station would be functional the appearance reflecting the proposed uses. However the increased massing of the building would increase the presence of the unit within the townscape. This places significant importance on landscape to break up the massing from longer views. Whilst there is scope for improvement the built form in itself would not warrant refusal on that basis alone subject to control over materials which could be conditioned. However taking the development form in conjunction with the layout it is considered that a key component of the success of this scheme in this location would be appropriate landscaping. It is considered that the scheme fails to provide a satisfactory level/scheme of landscaping. The development impacts unacceptably and harmfully on existing trees and landscaping and makes inadequate compensation for the losses. In this regard the development is considered unacceptable.

ECOLOGY: The main ecological impact of the development would be the removal of a large proportion of the existing area of broadleaved woodland plantation. This woodland, although not in itself of particular high ecological habitat quality, is of local value to a range of wildlife and provides the main sanctuary for wildlife at this location. Compensation for its loss would require like for like replacement planting in accordance with retained policy NE12 and the net gain of biodiversity aims stated in the NPPF. To achieve this, at least an equivalent area and ecological quality of replacement planting would be needed at or adjacent to the site. Based upon the current layout it is considered unlikely that the requirement could be achieved on site. The applicant has been provided with an opportunity to discuss this issue on site however has not taken that opportunity. As it stands the ecological concerns are unresolved. Some concerns with the application from

an ecological perspective are noted capable of being addressed through planning conditions such as the provision of ecological control over lighting.

AMENITY: The proposed building would be located close to boundaries adjoining neighbouring residential dwellings. It is considered that with the restricted opportunities for screening provided within the layout the development would impact unacceptably on adjoining neighbours as a consequence of the proximity of the large massing of the supermarket building to adjacent properties and through the associated vehicle movements close to boundaries in particular the activities associated with the proposed service yard for unspecified hours which is likely to give rise to unacceptable levels of disturbance.

NOISE: In the interest of restricting the impact of the development on adjoining neighbours conditions to control the opening hours of the supermarket have been requested by the Environmental Health Officer. However the applicant has advised they consider those restrictions to be over onerous and the conditions are in that regard not agreed.

CRIME PREVENTION: The safety of people using the public footpath running around the sides and rear of the building needs to be considered. Natural surveillance appears limited and this could become an area where anti-social behaviour occurs. This should be resolved in addressing the layout concerns already identified.

WASTE: The development seeks to reduce, reuse and recycle food waste through a variety of methods including the distribution of food boxes to charities and the use of anaerobic digestion waste facilities. Recycling is also promoted in-store through the development and sale of recycled goods. Space would be provided within the store's car park for recycling bank facilities for customers.

AIR QUALITY: Adequate information has been submitted to demonstrate that air pollution would not be significantly increased and if the application were acceptable in other respects it would be possible to apply conditions to ensure air quality effects are appropriately managed and minimised.

ARCHEAEOLOGY: The site is considered to have low potential for archaeology and no further actions to address archaeology are required.

LAND CONTAMINATION: A Geo-Environmental and Geotechnical Assessment were submitted with the application and taking account of its findings conditions are suggested if the application is permitted.

LOSS OF EXISTING USE: The current employment use would be lost at this site. However in terms of the Local Plan policies which protect this type of employment use it is considered that there is sufficient flexibility within the Somer valley in term of available and allocated sites so as not to prejudice the Councils employment policies if the existing use relocated off of this site and was replaced with an alternative use. Notwithstanding the Economic Development Officer is concerned that the jobs to be provided on this site in terms of the amount of jobs would be less than those that would be lost (notwithstanding they may be replaced elsewhere). In the event that the application is approved Section 106 obligations would seek to address the concerns raised.

ASSESSMENT OF BENEFITS ASSOCIATED WITH THE DEVELOPMENT

JOB CREATION: This would be a new enterprise coming to the local area. The site is not allocated for employment uses and there is nothing to prevent the existing occupier from relocating from the site as is their intention and re-providing its business either in or outside of the district. Therefore the development is agreed to bring new jobs that may otherwise not be provided. However the net benefit of those jobs is difficult to quantify given that based on the retail evidence this development would adversely affect some other businesses and closures and job losses elsewhere are likely. Similarly investment and job creation within the retail sector on sequentially preferable sites may be prejudiced.

RETAIL CHOICE: The application is suggested to improve the choice and competition for main food shopping in Midsomer Norton/Radstock/Westfield urban area. However as with the conclusion in respect of job creation this is not necessarily the case as existing retail enterprises may close and other retailers may no longer consider it attractive to locate to the area taking account of retail capacity even though sites for retail uses are being identified and promoted by planning and regeneration policies.

HIGHWAYS: Whether highway benefits would arise is undemonstrated. The highway network would have to be altered but that is to accommodate the proposed development. Furthermore required contributions to improve the accessibility and sustainability of the site have not been agreed with the applicant. The applicant in that regard has informally indicated an agreement to make what contributions they see as required but has made no commitment to what they might be and has made no comment on the requirements as specified by the Council's highway officer.

PUBLIC REALM: Whilst the removal of the existing building is agreed acceptable it is currently an inoffensive building set within good landscaping and is not highly prominent. The proposed building would be prominent and is inadequately landscaped and is not considered to create a satisfactory relationship with its surrounds. Therefore it is not considered that public realm benefits arise.

SITE REGENERATION: Whilst specific comments from the economic development officer have not been provided it was confirmed likely that the current employer would relocate from the site to more modern premises. It would therefore be of benefit to see the site redeveloped if it were to become vacant and preferably for an employment generating use. However taking account of the condition of the site and the opportunities that exist and the proposals as put forward it is considered that regeneration benefits should not be afforded great weight in this case.

CONCLUSION:

As a principle issue the proposed development is unacceptable on the grounds of its conflict with retail policy for the area as well as national retail policy. In the event that the application had been acceptable in that regard there are other key issues that would need to be resolved. Whilst these additional matters are regarded likely to be capable of resolution these matters have not been satisfactorily addressed by the applicant in the context of the application. The concerns which relate to the inadequacy of the proposed application in respect of the layout, landscaping, ecological mitigation, drainage and

measures to make sustainable transportation provision are reflected in the reasons for refusal.

RECOMMENDATION

REASON(S) FOR REFUSAL

1. The proposed development is not in accordance with the requirements of the sequential approach to development contrary to the Bath and North East Somerset adopted Local Plan Policy S4, Joint Replacement Structure Plan Policy 40, and paragraphs 24 and 27 of the National Planning Policy Framework. The development would as a result be harmful to the Council's retail strategy.
2. The proposed development would give rise to an unacceptable and significant adverse impact on the vitality and viability of the Midsomer Norton Town centre and a clear adverse impact on the Radstock town centre contrary to Policies S1 and S4, of the adopted Bath and North East Somerset Local Plan, Joint Replacement Structure Plan Policies 38 and 40 and paragraph 27 of the National Planning Policy Framework.
3. Inadequate information has been submitted to demonstrate that surface water runoff from the site can be properly and appropriately discharged contrary to Policy ES5 of the Bath and North East Somerset Local Plan (including minerals and waste policies) 2007, paragraph 103 of the National Planning Policy Framework and the advice contained within the NPPF Technical Guidance on flood risk.
4. In the absence of agreed mitigation to address the impact of the development on the highway network and make sustainable transport links with the site to the surrounding areas the development is contrary to planning policies IMP1 and T1 of the adopted Bath and North East Somerset Local Plan (including minerals and waste policies) adopted October 2007 and adopted Supplementary Planning Document Planning Obligations and paragraph 32 of the National Planning Policy Framework.
5. The proposed development would result in the removal of existing trees and woodland whereby inadequate mitigation planting is proposed. This woodland provides important habitat and its removal would be harmful to ecology and visual amenity contrary to Policy NE4, NE12, D4 of the Bath and North East Somerset Local Plan (including minerals and waste policies) 2007 and paragraph 118 of the National Planning Policy Framework.
6. The proposed development by virtue of its layout, inadequate landscaping and poor relationship with off site development would be harmful to the residential amenities of adjoining occupiers and the visual amenities of the area contrary to planning policies D2 and D4 of the adopted Bath and North East Somerset Local Plan (including minerals and waste policies) 2007 and paragraphs 58 and 64 of the National Planning Policy Framework.

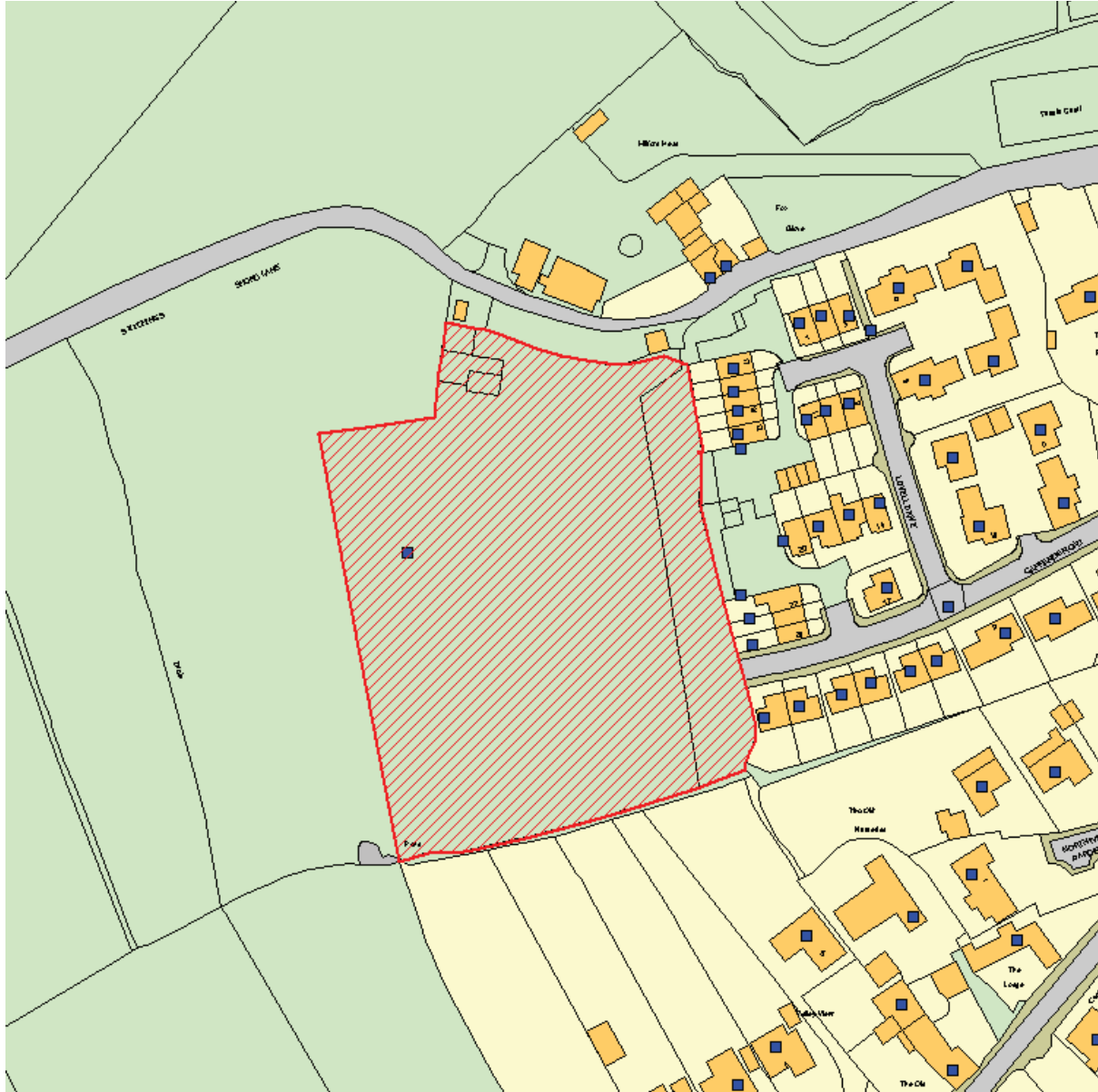
PLANS LIST:

1 31080-139 PL002 A, 31080-139 PL003 C, 31080-139 PL004 A, 31080-139 PL005 A, 31080-139 PL006 A, 31080-139 PL007 A, 31080-139 PL0010 A, 31080-139 PL0011 A, 31080-139 PL012 A, 31080-139 PL0013 A, 31080-139 PL0014 A, 40141_LP(90)001 A, 40141_LP(90)002 B, 40141_LP(90)003 A, 40141_LP(90)004 A, 40141_LP(90)005 A, 40141_LP(90)006 B, 40141_LP(90)007 B, 40141_LP(90)008 B, 40141_LP(90)009, 916-01, 916-02, 916-03, 31080-139 PL008 B, 31080-139 PL009 B, 69/11, 04/13

DECISION-TAKING STATEMENT

In determining this application the Local Planning Authority considers it has complied with the aims of paragraphs 186 and 187 of the National Planning Framework. Notwithstanding the advice that was provided to the applicant in connection with this current application at pre-application stage and discussions in relation to the issues arising during the consideration of the current planning application whereby the unacceptable nature of the proposals have been clearly conveyed to the applicant, and the applicant has been offered opportunities to meet to discuss those concerns both on site and at the office, the applicant has chosen to pursue the development in its current form and has chosen not to withdraw the application. Consequently and having regard to the need to avoid unnecessary delay the Local Planning Authority has moved forward and issued its decision.

Item No: 04
Application No: 12/04238/OUT
Site Location: Parcel 3567 Stitchings Shord Lane Bishop Sutton Bristol



Ward: Chew Valley South **Parish:** Stowey Sutton **LB Grade:** N/A
Ward Members: Councillor V L Pritchard
Application Type: Outline Application
Proposal: Erection of 35no. dwellings and associated infrastructure.
Constraints: Airport Safeguarding Zones, Agric Land Class 1,2,3a, Coal - Standing Advice Area, Coal - Referral Area, Forest of Avon, Greenfield site, Water Source Areas,
Applicant: Edward Ware Homes Ltd
Expiry Date: 8th January 2013

REPORT

REASON FOR REPORTING APPLICATION TO COMMITTEE

Councillor Pritchard has requested that the application should be considered by Committee, as the application is outside the development boundary of the village; is in conflict with existing planning policy for Bishop Sutton, and a development of this size would be in excess of the proposed 30 houses relating to an RA 1 village to be built over the period of the Core Strategy. The Chair of the Committee has agreed that this application should be considered by Committee.

PREAMBLE - POLICY CONTEXT

In response to the Inspectors criticisms of the Core Strategy on 26th February, the Council published a revised Draft Core Strategy, setting out the Councils revised estimations of housing need and housing delivery respectively, based on a revised Strategic Housing Market Assessment (SHMA) and Strategic Housing Land Availability Assessment (SHLAA). This will be considered by the Full Council at their meeting of 4th March, with the intention of it being adopted for Development Control Purposes.

With the increased housing numbers set out the Council considers that it does have a 5-year housing land supply. Commentary is set out below on the implications of the modified Core strategy for this application.

EIA SCREENING

As the proposal relates to a site that exceeds the 0.5ha threshold under the second column of Schedule 2 of the EIA Regulations 2011 an EIA screening opinion is required.

In accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations, 2001, an EIA screening was carried out and the applicant was formally notified of the decision.

The EIA screening opinion concluded that the proposed development at 35 dwellings falls well below the threshold of 1000 dwellings and at 1.13 ha is under the threshold of 5ha and that the significance of the impact of the development would be localised.

Based on an assessment of the relevant regulations and guidance it was considered that the proposed development is not classified as EIA Development and a Scoping Opinion would not therefore be required.

DESCRIPTION OF THE SITE AND APPLICATION

The application site consists of an agricultural field located on the western edge of Bishop Sutton, between the built up area and Chew Valley Lake which is approximately 450 metres to the west of the site. To the west and south the site is bounded by agricultural fields and gardens, to the east by a relatively recent residential estate (the Cappards Road development) and to the north by Stitchings Shord Lane, a narrow rural lane.

The site is located outside the Housing Development Boundary, which passes along the western boundary of the Cappards Lane Development. In terms of other designations, the site falls within the Chew Valley Water Source Protection Area, and within Flood Zone 1. The site is located outside of the Green Belt and Mendips Area of Outstanding Natural Beauty, the boundaries of which run along Stitching Shord Lane to the north of the site.

The site slopes gradually from the Cappards Road development in the direction of Chew Valley lake and is drained by a drainage ditch on the southern boundary of the site. This also takes surface water from the adjoining Cappards Road development and discharges towards Chew Valley Lake. A public right of way crosses the site from Stitches Shord Lane and emerges onto Wick Road opposite the primary school.

Outline consent is sought for the erection of 35 dwellings. The application seeks consent for the means of access, but the Appearance, Layout, Landscaping and Scale of development proposed are reserved matters. This means that the Council is considering the principle of 35 dwellings being erected on the site, and issues connected with the proposed access arrangements, but all other issues to be considered by means of a subsequent planning application for the "reserved matters".

Issues connected with planning obligations do however need to be considered at this stage.

RELEVANT PLANNING HISTORY:

Cappards Lane Estate:

00/01871/FUL - Erection of 39 dwellings and new access (revised scheme), Cappards Farm, Wick Road - approved 22.11.2000

99/03128/FUL - Demolition of existing buildings and redevelopment of site to provide 39 houses, garages, access roads, play area and landscaping, Cappards Farm Wick Road - approved 12.04.2000

SUMMARY OF CONSULTATIONS/REPRESENTATIONS

Summary of Consultation/Representations:

REPRESENTATIONS:

To date 69 representations have been received, comprising 65 letters of objection and 4 letters making general comments on the application. The responses can be summarised as follows:

OBJECTIONS (Summarised):

Principle Issues

- The site is a greenfield agricultural site, located outside the Development boundary and should not be developed. By contrast the Cappard Road development changed an abattoir into attractive homes, thereby improving the village.

- The application is premature, pending the adoption of the Core Strategy and Place-making Plan
- No need for additional housing in Bishop Sutton. Surely there are more suitable sites available.
- The development would vastly exceed the Parish Council's target of 2 - 3 homes per year.
- Other planning applications should be taken into consideration e.g. the field opposite Ham Lane, where an additional 41 dwellings are proposed.
- The site is an unsustainable and car dependent location for additional development. There are minimal jobs in the Chew Valley; most jobs are in Bristol, Bath or Weston-super-Mare.

Landscape Impacts

- Impact on the setting of the AONB
- Intrusion into the open countryside, within the setting of Chew Valley Lake. Will the development be visible from the Lake during spring and autumn?
- The legal agreement for the Cappards Road included a requirement to retain the area of land on the eastern boundary of the site as a "Tree Zone" permanently open and unfenced. This has not been considered in the proposals, which would encroach into this area.
- The field was recently cut in order to disguise the field boundary and footpath and the fencing enclosing the tree area was recently removed.

Traffic / Highway safety / Transport

- Cappards Road, (the access road) and Stitchings Shord Lane are too narrow and congested to accept additional traffic safely.
- Construction traffic would also arrive at the site via Cappards Road.
- The additional traffic from the development would endanger children at the play area at the entrance to Cappards Road.
- Additional traffic calming will be needed in the village.
- Insufficient parking in Cappards Road. The majority of homes only have 1 parking space.
- No use is proposed of a secondary potential access point via Stitchings Shord Lane, which could provide access to at least some of the houses of the proposed development.
- Insufficient parking for the new development.
- Lengthening Cappards Road will mean cars will reach higher speeds before meeting the play park area.
- The current bus service is limited with only 1 bus into Bristol in the morning

Infrastructure

- There is inadequate capacity at the school. If the application is approved, the development should make contributions to finance additional facilities.
- The Education comments underestimate the effect on the school. Expansion of the school roll can only be accommodated by increasing the number of classrooms and the levy from new development will come too late to resolve existing problems.

- There is also a shortage of child-minders in the area.
- Will the development pay to upgrade the phone line between Bishop Sutton and the Chew Magna exchange?

Flooding

- The site is underlain with clay and is vulnerable to flooding. How will the drainage ditches be maintained?
- Concerned that the development would flood.
- The site is within a Water Source Protection Area.

Design / Layout

- The layout and design is soul-less and lacking in character.
- The footpath as shown on the drawing is in the wrong place. It runs approximately 5 metres from the rear boundaries of the properties in a straight line from the Stitching Shord entrance to the garden at Northwick Gardens.
- Object to the proposed flats
- The proposed plans show a gated entrance into the next field. Is this to allow for future development as has happened with Cappards Road now?
- The layout plan shows a footpath passing from the visitor parking area into the Cappards Road development. There is no such footpath and no space for a footpath in the Cappards Road development.
- There are power cables crossing the field and a substation located in the field. These are not shown in the layout.
- Object to the impact on the footpath that runs through the site.

Ecology

- The development is too close to the nature reserve
- The site is of value. To date we have seen foxes, frogs, bats, deer, wood peckers, grass snakes and buzzards
- The site in question is an assembly point for flocks of migrating House Martins

Amenity Impacts

- Loss of view (Officer note: this is not a material planning consideration)
- Overlooking of properties that back onto the site.
- Increase in noise from traffic.
- The Arboricultural comments raise concerns about the overshadowing effect of trees beyond the site on the new properties, in other words, residents of Rushgrove Gardens will be pressured to chop down our trees for the benefit of a few planned houses.

Other

- Many of the reports are biased and inaccurate, in particular the ecology, transport and arboricultural reports and the flood risk assessment.
- Impact on house values (this is not a material planning consideration)

- It would be preferable if the land adjacent to The Batch were to be developed, being further from the lake, better drained and with better access.
- The site is unsafe due to shallow coal mine works as highlighted by The Coal Authority.
- The development should be accompanied by an Environmental Statement.

STOWEY SUTTON PARISH COUNCIL - Objects

This Parish Council has developed a number of policies to help us balance the demands of district and national policies with the wishes of Parishioners; the Residential Planning Policy, which has been in place since 2008 (reviewed 2012) is fully in compliance with the B&NES draft core strategy.

Our residential planning policy supports infill developments, within the existing village housing development boundary, of two to three houses per year, a target which we have met over recent years. This will allow us to reach the target of 30 to 35 new dwellings over the life of the core strategy.

The Parish Council has completed a desk survey of the parish and believes that there is sufficient land supply within the existing housing development boundary to support the number of additional dwelling units required by the draft core strategy.

The Parish policy is to avoid large developments, particularly those which are outside the existing development boundary.

In September 2012 the Parish Council conducted a survey of all households within the Parish and over 80% of the responses were in support of the existing parish residential planning policy, Therefore this application is not compliant with the Parish Residential Planning Policy & should be refused on these grounds.

As this application is for 35 dwellings in a single development at the very start of the core strategy cycle it will take the full allocation of additional dwellings that this community is expected to accommodate over the life of the core strategy, the recent pattern for infill development applications would suggest that, if permitted, this will lead to development which exceeds the core strategy target for this parish over the life of that strategy.

The application site is outside the existing housing development boundary & as no exceptional circumstances have been identified, is not in compliance with the draft core strategy.

The application proposes using the existing access road into the Cappards development, The Parish Council does not believe that this roadway can safely support the additional vehicle movements that 35 additional dwellings will bring, as there is currently frequent roadside parking on this access road, making pedestrian crossing and access difficult.

The Parish Council believes that the application should be refused for the reasons referred to above.

COAL AUTHORITY - No Objection, subject to a condition being applied to require intrusive investigations to take place (and any necessary mitigation measures) prior to the commencement of development.

ENVIRONMENT AGENCY - No objections.

Following the receipt of the amended Flood Risk Assessment dated 13.12.12 the Environment Agency withdrew their former objection, subject to a condition being applied requiring a detailed drainage design to be submitted, incorporating sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, and designed to deal with up to 1 in 1 year flood events.

HIGHWAYS DRAINAGE - No objections

HIGHWAYS DEVELOPMENT CONTROL - No objections, subject to conditions being applied and subject to the following contributions being secured prior to the commencement of development:

Prior to commencement, but that the works need not being tied to occupation of the scheme (as requested), with any funds being returned within five years if not committed.

1. Contributions of £16,000 towards the upgrading of local bus-stops (raised kerbing, real-time info.) - £16,000
2. Contribution of £4,000 towards an improved pedestrian crossing facility of the A368 (on route to local facilities) to address the severance effect of Wick Road.
3. £7,289.60 - strategic transport schemes within the Authority

The land sits outside the housing development boundary of Stowey-Sutton and therefore raises automatic in-principle concerns in respect of its distance from key facilities (shops, schools etc.). Development in such locations needs to demonstrate that occupants will be located within convenient distances to enable them to be reached by alternative travel modes, and that the development is therefore not car-dependant and contrary to national and local sustainability policy.

In terms of detail, I note this outline application seeks approval of the means of access, but not the layout.

With regard to the point of principle on sustainability, the applicant's Transport Statement concludes that the site is located such that it is not car-dependant and in terms of the guidance available (RPG10, IHT etc.) it generally meets the criteria set down. There are however areas of the local infrastructure which could be improved to encourage more use of non-car travel - such as the condition of local Public Rights of Way, the crossing of Wick Road etc.

In principle therefore, subject to improvements which could be secured through a section 106 agreement, there would be no objection to this development.

In terms of vehicular access, Cappards Road currently serves in excess of 50 dwellings. As a very recent development, the roads (in terms of both layout and construction) are of a good and current standard. The carriageway between the proposed development and its

junction with Wick Road is 5.5m wide with a 2.0m wide footway on at least one side. While parking does occur along the road, each dwelling is provided with off-street parking. Notwithstanding this, it is a common element of modern design to include for a degree of on-street parking as a traffic-calming feature.

By current standards therefore the existing road is appropriate to accommodate additional traffic, and meets the guidance of 'Manual for Streets' in respect of its design.

In terms of additional traffic flows, the Transport Statement bases its assessment of new trips on surveys taken from the existing development, which is considered an accurate way of predicting likely traffic generation. The assessment is very robust when compared with an assessment derived from the TRICS database (the usual method of forecasting development traffic) which shows a lower level of traffic might result. It is therefore acceptable and confirms the existing road network is able to accommodate the level of development proposed.

Similarly the junction of Cappards Road with Wick Road is of an appropriate standard, with the required level of visibility. There are no recorded casualty accidents relating to the use of this junction.

While approval of the layout of the site is not required at this stage, the "illustrative" plan submitted shows that this level of development can be accessed in an acceptable manner, and that levels of parking can be included in accordance with this authority's Local Plan. I have not commented further on the layout as this will be considered at reserved matters stage.

Public Right of Way CL20/28 which runs north-south through the site must be retained in its original route as it is not acceptable to divert the route onto estate roads. This footpath runs southward to Wick Road and would be a direct route to the west of the village and to bus stops and the village hall.

As this route crosses the proposed access road, there should be some distinction in road surfacing (or a change in height) to identify this and encourage pedestrian priority.

Conditions should be applied to require:

- Details of road infrastructure, parking and turning areas to be submitted and approved by the authority prior to their construction
- The road to be constructed so that upon occupation each dwelling is served by a properly bound footway and carriageway between the dwelling and existing highway
- Garaging to be retained for the parking of private cars
- Submission of Construction Management Plan detailing how construction is to be managed.

STRATEGIC HOUSING SERVICES - Object

The proposed Market Housing mix, 50% of which consists of four & five bed market Dwellings, is not reflective of local market needs. There is much evidence that house

prices in B&NES are higher than the national average and that the Chew valley in particular is a high value area.

It is anticipated that a market housing mix consisting of approx. 1/3 one & two bed 1/3 three bed & 1/3 four + bed accommodations would best suit the range of local income levels, especially those that have connections to the Parish but are struggling to find affordable market housing opportunities who would otherwise be forced to move out of the village to source cheaper forms of housing.

The proposed two bed flats are also not acceptable as rural affordable family friendly housing and should be replaced with two bed affordable houses. The SHMA considers that one bedroom flats are assumed to be appropriate for non-family housing and 2 bedroom houses for family accommodation. The SHMA at Section 10 actually states that: 'In simple terms 2-bed houses are assumed to be family-friendly, 2-bed flats are not'.

To reinforce the findings of the SHMA the B&NES Homeseach Register contains a high unmet demand for family transfers from two bed flats to two bed houses and historically there has been an under provision of two bed rural affordable dwellings.

The following revised affordable mix would be appropriate:

- 2 x 1 bed 2 person flat
- 5 x 2 bed 4 person house
- 4 x 3 bed 5 person house
- 1 x 4 bed 6 person house

The affordable housing does not meet B & NES requirements in that the affordable housing is grouped together and would not be "tenure blind"

This goes against the social cohesion and sustainability principles required by the NPPF & the B&NES SPD thus Housing Services are unable to support the proposed site layout plan.

If the planning officer is minded to support this application then Housing Services request that affordable dwellings must be delivered to the full design standards contained within the B&NES SPD & annexes, with 35% of the overall residential provision to be secured as affordable housing.

URBAN DESIGN OFFICER - no objections in principle

This is an outline application with all matters reserved. All design issues are indicative, and are subject to the overarching issue of the principle of development beyond the housing development boundary, which is the primary issue with respect to the application.

The application is supported by a design and access statement that demonstrates analysis of the site and its context. The extent of proposed development can be seen to have responded to the extent of urban development of Bishop Sutton. It can be seen to create an extension to the existing pattern of development in Stitchings Shord Lane.

The layout is logical. Car parking and manoeuvring space has been integrated within the form and landscape of the layout. However, units 12- 15 present an awkward rear garden

relationship with the highway. This will require review. Landscape buffers to the western boundary will be critical to integration of development into the rural setting if harm is to be mitigated.

The scale of development responds to that of the neighbouring development.

At this point it is too early to assess the appearance of the sketch proposals.

LANDSCAPE OFFICER - No Objection

I have no substantive issue with the principal of the development and I agree with the Landscape and Visual Impact Assessment in terms of the wider visual impact and the degree of impact on the local landscape character. Should permission be granted then I would want to see a full range of landscape based conditions to ensure that an appropriate hard and soft landscape scheme can be achieved. I would like to see more street trees than shown on Cooper Partnership Drg L04, but this could be resolved at a later stage.

ARBORICULTURE

I note that the outline application refers to access with all other matters reserved and I have no objection to the proposed access.

Whilst there are no trees of arboricultural significance within the site there are trees which appear outside of the red line boundary to the south which should be taken into account and which could impact on the quality of living for the southern eight plots. The Arboricultural Report has included these trees.

According to the Illustrative Master Plan (drawing 725/102E) the position of the dwellings within the southern plots respect the root protection areas, however, the gardens are approx. 10m deep which are likely to be shaded by the trees. The scale of the trees may lead to perceptions of danger and pressure on the tree owners to undertake work which would not otherwise be necessary. I would recommend that the depth of the gardens and position of windows are informed by a daylight and sunlight shading analysis (Building Research Establishment document 209), the results of which should be included in the Tree Constraints Plan and taken into account in the final layout.

I welcome the proposed hedge planting beyond the red line boundary to the West as indicated within the Landscape Strategy to provide green infrastructure links.

AVON AND SOMERSET CONSTABULARY - object

From looking at the plans submitted I note that footpaths run behind plots 20 - 35. Over 70% of burglaries occur when easy access is available to the rear of a property. Therefore these should be re-routed.

The affordable housing is grouped together. Secured By Design states that Affordable Housing should not be grouped together in groups of more than eight properties but should be pepper-potted throughout the development. Affordable housing should be tenure blind.

Car parking should have good natural surveillance. The visitor parking does not appear to have that and is by a footpath providing easy escape routes for offenders.

As an outline application security does not appear to have been considered.

I would welcome an application for Secured by Design for this development which would show that the development including the doors and windows being installed are achieving the minimum acceptable standard of safety and security.

ARCHAEOLOGY No objections subject to conditions requiring:

- a) Field evaluation of the site
- b) a subsequent programme of archaeological work and/or mitigation, and
- c) publication of the results.

Whilst the archaeological desk based assessment suggests that "based on current evidence, this assessment has identified a low potential for archaeological activity within the study site", it also recognises that "due to the lack of previous archaeological investigation within the site or in the immediate surrounding area, a clearer understanding for the potential of Prehistoric and Roman activity for the study site remains uncertain." I agree with these conclusions, and that we cannot rule out the possibility of significant archaeological remains on this site.

ECOLOGY - No objection subject to a condition requiring a wildlife management and enhancement scheme to be submitted to the Local Planning Authority.

I would expect ecological input into the planting scheme and careful consideration of how retained hedgerows shall be protected, enhanced and strengthened through additional planting where appropriate, and managed in the long term in a way will retain and enhance their ecological value. The ecological report also recommends a strategy to provide enhancements for bats and birds, which I support. I would recommend this includes provision of rough grassland buffer strips alongside hedgerows and boundary features, to encourage bats and small mammals, and provide foraging for birds, potentially including barn owl.

PARKS MANAGER, no objection subject to contributions of £70,680.69 being secured to fund the provision of formal open space and allotments off-site to serve the population, and fund the maintenance of the open space provided within the development.

EDUCATION, No objection subject to contributions of approximately £25,309.56 being secured to fund primary and secondary school places and Youth Services provision places. The final contribution is to be confirmed once the housing mix is known.

POLICIES/LEGISLATION

Policies/Legislation:

POLICIES

Bath and North East Somerset Local Plan Including Minerals and Waste Adopted 2007

- D.2 - General design and public realm considerations
- D.4 - Townscape Considerations
- BH.6 - Development affecting Conservation Areas
- BH.8 Improvement work in Conservation Areas
- BH.12 Important archaeological remains
- HG.7 Minimum residential density
- T.1 Overarching access policy
- T.3 Promotion of walking and use of public transport
- T.6 Cycling Strategy: cycle parking
- T.24 General development control and access policy
- T.26 On-site parking and servicing provision
- NE.1 Landscape character
- NE.2 Areas of Outstanding Natural Beauty
- NE.10 Nationally important species and habitats
- NE.11 Locally important species & habitats
- NE.12 Natural features: retention, new provision and management
- NE.13 - Water Source Protection Area
- IMP.1 Planning obligations

Bath and North East, Somerset, Bristol, North Somerset, South Gloucestershire Joint Replacement Structure Plan (Adopted September 2002)

- Policy 1 - Sustainable Development
- Policy 17 - Landscape Character
- Policy 54 - Car Parking

Bath and North East Somerset Draft Core Strategy - Publication Version December 2010

The Draft core strategy is currently suspended following an Examination in Public however remains a material consideration. At this stage the Core Strategy has limited weight but should be read in conjunction with ID28, the Inspector's Preliminary Conclusions on Strategic Matters and Way Forward, June 2012:

Chapter 3, Rural Areas of ID28 is pertinent to this application

Draft Core Strategy Policies:

- RA1 - Development in the Villages meeting the listed criteria
- RA2 - Development in Villages outside the Green Belt not meeting Policy RA1 Criteria
- CP2 - Sustainable Construction
- CP6 Environmental Quality
- CP9 - Affordable Housing
- CP10 - Housing Mix
- CP13 - Infrastructure Provision

ET.4 Employment development in and adjoining rural settlements

ET.5 Employment development in the 'countryside'

- Planning Obligations Supplementary Planning Document - Adopted July 2009

- Mendip Hills AONB Management Plan 2009 -2014

- Landscape - Character Assessment - Rural Landscapes of Bath and North East Somerset

- National Planning Policy Framework

The NPPF came into effect on the 27th March 2012 replacing all previous Planning Policy Statements (PPS's) and Guidance Notes (PPG's). The NPPF is of primary consideration in the determination of this application.

In the case of the B&NES Local Plan, although adopted in 2007 this was made in accordance with 1990 Town and Country Planning Act and therefore Para 215 of the NPPF is applicable where it is stated "due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)".

OFFICER ASSESSMENT

KEY ISSUES:

A. IS THE PRINCIPLE OF RESIDENTIAL DEVELOPMENT ACCEPTABLE ON THIS SITE?

Policy Context

Local Plan Policies SC.1 and HG.4 define Bishop Sutton as an R1 village, where residential development within the housing development boundary will be permitted if it is appropriate to the scale of the settlement in terms of the availability of facilities and employment opportunities and accessibility to public transport.

Policy RA1 of the Draft Core Strategy advises that within or adjoining the housing development boundary proposals for residential development will be acceptable where they are of a scale, character and appropriate to the scale of the settlement, provided that the proposal is in accordance with the spatial strategy for the District set out under policy DW1 and the village has:

- a) at least 3 of the following key facilities within the village: post office, school, community meeting place and convenience shop, and
- b) at least a daily Monday-Saturday public transport service to main centres, and
- c) local community support for the principle of development can be demonstrated.

The accompanying text in the Core Strategy discusses small scale housing developments (of up to and around 30 dwellings) being allowed in RA.1 villages.

The site is located outside the adopted housing development boundary and officers note the weight of objections raised to the scheme on this basis. Ordinarily therefore, the proposals would be recommended for refusal as being contrary to the above policies.

Notwithstanding these policies, paragraph 49 of the NPPF states that "housing applications should be considered in the context of the presumption in favour of sustainable development" and that "relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year land supply of deliverable housing". Furthermore, in order to boost the supply of housing, paragraph 47 makes it clear that where there has been a record of persistent under delivery an additional buffer of 20% to this supply of deliverable sites should be identified to ensure choice and competition in the market for land.

Para 14 of the NPPF states that "where the development plan is absent, silent or the relevant policies are out of date" the local authority should grant permission unless there are any adverse impacts in doing so that would "significantly or demonstrably outweigh the benefits of the scheme".

It has been publicised through the Core Strategy process that Bath and North East Somerset Council has not been able to demonstrate a five year land supply and therefore in light of the NPPF the relevant local plan policies cannot be considered up-to-date. This has the implication that the application should primarily be considered against the policies in the National Planning Policy Framework, with the Housing Development Boundary set aside. Therefore, in accordance with the NPPF, planning permission should be granted for the proposed development, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits of the development.

In response to the criticisms made of the Core Strategy and approach to housing, the Council has just published a revised SHLAA, revised housing numbers and recommended changes to the Core Strategy, which will be considered by Full Council on 4th March. It is proposed that the amended Core Strategy will be adopted for Development Control purposes at this meeting.

The housing figures have been revised upwards from the level set out in the Core Strategy, leading to a requirement for an additional 1870 houses to be provided across the district, including a requirement to accommodate an additional 200 dwellings in the rural areas. Recommended change RC34 suggests that policy RA1 be amended to allow small scale development of up to 50 additional dwellings in RA1 villages, but the background paper also considers alternative scenarios for the distribution of housing in the rural areas, with policy RA1 being amended to allow up to 70 or 100 additional dwellings in the RA1 villages.

The intention, set out in the report to Full Council, is that the location of the additional housing land should be determined through the Placemaking Plan in conjunction with discussion with Parish Councils, however given the policy position and the guidance in the NPPF, it would not be possible to refuse this application as being premature to this process.

Whilst these reports and the amended Core Strategy have yet to be subject to independent review, the revised documentation is intended to meet the Inspectors criticisms, and will be able to be given significant weight in development control decisions.

As discussed in the public comments and comments from the Parish Council, being considered at the same time as this application are two other housing schemes outside the adopted development boundary, application 12/05279/FUL for 41 houses at The Batch and application 12/05599/OUT for 9 houses at Milford Head, just to the north of Stitchings Lane. Officers are currently minded to recommend application 12/05599/OUT for refusal under delegated powers.

Delivering housing at the increased level identified will require sites that currently lie outside of currently adopted Housing Development Boundaries to come forward for development. Taking into account the policy situation and the guidance in National Planning Guidance, officers consider that the benefits of the development in terms of delivering housing to meet this need must be given significant weight in any decision. Furthermore, officers consider that even were both this application and the application at The Batch to be approved, the provision of housing at this level would not fundamentally prejudice the Core Strategy and its approach to development in the rural centres.

B. ARE THE PROPOSALS ACCEPTABLE IN TERMS OF THEIR LANDSCAPE IMPACTS?

A Landscape and Visual Impact Assessment (LVIA) was submitted with the application, assessing the likely impact of the proposals in these terms. The LVIA comments that the site lies in a low lying position, and that the surrounding landscape is characterised by frequent vegetated boundaries. As a result of this context the development would have a moderately significant visual impact from close vantage points (the footpaths to the north and south of the site), breaching a firm boundary to the built extent of the village, the western boundary of the Cappards Lane development. However there would be little inter-visibility between the site and the wider landscape and the development would not have a significant impact on the setting of the Area of Outstanding Natural Beauty. Likewise, whilst relatively close to Chew Valley Lake, the development would not be visible in views from the opposite shores of the lake.

The LVIA comments that there would be a slight but not significant impact on local views from the footpath on Burledge Hill (Viewpoint 3) but that this will mainly consist of new rooftops being seen through gaps in the surrounding vegetation, viewed in the context of adjacent built development within the village.

Landscape and Planning officers consider that the images submitted as part of the LVIA, and which can be viewed on the Council's website, bear these conclusions out. The development would have locally harmful landscape impacts by breaching the current boundary of the village but would not give rise to landscape harm in the wider context or harm the setting of the AONB.

C. IS THE PROPOSED DEVELOPMENT ACCEPTABLE IN TERMS OF TRANSPORT AND HIGHWAY SAFETY CONSIDERATIONS?

Location of site in relation to services

Whilst the site is located outside the housing development boundary, it is considered to be quite well related to the facilities available within Bishop Sutton, being located within 400 metres of the primary school, Red Lion Public House, church, shop/post office and Bus

stops. Other facilities are located slightly further away, but still within convenient walking distance on Wick Road.

There is a daily bus service to Bristol and less frequent services to Bath, Keynsham Midsomer Norton and Weston-Super-Mare.

Whilst outside of the housing development boundary, the proposed development is considered to be in broad compliance with criteria a. and b. of draft Core Strategy policy RA.1. However, it is recognised that the site, and Bishop Sutton as a whole, is not well related to employment opportunities and would tend to be car dependent.

Therefore contributions are sought towards the upgrading of bus stops, the improvement of pedestrian crossings and towards strategic transport works, as referred to in the highway comments above.

Highway Safety

Concerns have been raised about highway safety, in particular in terms of the adequacy of Cappards Road to accept additional traffic. Cappards Lane is a reasonably wide access road, with good visibility along the road and on the junction with Wick Road.

The Councils Highways engineers advise that the transport assessment is robust and that Cappards Road meets technical design standards and is able to accept the additional traffic that would result from the development without harm to highway safety. There is also no accident record associated with the use of the Cappards Road junction or on the Cappards Road estate.

Parking Provision

Concerns have also been raised about parking provision. The application is in outline, and therefore parking provision would be formally assessed as part of the reserved matters application, however the transport statement advises that parking would be provided at an overall rate of 2.1 spaces per dwelling, which is reasonably generous and is likely to accord with the Council's standards. The appropriate level of parking provision will depend on the mix of different house sizes. This will be confirmed at reserved matters stage.

D. IS THE DEVELOPMENT ACCEPTABLE IN TERMS OF FLOOD RISK CONSIDERATIONS?

Whilst the site is located in Flood Zone 1, residents have raised concerns about potential flood risk issues, and about the poor drainage of the area in general.

In response to original concerns raised by the Environment Agency, the applicants have submitted an addendum to their flood risk assessment. Whilst the detail of the drainage strategy would be confirmed at the reserved matters stage, the applicants have confirmed that the development would be designed to incorporate water storage on site, so as to maintain rainwater runoff rates at the existing (greenfield) rates. The applicants have also modelled the capacity of the drainage ditches within the development and the route of overland water flows should an extreme storm occur. In an extreme storm event, the site levels would be designed to route surface floodwaters along the access road into the field

to the west of the site. The drainage system would also be designed to maximise on-site infiltration, utilising filter drains in-front of all properties and permeable surfaces for internal roads.

On the basis of the additional details, the Environment Agency have lifted their original objection to the application, which they consider to be acceptable subject to relevant conditions being applied. The Council's Highways Drainage team also have no objections to the application.

E. IS THE PROPOSED DEVELOPMENT ACCEPTABLE IN TERMS OF LAND STABILITY CONSIDERATIONS?

The applicants submitted a coal report which confirmed that there are shallow mine workings beneath the site, which could present a risk to the development. These also pass beneath the adjoining housing development at Cappards Road.

The applicants have submitted a mining desk study risk assessment assessing the level of risk and the measures that could be adopted. In summary, as part of the preparatory groundworks the footprint of the proposed buildings would be probed and any shallow working encountered would be stabilised with grout. Depending on what is found, it might be necessary to utilise different foundation details in order to distribute superstructure loads over treated areas and/or bridge any localised voids pockets not identified.

The Coal Authority advise that these measures are sufficient for the purposes of the planning system and meet the requirements of NPPF in demonstrating that the application site is, or can be made, safe and stable for the proposed development. The further site investigation and mitigation measures proposed can be agreed by condition.

F. ARE THE PROPOSALS ACCEPTABLE IN TERMS OF THE MIX OF HOUSING, AND DELIVERY OF AFFORDABLE HOUSING?

Whilst the development offers to deliver affordable housing at a rate of 35% the Council's housing department has raised concerns about the overall housing mix and type of some of the affordable housing proposed (which would not meet local needs), and that affordable housing would be grouped together rather than pepper-potted across the development as is council policy.

As is noted in the application however, the application is in outline, and therefore these matters will be considered in due course as part of the reserved matters application, and can also be controlled through the Section 106 Planning Agreement.

G. IS THE PROPOSED DEVELOPMENT ACCEPTABLE IN TERMS OF DESIGN AND CRIME AND DISORDER CONSIDERATIONS?

Crime and Disorder

The Crime and Disorder act places a duty on Local Authorities to consider crime and disorder in all their activities. The police have raised valid concerns regarding the layout of the scheme, in terms of the parking court shown on the indicative plans, which would not be well overlooked and the relationship between the houses and public footpath running

through the site. The application is in outline however, with landscaping and layout as reserved matters (for later consideration) and these matters are not key to the principle of the development and can be addressed at reserved matters stage.

Design and Layout

Issues also exist with the illustrative layout shown that still need to be addressed in terms of the layout of dwellings 12 - 15, the relationship between the development and the trees on the southern boundary and how the public right of way is accommodated within the development, however these issues can also be discussed and resolved at reserved matters stage, at which point the detailed design of the individual buildings and spaces will also be considered. Issues such as overlooking and overshadowing would also be addressed at this time.

It is not considered that there are any design issues that would justify this outline application being refused, or that are not capable of being addressed through amendments to the layout and design of the scheme, and the impression from the indicative plans and design and access statement is that the development would share many characteristics with the adjoining Cappards Road development and appear as an organic extension to it.

The indicative layout plan shows an area of public open space at the centre of the site. The developer has commented that they would set up a management company in order to look after any on-site open space provided, rather than pass it over to the Local Planning Authority for adoption.

H. ARE THE PROPOSALS ACCEPTABLE IN TERMS OF THE DELIVERY OF PLANNING OBLIGATIONS?

The development would provide all of the planning obligations required of it, as set out in the Supplementary Planning Document entitled Planning Obligations, providing affordable housing, contributions to enhance educational provision and recreational provision to meet the needs of the increased population and transport enhancements.

The contributions towards education and public open space will depend on the housing mix and extent of public open space to be provided within the site, but neither of these variables are fixed at present, and will be fixed if and when reserved matters consent is granted. Therefore the planning agreement will need to provide security that contributions will be provided to mitigate these impacts, with the exact amount of the contribution being agreed at reserved matters stage. The Council's Education team have advised that there is capacity to extend or expand the school in order to accept the additional pupils resulting from the development and / or planning application.

CONCLUSIONS

As stated earlier in the report, due to the policy situation in BANES and the lack of 5-year housing supply, the application is to be considered against national guidance set out in the National Planning Policy Framework, with a presumption that the local authority should grant permission unless there are any adverse impacts in doing so that would significantly

or demonstrably outweigh the benefits of the scheme. This is the key policy test against which the proposals must be considered.

In these terms, the proposals would extend the village towards Chew Valley Lake, which lies within the AONB and has an attractive and largely undeveloped setting. Were development to continue unabated in this direction, it would eventually have a significant and most likely unacceptable impact on the landscape setting of the lake. However, as demonstrated in the Landscape and Visual Impact Assessment, the site and immediate surrounding landscape is flat and views are well contained by frequent field boundaries. As a result the proposed development would not be visible from the lake and would give rise to significant visual impacts only at quite close range. The overall landscape impact of the development is considered to be acceptable, with the development representing a modest extension to the footprint of the village.

Furthermore, whilst outside the housing development boundary, the site is relatively accessible, with the primary school, shop and bus stop within 400 metres.

In the public correspondence, highway safety concerns have been raised, however the Councils highways engineers advise that Cappards Road, which would take the traffic from the development, meets relevant design standards and could safely take the additional traffic generated.

The development would provide housing which would help to meet the shortfall within the district, would incorporate affordable housing and would provide the appropriate contributions to off-set the impact of the development, both in terms of the capacity of the school, pedestrian and public transport infrastructure and public open space. There are no technical objections to the scheme either in terms of flood risk or land stability issues.

Whilst there are significant objections to the scheme, and officers consider that the development would cause some landscape harm, lying outside of the existing built footprint of the village, this degree of harm would not substantially and demonstrably outweigh the benefits of the development, which in the main would consist of providing additional housing to meet the shortage in the district. Therefore a recommendation to approve the application, subject to the completion of a Section 106 Agreement to achieve the following:

Transport

1. Contributions of £16,000 towards the upgrading of local bus-stops (raised kerbing, real-time info.) - £16,000
2. Contributions of £4,000 towards an improved pedestrian crossing facility of the A368 (on route to local facilities) to address the severance effect of Wick Road.
3. Contributions of £7,289.60 - strategic transport schemes within the Authority

Affordable Housing

4. The provision, on site, of 35% Affordable Housing the housing mix to be agreed in writing with Bath and North East Somerset Council

Open Space and Recreational Facilities

5. Contributions to fund the provision of formal open space and allotments off-site to serve the population, and fund the maintenance of any open space provided within the development, the amount of the contribution to be calculated prior to reserved matters consent being granted in accordance with the Supplementary Planning Document entitled Planning Obligations, adopted July 2009. The agreed contributions shall be paid prior to the occupation of the development.

6. A landscape management plan shall be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of the development. This shall set out ongoing management objectives for any green community space and areas of retained and new planting provided within the development and not to be adopted by the Local Authority, shall indicate the areas to be managed and set out the scope, timing and frequency of specific maintenance operations to achieve these objectives.

Education

7. Contributions to fund the need for primary and secondary school places and Youth Services provision places arising from the development, the amount of the contribution to be calculated prior to reserved matters consent being granted and calculated in accordance with the Supplementary Planning Document entitled Planning Obligations, adopted July 2009. The agreed contributions shall be provided prior to the commencement of development.

RECOMMENDATION

Authorise the Development Manager, in consultation with the Planning and Environmental Law Manager, to enter into a section 106 agreement as detailed in the report to Committee. Upon completion of the agreement, authorise the Development Manager to permit the application subject to the following conditions.

CONDITIONS

1 The development hereby approved shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved whichever is the latest.

Reason: As required by Section 92 of the Town and Country Planning Act (as amended), and to avoid the accumulation of unimplemented planning permissions.

2 Approval of the details of the (a) layout, (b) scale, (c) appearance, and (e) landscaping of the site (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority before any development is commenced.

This is an outline planning permission and these matters have been reserved for the subsequent approval of the Local Planning Authority under the provisions of Section 92 of the Town and Country Planning Act (as amended) and Articles 1 and 3 of the General Development Procedure Order 1995 (as amended).

3 The proposed estate roads, footways, footpaths, verges, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car parking and street furniture shall be constructed and laid out in accordance with details to be submitted to and approved by the Local Planning Authority in writing before their construction begins. For this purpose, plans and sections, indicating as appropriate, the design, layout, levels, gradients, materials and method of construction shall be submitted to the Local Planning Authority.

Reason: To ensure that the roads are laid out and constructed in a satisfactory manner.

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

Reason: To ensure that the development is served by an adequate means of access.

5 Plans showing access, parking and turning areas shall be submitted to and approved in writing by the Local Planning Authority before the development is commenced. All areas shall be surfaced in accordance with details which shall first have been submitted to and approved in writing by the Local Planning Authority, and constructed to the satisfaction of the Local Planning Authority before the dwellings are occupied and shall not be used other than for the parking of vehicles in connection with the development hereby permitted.

Reason: In the interests of amenity and highway safety.

6 The garaging hereby approved shall be retained for the garaging of private motor vehicles associated with the dwelling and ancillary domestic storage and for no other purpose without the prior written permission of the Local Planning Authority.

Reason: To retain adequate off-street parking provision.

7 Prior to the commencement of the development,

a.) A Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority and shall include details of deliveries (including storage arrangements and timings), contractor parking, construction access, wheel wash arrangements and traffic management procedures. The development shall thereafter be carried out in full accordance with the physical and procedural measures set out in the approved Construction Management Plan.

b.) A photographic condition survey (annotated to a survey plan) shall be carried out recording the condition of the construction approach roads to the site (within 400 metres of

the site) prior to the commencement of development. The survey shall be submitted to and approved in writing by the Local Planning Authority. All damage resulting from development shall be made good in accordance with details and a timetable submitted to and agreed in writing by the Local Planning Authority.

Reason: To ensure the safe operation and ongoing condition of the highway.

8 Prior to the commencement of development, the intrusive investigation works recommended within Section 5 of the Coal Mining Risk Assessment shall be implemented in full. In the event that the site investigations confirm that remedial works are required to treat any areas of shallow mine workings, and/or any other mitigation measures (e.g. gas protection) to ensure the safety and stability of the proposed development, these works should also be undertaken prior to commencement of development, in accordance with details submitted to and agreed in writing by the Local Planning Authority.

Reason: In the interests of ensuring that land stability issues are dealt with properly, in the interests of health and safety.

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

- (i) Wildlife friendly planting including native planting to strengthen retained hedgerows
- (ii) Habitat creation including provision of rough grassland
- (iii) details of long term habitat and hedgerow management
- (iv) findings of pre-commencement checks and details any resulting precautionary measures for the protection of wildlife
- (v) Measures to enhance the value of the site to bats and birds
- (vi) Details of all other ecological mitigation and enhancement measures as appropriate

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. The works shall be carried out prior to the occupation of any part of the development.

Reason: In order to safeguard protected species at and around the site.

10 No development shall commence until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has first been submitted to and approved in writing by the Local Planning Authority. The programme of archaeological work should provide a field evaluation of the site to determine date, extent, and significance of any archaeological deposits or features, and shall be carried out by a competent person and completed in accordance with the approved written scheme of investigation.

Reason: The site is within an area of potential archaeological interest and the Council will wish to evaluate the significance and extent of any archaeological remains.

11 No development shall commence until the applicant, or their agents or successors in title, has presented the results of the archaeological field evaluation to the Local Planning

Authority, and has secured the implementation of a subsequent programme of archaeological work in accordance with a written scheme of investigation which has first been agreed and approved in writing by the Local Planning Authority. The agreed programme of archaeological work shall be carried out by a competent person and completed in accordance with the approved written scheme of investigation.

Reason: The site is within an area of potential archaeological interest and the Council will wish record and protect any archaeological remains.

12 The development shall not be brought into use or occupied until the applicant, or their agents or successors in title, has secured the implementation of a programme of post-excavation analysis in accordance with a publication plan which has been submitted to and approved in writing by the Local Planning Authority. The programme of post-excavation analysis shall be carried out by a competent person(s) and completed in accordance with the approved publication plan, or as otherwise agreed in writing with the Local Planning Authority.

Reason: The site may produce significant archaeological findings and the Council will wish to publish or otherwise disseminate the results.

13 Development shall not commence until a drainage design for each plot or parcel of land, incorporating sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

i. The surface water drainage system must deal with the surface water run-off from the site up to the critical 1% Annual Probability of Flooding (or 1 in a 100-year flood) event, including an allowance for climate change (i.e. for the lifetime of the development). Drainage calculations must be included to demonstrate this (e.g. Windes or similar sewer modelling package calculations that include the necessary attenuation volume).

ii. A clearly labelled drainage layout plan should be submitted showing the pipe networks and any attenuation ponds, soakaways and drainage storage tanks. This plan should show any pipe node numbers referred to in the drainage calculations and the invert and cover levels of manholes. Confirmation of the agreed discharge rate, with any flow control devices

iii. If there is any surcharge and flooding from the system, overland flood flow routes and "collection" areas on site (e.g. car parks, landscaping) must be shown on a drawing.

iv. Adoption and maintenance of the drainage system must be addressed and stated.

v. Where infiltration forms part of the proposed stormwater system such as infiltration trenches and soakaways, soakage test results and test locations are to be submitted in accordance with BRE digest 365.

REASON: To prevent the increased risk of flooding and to improve water quality.

PLANS LIST:

This decision relates to drawing nos:

- 725/101E ILLUSTRATIVE SITE PLAN
- 725/102E ILLUSTRATIVE MASTER PLAN
- 725/103A PROPOSED SITE ACCESS PLAN
- 725/110 EXISTING AND PROPOSED SECTION AA
- 725/111 EXISTING AND PROPOSED SECTION BB
- 725/112 EXISTING AND PROPOSED SECTION CC
- 725/113 EXISTING AND PROPOSED SECTION DD
- 725/114 EXISTING AND PROPOSED SECTION EE
- 725/100 SITE LOCATION PLAN
- WESSEX WATER PLAN

- AFFORDABLE HOUSING STATEMENT
- ARBORICULTURAL REPORT
- ARCHAEOLOGICAL ASSESSMENT
- CFSH PRE-ASSESSMENT
- DESIGN & ACCESS STATEMENT
- ECOLOGICAL SURVEY
- ENERGY & SUSTAINABILITY STATEMENT
- FLOOD RISK ASSESSMENT
- HOUSING LAND SUPPLY ASSESSMENT
- LANDSCAPE AND VISUAL IMPACT ASSESSMENT
- PLANNING STATEMENT
- STATEMENT OF COMMUNITY INVOLVEMENT
- TRANSPORT STATEMENT
- COAL MINING RISK ASSESSMENT
- AGENT - E-MAIL RE: ARCHAEOLOGICAL DESK-B...
- ARCHAEOLOGICAL DESK-BASED ASSESSMENT
- REPTILE SURVEY
- FLOOD RISK ASSESSMENT ADDENDUM dated 12th December 2012

Coal Mining and Land Stability Issues

Under the Coal Industry Act 1994 any intrusive activities, including initial site investigation boreholes, and/or any subsequent treatment of coal mine workings/coal mine entries for ground stability purposes require the prior written permission of The Coal Authority, since such activities can have serious public health and safety implications. Failure to obtain permission will result in trespass, with the potential for court action. Application forms for Coal Authority permission and further guidance can be obtained from The Coal Authority's website at: <http://coal.decc.gov.uk/en/coal/cms/services/permits/permits.aspx>

Public Right of Way

The development proposal affects the line of a public right of way and wherever possible the integrity of the way should be retained. In circumstances where there is no alternative other than to attempt to stop up or divert the way to enable the development to be carried out, early negotiations with the Authority to secure an order is advised. The route should

be safeguarded throughout the whole of the order making process, which can be lengthy and the outcome of this is not guaranteed.

Decision Taking Statement

In determining this application the Local Planning Authority considers it has complied with the aims of paragraphs 186 and 187 of the National Planning Framework. For the reasons given, and expanded upon in the case officer's report, a positive view of the submitted proposals was taken and consent was granted.

Reasons for Decision

Taking account of Section 38(6) of the Planning and Compulsory Purchase Act 2004, it has been concluded that the development accords with the National Planning Policy Framework - March 2012 and all other material planning considerations including those listed below and emerging Development Plan policies.

The site falls outside of the adopted development boundary and the proposals were considered contrary to policies SC.1 and HG.4 of the Adopted Local Plan and policy RA1 of the submission draft Core Strategy. However, the Authority is presently unable to demonstrate a 5-year-housing land supply, and the authority neither has an Adopted Core Strategy or up-to-date Local Plan. Therefore, in accordance with the guidance in the National Planning Policy Framework the application is to be considered against the policies in the NPPF, with consent being granted unless there are any adverse impacts in doing so that would "significantly or demonstrably outweigh the benefits of the scheme".

In this case the development would give rise to locally significant landscape harm, due to its location on a greenfield site beyond the established footprint of the settlement. However the adverse impacts of the development would not significantly or demonstrably outweigh the benefits of the scheme in terms of the delivery of housing and therefore, in accordance with national policy, the application has been approved.

ADVICE NOTE:

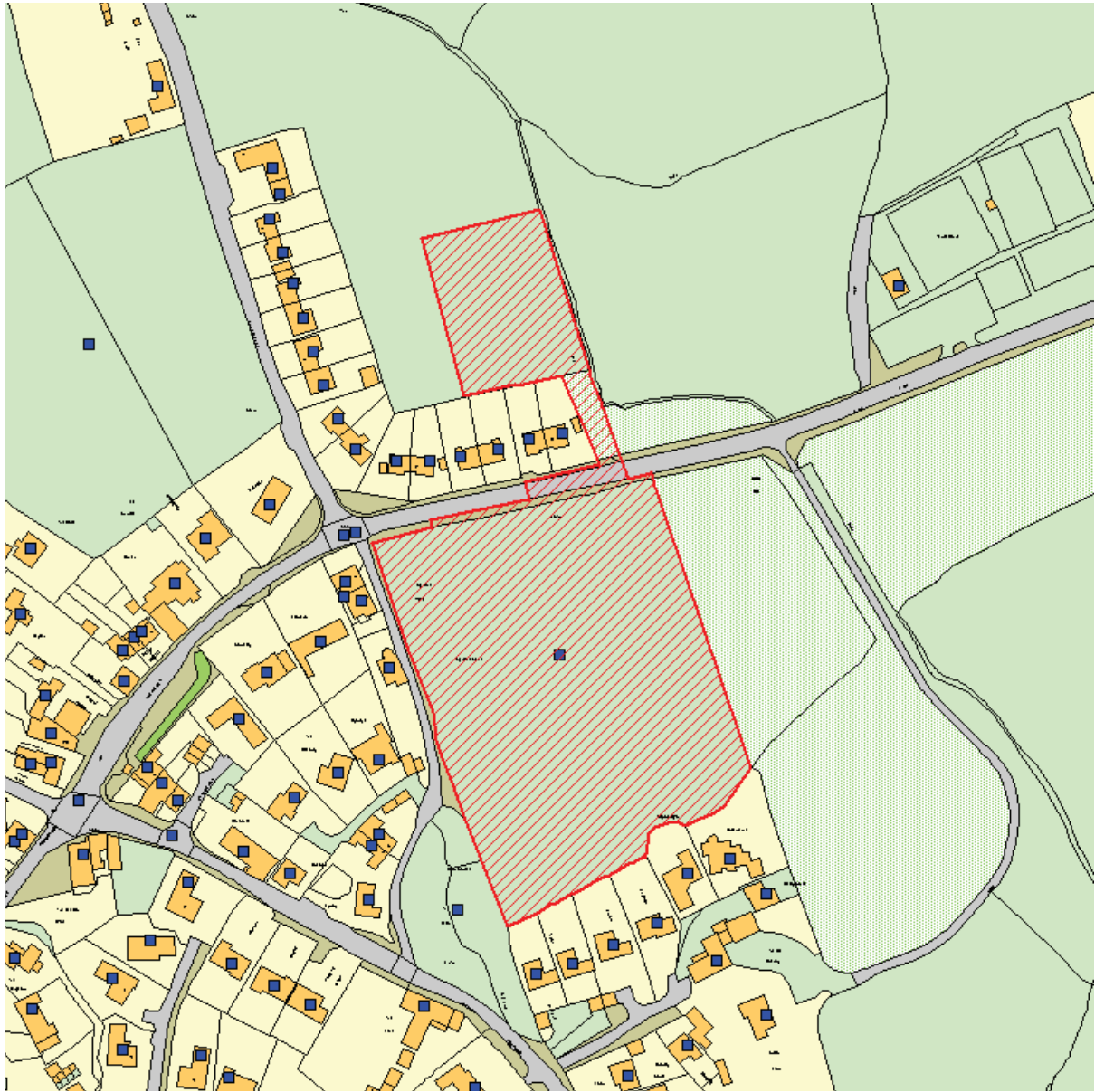
Where a request is made to a Local Planning Authority for written confirmation of compliance with a condition or conditions attached to a planning permission or where a request to discharge conditions is submitted a fee shall be paid to that authority. Details of the fee can be found on the "what happens 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.

Drainage and Riparian water rights

There must be no interruption to the surface water drainage system of the surrounding land as a result of the operations on the site. Provisions must be made to ensure that all existing drainage systems continue to operate effectively and that riparian owners upstream and downstream of the site are not adversely affected. Applicants or developers should be made aware of their responsibilities to ensure that the operations do not interfere with riparian owner's common law rights to receive water undiminished in quantity or quality. If any watercourses crossing the site are interrupted or diverted then,

notwithstanding the need for any statutory consents or licenses, it is the applicant's responsibility to take appropriate steps to protect the rights of the riparian owners, for which he has a liability.

Item No: 05
Application No: 12/05279/FUL
Site Location: Parcel 9181 Wick Road 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: Erection of 41 no. two, three, four and five bedroom dwellings including 14 no. affordable housing units along with the provision of informal public open space, vehicular access from the A368, landscaping and drainage.

Constraints: Airport Safeguarding Zones, Agric Land Class 3b,4,5, Coal - Standing Advice Area, Coal - Referral Area, Forest of Avon, Greenbelt, Greenfield site, Public Right of Way, Water Source Areas,

Applicant: Barratt Homes (Bristol) Ltd And Messrs

Expiry Date:	5th March 2013
Case Officer:	Richard Stott

REPORT

REASON FOR REPORTING APPLICATION TO COMMITTEE

Councillor Pritchard has requested that the application be considered by Committee as the application site is outside the development boundary of the village.

PREAMBLE - POLICY CONTEXT

The Council has published a revised Strategic Housing Market Assessment (SHMA) and revised Strategic Housing Land Availability Assessment (SHLAA), setting out the Council's revised estimations of housing need and housing delivery respectively. This is to be considered by the Full Council at their meeting of 4th March, after the date of writing this report.

If the figures are agreed by the Council it is intended that this work will enable the authority to demonstrate that it does have a 5-year housing land supply and this will inform revisions to the Core Strategy. Officers will produce an update report prior to the committee commenting on the implications of this evidence for this application prior to the committee meeting.

DESCRIPTION OF SITE

The application site is comprised of two separate parcels of land situated to the east of Bishop Sutton, intersected by the A368, adjoining but outside the defined housing development boundary. The site slopes gradually from the south towards the Chew Valley lake which is located over 600m to the north west.

The proposed built development would be contained on the land to the south of the A368 located on an open field measuring c.1.4ha situated between the village (to the west) and woodland (to the east). The site is bounded by mature hedgerows with residential developments located on three sides. Two footpaths cross the site and would be diverted within the site as part of this application. The area proposed for development is located outside of the green belt.

The land to the north of the A368 is within the green belt but is not proposed to be developed. This site is to feature a detention pond as part of the flood mitigation strategy. The northern portion of the land measures c.0.3ha.

PROPOSAL

This application seeks full planning permission for the erection of 41 no. two, three, four and five bed dwellings including 14 no. affordable units along with the provision of informal public open space, landscaping, flood mitigation and vehicular access from the A368.

EIA SCREENING

As the proposal relates to a site that exceeds the 0.5ha threshold under the second column of Schedule 2 of the EIA Regulations 2011 an EIA screening opinion is required.

In accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations, 2001, an EIA screening was carried out and the applicant was formally notified of the decision.

The EIA screening opinion concluded that the proposed development at 41 dwellings falls well below the threshold of 1000 dwellings and at 1.95ha is under the threshold of 5ha and that the significance of the impact of the development would be localised.

Based on an assessment of the relevant regulations and guidance it was considered that the proposed development is not classified as EIA Development and a Scoping Opinion would not therefore be required.

RELEVANT HISTORY

N/A

SUMMARY OF CONSULTATIONS/REPRESENTATIONS

CONSULTATION:

PUBLIC RIGHTS OF WAY: Comments

- No works shall be carried out on the line of the right of way prior to the path being legally diverted.

PLANNING POLICY: Comments

- As the Council cannot currently demonstrate a five-year housing land supply the application will need to be considered against paragraphs 49 and 14 of the NPPF (presumption in favour of sustainable development).

ECOLOGY: Comments

- The hedgerows must be retained and protected in the long term. Under the plans as proposed there is a risk of the hedgerows becoming degraded and subjected to varying forms of management according to individual residencies. This would not safeguard their historical and ecological value in the long term.
- Suitable long term management must be secured and a mechanism put in place to ensure the substantial width, height and character of the hedgerows are sustained and the hedgerows are cared for appropriately. An exclusion zone and sufficient space to allow access to the hedgerows for management need to be shown on the plans. I would recommend that all the "important hedgerows" should fall under the ownership and management of a management company who would be responsible for maintaining and managing them in the long term according to an agreed management plan, and for this to be secured as part of the s106 agreement.

- I would recommend that land to the north of the site is dedicated as wildlife habitat and subject to native planting, habitat creation and long term conservation management plan (details of which to be secured by condition); such an area can also function as public open space.

HOUSING: Comments

- Mix and level of affordable housing acceptable
- Various recommendations made to be tied into a Section 106 agreement

LANDSCAPE: No Objection (subject to the provision of public open play space)

- Site is outside the HDB but has dwellings on three sides.
- Landscape change would have greatest impact on those immediately looking towards the site.
- Development of this site would have relatively little impact on residents further away or from the higher ground as views would be limited or generally focused on the nearby lake.
- Where there may be longer distance views of the site, this new housing would generally be read as an extension of an existing element as opposed to the introduction of a new one.
- The effect on openness is not in itself sufficient to refuse permission.
- The site is not within any of the wider important landscape designations and although there is clearly some inter-visibility the development will not result in significant or demonstrable harm to the character or appearance of the surrounding countryside.
- It is important that as much of the perimeter vegetation is retained and protected. Some vegetation will be lost to the main road frontage and this is regrettable although it is accepted that it can be mitigated over time.
- Robust scheme of planting required.
- There is an obvious impact on the users of the PROW's that cross the site, but it is clear to see that the wish to preserve these routes has influenced the overall layout and has created a meaningful central feature.
- In terms of wider recreation there is ample opportunity to walk further afield and have organized sports elsewhere
- The central feature is not big enough as a stand-alone play area and is described as a 'the village green with potential public art.
- Request standard landscape conditions.

ARBORICULTURE: No Objection

- Loss of T2 (turkey oak on northern boundary) acceptable
- New tree planting can more than adequately compensate loss of trees.
- Recommend condition to ensure tree protection plan is implemented.

ENVIRONMENTAL HEALTH: No Objection

- Request pre-occupation condition relating to sound attenuation.

SCHOOLS: No Objection

- Financial contribution required towards the provision of education. This would need to be secured through a S.106 agreement however the final figure will need to be agreed following the outcome of the Planning Committee. The indicative figure given is £56,146.12 however could be subject to negotiation.

HIGHWAY DRAINAGE: No Objection

WESSEX WATER: No Objection

- The site will be served by separate systems of drainage provided by the developer to adoptable standards.
- Conditions requested in respect of foul water and surface water drainage

HIGHWAY DEVELOPMENT: No Objection

- Subject to conditions and the securing of contributions and works through a S.106

CONTAMINATED LAND: No Objection

- Conditions suggested relating to the reporting of unexpected contamination and gas monitoring.

COAL AUTHORITY: No Objection

- The content and conclusions of the Geotechnical Investigation and Contamination Risk Assessment Report are sufficient for the purposes of the planning system and meets the requirements of the NPPF in demonstrating that the application site is, or can be made, safe and stable for the proposed development.

ENVIRONMENT AGENCY: No Objection

- Conditions and recommendations made in respect drainage and surface water

ARCHAEOLOGY: No Objection

- Conditions recommended in respect of a field evaluation and if necessary, a programme of works and mitigation and publication of necessary results.

OPEN SPACE: No Objection

- Financial contribution required towards the provision of open space and allotments. This would need to be secured through a S.106 agreement however at the time of writing this report, negotiations over the final figure are on-going. The indicative figure given is £164,437.20 however is potentially subject to change.

STOWEY SUTTON PARISH COUNCIL: Object

- Parish policy seeks 30-35 dwellings in Bishop Sutton over the life of the Core Strategy
- Parish believes there is sufficient land within the village to support the number of houses required.
- Parish policy is to avoid large scale development
- Parish policy has local support
- Exceeds scale of development set out in parish policy.
- Site is outside housing development boundary.
- Access too close to busy junctions.
- Safety concerns relating to the pond
- EIA needs to be completed
- Site disconnected from village
- Impact on local drainage infrastructure.
- Impact on the school
- No employment provision

REPRESENTATIONS:

77 letters of objection received from 67 individuals. As many of the objections reiterate similar points below is a summary of the key planning issues raised:

- The site is a greenfield agricultural site, located outside the Development boundary and should not be developed.
- The application is premature, pending the adoption of the Core Strategy and Place-making Plan
- No need for additional housing in Bishop Sutton.
- More suitable sites elsewhere.
- The development would vastly exceed the Parish Council's target of 2 - 3 homes per year.
- Other planning applications should be taken into consideration e.g. the application at Cappard Farm, where an additional 35 dwellings are proposed.
- The site is an unsustainable and car dependent location for additional development.
- Few employment opportunities in Bishop Sutton.
- Impact on the setting of the green belt
- Intrusion into the open countryside
- Problems associated with construction traffic
- The additional traffic from the development would endanger children
- Likely to increase accidents with more cars on the road.
- Additional traffic calming will be needed
- The current bus service is limited
- There is inadequate capacity at the school.
- The Education comments underestimate the effect on the school.
- There is also a shortage of child-minders in the area.
- Impact on broadband services - nearest exchange is at Chew Magna and additional pressure will further restrict internet access.
- The site is underlain with clay and is vulnerable to flooding.
- More houses would increase flood risk and the houses would be at risk of flooding.

- The site is within the water source protection area.
- Loss of view (this is not a material planning consideration)
- Overlooking of properties that back onto the site.
- Increase in noise from traffic.
- Development of this site preferable to the Cappards Farm site.
- The development should be accompanied by an Environmental Statement.
- Harm to the hedgerows.
- Potential harm to birds and bats

1 petition received signed by 83 people. Below is a summary of the key planning issues raised:

- Development on green belt land - discouraged by the current local plan.
- Core Strategy focuses growth on brownfield sites.
- No need for large developments.
- Outside the housing boundary.
- Would complete the B&NES 10 year housing allocation in one estate.
- Flooding issues
- No youth provision
- Accident hotspot with no pavements.
- Primary school oversubscribed.
- No EIA for the site

5 letters of support received. Below is a summary of the key planning issues raised:

- Site suitable for development given its direct access to the main road.
- Although outside the technical village border, this development would be a natural village extension, very close to the Methodist Hall, Red Lion pub, and village shop.
- Bringing in new families will assist the struggling shops and pubs.
- Development provides opportunities to address issues around traffic and the footpaths.
- More affordable housing will help address issues of housing shortage in the area.
- Current political situation means it is likely that a large development will happen.
- Preference for this application over the application at Cappards Farm.
- This site is discrete and would form a natural extension to the village.
- No impact in terms of additional traffic through flow.
- Provides sufficient homes to meet the needs of Bishop Sutton.
- Self-contained nature of the site restricts further expansion.
- Visual impact would be limited.
- Full application confirms an intention to build the development.
- Drainage should be improved by the detention pond and new sewer.
- Barratt have confirmed a new pedestrian crossing. This would be beneficial for traffic calming and will reduce the need for people to use the footpath opposite the junction at Bonhill Road.
- Scheme provides appropriate mix of dwellings.
- Design incorporates the character of the village.
- Much needed affordable housing provided

6 letters providing general comments received from 4 individuals. Below is a summary of the key planning issues raised:

- Ancient hedgerows are of importance from a historical and ecological point of view.
- Hedgerows need to be protected from development.
- Expansion of the village should be more natural with smaller developments over a longer period and within the village boundaries.
- The 'pond' is shown in an area which is already subject to flood, especially on Bonhill Road and the village already gets cut off in very wet weather.
- Bats are present on the site.
- Lighting would need to be considered so as to limit light pollution.
- Both Cappards Farm and this application need to be considered together to ensure the best outcome for the village.
- Barrett homes have chosen a site at the entrance to the village to minimise the impact of new housing and with addressing the need for a crossing on the main road this means that residents have safe access into the village.
- The site cannot be expanded due to clear settlement boundaries the same cannot be said of Cappards Farm proposed development.
- Barrett homes development will not be seen from the many vantage points overlooking the village thus minimising the impact of the development.
- Barrett home developments have a proven record of quality build.

POLICIES/LEGISLATION

LEGAL FRAMEWORK

- Town and Country Planning Act, 1990

BATH & NORTH EAST SOMERSET LOCAL PLAN INCLUDING MINERALS AND WASTE POLICIES ADOPTED FOR OCTOBER 2007

- D.2 General design and public realm considerations
- D.4 Townscape Considerations
- IMP.1 Planning obligations
- CF.3 Contributions from new development to community facilities
- SR.3: Provision of recreational facilities to meet the needs of new developments
- BH.12 Important archaeological remains
- HG.4 Residential Development in R.1 Settlements
- HG.7 Minimum residential density
- HG.8: Affordable Housing on allocated and large windfall sites
- HG.10 Housing Outside Settlements
- GB.1 Control of Development in the Green Belt
- GB.2 Visual amenities of the Green Belt
- ES.5 Foul and surface water drainage
- ES.12 Noise and Vibration
- NE.1 Landscape character
- NE.4: Trees and woodland conservation
- NE.10 Nationally important species and habitats

- NE.11 Locally important species & habitats
- NE.12 Natural features: retention, new provision and management
- NE.14 Flood Risk
- T.1 Overarching access policy
- T.3 Promotion of walking and use of public transport
- T.24 General development control and access policy
- T.26 On-site parking and servicing provision

BATH AND NORTH EAST, SOMERSET, BRISTOL, NORTH SOMERSET, SOUTH GLOUCESTERSHIRE JOINT REPLACEMENT STRUCTURE PLAN (ADOPTED SEPTEMBER 2002)

- Policy 1 Sustainable Development
- Policy 17 Landscape Character
- Policy 54 Car Parking

DRAFT CORE STRATEGY, MAY 2011

The Draft core strategy is currently suspended following an Examination in Public however remains a material consideration. At this stage the Core Strategy has limited weight but should be read in conjunction with ID28, the Inspector's Preliminary Conclusions on Strategic Matters and Way Forward, June 2012:

Chapter 3, Rural Areas of ID28 is pertinent to this application

Draft Core Strategy Policies:

- RA1 - Development in the Villages meeting the listed criteria
- RA2 - Development in Villages outside the Green Belt not meeting Policy RA1 Criteria
- CP2 - Sustainable Construction
- CP6 Environmental Quality
- CP8 Green Belt
- CP9 - Affordable Housing
- CP10 - Housing Mix
- CP13 - Infrastructure Provision

SUPPLEMENTARY PLANNING GUIDANCE

- Planning Obligations Supplementary Planning Document, Adopted July 2009
- Mendip Hills AONB Management Plan 2009 -2014
- Rural Landscapes of Bath and North East Somerset - A Landscape Character Assessment, April 2003

NATIONAL PLANNING POLICY FRAMEWORK

The NPPF came into effect on the 27th March 2012 replacing all previous Planning Policy Statements (PPS's) and Guidance Notes (PPG's). The NPPF is of primary consideration in the determination of this application.

In the case of the B&NES Local Plan, although adopted in 2007 this was made in accordance with 1990 Town and Country Planning Act and therefore Para 215 of the

NPPF is applicable where it is stated "due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)".

OFFICER ASSESSMENT

PRINCIPLE OF DEVELOPMENT:

Local Plan Policies SC.1 and HG.4 define Bishop Sutton as an R1 village, where residential development within the development boundary will be permitted if it is appropriate to the scale of the settlement in terms of the availability of facilities and employment opportunities and accessibility to public transport. Until these policies are replaced by the Core Strategy, they remain the principle local policies, notwithstanding as the current Local Plan was made in accordance with 1990 Town and Country Planning Act, Para 215 of the NPPF is applicable where it states "due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)". This is to say, primary weight should be given to the NPPF in the event where there is conflict with the Local Plan.

In respect of the Draft Core Strategy of consideration is Policy RA1 which advises that within the development boundary proposals for residential development will be acceptable where they are of a scale, character and appropriate to the scale of the settlement, provided that the proposal is in accordance with the spatial strategy for the District set out under policy DW1. The accompanying text in the Core Strategy discusses small scale housing developments being allowed in RA.1 villages. The accompanying text originally suggested sites of up to and around 30 dwellings in the villages.

In respect of the current application, the site is located outside the adopted housing development boundary and officers note the weight of objections raised to the scheme on this basis. Ordinarily therefore, the proposals would be recommended for refusal as being contrary to the above policies however given the weak position of B&NES local policies at present, this application must be considered in light of the NPPF

As an update to the policy position, it has been publicised through the Core Strategy process that Bath and North East Somerset Council has not been able to demonstrate a five year land supply let alone the requisite 20% buffer and therefore in light of the NPPF the relevant local plan policies cannot be considered up-to-date. This has the implication that the application should primarily be considered against the policies in the National Planning Policy Framework, with the Housing Development Boundary set aside. Therefore, in accordance with the NPPF, planning permission should be granted for the proposed development, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits of the development.

In response to the criticisms made of the Core Strategy and approach to housing, the Council has published a revised SHLAA, revised housing numbers and recommended changes to the Core Strategy, which will be considered by Full Council on 4th March. It is proposed that the amended Core Strategy will be adopted for Development Control purposes at this meeting.

The housing figures have been revised upwards from the level set out in the Core Strategy, leading to a requirement for an additional 1870 houses to be provided across the district, including a requirement to accommodate an additional 200 dwellings in the rural areas. Recommended change RC34 suggests that policy RA1 be amended to allow small scale development of up to 50 additional dwellings in RA1 villages, but the background paper also considers alternative scenarios for the distribution of housing in the rural areas, with policy RA1 being amended to allow up to 70 or 100 additional dwellings in the RA1 villages.

The intention, set out in the report to Full Council, is that the location of the additional housing land should be determined through the Placemaking Plan in conjunction with discussion with Parish Councils, however given the policy position and the guidance in the NPPF, it would not be possible to refuse this application as being premature to this process.

Whilst these reports and the amended Core Strategy have yet to be subject to independent review, the revised documentation is intended to meet the Inspectors criticisms, and will be able to be given significant weight in development control decisions.

As discussed in the public comments and comments from the Parish Council, being considered at the same time as this application are two other housing schemes outside the adopted development boundary, application 12/04238/OUT for 35 houses at Cappard Farm and application 12/05599/OUT for 9 houses at Milford Head, just to the north of Stitchings Shord Lane. Officers are currently minded to recommend application 12/05599/OUT for refusal under delegated powers and 12/04238/OUT is to be taken to committee with a recommendation to permit.

Clearly if this application and the application at Cappards Farm were to be approved, 76 houses would be consented in Bishop Sutton, this is above the current level of housing provision envisaged for Bishop Sutton in the revised Core Strategy however could be consistent if a higher level of housing for the villages is agreed by Members.

Setting aside the current local policy position, Paragraph 49 of the NPPF states that "housing applications should be considered in the context of the presumption in favour of sustainable development" and that "relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year land supply of deliverable housing". Furthermore, in order to boost the supply of housing, paragraph 47 makes it clear that where there has been a record of persistent under delivery an additional buffer of 20% to this supply of deliverable sites should be identified to ensure choice and competition in the market for land.

Para 14 of the NPPF states that "where the development plan is absent, silent or the relevant policies are out of date" the local authority should grant permission unless there are any adverse impacts in doing so that would "significantly or demonstrably outweigh the benefits of the scheme". Examples of these impacts being given as sites protected under the Habitats Regulations or being designated a SSSI, Green Belt, Area of Outstanding Natural Beauty or heritage asset. In respect of this site the application is proposing new housing including affordable housing that will clearly help towards the shortfall in housing within the Bath & North East Somerset district, fundamentally it is noted that none of the aforementioned designations are applicable and the impact on

landscape character has been considered localised only but not significant enough of an issue to preclude development. Members should note that part of the application site to the north of the A368 is within the Green Belt and this is assessed later in this report.

Whilst it remains the case that the site for the proposed housing is outside the defined housing development boundary for Bishop Sutton and therefore the development is contrary to extant policy HG.4 and that at less than 100% affordable housing, the parcel of land cannot be considered a rural exception site (making the proposal contrary to Policy HG.9), there is clear evidence that the Secretary of State and the Planning Inspectorate are no longer finding these objections credible on their own in light of the National Planning Policy Framework and that the NPPF is taking precedence in the decision making process, especially where local authorities are unable to demonstrate a five-year land supply.

Since the publication of the NPPF in March 2012, there has been a multitude of appeal decisions issued across the country allowing housing developments on sites outside development boundaries. In the majority of these cases, the Inspectors (and indeed the Secretary of State) have attached little weight to relevant local policies restricting development where a clear shortfall in housing provision has been shown and/or where a five-year land supply is not up-to-date - this includes recent decisions within the Bath & North East Somerset district at Farmborough (ref: 11/02432/OUT) and Whitchurch (ref: 11/02193/FUL). What is most striking about these appeal decisions is the limited weight that is being given to wider considerations including (but not limited to) the impact on landscape character, residential amenity and nature conservation - in almost all cases it would appear that addressing the reduction in the shortfall in housing land is the primary consideration and is consistent with the NPPF. In respect of this particular case it is worth noting that the site is not within a designated AONB or conservation area where more emphasis maybe put on maintaining the existing character, and although the northern portion of the site is within the green belt, the housing development would be contained wholly outside the green belt.

In respect of the emerging policy position, whilst limited weight can be attached to the Core Strategy, given the suspension of the examination, it is noted that this seeks to direct development to the most sustainable villages by allowing for development of around 30 dwellings to come forward at villages that meet the criteria of Policy RA1 and indeed it is now proposed that this figure be increased to 50 or perhaps more. Bishop Sutton at present meets the criteria to be considered an RA1 settlement and whilst the site is outside the housing boundary, the level of housing proposed is broadly in line with the suggested revised level of housing that the policy would allow for.

In terms of the sustainability issues relating to this site, the applicant has commented that the site is located in a settlement that has been identified in both the adopted Local Plan and emerging Core Strategy as being suitable to receive additional growth (R.1 settlements - under the Local Plan - and RA1 villages - under the Core Strategy - are generally regarded as being the most sustainable). It is noted that whilst there may not be sufficient employment opportunities in Bishop Sutton itself to accommodate all new inhabitants, the village is accessible to both employment opportunities and services in the wider area (including Bath and Bristol) and has access to a range of existing retail and other facilities.

Overall, in light of the NPPF, specifically with reference to paragraphs 14 and 49, in light of the evidence that has come from the multitude of recent appeal decisions and with regard to the current status of both the Local Plan and the Draft Core Strategy, it is clear that resisting this application on the grounds of its location alone would be insufficient. Furthermore, whilst it is accepted that the most appropriate process for reviewing development opportunities of this size in locations such as this would be through the Placemaking Plan, it is clear that prematurity also cannot be used as a reason to withhold a recommendation for permission at this stage.

Whilst recommending this application for permission remains contrary to the relevant Bath & North East Somerset Council policies, as stated only limited weight can be attributed to these policies and therefore the NPPF takes precedent. It is concluded that this application is compliant with the NPPF and therefore no overall in principle objection to the development can be sustained.

It has been publicised through the Core Strategy process that Bath and North East Somerset Council has not been able to demonstrate a five year land supply and therefore in light of the NPPF the relevant local plan policies cannot be considered up-to-date. This has the implication that the application should primarily be considered against the policies in the National Planning Policy Framework, with the Housing Development Boundary set aside. Therefore, in accordance with the NPPF, it is recommended that planning permission should be granted for the proposed development, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits of the development.

CHARACTER, DESIGN, SITING, SCALE, MASS AND SITE LAYOUT:

This application is supported by a detailed Design and Access Statement and the overall design and layout of the site has evolved with reference to the local and wider area. It is noted that the prevailing grain of development at this end of Bishop Sutton is mixed with properties dating from various periods from the late 19th century through the 20th century. There is no one dominant pattern to the surrounding phases of development and no one dominant building style. As a result of the prevailing grain and pattern it gives more opportunity for a bespoke approach tailored to this particular site.

The proposal features a centrally positioned entrance from the A368 with a mix of detached, semi-detached and small terraced houses orientated across the site, overall the density equated to c.35dph which is broadly comparable to the clusters of development in close proximity to the site.

Open space is integrated into the development and the layout has been centred around the bisecting public footpaths so as to retain movement through the site. 35% of the development is set aside for affordable housing.

Traditional, vernacular elements of the wider area have been drawn upon to inform this development and the streetscene would be dominated by continuous frontages which reinforce the sense of place whilst trees and planting have been designed into the scheme to soften the areas of hard standing and parking.

The massing of the buildings would be fairly uniform across the site with the houses being a mix of two and two-and-a-half storey dwellings whilst the roofscapes vary and undulate across the site in line with the prevailing topography.

Full details of materials have been provided with the application. The properties are designed to reflect local characteristics and the buildings would be finished in a mixture of stone, brick and render under tiled roofs, all materials are readily identifiable and whilst modern, will tie the development to the local area. Door features, canopies and porches draw on local references and will again situate the development to the wider area.

Boundary treatments will be comprised of low planting, hedgerows and stone walls, again reflecting and reinforcing the local character and appearance. The use of natural species to enhance the site will preserve the landscape setting of the site and connect the built elements of the scheme to the wider countryside. gruelling

Central to the site is an area of public open space at the convergence of the two public rights of way, this central point sits on the historic line of the footpaths and will act as a focal point to the development.

Overall it is considered that this application is well thought out and well related to the wider and local area in terms of its design, siting and layout. In respect of the prevailing policies, the proposed development is considered to succeed in terms of creating a strong sense of place using buildings that respond to the local character and reflect the identity of the surroundings in terms of design, siting and use of materials, this is consistent with national policy as set out in the NPPF. With regard to the local policy position, for the same reasons as national policy the proposed is considered to be in accordance with the parameters of policies D.2 and D.4 insofar as it is well connected to the surroundings, provides ease of movement and legibility, maintains the qualities of the public realm and uses high quality design to create a safe and secure environment.

Having considered the specific details of this application in light of the prevailing policies and a full appraisal of the surrounding area it is concluded that the proposed development is acceptable in terms of the principles of good urban design. No planning objection is therefore raised in respect of the design, siting, size, mass, scale, character and layout.

SUSTAINABILITY

Level 3 of the Code for Sustainable Homes will be applied for Affordable Homes. This means that energy and carbon dioxide emissions associated with the operation of new buildings will comply with Part L of the Building Regulations 2010 and fixtures and fitting will be designed to limit average annual water consumption to 125 litres per person per day.

Various water efficient fixtures and fittings in homes will reduce potable water consumption, including dual flush toilets, low flow showerheads, tap aerators and water butts to capture and store rainwater. A SUDS has been proposed which would help manage water from heavy downpours and reduce pollution in local waterways.

Initiatives to reduce waste at the construction and operational stages of the development will be implemented.

No objection is raised in respect of the sustainability of this proposed development.

RESIDENTIAL AMENITY:

In respect of the impact on the existing dwellings surrounding the site the principle properties affected by this development are located on The Batch, to the west, and Sutton Hill Road, to the south.

There are six properties fronting the A368 and facing the site to the north, it is considered that as these currently face the large mature hedgerow, which is to remain, and are physically separated by the main road, the impact on the amenity of these occupants would be limited. Overlooking in respect of these dwellings would be restricted by virtue of the hedgerow and the proposed new dwellings are a sufficient distance so as not to create overshadowing or an unacceptable sense of enclosure.

In respect of the properties on The Batch, Highland Villas (situated adjacent to the junction of The Batch and the A368) would be located within 15m of plot 33 however it is noted that plot 33 is offset at an oblique angle so as to limit direct visibility and preserve privacy. Highland House would be within 22m of plots 31 and 32 and directly faces the development site however it is noted that there is a mature high hedge between the existing house and the development site and the windows on the side elevation of Highland House do not appear to serve habitable rooms (i.e. living/dining room). Byeways is located 33m from plot 23 however is set at 90 degrees and so would not be adversely affected by the development. It is accepted that the outlook of the residents of the properties on The Batch would be altered to a degree by this development however it is also noted that views into the site from these properties are interrupted in part by the existing large mature hedgerow which is to be retained. Overall the level of harm to the amenity of the adjoining residents is deemed acceptable in planning terms, by virtue of the site layout, orientation of the properties, level of separation between the existing and proposed dwellings and the presence of mature vegetation it is felt that privacy will not be adversely compromised and there is no risk of overshadowing or enclosure.

In respect of the impact on the residents along Sutton Hill Road, it is noted that these dwellings are situated on a higher level overlooking the site and that the general boundary treatment (hedgerow) along the southern edge of the site is less dense. Whilst the topography undulates across the site in general the existing houses sit on a level between 2m and 3.5m above the ground level of the closest proposed dwellings. Of all the immediate properties directly affected by this development it is these properties that will notice the greatest change to the landscape character. Notwithstanding, loss of a view is in itself not a material planning consideration and issues of amenity are judged in terms of loss of light, increased overlooking, exposure to noise, smell traffic or other significant disturbance.

In terms of limiting the impact on the existing properties to the south of the site the proposed layout has been done in such a way so as to orientate the new properties away from the existing in order to reduce intervisibility and maintain privacy. It is noted that plot 13 would be situated 20m away from Greenbanks however is orientated at 90 degrees so as to eliminate overlooking. Plot 15 is situated 42m to the north of Maple Lodge, Plots 16 and 17 are 54m and 45m respectively from Barnfield, plot 18 is 40m from Foxbury and

plot 19 is 33m from Lorient. All of these properties are set at distances over 21m, which is an accepted standard to ensure acceptable amenity standards. Given the level of separation between each of these plots and the nearest existing dwellings privacy would not be compromised by the new development.

As stated, the hedgerow along the southern boundary is less dense than along the east or west boundaries, whilst this could make the new development more visible to the existing dwellings to the south the application proposes a scheme of mitigation to include new planting along the southern perimeter in order to strengthen the boundary and break up the impact of the development. Overall it is considered that the proposed development, by virtue of the orientation of the properties, the level of separation between existing and proposed dwellings, the change in gradient and the existing and proposed vegetation, would not adversely compromise the amenity of the residents to the south of the site.

It should be noted that whilst objections have been received in respect of the loss of view, as stated previously this is not a material planning consideration. Whilst the outlook of some of the closest residents would be altered by the proposed development, overall it is concluded the development would not significantly harm the amenity of adjoining residents to an extent that would override the more strategic benefits of allowing this development.

In consideration of the internal (proposed) layout, all properties are designed, orientated and sited in a manner so as to avoid overlooking and avoid overshadowing. There is no objection raised in respect of the impact on amenity of future occupiers of the site. During the course of this application amendments to the scheme were agreed to resite the garages associated with plot 18 so as to limit the impact on plot 17 and reduce the level of potential overshadowing.

In order to protect the amenity of those future residents closest to the A368, whilst the Environmental Health Officer has raised no objection to this application a pre-occupation condition is recommended to demonstrate that the development has been constructed to provide sound attenuation against external noise in accordance with BS8233:1999.

TREES:

In respect of the trees on the site, the application is accompanied by a detailed arboricultural statement and constraints report. There are no Category A trees on the development area of the application site. The application for the large part retains the mature trees around the site with the only notable loss being the Category B turkey oak on the north side of the site which will be removed to provide the access. The Category B lime and poplars on the southern boundary will be retained. Notwithstanding the loss of the turkey oak, the application proposes a substantial amount of replanting to mitigate the loss and to enhance the overall landscape.

During the course of this application, the locations of various buildings around the edge of the site have been moved away from the boundary so as to limit their potential impact on the hedgerow and trees. This is welcomed as it will help to further protect and retain the trees.

The arboricultural officer has raised no objection to the proposed development however has recommended a condition relating to no works being carried out until the details shown on the tree protection plan are in place and have been verified.

LANDSCAPE:

A detailed Landscape Visual Impact Assessment (LVIA) has been submitted and, along with a visit to the site and an assessment of the wider area, the Landscape Architect has raised no overall objection to this application. The site is surrounded by development on three sides and although outside the defined housing boundary is within the wider village envelope therefore the impact on landscape character is contained and localized.

The development of this site will see the loss of agricultural land and there will, by definition, be an impact on the openness of the countryside however this change would have relatively little impact on the wider area when viewed from on higher ground. Where there may be longer distance views of the site, this new housing would generally be read as an extension of an existing element as opposed to the introduction of a new one. In this regard the effect on landscape character is in itself not sufficient to refuse permission and the proposed would not adversely harm the openness of the adjacent green belt which is situated to the north of the A368.

Crucially, the application site is not within any of the wider important landscape designations (AONB, Green Belt, Conservation Area etc.) and although there is clearly some inter-visibility between the site and the surroundings the LVIA conclusion is generally agreed with in that the development will not result in significant or demonstrable harm to the character or appearance of the surrounding countryside.

In terms of landscape detail, some vegetation will be lost to the main road frontage and although in itself this is regrettable it is accepted that it can be mitigated over time. A robust scheme of planting for the whole site is proposed and the Landscape Officer has suggested the use of landscape conditions.

The Landscape Officer has stated that there is a necessity to have an informal play facility on the site however it is noted that due to the site layout and available area of land this is not possible. To accommodate such a facility would result in a compromise to the overall site layout and as noted above, substantial contributions are to be secured towards providing off-site formal open space. In light of the potential compromise to layout and the securing of off-site open space provision whilst the comments of the Landscape Architect are noted it is considered unviable to insist on on-site play provision and this reason alone would not be robust enough to justify refusing this application.

Overall, in light of the Landscape Officer's comments it is considered that the proposed development is acceptable in principle and will not adversely harm the landscape character and setting of the wider area.

ECOLOGY:

The Council ecologist has considered this application in light of the submitted information and has raised no overarching ecological objection.

The principal concerns relating to the area of land to the south of the A368 relate to ensuring the hedgerows are preserved - this also ties with the comments of both the arboricultural officer and the archaeologist. This issue has been considered and it is agreed that the protection of the hedgerows will be incorporated into the S.106, indeed the developer's solicitor has offered suggested wording for restrictive and positive covenants that could be placed on each of the plots abutting the hedgerows.

It has been requested that the land to the north of the site is dedicated as wildlife habitat and subject to native planting, habitat creation and long term conservation management plan. This would need to be secured by condition or as part of a legal agreement however no wording for such a condition has been provided. Should Members resolve to agree with the Officer recommendation and grant permission for this application, these requested details will need to be negotiated with the applicant.

HIGHWAYS (ACCESS AND PARKING):

The highway officer has raised no objection to the proposed development. Revisions to the scheme have been made and sufficient visibility is achieved at the site entrance. On-site parking and garaging is above the recommended standards and therefore no objection is raised. Works to the highway including provision of a new crossing (which would help with traffic calming when entering the village) and improvements to the footway along the A368 have been negotiated and are to be secured via contributions secured through a S.106 agreement.

Third party concerns are noted in terms of additional vehicle movements in the area and the speed of vehicles passing the entrance to the site. In respect of these comments as stated, the provision of a new footway and crossing is likely to calm traffic and it is noted that the visibility when existing this site exceed the standards set out in Manual for Streets. With regard to vehicle speed, although at the entrance to the village, the speed limit passing the entrance is 30MPH. Whilst it is possible that drivers may exceed this speed when exiting the village or whilst slowing as they enter the village enforcement of speed limits is not within the remit of the planning system. Fundamentally, this application proposes adequate access arrangements to the site and with the provision of new road traffic signs and a new crossing it is likely that driver behaviour will change over time.

Overall the proposed is considered to be acceptable in terms of highway safety and therefore, subject to conditions and securing the necessary funding and works through the S.106, no overall highway objection is raised.

ARCHAEOLOGY:

The applicant has submitted a desk based assessment of the site. The Council Archaeologist is content with the findings of the initial report in terms of agreeing the principle of development, noting that the ancient hedgerows surrounding the site will be preserved. The report has identified the presence of non-designated earthworks on site associated with a post medieval road and a platform of a possible roadside building. In the interest of assessing the earthworks the Archaeologist has suggested a condition to carry out a field evaluation prior to any development and in the event that deposits are found, a programmed of works and mitigation would be required.

Subject to the condition being applied to any permission granted, and the long term protection of the hedgerow being secured through the S.106 agreement the Archaeologist has raised no objection in respect of this development.

HOUSING:

No objection is raised by the Housing Officer. The application proposes 35% on-site affordable housing split 75%/25% between social rent and intermediate market housing, this accords with B&NES affordable housing policies. The mix of affordable housing is appropriate and in line with the current evidence relating to demand for housing in this area.

The Housing Officer has requested that at least 60% of the affordable units are built to lifetime homes standards however the applicant has confirmed they are to provide 100% of affordable units to this standard.

Concerns have been raised about the orientation of some of the affordable units. Whilst this point is noted it is accepted that some of the market housing is also orientated in a manner that would not achieve the best solar gain, given the size of the site it is inevitable that some properties will be better sited than others and thus given this issue is prevalent in both the affordable and market units it is not considered an issue that should preclude the granting of permission. Ultimately, the design and layout of the site would be compromised in order to achieve all the requests made by the housing officer and therefore in the interest of forming a view that balances all considerations relating to this development the request has not been actioned.

With regard to the issue of the affordable units being clustered and not pepper-potted, given this is only a scheme for 41 dwellings with 14 units being affordable on a relatively small site this issue is not considered fundamental and certainly should not be taken as a reason to refuse permission. In general the affordable units are well located within the central belt of the site and with good access to the elements of open space. No planning objection is raised in respect of this matter.

The housing officer has suggested the inclusion of obligations towards affordable housing to be secured through a S.106. These are noted and subject to negotiation will be incorporated into the legal agreement. In addition to the suggested obligations the applicant has agreed to a local tie which would priorities the affordable housing to local people first. This is welcomed.

Overall, the comments of the housing officer are noted and the necessary obligations will be tied into the S.106. The concerns raised have been considered but are not considered sufficient to refuse the scheme particularly when balanced with all the other planning considerations.

EDUCATION:

The Education Department has identified a shortfall of primary school places and youth services provision in the local area however has requested contributions of £56,146.12 to ensure adequate provision is made. These contributions would need to be secured as part of a S106 agreement.

It is noted that the calculation for this application has been made taking into account the impact the development at Cappards Farm (which was submitted in advance of this application). The figure given is based on a scenario if planning permission were granted for Cappards Farm (which will be determined at the same Committee meeting as this application). The final figure will therefore need to be negotiated and revised to reflect the outcome of the Development Control Committee.

OPEN SPACE:

The submitted Planning Statement asserts that the Parish of Stowey Sutton already has sufficient supply of formal outdoor space to absorb the additional demand created by the development. However; the Council's data shows a deficiency in this regard, with an under supply of 0.52 ha and 0.37 ha for formal open space and allotments respectively. Contributions relating to both types of provision and totalling £164,437.20 are therefore required and will need to be secured through the S.106.

In respect of the detention pond on the northern section of the site, this area has not been included in the calculation as it is considered that this facility will not lend itself to being used as formal open space and would not therefore make a positive contribution in this regard. This view is consistent with the submitted application, which does not suggest that this part of the site would represent additional provision.

Whilst it is noted that the submitted Planning Layout details an area of open space within the centre of the main part of the site (stated to be 281m² within the submitted Planning Statement), an area of such modest scale, surrounded by the proposed built form and associated highway network, would not function as formal open space. The proposed provision of 281m² has not therefore been included as part of the contribution calculation.

There is no requirement for a contribution in respect of natural open space provision, by reason of the site's rural location and resultant easy access to areas of natural open space.

Overall no objection is raised in respect of open space provision subject to securing the appropriate funding through the S.106 agreement.

FLOODING:

The site is located in Flood Zone 1 and as such is more favourable for development, notwithstanding, residents have raised concerns about potential flood risk issues and about the poor drainage of the area in general.

The applicants have submitted an addendum to their flood risk assessment to which the Environment Agency have raised no objection. As part of this application the land to the north of the A368 is to be set aside for a detention pond and a detailed drainage strategy has been put forward. Discharge of surface water would be controlled by a hydrobreak flow control allowing 10.8l/s runoff. The detention pond has capacity to store 420m³ water which could accommodate a 1 in 100 year plus 30% flood event. Restricted outflow from the pond would be into the stream adjoining the northern field. Permeable paving will be

used to improve surface water drainage. Filtration tests have confirmed that soakaways would not be viable on this site.

Whilst the concerns of locals are noted and it is evident that this site at present is liable to surface water flooding, this application proposes a mitigation scheme that will improve surface water flow without adversely compromising discharge into the local watercourse. Overall the proposal is considered to be a benefit to the area and it is likely that the works will in themselves address the concerns of residents. Fundamentally, the Environment Agency have raised no objection to this application, which they consider to be acceptable subject to relevant conditions being applied. The Council's Highways Drainage team also have no objections to the application. The proposed development is considered to be in accordance with the prevailing local policies and the advice set out in the NPPF.

LAND STABILITY

The Coal Authority has considered this application however have raised no objection to the proposed development. The Coal Authority has commented that the Geotechnical Investigation and Contamination Risk Assessment Report correctly identifies that the application site has been subject to past coal mining activity. The Coal Authority records indicate the extreme southern part of the site has been subject to past underground coal mining at shallow depth and there are two off-site mine entries to the South West of the site.

The Geotechnical Investigation and Contamination Risk Assessment Report has been informed by an appropriate range of sources of information; including a Coal Mining Report, BGS geological mapping, and historic mapping. Based on this review of existing sources of geological and mining information the Risk Assessment is able to conclude that shallow mine workings do not pose a risk to the proposed development. Accordingly, no specific remedial measures are proposed and as stated, no objection is raised.

OTHER MATTERS:

Representations have made reference to how the obligations can be secured. Should permission be granted for the site, the applicants and other interested parties would enter into a Section 106 Legal Agreement with the Council. The S106 would include trigger points for when the contributions would be required to be paid and the Local Planning Authority regularly monitor schemes to ensure the contributions are being paid. If the land is sold, the S106 Agreement would be transferred to the new owners and any contributions become their responsibility.

Concern has been raised about the potential street lighting of the site given Bishop Sutton is generally absent of street lights. This issue has been raised with the applicant and whilst there is no objection to street lights per se, any lights would need to be appropriately designed to fit with the character and appearance of the site and would need to ensure that light spill is contained and does not adversely impact on the wider area. To this end it is recommended that a condition is imposed on the permission certificate requiring the submission of details for the street lights to be considered and approved prior to the adoption of the highway.

Several commentators have referred to the Stowey Sutton Parish Plan and the provisions for housing in the area contained within it. Whilst these comments are noted it is stressed that this document is not adopted policy and can only be treated as a tool for gauging local aspirations. It is noted that the Parish Plan does not accord with national policy as set out in the NPPF and the housing figures and development objectives are below those set out in the draft core strategy. Whilst the proposed development is contrary to the Parish Plan, as this is not adopted policy, no weight can be given to it.

A Screening Request was submitted with this application seeking a view as to whether the proposed residential development of this site represented Environmental Impact Assessment (EIA) development. The assessment concluded that the proposed development of the site is likely to have an impact on the visual character of the surrounding landscape and contribute to traffic and congestion however these issues are largely localised. The assessment concluded that the scale of the development is significantly below the threshold to be considered EIA development. The Screening Opinion concluded that the proposed development does not represent EIA development.

Part of the site adjoining the entrance is a designated public right of way. This is to be unaffected by the development however in accordance with Article 13 of the Development Management Procedure Order, 2010, the application was advertised on the 20th December 2012.

CONCLUSION:

Whilst it is accepted that this application is contrary to the relevant local plan policies as set out in this report by virtue of the fact that it proposes development outside the housing development boundary, the relevant policies are afforded to have less weight as the Council is currently unable to demonstrate a five-year land supply. The NPPF makes it clear that in such circumstances, Local Planning Authorities should grant consent for developments except where there are adverse impacts in doing so that would significantly and demonstrably outweigh the benefits, this approach has been robustly tested through the appeals process. In respect of this site, it is not green belt land, it is not covered by any specific protections or designations and its landscape value, by reason of its topography, is considered to be localised. Overall the impact of developing this site would be limited to the immediate area and as such it would be hard to argue that the benefit of providing the additional housing - particularly in light of the Council's current shortfall - are outweighed.

The proposed development is considered to be well thought out and well designed, offering an acceptable layout and style that would integrate with the surrounding area. The proposed, as stated, accords with the proposed changes to the Core Strategy and is in line with national policy. The proposed would preserve the existing vegetation and maintain wider landscape character whilst offering improvements to pedestrian access, surface run off and local flooding issues.

Having considered all relevant planning matters in respect of this case, in light of third party representations, consultation responses and the rapidly changing policy position as highlighted by recent appeal decisions it is concluded that on balance this application should be recommended for approval.

In making this recommendation this represents a departure from the development plan and therefore, in line Article 13 of the Development Management Procedure Order, 2010 and with Circular 02/09 the application was advertised on the 20th December 2012.

DRAFT PLANNING OBLIGATIONS:

The following is a summary of the draft heads of terms. In the event that the Committee resolves to grant permission, the details of the S.106 will need to be negotiated and finalised prior to the issuing of permission.

Housing:

- 35% of the overall residential provision to be secured as affordable and grant free housing with a max 75 /25 percent split between Social Rent and Intermediate Market housing.
- Affordability of any intermediate product including service charges and size mix as set out in the Ark Report Opening Doors (publicly available).
- 100% of the affordable housing to reach Lifetime Homes internal standards & identified on plan. (To be certified as meeting The Lifetime Homes Design Guide published by IHS BRE press written by Chris Goodman)
- To transfer the units to a partnering Registered Social Landlord (RSL) or other Affordable Housing Provider (AHP) as approved by the Council.
- Phasing conditions on affordable housing triggers to be set out in the Section 106 Agreement.
- Public subsidy (grant) will only be made available in the event that the RSL's or AHP's supportable deficit is insufficient to pay for the build costs. Grant will be subject to a comprehensive financial viability assessment. Where the assessment justifies a 35% contribution cannot be achieved, the full 35% affordable housing must still be identified on plan to ensure a later transfer of all affordable dwellings subsequent to grant aid being available.
- A Local Tie to give priority to people in the local community. Local Tie to be cascaded prioritising AH first to those in the Parish of Stowey Sutton, then the surrounding Parishes of West Harptree, Compton Martin, Chew Stoke, Chew Magna, Stanton Drew, Chelwood, Clutton, Cameley and Hinton Blewett, then to the District of Bath & North East Somerset.

Education:

- A contribution of up to £56,146.12 towards education will be required however the final figure will be subject to change following the outcome of the Committee meeting

Highways:

- A strategic contribution of £8,539.25
- The introduction of the pedestrian crossing of Wick Road (dropped kerb and tactile paving)
- Pedestrian Improvements up to £15,000

Open Spaces:

Total contribution of £164,437.20 towards public open space broken down as follows:

1. Formal open space provision:
 - a. Land purchase: £8,910.00
 - b. Construction costs: £70,920.00
 - c. Maintenance: £76,122.00
 - d. Enhance existing facilities: NIL

2. Allotment provision:
 - a. Land purchase: £1,782.00
 - b. Construction costs: £3,110.40
 - c. Maintenance: £3,592.80
 - d. Enhance existing facilities: NIL

Other Matters:

The following covenants to protect the hedgerows surrounding the site are to be placed on each of the plots abutting the hedgerows.

1. A restricted covenant worded along the lines of:
"Not to cut back the hedgerow [shown [] on the Plan] beyond the line of the post and wire fence forming the boundary of the Property and not to reduce the height of such hedgerow below [x] nor the width of it below [x]".
2. A positive covenant as follows:
"To maintain the hedgerow [shown [] on the Plan] in so far as it forms the boundary of the Property and carry out such pruning or cutting as may be necessary (subject always to the covenants in clause [] above) and where within a period of five years from the date of the development being completed such hedgerow dies, is removed, becomes seriously damaged or diseased to replace the same within 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".

RECOMMENDATION

Authorise the Development Manager, in consultation with the Planning and Environmental Law Manager, to enter into a section 106 agreement as detailed in the report to Committee. Upon completion of the agreement, authorise the Development Manager to permit the application subject to the following conditions.

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/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.

3 The dwellings hereby approved shall be built and finished in accordance with the schedule of materials set out on drawing 0475-108 (Materials Layout) received 8th February 2012 unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interest of the character and appearance of the development

4 Prior to the commencement of development of the proposed estate road, details of the means of street lighting shall first be submitted to and approved in writing by the Local Planning Authority. The details are to include the technical specifications of the lights including the height of the lighting columns and details of light spill.

Reason: in the interest of the character and appearance of the development and the surrounding area.

5 All hard and/or soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the Local Planning Authority. 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.

6 Notwithstanding the details of the approved plans, prior to the commencement of development of the detention pond a detailed landscaping scheme, including details of any planting and means of enclosure, shall first be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure satisfactory landscaping of the detention pond to the north of the development site.

7 The proposed estate roads, footways, footpaths, verges, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car parking and street furniture shall be constructed and laid out in accordance with details to be submitted to and approved by the Local Planning Authority in writing before their construction begins. For this purpose, plans and sections, indicating as appropriate, the design, layout, levels, gradients, materials and method of construction shall be submitted to the Local Planning Authority. Happy with this condition

Reason: To ensure that the roads are laid out and constructed in a satisfactory manner.

8 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.

9 Prior to the commencement of the development, a Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority and shall include details of deliveries (including storage arrangements and timings), contractor parking, traffic management and a road condition survey.

Reason: To ensure the safe operation of the highway.

10 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.

Reason: In the interest of residential amenity

11 No development shall commence until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has first been submitted to and approved in writing by the Local Planning Authority. The programme of archaeological work should provide a field evaluation of the site to determine date, extent, and significance of any archaeological deposits or features, and shall be carried out by a competent person and completed in accordance with the approved written scheme of investigation.

Reason: The site is within an area of potential archaeological interest and the Council will wish to evaluate the significance and extent of any archaeological remains.

12 No development shall commence until the applicant, or their agents or successors in title, has presented the results of the archaeological field evaluation to the Local Planning Authority, and has secured the implementation of a subsequent programme of archaeological work in accordance with a written scheme of investigation which has first been agreed and approved in writing by the Local Planning Authority. The agreed programme of archaeological work shall be carried out by a competent person and completed in accordance with the approved written scheme of investigation.

Reason: The site is within an area of potential archaeological interest and the Council will wish record and protect any archaeological remains.

13 The development shall not be brought into use or occupied until the applicant, or their agents or successors in title, has secured the implementation of a programme of post excavation analysis in accordance with a publication plan which has been submitted to and approved in writing by the Local Planning Authority. The programme of post-excavation analysis shall be carried out by a competent person(s) and completed in accordance with the approved publication plan, or as otherwise agreed in writing with the Local Planning Authority.

Reason: The site may produce significant archaeological findings and the Council will wish to publish or otherwise disseminate the results.

14 No development approved by this permission shall be commenced until a detailed surface water run-off limitation scheme, together with supporting calculations, has been submitted to, and approved in writing by the Local Planning Authority (LPA). The submitted details shall clarify the intended future ownership and maintenance for all drainage works serving the site. The approved scheme shall be implemented and maintained in accordance with the approved programme and details.

Reason: To prevent increased risk of surface water flooding.

15 No ground preparation or development activity shall commence until the protective fencing as shown on the Tree Protection Plan (reference D28 18 P3) is in place and checked and verified by the project Arboriculturalist. A signed certificate of compliance shall be provided to the local planning authority two weeks prior to development commencing. The fencing shall remain in place until completion of construction and any amendments shall be agreed in writing by the local planning authority beforehand.

Reason: To ensure that the trees and other landscape features to be retained are protected from potentially damaging activities.

16 The existing historic trees and hedges surrounding the site shall be retained in accordance with the details set out on the approved plans. Any retained tree or hedge which within five years of the approved development being occupied or completed, whichever is the sooner, dies, is removed or becomes seriously damaged or diseased shall be replaced by a similar species, of a size to be first approved in writing by the Local Planning Authority, during the next planting season or in accordance with a programme of replacement to be agreed in writing with the Local Planning Authority.

Reason: To safeguard the appearance of the development and the surrounding area and in the interest of the ecological value of the hedgerows.

17 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:

1 This decision relates to the documents and drawings date stamped as follows:

28th November 2012:

- APPLICATION FORM and SITE LOCATION PLAN

4th December 2012:

- AFFORDABLE HOUSING STATEMENT, ARBORICULTURAL CONSTRAINTS REPORT, ARCHAEOLOGICAL DESK-BASED ASSESSMENT, B&NES VALIDATION

CHECKLIST, DESIGN & ACCESS STATEMENT, DRAFT HEADS OF TERMS S106, DRAINAGE STATEMENT, ECOLOGICAL REPORT
GEOTECHNICAL INVESTIGATION AND CONTAMINATED LAND REPORT, HOUSING LAND SUPPLY ASSESSMENT, LANDSCAPE & VISUAL ASSESSMENT, PLANNING STATEMENT, REQUEST FOR A SCREENING OPINION, STATEMENT OF COMMUNITY INVOLVEMENT, SUPERSEDED - FLOOD RISK ASSESSMENT, SUPERSEDED - PARKING SCHEDULE, SUSTAINABILITY STATEMENT, SUSTAINABLE CONSTRUCTION CHECKLIST and the TRANSPORT STATEMENT

Drawings:

- 0475-100, 0475-106, 0475-109, 0475-110, 0475-200, 0475-201, 0475-202, 0475-203, 0475-204, 0475-205, 0475-206, 0475-207, 0475-208, 0475-209, 0475-210, 0475-211, 0475-212, 0475-213, 0475-214, 0475-215, 0475-216, 0475-217, 0475-218, 0475-219, 0475-220, 0475-221, 0475-222, 0475-223, 0475-224, 0475-225, 0475-226, 0475-227, 0475-228, 0475-229, 0475-230, 0475-231, 0475-232, 0475-233, 0475-234, 0475-235, 0475-236, 0475-237, 0475-302, 0475-320, 0475-321 A, BRS.3841_05, BRS.3841_12, BRS.3841_13 and D28 18 P3

14th December 2012:

- WESSEX WATER PLAN

17th January 2013:

- Drawings BRS 3841_11A, BRS 3841_13A, SK03 REV A

5th February 2013:

- Drawing SK03 A

8th February 2013:

- REVISED FLOOD RISK ASSESSMENT, REVISED PARKING SCHEDULE

- Drawings 0475-102 C, 0475-103 C, 0475-104 C, 0475-105 C, 0475-107 C, 0475-108 C, 0475-320 D, 0475-321 B, BRS 3841_13B

PUBLIC RIGHTS OF WAY

Clause 10 of the Draft Growth and Infrastructure Bill is to amend section 257 of the Town and Country Planning Act, 1990 to enable the authority to make a rights of way order where it is satisfied that an application for planning permission has been made. The measure will enable the rights of way order to be considered alongside the planning application, instead of having to wait until after planning permission has been granted.

CONTAMINATED LAND

In the event that contamination is found at any time when carrying out the approved development, work must be ceased and it must be reported in writing immediately to the Local Planning Authority. The Local Planning Authority Contaminated Land Department

shall be consulted to provide advice regarding any further works required. Contamination may be indicated by soils that have unusual characteristics such as: unusual colour, odour, texture or containing unexpected foreign material.

Gas monitoring and risk assessment should be carried out in accordance with CIRIA C665. Any gas protection measures required shall be proposed in accordance with the appropriate guidance. A Verification Report of the installed gas protection measures shall be submitted to the Local Planning Authority for consideration

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.

REASONS FOR GRANTING APPROVAL

1. Taking account of Section 38(6) of the Planning and Compulsory Purchase Act 2004, it has been concluded that the development accords with the National Planning Policy Framework - March 2012 and all other material planning considerations including those listed below at (A)
2. All other material considerations, including the views of third parties, have been considered and they do not outweigh the reasons for approving the proposed development.
3. The site falls outside of the adopted development boundary and the proposals were considered contrary to policies SC.1 and HG.4 of the Adopted Local Plan and policy RA1 of the submission draft Core Strategy. However, the Authority is presently unable to demonstrate a 5-year-housing land supply, and the authority neither has an Adopted Core Strategy or up-to-date Local Plan. Therefore, in accordance with the guidance in the National Planning Policy Framework the application is to be considered against the policies in the NPPF, with consent being granted unless there are any adverse impacts in doing so that would "significantly or demonstrably outweigh the benefits of the scheme".
4. In this case the development would give rise to locally significant landscape harm, due to its location on a greenfield site beyond the established footprint of the settlement. However the adverse impacts of the development would not significantly or demonstrably outweigh the benefits of the scheme in terms of the delivery of housing and therefore, in accordance with national policy, the application has been approved.
5. The proposed layout, mix, design, scale and mass are considered to be acceptable, respecting the local grain of development. The proposed dwellings will be finished in appropriate materials, consistent with the wider area.
6. The proposed development will not significantly harm the amenities of immediately adjoin residents to a degree that could justify refusing this application.

7. The proposed development will preserve the local ecology and trees and maintain the historic hedgerows.
8. The proposed development will improve issues of land drainage.
9. The proposed development offers more than sufficient on-site parking and proposes a safe means of access.
10. The proposed development will not adversely harm the openness of the adjacent green belt.

A

LEGAL FRAMEWORK

- Town and Country Planning Act, 1990

BATH & NORTH EAST SOMERSET LOCAL PLAN INCLUDING MINERALS AND WASTE POLICIES ADOPTED FOR OCTOBER 2007

- D.2 General design and public realm considerations
- D.4 Townscape Considerations
- IMP.1 Planning obligations
- CF.3 Contributions from new development to community facilities
- SR.3: Provision of recreational facilities to meet the needs of new developments
- BH.12 Important archaeological remains
- HG.4 Residential Development in R.1 Settlements
- HG.7 Minimum residential density
- HG.8: Affordable Housing on allocated and large windfall sites
- HG.10 Housing Outside Settlements
- GB.1 Control of Development in the Green Belt
- GB.2 Visual amenities of the Green Belt
- ES.5 Foul and surface water drainage
- ES.12 Noise and Vibration
- NE.1 Landscape character
- NE.4: Trees and woodland conservation
- NE.10 Nationally important species and habitats
- NE.11 Locally important species & habitats
- NE.12 Natural features: retention, new provision and management
- NE.14 Flood Risk
- T.1 Overarching access policy
- T.3 Promotion of walking and use of public transport
- T.24 General development control and access policy
- T.26 On-site parking and servicing provision

BATH AND NORTH EAST, SOMERSET, BRISTOL, NORTH SOMERSET, SOUTH GLOUCESTERSHIRE JOINT REPLACEMENT STRUCTURE PLAN (ADOPTED SEPTEMBER 2002)

- Policy 1 Sustainable Development
- Policy 17 Landscape Character

- Policy 54 Car Parking

DRAFT CORE STRATEGY, MAY 2011

The Draft core strategy is currently suspended following an Examination in Public however remains a material consideration. At this stage the Core Strategy has limited weight but should be read in conjunction with ID28, the Inspector's Preliminary Conclusions on Strategic Matters and Way Forward, June 2012:

Chapter 3, Rural Areas of ID28 is pertinent to this application

Draft Core Strategy Policies:

- RA1 - Development in the Villages meeting the listed criteria
- RA2 - Development in Villages outside the Green Belt not meeting Policy RA1 Criteria
- CP2 - Sustainable Construction
- CP6 Environmental Quality
- CP8 Green Belt
- CP9 - Affordable Housing
- CP10 - Housing Mix
- CP13 - Infrastructure Provision

SUPPLEMENTARY PLANNING GUIDANCE

- Planning Obligations Supplementary Planning Document, Adopted July 2009
- Mendip Hills AONB Management Plan 2009 -2014
- Rural Landscapes of Bath and North East Somerset - A Landscape Character Assessment, April 2003

NATIONAL PLANNING POLICY FRAMEWORK

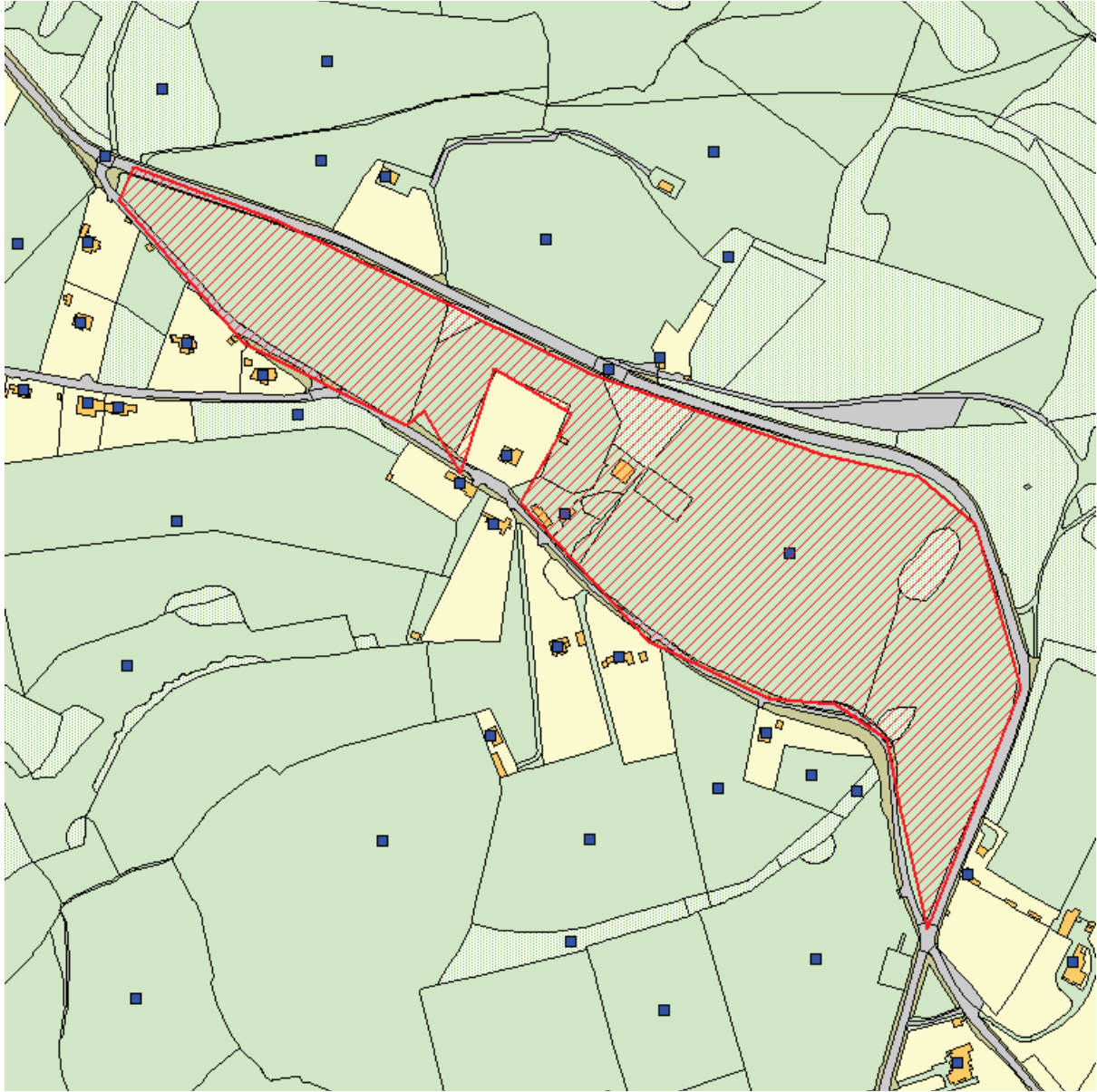
The NPPF came into effect on the 27th March 2012 replacing all previous Planning Policy Statements (PPS's) and Guidance Notes (PPG's). The NPPF is of primary consideration in the determination of this application.

In the case of the B&NES Local Plan, although adopted in 2007 this was made in accordance with 1990 Town and Country Planning Act and therefore Para 215 of the NPPF is applicable where it is stated "due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)".

DECISION TAKING STATEMENT

In determining this application the Local Planning Authority considers it has complied with the aims of paragraphs 186 and 187 of the National Planning Framework. The applicant has engaged in discussions and negotiations with the Authority and for the reasons given, and expanded upon in the related case officer's report, a positive view of the submitted proposals was taken and permission was granted.

Item No: 06
Application No: 12/04834/FUL
Site Location: Pack Horse Farm Old Midford Road Midford Bath BA2 7DQ



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

Ward Members: Councillor Neil Butters

Application Type: Full Application

Proposal: Change of use of land to equestrian, retention of 2no. mobile stable units for current DIY livery business and conversion of existing outdoor turnout area/starvation paddock to an all-weather riding arena (revised resubmission).

Constraints: Agric Land Class 1,2,3a, Agric Land Class 3b,4,5, Area of Outstanding Natural Beauty, Greenbelt, Listed Building, Water Source Areas,

Applicant: Mr Robert Barrett

Expiry Date:	11th February 2013
Case Officer:	Rachel Tadman

REPORT

REASON FOR REPORTING APPLICATION TO COMMITTEE:

Southstoke Parish Council have objected to the development so the application was referred to the Chair of Development Control Committee who was of the view that the application should be dealt with by Committee.

PROPOSAL: Change of use of land to equestrian, retention of 2no mobile stable units for current DIY livery business and conversion to existing outdoor turnout area/starvation paddock to an all-weather riding arena (revised resubmission).

SITE LOCATION: Pack Horse Farm

DESCRIPTION OF SITE AND APPLICATION:

The application site is located between Old Midford Road and Midford Road on the south eastern outskirts of Bath. The site currently contains an agricultural barn, a block 3 stables and tack room and a tractor shed. The site also contains an outdoor turnout area/starvation paddock and a block of two timber stables. The overall site is 8.09 hectares and is within the AONB, and the Greenbelt.

The proposal is for the change of use of the land to equestrian use, retention of 2no mobile stable units for current DIY livery business and conversion of existing outdoor turnout area/starvation paddock to an all weather riding arena (revised proposal). The application is retrospective in relation to the use and the erection of the block of 2 timber stables.

The application proposes the replacement of the existing surface of the outdoor turnout area/starvation paddock with an all weather surface for the exercise of horses. It also proposes to regularise the existing timber stable block of two stables which are 7.2m wide, 3.6m deep and 2.9m high at the ridge. The stable block also has a small overhang to the front and is constructed of timber walling with black corrugated sheeting to the roof.

The application does not propose lighting to the all weather arena.

Relevant History:

WB 014031 - PERMIT - 16 February 1996 - Erection of agricultural building and stable block - Temporary permission was given for the timber stable block

01/00086/REN - PERMIT - 12 February 2001 - Retention of stable block

01/02409/FUL - PERMIT - 6 September 2002 - Erection of cattle shed

06/01743/FUL - RF - 6 July 2006 - Conversion of tractor barn to two holiday units (resubmission)

07/00053/FUL - RF - 13 April 2007 - Change of use of tractor barn to create two holiday units. A subsequent appeal was dismissed.

07/03659/FUL - Parcel 2076, Old Midford Road, Midford, Bath - Change of use of land at Pack Horse Farm from agriculture to agriculture and equestrian, together with retention of a ménage/livestock holding area. The ménage was already in place when this application was submitted and the application sought to regularise this aspect of the scheme. The application was refused on 31 January 2008 for the following reasons:

Refused on 31 January 2008 for the following reasons:

1 The proposal constitutes an intensification in non-agricultural use on this predominantly agricultural smallholding without opportunity to assess its impact fully through a formal farm diversification proposal and as such it is inappropriate development within the Green Belt and AONB contrary to National Policies and Policies GB1 & 2 and NE1 of the Bath and North East Somerset Local Plan (including minerals and waste policies) adopted October 2007.

2 The physical development proposals are prominent within the holding, being out of keeping with the landform and field pattern and use existing and prominent within the Green Belt and the AONB contrary to Policies GB1 & 2 and NE1 of the Bath and North East Somerset Local Plan (including minerals and waste policies), adopted October 2007.

3 In the absence of an adequate farm diversification proposal, the proposed use and development is considered likely to have a potential adverse impact upon neighbour amenity and travel patterns contrary to Policies D2(h) and Policies T1, T24 and T26 of the Bath and North East Somerset Local Plan (including minerals and waste policies), adopted October 2007.

This application is of relevance to the application under consideration as it is, in some respects, very similar and is also being used by objectors as a precedent and argument for continuing to refuse equestrian use on this site.

However of particular relevance is that the previous scheme was considered as part of a farm diversification scheme and great weight was placed on the inadequacy of the information supporting such an approach in the reasons for refusal. In contrast, the current application is being put forward as a change of use of the whole site rather than as part of a wider farm diversification project and therefore has to be considered on its merits.

Furthermore significant weight in the refusal was given to the impact of the turnout area/starvation paddock on the Green Belt and AONB. However the turnout area has now existed for in excess of 4 years and is therefore unenforceable which overcomes these significant objections.

11/04606/FUL - 14 March 2012 - Change of use and conversion of existing redundant barn building to 2no. live-work units to incorporate new principal rider and grooms accommodation, addition of 2 stables to existing 2 mobile stables, to create 4 permanent stables for current DIY Livery Business, erection of stabling for 7 event horses and

conversion of existing outdoor turnout area/starvation paddock to an all-weather riding arena. This application was withdrawn.

SUMMARY OF CONSULTATIONS/REPRESENTATIONS

HIGHWAY DEVELOPMENT OFFICER: There are no highways objections to the proposed development.

There will be no additional traffic movements generated by the proposal, however my one concern lies with the potential for the new arena to hold events (gymkhanas, eventing etc.) which has the potential to generate relatively high levels of traffic, along a substandard road network.

If considered reasonable from a planning perspective, I would recommend that an appropriate condition is attached.

Environment Agency: The Environment Agency has no objections, in principle, to the proposed development but recommends that if planning permission suggested informatives and recommendations should be included in the Decision Notice.

Additional Comments: I note concerns remain over traffic generation. As I understand it, there is unlikely to be an intensification of use compared to its existing use for horse livery. The numbers of trips quoted are minimal when considered on a daily basis (just over 10 trips per day).

Notwithstanding this, the level of traffic generated by its lawful use as agriculture could vary depending on the intensity of the nature of the farm use (arable compared to livestock for example), and while figures are not available for these uses I am of the view that the keeping of horses on the site would not result in a significant increase in traffic.

While the local highway network has previously been described as "substandard", this term is used in consideration of modern design standards which clearly aren't appropriate in many circumstances, especially in rural areas. In this regard therefore, no recent planning application at this site has been recommended for refusal by the Highways Team on this basis.

In respect of this application, while the roads have been described as substandard, the levels of additional traffic would not justify a recommendation of refusal.

COTSWOLDS CONSERVATION BOARD: If the Council is minded to grant this application, the Cotswolds Conservation Board would suggest that conditions regarding the following issues are applied:

- a) The number of horses permitted to be kept on the land is restricted to the density advised by the British Horse Society; The BHS recommend a ratio of two horses per hectare on permanent grazing. In this case adult 3 horses would be the maximum number. Exceeding this number will result in permanent damage to the pasture by overgrazing and "poaching" in wet weather.
- b) A pasture and waste management plan is approved by the Council in order to ensure that the pasture remains in good condition and opportunities are taken to conserve and enhance biodiversity;

- c) Permitted development rights for the erection of shelters, fences, jumps etc on the land are restricted to avoid visual clutter in the AONB;
- d) Any external lighting is time limited to avoid harm to tranquillity and dark skies in the AONB.

All these conditions would be required in order to conserve the landscape and scenic beauty of the Cotswolds AONB, conserve and enhance biodiversity, and protect tranquillity and dark skies, all in accordance with the NPPF.

SOUTH STOKE PARISH COUNCIL: Object in Principle for the following reasons:

- 1. Harm to the Green Belt and its openness, and the AONB due to additional buildings, intensification of use, storage of horse trailers and the all weather arena.
- 2. Increase in traffic which is harmful to highway safety
- 3. Harm to residential amenity

The Parish Council also raise concerns about the existing unauthorised use of the site as equestrian. They also highlight the planning history of the site where an application for equestrian use was refused in 2008.

OTHER REPRESENTATIONS / THIRD PARTIES

A total of 14 representations have been received of which 13 object to the development. These raise the following concerns:

- 1. Harmful impact on highway safety
- 2. Harm to residential amenity through increased noise and disturbance
- 3. Unauthorised use as equestrian
- 4. Harm to Green Belt and the AONB.

POLICIES/LEGISLATION

Bath & North East Somerset Local Plan including minerals & waste policies adopted 2007 - the following policies are relevant:

- D.2 and D.4 - Design and Residential Amenity
- BH.2 - Impact on Listed Buildings and their setting
- GB1, GB2 - Acceptability within and impact on the Green Belt
- NE1, NE2 - Impact on the landscape and the Area of Outstanding Natural Beauty
- T.1, T.24, T26 - Highways Safety.

Bath and North East Somerset Submission Core Strategy (May 2011) is out at inspection stage and therefore will only be given limited weight for development management purposes.

National Planning Policy Framework (NPPF) - March 2012

OFFICER ASSESSMENT

PLANNING ISSUES:

PRINCIPLE OF PROPOSED USE/DEVELOPMENT:

The site has been in an unauthorised use as equestrian for some time and has been subject to a number of planning applications seeking to regularise the use and other developments such as the provision of the outdoor turnout area/starvation paddock.

However, whilst the existing outdoor turnout area/starvation paddock does not have the benefit of planning permission, it has now been in place for over four years so is unenforceable. Therefore, with respect to this aspect of the application, the proposal only includes the relatively simple procedure of replacing its existing surface with an all weather surface for the exercise of horses.

The site has an overall lawful use as agricultural although the grant of planning permission to retain the block of 3 timber stables and tack room in 2001 (01/00086/REN), having been granted temporary permission some years before, implies that some element of equestrian/recreational use was to be introduced onto the site albeit ancillary to the existing agricultural use.

Nevertheless the proposal is now to change the use of the whole site to equestrian which is within the Green Belt. The NPPF states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Planning Policy Guidance Note 2: Green Belts formerly allowed for the making of a material change of use of land which maintained openness and did not conflict with the purposes of including land in the green belt (para 3.12).

However Chapter 9 of the NPPF, titled Green Belt, has omitted the reference to 'material changes of use' being not inappropriate.

Paragraph 90 of the NPPF has an exhaustive list of certain 'other' forms of development which are not inappropriate in Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt. These are:

- mineral extraction;
- engineering operations;
- local transport infrastructure which can demonstrate a requirement for a Green Belt location;
- the re-use of buildings provided that the buildings are of permanent and substantial construction; and
- development brought forward under a Community Right to Build Order

Paragraph 90 does not include any reference to material changes of use which means that any material change of use of land in the Green Belt is now inappropriate development by default.

This is a significant issue for proposals such as this as the proposed change of use is now, under the guidance of the NPPF, considered as inappropriate development within the Green Belt. Therefore it would only be permissible where very special circumstances can be demonstrated.

Notwithstanding this the proposed stable block is considered as being an appropriate facility for the purposes of outdoor sport or outdoor recreation because this is a building which complies with paragraph 89 of the NPPF.

In response further information has been submitted to support the application and to justify very special circumstances. This is summarised below:

The information argues that the proposed development should be considered under Paragraph 89 of the NPPF which advises that new buildings are inappropriate development within the Green Belt unless they meet one of the exceptions listed.

Paragraph 89 then advises that provision for appropriate facilities for outdoor sport and outdoor recreation as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it.

It is argued that as the site has already been grazed by horses in the past then the purposes of including land within the Green Belt 'must have an existing use or allowed to be changed for similar uses within the Countryside'.

Officers are of the view that, whilst it is true that some element of equestrian use has existed on the site, this is considered to be an ancillary use and the application being considered is for a material change of use to a sole equestrian use. As explained above, this is considered as inappropriate development within the Green Belt.

In light of this it is considered that the information submitted does not represent very special circumstances to outweigh the harm, by reason of inappropriateness, to the Green Belt.

DESIGN AND IMPACT OF THE PROPOSED DEVELOPMENT:

The proposed development includes two elements of operational development namely the erection of a pair of timber stables and the change of surface to the turnout area to an all weather surface. These need to be considered against the site's location within the AONB, Green Belt and within the setting of a Grade II listed building.

With regard to the Green Belt, it has already been concluded that the proposed material change of use is inappropriate development and therefore harmful to the Green Belt. Nevertheless when harm to the openness of the Green Belt is considered the level of activity on the land as a result of an equestrian use, has to be balanced carefully against its lawful agricultural use. In this case the level of activity, including the storage of trailers etc, is likely to be very similar to an agricultural use. Concerns with regard to jumps being used could be adequately controlled by conditions.

Overall, and on balance, it is the Officer's view that the change of use would not have a harmful impact on the openness of the Green Belt and would not be contrary to the

purposes of including land within the Green Belt. The same view is taken with regard to the replacement of the surface of the turnout area to an all weather surface is also not considered to harm openness. In relation to the erection of the timber stable block it is of a small size and scale and is also not considered to have a harmful impact on openness.

The site is also within the Cotswolds Area of Outstanding Natural Beauty and a representation from the Cotswolds Conservation Board has been received. Whilst no objection is raised they do suggest a number of conditions, most of which would be appropriate to attach. However the suggestion that the site should only accommodate 3 horses, in line with British Horse Society guidelines of 2 horses per hectare, would appear to be a miscalculation. The site is just over 8 hectares so could comfortably accommodate 16 horses.

The previous refusal for equestrian use in 2008 did conclude that the development would have a harmful impact on the AONB and this was included in the reasons for refusal. However significant weight was given to the impact of the turnout area/starvation paddock which, as has been explained, is now unenforceable. Therefore when the remaining elements are considered it is now the view of Officers that the development would not have a harmful impact on the AONB.

The adjacent Pack Horse House is a Grade II listed building so the impact of the development on its setting is also relevant. As the operational development is relatively minor, and located some distance from the building it is considered that this would not have a harmful impact on its setting. Furthermore the change of use from agricultural, given their similar characteristics, is also not considered to have a harmful impact on the setting of the Grade II listed building.

RESIDENTIAL AMENITY: The site is located directly adjacent to the original dwelling of Pack Horse Farm and there are also other dwellings located on the opposite side of Old Midford Road close to the site.

The proposed change of use has to be balanced against the existing authorised use as agriculture which can have an impact, sometimes detrimental, to the residential amenity of neighbouring occupiers. Particularly where the agricultural use is intensive, the impact can take the form of noise, smells and disturbance which can be experienced from early in the morning to late at night.

In comparison the change of use to equestrian is unlikely to have an impact over and above that experienced by an agricultural use, particularly an intensive agricultural operation. Horse owners usually visit in the morning and again at night and are unlikely to cause levels of noise or disturbance that would be detrimental to residential amenity. With regard to smells the plans clearly show the muck heap located some distance away from the nearest dwelling.

With regard to the proposed erection of two stables and the change of surface to the turnout area, both of these developments are located some 40m and 70m respectively distance from the boundary of the nearest dwelling, in this case Pack Horse House. In light of this it is considered that these elements of the scheme would not have a harmful impact on the residential amenity of any neighbouring occupiers.

Whilst it is acknowledged that the 2008 refusal cited harm to residential amenity as a reason for refusal and that many objections have also been received in this respect, on reconsideration Officers are now of the view that the impact of the development on residential amenity would not be over and above that that could be experienced by the authorised agricultural use.

PLANNING OFFICER ASSESSMENT OF HIGHWAY ISSUES:

The site has a lawful use as agriculture and already contains a number of agricultural buildings including a tractor shed. The size of the site, at just over 8 hectares, could result in a number of traffic movements by vehicles accessing the site, including tractors with trailers and livestock lorries which could vary depending on the intensity of the nature of the farm use (arable compared to livestock for example).

The proposed change of use from agriculture to equestrian would also result in a number of traffic movements, including vehicles with trailers and horse lorries. However, in comparison, it is unlikely that the proposed use would have any significant impact on highway safety over and above that which could be expected from an agricultural use.

The Highways Development Officer has acknowledged that the local highway network has previously been described as "substandard", but is of the view that this term is used in consideration of modern design standards which clearly aren't appropriate in this case, specifically due to its location within a rural area. Nevertheless, it is not expected that the levels of additional traffic would not justify a recommendation of refusal.

In light of this the Highways Development Officer has raised no objections to the scheme subject to a condition preventing the site's use for events which could attract a high level of vehicle movements along narrow lanes and is therefore considered appropriate in these circumstances.

In terms of sustainability the site is located close to the existing dwellings and not far from the boundary of the urban area of Bath. As equestrian uses obviously need to be within the countryside it is considered that the proposed development given its specific characteristics, in its location close to an urban area, is within a sustainable location.

The Parish Council has pointed out that the 2008 refusal cites the harmful impact on highway safety as a reason for refusal. At that time it was stated in the delegated report that the Highways Development Officer objected to the scheme on the grounds that it did not form part of a farm diversification scheme and was therefore unacceptable. However it appears that the Highways Development Officer comment was taken from the 2007 refusal in relation to the change of use of the tractor barn to create two holiday units. On reflection it is considered that this approach was not correct as the application for the conversion of the tractor sheds and the application to change the use of the site to equestrian were different and raised different issues and pressures on the highway network.

CONCLUSION:

The proposals comprise a material change of use of the land which is, due to the revised guidance within the NPPF, considered to comprise inappropriate development within the

Green Belt which is harmful by definition and therefore unacceptable in principle. Whilst information to justify very special circumstances has been submitted they are not considered to outweigh the harm, by way of inappropriateness, to the Green Belt. However the proposed erection of a pair of timber stables is considered to be an appropriate facility for outdoor sport and outdoor recreation and is therefore not inappropriate development.

With regard to the impact of the development on the openness of the Green Belt, when balanced against the lawful use for agriculture, the proposed change of use, change of surface to the turnout area and the erection of the timber stables, are not considered to harm openness.

Again, when balanced against the lawful use for agriculture, the location of the operational elements of the development and the overall change of use to equestrian, the proposal is not considered to have a detrimental impact on the residential amenity of any neighbouring occupiers.

Furthermore the proposed development is not considered to have a harmful impact on highway safety over and above any impact that would have existed in the site's lawful use as agriculture. The Highways Development Officer has raised no objections to the development and it is considered that the level of traffic accessing the site would be similar to an agricultural use, especially an intensive use, and therefore is considered to be acceptable.

RECOMMENDATION

REASON(S) FOR REFUSAL

1 The proposed material change of use of the land from its lawful use as agriculture, to recreational use (equestrian), in the absence of very special circumstances to outweigh any harm to the Green Belt, would comprise inappropriate development within the Green Belt which is, by definition harmful, and therefore unacceptable in principle. This would be contrary to Policy GB1 of the Bath & North East Somerset Local Plan including minerals & waste policies adopted 2007.

PLANS LIST:

This decision relates to drawing nos 035 004 Rev C, 035 002 Rev D, 035 011, 035 012, Longcross Stables 05, S4926/001 A, S4926/100.

In determining this application the Local Planning Authority considers it has complied with the aims of paragraphs 186 and 187 of the National Planning Framework. The submitted application was unacceptable for the stated reasons and the applicant was advised that the application was to be recommended for refusal. Despite this the applicant chose not to withdraw the application and having regard to the need to avoid unnecessary delay the Local Planning Authority moved forward and issued its decision.

Item No: 07
Application No: 13/00154/REG03
Site Location: City Of Bath College Avon Street City Centre Bath Bath And North East Somerset



Ward: Abbey **Parish:** N/A **LB Grade:** N/A
Ward Members: Councillor B J Webber Councillor Manda Rigby
Application Type: Regulation 3 Application
Proposal: Installation of a public sculpture and plinth.
Constraints: Agric Land Class 3b,4,5, Article 4, Conservation Area, Forest of Avon, Hotspring Protection, World Heritage Site,
Applicant: Bath And North East Somerset Council
Expiry Date: 26th March 2013
Case Officer: Tessa Hampden

REPORT

REASON FOR REPORTING APPLICATION TO COMMITTEE:

The applicant's agent has a close association with Planning Services and the application is made on behalf of Bath & North East Somerset Council.

SITE DESCRIPTION AND PROPOSAL

Temporary planning permission was given in April 2012 for 9 sculptures located around Bath city centre, as part of the Sculpture and Sport art exhibition celebrating the 2012 Cultural Olympiad. This current application relates to the sculpture which features the torso of Olympic swimmer Mark Foster and is carved of Bath stone set upon a Bath stone plinth. The installation measures 3.08m in height and is 1.38m at its widest point. Planning permission to extend the time limit of the subject installation was granted until 31st March 2013 at the junction of Southgate Street and Stall Street. This was to enable a long term location for the work to be resolved. Following a programme of stakeholder engagement, the City of Bath College frontage was chosen as the preferred location. The City of Bath College was preferred because of the association the plinth has with the stone masonry skills taught at the college.

The planning application therefore seeks planning permission for the permanent installation of the public sculpture and plinth at the City of Bath College. The site is set within the City of Bath Conservation Area and within the wider World Heritage Site.

Relevant planning history

12/00495/FUL -PERMIT- Erection of 9 temporary plinths with name plaques in various locations (for the display of temporary public art works) (01/05/2012 - 01/11/2012) -

DC - 12/03184/REG03 - PERMIT - 27 September 2012 - Extension of temporary permission for statue at Stall Street/New Orchard Street from 1 November 2012 to 30 April 2013

SUMMARY OF CONSULTATIONS/REPRESENTATIONS

None received. However, the consultation period has not yet expired, but Members will be provided with an update if any representations are received.

POLICIES/LEGISLATION

BATH & NORTH EAST SOMERSET LOCAL PLAN INCLUDING MINERALS AND WASTE POLICIES ADOPTED FOR OCTOBER 2007

D.2 General Design and Public Realm Consideration

D.4 Townscape Consideration

BH.1 World Heritage Site

BH.6 Conservation Area

SUBMISSION CORE STRATEGY, MAY 2011 (The submission core strategy is a key material consideration but at this stage it has limited weight)

OFFICER ASSESSMENT

Assessment of design and setting

The sculpture and plinth will be seen against the back drop of the college building. The recent contemporary extension to this building provides an appropriate setting for this statue which will appear as an acceptable addition to this site. Although the statue is relatively tall, given the siting adjacent to these larger buildings and the space surrounding the proposal, the statue is not considered to appear overly prominent in this location. The Design and Access Statement cites that the development will act as a central focus of the college forecourt and student meeting place. Elevated views from the college building will reveal the detailed inscribed back section of the work.

Overall therefore the proposed development is considered to respond appropriately to this context and is considered to be an acceptable additional to the public realm. The proposal is not considered to adversely harm the character and appearance of the City of Bath Conservation Area or the setting of the wider World Heritage Site.

Highway safety

The proposed location is within the college forecourt which is set away from the public highway. Its siting ensures that the development does not adversely impede pedestrian movement or cause a highway safety issue.

RECOMMENDATION

For the reasons set out in this report it is recommended that planning permission is granted for the permanent relocation of the Mark Foster torso statue at the City of Bath College.

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/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:

Plan: 1133/03 date stamped 25 Jan 2013 and 1133/03A date stamped 25th February 2013 and Design Statement date stamped 14th January 2013

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
2. All other material considerations, including the views of third parties, have been considered and they do not outweigh the reasons for approving the proposed development.
3. The relocation of this art installation which is currently in situ has been carefully sited and designed so as not to adversely harm the setting of the character and appearance of this part of the Conservation Area or setting of the wider World Heritage Site. The development does not impact upon highway safety.

DECISION TAKING STATEMENT

In determining this application the Local Planning Authority considers it has complied with the aims of paragraphs 186 and 187 of the National Planning Framework. For the reasons given, and expanded upon in a related case officer's report, a positive view of the submitted proposals was taken and permission was granted.

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Bath and North East Somerset Council			
MEETING: Development Control Committee	AGENDA		
MEETING DATE: 13 March 2013	ITEM NO:		
REPORT OF David Trigwell, Divisional Director of Planning and Transport Development.			
REPORT ORIGINATOR: Ms Lisa Bartlett, Development Manager (Tel. Extension No. 7281).			
DATE PREPARED: 24 th January 2013			
AN OPEN PUBLIC ITEM			
BACKGROUND PAPERS: Enforcement file 12/00372/UNAUTH			
TITLE: Enforcement Report: Red Hill House, Red Hill, Camerton, Bath BA2 0NY			
WARD : Bathavon West			

1.0 PURPOSE OF REPORT

A decision on this matter was deferred at the last Development Control Committee meeting on 13th February 2013 for members to carry out a site meeting. This report has been updated to reflect both verbal updates from the last meeting together with further information received to date.

To seek Members view on the harm caused to highway safety and landscape character and amenity of the area with respect to the unauthorised material change of use of a single dwellinghouse to a mixed use of dwelling, daily yoga classes, weekend retreats and other associated business activities. Officers are seeking Authority from Members to issue an enforcement notice to require the use of the dwelling for business purposes, yoga classes and weekend retreats to cease.

2.0 LOCATION OF PLANNING CONTRAVENTION

Red Hill House, Red Hill, Camerton, Bath BA2 0NY (“the Property”), as outlined in bold on the attached site location plan (Appendix 1).

3.0 OUTLINE OF PLANNING CONTRAVENTION

Without planning consent the material change of use of a single dwellinghouse to a mixed use of dwelling, daily yoga classes, weekend retreats and associated business activities.

4.0 RELEVANT PLANNING HISTORY

08/00669/FUL – Conversion of car port to sun room – Permitted
08/04291/FUL- Change of use of existing sun room to provide yoga classes and creation of hardstanding for associated parking (retrospective) – Refused
09/01515/CLPU – Use of dwelling to teach yoga classes (Certificate of Lawfulness for a Proposed Use) – Refused
09/03166/CLPU – Use of dwelling to teach yoga classes (Certificate of Lawfulness for a Proposed Use) – Refused, appeal dismissed.
11/05201/FUL - Change of use from dwelling to mixed use dwelling and yoga school (Retrospective) – Refused

For information only and not for consideration in this report - Members are advised that on 1st February 2013 a Tree Preservation Order (TPO) was made covering all the trees on the site. The deadline for representations to the Order is 10th April 2013. On 11th February 2013 an application to fell one Sycamore and one Cherry was received, reference 13/00604/TPO. The target date for a decision is 8 April 2013.

5.0 BACKGROUND

On 15 April 2008 planning permission was granted, reference 08/00669/FUL, for the conversion of the existing car port to a sun room. In November 2008 an application was submitted for the change of use of existing sun room to provide yoga classes and creation of hardstanding for associated parking (retrospective), reference 08/04291/FUL. It was proposed that clients would park on land opposite Red Hill House and the applicant would stand in the highway to stop traffic and see clients across the road. This application was subsequently refused on 10 February 2009 for the following reasons:

- 1. The proposed change of use of the residential dwelling to business use will result in an increase in pedestrian movement to and from the dwelling (when operating as a Yoga studio) both along the carriageway and to the proposed car park at a point where there is insufficient visibility to ensure the safe crossing of the highway. This is in conflict with policy T24 of the Bath and North East Somerset Local Plan.*
- 2. The proposed change of use of the residential dwelling to business use will result in an increase in vehicular movements to and from the western and eastern side of Red Hill to the detriment of students of the Yoga studio and other road users. This is in conflict with policy T24 of the Bath and North East Somerset Local Plan.*
- 3. The proposed creation of a formal parking area on land located on the eastern side of Red Hill within open countryside would detract from the rural character of this part of Red Hill contrary to policy D2 of the Bath and North East Somerset Local Plan.*

Since this time there have been a number of applications seeking permission to operate a yoga business at this location all of which have been refused due to highway safety implications. The applicant has appealed the Council's decision on one occasion namely the decision against a refusal to grant a certificate of lawful use or development, reference 09/03166/CLPU which was refused on 11 June 2010. The Inspector in his decision letter dated 5 April

2011 stated “the vehicle movements associated with the proposed yoga classes would, as a matter of fact and degree, bring about a material change of use in the character of the use of the appeal property, compared with its use as a single dwellinghouse”. The appeal was subsequently dismissed.

Since this time activity has increased, Yoga classes, workshops and retreats continue to take place at Red Hill House. The current level of activity includes at least 16 regular classes per week at various times in the day including morning, afternoon and evening. It is advertised that each class has no more than 13 students. In addition, there are occasional Saturday workshops throughout the year and additional monthly classes. There are approximately 7 instructors. A number of weekend retreats take place throughout the year. The property is also advertised as being available for rent for private classes and weekend workshops able to cater for up to 40 people seated. The main house is offered as a bed and breakfast facility with up to 6 bedrooms capable of sleeping up to 15 people.

In an attempt to overcome highway concerns the owner has suggested various alternative parking proposals. The attached plan shows the alternative parking proposals which have been considered which include parking on land on the opposite side of the road to Red Hill House, utilising parking at an existing restaurant site approximately 720m to the north of the site, and the use of an existing car park at Travis Perkins. More recently the owner has proposed parking in an adjacent field directly to the North of Red Hill House. Each of these proposals has been considered however Officers consider that none of the proposals overcome highway safety concerns. Furthermore, it is considered the proposals to create a parking area within the open countryside would detract from and have an adverse impact on the rural character of the area contrary to Policies D.2 which seeks to reduce the impact of car parking on the character of an area and NE.1 which seeks to retain and enhance local landscape character in resisting development which does not conserve or enhance the local distinctiveness of the landscape.

The Council wrote to the owner in August 2012 advising that an alternative venue should be sought. Since this time the yoga business has continued to operate. In January 2013 Officers agreed with the owner that the unauthorised business activities would cease on or before 31st March 2013 and that the owner would make enquiries to relocate to more suitable premises. It became evident that this was unlikely to happen before 31st March and therefore the matter was reported to the Development Control Committee on 13th February 2013.

On 27th February 2013 a site meeting was held at Red Hill House attended by Ms Martinus (owner), Ms Wake (Greenvale Design) on behalf of the owner, and the Council’s Highway Officers, Senior Arboricultural Officer and Principal Planning Enforcement Officer. The following issues were discussed:-

Visibility

Some clearing of vegetation at the entrance to the site has been made resulting in a marginal improvement to visibility. However, in order to make

significant improvements to visibility to provide a safe means of access, considerable alterations to the bank, hedge and trees would be required. Whilst the bank area immediately south of the entrance could be cut back a little way to effect some further visibility improvement, the extent of the works necessary to achieve the minimum highway requirements would necessitate the loss of mature trees and the excavation of a significant length of the bank which Officers consider is unacceptable due to the adverse effect on the landscape character and amenity of the area.

The level of appropriate visibility for an access onto Red Hill, having regard to the recorded speeds on this road (85th percentile of 35-40mph), would be splays of 2.4m by 70-90m in accordance with standards in Design Manual for Roads and Bridges, which are considered to be the most appropriate standards for this type of road. It should be noted that the lesser standards for visibility in Manual of Streets which requires splays of 2.4m by 45m, could still not be achieved without unacceptable impact on hedges and trees.

Of the two existing mirrors opposite the site entrance, one provides a good quality view of the traffic from uphill. The other existing mirror provides a distorted view to the right and it is the owner's intention to replace this with a high quality mirror to improve visibility and to position a third, high quality mirror further downhill, on the opposite side of the road from the entrance, with a good sightline to traffic coming around the sharp bend from downhill.

The suggested use of existing and new mirrors to aid movements out of the access is not recommended or supported by the Highway Authority, as they can distort images and give false representation of distances.

Parking and Vehicle Access Management

At the meeting the owner produced a parking and turning area layout plan which officers agreed provides a better management of parking and turning within the site. However, this plan does not show the position of existing trees nor reflect their potential loss. On 28th February 2013 Members were sent a copy of this plan by Ms Wake. In addition new rules for accessing the site and parking have now been introduced by the owner at the Yoga Centre, these are:

- No right turn out of the site allowed
- A no parking turning area is marked out to ensure vehicles can exit site without reversing
- Maximum of 6 vehicles to be parked on site at any time.

Whilst the owner has outlined how these rules will be applied, it is Officers opinion that the Council would not be possible to regulate or enforce such rules.

To date five third party representations have been received in support of the yoga centre. Comments include:

- The centre is a special place that provides affordable yoga classes and workshops for the local community.

- Positive effect on health and wellbeing that yoga provides.
- Enjoy having the Universal Yoga Centre in Camerton.

All representations of support received acknowledge the difficulty of parking and manoeuvring when visiting classes.

Six third party representations in objection have been received all of which express concerns in relation to the highway safety of both pedestrians and vehicles.

To date an acceptable resolution to the current situation has not been found and the use of this dwelling in connection with a yoga business remains unacceptable. Your Officers are therefore seeking authority to take appropriate action.

6.0 DEVELOPMENT PLAN

Of particular relevance to this matter is the Bath and North East Somerset Local Plan (including minerals and waste policies) adopted October 2007 (the Local Plan). Of particular relevance are T.24 and T.26 relating to highway safety and parking provision.

National Planning Policy Framework (“NPPF”) was published March 2012 and is a material consideration. Local Plan policies T.24 and T.26 are consistent with national policy contained in the NPPF.

7.0 EXPEDIENCY OF ENFORCEMENT ACTION

Red Hill House is a large residential dwelling located to the north of the Camerton housing development boundary. It has seven bedrooms and stands within grounds of approximately 0.25ha.

Red Hill is a classified road of relatively limited width. The road is well used by local residents and also provides a link/short cut between the Radstock /Bath road (A367) and the Timsbury/Bath Road (B3115). The highway does not benefit from a footway in either direction to/from the application site and due to the line of the road, including bends, does not provide a safe pedestrian access to the property.

The programme of classes is currently advertised by way of a website, social media sites and local leaflet distribution. The classes are advertised as ‘taking place in a purpose built studio’ (a former sun room which was granted planning permission in 2008). In addition, bed and breakfast, retreats and weekend workshops as well as private classes to all levels, ages and abilities are also advertised. The Council is of the opinion that the overall use by virtue of the number and nature of classes held (including weekend retreats); the frequency of the classes; the number of attendees; staffing levels; and the levels of associated traffic, greatly exceed that which would reasonably be expected in association with purely domestic occupation. The current and

potential increased use of the sub- standard access is prejudicial to highway safety. Furthermore, the Council consider that the trees provide an important contribution to the landscape character and amenity of the area and their future removal to improve visibility would result in unacceptable harm.

In the circumstances, enforcement action against the unauthorised yoga classes, weekend retreats and associated business activities is therefore considered expedient as all likely alternative parking facilities have been explored and considered unacceptable. Furthermore, Officers are of the opinion that were an application received for this use, there are no conditions which could be attached to permission that would overcome the serious highway safety concerns and at the same time safeguard the appearance of the area.

8.0 HUMAN RIGHTS

8.1 It is considered that Article 1 of Protocol 1 (peaceful enjoyment of possessions) and Article 8 (right to respect for private and family life, home and correspondence) of the European Convention on Human Rights may apply in this case. However, those rights must be weighed against the public interest in preserving the character and appearance of the surrounding area. Given that the unauthorised works are harmful and contrary to the Development Plan and given that there are no material considerations which outweigh the harm. It is considered that Enforcement Action would be a proportionate interference in the wider public interest.

9 RECOMMENDATIONS

That delegated authority be granted to the Development Manager, in consultation with the Planning and Environmental Law Manager, to take any necessary enforcement action on behalf of the Local Planning Authority in respect of the alleged planning contravention outlined above, by exercising the powers and duties of the Authority (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 Property.

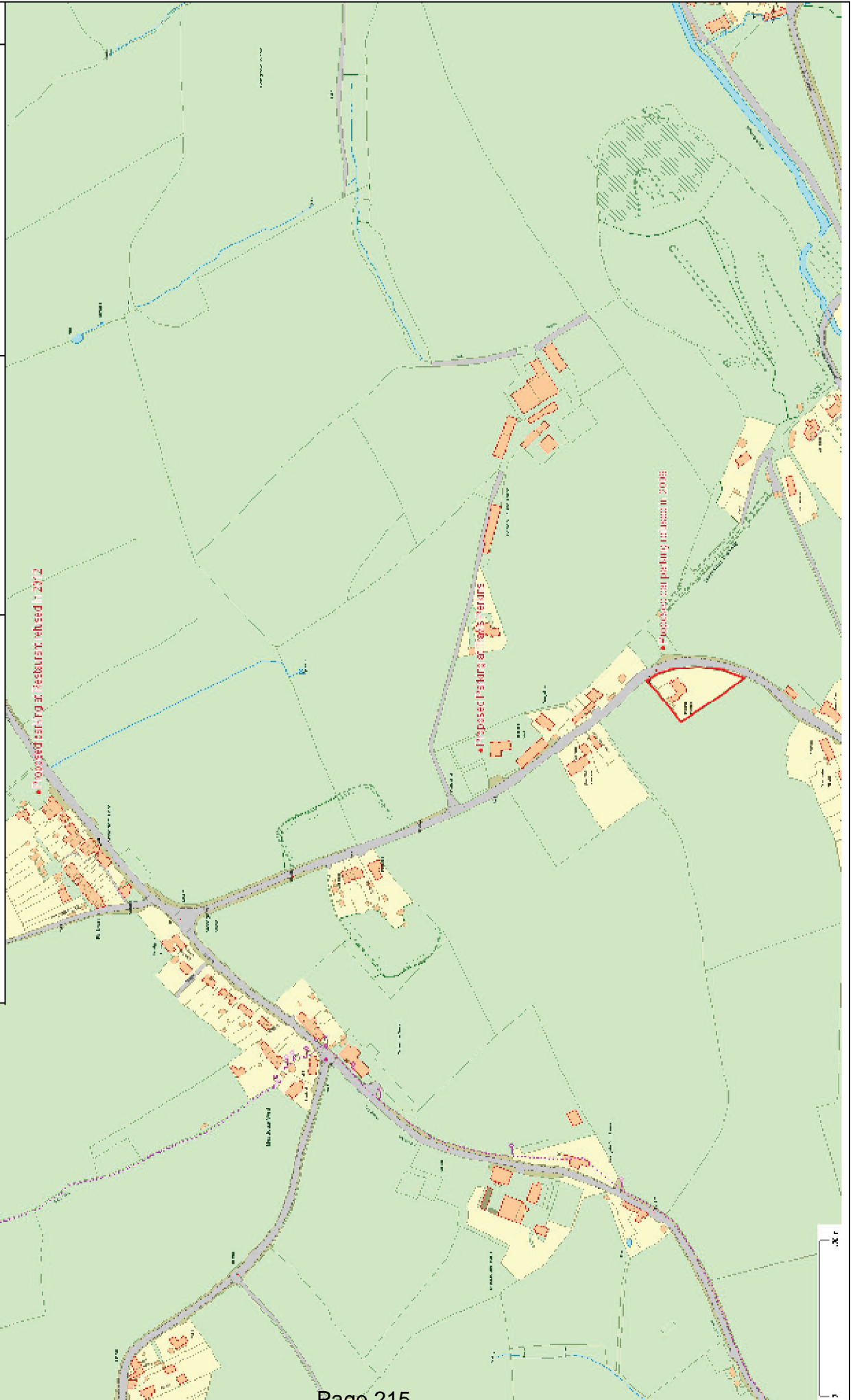
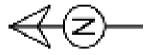
General Note

This specific delegated authority will, in addition to being the subject of subsequent report back to Members in the event of Enforcement Action either 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 Head of Planning Services, and*
- (d) *maintenance of a proper record of action taken.*

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Bath & North East Somerset Council	
MEETING:	Development Control Committee
MEETING DATE:	
RESPONSIBLE OFFICER:	Lisa Bartlett, Development Control Manager, Planning and Transport Development (Telephone: 01225 477281)
	AGENDA ITEM NUMBER
TITLE:	NEW PLANNING APPEALS, DECISIONS RECEIVED AND DATES OF FORTHCOMING HEARINGS/INQUIRIES
WARD:	ALL
BACKGROUND PAPERS:	None
AN OPEN PUBLIC ITEM	

APPEALS LODGED

App. Ref: 12/02826/FUL
Location: Land Between Barton House And Laburnum Cottage The Barton Corston Bath
Proposal: Erection of a single dwelling from an existing access on land adjacent to Laburnum Cottage (Resubmission)
Decision: REFUSE
Decision Date: 22 August 2012
Decision Level: Delegated
Appeal Lodged: 31 January 2013

App. Ref: 12/03887/FUL
Location: Homefield Lower Shortwood Farm Whitehouse Lane Hinton Blewett Bristol Radstock
Proposal: Change of use of existing barn for use as holiday let
Decision: Non-determination
Decision Date: 20 February 2013
Decision Level:
Appeal Lodged: 7 February 2013

App. Ref: 12/02335/REM
Location: Westfield House Summer Lane Monkton Combe Bath
Proposal: Removal of condition 2 of application 07/01390/FUL allowed on appeal 5th November 2011 to allow use of the first floor area of the extended coach house to be used as a separate dwelling (Renovations and extension of former coach house/gardener's rooms to form annexe to

Decision: Westfield house and demolition of timber shed)
REFUSE
Decision Date: 19 July 2012
Decision Level: Delegated
Appeal Lodged: 8 February 2013

App. Ref: 12/01882/OUT
Location: Parcel 0006 Maynard Terrace Clutton Bristol
Proposal: Erection of 36no. dwellings and associated works (revised resubmission)
Decision: REFUSE
Decision Date: 17 December 2012
Decision Level: Planning Committee
Appeal Lodged: 11 February 2013

App. Ref: 12/00459/FUL
Location: 30 North Road Midsomer Norton Radstock BA3 2QD
Proposal: Erection of dwelling and alterations to existing access.
Decision: REFUSE
Decision Date: 24 July 2012
Decision Level: Delegated
Appeal Lodged: 13 February 2013

App. Ref: 12/03605/FUL
Location: 1 Kempthorne Lane Odd Down Bath BA2 5DX
Proposal: Erection of a two storey extension.
Decision: REFUSE
Decision Date: 7 November 2012
Decision Level: Delegated
Appeal Lodged: 15 February 2013

App. Ref: 12/03835/FUL
Location: 5 Vernon Park Twerton Bath BA2 3DD
Proposal: Erection of an end of terrace house with 2no. car spaces for dwelling and 1no. car space for 5 Vernon Park (Resubmission).
Decision: REFUSE
Decision Date: 30 October 2012
Decision Level: Delegated
Appeal Lodged: 18 February 2013

App. Ref: 12/04848/FUL
Location: 3 Lincombe Road Westfield Radstock BA3 3YJ
Proposal: Erection of a single storey extension to rear of garage and a first floor extension over garage (resubmission)
Decision: REFUSE
Decision Date: 27 December 2012
Decision Level: Delegated

Appeal Lodged: 21 February 2013

App. Ref: 12/02021/FUL
Location: Field Parcel 6823 Adjacent To Kennet And Avon Canal Warminster Road Claverton Bath BA2 7BJ
Proposal: Erection of an agricultural building for drying and storage of hops produced on the holding.
Decision: REFUSE
Decision Date: 10 October 2012
Decision Level: Delegated
Appeal Lodged: 22 February 2013

App. Ref: 12/04616/AGRA
Location: Field Parcel 6823 Adjacent To Kennet And Avon Canal Warminster Road Claverton Bath BA2 7BJ
Proposal: Erection of a portal framed agricultural storage building (Following 12/04193/AGRN).
Decision: REFUSE
Decision Date: 7 December 2012
Decision Level: Delegated
Appeal Lodged: 22 February 2013

App. Ref: 12/04220/OUT
Location: 23 Chandos Road Keynsham Bristol BS31 2BY
Proposal: Erection of a dwelling to the rear of 23 Chandos Road (Resubmission).
Decision: REFUSE
Decision Date: 12 November 2012
Decision Level: Delegated
Appeal Lodged: 25 February 2013

App. Ref: 12/02165/OUT
Location: Fairash Poultry Farm Compton Martin Road West Harptree Bristol BS40 6EQ
Proposal: Erection of 3no. dwellings following demolition of existing poultry farm (revised resubmission).
Decision: REFUSE
Decision Date: 6 August 2012
Decision Level: Planning Committee
Appeal Lodged: 27 February 2013

App. Ref: 12/03103/REM
Location: Vale View Cottage Vale View Place Larkhall Bath
Proposal: Removal of condition 12 of application 01/00050/FUL (Erection of a dwelling).
Decision: REFUSE
Decision Date: 20 September 2012

Decision Level: Delegated
Appeal Lodged: 28 February 2013

APPEAL DECISIONS

App Ref: 12/03315/FUL
Location: 11 Frome Road, Radstock BA3 3JX
Proposal: Construction of one studio apartment and one two bedroom apartment.
Decision: Refuse
Decision Date: 31 July 2012
Decision Level: Delegated
Appeal Decision: Dismissed

Summary

The main issues are:

i) Whether the proposal would preserve or enhance the character or appearance of the Radstock Conservation Area

The flat roof design would offer a poor design solution, again out of accord with the style of traditional cottages nearby. The proposal would be a dominant and discordant feature in a prominent position, lying to the east of a wide junction and area of open space. This would neither preserve nor enhance the character or appearance of the conservation area

ii) the effect of the proposal on the living conditions of the occupiers of the proposed development with particular regard to daylight and noise

The Inspector was not satisfied that adequate daylight would be received within the ground floor flat. It was further considered that the occupiers of the proposed apartments would be exposed to high levels of noise from road traffic and that in these circumstances it would not be appropriate to seek to mitigate such noise by the imposition of conditions, as it would effectively prevent having openable windows in the ground floor studio. This would add to the claustrophobic conditions, and limit natural ventilation, which would be unacceptable in a one room dwelling. High noise levels would also make sitting out in the garden a very noisy experience

The proposal would result in material harm to the living conditions of proposed occupiers with regard to daylight and noise and would conflict with saved LP Policy D.2 as well as advice in the Framework.

App Ref: 12/04399/FUL
Location: 168 Charlton Park
Proposal: Rebuild front wall, erection of 3 pillars and erection of fencing in between pillars and to side of properties (Retrospective) (Resubmission)
Decision: Refuse

Decision Date: 16.11.2012
Decision Level: Delegated
Appeal Decision: Appeal dismissed 24th January 2013

Summary

The application was a retrospective application for a boundary wall which was refused due to the impact on the character and appearance of the surrounding area.

The fence was considered to be a prominent feature in the street. The Inspector concluded that the fence would unacceptably harm the appearance of the established layout.

App Ref: 12/02849/FUL
Location: Little Mead, Pipehouse Lane, Freshford
Proposal: Erection of single storey extensions following demolition of existing side and rear extensions, and general renovation of existing studio outbuilding into additional accommodation ancillary to the main house.
Decision: Refuse
Decision Date: 24.08.2012
Decision Level: Delegated
Appeal Decision: Appeal dismissed – 24th January 2013

Summary

The application was for the extension of an annex building to create addition accommodation for the owners of the main house to use as a studio and as accommodation for guests.

The main reasons for refusal were extensions being inappropriate distortional additions to the building, the impact of the design on the existing building and concerns in respect of the future use of the building.

Whilst there was some doubt about which parts of the building were considered to be original the Inspector concluded that the increase in volume and 20% increase in the area covered by the building would represent a disproportionate addition over and above the size of the original building.

It was considered that the building due to the increase in area would detract from the openness of the Green Belt.

The Inspector considered that due to its size and the fact that the extension would wrap around the barn it would fail to complement the existing building. Stating that it would dominate the building and the large box dormer exacerbated the impact.

The applicant also made an application for costs and this application was rejected. The Inspector concluded the following in this decision:

- The first two reasons for refusal were clear and specific and the officer's report provided adequate evidence to substantiate them.

- In respect of the third reason for refusal a condition could have been used in respect of this matter. However, given the dispute over the proposed use the condition could have been unreasonable and the Council was right not to use a condition.
- In terms of time being wasted it was concluded that the appellant choose to submit a CLEUD and that any costs for this cannot be secured through this decision.
- The application was determined within 8 weeks and therefore there was not unreasonable delay.
- There was inconsistency in the advice given by the Council in respect of the proposed use. However, this would not have overcome the reasons for refusal.
- Advice in respect of the extension being inappropriate in the Green Belt and the appropriateness of its scale was generally consistent.
- The Inspector did not find that the Council displayed an unreasonably negative or intransigent attitude when dealing with the proposals. Rather, they set out what I have found to be justified objections to it, while giving the appellants the opportunity to amend their proposals accordingly. For example, on 25 July 2012, Mrs Faulkner wrote a lengthy email setting out her views on the scheme and offering the appellants the opportunity of amending the plans or withdrawing the application.

The fact that the Council does not have arrangement for local design review is surprising, however the advice in the NPPF while authoritative is not a statutory requirement, and the appeal decision found the Council's objections to the design of the development to be generally sound

App Ref: 12/00579/FUL
Location: 9A Molly Close, Temple Cloud, Bristol, BS39 5AE
Proposal: the erection of a three bedroom bungalow and the alteration of the front garden.
Decision: Refuse
Decision Date: 2 February 2012
Decision Level: Delegated
Appeal Decision: Dismiss

Summary

The main issues are:

i) the effect of the proposal on the character and appearance of the area

Given its siting and scale, the proposed dwelling would appear as a visually obtrusive development, which would significantly diminish the open and spacious character of the upper part of Molly Close. It was concluded that the development would have an unacceptable impact on the character and appearance of the area due to its siting and scale

ii) whether the living conditions for future occupiers would be acceptable in terms of the provision of private outdoor amenity space.

I conclude that the proposed area of private outdoor amenity space would be of an adequate size and provide sufficient privacy for future occupiers of the development. There would be compliance with Policy D2 of the Local Plan insofar as it relates to the living conditions for the future occupiers of the development.

App Ref: 12/04122/FUL
Location: Bannerdown Cottage, Steway Lane, Batheaston, BA1 8EQ
Proposal: Single storey kitchen extension with terrace to west and garage extension to east (Resubmission)
Decision: Refuse
Decision Date: 13 November 2012
Decision Level: Delegated
Appeal Decision: Appeal dismissed 12 February 2013

Summary

The application was a revised scheme following a refusal and entailed erection of two extensions to a dwelling within the Green Belt. The application was refused because the cumulative increase in volume of all extensions was deemed disproportionate in relation to the original dwelling and harming to the openness of the Green Belt.

The dwelling was extended in 2003 and the parties broadly agreed about the size of the dwelling before and after this earlier extension. However, the applicant contested LPA's calculations of the increase in volume. In particular, the appellant's approach took into account a former attached garage and various outbuildings that had been demolished shortly after 2003.

The Inspector found that the former garage and outbuildings, even assuming they were indeed part of the dwelling as opposed to separate curtilage structures, should only be taken into account if they formed part of the dwelling as it existed on 1 July 1948, and there was no definitive evidence of this. The Council's assessment therefore was deemed correct and the appeal was dismissed.

App Ref: 12/03517/FUL
Location: 15 Rosslyn Road, Bath BA1 3LQ
Proposal: Two storey side and single storey rear extension
Decision: Refuse
Decision Date: 10 October 2012
Decision Level: Delegated
Appeal Decision: Appeal dismissed 12 February 2013

Summary

The application was refused on the grounds of harm to residential amenity and impact on the character of the locality. The Inspector did not agree that the harm to the residential amenity would be harmful enough to justify refusal. With regard to character of the locality, the street has an attractive suburban character by virtue of the generous setting out of the semi-detached pairs, which are typically set well back from the road with large gaps between them, particularly at first floor level. The Inspector agreed that the proposed two storey side extension would erode the spacious setting out of the dwellings and would be detrimental to the streetscene.

App. Ref: 12/00511/FUL
Location: Bickfield Farm, Bickfield Lane, Compton Martin
Proposal: Installation of photovoltaic solar panels
Decision: Refuse
Decision Date: 19.04.2012
Decision Level: Delegated
Appeal Decision: Allow

Summary:

Installation of 208 panels set in three parallel rows sited in an area of about 950 square metres within a pasture field. The site is within the Bristol and Bath Green Belt and the Mendip Hills Area of Outstanding Natural Beauty. Appreciate that the development might benefit the farm business financially. However, it seems to me that it could not be reasonably argued that it is functionally required for the undertaking of the agricultural enterprise on the holding. On this basis I conclude on this issue that the proposal constitutes inappropriate development in the Green Belt. Whilst the installation occupies a physical space and thus necessarily results in a loss of openness it is impermanent in appearance. Its structure appears lightweight such that it could be readily removed. In all, I consider that the limited loss of openness entailed in the scheme adds only a little additional weight against the proposal. The panels are dark-coloured and set in slender silver frames. To the eye, they are not in themselves unattractive, their form reading clearly as a product of their function. That said they do appear somewhat out of place in a traditional pastoral landscape. Nevertheless, I consider that they result in only limited harm to the visual amenity of the Green Belt and the Area of Outstanding Natural Beauty. The installation is not so substantial that it would result in the permanent sterilisation of agricultural land. Very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources. The scheme would support Government policy on renewable energy and climate change. These other considerations clearly outweigh the harm by reason of inappropriateness and other harm, so as to amount to the very special circumstances necessary to justify the development.

App. Ref: 12/00452/FUL
Location: Nempnett Farm, Greenhouse Lane, Nempnett Thrubwell
Proposal: Installation of photovoltaic solar panels
Decision: Refuse
Decision Date: 19.04.2012
Decision Level: Delegated
Appeal Decision: Allow

Summary:

Three parallel rows of photovoltaic panels sited in a rectangle of land extending to about 37m by 26m within a pasture field. The site is within the Bristol and Bath Green Belt. Appreciate that the development might benefit the farm business financially. However, it seems to me that it could not be reasonably argued that it is functionally required for the undertaking of the agricultural enterprise on the holding. On this basis I conclude on this issue that the proposal constitutes inappropriate development in the Green Belt. Whilst the installation occupies a physical space and thus necessarily results in a loss of openness it is impermanent in appearance. Its structure appears lightweight such that it could be readily removed. In all, I consider that the limited loss of openness entailed in the scheme adds only a little additional weight against the proposal. The

panels are dark-coloured and set in slender silver frames. To the eye, they are not in themselves unattractive, their form reading clearly as a product of their function. That said they do appear somewhat out of place in a traditional pastoral landscape. Nevertheless, I consider that they result in only limited visual harm to the Green Belt. Acknowledge that the installation is visible from the farm buildings at Oxleaze Farm, which is the neighbouring farm to the north, as well as from the public footpath mentioned above, but I saw that due to its dark colour and low profile it is not particularly prominent in the landscape. Incremental contributions such as that provided by the appeal scheme can be significant in achieving the economic, social and environmental dimensions of sustainable development. Cumulatively, they have the potential to secure significant reductions in greenhouse gas emissions and provide resilience to the impact of climate change. Accordingly, I give very considerable weight to the delivery of renewable energy benefits associated with the scheme. These other considerations clearly outweigh the harm by reason of inappropriateness and other harm, so as to amount to the very special circumstances necessary to justify the development.

App. Ref:	12/00453/FUL
Location:	Oxleaze Farm, Greenhouse Lane, Nempnett Thrubwell
Proposal:	Installation of photovoltaic solar panels
Decision:	Refuse
Decision Date:	19.04.2012
Decision Level:	Delegated
Appeal Decision:	Allow

Summary:

The installation includes two parallel rows of photovoltaic panels sited in a rectangle of land extending to about 53m by 17.5m. The site is in the corner of a pasture field lying to the north of the main farm buildings and to the east (rear) of a new dwelling with road frontage. The site is within the Bristol and Bath Green Belt. Appreciate that the development might benefit the farm business financially. However, it seems to me that it could not be reasonably argued that it is functionally required for the undertaking of the agricultural enterprise on the holding. On this basis I conclude on this issue that the proposal constitutes inappropriate development in the Green Belt. Whilst the installation occupies a physical space and thus necessarily results in a loss of openness it is impermanent in appearance. Its structure appears lightweight such that it could be readily removed. In all, I consider that the limited loss of openness entailed in the scheme adds only a little additional weight against the proposal. The panels are dark-coloured and set in slender silver frames. To the eye, they are not in themselves unattractive, their form reading clearly as a product of their function. That said they do appear somewhat out of place in a traditional pastoral landscape. Nevertheless, I consider that they result in only limited visual harm to the Green Belt. Acknowledge that the installation is visible from the farm buildings at Nempnett Farm, which is the neighbouring farm to the south, but I saw that due to its dark colour and low profile it is not particularly prominent in the landscape. Incremental contributions such as that provided by the appeal scheme can be significant in achieving the economic, social and environmental dimensions of sustainable development. Cumulatively, they have the potential to secure significant reductions in greenhouse gas emissions and provide resilience to the impact of climate change. Accordingly, I give very considerable weight to the delivery of renewable energy benefits associated with the scheme. These other considerations clearly outweigh the harm by reason of inappropriateness and other harm, so as to amount to the very special circumstances necessary to justify the development.

App. Ref: 12/01925/FUL
Location: 4 Lime Grove, Bathwick, Bath
Proposal: Conversion of student lets into 2no maisonettes and 1no self contained apartment with first floor extension at the rear
Decision: Refusal
Decision Date: 02.10.2012
Decision Level: Non-determination
Appeal Decision: Dismiss

Summary:

Inevitably, this existing arrangement restricts light and outlook to the patio and various habitable room windows in the main rear wall and side elevation of the rear projection of No 3. There is also an appreciable degree of mutual overlooking between Nos 3 and 4. However, the existing situation is consistent with the general standards of the area. Conversely, the proposed first floor rear extension would significantly increase the sense of enclosure at No 3 whilst further reducing light and outlook to the patio and rear/side windows. The inclusion of a roof terrace at second floor level would likewise increase the degree of overlooking. These effects would be unacceptable when assessed against the general standards of the area and the need to protect the amenities of existing uses and occupiers set out in saved Policies D2 and HG.12 of the Bath & North East Somerset Local Plan 2007. This leads me to conclude on the main issue that the proposed development would cause significant harm to the living conditions at the adjoining property, 3 Lime Grove. I agree with the Council that the works proposed would be generally unobtrusive, such that the character and appearance of the conservation area, which is also a designated World Heritage Site would be preserved. Although the proposal would increase the supply of housing in a central and accessible location, in broad compliance with the National Planning Policy Framework, this must be set against other policies in the Framework seeking to deliver high quality residential and living environments. In this instance, the harm that I have identified in relation to the main issue is significant and overriding.

App. Ref: 12/01606/FUL
Location: 22 The Tynning, Widcombe, Bath
Proposal: Erection of a two storey extension and a single storey side/rear extension following demolition of existing single storey extension and associated works (revised resubmission).
Decision: Refuse
Decision Date: 07.06.2012
Decision Level: Delegated
Appeal Decision: Dismiss

Summary:

The proposed design is imaginative. Four semi-detached houses face Widcombe Hill between The Tynning and Tynning End. Due to the topography of the land No 22 occupies a prominent position above the level of the road both to front and side. However, the angles of view from the public domain work in favour of the proposal. The cat slide roof of the two storey extension would ensure that this extension appeared subservient to the host dwelling. The addition of the two storey extension would therefore do no more than bring the dwelling in line with the size and

design of other houses nearby. Believe that the extensions would respect the dominance and character of the existing house without unduly upsetting the balance of the semi-detached pair. I consider that the proposal represents thoughtful and innovative design of considerable quality. I appreciate that the area of the balcony would be small and therefore might not be intensively used. I also appreciate that it would be set away from the common boundary. However, the houses are of modest size and the gardens are not large. Consider that, due to the short distance involved and the limited amount of amenity space at St Aubins, the balcony would give rise to overlooking at uncomfortably close range. This aspect of the proposal is therefore unsatisfactory.

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